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SUPPLEMENTARY SUBMISSION TO THE MĀORI AFFAIRS SELECT COMMITTEE ON THE NGĀI TAI KI TĀMAKI CLAIMS SETTLEMENT BILL

INTRODUCTION

1. This supplementary submission on the Ngāi Tai ki Tāmaki Settlement Bill (the **Bill**) is made by the Ngātiwai Trust Board (the **Trust Board**) on behalf of Te Iwi o Ngātiwai (**Ngātiwai**) following the Maori Affairs Select Committee (the **Committee**) hearing held in Auckland on 19 January 2018.
2. This supplementary submission addresses matters discussed at the select committee hearing on 19 January 2018, including:
 - (a) corrections to errors in the one-page timeline provided by the Trust Board, but further highlights the inadequacy of the overlapping claims process that the Trust Board would like to be rectified; and
 - (b) responding to the request of a member of the Committee for further clarification of the specific redress instruments that the Trust Board has concerns with.
3. This submission also provides additional information about:
 - (c) the Trust Board's deep concerns with Crown acknowledgement of Ngāi Tai ki Tāmaki statements of association;
 - (d) the lack of consideration of the range of redress instruments consistent with a hierarchy of customary rights and interests; and
 - (e) why it is important to resolve these matters now.

THE INADEQUACY OF THE OVERLAPPING CLAIMS PROCESS

4. During the hearings, the Trust Board presented a one-page summary of the process and timeframes it had experienced in relation to the Ngāi Tai ki Tāmaki overlapping claims process. It was noted during the hearings that there were two date errors in the summary. It was also noted by Ngāi Tai ki Tāmaki that they had signed an Agreement in Principle (AiP) with the Crown in 2011 that contained their "rohe moana". The AiP and the Crown's lack of disclosure of the AiP at that time is another example of poor process. Had the overlap been picked up at that stage a process to

resolve overlapping claims and appropriate redress could have commenced much earlier. For these reasons, the summary attached and marked with the letter “A” has been revised to correct the errors and include the AiP signed in 2011.

5. The Trust Board also heard from Ngāi Tai ki Tāmaki at the hearings that the redress that is the subject of concern to the Trust Board was introduced by the Ministry for Primary Industries (MPI) very much at the eleventh hour. This situation further highlights the inadequacy of the process that the Trust Board would like to be rectified.

SPECIFIC REDRESS INSTRUMENTS THAT THE TRUST BOARD HAVE CONCERNS WITH

6. During question time following the Trust Board's presentation, a member of the Select Committee Ms. Harete Hipango requested identification of the specific statutory areas that are the basis or substance for submissions at paragraphs 14, 18, 19, 24 and 34 of the Trust Board's initial submission.

The Overlapping Area

7. To assist the committee, it is useful to first view the overlapping area between Ngātiwai and Ngāi Tai ki Tāmaki in a wide sense. This overlap is best viewed in the map attached and marked with the letter “B”¹. It is this area that is the basis for the Trust Board's submissions in general. However, the specific redress instruments of concern to the Trust Board are set out in detail in paragraphs 8 to 14 below and are summarised in paragraph 15.

Statements of Association and Statutory Acknowledgement

8. Within the overlapping area referred to in paragraph 7 above the Crown has acknowledged certain Ngāi Tai ki Tāmaki “Statements of Association” included in the Ngāi Tai ki Tāmaki Deed of Settlement (the **Deed**), a copy of which is attached and marked with the letter “C”². In particular these statements relate to the following places all of which are of paramount social, cultural, spiritual and economic significance to the people of Ngātiwai:
 - (a) Te Ārai o Tāhuhu (Te Ārai Point);
 - (b) Te Hauturu o Toi (Little Barrier Island);
 - (c) Aotea (Great Barrier Island); and
 - (d) Tikapa Moana (Hauraki Gulf)
9. The “Statutory Acknowledgement” is provided in clause 74, which states;

“The Crown acknowledges the statements of association for the statutory area.”

¹ This map was attached to the letter sent to the Trust Board on 13 June 2017 by the Office of Treaty Settlements disclosing the MPI protocol area.

² These statements are located in the “*Deed of Settlement Schedule: Documents*” on pages 2 and 3.

Statutory Area and Coastal Marine Area

10. Statutory area is defined in clause 73 of the Bill as:

“statutory area means an area described in Schedule 2, the general location of which is indicated on the deed plan for that area”
11. Schedule 2, lists the “Coastal Marine Area” and location as shown on OTS-403-128. The Coastal Marine area is set out in the *Deed of Settlement: Attachment* page 31 a copy of which is attached and marked with the letter “D”.
12. Schedule 2, Part 1, lists these areas as “Areas subject only to statutory acknowledgement”, a copy of which is attached and marked with the letter “E”.

Ministry for Primary Industries Protocol and Protocol Area

13. The Bill at clause 87 to 91 contains general provisions relating to protocols and at clause 91 a specific provision relating to the MPI Protocol. The MPI Protocol and Protocol Area are located in the *Deed of Settlement Schedule: Documents* on pages 26 to 36 and are attached and marked with the letter “F” and “G” respectively.

Taonga Tuturu Protocol and Protocol Area

14. In addition to the general provisions relating to protocols at clause 87 to 91 of the Bill clause 92 contains specific provisions relating to the Ministry for Arts, Culture and Heritage Taonga Tuturu Protocol and Protocol Area. The Taonga Tuturu Protocol and Protocol Area are located in the *Deed of Settlement Schedule: Documents* on pages 37 to 46 and are attached and marked with the letter “H” and “I” respectively.
15. In summary the Trust Board's concerns relate to the following specific redress instruments³ contained in the Bill and the Deed in the overlapping area:
 - (a) The Ngāi Tai ki Tāmaki Statements of Association;
 - (b) The Crown's Statutory Acknowledgement of the Ngāi Tai ki Tāmaki Statements of Association;
 - (c) The Statutory Area further defined as the Coastal Marine Area;
 - (d) The MPI Protocol and Protocol Area; and
 - (e) The Taonga Tuturu Protocol and Protocol Area.

THE TRUST BOARDS DEEP CONCERNS WITH CROWN ACKNOWLEDGEMENT OF NGAI TAI KI TAMAKI STATEMENTS OF ASSOCIATION

Statements of Association

16. The Trust Board is deeply concern that certain statements of association made by Ngāi Tai ki Tāmaki within the Ngātiwai Area of Interest, referred to in paragraph 8 (a) to (d) above, have not been worked through properly in accordance with tikanga before being acknowledged by the Crown in statutory acknowledgements.
17. Of major concern is that the process can effectively create, new legal rights akin to customary rights (i.e. mana whenua – mana moana) for an iwi or hapū:
 - (a) who may not have ever held such authority over an area, or

³ OTS guidelines on Statutory instruments are set out in *Healing the past, building a future* pages 115 to 132.

- (b) where their rights are 'ahi mātaotao', or 'cold' and no longer extant in a Māori cultural customary sense.

Statutory Acknowledgements

18. The Trust Board understands that:

Statutory Acknowledgements are acknowledgements by the Crown of statements by Ngāi Tai ki Tāmaki of Ngāi Tai ki Tāmaki's special cultural, historical, or traditional association with certain area of Crown-owned land.

Relevant consent authorities (ie local authorities), the Environment Court and Heritage New Zealand Pouhere Taonga must have regard to these statements for certain purposes, in particular resource consent applications under the Resource Management Act 1991 for any activity within, adjacent to, or directly affecting a statutory acknowledgement area and certain applications under the Heritage New Zealand Pouhere Taonga Act 2014.

The acknowledgement also require that the local authorities provide Ngāi Tai ki Tāmaki with summaries of all resource consent applications that may affect the areas named in these acknowledgements prior to any decision being made on those applications⁴ (emphasis added).

19. It is clear to the Trust Board that the 'special association' described by an iwi with any area, or adjacent area, of Crown owned land must be clearly documented, described and proven by the iwi concerned. It is the clear position of the Trust Board that this has not been done by Ngāi Tai ki Tāmaki in regard to the overlapping area, as it applies to Te Ārai o Tāhuhu, Te Hauturu o Toi, Te Kawau Tūmārō o Toi, to Aotea generally or to the outer and northern Hauraki Gulf.

Ngāti Tai as distinct from Ngāi Tai

20. The Trust Board raised the general issue of how Ngāi Tai ki Tāmaki ancestral rights apply beyond Tāmaki, or to wider Ngāti Tai (Tainui) ancestry generally within the wider region in its submissions to OTS⁵.
21. It is clear to the Trust Board that prior to the late 17th century that iwi and hapū of Tainui and Te Arawa descent occupied the Hauraki Gulf and its islands, and Ngāi Tahu its northern extremities. It is also clear that all of the iwi or hapū associated with this area, both before and subsequent to this time also descend from the older descent groups associated with Maui and Toi te huatahi.
22. Ngātiwai tradition associates:
- (a) the pre – conquest iwi and hapū within the Hauraki Gulf as being Ngāti Tai, a much wider descent group than Ngāi Tai and certainly more so than Ngāi Tai ki Tāmaki. All of the iwi of lower Northland, Kaipara, Tāmaki makaurau, Manukau, Hauraki and the Waikato, descend from Ngāti Tai.

⁴ Summary of the Ngāi Tai ki Tāmaki settlement <https://www.govt.nz/treaty-settlement-documents/ngai-tai-ki-tamaki/ngai-tai-ki-tamaki-deed-of-settlement-summary-7-nov-2015/>

⁵ See submissions dated 15 March 2017, 22 June 2017 and 19 July 2017 all attached as appendices marked with the number "7" to the Trust Boards initial submission to the committee.

- (b) the other descent group from this period specifically associated with Aotea, Hauturu and Mahurangi was Ngāti Te Wharau, of Te Arawa (Ngāti Hei) descent. Ngātiwai and its constituent hapū hold this older Te Arawa descent as described through specific whakapapa.
23. Ngātiwai and its constituent hapū descend from these Tainui and Te Arawa ancestors, and hold their mana secured after the conquest and settlement of these places. This was specifically through the peacemaking marriage of Rehua and Waipahihi of Ngāti Tai, and through the associated marriage of Rehua's son Te Rangituangahuru to Rangiarua of Pahangahou (Ngāti Tai). Through this latter marriage descent from the Te Arawa (Ngāti Hei) hapū, Ngāti Te Wharau was also introduced to Ngātiwai and its constituent hapū.
 24. These Ngāti Tai and Te Arawa descent lines and associated customary rights are still held within Ngātiwai whānui, not only by the constituent hapū of Ngāti Rehua and Ngāti Manuhiri, but also by the related northern Ngātiwai communities of Matapouri and Whananaki, among others. These are extant, unbroken and enduring customary rights ('a special association') held by Ngātiwai from these Tainui ancestors. If such customary rights are to be asserted by another hapū or iwi then they must be described in documented detail as they relate to specific parcels of Crown land (emphasis added).

