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Release of Submissions:
Mixed Ownership Model Consultation with Māori

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[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people.

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

He tono nā

Te Rūnanga o NGĀI TAHU

ki a

HON BILL ENGLISH, MINISTER OF FINANCE

HON TONY RYALL, MINISTER FOR STATE OWNED ENTERPRISES

e pā ana ki te

EXTENSION OF THE MIXED OWNERSHIP MODEL A PROPOSAL TO CHANGE LEGISLATION IN RELATION TO FOUR STATE-OWNED ENTERPRISES

22 February 2012

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EXECUTIVE SUMMARY

Te Rūnanga o Ngāi Tahu (Te Rūnanga) has no position on merits or otherwise of the Government's intention to proceed with the Mixed Ownership Model. We recognize and acknowledge that Iwi members hold divergent views on the sell-down of state assets. However, Te Rūnanga, and before it the Ngāi Tahu Māori Trust Board has always advocated that these assets should be available for the settlement of claims under the Ti Tiriti o Waitangi.

In the event that state assets are to be placed into a Mixed Ownership Model, Te Rūnanga is vitally interested in the means by which the Mixed Ownership Model is extended to the four named energy generating State-Owned Enterprises (SOEs) and the protections which accompany the changes in the ownership model.

HE MIHI MAUMAHARA

Te Rūnanga o Ngāi Tahu (Te Rūnanga) notes that the closing date for this response is February 22nd 2012 being the first anniversary of the February 2011 earthquake.

Ka taka te wā, ka huri te tau. Ka hoki ngā maharatanga ki ngā pēhitanga o te wā, te mamae, te pōuri, te ohorere, te papatoiake. Ka tangi tonu nei te manawa. Heoi anō ia kua kite atu i roto i te tau nei, ko te nui o tēnei mea te aroha o tētahi ki tētahi. Me te mōhio rāia mā tērā aroha, ka ora anō tātou, ka mahuta anō te pane i te pae. Ōtautahi, Waitaha kia waka kōtuia te rite, he rā anō kei tua.

I) TE RŪNANGA O NGĀI TAHU

1. This response to the document entitled *Extension of the Mixed Ownership Model - A proposal to change legislation in relation to: Genesis Power Ltd, Meridian Power Ltd, Mighty River power Ltd, Solid Energy Ltd; Consultation with Māori* (the consultation document) is made on behalf of Te Rūnanga. Te Rūnanga is statutorily recognised as the representative body of Ngāi Tahu Whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996. We note for the record the following relevant provisions of that legislation:

   Section 3 states:

   > *This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.*

   Section 15(1) states:

   > *Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.*

The Charter of Te Rūnanga o Ngāi Tahu (adopted in 1993) constitutes Te Rūnanga as the kaitiaki of the tribal interest. In particular, it is noted that no national or pan-Māori body has a mandate to represent Ngāi Tahu.

2. Te Rūnanga believes that this response should be accorded the status and weight due to the tribal collective, Ngāi Tahu Whānui, currently comprising over 40,000 members registered in accordance with section 8 of the Act.

3. Further, substantial energy-generating assets of three of the the four SOE's in question are located within the Takiwā of Ngāi Tahu. While the status of the Treaty of Waitangi in legislation is of the greatest significance to all Iwi as a matter of principle, Te Rūnanga is of the view that particular weight should be given to the perspectives of those Iwi who hold mana whenua in respect of the areas where the key assets are located, and where the operations of relevant SOEs are focused.

4. Te Rūnanga notes that the Ngāi Tahu Deed of Settlement 1997 and the Ngāi Tahu Claims Settlement Act 1998 also contain provisions relevant to the Crown treatment of these assets[1].

II) TE RŪNANGA INTERESTS IN THE PROPOSED LEGISLATION FOR THE EXTENSION OF THE MIXED OWNERSHIP MODEL

1. The interests of Te Rūnanga in respect of the proposed legislation for the extension of the mixed ownership model derive from two inter-related sources:

   a) Treaty Relationship – Te Rūnanga has an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty), and the principles distilled from it, in all its actions. This is true both as a matter of general principle and more particularly as a result of the re-affirmation of the Treaty partnership between Ngāi Tahu and the Crown effected by the settlement of the historic claims of Ngāi Tahu in 1997. The Crown apology to Ngāi Tahu, contained in the Ngāi Tahu Claims Settlement Act 1998 (see Appendix One) includes commitment from the Crown to enter into a 'new age of cooperation with Ngāi Tahu', acknowledging the Treaty principles of partnership, active participation in decision-making, and recognition of rangatiratanga.

   b) Kaitiakitanga – As noted above, substantial energy generating assets owned by three of the four companies in question are located in the Takiwā of Ngāi Tahu. In keeping with the kaitiaki responsibilities of Ngāi Tahu Whānui, Te Rūnanga has an abiding interest in ensuring sustainable management of the natural resources found in that Takiwā. Ngāi Tahu maintain a vital interest in ensuring that the four companies, as significant users of those resources, do so in a manner that not only meets regulatory standards, but international best practice.

