



16 Feb 2018

File Ref: OIA 36639

Tēnā koe

**Official Information Act request**

Thank you for your information request dated 14 December 2017. You asked for:

*"...all information regarding the Ngatikahu Ki Whangaroa Trust Board/Kahukuraariki Trust including correspondence to and from Office of Treaty Settlements and Minister of Treaty Settlements, or any other Ministers/Members of Parliament held by Te Puni Kōkiri."*

On 18 December 2017 we asked for clarification on the scope of the request as it was very broad and the information requested covered many years. On 21 December 2017 you advised us that the original request should stand.

On 30 January 2018 we advised you that we extended the timeframe under section 15A (1)(b) of the Act as consultation was necessary to make the final decision and we are unable to meet the original 20 working day timeframe.

We do not centrally collate information by topic. However we do centrally collate all formal written advice to Ministers, and Ministerial correspondence, and in this category we have identified eight documents in scope of your request. The documents and my decisions about the release of the information are set out in the table attached as Appendix A.

Identifying any further information in scope of your request is impracticable due to the large amount of information potentially in scope. For this reason any additional information we hold is declined under section 18(f) of the Act, which applies when the information cannot be made available without substantial collation or research.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact Madeline Smith, Senior Advisor, Ministerials and Business Support via [smitm@tpk.govt.nz](mailto:smitm@tpk.govt.nz).

Ngā mihi

Lisa Davies

Manahautū Tuarua Whakakapi Hononga ā Rohe | Acting Deputy Chief Executive, Policy Partnerships



Appendix A – documents

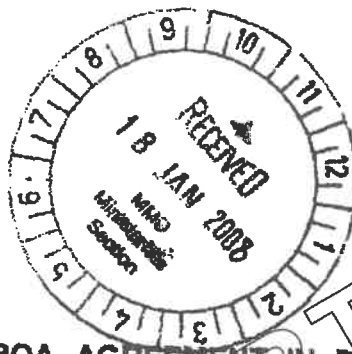
Item	Date	Document description	Decision
1.	19 December 2007	Briefing paper: Ngātikahu ki Whangaroa agreement in principle signing ceremony	Release in full
2.	24 November 2009	Letter regarding meeting request with the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs regarding the Ngātikahu ki Whangaroa historical claims	some information withheld under 9(2)(a)
3.	16 April 2010	Letter regarding Ngātikahu ki Whangaroa Trust Board – Stony Creek	some information withheld under 9(2)(a)
4.	27 May 2015	Joint briefing paper with OTS: Ngātikahu ki Whangaroa: Proposed post-settlement governance entity (PSGE) and ratification strategy for deed of settlement and PSGE	Release in full
5.	4 June 2015	Joint with OTS – Letter regarding Ngātikahu ki Whangaroa post-settlement governance entity and ratification strategy	some information withheld under 9(2)(a)
6.	24 September 2015	Joint briefing paper with OTS: Ngātikahu ki Whangaroa: Ratification results	Release in full
7.	12 October 2015	Joint with OTS – Letter regarding Ngātikahu ki Whangaroa: Ratification results	some information withheld under 9(2)(a)
8.	28 March 2017	Joint briefing paper with OTS: Ngātikahu ki Whangaroa: Update on facilitation – Stony Creek Station	Some information withheld under sections 6(c), 9(2)(a) and 9(2)(g)(i)



**Te Puni Kōkiri**  
REALISING MĀORI POTENTIAL

19 December 2007

Minister of Māori Affairs



## **NGĀTIKAHU KI WHANGAROA AGREEMENT IN PRINCIPLE SIGNING CEREMONY**

### **Purpose**

1. This brief provides you with background information on the Ngātikahu ki Whangaroa Agreement in Principle signing ceremony. You are scheduled to attend the signing ceremony at Taemaro Bay on 22 December 2007.

### **Background**

2. Ngātikahu ki Whangaroa is a claimant group of approximately 2,000 people whose area of interest lies between the Whangaroa and Mangōnui harbours in the Far North. Ngātikahu ki Whangaroa are bordered by Ngāti Kahu to the west and southwest and Ngāpuhi to the south and southeast.
3. The claims of Ngātikahu ki Whangaroa relate primarily to the Crown's investigation and resolution of pre-Treaty land transactions, pre-1865 Crown purchases of land, the Taimaro and Waimahana Grants Act 1874<sup>1</sup> and Crown acquisition of land for scenery preservation and public works purposes in the twentieth century.
4. Signing an Agreement in Principle with Ngātikahu ki Whangaroa will build on the important momentum created in the Far North by the Te Rarawa Agreement in Principle signing in September 2007 and the release of the Crown's settlement offer to Te Aupōuri for overlapping claimant consultation in October 2007.

### **Progress of Negotiations**

5. During negotiations, Ngātikahu ki Whangaroa made it clear that, unless a settlement could be achieved that would include the return of the Stony Creek Station assets (approximately 3045 hectares, including the Thomson and Clarke blocks, and stock and plant) as recommended by the Waitangi Tribunal in its 1997 Muriwhenua Land Report, they would seek a resumption order over this land from the Waitangi Tribunal. Consequently, the key challenge in developing the offer was the need to

<sup>1</sup> The Act misspelled the name Taemaro.

resolve the tension between the \$4.5 million quantum originally offered to Ngātikahu ki Whangaroa and Ngātikahu ki Whangaroa's desire to secure ownership of the Stony Creek Station assets, the value of which is at least double the original quantum and may be considerably more.

6. The transfer of the station is subject to a condition that the Crown receives 50% of the sale proceeds if the Ngātikahu ki Whangaroa governance entity sells any of the land or enters into a transaction that resembles sale, such as a long term lease to a third party, within 30 years of settlement date.
7. The cultural redress and historical elements of the settlement package are broadly consistent with previous settlements, although the cultural redress includes the transfer of a relatively large area (137 hectares) of high value conservation land on the Kōwhiri Peninsula, subject to its classification as an historic reserve.

#### *Ngāti Aukiwa*

8. Negotiations were suspended for most of 2005 to allow for mediation between the Kahukuraariki Trust Board ("the Trust"), which is the mandated entity for the purposes of historical Treaty settlement negotiations, and a group within Ngātikahu ki Whangaroa using the hapū name Ngāti Aukiwa ("the Ngāti Aukiwa group"). Despite using its name, the Ngāti Aukiwa group does not have a mandate from the Ngāti Aukiwa hapū. The Ngāti Aukiwa group does not recognise the mandate of the Trust to negotiate its claims and seeks the return of Stony Creek Station for Ngāti Aukiwa alone. The Crown has made several attempts to assist the parties to resolve the dispute, but these efforts have been frustrated by the Ngāti Aukiwa group either refusing to participate in, or withdrawing from, mediation processes.
9. The Ngāti Aukiwa group has undertaken occupations and protest activity on Stony Creek Station (usually flaring up around Christmas) that has escalated over the last four years. Although the core of the dispute relates to tribal authority and mandate, since 2004 the group has framed its protest activity as being against the Crown's authority and ownership of Stony Creek Station, based on the group's stated belief that they have aboriginal and customary title to the land. This change in the focus of the protest action has led to increased numbers of protestors (approximately 25-60) participating in occupations and other activities.