Te Ārai o Tāhuhu (Te Ārai Point)

25. It is the position of the Trust Board that Ngāi Tai ki Tāmaki have not described any documented Ngāi Tai ki Tāmaki ancestral relationship, let alone a 'special association', with Te Ārai o Tāhuhu that could be applied through a statutory acknowledgement.
26. Te Ārai o Tāhuhu (Te Ārai Point) is of considerable significance to Ngātiwai and its constituent hapū who have been involved in its management with the Crown and Auckland Council for many years. It is associated with the arrival in Aotearoa of the eponymous Ngāi Tāhuhu tupuna, Tahuhunuiorangi, in his waka, Moekākara. It is not Moekaraka as stated in the Ngāi Tai ki Tāmaki statement of association⁶. (Note: This has possibly been copied from the Ngāti Manuhiri website where it is presently incorrectly spelt)
27. It should be pointed out, that the tupuna, Tahuhu, associated with Te Ārai o Tāhuhu is not the Tahuhu associated with Ōtāhuhu in Tāmaki Makaurau, as quoted by many sources based largely on several articles by ethnographer George Graham. Ngāi Tai ki Tāmaki have not documented any ancestral relationship with this tupuna.
 - (a) The tupuna Tahuhu associated with Wakatūwhenua (Goat Island) and with Te Ārai o Tāhuhu is Tahuhunuiorangi, the son of the Ngātiwai tupuna Manaia. He is the eponymous ancestor of Ngāi Tāhuhu from whom the tribes of Te Tai Tokerau descend.
 - (b) The tupuna Tahuhu associated with Ōtāhuhu and Tāmaki makaurau is a different person. This tupuna was a descendant of Hoturoa and his wife Marama kiko hura who were members of the crew of the Tainui waka. This Tahuhu came seven generations later.

⁶ *Deed of Settlement: Documents, page 2 paragraph 3.*

28. What has created the confusion was that he was the son of a different Manaia and his Tainui wife Maungakiekie. This Tahuhu married Otaki and became the eponymous ancestor of the Te Waiōhū hapū 'Ngāi Tāhuhu' who occupied Ōtāhuhu and other parts of central Tāmaki makaurau. This whakapapa is well known in Tainui, especially in Ngāti Maniapoto and Te Waiōhū, and is given in Ngā Iwi o Tainui, Pei Te Hurinui Jones & B. Biggs, 1995, p. 231.

Te Hauturu o Toi (Little Barrier Island);

29. It is the position of the Trust Board that Ngāi Tai ki Tāmaki have not described any specific ancestral relationship, and certainly not a 'special association' with Te Hauturu o Toi. A spurious ancestral association with the entire island through unnamed 'Patupaiarehe' could apply to any iwi and any part of Aotearoa.
30. Ngāi Tai ki Tāmaki tūpuna did not assert a specific ancestral association with Hauturu during the 17 years land court investigation of the island in the 19th century. Title to the island was awarded solely to Ngātiwai and its constituent hapū. The mana of older occupants of the island, namely Pāhangahou and Ngāti Te Wharau was subsumed by Ngātiwai through conquest and marriage.

Aotea (Great Barrier Island) – Āwana

31. The Board accepts the ancestral association of Ngāi Tai ki Tāmaki with Āwana through the tūpuna Te Wana. It is noted however, that the descendants of Te Wana were killed or driven from Aotea by Ngātiwai. In addition, Ngātiwai subsumed this mana when his only surviving grand daughters, Waipahihi and Rangiarua, married Rehua and Te Rangitūangahuru.
32. The Board does not accept the undocumented claim that Ngāi Tai ki Tāmaki tūpuna remained on Aotea at unnamed places at Rangitāwhiri (Tryphena). The most recent Māori Land Court finding relating to Aotea, and the Ngātiwai conquest of Aotea, does not document this to be the case but states that this ancestral relationship relates to other hapū. Ngāi Tai ki Tāmaki presented no evidence to this long running and well publicised investigation in the 1980s and 1990s. It is most important to note that the Court ruled that kaitiakitanga on Aotea and its environs sits solely with Ngāti Rehua. How this is worked through in regard to cultural redress has yet to be determined by the Crown and the iwi involved.

Te Kawau tūmārō o Toi (Kawau Island)

33. The Trust Board does not accept an extant and enduring Ngāi Tai ki Tāmaki ancestral relationship with Te Te Kawau tūmārō o Toi, or that one has been described. The older and broader Ngāti Tai ancestry associated with the island is held by Ngātiwai and its constituent hapū, and by hapū of Ngāti Kahu descent as described in the current documentation. The hapū name Ngāti Kahu applies to the descendants of the Te Kawerau ancestor Maeaeariki and his descendant Kahu. This mana continues to be held by Ngātiwai, including Ngāti Manuhiri, as well as by Ngāti Whātua, including Ngāti Rongo, and by Te Kawerau ā Maki. Ngāi Tai ki Tāmaki ancestral relationships, through Ngāti Poataniwha, if described, would apply to the area south of the Whāngaparāoa peninsula, and not to Kawau Island or Mahurangi.

Tikapa Moana (Northern Hauraki Gulf)

34. The Trust Board is concerned with the Ngātiwai ancestral relationships within Te Moana nui o Toi, the outer and northern part of the Hauraki Gulf. This concern is raised in particular in relation to the MPI and Taonga Tuturu Protocols and Protocol Areas.
35. The Trust Board has no objection on Ngāi Tai ki Tāmaki ancestral relationships with Tikapa Moana, the southern Hauraki Gulf, or the islands or coastal environment adjoining it, as described by Ngāi Tai ki Tāmaki.

THE LACK OF CONSIDERATION OF REDRESS INSTRUMENTS CONSISTANT WITH A HIERARCHY OF RIGHTS AND INTERESTS

36. The Trust Board is also concerned that cultural redress instruments applied in relation to the Ngāi Tai ki Tāmaki Statements of Association have not been tailored appropriately to Ngāi Tai ki Tāmaki interest within the area that overlaps with the Ngātiwai Area of Interest.
37. The Trust Board agrees with those members of the Committee who consider there is a hierarchy of rights and interests. The Trust Board further considers that any redress should be appropriate and consistent with that hierarchy. Unfortunately, there has been no opportunity to consider how these matters could best be addressed in a tikanga Maori way because the process has been inadequate.

Ngāti Hako Statement of Association Example

38. For example, the Trust Board understands that the Crown has offered Ngāti Hako (another Hauraki Iwi) a statement of association without the addition of a statutory acknowledgement or protocols (and associated areas). As set out in the email correspondence from OTS attached and marked with the letter "J", the statement of association is not being accompanied by a statutory acknowledgement.
39. This example demonstrates that the Crown has a range of cultural redress instruments that can be applied in different situations consistent with the relative interest of settling groups. The Crown in the case of Ngāti Hako appears to appreciate different levels of interests and has tailored the redress accordingly⁷.

Ngāti Pūkenga Statutory Acknowledgement and Area of Interest Examples

40. A further example that the Trust Board is aware of can be found in the Ngāti Pūkenga overlapping claims process. Attached and marked with the letter "K" is a letter from Minister Finlayson setting out his Final decisions on the overlapping claims between Ngāti Pūkenga and Ngātiwai dated 28 March 2013. The letter sets out amendments to the Pakikaikutu coastal statutory acknowledgement and to the Pakikaikutu Kāinga Area of Interest map as follows:

"Amendments to the Pakikaikutu coastal statutory acknowledgement

The coastal statutory acknowledgement area will be amended as follows:

⁷ This example is provided only to demonstrate the point that redress can be tailored. It is not an acceptance by the Trust Board that Ngāti Hako have a valid association to a Pa site on Aotea which has yet to be worked through in a Tikanga Maori way.

- i. The length of the coastal statutory acknowledgement will be reduced in accordance with the concession made to Ngātiwai by Ngāti Pūkenga;
- ii. The width of the statutory acknowledgement area will be limited to 100 meters on the seaward side of the line of mean high water springs; and
- iii. The provisions in the Ngāti Pūkenga deed of settlement will also be amended to clarify the nature, scope and limitations of coastal statutory acknowledgements as outlined in the Crown's letter dated 21 March 2013.

Amendments to the Pakikaikutu Kāinga Area of Interest map

The wording in the legend to the Pakikaikutu Kāinga Area of Interest map will be amended to read:

"This map encompasses areas and sites that are important to Ngāti Pūkenga for a range of reasons including ancient historical connections and events connected to the Treaty of Waitangi claims and Crown Actions. It includes areas in which Ngāti Pūkenga has interests but do not depict tribal boundary or define an area of mana whenua." (emphasis added)

- 41. This example demonstrates that within specific redress instruments tailoring can occur in terms of:
 - (a) length,
 - (b) width, and
 - (c) clarifying the nature, scope and limitations of the redress.
- 42. However, Ngātiwai and Ngāi Tai ki Tāmaki have not yet be able to consider such options because the overlapping claims engagement process has been inadequate.

WHY IS IT IMPORTANT TO RESOLVE THESE MATTERS NOW

- 43. As indicated in the Trust Board's initial submission and mentioned at the select committee hearing. The Trust Board filed an urgent hearing application Wai 2666 (the **Application**) with the Waitangi Tribunal on 24 July 2017, seven working days after meeting with Ngāi Tai ki Tāmaki and twelve working days before the Bill was introduced into the house. While Ngāi Tai ki Tāmaki had offered further opportunities for meetings face to face with Ngātiwai they were already aware that their Bill was about to be introduce into the house⁸.
- 44. Ngātiwai and Ngāi Tai ki Tāmaki were only able to meet on one occasion for one hour to discuss the Deed of Settlement and proposed redress now contained in the Deed and the Bill. If the process had been allowed to continue it may have resulted in a very different outcome. The Trust Board request that such discussions recommence and are able to conclude without further interference by the Crown.
- 45. The Trust Board's application relates to similar inadequate overlapping claims processes and outcomes in all of the Hauraki/Marutūāhu settlements that overlap with the Ngātiwai Area of Interest including those of:

⁸ See Draft notes of the meeting held on 13 July 2017 attached as appendix 5 to the Trust Boards initial submission.

- (a) Ngāi Tai ki Tāmaki;
 - (b) Ngāti Maru;
 - (c) Ngāti Tamatera;
 - (d) Ngāti Paoa;
 - (e) Ngāti Hako;
 - (f) Ngāti Whanaunga;
 - (g) Te Patukirikiri
 - (h) Hauraki Collective; and
 - (i) Marutūāhu Collective.
46. By way of example attached and marked with the letter “L” is a copy of my affidavit dated 3 November 2017 setting out an overview of the engagement between the Hauraki/Marutūāhu iwi and Ngātiwai.
47. The Trust Board's ability to have its concerns addressed through the Waitangi Tribunal in relation to Ngāi Tai ki Tāmaki settlement has now been removed. The only avenue the Trust Board can see available to it now is to request the intervention of the Committee to remove the specific redress that the Trust Board has concerns with (set out in paragraphs 8 to 15 above) so that the matters can be resolved.
48. The remainder of the Hauraki/Marutūāhu settlements referred to in paragraph 44 (a) to (i) above have yet to be progressed to final stages - including the Select Committee stage. The Waitangi Tribunal have yet to make a determination on the Trust Boards application and other related applications. However, should the applications be declined and no further overlapping claims processes are provided to work through the concerns expressed by the Trust Boards the same key issues will arise again at further Select Committee hearings. That is, inadequate due process and outcomes in terms of appropriate redress. It is for these reasons why we seek the assistance of the Committee now.
49. The Trust Board would like to thank the committee and Ngāi Tai ki Tāmaki for the opportunity to make submissions on the Bill and be heard at the hearings. It is acknowledged that Ngāi Tai ki Tāmaki have had their settlement delayed because of circumstances beyond their control. However, the Trust Board ask that the committee and Ngāi Tai ki Tāmaki give serious consideration to the concerns raised in the Trust Boards submissions on the Bill.

