

## TE POU A HAOKAI

Comprising:

Te Aitanga a Mahaki

Whānau a Kai

NgāAriki Kaiputahi

Te Whānau a Wi Pere

Te Whānau a Rangihakataetaea

## NGAI TAMANUHIRI

## RONGOWHAKAATA

Including:

Ngā Uri o Te Kooti Rikirangi

and

HER MAJESTY THE QUEEN

in right of New Zealand

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**Agreement in Principle  
for the Settlement of the Historical Claims of  
Tūranganui-a-Kiwa**

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**29 August 2008**

## **Pōpō!**

*Popo! E tangi ana Tama ki te kai mana*

*Popo! The sacred being seeks sustenance and sustainability*

The ancient wisdom expressed in the oriori *Pōpō!* has shaped the way in which Turanga Manu Whiriwhiri has chosen to participate in the negotiations process with the Crown. Turanga Manu Whiriwhiri participate in a manner that gives voice to the words of our tipuna, that brings forth the aspirations of the descendants of those tipuna, and that give rise to the inculcation of powerful, innovative and creative thinking in order to resolve the historical claims regarding the acts and omissions of the Crown in breaching the Treaty. This oriori informs and illuminates the relationship between that which Turanga Manu Whiriwhiri may wish to create, and that which is actually possible to be created. This knowledge provides a sense of precedence, and therefore a sense of what Turanga Manu Whiriwhiri may prefer, as a way of solving the historical grievances, as a way of moving forward, and essentially affording the opportunity to be able to contribute more effectively and more powerfully as citizens in our local community, as citizens of Aotearoa New Zealand, and ultimately, as citizens of the world. These aspirations are expressed more succinctly, in this manner:

*Mana Whenua – the ability to enact tikanga regarding whenua*

*Mana Moana – the ability to enact tikanga regarding moana*

*Mana Tangata – the ability to enact tikanga regarding tangata*

*Mana Rangatira – the ability to enact tikanga regarding rangatira*

*Mana Tipuna – the ability to enact tikanga regarding tipuna*

*Mana Atua – the ability to enact tikanga regarding atua*

Hence the extrapolation of a definition of culture covering the widest range of expression from the metaphysical origin to the physical being, from the individual presence to the societal or collective consciousness, from the temporal realm to the spiritual cosmology. *Pōpō!* is the vehicle of expression that gives voice to that extrapolation. Turanga Manu Whiriwhiri will apply this thinking to all areas of negotiation, to this Agreement in Principle and to the Deed of Settlement.

## Agreement in Principle for the Settlement of the Historical Claims of Tūranganui-a-Kiwa

### Negotiations to date

- 1 The Crown has a strong preference to negotiate with large natural groupings. On 17 August 2005, the Crown recognised the mandates of the Rongowhakaata Claims Committee (including Ngā Uri o Te Kooti Rikirangi who themselves have the mandate of their people), Te Pou a Haokai Central Progression Team (comprising Whānau a Kai, NgāAriki Kaiputahi and Te Aitanga-ā-Mahaki all of whom themselves have the mandate of their people and Te Whānau a Rangiwhakataetaea and Te Whānau a Wi Pere) and Ngai Tamanuhiri Whānui Charitable Trust to negotiate collectively on behalf of Tūranganui-a-Kiwa (as defined in paragraph 88 below), an offer for the settlement of their Historical Claims.
- 2 On 29 May 2007, the parties entered into Terms of Negotiation, which set out the scope, objectives and general procedure for negotiations.
- 3 Negotiations have now reached a stage where the parties wish to enter this Agreement in Principle recording that they are willing to settle the Historical Claims by entering into a Deed of Settlement on the basis set out in this Agreement in Principle.

### General

- 4 This Agreement in Principle contains the scope and nature of the Crown's offer to settle the Historical Claims.
- 5 Crown settlement policy limits the redress that is available to Tūranganui-a-Kiwa in this Agreement in Principle. The redress offered to Tūranganui-a-Kiwa to settle the Historical Claims comprises three main components. These are:
  - a. Historical Account, Crown Acknowledgements and Crown Apology;
  - b. Cultural Redress; and
  - c. Financial and Commercial Redress.
- 6 Following the signing of this Agreement in Principle, the parties will work together in good faith to develop, as soon as reasonably possible, a Deed of Settlement, or Deeds of Settlement if it is agreed that there will be more than one. The Deed of Settlement will include the full details of the redress the Crown is to offer to settle the Historical Claims and all other necessary matters. The Deed of Settlement will be conditional on the matters set out in paragraph 97 of this document.
- 7 The Crown and Tūranga Manu Whiriwhiri each reserve the right to withdraw from this Agreement in Principle by giving written notice to the other party.
- 8 This Agreement in Principle is entered into on a without prejudice basis. It:
  - a. is non-binding and does not create legal relations; and

- b. cannot be used as evidence in any proceedings before, or presented to the Courts, the Waitangi Tribunal and any other judicial body or tribunal.
- 9 The Terms of Negotiation between the mandated groups and the Crown continue to apply to the negotiations except to the extent affected by this Agreement in Principle.
- 10 Tūranga Manu Whiriwhiri is yet to decide if one or more Governance Entities will be required to hold and manage some or all of the settlement redress. Accordingly, references to the Governance Entity(ies) in this Agreement in Principle and the Deed of Settlement will be read accordingly.
- 11 Key terms used in this document are defined in paragraph 103 below.

## Section 1: Historical Account, Crown Acknowledgments, and Crown Apology

- 12 The Historical Account, Crown Acknowledgements and Apology are the cornerstone of the Crown's settlement offer. The Deed of Settlement will contain an agreed Historical Account that outlines the historical relationship between the Crown and Tūranganui-a-Kiwa.
- 13 On the basis of the Historical Account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown will then offer an apology to Tūranganui-a-Kiwa in the Deed of Settlement for the acknowledged Crown breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown Apology will be developed following the signing of this Agreement in Principle.
- 14 A draft of a substantively agreed Historical Account is attached as **Attachment 2**. The attached Historical Account may be subject to further editing and amendments, and additional sections may be added, as the Crown and Tūranga Manu Whiriwhiri agree is necessary.
- 15 The Crown agrees to provide Ngā Uri o Te Kooti Rikirangi with a specific account appended to the Historical Account and a specific apology in relation to stigmatisation of Te Kooti Rikirangi and his descendants. This account and apology will be negotiated as part of the wider negotiations with Tūranga Manu Whiriwhiri.
- 16 The Crown also agrees to provide NgaAriki Kaiputahi, Te Aitanga-ā-Makahi, Whānau a Kai, Ngai Tamanuhiri and Rongowhakaata with a specific account and apology, to be appended to the Historical Account, for issues pertaining specifically to these groups and that are not reflected in the Historical Account.

## Section 2: Cultural Redress

### Overview

- 17 The Cultural Redress package is based on factors such as the nature and extent of claims, the redress sought by Tūranga Manu Whiriwhiri and the instruments available to the Crown. Certain cultural redress instruments are designed to recognise the historical and cultural interests of Tūranganui-a-Kiwa.
- 18 There are three main components of this package:
  - a Mana Tangata (Identity and Heritage) redress;
  - b Mana Whenua/Mana Moana (Protection and Use of Land and Sea) redress; and
  - c Mana Rangatira (Enhancement of Relationships) redress.
- 19 Some key components being provided in this Agreement in Principle are unique and have arisen from the Tūranganui-a-Kiwa cultural relief framework, aspirations and desires, which are based on the principles that are derived from the oriori, *Pōpō!*, and as articulated by Tūranga Manu Whiriwhiri to the Crown during these negotiations.
- 20 All items of cultural redress are subject to the following being resolved before a Deed of Settlement is signed:
  - a the Crown confirming that any overlapping claim issues in relation to any item of cultural redress have been addressed to the satisfaction of the Crown; and
  - b any other conditions set out below relating to specific items of cultural redress.
- 21 Unless otherwise specified, the value of the cultural redress is not off-set against the Financial and Commercial Redress Amount.
- 22 An overview map showing the location of all cultural redress sites referred to in this section and individual map sites are included in **Attachment 3**.