2. It should be noted that Te Rūnanga does not have a formal position on the merits of the Government's intention to extend the Mixed Ownership Model to the four companies in question. This is an issue on which Iwi members and others in the

[1] A further, more particular interest is the impact of the proposed new legislation on redress mechanisms included in the Ngāi Tahu Claims Settlement Act. Proposed consequential amendments to that are the subject of direct correspondence between Te Rūnanga and the responsible Minister independent of this consultation process.

community hold divergent views. Te Rūnanga has always supported the use of such assets in the settlement of the historical Treaty of Waitangi claims of iwi. The views expressed by Te Rūnanga in this response to the consultation document focus, therefore, on the mechanisms by which the Government's intentions are implemented and the on-going protections of the rights and interests of iwi.

3. Further, Te Rūnanga acknowledges that there is an obvious link between hydro- and geothermal energy generation assets and the Treaty-guaranteed rights of Iwi and hapū in respect of freshwater, in all its forms. In common with other Iwi, Ngāi Tahu maintains that it has rights and interests in this regard which are extant and have never been extinguished.

4. Te Rūnanga supports the right of all Iwi and hapū to pursue their rights in the courts and the Waitangi Tribunal in whatever way, and at whatever time they see fit. However, the concept of any national or pan-Māori claim is roundly rejected. Te Rūnanga does not believe a mandate exists for any such action and, certainly, none has been given by Ngāi Tahu.

5. Te Rūnanga's position will be that if such a claim is to be taken which would affect all iwi interests then we would want to be separately represented. However, as long as the Crown continues to engage with Iwi directly, meaningfully and in good faith, dialogue between the Treaty partners is to be preferred to litigation.

III) TE RŪNANGA POSITION ON THE CONSULTATION PROCESS

6. Te Rūnanga does wish to record its appreciation that the Deputy Prime Minister did attend the consultation hui within the Ngāi Tahu Takiwā. The ability of our people to engage with the Minister kanohi ki te kanohi was appreciated.

7. However, Te Rūnanga wishes to formally record our disappointment that the Crown has engaged on a truncated consultation process which has, for us, ended on the anniversary of the February 22nd 2011 Christchurch earthquake. This has seriously impaired Te Rūnanga's ability to consult with our own people or to provide the detailed response which we feel is appropriate for this this particular *take*.

8. Te Rūnanga believes that the second of these deficiencies can be addressed by the formulation of an iwi/Crown technical working group to address the issues which we will raise in this response.

IV) TE RŪNANGA POSITION ON THE PROPOSED LEGISLATION FOR THE EXTENSION OF THE MIXED OWNERSHIP MODEL

9. Section 9 of the SOE Act was enacted in response to concerns expressed by Māori that, by transferring assets into SOEs, the Crown would be depriving itself of the ability to provide those assets to Iwi through Treaty settlements. While the original focus was on land based aspects of the assets being available for Treaty settlements, over time the concern has been for both the management and protection of the resources (land, geothermal, coal, oil and gas and water) by these companies.

10. It has been said that s.9 of the SOE Act is the strongest of all Treaty clauses that have been included in legislation. Given that s.9 is expressed in a negative way ("Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi"), in contrast to the more positive s.4 of the Conservations Act 1987, which requires that Act to be "be interpreted and administered as to give effect to the principles of the Treaty of Waitangi", that is debatable. What is beyond doubt, however, is that s.9 of the SOE Act has resulted in more concrete outcomes for the protection of Māori rights and interest than any other single legislative provision.