Ngā mihinui



Haydn Edmonds
Chairman
Ngātiwai Trust Board

“Te Karere o Tūkaiaia”



Context of Overlapping Claims Process with Hauraki Iwi including Ngai Tai ki Tamaki in relation to Protocol redress and Statutory Acknowledgements

Date	Tamaki/Hauraki Negotiations	Ngai Tai ki Tamaki Negotiations
June 2009	Cabinet agree Crown negotiate with all groups in Tamaki/Hauraki regions at the same time and progress highly significant cultural redress through collective negotiations.	
November 2011		Crown and Ngai Tai ki Tamaki sign AiP.
4 October 2013	OTS letter acknowledging Ngātiwai likely to have interests in Hauraki Settlements and redress to be disclosed the following week.	
7 November 2015		Crown and Ngai Tai ki Tamaki sign DoS.
13 January 2017	OTS disclose Protocol redress for individual Hauraki Iwi – one area for all Iwi.	
31 January 2017	OTS meet with Ngātiwai to discuss different negotiations and redress proposals.	
27 February 2017	OTS disclose revised protocol areas for each of the Hauraki Iwi.	
15 March 2017	Ngātiwai provide preliminary response on multiple topics to OTS including protocol redress.	
13 June 2017		OTS disclose protocol redress to Ngātiwai and set out the overlapping claims process and timeframes.
20 June 2017		Ngātiwai request face to face engagement with Ngai Tai ki Tamaki.
22 June 2017		Ngātiwai point to letter of 15 March 2017 concerning response on protocols and corrections.
13 July 2017		Ngātiwai and Ngai Tai ki Tamaki meet to discuss overlapping claims.
19 July 2017		Ngātiwai provides written response to OTS in objection.
24 July 2017	Ngātiwai file urgent hearing application with the Waitangi Tribunal.	Urgency application includes Ngai Tai ki Tamaki overlapping claims process and redress.
9 August 2017		Ngai Tai ki Tamaki settlement bill introduced into the house.
15 August 2017		First Reading.
19 January 2018		Ngātiwai provide submission to the Maori Affairs Select Committee.
19 February 2018		Maori Affairs Select Committee hearings Jet Park, Mangere, Auckland 10 minutes.
6 March 2018		Ngātiwai provide supplementary submission to the Select Committee.

"A"

"B"

Ngāi Tai ki Tāmaki Primary Industries Protocol Area and Ngātiwai Area of Interest



Legend

- Ngāi Tai ki Tāmaki Primary Industries Protocol Area
- Ngātiwai Area of Interest

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DOCUMENTS

1 STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)

The statements of association of Ngāi Tai ki Tāmaki are set out in this part. These are statements of the particular cultural, spiritual, historical, and traditional association of Ngāi Tai ki Tāmaki with the identified areas.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Coastal Marine Area (as shown on deed plan **OTS-403-128**)

Ngāi Tai Ki Tāmaki are a maritime people without boundaries and have been voyagers since ancient times. Ngāi Tai ki Tāmaki are acknowledged as being amongst the original inhabitants of Aotearoa. It is inevitable that some of the most significant sites of arrival, ritual, landmark and subsequent habitation, both seasonal and permanent, are now shared with others, others with whom we share close links through whakapapa and shared histories, others who through the passage of time and history hold ahi kaa in different places. Ngāi Tai hold fast to the knowledge of our associations to the places and the people as taonga tuku iho. From Te Arai out to Hauturu out to Aotea and throughout Hauraki and Tāmaki Makarau and all the islands within, Ngāi Tai have significant multiple, and many layered associations.

Te Arai

Ngāi Tai ki Tāmaki have had long association to the Mahurangi district as far north as Te Arai. This stems from our deep ancestral links from the Turehu and Patupaiarehe who intermarried with the later voyagers into this area including Maruiwi, Ruatamorea and Tāmaki.

Te Arai gained its name from the arrival of Manaia and his son Tahuhu nui a rangi who made landfall at Te Arai in command of the Moekaraka waka. Tahuhu there set up a temporary shelter (arai) for a stone altar (tūāhu). Ceremonial offerings were made to ensure the safety of his followers. Ngāi Tai know the tūāhu as Te Toka tu whenua.

Tahuhu travelled south and established his people at the place now known as Otahuhu near the site of the famous waka portage from the Tāmaki river through to the Manukau Harbour. Upon his passing Tahuhu was returned to Te Arai and interred there.

At the time of the arrival of the Tanui waka, Te Keteanaataua who married Hinematapaua (a descendant of Maruiwi and Ruatamorea) and his son Taihaua, key ancestors of Ngāi Tai ki Tāmaki strengthened links with Ngāi Tahuhu whose known interests at the time extended from Te Arai southward to Otahuhu.

In April 1841 Ngāi Tai ki Tāmaki leaders Te Tara, Nuku, and Te Haua participated alongside others in the original transaction for the Mahurangi and Omaha Block ,which boundaries extended from Takapuna to Te Arai reinforcing the knowledge that Ngāi Tai ki Tāmaki share joint interests over lands and waters as far north as Te Arai.

Te Hauturu-o-Toi

Ngāi Tai ki Tāmaki acknowledge our descent from the Patupaiarehe who occupied our domains from long before the arrival of Toi Te Huatahi. It was a branch of these people that occupied Hauturu when Toi, having just crossed Te Moananui a Kiwa in his waka Te Paepae ki Rarotonga, arrived in the Hauraki Gulf / Tīkapa Moana. The Patupaiarehe enshrouded the island with mist in order to be concealed from the arriving waka. As a result of summoning the winds that shredded the concealing mists the island became known as Te Hauturu o Toi (the source of the winds of Toi). The people who occupied Hauturu subsequent to these events include some of those from whom Ngāi Tai and others descend thus weaving our mutual associations down to the present day. The Hauturu Rehearing in 1886 recorded Ngāi Tai as one of those iwi with traditional association to Hauturu.

Aotea: Owana Pā (Awana Pā)

Owana Pā is a wāhi tapu area situated on the eastern side of Aotea island. Owana Pā is a prominent headland connected by an isthmus to the mainland and surrounded by a sheltered inlet, estuary and open sea. The pā was named after Te Wana who descended from Ngāti Tai and was

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

a notable chief who lived there until the 17th century. The southern side of the pa was defended by three deep ditches with earthen banks, on which palisades, two to three meters high were built. The rocky cliffs to the north were sufficiently steep to protect the pa without additional defences. Below on the flat lay extensive gardens and a papakainga. There is evidence of midden, papa kainga, an urupa and burials. During the later musket wars, Owana Pa was less defensible due to the lack of access to fresh water during times of siege.

In the late 17th century, a rangatira and his son, journeyed with a group to Aotea where they stayed as manuhiri with Ngāti Te Hauwhenua, a north western hapu of Ngāti Tai. The union of the rangatiras' daughter to a Te Hauwhenua rangatira soon followed but to the rangatiras' dismay, was subsequently killed in a family dispute. Deeply hurt and angered, the rangatira sought utu calling upon his whanaunga to lead a taua (war party) to Aotea.

After a series of battles, Ngāti Te Hauwhenua was defeated and peace was made with Ngāti Taimanawa, a central and south eastern hapu of Ngāti Tai through marriages with rangatira of the other iwi.

A period of peace prevailed over Aotea, until such time that hostility arose once again. For whatever reason, some say that it was because Ngāti Tai still resented the other iwi, which consequently resulted in the death of the rangatira from the other iwi. His death was avenged by a series of battles, one of which took place at Owana Pā, reportedly driving Ngāti Tai from Aotea. However Ngāti Tai continued to occupy the southern area of Rangitawhiri and dispute any conclusive defeats in that area.

Hauraki Gulf / Tīkapa Moana

From Repanga south to Ahuahu and Whakau to Ruamahua and Tuhua. These motu were important to Ngāti Tai/ Ngāi Tai as not only did they provide shelter and a stopover during voyaging, but they were also navigation points as our ancestors sailed and traded across the seas. We journey past Tuhua to Te Ranga a Taiehu where Ngāti Tai and Ngā Marama had a settlement near Katikati and Te Punga o Tainui, the site of the Tainui anchorage. Along the eastern coast of Hauraki to Whangamata where Ngā Marama had a pā to Oputere where Te hekenga o nga toru from Torere travelled meeting up with their Ngāti Tai relatives there before moving onto Waikawau Bay and thence to Moehau to join their whanaunga.

Ngāi Tai / Ngāti Tai acknowledge our shared interests in the greater Moehau area as Poihakena, Te Huripupu and Tukituki Bay were significant sites of battle for Ngāi Tai. Motuiwi, Oruapopou, Motukawao and the Coromandel Island group are of ancestral significance to Ngāi Tai as descendants of Manukaihongi. These areas with subsequent relationships provided access to shared fisheries that continue today.

Papa-aroha is very significant for Ngāi Tai as this is the place where Te Whatatau met and subsequently married Te Raukohekohe. The sheltered bay of Kikowhakarere is also very significant for Ngāi Tai as this is where Te Whatatau put aside his wife Te Kaweau for her refusal to share hua-manu with his whanunga from Torere.