#### *Ceremony arrangements*

10. The likelihood of potential objections to signing the Agreement in Principle has meant that the Kahukuraariki Trust Board has asked for several changes to be made to the Order of Events for the day to ensure the ceremony is a peaceful and celebratory occasion.
11. The Chair of the Kahukuraariki Trust Board (Manaaki Poto) has suggested that she, the Minister in Charge of Treaty of Waitangi Negotiations and Associate Minister in Charge of Treaty of Waitangi Negotiations, Hon Mita Ririnui, sign the Agreement in Principle document itself in Kerikeri, to both ensure it is signed and to not provide a focus point for protest at Taemaro Bay. Three copies of the

Agreement in Principle need to be signed. The actual signing can be done in a low-key way at the Kerikeri Airport. The document itself will then be transported to Taemaro Bay and anyone attending the ceremony who wishes to, can sign the document as a witness.

12. There is a small settlement at Taemaro Bay but no permanent marae. Ngātikahu ki Whangaroa plan to hold the ceremony in a marquee erected for the occasion on a flat area of land near the beach.

#### Comment

13. The Tai Tokerau regional office has advised that there could be protests at the ceremony.
14. Officials will be travelling to the ceremony by boat from Mangonui to Taemaro bay. Apparently the road is in poor condition, and protesters are likely to be on this road.
15. Extra security is going to be present at the ceremony. Members of the Diplomatic Protection Squad may also attend.

#### Recommendations

16. It is recommended that you:
  - a. note that you are scheduled to attend the ceremony to sign an Agreement in Principle with Ngātikahu ki Whangaroa on 22 December 2007 at Taemaro Bay;
  - b. note that protests are likely at the event; and
  - c. note that officials are available to meet with you to discuss these matters if required.

*Kim Ngarimu*  
Kim Ngarimu  
Deputy Secretary, Policy

Signed by Huni Parekura Horomia

NOTED / SEEN / APPROVED
Minister of Maori Affairs
22/12/2007



## Office of Hon Christopher Finlayson

Attorney-General

Minister for Treaty of Waitangi Negotiations

Minister for Arts, Culture and Heritage

2

9 (2) (a)

24 NOV 2009

### AUCKLAND

Tēnā koe.

Thank you for your letter of 8 October requesting a meeting with me and the Minister of Māori Affairs to discuss a path towards the settlement of the Ngatikahu ki Whangaroa historical claims.

My existing commitments mean I am not able to meet a delegation from Ngatikahu ki Whangaroa this year, but I do want to take steps to re-establish a working relationship between the Ngatikahu ki Whangaroa Trust Board and the Crown. I am therefore pleased to learn from my officials that the Trust Board now wants to meet with my caucus colleague, Mr Paul Quinn MP, as I proposed in my letter of 25 September 2009 (addressed to 9 (2) (a)).

I look forward to being updated on progress, and to being involved more directly in discussions with Ngatikahu ki Whangaroa in 2010.

Nāku noa, nā

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations



## Office of Hon Christopher Finlayson

Attorney-General

Minister for Treaty of Waitangi Negotiations

Minister for Arts, Culture and Heritage

16 APR 2010

9 (2) (a)

### AUCKLAND

Tēnā koe

Thank you for your letters dated 12, 16, 26 and 30 March 2010 addressed to me, Mr Paul Quinn MP and Hon Pita Sharples, Minister of Māori Affairs. As Minister for Treaty of Waitangi Negotiations I am responding to your letters on behalf of my colleagues.

As you will be aware, this month both Minister Sharples and I are attending consultation hui around the country to hear public views on the Government's proposal to replace the Foreshore and Seabed Act 2004. These and other commitments mean that neither of us will be available to meet with the Ngatikahu ki Whangaroa Trust Board for at least the next two months.

This Government takes the current illegal occupation of Stony Creek Station very seriously and I want to ensure progress is made towards implementing the 2007 Ngatikahu ki Whangaroa Agreement in Principle as soon as possible. I am considering advice from Mr Quinn and my officials about how this could be achieved and I will write to you shortly setting out the Crown's position in detail.

Nāku noa, nā

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

CC: Minister of Māori Affairs  
Mr Paul Quinn MP



**Minister for Treaty of Waitangi Negotiations**  
**Te Minita Whanaketanga Māori**

**Subject** Ngatikahu ki Whangaroa: Proposed post-settlement governance entity (PSGE) and ratification strategy for deed of settlement and PSGE

**Date** 27 May 2015  
**Report No. OTS:** 2014/2015 - 656

**Priority:** High  
**File ref:** CLA-N119-GV

**Action sought**

**Minister for Treaty of Waitangi Negotiations**  
 (Hon Christopher Finlayson)

Agree that the proposed PSGE Kahukuraariki Trust is an appropriate entity to receive and manage Treaty settlement redress on behalf of Ngatikahu ki Whangaroa; and

**Te Minita Whanaketanga Māori**  
 (Hon Te Ururoa Flavell)

Agree that the draft Kahukuraariki Trust deed meets the requirements agreed by Cabinet for the process to determine final ownership of Stony Creek Station; and

Approve the ratification strategy for the proposed Kahukuraariki Trust and the Ngatikahu ki Whangaroa deed of settlement; and

Sign the attached letter to the Chair of the Ngatikahu ki Whangaroa Trust Board advising him of your decisions.

**Contact for Telephone Discussion (if required)**

Name	Position	Phone		1 <sup>st</sup> Contact
Leah Campbell	Lead Negotiator, Office of Treaty Settlements	04 913 9202	027 836 0532	✓
Emily Owen	Negotiation and Settlement Manager, Office of Treaty Settlements	04 496 3362		
Arawhetu Gray	Deputy Chief Executive, Te Puni Kōkiri	04 819 6008	027 491 9982	
Sam Bishara	Acting Manager, Crown-Iwi, Hapū, Whānau Māori Relations, Te Puni Kōkiri		027 440 3986	✓



## Ngatikahu ki Whangaroa: Proposed post-settlement governance entity (PSGE) and ratification strategy for deed of settlement and PSGE

### Purpose

1. This report summarises officials' review of the proposed Ngatikahu ki Whangaroa post-settlement governance entity (PSGE), the Kahukuraariki Trust, and ratification strategy for their deed of settlement and PSGE. Decisions are sought from the Minister for Treaty of Waitangi Negotiations and Te Minita Whanaketanga Māori to enable the Ngatikahu ki Whangaroa Trust Board (the Trust Board), the mandated entity for Ngatikahu ki Whangaroa, to ratify their proposed PSGE and deed of settlement.

### Executive summary

#### Post-settlement governance entity

2. Officials have reviewed the draft Kahukuraariki Trust deed proposed by the Trust Board and are satisfied that the PSGE meets the Crown's policy principles of representation, accountability and transparency of decision-making and dispute resolution processes. Officials consider that the proposed Kahukuraariki Trust is an appropriate entity to receive and manage Treaty settlement assets on behalf of Ngatikahu ki Whangaroa.
3. Officials also consider that the provisions in the draft trust deed in relation to Stony Creek Station meet the requirements of the process agreed by Cabinet for determination of the final ownership of the Station.

#### Ratification strategy

4. The Trust Board submitted a deed of settlement and PSGE ratification strategy to the Crown. The proposed ratification process is consistent with Crown guidelines and officials are satisfied that all adult members of Ngatikahu ki Whangaroa (whether registered or not) will have the opportunity to receive information about, discuss and vote on the proposed Kahukuraariki Trust and deed of settlement in an inclusive, fair and transparent process.

