NGĀTI MUTUNGA O WHAREKAURI

and

THE CROWN

AGREEMENT IN PRINCIPLE
TO SETTLE
HISTORICAL CLAIMS

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25 November 2022

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1 BACKGROUND

Mandate and terms of negotiation

1.1 Ngāti Mutunga o Wharekauri Iwi Trust undertook consultation and hui with Ngāti Mutunga o Wharekauri, and on 28 March 2014 gained a mandate to negotiate with the Crown a deed of settlement settling the historical claims of Ngāti Mutunga o Wharekauri.

1.2 The Crown recognised this mandate on 16 March 2015.

1.3 The mandated negotiators and the Crown agreed the scope, objectives, and general procedures for the negotiations by Crown Expectations and Matters for Agreement dated 20 March 2015.

Nature and scope of deed of settlement agreed

1.4 The mandated negotiators and the Crown have agreed, in principle, the nature and scope of the deed of settlement and shared redress deed.

1.5 This agreement in principle records that agreement and concludes substantive negotiations of the redress contemplated in this agreement in principle.

Approval and signing of this agreement in principle

1.6 The mandated body has –

1.6.1 approved this agreement in principle; and

1.6.2 authorised the mandated negotiators to sign it on their behalf.

2 AGREEMENT IN PRINCIPLE

2.1 Ngāti Mutunga o Wharekauri and the Crown agree –

2.1.1 that, in principle, the nature and scope of the deed of settlement and the shared redress deed is to be as provided in this agreement in principle; and

2.1.2 to work together in good faith to develop, as soon as reasonably practicable, a deed of settlement and shared redress deed based on this agreement in principle. In particular, parties will work together to resolve any matters in relation to clause 3.5 of this agreement in principle, and agree or determine (where applicable) those matters under clauses 3.8 and 10.2; and

2.1.3 the deed of settlement is to be signed by or on behalf of Ngāti Mutunga o Wharekauri, the Ngāti Mutunga o Wharekauri governance entity, and the Crown; and

2.1.4 the shared redress deed is to be signed by or on behalf of Ngāti Mutunga o Wharekauri, the Ngāti Mutunga o Wharekauri governance entity, Moriori, the Moriori Imi Settlement Trust, and the Crown.

3 SETTLEMENT

Settlement of historical claims

3.1 The deed of settlement is to provide that, on and from the settlement date:

3.1.1 the historical claims of Ngāti Mutunga o Wharekauri are settled; and

3.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and

3.1.3 the settlement is final.

3.2 The definitions of the historical claims, and of Ngāti Mutunga o Wharekauri, are to be based on the definitions of those terms in schedule 1.

Terms of settlement

3.3 The terms of the settlement provided in the deed of settlement and the shared redress deed are to be:

3.3.1 those in schedule 2; and

3.3.2 any additional terms agreed by the parties.

Redress

3.4 The deed of settlement and shared redress deed are to provide for redress in accordance with this agreement in principle.

3.5 However, the deed of settlement and shared redress deed will include –

3.5.1 redress contemplated by this agreement in principle only if any overlapping interests in relation to that redress have been addressed to the satisfaction of the Crown; and

3.5.2 a property that this agreement in principle specifies as a potential cultural redress property, or a potential commercial redress property, or a potential deferred selection property, subject to final written confirmation from the Crown that each of those properties is available. If any such potential property is not available, the Crown is under no obligation to substitute that property with another property.

3.6 If the Crown is unable to confirm any redress contemplated by this agreement in principle due to overlapping interests, the parties may discuss alternative redress so that the nature of the redress contemplated by this agreement in principle is maintained so far as that is possible, in the deed of settlement and shared redress deed.

3.7 If any new redress is offered by the Crown in accordance with clause 3.6, Ngāti Mutunga o Wharekauri acknowledge that clauses 3.5.1 and 3.5.2 apply to that redress.

Transfer or vesting of settlement properties

3.8 The settlement documentation is to provide that the vesting or transfer of:

3.8.1 a redress property or a purchased deferred selection property will be subject to –

(a) any further identification and/or survey required; and

(b) Part 4A of the Conservation Act 1987 (unless the settlement documentation provides otherwise); and

(c) sections 10 and 11 of the Crown Minerals Act 1991; and

(d) any relevant provisions included in the settlement documentation.

3.8.2 a redress property, will be subject to any encumbrance or right, in relation to that property that the settlement documentation either –

(a) describes as existing at the date of the deed of settlement or the date of the shared redress deed; or

(b) requires to be created on or before the settlement date; and

3.8.3 a purchased deferred selection property will be subject to any encumbrance or right, or obligation in relation to that property, that is either:

(a) described in the disclosure information provided for that deferred selection property (and not varied during the pre-purchase period); or

(b) entered into by the Crown during the pre-purchase period; or

(c) required to be created under the settlement documentation on or before the settlement date for the property.

4 HISTORICAL ACCOUNT, ACKNOWLEDGEMENT AND APOLOGY

4.1 The deed of settlement is to include –

4.1.1 an agreed account of the historical relationship between Ngāti Mutunga o Wharekauri and the Crown to be developed by the parties; and

4.1.2 the Crown's acknowledgement of its acts and omissions which have breached te Tiriti of Waitangi/the Treaty of Waitangi and its principles or caused prejudice to Ngāti Mutunga o Wharekauri; and

4.1.3 a Crown apology for those breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

4.2 The historical account will be based on the following provisional topics:

4.2.1 Te Hekenga o Ngāti Mutunga;

4.2.2 Migration to the Chatham Islands;

4.2.3 Normanby's Instructions and the Treaty of Waitangi;

4.2.4 The annexation of Wharekauri, 1842;

4.2.5 Auckland Islands, 1842–1856;

4.2.6 Ngāti Mutunga and the Crown, 1850s;

4.2.7 Compensation Court in Taranaki, 1866;

4.2.8 Taranaki Land Confiscations and the Compensation Court;

4.2.9 The Chatham Islands Penal Colony;

4.2.10 the Native Land Court;

4.2.11 Public Works;

4.2.12 Te Whanga Lagoon; and

4.2.13 Twentieth-century socio-economic circumstances.

4.3 The following Crown acknowledgements are provisional and will be subject to further discussion and final confirmation by the parties before inclusion in the deed of settlement

4.3.1 the Crown acknowledges Ngāti Mutunga o Wharekauri as tangata whenua of Wharekauri (the Chatham Islands);

4.3.2 the Crown acknowledges that its annexation of Wharekauri in 1842 was carried out without any effort to consult with Ngāti Mutunga o Wharekauri. This represented a profound failure to give appropriate recognition and respect to the mana and te tino rangatiratanga of Ngāti Mutunga o Wharekauri. The Crown further acknowledges that its failure to seek the consent of Ngāti Mutunga o Wharekauri did not meet the standards of conduct set out in the instructions given to Governor Hobson when he was sent from England to establish sovereignty over New Zealand;

4.3.3 the Crown acknowledges that the undertakings it made to Māori in te Tiriti o Waitangi/the Treaty of Waitangi apply and have always applied to Ngāti Mutunga o Wharekauri from the date of annexation;

4.3.4 in 2001 and 2005 the Crown settled the historical claims of Ngāti Tama and Ngāti Mutunga at Taranaki. In these settlements, the Crown acknowledged that the wars and confiscations in Taranaki had breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and that the inadequacies in the Compensation Court process compounded the prejudicial effects of confiscation;

4.3.5 the Crown acknowledges that between 1866 and 1868 it used the rohe of Ngāti Mutunga o Wharekauri as a penal colony, and that the use of their rohe for this purpose has been a grievance for Ngāti Mutunga o Wharekauri;

4.3.6 the Crown acknowledges that:

(a) it introduced the native land laws, which provided for the individualisation of title to Ngāti Mutunga o Wharekauri lands previously held in collective tenure, without consulting Ngāti Mutunga o Wharekauri;

(b) in 1870 the Native Land Court awarded title to a number of Wharekauri (Chatham Islands) land blocks, each to ten or fewer Ngāti Mutunga o Wharekauri individuals who were able to act as absolute owners, rather than for or on behalf of Ngāti Mutunga o Wharekauri;

(c) the native land laws did not prevent the alienation of much Ngāti Mutunga o Wharekauri land without the consent of the wider community of rights-holders who were thereby dispossessed of their interests in these lands;

(d) it did not take effective steps to prevent this dispossession before most of these lands had been alienated; and

(e) this meant the operation of the native land laws on Wharekauri (the Chatham Islands) did not reflect the Crown's obligation to actively protect the interests of Ngāti Mutunga o Wharekauri in lands they may otherwise have wished to retain, and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.7 the Crown further acknowledges that the operation and impact of the native land laws, in particular the awarding of land to individuals rather than to iwi or hapū, was inconsistent with tikanga Ngāti Mutunga o Wharekauri, and made Ngāti Mutunga o Wharekauri lands more susceptible to partition, fragmentation,

and alienation. This contributed to the erosion of the tribal structures of Ngāti Mutunga o Wharekauri, which were based on collective iwi custodianship of land. The Crown's failure to actively protect the iwi structures of Ngāti Mutunga o Wharekauri was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.8 the Crown acknowledges that when it created Māori Parliamentary seats in 1867 it failed to include Wharekauri (the Chatham Islands) within the boundaries of a Māori electoral district, thereby denying Ngāti Mutunga o Wharekauri political representation and the right to vote. The Crown further acknowledges that it became aware of this omission in 1880, but did not extend the electoral boundaries to include Wharekauri (the Chatham Islands) until 1922. This unjustified failure, until 1922, to ensure that Ngāti Mutunga o Wharekauri could exercise the right to vote, a fundamental right and privilege of British subjects, was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles;

4.3.9 the Crown acknowledges that it promoted legislation which, between 1953 and 1974, empowered the Māori Trustee to compulsorily acquire Ngāti Mutunga o Wharekauri interests in lands which the Crown considered uneconomic. This deprived some Ngāti Mutunga o Wharekauri individuals of their tūrangawaewae, further undermined tribal structures, and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and

4.3.10 the Crown acknowledges that it failed to actively protect te reo Māori and encourage its use by iwi and Māori, which had a detrimental impact on te reo Māori on Wharekauri (the Chatham Islands), and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

5 CULTURAL REDRESS

General

5.1 All items of cultural redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:

5.1.1 the Crown confirming that any residual overlapping interests in relation to any item of cultural redress have been addressed to the satisfaction of the Crown; and

5.1.2 any other conditions specified in the cultural redress tables provided below and set out in clauses 3.5, 3.8 and 10.2 of this agreement in principle.

Resource Management Act Reform

5.2 Redress which interacts with the Resource Management Act 1991 may be affected by the Crown's current work to reform the resource management system (the reforms). Should the reforms be enacted the Crown and Ngāti Mutunga o Wharekauri will engage to discuss how the redress will be carried over into the new system to ensure the intent of the redress is upheld.

Cultural revitalisation payment

5.3 The Crown remains committed to supporting the cultural revitalisation of Ngāti Mutunga o Wharekauri. Therefore, the deed of settlement is to provide that the Crown will pay $3 million to the Ngāti Mutunga o Wharekauri governance entity on the settlement date, subject to the conditions below:

5.3.1 Ngāti Mutunga o Wharekauri is to use $2.7 million for the construction of a marae; and

5.3.2 the remaining $0.3 million will be used by Ngāti Mutunga o Wharekauri to commission a general history of Ngāti Mutunga o Wharekauri on the Chatham Islands.

Potential cultural redress properties

5.4 The deed of settlement is to provide that the settlement legislation will vest in the Ngāti Mutunga o Wharekauri governance entity those of the properties described in Table 1 below, as potential cultural redress properties that the parties agree are to be cultural redress properties.

5.5 If the parties agree a potential cultural redress property is to be vested as a cultural redress property, it will be vested in the Ngāti Mutunga o Wharekauri governance entity on the basis provided in Table 1 below.

Table 1 - Potential cultural redress properties

Landholding Agency	Name of area	General description/location	Conditions of vesting/specific conditions currently known
Land Information New Zealand (Treaty Settlements Landbank)	3 Meteorological Lane, Chatham Island PF1988	*Wellington Land District – Chatham Islands Council* 0.2364 hectares, more or less, being Lot 1 DP 486165. All record of title 692571 for the fee simple estate. Refer to **Map 1** in attachment 4	Vest in fee simple
Land Information New Zealand	6 Wilson Place, Chatham Island	*Wellington Land District – Chatham Islands Council* 0.1142 hectares, more or less, being Lot 2 DP 49761. Part record of title WN56A/20 for the fee simple estate. Refer to **Map 2** in attachment 4	Vest in fee simple
Land Information New Zealand	7 Wilson Place, Chatham Island	*Wellington Land District – Chatham Islands Council* 0.1248 hectares, more or less, being Lot 5 DP 49761. Part record of title WN56A/20 for the fee simple estate. Refer to **Map 3** in attachment 4	Vest in fee simple.

Land Information New Zealand (Treaty Settlements Landbank)	9 Wilson Place, Chatham Island PF1117	*Wellington Land District – Chatham Islands Council* 0.1128 hectares, more or less, being Lot 4 DP 49761. All record of title WN44A/633 for the fee simple estate. Refer to **Map 4** in attachment 4	Vest in fee simple
Land Information New Zealand (Treaty Settlement Landbank)	Highet Place, Chatham Island PF1107A	*Wellington Land District – Chatham Islands Council* 1.7169 hectares, more or less, being Lot 2 LT 570193 (Part Kekerione 62 Block). Part record of title WN54C/73 for the fee simple estate. Refer to **Map 5** in attachment 4	Vest in fee simple

*The legal descriptions of the properties in this table and any associated maps are indicative only and subject to confirmation by the Crown

Statutory acknowledgement

5.6 The deed of settlement is to provide for the settlement legislation to –

5.6.1 provide the Crown's acknowledgement of the statements by Ngāti Mutunga o Wharekauri of their particular cultural, spiritual, historical, and traditional association with each of the areas described in Table 2 below as statutory areas to the extent that those areas are owned by the Crown; and

5.6.2 require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the statutory acknowledgement; and

5.6.3 require relevant consent authorities to forward to the Ngāti Mutunga o Wharekauri governance entity summaries of resource consent applications affecting a statutory area; and

5.6.4 require relevant consent authorities to forward to the Ngāti Mutunga o Wharekauri governance entity a copy of a resource consent application notice under section 145(10) of the Resource Management Act 1991; and

5.6.5 enable the Ngāti Mutunga o Wharekauri governance entity, and any member of Ngāti Mutunga o Wharekauri, to cite the statutory acknowledgement as evidence of the settling group's association with a statutory area.

Table 2 – Statutory acknowledgements

Statutory areas to which the statutory acknowledgement is to apply	Location
11882, Owenga (Scenic Reserve – Owenga)	Owenga, Chatham Island
Coastal marine area (as shown on the map in attachment 3)	Coastal marine area around all islands in the Chatham Islands
Hanson Bay South Marginal Strip	Hanson Bay, Chatham Island
Lake Huro Marginal Strip	Lake Huro, Chatham Island
Manauea / Ocean Mail Scenic Reserve	North Road, Chatham Island
Mangere Island Nature Reserve	Mangere Island, Chatham Islands
Owenga Marginal Strip	Owenga, Chatham Island
Pacific Ocean Marginal Strip	Point Durham, Chatham Island
Part site 100, ex-Wharekauri Station (east) (Part Scenic Reserve - Wharekauri coastal strip)	Chatham Island
Petre Bay Marginal Strip	Petre Bay, Chatham Island
Pitt Strait Marginal Strip	Pitt Strait, Chatham Island
Rangatira Nature Reserve	South East Island (Rangatira), Chatham Islands
Site 101, ex-Wharekauri Station (Scenic Reserve - Lake Rotokawau)	Lake Rotokawau, Chatham Island
Site 102, ex Wharekauri Station (Scenic Reserve - Punakokowai/Tangepu)	Takapu, Chatham Island
Site 103, ex Wharekauri Station (Scenic Reserve – Lower Nikau Bush)	North Road, Chatham Island
Site 104, ex Wharekauri Station (Scenic Reserve –Chudleigh)	Wharekauri Road, Chatham Island; subject to the site being administered by the Department of Conservation
Site 105, ex Wharekauri Station (Scenic Reserve - Tioriori/Green Swamp)	Tioriori Creek; Chatham Island
Te Awatea Scenic Reserve	Chatham Island
Part Tikitiki Hill Conservation Area – Department of Conservation staff house and land	Tikitiki Hill, Chatham Islands
Waipāua Scenic Reserve	Pitt Island (Rangiauria), Chatham Islands
Waitangi Marginal Strip	Waitangi, Chatham Island

Memorial on the Auckland Islands

5.7 The deed of settlement will provide for the ability for Ngāti Mutunga o Wharekauri to erect a memorial marker on the Auckland Islands, subject to addressing overlapping interests with Ngāi Tahu.