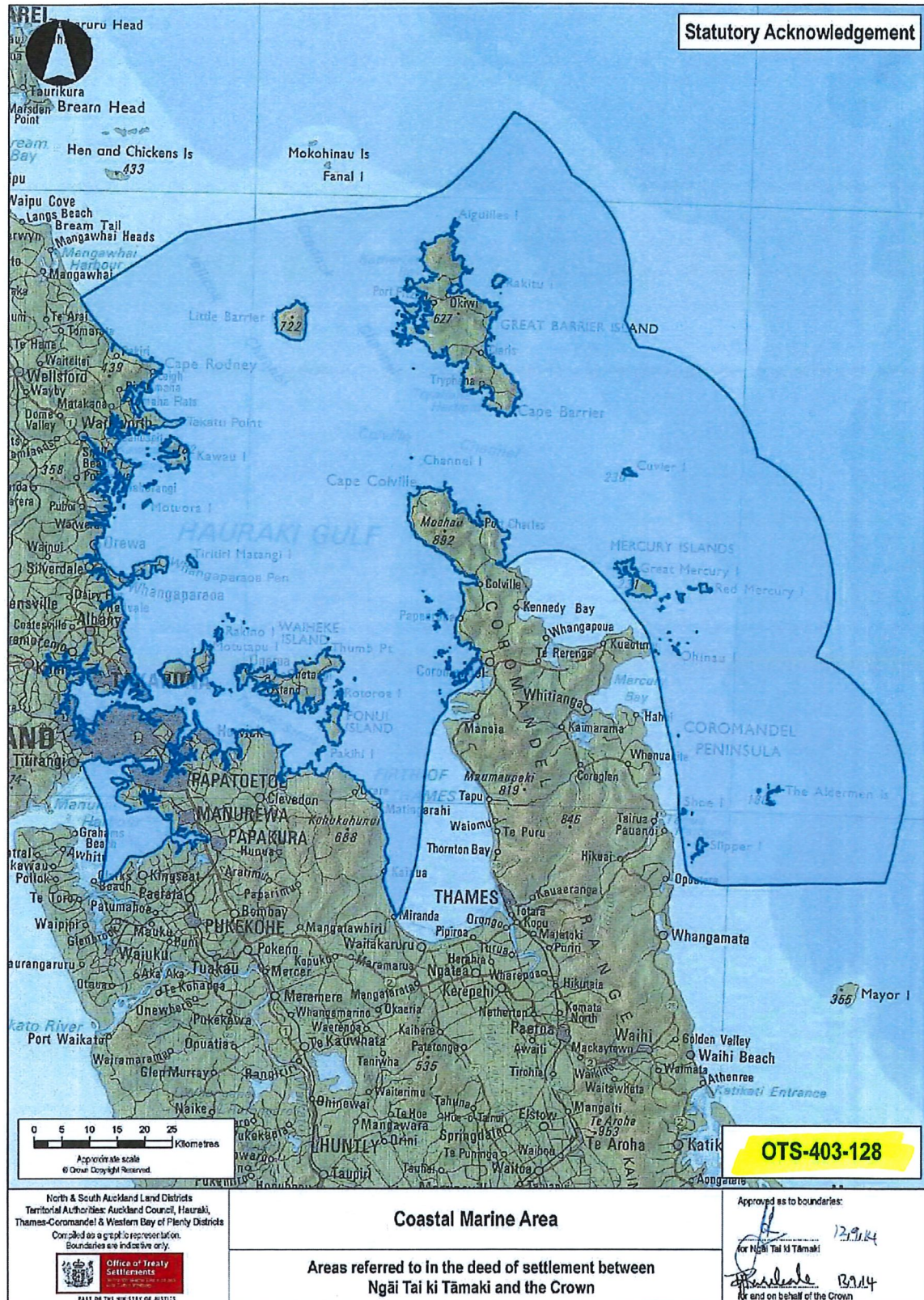
Waiau was the home of Te Rakau and his two Ngāti Tai/ Patutatahi wives. Peace was made in this area when Ngāi Tai and another Iwi were joined in marriage. These descendants conjointly occupied lands at Waiau and across Hauraki Gulf / Tīkapa Moana on motu and lands between present day Howick and Beachlands.

Te Puru is one of several sites in the Thames – Ohinemuri area associated with the re-settlement of a branch of Ngāi Tai from Torere with the people of Tuteranganini.



ATTACHMENTS

2: DEED PLANS



**Schedule 2**
Statutory areas

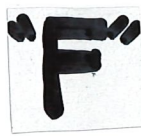
ss 73, 82

Part 1**Areas subject only to statutory acknowledgement**

Statutory area	Location
Coastal Marine Area	As shown on OTS-403-128
Kiripaka Wildlife Scenic Reserve	As shown on OTS-403-129
Motutapu Island Recreation Reserve	As shown on OTS-403-130
Motuihe Island Recreation Reserve	As shown on OTS-403-125
Mutukaroa / Hamlin Hill	As shown on OTS-403-124
Papepape Marginal Strip	As shown on OTS-403-122
Te Matuku Bay Scenic Reserve	As shown on OTS-403-121
Te Morehu Scenic Reserve	As shown on OTS-403-126
Turanga Creek Conservation Area	As shown on OTS-403-123
Wairoa Gorge Scenic Reserve	As shown on OTS-403-118
Wairoa River and tributaries	As shown on OTS-403-127

Part 2**Areas subject to both statutory acknowledgement and deed of recognition**

Statutory area	Location
Mataitai Forest Conservation Area	As shown on OTS-403-115
Mātaaitai Scenic Reserve	As shown on OTS-403-115
Papa Turoa Scenic Reserve	As shown on OTS-403-119
Stony Batter Historic Reserve	As shown on OTS-403-120
Whakatiri Scenic Reserve	As shown on OTS-403-115



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3: PRIMARY INDUSTRIES PROTOCOL

Ministry for Primary Industries
Manatū Ahu Matua



**THE PRIMARY INDUSTRIES PROTOCOL WITH NGĀI TAI
KI TĀMAKI**

**Issued by
the Minister for Primary Industries**

3 PROTOCOLS

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3: PRIMARY INDUSTRIES PROTOCOL

PART ONE - RELATIONSHIP

PURPOSE

1. The purpose of this Primary Industries Protocol (the “**Protocol**”) is to set out how Ngāi Tai ki Tāmaki, the Minister for Primary Industries (the “**Minister**”) and the Director-General of the Ministry for Primary Industries (the “**Director-General**”) will establish and maintain a positive, co-operative and enduring relationship.

CONTEXT

2. The Protocol should be read in a manner that best furthers the purpose of the Ngāi Tai ki Tāmaki Deed of Settlement (the “**Deed of Settlement**”).
3. The Protocol is a living document that should be updated to take account of the relationship between the parties, future developments and additional relationship opportunities.

PRINCIPLES UNDERLYING THE PROTOCOL

4. The Ministry and Ngāi Tai ki Tāmaki are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to the Protocol. The relationship created by the Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
5. The parties recognise that to successfully implement the Protocol, the parties will need to work in partnership and in the spirit of collaboration.
6. The parties also acknowledge the below relationship and their importance to successfully achieve the purpose of the Protocol. These relationship principles provide that the Ministry and Ngāi Tai ki Tāmaki will:
 - a. work in a spirit of co-operation;
 - b. ensure early engagement on issues of known mutual interest;
 - c. operate on a ‘no surprises’ approach;
 - d. acknowledge that the relationship is evolving, not prescribed;
 - e. respect the independence of the parties and their individual mandates, roles and responsibilities; and
 - f. recognise and acknowledge that both parties benefit from working together by sharing their vision, knowledge and expertise.
7. The Minister and the Director-General have certain functions, powers and duties in terms of legislation that they are responsible for administering. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāi Tai ki Tāmaki and the Ministry. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

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8. The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngāi Tai ki Tāmaki or with another iwi or hapū with interests inside the Protocol Area on matters that could affect the interests of Ngāi Tai ki Tāmaki.

PART TWO - SCOPE AND INTERPRETATION

SCOPE

9. The Protocol applies to agriculture (agriculture includes animal welfare and horticulture), forestry, fisheries, biosecurity and food safety portfolios administered by the Ministry for Primary Industries (the “**Ministry**”).
10. The Protocol does not cover processes regarding the allocation of aquaculture space, or the Treaty settlement processes established for assets held by the Ministry’s Crown Forestry unit.
11. The Ministry is required to provide for the utilisation of fisheries resources while ensuring sustainability, to meet Te Tiriti o Waitangi/the Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.
12. The Protocol applies to the Protocol Area as noted and described in the attached map (“**Appendix A**”).

DEFINITIONS AND INTERPRETATION

13. In the Protocol:
 - a. “**Protocol**” means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;
 - b. “**Protocol Area**” means the land area as noted in the attached map at Appendix A;
 - c. “**Crown**” means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by, the terms of the Deed of Settlement to participate in any aspect of the redress under the Deed of Settlement;
 - d. “**Fisheries Legislation**” means the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1983 and the Fisheries Act 1996, and any regulations made under the Fisheries Act 1983 and the Fisheries Act 1996;
 - e. “**Governance Entity**” and the “**trustees**” means the trustees of the Ngāi Tai ki Tāmaki Trust; and
 - f. “**iwi of Hauraki**” means the iwi referred to in clause 24 of this Protocol; and
 - g. the “**parties**” means the trustees of the Ngāi Tai ki Tāmaki Trust, the Minister for Primary Industries (acting on behalf of the Crown), and the Director-General of the Ministry of Primary Industries (acting on behalf of the Ministry for Primary Industries).

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TERMS OF ISSUE

14. The Protocol is issued pursuant to section [insert number] of the [Ngāi Tai ki Tāmaki Claims Settlement Act][*date*] (the “**Settlement Legislation**”) and clause 5.12 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

PART THREE - FISHERIES

15. The Minister and the Director-General of the Ministry have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāi Tai ki Tāmaki and the Ministry.
16. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.
17. This Protocol must be read subject to the summary of the terms of issue set out in Appendix B.

INPUT INTO AND PARTICIPATION INTO THE MINISTRY'S NATIONAL FISHERIES PLANS

18. The Ministry's national fisheries plans will reflect the high level goals and outcomes for fisheries. The plans will guide annual identification of the measures (which may include catch limits, research, planning and compliance services) required to meet these goals and outcomes.
19. There are five National Fisheries Plans, which relate to:
- a. inshore fisheries;
 - b. shellfish;
 - c. freshwater fisheries;
 - d. highly migratory fisheries; and
 - e. deepwater fisheries.
20. The National Fisheries Plans are implemented through an Annual Review Report and Annual Operational Plan.
21. The Annual Review Report presents information on:
- a. the current status of fisheries relative to the performance measures recorded in the National Fisheries Plans; and
 - b. the extent of the delivery of previous and existing services and management actions.
22. The Annual Review Report is developed through engagement with tāngata whenua about what future services are required to meet agreed objectives, address gaps in performance and meet tāngata whenua interests, including research, compliance and special permits. The Ministry will engage with the parties to produce the Annual Review Report.

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3: PRIMARY INDUSTRIES PROTOCOL

23. The Annual Operational Plan will record the future services agreed through the Annual Review Report process to be delivered to fisheries for the next financial year (1 July-30 June). The demand for services is often greater than can be provided by the Ministry. The Ministry undertakes a prioritisation of proposed services to address competing interests.
24. The Ministry will provide for the input and participation of the twelve iwi of Hauraki, Ngāi Tai ki Tāmaki, Ngāti Hei, Hako, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Tara Tokanui, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngaati Whanaunga and, Te Patukirikiri which includes Ngāi Tai ki Tāmaki, into national fisheries plans through iwi forum fisheries plans. Iwi forum fisheries plans allow the Ministry to engage and involve iwi in fisheries management activities and national fisheries planning.

IWI FORUM FISHERIES PLANS

25. The twelve iwi of Hauraki collectively will have input into the relevant forum fisheries plan. The plan must incorporate:
 - a. the objectives of the iwi of Hauraki for the management of their customary, commercial, recreational, and environmental interests;
 - b. views of the iwi of Hauraki on what constitutes the exercise of kaitiakitanga within the Protocol Area;
 - c. how the iwi of Hauraki will participate in fisheries planning and management; and
 - d. how the customary, commercial, and recreational fishing interests of forum members will be managed in an integrated way.
26. The iwi of Hauraki, which includes Ngāi Tai ki Tāmaki, will have the opportunity to jointly develop an iwi fisheries plan that will inform the content of the relevant forum fisheries plan.
27. Any person exercising functions, powers and duties under sections 12 to 14 of the Fisheries Act 1996 will have particular regard to forum plans interpretation of kaitiakitanga (see section 12(1) (b) of the Fisheries Act 1996).

MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

28. The Ministry, with available resources, undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:
 - a. discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Protocol Area; and
 - b. making available existing information relating to the sustainability, biology, fishing activity and fisheries management within the Protocol Area.

RĀHUI

29. The Ministry recognises that rāhui is a traditional use and management practice of Ngāi Tai ki Tāmaki and supports their rights to place traditional rāhui over their customary fisheries.

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3: PRIMARY INDUSTRIES PROTOCOL

30. The Ministry and the Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. The Governance Entity undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngāi Tai ki Tāmaki over their customary fisheries, and also the reasons for the rāhui.
31. The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngāi Tai ki Tāmaki over their customary fisheries, in a manner consistent with the understandings outlined in clause 29 of this Protocol.
32. As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngāi Tai ki Tāmaki over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

PROVISION OF FISHERIES SERVICES AND RESEARCH

33. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
34. Ngāi Tai ki Tāmaki input and participation into Ministry fisheries services and research will occur through Ngāi Tai ki Tāmaki input and participation into the Ministry's national fisheries plans.

PART FOUR – STRATEGIC PARTNERSHIPS

INFORMATION SHARING AND COLLABORATION

35. The Governance Entity and the Ministry will use reasonable endeavours to exchange and share information relevant of mutual benefit, subject to the provisions of the Settlement Legislation, any other enactment, and the general law.
36. For the purpose of carrying out its function, the Governance Entity may make a request of the Ministry to:
 - a. provide information or advice to the Governance Entity requested by the Governance Entity, but only on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity; and/or
 - b. provide a Ministry representative to attend a meeting with the Governance Entity.
37. In respect of the above requests for information or advice:
 - a. where reasonably practicable, the Ministry will provide the information or advice; and
 - b. in deciding whether it is reasonably practicable to provide the information or advice, the Ministry will have regard to any relevant consideration, including:
 - i. whether, where a request has been made under the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, there are permitted reasons for withholding the information;

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3: PRIMARY INDUSTRIES PROTOCOL

- ii. whether making the information available would contravene the provisions of an enactment;
 - iii. the time and cost involved in researching, collating and providing the information or advice; and
 - iv. whether making the information available would put at risk any of the Ministry's wider stakeholder relationships.
- 38. In respect of requests for the Ministry to attend a meeting with the Governance Entity:
 - a. only where reasonably practicable, the Ministry will comply with the request;
 - b. the Ministry will determine the appropriate representative to attend any meeting; and
 - c. in deciding whether it is reasonably practicable to comply with the request, the Ministry may have regard to any relevant consideration, including:
 - i. the number and frequency of such requests the management agency has received from the Governance Entity;
 - ii. the time and place of the meeting and the adequacy of notice given; and
 - iii. the time and cost involved in complying with the request.

JOINT WORK PROGRAMMES

- 39. If agreed to by both parties, the Ministry and the Governance Entity, will work together to develop and implement joint work programmes on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity.
- 40. The work programme/s must be beneficial to both parties, must align with the parties objectives and priorities relating to the primary sector, and be based on agreed-to terms of delivery.

PROVISION OF SERVICE AND RESEARCH RELATING TO AGRICULTURE, FORESTRY, FOOD SAFETY AND BIOSECURITY

- 41. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
- 42. Where the Ministry undertakes or contracts for services or research relating to agriculture (agriculture includes animal welfare and horticulture), forestry, food safety or biosecurity, and where the Ministry considers it to have a direct impact on the Protocol Area, the Ministry will:
 - a. notify the the Governance Entity of its intention to do so and provide the Governance Entity with an opportunity to be involved in the planning for services or research, as appropriate;
 - b. where applicable, invite the Governance Entity to provide a representative to be a member of the tender evaluation panel, subject to the Ministry's conflict of interest policy;
 - c. advise the Governance Entity of the provider it has chosen;

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3: PRIMARY INDUSTRIES PROTOCOL

- d. require any research provider to engage with the Governance Entity; and
- e. provide the Governance Entity with the results of that research, as appropriate.

CONSULTATION

43. Where the Ministry is required to consult in relation to the Protocol, the principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- a. ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - b. providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - c. ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - d. ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and
 - e. where the Ministry has consulted with the Governance Entity in relation to this Protocol, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

PART FIVE – IMPLEMENTATION

MAINTAINING THE RELATIONSHIP

44. Each party will identify a senior representative to oversee the implementation of the Protocol. The senior representatives will be the key point of contact for any matters relating to the Protocol, and will be responsible for ensuring the outcomes and deliverables of the Protocol are monitored, and achieved.
45. Where elements of the Protocol may not be achievable, the parties will communicate this as soon as possible and work towards a common understanding of the issues and a positive way forward for both parties to achieve the outcomes of the Protocol.
46. Representatives of the parties will meet as required, and as agreed to by both parties.

ESCALATION OF MATTERS

47. If one party considers that there has been a breach of the Protocol then that party may give notice to the other that they are in dispute.
48. As soon as possible, upon receipt of the notice referred to in clause 47, the Ministry and the Governance Entity's representative(s) will meet to work in good faith to resolve the issue.
49. If the dispute has not been resolved within 45 working days despite the process outlined in clauses 47 and 48 having been followed, the Ministry and the Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

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3: PRIMARY INDUSTRIES PROTOCOL

REVIEW AND AMENDMENT

50. The parties agree that this Protocol is a living document which should be updated and adapted to take account of any future developments and relationship opportunities.
51. The parties may vary or terminate this Protocol only in writing.

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Primary Industries

WITNESS

Name:

Occupation:

Address:



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3: PRIMARY INDUSTRIES PROTOCOL

APPENDIX A: PROTOCOL AREA





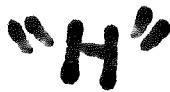
DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

<i>A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀI TAI KI TĀMAKI ON SPECIFIED ISSUES</i>
--

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated xx between Ngāi Tai ki Tāmaki and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a protocol (the “Protocol”) setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the governance entity on matters specified in the Protocol. These matters are:
 - 1.1.1 Protocol Area – Part 2;
 - 1.1.2 Terms of issue – Part 3
 - 1.1.3 Implementation and communication – Part 4
 - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5
 - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6
 - 1.1.7 Effects on Ngāi Tai ki Tāmaki interests in the Protocol Area – Part 7
 - 1.1.8 Registration as a collector of Ngā Taonga Tūturu – Part 8
 - 1.1.9 Board Appointments – Part 9
 - 1.1.10 National Monuments, War Graves and Historical Graves – Part 10
 - 1.1.11 History publications relating to Ngāi Tai ki Tāmaki – Part 11
 - 1.1.12 Cultural and/or Spiritual Practices and professional services – Part 12
 - 1.1.13 Consultation – Part 13
 - 1.1.14 Changes to legislation affecting this Protocol –Part 14
 - 1.1.15 Definitions – Part 15
- 1.2 For the purposes of this Protocol the governance entity is the body representative of Ngāi Tai ki Tāmaki who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 Manatū Taonga also known as the Ministry (the Ministry) and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 1.4 The purpose of the Protected Objects Act 1975 (“the Act”) is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu,



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3: TAONGA TŪTURU PROTOCOL

and by establishing and recording the ownership of Ngā Taonga Tūturū found after the commencement of the Act, namely 1 April 1976.

- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in Clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in Clause 1.1, as set out in clauses 5 to 11 of this Protocol.

2 PROTOCOL AREA

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the “Protocol Area”).

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section xx of the Ngāi Tai ki Tāmaki Claims Settlement Act [xxx] (“the Settlement Legislation”) that implements the Ngāi Tai ki Tāmaki Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the governance entity by:
- 4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
 - 4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
 - 4.1.4 meeting with the governance entity to review the implementation of this Protocol if requested by either party;
 - 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Chief Executive under it;
 - 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
 - 4.1.7 including a copy of the Protocol with the governance entity on the Ministry’s website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

General

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

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3: TAONGA TŪTURU PROTOCOL

- 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
- 5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

Ownership of Taonga Tūturu found in Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found elsewhere in New Zealand

- 5.2. If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

Custody of Taonga Tūturu found in Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found elsewhere in New Zealand

- 5.5 If the governance entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of x origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
 - 5.5.1 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and

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3: TAONGA TŪTURU PROTOCOL

- 5.5.2 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

Export Applications

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ngāi Tai ki Tāmaki origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngāi Tai ki Tāmaki origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of the Chief Executive's decision.

6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
- 6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand;
- 6.2 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

7. EFFECTS ON NGĀI TAI KI TĀMAKI INTERESTS IN THE PROTOCOL AREA

- 7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngāi Tai ki Tāmaki interests in the Protocol Area.
- 7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngāi Tai ki Tāmaki interests in the Protocol Area.
- 7.3 Notwithstanding paragraphs 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngāi Tai ki Tāmaki interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

- 8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

9. BOARD APPOINTMENTS

- 9.1 The Chief Executive shall:

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- 9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
- 9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
- 9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 10.1 The Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ngāi Tai ki Tāmaki interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning.
- 10.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

11. HISTORY PUBLICATIONS

- 11.1 The Chief Executive shall:
 - 11.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāi Tai ki Tāmaki; and
 - 11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngāi Tai ki Tāmaki:
 - (a) from an early stage;
 - (b) throughout the process of undertaking the work; and
 - (c) before making the final decision on the material of a publication.
- 11.2 It is accepted that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the governance entity, is entitled to make the final decision on the material of the historical publication.

12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 12.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāi Tai ki Tāmaki within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.

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3: TAONGA TŪTURU PROTOCOL

- 12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 12.3 The procurement by the Chief Executive of any such services set out in Clauses 12.1 and 12.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

13. CONSULTATION

- 13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 13.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
 - 13.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 13.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
 - 13.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
 - 13.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 14.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:
- 14.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
 - 14.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and
 - 14.1.3 report back to the governance entity on the outcome of any such consultation.

15. DEFINITIONS

- 15.1 In this Protocol:

Chief Executive means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

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Crown means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement

Expert Examiner has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

Found has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings

governance entity means the trustees of the Ngāi Tai ki Tāmaki Trust.

Ngā Taonga Tūturu has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu.

Ngāi Tai ki Tāmaki has the meaning set out in clause 10.5 of the Deed of Settlement.