### Recommendations

5. It is recommended that you:

- a. agree that the proposed PSGE Kahukuraariki Trust is an appropriate entity to receive and manage Treaty settlement redress on behalf of Ngatikahu ki Whangaroa; and

Minister for Treaty of Waitangi Negotiations

YES / ~~NO~~

Te Minita Whanaketanga Māori

YES / ~~NO~~

- b. agree that the draft Kahukuraariki Trust deed meets the requirements agreed by Cabinet for the process to determine final ownership of Stony Creek Station; and

Minister for Treaty of Waitangi Negotiations

YES / ~~NO~~

Te Minita Whanaketanga Māori

YES / ~~NO~~

- c. approve the ratification strategy developed by the Ngatikahu ki Whangaroa Trust Board for the Kahukuraariki Trust and deed of settlement; and

Minister for Treaty of Waitangi Negotiations

YES / ~~NO~~

Te Minita Whanaketanga Māori

YES / ~~NO~~

- d. sign, if you agree, the letter to the Chair of the Ngatikahu ki Whangaroa Trust Board advising him of your decisions.

Minister for Treaty of Waitangi Negotiations



YES / ~~NO~~

Te Minita Whanaketanga Māori

YES / ~~NO~~

  
Leah Campbell  
Lead Negotiator  
Office of Treaty Settlements

  
Arawheta Gray  
Deputy Chief Executive  
Te Puni Kōkiri

NOTED / APPROVED / NOT APPROVED	NOTED / APPROVED / NOT APPROVED
 Hon Christopher Finlayson Minister for Treaty of Waitangi Negotiations Date: 27 / 5 / 2015	 Hon Te Ururoa Flavell Te Minita Whanaketanga Māori Date: 2 / 6 / 2015

## **Background**

6. On 20 September 2001, the Crown recognised the mandate of the Ngatikahu ki Whangaroa Trust Board to negotiate a comprehensive settlement of the historical Treaty of Waitangi claims of Ngatikahu ki Whangaroa. The Crown and the Trust Board signed terms of negotiation on 19 October 2004 and an agreement in principle between the parties was signed on 12 December 2007.
7. The Trust Board signed a refined agreement in principle with the Crown in July 2014 and is now progressing towards initialling a deed of settlement with the Crown in June 2015. In October 2014, the Trust Board submitted a draft PSGE trust deed and proposed deed of settlement and PSGE ratification strategy for Crown approval.

## **Structure of proposed PSGE**

8. Officials recommend that you approve the proposed Kahukuraariki Trust as an appropriate governance entity to receive and manage settlement redress on behalf of the members of Ngatikahu ki Whangaroa. Officials are satisfied the proposed Trust meets the Crown's policy principles relating to PSGEs.
9. The Trust Board provided their draft PSGE trust deed to the Crown for review. The proposed governance entity, the Kahukuraariki Trust, is a private trust. The draft trust deed is based on a template developed by the Crown. This template allows individual iwi to adapt it to suit their particular circumstances while still meeting the Crown's PSGE principles.
10. The Crown's principles for PSGEs are that the entity has a structure that:
  - a) adequately represents all members of the claimant group;
  - b) has transparent decision-making and dispute resolution procedures;
  - c) is fully accountable to the whole claimant group;
  - d) ensures the beneficiaries of the settlement and the beneficiaries of the governance entity are identical when the settlement assets are transferred from the Crown to the claimant group; and
  - e) has been ratified by the claimant community.
11. Officials have reviewed the draft trust deed and consider it meets the Crown's PSGE principles. The proposed PSGE provides for participation by iwi members in their trust's affairs, allows for iwi members to stand for election as trustees and provides for elected trustees to be accountable to iwi members.

## **Representation**

12. Individuals who descend from one or more Ngatikahu ki Whangaroa ancestors, including legal and Māori customary adoptees, will be the beneficiaries of the Kahukuraariki Trust and eligible to be registered as members on the register to be maintained by the Kahukuraariki Trust trustees.
13. The Kahukuraariki Trust trustees will establish a Whakapapa Committee to make decisions on all applications for registration with the Kahukuraariki Trust. The draft trust deed also states that unsuccessful applicants may re-apply and outlines the process to be followed.

14. There will be eight trustees, one for each of the Ngatikahu ki Whangaroa marae. The initial trustees will be the current members of the Trust Board. The initial trustees will hold office through to the initial elections. With the exception of the initial trustees, the trustees will hold office for a term of three years and retiring trustees will be eligible for re-election. The draft trust deed outlines the transition process for the retirement of the initial trustees.
15. A candidate may only be nominated for election if they are registered on the Ngatikahu ki Whangaroa Register as at the closing date for nominations. Subject to certain conditions, all registered members aged 18 years and over of Ngatikahu ki Whangaroa descent are eligible to be trustees. All adult registered members will be eligible to vote in trustee elections. The nomination and election processes are clearly set out in the draft trust deed.
16. The draft trust deed requires a review of the terms and operation of the trust deed within four years. It outlines the process of engagement and consultation required. Any amendments to the constitutional arrangements may only be made with the approval of a special resolution as set out in the trust deed. The voting threshold for any special resolution is 75% of the adult registered members who validly cast a vote.

#### *Transparency*

17. The draft trust deed provides for the annual reports and consolidated financial statements to be held at the offices of the Kahukuraariki Trust and made available for inspection by any iwi member along with the annual plan, five year plan, statement of intent and constitutional documents.
18. Trustees are required to identify and disclose when they may have a financial or other interest in a Trust matter and are excluded from taking part in any decision on such a matter.

#### *Dispute resolution*

19. If a dispute arises in relation to the Kahukuraariki Trust or its entities on matters of membership, tikanga, reo, kawa, whakapapa and kōrero the dispute shall be referred to the trustees in the first instance. If a dispute is not settled by the trustees in 30 days, a non-permanent disputes committee will be appointed by the trustees. The role of the disputes committee shall be to facilitate and make findings and decisions on any disputes referred to it.

#### *Accountability*

20. The purpose of the Kahukuraariki Trust is to receive, manage hold and administer the Trust's assets for and on behalf of the present and future members of Ngatikahu ki Whangaroa.
21. Trustees are accountable to members of Ngatikahu ki Whangaroa primarily through the election process and the annual general meeting. The tenure of a trustee can be terminated for a number of reasons which are clearly set out in the draft trust deed.
22. Members of Ngatikahu ki Whangaroa are able to participate in the affairs of the Kahukuraariki Trust by attending the annual general meetings and any special general meetings. A special general meeting can be called by five percent of the adult registered members.
23. Certain matters require a special resolution of adult registered members including major transactions, amendments to the Trust deed and determination of the final ownership of Stony Creek Station. To pass a special resolution requires approval by 75 percent of adult registered members who cast a valid vote on the resolution. Disposal of lands received as

settlement redress requires a restricted transaction resolution approved by 75 percent of adult registered members.

#### ***Beneficiaries***

24. The current definition of the claimant group who will be the beneficiaries of the Ngatikahu ki Whangaroa settlement is identical to the definition of Ngatikahu ki Whangaroa in the PSGE. Any changes to the claimant definition before Ngatikahu ki Whangaroa's deed of settlement is signed will supersede and replace the definition in the PSGE.

#### ***Stony Creek provisions***

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25. Cabinet has agreed that Stony Creek Station will be vested in the Ngatikahu ki Whangaroa PSGE on the condition that:
- a. the trustees of the PSGE must, not later than four years after settlement date, initiate a fair and transparent process that is open to all members of Ngatikahu ki Whangaroa to determine the final ownership of Stony Creek Station;
  - b. the process above will be agreed following consultation with all adult members of Ngatikahu ki Whangaroa at a special general meeting of the PSGE; and
  - c. any recommendations arising as a result of the process undertaken above will be put to the adult members of Ngatikahu ki Whangaroa as a major transaction for their approval.
26. The draft trust deed provides for the review of the final ownership of Stony Creek Station as agreed by Cabinet. Recommendations arising from the process must be approved by special resolution. In order to pass, a special resolution requires at least 75 percent of the votes validly cast by adult registered members of Ngatikahu ki Whangaroa to be in favour of the proposed resolution. Recommendations arising from the review process are exempt from the restricted transactions provisions of the draft trust deed but any proposal to transfer ownership of Stony Creek Station outside of the review process will be considered a restricted transaction and require approval by 75 percent of adult registered members. The draft trust deed clearly sets out the procedure for passing special resolutions and restricted transaction resolutions.