11. The seminal case in relation to s.9 of the SOE Act, the 1987 *New Zealand Maori Council v Attorney-General* (the Lands case) not only lead to the development of the protective mechanism enshrined in ss.27-27D of the SOE Act, but provided the Court of Appeal with its first opportunity to articulate the principles of the Treaty for the first time. In the view of the Court of Appeal, those principles included that:

    a. The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith;

    b. The Crown's duty of active protection means that Māori must be able to use their lands and waters to the fullest extent possible;

    c. There is a duty on the Crown to consult with Māori in certain circumstances;

    d. The Crown has a duty to remedy past breaches of the Treaty of Waitangi; and

    e. The Crown retains the freedom to govern and the principles of the Treaty do not impose unreasonable restrictions on the right of a duly-elected government to govern and to pursue its policies

12. Although that statement of the principles of the Treaty remains central to all Treaty of Waitangi jurisprudence, it has been expanded on since by the Courts. In particular, the Court of Appeal in the 1995 case of *Ngāi Tahu Māori Trust Board v Director-General of Conservation,* (the Whalewatch case), further considered, in particular the principle of active protection. Rejecting arguments that that principle was satisfied by procedural steps, such as consultation, the Court expressed the view that:

    > *The iwi are in a different position in substance and on the merits from other possible applicants for permits. Subject to the overriding conservation considerations that we have mentioned and to the quality of service offered, Ngai Tahu are entitled to a reasonable degree of preference.*

13. Te Rūnanga o Ngāi Tahu is of the view that all of the principles of the Treaty, including the principle of reasonably preference thus articulated, must be considered in assessing the level of protection of Iwi rights and interests provided, in combination, by ss.9 and 27-27D of the SOE Act. The essential question raised by the consultation document is therefore how an equivalent level of protection should be provided in the new, Mixed Ownership Model, regime.

14. There are three elements to be addressed in respect of that equivalent level of protection:

a. The over-riding importance of consistency with Treaty principles – what section 9 of the State-Owned Enterprises Act (the SOE Act) means, and what is required in order to ensure the same measure of protection for the Treaty-guaranteed rights and interests of Iwi is provided in the new regime;

b. No prejudice to the Crown's ability to settle Treaty claims or recognize the extant rights of the Iwi – what is required in the new regime in order to provide an equivalent level of assurance that the Crown will retain the ability to settle claims and recognize rights to that provided by the combination of ss.9 and 27-27D of the SOE Act; and

c. How provision should be made for Iwi participation in the sale process that reflects the Treaty principle of reasonable preference.

V) THE OVER-RIDING IMPORTANCE OF CONSISTENCY WITH THE PRINCIPLES OF THE TREATY

15. In the early days of the SOE Act the focus of Iwi was on ensuring that Crown assets transferred to SOEs would remain available for return to them through the Treaty settlement process. As noted above, however, there is no basis for such a limited view of the effect of s.9, which should inform all of the Crown's actions in its capacity as the sole shareholder of SOEs. Indeed, the Court of Appeal in the *Lands* case, commented that it could see no basis for reading down the clear words of s.9.

16. Considered in this broader light, Te Rūnanga believes that s.9 of the SOE Act provides not only protection for Iwi rights and interests, but also a platform for better management of the natural resources utilised by these companies in question, in partnership with iwi.

17. Of particular relevance, in this respect, are the Crown's powers as shareholder under the SOE Act is the power to direct the Board of any SOE to include in, or omit from, its statement of corporate intent (SOCI) provisions dealing any of a number of matters, including the objectives of the SOE, the nature and scope of the activities it may undertake and the performance targets and other measures by which its performance may be judged in relation to its objectives (ss.13 and 14, SOE Act). Clearly, before exercising that power, the relevant Minister is to have regard to, *inter alia*, the Crown's obligations under s.9.

18. Therefore, Iwi could legitimately expect that the Crown would, exercise its powers in this regard to direct an SOE to act in a manner (at least) 'not inconsistent with' the principles of the Treaty. Whether or not the Crown has, in fact, acted in this manner over the past 25 years, is not the point. This is the level of protection Te Rūnanga believes that s.9 of the SOE Act provides and which, therefore, needs to be replicated in the new, Mixed Ownership Model regime.

19. The consultation document essentially concludes that mirroring s.9 in the new legislation will have negligible effect, because the Crown will have more limited rights and powers as the majority shareholder of a Mixed Ownership Model company than it does at present as a sole shareholder under the SOE Act. This analysis is largely correct: simply mirroring s.9 in the new legislation will not provide the same level of protection of Treaty rights and interests as exists under the SOE Act. This is not because of any shortcoming in s.9 but because the Crown mechanism for shaping the behaviour of the company through its power of

directing the contents of the company's SOCI will – presumably – be more limited than is presently the case.

20. Having said that, Te Rūnanga is strongly of the view that mirroring s.9 in the new legislation is important as a matter of principle; the section established an important baseline expectation for Crown behaviour which should not be lightly swept aside. Section 9 is a legally enforceable statement of the importance of the Treaty relationship and, importantly, the Crown's fiduciary and good faith obligations to Māori. While the Crown is undoubtedly entitled to extend the Mixed Ownership Model, it must retain a statutory duty to not act in a manner inconsistent with the principles of the Treaty in the context of the resulting companies.