Protocol means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol

Taonga Tūturu has the same meaning as in section 2 of the Act and means:

an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
 - (i) manufactured or modified in New Zealand by Māori; or
 - (ii) brought into New Zealand by Māori; or
 - (iii) used by Māori; and
- (c) is more than 50 years old.

DOCUMENTS

3: TAONGA TÛTURU PROTOCOL

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of
New Zealand by the Minister for Arts,
Culture and Heritage:

WITNESS

Name:

Occupation:

Address:

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

ATTACHMENT A: PROTOCOL AREA



"I"

"J"

Tania McPherson

From: Chrisp, Sophie
Sent: Wednesday, 23 November 2016 5:51 p.m.
To: Tania McPherson
Cc: Campbell, Leah
Subject: RE: Overlapping claims: Hako Treaty settlement negotiations with the Crown

Kia ora Tania

To follow on from your conversation with Leah yesterday afternoon, the revised timeframe for Ngātiwai to consider and respond to the Crown's offer to Hako is **Tuesday 20 December**. We'll be in touch in the week ending 16 December.

I understand you also sought reassurance from OTS that a statement of association does not create future rights. As part of that we committed to providing you an explanation on statements of association.

A statutory acknowledgement is a redress instrument which enhances a claimant group's ability to participate in specified Resource Management Act 1991 processes over defined area of Crown-owned land. The Crown asks the claimant group to prepare a statement of association to accompany this redress instrument.

A statement of association, however, is a redress mechanism that enables a claimant group an opportunity to describe their association with an area of significance in their deed of settlement. A statement of association, unto itself, creates no obligations or rights.

During negotiations with Hako it was agreed:

- Hako would prepare a statement of association over Tāmaki Makaurau to reflect their traditional association with Tāmaki Makaurau, and the historical significance of this area;
- this statement of association would *not be* accompanied by a statutory acknowledgement;
- and
- at the end of the statement, it would state: "The preceding text is Hako's statement of their historical associations with Tāmaki. It does not represent the Crown's view, and does not affect any existing rights or interests."

I hope this explanation addresses your concerns

Ngā mihi
Sophie



Sophie Chrisp
Analyst | Office of Treaty Settlements
DDI: +64 4 494 9878 | Ext 50878
www.justice.govt.nz

From: Tania McPherson [mailto:tania.mcpherson@ngatiwai.iwi.nz]
Sent: Tuesday, 22 November 2016 4:16 p.m.
To: Campbell, Leah
Cc: Chrisp, Sophie
Subject: FW: Overlapping claims: Hako Treaty settlement negotiations with the Crown

Kia ora Leah

"I"

"K"



Office of Hon Christopher Finlayson

Attorney-General

Minister for Treaty of Waitangi Negotiations

Minister for Arts, Culture and Heritage

03 APR 2013

28 MAR 2013

Mr. Wayne Peters
Partner
Wayne Peters Lawyers
PO Box 5053
Whangarei 0140

Tēnā koe

Final decisions on overlapping claims between Ngāti Pūkenga and Ngatiwai

I am writing to provide my final decisions on redress in the overlapped areas between Ngatiwai and Ngāti Pūkenga in the Whangarei area.

In making my decisions I wish to acknowledge the efforts Ngatiwai have made to reach a mutually acceptable agreement with Ngāti Pūkenga on redress in Pakikaikutu included in the initialled Ngāti Pūkenga deed.

I also note that Ngatiwai and Ngati Pūkenga have not been able to reach an agreement on the Pakikaikutu coastal statutory acknowledgement, hence the need for me to make final decisions on this matter.

My final decisions take into account concerns expressed by Ngatiwai and the responses received from Ngāti Pūkenga in the course of the overlapping claims process. This includes concerns outlined in your letter to the Office of Treaty Settlements dated 5 March 2013 and the response provided by Ngāti Pūkenga, as detailed in the letter from Dominic Wilson, dated 22 March 2013.

My final decisions on overlapping issues in Pakikaikutu are set out below.

I have decided to retain redress included in the initialled Ngāti Pūkenga deed of settlement on the basis of their historic and customary associations with the Pakikaikutu area. The redress will, however, be subject to the modifications outlined below.

Amendment to the Ngāti Pūkenga Statement of Association

The Ngāti Pūkenga statement of association for the Pakikaikutu coastal statutory acknowledgement will be amended to include the following statement:

"X"

"The Ngāti Pūkenga association with Pakikaikutu is not intended to undermine, overturn, or re-open any fisheries allocation received by Ngatiwai in relation to Whangarei harbour".

Amendments to the Pakikaikutu coastal statutory acknowledgement

The coastal statutory acknowledgement area will be amended as follows:

- i. The length of the coastal statutory acknowledgement will be reduced in accordance with the concession made to Ngatiwai by Ngāti Pūkenga;
- ii. The width of the statutory acknowledgement area will be limited to 100 metres on the seaward side of the line of mean high water springs; and
- iii. The provisions in the Ngāti Pūkenga deed of settlement will also be amended to clarify the nature, scope and limitations of coastal statutory acknowledgements as outlined in the Crown's letter dated 21 March 2013.

Amendment to the Pakikaikutu Kāinga Area of Interest map

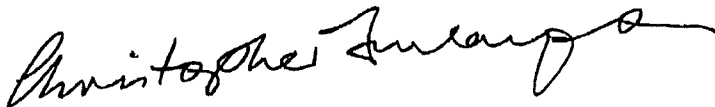
The wording in the legend to the Pakikaikutu Kāinga Area of Interest map will be amended to read:

"This map encompasses areas and sites that are important to Ngāti Pūkenga for a range of reasons including ancient historical connections and events connected to the Treaty of Waitangi claims and Crown Actions. It includes areas in which Ngāti Pūkenga has interests but do not depict a tribal boundary or define an area of mana whenua."

Finally, I would like to thank you once more for your engagement with Ngāti Pūkenga and Crown officials in the course of the overlapping claims process for the Ngāti Pūkenga deed of settlement.

Should you have any questions regarding this letter, please direct your queries in the first instance to John Grant, Acting Negotiation and Settlements Manager in the Office of Treaty Settlements on 04 494 9933 or via e-mail at john.grant@justice.govt.nz.

Nāku noa, nā



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

"L"

1-6

BEFORE THE WAITANGI TRIBUNAL

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 2666

IN THE MATTER of the Treaty of Waitangi Act 1975

AND IN THE MATTER of the Crown's Treaty settlement policy regarding overlapping claims and the proposed redress in relation to the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

AND IN THE MATTER of a claim filed by **HAYDN THOMAS EDMONDS** on behalf of Ngātiwai Trust Board and the iwi of Ngāti Wai for an urgent inquiry into the Crown's settlement policy regarding overlapping claims and the proposed redress in the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

REPLY AFFIDAVIT OF HAYDN THOMAS EDMONDS ON BEHALF OF
NGĀTIWAI TRUST BOARD

3 November 2017

KAHUI
LEGAL

PO Box 1654

Telephone: 04 495 9999

Facsimile: 04 495 9990

Counsel: K Tahana / M C Tukapua

WELLINGTON

[Handwritten signatures]

"X"

2-6

I, HAYDN THOMAS EDMONDS, SWEAR:

Introduction

1. This is my second affidavit in relation to Wai 2666, further to my original affidavit dated 21 July 2017.
2. This affidavit responds to the Crown's submissions and the affidavit of Susan Kiri Leah Campbell dated 9 October 2017.
3. In this affidavit, I set out:
 - (a) an overview of the engagement between the Hauraki iwi and Ngātiwai; and
 - (b) an update on Ngātiwai request to the Crown for a tikanga based resolution process.

Engagement between the Hauraki iwi and Ngātiwai

4. I disagree with the Crown's response suggesting that the Trust Board is dissatisfied with the outcome of engagement¹ with the Hauraki iwi². I set out below the extent of the Trust Board's efforts to engage with the Hauraki collectives/iwi, including:
 - (a) engagement with the Marutūāhu and Hauraki Collectives; and
 - (b) engagement with individual iwi of Hauraki

Engagement with the Marutūāhu and Hauraki Collective

5. The Trust Board understands that the Marutūāhu Collective and the Hauraki Collective negotiator is Paul Majurey. Mr Majurey attended one initial meeting with Michael Dreaver, myself and Jim Smillie in Walkworth on 31 October 2013. As set out in my first affidavit³, that meeting was largely introductory and no discussions took place concerning the redress Marutūāhu were seeking within the Ngātiwai Area of Interest (AoI) either on the mainland, on Aotea or in the ocean space in between. That one meeting is the extent of any face to face engagement the Trust Board has had with the Marutūāhu and the Hauraki Collective negotiator, Mr Majurey.

¹ Memorandum of counsel for the Crown dated 6 October 2017, at paragraph 10.

² Paragraph 6 (ibid)

³ Affidavit of Haydn Thomas Edmonds dated 21 June 2017, at paragraph 34.

Handwritten signature

6. As described in the affidavit of Tania McPherson⁴, the Trust Board has made several attempts to request further meetings with Mr Majurey and others following that initial meeting. As set out in Ms McPherson's affidavit and further set out below, the Trust Board has received no response at all from Mr Majurey and a number of the other Hauraki negotiators to these requests, however there has been limited engagement with some of the Hauraki negotiators.

Engagement with Individual Hauraki Iwi

Ngāti Maru

7. The Trust Board understands that Paul Majurey and Wati Ngamane are the Ngāti Maru negotiators. There have been no face to face meetings with the Ngāti Maru negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.
8. Ngāti Maru have not contacted Ngātiwai to engage with Ngātiwai to discuss their iwi specific overlapping claims. The only effort that has been made to organise meetings has been the effort made by the Trust Board as set out in the affidavit of Tania McPherson.

Ngāti Tamatera

9. The Trust Board understands that Liane Ngamane and John McEnteer are the Ngāti Tamatera negotiators. There have been no face to face meetings with the Ngāti Tamatera negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.
10. Ngāti Tamatera have not contacted Ngātiwai to discuss their iwi specific overlapping claims. The only effort that has been made to organise meetings has been the effort made by the Trust Board as set out in the affidavit of Tania McPherson.

Ngāti Paoa

11. The Trust Board understands that Hauauru Rawiri and Morehu Rawiri are the Ngāti Paoa negotiators. There have been no face to face meetings with the Ngāti Paoa negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.

⁴ Affidavit of Tania McPherson dated 23 August 2017, at paragraphs 59, 65, 80-82, 102-103, 105-106, and 110.

af. 07

12. While there was some initial responsiveness to Ngātiwai requests for engagement from Mr Rawiri he later determined that the meeting should not proceed until the challenge to the Ngātiwai Mandate (Wai 2561) was resolved.
13. Ngāti Paoa made no effort to contact the Trust Board to discuss their iwi specific overlapping claims. The Trust Board initiated all contact and supplied relevant information but was ultimately deferred by the Ngāti Paoa negotiator concerned.