#### ***Ratification strategy assessment***

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27. The Crown requires a claimant group to approve and ratify the proposed PSGE before it is established. Officials have assessed the ratification strategy developed by the Trust Board and consider it is consistent with the Crown's guidelines of providing adequate opportunity for iwi members to participate in ratifying the PSGE and deed of settlement.

#### ***PSGE and deed of settlement ratification***

28. Officials are satisfied that:
- a. all adult registered members will have the opportunity to receive information about, discuss and vote on the proposed PSGE and deed of settlement;
  - b. the publicity and communication material for the ratification process will allow iwi members to be informed about the ratification process, the PSGE and deed of settlement;

- c. the voting procedures, including verification of the registrations, special voting and the use of an Independent Returning Officer, will allow for an inclusive, fair and transparent process; and
- d. the number and location of the ratification hui reflects the geographical spread of iwi members registered with Ngatikahu ki Whangaroa.
29. Notification of the ratification process will include public notices in the Northland Age, Bay Chronicle, Dominion Post, New Zealand Herald and Christchurch Press newspapers. Notices will also be published on the Trust Board website, Youtube channel, Twitter feed and Facebook page. The process will be advertised on iwi radio stations in Taitokerau (Ngāti Hine Radio, Te Hiku O Te Ika, Radio Tautoko and Radio Waatea). Flyers will be disseminated in all eight Ngatikahu ki Whangaroa marae as well as marae and community centres in Kaitiāia, Kaeo, Kaikohe, Kawakawa and Whangārei. The advertisements will outline the ratification process, advise the date and time of the ratification hui and provide contact details for where further information can be obtained.
30. A total of four ratification hui will be held in areas where a significant population of Ngatikahu ki Whangaroa iwi members live (two at marae in Northland (Otangaroa and Waitaruke marae) and two in Auckland). Te Puni Kōkiri officials will be invited to observe the ratification hui as the Independent Crown observers.
31. Information packs will be mailed out to all adult registered members of Ngatikahu ki Whangaroa. These packs will include an information booklet on the proposed PSGE and deed of settlement, a voting paper with the resolutions to be voted on and a unique identifier number, a freepost envelope, details of the ratification hui and contact details for further information.
32. The voting period will last seven weeks and will be facilitated by an independent election company, Electionz.com. All eligible voters will be able to cast their vote either by postal ballot or via ballot box at the ratification information hui.
33. Iwi members aged 18 years or older at the time and during the voting period (but before the close of the voting period), and who are registered, will be eligible to vote. Unregistered adult members and those who turn 18 years of age during the ratification process will be able to register and cast a special vote.
34. A special vote procedure will be facilitated by Electionz.com. Information on special votes will be outlined in the information packs. Special votes cast by adult iwi members who register during the voting process will be subject to whakapapa verification of the accompanying registration form.

#### **Next steps**

35. We recommend you agree that the proposed Kahukuraariki Trust is an appropriate entity to receive and manage settlement redress on behalf of Ngatikahu ki Whangaroa and that the PSGE and deed of settlement ratification strategy meet Crown requirements. We have attached a letter for your signatures, should you agree, advising the Chair of the Trust Board of your decisions.
36. We are currently working towards initialling the Ngatikahu ki Whangaroa deed of settlement in June 2015, after which the ratification process will proceed. The outcome of the ratification will be confirmed by the Independent Returning Officer after the voting period ends. Officials

will report to you on the outcome and advise whether there is sufficient support for the proposed Kahukuraariki Trust to be established and the deed of settlement to be signed.

#### **Consultation**

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37. This report was prepared jointly by the Office of Treaty Settlements and Te Puni Kōkiri.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## Office of Hon Christopher Finlayson

5

04 JUN 2015

9 (2) (a)

**KAITAIA 0441**

Tēnā koe

**Ngatikahu ki Whangaroa post-settlement governance entity and ratification strategy**

Thank you for providing the documentation outlining the proposed post-settlement governance entity for Ngatikahu ki Whangaroa. We have considered the proposed Kahukuraariki Trust and are pleased to inform you that it meets the Crown's criteria of accountability, representation and transparency. We consider that the proposed Kahukuraariki Trust is appropriate to receive and manage Treaty settlement redress on behalf of Ngatikahu ki Whangaroa.

We have also considered your ratification strategy for your post-settlement governance entity and deed of settlement and are pleased to inform you the ratification process meets the Crown's requirements and can proceed following the initialling of your deed of settlement.

We congratulate you on reaching this stage in the Treaty settlement process and look forward to receiving the results of your ratification process.

This is an important step towards settling the claims of Ngatikahu ki Whangaroa and we wish you the best for the ratification process and look forward to signing a deed of settlement with you on behalf of the Crown.

Nā māua noa, nā

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

Hon Te Ururoa Flavell  
Te Minita Whanaketanga Māori





PART OF THE MINISTRY OF JUSTICE

Minister for Treaty of Waitangi Negotiations  
Te Minita Whanaketanga Māori

**Ngatikahu ki Whangaroa: Ratification results**

Date 24 September 2015  
Report No. OTS: 2015/2016 - 185

Priority: High  
File ref: CLA-N116-OF-09

**Action sought**

Minister for Treaty of  
Waitangi Negotiations  
(Hon Christopher Finlayson)

Te Minita Whanaketanga  
Māori (Hōnora Te Ururoa  
Flavell)

Note the official results of the Ngatikahu ki Whangaroa ratification; By 7 October 2015

Agree that the results of the Ngatikahu ki Whangaroa ratification demonstrate sufficient support from the claimant community for the Post-Settlement Governance Entity and to sign the deed of settlement; and  
Sign the attached letter to David Manuel, Chairperson of Ngatikahu ki Whangaroa Trust Board, advising him of the outcome of your consideration of the ratification results.

**Contact for Telephone Discussion (if required)**

Name	Position	Phone		1 <sup>st</sup> Contact
Leah Campbell	Deputy Director	04 913 92020	027 8360532	✓
Emily Owen	Manager Settlement Development (Acting)	04 496 3362		
Kit Anderson	Acting Deputy Chief Executive, Policy Partnerships (TPK)	04 819 6008	027 550 0767	
Tia Warbrick	Acting Manager, Crown-Iwi, Hapū, Whānau Māori Relations (TPK)	04 819 6028	027 722 6628	

## Ngatikahu ki Whangaroa: Ratification results

### Purpose

1. This report:
  - a. presents you with the ratification results for the Ngatikahu ki Whangaroa deed of settlement (the deed) and the Post-Settlement Governance Entity (PSGE);
  - b. recommends you agree the ratification results demonstrate sufficient support from the claimant community for the deed and PSGE; and
  - c. asks that you sign the attached letter to David Manuel, Chairperson of Ngatikahu ki Whangaroa Trust Board (the Trust Board), advising him of the outcome of your consideration of the ratification results.

