TAPUIKA

and

TAPUIKA IWI AUTHORITY TRUST

and

THE CROWN

DEED OF SETTLEMENT OF HISTORICAL CLAIMS

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16 December 2012

PURPOSE OF THIS DEED

This deed –

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Tapuika and breached the Treaty of Waitangi and its principles; and

- provides an acknowledgment by the Crown of the Treaty breaches and an apology; and

- settles the historical claims of Tapuika; and

- specifies the cultural redress, and the financial and commercial redress, to be provided in settlement to the governance entity that has been approved by Tapuika to receive the redress; and

- recognises and provides redress for and settles past wrongs of the Crown in relation to Tapuika thereby to provide the basis for a fresh start for the relationship between Tapuika and the Crown; and

- includes definitions of –

  - the historical claims; and

  - Tapuika; and

- provides for other relevant matters; and

- is conditional upon settlement legislation coming into force.

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DEED OF SETTLEMENT

THIS DEED is made between

TAPUIKA

and

TAPUIKA IWI AUTHORITY TRUST

and

THE CROWN

KARAKIA NA TIA

Tuia te rangi

Tokona te rangi

Te maungarangi ki te whai ao ki te ao marama

Tau te tamore pai ki raro

Whakaekehia whakaokorau

Tutara wiwini

Tutara wawana

Ma te tapu ihi ma te tapu mana

Ma whakarere atu ki te rangi

Awatea tenei te pou ka tu

Te pou teina koia i tua

Koia i waho koia to pukepuke

To maharahara

E tu hurinuku

E tu hurirangi

E tu pakau rowha

He nuku ki runga

He nuku ki raro

He nuku hina atu

He nuku hina mai

He nuku whakahotu manawa e te toa

Whakauauarongo kia tina

Whano whano hara mai te toki

Haumi e hui e taiki e!

MIHI

Ko Tapuika te tangata

Ko Tapuika te whenua

Ko Tapuika te whare o te tangata

Ko Tapuika te mātāpuna o te tangata

Tihei mauri ora

Te mea tuatahi, ka huri ki te poroporoaki ki a mātou tipuna ariki a Atuamatua, "E Tia, e Oro, Maka, nau mai haere ki uta. Kaua hei mau ki tai ki tu, kaua e haere kite kimi pākanga, engari e mau ki uta ki tu ki noho he huhu, he popo, he hanehane."

Te mea tuarua, te kōrero i o mātou tipuna a Tia me tana taunaha ki te whenua, ki te moana mo tana tamati o Tapuika."Mai i nga pae maunga ki te toropuke e tu kau mai ra ki te awa e rere mai ana, waiho te whenua ko Te Takapu o Taku tamaiti, a Tapuika."

Te mea tuatoru, ka huri noa e nga mate maha e takoto ana i o tātou Marae maha puta noa i te Motu, tāenoa atu ki a rātou kua wheturangitia.

Haere, ki Hawaiki nui, Hawaiki roa, Hawaiki pāmamao. Haere ki te putahitanga a Rehua, te huihuingā o te mano, ahakoa te aroha.

No reira, haere, haere, haere atu ra.

Ko Rangiuru me Otawa e nga maunga tawhito

E ngā hapu o Ngāti Tuheke, Ngāti Marukukere, Ngāti Kuri, Ngāti Moko.

E ngā uri o Tapuika katoa, karanga mai, mihi mai

Tērā e kiia he taumahatanga mo te iwi e whakapau kaha ana kia oti ō rātou mahi me te karauna. Ka tika pea, engari whakaarohia ngā hua a ngā wā e heke mai nei, whai muri I te whakataunga o ngā take. Tērā pea, ka pai ake kia eke rātou ki runga I te waka I mua I te pae tawhiti kia haere ngātahi ai tātou

Ki a Tapuika, he tupuna te awa o Kaituna.

E mau ana te mana, te mauri me te rangatiratanga o te iwi.

He mauri motuhake tō te awa.

He wairua ake tōna, he tuakiri tino kaha.

He mauri tū tahi e kore e wehea.

Heoi anō he whakaaro noa iho tēnei kia hoki mai te wairua pai, te ngākau aroha ki roto I ngā mahi whakatau take tiriti. Kia tūtuki ai I runga I ngā whakapono, te tumanako me te aroha o tētahi, ki tētahi.

Tena koutou i raro i te taumaru o te runga rawa, tena koutou katoa.

Na Teia Williams

KIMIHIA RANGAHAUA

Kimihia rangahaua

Kai hea te momo o Tapuika kua ngaro nei

Aua!

Kai roto pea

Kai ana parepare e whakatakoto matua ana

E Heeni e!

E kapo ki nga whetu e kapo ki te marama

E kapo ki te ata o Toheriri ka riro

Ka riro koa ki te warangatia kua puhi puhia ki te raiwhara

E moe ra

He kawenga mana mana a hau no Toheriri ki te awa a te atua

Ka tu toina tina a Wiremu

Ka tu toina tina a Arama

Noho ana mai noho ana mai

Te tangata kawe riri ki te pakeha

Kia riro mai ai ko te tima ko te rakau toru hai taonga

E hoki mai ai ki nga wahine ki nga tamariki

Ka mahue atu te totara hei mata nei a Toheriri

Maihi -Haimona - Huni na Hakaraia

Tiki mai! Whakangaoko i te whenua ka tanuku Rangiuru kai raro!

1 BACKGROUND

NEGOTIATIONS

1.1 The Crown entered into joint terms of negotiation with Tapuika and with Ngāti Rangiwewehi on 14 August 2008.

1.2 The joint terms of negotiation agreed the scope, objectives, and general procedures for negotiating the deed of settlement.

1.3 Tapuika gave the mandated negotiators a mandate to negotiate a deed of settlement with the Crown on 14 August 2008.

1.4 The Crown recognised the mandate on 30 October 2008.

1.5 On 25 July 2009, the joint terms of negotiation were amended to include Ngāti Rangiteaorere under the banner of the Ngā Punawai o Te Tokotoru. While all three iwi negotiated as part of Ngā Punawai o Te Tokotoru, each iwi has entered into separate agreements in principle and deeds of settlement.

1.6 This deed of settlement is in relation to the historical claims of Tapuika.

1.7 The mandated negotiators of Tapuika and the Crown -

1.7.1 by joint terms of negotiation dated 14 August 2008, agreed the scope, objectives, and general procedures for the negotiations; and

1.7.2 by agreement dated 16 June 2011, agreed, in principle, that Tapuika and the Crown were willing to enter into a deed of settlement on the basis set out in the agreement; and

1.7.3 since the agreement in principle, have –

(a) had extensive negotiations conducted in good faith; and

(b) negotiated and initialled a deed of settlement.

RATIFICATION AND APPROVALS

1.8 Tapuika have, since the initialling of the deed of settlement, by a majority of-

1.8.1 95.1%, ratified this deed and approved its signing on their behalf by Tapuika Iwi Authority Trust; and

1.8.2 97.1%, approved the governance entity receiving the redress.

1.9 Each majority referred to in clause 1.8 is of valid votes cast in a ballot by eligible members of Tapuika.

1.10 The governance entity approved entering into, and complying with, this deed by a resolution of trustees on 15 December 2012.

1.11 The Crown is satisfied –

1.11.1 with the ratification and approvals of Tapuika referred to in clause 1.8; and

1.11.2 with the governance entity's approval referred to in clause 1.10; and

1.11.3 the governance entity is appropriate to receive the redress.

AGREEMENT

1.12 Therefore, the parties –

1.12.1 in a spirit of co-operation and compromise wish to enter, in good faith, into this deed settling the historical claims; and

1.12.2 agree and acknowledge as provided in this deed.

2 HISTORICAL ACCOUNT

2.1 The Crown's acknowledgements and apology to Tapuika in part 3 are based on this historical account.

TE TAKAPU O TAPUIKA

2.2 The origins of Tapuika date back to Hawaiiki, from where Tia and his son Tapuika journeyed to Aotearoa on the waka Te Arawa. Tia claimed for his son the lands he saw from the waka as it lay offshore between Mōtiti Island and the outlet of the Wairakei Stream at Papamoa: "Mai i ngā pae maunga ki te toropuke e tū kau mai rā ki te awa e rere mai ana, waiho te whenua ko te takapū o taku tamaiti ā Tapuika ("From the range of mountains in the distance to the hill which stands before me, to the river that flows towards me, I proclaim these lands as the belly of my son Tapuika"). The lands within the taumau of Tia (claim or reserve bespoken of by Tia) are known as Te Takapū o Tapuika and thereafter formed the tribal estate of his descendants, the iwi Tapuika.

2.3 Te Takapū is an area rich in waterways, wetlands, cultivation lands, and forests. Tapuika lived within Te Takapū and is buried in the Koaretaia urupā at Maketū. The children and grand-children of Tapuika settled throughout Te Takapū, occupying and naming many places, and establishing numerous hapū. The main hapū today are Ngāti Marukukere, Ngāti Moko, Ngāti Kuri, and Ngāti Tūheke. Through chiefly marriages and alliances Tapuika, for the most part, established mutually beneficial relationships with neighbouring iwi. During the 1830s Maketū became a hub of early commercial and trading opportunities, leading to a struggle between Tapuika and other Māori over control over the area's coastal resources. These struggles culminated in protracted warfare and the temporary abandonment of the Maketū area, before Tapuika returned to their traditional coastal settlements.

TAPUIKA – CROWN RELATIONSHIP, 1840–1863

2.4 In 1840 Crown agents brought copies of the Treaty of Waitangi to the Bay of Plenty district, but not to Maketū. Consequently, Tapuika chiefs had little or no opportunity to consider whether or not they should sign the Treaty. Evidence from the 1840s and early 1850s suggests that there was little support for the Treaty and the notion of British sovereignty among Bay of Plenty Māori. In 1843 Māori in the Maketū area sought the presence of a Crown official to mediate in their local conflicts. This led the Crown to appoint a Police Magistrate and Sub-Protector of Aborigines for the Tauranga District. The Police Magistrate subsequently established his headquarters at Maketū in 1843.

2.5 In about May 1843 the Police Magistrate opened negotiations with another iwi to acquire a block of about 500 acres at Maketū for a residence and base for his official duties. Tapuika immediately occupied a pā nearby, and informed the Police Magistrate that the "mana of the land" he sought to buy belonged to their chief Te Koata. At a meeting in Rotorua convened by the Police Magistrate to discuss the issue, Te Koata and Tapuika maintained that the land in question had never been absolutely abandoned by his ancestors and that their rights to it had "consequently never been extinguished."

2.6 Tapuika's protest contributed to the purchase being delayed from May 1843 to December 1844. Additional payments were made during this period and the area acquired by the Crown reduced from an estimated 500 acres to 42 acres. This assuaged Tapuika's grievance.

2.7 In the 1840s and 1850s, Bay of Plenty Māori were profitably engaged in trading large amounts of their produce on the Auckland market. Tapuika owned several trading vessels in this period. From the mid-1850s Bay of Plenty Māori also turned their efforts to the expansion of their horticultural and agricultural efforts.

2.8 In 1860, the Crown convened the Kohimārama conference, a large hui for Crown and iwi representatives, in response to the activities of Kīngitanga in support of Māori autonomy and the development of war in Taranaki. Mohi Kupe, Rota Te Wharehuia, and Tāmati Hapimana of Tapuika attended the conference. They expressed opposition to the Kīngitanga, and supported the uniting of Māori and Pākehā and the protective role of the Crown as promoted to them by Governor Gore Brown and Native Secretary Donald McLean at Kohimārama.

2.9 At Kohimārama, McLean raised the issue of a land purchase at Maketū. In the context of possible war against tribes considered by the government to have formed "land leagues" preventing sales of land to the Crown, Tāmati Hapimana sought settlers for Tapuika's land at Maketū, "the place which has cherished me from childhood even until now."

2.10 Those Tapuika who spoke at Kohimārama of selling lands did not represent the views of all of the iwi. In 1860, Paora Paruhi, a Tapuika rangātira at Kenana, heard of another iwi's proposal to sell land near Maketū. Paruhi moved to Whakapoukōrero (between Pūkaingataru and Maketū) to defend his customary claims there. The proposal to sell the land was subsequently abandoned.

2.11 Tapuika wished to establish a partnership with the Crown in the administration of their district. In 1861 the Governor promoted a system for the administration of "Native Districts" which came to be known as the Rūnanga system, or "new institutions". Māori districts were to be controlled by Village and District Rūnanga and whakawā (assesors), supervised by Pākehā officials. The Crown's intention was that these bodies would also undertake the role of defining tribal, hapū, and individual land interests. This promised a level of Māori self-government. Tapuika and others welcomed the new institutions when they were introduced to them at a hui at Maketū in December 1861. The new institutions were being implemented by mid-1862 but only one whakawā was appointed at Maketū. In the end, the new institutions proved short-lived, being disestablished in 1865.

WAR

2.12 Tapuika were not at first directly affected by the Crown's unjustified invasion of the Kīngitanga's Waikato heartland in July 1863. As the Crown progressed towards a military defeat of Kīngitanga forces in the Waikato campaign, it opened a new front of war in Tauranga in January 1864, drawing in many Tapuika in defence of their Tauranga kin and their lands. Some in Tapuika had close ties to the Tauranga Kīngitanga, and sympathised with them, while others had close ties to inland iwi and, like most of them, opposed Kīngitanga.

2.13 In March 1864, two hundred Crown troops established a fort at Pukemaire pā, Maketū, with a view to preventing a large taua of Kīngitanga from outside the district from reinforcing their allies in the Waikato. Tapuika, including some Kīngitanga supporters, were amongst a group of Māori who opposed the passage of the taua through their lands. In late April 1864, with artillery support from warships offshore, the Māori and Crown force at Maketū repelled the taua, inflicting severe casualties at Kaokaoroa Beach as the taua retreated along the coast to Matatā.

2.14 Few Tapuika Kīngitanga had come into conflict with Crown to this point, but at Kaokaoroa some joined with the Kīngitanga taua, including Toheriri. A warrant had been

issued previously for Toheriri's arrest. The Tapuika waiata Kimihia Rangahaua records that he was captured in battle by Crown forces and later executed at Te Awa o te Atua. Those Tapuika who fought against the Kīngitanga taua at Kaokaoroa to defend their lands then joined with Tauranga Kīngitanga when they defeated the Crown at the battle of Pukehinahina (Gate Pā) on 29 April 1864, again in order to defend their lands.

2.15 A further engagement involving Tapuika took place at Te Ranga in June 1864. At Te Ranga, Māori were surprised by a Crown reconnaissance force before they had completed their rifle pits and defensive works. The Crown forces opened fire and when their reinforcements arrived, assaulted the Māori position. Several Tapuika men from Kenana were among the heavy casualties suffered by those who held the line during the withdrawal of the main Kīngitanga force.

CONFISCATION

2.16 In 1863, the Crown enacted the New Zealand Settlements Act which provided for the confiscation of Māori land whenever the Governor in Council was satisfied that "any native tribe or section of tribe or any considerable number thereof" had been engaged in rebellion against the authority of the Queen. Confiscated land was to be allocated to military and other settlers with a view to provide for future peace and security. Sales of confiscated land were intended to recoup the Crown's costs of the wars against Māori. The British Colonial Office had misgivings about the scope and application of the Act, considering it "capable of great abuse."

2.17 In early August 1864, after the battle of Te Ranga, many Tauranga Māori formally submitted to the Crown at a peace conference at Te Papa. At the conference Governor Grey and certain chiefs arranged that all the land belonging to a Tauranga iwi would be confiscated, but that ultimately three-quarters of the land would be returned. Tapuika did not participate in this conference. Those at Kenana had fled the district in the wake of their defeat at Te Ranga, having been threatened by the Crown's Māori allies with captivity if they did not surrender and swear an oath of allegiance to the Crown. Tapuika Kīngitanga did not formally submit to the Crown, other than eight or nine Tapuika fighters who were among a group of 49 men, women, and children who surrendered to the Crown at Maketū on 22 August 1864.

2.18 The few Tapuika who surrendered to the Crown at Maketū in August 1864, were informed that they should surrender their lands to the Crown, as some Tauranga Māori had done, as well as giving up the few guns in their possession and taking the oath of allegiance. Although they took the oath and yielded their weapons, the captured Tapuika fighters did not offer up their lands to the Crown. In December 1864, rangātira of inland iwi who had fought alongside the Crown's forces resolved that the lands of those who had opposed the Crown, such as Tapuika, should be confiscated.

2.19 In May 1865, the Crown issued an Order in Council under the 1863 Act declaring that an area of some 214,000 acres around Tauranga would become a district set apart "for settlements and colonization". The Order declared that three-quarters of that land would be returned, but did not provide for a Compensation Court, as contemplated by the Settlements Act, to determine whom the land would return to. The confiscation proclaimed in May 1865 was intended to punish Tauranga Māori, not Tapuika, and the 214,000 acres did not then appear to include Tapuika lands. Before the district was proclaimed there were suggestions that it be extended eastward to the Kaituna River, which would have taken in customary lands of Tapuika. The inland iwi who had supported the Crown in 1864 and 1865 objected to this boundary as they asserted interests in this area. The boundary was then amended to that proclaimed in May 1865.

2.20 The boundaries of the Tauranga confiscation district were amended again in September 1868 by the Tauranga District Lands Act 1868 after the Crown acknowledged that the boundaries given in 1865 were erroneous and could not be surveyed. The 1868 Act increased the confiscation district from 214,000 acres to 290,000 acres, taking in land around two maunga important to Tapuika, Otanewainuku and Ōpoutihi. The Native Land Court later awarded land adjacent to these maunga outside the confiscation district to Ngāti Tauana, a hapū of Tapuika, which was considered by the Court to be a hapū of another iwi. Tapuika were not consulted about, and did not consent to, the 1868 extension to the confiscation.