21. Commentators have, rightly, pointed out that few Iwi are likely to be drawn to the option of a "more specific Treaty clause describing how the Crown will meet its obligations" mooted in the consultation document, for the simple reason that legislative references to the Treaty have become progressively less effectual over more recent years. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill currently before Parliament serves as a cogent example of this trend, with its ostensible 'Treaty clause' in fact consisting of nothing more than a list of other provisions of the Bill which set out procedural measures that barely even merit the description of consultation.

22. Therefore, Te Rūnanga believes that the new regime should include a provision identical to s.9 of the SOE Act, but <u>also</u> some other measure(s) that will provide a means of delivering a level of protection to the Treaty rights and interests of Iwi that is equivalent to that of s.9. In fact, it would be entirely appropriate for the Treaty partners to expect a higher level of protection than that, given the 25 years of evolution and maturation in the Treaty partnership that has occurred since s.9 was enacted and the *Lands case* decided.

23. Unfortunately, the consultation document does not provide any detail as to the governance framework that will apply to the relevant companies, making it difficult to devise mechanisms for effectively delivering on the principles enshrined in s.9 of the SOE Act. In the absence of such detail, Te Rūnanga has taken the view that such mechanisms are likely to be most effectively provided for the in the constitutions of the companies themselves, with the new legislation merely requiring such provision to be made. Te Rūnanga would welcome the opportunity to work with officials to develop appropriate constitutional provisions.

24. Te Rūnanga understands that the Crown position is that because the Treaty relationship is primarily between the Crown and iwi (hapū) that it is not possible to require the 49% of non Crown shareholders to be bound by the Treaty. While that is technically the case, the legislation establishing the Mixed Ownership Model can enjoin the new entity to act as a whole in a manner which is consistent with the Crown's obligations. Many non Crown agencies including the Anglican Church have voluntarily made such commitments.

25. Te Rūnanga believes that there are precedents for placing constraints or positive directions on the way a former state asset can operation post-privatisation, for example, in the form of the 'Kiwi share' provision included in the Telecom constitution. Any argument that giving effect to a commitment to the Treaty in the constitutions of the relevant companies would negatively impact on the value of their shares, would to overlook the fact that an increasing number of private entities operate according to constitutional mandates that direct them to pursue a

range of objectives beyond the simple pursuit of profits. These include commitments to the treaty and biculturalism, social responsibility and environmental best practice.

Recommendations

26. Te Rūnanga recommends that:

    a. the following provision be included in the new legislation:

        Consistency with the principles of the Treaty of Waitangi

        (1) Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.

        (2) The constitution of each [Mixed Ownership Model company] shall include provisions requiring it to act in a manner that is not inconsistent with the principles of the Treaty of Waitangi.

    b. a joint working group of Crown officials and advisors to affected Iwi be convened to develop model provisions for incorporation in the constitutions of the relevant companies.

VI) NO PREJUDICE TO THE CROWN'S ABILITY TO SETTLE OR RECOGNIZE EXTANT RIGHTS

27. Sections 27-27D of the SOE Act link to the Treaty of Waitangi Act 1975 and establish a regime which allows for Crown lands transferred to SOEs to be 'resumed' by the Crown and utilised in Treaty settlements. The consultation document proposes that existing memorials will remain in place and these sections will be repeated in the new legislation and apply to any future transfers of land from the Crown to the Mixed Ownership Model companies.

28. As noted above, ss.27A-27D were inserted into the SOE Act as a result of the *Lands* case to ensure that Crown lands transferred to SOEs would remain available for use in Treaty settlements. The reality is, however, that the land assets of SOEs have not, to date, been utilised in any Treaty settlements, despite the vast majority of all settlements (by land area) having been concluded in the years since the passage of the SOE Act. With all due respect to those Iwi yet to conclude Treaty settlements, Te Rūnanga takes the view that the more significant Treaty rights that remain to be recognised (or redressed where improperly extinguished by the Crown), are those relating to resources other than land, i.e. water, minerals and (to some extent) geothermal energy.

29. The proposed retention of existing s.27 memorials and rollover to the new legislation of sections 27-27D of the SOE is the bare minimum that can be expected. It is inarguable that land assets acquired from the Crown by Mixed Ownership Model companies from must remain available for use in Treaty settlements. Given the limited relevance of these provisions to the 21st Century context of the Treaty

partnership, more is required in order to not significantly compromise the means available to the Crown to recognise extent rights or redress improperly extinguished rights to resources other than land.