### Mana Tangata (Identity and Heritage) redress

- 23 The objective of Mana Tangata redress is to assist Tūranganui-a-Kiwa to reclaim and promote their identity, tikanga and history and consists of the following elements:
  - a Te Hau ki Tūranga – recognition and promotion of Ngāti Kaipoho (hapū of Rongowhakaata), Rongowhakata and Tūranganui-a-Kiwa identity through the Museum of New Zealand Te Papa Tongarewa (**Te Papa Tongarewa**), by way of:
    - i recognition of ownership over Te Hau ki Tūranga; and
    - ii an enhanced kaitiaki role;

- b pūtea for cultural revitalisation – provision of funds to assist with the preparation and implementation of a cultural revitalisation plan; and
- c pūtea for a memorial – provision of funds to assist with the erection of a memorial to those Tūranga who lost their lives due to Crown actions.

*Te Hau ki Tūranga*

- 24 Te Hau ki Tūranga is one of the oldest surviving carved whareniui (meeting house) in New Zealand. The whareniui is elaborately carved in the Ngāti Kaipoho or Tūranga style of carving and is one of the most significant taonga tuku iho for Ngāti Kaipoho, Rongowhakaata and Tūranganui-a-Kiwa. The whareniui is currently on display at Te Papa Tongarewa.
- 25 The Deed of Settlement and Settlement Legislation (as required) will recognise that Rongowhakaata never relinquished ownership over Te Hau ki Tūranga, and will provide for:
- a the recording of the Crown's apology for the circumstances in which the Crown assumed control of Te Hau ki Tūranga in 1867 and its removal from Orakaiapu Pa, Manutuke;
  - b recognition of ownership over Te Hau ki Tūranga; and
  - c a relationship instrument to be entered into between Rongowhakaata and Te Papa Tongawera that addresses the ongoing care, display and maintenance of the whareniui while it remains on display at Te Papa Tongarewa.
- 26 Further to paragraph 25b above, the Crown will actively explore with Te Papa Tongarewa and Rongowhakaata options to give effect to ownership of Te Hau ki Tūranga, including investigation into legal title.

*Preparation and implementation of a cultural revitalisation plan*

- 27 The Deed of Settlement will provide that the Crown will, on Settlement Date, provide to the Governance Entity \$1,000,000 to assist with the preparation and implementation of a cultural revitalisation plan.
- 28 The scope of the cultural revitalisation plan and the use of the funding in paragraph 27 above will be determined by Tūranga Manu Whiriwhiri prior to the initialling of a Deed of Settlement for ratification by Tūranganui-a-Kiwa.

*Pūtea for a memorial recognising Tūranganui-a-Kiwa loss*

- 29 The Deed of Settlement will provide that the Crown will, on settlement date, provide \$100,000 as a contribution towards the erection of a memorial to those Tūranganui-a-Kiwa who lost their lives as a result of past Crown actions. The Crown is willing to facilitate discussions between Tūranga Manu Whiriwhiri and the Gisborne District Council on an appropriate site for the placement of the memorial.
- 30 The amounts referred to in paragraphs 27 and 29 above will be provided in addition to the Commercial and Financial Redress Amount. The Crown will transfer the amounts referred to in paragraphs 27 and 29 (totalling \$1,100,000)

prior to Settlement Date, subject to the Crown being satisfied that Tūranga Manu Whiriwhiri has obtained a mandate through ratification of this proposal, following the initialling of a Deed of Settlement.

**Mana Whenua/Mana Moana (Protection and Use of Land and Sea)  
redress**

*Cultural Redress Properties*

GIFTED CULTURAL REDRESS PROPERTIES

- 31 Neither the site of the former Gisborne Abattoir nor Watson Park is owned by the Crown. The Crown has entered into discussions with the Gisborne District Council for the Crown to purchase, at fair market value, 4.9794 hectares of the Gisborne Abattoir Site and part of Watson Park for gifting to the Governance Entity. The purchase and therefore the vesting of the properties in the Governance Entity will be subject to the Crown agreeing terms and conditions with the Gisborne District Council that are acceptable to the Crown, and to Tūranga Manu Whiriwhiri. The Crown and Tūranga Manu Whiriwhiri have discussed the possible purchase value of these sites.
- 32 In addition, the vesting will be subject to any existing rights or encumbrances and satisfactory arrangements with the Gisborne District Council in respect of subdivision, and will be for a total value of no more than \$10 million. Maps of the Gifted Cultural Redress Properties are included in **Attachment 3**.

TABLE 1 – GIFTED CULTURAL REDRESS PROPERTIES

Site	Iwi	Description	Specific conditions or encumbrances (Known at the time of this AIP)
Gisborne Abattoir Site	Tūranganui-a-Kiwa	An area of approx 4.9794 ha more or less being Lot 1, DP 6263, Section 35, Block VI, Tūranganui Survey District, Part Awapuni 1B Block, Part Awapuni 1 1C Block and Part Awapuni 1 1K Block, as shown on <b>Map 1 in Attachment 3</b>	Crown to pay for land to be physically cleared before vesting
Part Watson Park	Rongowhakaata	An area of approximately 5 ha being Lot 2, DP 6263 and Parts of Waiohiorore A, B and C Blocks, as shown on <b>Map 2 in Attachment 3</b>	Location of vesting area yet to be agreed Subject to Gisborne District Council consultation with the public

VESTED CULTURAL REDRESS PROPERTIES

- 33 In addition to the Gisborne Abattoir Site and part of Watson Park, the Deed of Settlement and Settlement Legislation (as required) will provide for the vesting in the Governance Entity of nine Cultural Redress Properties, in fee simple estate for nil consideration on Settlement Date, as set out in Table 2 (Vested

Cultural Redress Properties). The vesting will be subject to the specific conditions and encumbrances noted in Table 2. Maps of the Cultural Redress Properties are included in **Attachment 3** (Maps 1-11). Identification of a particular iwi does not exclude wider Tūranganui-a-Kiwa interests in the Cultural Redress Properties identified in Tables 1 and 2.

TABLE 2 – VESTED CULTURAL REDRESS PROPERTIES

Site	Iwi	Description	Specific conditions or encumbrances (Known at the time of this AIP)
<p>Te Kuri a Paoa (Young Nick's Head Historic Reserve)</p>	<p>Ngai Tamanuhiri</p>	<p>38.370 ha more or less being Lot 1 DP 319260, as shown on <b>Map 3 in Attachment 3</b></p>	<p>Subject to the site being vested under section 26 of the Reserves Act for Ngai Tamanuhiri to hold and administer as an historic reserve</p> <p>To be declared a national reserve under section 13 of the Reserves Act</p> <p>The Crown will provide Ngai Tamanuhiri with a contribution of \$50,000 towards the management of the site, to be primarily used for fencing and planting, and if appropriate, towards the recognition of Ngai Tamanuhiri's association with the site</p> <p>Subject to consultation with the Young Nicks Head Trust (of which Ngai Tamanuhiri are members), on existing management plans to fence and plant the area, and any other matters as appropriate</p>
<p>Mangapoike</p>	<p>Ngai Tamanuhiri</p>	<p>62.6605 ha more or less being Part Nuhaka 2B2A2 and all computer freehold register HBP4/1288, as shown on <b>Map 4 in Attachment 3</b></p>	<p>Nil</p>
<p>Gisborne Bus Depot Site</p>	<p>Te Pou a Haokai</p>	<p>0.4815 ha more or less being Section 395 Town of Gisborne and all computer freehold register GS5B/1401 as shown on <b>Map 5 in Attachment 3</b></p>	<p>Nil</p>