Potential official geographic names

5.8 The Crown will work with Ngāti Mutunga o Wharekauri to develop a list of names for geographic features within their area of interest for proposing to the New Zealand

Geographic Board Ngā Pou Taunaha o Aotearoa. The deed of settlement is to provide for the settlement legislation to provide for each of the names listed in the deed of settlement to be the official geographic names of the features if the parties agree.

Protocols

5.9 The deed of settlement is to require that the responsible Minister issue the Ngāti Mutunga o Wharekauri governance entity with the protocols referred to below.

5.10 A protocol will provide for the Crown's interaction with the Ngāti Mutunga o Wharekauri governance entity in relation to specified matters.

Crown Minerals Protocol

5.11 The deed of settlement is to require the Minister of Energy and Resources issue the Ngāti Mutunga o Wharekauri governance entity with a Crown Minerals Protocol.

Primary Industries Protocol

5.12 The deed of settlement is to require the Minister of Agriculture, Minister for Biosecurity, Minister of Fisheries, Minister for Food Safety and the Minister of Forestry to issue the Ngāti Mutunga o Wharekauri governance entity with a Primary Industries Protocol.

Whakaaetanga Tiaki Taonga

5.13 The following culture and heritage parties have agreed to enter into a Whakaaetanga Tiaki Taonga with the Ngāti Mutunga o Wharekauri governance entity:

5.13.1 Te Tari Taiwhenua Department of Internal Affairs (the agency responsible for Te Puna Mātauranga o Aotearoa National Library of New Zealand and Te Rua Mahara o Te Kāwanatanga Archives New Zealand); and

5.13.2 Manatū Taonga Ministry for Culture and Heritage; and

5.13.3 Museum of New Zealand Te Papa Tongarewa; and

5.13.4 Heritage New Zealand Pouhere Taonga.

5.14 The parties intend that the Whakaaetanga Tiaki Taonga will facilitate:

5.14.1 the care, management, access, use, development and revitalisation of Ngāti Mutunga o Wharekauri taonga; and

5.14.2 the identification, protection, preservation and conservation of the historical and cultural heritage of Ngāti Mutunga o Wharekauri.

5.15 The Whakaaetanga Tiaki Taonga will be issued to the Ngāti Mutunga o Wharekaruri governance entity through the deed of settlement.

Relationship Instruments

5.16 The deed of settlement is to require that the agencies referred to in Table 3 below will enter into a relationship instrument with the Ngāti Mutunga o Wharekauri governance entity.

Table 3 – Relationship instruments

Agency	Relationship instrument
Te Papa Atawhai Department of Conservation	Relationship agreement
Ngā Taonga Sound & Vision	Letter of introduction

Letter of introduction to agencies

5.17 The deed of settlement will provide for the Chief Executive of the Office for Māori Crown Relations – Te Arawhiti to write a letter of introduction to Ngā Taonga Sound & Vision. The purpose of the letter is to raise the profile of Ngāti Mutunga o Wharekauri in relation to the work of Ngā Taonga Sound & Vision.

Cultural redress non-exclusive

5.18 The Crown may do anything that is consistent with the cultural redress contemplated by this agreement in principle, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

6 FINANCIAL AND COMMERCIAL REDRESS

General

6.1 All items of commercial redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:

6.1.1 the Crown confirming that any residual overlapping interests in relation to any item of commercial redress have been addressed to the satisfaction of the Crown; and

6.1.2 any other conditions specified in the commercial redress tables provided below and set out in clauses 3.5, 3.8 and 10.2 of this agreement in principle.

Financial and commercial redress amount

6.2 The deed of settlement is to provide that the Crown will pay the Ngāti Mutunga o Wharekauri governance entity on the settlement date the financial and commercial redress amount of $13 million less – the total of the transfer values (determined in accordance with the valuation process in schedule 3) of any properties that the deed of settlement provides are commercial redress properties to be transferred exclusively to the Ngāti Mutunga o Wharekauri governance entity on the settlement date.

Shared Right of First Refusal

6.3 The settlement documentation is to provide that –

6.3.1 the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust have a shared right of first refusal (RFR) in relation to a disposal by the Crown or Health New Zealand of land defined as "shared RFR land" in the Moriori Claims Settlement Act 2021, which is the land described in Table 4 below that, on the date the RFR commences is vested in the Crown or held in fee simple by the Crown or Health New Zealand;

6.3.2 the RFR will apply for 179 years from the date the RFR commences;

6.3.3 The RFR commences on the earlier of –

(a) the date that is 36 months after the settlement date under the Moriori Claims Settlement Act 2021; and

(b) the settlement date; and

6.3.4 The RFR becomes operative for the Ngāti Mutunga o Wharekauri governance entity on the settlement date;

6.3.5 If the RFR commences but the settlement date has not occurred, then any RFR offer will not be made to the Ngāti Mutunga o Wharekauri governance entity until the settlement date has occurred; and

6.3.6 Land may cease to be shared RFR land if it is -

(a) required for the settlement of historical Treaty claims of Ngāti Mutunga o Wharekauri; or

(b) required as a redress property to be shared between Ngāti Mutunga o Wharekauri and Moriori.

Table 4 – shared RFR land

RFR Area			
Land within the RFR Area shown on SO 536545 which on the date the RFR commences is vested in the Crown or is held in fee simple by the Crown.			
RFR List			
Landholding Agency	**Property Name/ Address**	**General description/ location**	**Conditions of transfer/Specific conditions currently known**
Health New Zealand (formerly Canterbury District Health Board)	Chatham Islands Nurses Accommodation 6 Hospital Road, Waitangi, Chatham Island	*Wellington Land District – Chatham Islands Council* 2.8836 hectares, more or less, being Part Kekerione 1 Subdivision 62 Block. Balance record of title WN370/115 for the fee simple estate.	Subject to Ministerial approval under the Pae Ora (Healthy Futures) Act 2022.
Health New Zealand (formerly Canterbury District Health Board)	Chatham Island Hospital 6 Cornflat Road, Waitangi, Chatham Island	*Wellington Land District – Chatham Islands Council* 0.0846 hectares, more or less being Lot 11 DP 74262. All record of title WN41B/635 for the feed simple estate.	Subject to Ministerial approval under the Pae Ora (Healthy Futures) Act 2022.

*The legal descriptions of the properties in this table are indicative only and subject to confirmation by the Crown

Fisheries quota right of first refusal

6.4 The deed of settlement is to provide that by or on the settlement date, the Minister of Fisheries will provide the Ngāti Mutunga o Wharekauri governance entity with a right of first refusal within the Ngāti Mutunga o Wharekauri area of interest over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system after the settlement date. The details of the right of first refusal will be outlined in the deed of settlement

7 SHARED REDRESS

7.1 It is intended that Ngāti Mutunga o Wharekauri will be a party to a shared redress deed between themselves, the Crown and Moriori.

7.2 The Crown owes Ngāti Mutunga o Wharekauri a duty consistent with the principles of the Treaty of Waitangi to negotiate a shared redress deed in good faith.

7.3 The Crown intends to continue working with Ngāti Mutunga o Wharekauri and Moriori to give effect to the proposal set out in clauses 7.6 to 7.33.

7.4 The parties acknowledge while the Crown is negotiating a shared redress deed in good faith, the Crown is not in breach of this Agreement in Principle if a shared redress deed is not agreed by Ngāti Mutunga o Wharekauri, Moriori and the Crown.

7.5 The Crown acknowledges that the transfer of the shared redress properties for any purpose other than as shared redress for Ngāti Mutunga o Wharekauri and Moriori would be inconsistent with both clauses 7.2 and 7.3, unless alternative arrangements are otherwise agreed by the Crown, Ngāti Mutunga o Wharekauri, and Moriori.

Shared cultural redress

7.6 All items of cultural redress in clauses 7.7 to 7.25 are subject to clause 5.1

Potential shared cultural redress properties

7.7 The shared redress deed is to provide that the settlement legislation will vest in equal shares in the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust as tenants in common those of the properties described in Table 5 below as potential cultural redress properties that the parties agree are to be cultural redress properties.

7.8 If the parties agree a potential cultural redress property is to be vested as a cultural redress property, it will be vested on the basis provided in Table 5 below.

Table 5 – Potential shared cultural redress properties

Landholding Agency	Name of area	General description/location	Conditions of vesting/Specific conditions currently known
TBC	Te Whanga Lagoon and related sites	*Wellington Land District – Chatham Islands Council* 476.7196 hectares, approximately, being part Sections 1 and 2 Block VII Rekohu Survey District. No registration. 18,120.00 hectares, approximately, being part	Bed vesting fee simple and administered by the Te Whanga Management Board; The title of the bed of Te Whanga will be inalienable and its owners will not be able to mortgage or give a security interest in Te Whanga;

		bed of Te Whanga Lagoon. No registration. Subject to survey. North Road, Chatham Island. Refer to **Map 6** in attachment 5	All rights and responsibilities over Te Whanga will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; Ownership of the airspace above the water, and the space occupied from time to time by the waters at their highest level without overflowing the banks, is subject to ongoing negotiations; and Any liabilities transferring with ownership and/or management will be determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Land Information New Zealand	Site 110, ex Wharekauri Station	*Wellington Land District – Chatham Islands Council* 15.3200 hectares, approximately, being Section 1 SO 36806. Part Transfer 067039.2. North Road, Chatham Island. Refer to **Map 7** in attachment 5	Vesting fee simple and administered by the Te Whanga Management Board; The land will be inalienable and its owners will not be able to mortgage or give a security interest in the land; All rights and responsibilities over the land will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; and Any liabilities transferring with ownership and/or management will be determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Land Information New Zealand	Site 111, ex Wharekauri Station	*Wellington Land District – Chatham Islands Council* 14.9000 hectares, approximately, being Section 1 SO 36807. Part Transfer 067039.2. North Road, Chatham Island.	Vesting fee simple and administered by the Te Whanga Management Board; The land will be inalienable and its owners will not be able to mortgage or give a security interest in the land; All rights and responsibilities over the

		Refer to **Map 8** in attachment 5	land will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; and Any liabilities transferring with ownership and/or management will be determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Land Information New Zealand	Site 112, ex Wharekauri Station	*Wellington Land District – Chatham Islands Council* 5.3000 hectares, approximately, being Section 3 SO 36548. Part Transfer 067039.2. North Road, Chatham Island. Refer to **Map 9** in attachment 5	Vesting fee simple and administered by the Te Whanga Management Board; The land will be inalienable and its owners will not be able to mortgage or give a security interest in the land; All rights and responsibilities over the land will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; and Any liabilities transferring with ownership and/or management will be determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Land Information New Zealand	Site 113, ex Wharekauri Station	*Wellington Land District – Chatham Islands Council* 0.2500 hectares, approximately, being Section 4 SO 36548. Part Transfer 067039.2. North Road, Chatham Island. Refer to **Map 10** in attachment 5	Vesting fee simple and administered by the Te Whanga Management Board; The land will be inalienable and its owners will not be able to mortgage or give a security interest in the land; All rights and responsibilities over the land will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; and Any liabilities transferring with ownership and/or management will be

			determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Land Information New Zealand	Site 114, ex Wharekauri Station	*Wellington Land District – Chatham Islands Council* 0.7000 hectares, approximately, being Section 5 SO 36548. Part Transfer 067039.2. North Road, Chatham Island. Refer to **Map 11** in attachment 5	Vesting fee simple and administered by the Te Whanga Management Board; The land will be inalienable and its owners will not be able to mortgage or give a security interest in the land; All rights and responsibilities over the land will be held by the Te Whanga Management Board; Third party rights will be protected and public access maintained; and Any liabilities transferring with ownership and/or management will be determined prior to reaching shared redress deed and are subject to ongoing negotiations.
Department of Conservation	Part Tikitiki Hill Conservation Area – white house (land and buildings)	*Wellington Land District – Chatham Islands Council* 0.6 hectares, approximately, being Part Kekerione 1W Block and Part Section 1 SO 531657. [Part DI 27/21]. Subject to survey. Tikitiki Hill Road, Chatham Island. Refer to **Map 12** in attachment 5	Vesting fee simple subject to there being no historic values to be protected.
Department of Conservation	Part Tikitiki Hill Conservation Area – southern site	*Wellington Land District – Chatham Islands Council* 0.12 hectares, approximately, being Part Section 1 SO 531657. [Part DI 27/21]. Subject to survey. Tikitiki Hill Road, Chatham Island.	Vesting fee simple subject to there being no historic values to be protected; Subject to an agreed registrable ground lease for the Education asset located onsite with ownership of the improvements remaining unaffected by the transfer.

		Refer to **Map 13** in attachment 5	
Department of Conservation	Part Tikitiki Hill Conservation Area – paddocks	*Wellington Land District – Chatham Islands Council* 1.4 hectares, approximately, being Part Kekerione 1J Block and Part Section 1 SO 531657. [Part DI 27/21]. Subject to survey. Tikitiki Hill Road, Chatham Island. Refer to **Map 14** in attachment 5	Vesting fee simple
Department of Conservation	Part Tikitiki Hill Conservation Area – conical hill	*Wellington Land District – Chatham Islands Council* 1.16 hectares, approximately, being Part Kekerione 1W Block and Part Section 1 SO 531657. [Part DI 27/21]. Subject to survey. Tikitiki Hill Road, Chatham Island. Refer to **Map 15** in attachment 5	Vesting fee simple as a reserve

*The legal descriptions of the properties in this table and any associated maps are indicative only and subject to confirmation by the Crown

Joint overlay classification

7.9 Ngāti Mutunga o Wharekauri and the Crown agree that the Crown, Ngāti Mutunga o Wharekauri and Moriori must agree to a statement of shared values, protection principles and actions for the joint overlay classification. If the parties cannot agree, then further negotiations will be required to determine how the redress will be delivered.

7.10 The shared redress deed is to provide for the settlement legislation to –

7.10.1 declare the area described in Table 6 below subject to a joint overlay classification with Morori; and

7.10.2 provide the Crown's acknowledgement of an agreed statement with Ngāti Mutunga o Wharekauri and Moriori over shared values in relation to the area; and

7.10.3 require the New Zealand Conservation Authority, and relevant conservation boards –

(a) when considering a conservation document, in relation to the area, to have particular regard to –

(i) the Ngāti Mutunga o Wharekauri and Moriori statement of shared values agreed by the parties; and

(ii) the Ngāti Mutunga o Wharekauri and Moriori protection principles agreed by the parties;

(b) before approving a conservation document, in relation to the area to –

(i) consult with the Ngāti Mutunga o Wharekauri governance entity and Moriori Imi Settlement Trust; and

(ii) have particular regard to the Ngāti Mutunga o Wharekauri and Moriori statement of shared values and protection principles agreed by the parties.

7.10.4 require the Director-General of Conservation to take action in relation to the Ngāti Mutunga o Wharekauri and Moriori statement of shared values and protection principles agreed by the parties; and

7.10.5 enable the making of regulations by the Governor General on the recommendation of the Minister of Conservation and bylaws made by the Minister of Conservation, in relation to the area.

Table 6 – Joint overlay classification

Overlay area to which the joint overlay classification is to apply	General description / location*
Cape Young portion of Site 100 (Part Scenic Reserve - Wharekauri coastal strip)	*Wellington Land District – Chatham Islands Council* 23.8700 hectares, more or less, being Section 4 SO 36540 Refer to **Map 16** in attachment 6

* The legal descriptions of the properties in this table are indicative only and subject to confirmation by the Crown

Natural resources sector: annual joint meeting

7.11 The Crown commits to explore an arrangement for the natural resources sector agencies (Manatū Mō Te Taiao Ministry for the Environment, Te Puni Kōkiri, Te Papa Atawhai Department of Conservation, Toitū te Whenua Land Information New Zealand, Manatū Ahu Matua Ministry for Primary Industries, Te Tari Taiwhenua Department of Internal Affairs, and Hīkina Whakatutuki Ministry for Business Innovation and Employment) to hold an annual joint meeting with Ngāti Mutunga o Wharekauri and Moriori where all parties could discuss issues, upcoming agency consultation and other matters any party wishes to raise.

7.12 The parties agree:

7.12.1 to work together reasonably and in good faith to explore a potential arrangement to hold an annual joint meeting with Ngāti Mutunga o Wharekauri and Moriori as recorded in clause 7.11; and

7.12.2 the opportunity to explore a potential arrangement to hold an annual joint meeting with Ngāti Mutunga o Wharekauri and Moriori may not result in any agreed redress.