### Executive Summary

2. In June 2015 the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development approved the strategy for ratification of the Ngatikahu ki Whangaroa (NKKW) deed and PSGE [OTS report: 2014/2015 – 656 refers].
3. Four ratification hui were held and voting was open for ten weeks and five days. A total of 2,426 voting packs were sent to registered adult members of NKKW by Election Services (the independent scrutineer). We consider that the ratification process was open and transparent as it enabled all registered members of NKKW to receive information, discuss and vote on the proposed settlement package and PSGE. Although there were some issues during the ratification process we consider risks created by these issues were largely mitigated (for example, as some voting packs were received late the voting period was extended). Further detail on the ratification process is provided in paragraphs 15 – 23.
4. The official results of the NKKW ratification are as follows:

	Participation rate (valid votes only)	Approval rate	Disapproval rate	Invalid votes (blank)
Deed of Settlement	750 votes (30.9%)	585 votes (78.00%)	149 votes (19.87%)	16 invalid votes (2.13%)
PSGE	750 votes (30.9%)	534 votes (71.20%)	179 votes (23.87%)	37 invalid votes (4.93%)

5. The participation rates for the deed and PSGE are higher than 17 claimant groups previously accepted by the Crown.

6. Even though the approval rates for the deed and PSGE are both at the low end of results previously accepted by the Crown we consider these are positive results for NKKW given the internal divisions within NKKW regarding Stony Creek Station (the Station). Although the Waitangi Tribunal recommended the return of the Station to NKKW in its 1997 Muriwhenua Land Report this redress has been contested by some members of NKKW who have occupied the Station since 2004. These settlement negotiations stalled following the permanent occupation of the Station, and recommenced in 2014. The proposal for redress over the Station allows for a longer conversation following settlement amongst NKKW members regarding ownership.
7. We consider it would be difficult to receive a higher ratification result from NKKW given the history of division amongst NKKW over many years and the length of time to complete their settlement negotiations.
8. There is no Crown policy on what are considered to be acceptable ratification results. If joint Ministers approve the deed ratification results, then the results will be the fourth lowest rate accepted by the Crown. If joint Ministers approve the ratification results of the PSGE they will be the second lowest rate accepted by the Crown.
9. We consider achieving a higher level of support through ratification would be extremely difficult given the history of division within NKKW. If you do not wish to proceed with the settlement on the basis of the ratification results we consider it unlikely that NKKW will settle within the Crown's current settlement framework.
10. Although the level of support for the deed and PSGE are at the low end of previously accepted approval rates, officials consider that the results are acceptable because:
  - a. the high level of participation;
  - b. the support from a significant proportion of the voting community;
  - c. the completion of a fair and transparent ratification process;
  - d. Ministers have previously approved lower ratification rates; and
  - e. there were no substantial issues raised during the ratification process.
11. Officials therefore recommend you agree the ratification results demonstrate sufficient support from the claimant community for the NKKW deed and PSGE.

#### **Recommendations**

12. It is recommended that you:	Minister for Treaty of Waitangi Negotiations	Te Minita Whanaketanga Māori
a. note the Ngatikahu ki Whangaroa claimant community ratified the Ngatikahu ki Whangaroa deed of settlement with 78.00% of valid votes in favour and the Ngatikahu ki Whangaroa Post-Settlement Governance Entity with 71.20% of valid votes in favour;		
b. agree the ratification results for the Ngatikahu ki Whangaroa deed of settlement and PSGE demonstrate sufficient support from the Ngatikahu ki Whangaroa claimant community; and	Yes / No	Yes / No

- c. sign the attached letter to David Manuel, Chair of Ngatikahu ki Whangaroa Trust Board advising him of your consideration of the ratification results.

Yes / ~~No~~

Yes / ~~No~~

Leah Campbell  
Deputy Director  
Office of Treaty Settlements

Lili Anderson  
Acting Deputy Chief Executive, Policy  
Partnerships  
Te Puni Kōkiri

NOTED / APPROVED / NOT APPROVED
Hon Christopher Finlayson Minister for Treaty of Waitangi Negotiations
Date: 27 / 9 / 2015

NOTED / APPROVED / NOT APPROVED
Hon Te Ururoa Flavell Te Minita Whānaketanga Māori
Date: 7 / 10 / 2015

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OFFICIAL INFORMATION ACT

## Background

13. NKKW are a Far North Iwi whose area of interest lies between the Mangōnui and Whangaroa Harbours. The NKKW Iwi register includes 2,426 members descended from Kahukuraariki. NKKW has historical claims against the Crown resulting from acts or omissions by the Crown prior to 21 September 1992. The settlement package includes an agreed historical account, Crown acknowledgements, a Crown apology to NKKW, cultural redress and financial redress.
14. In June 2015 the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Affairs approved the proposed ratification strategy for the NKKW ratification of their deed of settlement (the deed) and Post-Settlement Governance Entity (PSGE) [OTS report: 2014/2015 – 656 refers].
15. On the 5 June 2015 the Crown and NKKW Initialled a deed of settlement and it has been presented to the people of NKKW for ratification.

## Ratification Process

16. Four ratification hui were held and attended by Crown observers from Te Puni Kōkiri who have provided the Office of Treaty Settlements and NKKW with a Crown observer report for each hui. Officials consider that the ratification process was open and transparent. It enabled all registered members of NKKW to receive information, discuss and vote on the proposed settlement package and PSGE. A total of 2,426 voting packs were sent to registered adult members of NKKW by Election Services, the independent scrutineer.
17. The ratification was advertised in major newspapers in the region where large numbers of NKKW members reside, including the *Northland Age*, the *Chronicle* and the *Whangaroa Whispers*. It also featured in national newspapers including the *NZ Herald*, the *Dominion Post* and *The Press*.
18. Information on the ratification process was also disseminated through pānui on Ngāti Hine Radio, Te Hiku O Te Ika, Radio Tautoko, Radio Waatea and other relevant radio stations. It was also advertised through email lists, the NKKW official website ([www.ngatikahukuiwhangaroa.com](http://www.ngatikahukuiwhangaroa.com)), facebook page and Twitter feed.

## Voting process

19. The voting process was originally agreed to take place over seven weeks (17 June to 5 August 2015). OTS was notified by the Trust Board on 28 July 2015 that some of the voting packs had not been received by their registered members. The Trust Board recruited volunteers to make telephone calls to NKKW members to establish whether they had received their voting packs. The Trust Board then supplied the names of these registered members to Election Services who re-sent their voting packs. As Election Services' system only accepts one vote per registered member there was no risk of a registered member voting more than once. An extension was also considered appropriate to allow further time for registered members to participate and vote. Voting therefore closed on 31 August 2015.
20. NKKW Trust Board reported that one NKKW member received two voting packs. As noted above Election Services confirmed that their system can only accept one vote per person, so there was no risk of registered members voting more than once.

21. All adult members of NKKW were entitled to vote. Those adult members who were not registered with NKKW were able to vote provided they had to register with NKKW who advised Election Services who then sent them a voting pack.