**WITHOUT PREJUDICE  
TŪRANGANUI-A-KIWA AGREEMENT IN PRINCIPLE**

<b>Site</b>	<b>Iwi</b>	<b>Description</b>	<b>Specific conditions or encumbrances</b> (Known at the time of this AIP)
Old Army Hall Site (16 Fitzherbert Street property)	Te Pou a Haokai	0.3236 ha more or less being Lots 19, 20, 29 and 41 Blk A, DP 209 as shown on <b>Map 6 in Attachment 3</b>	
Patutahi Health Clinic Site (Atkins Street property)	Te Whanau a Kai	0.1012 ha more or less being Section 31 Town of Patutahi as shown on <b>Map 7 in Attachment 3</b>	The Crown will contribute \$250,000 to assist Te Whanau a Kai with establishing a cultural base
Rakaukaka (Rakaukaka Scenic Reserve)	Rongowhakaata	5.6921 ha more or less being Section 26 Block VIII, Patutahi Survey District, as shown on <b>Map 8 in Attachment 3</b>	Subject to the existing scenic reserve status (including public access) The Crown will contribute \$50,000 to assist Rongowhakaata with the development and implementation of a 4-5 year noxious weed eradication programme The Crown, through the Department of Conservation, will provide information on the ecological values and possible management options for the site prior to transfer of the land
Ex-Railway Land Site	Rongowhakaata	1.2772 ha more or less being Lot 1 DP 9549 and all computer freehold register GS6C/1000, as shown on <b>Map 9 in Attachment 3</b>	Subject to a development plan for archaeological sites held in consent notice G.226426.3 Subject to a right to drain sewage specified in easement certificate G.230659.3
Matawhero (Matawhero Government Purpose Reserve (Wildlife Management))	Rongowhakaata and Nga Uri o Te Kooti Rikirangi	48.7254 ha more or less being Lot 2, 3, 4, 5, 6 and 7 DP 4751, Section 23 Block I Tūranganui Survey District and Sec 50 Blk I Turanganui Survey District as shown on <b>Map 10 in Attachment 3</b>	To be jointly vested (on terms to be agreed between Rongowhakaata, Nga Uri o Te Kooti Rikirangi and the Crown), in Rongowhakaata and Nga Uri o Te Kooti Rikirangi, with a larger area to be vested in Rongowhakaata Subject to the site being reclassified as a recreation reserve Subject to the existing

WITHOUT PREJUDICE  
TŪRANGANUI-A-KIWA AGREEMENT IN PRINCIPLE

Site	Iwi	Description	Specific conditions or encumbrances (Known at the time of this AIP)
			<p>lease with Ecoworks (NZ) Limited</p> <p>The Crown will contribute \$50,000 to assist Rongowhakaata and Nga Uri o Te Kooti Rikirangi with the regeneration of the area for flax planting, weed control, restoring eel habitats including fish passage, fencing and fixing the weir</p> <p>The Crown, through the Department of Conservation, will provide information on the ecological values and possible management options for the site prior to transfer of the land</p> <p>The Crown is also willing to explore a reserve name change for part of the site to reflect Te Kooti's strong association with the land</p>
<p>Te Whare Rakei o Te Kooti Rikirangi</p> <p>(75 Birrell Street or such other cultural redress property (if any) as agreed by Turanga Manu Whiriwhiri and the Crown)</p>	<p>Nga Uri o Te Kooti Rikirangi</p>	<p>0.0783 ha more or less being Lot 5 DP 7625 as shown on <b>Map 11 in Attachment 3</b></p>	<p>The Crown will contribute \$250,000 to assist Nga Uri o Te Kooti Rikirangi with establishing a dedicated facility for the memory, taonga, cultural, spiritual and intellectual return of Te Kooti Rikirangi to Tūranga</p>

*The Old Police Station Site (98 Childers Road)*

- 34 The Old Police Station Site at 98 Childers Road is currently a non-surplus Crown property that has been included in the Crown's settlement redress package to Tūranganui-a-Kiwa as a Right of First Refusal property (refer property 40 in **Attachment 4, Table 4**). The Crown aim is to ensure that prior to the Settlement Date that property will be added into the Gisborne Landbank prior to Settlement Date, and vested in the Governance Entity, in fee simple estate for nil consideration. The vesting will be subject to any existing rights or encumbrances. Should it become surplus following Deed of Settlement, the Crown will offer Tūranga Manu Whiriwhiri a right of first refusal over the Old Police Station.

*Funding associated with Cultural Redress Properties*

- 35 As listed in Table 2 above, the Crown will contribute:
- a \$50,000 to assist Ngai Tamanuhiri with the management of Te Kuri a Paoa, to be primarily used for fencing and planting, and if appropriate, towards the recognition of Ngai Tamanuhiri's association with the site;
  - b \$250,000 to assist Te Whanau a Kai with establishing a cultural base at Patutahi;
  - c \$50,000 to assist Rongowhakaata with the development and implementation of a 4-5 year noxious weed eradication programme at Rakaukaka;
  - d \$50,000 to assist Rongowhakaata and Ngā Uri o Te Kooti Rikirangi with the regeneration of the area for flax planting, weed control, restoring eel habitats including fish passage, fencing and fixing the weir at Matawhero; and
  - e \$250,000 to assist Ngā Uri o Te Kooti Rikirangi with establishing a dedicated facility for the memory, taonga, cultural, spiritual and intellectual return of Te Kooti Rikirangi to Tūranga at Te Whare Rakei o Te Kooti Rikirangi.
- 36 The Crown will transfer the amount referred to in paragraph 35 above (totalling \$650,000) at Settlement Date, subject to the Crown being satisfied that Tūranga Manu Whiriwhiri has obtained a mandate through ratification of this proposal, following the initialling of a Deed of Settlement.

*Conditions for Cultural Redress Properties*

- 37 The vesting of the Cultural Redress Properties is subject to (where relevant):
- a final negotiations with the Gisborne District Council on the transfer of the Gisborne Abattoir Site and part of Watson Park;
  - b further identification and survey of sites;

- c obtaining any necessary consents, as may be required, to undertake the specific purpose the funding is provided for (particularly in relation to funding for Te Kuri a Paoa, Rakaukaka, and Matawhero);
  - d confirmation that no prior offer back or other third party right, such as those under the Public Works Act 1981, exists in relation to the site and that any other statutory provisions that must be complied with before the site can be transferred are complied with;
  - e any specific conditions or encumbrances included, or referred to, in Tables 1 and 2 above;
  - f any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the site to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information as requiring to be created;
  - g the rights or obligations at the Settlement Date of third parties in relation to fixtures, structures or improvements;
  - h Part 4A of the Conservation Act 1987 and the creation of marginal strips except as expressly provided;
  - i sections 10 and 11 of the Crown Minerals Act 1991;
  - j any other specific provisions relating to the Cultural Redress Properties that are included in the Agreement in Principle and/or Deed of Settlement; and
  - k the Crown confirming the nature and extent of overlapping interests to the sites, and that those interests have been addressed to the satisfaction of the Crown.
- 38 Unless otherwise specified, after transfer of the Cultural Redress Properties, the Governance Entity will be responsible for the maintenance of the Cultural Redress Properties, including any future pest control (including flora and fauna), fencing, interpretation material, required bio security responses, and removal of refuse if required, and the preparation of reserve management plans under the Reserves Act 1977 (section 41) on the land transferred with a reserve status.
- 39 The Governance Entity will also be responsible for any rates that become payable after transfer of the Cultural Redress Properties to the Governance Entity.
- 40 Following the signing of the Agreement in Principle, the Crown and Tūranga Manu Whiriwhiri will discuss disclosure information requirements. Following that discussion the Crown will prepare disclosure information in relation to each site, and will provide such information to Tūranga Manu Whiriwhiri. If any sites are unavailable for transfer for any of the reasons given in paragraph 37 above the Crown and Tūranga Manu Whiriwhiri will explore the possibility of other ways to maintain the cultural value of the settlement package.