Customary fisheries

Regulations

7.13 **Wharekauri / Rēkohu fisheries area** means the area as shown on the map in attachment 7.

7.14 Clause 5.42 of the Moriori Deed of Settlement provided that within 80 business days of the settlement date under the Moriori Claims Settlement Act 2021, the Ngāti Mutunga o Wharekauri representative, the Moriori Imi Settlement Trust, and Fisheries New Zealand would agree a work programme to develop customary non-commercial fishing regulations for the Wharekauri / Rēkohu fisheries area that will apply to the management of fisheries subject to the Fisheries Act 1996.

7.15 It is intended the regulations will:

7.15.1 provide for the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust to appoint kaitiaki/t'chieki who can authorise the taking of fish for customary purposes over the whole of the Wharekauri / Rēkohu fisheries area; and

7.15.2 require people fishing under customary authorisations to provide information to kaitiaki/t'chieki i on location of fishing activities and on the species, quantity and size of fish taken and for this information to be collated and reported to the Fisheries New Zealand;

7.15.3 include requirements for –

(a) kaitiaki/t'chieki to provide details of all authorisations issued to the Ngāti Mutunga o Wharekauri governance entity and Moriori Imi Settlement Trust;

(b) the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust to provide that information to Fisheries New Zealand annually;

(c) holders of authorisations to provide details of their authorisations to fisheries officers on request; and

(d) holders of authorisations to report to the Ngāti Mutunga o Wharekauri governance entity and Moriori Imi Settlement Trust details of the fisheries resources taken under the authorisation; and

7.15.4 make provision for the Ngāti Mutunga o Wharekauri governance entity and Moriori Imi Settlement Trust to recommend to the responsible Minister bylaws restricting or prohibiting fishing in the 15 rāhui areas that would apply to all fishers;

7.15.5 provide that the responsible Minister will make the bylaws recommended in clause 7.15.4 unless the responsible Minister considers that an undue adverse effect on fishing in the relevant fisheries management area would result if the proposed laws were made; and

7.15.6 make provision for tools to enable the active management of the rāhui areas through the application of the regulations or through any bylaws created under the regulations.

Rāhui areas

7.16 The Crown, the Ngāti Mutunga o Wharekauri governance entity, and the Moriori Imi Settlement Trust will together explore whether the current location of rāhui areas established under regulation 5B of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 is consistent with the requirements of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to provide for the special relationship between tangata whenua and those places that are of customary food gathering importance.

7.17 The boundaries of the rāhui areas could be altered and/or new areas created so long as any alterations or new areas do not prevent fishers taking their legal entitlements (as per the requirement for mataitai reserves in the Fisheries (Kaimoana Customary Fishing) Regulations 1998).

Joint Planning Committee

7.18 The shared redress deed is to provide that the settlement legislation will establish a planning committee comprising representatives of the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust, and the Chatham Islands Council. The committee will be deemed to be a committee under schedule 7 of the Local Government Act 2002. Its role will relate to natural resource planning processes that affect the Chatham Islands as shown in the Ngāti Mutunga o Wharekauri area of interest. It is intended that:

7.18.1 the committee will comprise four Chatham Islands Council representatives, two Ngāti Mutunga o Wharekauri governance entity representatives and two Moriori Imi Settlement Trust representatives;

7.18.2 the committee's role will relate to resource management planning processes that affect the Chatham Islands and include recommending to the Chatham Islands Council plan and policy changes that affect the sustainable management of natural and physical resources on the Chatham Islands;

7.18.3 the committee will oversee development of the single resource management document as required by the Chatham Islands Council Act 1995;

7.18.4 the Chatham Islands Council retains final decision making powers; and

7.18.5 settlement legislation will be used to ensure the committee is permanent and to define its role and procedures.

7.19 The detail of the committee, including its terms of reference, roles and membership, will be determined before settlement date.

7.20 It is expected that the terms of reference will be agreed to at the first meeting of the Joint Planning Committee.

7.21 The Crown commits to explore establishment funding for the committee in line with Cabinet guidelines.

Te Whanga Management Board

7.22 The shared redress deed is to provide that the settlement legislation will establish a permanent statutory management board whose purpose is to coordinate and oversee the delivery of management for Te Whanga Lagoon.

7.23 The functions of the board are to:

7.23.1 fulfil the functions of owner of the bed of Te Whanga Lagoon;

7.23.2 implement natural resources policies and plans set by the Joint Planning Committee of the Chatham Islands Council as they relate to Te Whanga Lagoon;

7.23.3 seek opportunities to raise funds and support for the ongoing health and wellbeing of Te Whanga Lagoon;

7.23.4 prepare, approve and implement a natural resources management plan for Te Whanga Lagoon which integrates with conservation and fisheries management; and

7.23.5 take any other action that is considered by the board to be appropriate to achieve its purpose.

7.24 The Te Whanga Management Board will adopt terms of reference at its first meeting that will set out the procedures within which it must operate. This will be the subject of further negotiations.

7.25 The membership of the Te Whanga Management Board will be as follows:

7.25.1 two members appointed by the Ngāti Mutunga o Wharekauri governance entity;

7.25.2 two members appointed by the Moriori Imi Settlement Trust;

7.25.3 one member appointed by the Chatham Islands Council; and

7.25.4 one member appointed by the Minister of Conservation and/or the Director General of Conservation.

Delivery of shared redress

7.26 If, within 12 months after the settlement date under the Moriori Claims Settlement Act 2021, Ngāti Mutunga o Wharekauri and Moriori have not signed the shared redress deed, the Crown will explore other ways to establish Te Whanga Management Board and Joint Planning Committee while still providing for Ngāti Mutunga o Wharekauri and Moriori representation and participation

7.27 Ngāti Mutunga o Wharekauri and the Crown agree that if the potential redress recorded at clause 7.11, and clauses 7.13 to 7.25 cannot be delivered on the Ngāti Mutunga o Wharekauri settlement date, further negotiations will be required to determine how the redress will be delivered.

Shared commercial redress

7.28 All items of commercial redress in clauses 7.29 to 7.33 are subject to clause 6.1

Potential shared commercial redress property/deferred selection property

7.29 The shared redress deed is to provide that the Crown must either –

7.29.1 transfer to the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust in undivided equal shares as tenants in common on the settlement date the property described in Table 7 below as a potential commercial redress property that the parties agree is to be a commercial redress property; or

7.29.2 provide that the Ngāti Mutunga o Wharekauri governance entity and the Moriori Imi Settlement Trust may, for two years after the settlement date, provide a written notice of interest to the Crown to purchase the property described in Table 7 below as a potential deferred selection property that the parties agree is to be a deferred selection property. The shared redress deed will provide for the effect of the written notice and will set out a process where the property is valued and may be acquired by the Ngāti Mutunga o Wharekauri governance entity, the Moriori Imi Settlement Trust or both entities as tenants in common.

7.30 If a commercial redress property or a deferred selection property that is to be transferred is a leaseback commercial redress property or a leaseback deferred selection property, the shared redress deed is to provide that the property is to be leased back by the Ngāti Mutunga o Wharekauri governance entity and/or the Moriori Imi Settlement Trust (as applicable) to the Crown, from the settlement date, –

7.30.1 on the terms and conditions provided by a registrable ground lease for that property (ownership of the improvements remaining unaffected by the purchase) incorporated in the shared redress deed; and

7.30.2 in the case of a Crown leaseback that is not a school site, at its initial annual rent determined or agreed in accordance with the valuation process in schedule 3 (plus GST, if any, on the amount so determined or agreed); or

7.30.3 in the case of a Crown leaseback of a school site, at an initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in

accordance with the Crown leaseback (plus GST, if any, on the amount so determined).

Table 7 – Potential deferred selection property or potential commercial redress property

Landholding Agency	Property Name/Address	General description/location	Conditions of transfer/Specific conditions currently known
Ministry of Education	Kaingaroa School site (land only) Hospital Road, Kaingaroa, Chatham Island	Wellington Land District – Chatham Islands Council 1.4762 hectares, more or less, being Part Wharekauri No. 1. All *Gazette* notice 297977.1.	Subject to sale and leaseback, refer to clause 7.30

*The legal descriptions of the properties in this table are indicative only and subject to confirmation by the Crown

7.31 Transfer and leaseback of school sites will be subject to standard Ministry of Education policies and operational considerations. Transfer and leasebacks of school sites are for land only and are subject to an agreed registrable ground lease for the property with ownership of the improvements remaining unaffected by the transfer. Operational considerations, such as shared school sites or some Board of Trustees house site issues may mean a specific site may be available but would be subject to specific processes and encumbrances in the shared redress deed (or lease).

7.32 Availability of transfer and leaseback of Ministry of Education sites is subject to the transfer value (for commercial redress properties) and to the lease (for both commercial redress and deferred selection properties) being agreed one month prior to initialling of the shared redress deed.

7.33 A school site will cease to be a transfer and leaseback property if before the settlement date (in respect of commercial redress properties) or before receipt of notice of interest (in respect of deferred selection properties) the Ministry of Education notifies the Ngāti Mutunga o Wharekauri governance entity or mandated body and Moriori Imi Settlement Trust, that the site has become surplus to its requirements.

8 OVERLAPPING INTERESTS PROCESS

Process for resolving overlapping interest

8.1 The development of this agreement in principle has been informed by the overlapping interests process set out in attachment 8.

8.2 The Crown is ultimately responsible and accountable for the overall overlapping interests process and it must act in accordance with its Treaty obligations. The Crown –

8.2.1 has a duty to act in good faith to other claimant groups who have interests in the Ngāti Mutunga o Wharekauri area of interest (refer attachment 1); and

8.2.2 must ensure it actively protects the interests of other claimant groups (whether already mandated or not) and settled groups; and

8.2.3 must avoid unreasonably prejudicing its ability to reach a fair settlement with other claimant groups in the future, while not unduly devaluing the settlement of other settled groups and with Ngāti Mutunga o Wharekauri.

8.3 Following the signing of this agreement in principle, parties will work together with groups with overlapping interests to resolve any remaining overlapping interests. If after working together overlapping interests issues remain unresolved, the Crown may make a final decision. In reaching any decisions on redress within areas of overlapping interests, the Crown is guided by two general principles:

8.3.1 the Crown's wish to reach a fair and appropriate settlement with Ngāti Mutunga o Wharekauri without compromising the existing settlements of settled groups; and

8.3.2 the Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.

8.4 Following the signing of this document the Crown will write to overlapping interest groups to advise them that an agreement in principle has been signed by Ngāti Mutunga o Wharekauri and the Crown and the process to resolve overlapping interests issues before initialling a deed of settlement.

9 INTEREST AND TAX

Interest

9.1 The deed of settlement is to provide for the Crown to pay the Ngāti Mutunga o Wharekauri governance entity, on the settlement date, interest on the financial and commercial redress amount.

9.1.1 for the period –

(a) beginning on the date of this agreement in principle; and

(b) ending on the day before the settlement date; and

(c) at the rate from time to time set as the official cash rate by the Reserve Bank, calculated on a daily basis but not compounding.

9.2 The interest is to be –

9.2.1 subject to any tax payable; and

9.2.2 payable after withholding any tax required by legislation to be withheld.

Tax

9.3 Subject to the Minister of Finance's consent, the deed of settlement and shared redress deed are to provide that the Crown must indemnify the Ngāti Mutunga o Wharekauri governance entity for any GST or income tax payable in respect of the provision of Crown redress.

9.4 The Ngāti Mutunga o Wharekauri governance entity agrees that neither it, nor any other person, will claim with respect to the provision of Crown redress -

9.4.1 an input credit for GST purposes; or

9.4.2 a deduction for income tax purposes.

10 NEXT STEPS

Disclosure information

10.1 The Crown will, as soon as reasonably practicable, prepare and provide to Ngāti Mutunga o Wharekauri disclosure information in relation to –

10.1.1 each potential cultural redress property; and

10.1.2 each potential commercial redress property.

Resolution of final matters

10.2 The parties will work together to agree, as soon as reasonably practicable, all matters necessary to complete the deed of settlement and shared redress deed, including agreeing on or determining as the case may be –

10.2.1 the terms of the –

(a) historical account; and

(b) Crown's acknowledgement and apology; and

10.2.2 the cultural redress properties, the commercial redress properties, the deferred selection properties, the shared RFR land from the potential properties or land provided in the relevant table, and if applicable, any conditions that will apply; and

10.2.3 the transfer values of the commercial redress properties (in accordance with the valuation process in schedule 3, or by another valuation process as agreed in writing between the landholding agency, Ngāti Mutunga o Wharekauri and the Moriori Imi Settlement Trust (as applicable)); and

10.2.4 the terms of a registrable ground lease for any leaseback property; and

10.2.5 the initial annual rent for any leaseback commercial redress property other than a school site[1]; and

10.2.6 the terms of the following (which will, where appropriate, be based on the terms provided in recent settlement documentation):

(a) the cultural redress; and

(b) the transfer of the commercial redress properties; and

[1] For a school site, the initial annual rent will be as a result of the processes in clause 7.30.3

(c) the right to purchase a deferred selection property, including the process for determining its market value; and

(d) the RFR, including the circumstances in which shared RFR land may be disposed of without the RFR applying; and

(e) the tax indemnity; and

10.2.7 the following documents:

(a) the shared statement of Ngāti Mutunga o Wharekauri and Moriori values and the protection principles in relation to the overlay classification area; and

(b) Ngāti Mutunga o Wharekauri statements of association for each of the statutory areas; and

(c) the protocols; and

(d) the conservation relationship agreement; and

(e) the Ministry for the Environment relationship agreement; and

(f) Whakaeetanga Tiaki Taonga relationship agreement with the Te Tari Taiwhenua Department of Internal Affairs, Manatū Taonga Ministry for Culture and Heritage, Heritage New Zealand Pouhere Taonga, and Museum of New Zealand Te Papa Tongarewa; and

(g) letter of introduction; and

(h) Quota RFR Deed; and

(i) the settlement legislation; and

10.2.8 all other necessary matters.

Development of Ngāti Mutunga o Wharekauri governance entity and ratification process

10.3 Ngāti Mutunga o Wharekauri will, as soon as reasonably practicable after the date of this agreement, and before the signing of a deed of settlement or shared redress deed –

10.3.1 form a single governance entity that the Crown is satisfied meets the requirements of clause 11.1.2(a); and

10.3.2 develop a ratification process referred to in clause 11.1.2(b) that is approved by the Crown.

11 CONDITIONS

Entry into deed of settlement conditional

11.1 The Crown's entry into the deed of settlement and shared redress deed is subject to –

11.1.1 Cabinet agreeing to the settlement and the redress; and

11.1.2 the Crown being satisfied Ngāti Mutunga o Wharekauri have –

(a) established a governance entity that –

(i) is appropriate to receive the redress; and

(ii) provides, for Ngāti Mutunga o Wharekauri, –

(I) appropriate representation; and

(II) transparent decision-making and dispute resolution processes; and

(III) full accountability; and

(b) approved, by a ratification process approved by the Crown, –

(i) the governance entity to receive the redress; and

(ii) the settlement on the terms provided in the deed of settlement; and

(iii) signatories to sign the deed of settlement and shared redress deed on behalf of Ngāti Mutunga o Wharekauri.

Settlement legislation

11.2 The deed of settlement and shared redress deed are to provide that following the signing of the deed of settlement and shared redress deed respectively the Crown will propose a draft bill for introduction to the House of Representatives.

11.3 This draft bill will provide for all matters for which legislation is required to give effect to the deed of settlement and shared redress deed.

11.4 The draft bill must:

11.4.1 comply with the drafting standards and conventions of the Parliamentary Counsel Office for Government's Bills, as well as the requirements of the Legislature under Standing Orders, Speakers' Rulings, and conventions; and

11.4.2 be in a form that is satisfactory to Ngāti Mutunga o Wharekauri and the Crown.

11.5 The deed of settlement and shared redress deed are to provide that Ngāti Mutunga o Wharekauri and the Ngāti Mutunga o Wharekauri governance entity must support the passage of the draft settlement bill through Parliament.

Settlement conditional on settlement legislation

11.6 The deed of settlement is to provide that the settlement is conditional on settlement legislation coming into force although some provisions may be binding on and from the date the deed of settlement is signed.

11.7 The shared redress deed will be conditional on settlement legislation coming into force although some provisions may be binding on and from the date the shared redress deed is signed.

12 GENERAL

Nature of this agreement in principle

12.1 This agreement in principle –

12.1.1 is entered into on a without prejudice basis; and

12.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal; and

12.1.3 is non-binding; and

12.1.4 does not create legal relations.

Termination of this agreement in principle

12.2 The Crown or the mandated negotiators, on behalf of Ngāti Mutunga o Wharekauri, may terminate this agreement in principle by notice to the other.

12.3 Before terminating this agreement in principle, the Crown or the mandated negotiators, as the case may be, must give the other at least 20 business days' notice of an intention to terminate.

12.4 This agreement in principle remains without prejudice even if it is terminated.

Definitions

12.5 In this agreement in principle –

12.5.1 the terms defined in the definitions schedule have the meanings given to them by that schedule; and

12.5.2 all parts of speech, and grammatical forms, of a defined term have a corresponding meaning.

Interpretation

12.6 In this agreement in principle –

12.6.1 headings are not to affect its interpretation; and

12.6.2 the singular includes the plural and vice versa.

12.7 Provisions in –

12.7.1 the schedules to this agreement in principle are referred to as paragraphs; and

12.7.2 other parts of this agreement are referred to as clauses.

SIGNED on 25th day of November 2022

SIGNED for and on behalf of **THE CROWN** by –

The Minister for Treaty of Waitangi Negotiations in the presence of –

Hon Andrew Little

WITNESS

Name: Elena Webber
Occupation: Public Servant
Address: Wellington

SIGNED for and on behalf of Ngāti Mutunga o Wharekauri by:

Deena Ngawhata Whaitiri
Chair
Ngāti Mutunga o Wharekauri Iwi Trust

Monique Croon
Deputy Chair
Ngāti Mutunga o Wharekauri Iwi Trust

WITNESS

Name: Melodie Eruera-Fraser
Occupation: Whanau Ora Navigator
Address: 586 North Road
Chatham Islands
Wharekauri

Members of Ngāti Mutunga o Wharekauri and other witnesses who support the agreement in principle:

Members of Ngāti Mutunga o Wharekauri and other witnesses who support the agreement in principle:

SCHEDULES

1 DEFINITIONS

Historical claims

1.1 The deed of settlement will provide that **historical claims** –

1.1.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that -

(a) is, or is founded on, a right arising –

(i) from the Te Tiriti o Waitangi / Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 –

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

1.1.2 includes every claim to the Waitangi Tribunal to which paragraph 1.1.1 applies that relates exclusively to the settling group or a representative entity, including the following claims:

(a) Wai 65 – Chatham Islands and Fisheries claim;

(b) Wai 181 – Kekerione No.1 Hospital Land claim;

(c) Wai 460 – Chatham and Auckland Islands claim;

(d) Wai 1382 – Matarakau Wharekauri Public Works claim;

(e) Wai 2279 – Pamariki Lands; and

(f) Wai 2403 – the Kekerione Land Blocks.

1.1.3 includes every other claim to the Waitangi Tribunal to which paragraph 1.1.1 applies, so far as it relates to Ngāti Mutunga o Wharekauri or a representative entity.

1.2 However, **historical claims** does not include the following claims -

1.2.1 a claim that a member of **Ngāti Mutunga o Wharekauri**, or a whānau, hapū, or group referred to in clause 1.4.2, may have that is, or is founded on, a right

arising as a result of being descended from a tupuna who is not referred to in paragraph 1.5.2;

1.2.2 any claim that one or more members of Ngāti Mutunga o Wharekauri, or a representative entity, may have that arises from the exercise of customary rights outside of the Ngāti Mutunga o Wharekauri area of interest; and

1.2.3 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in paragraph 1.2.1.

1.3 To avoid doubt, clause 1.1.1 is not limited by paragraphs 1.1.2 or 1.1.3.

Ngāti Mutunga o Wharekauri

1.4 The deed of settlement will provide **Ngāti Mutunga o Wharekauri** means –

1.4.1 the collective group composed of individuals who descend from a **tupuna** of **Ngāti Mutunga o Wharekauri**; and

1.4.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in paragraph 1.4.1, including:

(a) Ngāti Mutunga, including:

(i) Ngāti Tupawhenua;

(ii) Ngāti Aurutu;

(iii) Ngāti Kura;

(b) Kekerewai;

(c) Ngāti Haumia;

(d) Ngāti Tama; and

1.4.3 every individual referred to in paragraph 1.4.1.

1.5 The deed of settlement will provide, for the purposes of paragraph 1.4.1 -

1.5.1 a person is **descended** from another person if the first person is descended from the other by –

(a) birth;

(b) legal adoption; or

(c) Māori customary adoption in accordance with the Ngāti Mutunga o Wharekauri tikanga (customary values and practices); and

1.5.2 **Tupuna** means an individual who:

(a) exercised customary rights by virtue of being descended from:

(i) **Mutunga**, **Hinetuhi**, **Hineweo**, **Haumia**, **Whata**, **Rakaeiora**, **Tamaariki**; or

(ii) a recognised ancestor of any of the groups listed in paragraph 1.4.2; and

(b) exercised the customary rights in 1.5.2(a) in relation to the Area of Interest after 1 November 1842.

1.5.3 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including –

(a) rights to occupy land; and

(b) rights in relation to the use of land or other natural or physical resources.

Other definitions

1.6 In this agreement in principle –

arbitration commencement date, in relation to the determination of the market value and/or market rental of a valuation property means:

(a) in relation to a referral under paragraph 3.12.2 the date of that referral; and

(b) in relation to an appointment under paragraph 3.12.3 or 3.12.4, a date specified by the valuation arbitrator; and

arbitration meeting, in relation to the determination of the market value and/or market rental of a valuation property, means the meeting notified by the valuation arbitrator under paragraph 3.13.1; and

area of interest means the area identified as the area of interest in attachment 1; and

business day means a day that is not –

(a) a Saturday or Sunday; or

(b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Te Rā Aro ki a Matariki/Matariki Observance Day or Labour Day; or

(c) if Waitangi Day or ANZAC Day falls on a Saturday or Sunday, the following Monday; or

(d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or

(e) a day that is observed as the anniversary of the province of –

(i) Wellington; or

(ii) Chatham Islands; and

commercial redress property means

(a) each property described as a commercial redress property in the deed of settlement; and

(b) each property described as a commercial redress property in the shared redress deed; and

conservation document means a national park management plan, conservation management strategy, or conservation management plan; and

Crown has the meaning given to it by section 2(1) of the Public Finance Act 1989; and

Crown leaseback, in relation to a leaseback commercial redress property or a leaseback deferred selection property, means the lease the deed of settlement or the shared redress deed will provide to be entered into by the Ngāti Mutunga o Wharekauri governance entity and/or the Moriori Imi Settlement Trust (as applicable) and the Crown as described in clause 7.30; and

Crown redress –

(a) means redress –

(i) provided by the Crown to the Ngāti Mutunga o Wharekauri governance entity; or

(ii) vested by the settlement legislation in the Ngāti Mutunga o Wharekauri governance entity that was, immediately prior to the vesting, owned by or vested in the Crown; and

(b) includes any right of the Ngāti Mutunga o Wharekauri governance entity under the settlement documentation –

(i) to acquire a deferred selection property; or

(ii) of first refusal in relation to shared RFR land; but

(c) does not include

(i) an obligation of the Crown under the settlement documentation to transfer a deferred selection property or shared RFR land; or

(ii) a deferred selection property or shared RFR land; or

(iii) any on-account payment made before the date of the deed or to entities other than the Ngāti Mutunga o Wharekauri governance entity; and

cultural redress means the redress to be provided under the settlement documentation referred to in part 5 and clauses 7.7 to 7.25; and

cultural redress property means

(a) each property described as a cultural redress property in the deed of settlement; and

(b) each property described as a cultural redress property in the shared redress deed; and

deed of settlement means the deed of settlement to be developed under clause 2.1.2; and

deferred selection property means

(a) each property described as a deferred selection property in the deed of settlement; and

(b) each property described as a deferred selection property in the shared redress deed; and

disclosure information means –

(a) in relation to a redress property, the information provided by the Crown to Ngāti Mutunga o Wharekauri under clause 10.1; and

(b) in relation to a purchased deferred selection property, the disclosure information about the property the deed of settlement or the shared redress deed requires to be provided by the Crown to the Ngāti Mutunga o Wharekauri governance entity; and

encumbrance, in relation to a property, means a lease, tenancy, licence, easement, covenant, or other right or obligation affecting that property; and

financial and commercial redress means the redress to be provided under the settlement documentation referred to in part 6 and clauses 7.29 to 7.33; and

financial and commercial redress amount means the amount referred to as the financial and commercial redress amount in clause 6.2; and

initial annual rent, in relation to a leaseback property, means the rent payable under the Crown leaseback from its commencement determined or agreed in accordance with schedule 3; and

land holding agency, in relation to a potential commercial redress property, a potential deferred selection property, or any shared RFR land, means the department specified opposite that property in Table 4 or 7, as the case may be; and

leaseback commercial redress property means:

(a) a potential commercial redress property that Table 7 identifies as a leaseback property; or

(b) a commercial redress property identified in the deed of settlement or the shared redress deed as a leaseback property; and

leaseback deferred selection property means:

(a) a potential deferred selection property that Table 7 identifies as a leaseback property; or

(b) a deferred selection property identified in the deed of settlement or the shared redress deed as a leaseback property; and

leaseback property means each leaseback commercial redress property and each leaseback deferred selection property; and

mandated negotiators means –

(a) the following individuals:

(i) Thomas McClurg, Wellington, Director, Toroa Strategy Limited; and

(ii) Hariroa Daymond, Chatham Islands, Trustee; or

(b) if one or more individuals named in paragraph (a) dies, or becomes incapacitated, the remaining individuals; and

mandated body means Ngāti Mutunga o Wharekauri Iwi Trust; and

market rental, in relation to a valuation property, has the meaning provided in the valuation instructions in appendix 1 to schedule 3; and

market value, in relation to a valuation property, has the meaning provided in the valuation instructions in appendix 1 to schedule 3; and

Moriori Deed of Settlement means the deed of settlement entered into between the Crown, Moriori and the Trustees of the Moriori Iwi Settlement Trust dated 14 February 2020; and

Moriori Imi Settlement Trust has the meaning given in section 12 of the Moriori Claims Settlement Act 2021; and

Ngāti Mutunga o Wharekauri governance entity means the post-settlement governance entity to be formed by Ngāti Mutunga o Wharekauri; and

party means each of the settling group and the Crown; and

potential commercial redress property means each property described as a potential commercial redress property in Table 7; and

potential cultural redress property means each property described as a potential cultural redress property in Tables 1 and 5; and

potential deferred selection property means each property described as a potential deferred selection property in Table 7; and

protocol means a protocol referred to in clauses 5.9 to 5.12; and

purchased deferred selection property means each deferred selection property in relation to which the Ngāti Mutunga o Wharekauri governance entity and the Crown are to be treated under the deed of settlement or the shared redress deed as having entered into an agreement for its sale and purchase; and

redress means the following to be provided under the settlement documentation –

(a) the Crown's acknowledgment and apology referred to in clause 4.1; and

(b) the financial and commercial redress; and

(c) the cultural redress; and

redress property means –

(a) each cultural redress property; and

(b) each commercial redress property; and

registered valuer means any valuer for the time being registered under the Valuers Act 1948; and

representative entity means a person or persons acting for or on behalf of the settling group; and

resumptive memorial means a memorial entered on a record of title under any of the following sections:

(a) 27A of the State-Owned Enterprises Act 1986; or

(b) 568 of the Education and Training Act 2020; or

(c) 38 of the New Zealand Railways Corporation Restructuring Act 1990; and

school site, means a leaseback property in respect of which the land holding agency is the Ministry of Education; and

settlement means the settlement of the historical claims under the settlement documentation; and

settlement date means the settlement date that will be defined in the settlement legislation; and

settlement document means a document to be entered into by the Crown to give effect to the deed of settlement and shared redress deed; and

settlement documentation means the deed of settlement, the shared redress deed and the settlement legislation; and

settlement legislation means legislation giving effect to the deed of settlement and shared redress deed; and

settling group means Ngāti Mutunga o Wharekauri; and

shared redress deed means the shared redress deed to be developed under clause 2.1.2 and to which Ngāti Mutunga o Wharekauri, the Crown and Moriori are parties as contemplated by clause 7.1; and

shared RFR means the right of first refusal referred to in clause 6.3; and

shared RFR land means the land referred to as shared RFR land in the deed of settlement; and

statement of association means each statement of association referred to in clause 5.6; and

statutory acknowledgement means the acknowledgement to be made by the Crown in the settlement legislation referred to in clause 5.6 on the terms to be provided by the settlement legislation; and

statutory area means an area referred to in Table 2 as a statutory area; and

tax indemnity means the indemnity to be provided in the deed of settlement under clauses 9.3 and 9.4; and

te Tiriti o Waitangi/the Treaty of Waitangi means the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975; and

transfer value, in relation to a potential commercial redress property, means the amount payable by the Ngāti Mutunga o Wharekauri governance entity for the transfer of the property determined or agreed in accordance with schedule 3; and

valuation arbitrator, in relation to a valuation property means the person appointed under paragraphs 3.3.2 or 3.4, in relation to the determination of its market value, and if applicable its market rental; and

valuation date, in relation to a valuation property, means the notification date in relation to the property; and

valuation property means each potential commercial redress property that is to be valued in accordance with schedule 3.

2 TERMS OF SETTLEMENT

Rights unaffected

2.1 The deed of settlement is to provide that, except as provided in the settlement documentation, the rights and obligations of the parties will remain unaffected.

Acknowledgments

2.1.1 Each party to the deed of settlement is to acknowledge in the deed of settlement that full compensation of the settling group is not possible; and

2.1.2 the settling group intends their foregoing of full compensation to contribute to New Zealand's development; and

2.1.3 the settlement is intended to enhance the ongoing relationship between the settling group and the Crown (in terms of the te Tiriti o Waitangi/the Treaty of Waitangi, its principles, and otherwise).

2.2 The settling group is to acknowledge in the deed of settlement that –

2.2.1 taking all matters into consideration (some of which are specified in paragraph 2.1.1), the settlement is fair in the circumstances; and

2.2.2 the redress –

(a) is intended to benefit the settling group collectively; but

(b) may benefit particular members, or particular groups of members, of the settling group if the Ngāti Mutunga o Wharekauri governance entity so determines in accordance with the Ngāti Mutunga o Wharekauri governance entity's procedures.

Implementation

2.3 The deed of settlement is to provide the settlement legislation will, on terms agreed by the parties (based on the terms in recent settlement legislation), –

2.3.1 settle the historical claims; and

2.3.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and

2.3.3 provide that certain enactments do not apply –

(a) to a redress property, a purchased deferred selection property, or any shared RFR land; or

(b) for the benefit of the settling group or a representative entity; and

2.3.4 require any resumptive memorials to be removed from records of title for, a redress property, any purchased deferred selection property, or any shared RFR land; and

2.3.5 provide that the maximum duration of a trust pursuant to the Trusts Act 2019 does not–

(a) apply to a settlement document; or

(b) prescribe or restrict the period during which –

(i) the trustees of the governance entity may hold or deal with property; and

(ii) the Trust, being the governance entity may exist; and

2.3.6 require the Chief Executive of the Office for Māori-Crown Relations – Te Arawhiti to make copies of the deed of settlement publicly available.

2.4 The deed of settlement is to provide –

2.4.1 the Ngāti Mutunga o Wharekauri governance entity must use its best endeavours to ensure every historical claim is discontinued by the settlement date or as soon as practicable afterwards; and

2.4.2 the Crown may: –

(a) cease any land bank arrangement in relation to the settling group, the Ngāti Mutunga o Wharekauri governance entity, or any representative entity, except to the extent necessary to comply with its obligations under the deed;

(b) after the settlement date, advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement.

3 VALUATION PROCESS FOR POTENTIAL COMMERCIAL REDRESS PROPERTIES

Note: Unless otherwise agreed in writing between the relevant landholding agency and Ngāti Mutunga o Wharekauri, the parties will enter into the following valuation process for potential commercial redress properties

Note: In the case of the valuation of Kaingaroa School site (land only), "parties" means Ngāti Mutunga o Wharekauri, Moriori and the Crown.

A: DETERMINING THE TRANSFER VALUE AND INITIAL ANNUAL RENT OF A PROPERTY

APPLICATION OF THIS SUBPART

3.1 This subpart provides how the following are to be determined in relation to a valuation property:

3.1.1 its transfer value; and

3.1.2 if it is a leaseback property that is not a school site, its initial annual rent.

3.2 The transfer value, and if applicable the initial annual rent, are to be determined as at a date agreed upon in writing by the parties (the **notification date**).

APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

3.3 The parties, in relation to a property, not later than [10] business days after the notification date:

3.3.1 must each:

(a) instruct a valuer using the form of instructions in appendix 1; and

(b) give written notice to the other of the valuer instructed; and

3.3.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the property.

3.4 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within [15] business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.

3.5 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

3.6 Each valuer must be a registered valuer.

3.7 The valuation arbitrator –

3.7.1 must be suitably qualified and experienced in determining disputes about –

(a) the market value of similar properties; and

(b) if applicable, the market rental of similar properties; and

3.7.2 is appointed when he or she confirms his or her willingness to act.

VALUATION REPORTS FOR A PROPERTY

3.8 Each party must, in relation to a valuation, not later than:

3.8.1 [50] business days after the notification date, provide a copy of its final valuation report to the other party; and

3.8.2 [60] business days after the notification date, provide its valuer's written analysis report to the other party.

3.9 Valuation reports must comply with the latest International Valuation Standards that apply on the valuation date, or explain where they are at variance with those standards.

EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR A PROPERTY

3.10 If only one valuation report for a property that is not a school site is delivered by the required date, the transfer value of the property, and if applicable its initial annual rent, is the market value and the market rental, as assessed in the report.

3.11 If only one valuation report for a property that is a school site is delivered by the required date, the transfer value of the property is the market value as assessed in the report, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

NEGOTIATIONS TO AGREE A TRANSFER VALUE AND INITIAL ANNUAL RENT FOR A PROPERTY

3.12 If both valuation reports for a property are delivered by the required date:

3.12.1 the parties must endeavour to agree in writing:

(a) the transfer value of a property that is not a school site; or

(b) if the property is a school site, the transfer value (being the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and

(c) if the property is a leaseback property that is not a school site, its initial annual rent;

3.12.2 either party may, if the transfer value of the property, or if applicable, its initial annual rent, is not agreed in writing within [70] business days after the notification date and if a valuation arbitrator has been appointed under paragraph 3.3.2 or paragraph 3.4, refer that matter to the determination of the valuation arbitrator; or

3.12.3 if that agreement has not been reached within the [70] business day period but the valuation arbitrator has not been appointed under paragraph 3.3.2 or paragraph 3.4, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further [5] business days; and

3.12.4 if paragraph 3.12.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further [5] business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and

3.12.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

VALUATION ARBITRATION

3.13 The valuation arbitrator must, not later than [10] business days after the arbitration commencement date, –

3.13.1 give notice to the parties of the arbitration meeting, which must be held –

(a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but

(b) not later than [30] business days after the arbitration commencement date; and

3.13.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable, –

(a) each valuer; and

(b) any other person giving evidence.

3.14 Each party must –

3.14.1 not later than 5pm on the day that is [5] business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer –

(a) its valuation report; and

(b) its submission; and

(c) any sales, rental, or expert evidence that it will present at the meeting; and

3.14.2 attend the arbitration meeting with its valuer.

3.15 The valuation arbitrator must –

3.15.1 have regard to the requirements of natural justice at the arbitration meeting; and

3.15.2 no later than [50] business days after the arbitration commencement date, give his or her determination –

(a) of the market value of the property (which in respect of a school site is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and

(b) if applicable, of its market rental; and

(c) being no higher than the higher, and no lower than the lower, assessment of market value and/or market rental, as the case may be, contained in the parties' valuation reports.

3.16 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

TRANSFER VALUE AND INITIAL ANNUAL RENT FOR ALL PROPERTIES

3.17 The transfer value of the property, and if applicable its initial annual rent, is:

3.17.1 determined under paragraph 3.10 or 3.11, (as the case may be); or

3.17.2 agreed under paragraph 3.12.1; or

3.17.3 the market value and, if applicable, market rental determined by the valuation arbitrator under paragraph 3.15.2, if the determination is in respect of a property that is not a school site; or

3.17.4 if the property is a school site, the market value determined by the valuation arbitrator under paragraph 3.15.2, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

B: GENERAL PROVISIONS

TIME LIMITS

3.18 In relation to the time limits each party must use reasonable endeavours to ensure –

3.18.1 those time limits are met and delays are minimised; and

3.18.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

DETERMINATION FINAL AND BINDING

3.19 The valuation arbitrator's determination under subpart A is final and binding.

COSTS

3.20 In relation to the determination of the transfer value, and initial annual rent, of a property, each party must pay –

3.20.1 its costs; and

3.20.2 half the costs of a valuation arbitration; or

3.20.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

APPENDIX 1

PLEASE NOTE

If these instructions apply to-

- *a non-leaseback property, references connected with a leaseback (including references to assessing the property's market rental) must be deleted; or*
- *a leaseback property -*
  - *that is to be leased back to the Ministry of Education, references to assessing the property's market rental must be deleted; or*
  - *that is not to be leased back to the Ministry of Education, references to a lease to the Ministry of Education and to the market value of a school site must be deleted.*

These instructions may be modified to apply to more than one property.

[Valuer's name]

[Address]

Valuation instructions

INTRODUCTION

Ngāti Mutunga o Wharekauri and the Crown have entered into an agreement in principle to settle the settling group's historical claims dated **[date]** (the **agreement in principle**).

PROPERTY TO BE VALUED

Ngāti Mutunga o Wharekauri have given the land holding agency an expression of interest in purchasing -

[describe the property including its legal description]

[PROPERTY TO BE LEASED BACK

If Ngāti Mutunga o Wharekauri purchases the property from the Crown as a commercial redress property under its deed of settlement, the governance entity will lease the property back to the Crown on the terms provided by the attached lease in (the **agreed lease**).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the **Lessee's improvements**), remains unaffected by the transfer.]

AGREEMENT IN PRINCIPLE

A copy of the agreement in principle is enclosed.

Your attention is drawn to –

(a) schedule [**3**]; and

(b) the attached agreed lease of the property].

All references in this letter to subparts or paragraphs are to subparts or paragraphs of schedule [**3**].

A term defined in the agreement in principle has the same meaning when used in these instructions.

The property is a property for the purposes of part [7]. Subpart A of schedule [**3**] applies to the valuation of properties.

ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property [that is a school site in accordance with the methodology below] as at [date] (the **valuation date**).

[As the Lessee's improvements will not transfer, the market value of the property is to be the market value of its land (i.e. not including any Lessee's improvements).]

The [land holding agency/ Ngāti Mutunga o Wharekauri] [***delete one***] will require another registered valuer to assess the market value of the property [,and its market rental,] as at the valuation date.

The two valuations are to enable the market value of the property, [and its market rental,] to be determined either:

(a) by agreement between the parties; or

(b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which Ngāti Mutunga o Wharekauri may elect to purchase the property as a commercial redress property under part 6, plus GST (if any).

[MARKET VALUE OF A SCHOOL SITE

For the purposes of these instructions the intention of the parties in respect of a school site is to determine a transfer value to reflect the designation and use of the land for education purposes.

The market value of a school site is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

A two step process is required:

1) firstly, the assessment of the unencumbered market value (based on highest and best use) by;

    a) disregarding the designation and the Crown leaseback; and

    b) considering the zoning in force at the valuation date and

    c) excluding any improvements on the land; and;

2) secondly the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).]

[If, in the relevant district or unitary plan, the zoning for the school site is Specialised (as defined below), the zoning for the school site for the purposes of step 1(b) of the two-step process above will be deemed to be the Alternative Zoning (as defined below).

For the purposes of these instructions:

- "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).

- "Alternative Zoning" means the most appropriate probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):

  (a) the underlying zoning for the school site (if any);

  (b) the zoning for the school site immediately prior to its Specialised zoning;

  (c) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;

  (d) if the school site is within the area governed by Auckland Council, the underlying zoning applied to the school site in the Draft Auckland Unitary Plan publicly notified 15 March 2013, namely *[insert the zoning from the Draft Auckland Unitary Plan publicly notified 15 March 2013]*; and

  (e) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the school site.

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).]

[ASSESSMENT OF MARKET RENTAL REQUIRED

You are also required to assess the market rental (exclusive of GST) for the property, as at the valuation date, being the rental payable from the commencement of the agreed lease.

The market rental for the property is to be the market rental payable under the agreed lease, being a ground lease. So it will be the rent payable for its land (i.e. excluding any Lessee's improvements).]

VALUATION OF PROPERTY

You must, in relation to a property:

(a) before inspecting the property, determine with the other valuer:

  (i) the valuation method or methods applicable to the property; and

(ii) the comparable sales[, and comparable market rentals if the property is not a school site,] to be used in determining the market value of the property [and its market rental if the property is not a school site]; and

(b) inspect the property, where practical, together with the valuer appointed by the other party; and

(c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and

(d) by not later than [30] business days after the valuation date prepare, and deliver to us, a draft valuation report; and

(e) by not later than [45] business days after the valuation date:

(i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and

(ii) deliver a copy of your final valuation report to us; and

(f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property [and its market rental if the property is not a school site]; and

(g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value [and its market rental if the property is not a school site]; and

(h) if a consensus on market value [and its market rental if the property is not a school site] is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and

(i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property [and its market rental if the property is not a school site]; and

(j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and

(k) participate in any arbitration process required under subpart A to determine the market value of the property [and its market rental if the property is not a school site].

REQUIREMENTS OF YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

(a) the property is a current asset and was available for immediate sale as at the valuation date; and

(b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

(a) to assess market value on the basis of market value as defined in the latest editions of the Australia and New Zealand Valuation and Property Standards and the International Valuation Standards that apply on the valuation date; and

(b) to take into account –

(i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date[; and

(ii) the terms of the agreed lease]; and

(iii) the attached disclosure information about the property that has been given by the land holding agency to the settling group, including the disclosed encumbrances; and

(iv) the attached terms of transfer (that will apply to a purchase of the property by the governance entity); but

(c) not to take into account a claim in relation to the property by or on behalf of the settling group[; and

(d) in relation to the market rental for the property, to be on the basis of a willing lessor and a willing lessee, in an arm's length transaction, the parties having acted knowledgeably, prudently, and without compulsion].

REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the latest editions of the Australia and New Zealand Valuation and Property Standards and the International Valuation Standards that apply on the valuation date, including –

(a) an executive summary, containing a summary of –

(i) the valuation; and

(ii) [the market rental; and]

(iii) the key valuation parameters; and

(iv) the key variables affecting value; and

(b) a detailed description, and a clear statement, of the land value; and

(c) a clear statement as to any impact of –

(i) the disclosed encumbrances[; and

(ii) the agreed lease]; and

(d) details of your assessment of the highest and best use of the property; and

(e) comment on the rationale of likely purchasers[, and tenants,] of the property; and

(f) a clear identification of the key variables which have a material impact on the valuation; and

(g) full details of the valuation method or methods; and

(h) appendices setting out –

(i) a statement of the valuation methodology and policies; and

(ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in the latest International Valuation Standard, Market Value Basis of Valuation, and other relevant standards that apply on the valuation date.

Your report must contain a clear statement of the treatment of Goods and Services Tax (GST) (if any) to the property valuation.

You may, with our prior consent, obtain specialist advice, such as engineering or planning advice.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than:

(a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and

(b) [45] business days after the valuation date, to:

(i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and

(ii) deliver a copy of your final valuation report to us; and

(c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and

(d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

ACCESS

[You should not enter on to the property without first arranging access through the **[landholding agency]** **[give contact details]**.]

[Where the property is a school site, you should not enter on to [**insert name(s) of school site(s)**] without first arranging access through the Ministry of Education [**give contact details**] and should not contact the school(s) directly.]

OPEN AND TRANSPARENT VALUATION

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must:

(a) copy any questions you have or receive with regard to the valuation, together with the responses, to the settling group, the land holding agency, and the other valuer: and

(b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final valuation report to us.

Yours faithfully

[**Name of signatory**]

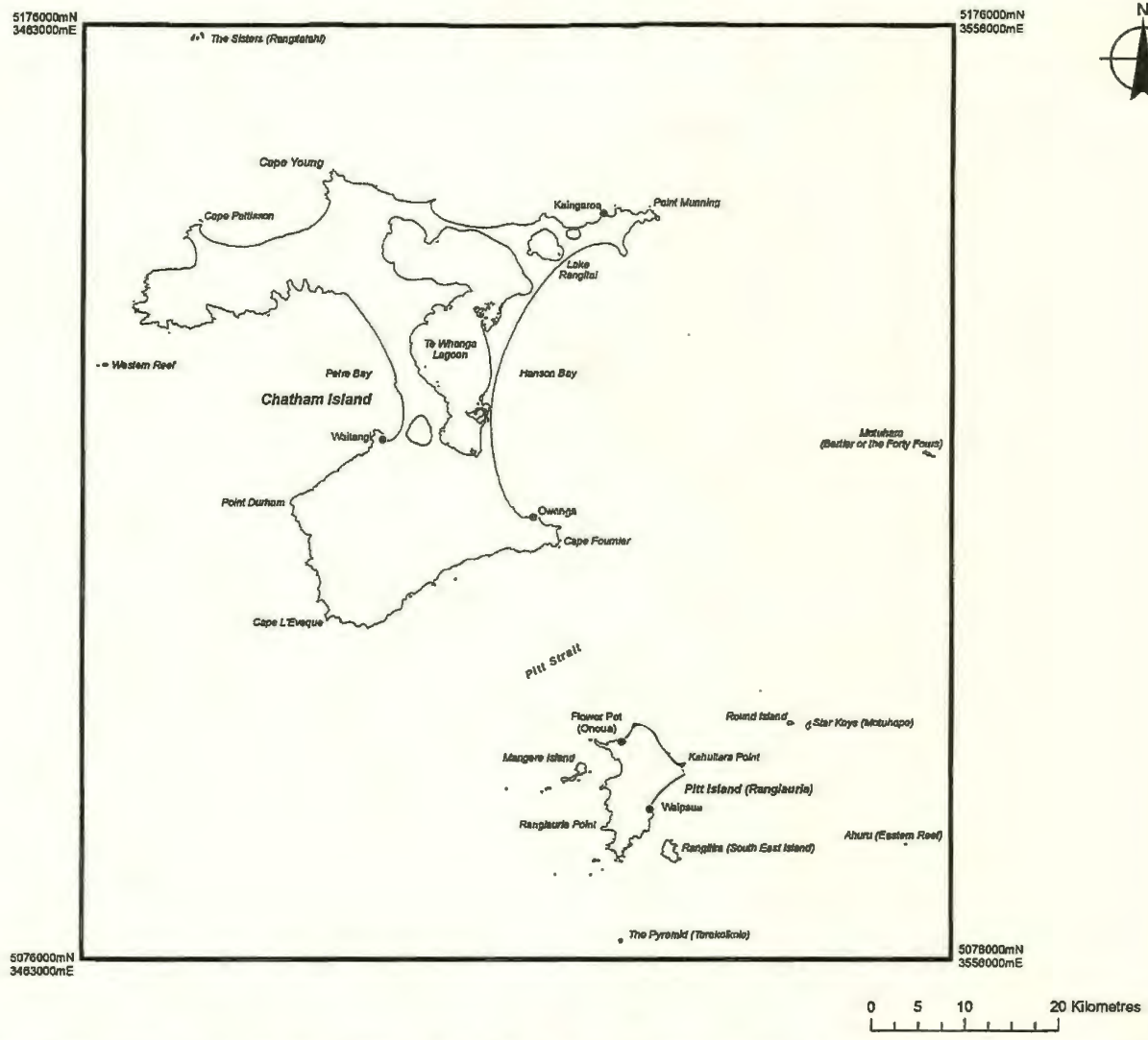
[**Position**]

[**Settling group/Land holding agency**][**delete one**]

ATTACHMENTS

1 AREA OF INTEREST





This plan is only for the purpose of a Right of Refusal over Crown land and to identify the area that memorials will be removed. It is not intended for any other purpose.

Certified that the boundary shown hereon is the same as that boundary agreed to for the purposes of a Right of First Refusal over Crown land.

Approved as to boundaries:

..... 1.8.2019
for and on behalf of Moriori

..... / /
for and on behalf of Ngāti Mutunga o Wharekauri

..... 1.8.19
for and on behalf of the Crown

Notes:

1. Right of First Refusal Area (RFR Area) boundary is bold black line defined by coordinates.
2. Coordinates are in terms of Chatham Islands Transverse Mercator 2000.