*Information Provided to the Claimant Community*

22. The independent returning officer (Election Services) posted voting packs to all registered adult members of NKKW (and registered members who would turn 18 years old during the voting period). Each voting pack contained:
- a. an Information booklet including information on the Crown's Treaty settlement process, the claims to be settled, and the NKKW deed;
  - b. Information on the ratification process (such as dates, times and venues of information hui and the voting process), registration and information on where copies of the NKKW deed could be viewed online;
  - c. voting documentation; and
  - d. a freepost envelope.
23. Four ratification hui were held (two in the NKKW rohe and two in Auckland) to provide Iwi members with information on, and the opportunity to ask questions about, the deed and the PSGE.
24. Approximately 121 NKKW Iwi members attended the ratification hui. Sufficient notice (through the media set out at paragraphs 17-18) was given for each hui and the locations and venues were appropriate for the size and location of the NKKW population. The final hui was delayed due to a tangi at that marae but sufficient notice (through the Trust Board website and facebook page, emails to all registered members and notices at the marae and in the *Northland Age* newspaper) was given to the NKKW members.
25. The Trust Board presented and provided Iwi members at the ratification hui with consistent information on the proposed deed and PSGE, in the voting pack and through the presentation at each ratification hui. The majority of the questions asked at the hui sought clarification around specific redress items or related to post-settlement matters.
26. Attendees were given adequate opportunity to ask questions and make comments. The presenter endeavoured to respond as fully as possible to all questions and statements made. Although some technical questions related to redress were answered incorrectly we consider that these do not pose a substantial risk to the ratification.

*Resolutions*

27. Registered adult members of NKKW were asked to vote on the following resolutions:
- a. *I, as a member of NKKW, agree to accept the NKKW Deed of Settlement;*
  - b. *I, as a member of NKKW, agree that the Kahukuraariki Trust be the post-settlement governance entity that will receive and manage redress on behalf of NKKW; and*
  - c. *I as a member of NKKW, agree that the initial Trustees of the Kahukuraariki Trust sign the Deed of Settlement on behalf of NKKW.*

### **Ratification Results**

28. The official results of the NKKW ratification are as follows:

	Participation rate (valid votes only)	Approval rate	Disapproval rate	Invalid votes (blank)
Deed of Settlement	750 votes (30.9%)	585 votes (78.00%)	149 votes (19.87%)	16 invalid votes (2.13%)
PSGE	750 votes (30.9%)	534 votes (71.20%)	179 votes (23.87%)	37 invalid votes (4.93%)

#### **Participation Rate**

29. The participation rate of 30.9% is relatively high compared to the majority of ratification processes undertaken over the past few years. This rate can be attributed to NKKW's focus on running a thorough ratification process in light of internal issues raised by a group within the NKKW claimant community.

#### **Deed of Settlement Approval Rate**

30. The level of support for the deed at 71.2 percent of valid votes is one of the lowest of previously accepted approval rates for deeds by the Crown. A table outlining previously accepted deed results is attached at Appendix 1 for your consideration.

31. 16 invalid votes were received and were not included in the participation rate.

32. The relatively low approval rate can be explained by internal divisions within NKKW. Stony Creek Station has been illegally occupied by certain members of the Ngāti Aukiwa hapū (the Occupiers) for a number of years. The Occupiers claim that Stony Creek Station should not have been included in the NKKW AIP nor used in any NKKW settlement and is exclusively Ngāti Aukiwa land.

33. In 2008 the OTS attempted, through discussion and then with police intervention, to resolve the occupation of the Station. However, the Station has been illegally occupied ever since. Negotiations with the Trust Board essentially stalled as a consequence in mid-2008 as progress was not possible without the Station being included in the NKKW settlement package.

34. In 2014 the Crown, led initially by Ben Dalton and then David Tapsell attempted to initiate and facilitate discussions between the Trust Board and a group representative of the Occupiers (the Working Group) with the aim of reaching a resolution in respect of the ownership of Stony Creek Station.

35. A refined AIP was signed by the Trust Board in July 2014 and provided for the possibility of Stony Creek ownership being settled in an interim way, for DoS purposes, with final ownership to be determined post settlement by NKKW members. In March 2015 the Crown and the Trust Board agreed to vest the Station in the PSGE with conditions.

### *Analysis*

36. There is no policy or specific threshold for what the Crown considers to be acceptable ratification results. When reviewing ratification results the Crown considers a number of factors including:
- a. the level of participation by the claimant community;
  - b. the approval rates for the deed and PSGE;
  - c. whether the process was carried out in a fair and transparent manner allowing all individuals the opportunity to vote; and
  - d. contextual issues relating to the settlement.
37. The lowest approval rate accepted by the Crown for a deed is 65% for Waikato-Tainui. Other results lower than NKKW's include 77% for Te Atiawa and 67.7% for Ngāti Rangiteaorere. All of these results involved similar issues of iwi division and all of these results had participation levels within a similar range. If Joint Ministers approve the deed ratification results they will be the fourth lowest rate accepted by the Crown.
38. Officials consider that the results for the deed are acceptable because:
- a. the high level of participation;
  - b. the support from a significant proportion of the voting community;
  - c. the completion of a fair and transparent ratification process;
  - d. Ministers have previously approved lower ratification rates; and
  - e. there were no substantial issues raised throughout the ratification process.

### *Post-Settlement Governance Entity Approval Rate*

39. The level of support for the PSGE at 71.20 percent of valid votes is one of the lowest approval rates for a PSGE. A table outlining previously accepted PSGE results is attached at Appendix 2 for your consideration.
40. 37 Invalid votes were received and were not included in the participation rate.
41. Previous ratification results suggest it is not uncommon for the results of the PSGE ratification to be lower than the results of the deed ratification. This trend suggests some voters that support the settlement package as a whole have reservations about the trustees who will ultimately receive and manage the settlement redress on behalf of the NKKW claimant community.
42. Like the deed there is no specific number used to determine an acceptable ratification result for a PSGE. Instead the Crown takes a balanced contextual view of the circumstances surrounding ratification.
43. The lowest approval rate accepted by the Crown for a PSGE is 67.5% for Ngāti Rangiteaorere. The Ngāti Rangiwewehi PSGE was approved with support of 73.2%. Ngāti Rangiteaorere and Ngāti Rangiwewehi faced similar difficulties to NKKW including a division within their iwi. Furthermore both groups received participation rates within a similar range.



44. Officials consider that the results for the PSGE are acceptable because:

- a. the high level of participation;
- b. the support from a significant proportion of the voting community;
- c. the completion of a fair and transparent ratification process;
- d. Ministers have previously approved lower ratification rates; and
- e. there were no substantial issues raised throughout the ratification process.

**Consultation**

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45. OTS and Te Puni Kōkiri jointly developed this briefing.

**Next Steps**

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46. If you agree that the ratification results demonstrate sufficient support for the deed and PSGE we recommend you sign the attached letter to David Manuel, Chairperson of NKKW Trust Board, advising him of the outcome of your consideration of the ratification results.



## Office of Hon Christopher Finlayson

7.

12 OCT 2015

9(2)(a)

By email: 9(2)(a)

Tēnā koe 9(2)(a)

We have considered the outcome of the ratification of the Ngatikahu ki Whangaroa deed of settlement and Post-Settlement Governance Entity. We are pleased to advise that we consider the results of your ratification has demonstrated a sufficient level of support from the Ngatikahu ki Whangaroa claimant community for the Crown and Ngatikahu ki Whangaroa Trust Board representatives to proceed to sign the deed of settlement.

We are satisfied that the ratification provided all registered adult members of Ngatikahu ki Whangaroa with the opportunity to receive information about, discuss and vote on whether to accept the Ngatikahu ki Whangaroa deed of settlement and Post-Settlement Governance Entity.

It has been a long road for Ngatikahu ki Whangaroa and the Crown in reaching this stage of the settlement process. We wish to congratulate you on reaching this significant milestone.

We look forward to working towards signing of the deed of settlement later in the year.