30. The issue of principle that Te Rūnanga seeks to have enshrined, however, is that all of the assets the Mixed Ownership Model companies (including, for example, water use consents) began as publically-owned assets and should therefore be potentially subject to resumption. Clearly, compensation should be paid to the company by the Crown where any resumption takes place.

31. It has been suggested that it is not necessary to extend the effect of the SOE's protective mechanisms to assets other than land because the transition from SOE to Mixed Ownership Model companies will not affect the nature of rights held in respect of those assets. That may well be true, in which case, a legislative statement of the Crown's intent that that is the case should be entirely uncontroversial.

32. Another option would be to specifically provide for a portion of the Crown's shareholding in the Mixed Ownership Model companies to be available for transfer to Iwi in appropriate circumstances. To the extent that land and assets of the companies in question are in the rohe of Iwi who claims in respect of past breaches of the Treaty have not yet been settled, those iwi should have the option of having Crown land returned to them, or to receive shares in those companies. The same principle should extend to Iwi who can establish extant Treaty-guaranteed rights requiring effective recognition. While Te Rūnanga, and some other Iwi, have taken the view that ownership of natural resources such as freshwater can be less important than how those resources are managed, it is also true that, as owners, it is easier to influence how assets and resources are managed.

33. Given the emphasis that has been placed on ensuring that at least 51% of shares in the companies remain in New Zealand hands, any shares transferred to Iwi in this way could, reasonably, be subject to a first right of refusal in favour of the Crown should the Iwi subsequently wish to dispose of those shares.

Recommendations

34. Te Rūnanga recommends that, in addition to retention of the full effect of sections 27-27D of the SOE Act, as proposed in the consultation document, provisions should be included in the new legislation to the effect that:

    a. Nothing in the new legislation is to be interpreted as in any way prejudicing or diminishing the ability of the Crown to provide redress for past breaches of the Treaty or to effectively recognise extant rights and interests guaranteed by the Treaty;

    b. Any physical asset (including any right, permission or entitlement to utilise a physical asset or resource) held by the Mixed Ownership Model company at the date of commencement of the new legislation must be transferred to the Crown if required by the Crown in order to redress past breaches of the Treaty or recognise rights or interests guaranteed by the Treaty;

c. The Crown must pay the Mixed Ownership Model company full compensation for any asset so transferred;

d. Nothing in the new legislation is to be interpreted as preventing the Crown from transferring any portion of its shares in a Mixed Ownership Model company to Iwi in order to provide redress for past breaches of the Treaty or to recognize rights and interests guaranteed by the Treaty;

e. Any shares so transferred must be subject to a right of first refusal back to the Crown.

VII) OPPORTUNITIES FOR IWI PARTICIPATION

35. Te Rūnanga believes that the principle of a reasonable preference, as articulated in the *Whalewatch* case, is entirely applicable to the circumstances of the Crown divesting itself of shares in key energy-generating SOEs. Moreover, much has said an written over recent years about the key role Iwi have to play in helping to meet New Zealand's need for investment in infrastructure. Iwi are significant and stable, but still fundamentally grass-roots, investors and, as such, should be ideal partners for the Crown in this venture.

36. The idea of a joint Crown-Iwi working group to look at the detail of implementation of the extension of the Mixed Ownership Model has been mooted, and Te Rūnanga would strongly support such an initiative. Appropriately qualified officials and technical advisors to Iwi would be best placed to develop opportunities for Iwi participation in the process that are practical, commercially-robust and in reflective of the principle of active protection.

Recommendations

1. Te Rūnanga recommends that:

   a. joint working group of Crown officials and advisors to affected Iwi be convened to develop model provisions for participation in the sales process which is consistent with the principles of active protection and reasonable preference.

VIII) CONCLUSION

While Te Rūnanga has expressed concerns over the consultation process we would also like to express some optimism that with direct input from Iwi leaders and their technical advisors there is a way forward to

a. ensure that all of the existing rights and interests of iwi under the current legislative framework can be enshrined in the new legislative framework and improved upon; and

b. a process can be established to ensure all iwi, settled or not yet settled can participate in the sales process.

IX) APPENDIX ONE – CROWN APOLOGY WITHIN THE NGĀI TAHU CLAIMS SETTLEMENT ACT

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

   "'This was the command thy love laid upon these Governors … that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily … and remember the power of thy name."

   The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

2. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

3. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

4. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tireni!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

5. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their

active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

6. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

7. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

8. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu."