REPORT BY THE FACILITATOR

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TO THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

and

TO THE IWI/HAPŪ OF THE KAIPARA, TĀMAKI MAKAURAU AND THE COROMANDEL

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Background

After some years of good faith negotiations, Ngāti Whātua o Ōrākei and the Crown entered into an Agreement in Principle (AIP) in June 2006. The AIP contained redress which was contested by other tangata whenua groups. They believed that the AIP impacted on their own interests in an unfair and unacceptable way. In particular they strongly objected to Ngāti Whātua o Ōrākei receiving exclusive rights to the maunga, to the lack of clarity, perceived hidden value and the resulting reduction of available Crown properties arising from the naval housing transaction, and to the exclusive Right of First Refusal [RFR] over Crown land in the central city. The groups included Te Kawerau ā Maki, Ngāti Te Ata, Ngāti Tamaoho, Ngāi Tai, Te Akitai, Hauraki and Waikato. Some of them sought a remedy from the Waitangi Tribunal which, in due course, upheld their assertion of prejudice. When describing the history of Tāmaki Makaurau the Tribunal wrote:

"*Thus it [Tāmaki* ***Makaurau] was, and remains, an intensively occupied part of the country, where constant habitation by changing populations of*** *Māori* ***as a result of invasion,*** *conquests, and inter marriage has created dense layers of interests*" [page 13 Process Report].

It was highly critical of the way the AIP had been negotiated with little consideration of these 'dense layers of interests'.

The Tribunal strongly recommended that the AIP

"*...not proceed at this stage*" and that the Crown "***should now work with other tangata whenua groups to negotiate settlements for them. Once that is done –and not before- it will be possible to arrive at a situation where appropriate redress (both cultural and commercial) is offered not only to*** *Ngāti Whātua o Ōrākei*, ***but to all the tangata whenua groups in*** *Tāmaki* ***Makaurau. Then, the mana of all would be upheld, relationships would be restored, and reconciliation would be possible***" [letter to Minister]

In summary the Tribunal accepted there were other tangata whenua groups with interests in Tāmaki Makaurau and that it was totally inappropriate in those circumstances for the AIP to provide exclusive rights to Ngāti Whātua o Ōrākei.

The Tribunal's recommendation that the Crown should negotiate with all tangata whenua groups with interests in Tāmaki Makaurau before the AIP with Ngāti Whātua o

Ōrākei could be further considered creates an even bigger challenge than might have appeared at first glance. This is because some of those groups who had complained about Ngāti Whātua o Ōrākei have competing claims over their own areas from many iwi/hapū in the Kaipara and/or the Coromandel. If the strong criticism on process from the Tribunal is not to be repeated, all iwi/hapū with interests in all 3 regions will have to negotiate with the Crown and with each other at the same time. It is probably fair to say that such a proposition is daunting. In the normal course of events, such a set of negotiations would take a very long time indeed. Perhaps unsurprisingly then, little or no progress has been made since the Tribunal Report was released.

Facilitation

In March 2009 the Minister for Treaty of Waitangi Negotiations asked if I would offer my services as a facilitator to help find a way forward for iwi/hapū with interests in Tāmaki Makaurau. I was happy to do so and I wrote to the various tangata whenua groups asking if they wished me to be involved. All did so. I therefore obtained a helpful briefing from the Office of Treaty Settlements. I then embarked on a series of meetings with iwi/hapū over a period of weeks, and I wish to thank the rangātira, kaumatua, and kuia for their courtesy and help. They must have been astonished at how little I knew of the historical events which had given rise to the complex and sensitive issues facing them. I have learned a great deal from them. I also undertook considerable research. I indicated that if I could come up with some sort of proposal worthy of consideration I would put it to them. Having received authority from Ministers I am pleased to now present a proposal.

My tasks were:

- to see if the objections to the Ngāti Whātua o Ōrākei AIP could be resolved so that Ngāti Whātua o Ōrākei could proceed to a Deed of Settlement; and
- to reach an agreement with all the other tangata whenua groups in Tāmaki Makaurau on a pathway which would lead to negotiations and a hopefully a settlement of their claims over time.

I have concluded that the objections to the Ngāti Whātua o Ōrākei AIP in its current form are never going to be withdrawn particularly as they relate to parts of the cultural redress. It is equally clear that it will not be possible to reach settlements with the other groups without resolving with all groups the very issues that had been objected to so vehemently in the Ngāti Whātua o Ōrākei AIP.

Options

It seemed to me therefore that there are two options.

The first option is to advise Ngāti Whātua o Ōrākei that because the Crown would never be able to treat the overlapping interests as having been addressed to its satisfaction (Clause 65(a)), the Crown would never be able to enter into a Deed of Settlement. The only proper action then would be for the Crown to give written notice to Ngāti Whātua o Ōrākei that it withdrew from the AIP (Clause 7). Negotiations with Ngāti Whātua o Ōrākei would have to start again from the beginning and proceed in tandem with all the other negotiations. Such an outcome would have been extremely disappointing to Ngāti Whātua o Ōrākei and reflect badly on the Crown when both had acted in good faith throughout.

The second option would require considerable courage, a generosity of spirit and a desire to work together in the common interest. This option entailed grabbing the bull by the horns and striving to see if the Ngāti Whātua o Ōrākei AIP could be renegotiated to take account of the 'layers of interest'. At the same time, the Crown would negotiate now with all tangata whenua groups in Tāmaki Makaurau and also in the Kaipara and the Coromandel because many groups have interests in one or more and sometimes all three regions.

This second option raises some interesting issues.