*Right of First Refusal over Tūranga Conservation Lands*

- 41 The Crown will explore with Tūranga Manu Whiriwhiri, for inclusion in the Deed of Settlement, a mechanism requiring the Crown to offer Tūranganui-a-Kiwa the opportunity to acquire surplus conservation land within a specified area to be known as the Tūranga Conservation Lands for a period of 100 years from Settlement Date. The final land area agreed between the Crown and Tūranga Manu Whiriwhiri will take into account the interests of overlapping groups.

*Statutory Acknowledgements*

- 42 The Deed of Settlement and the Settlement Legislation will provide for statutory acknowledgments to be made in relation to:
- a Gray's Bush Scenic Reserve (as shown on **Map 12 in Attachment 3**);
  - b Part of the Waioweka Conservation Area (as shown on **Map 13 in Attachment 3**), in which Te Turi o Kahutapere and Te Rimuroa are located;
  - c the following waterways within the Area of Interest (as shown on **Map 14 in Attachment 3**):
    - i Tūranganui River;
    - ii Taruheru River;
    - iii Waipaoa River (including Karaua Stream);
    - iv Waimata River;
    - v Hangaroa River;
    - vi Te Arai River; and
    - vii Waikanae Stream; and
  - d the Tūranga Coastal Marine Area adjoining the Area of Interest (as shown on **Overview Map A in Attachment 3**).
- 43 Statutory acknowledgements provide for the Crown to acknowledge in the Settlement Legislation a statement by Tūranganui-a-Kiwa of their cultural, spiritual, historical and traditional association with a particular area. They further provide for:
- a relevant consent authorities, the New Zealand Historic Places Trust and the Environment Court to have regard to the statutory acknowledgments for certain purposes;
  - b relevant consent authorities to forward to the Governance Entity summaries of resource consent applications for activities within, adjacent to, or impacting directly on, the area in relation to which a statutory acknowledgment has been made; and
  - c the Governance Entity and any member of Tūranganui-a-Kiwa to cite to consent authorities, the New Zealand Historic Places Trust and the

Environment Court the statutory acknowledgment as evidence of the association of Tūranganui-a-Kiwa with the area in relation to which the statutory acknowledgement has been made.

- 44 The statutory acknowledgment provided to the Governance Entity will, in substance, be provided on similar terms to those provided in previous Treaty settlements. In particular, the statutory acknowledgements:
- a will not affect the lawful rights or interests of a person who is not a party to the Deed of Settlement;
  - b in relation to waterways, will not include:
    - i a part of the bed of the waterway that is not owned by the Crown; or
    - ii land that the waters of the waterway do not cover at its fullest flow without overlapping its banks; or
    - iii an artificial watercourse; or
    - iv a tributary flowing into the waterway; and
  - c will not prevent the Crown from providing a statutory acknowledgment to persons other than Tūranganui-a-Kiwa or the Governance Entity with respect to the same area.

#### *Deeds of Recognition*

- 45 The Deed of Settlement and the Settlement Legislation will provide for the Crown and the Governance Entity to enter into a deed of recognition in relation to the following:
- a Gray's Bush Scenic Reserve (as shown on **Map 12 in Attachment 3**); and
  - b Part of the Waioeka Conservation Area (as shown on **Map 13 in Attachment 3**), in which Te Turi o Kahutapere and Te Rimuroa are located.
- 46 Deeds of recognition provide for the Governance Entity to be consulted on matters specified in the deed of recognition, and regard had to its views. A deed of recognition provided to Tūranganui-a-Kiwa will, in substance, be provided on similar terms to those provided in previous Treaty settlements.
- 47 A deed of recognition with the Governance Entity will not prevent the Crown from entering into a deed of recognition with persons other than Tūranganui-a-Kiwa or the Governance Entity with respect to the same area.

#### *Place Name Changes*

- 48 The Crown will explore, for inclusion in the Deed of Settlement, the possibility of amending or assigning a list of agreed place names of significance to Tūranganui-a-Kiwa. The New Zealand Geographic Board Ngā Taunaha o Aotearoa will be consulted, and any amendment or assignment of place names

will be in accordance with the process and conventions of the New Zealand Geographic Board Ngā Taunaha o Aotearoa.

### *Reserve Name Change*

- 49 The Crown will explore, for inclusion in the Deed of Settlement, the possibility of amending or assigning the following reserve names for lands administered by the Department of Conservation, in consultation with the New Zealand Geographic Board Ngā Taunaha o Aotearoa, Tūranganui-a-Kiwa and other relevant iwi:
- a a dual name change of Young Nicks Head Historic Reserve to Te Kuri a Paoa/Young Nick's Head National Historic Reserve; and
  - b assigning a reserve name to part of the Matawhero Site to reflect Te Kooti Rikirangi's strong association with the land.

### **Mana Rangatira (Enhancement of Relationship) redress**

- 50 Mana Rangatira redress contributes towards the protection and recognition of the right of Tūranganui-a-Kiwa to exercise mana rangatira, mana tangata, mana tipuna, mana atua, mana whenua and mana moana, and consists of the following redress:
- a the establishment of a local leadership body between Tūranganui-a-Kiwa and the Gisborne District Council;
  - b the establishment of a central leadership group to assist the development of an iwi management plan that focuses on resource management, fisheries and conservation issues and a range of other matters to be agreed before settlement;
  - c protocols between the Governance Entity and the Minister of Conservation, Minister of Fisheries and Minister for Arts, Culture and Heritage and a relationship agreement with the Ministry for the Environment;
  - d promotion of relationships with local authorities; and
  - e promotion of relationships with New Zealand and international museums.

### *Local Leadership Body*

- 51 The Crown is willing to facilitate discussions between Tūranga Manu Whiriwhiri and the Gisborne District Council on the establishment of a local leadership body that provides Tūranganui-a-Kiwa the opportunity to have meaningful input 'at the top table level' on common issues (to be agreed) that affect the Tūranga region. The Crown will explore assisting, in a non-monetary way, with the establishment of that local leadership body with a view to it being a statutory body if Tūranga Manu Whiriwhiri and the Gisborne District Council request such assistance.

*Central Leadership Group*

- 52 The Crown is also willing to assist with the establishment of a central leadership group that aims to help Tūranganui-a-Kiwa develop:
- a an iwi management plan (in terms of the Resource Management Act 1991) that focuses on resource management, fisheries and conservation issues; and
  - b a range of other relevant matters to be agreed between Agreement in Principle and Deed of Settlement.
- 53 The Crown is willing to provide a facilitator for the inaugural meeting of the Central Leadership Group, and contribute up to \$35,000 to the Governance Entity for set-up costs.
- 54 The key role of the Central Leadership Group is to ensure that the principles of the Treaty of Waitangi are implemented in a coordinated manner to the extent consistent with relevant legislation. The key participants in the Central Leadership Group will be representatives from Tūranganui-a-Kiwa, the Ministry of Fisheries, the Department of Conservation, the Ministry of Agriculture and Forestry (as appropriate), the Ministry for the Environment, other relevant Crown agencies as agreed and, if invited and agreed, the Gisborne District Council.
- 55 The Crown proposes that the Central Leadership Group meets annually. The Crown further proposes that the Central Leadership Group should be reviewed after five years of operation.

*Protocols*

- 56 A protocol is a statement issued by a Minister of the Crown setting out how a particular government agency intends to:
- a exercise its functions, powers and duties in relation to specified matters within its control in the claimant group's protocol area; and
  - b consult and interact with the claimant group on a continuing basis and enable that group to have input into its decision-making processes.
- 57 The Deed of Settlement and the Settlement Legislation will provide for the following Ministers to issue protocols to the Governance Entity:
- a the Minister of Conservation;
  - b the Minister for Arts, Culture and Heritage; and
  - c the Minister of Fisheries.
- 58 The Crown proposes that the protocols will be on similar terms, in substance, to those provided in previous Treaty settlements. The content of the protocols will be drafted and agreed between the parties for inclusion in the Deed of Settlement. All protocols will be developed to comply with the applicable legislation. In each case, the protocol areas will be the same as the Area of Interest (as shown in **Attachment 1**), together with adjacent coastal waters, to

the extent that adjacent waters are covered by the applicable legislation. The matters that the Crown proposes each of the protocols will cover are set out below.

#### CONSERVATION PROTOCOL

- 59 The Conservation Protocol could cover matters such as:
- a input into business planning (subject to consideration against other priorities) at the Area Office level;
  - b access to, and the use of, cultural materials gathered from public conservation land for traditional purposes;
  - c the management of cultural and historic heritage sites, including wāhi tapu and wāhi taonga, and other places of historical and cultural significance to Tūranganui-a-Kiwa on public conservation land;
  - d visitor and public information, in particular, opportunities for input into visitor appreciation;
  - e input by the Governance Entity into the Department's species management work;
  - f co-operation on freshwater fisheries;
  - g co-operation on advocacy under the Resource Management Act 1991, particularly in relation to the protection and restoration of wetlands;
  - h consultation with the Governance Entity on conditions for protection of wāhi tapu and taonga when considering concession applications;
  - i participation by the Governance Entity in any name changes instituted by the Department;
  - j identification of special projects by the Governance Entity for inclusion in the Department's business planning process;
  - k confidentiality mechanisms for the protection of culturally sensitive information; and
  - l specific sites relating to Te Kooti Rikirangi including sites outside the Area of Interest (as part of the wider negotiations with Tūranga Manu Whiriwhiri).

#### TAONGA TŪTURU PROTOCOL

- 60 The Taonga Tūturu Protocol could cover the following matters:
- a newly found taonga tūturu;
  - b the export of taonga tūturu; and
  - c the Protected Objects Act 1975 and any amendment or substitution thereof.

FISHERIES PROTOCOL

- 61 The Fisheries Protocol could cover the following matters:
- a recognition of the interests of Tūranganui-a-Kiwa in taonga fish species and marine aquatic life;
  - b development of sustainability measures, fisheries regulations and fisheries plans;
  - c management of customary non-commercial fisheries;
  - d research planning;
  - e consultation on the Ministry of Fisheries annual business plan;
  - f consultation on contracting for services; and,
  - g where relevant and appropriate, consultation on employment of staff with non-commercial fisheries responsibilities.
- 62 The Crown acknowledges the establishment of the Gisborne Iwi Regional Forum within the Area of Interest, and that Tūranganui-a-Kiwa is represented on this Forum. When consultation is required on an issue within the Area of Interest, consultation between the Ministry of Fisheries and the Governance Entity will take place through the Gisborne Iwi Regional Forum.

*Relationship Agreement with the Ministry for the Environment*

- 63 The Deed of Settlement will provide that following Settlement Date, the Ministry for the Environment will meet annually with the Governance Entity, or as otherwise agreed between the Ministry and the Governance Entity, to discuss the performance of local government in implementing the Treaty of Waitangi provisions of the Resource Management Act 1991 and other resource management issues, within the Area of Interest.

*Promotion of relationship with Local Authorities*

- 64 The Deed of Settlement will note that the Minister in Charge of Treaty of Waitangi Negotiations will write to the Gisborne District Council to encourage the Council to enhance its relationship with Tūranganui-a-Kiwa by, for example, entering into a memorandum of understanding (or a similar document) with the Governance Entity in relation to the interaction between the Council and the Governance Entity.

*Promotion of relationships with Museums*

- 65 The Deed of Settlement will note that the Minister in Charge of Treaty of Waitangi Negotiations will write to an agreed list of:
- a New Zealand museums encouraging them to enhance their relationship with Tūranganui-a-Kiwa, particularly in relation to Tūranganui-a-Kiwa taonga; and

- b international museums introducing them to Tūranganui-a-Kiwa and identifying any key issues of relevance to both Tūranganui-a-Kiwa and the museum.

## Section 3: Financial and Commercial Redress

### Financial and Commercial Redress Overview

- 66 The Financial and Commercial Redress Amount is \$59 million. If Turanga Manu Whiriwhiri decide to establish more than one Governance Entity to receive the Financial and Commercial Redress Amount, the Crown would prefer, as agreed in the Terms of Negotiation, that Te Pou a Haokai, Rongowhakaata and Ngai Tamanuhiri agree upon a split of the Financial and Commercial Redress Amount. If no such agreement can be reached, and following receipt of written notice from Tūranga Manu Whiriwhiri that agreement has not been able to be reached, the Crown has agreed to determine the Financial and Commercial Redress Amount split. Arriving at that split will take place through discussions between the Crown and Turanga Manu Whiriwhiri between the signing of the Agreement in Principle and the initialling of a Deed of Settlement.
- 67 The Deed of Settlement and the Settlement Legislation will provide for the Crown to transfer to the Governance Entity on Settlement Date:
- a selected Landbank Properties for nil consideration;
  - b selected Commercial Redress Properties (with the total value of the selected properties not exceeding the Financial and Commercial Redress Amount); and
  - c the Cash Settlement Amount (being the total value of the Financial and Commercial Redress Amount less the Transfer Value of the Commercial Redress Properties).
- 68 The Deed of Settlement will also provide the Governance Entity with a right to deferred purchase of:
- a certain surplus Crown properties for six months after Settlement Date; and
  - b certain non-surplus Crown properties under a sale and leaseback arrangement (land only) for two years after Settlement Date.
- 69 Further details are specified in paragraphs 70 to 84 below. An overview map showing the general location of all Crown properties referred to in this section is included in **Attachment 4 (Map B)**.

### Commercial Redress Properties

#### *Landbank Properties*

- 70 The Deed of Settlement and Settlement Legislation will provide for the vesting in the Governance Entity of the Landbank properties, in fee simple estate for nil consideration on Settlement Date, as set out in **Attachment 4, Table 5** (Landbank Properties).