Ngāti Hako

14. The Trust Board understands that John Linstead and Josie Anderson are the Ngāti Hako negotiators. There have been no face to face meetings with the Ngāti Hako negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.
15. While there was an initial willingness to meeting with Ngātiwai from Mr Linstead he did not respond to meeting organisation requests.
16. Ngāti Hako made an initial effort to contact the Trust Board to discuss their iwi specific overlapping claims. However, after the Trust Board provided its initial feedback to OTS on the proposed redress the Trust Board was subsequently unable to obtain a response to requests for meeting availability and ultimately ignored by the Ngāti Hako negotiator concerned.

Ngāti Whanaunga

17. The Trust Board understands that Tipa Compain and Nathan Kennedy are the Ngāti Whanaunga negotiators. There have been no face to face meetings with the Ngāti Whanaunga negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.
18. While there was a meeting organised and confirmed to take place on 19 July 2017. Mr Compain contacted the Trust Board the day before the meeting to cancel it due to ill health.
19. Ngāti Whanaunga made no effort to contact the Trust Board in the first instance to discuss their iwi specific overlapping claims. The Trust Board initiated all contact and supplied relevant information but ultimately the meeting was cancelled.

Te Patukirikiri

20. The Trust Board understands that William Peters and David Williams are the Te Patukirikiri negotiators. There have been no face to face meetings with the Te Patukirikiri negotiators at all to discuss their iwi specific redress that overlaps with the Ngātiwai Area of Interest.
21. Te Patukirikiri have not responded to any of the Boards correspondence requesting direct face to face engagement to discuss overlapping claims matters.

Ngāti Hei, Ngāti Rahirahi Tumutumu, Ngāti Porau ki Hauraki, Ngāti Tara Tokanui

22. The only overlapping claims redress related to these groups is the Fisheries Quota RFR redress contained in the Hauraki Collect Settlement.
23. As the Trust Board was unable to discuss the Hauraki Collective Fisheries Quota RFR redress with Mr Majurey the Trust Board made efforts to contact the negotiators from the individual iwi within the Hauraki Collective. Unfortunately this proved fruitless as those who responded had no apparent knowledge of the redress in question.

Ngai Tai ki Tamaki

24. The only face to face lwi engagement hui that took place during this long process occurred with Ngai Tai ki Tamaki on 13 July 2017. Unfortunately that settlement has now been introduced into the house and is now out of scope for the Trust Boards urgency application.

Ngātiwai requests for a tikanga based resolution process

25. One of the key concerns of Ngātiwai is the absence of any face to face meetings to properly identify, and understand the basis of, the interests of Ngātiwai and iwi of Hauraki within those areas where the Crown has chosen to provide property as cultural and commercial redress (the **Exclusive Redress**) to iwi of Hauraki. For this reason, Ngātiwai requested the Crown to facilitate a tikanga based resolution process by letter dated 22 August 2017, a copy of which is **attached** and marked "HE-1"⁵.

⁵ A copy of this letter was also attached as Appendix B to the Memorandum of Counsel for Ngātiwai Trust Board dated 22 September 2017.

26. On 19 September 2017, Ms McPherson received an email from Tessa Buchanan of the Office of Treaty Settlements dated 19 September 2017, advising that the Minister has decided that the Pare Hauraki Collective Redress Deed will not be signed before the general election because of the "lack of agreement on a resolution process in relation to Iwi of Hauraki collective redress in Tauranga Moana". Ms McPherson responded by email dated 20 September 2017 that it was disappointing that the Minister had not acknowledged the lack of agreement with respect to redress in Ngātiwai's rohe. A copy of these emails is **attached** and marked "HE-2".
27. My concern is that the Minister is willing to facilitate a tikanga based resolution process in relation to Tauranga Moana and Hauraki but not in relation to Ngātiwai and Hauraki. Ngātiwai appear to be being treated differently.
28. On 21 September 2017, Ngātiwai had still not received a substantive response to its letter of 22 August 2017 from the Minister, so Ms McPherson sent a further email to the Office of Treaty Settlements (a copy of which is **attached** and marked "HE-3").
29. The Crown has only recently, by letter dated 17 October 2017, responded to Ngātiwai's letter of 22 August 2017. A copy of the Minister's response dated 17 October 2017 is **attached** and marked "HE-4".
30. The Minister's letter fails to explain why the Crown considers a tikanga based process is not required in relation to Hauraki redress within the Ngātiwai rohe. The Crown has indicated, in relation to Tauranga Moana, in the absence of agreement between iwi groups in relation to Hauraki Collective redress in Tauranga Moana, it is not possible to sign the Pare Hauraki Collective Redress Deed. The Crown has not taken a similar approach with respect to Ngātiwai.

SWORN at *Whangarei* this)
 3 day of November 2017)
 before me:)

S. Farrant

A Solicitor of the High Court of New Zealand
 Susanne Joy Farrant, JP
 #95433
 WHANGAREI
 Justice of the Peace for New Zealand



[Signature]
 Hayden Thomas Edmonds

AFFIDAVIT OF HAYDN THOMAS EDMONDS

Index to Exhibits

No.	Description	Date
HE-1	Letter from Haydn Edmonds to Hon Christopher Finlayson	22 August 2017
HE-2	Email correspondence between Tania McPherson of Ngātiwai Trust Board and Tessa Buchanan, Office of Treaty Settlements	19-20 September 2017
HE-3	Email correspondence Tania McPherson to Hon Christopher Finlayson	21 September 2017
HE-4	Letter Hon Christopher Finlayson to Haydn Edmonds	17 October 2017



EXHIBIT NOTE

1

This is the exhibit marked "HE-1" referred to in the affidavit of HAYDN THOMAS EDMONDS and sworn at Whangarei this 3rd of November 2017 before me:

S. Farrant



Susanne Joy Farrant, JP
#95433
WHANGAREI
Justice of the Peace for New Zealand

A Seller of the High Court of New Zealand

Ngātiwai Trust Board

129 Port Road, Whangarei 0110

P O Box 1332, Whangarei 0140, New Zealand

Telephone: +64 9 430 0939 Fax: +64 9 438 0182

Email: ngatiwai@ngatiwai.iwi.nz Website: www.ngatiwai.iwi.nz



22 August 2017

Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations
Private Bay 18041
Parliament Buildings
Wellington 6160

SENT BY E-MAIL: c.finlayson@parliament.govt.nz

Tēnā koe e Te Minita

Ngātiwai Trust Board – Settlements with Iwi of Hauraki

We refer to your letter of 10 August 2017.

The Ngātiwai Trust Board (**Trust Board**) remains very concerned with the approach the Crown is taking in dealing with overlapping claims in relation to the various settlements with Iwi of Hauraki. Your response ignores the concerns of Ngātiwai and indicates a desire to proceed with settlements without regard to tikanga, preservation of relationships between Iwi and ensuring overlapping settlements do not erode the mana whenua of Ngātiwai.

It is not enough for the Crown to "encourage" Ngātiwai to engage with Hauraki Iwi in circumstances where the Crown is fully aware that such engagement is not taking place, despite repeated requests by Ngātiwai to engage. The Crown cannot sit back and leave overlapping issues to Iwi or expect Ngātiwai to accept the Crown's redress when there has been no tikanga based process to enable Ngātiwai to understand the nature of Hauraki's interests within the Ngātiwai rohe. For the Crown to offer redress in a manner that takes no account of tikanga or mana whenua, is to take sides and to act contrary to its obligations as a Treaty partner. This approach is creating divisions between Iwi.

Ngātiwai is not asking the Crown to determine mana whenua or tikanga. We are asking the Crown to offer appropriate redress that is sensitive to mana whenua and tikanga so that further grievances and divisions are not created.

"Te Karere o Tūkaiāia"

HE-1

AS SF

Your 10 August 2017 response is contrary to statements you have made in Parliament that:

[you are] conscious of the desire not to have any overlapping interests lead to further contention. ...

The last thing I want to do through a Treaty settlement, or rushing through a Treaty settlement, is to create further grievance. These matters need to be handled sensitively.

We request that you handle Ngātiwai's interests sensitively. Ngātiwai is committed to working through these issues and is open to redress being offered to iwi of Hauraki, but only to the extent that such redress is consistent with Hauraki interests and does not undermine the mana whenua of Ngātiwai.

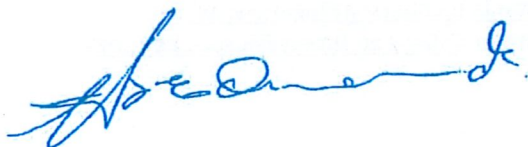
We understand that many iwi (Waikato-Tainui, Ngāti Manuhiri, Raukawa, Ngāti Haua, Ngāti Whatua Ōrākei and Tauranga Moana) have raised similar concerns to Ngātiwai regarding the Crown's approach to overlapping claims. Ours is not the only request for a tikanga approach to resolve these issues. We request that you show Ngātiwai the same level of understanding and support as has been made available to those iwi.

To enable these issues to be resolved in an appropriate way, we urgently request that you (with the assistance of the Minister for Māori Development) pro-actively facilitate engagement between representatives of Ngātiwai, representatives of Hauraki iwi and representatives of the Crown. We consider it important that the Crown be involved in such a process so that it can better understand and provide redress in overlapping areas in a manner that is sensitive to tikanga and mana whenua.

We remain committed to working through these issues in a manner that reflects our partnership with the Crown and we request that the Crown do the same.

We look forward to your response.

Naku noa, na



Haydn Edmonds
Chairman, Ngātiwai Trust Board

Cc: Hon. Te Ururoa Flavell, Minister for Māori Development
teururoa.flavell@parliament.govt.nz

"Te Karere o Tūkaiaia"



EXHIBIT NOTE

This is the exhibit marked "HE-2" referred to in the affidavit of ~~HAYDN~~
THOMAS EDMONDS and sworn at Whangarei this
of 19 September 2017 before me:



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From: Tania McPherson
Sent: Wednesday, 20 September 2017 1:59 p.m.
To: 'Buchanan, Tessa'; Haydn Edmonds
Cc: 'Campbell, Leah'; 'Hickey, Maureen'; Haydn Edmonds (haydn@ngatiwai.iwi.nz); Kris MacDonald
Subject: RE: Pare Hauraki Collective Redress Deed

A Solicitor of the High Court of New Zealand
WHANGAREI
Justice of the Peace for New Zealand

Kia ora Tessa

Thank you for the update even though it is disappointing that the Minister has failed to recognise the lack of agreement on a resolution process in relation to Hauraki collective, Marutūahu collective and individual Hauraki iwi settlement redress within the Ngatiwai rohe.