THE TAURANGA BUSH CAMPAIGN

2.21 In September 1864 letters from emissaries of a new Māori faith, Pai Mārire, were distributed in the Tauranga district, and specifically to unsurrendered Kīngitanga, including some Tapuika. The Pai Mārire ("Good and Peaceful") religion, also known as the Hauhau movement, was founded in Taranaki by Te Ua Haumene in 1862. Based on the bible, Pai Mārire promised the achievement of Māori autonomy. Its message of peace and autonomy of religious worship appealed to many Māori at a time of war, and a number of North Island Māori had converted to the new faith by the end of 1864. A community of Pai Mārire supporters, including most Tapuika, was based at their main settlement, Kenana, under their long-established spiritual leader Hakaraia, and by February 1865 the extent of support for Pai Mārire concerned Tauranga Civil Commissioner Clarke.

2.22 In April 1865 Governor Grey issued a proclamation condemning the "fanatical sect, commonly called Pai Mārire" and declaring the Crown's intention to "resist and suppress, by the force of arms if necessary...fanatical doctrines, rites and practices" committed in the name of this new religion. The Crown's capacity to enforce this proclamation was limited, however, as a consequence of which all "well-disposed" persons were also requested to assist in its enforcement. In 1865 the inland iwi who had militarily supported the Crown in 1864–1865, and who occupied lands around Maketū claimed by Tapuika, endorsed the Crown's opposition to Pai Mārire. Clarke advised them that the Crown's opposition to Pai Mārire legitimised their desire to suppress adherents of the faith at Kenana, including Tapuika and Hakaraia's followers. The Crown armed the inland iwi and encouraged them to oppose local Pai Mārire, but for much of 1865 they were occupied in a campaign against other Pai Mārire in the eastern Bay of Plenty.

2.23 In late 1864 the Crown began surveying the Tauranga confiscated lands. A group of Māori, including some Tapuika, opposed the survey. In May 1866, after a temporary halt, the Crown resumed the survey and extended it inland into lands of interest to Tapuika and other iwi. In response a Kīngitanga aukati was set up in the southern part of the confiscated block to oppose the confiscation and to protect the interests of the traditional owners, including Tapuika. In December 1866, as tensions escalated, violence was threatened against the surveyors, leading the Crown to provide the survey party with armed guards. Equipment confiscated from the surveyors was later found at the headquarters of Hakaraia. In January 1867, an unauthorised Crown patrol breached the aukati in the south of the confiscated block igniting a skirmish that grew into a larger conflict now known as the Tauranga bush campaign. This campaign was characterised by the Crown's use of scorched earth tactics in which settlements, extensive cultivations, food stores, and livestock were destroyed.

2.24 In December 1866 and January 1867, surrounded by rising turmoil, those Tapuika who followed Hakaraia remained peacefully at Kenana. At the end of January 1867 they withdrew to Taumata, a seasonal settlement inland of Tauranga, seeking to ensure that

conflict was confined to the Tauranga district, and did not occur at Maketū, Kenana, or Te Puke. However, Defence Minister Theodore Haultain considered Hakaraia and his supporters to be rebels so "extreme measures" were to be taken against them. On Haultain's instructions, the Crown's Māori forces destroyed the settlements of Kenana and Te Puke and the cultivations around them, before pushing inland to destroy other settlements and cultivations. Privately, Haultain reported that he directed Hakaraia's place "to be destroyed as a special punishment to him". The Tapuika at Kenana were also subjected to this punishment because Hakaraia had lived there with them.

2.25 Crown forces pursued Hakaraia and his party, including Tapuika, in the bush-covered hills inland of Tauranga. In early February 1867, they sacked the kainga at Akeake, Māenene, Taumata, Oropi and Paengaroa. The extensive cultivations in the area were also torched. The Crown forces "scoured" the surrounding bush and looted property hidden there by the fleeing occupants of the kāinga. Tapuika and other Māori suffered this collective punishment because the Crown failed to apprehend the individuals responsible for resisting the surveying. A girl taken captive at Akeake revealed that Hakaraia had only fifty-nine men, and had not wished to fight before the Crown took offensive action. Other estimates of his forces were similarly low.

2.26 Crown forces continued to destroy kāinga and cultivations in the south of the Tauranga confiscation district through February and into March 1867. They failed to capture Hakaraia or arrest those believed to be responsible for halting the survey of the confiscated land. Hakaraia's followers, including Tapuika, withdrew into the Kaimai ranges. The effects of the Tauranga bush campaign were severe for Tapuika.

2.27 In 1867 the Crown ordered members of an Arawa hapū who took a leading role in the bush campaign to occupy Kenana as it was considered a strategically important position for the defence of the Maketū district. The Crown advised them they could cultivate the land but this would "give them no claim to the soil". Even so, the hapū occupied the land beside the Waiari Stream for many years and some later claimed it as their "permanent abode."

2.28 Hakaraia remained in Kīngitanga territory for several years together with some Tapuika followers. Some of Hakaraia's group later moved to Whangamatā to dig kauri gum. Other Tapuika remained in Te Takapū; they did not surrender to the Crown and joined others affected by the Tauranga confiscation in again setting an aukati to protect their lands.

2.29 In about July 1869, Hakaraia met with the prophet Te Kooti Arikirangi Te Tūruki and agreed to support him. Te Kooti had been pursued by Crown forces since his escape from detention in July 1868. In early 1870, Te Kooti sought refuge with Hakaraia's party at Tāpapa, a kāinga in the Kaimai ranges. From there Te Kooti informed the Crown he sought peace and would remain quietly with Hakaraia's party. On 24 January 1870, seeking to capture Te Kooti, Crown forces destroyed Tāpapa, from which Te Kooti and Hakaraia's party had withdrawn. Reports of the conflict differ in their details, but according to a Kīngitanga official an elderly man and some women of Tapuika were killed in the assault. Te Kooti's forces then doubled back under cover of fog to attack the colonial force. Te Kooti and Hakaraia's party escaped the ensuing skirmish. Hakaraia was killed by Crown forces in an attack on Waipuna pā (Maraetahi) on 23 March 1870. Three men killed with him were said to be Tapuika. In 1883 Te Kooti and other combatants were included in a general amnesty for political offences that had been committed during the wars, but such an amnesty could not apply to those who had been killed in the wars, such as those Tapuika who fell at Tāpapa and Maraetahi.

"RETURN" OF THE CONFISCATED LANDS

2.30 The Crown proclaimed the Tauranga raupatu in 1865, but did not begin investigating Māori claims to the land outside the 50,000 acres retained by the Crown until 1873, and awards of the land were not completed until 1886. The prolonged process, administered by the Tauranga Lands Commissioner, was at times confused, inconsistent, and ad hoc. Hearings were not advertised and record keeping was inadequate. The Crown instructed the Commissioner to award the confiscated land to the Tauranga iwi involved in the 1864 agreement, but the Commissioner usually awarded land to those he identified as the customary owners. The Commissioner generally excluded unsurrendered rebels – as many Tapuika were – from titles or granted them greatly reduced awards from their customary lands.

2.31 One Tapuika claim to Ōtawa-Waitaha (4,947 acres) was not heard at the Commissioner's unadvertised inquiry in 1877. The case was reheard in early 1878, after much protest at the initial decision. In March 1878, the Commissioner who heard the rehearing asserted that only one iwi – not being Tapuika – had claims to Ōtawa-Waitaha. Tapuika again claimed the land when the Commissioner sat to determine the owners in September 1878. This claim was rejected without the basis for this finding being recorded. In 1880 some individuals linked to Tapuika petitioned the government about their exclusion from the title. The government referred the petition to the Commissioner, who rejected the claim and the government did not inquire further.

2.32 The Commissioner determined titles to Taumata No.'s 1 and 2 (5,310 acres) and Waoku (4,151 acres) in 1881 without Tapuika interests being considered. Three years before claims to those blocks came before him another of the Tauranga Commissioners asserted that Tapuika had no interests in the area.

THE TOA CLAIMS

2.33 One of the deepest grievances Tapuika holds against the Crown arises from the alienation of 40,000 acres of coastal land in the Tapuika rohe. In the 1870s a dispute arose between Māori over rights to land in the Maketū district. Tapuika had inhabited the area since ancient times. In the 1830s many Bay of Plenty Māori were drawn there seeking economic opportunities in the flax trade, which flourished at Maketū due to its harbour and proximity to coastal wetlands. The other iwi later claimed to have conquered the land through their toa, or prowess in battle, in a series of battles in the 1830s, and to have occupied it since. Tapuika, who based their claims to the land on ancestry and long occupation, strongly rejected the toa claims.

2.34 The toa claims in the Maketū district were unusual. "Toa" means "brave" or "bravery" and toa claims are usually asserted where a group with ancestral rights to land claims superior rights over others with similar ancestral rights by virtue of bravery or prowess in defence of that land against invaders. The claims made by other iwi to Tapuika's ancestral lands in the Maketū district in the 1870s were very different, being based on assertions of conquest in the 1830s. Tapuika also participated in the battles of the 1830s and did not consider these events affected their permanent rights of ownership.

2.35 The dispute, which was unique in customary terms, became overlaid with the deep divisions caused by the conflicts of the 1860s. Some Tapuika had fought against the Crown during the wars, while most of the other iwi involved in the toa dispute had fought alongside the Crown. Some leaders of the other iwi were of the view that Tapuika had forfeited their lands on account of their support for the Kīngitanga, Pai Mārire and Te Kooti. Under the New Zealand Settlements Act 1863, it was Crown policy to confiscate

land as a punishment for those Māori the Crown deemed to have been in rebellion. The Crown also instructed some of its Māori allies to occupy Tapuika land after the Bush Campaign. These allies had played a leading role in assaults on Tapuika settlements in 1867.

The Toa Claims in the Native Land Court

2.36 The enmities of war were still fresh when the Native Land Court began hearing the toa claims. The native land laws of the 1860s established the Court and provided for it to determine the owners of Māori land "according to native custom". The Crown intended that the native land laws would facilitate the opening up of Māori lands to colonisation. However, the new laws introduced a significant change to traditional Māori land tenure. Customary tenure was able to accommodate multiple and overlapping interests to the same land. The Native Land Court was not designed to accommodate the complex and fluid customary land usages of Māori as it assigned permanent ownership. Moreover, land rights under customary tenure were generally communal but the new land laws gave rights to individuals. It was also hoped that the application of the native land laws would eventually lead Māori to abandon the collective structures of their traditional landholdings. Among other objectives, the Crown hoped to detribalise Māori, and thought the new land laws would promote their eventual assimilation into European culture.

2.37 Māori were not represented in Parliament, when the 1862 and 1865 Native Land Acts were enacted. Property qualifications based on European land tenure denied most Māori men the right to vote until the establishment of four Māori seats in the House of Representatives in 1868. The Crown had generally canvassed views on land issues at the 1860 Kohimārama Conference, but the native land laws adopted a different approach, which did not fully reflect earlier proposals. Tapuika were not consulted on the legislation before its enactment and nor were they informed of its full implications.

2.38 Māori had no alternative but to use the Court if they wanted a title that would be recognised by the Pākehā legal system and that would enable them to integrate the land in question with the modern economy. A freehold title from the Court was necessary if they wanted to sell or legally lease land, or to use it as security to enable development of the land. However, the nature of the titles issued by the Court meant these were not widely accepted as security.

2.39 The Court first heard claims to land in the Maketū district in 1867 but few titles were issued before 1871. The first large block in the district investigated by the court was Pukāingataru, a block of 3,510 acres southwest of Maketū. It had been surveyed and claimed on the basis of toa by an individual from another iwi. The counter-claim of Tapuika was based on ancestral rights and long occupation.

2.40 In January 1871 the Native Land Court awarded title to Pūkāingataru (3,510 acres near Maketū) to Tapuika on the basis that Tapuika had not been permanently dispossessed of their ancestral lands and that the rights of Tapuika had not been affected by the military successes of the other iwi. The Court did not recognise a toa claim to the district but it did acknowledge that some of the other iwi had acquired individual rights of ownership to the small areas they had occupied since the 1830s (being small allotments at Maketū). The judge who heard the case was known as a scholar of Māori affairs and was familiar with land issues in the Maketū district. The Chief Judge of the Court later observed that the 1871 Pūkāingataru finding was in accord with the guiding principles concerning the Maketū lands he had set out for the judges of his Court in 1867.

2.41 Subsequent Court decisions over other Maketū land created unrest, prompting the Crown to close the Court at Maketū in 1871. The Crown then suspended the Court in

wider Rotorua and Taupo districts from August 1873 to February 1877. The Court did not sit again at Maketū until April 1878. Meanwhile, Crown purchase agents caused further tension by purchasing interests before the Native Land Court had investigated title.

2.42 In the court's absence, Tapuika maintained their claims to land in the district. In January 1875 they built a pā at their Te Kāraka kāinga, on the lower Kaituna River, to defend land that Crown officials had agreed to reserve for them from the Te Puke purchase. Conflict threatened and Tapuika agreed that in order to preserve the peace they would withdraw from Te Kāraka after harvesting their crops, and leave it to the Native Land Court to resolve ownership.

A "Sort of Judgment": the Crown Intervenes in the Toa Dispute

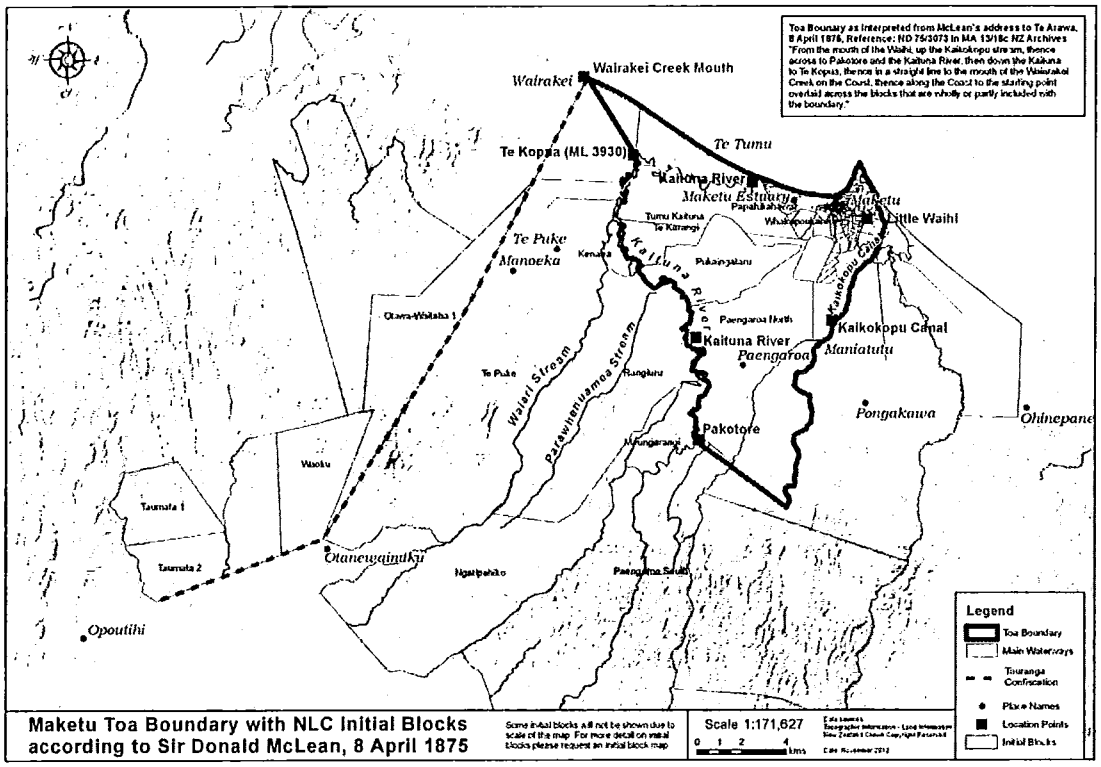
2.43 By 1875, tensions at Maketū were escalating over the activities of Crown purchase agents. Native Minister Donald McLean convened a public meeting at Maketū with Tapuika and other iwi to resolve the issue. He had previously acknowledged that "political" considerations, more than the quality of the land, had influenced Crown purchasing in the Maketū district, and sought to acknowledge the toa claims through a separate payment. During the speeches of welcome, a member of another iwi interrupted the Tapuika speaker and shouted, "Go to Waikato." That is, he cast Tapuika as Kīngitanga who no longer had a place on their customary lands around Maketū. The combined meeting only exacerbated tensions and was abruptly closed. McLean instead met separately with representatives of the iwi present over the next three weeks.

2.44 When Tapuika met with McLean, they emphasised to him their ancestral claims to Te Takapū o Tapuika, and the part they had played alongside the other iwi in retaking the Maketū district in the 1830s. They rejected the assertion that they had been conquered: "We live on our own land, from Maketū right up to Rangiuru. The great name by which this land is known is the Belly of Tapuika a Tia." Alluding to the role Tapuika played alongside the other iwi in retaking the land in the 1830s, Ngā Rewha of Tapuika added: "There are braves [toa] in my tribe, I also am a brave: there are chiefs too, and I also am a chief."

2.45 Before the meeting, McLean had received advice about the toa claims from the Resident Magistrate at Tauranga. In 1867 the same official, as Civil Commissioner, had permitted the occupation of Te Kahika, a Tapuika kāinga, by a hapū of another iwi allied to the Crown in the Tauranga Bush Campaign. The Resident Magistrate disagreed with the Native Land Court's 1871 Pūkāingataru judgment and recommended that the toa claims be recognised over a large part of the district, including Pūkāingataru. Before 1870 he had proposed a boundary to separate Tapuika claims from the toa claims but Tapuika had rejected his boundary.