*Licensed Crown Forest Land*

- 71 Te Pou a Haokai will have the opportunity to select for transfer to the Governance Entity on Settlement Date, parcels of land from within the Licensed Crown Forest Land identified on **Map 1 in Attachment 4**.
- 72 Ngai Tamanuhiri Whanui Trust and Te Iwi o Rakaipaaka Incorporated have agreed to determine their respective mana whenua interests and draft an accord based on the processes agreed as part of the Central North Island Deed of Settlement, in the Licensed Crown Forest Land identified on **Map 2 in Attachment 4**. The Crown will abide by this agreement, as set out in the Memorandum dated 30 July 2008 (refer **Attachment 5**), subject to the signing of a Deed of Settlement.
- 73 The Transfer Value for the Licensed Crown Forest Lands will be at a fair market value and determined in accordance with the valuation process in a similar form to that set out in **Attachment 6**. The effective date of valuation will be the date of the Deed of Settlement. The Governance Entity may pay the Transfer Value of the Licensed Crown Forest Land direct to the relevant Crown agency, in which case the Transfer Value will not be deducted from the Cash Settlement Amount.
- 74 If either Te Pou a Haokai or Ngai Tamanuhiri selects for purchase only parts of the parcels of land identified on **Maps 1 and 2 in Attachment 4**, the exact configuration of forest land to be transferred will need to be agreed respectively by Te Pou a Haokai, Ngai Tamanuhiri and the Crown for inclusion in the Deed of Settlement. In establishing those parts of land, the Crown will need to take into account whether the balance of the respective parcels will be:
- a devalued by the selection; and
  - b commercially and practically viable for forestry operations.
- 75 Appropriate legal access and other rights required between the parts of the Licensed Crown Forest Land that Te Pou a Haokai and Ngai Tamanuhiri choose to take and the balance of the land will need to be further defined and agreed. In this regard, the transfer of Licensed Crown Forest Land will be subject to:
- a. reciprocal easements in compliance with Section 17.4 of the relevant Crown forestry licences as are necessary to provide for ongoing legal access for forestry operations; and
  - b. provision for access to, and protection of, wāhi tapu of other iwi/hapū.
- 76 The Settlement Legislation will provide for the accumulated rentals (held by the Crown Forestry Rental Trust), associated with the Licensed Crown Forest Land selected for transfer to Te Pou a Haokai and Ngai Tamanuhiri, to be paid to Te Pou a Haokai and Ngai Tamanuhiri in accordance with the trust deed of the Crown Forestry Rental Trust dated 30 April 1990 (as if the Waitangi Tribunal had made a final recommendation for the return of that land to the Governance Entity) on Settlement Date. The accumulated rentals are in addition and separate to the Financial and Commercial Redress Amount.

- 77 Any Licensed Crown Forest Land within the Area of Interest that is not selected for transfer to Te Pou a Haokai and Ngai Tamanuhiri will be available to the Crown to retain (for use in future settlements with other claimant groups) or dispose of as it chooses. The Settlement Legislation will therefore remove all statutory protections for Tūranganui-a-Kiwa in relation to such land.
- 78 In the event of the Settlement Systems Futures and Emissions Units Bill regarding New Zealand Units (relating to Units being made available to Licensed Crown Forest Land owners) being enacted prior to Settlement Date, the Units will be allocated to Te Pou a Haokai and Ngai Tamanuhiri for nil consideration.
- 79 Licensed Crown Forest Land will be valued on the basis that New Zealand Units will not transfer with the land.
- 80 Furthermore, property 6 in **Attachment 4, Table 2** will be added to the Wharerata Forest legal description for convenience and will form part of the Tūranganui-a-Kiwa settlement package subject to the resolution of overlapping claims and agreement on other terms of transfer including whether all or part of that property has a Transfer Value.

*Right of Deferred Selection: Surplus and Sale and Leaseback Properties*

- 81 The Deed of Settlement will provide for the Governance Entity with a right of deferred selection for Surplus and Sale and Leaseback Properties and the opportunity to exercise the right of deferred selection once within:
- a the period of six months after Settlement Date over any or all of the Surplus Properties identified in **Attachment 4, Table 2**;
  - b the period of six months after Settlement Date over properties 26 and 29 from **Attachment 4, Table 4** if they become surplus and pass into the Office of Treaty Settlements Landbank prior to signing a Deed of Settlement; and
  - c the period of two years after Settlement date over any or all of the Sale and Leaseback Properties identified in **Attachment 4, Table 3** to be leased back to the Crown, subject to agreement between Tūranga Manu Whiriwhiri and the relevant Crown agency of the lease terms and conditions.
- 82 The transfer and leaseback to the Crown of the Sale and Leaseback Properties will relate to the land only and not any improvements on the land.
- 83 The Deed of Settlement will set out the terms and conditions of the right of deferred selection. The Transfer Value for the properties selected under the deferred selection process will be at a fair market value and determined in accordance with an agreed valuation process, such as that outlined in **Attachment 7**. The effective date of valuation will be the date the deferred selection is exercised.

### Conditions for Commercial Redress Properties

- 84 The transfer of the Commercial Redress Properties will be subject to (where relevant):
- a the consent of the relevant Crown agency;
  - b confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1981, exist in relation to the property or asset; and any other statutory provisions which must be complied with before the property or asset can be transferred are able to be complied with;
  - c any express provisions relating to specified properties and assets that are included in the Deed of Settlement;
  - d standard terms of transfer and specific terms of transfer applicable to the specified property or asset;
  - e standard terms of leaseback and specific terms of leaseback applicable to the specified property or asset;
  - f any rights or encumbrances (such as a tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the property or asset to be transferred, either existing at the date the Deed of Settlement is signed, or which are advised in the disclosure information to be provided to Tūranga Manu Whiriwhiri as being required;
  - g Part 4A of the Conservation Act 1987 and the creation of marginal strips except as expressly provided;
  - h sections 10 and 11 of the Crown Minerals Act 1991; and
  - i the Crown confirming the nature and extent of overlapping claims to the properties or assets, and the Crown being satisfied that these interests have been appropriately safeguarded.

### Right of First Refusal

- 85 The Deed of Settlement will provide the Governance Entity with a right of first refusal over the Right of First Refusal Properties identified in **Attachment 4, Table 4**, and any of the Sale and Leaseback Properties that are not selected by Tūranga Manu Whiriwhiri as one of the Sale and Leaseback Properties within the two year period. The right of first refusal will be on similar terms and conditions as in other recent settlements and for a period of 169 years from Settlement Date.
- 86 In respect of Landcorp Farming Limited and Ontrack properties in the Area of Interest the Crown will, between the signing of the Agreement in Principle and the initialling of a Deed of Settlement, explore with the relevant Minister/s

opportunities for Tūranga Manu Whiriwhiri in respect of those Landcorp Farming Limited and Ontrack properties, including a right of first refusal.

## Section 4: Other Issues

### Claimant Definition

87 The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and therefore who can benefit from the settlement.

88 The definition of Tūranganui-a-Kiwa comprises the following:

- a Rongowhakaata includes Ngā Uri o Te Kooti Rikirangi and are:
  - i the collective group composed of persons:
    - A who descend from:
      - (a) the eponymous ancestor Rongowhakaata and in particular Rongowhakaata's wives Turahiri and Moetai and their issue; and
      - (b) any other ancestor of the hapū/descent groups listed below who exercised customary interests within the Rongowhakaata areas after 6 February 1840; and
    - B who are members of one or more of the following principal hapū of Rongowhakaata:
      - (a) Ngāti Maru;
      - (b) Ngāi Tawhiri;
      - (c) Ngāti Kaipoho; and
    - C every whānau, hapū or group of persons to the extent that that whānau, hapū or group includes persons referred to in paragraph 88ai above; and
    - D every person referred to in paragraph 88ai above;
- b Te Pou a Haokai comprises Te Aitanga a Mahaki, Whanau a Kai, NgaAriki Kaiputahi, Te Whanau a Wi Pere and Te Whanau a Rangiwakataetaea, and are:
  - i the collective group composed of persons:
    - A who descend from one or more of the following ancestors:
      - (a) Mahaki, Kaikoreaunei, Rawiri Tamanui, Te Rangiwakataetaea Tarahau; and
      - (b) any other recognised ancestor of the hapu/descent groups listed below who exercised customary interests within the areas of Te Aitanga a Mahaki, Whanau a

Kai, NgaAriki Kaiputahi, Te Whanau a Wi Pere and Te Whanau a Rangiwhakataetaea after 6 February 1840; and