Nga mihi

Tania McPherson
Treaty Claims Manager
Ngatiwai Trust Board
129 Port Road
P O Box 1332
Whangarei 0140
New Zealand

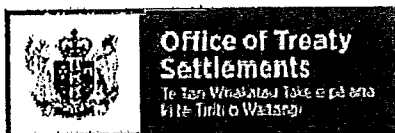
Phone: 09 430 0939
Mobile: 021 667798
e-mail: tania.mcpherson@ngatiwai.iwi.nz

From: Buchanan, Tessa [<mailto:Tessa.Buchanan@justice.govt.nz>]
Sent: Tuesday, 19 September 2017 4:37 p.m.
To: Haydn Edmonds <haydn@ngatiwai.iwi.nz>; Tania McPherson <tania.mcpherson@ngatiwai.iwi.nz>
Cc: Campbell, Leah <Leah.Campbell@justice.govt.nz>; Hickey, Maureen <Maureen.Hickey@justice.govt.nz>
Subject: Pare Hauraki Collective Redress Deed

Tēnā kōrua

This email is to advise you that the Minister for Treaty of Waitangi Negotiations has decided that the Pare Hauraki Collective Redress Deed will not be signed before the general election this week. The Minister has made this decision in light of the lack of agreement on a resolution process in relation to iwi of Hauraki collective redress in Tauranga Moana.

Nāku noa, nā



PART OF THE MINISTRY OF JUSTICE

Tessa Buchanan
Negotiation and Settlement Manager
DDI: 04-494-9924 | MOB: 027-560-5492 | EXT: 50924
www.ots.govt.nz

Confidentiality notice:

This email may contain information that is confidential or legally privileged. If you have received it by mistake, please:

- (1) reply promptly to that effect, and remove this email and the reply from your system;
- (2) do not act on this email in any other way.

Thank you.


AE 07

EXHIBIT NOTE

5

This is the exhibit marked "HE-3" referred to in the affidavit of HAYDN THOMAS EDMONDS and sworn at Whangarei this 3 day of November 2017 before me:

Susanne Joy Farrant
 A Solicitor of the High Court of New Zealand
 #95433
 WHANGAREI
 Justice of the Peace for New Zealand



From: Tania McPherson
Sent: Thursday, 21 September 2017 11:16 a.m.
To: 'C Finlayson (MIN)'
Cc: 'teururoa.flavell@parliament.govt.nz'; 'Hickey, Maureen'; 'Buchanan, Tessa'; 'Campbell, Leah'
Subject: FW: Ngatiwai Trust Board - Settlements with iwi of Hauraki
Attachments: 2017 08 22 Letter to joint Ministers re Engagement with Hauraki Iwi.pdf; 2017 08 24 Crown Acknowledgement of NTB letter dated 22 August 2017 16194 Haydn Edmonds.pdf

Tena koe Imogen

Attached for your information is a copy of a letter the Ngatiwai Trust Board send to Minister Finlayson on 22 August 2017. We do not appear to have received a response to this letter despite receiving an acknowledgement on 24 August 2017.

Nga mihi

Tania McPherson
 Treaty Claims Manager
 Ngatiwai Trust Board
 129 Port Road
 P O Box 1332
 Whangarei 0140
 New Zealand

Phone: 09 430 0939
 Mobile: 021 667798
 e-mail: tania.mcpherson@ngatiwai.iwi.nz

From: Tania McPherson [<mailto:tania.mcpherson@ngatiwai.iwi.nz>]
Sent: Tuesday, 22 August 2017 11:59 a.m.
To: 'C Finlayson (MIN)' <c.finlayson@parliament.govt.nz>
Cc: 'teururoa.flavell@parliament.govt.nz' <teururoa.flavell@parliament.govt.nz>
Subject: Ngatiwai Trust Board - Settlements with iwi of Hauraki

Tena koe

Please find attached a letter for the Minister from our Chairman Haydn Edmonds. Haydn can be contacted on (021) 2646 785.

Nga mihi

Tania McPherson
 Treaty Claims Manager
 Ngatiwai Trust Board

Handwritten signature/initials

129 Port Road
P O Box 1332
Whangarei 0140
New Zealand

Phone: 09 430 0939
Mobile: 021 667798
e-mail: tania.mcpherson@ngatiwai.iwi.nz

Ngātiwai Trust Board

129 Port Road, Whangarei 0110
 P O Box 1332, Whangarei 0140, New Zealand
 Telephone: +64 9 430 0939 Fax: +64 9 438 0182
 Email: ngatiwai@ngatiwai.iwi.nz Website: www.ngatiwai.iwi.nz



22 August 2017

Hon Christopher Finlayson
 Minister for Treaty of Waitangi Negotiations
 Private Bay 18041
 Parliament Buildings
 Wellington 6160

SENT BY E-MAIL: c.finlayson@parliament.govt.nz

Tēnā koe e Te Minita

Ngātiwai Trust Board – Settlements with Iwi of Hauraki

We refer to your letter of 10 August 2017.

The Ngātiwai Trust Board (Trust Board) remains very concerned with the approach the Crown is taking in dealing with overlapping claims in relation to the various settlements with iwi of Hauraki. Your response ignores the concerns of Ngātiwai and indicates a desire to proceed with settlements without regard to tikanga, preservation of relationships between iwi and ensuring overlapping settlements do not erode the mana whenua of Ngātiwai.

It is not enough for the Crown to "encourage" Ngātiwai to engage with Hauraki iwi in circumstances where the Crown is fully aware that such engagement is not taking place, despite repeated requests by Ngātiwai to engage. The Crown cannot sit back and leave overlapping issues to iwi or expect Ngātiwai to accept the Crown's redress when there has been no tikanga based process to enable Ngātiwai to understand the nature of Hauraki's interests within the Ngātiwai rohe. For the Crown to offer redress in a manner that takes no account of tikanga or mana whenua, is to take sides and to act contrary to its obligations as a Treaty partner. This approach is creating divisions between iwi.

Ngātiwai is not asking the Crown to determine mana whenua or tikanga. We are asking the Crown to offer appropriate redress that is sensitive to mana whenua and tikanga so that further grievances and divisions are not created.

"Te Karere o Tūkalāla"

Your 10 August 2017 response is contrary to statements you have made in Parliament that:

[you are] conscious of the desire not to have any overlapping interests lead to further contention. ...

The last thing I want to do through a Treaty settlement, or rushing through a Treaty settlement, is to create further grievance. These matters need to be handled sensitively.

We request that you handle Ngātiwai's interests sensitively. Ngātiwai is committed to working through these issues and is open to redress being offered to iwi of Hauraki, but only to the extent that such redress is consistent with Hauraki interests and does not undermine the mana whenua of Ngātiwai.

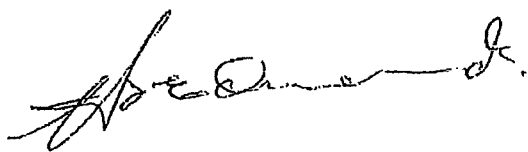
We understand that many iwi (Waikato-Tainui, Ngāti Manuhiri, Raukawa, Ngāti Haua, Ngāti Whatua Ōrākei and Tauranga Moana) have raised similar concerns to Ngātiwai regarding the Crown's approach to overlapping claims. Ours is not the only request for a tikanga approach to resolve these issues. We request that you show Ngātiwai the same level of understanding and support as has been made available to those iwi.

To enable these issues to be resolved in an appropriate way, we urgently request that you (with the assistance of the Minister for Māori Development) pro-actively facilitate engagement between representatives of Ngātiwai, representatives of Hauraki iwi and representatives of the Crown. We consider it important that the Crown be involved in such a process so that it can better understand and provide redress in overlapping areas in a manner that is sensitive to tikanga and mana whenua.

We remain committed to working through these issues in a manner that reflects our partnership with the Crown and we request that the Crown do the same.

We look forward to your response.

Naku noa, na



Haydn Edmonds
Chairman, Ngātiwai Trust Board

Cc: Hon. Te Ururoa Flavell, Minister for Māori Development
teururoa.flavell@parliament.govt.nz

"Te Karere o Tūkalāia"





Office of Hon Christopher Finlayson

408 2017

Haydn Edmonds
Chairman
Ngatiwai Trust Board

Via email: tanla.mcpherson@ngatiwai.iwi.nz

Tēnā koe

On behalf of Hon Christopher Finlayson, Minister for Treaty of Waitangi Negotiations, thank you for your email of 22 August 2017 regarding settlements with iwi of Hauraki. Your correspondence is with Minister Finlayson for his consideration.

Nāku noa, na

I Holmes | Ministerial Secretary
Office of Hon Christopher Finlayson

Reference: 16194



Office of Hon Christopher Finlayson

EXHIBIT NOTE

This is the exhibit marked "HE-4" referred to in the affidavit of HAYDN THOMAS EDMONDS and sworn at Whangarei this 3rd of November 2017 before me:

Susanne Joy Farrant



A Solicitor of the High Court of New Zealand

Susanne Joy Farrant, JP
#95433

WHANGAREI
Justice of the Peace for New Zealand

17 OCT 2017

Haydn Edmonds
Chair
Ngātiwai Trust Board

By email: haydn@ngatiwai.iwi.nz; ngatiwai@ngatiwai.iwi.nz

Tēnā koe

Re: Ngātiwai Trust Board – settlements with iwi of Hauraki

Thank you for your letter of 22 August and your letter of 10 October which the Prime Minister's office has referred to me for response. Given the matters raised in your letters are currently before the Waitangi Tribunal I expect they will be fully addressed in that forum.

Treaty settlements are not intended to establish or recognise claimant group boundaries. Matters of boundaries and predominance can only be decided between claimant groups. The Crown is available to attend such discussions and is mindful to be properly informed of overlapping interests, however the Crown can only settle the claims of the group with which it is negotiating.

In instances where agreement on redress cannot be reached between overlapping groups the Crown may have to make a decision on what redress is offered. In making such decisions the Crown is guided by its wish to reach a fair and appropriate settlement with the claimant group in negotiations and its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.

The Pare Hauraki, Ngāti Paoa, Ngaati Whanaunga, Ngāti Maru, Ngāti Tamaterā and Te Patukirikiri deeds of settlement have been initialled. The decision on whether to sign the Pare Hauraki Collective Redress Deed will be the responsibility of the new government once it is formed, as will the decision on whether to accept the ratification results of the individual deeds. The Marutūāhu Collective Redress Deed remains in negotiation. The Crown has provided procedural updates to Ngātiwai at various stages. It has also consulted thoroughly with Ngātiwai directly as well as with Ngātiwai hapū, in particular Ngāti Manuhiri and Ngāti Rehua, in relation to proposed

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redress that is either within the area of interest attached to the Ngātiwai Deed of Mandate or which Crown officials have anticipated may be of concern to Ngātiwai.

As stated in the Crown's submissions to the Waitangi Tribunal, the Crown considers the engagement with Ngātiwai in relation to overlapping claims issues has been robust and thorough. The settlement redress proposed for Hauraki iwi does not hinder the Crown's ability to provide appropriate redress to Ngātiwai in settlement of their claims in the future.

The Office of Treaty Settlements is available to attend a meeting between Ngātiwai and Hauraki iwi if both parties agree. In this event please contact Tessa Buchanan at tessa.buchanan@justice.govt.nz or on 04 494 9924.

Nāku noa, nā



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

CC: Tania McPherson, Treaty Claims Manager, Ngātiwai Trust Board,
tania.mcperson@ngatiwai.iwi.nz