Nā māua noa, nā

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

Hon Te Ururoa Flavell  
Te Minita Whanaketanga Māori



**COPY**

**Minister for Treaty of Waitangi Negotiations**  
**Minister for Māori Development**

**Subject** Ngātikahu ki Whangaroa: Update on facilitation - Stony Creek Station

**Date** 28 March 2017

**Priority:** High

**Report No. OTS:** 2016/2017 - 649

**File ref:** CLA-N116-OF-F-09

**Action sought**

**Minister for Treaty of Waitangi Negotiations**  
(Hon Christopher Finlayson)

**Note** the status of mediation and current approach with respect to Stony Creek Station, and

By 4 April 2017

**Minister for Māori Affairs**  
(Hon Te Uruora Flavell)

**Agree** to broaden the scope of approved exceptional circumstances funding to include activities that will support a non-confrontational resolution of the occupation at Stony Creek Station; and

**Sign** the attached response to Taemaro and Waitaruke Marae representatives.

**Contact for Telephone Discussion (if required)**

Name	Position	Phone	1 <sup>st</sup> Contact
<b>Office of Treaty Settlements</b>			
Lil Anderson	Director, Office of Treaty Settlements	04 918 8732	021 387 047
Nigel Fyfe	Deputy Director – Lead Negotiator		✓
Maureen Hickey	Negotiations and Settlement Manager	027 3505197	04 494 9832
Hamish Kirk	Analyst		
<b>Te Puni Kōkiri</b>			
Jaclyn Williams	Manager, Crown-Iwi, Hapū, Whānau Māori Relationships	027 499 2309	04 819 6763
Frances Lawton	Analyst, Crown-Iwi, Hapū, Whānau Māori Relationships	027 589 6373	

# Ngātikahu ki Whangaroa: Update on facilitation - Stony Creek Station

## Purpose

1. This report updates you on progress to resolve the unlawful occupation of Stony Creek Station and the Thomson Block and seeks your agreement to broaden the scope of \$400,000 of exceptional circumstances funding to include mediation solutions.
2. A letter replying to representatives of Taemaro and Waitaruke Marae is also provided for your signatures.

## Executive Summary

3. Stony Creek Station has been occupied by a dissenting sub-group of the iwi since the 2007 signing of an agreement in principle between the Crown and Ngatikahu ki Whangaroa (NKKW).
4. The prospect of the Third Reading of the Ngatikahu ki Whangaroa Claims Settlement Bill (the Bill) is applying pressure to addressing the unlawful occupation of Stony Creek Station. This pressure drives options for the Crown in resolving the occupation through either mediation or eviction. The vesting of Stony Creek Station in the Kahukuraariki Trust Board (KTB) on settlement date currently carries a high level of risk if KTB maintains its expectation the Crown will order eviction of the occupiers.
5. Peaceful resolution of the occupation has appeared unlikely until the introduction of OTS special advisors Peter Douglas and Ken Mair to work individually with each of the groups.
6. Mr Mair's and Mr Douglas's recent discussions with both the KTB and representatives of the Peterson whānau of Ngāti Aukiwa have suggested there is potential for a durable and non-confrontational resolution to the occupation of Stony Creek Station. The timeframe for this mediation is uncertain due to the need to build relationships and develop trust between the special advisors and the two parties, and eventually between the two parties themselves. In the event a peaceful resolution is not reached the Crown will need time to consider its next steps including the possibility of trespass action.
7. We seek the approval of both the Minister for Treaty of Waitangi Negotiations and Minister for Māori Affairs to persist with mediation through Mr Mair and Mr Douglas in an effort to resolve, or gain agreement to resolve, the occupation ahead of the Third Reading of the Bill.
8. We also seek the Minister for Treaty of Waitangi Negotiations' agreement to broaden the scope of the \$400,000 exceptional circumstances claimant funding initially approved for security following an eviction of the occupiers prior to settlement. This funding would then be available to support a non-confrontational resolution.
9. Members of two NKKW marae have written to you seeking your support to delay the third reading of the Bill and seeking to reopen the question of ownership, mandate and opportunities previously explored in relation to Stony Creek Station. They also allege a number of issues with the KTB's governance and execution of the Kahukuraariki Trust Deed and a lack of confidence in the current trustees. A draft response to the correspondence is attached for your consideration

10. You will be provided an update on progress on mediation attempts by the end of April 2017.

### Recommendations

11. It is recommended that you:

Minister for  
Treaty of  
Waitangi  
Negotiations

Minister for  
Māori  
Development

a. agree to continue mediation as the optimal way to resolve internal NKKW issues concerning Stony Creek Station ahead of the Ngatikahu ki Whangaroa Claims Settlement Bill third reading;

YES / NO

YES / NO

b. note the Minister for Treaty of Waitangi Negotiations has delegated authority from Cabinet to approve claimant funding for exceptional circumstances;

c. agree to broaden the scope of the approved \$400,000 exceptional circumstances funding to include activities that will support a non-confrontational resolution of the occupation at Stony Creek Station; and

YES / NO

d. note the draft ministerial letter provided for your response to the representatives of Teapaio and Waitaruke Marae (Attachment One).

Nigel Fyfe

Deputy Director – Lead Negotiator for Ngāpuhi

Jaclyn Williams

Manager, Crown-Iwi, Hapū, Whānau Māori Relationships

NOTED / APPROVED / NOT APPROVED

NOTED / APPROVED / NOT APPROVED

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

Date: 28 / 3 / 2017

Hon Te Uruora Flavell  
Minister for Māori Development

Date: 4 / 4 / 2017

## Background

### *Ngatikahu ki Whangaroa Treaty settlement*

12. NKKW signed their Deed of Settlement on 18 December 2015. The Settlement Bill had its second reading on 22 September 2016 and is available for third reading.
13. The key commercial settlement assets are three farms totalling 3,000 hectares: Stony Creek Station, the Thomson Block and the Clarke Block. The properties are held in the Treaty settlements landbank and are now managed by Land Information New Zealand. The farms will transfer to the KTB on settlement date: 40 working days (around two months) after the day following enactment of the legislation.

### *Unlawful occupation of Stony Creek Station*

14. Stony Creek Station has been occupied by various whanau comprising a dissenting sub-group of the iwi (including some members of the Ngāti Aukiwa hapū) since the 2007 signing of an agreement in principle between the Crown and NKKW. Buildings on the adjoining Thomson Block are also occupied. Those in occupation and their supporters assert Ngāti Aukiwa has a primary proprietary interest in the farm and oppose its use for the broader settlement of NKKW's Treaty claims.
15. These issues date back to the mandating phase in the early 2000s and there have been a number of attempts to foster a resolution between the various parties throughout the settlement negotiations – without success.
16. As the legislation progresses KTB has expressed its ongoing concern about the unlawful occupation and the risk of it preventing the Trust from developing the farms for the benefit of all members of the iwi. It urged the Crown to act to address the situation while the farms are still Crown land. You wrote to KTB on 25 July 2016 committing to work with it to ensure it has vacant possession of Stony Creek Station on settlement date.
17. On 17 October 2016 KTB responded in writing to you requesting:
  - a. the Crown enter into discussions with the occupiers to facilitate their immediate removal from the land;
  - b. the Crown fund security for a minimum of two years so that KTB can focus on the development of the farms uninterrupted by unlawful occupation; and
  - c. funding assistance to organise facilitated hui with the occupiers once they have been removed.
18. In response MfToWN approved exceptional circumstances funding of:
  - a. up to \$400,000 for KTB to employ staff and lease equipment to secure Stony Creek Station and the Thomson and Clarke Blocks prior to settlement date [OTS report 2016/17 206 refers]; and
  - b. up to \$10,000 for expenses KTB may incur while engaging with the Crown to prepare for taking control of the farms [OTS report 2016/17 407 refers].
19. In parallel, the Crown engaged Peter Douglas and Ken Mair as independent advisors to try open up discussions with the whānau living on the farms, encourage the whanau and KTB to

engage in an effort to shift the focus of KTB away from the idea of the Crown removing the occupiers, and to look for a more constructive outcome.

*Vacant Possession and Potential Trespass Action*

20. The KTB may call on the Crown to take trespass action to ensure it has vacant possession on settlement date. Ultimately any decision to do so would fall to the Commissioner of Crown Land and the NZ Police.

21.

9 (2) (g) (i)

22.

6 (c)

**Discussion - Attempts to achieve a facilitated resolution**

23. Given the issues associated with trespass action a facilitated resolution is preferred. Ken Mair and Peter Douglas have been meeting separately with KTB trustees and the whānau in occupation since January 2017. Establishing trust has, as expected, taken some time but they report the discussions are increasingly constructive and there is growing willingness both from KTB and from key representatives of the whānau occupying the land to have a joint hui.

24. KTB trustees generally now acknowledge removing the whānau will not provide a sustainable solution given the size of the property and ease with which people could return. The whānau is currently considering an invitation from Mr Mair and Mr Douglas to meet with KTB members.

25. Mr Mair and Mr Douglas are meeting with people weekly and there is a level of focus generated by both the KTB and occupiers being aware the third reading could be as early as May. At this stage, given the delicate nature of the work and the need to move at the parties pace, it is not possible to set out a defined work plan or timeframes.

26. The intention is that in the next few weeks Mr Mair and Mr Douglas will begin to ask both parties to come up with mechanisms within the parameters of the Deed of Settlement to resolve their issues. The options the parties develop may include:

- a. Bringing forward the iwi determination of the final ownership of Stony Creek Station provided for in the Kahukuraariki Trust Deed; or
- b. Amending the Kahukuraariki Trust Deed to bring forward elections for marae-based representation on KTB (they currently have initial trustees who don't represent specific marae); or
- c. Establishing an asset holding company and associated governance structure for Stony Creek Station that provides a particular role for Ngāti Aukiwa.

27. Any approaches devised by the parties may take some time to assess and agree as part of a resolution package.
28. At this stage we propose to provide you with an update on progress by the end of April. We expect that will include a more developed work plan and assessment of timeframes.

*Timeframes for Third Reading of the Bill*

29. We are conscious there are limited opportunities for Parliament to pass the NKKW legislation in the Government's current term of office. We consider the facilitation work is critically important and if there is a chance it can succeed we recommend it is given the necessary time. That should not be unlimited, however. The fact the third reading is imminent provides some impetus to the discussions.
30. In the event a peaceful resolution is not reached the Crown will need time to consider its next steps and if trespass action was favoured to put that into action. The 40 day settlement date would provide some preparation time.

MONTH OF THIRD READING	EARLIEST POSSESSION DATE (Royal Assent plus 40 days)
May (4 sitting weeks)	July
June (3 sitting weeks)	August
July (2 sitting weeks)	September
August (depends when the House rises)	October

*Support facilitation to broaden scope of exceptional circumstances funding*

31. Cabinet has delegated authority to MfToWN to approve claimant funding for exceptional circumstances [TOW Min (09) 6/4 and CAB Min (09) 20/2 refer]. We seek your agreement to broaden the scope of the \$400,000 exceptional circumstances funding approved for KTB (OTS report 2016/17 206 refers) from solely security services to activities and services that will support the Trust to achieve a non-confrontational resolution of the Stony Creek Station issues.
32. We understand KTB supports a broadening of the scope and we consider making the funding available to more generally assist activities that support a non-confrontational resolution is consistent with the Crown's claimant funding objectives, in particular:
  - a. funding will support a claimant group to reach a durable settlement in a timely fashion;
  - b. the Crown's financial and political risks will be minimised [CAB Min (10) 43/12 refers].
33. OTS has asked KTB to propose a set of indicative activities or services that might be funded and Ken Mair will work with them on this. These activities/services may include holding hui (and associated travel, catering and venues) and using professional facilitation and advisory services.
34. If the broadened scope is approved we will release funding to KTB in \$50,000 tranches once there is an agreed set of fundable activities or services. All KTB expenditure will need to be



substantiated by invoices as normal for claimant funding. This will ensure transparency for both Ngatikahu ki Whangaroa and the Crown.

35. There is risk that the \$400,000 will be exhausted, a resolution not achieved and KTB may then seek further exceptional circumstance funding for security purposes. We will manage this risk by making it clear that the Crown will not provide further funding.

#### **Letter from Taemaro and Waitaruke Marae Trustees**

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36. On 1 March 2017, trustees of Taemaro and Waitaruke Marae wrote to you to seek your support to delay the third reading of the Bill alongside a plan that includes:
- a. Proper investigation into all matters including ownership, mandate, the operations and opportunities explored and lost previously by the KTB;
  - b. The engagement of skilled people to work to bring the various whānau, hapū and marae together;
  - c. The engagement of the Maori Land Court for mediation and management of the Kahukuraariki Trust; and
  - d. Assurance that election processes empower marae-mandated representatives.
37. They also express a lack of confidence in the current Kahukuraariki trustees and state they would support the security funding being used for a peaceful resolution.
38. The letter did highlight an area where the Trust has not been consistent with its Trust Deed (contracting one of its trustees to act in a project manager role). We have raised that with the Trust and they have remedied that situation. We have also encouraged the Kahukuraariki trustees to ensure they have legal advice on the requirements set out in the Trust Deed.
39. We consider many of the other issues raised may be addressed through the current efforts of the KTB and the mediation efforts of Mr Mair and Mr Douglas. We attach a draft response to the letter for your consideration.

#### **Consultation**

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40. The advice in this paper has been developed in consultation with the Crown Law Office specifically in regard to the plausibility of issuing trespass at Stony Creek.

#### **Next steps**

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41. We will provide you with an update on progress on mediation attempts by the end of April 2017.

---

**Attachment One**

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OFFICIAL INFORMATION ACT



## Office of Hon Christopher Finlayson

Taemaro Marae Trustees  
c/o PO BOX 141  
Mangonui  
FAR NORTH 0442

Waitaruke Marae Inc. Society Executive  
State Highway 10  
Waitaruke  
KAEO

By email: [heitauiira@xtra.co.nz](mailto:heitauiira@xtra.co.nz)

Tēnā koutou

**Re: Concerns regarding Kahukuraariki Trust Board and seeking support to delay the Third Reading of the Ngāti Kahu Ki Whangaroa Settlement Bill**

We acknowledge receipt of your letter of 27 February outlining your concerns about the Kahukuraariki Trust and asking that the Crown delay the third reading of the Ngatikahu ki Whangaroa Claims Settlement Bill.

The Kahukuraariki Trust is a private trust which means it is directly responsible to its beneficiary group rather than to Ministers of the Crown. Our officials have, however, alerted the trustees to the issues you have raised and asked them to take steps to consider and address them as necessary.

As you will now be aware we have also engaged Peter Douglas and Ken Mair, as independent advisors, to try and bring the various parties involved in the Ngatikahu ki Whangaroa claim and settlement together to find a peaceful and constructive resolution to the issues. We encourage you to participate in and support the approaches they are facilitating.

The Ngatikahu Ki Whangaroa Claims Settlement Bill has not yet been scheduled for its third reading. The timing for that will be determined by the House and is dependent on range of factors. At this stage we understand the earliest the third reading could occur is May 2017.

Nā māua,

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

Hon Te Uruora Flavell  
Minister for Māori Development

cc:

9(2)(a)