LAND DISTRICT: Wellington

TERRITORIAL AUTHORITY: Chatham Islands Council

File IZ009600.35

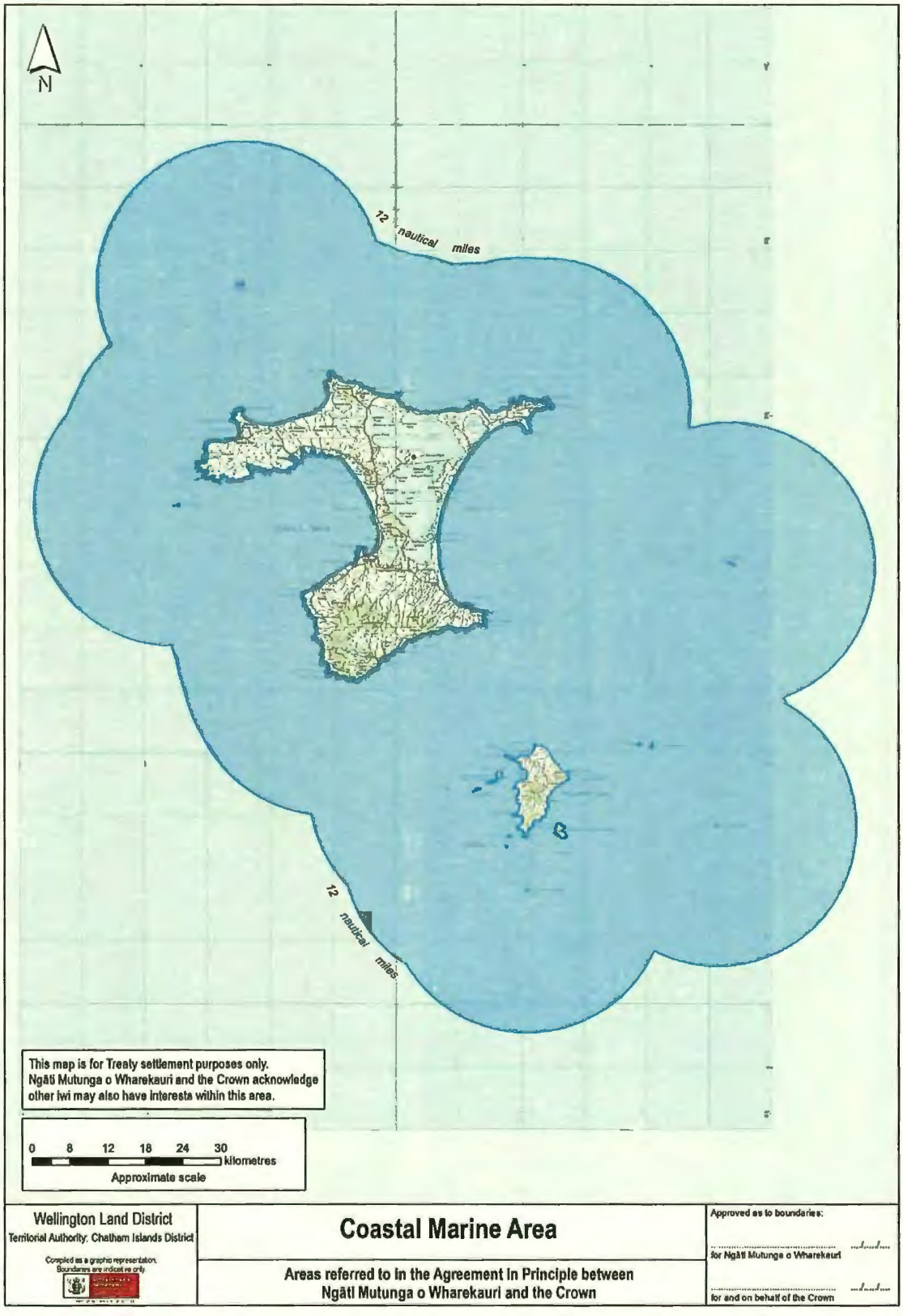
Shared Right of First Refusal Area – Moriori and Ngāti Mutunga o Wharekauri

Compiled by Jacobs New Zealand Limited

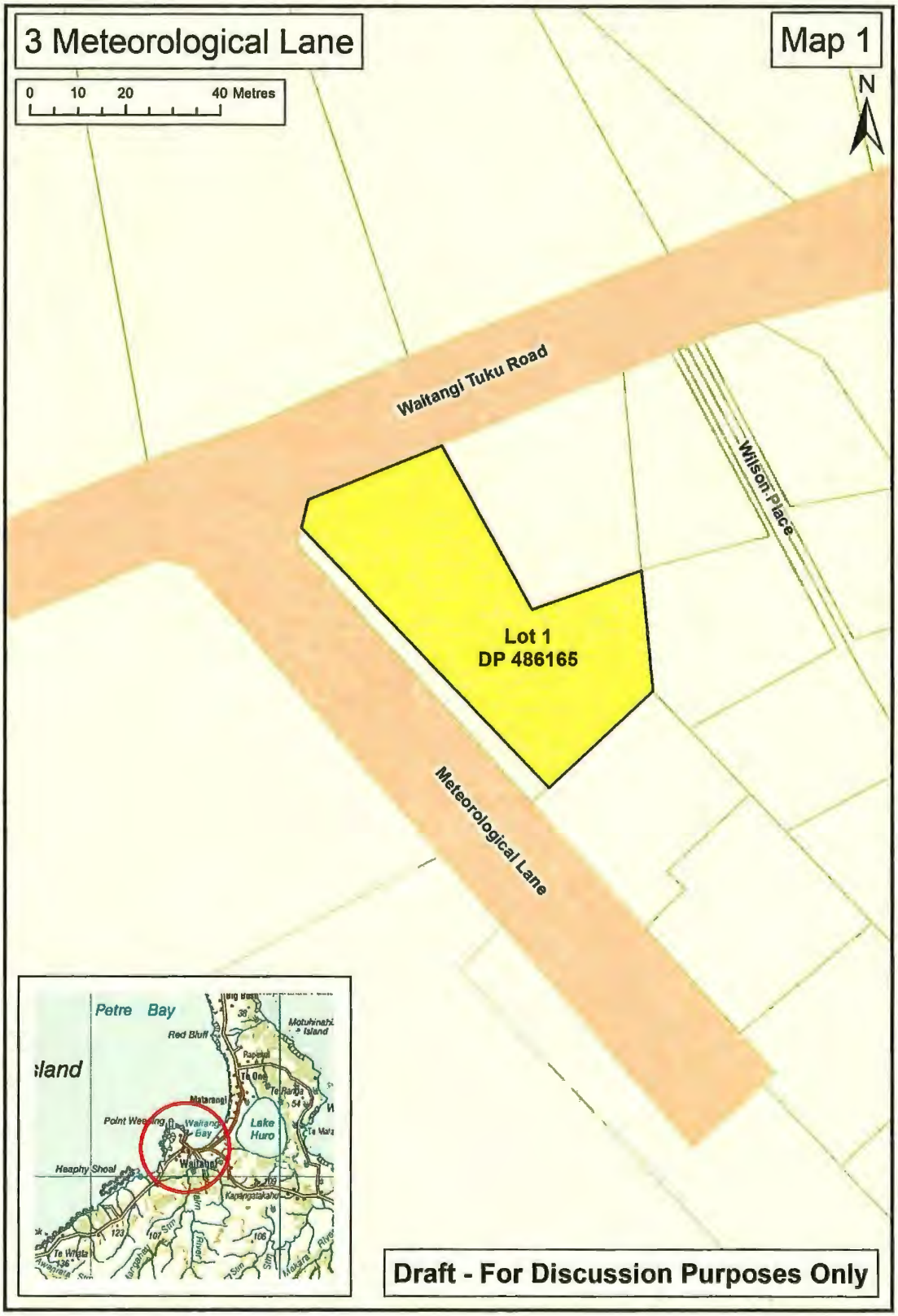
Scale 1:450,000 at A3 Date: May 2019

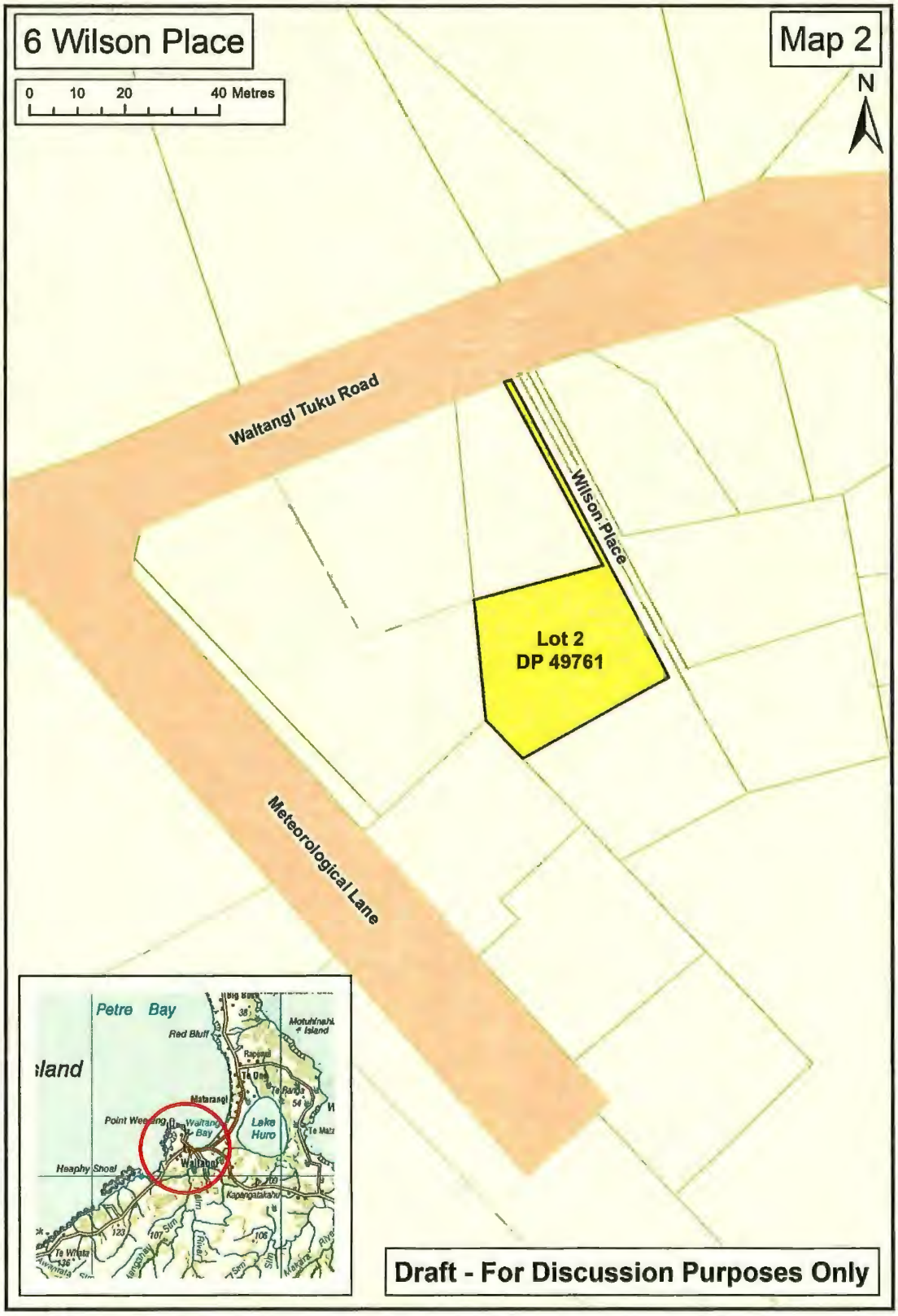
SO 536545

3 COASTAL MARINE AREA



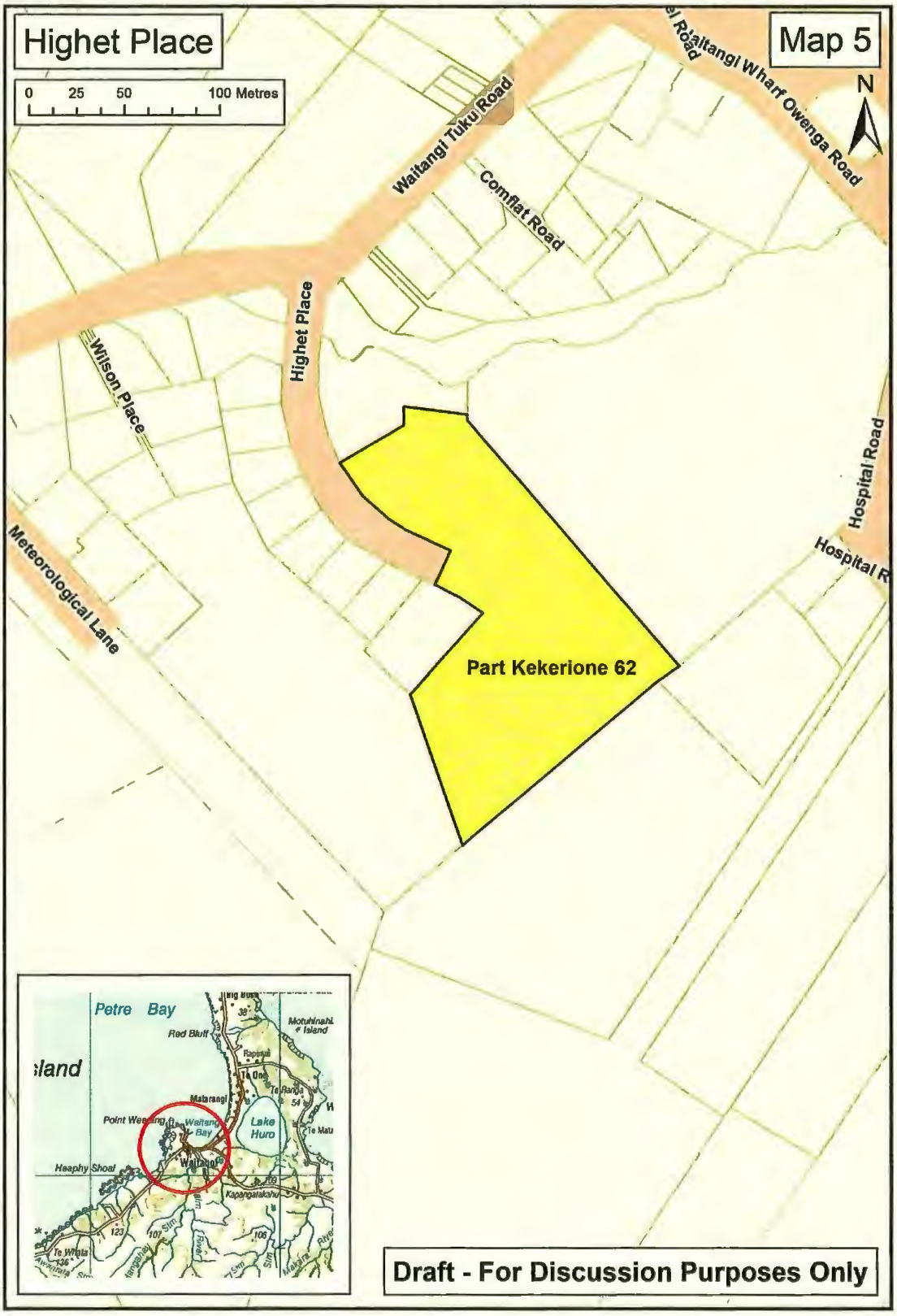
4 CULTURAL REDRESS PROPERTIES



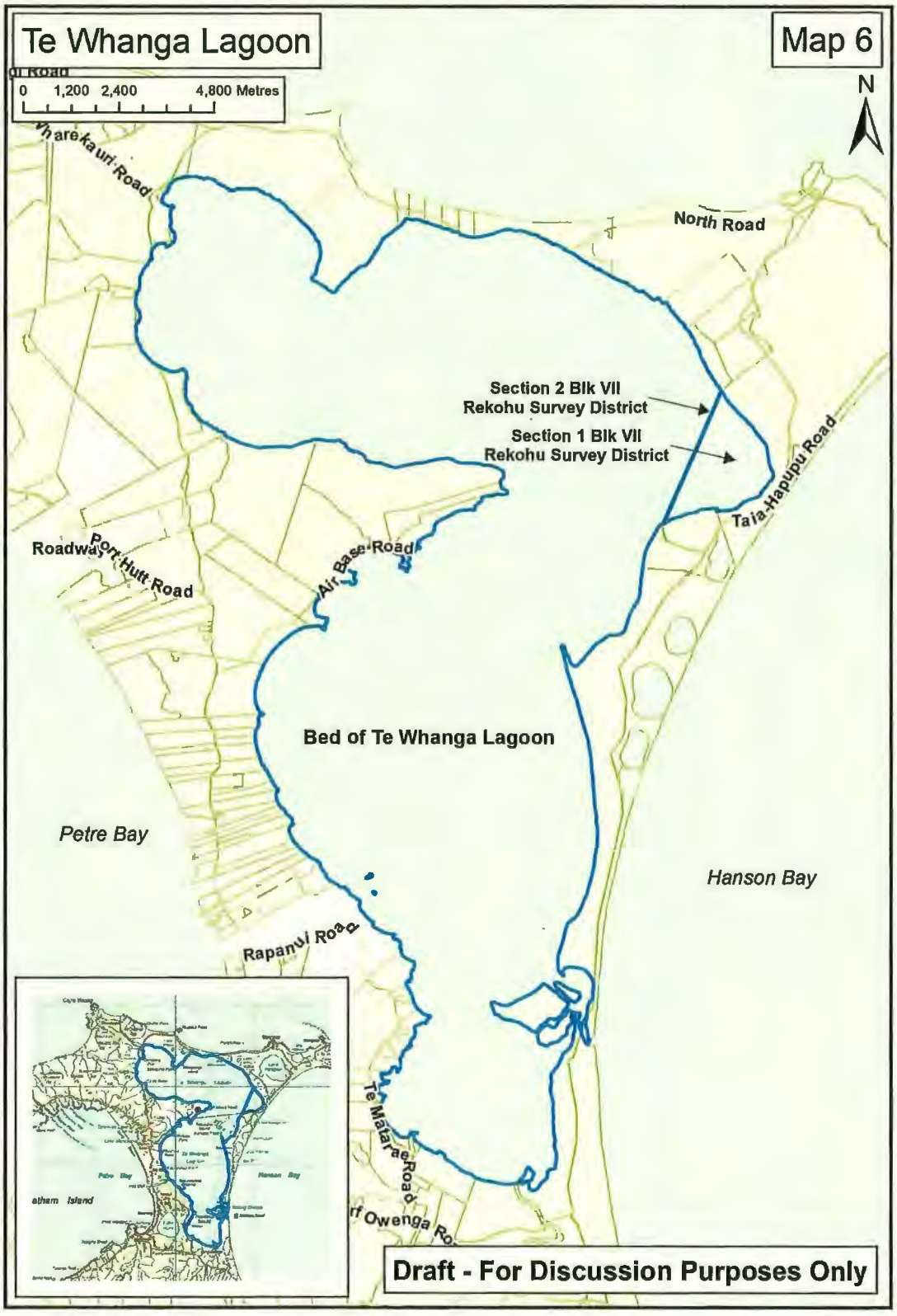

6 Wilson Place
Map 2
0 10 20 40 Metres
N
Waitangi Tuku Road
Wilson Place
Lot 2
DP 49761
Meteorological Lane
Petre Bay
Red Bluff
Matarangi
Point Wedding
Waitangi Bay
Lake Huro
Heaphy Shoal
Waitangi
Draft - For Discussion Purposes Only

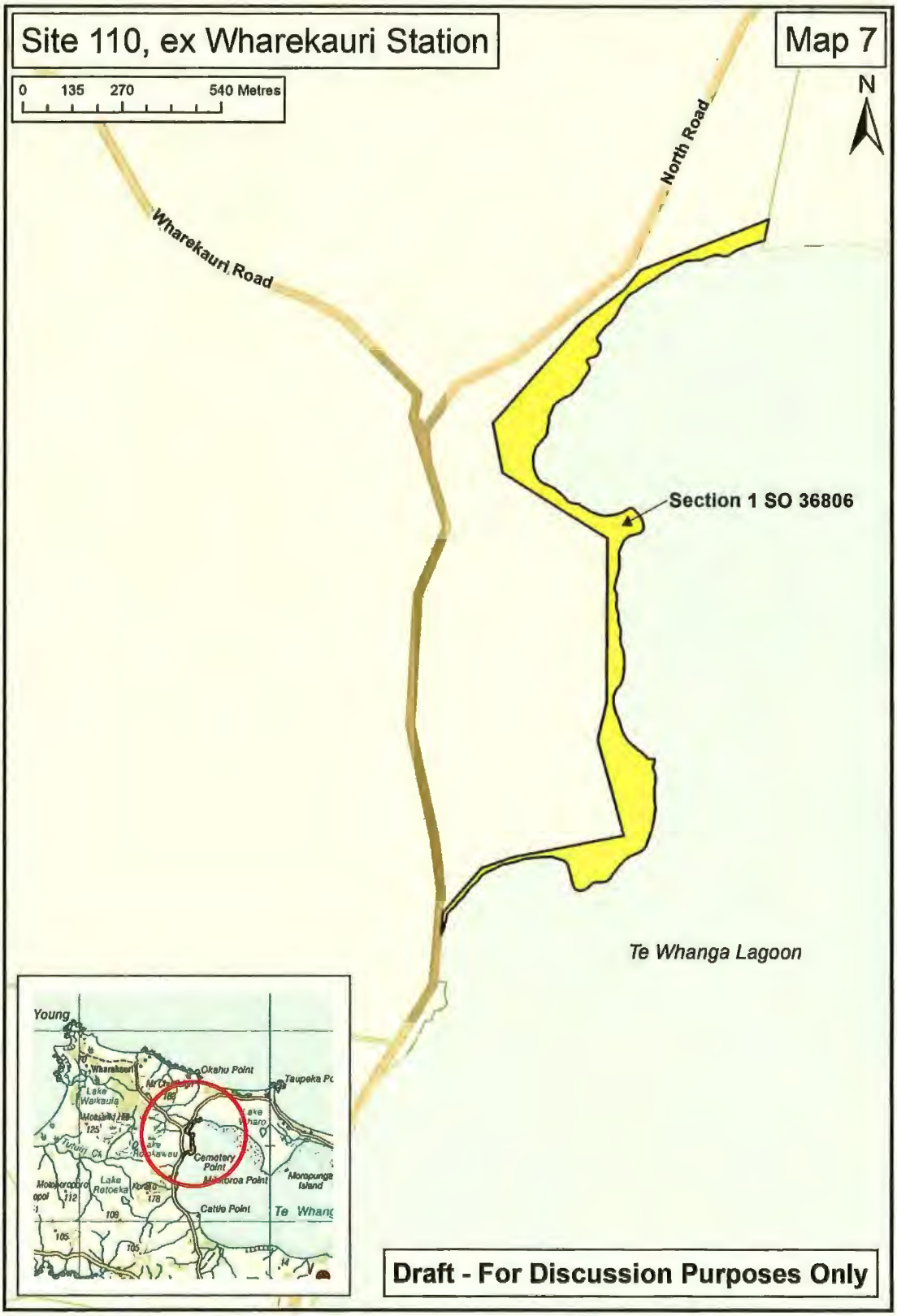

7 Wilson Place
Map 3
0 10 20 40 Metres
N
Waitangi Tuku Road
Highet Place
Wilson Place
Lot 5
DP 49761
Petre Bay
Red Bluff
Matarangi
Lake Hiro
Heaphy Shoal
Draft - For Discussion Purposes Only


9 Wilson Place
Map 4
0 10 20 40 Metres
N
Waitangi Tuku Road
Highet Place
Wilson Place
Lot 4
DP 49761
Petre Bay
Red Bluff
Motuhinahi Island
Matarangi
Lake Huro
Heaphy Shoal
Draft - For Discussion Purposes Only

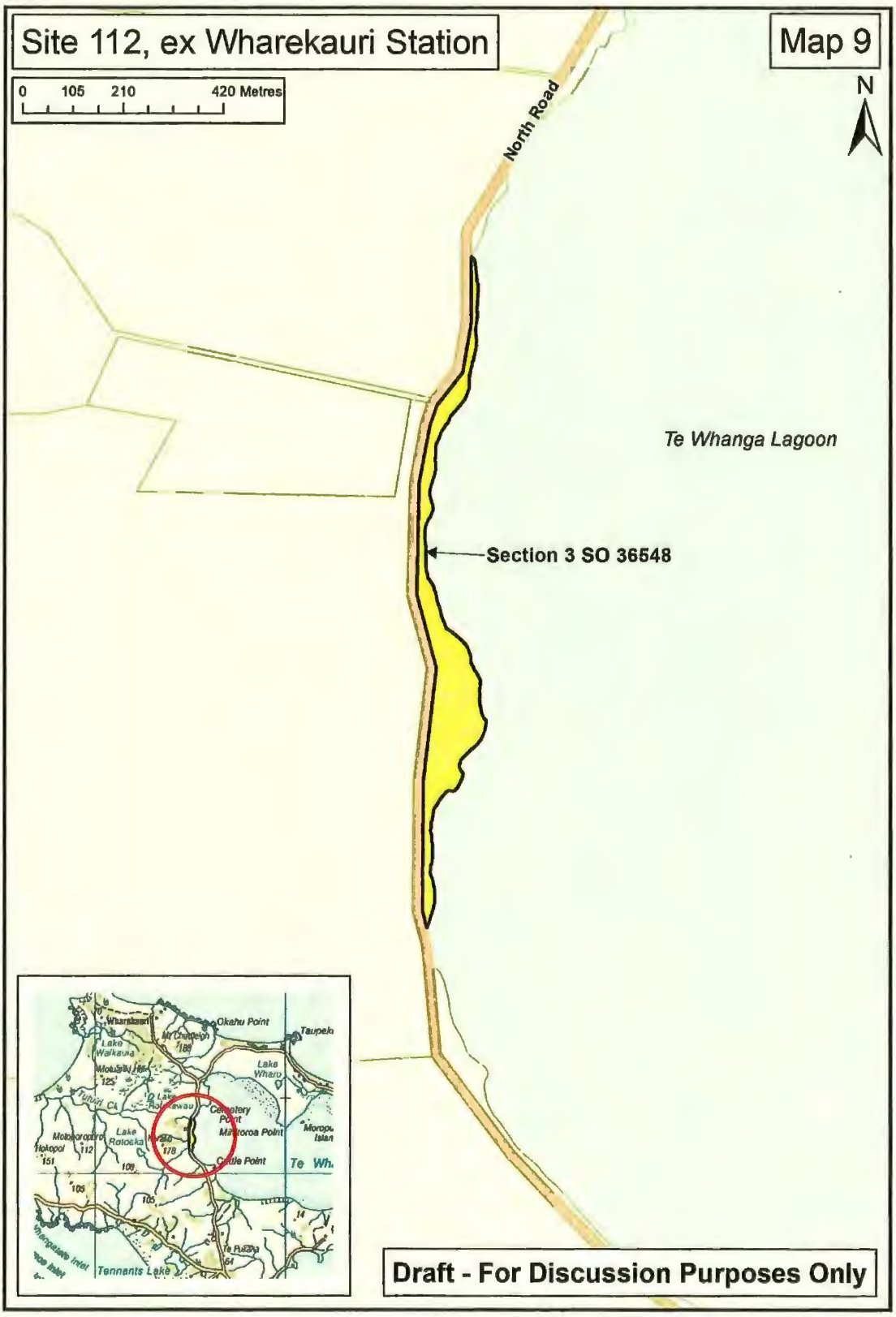

Highet Place
Map 5
0 25 50 100 Metres
N
Waitangi Tuku Road
Comflat Road
Waitangi Wharf Owenga Road
Highet Place
Wilson Place
Meteorological Lane
Hospital Road
Hospital R
Part Kekerione 62
Petre Bay
Red Bluff
Matarangi
Lake Huro
Heaphy Shoal
Draft - For Discussion Purposes Only

5 SHARED CULTURAL REDRESS PROPERTIES

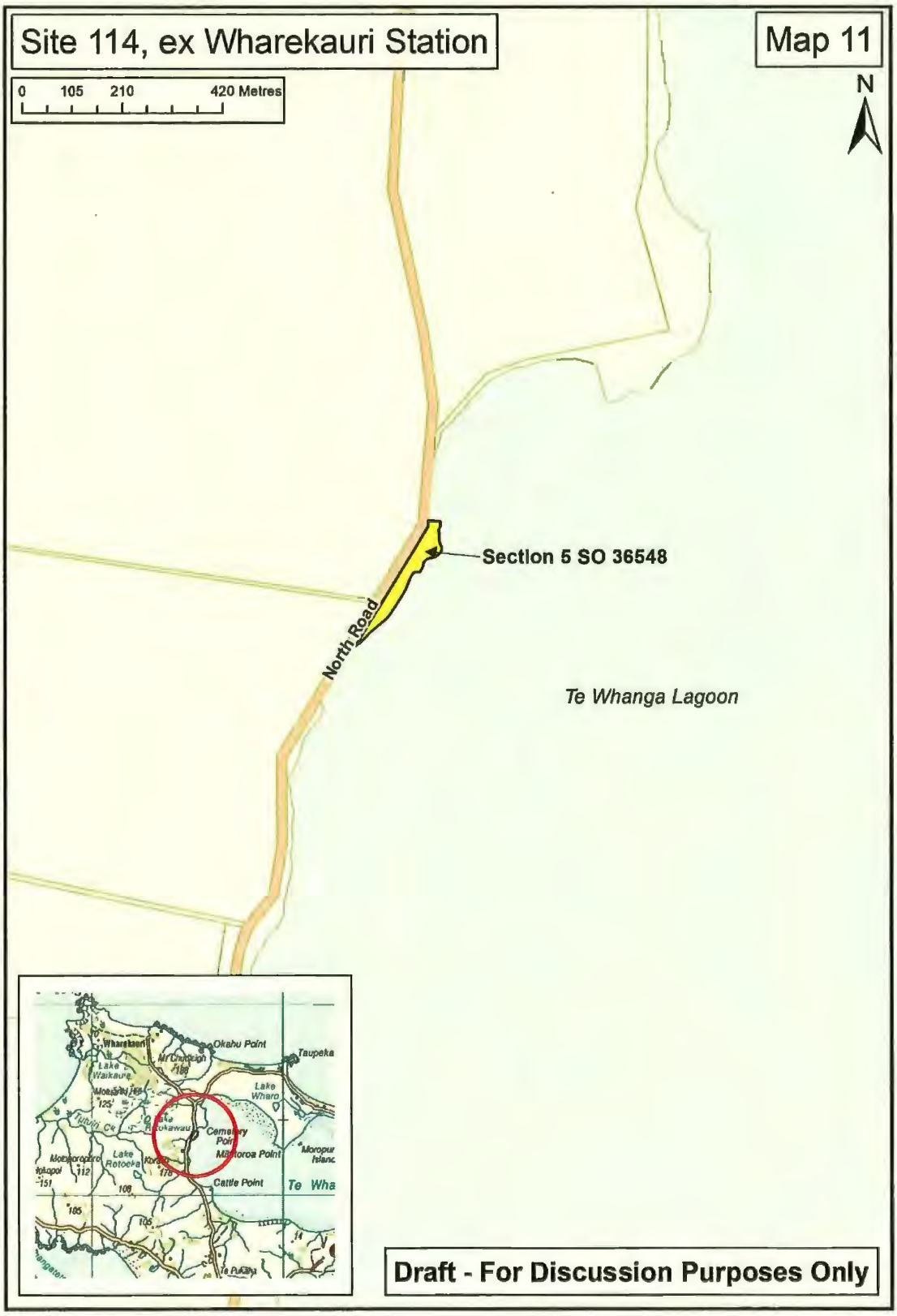


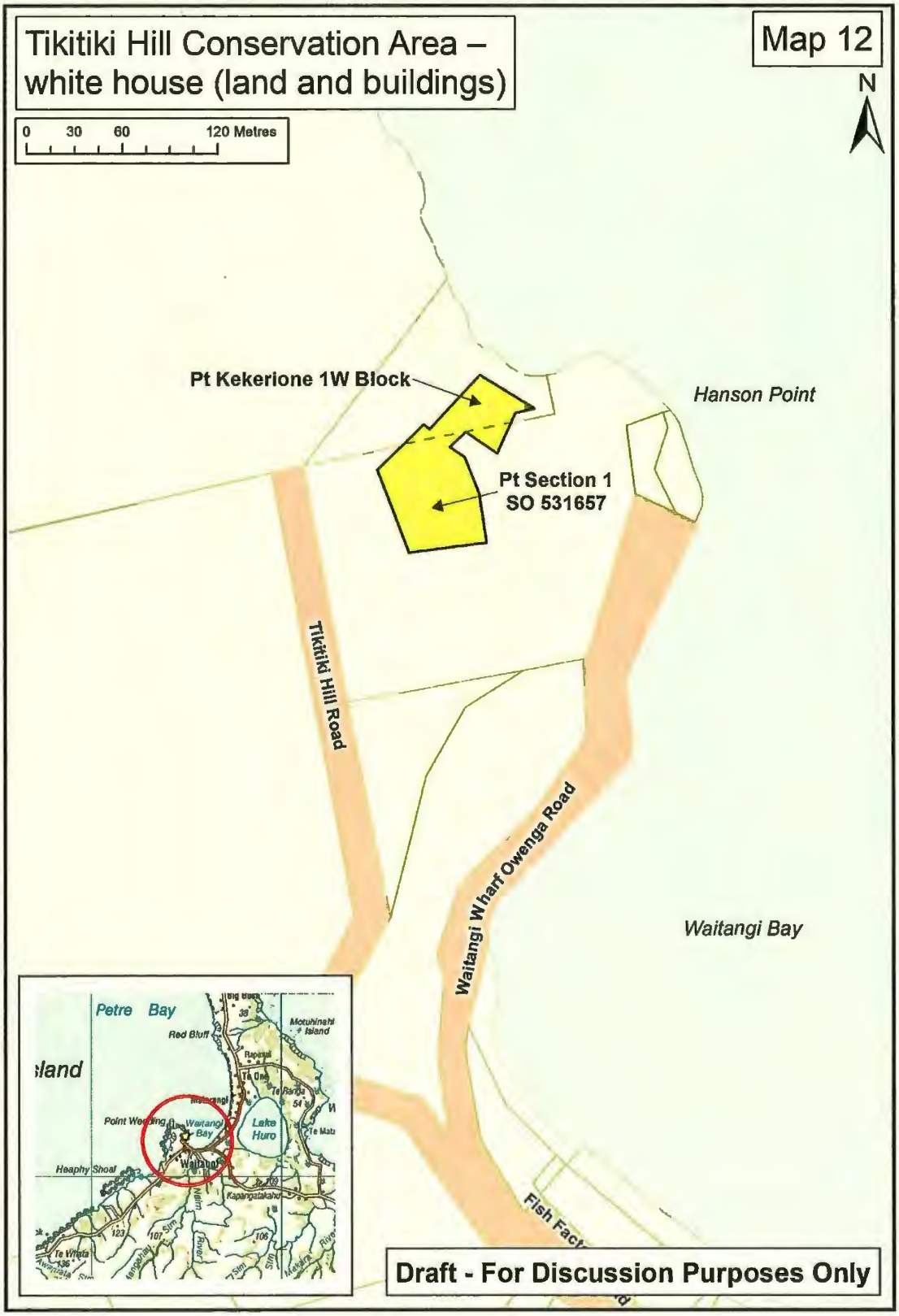

Site 110, ex Wharekauri Station
Map 7
0 135 270 540 Metres
N
North Road
Wharekauri Road
Section 1 SO 36806
Te Whanga Lagoon
Young
Okahu Point
Cemetery Point
Cattle Point
Draft - For Discussion Purposes Only


Site 111, ex Wharekauri Station
Map 8
0 125 250 500 Metres
N
Te Whanga Lagoon
Section 1 SO 36807
North Road
Draft - For Discussion Purposes Only

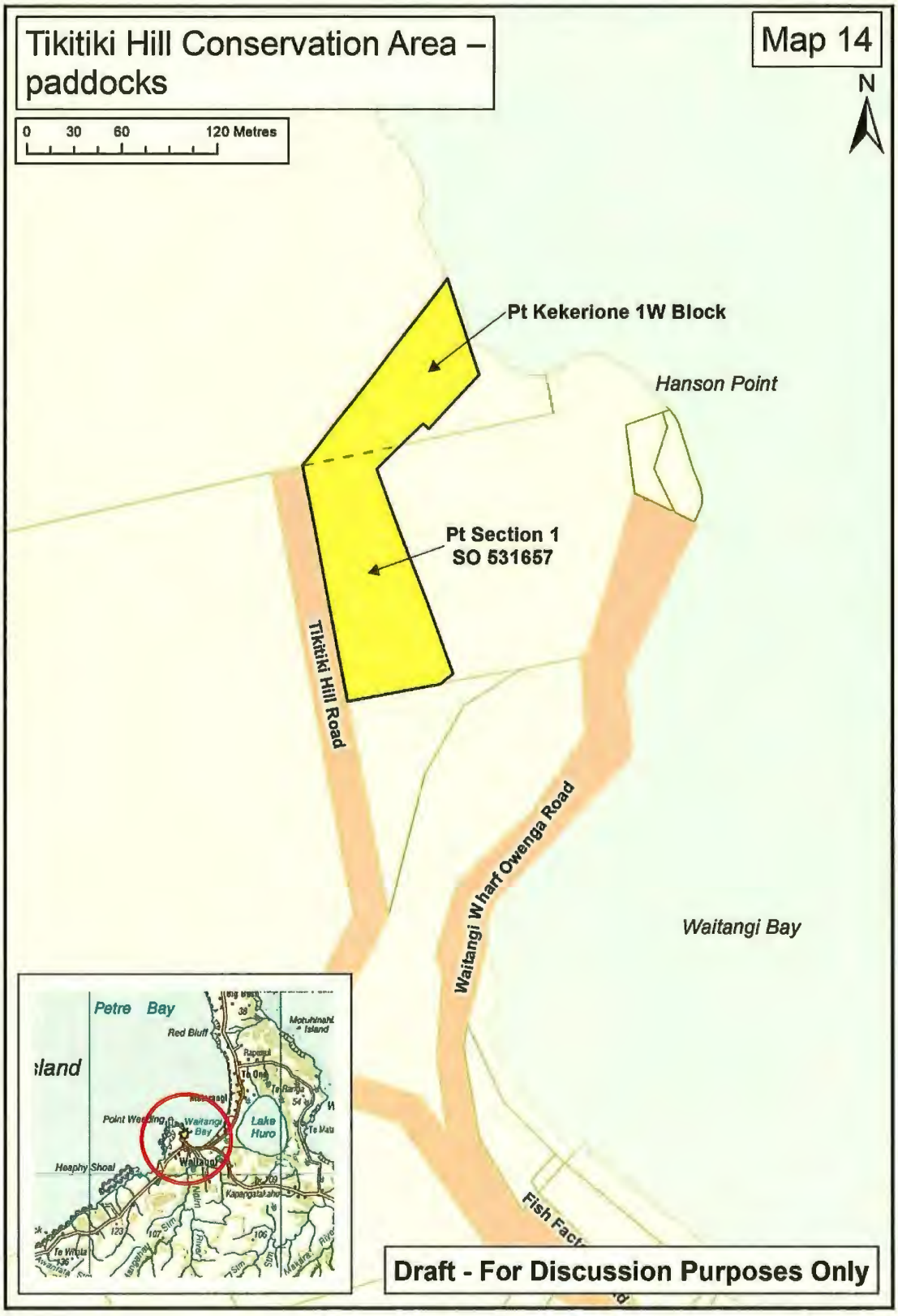

Site 112, ex Wharekauri Station
Map 9
0 105 210 420 Metres
N
North Road
Te Whanga Lagoon
Section 3 SO 36548
Draft - For Discussion Purposes Only


Site 113, ex Wharekauri Station
Map 10
0 62.5 125 250 Metres
N
North Road
Section 4 SO 36548
Te Whanga Lagoon
Wharekauri
Okahu Point
Lake Wharo
Cemetery Point
Cattle Point
Lake Rotoeka
Draft - For Discussion Purposes Only


Site 114, ex Wharekauri Station
Map 11
0 105 210 420 Metres
N
Section 5 SO 36548
North Road
Te Whanga Lagoon
Draft - For Discussion Purposes Only


Tikitiki Hill Conservation Area – white house (land and buildings)
Map 12
N
0 30 60 120 Metres
Pt Kekerione 1W Block
Pt Section 1 SO 531657
Hanson Point
Tikitiki Hill Road
Waitangi Wharf Owenga Road
Waitangi Bay
Petre Bay
Red Bluff
Motuhinahi Island
Lake Huro
Heaphy Shoal
Draft - For Discussion Purposes Only


Tikitiki Hill Conservation Area – southern site
Map 13
N
0 30 60 120 Metres
Hanson Point
Pt Section 1
SO 531657
Tikitiki Hill Road
Waitangi Wharf Owenga Road
Waitangi Bay
Petre Bay
Red Bluff
Lake Huro
Heaphy Shoal
Draft - For Discussion Purposes Only

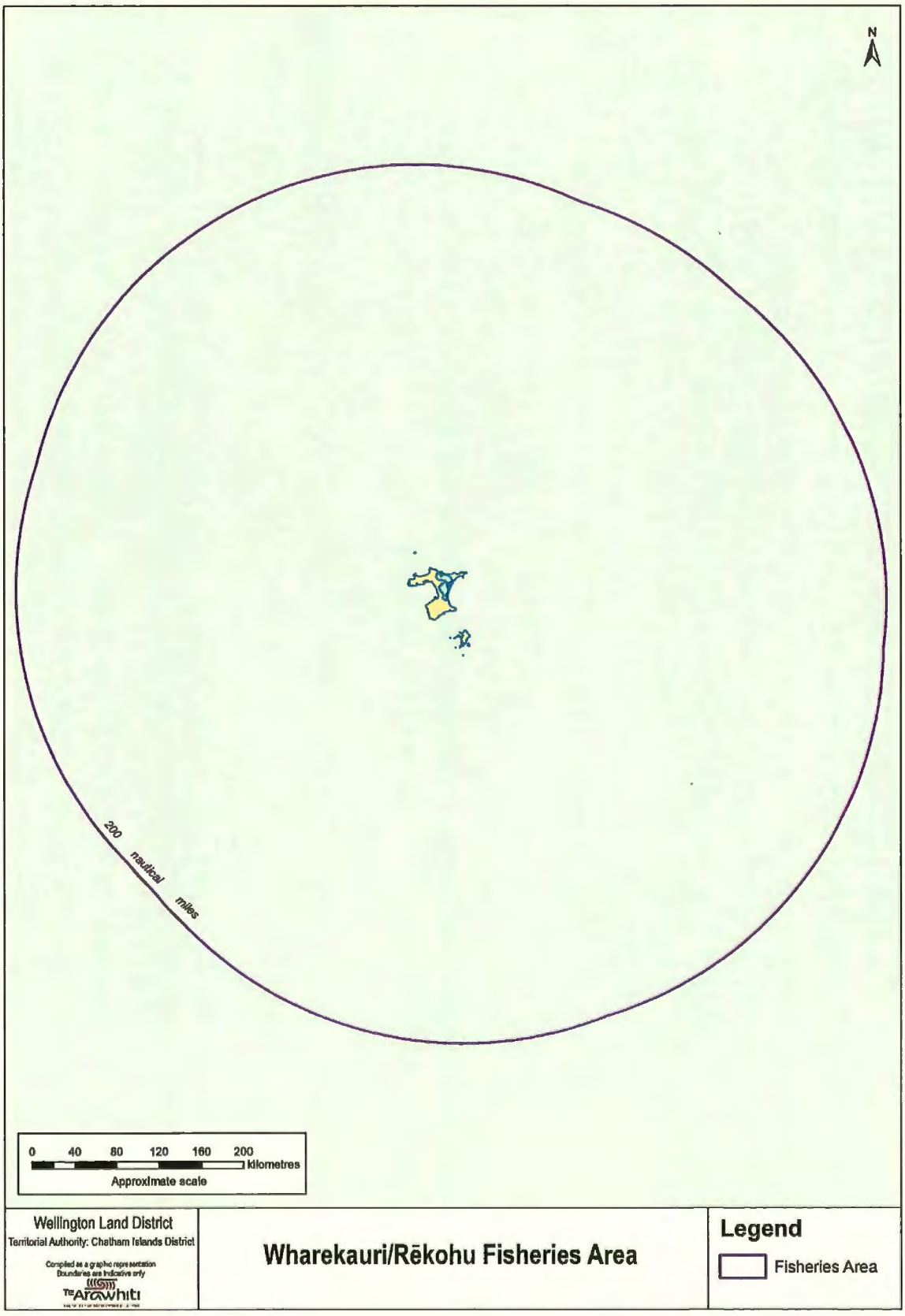

Tikitiki Hill Conservation Area – paddocks
Map 14
N
0 30 60 120 Metres
Pt Kekerione 1W Block
Hanson Point
Pt Section 1
SO 531657
Tikitiki Hill Road
Waitangi Wharf Owenga Road
Waitangi Bay
Petre Bay
Red Bluff
Lake Huro
Heaphy Shoal
Draft - For Discussion Purposes Only


Tikitiki Hill Conservation Area – conical hill
Map 15
N
0 30 60 120 Metres
Pt Kekerione 1W Block
Hanson Point
Pt Section 1
SO 531657
Tikitiki Hill Road
Waitangi Wharf Owenga Road
Waitangi Bay
Petre Bay
Red Bluff
Motuhinahi Island
Point Wedding
Waitangi Bay
Lake Huro
Heaphy Shoal
Fish Fact
Draft - For Discussion Purposes Only

6 JOINT OVERLAY CLASSIFICATION



7 WHAREKAURI/RĒKOHU FISHERIES AREA



8 CROWN AND NGĀTI MUTUNGA O WHAREKAURI PROCESS FOR ADRESSING OVERLAPPING INTERESTS

Moriori and Ngāi Tahu have interests in the Ngāti Mutunga o Wharekauri area of interest.

Table 8 – Process for addressing overlapping interests within the Ngāti Mutunga o Wharekauri area of interest

Process	Activities
Overlapping claims discussions	• The Crown began negotiations with Ngāti Mutunga o Wharekauri and Moriori in March 2016, and discussed the overlapping interests process at the first meetings. • Both Ngāti Mutunga o Wharekauri and Moriori agreed to meet early to discuss overlapping interests. • Ngāti Mutunga o Wharekauri and Moriori held hui to discuss overlapping interests and settlement aspirations. • The Crown provided details to Ngāti Mutunga o Wharekauri and Moriori of what cultural redress instruments it was prepared to offer over which sites to assist overlapping interest discussions. • Agreement was reached between Ngāti Mutunga o Wharekauri and Moriori on a joint approach to Te Whanga Lagoon, resource management, customary fisheries and a right of first refusal. • Ngāi Tahu have interest in the Auckland Islands and have been consulted on the offer to provide Ngāti Mutunga o Wharekauri the ability to erect a memorial on the Islands. • On 19 December 2019, Ngāi Tahu indicated they were in discussions with Ngāti Mutunga o Wharekauri but did not consider this an issue that should be agreed through the settlement process. • On 25 October we wrote to Moriori Imi Settlement Trust seeking their feedback on the additional conservation redress. We also wrote to Ngāi Tahu to provide an update on their interests in the Auckland Islands. • On 10 November 2022 Moriori Imi Settlement Trust indicated opposition to the additional cultural redress. • On [xx] November we wrote to Moriori Imi Settlement Trust and Te Rūnanga o Ngāi Tahu to inform them that the Crown would sign an Agreement in Principle with Ngāti Mutunga o Wharekauri on 25 November 2022
Crown offers	• The Crown made a comprehensive offer to Ngāti Mutunga o Wharekauri on 28 April 2017 and Moriori on 27 April 2017. Ngāti Mutunga o Wharekauri did not accept their offer. • The Crown advised Ngāi Tahu the Ngāti Mutunga o Wharekauri Crown offer included the ability to erect a memorial on the Auckland Islands. • In August 2017 the Crown signed an agreement in principle with Moriori to settle their historical claims. • Ngāti Mutunga o Wharekauri objected to aspects of the exclusive cultural redress offered to Moriori. • The Crown encouraged both groups to engage on unresolved overlapping interests, and offered the services of an independent facilitator. • In December 2018, the Crown made revised Crown offers to Ngāti Mutunga o Wharekauri and Moriori that were in part a response to Ngāti Mutunga o Wharekauri concerns about aspects of the Moriori Agreement in Principle. • The Crown's offer letter to Moriori disclosed the cultural redress being offered to Ngāti Mutunga o Wharekauri in which Moriori have an interest.

Process	Activities
	• The Crown's offer letter to Ngāti Mutunga o Wharekauri disclosed the cultural redress being offered to Moriori in which Ngāti Mutunga o Wharekauri have an interest. • Ngāti Mutunga o Wharekauri declined both Crown offers, considering these failed to achieve parity with the Moriori settlement. • The Moriori Deed of Settlement was signed in February 2020, with settlement legislation enacted in November 2021. • In August 2022, the Crown agreed to consolidate the 2017 and 2018 Crown offers as a best offer. Before the Crown could make an offer, Ngāti Mutunga o Wharekauri compromised on parity with Moriori and sought additional cultural redress. • In November 2022, the Crown presented a consolidated Crown offer which included a commitment that MfTOWN and MOC would continue to consider further specific aspects of cultural redress.