- Following the usual negotiating procedure, where there is much confidential 'one-to-one' exchange of views before agreement is reached and announced, will simply not work here. A new approach, in which there are transparent negotiations running in tandem, is required in these quite unusual circumstances.

- It follows that the Crown will have to put on the table for all to see just how it proposes to resolve issues around the sensitive cultural redress items such as the maunga, and the right of first refusal part of the commercial redress package. There will be many groups that will be affected. The only realistic way forward, if decades of negotiations are to be avoided, is to suggest that the issue of manawhenua is put to one side for the purposes of these negotiations, and instead regard is had to interests in the whole. After all the Crown is in a difficult position when two iwi contest who has manawhenua. It is not for the Crown to determine. Only Māori can give such recognition. If there is no such recognition it is pointless expecting the Crown to rule on the matter. The Crown has to act with integrity to all iwi/hapū at all times and must not prefer one over another. Any discretionary redress has to reflect any 'layers of interests'.

- On the question of what is an appropriate quantum ('utunga') for each iwi/hapū, a similar issue arises. Each iwi/hapū is naturally interested to know what its utunga might be, and little will be gained by reaching agreement on cultural redress but leaving the utunga to be decided at some time later. The utunga has to fair and seen to be fair between iwi/hapū including those who have settled in the past. In these circumstances where iwi/hapū are working together it seems sensible for the Crown to take a novel approach and to indicate up front what it considers fair. This enables each iwi/hapū to consider how its utunga compared with others, and to see where they are in the big picture. Some might argue that this could be seen as a 'take it or leave it' offer repeating the ad hoc unprincipled offers made by the Crown in the 1800s and early part of the 1900s. But in reality it is neither ad hoc nor unprincipled. Each settlement becomes another in the continuum of earlier settlements and follows an entirely consistent format with a totally rational basis for the assessment of a fair commercial redress package. Of course any iwi/hapū is free to discuss the utunga and argue that it is not fair relative to the others.

- If the progress that everybody wants is to be achieved with so many parties involved at the same time, the fewer the contested or complex issues that have to be resolved, the better. Endless arguments between iwi/hapū over which iwi/hapū should have which item of Crown owned land would bring the whole process to a standstill. Those not involved would have to wait while the matter was resolved. So I concluded early on that wherever possible the utunga would have to consist of cash and not land. There are some justified exceptions to this. One is the Crown land in the outstanding raupatu blocks (Waiuku North and South, and East Wairoa) where, as in the 1994 settlement with Waikato Tainui, Crown land in the blocks will in principle be returned. Another is the Crown Forest estates where there are valuable accrued rentals. Then there are the 4 urupā at Maioro which should have been returned to Ngāti Te Ata years ago, and which will be now. Due to its particular significance to Hauraki the Whenuakite farm on the Coromandel is yet another exception and one which will be offered to Hauraki. Finally there is the naval housing land in Tāmaki Makaurau which, to be fair to Ngāti Whātua o Ōrākei, will be offered to them again but on commercial terms.

- The negotiation by the Crown with a recognisable group should not be taken as an acknowledgement by the Crown of an iwi or hapū status. That too is a matter for Māori and not the Crown. If hapū agree to act together in some larger grouping, then that is for them to decide. So while there were many good reasons for the Crown's policy of dealing with large natural groupings in the past, it should not be forgotten that it was hapū who suffered from the breaches of Treaty obligations and it was the hapū's land that was lost. Forcing hapū under an umbrella, when they do not want to be there, is unlikely to promote harmony.

The negotiation of so many claims simultaneously, where many iwi/hapū have to agree on matters of common interest, is a massive undertaking. To achieve the desired result everyone involved will have to work cooperatively. It will take inspired leadership by all involved.

Having taken all these matters into account I began to design a proposal which would be as fair as I could make it. It suggested amendments to the Ngāti Whātua o Ōrākei AIP which, if accepted by Ngāti Whātua o Ōrākei, would mean it could proceed to a Deed of Settlement. It also suggested a broad outline of settlement terms for all other iwi/hapū with interests in the Kaipara, Tāmaki Makaurau and the Coromandel.

Having done that I then approached the Minister and respectfully sought his support. He gave it enthusiastically. At his invitation I attended the Cabinet Strategy Committee meeting and advocated the proposal. I am pleased to be able to advise that the Cabinet has now authorised me to put the proposal to the iwi/hapū. The proposal includes indicative utunga which has been approved by Cabinet. Other matters included in the proposal are approved in principle and can be advanced by the Crown and those iwi/hapū who wish to proceed further.

There is thus a window of opportunity which, if seized, will benefit Māori and the nation. After more than a century the grievances felt so strongly for so long can at last be honestly addressed. Tangata whenua will be able to move from grievance to development and the future generations will have a positive and brighter outlook. The honour of the Crown can be restored. A new cooperative era between tangata whenua and the authorities of central and local government should emerge from the distrust and antipathy of the past. Tangata whenua will have an economic base on which to build to ensure the survival of generations yet to come. The country as a whole can confidently face the future together. Such outcomes are worth the effort that is now demanded.

The rest of this paper therefore describes the proposal first for Ngāti Whātua o Ōrākei and then for all the iwi/hapū in the Kaipara, Tāmaki Makaurau and the Coromandel to consider. It is not binding on anyone. Much will need to be done before there is a non-binding AIP with those iwi/hapū who elect to proceed further.

The proposal seeks to address the grievances of the iwi/hapū of the Kaipara, Tāmaki Makaurau and of the Coromandel. These grievances arose mainly from the loss of land between 1840 and 1900. In summary land was purchased by the Crown in unfair circumstances or for paltry sums. Some land was taken for public works in rather dubious circumstances and often without compensation. On occasions the Crown inadvertently, or possibly even deliberately, overlooked tangata whenua with interests in that land. Then there was the effect of the Native Land Court which facilitated the disposition of other whenua. For the Coromandel groups another concern was the way

the Crown dealt with gold mining. In Tāmaki Makaurau land of Kingite supporters was invaded, war ensued with many deaths, people were evicted from their turangawaewae, their land was confiscated and some then returned to those who had fought with the Crown. Between 1840 and 1900 many groups lost much and sometimes all their lands. Many became homeless. By 1900 their very existence came to be at risk.

This outcome was not the result tangata whenua had expected when the Treaty was signed. Nor was it the result the British Government had expected. Today there has been an encouraging renaissance. This proposal presents an opportunity now for iwi/hapū to look to the future with confidence.

The first part of this paper deals with the Ngāti Whātua o Ōrākei AIP and suggests some amendments which, if acceptable to Ngāti Whātua o Ōrākei, would mean that Ngāti Whātua o Ōrākei and the Crown could proceed to a Deed of Settlement.

The second part of this paper contains a proposal to iwi/hapū with interests in the Kaipara, in Tāmaki Makaurau and in the Coromandel. It suggests a broad redress package which if accepted by the recipient iwi/hapū will enable that iwi/hapū to negotiate the detail and proceed to an AIP and later to a Deed of Settlement. It cuts to the quick.

The AIP between the Crown and Ngāti Whātua o Ōrākei

The main objections to the AIP relate to the exclusive redress over certain maunga, the nature of and the impact on others of the naval housing transaction, and the exclusive area included in the Right of First Refusal.

The maunga

The objection here is that Ngāti Whātua o Ōrākei is offered exclusive rights to some of the maunga. It cannot be disputed that over the centuries various groups exercised ahi kaa over many of the maunga. Kiwi Tāmaki of Te Akitai and Waiohua for example, lived in a pa on Maungakiekie at the time of the Te Taoū/Ngāti Whātua invasion in the mid 1700s. Waiohua descendents today include Ngāti Te Ata, Ngāti Tamaoho, Ngāi Tai and Te Akitai who, although staunch members of the Kingitanga, advise me that they regard the maunga on Tāmaki Makaurau as spiritually very important. So the deeply felt association of the other groups to the maunga is understandable and continues to this day. It is true of course that the antecedents of Ngāti Whātua o Ōrākei undoubtedly had a strong association with many of the maunga for most of the century prior to their sale in the early 1840s. Today all groups therefore claim past associations which to each are extremely important and can never be extinguished. The maunga remain visible to all groups and always will be. A structure which recognises shared interests is clearly desirable. One possible way this could be done is presented in this paper.

The naval housing transaction

The objection here is that the AIP provides for the sale and purchase of valuable Crown land which therefore restricts the land available to other groups with interests in Tāmaki Makaurau. In addition it is said that the terms of transaction are unclear and the real benefits to Ngāti Whātua o Ōrākei and the costs to the Crown lack transparency. It is necessary to briefly describe the transaction.

Ngāti Whātua o Ōrākei can buy Crown land at Devonport presently used by the Navy for housing up to a value of $80m. Ngāti Whātua o Ōrākei take title on settlement and lease the land back to the Crown for 21 years with perpetual rights of renewal. If we assume a constant ground rent at 6.5% of the unimproved value, then the annual rent from the Navy would be $5.2m. However for the first 35 years the rent is waived by Ngāti Whātua o Ōrākei and the Net Present Value of that rent waiver is $85m. So the rent waiver pays the purchase price and it is claimed the transaction therefore is value neutral to the Crown.

By any measure this is a most unusual transaction. The real cost to the Crown is not easy to calculate. First, the Crown is restricted to using the land for single residential dwellings which in itself results in an opportunity cost to the Crown. But it is the lack of commerciality which is the real problem. No one in their right mind would ever sell his own property on such terms. The seller receives no money at all but happily hands over title. He becomes a tenant in his former home, withholding rent for a period which he

had never paid before, and eventually either begins paying rent or ends up with an old house on someone else's land. Here the Crown is asked to do the same.

As a matter of principle where Crown land is purchased by a claimant in a Treaty settlement the deal should be commercial and transparent. This is neither. It is difficult to argue that this transaction is in fact value neutral. Ngāti Whātua o Ōrākei as good as acknowledges that when it concedes its cash settlement of $10m is much lower than it should be because of the benefit it receives from this transaction. If that benefit is cancelled out because the transaction becomes commercially based, the utunga needs to be adjusted upwards to ensure transparency and avoid any prejudice from the variation to the AIP. That has been done.

The proposal to all iwi/hapū which follows in Part B must be fair to all and based as far as possible on principle. As will be seen the only Crown land being offered is the Crown Forest land, the land in the outstanding raupatu blocks, the Whenuakite farm, and the 4 urupā. It is hard to see why a one off sale of naval housing land in these circumstances should be added. However I am conscious that Ngāti Whātua o Ōrākei has built up a close working relationship with the Navy and that is to be encouraged. It may also have a business plan which has been developed with the naval housing land included. As Ngāti Whātua o Ōrākei has acted in good faith I suggest an exception is made and that Ngāti Whātua o Ōrākei should be entitled to buy agreed naval housing land up to $80m. However it should do so on fully commercial terms which will have to be the subject of further negotiation with the Crown.

The right of first refusal

The objection here is that, despite Ngāti Whātua o Ōrākei properly acknowledging the interests of other tangata whenua groups in Tāmaki Makaurau and restricting their exclusive RFR area to the CBD, other groups maintain that they have interests in the CBD too and that, looking at the isthmus as a whole and the various iwi interests in it, it is still quite unfair that Ngāti Whātua o Ōrākei should be able to pick the plums of the CBD leaving less valuable areas to the others. It is highly likely the Right of First Refusal (RFR) area has better prospects for capital gains than properties further afield. This objection is unlikely to be satisfied unless the provision is varied and I suggest a shared RFR over the whole Tāmaki Makaurau RFR area as defined.

If Ngāti Whātua o Ōrākei agrees to these amendments and enhancements I consider the Crown could regard the iwi objections to the AIP as satisfied and that the Ngāti Whātua o Ōrākei amended AIP should proceed to a Deed of Settlement.

Suggested Outline of a Redress Package

The proposal that follows is only an outline. Clearly there is much that will have to be worked through co-operatively between the Crown and iwi/hapū and between iwi/hapū. It is possible some suggestions cannot be done. Central and local authorities will have to come on board in relation to the maunga and harbours (wahapū). It will be necessary to define the role of the suggested advisory body on the harbours and their catchment waters and ensure that it is adequately consulted and its views properly considered. Some tangata whenua groups may wish to question whether the indicative utunga is in fact fair relative to others. Some will need time to prepare a list of those areas of great importance such as urupā which they would like returned and the Crown will need time to see if it can help. It is not intended that either the Crown or the tangata whenua groups are bound at this stage or even in the near future. It is only a start. But those groups who elect to take the proposal forward can now make some progress.

I acknowledge that the proposal discloses some issues which are really the business only of the groups concerned. This is regretted but unavoidable if the total picture is to be understood by all the groups involved.

Iwi/hapū

The iwi/hapū to which this proposal applies are listed below.

NGĀTI WAI

- Ngāti Manuhiri
- Ngāti Rehua

NGĀTI WHĀTUA

- Te Runanga o Ngāti Whātua
- Ngāti Whātua o Kaipara ki Te Tonga
- Ngāti Whātua o Ōrākei

TE KAWERAU Ā MAKI

TAINUI

- Waikato
- Ngāti Te Ata
- Ngāti Tamaoho
- Ngāi Tai
- Te Akitai

HAURAKI

- Ngāti Hei
- Ngāti Hako
- Patukirikiri
- Ngā Rahiri Tumutumu
- Ngāti Tara Tokanui
- Ngāti Pukenga ki Waiau
- Ngāti Porou ki Harataunga ki Mataroa
- Ngāti Paoa
- Ngāti Maru
- Ngāti Whānaunga
- Ngāti Tamatera
- Ngāi Tai

Settlement area and claims to be settled

The proposal contains a suggested redress package for each of the iwi/hapū with interests in the Kaipara, Tāmaki Makaurau and the Coromandel. The claims by those iwi/hapū who ultimately accept a Crown offer will be settled in the Settlement Area. Because many iwi/hapū have interests in extensive areas, the ***Settlement Area will be all land, including islands, north and east of the Waikato-Tainui confiscation line from Port Waikato to Morrinsville and then in a straight line from Morrinsville to Mt Maunganui.***

A final settlement by an iwi/hapū will result in all claims against the Crown, including those arising from confiscations, land sales or the effect of the Native Land Court, in the Settlement Area by Ngāti Wai (Ngāti Manuhiri and Ngāti Rehua only), Ngāti Whātua, Tainui and Hauraki whether iwi, hapū, whānau or individuals, being finally settled.

Suggested redress package

The suggested redress package will contain for each iwi/hapū:

Historical Account, Crown Acknowledgments and Crown Apology

Each iwi/hapū and the Crown shall in good faith seek to agree on an historical account of the events leading to the grievances of that iwi/hapū. It is acknowledged that each account must not conflict with other historical accounts. The Crown would acknowledge and issue a formal apology for breaches of the Treaty and other acts or omissions which have caused prejudice.

Cultural Redress

Wāhi tapu

Each iwi/hapū may request the return of small discrete places of great importance such as urupā or pa sites or waka landing sites which are held by the Crown in the Settlement

Area and the Crown shall endeavour to meet such requests. If the return is not possible the iwi/hapū may request that such sites are made subject to alternative redress such as a Statutory Acknowledgement or a Deed of Recognition. Each iwi/hapū may request the Crown to consider its interests in fauna and flora and/or natural resources.

The maunga and the wahapū and catchment waters
A new entity will be established for each region so that those iwi/hapū with primary common interests in the natural resources in that region can act together.

<u>The Kaipara</u>

<u>Te Māori o Kaipara</u> - for Ngāti Manuhiri, Ngāti Rehua, Te Runanga o Ngāti Whātua, Ngāti Whātua o Kaipara Ki Te Tonga, Te Roroa and Te Uri o Hau

<u>Tāmaki Makaurau</u>

<u>Te Māori o Tāmaki Makaurau</u> - for Te Kawerau ā Maki, Ngāti Whātua o Ōrākei, Waikato, Ngāti Te Ata, Ngāti Tamaoho, Ngāi Tai, Te Akitai, Ngāti Paoa, Ngāti Maru, Ngāti Whānaunga and Ngāti Tamatera

<u>Coromandel</u>

<u>Te Māori o Hauraki</u> - for Ngāi Tai, Ngāti Paoa, Ngāti Maru, Ngāti Whānaunga, Ngāti Tamatera, Ngāti Hei, Ngāti Hako, Patukirikiri, Ngāti Rahiri Tumutumu, Ngāti Tara Tokanui, Ngāti Pukenga Ki Waiau, Ngāti Porou ki Harataunga ki Mataroa

Each named iwi/hapū is entitled to be a member of their entity. Each entity shall have a <u>Governing Council</u> consisting of 2 nominees of each iwi hapū with equal voting rights from each member. The Council shall elect a Chairman and Vice Chairman from its midst.

Each entity shall have the following functions and shall have the powers set out but no other.

The functions for **<u>Te Māori o Kaipara</u>** are:

- to nominate sufficient individuals to **<u>Kaitiaki o Ngā Maunga o Kaipara</u>** which, together jointly and equally with the relevant local authority, shall be the administering body under the Reserves Act 1977 or, where applicable an advisory body for maunga to be agreed between **<u>Te Māori o Kaipara</u>** and the Crown. Once identified and agreed:
    - any reserves status will be retained, subject to existing rights, and local authority to control spending;

    - statutory acknowledgements and deeds of recognition would be available for iwi/hapū;

- to nominate one of the nominees of each iwi/hapū (other than Ngāti Manuhiri and Ngāti Rehua) to be the **Kaitiaki o Wahapū Kaipara** which shall act as an advisory body to the controlling authority for the Kaipara Harbour and its catchment waters. Each iwi/hapū shall retain any customary rights and may negotiate for recognition of those rights under the Foreshore and Seabed Act or any replacement Act.

The functions for **Te Māori o Tāmaki Makaurau** are:

- to nominate sufficient individuals to **Kaitiaki o Ngā Maunga o Tāmaki Makaurau** which, together jointly and equally with the relevant local authority, shall be the administering body of the maunga under the Reserves Act 1977 or, where applicable, an advisory body for:

  Maungakiekie/One Tree Hill
  Maungawhau/Mt Eden
  Owairaka/Mt Albert
  Rangitoto
  Te-Ara-Puera/Mangere mountain
  Takarunga/Mt Victoria
  Maungarei/Mt Wellington
  Ohinerau/Mt Hobson
  Puketapapa/Mt Roskill
  Takapuna/North Head
  Te Kopuke/Mt St John

    - any reserves status will be retained, subject to existing rights, and local authority to control spending;
    - statutory acknowledgements and deeds of recognition would be available for iwi/hapū;

- to nominate one of the nominees of each iwi/hapū to be the **Kaitiaki o Ngā Wahapū o Waitematā me Manukau** which shall act as an advisory body to the controlling authority for the Waitematā and Manukau Harbours and their catchment waters. Each iwi shall retain any customary rights and may negotiate for recognition of those rights under the Foreshore and Seabed Act or any replacement Act. It shall also act with other iwi/hapū as agreed as an advisory body over the Hauraki Gulf and in doing so shall respect existing Maritime Parks.

The functions of **Te Māori o Hauraki** are:

- to nominate sufficient individuals to **Kaitiaki o Ngā Maunga o Hauraki** which, together jointly and equally with the relevant local authority, shall be the administering body under the Reserves Act 1977 or where applicable an advisory body for maunga to be agreed between **Te Māori o Hauraki** and the Crown. Once identified and agreed:

- any reserves status will be retained, subject to existing rights, local authority to control spending;
    - statutory acknowledgements and deeds of recognition would be available for iwi/hapū;

- to nominate one of the nominees of each iwi/hapū to be the **Kaitiaki o Wahapū o Hauraki** which shall act as an advisory body to the controlling authority for ngā wahapū and their catchment waters to be agreed between Te Māori o Hauraki and the Crown.

Te Māori o Kaipara, Te Māori o Tāmaki Makaurau and **Te Māori o Hauraki** shall also have the power:

- to negotiate, if requested by an iwi/hapū, with the Crown for Statutory Acknowledgments and/or Deeds of Recognition over other land and/or resources in the Settlement Area which are of importance to that iwi/hapū and may be better dealt with by the collective;
- to delegate to any one or more iwi/hapū member(s) specific responsibility for one or more of the maunga or the wahapū or areas covered by the statutory acknowledgements or deeds of recognition;
- to act, if requested, as kaitiaki of the utunga of any iwi/hapū on its behalf and therefore to receive administer invest and generally protect and further the interests of such iwi/hapū for such period as may be negotiated with such iwi/hapū;
- to negotiate, if requested by an iwi/hapū, protocols with various Government Departments to enable proper and full consultation on matters of concern to iwi/hapū;
- to submit suggestions for name changes to places within the Settlement Area. The Crown shall facilitate the following name changes:
    - One Tree Hill to One Tree Hill/Maungakiekie
    - Mt Eden to Mt Eden/ Maungawhau
    - Purewa Creek to Pourewa Creek.
- by unanimous vote to admit another iwi/hapū as a member

Other cultural development aspirations

Iwi/hapū may discuss other cultural development aspirations with the Crown.

Commercial Redress

This package includes the utunga and a Right of First Refusal.

Assessing indicative utunga

To preserve fairness between all claimants when assessing a fair utunga, I took into account as a starting point the earlier settlements or agreements for similar claims. I then increased the utunga in those earlier settlements or agreements by the rate of inflation to today's dollars. In that way iwi/hapū will have similar purchasing power. The result for a number of the settlements or agreements is set out below:

Iwi/hapū	$m (2009 dollars)
Raupatu	
Waikato-Tainui	232
Land sales and Native Land Court	
Ngāi Tahu	223
Ngāti Apa	17
Te Uri o Hau	18
Te Roroa	11
Ngāti Pahauwera	21
Te Aupouri	14
Turanganui a Kiwa	61
Te Rarawa	21
Ngāti Kahu	22
Taranaki Whānui	27
Rangitāne o Manawatu	11

In each of those settlements or agreements the Crown took into account amongst other things:

- the approximate land area the claimants had at the time the breaches of the Treaty occurred;
- whether any land was retained;
- the seriousness of the Crown's breach e.g. giving a weighting to confiscation claims which often involved captivity or loss of life;
- the number of members the group has today;
- other special features which justified consideration;
- the commercial redress of any earlier settlements or agreements.

As an example, Waikato-Tainui negotiated a settlement in 1994 for the confiscation of approximately 462,000 hectares from hapū affiliated to the Kingitanga. Three blocks, Waiuku North and South and the East Wairoa, totalling about 41,700 hectares were excluded from those negotiations. Using the earlier settlement adjusted for inflation as a guide, the utunga for the three blocks now would be about $21m. Of greater relevance for iwi/hapū here are the earlier settlements for claims arising from land sales

and the effect of the Native Land Court. The geographically closest example is Te Uri o Hau who lost about 214,000 hectares between 1840 and 1900. Today it has about 6000 members and 14 marae. It received $18m in 2009 dollars ($15.6m at the time).

I carried out a similar exercise here with some additional consideration given to the balance between the over arching groupings of Ngāti Whātua, Tainui and Hauraki.

In an ideal world all Treaty settlements would have been completed on the same day in 1994 when the first major settlement was reached. Of course that was not possible. While adjusting for inflation helps preserve purchasing power, the fact is that the increase in land values has exceeded the CPI. The result is that iwi/hapū today are at a disadvantage when it comes to buying land which is so important to them. I have tried to go some way to address this problem by increasing the utunga above the CPI adjusted earlier settlement or agreement guidelines. The increase also makes an allowance for the cost any cultural development programmes.

The end result I have called the indicative utunga. My recommendation to the Government, which it has accepted and authorised be to put to iwi/hapū, was that the indicative utunga should be:

Indicative Utunga

IWI/HAPŪ	$m (2009)
NGĀTI WAI	
Ngāti Manuhiri	**6.5**
Ngāti Manuhiri may also purchase the land under the Southern Mangawhai Forest at market price. The accumulated rentals (approx $1m) will follow title.	
Ngāti Rehua	**3.0**
NGĀTI WHĀTUA	
Te Runanga o Ngāti Whatua	**5.0**
Te Runanga seeks over time to bring the various hapū of Ngāti Whātua under the umbrella of Te Runanga. That will be a matter for them to determine. In the event that legislation might be required to effect such an arrangement the Crown will endeavour to legislate in accordance with the wishes of Te Runanga and the hapū.	

IWI/HAPŪ	$m (2009)
Ngāti Whātua o Kaipara ki Te Tonga Ngāti Whātua o Kaipara ki Te Tonga may also purchase the land under the Woodhill Forest at market price. The accumulated rentals (approx $20m) will follow title.	**21.5**
Ngāti Whātua o Ōrākei (including earlier $2m) Ngāti Whatua o Ōrakei may also purchase naval housing land at market value up to a value of $80m.	**18.0**
TE KAWERAU Ā MAKI Te Kawerau ā Maki may also purchase the land under Riverhead Forest at market price. The accumulated rentals (approx $9m) will follow title.	**6.5**
TAINUI	
Waikato (raupatu) It is appropriate that Waikato complete the raupatu settlement to honour the Kingitanga. Therefore the Crown, in recognition of the saying "I riro whenua atu me hoki whenua mai", shall endeavour to return to Waikato Crown owned land in the confiscated Waiuku North and South blocks and the East Wairoa block (excluding ngā urupā Te Papawhero, Waiaraponia, Te Kuo and Tangitanginga) or cash up to a value of $25m. For the purposes of the relativity clause this settlement shall be excluded from the calculation. Any land returned or cash shall be the utunga referred to above for Waikato.	**25.0**
Ngāti Te Ata Ngā urupā Te Papawhero, Waiaraponia, Te Kuo and Tangitanginga shall also be vested in Ngāti Te Ata.	**5.0**
Ngāti Tamaoho	**5.0**
Ngāi Tai	**5.0**
Te Akitai	**5.0**
HAURAKI	
Coromandel-Hauraki (outside Tāmaki Makaurau and Kaipara) Hauraki may also purchase the land under the Whangapoua Forest, and/or the Kauaeranga Forest and/or the Tairua Forest at market price. The accumulated rentals (approx $18m) will follow title. Hauraki may purchase the Whenuakite Farm at market value.	**53.0**
Hauraki-Marutūāhu (inside Tāmaki Makaurau and Kaipara and includes Waiheke Farm) Hauraki may also purchase the land under Maramarua Forest at market price. The accumulated rentals (approx $10m) will follow title.	**22.0**
TOTAL OF INDICATIVE UTUNGA [illegible]	[illegible]

Each iwi/hapū may of course decide to manage its own utunga. It may however request the entity of which it is a member to act as kaitiaki of its utunga in a pooled account and the entity would hold such utunga and accumulated income for that iwi/hapū as a percentage its utunga bears to the total fund. Each iwi/hapū would own a share of the total on terms to be agreed. Alternatively each iwi/hapū may retain control of its own utunga but may request the entity to act as kaitiaki of its utunga but in a separate account. As a further alternative the iwi/hapū may delegate to any other entity the task of managing the whole or any part of its assets including the utunga.

Once settled and the assets transferred, I propose that the Crown shall pay $100,000 per annum for 5 years to each entity provided it is kaitiaki for utunga, and each iwi/hapū which has control of utunga, so that economic and business advice on the management and investment of assets can be commissioned.

Right of First Refusal

I recommend to the Government that the Crown grants the following Rights of First Refusal over land held by the Crown at Settlement Date for a period of 50 years:

- to **Waikato** in the area within the Waiuku North and South Blocks and the East Wairoa Block;
- to **Te Māori o Kaipara** in the area below the southern Te Uri o Hau settlement takiwā and above a straight line from Muriwai to Okura and includes Kawau, Goat, Little Barrier and Great Barrier islands but excludes any Crown forests purchased;
- to **Te Māori o Tāmaki Makaurau** in the area below a straight line drawn from Muriwai to Okura and above the Waikato confiscation line from Port Waikato to Miranda including the islands in the Gulf but excludes any naval housing land acquired by Ngāti Whātua o Ōrākei, the Waiuku North and South Blocks and the East Wairoa Block, ngā urupā vested in Ngāti Te Ata, and any Crown forests purchased;
- to **Te Māori o Hauraki** in the area east of Miranda and the Waikato confiscation line and north of a line from Morrinsville to the coast to be finalised after discussion with Tauranga Moana iwi/hapū and includes the Mercury Islands but excludes Whenuakite farm if purchased and any Crown forests purchased.

If the right is not exercised then any iwi/hapū may negotiate with the Crown to buy the property along with all other third parties.

Te Taoū tuturu

The historical accounts of the invasion and conquest of Tāmaki Makaurau in the mid 1700s are varied. It seems common ground that the invaders were Te Taoū. However some believe Te Taoū was a sub tribe of Ngāti Whātua and the version which came to be generally accepted was that the invasion was led by Tuperiri of Ngāti Whātua who descended from Makawe and her second husband Tauroto. Tuperiri's descendents came to be known as Ngāti Whātua o Ōrākei. [Refer Section 10 of the Ōrākei Act 1991]. Over time other Ngāti Whātua people came to occupy much of the Kaipara. After 1840 the Crown purchased land from the Ngāti Whātua people in Tāmaki Makaurau and in the Kaipara.

However there is an alternative account of events which is advanced by members of Te Taoū tuturu. They assert that the invasion and conquest was undertaken by Te Taoū, led by Waha akiaki, who were not part of Ngāti Whātua at all. They say the tupuna of this group includes Makawe and her first husband Marua Nuku and that they have a quite different whakapapa to the Te Taoū group in Ōrākei. They are today deeply aggrieved first because land they claim was theirs was sold by others, and secondly because they say they have never received recognition as a distinct iwi by the Crown, the Courts or the Waitangi Tribunal. Because they have challenged the right of those who sold land Te Taoū tuturu regarded as theirs, Te Taoū tuturu has been become rather ostracised.

It is not easy today to establish the relationship of those who took part in the invasion over 250 years ago and it is impractical if not impossible to determine who the true owners were of every block that was sold 150 years ago. The Crown is bound by the decisions of the Courts in any event. As the Crown can only be expected to provide redress once, the answer must be to ensure that both parties claiming rights share the utunga. I understand both Ngāti Whātua o Kaipara ki Te Tonga and Te Runanga o Ngāti Whātua regard Te Taoū tuturu as beneficiaries. Provided they are beneficiaries I cannot see the Crown has any further responsibility for the land sales. On the question whether the Crown prejudiced Te Taoū tuturu by failing to recognise its identity distinct from Ngāti Whātua, the Waitangi Tribunal said:
'....the claim, that the Crown caused or contributed to the erosion of Te Taoū ***identity is not well founded because Te Taoū continues to exist a recognised kin group, even*** *though some of its members may be unaware of all their kin connections.'* (Page 331, Kaipara Report). I consider the Crown is obliged to respect the view of the Tribunal.

Finally, I have been informed it is Te Taoū tuturu's hope that eventually the different Te Taoū branches can come together again under the Te Taoū banner. That is for them all to decide and is for the future. For the present I suggest that the Crown:

- acknowledges that Te Taoū tuturu has a different whakapapa to the Te Taoū of Ngāti Whātua o Ōrākei;
- ensures that Te Taoū tuturu are beneficiaries of Ngāti Whātua o Kaipara ki Te Tonga and Te Rununga o Ngāti Whātua;

- encourages Ngāti Whātua o Kaipara ki te Tonga and Te Runanga o Ngāti Whātua to acknowledge and respect the different whakapapa of Te Taoū tuturu and its distinct identity;
- makes a contribution of **$100,000** to Te Taoū tuturu so that it can continue to explore its origins and enhance its relationship with the Te Taoū of Tuperiri descent.

Next steps

1. It would be helpful to me, to the Government, and to other iwi/hapū if some indication could be given to me within say two weeks whether it is likely your iwi/hapū is likely to want to take the proposal further.

2. Those iwi/hapū with a Crowen-recognised and undisputed mandate (**Waikato, Te Runanga o Ngāti Whātua, Te Kawerau ā Maki, Ngāti Whātua o Kaipara ki te Tonga and Ngāti Whātua o Ōrākei**) may, if they wish, now enter into direct negotiations to move to an AIP.

3. Those with a disputed mandate (**Hauraki**) or no mandate to engage with the Crown (**Ngāti Manuhiri, Ngāti Rehua, Ngāti Te Ata, Ngāti Tamaoho, Ngāi Tai, and Te Akitai**) are invited to request Te Puni Kōkiri (TPK) to organise a Hui a Iwi so that the members can decide whether to take the proposal further and if so to elect 'interim negotiators' who shall:
   - engage on an interim basis with the Crown;
   - maintain the iwi/hapū membership roll;
   - campaign for members who whakapapa to the iwi/hapū;
   - assemble and deliver to the Crown the list of wāhi tapu sites;
   - work cooperatively with other iwi/hapū and the Crown on the structure of **Te Māori o Kaipara, Te Māori o Tāmaki Makaurau** and **Te Māori o Hauraki** as applicable;
   - finalise the structure to administer the affairs of the iwi/hapū (which structures must be approved by the Crown). The Office of Treaty Settlements and TPK will provide advice on possible models;
   - report back progress regularly to iwi/hapū member and hold a further series of hui with the assistance of TPK to confirm a formal mandate to engage with Crown. (**Hauraki and Hauraki (Marutūāhu)** as an alternative, if both agree and agree to be bound by the outcome, could proceed with the current review of the mandates).

   Formal confirmed mandates recognised by the Crown must be in place before any AIP is put to members for approval. The Crown will ensure there is reasonable funding for this purpose. I hope that those holding mandates will cooperate with TPK.

4. The Office of Treaty Settlements will investigate setting up a small dedicated team for the negotiation with iwi/hapū.

Indicative timeline

If my Proposal is considered acceptable then I suggest the following indicative timeline.

Milestone	Target date for completion
TPK-facilitated Hui a Iwi (for some)	end July 2009
Formal mandating process (for some)	end October 2009
Negotiations with Crown to AIPs	end October 2009
AIPs approved by iwi/hapū members	mid December 2009

Any AIP should include details of the agreed cultural redress including wāhi tapu and other sites of great importance, and the agreed commercial redress. However it will not be necessary to have agreed on post settlement governance structures at that stage.

Impact of decision by an iwi/hapū not to proceed

If a group elects not to take the proposal to the next stage the offer will remain open until the Crown gives notice of withdrawal. Pending such notice the utunga shall increase by the CPI increase each year. Places will be reserved on **Te Māori o Kaipara**, **Te Māori o Tāmaki Makaurau** and **Te Māori o Hauraki** as the case may be.

Annex One: Redress Summary

IWI/HAPŪ	PROPOSED REDRESS
NGĀTI WAI	
Ngāti Manuhiri	RFR through Te Māori o Kaipara Indicative utunga: $6.5m Possible access to forest rentals ($1m)
Ngāti Rehua	RFR through Te Māori o Kaipara Indicative utunga: $3m
NGĀTI WHĀTUA	
Te Runanga o Ngāti Whātua	Shared harbour and catchment waters and RFR through Te Māori o Kaipara Indicative utunga: $5m
Ngāti Whātua o Kaipara ki te Tonga	Shared harbour and catchment waters and RFR through Te Māori o Kaipara Indicative utunga: $21.5m Access to forest rentals ($20m)
Ngāti Whātua o Ōrākei	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau (no longer exclusive) Naval housing purchase as revised Indicative utunga: $18m
TE KAWERAU Ā MAKI	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau Indicative utunga: $6.5m Access to forest rentals ($9m)
TAINUI	
Waikato	Shared maunga, harbours etc and RFR over Waiuku North and South Blocks and East Wairoa Block and through Te Māori o Tāmaki Makaurau Indicative utunga: $25m in raupatu land or cash
Ngāti Te Ata	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau Indicative utunga: $5m Gift of ngā urupā Interests in Raupatu utunga held by Waikato Tainui

	PROPOSED REDRESS
TAINUI (cont)	
Ngāti Tamaoho	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau Indicative utunga: $5m Interests in Raupatu utunga held by Waikato Tainui
Ngāi Tai	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau Indicative utunga: $5m Interests in Raupatu utunga held by Waikato Tainui
Te Akitai	Shared maunga, harbours etc and RFR through Te Māori o Tāmaki Makaurau Indicative utunga: $5m Interests in Raupatu held by Waikato Tainui
HAURAKI	
Hauraki (for interests outside Tāmaki Makaurau and Kaipara)	RFR through Te Māori o Hauraki Indicative utunga: $53m Access to forest rentals ($18m) Access to farmland Whenuakite
Hauraki (Marutūāhu) (for interests in Tāmaki Makaurau and Kaipara)	RFR through Te Māori o Hauraki Indicative utunga: $22m Access to forest rentals ($10m)

Annex Two: Indicative utunga by iwi/hapū with strong affiliations today

Ngāti Wai	$m	Ngāti Whatua	$m	Tainui	$m	Hauraki	$m
Ngāti Manuhiri	6.5	Kaipara ki te Tonga	21.5	Waikato	25.0	Coromandel-Hauraki	53.0
Ngāti Rehua	3.0	Te Runanga o Ngāti Whatua	5.0	Te Kawerau ā Maki	6.5	Hauraki Marutuahu	22.0
		Ngāti Whatua o Ōrakei	18.0	Ngāti Te Ata	5.0		
				Ngāti Tamaoho	5.0		
				Ngāi Tai	5.0		
				Te Akitai	5.0		
	9.5		*44.5*		*51.5*		*75.0*
		Te Roroa	*11.0*				
		Te Uri o Hau	*18.0*				
	9.5		**73.5**		**51.5**		**75.0**
CFL Rentals							
Mangawhai Sth	1.0	Woodhill	20.0	Riverhead	9.0	Maramarua, Kauaeranga, Tairua, Whangapoua	28.0
		Pouto and Mangawhai Nth	*1.6*				
	10.5		**95.1**		**60.5**		**103.0**

KIA TAU TE RANGIMARIE KI A TATOU KATOA