- B who are members of one or more of the following hapu/descent groups:
    - (a) Ngāti Wahia, Ngā Potiki, Te Whanau a Kai, Te Whanau a Iwi, NgaAriki Kaiputahi, Te Whanau a Wi Pere, Te Whanau a Rangiwhakataetaea – Ngāti Matepu, Te Whanau a Taupara, Ngai Tamatea, Ngai Tuketenui, Ngāti Whakauaki, Ngāti Hikarongo, Ngai Tawhiri, Ngapuhi, Te Whanau a Eria, Ngati Titinui, Te Whanau a Tamarau, Te Whanau Takuwha, Ngai Te Kohu, Ngai Tu Te Aritonga, Ngai Tama, Ngāti Rangituamaro, Ngāti Hine, Ngāti Ruawairau, Ngai Te Pokigawaho, Ngāti Kohuru, Ngāti Kaia, Ngariki Po, Ngariki Rotoawe, Ngāti Rua (Ruarapua), Te Whanau a Te Atipu; and
  - C every whānau, hapū or group of persons to the extent that that whānau, hapū or group includes persons referred to in paragraph 88; and
  - D every person referred to in paragraph 88bi above;
- c Ngāi Tamanuhiri are:
- i the collective group composed of persons:
    - A who descend from the following ancestor:
      - (a) Tamanuhiri; or
      - (b) Any other recognised ancestor of the hapū/descent groups listed below who exercised customary interests within the Ngāi Tamanuhiri area after 6 February 1840; and
    - B who are members of one or more of the following hapū/descent groups:
      - (a) Ngāti Rangiwhaho Matua, Ngāti Rangiwhaho, Ngāti Kahutia, Ngāti Rangitauwhiwhi, Ngāti Tawehi; and
    - C every whānau, hapū or group of persons to the extent that that whānau, hapū or group includes persons referred to in paragraph 88ci above; and
    - D every person referred to in paragraph 88ci above.

89 The format for the definition of Tūranganui-a-Kiwa will be discussed in the process of finalising a draft Deed of Settlement and will use a format similar to that used for recent settlements.

## Scope of Settlement

- 90 The Deed of Settlement will settle all the Historical Claims of Tūranganui-a-Kiwa. “Historical Claims” means every claim made by Tūranganui-a-Kiwa) (in accordance with the definition in paragraph 88 above) or by a representative entity of Tūranganui-a-Kiwa:
- wherever the claim occurs, including any claims relating to matters outside the Area of Interest;
  - whether or not the claim has arisen or been considered, researched, registered, or notified;
  - whenever the claim is made (either before, on, or after Settlement Date) that:
    - a is founded on a right arising from the Treaty of Waitangi or the principles of the Treaty of Waitangi; under legislation, at common law (including aboriginal title or customary law), from a fiduciary duty, or otherwise; and
    - b arises from or relates to acts or omissions before 21 September 1992:
      - i by or on behalf of the Crown; or
      - ii by or under any legislation;
    - c accordingly includes (without limiting the general wording of paragraphs 90a and 90b above):
      - i every claim to the Waitangi Tribunal that relate specifically to Tūranganui-a-Kiwa, including:
        - A Wai 283, Wai 684, Wai 856, Wai 337, Wai 878, insofar as these relate to Rongowhakaata (including Nga Uri o Te Kooti Rikirangi);
        - B Wai 274, Wai 323, Wai 499, Wai 507, Wai 703, Wai 874, Wai 892, Wai 895, Wai 995, Wai 997, Wai 283, Wai 878, Wai 915, Wai 957, insofar as these relate to Te Pou a Haokai (Te Aitanga a Mahaki, Whanau a Kai, NgaAriki Kaiputahi, Te Whanau a Wi Pere and Te Whanau a Rangihakataetaea); and
        - C Wai 129, Wai 163, Wai 917, Wai 283, Wai 878, insofar as these relate to Ngai Tamanuhiri.
- 91 The term ‘Historical Claims’ does not include any claim that a member of Tūranganui-a-Kiwa may have that is founded on a right arising as a result of being descended from an ancestor to whom paragraphs 88a, 88b and 88c above do not apply.

## Proposed Terms of the Deed of Settlement

### *Acknowledgements concerning the settlement and the redress*

- 92 The Crown and Tūranganui-a-Kiwa will acknowledge in the Deed of Settlement that:
- a the settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation and compromise;
  - b on the basis of current Crown Settlement policy it is not possible to fully compensate Tūranganui-a-Kiwa for all the loss and prejudice so suffered;
  - c this forgoing of full compensation is intended by Tūranganui-a-Kiwa to further contribute to the development of New Zealand over and above the contribution already made as a result of historical and current use of Tūranganui-a-Kiwa land and resources in breach of the Treaty to the detriment of Tūranganui-a-Kiwa themselves; and
  - d taking all matters into consideration (some of which are specified in this clause) the settlement is fair in the circumstances.

### *Acknowledgements concerning the settlement and its finality*

- 93 The Crown and Tūranganui-a-Kiwa will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the Historical Claims:
- a is intended to enhance the ongoing relationship between the Crown and Tūranganui-a-Kiwa (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);
  - b except as expressly provided in the Deed of Settlement, will not limit any rights or powers the Crown or Tūranganui-a-Kiwa might have arising from Te Tiriti o Waitangi/the Treaty of Waitangi or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, legislation, common law (including aboriginal title and customary law), fiduciary duty or otherwise;
  - c does not extinguish any aboriginal title, or customary rights, that Tūranganui-a-Kiwa may have;
  - d does not imply an acknowledgement by the Crown that aboriginal title, or any customary rights, exist; and
  - e is not intended to affect any actions or decisions under the:
    - i deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims; and
    - ii the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Māori Fisheries Act 2004, the Māori Commercial Aquaculture Claims Settlement Act 2004, the Fisheries Act 1996, the Foreshore and Seabed Act 2004, the Resource Management Act 1991 or the Marine Reserves Act 1971.

- 94 Tūranganui-a-Kiwa will acknowledge and agree (amongst other things) in the Deed of Settlement, and the Settlement Legislation will provide that, with effect from the Settlement Date:
- a the Historical Claims are settled;
  - b the settlement of the Historical Claims is final;
  - c the Crown is released and discharged from any obligations, liabilities and duties in respect of the Historical Claims;
  - d the Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:
    - i the Historical Claims;
    - ii the Deed of Settlement;
    - iii the redress provided to Tūranganui-a-Kiwa and the Governance Entity in the settlement; and
    - iv the Settlement Legislation,(except in respect of the interpretation and enforcement of the Deed of Settlement and the Settlement Legislation); and
  - e any proceedings in relation to the Historical Claims will be discontinued.
- 95 The Deed of Settlement will provide for Tūranganui-a-Kiwa by acknowledging and agreeing the following:
- a the Crown has acted honourably and reasonably in respect to the settlement;
  - b it is intended that the settlement is for the benefit of Tūranganui-a-Kiwa and may be for the benefit of particular individuals or any particular iwi, hapū, or group of individuals as is determined appropriate between Tūranganui-a-Kiwa and the Crown; and
  - c the settlement is binding on Tūranganui-a-Kiwa and the Governance Entity (and any representative entity of Tūranganui-a-Kiwa).

*Removal of statutory protections and termination of landbanking arrangements*

- 96 The Deed of Settlement will provide for Tūranganui-a-Kiwa by acknowledging and agreeing the following:
- a the Settlement Legislation will provide that the following legislation does not apply to land in the Specified Area (including Cultural and Commercial Redress Properties), namely:
    - i Sections 8A-8HJ of the Treaty of Waitangi Act 1975;
    - ii Sections 27A to 27C of the State Owned Enterprises Act 1986;

- iii Sections 211 to 213 of the Education Act 1989;
- iv Part III of the Crown Forests Assets Act 1989; and
- v Part III of the New Zealand Railways Corporation Restructuring Act 1990;
- b the Settlement Legislation will provide for the removal of all resumptive memorials from land in the Specified Area;
- c the landbank arrangements in relation to Tūranganui-a-Kiwa will cease;
- d that neither Tūranganui-a-Kiwa nor any representative entity of Tūranganui-a-Kiwa have, from the Settlement Date, the benefit of the legislation referred to in paragraph 96a above in relation to land outside the Specified Area; and
- e that neither Tūranganui-a-Kiwa nor any representative entity of Tūranganui-a-Kiwa will object to the removal by legislation of the application of the legislation referred to in paragraph 96a above in relation to any land outside the Specified Area, or to the removal of memorials with respect to such land.

### Conditions

- 97 The Agreement in Principle and/or the Deed of Settlement (as appropriate) will be subject to the following conditions:

#### *Overlapping Interests*

- a the Crown confirming that overlapping interests from other tribal groups in relation to any part of the settlement redress have been addressed to the satisfaction of the Crown in respect of that item of redress;

#### *Cabinet agreement*

- b Cabinet agreeing to the settlement and the redress to be provided to Tūranganui-a-Kiwa;

#### *Ratification*

- c Tūranga Manu Whiriwhiri obtaining mandate from the members of Tūranganui-a-Kiwa (through a process agreed by Tūranga Manu Whiriwhiri and the Crown) authorising it to:
  - i enter into the Deed of Settlement on behalf of Tūranganui-a-Kiwa; and
  - ii in particular, settle the Historical Claims on the terms provided in the Deed of Settlement;

#### *Governance Entity(ies)*

- d the establishment of an entity(ies) (the **Governance Entity(ies)**) prior to the introduction of Settlement Legislation that the Crown is satisfied:

- i is an appropriate entity(ies) to which the Crown will provide the settlement redress;
- ii has a structure that provides for:
  - A appropriate representation of Tūranganui-a-Kiwa;
  - B transparent decision-making and dispute resolution processes; and
  - C full accountability to all of part of Tūranganui-a-Kiwa as appropriate; and
- iii has been ratified by the members of Tūranganui-a-Kiwa (through a process agreed by Tūranga Manu Whiriwhiri and the Crown) as an appropriate entity to receive the settlement redress;
- e the Governance Entity(ies) signing a Deed of Covenant to provide for it, among other things, to be bound by the terms of the Deed of Settlement.

### *Settlement Legislation*

- 98 The Agreement in Principle and the Deed of Settlement will be subject to:
  - a the passing of Settlement Legislation to give effect to parts of the settlement; and
  - b Tūranganui-a-Kiwa supporting the passage of Settlement Legislation.
- 99 The Crown will propose Settlement Legislation for introduction into the House of Representatives only after the Governance Entity has been established and ratified and has signed a Deed of Covenant.
- 100 The Crown will ensure that Tūranga Manu Whiriwhiri or the Governance Entity has appropriate participation in the process of drafting the Settlement Legislation and such drafting will commence once the Deed of Settlement has been signed.

### **Taxation**

- 101 The Deed of Settlement will also include the following taxation matters:
  - a subject to obtaining the consent of the Minister of Finance, the Governance Entity will be indemnified against income tax and Goods and Services Tax (**GST**) arising from the transferring, crediting or payment of Financial and Commercial Redress by the Crown to the Governance Entity;
  - b this indemnity does not extend to any tax liability arising in connection with the acquisition of property by the Governance Entity after Settlement Date, whether it uses its own funds or uses the Financial and Commercial Redress for such acquisition;
  - c again, subject to obtaining the consent of the Minister of Finance, the Governance Entity will also be indemnified against income tax, GST and

gift duty arising from the transfer of Cultural Redress by the Crown to the Governance Entity; and

- d neither the Governance Entity nor any other person shall claim a GST input credit or tax deduction in respect of any Cultural Redress or Financial and Commercial Redress provided by the Crown to the Governance Entity.

### Interest

102 The Deed of Settlement will provide for the Crown to pay the interest on the Financial and Commercial Redress Amount for the period from (and including) the date of this Agreement in Principle to (but excluding) Settlement Date. Interest will be calculated and provided on the same basis as in recent settlements, i.e. based, among other things, on the Official Cash Rate, will be non-compounding, and subject to normal taxation law.

### Definitions

103 Key terms used in this document are defined as follows:

**Agreement in Principle** means this Agreement in Principle entered into between the Crown and Tūranga Manu Whiriwhiri on 29 August 2008 setting out the redress the Crown and Tūranga Manu Whiriwhiri have agreed to, in principle, for the settlement of the Historical Claims.

**Area of Interest** means the area shown in **Attachment 1**.

**Commercial Redress Properties** means those properties referred to in paragraph 70 to 83.

**Crown** means:

- a the Sovereign in right of New Zealand; and
- b includes all Ministers of the Crown and all Departments; but
- c does not include:
  - i an Office of Parliament; or
  - ii a Crown Entity; or
  - iii a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

**Cultural Redress Properties** means those properties referred to in paragraph 32, Table 1 and paragraph 33, Table 2.

**Deed of Settlement** means the Deed of Settlement to be entered into between the Crown and Tūranganui-a-Kiwa setting out the full detail of the final settlement of the Historical Claims.

**Financial and Commercial Redress** means the redress offered for the settlement of the Historical Claims as set out in paragraphs 66 to 86.

**Financial and Commercial Redress Amount** means the total dollar value of the financial and commercial redress offered for the settlement of the Historical Claims as set out in paragraph 66.

**Governance Entity** means an entity established in accordance with paragraph 97d.

**Historical Claims** has the meaning set out in paragraph 90 and 91.

**Licensed Crown Forest Land** means that land referred to in paragraphs 71 to 80.

**Right of First Refusal Properties** means those properties referred to in paragraph 85.

**Sale and Leaseback Properties** means those properties referred to in paragraph 81c and identified in **Attachment 4**, Table 3.

**Settlement Date** means the date that is 20 business days after the date the Settlement Legislation comes into force, being the date on which the settlement redress is to be transferred to the Governance Entity.

**Settlement Legislation** means the Bill or Act, if the Bill is passed, to give effect to the Deed of Settlement.

**Specified Area** means the area referred to in paragraph 96a, which is yet to be agreed between the parties, but:

- a will include the Cultural and Commercial Redress Properties; and
- b may include other lands if the Crown is satisfied that Tūranganui-a-Kiwa have exclusive customary interests in those lands.

**Surplus Properties** means those properties referred to in paragraphs 81a and identified in **Attachment 4**, Table 2.

**Transfer Value** means the amount referred to as such, and determined by, the process set out in **Attachments 6 and 7** for the Commercial Redress Properties.

**Tūranga Coastal Marine Area** means the coastal marine area as defined under section 2 of the Resource Management Act 1991 that adjoins the Tūranganui-a-Kiwa Area of Interest (as shown on **Overview Map A in Attachment 3**).

**Tūranga Manu Whiriwhiri** means the negotiators who have been appointed by the mandated bodies in paragraph 1 to negotiate the settlement of Tūranganui-a-Kiwa Historical Claims.

**Tūranganui-a-Kiwa** means the collective group, and groups and individuals who descend from a recognised ancestor, or a members of one or more hapu of Rongowhakaata (including Ngā Uri o Te Kooti Rikirangi), Te Pou a Haokai (comprising Te Aitanga a Mahaki, Whanau a Kai, NgaAriki Kaiputahi, Te Whanau a Wi Pere and Te Whanau a Rangiwahakataetaea), and Ngai Tamanuhiri.



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David Hawea  
Chairman – Te Whanau a Kai Trust

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Na Rongowhakaata Raihania  
Chairperson – Ngai Tamanuhiri Whanui Trust

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Rapiata Darcy Ria  
Kaumatua - Rongowhakaata

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Peter Moeau  
Manu Taki – Ngā Uri o Te Kooti Rikirangi

**WITNESSES:**

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## Section 5: Attachments