2.46 After hearing from all of the iwi gathered at Maketū, McLean told them that Tapuika had established an ancestral title, but that other iwi had enabled Tapuika to occupy and retain their lands. Given this, he believed that the toa claims had to be recognised over part of the district. At the meeting, McLean followed the advice of the Tauranga Resident Magistrate in setting out the boundaries for the toa claims. He defined the boundary of the toa claims as a line from Waihi (at Maketū) up the Kaikōkopu River, across to Pākotore and the Kaituna River, down the river to Te Kōpua and then across to Wairakei on the coast and back to Maketū. This took in all of Tapuika's coastal land as well as a considerable portion of their rohe south of Maketū (See Figure 1). As McLean had indicated before the meeting began, this was a political solution to a tenurial dispute. It was, however, extremely unusual for the Crown to intervene so explicitly in a dispute over customary interests. Another official working in the district at the time later recalled that it had been expedient to recognise the toa claimants in order to preserve the peace.

Figure 1



2.47 McLean had told the iwi he met with at Maketū that he was not holding a Native Land Court investigation or otherwise determining title to the land. His boundary was not intended to be exclusive but was the area over which a payment was to be made to acknowledge the toa claims in existing land purchase operations. One of the Crown's land purchase officers in the Bay of Plenty thought £1,000 would suffice for the interests of the toa claimants.

2.48 McLean's 1875 boundary instead came to be regarded as a judgement on customary interests. Tapuika saw it as taking away their lands, and their supporters asked the toa claimants to "return to the Tapuika their lands which McLean took away from them, and has given to you". The Chief Judge of the Native Land Court subsequently stated that McLean had held a "quasi-judicial investigation" resulting in a "sort of judgment" that was later held over the Court. His "irregular proceedings" had pre-judged Native Land Court inquiries to lands which were subject to the toa claims.

2.49 A subsequent Native Land Court found that McLean had decided the boundary between Tapuika's ancestral claims and the toa claims of other iwi. All lands claimed by Tapuika beyond that boundary – approximately 40,000 prized coastal acres – were awarded to toa claimants. A number of Tapuika wāhi tapu, pā and cultivations were located in this area, including Koaretaia, an ancient urupā near the mouth of the Maketū estuary. Tapuika himself and several of his children are buried there. Tapuika, a coastal people, were left with no coastal lands.

2.50 Ultimately, the Pūkāingataru block was lost to Tapuika as well. Although it had been awarded to Tapuika in 1871, the Court found in favour of toa claimants when the block was reheard in 1888. One of the two judges who presided over the rehearing had, in the

1860s, commanded a unit of the Crown's Māori allies in the Bay of Plenty in a series of battles against adherents of Pai Mārire, possibly including some Tapuika.

2.51 The Court recognised the role of Tapuika in fighting alongside other iwi in the 1830s by allotting small portions of three blocks, totalling 1,409 acres, to Tapuika as toa claimants. However, Tapuika's ancestral claims were recognised only outside of the 1875 toa claims boundary, being those lands west of the Kaituna: Rangiuru, Ngātipāhiko, Maungarangi, and Kenana (a total of 35,375 acres).

2.52 Tapuika today maintain that the effect of the toa boundary was akin to raupatu and designed to punish Tapuika for taking up arms against the Crown in the 1860s. In the view of the tribe, the boundary devised by the Crown and the subsequent operation of the Native Land Court precipitated widespread alienation of Tapuika land, leading to severe spiritual, economic and cultural hardship for Tapuika. According to Tapuika kōrero, the loss of land and the loss of culture were linked: what lies over the land is the whakapapa, traditions, history of the people, the connection between the people and their whenua, tikanga, wairuatanga, whakapapa and way of life. The Tapuika waiata, Tēnei te Aroha, expresses the sorrow of Tapuika people at their alienation from their ancestral lands, including land within the toa claims boundary from their ancestral lands, including land within the toa claims boundary:

Tēnei te aroha ka piki ki te nui	*Here is the love that swells to a great size*
Kei hea koia hei tahu hei piringa mō te Kuku?	*Where have all the homes gone, those that were the nesting places for the Kuku?*
E Whae mā, e Pā mā tirohia tonutia	*Oh my mothers, oh my fathers, I search still*
Kua riro rā te momo te tangata kua riro kei Paerau	*Those types of people who are gone, gone to Paerau*
Kei Te Reinga, kei Te Pōuritanga	*Gone to Te Reinga, gone to the night*
E hahau ana, e tangi ana ki te ao mārama	*I sob and cry to the world of light*
Ki ngā maunga, ki ngā moana, ki ngā whare kōrero	*To the mountains, to the seas, to the houses of learning*
E tangi kau ana te mapu e!	*I expel a final sigh of despair!*
Tēnei au, te aroha nei te tangi nei i runga o Rangiuru	*Here I am, my love, my grief, here on Rangiuru*
Whakamau ana te titiro atu ki runga	*I turn to look towards Maketū*

o Maketū	
E haruru ana e papaki ana ngā tai o te moana	*Where the tides of the sea rumble and crash*
Koia pea nana nei i tukituki ngā wairua haere	*They are perhaps the same tides that carry the travelling souls*
ka riro ki te pō e!	*And are lost into the night!*
Āku pikitanga, āku heketanga i runga o Te Kaharoa	*My ascensions and descents over Te Kaharoa*
Ngā takahanga, ngā nohoanga o tini tūpuna	*The stamping ground, the homes of the many ancestors*
Ā ko Te Mangakino, ko Ngaengaenui kei roto ko Waiari	*And Te Mangakino and Ngaengaenui and in Waiari*
Ko Parawhenuamea te pūkaitanga o ngā taniwha	*Parawhenuamea is the gathering place of taniwha*
Kei Kenana te moengaroa o Ngāti Moko, o Tapuika me Tūhourangi e!	*The long resting place of Ngāti Moko, Tapuika and Tūhourangi is at Kenana*

TAPUIKA AND THEIR LANDS IN THE LATE NINETEENTH CENTURY

2.53 Tapuika entered into several land transactions prior to 1875. The defining of the toa boundary by the Crown and the Native Land Court judgments that followed over lands within that boundary had significant implications for these transactions.

2.54 Tapuika generally preferred to lease rather than sell their lands. In the 1860s they leased flax-cutting rights to their Kaituna River wetlands. In 1869 they arranged, with private parties, to lease land at Rangiuru before title to the land had been determined by the Native Land Court. However, alienations of Māori land could only take legal effect after the Native Land Court had awarded title to the land in question.

2.55 In 1870-71 Tapuika attended the Native Land Court title investigation for Pukaingataru. The hearing, which lasted seven weeks, took place in Tauranga, a costly and inconvenient venue for Tapuika. They incurred debts to private parties seeking to purchase their lands, and who provided Tapuika with rations during hearings. Tapuika also attended hearings in Maketū, but the Crown closed the Maketū sitting before the Court had determined the titles to the lands in which Tapuika claimed interests. This meant that the lease of Rangiuru could not be legally formalised.

2.56 In 1873, the Crown began negotiating for land in the Maketū-Rotorua district. The Crown used agents who had previously negotiated for private parties, and took over some of the private negotiations. The Crown suspended the operation of the Native Land Court over much of the Bay of Plenty between 1873 and 1877 in part to ensure that private parties could not complete any transactions for land which the Crown wished to acquire. This did not prevent Crown purchase agents from continuing to negotiate for land. By 1875 the

Crown's agents were in negotiation for more than 400,000 acres in the Maketū -Rotorua district.

2.57 Crown agents used a variety of tactics to persuade Tapuika to sell land. Tapuika owed over £900 for surveys of the Pūkāingataru, Rangiuru and Paengaroa blocks, and Crown agents reported that the immediate liquidation of survey costs was the main inducement to sell land on the Maketū plains. Tapuika leaders said they were "importuned and intimidated" into selling Paengaroa after threats from the purchase agents to mortgage their land to recover debts.

2.58 Pre-title advances were another purchasing tactic used by the Crown to acquire Tapuika land. When the Crown purchase agents began negotiating for land in the Tapuika rohe, only the Pukaingataru block had passed through the Native Land Court. Nevertheless, the agents made advance payments to Tapuika for their interests in other lands from 1874. The Crown did not always ensure that the payments it made were fairly distributed among the customary owners of the land it sought to purchase. Nor did the Crown ensure advance payments were always properly recorded or properly made. In 1874, for instance, an advance of £200 was recorded as having been paid to an individual for Tapuika's interests in Paengaroa. Yet this person received only £5 of this money and was not even of Tapuika.

2.59 In 1875, Tapuika informed the Crown that some of the money charged against their interests had been distributed among other tribal groups. In the Native Land Court in 1887, Tapuika objected to many of the sums claimed by the Crown as advances against Paengaroa. A Crown purchase agent later concluded that it was doubtful that Tapuika had received "anything like" the more than £2,000 charged against their Paengaroa interests. The same agent concluded that the payment of pre-title advances in the district in the 1870s was "utterly bad."

2.60 A further tactic the Crown used in seeking to acquire land from Tapuika and other Bay of Plenty Māori was to enter lease agreements with a view to securing purchases. As a result of such transactions, many Māori in the Bay of Plenty came to view the lease as the "bait", and the purchase as the "hook". This tactic was employed by the Crown with Tapuika because there were some blocks that Tapuika would only agree to lease. In 1874, therefore, the Crown agreed to lease land from Tapuika at Rangiuru, Pūkāingataru and Kaituna for 21 years. The lease agreements included clauses prohibiting Māori from dealing with any party other than the Crown. The Crown paid some advances of rent money, but would not agree to pay regular rent until after the Native Land Court had awarded titles confirming the ownership of the lessors. Title could not be determined until the Crown lifted the suspension of the Court.

2.61 In 1876, Tapuika sought to withdraw from the Rangiuru lease and refund some of the Crown's advances. The Crown refused to accept the refund, but it never completed the lease of Rangiuru, or any of its lease arrangements with Tapuika.

2.62 The Crown's purchase agents were initially instructed to negotiate openly and with tribal leaders, rather than individual owners. This was also Tapuika's preference. From 1877, the Crown could apply to the Native Land Court for awards of any interests it had acquired in a block and from this point negotiations with individuals became more common. In September 1878 the Crown began making payments to individual Tapuika for the purchase of Rangiuru, which provoked protests from Tapuika. The Crown paid advances to individuals at distant locations, such as Taupo and Auckland, or to individuals who were not of Tapuika or who were not later included in the title award. When title was investigated in 1879 and re-heard in 1881, the Crown provided Tapuika

with £680 worth of provisions to enable them to attend the hearings, which took place at Tauranga. The Crown treated this sum as an advance on the purchase of Rangiuru.

2.63 The Crown also had a consistent tactic of establishing itself as a monopoly purchaser. Although the suspension of the Native Land Court was lifted in 1877, the Crown had introduced legislation the same year to specifically prohibit private parties from dealing in any Māori land if the Crown had proclaimed its intention to negotiate the purchase of this land. The exclusion of private competition prevented Māori from selling their land in a free market and from obtaining the full value of lands alienated. Tapuika were offered up to 10 shillings per acre for the Rangiuru block, whereas the Crown paid just over six shillings per acre.

2.64 In 1878 Tapuika applied for a title to Paengaroa, but most of the block lay within the Crown's toa claims boundary and their ancestral claims were excluded. Tapuika and others objected to the title being granted and sought a rehearing. In 1885, Tapuika were, on the basis of their own role in retaking the land, finally awarded 460 acres of the 10,447 acres in the block after the case had been reheard twice. The Paengaroa decision indicates the influence of the Crown's toa claims boundary on Tapuika.

2.65 The Crown was determined to recover as much land as possible for its pre-title advances. After the title to Paengaroa was settled, the Crown sought to recover the pre-title advances of more than £2000 it claimed to have paid Tapuika for the block in the 1870s, before the toa boundary had been set. However, the 1885 award was insufficient to allow them to discharge the debt created by these advances. In 1888 the Crown sought an award of all 460 acres awarded to Tapuika in discharge of the money claimed by the Crown. Tapuika opposed the Crown's request and it was rejected by the Native Land Court as those individuals awarded parts of Paengaroa owned insufficient lands elsewhere, meaning the loss of the lands risked rendering the owners landless. The Crown then sought to recover the advances from other Tapuika lands. This led to 5,000 acres of the Ngātipāhiko block being awarded to the Crown by the Court.

2.66 The Rangiuru block was awarded to Tapuika in 1879, and again in 1881 after the case was reheard. The Crown and a private party both claimed to have acquired interests in the Rangiuru block from Tapuika before 1879. In 1881 a royal commission of inquiry investigated the claims and recommended that the Crown abandon its purchase and obtain a refund of its advances from the private party. Tapuika endorsed these findings and urged the Crown to take back its money. The Crown refused and, in 1883, sought an award from the Native Land Court for the interests it claimed to have acquired. The Crown claimed to have paid advances of cash and goods to the value £1,440. Tapuika disputed the sum, which the Crown offered to reduce to £1,300, provided that Tapuika agreed to surrender 2,600 acres. Tapuika objected to the Crown obtaining the part of the block it wished to acquire but the Native Land Court issued an order in favour of the Crown.

2.67 Tapuika sought restrictions on the alienation of the balance of Rangiuru (9,655 acres). However, in 1883 the block was subdivided and the private party was awarded 6,746 acres in Rangiuru after the Court was satisfied that the owners had received the pre-title advances the private party claimed to have paid for the land.

2.68 By the late 1890s the only large area of land remaining in Tapuika ownership was within the subdivisions of the Ngātipāhiko B block (17,417 acres) which lay to the south of Rangiuru. Some of the Tapuika owners of Ngātipāhiko B1, B2 and B3 offered to sell their interests to the Crown because they were pressed by store debts. The owners asked for a price of £1 per acre. However, the Crown was a monopoly purchaser having re-imposed pre-emption in 1894. The Crown offered five shillings per acre, a quarter of the

price sought by the owners. The average holding of each owner was less than 40 acres. Between 1897 and 1899 the Crown acquired about 300 individual interests at the price it offered and in 1899 was awarded 12,850 acres. The 98 who had not sold had been awarded 4,403 acres.

2.69 In 1899, shortly after the Crown was awarded this land, 200 of the Tapuika vendors of Ngātipāhiko petitioned the Crown for "compassion on us" and the return of some of the land. A Crown official considered Tapuika were "well off," and that a show of compassion "would not lead to thrift." The five shillings per acre paid by the Crown for Ngātipāhiko had equated to an average of £7 for each of the vendors. They had sold the land to clear debts, leaving them with little or no money and little or no land.

2.70 The Maungārangi block (1,610 acres), on the Kaituna River and east of Rangiuru, was awarded to Tapuika in 1893. It too was subjected to Crown purchasing, leading to the award of 600 acres (Maungārangi A) to the Crown in 1899. This left the 236 owners of the remaining land in the block with 980 acres, or an average of 4 acres each.

2.71 In the years following the Crown's 1875 decision on the toa claims boundary, the Native Land Court awarded Tapuika title to about 35,000 acres outside that boundary and around 1,500 acres within it. By 1900, Crown purchases and one private purchase had left Tapuika with approximately 10,000 acres of land, or 28 percent of the land they had been awarded. This was only about 6 percent of Te Takapū o Tapuika.

2.72 With little land left to farm or develop, many Tapuika took up manual labour at the flax mills that began operating in the Maketū and Te Puke district in the 1890s. Tapuika laboured at digging sulphur and picking maize. Living and working conditions for flax mill workers were poor and contributed to poor health in Tapuika communities. Tapuika were afflicted by chronic and epidemic illnesses. Deaths from outbreaks of disease were regularly reported in the 1890s and 1900s, including 30 deaths in 1893.

2.73 Tapuika sought to retain their remaining land and looked to the future, setting great store by the education of their children. In 1887 the Crown established Te Matai Native School in Rangiuru on land gifted by Tapuika. In 1888, Tapuika's "unbounded enthusiasm" and support for the school was welcomed by the Native Schools Inspector. Nevertheless, the itinerant nature of their employment, and the need to attend Native Land Court hearings, prevented their children from consistently attending the school.

TAPUIKA AND THEIR LANDS IN THE TWENTIETH CENTURY

2.74 Tapuika retained approximately 10,000 acres at the dawn of the twentieth century, which was only a fraction of the customary lands they had claimed in the nineteenth century and less than a third of the land they had been awarded. Title to this land had been fragmented by Native Land Court partition and succession processes into 95 subdivisions, most of which were very small with numerous owners, making it difficult for owners to develop the land. About 6,000 acres of the land remaining in Tapuika ownership was under lease or in the bush-clad portions of the Ngātipāhiko block, which were unsuitable for occupation. This left approximately 4,000 acres available for occupation by the iwi. The 1908 Native Lands and Native Land Tenure Commission of Inquiry concluded that Tapuika had "very little land". It recommended that much of the remaining Tapuika land be made inalienable.

2.75 However, the Crown did not prevent further alienation of Tapuika's lands. The Native Land Act 1909 set aside all existing restrictions on alienation. This legislation provided for Crown-appointed district Māori land boards to supervise all alienations of Māori land. The land boards were required to ensure that any alienation did not render the vendors

landless. The Act defined landlessness as meaning an owner's interests were insufficient for his adequate maintenance, but did not quantify what was sufficient.

2.76 After 1909, private parties purchased most of Tapuika's remaining land. By the early 1920s, Tapuika holdings in the 470-acre Kenena block had been reduced to 22 acres. Today, just 13 acres of this block remain in the ownership of Tapuika individuals. By 1920 private purchasing reduced Tapuika holdings in the 1610-acre Maungārangi block by 663 acres and today only 296 acres are owned by members of Tapuika.

2.77 In the 1910s and 1920s the Waiariki Māori Land Board approved purchases of land in the Paengaroa and Rangiuru blocks by private parties even though it was aware that some purchases would render the vendors landless. It approved these purchases on the basis that the vendors were either working away from their land or, in the case of wives and children, were supported by others.

2.78 In some cases, Tapuika owners sold land due to their "dire necessity" for money. Others sold to clear debts incurred from improving their housing conditions. Costs incurred by Native Land Court and Māori Land Board processes, particularly survey charges for the partitioning of titles, imposed significant financial burdens on some owners; from 1917-1924 201 survey liens totalling £1,430 were charged to Tapuika's remaining lands.

2.79 Before the 1920s, the Crown gave Tapuika very little support to develop their own land, and private parties were generally unwilling to lend on the security of multiply-owned Māori land. In some cases Tapuika sold land to raise funds to develop their remaining lands.

2.80 In 1929, the Crown introduced state-financed Māori land development schemes. Tapuika's holdings were by this stage so reduced that there was limited scope for them to benefit from the schemes. One scheme involving their land was established in 1931 on 422 acres of land near Rangiuru adjoining the Kaituna River. The land required investment in extensive drainage and development before it could be farmed. The Crown administered these schemes and, in 1932, the Native Minister characterised his complete control over them as "benevolent despotism". Nevertheless, the scheme provided work for only a handful of Tapuika individuals.

2.81 In the twentieth century, the Crown took further land from Tapuika through public works takings. The Crown was empowered by the Native land legislation of the nineteenth and early twentieth centuries to compulsorily acquire up to five percent of any Māori owned block for road making or railway construction, without paying compensation. Prior to 1900, around 70 acres of land was taken from five Tapuika blocks for roading purposes under this legislation.

2.82 From 1900 to 1999, the Crown took a further 113 acres in eighty separate public works takings for roads, railways, and river control purposes. This represents roughly five percent of the total land remaining today in Tapuika ownership. Compensation was not always paid for the land taken. In 1939, 7.7 acres was taken as a new site for Te Matai Native School. Rather than pay compensation, the Crown arranged with Tapuika individuals to exchange the new site for the existing school site of 3 acres, land which had been gifted to the Crown in 1886.

2.83 Some of the land taken by the Crown was of great significance to Tapuika, including land from within Kenana urupā. In 1917, a quarter of an acre was taken from the four-acre urupā for railway purposes. In the 1960s, a smaller area was taken from the urupā to re-align a county road. In 1971 another small area was taken from the urupā for State Highway 2 but in breach of the provisions of the Public Works Act. The Māori Land Court

found the 1971 taking to be "without province in law". Tapuika did not consent to any of these takings. Kenana urupā, which has remained in use, is now bisected by State Highway 2 and the adjacent railway line.

2.84 By 2000, Tapuika individuals held just 2,210 acres, fragmented into 212 separate titles held by thousands of individual owners.

NGA WAI, NGA REPO, AND TE MOANA: WATERWAYS

2.85 The rivers, streams, and wetlands of Te Takapū o Tapuika form a system of waterways that are a taonga of great customary significance to Tapuika. Tapuika kāinga, urupā and wāhi tapu were located along the Kaituna, Waiari, Parawhenuamea, Te Pakipaki, and Paraiti streams and rivers. These watercourses and their banks feature many places named by Tapuika for the taniwha that inhabited them. The lower Kaituna wetlands of Kawa, Pūkāingataru, Parawhenuamea, and Nohonoa were also a significant resource for Tapuika, and were used for fishing, cultivation, hunting and gathering. Along the coast from Maketū to Wairakei were highly valued fishing grounds, such as Papahīkahawai, and Ōkurei, where kahawai, kuku, kina, and kōura were gathered.

2.86 From the 1890s, the Crown, through legislation, assumed regulatory control over the waterways of Te Takapū. In 1895, the Crown established the Te Puke Land Drainage Board to facilitate drainage and clear lands to the west of the Kaituna River. In 1906 the Tumu-Kaituna Drainage Board was established, also by the Crown, to facilitate the drainage and clearing of lands to the east of the Kaituna River. The Kaituna River District Act 1926 provided for the establishment of a river board for the Kaituna district with powers to drain land, divert waterways, and implement flood control measures. The Crown provided loans to these various boards to supplement the income they received from rates.

2.87 In the 1920s and 1950s, the Crown consulted with owners of Māori land along the lower Kaituna, and within the toa claims boundary, about the management of the river. However the Crown did not make any arrangements for Tapuika to be represented on the boards and their customary interests in the wetlands were not considered in the course of drainage operations or flood control. According to Tapuika, this has aggravated the sense of grievance they feel towards the Crown over their exclusion from lands and waterways within the toa boundary.

2.88 Within the framework of the Crown's regulatory system, the waterways of Te Takapū have been extensively modified. These changes were made in the interests of agricultural development, but the newly drained land was vulnerable to flooding. The lower Kaituna area was subject to frequent and sometimes severe flooding from 1907 to the late 1950s and flood control measures during this time were ineffectual in the face of major floods.

2.89 In the 1940s, the river board considered whether to proceed with a flood-protection measure to create a cut in the sandhills at Te Tumu diverting the Kaituna River away from Maketū. A Crown engineer warned that cut would destroy fishing grounds at Maketū which were "much prized" by Māori. He suggested that "considerable" compensation would need to be paid.

2.90 However, in the mid 1950s, after the Crown approved and subsidised the work, the river board proceeded with the construction of the cut at Te Tumu. This caused significant harm to fishing grounds and shellfish beds in the Maketū estuary which Tapuika and other Māori relied on for kaimoana for cultural and economic reasons. Tapuika were not paid compensation for these losses.

2.91 In 1964, the Crown established the Bay of Plenty Catchment Commission, which was legally responsible for the management of the Kaituna River. In 1970 the Commission concluded that there was still considerable scope for further drainage and flood control work around the lower Kaituna River. Over the next twenty years, the Commission embarked on river control, river widening, stop-banking, and drainage works of a much larger scale than previously undertaken. In 1982, river widening work destroyed an important Tapuika wāhi tapu near Te Kārangi. Other river-widening works on the Kaituna in 1982 emptied the traditional wells of Tapuika living at Waitangi, Ōtukawa, and Paengaroa.

2.92 By the 1980s, the wetlands of the lower Kaituna were largely drained and no longer provided sustenance to Tapuika. The polluted waters of the Maketū estuary and of the lower Kaituna River were unsafe for swimming and for food-gathering. The river has long been polluted by effluent and human waste from an abattoir at Rangiuru, as well as by agricultural run-off. The Waiari stream is polluted by effluent pumped from the sewerage scheme serving Te Puke township, which is culturally inappropriate given that wahi tapu is located beside the stream. Upstream from this discharge point, local bodies have abstracted water from the Waiari to supply distant communities. The modifications made to the waterways since the late nineteenth century have deeply distressed Tapuika and made it increasingly difficult for them to maintain their customary relationships with their awa.

3 ACKNOWLEDGEMENTS AND APOLOGY

CROWN ACKNOWLEDGEMENTS TO TAPUIKA

3.1 The Crown acknowledges that it has failed to address until now the long-standing, deeply-felt grievances of Tapuika. The Crown hereby recognises the legitimacy of these grievances, and makes the following acknowledgements.

WAR

3.2 The Crown acknowledges:

3.2.1 in the 1860s, Tapuika were drawn into wars that were not of their making; these conflicts had a divisive effect as individuals within Tapuika were compelled to align themselves with different sides in the conflict as evidenced by their participation on both sides of the battle of Kaokaoroa in April 1864;

3.2.2 members of Tapuika were attacked by Crown troops at Pukehinahina in April 1864, and suffered loss of life at Te Ranga in June 1864; and

3.2.3 the Crown was ultimately responsible for the outbreak of war in Tauranga in 1864 and the resulting loss of life, and thus breached Te Titiri o Waitangi/the Treaty of Waitangi and its principles.

RAUPATU

3.3 The Crown acknowledges that its 1868 extension of the Tauranga confiscation boundary compulsorily extinguished any customary interests in that land, including those of Tapuika and this was a breach of the Te Titiri o Waitangi/the Treaty of Waitangi and its principles. The Crown also acknowledges that:

3.3.1 the process for returning such land was ad hoc, slow, and arbitrary in nature;

3.3.2 Tapuika were unsurrendered rebels at the time the lands were returned; and

3.3.3 unsurrendered rebels were generally excluded from the lands return process.

3.4 The Crown acknowledges:

3.4.1 it inflicted a scorched earth policy in its assaults on Tapuika settlements of Kenana and Rangiuru near Te Puke during the 1867 bush campaign; and

3.4.2 the destruction of these settlements had a devastating and unnecessary impact on Tapuika and was a breach of Te Titiri o Waitangi/the Treaty of Waitangi and its principles.

NATIVE LAND LAWS

3.5 The Crown acknowledges:

3.5.1 it did not consult with Tapuika about the introduction of the native laws in the 1860s;

3.5.2 the title determination process carried significant costs for Tapuika, including survey and court costs. These costs were a particularly heavy burden for Tapuika given the length and number of hearings into blocks near Maketū and that some of these hearings took place outside the Tapuika rohe; and

3.5.3 the workings of the native land laws, in particular the awarding of land to individuals rather than iwi or hapū and the enabling of individuals to deal with that land without reference to iwi or hapū, made the lands of Tapuika more susceptible to alienation. As a result, the traditional tribal structures, mana and rangatiratanga of Tapuika were eroded. The Crown acknowledges that it failed to take adequate steps to protect these structures, and this was a breach of Te Titiri o Waitangi/the Treaty of Waitangi and its principles.

TOA CLAIMS

3.6 The Crown acknowledges that Tapuika's deepest grievance arises from the Crown's handling of the toa claims. The Crown further acknowledges that its determination of a toa boundary within the Tapuika rohe in 1875:

3.6.1 exacerbated a customary tenure dispute arising from decisions of the Native Land Court and Crown land purchase operations, further alienating Tapuika from their kin;

3.6.2 conflicted with an earlier judgment of the Native Land Court which found that Tapuika were the customary owners of land within the boundary set by the Crown;

3.6.3 influenced subsequent Native Land Court judgments to lands within the boundary; and

3.6.4 these ultimately excluded Tapuika from title to approximately 40,000 acres of their ancestral coastal lands and some of their most sacred sites. This had a severe and lasting impact on the economic base and tino rangatiratanga of Tapuika.

CROWN LAND PURCHASE TACTICS

3.7 The Crown acknowledges that:

3.7.1 it failed to ensure that pre-title advances recorded as paid to Tapuika for the Paengaroa block were received by Tapuika and then insisted on receiving land in other blocks from Tapuika in return for those advances;

3.7.2 it used outstanding debts to pressure Tapuika into selling land at Paengaroa;

3.7.3 it used lease agreements and monopoly purchasing powers to facilitate the purchase of Tapuika land, and refused to accept Tapuika's 1876 request to withdraw from a lease for Rangiuru while maintaining monopoly purchasing powers over the block;

3.7.4 its monopoly purchasing powers prevented Tapuika selling Rangiuru for a significantly higher price to private parties than the price paid by the Crown; and

3.7.5 the combined effect of these aggressive purchase techniques meant that the Crown failed to act in good faith or protect actively the interests of Tapuika in land they wished to retain and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

PUBLIC WORKS TAKINGS

3.8 The Crown acknowledges that in 1888 Tapuika gifted the Crown with 3 acres of land near Te Matai for a Native School. In 1939 the Crown used public works legislation to take 7.7 acres of land from Tapuika for a new school site. Instead of paying compensation, the Crown returned the smaller area of gifted land to Tapuika.

3.9 The Crown acknowledges that:

3.9.1 the Crown took land from within the Tapuika urupā at Kenana three times between 1917 and 1971 and that the urupā was in use by Tapuika when each of the takings occurred;

3.9.2 Tapuika did not consent to any of these takings and were deeply distressed by them;

3.9.3 the urupā, which is still in use today, is now divided in two by a highway and an adjacent railway line; and

3.9.4 the third taking, in 1971, was found by the Māori Land Court to be in breach of the Public Works Act 1928. The Crown acknowledges that the 1971 taking was also made in breach of the Treaty of Waitangi and its principles.

WATERWAYS

3.10 The Crown acknowledges that Tapuika consider the Kaituna River and its tributaries as taonga of great significance, with their own mauri. For Tapuika, their relationships with the Kaituna River and its tributaries, give rise to their responsibilities to protect the mana and mauri of the waterways and to exercise their tino rangatiratanga, mana whakahaere and kaitiakitanga in accordance with their tikanga. Their relationships with the rivers lie at the heart of their spiritual and physical wellbeing, and their tribal identity and culture. The Crown further acknowledges that:

3.10.1 the modification, pollution and degradation of the Kaituna River and its tributaries since the 1890s have drained resource-rich wetlands, destroyed Tapuika wahi tapu, caused significant harm to kaimonana sources relied on by Tapuika, compromised the traditional water supplies of Tapuika communities, and caused great anguish to Tapuika; and

3.10.2 the Crown has failed to respect, provide for and protect the special relationship of Tapuika with the Kaituna River and its tributaries.

CROWN APOLOGY TO TAPUIKA

3.11 To the iwi of Tapuika, to the tūpuna, the descendants, the hapū and the whānau, the Crown now makes this apology. It is long overdue. Your grievances are acutely felt, and they go back generations. For too long the Crown has failed to find a way to respond to them appropriately.

Kei te iwi o Tapuika, kei ngā tūpuna, kei ngā uri, kei ngā hapū me ngā whānau, tēnei te Karauna te whakapāha atu nei. Kua takaroa rawa. E kai kinikini ana ō koutou mamae, ā, e hia kē whakatupuranga te roa. Kua roa ukauka kē te Karauna e kimi urupare tōtika ana, kihai i kitea.

The Crown is deeply sorry that it has not lived up to its obligations to Tapuika under the Te Tiriti o Waitangi/the Treaty of Waitangi.

Kāore te pāpōuri o te Karauna i te korenga ōna e whakaea i ngā herenga ki a Tapuika i raro i te Tiriti o Waitangi.

Beginning in the 1860s and continuing well into the twentieth century, the Crown's dealings with Tapuika have dishonoured the Treaty and its spirit.

Kua takahia te Tiriti me tōna wairua e te Karauna me āna mahi ki a Tapuika mai anō i ngā tau 1860, ā, tae rawa ake ki te takapū o te rautau rua ngahuru.

In the 1860s Tapuika were swept up in the bitter tide of war, confiscation, and urupātu. From the 1870s, the native land laws and Crown land purchase operations compromised your rangatiratanga and facilitated the alienation of much of your rohe, Te Takapu o Tapuika. The line the Crown drew through your rohe in 1875 influenced subsequent decisions of the Native Land Court which ultimately excluded Tapuika from title to your ancestral coastal lands and sacred sites.

I ngā tau 1860, i whawhati mai ki runga i a Tapuika te tai tūāuri o te matawhāura, o te murunga whenua me te urupatu. Mai anō i ngā tau 1870, i turakina tō koutou rangatiratanga e ngā ture whenua Māori me ngā mahi hoko whenua a te Karauna. Nā konei hoki te Karauna i huawaere te hokonga o te nuinga o tō koutou rohe, o Te Takapū o Tapuika. He kaha te pā o te rārangi i tuhia e te Karauna i te tau 1875 ki ā te Kōti Whenua Māori whakatau i whai iho, ā, ko tōna otinga atu ko te ngaromanga i a Tapuika o te mana ki ō koutou whenua kura i ngā pāpāringa o te moana, me ngā wāhi tapu hoki.

In the twentieth century, the Crown took land from you that had been marked out as a resting place for your dead, not once but three times. The Crown sincerely and with deep remorse apologises for the trauma it thereby caused.

I te rautau rua ngahuru, i murua e te Karauna ō koutou whenua i whakatapua hei moenga roa mō ō koutou mate, kaua rā ko te murunga kotahi, engari kē ia e toru rawa. Kāore te kaniawhea i te Karauna e whakapāha tūturu nei mō ngā mate i pā.

The waterways you live beside and cherish have, since the 1950s, been degraded and polluted. The Crown profoundly regrets the anguish this has

Mai anō i ngā tau 1950, kua tāhawahawatia, kua whakaparuparutia hoki ngā wai a Parawhenuamea e noho ai koutou, e

caused for Tapuika, and for failing to protect the special relationship Tapuika has with the Kaituna River and its tributaries.

whakamaimoatia ai e koutou. E ngaukino ana te manawa pā i te Karauna i te auhī i pā ki a Tapuika, mōna i kore nei e taurima i te hononga motuhake o Tapuika ki te Awa Nui o Tapuika me ōna hikuwai.

Despite all these challenges Tapuika have survived by holding fast to their whenua and their awa, their traditions and their identity. The Crown acknowledges the resilience and unextinguished mana of Tapuika.

Ahakoa ngā mātātaki huhua nei, nā te pūpuri pūmau ki tōna whenua, ki ōna awa, ki āna tikanga, ki tōna whakapapa hoki a Tapuika i takatū tonu ai i te mata o te whenua. E aumihi ana te Karauna ki te pūtohe me te mana tūmau o Tapuika.

Through this apology, and this settlement, the Crown hopes to honestly confront the past and relieve the burden of grievance Tapuika has carried all these years. By the same means, the Crown hopes to forge a new relationship with the people of Tapuika, a relationship firmly founded on mutual trust, co-operation and respect for Treaty of Waitangi.

Mā roto i tēnei whakapāha, e tūmanako ana te Karauna kia ea ngā mahi o mua, kia māriri hoki te mamae kua roa nei e ngaukino ana i a Tapuika. Mā konei anō hoki, e tūmanako ana te Karauna ki te whakawhirikoka i te taukaea hou i waenga i ngā uri o Tapuika, he taukaea e takea mai ana i te whakapono o tētehi ki tētehi, i te mahi ngātahi, i te whai koha ki Te Tiriti o Waitangi hoki.

4 SETTLEMENT

ACKNOWLEDGEMENTS

4.1 Each party acknowledges that –

4.1.1 the settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation;

4.1.2 it is not possible to compensate Tapuika fully for all the loss and prejudice suffered; and

4.1.3 the settlement is intended to enhance the ongoing relationship between Tapuika and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).

4.2 Tapuika acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

4.3 Therefore, on and from the settlement date, –

4.3.1 the historical claims are settled; and

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

4.3.3 the settlement is final.

4.4 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.

4.5 The Crown acknowledges that, except as provided by this deed or the settlement legislation, the provision of redress will not -

4.5.1 affect any rights of Tapuika in relation to water; and

4.5.2 affect, in particular, any rights Tapuika may have in relation to aboriginal title or customary rights or any other legal or common law rights including the ability to bring a contemporary claim to water rights and interests.

4.6 Clause 4.5 does not limit clause 4.3.

REDRESS

4.7 The redress, to be provided in settlement of the historical claims, –

4.7.1 is intended to benefit Tapuika collectively; but

4.7.2 may benefit particular members, or particular groups of members, of Tapuika if the governance entity so determines in accordance with the governance entity's procedures.

IMPLEMENTATION

4.8 The settlement legislation will, on the terms provided by sections 204 to 209 of the draft settlement bill, –

4.8.1 settle the historical claims; and

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

4.8.3 provide that the legislation referred to in section 206(2) of the draft settlement bill does not apply -

(a) to -

(i) a redress property;

(ii) a purchased deferred selection property if settlement of that property has been effected; or

(iii) a second right of purchase property, if that property is not a redress property, but is purchased, and settlement of it is effected, under this deed; or

(iv) any RFR land; and

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

4.8.4 require any resumptive memorial to be removed from a computer register for all or any part of the following properties:

(a) a redress property;

(b) a purchased deferred selection property if settlement of that property has been effected;

(c) a second right of purchase property, if that property is not a redress property, but is purchased, and settlement of it is effected, under this deed; and

(d) any RFR land; and

4.8.5 provide that the rule against perpetuities and the Perpetuities Act 1964 does not –

(a) apply to a settlement document; or

(b) prescribe or restrict the period during which -

(i) the trustees of the Tapuika Iwi Authority Trust, being the governance entity, may hold or deal with property; and

(ii) the Tapuika Iwi Authority Trust may exist; and

4.8.6 require the Secretary for Justice to make copies of this deed publicly available.

4.9 Part 1 of the general matters schedule provides for other action in relation to the settlement.

5 CULTURAL REDRESS

KAITUNA RIVER FRAMEWORK

BACKGROUND

5.1 Te Hononga o Tapuika me te Awa o Kaituna

Ko Rangiuru te maunga

Ko Kaituna te awa

Ko Tapuika te iwi

E mōhiotia whānuitia ana a Kaituna e Tapuika, ko Te Awanui o Tapuika, nā tōna pāpara, nā Tia i tapa mō tana tamaiti. Ko Te Awanui o Tapuika tēnā.

Ko te piringa o Tapuika ki te Kaituna he oranga tinana, he oranga wairua hoki mō tō mātou iwi. He raukura whakahirahira mō mātou e taki noho nei ki ōna tahataha, ā, mā te whakataukī nei e whakamārama, 'Ko Rangiuru te maunga, ko Kaituna te awa, ko Tapuika te iwi'. Mō mātou, mō Tapuika, he taonga tuku iho tēnei awa nā ngā atua i hōmai, he rahi kē tōna mana. He tapu ōna wai pērā i te ira pounamu e kore e waimeha.

Nā ngā kōrero pūrākau o Tapuika i whakapūmau te piringa o te iwi nei ki te awa o Kaituna me te mauri hoki o te awa. Nā ēnei tikanga te piringa nei i pupuri, nā te kupu kōrero, nā te whakapapa, nā te whakataukī, nā te waiata me te noho tūturu hoki a Tapuika.

Ko te mauri o Kaituna he mea whakarāhui mō wana taonga me te waiora hoki. Ko tōna mauri te herenga o te ao wairua ki te ao kikokiko.

Poua ki te rangi, poua ki te whenua

Anei a Tapuika e tū ake nei

E ai ki a Tapuika, he uri mātou nō te atua nei, nō Pūhaorangi, ā, nā te whakataukī kai runga ake nei nā i whakamārama, he arawhata ngā uri nei nō te ao wairua ki te ao hurihuri. Nā tēnā take, ka takoto te tiakitanga o te awa nei ki te iwi ki roto i ngā mahi tikanga, ngā mahi ture me ngā mahi tapu.

He awa taniwha a Kaituna, ā, he tere ō rātou riri ki ngā mea e takatakahī ana i te mana o te awa. Mō mātou nei, mō Tapuika, ko tō rātou nohonga ki te awa he tohu mana nō te ao wairua, ko tō rātou rangatiratanga e kore e makere. Ko rātou rā ngā kaitiaki o te awa me te iwi hoki, he mea whakaaraara ki te rarua te iwi.

Tērā tētehi waiata o Tapuika, ko *Tērā Koia Ngā Uru Whetu*, ko tā te waiata nei he whakamahara ki ngā kāinga huhua o Tapuika ki te roanga o ōna tahataha. Ko Te Paengaroa-o-ngā-māra-kūmara-o-Marukukere tēnā, ko Ōporouruao tēnā, ko Whirinaki tēnā, ko Te Huruhuru-o-Topea tēnā, ā, he maha noa atu. He maha hoki ngā wāhi tapu o Tapuika ki te roanga o Kaituna. Ko Oteiere tēnā, ko Otamamarere tēnā, ko Te Ana-o-Kaiongaonga tēnā, ko Te Kūaha-o-Te-Urutapu tēnā. Kai te tangi hohotu tonu mātou o Tapuika mō ēnei wāhi tapu kua whakapokea me te manakore kua tau.

He awa whāngai a Kaituna. E whāngaihia katoatia ana ngā hapū e taki noho nei ki ōna tahataha. He awa pātaka mō Tapuika nō tua whakarere. Kua kikī ōna taha ki te ponira,

ki te ika, ki te kākahi, ki te kōura, ki te kānga wai, ki te inanga, ki te tuna hoki. Ko ōna pekanga, he whāngai atu ki ngā repo, ki reira tupu ake ai ngā momo harakeke i mahia ki te kahu, i mahia ki te hanga whare. I takea mai te ingoa o Kaituna i te mahi kai i ngā tuna huhua o te awa.

He awa tāngae a Kaituna, ā, i herea katoatia ngā hapu e taki noho nei ki ōna tahataha. Mai i tōna timatatanga ki te rere i Ōkere, tae rawa atu ki ngā māniа o Kaituna, ā, rere kau noa atu ki Te Tumu, kua herea katoatia ngā hapu o te awa e te whakapapa, e te kaitiakitanga hoki o te awa nei mō rātou mō āpōpō.

He awa whakahihiko, whakatoitoi a Kaituna. Ko te tau e whai muri mai nei i takina tuatahitia ki ngā parepare o Kaituna. He whakaritenga tērā o te ihi me te wehi o ngā toa ki ngā tai o te awa o Kaituna, ā, i mahia kia tū pakari ai a Tapuika pērā i te awa, rere tōtika, rere pai.

Kī mai nei Te Atua o te pō kua mangawhai au ka mate

Kāore!

Ara kai te pikitanga au, ka mate

Kāore!

Ara kia kite au ki te tai o te uru

Kia kite au ki te tai o te tonga

E ka kūtia, wherahia

Te tai o Kaituna ka kūtia

Ka tangi te wahine!

E hia kē ngā tau i tiro atu rā mātou ki te whakaparahako ki tō matou taonga nei. Kua parua ōna wai, kua whakawhānuitia atu ōna tahataha, kua titaha haere tōna rere ki tai, ā, kua tūkinotia ō mātou wāhi tapu. Kua whāiti haere ngā tuna, ngā kākahi, ā, hemo noa atu wētehi o ngā momo.

Ko te hua o te tatau pounamu nei e tōmina nei mātou ko te whakarauoranga, ko te tiakitanga me te whakamanahanga o te awa nei, o Kaituna. Hei aha? Hei painga mō ngā uri whakatupu e haere ake nei, e haere ake nei.

Kīhai mātou i tuku i tō mātou mana, tō mātou kaitiakitanga o te awa nei, o Kaituna, ā, auare ake e pērātia. E karanga ana te mauri o Te Awanui o Tapuika ki a mātou nei kia whakahokia ai a ia ki tōna mana, ki tōna ihi, ki tōna wehi.

5.2 The relationship between Tapuika and the Kaituna River

Rangiuru is the mountain
Kaituna is the river
Tapuika is the iwi

The Kaituna River is known to Tapuika as *Te Awanui o Tapuika* the great river of Tapuika, named by Tia for his son. Te Awanui o Tapuika.

The relationship of Tapuika with the Kaituna River lies at the heart of the spiritual and physical wellbeing of our people. It is our identity, it is who we are as a river people expressed in the tribal proverb, 'Rangiuru is the mountain, Kaituna is the awa, Tapuika is the Iwi'. To Tapuika the Kaituna River is a taonga of immeasurable importance a gift

from the Gods, imbued with great mana. Its waters are as precious as the shimmering greenstone.

The traditions of Tapuika confirm the intrinsic connection of Tapuika to the Kaituna River and the *mauri* or life force of the River. These traditions are expressed in the kupu korero, whakapapa, whakatauki, waiata and noho tuturu of Tapuika.

The mauri of the Kaituna River is an important element that governed the use and wellbeing of the river. The mauri of the Kaituna River is the integral essence that binds together the spiritual elements and the natural elements.

From the heavens to the earth

Here stands Tapuika

The Tapuika belief is that as descendants of the god Puhaorangi they are the link between the spiritual world and the natural world as expressed in the above whakatauki. As such they are responsible for protecting and ensuring respect for the river expressed through tikanga, ture and tapu.

The presence of tribal taniwha, guardians of the Kaituna River engendered fear in those who transgressed and showed disrespect for the river. To Tapuika their presence on the river represented the power and authority of the spiritual world, their rangatiratanga over the river undisputed. They were the protectors of the river and of the people, providing warnings when the tribe was in danger.

The Tapuika song Tera Koia Ngā Uru Whetu recounts the numerous Tapuika settlements along the Kaituna River – Paengaroa, Oporouruao, Whirinaki, Te Huruhuru o Topea and many others. There are many sacred places of Tapuika along the length of the Kaituna River, Oteiere, Otamamarere, Te Ana o Kaiongaonga, Te Kuaha o Te Urutapu. We grieve at the desecration of our sacred places and the lack of respect accorded to them.

The Kaituna River is a provider. It sustains and nurtures all who live by its waters. It has been a pataka awa for Tapuika for generations. Its river banks teemed with watercress, fish, fresh water mussels, freshwater crayfish, fermented maize, whitebait and eels. Its tributaries fed numerous swamps where flaxes of untold varieties were harvested to make clothes and building materials. The name Kaituna refers to the eating of eels which were caught in abundance.

The Kaituna River is the umbilical cord that joins the tribes of the river together. From its commencement at Okere Falls, to the Kaituna plains to its outlet at Te Tumu, the river tribes are joined together through whakapapa and a united responsibility to ensure the Kaituna is protected for the generations yet to come.

The Kaituna River inspires and motivates. The chant below was first given voice by the banks of the Kaituna River. It compares the prowess of the warriors with the relentless tides of the Kaituna River and encourages us to be like the river strong and eternal.

The Lord of the Night tells to me that I have failed and I will die
Never!
And if I try to rise again, I will die
Never!
I turn to see the tides of the west
I turn to see the tides of the south

As they come together and array themselves for battle
The tide of Kaituna rushes forth to meet them
Hear the cries of the women!

We have endured many years of seeing our taonga being disrespected, its waters polluted, its banks widened, its natural flow to the sea diverted and our sacred places destroyed. We have seen the eels, shellfish and other fish species disappear.

We seek through this settlement the restoration, protection and enhancement of the Kaituna River for the benefit of our grandchildren and their children's children.

We have never relinquished our rights or responsibilities over the Kaituna River and we never will. The mauri of the Te Awanui o Tapuika calls to us to return it to its former power and authority.

SETTLEMENT LEGISLATION

5.3 The settlement legislation will, as set out in the draft settlement bill, provide as necessary for the matters set out in clauses 5.4 to 5.86 and clause 5.88.

SUMMARY OF FRAMEWORK

5.4 The Kaituna River framework consists of the following elements:

5.4.1 Te Maru o Kaituna; and

5.4.2 the Kaituna River Document.

TE MARU O KAITUNA

Establishment and purpose of Te Maru o Kaituna

5.5 The settlement legislation will establish a statutory body called Te Maru o Kaituna ("**the Kaituna River Authority**").

5.6 The purpose of the Kaituna River Authority is the restoration, protection and enhancement of the environmental, cultural and spiritual wellbeing of the Kaituna River.

5.7 In achieving its purpose the Kaituna River Authority may also consider the social and economic wellbeing of people and communities.

5.8 Despite the composition of the Kaituna River Authority as described in clause 5.16, the Kaituna River Authority is deemed to be a joint committee of the Bay of Plenty Regional Council, Rotorua District Council, Tauranga City Council and Western Bay of Plenty District Council within the meaning of clause 30(1)(b) of Schedule 7 of the Local Government Act 2002.

5.9 Despite Schedule 7 of the Local Government Act 2002, the Kaituna River Authority:

5.9.1 is a permanent committee; and

5.9.2 must not be dissolved unless all appointers agree to the Kaituna River Authority being dissolved.

5.10 The members of the Kaituna River Authority must:

5.10.1 act in a manner so as to achieve the purpose of the Kaituna River Authority; and

5.10.2 subject to clause 5.10.1 comply with any terms of appointment issued by the relevant appointer.

Functions of the Kaituna River Authority

5.11 The principal function of the Kaituna River Authority is to achieve its purpose.

5.12 The specific functions of the Kaituna River Authority are to:

5.12.1 encourage the restoration, protection and enhancement of the environmental, cultural and spiritual wellbeing of the Kaituna River;

5.12.2 prepare and approve the Kaituna River document to identify the vision, objectives and desired outcomes and any other relevant matters for the Kaituna River;

5.12.3 monitor the implementation and effectiveness of the Kaituna River Document;

5.12.4 support the integrated and collaborative management of the Kaituna River;

5.12.5 work with agencies with responsibilities relating to the Kaituna River (including local authorities and Crown agencies) to:

(a) monitor the state of the Kaituna River environment and the effectiveness of the management of the Kaituna River; and

(b) engage with iwi concerning their interests in the Kaituna River and their views on the management of the Kaituna River;

5.12.6 facilitate participation of iwi in the management of the Kaituna River;

5.12.7 provide guidance or recommendations to relevant local authorities regarding potential projects, initiatives, action or research aimed at the restoration, protection, and enhancement of the health and wellbeing of the Kaituna River;

5.12.8 seek funding to assist in achieving the purpose of the Kaituna River Authority;

5.12.9 provide guidance to relevant local authorities regarding the appointment of commissioners to hearing panels considering applications for resource consents relating to the Kaituna River;

5.12.10 engage with, seek advice from and provide advice to local authorities and other relevant agencies regarding the health and wellbeing of the Kaituna River;

5.12.11 gather and disseminate information, hold meetings and undertake other actions in relation to the health and wellbeing of the Kaituna River; and

5.12.12 take any other action that is considered by the Kaituna River Authority to be appropriate to achieve its purpose.

5.13 To avoid doubt, except as provided for in clause 5.12.2, the Kaituna River Authority has discretion to determine in any particular circumstances:

5.13.1 whether to exercise any function identified in clause 5.12; and

5.13.2 how, and to what extent, any function identified in clause 5.12 is exercised.

Capacity

5.14 The Kaituna River Authority will have such powers as are reasonably necessary for it to carry out its functions:

5.14.1 in a manner consistent with part 11 of the draft settlement bill; and

5.14.2 subject to clause 5.14.1, the local government legislation.

Procedures of the Kaituna River Authority

5.15 Except as otherwise provided for in sections 277A to 277P and Schedule 8A of the draft settlement bill, the procedures of the Kaituna River Authority are governed by the applicable provisions of the Local Government Act 2002, Local Government Official Information and Meetings Act 1987 and Local Authorities (Members' Interests) Act 1968.

Appointment of Kaituna River Authority members

5.16 At settlement date, the Kaituna River Authority will consist of eight members as follows:

5.16.1 two members appointed by the governance entity noting that, in the case of one of the two members, that member will be jointly appointed by the governance entity and Te Kapu o Waitaha;

5.16.2 one member appointed by Te Pumautanga o Te Arawa;

5.16.3 one member appointed by Te Tahuhu o Tawakeheimoa Trust;

5.16.4 one member appointed by the Bay of Plenty Regional Council;

5.16.5 one member appointed by the Rotorua District Council;

5.16.6 one member appointed by the Tauranga City Council; and

5.16.7 one member appointed by the Western Bay of Plenty District Council.

(each organisation being an "**appointer**").

5.17 Any member of the Kaituna River Authority appointed by a local authority appointer must be a current mayor or councillor of that council to be eligible for appointment to the Kaituna River Authority.

5.18 The parties acknowledge that, through subsequent Treaty of Waitangi settlement legislation, provision may be made for:

5.18.1 the Ngāti Whakaue entity to appoint a member to the Kaituna River Authority; and

5.18.2 the Bay of Plenty Regional Council to appoint an additional member to the Kaituna River Authority.

5.19 Members of the Kaituna River Authority:

5.19.1 are appointed for a term of three years, unless the member resigns or is removed by an appointer during that term; and

5.19.2 may be reappointed or removed by and at the sole discretion of the relevant appointer.

5.20 In appointing members to the Kaituna River Authority, appointers:

5.20.1 must be satisfied that the person has the skills, knowledge or experience to:

(a) participate effectively in the Kaituna River Authority; and

(b) contribute to the achievement of the purpose of the Kaituna River Authority; and

5.20.2 must have regard to any members already appointed to the Kaituna River Authority to ensure that the membership reflects a balanced mix of knowledge and experience in relation to the Kaituna River.

5.21 Nothing done by the Kaituna River Authority is invalid because of:

5.21.1 a vacancy in the membership of the Authority at the time the thing was done; or

5.21.2 the subsequent discovery of a defect in the appointment of a person acting as a member.

Resignation or removal of Kaituna River Authority members

5.22 A member may resign by giving written notice to that person's appointer and the Kaituna River Authority.

5.23 A member may be removed by the relevant appointer giving written notice to that member and the Kaituna River Authority.

5.24 Where there is a vacancy on the Kaituna River Authority:

5.24.1 the relevant appointer will fill that vacancy as soon as is reasonably practicable; and

5.24.2 any such vacancy does not prevent the Kaituna River Authority from continuing to discharge its functions.

5.25 To avoid doubt, members of the Kaituna River Authority who are appointed by iwi are not, by virtue of that membership, members of a local authority.

Chair and Deputy Chair

5.26 At the first meeting of the Kaituna River Authority the Tapuika appointed members will appoint one member as Chair for the first three years of the Kaituna River Authority.

5.27 Following the first three year term the Kaituna River Authority will appoint one member as Chair for each subsequent term.

5.28 The Chair:

5.28.1 is appointed for a term of three years unless the Chair resigns or is removed during that term; and

5.28.2 may be reappointed as the Chair.

5.29 At its first meeting the Kaituna River Authority will appoint one member as Deputy Chair.

5.30 The Deputy Chair:

5.30.1 is appointed for a term of three years, unless the Deputy Chair resigns or is removed during that term; and

5.30.2 may be reappointed as the Deputy Chair.

Standing orders

5.31 At its first meeting the Kaituna River Authority will adopt a set of standing orders and may amend those standing orders from time to time.

5.32 The standing orders must:

5.32.1 not contravene part 11 of the draft settlement bill;

5.32.2 respect tikanga Māori; and

5.32.3 not contravene the Local Government Act 2002, Local Government Official Information and Meetings Act 1987 or any other Act.

5.33 A member of the Kaituna River Authority must comply with the standing orders as amended from time to time by the Kaituna River Authority.

Meetings of the Kaituna River Authority

5.34 The Kaituna River Authority will:

5.34.1 at its first meeting agree a schedule of meetings that will allow the Kaituna River Authority to achieve its purpose and properly discharge its functions; and

5.34.2 review that meeting schedule on a regular basis to ensure that it is sufficient to allow the Kaituna River Authority to achieve its purpose and properly discharge its functions.

5.35 The Chair will preside over meetings and, if the Chair is absent from a meeting, the Deputy Chair will preside over that meeting.

5.36 If there are eight members of the Kaituna River Authority, the quorum for a meeting is not less than five members, made up as follows:

5.36.1 at least two of the members appointed by the iwi appointers;

5.36.2 at least two of the members appointed by the local authority appointers; and

5.36.3 in addition to the members identified in clauses 5.36.1 and 5.36.2, the Chair or Deputy Chair.

5.37 If there are ten members of the Kaituna River Authority, the quorum for a meeting is not less than seven members, made up as follows:

5.37.1 at least three of the members appointed by the iwi appointers;

5.37.2 at least three of the members appointed by the local authority appointers; and

5.37.3 in addition to the members identified in clauses 5.37.1 and 5.37.2, the Chair or Deputy Chair.

Decision-making

5.38 The decisions of the Kaituna River Authority must be made by vote at a meeting.

5.39 When making a decision the Kaituna River Authority:

5.39.1 will strive to achieve consensus among its members; but

5.39.2 if, in the opinion of the Chair (or Deputy Chair if the Chair is absent), consensus is not practicable after reasonable discussion, a decision of the Kaituna River Authority may be made by a minimum of 70% majority of those members present and voting at a meeting of the Kaituna River Authority.

5.40 The Chair and the Deputy Chair of the Kaituna River Authority may vote on any matter but do not have casting votes.

5.41 The members of the Kaituna River Authority must approach decision-making in a manner that:

5.41.1 is consistent with, and reflects, the purpose of the Kaituna River Authority; and

5.41.2 acknowledges as appropriate the interests of iwi in particular parts of the Kaituna River.

Declaration of interest

5.42 A member of the Kaituna River Authority is required to disclose any actual or potential interest in a matter to the Kaituna River Authority.

5.43 The Kaituna River Authority will maintain an interests register and will record any actual or potential interests that are disclosed to the Kaituna River Authority.

5.44 A member of the Kaituna River Authority is not precluded by the Local Authorities (Members' Interests) Act 1968 from discussing or voting on a matter:

5.44.1 merely because the member is affiliated to an iwi or hapū that has customary interests over the Kaituna River; or

5.44.2 merely because the member is also a member of a local authority; or

5.44.3 merely because the economic, social, cultural, and spiritual values of any iwi or hapū and their relationships with the Kaituna River Authority are advanced by or reflected in:

(a) the subject matter under consideration;

(b) any decision by or recommendation of the Kaituna River Authority; or

(c) participation in the matter by the member.

5.45 To avoid doubt, the affiliation of a member of the Kaituna River Authority to an iwi or hapū that has customary interests over the Kaituna River is not an interest that must be disclosed or recorded under clause 5.43.

5.46 In clauses 5.42 to 5.45, "**matter**" means:

5.46.1 the Kaituna River Authority's performance of its functions or exercise of its powers; or

5.46.2 an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Kaituna River Authority.

5.47 A member of the Kaituna River Authority has an actual or potential interest in a matter, in terms of clauses 5.42 to 5.46, if he or she:

5.47.1 may derive a financial benefit from the matter; or

5.47.2 is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or

5.47.3 may have a financial interest in a person to whom the matter relates; or

5.47.4 is a partner, director, officer, Board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

5.47.5 is otherwise directly or indirectly interested in the matter.

5.48 However, a person is not interested in a matter if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities as a member of the Kaituna River Authority.

Reporting and review

5.49 The Kaituna River Authority will report on an annual basis to the appointers.

5.50 The report referred to in clause 5.49 will:

5.50.1 describe the activities of the Kaituna River Authority over the preceding 12 months; and

5.50.2 explain how those activities are relevant to the Kaituna River Authority's purpose and functions.

5.51 The appointers will commence a review of the performance of the Kaituna River Authority, including of the extent that the purpose of the Kaituna River Authority is being achieved and the functions of the Kaituna River Authority are being effectively discharged, on the date that is one year after the approval of the first Kaituna River Document.

5.52 The appointers may undertake any subsequent review of the performance of the Kaituna River Authority at any time agreed between all of the appointers.

5.53 Following any review of the Kaituna River Authority under clause 5.51 or 5.52, the appointers may make recommendations to the Kaituna River Authority on any relevant matter arising out of that review.

Administrative and technical support of Kaituna River Authority

5.54 On the effective date, the Crown will provide $250,000 to the Kaituna River Authority as a contribution to the costs of:

5.54.1 the initial operation of the Kaituna River Authority; and

5.54.2 the preparation and approval of the first Kaituna River Document.

5.55 The Bay of Plenty Regional Council will:

5.55.1 hold funds on behalf of the Kaituna River Authority;

5.55.2 account for those funds in a separate and identifiable manner; and

5.55.3 expend those funds as directed by the Kaituna River Authority.

5.56 The administrative support for the Kaituna River Authority will be provided by the Bay of Plenty Regional Council.

5.57 The technical support for the Kaituna River Authority will be provided by the appointers, where it is reasonably practicable to provide such support.

THE KAITUNA RIVER DOCUMENT

Purpose and scope of the Kaituna River Document

5.58 The Kaituna River Authority will prepare and approve a document for the Kaituna River ("**Kaituna River Document**").

5.59 The purpose of the Kaituna River Document is to:

5.59.1 encourage the restoration, protection and enhancement of the environmental, cultural and spiritual wellbeing of the Kaituna River;

5.59.2 provide, as appropriate, for the social and economic wellbeing of people and communities;

5.59.3 identify the significant issues for the Kaituna River; and

5.59.4 identify the vision, objectives and desired outcomes for the Kaituna River.

5.60 The Kaituna River Document may:

5.60.1 address other matters that the Kaituna River Authority considers relevant to the purpose of that document; but

5.60.2 not include rules or other methods.

5.61 The Kaituna River Authority will commence the preparation of the Kaituna River Document no later than three years after the effective date.

5.62 In preparing the Kaituna River Document, the Kaituna River Authority must:

5.62.1 adopt and facilitate a collaborative approach that encourages the participation of interested persons and organisations;

5.62.2 review the Kaituna River and Ongatoro/Maketu Estuary Strategy and consider whether relevant aspects of its content may be incorporated into the first Kaituna River Document;

5.62.3 ensure that the contents of the Kaituna River Document are consistent with the purpose of that document as set out in clause 5.59;

5.62.4 include a proposed name for the Kaituna River Document;

5.62.5 consider and document the potential alternatives to, and the potential benefits and costs of, the matters provided for in the draft Kaituna River Document; and

5.62.6 comply with the obligations under clause 5.62.5 only to the extent that is relative to the nature and contents of the Kaituna River Document.

5.63 In conjunction with the requirements of clause 5.62, when preparing the Kaituna River Document, the Kaituna River Authority may also consider:-

5.63.1 any other information or document that is relevant to the purpose of the Kaituna River Document; and

5.63.2 any other statutory framework that is relevant to the purpose of the Kaituna River Document.

Effect on Resource Management Act 1991 planning documents

5.64 In preparing, reviewing, varying or changing a regional policy statement, regional plan or district plan (including a proposed policy statement or plan), a local authority must recognise and provide for the vision, objectives and desired outcomes in the Kaituna River Document.

5.65 The obligation under clause 5.64 applies each time that a local authority prepares, reviews, varies or changes a regional policy statement, regional plan or district plan (including a proposed policy statement or plan).

5.66 Until such time as the obligation under clause 5.64 is complied with, where a consent authority is processing or making a decision on an application for resource consent in the area of the Kaituna River, that consent authority will have regard to the Kaituna River Document.

5.67 To avoid doubt,

(a) the obligations under clauses 5.64 to 5.66 apply only to the extent that the contents of the Kaituna River Document relate to the resource management issues of the region or district;

(b) when complying with the obligation under clause 5.64 to recognise and provide for the vision, objectives and desired outcomes of the Kaituna River Document, the local authority must do so in a manner consistent with the purpose of the Resource Management Act 1991, having regard to efficiency, effectiveness and the costs and benefits; and

(c) the obligations under clause 5.64 must be carried out in accordance with the requirements and procedures in Part 5 and Schedule 1 of the RMA.

Effect on Local Government Act 2002

5.68 A local authority must take into account the Kaituna River Document when making any decision under the Local Government Act 2002, to the extent that the content of that document has a bearing on local government matters in relation to the Kaituna River.

Effect on fisheries processes

5.69 The parties acknowledge that:

5.69.1 once approved, the Kaituna River Document will influence regional policy statements, regional plans or district plans (including proposed policy statements or plans); and

5.69.2 under section 11 of the Fisheries Act 1996, the Minister is required to have regard to regional policy statements and regional plans under the RMA before setting or varying any sustainability measures.

Notification and submissions on draft Kaituna River Document

5.70 When the Kaituna River Authority has prepared the draft Kaituna River Document (and, in the case of the first Kaituna River Document, no later than 12 months after the commencement of the preparation process), the Kaituna River Authority:

5.70.1 must notify it by giving public notice;

5.70.2 may notify it by any other means that the Kaituna River Authority thinks appropriate; and

5.70.3 must ensure that the draft Kaituna River Document and any other document that the Kaituna River Authority considers relevant are available for public inspection.

5.71 The public notice must:

5.71.1 state that the draft Kaituna River Document is available for inspection at the places and times specified in the notice; and

5.71.2 state that interested persons or organisations may lodge submissions on the draft Kaituna River Document:

(a) with the Kaituna River Authority;

(b) at the place specified in the notice; and

(c) before the date specified in the notice.

5.72 The date for the lodging submissions specified in the notice under clause 5.71.2(c) must be at least 20 business days after the date of the publication of the notice.

5.73 Any person or organisation may make a written or electronic submission on the draft Kaituna River Document in the manner described in the public notice.

Approval of Kaituna River Document

5.74 The Kaituna River Authority must consider any written submissions to the extent that those submissions are consistent with the purpose of the Kaituna River Document.

5.75 The Kaituna River Authority may, having considered any submissions made, and in its discretion, hold a hearing and invite those persons who made a submission to be heard at a time and place specified by the Authority.

5.76 The Kaituna River Authority will consider any submissions and any oral presentations at a hearing and then may amend the Kaituna River Document in response.

5.77 The Kaituna River Authority must then approve the Kaituna River Document.

5.78 The Kaituna River Authority:

5.78.1 must notify the Kaituna River Document by giving public notice; and

5.78.2 may notify the Kaituna River Document by any other means that the Kaituna River Authority thinks appropriate.

5.79 At the time of giving public notice of the Kaituna River Document under clause 5.78, the Kaituna River Authority will also make available a decision report that identifies how submissions were considered and dealt with by the Kaituna River Authority.

5.80 The public notice must:

5.80.1 state where the Kaituna River Document is available for public inspection; and

5.80.2 state when the Kaituna River Document comes into force.

5.81 The Kaituna River Document:

5.81.1 must be available for public inspection at the local offices of the relevant local authorities and appropriate agencies; and

5.81.2 comes into force on the date specified in the public notice.

5.82 The Kaituna River Authority may request from an appointer reports or advice to assist in the preparation or approval of the Kaituna River Document.

5.83 The relevant appointer will comply with a request under clause 5.82 where it is reasonably practicable to do so.

Review of, and amendments to, the Kaituna River Document

5.84 The Kaituna River Authority will commence a review of the Kaituna River Document:

5.84.1 no later than 10 years after the approval of the first Kaituna River Document; and

5.84.2 no later than 10 years after the completion of the previous review.

5.85 If the Kaituna River Authority considers as a result of a review that the Kaituna River Document should be amended in a material manner, the amendment must be prepared and approved in accordance with clauses 5.70 to 5.81.

5.86 If the Kaituna River Authority considers the Kaituna River Document should be amended in a manner that is of minor effect, the amendment may be approved under clause 5.76, and the Kaituna River Authority must comply with clauses 5.78 and 5.80 to 5.81.

Kaituna River Iwi Committee

5.87 The Crown acknowledges that, in addition to participating in the Kaituna River Authority, Tapuika intends to establish an iwi committee with Waitaha, Ngāti Pūkenga and Ngā Pōtiki to work collectively and in the spirit of cooperation on matters relating to the Kaituna River.

Definitions

5.88 In this part:

5.88.1 **appointers** means all of the organisations with the power to appoint members to the Kaituna River Authority under clause 5.16;

5.88.2 **iwi members** means the members of the Kaituna River Authority that are appointed under clause 5.16;

5.88.3 **local authority** means a regional council or a territorial authority;

5.88.4 **local government legislation** means the Local Government Act 2002, Local Government Act 1974, Local Government Official Information and Meetings Act 1987 and the Local Authorities (Members' Interests) Act 1968;

5.88.5 **Kaituna River** means the Kaituna River including its tributaries within the catchment areas shown on deed plan OTS-209-79;and

5.88.6 **Kaituna River Document** means, for the purposes of clauses 5.64 to 5.69, the document once it has been approved by the Kaituna River Authority under clause 5.77.

VEST AND GIFT BACK OF LOWER KAITUNA WILDLIFE MANAGEMENT RESERVE

5.89 The settlement legislation will, on the terms provided by sections 261 to 262A of the draft settlement bill, provide that:

5.89.1 the fee simple estate in the Lower Kaituna Wildlife Management Reserve (as shown on deed plan OTS-209-80) will vest in the governance entity and the Ngāti Whakaue entity in accordance with clause 5.89.2 (the **vesting date**) but subject to clause 5.89.3;

5.89.2 the vesting date is the earlier of:

(a) the date nominated by the governance entity and the Ngāti Whakaue entity by jointly giving written notice to the Minister of Conservation as to the vesting date; and

(b) 31 December 2016;

5.89.3 should the date specified in clause 5.89.2(b) be the vesting date, the fee simple estate will vest solely in the governance entity, being the iwi in respect of which its settlement legislation has been enacted on or before this vesting date;

5.89.4 on the seventh day after the vesting date, the fee simple estate in the Lower Kaituna Wildlife Management Reserve vests in the Crown:

(a) as a wildlife management reserve;

(b) as a gift from the governance entity and the Ngāti Whakaue entity jointly (where clause 5.89.1 applies) or from the governance entity (where clause 5.89.3 applies);

5.89.5 despite the Kaituna Wetlands vestings under clause 5.89.1 or clause 5.89.3 and clause 5.89.4 (the **Kaituna Wetlands vestings**):

(a) the Lower Kaituna Wildlife Management Reserve remains a wildlife management reserve under the Wildlife Act 1953, and that Act continues to apply to the reserve, as if the Kaituna Wetlands vestings had not occurred;

(b) any other enactment or any instrument or interest that applied to the Lower Kaituna Wildlife Management Reserve immediately before the vesting date continues to apply to the site as if the Kaituna Wetlands vestings had not occurred; and

(c) every encumbrance that affected the Lower Kaituna Wildlife Management Reserve immediately before the vesting date continues to affect that site as if the Kaituna Wetlands vestings had not occurred;

(d) the Crown retains all liability for the Lower Kaituna Wildlife Management Reserve as if the Kaituna Wetlands vestings had not occurred; and

(e) the Kaituna Wetlands vestings are not affected by Part 4A of the Conservation Act 1987, section 11 and Part 10 of the Resource Management Act 1991, or any other enactment.

CULTURAL REDRESS PROPERTIES

5.90 The settlement legislation will vest in the governance entity on the settlement date –

In fee simple

5.90.1 the fee simple estate in each of the following sites:

(a) Otukawa (as shown on deed plan OTS-209-11);

(b) Otahu Pā (as shown on deed plan OTS-209-12);

(c) Te Riu o Hua (as shown on deed plan OTS-209-67); and

As a scenic reserve

5.90.2 the fee simple estate in each of the following sites as a scenic reserve, with the governance entity as the administering body:

(a) Te Manga o Ngakohua (as shown on deed plan OTS-209-09);

(b) Wai Paepae (as shown on deed plan OTS-209-05);

(c) Waiari Stream site (as shown on deed plan OTS-209-78); and

As an historic reserve

5.90.3 the fee simple estate in each of the following sites as a historic reserve, with the governance entity as the administering body:

(a) Te Pehu Pā (as shown on deed plan OTS-209-03);

(b) Te Kainga Onaumoko (as shown in deed plan OTS-209-06);

(c) Te Whaititiri Pā (as shown in deed plan OTS-209-07);

(d) Te Paieka (as shown on deed plan OTS-209-08); and

(e) Te Weta Pā (as shown on deed plan OTS-209-68); and

As a historic reserve subject to a right of way easement

5.90.4 The fee simple estate in Omawake Pā (as shown on deed plan OTS-209-10) as a historic reserve with the governance entity as the administering body, subject to a right of way in relation to that site on the terms and conditions set out in Part 7.1 of the documents schedule;

Jointly vested as a scenic reserve

5.91 The settlement legislation will vest in the governance entity on the later of the settlement date and the Ngāti Rangiwewehi settlement date an undivided half share in the fee simple estate in Te Taita (as shown on deed plan OTS-209-27) (to be held as tenants in common with Ngāti Rangiwewehi), with a joint management body as the

administering body. The members of the joint management body will be appointed by the governance entity and the Te Tahuhu o Tawakeheimoa Trust.

5.91A The settlement legislation will vest the fee simple estate in Puwhenua (as shown on deed plan OTS-209-83) as a scenic reserve in the following entities as tenants in common:

5.91A.1 the governance entity as to an undivided 1/6 share;

5.91A.2 Te Tahuhu o Tawakeheimoa Trust as to an undivided 1/6 share;

5.91A.3 Te Kapu o Waitaha as to an undivided 1/6 share;

5.91A.4 Ngā Hapū o Ngāti Ranginui Settlement Trust as to an undivided 1/6 share;

5.91A.5 the Ngāi Te Rangi governance entity as to an undivided 1/6 share; and

5.91A.6 the Ngāti Pūkenga governance entity as to an undivided 1/6 share.

5.91B The settlement legislation will establish a joint management body which will be the administering body for the reserve.

Jointly vested as scenic reserve subject to a right of way easement

5.91C The settlement legislation will vest the fee simple estate in Otanewainuku (as shown on deed plan OTS-209-82) as a scenic reserve in the following entities as tenants in common:

5.91C.1 the governance entity as to an undivided 1/6 share;

5.91C.2 Te Tahuhu o Tawakeheimoa Trust as to an undivided 1/6 share;

5.91C.3 Te Kapu o Waitaha as to an undivided 1/6 share;

5.91D.4 Ngā Hapū o Ngāti Ranginui Settlement Trust as to an undivided 1/6 share;

5.91C.5 the Ngāi Te Rangi governance entity as to an undivided 1/6 share; and

5.91C.6 the Ngāti Pūkenga governance entity as to an undivided 1/6 share.

5.91D The settlement legislation will establish a joint management body which will be the administering body for the reserve.

5.91E The settlement legislation will provide that the vesting of, and establishment of the joint administering body for, the reserve is subject to the entities referred to in clause 5.91D providing the Crown with a registrable right of way easement over A and B as marked on deed plan OTS-209-82in the form set out in part 7.2 of the documents schedule.

Vesting date for Puwhenua and Otanewainuku

5.91F The settlement legislation will provide that the vestings of, and establishment of the joint administering bodies for, Puwhenua and Otanewainuku will occur on a date to be specified by the Governor-General by Order in Council, on recommendation of the Minister of Conservation.

5.91G The Minister must make the recommendation referred to in clause 5.91H to the Governor-General as soon as practicable after the following Acts of Parliament have come into force:

5.91G.1 the settlement legislation; and

5.91G.2 the legislation required to be proposed for introduction to the House of Representatives under each of the following deeds:

(a) the Waitaha settlement deed;

(b) the Ngāti Rangiwewehi settlement deed;

(c) the Ngāti Ranginui settlement deed;

(d) the Ngāti Pūkenga settlement deed; and

(e) the Ngāi Te Rangi settlement deed.

5.91H The Minister must, in making his recommendation to the Governor-General, specify the entities in which Puwhenua and Otanewainuku will vest in accordance with clauses 5.19A and 5.91C.

5.91I Without limiting clause 7.2, the Crown and the governance entity will agree in writing to any necessary changes to the draft settlement bill proposed for introduction to the House of Representatives so as to give effect to the vesting of Puwhenua and Otanewainuku in the manner specified in clauses 5.91A to 5.91E.

5.92 Each cultural redress property is to be –

5.92.1 as described in schedule 8 of the draft settlement bill; and

5.92.2 vested on the terms provided by -

(a) sections 246 to 277 of the draft settlement bill; and

(b) part 2 of the property redress schedule; and

5.92.3 subject to any encumbrances, or other documentation, in relation to that property -

(a) required by clauses 5.90 to 5.91E to be provided by the governance entity; or

(b) required by the settlement legislation; and

(c) in particular, referred to by schedule 8 of the draft settlement bill.

ENHANCING CULTURAL PRESENCE

5.93 The Crown must pay to the governance entity on the settlement date the sum of $500,000 to assist Tapuika to enhance their cultural presence in Te Puke. This redress recognises the strong cultural association Tapuika has with this area.

WHENUA RAHUI

5.94 The settlement legislation will, on the terms provided by sections 232 to 245 of the draft settlement bill, –

5.94.1 declare that Opoutihi (as shown on deed plan OTS-209-13) is subject to Whenua Rahui; and

5.94.2 provide the Crown's acknowledgement of the statement of the values of Tapuika in relation to the site; and

5.94.3 require the New Zealand Conservation Authority, and any relevant conservation board when approving or otherwise considering any conservation management strategy, conservation management plan or national park management plan in respect of the site to have particular regard to:

(a) the statement of Tapuika values; and

(b) the protection principles (which are directed at the Minister of Conservation avoiding harming or diminishing the Tapuika values in relation to the site); and

5.94.4 require the New Zealand Conservation Authority and any relevant conservation board, before approving any conservation management strategy, conservation management plan, or national park management plan in respect of the site to:

(a) consult with the governance entity; and

(b) have particular regard to the views of the governance entity as to the effect of the strategy or plan on:

(i) Tapuika values; and

(ii) the protection principles (which are directed at the Minister of Conservation avoiding harming or diminishing the Tapuika values in relation to the site); and

5.94.5 provide that where the governance entity advises the New Zealand

Conservation Authority in writing that it has significant concerns about a draft management strategy in relation to the site, the New Zealand Conservation Authority will, before approving the strategy give the governance entity an opportunity to make submissions in relation to those concerns; and

5.94.6 require the application of the Whenua Rahui to be noted in any conservation management strategy, conservation management plan, or national park management plan affecting the site; and

5.94.7 require the Director-General of Conservation to take action in relation to the protection principles; and

5.94.8 enable the making of regulations and bylaws in relation to the site.

5.95 The statement of the values of Tapuika, the protection principles, and the Director-General's actions are in the documents schedule.

ARRANGEMENTS IN RESPECT OF THE ŌTARA SCENIC RESERVE

5.96 The Crown acknowledges the importance of the Ōtara Scenic Reserve to the governance entity;

5.96A The Crown confirms that:

5.96A.1 if Te Kapu o Waitaha no longer wishes to hold the fee simple estate in Ōtara Scenic Reserve, Te Kapu o Waitaha will transfer for nil consideration the fee simple estate in Ōtara Scenic Reserve to the Crown in accordance with the Waitaha settlement legislation; and

5.96A.2 in the event clause 5.96A.1 occurs, and if the governance entity so desires, the Crown will vest, as soon as resonably practicable, the fee simple estate in Ōtara Scenic Reserve in the governance entity, subject to reserve status and it is envisaged that a Reserves and Other Lands Disposal Act will provide for the vesting to occur.

5.97 The settlement legislation will, on the terms provided by section 257 of the draft settlement bill, provide that:

5.97.1 each member of Tapuika has a right of access to the Ōtara Scenic Reserve; and

5.97.2 the right of access is exercisable by Tapuika in perpetuity (noting this right of access will become redundant where clause **Error! Reference source not ound.** applies); and

5.97.3 any rights exercised, or obligations undertaken, by the administering body of the Ōtara Scenic Reserve under the Reserves Act 1977 will not limit the right of access granted to Tapuika; and

5.97.4 each member of Tapuika exercising a right of access may do so in the same manner as any member of Waitaha (whether that be by vehicle or on foot).

VESTING OF WAIARI STREAM SITE

5.98 The parties acknowledge that:

5.98.1 if the governance entity no longer wishes to hold Waiari Stream Scenic Reserve, the governance entity will transfer the fee simple estate in Waiari Stream Scenic Reserve for nil consideration to the Crown in accordance with this deed and the settlement legislation; and

5.98.2 in the event that clause 5.98.1 occurs, and if Te Kapu o Waitaha so desires, the Crown will, as soon as resonably practicable, vest the fee simple estate in Waiari Stream Scenic Reserve in Te Kapu o Waitaha, subject to reserve status and it is envisaged that a Reserves and Other Lands Disposal Act will provide for the vesting to occur.

STATUTORY ACKNOWLEDGEMENT

5.99 The settlement legislation will, on the terms provided by sections 218 to 226 of the draft settlement bill, –

5.99.1 provide the Crown's acknowledgement of the statements by Tapuika of their particular cultural, spiritual, historical, and traditional association with the following areas:

(a) Maketu Wildlife Management Reserve (as shown on deed plan OTS-209-14);

(b) Waihi Estuary Wildlife Management Reserve (as shown on deed plan OTS-209-15);

(c) Part Taumata Scenic Reserve (Ngatokaturua) (as shown on deed plan OTS-209-16);

(d) Kiwi Stream Conservation Area (as shown on deed plan OTS-209-17);

(e) Pokopoko Stream Scenic Reserve (as shown on deed plan OTS-209-73);

(f) Maketū Conservation Area (as shown on deed plan OTS-209-19);

(g) Part Whataroa Road Conservation Area (Kaiakatia) (as shown on deed plan OTS-209-20);

(h) Part Ruato Stream Conservation Area (as shown on deed plan OTS-209-21);

(i) Mangorewa Scenic Reserve (as shown on deed plan OTS-209-22);

(j) Part Mangorewa Ecological Area (as shown on deed plan OTS-209-23);

(k) Marginal strips located in the area of interest (as shown on deed plan OTS-209-25);

(l) Otanewainuku Conservation Forest (as shown on deed plan OTS-209-77);

(m) Kaituna River (as shown on deed plan OTS-209-26);

(n) Mangorewa River (as shown on deed plan OTS-209-28);

(o) Waiari Stream (as shown on deed plan OTS-209-29);

(p) Pokopoko Stream (as shown on deed plan OTS-209-60);

(q) Te Rerenga Stream (as shown on deed plan OTS-209-62);

(r) Kiwi Stream (as shown on deed plan OTS-209-63);

(s) Ruato Stream (as shown on deed plan OTS-209-64);

(t) Whataroa Stream (as shown on deed plan OTS-209-65);

(u) Ohaupara Stream (as shown on deed plan OTS-209-66);

(v) Mangatoi Stream (as shown on deed plan OTS-209-69);

(w) Kaokaonui Stream (as shown on deed plan OTS-209-70);

(x) Onaia Stream (as shown on deed plan OTS-209-71);

(y) Ohineangaanga Stream (OTS-209-76);

(z) Raparapahoe Stream (as shown on OTS-209-75); and

(aa) Coastal Marine Area: Little Waihi to Wairakei (as shown on deed plan OTS-209-74); and

5.99.2 require relevant consent authorities, the Environment Court, and the New Zealand Historic Places Trust to have regard to the statutory acknowledgement; and

5.99.3 require relevant consent authorities to forward to the governance entity –

(a) summaries of resource consent applications within, adjacent to or directly affecting a statutory area; and

(b) a copy of a notice of a resource consent application served on the consent authority under section 145(10) of the Resource Management Act 1991; and

5.99.4 enable the governance entity, and any member of Tapuika, to cite the statutory acknowledgement as evidence of the association Tapuika has with an area.

5.100 The statements of association are in the documents schedule.

DEEDS OF RECOGNITION

5.101 The Crown must, by or on the settlement date, provide the governance entity with a copy of each of the following:

5.101.1 a deed of recognition, signed by the Minister of Conservation and the Director-General of Conservation, in relation to the following areas:

(a) Part Taumata Scenic Reserve (Ngatokaturua) (as shown on deed plan OTS-209-16);

(b) Kiwi Stream Conservation Area (as shown on deed plan OTS-209-17);

(c) Maketū Conservation Area (as shown on deed plan OTS-209-19);

(d) Part Whataroa Road Conservation Area (Kaiakatia) (as shown on deed plan OTS-209-20);

(e) Part Ruato Stream Conservation Area (as shown on deed plan OTS-209-21);

(f) Mangorewa Scenic Reserve (as shown on deed plan OTS-209-22);

(g) Part Mangorewa Ecological Area (as shown on deed plan OTS-209-23);

(h) Marginal strips located in the area of interest (as shown on deed plan OTS-209-25); and

5.101.2 a deed of recognition, signed by the Commissioner of Crown Lands, in relation to the Kaituna River (as shown on deed plan OTS-209-26).

5.102 Each area that a deed of recognition relates to includes only those parts of the area owned and managed by the Crown.

5.103 A deed of recognition will provide that the Minister of Conservation and the Director-General of Conservation, or the Commissioner of Crown Lands, as the case may be, must, if undertaking certain activities within an area that the deed relates to, –

5.103.1 consult the governance entity; and

5.103.2 have regard to its views concerning the association of Tapuika with the area as described in a statement of association.

NEW AND ALTERED GEOGRAPHIC NAMES

5.104 The settlement legislation will, from the settlement date, –

5.104.1 assign each of the following new geographic names to the location set opposite it:

New Geographic name	Location (topographic map and grid reference)	Geographic feature type
Puetou	BE37921901	Historic site*
Te Raho-o-Totokau Stream	BD37 901055 and BD37 910065	Stream
Parawhenuamea Stream	BD37913054 and BD37946148	Stream

5.104.2 alter each of the following existing geographic names to the altered geographic name set opposite it:

Existing geographic name (official, recorded or local usage)	Altered or assigned geographic name	Location (topographic map and grid references)	Geographic Feature Type
Part Mangorewa River	Paraiti River	BE37 787938 and BE36709889	River
Parawhenuamea Stream	Pakipaki Stream	BE37895010 and BD37965115	Stream

5.105 The settlement legislation will assign the new geographic names, and alter the existing geographic names, on the terms provided by section 231B of the draft settlement bill.

PROTOCOLS AND RELATIONSHIP AGREEMENT

5.106 Each of the following protocols must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister:

5.106.1 the Crown minerals protocol; and

5.106.2 the taonga tūturu protocol.

5.107 A protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.

Fisheries protocol

5.108 The parties acknowledge that Tapuika may take steps to establish a mandated iwi

organisation (as defined under the Māori Fisheries Act 2004), and in the event that the governance entity is recognised as a mandated iwi organisation, the responsible Minister will agree a fisheries protocol with Tapuika.

5.109 When the protocol is agreed, the responsible Minister will sign and issue the fisheries protocol to the governance entity.

5.110 The settlement legislation will provide that, in the event that the fisheries protocol is agreed between the parties, it will have the legislative effect of a protocol in terms of sections 217A and 217B of the draft settlement bill.

5.111 A fisheries protocol will set out how the Crown will interact with the governance entity with regard to the matters specified in it.

Conservation Relationship agreement

5.112 The conservation relationship agreement must, by or on the settlement date, be signed by both the governance entity and the responsible Minister.

5.113 The conservation relationship agreement:

5.113.1 sets out how the governance entity and the Department of Conservation (the **Department**) will work together in fulfilling the agreed strategic objectives; and

5.113.2 provides a framework to foster the development of a positive, collaborative and enduring relationship into the future between Tapuika and the Department.

FORM AND EFFECT OF DEEDS OF RECOGNITION AND PROTOCOLS AND RELATIONSHIP AGREEMENT

5.114 Each deed of recognition, protocol, and relationship agreement will be in the form set out in the documents schedule.

5.115 Each deed of recognition and protocol will be issued under, and subject to, the terms provided by sections 211 to 217B and sections 227 to 230 of the draft settlement bill.

5.116 A failure by the Crown to comply with a deed of recognition or a protocol or relationship agreement is not a breach of this deed.

LETTER OF RECOGNITION

5.117 The Ministry recognises that:

5.117.1 Tapuika as tangata whenua are entitled to have input and participation in fisheries management processes that relate to fish stocks in their area of interest and that are subject to the Fisheries Act 1996;

5.117.2 Tapuika as tangata whenua have a special relationship with all species of fish, aquatic life and seaweed within their area of interest and an interest in the

sustainable utilisation of all species of fish, aquatic life and seaweed.

5.118 By or on the settlement date, the Director-General of the Ministry for Primary Industries (the **Ministry**) will write a letter of recognition to the governance entity outlining:

5.118.1 that the Ministry recognises Tapuika as tangata whenua within their area of interest and has a special relationship with all species of fish, aquatic life and seaweed within their area of interest;

5.118.2 how Tapuika can have input and participation into the Ministry's fisheries planning processes; and

5.118.3 how Tapuika can implement the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within their area of interest.

5.119 The Crown must, by or on the settlement date, procure that the Director-General of the Ministry will write such a letter of recognition to the governance entity.

LETTERS OF INTRODUCTION

5.120 By or on the settlement date, the Minister for Treaty of Waitangi Negotiations must write letters of introduction in the form set out in the documents schedule to the following organisations:

(a) Mighty River Power;

(b) NZTA;

(c) Fish and Game New Zealand;

(d) Bay of Plenty Regional Council;

(e) Ministry of Health;

(f) Ministry of Social Development; and

(g) Housing New Zealand.

CULTURAL REDRESS GENERALLY NON-EXCLUSIVE

5.121 The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

5.122 However, the Crown must not enter into another settlement that provides for the same redress where that redress is offered exclusively to the governance entity.

6 FINANCIAL AND COMMERCIAL REDRESS

FINANCIAL REDRESS

6.1 The Crown must pay the governance entity on the settlement date the financial and commercial redress amount of $6,000,000, less –

6.1.1 $2,500,000 being the on-account payment that was paid on 19 December 2008 to Tapuika on account of the settlement; and

6.1.2 $2,760,300 being the total transfer values of the commercial redress properties transferred to the governance entity; and

6.1.3 if clause 6.6 applies, $332,035 (less any amount deducted pursuant to paragraph 9.50 of the property redress schedule), being the transfer value of Puwhenua Forest.

COMMERCIAL REDRESS PROPERTIES

6.2 Each commercial redress property is to be –

6.2.1 transferred by the Crown to the governance entity–

(a) as part of the redress to settle the historical claims, and without any other consideration to be paid or provided by the governance entity or any other person; and

(b) on the terms of transfer in part 9 of the property redress schedule; and

(c) on the date determined by clause 6.6, for the Puwhenua Forest; and

(d) on the later of the settlement date and the Ngāti Rangiwewehi settlement date, for Te Matai Forest (North) and for Te Matai Forest (South); and

(e) on the settlement date for the other commercial redress properties; and

6.2.2 as described, and is to have the transfer value provided, in part 3 of the property redress schedule.

6.3 The transfer of each commercial redress property will be –

6.3.1 subject to, and where applicable with the benefit of, the disclosed encumbrances provided in relation to that property; and

6.3.2 in the case of Kaharoa Forest, subject to the governance entity providing to the Crown by or on the settlement date a registrable right of way easement over the area marked A on SO 60791 in the form set out in Part 7.3 of the documents schedule; and

6.3.3 in the case of Te Matai Forest (North), subject to the Crown providing to the governance entity by or on the date referred to in clause 6.2.1(d) a registrable right of way easement over the area marked A on SO 60851 in the form set out in part 7.4 of the documents schedule; and

6.3.4 in the case of Te Matai Forest (South)-

(a) subject to the governance entity providing the Crown by or on the date referred to in 6.2.1(d) a registrable right of way easement over the area marked A on SO 60854 in the form set out in part 7.5 of the documents schedule; and

(b) subject to the Crown granting to the governance entity a registrable righ of way easement over the areas marked A and B on SO 60849 in the form set out in part 7.6 of the documents schedule.

6.4 The following commercial redress property is to be leased back to the Crown, immediately after its transfer to the governance entity, on the terms and conditions provided by the lease for that property in part 8 of the documents schedule (being a registrable ground lease for the property, ownership of the improvements remaining unaffected by the purchase):

6.4.1 Police Station, Te Puke.

PUWHENUA FOREST

6.5 Clause 6.6 applies if, before the final effective date each of the following events has occurred:

6.5.1 the governance entity, Ngā Hapū o Ngāti Ranginui Settlement Trust and Te Tahuhu o Tawakeheimoa Trust have jointly given a notice in writing to the Crown –

(a) confirming that they have established a limited liability company under the Companies Act 1993 to be the RRT joint entity that will take the transfer of Puwhenua Forest in accordance with clause 6.6; and

(b) identifying the name of the RRT joint entity; and

6.5.2 the Crown has confirmed in writing to the governance entity, Ngā Hapū o Ngāti Ranginui Settlement Trust and the Te Tahuhu o Tawakeheimoa Trust, that the RRT joint entity is appropriate to receive Puwhenua Forest as redress; and

6.5.3 the RRT joint entity has entered into a deed of covenant with the Crown agreeing to be bound by clause 6.6 as if the RRT joint entity had signed this deed for that purpose; and

6.5.4 Ngā Hapū o Ngāti Ranginui Settlement Trust and the Crown have entered into a deed to amend the Ngāti Ranginui settlement deed to enable the provisions relating to Puwhenua Forest to be included in this deed.

6.6 Clauses 6.2 and 6.3 and part 3 of the general matters schedule apply to Puwhenua Forest, and they apply on the following basis:

6.6.1 as if, in relation to Puwhenua Forest, references to the "governance entity" were references to the RRT joint entity; and

6.6.2 Puwhenua Forest is to be transferred to the RRT joint entity on the date that is the last to occur of all the following dates:

(a) the settlement date;

(b) the Ngāti Ranginui settlement date; and

(c) the Ngāti Rangiwewehi settlement date.

6.7 Clause 6.8 applies from the last date to occur of the three settlement dates specified in clause 6.6.2 if all the events referred to in clause 6.5 have not occurred on that date.

PUWHENUA FOREST AS A DEFERRED SELECTION PROPERTY

6.8 Puwhenua Forest is no longer a commercial redress property. Instead, the governance entity has, for two years after the last date to occur of the three settlement dates specified in clause 6.6.2, a right to elect to purchase Puwhenua Forest as a deferred selection property on, and subject to, the terms and conditions in part 6 and 8 of the property redress schedule.

RIGHT TO PURCHASE SECOND RIGHT OF PURCHASE PROPERTIES

6.9 Part 7 of the property redress schedule provides the governance entity with a right to purchase a second right of purchase property (being each property described in part 5 of the property redress schedule) if that property ceases to be a deferred selection property under the Waitaha settlement deed.

6.10 The right to the governance entity to purchase an available second right of purchase property is on the terms and conditions in parts 7 and 8 of the property redress schedule.

SETTLEMENT LEGISLATION

6.11 The settlement legislation will, on the terms provided by sections 278 to 287C of the draft settlement bill, enable the transfer of –

6.11.1 the commercial redress properties; and

6.11.2 the deferred selection property; and

6.11.3 a second right of purchase property, if it is not a commercial redress property.

RFR FROM THE CROWN

6.12 The governance entity is to have a right of first refusal in relation to a disposal by the Crown or a Crown body of RFR land, being land listed in the attachments as RFR land that, on the settlement date, -

6.12.1 is vested in the Crown; or

6.12.2 the fee simple for which is held by the Crown or NZTA.

6.13 The right of first refusal is –

6.13.1 to be on the terms provided by sections 288 to 316 of the draft settlement bill; and

6.13.2 in particular, to apply-

(a) for a term of 171 years from the settlement date; but

(b) only if the RFR land is not being disposed of in the circumstances provided by sections 299 to 305 of the draft settlement bill.

7 SETTLEMENT LEGISLATION, CONDITIONS, AND TERMINATION

SETTLEMENT LEGISLATION

7.1 Within 12 months after the date of this deed, the Crown must propose the draft settlement bill for introduction to the House of Representatives.

7.2 The draft settlement bill proposed for introduction may include changes:

7.2.1 of a minor or technical nature; or

7.2.2 where clause 7.2.1 does not apply where those changes have been agreed in writing by the governance entity and the Crown.

7.3 Tapuika and the governance entity must support the passage through Parliament of the settlement legislation.

SETTLEMENT CONDITIONAL

7.4 This deed, and the settlement, are conditional on the settlement legislation coming into force.

7.5 However, the following provisions of this deed are binding on its signing:

7.5.1 clauses 7.4 to 7.9:

7.5.2 paragraph 1.3, and parts 4 to 7, of the general matters schedule.

EFFECT OF THIS DEED

7.6 This deed –

7.6.1 is "without prejudice" until it becomes unconditional; and

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

7.7 Clause 7.6 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

7.8 The Crown or the governance entity may terminate this deed, by notice to the other, if –

7.8.1 the settlement legislation has not come into force within 30 months after the date of this deed; and

7.8.2 the terminating party has given the other party at least 60 business days notice of an intention to terminate.

7.9 If this deed is terminated in accordance with its provisions, it –

7.9.1 (and the settlement) are at an end; and

7.9.2 does not give rise to any rights or obligations; and

7.9.3 remains "without prejudice".

7.10 The parties intend that if this deed does not become unconditional under clause 7.4, the on-account payment will be taken into account in relation to any future settlement of the historical claims.

8 GENERAL, DEFINITIONS, AND INTERPRETATION

GENERAL

8.1 The general matters schedule includes provisions in relation to –

8.1.1 the implementation of the settlement; and

8.1.2 the Crown's –

(a) payment of interest in relation to the settlement; and

(b) tax indemnities in relation to redress; and

8.1.3 giving notice under this deed or a settlement document; and

8.1.4 amending this deed.

HISTORICAL CLAIMS

8.2 In this deed, **historical claims** –

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

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

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

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

(iv) from fiduciary duty; or

(v) otherwise; and

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

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

(ii) by or under legislation; and

8.2.2 includes every claim to the Waitangi Tribunal to which clause 8.2.1 applies that relates exclusively to Tapuika or a representative entity, including the following claims:

(a) Wai 615;

(b) Wai 831;

(c) Wai 825;

(d) Wai 1182; and

8.2.3 includes the Wai 368 claim to the Waitangi Tribunal to which clause 8.2.1 applies so far as it relates to Tapuika or a representative entity.

8.3 However, **historical claims** does not include the following claims –

8.3.1 a claim that a member of Tapuika, or a whānau, hapū, or group referred to in clause 8.5.2, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in clause 8.5.1:

8.3.2 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 8.3.1.

8.4 To avoid doubt, clause 8.2.1 is not limited by clause 8.2.2.

TAPUIKA

8.5 In this deed, Tapuika means:

8.5.1 the collective group composed of individuals who descend from an ancestor of Tapuika; and

8.5.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 8.5.1, including:

(a) Ngāti Tuheke;

(b) Ngāti Kuri;

(c) Ngāti Marukukere; and

(d) Ngāti Moko.

8.6 For the purposes of clause 8.5.1 –

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

(a) birth; or

(b) legal adoption; or

(c) Māori customary adoption in accordance with Tapuika tikanga (customary values and practices); and

8.6.2 **ancestor of Tapuika** means an individual who exercised customary rights by virtue of being descended from:

(a) Tapuika through Makahae, Huritini, Marangaipāroa, Tukutuku, Tamateranini, and Tuariki; or

(b) a recognised ancestor of any of the groups referred to in clause 8.5.2; and

who exercised customary rights predominantly in relation to the area of interest of Tapuika any time after 6 February 1840.

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

(a) rights to occupy land; and

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

MANDATED NEGOTIATORS AND SIGNATORIES

8.7 In this deed –

8.7.1 **mandated negotiators** means the following individuals:

(a) Piatarihi Callaghan, Te Puke, Manager Ngā Kakano Foundation Services; and

(b) Dean Flavell, Te Puke, Te Pou Arahi, Cultural Heritage Manager, Tauranga City Council; and

(c) Vincent Kihirini, Te Puke, Chief Executive Ngā Kakano Foundation; and

(d) Nuia Kokiri, Te Puke, retired; and

(e) Dr Hinematau McNeill, Auckland, Associate Dean, Auckland University of Technology; and

(f) Geoff Rice, Company Director, Rotorua; and

(g) Teia Williams, Te Puke, Orchardist; and

8.7.2 **mandated signatories** means the following individuals:

(a) Carol Biel, Te Puke, Coordinator Services for the Elderly, Ngā Kakano Foundation; and

(b) Melanie Biel, Te Puke, Process Worker Affco Rangiuru; and

(c) Dean Flavell, Te Puke, Pou Arahi, Cultural Heritage Manager, Tauranga City Council; and

(d) Vincent Kihirini, Te Puke, Chief Executive Ngā Kakano Foundation; and

(e) Nuia Kokiri, Te Puke, Retired; and

(f) Ateremu McNeill, Christchurch, IT Consultant; and

(g) Dr Hinematau McNeill, Auckland, Associate Dean, Auckland University of Technology; and

(h) John Pini, Tauranga, Process Worker Sandford Ltd; and

(i) Geoff Rice, Rotorua, Company Director; and

(j) Te Hira Roberts, Te Puke, Coordinator Mental Health Early Intervention Service, Ngā Kakano Foundation; and

(k) Teia Williams, Te Puke, Orchardist.

ADDITIONAL DEFINITIONS

8.8 The definitions in part 6 of the general matters schedule apply to this deed.

INTERPRETATION

8.9 Part 7 of the general matters schedule applies to the interpretation of this deed.

SIGNED as a deed on 16 December 2012

SIGNED for and on behalf
of **TAPUIKA** by
the trsutees of the Tapuika Iwi Authority –

Carol Biel

Melanie Biel

Dean Flavell

Vincent Kihirini

Nuia Kokiri

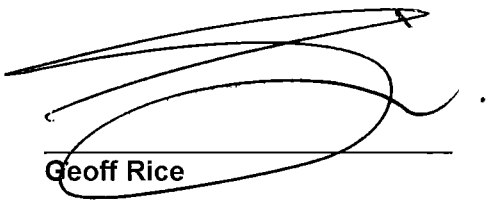
Ateremu McNeill

Dr Hinematau McNeill

John Pini

Te Hira Roberts

Teia Williams



Geoff Rice

WITNESS

P. Callaghan

Name: Pia Callaghan

Occupation: Manager Health Services NKE

Address: 24 Aron Pl Te Puke.

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

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

Hon Christopher Finlayson

The Minister of Finance (only in relation to the tax indemnities) in the presence of -

Hon Simon William English

WITNESS

Name: Andrea Craig

Occupation: Economic Advisor

Address: 2/68 Oban St, Well

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Te Papara Marsh

TeHiamanui Mana

Joseph Te Toroa Malcolm

WHAREKONEHU TE MONI

Tarefeiti [illegible]

Rev. Kereamanu Patena Wihapi

[illegible]

Tawhanake [illegible] Morehu

Keremoari Wati

Kereiao Lily Wilson - Tanatui.

Josephine Mortensen

[illegible] Paraotana

Aquitania Tehiini - Hollesan

[illegible] Koka - Waihaua

[illegible]

Hani Hiini

Ngarigaru Eparaima Kokiri Keenan

Te Tohu a Tui

Kowhai

J. Maka

Anne Cliffe.

Ihune Mokena

Moerangi Potiki

Irihapeti Morehu

[illegible] (Whaeateati)

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Sarah Mathews
Lillian Moaetea Tua Kaka R.M.K.
Grace Malcolm Tapu
Ngamihi Peters Tup
George & Bim Skudder
Huakini & Kelli St Amo. Tapuika
Carol Alomino
Rangitawhai McLeod Tapuika
M Y Clark
Rosamund Long (Kohera) Tapuika
Matekino Paora Tapuika
John Burley Tapuika
Melissa Burley Tapuika
Tapuika
Hinapouri Rita
Bronwyn Wilson-Hokianga
Henare Malti
Lanning Patrick Tutakiahani Simpkins
(Lilliette Walton)
Tipene Mita Taupopoki Clarke.
Ripeka Scott
Kuruhi

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Ngatauerua Kenngi Robinson

Matehuihui (Mohi) Klomp.

Rehutaimoana Haami Williams

Larissa Clarke

Hanara Hori Ahomiro

James Burley

Ruby Burley-Smith

Alice Burley

Peter Urvine

Laura Burley

Raymond Williams

Te Atatchen Bilel

Wikitoria Marsh Maihi

Rauminia Robinson

Romata Marsh Maihi

Maarama Marsh Maihi

Mahi Marsh

Ocean Piri 2012.

Dr Bruce Kiloroni

Gleaning Piri

GOPRIEL

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Isaiah Joel Kokiri

Asher Joseph McMahon

Cath Tawaki

HIRAINA Kiwi

Carliza Patuawa (Nee Malcolm)

Calais Michelle Hokianga

Ngapera Hokianga.

Howell.

PATRICIA PEATA MATARIKI WILSON (GIRLIE)

Donna-Mea April Hikatangata.

Dana TE ARIKI Hikatangata

Mereana Taiatini

Andrew Hawaki

Paretaihinu Ranaki Ranaki (under duress)

Melanie Hiini Hiini

Chiquita :) Hauraki Hauraki

Wharerarauwhe Tekura Dinsdale

REKO POTIKI

Ange Dinsdale

Samena Kopere

Calais Te Amo o Te Rangi

Joseph GRANT

Makuini Raku

Whanganui Raku

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Hell FILTHY FEW (Ieri Froelich)

Huatiwi Te Amo Dinsdale

John Maxwell Bird

The Haeaua Charles Chrimes

Raiha Tokau Allan Akonio Kihirini

Rutu Maxwell-Swinton-(Heera Te Hiini)

Jules Dinsdale

R. Moore

A.M. Dinsdale

Ngarepo Eparaima

Thomas Tomairangi Tewete Smith

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Irene Lunsdale.

MARINA PAUL

Puahiutia Kanapu

Huta Pamariki° Keenan.

GA Mohi

D.M. Tuhakaraina

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Sasa Ihapi

Adigi

Rangitawhai Rahiri
Huni Rahiri Snr

Arohanoa Biel-Nicholson

Anahera Dinsdale

C.W.S.M. Dinsdale.

Joshua Te Hanataua Lang

Michael Hunia

R. Te Pou

Ashley Biel

Ateneua Biel

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED

Kathy Ngatai

Max Te Mana McMeeking (Whaitaiti).

VICKI McNEILL

Te Uarangi Biel

Koha Gountlett

Te Taiawatea Whaiti (Moko)

Dennis White

EXTRA INITIALLING PAGES

Kahuwaiki Hancock

R.M.D.B

J. Bidois

J. Bidois

MB

OTHER WITNESSES/MEMBERS OF TAPUIKA WHO SUPPORT THE DEED