

Reference: 20200437



11 March 2021



Thank you for your Official Information Act request, received on 21 December 2020.
You requested the following:

- Copies of any advice provided to Ministers on the impact of the announced agreement on the future of the land at Ihumātao including, but not limited to, impacts for the communities involved, the land itself and any potential Treaty of Waitangi issues

The time to reply to your request was extended by 20 working days.

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	1 December 2020	Draft Briefing for PreCab Meeting with the Treasury 14 December 2020	Release in part
2.	28 February 2020	Treasury edit and comments on Cabinet paper "Te Puke Tāpapatanga a Hape (Ihumātao) Proposal"	Release in part

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons, and
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage.

1 The Terrace
PO Box 3724
Wellington 6140
New Zealand
tel. +64-4-472-2733

<https://treasury.govt.nz>

Some information has been redacted because it is not covered by the scope of your request. This is because the documents include matters outside your specific request.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Further relevant public information

The Ministry of Housing and Urban Development has recently proactively released other documents regarding the Ihumātao proposal (the final Cabinet paper and minute, and the sale and purchase agreement). These documents can be found at the Ministry of Housing and Urban Development's website: <https://www.hud.govt.nz/news-and-resources/proactive-releases/>.

Please note that this letter (with your personal details removed), and enclosed documents, may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely,

John Beaglehole
Acting Manager

OIA 20200437

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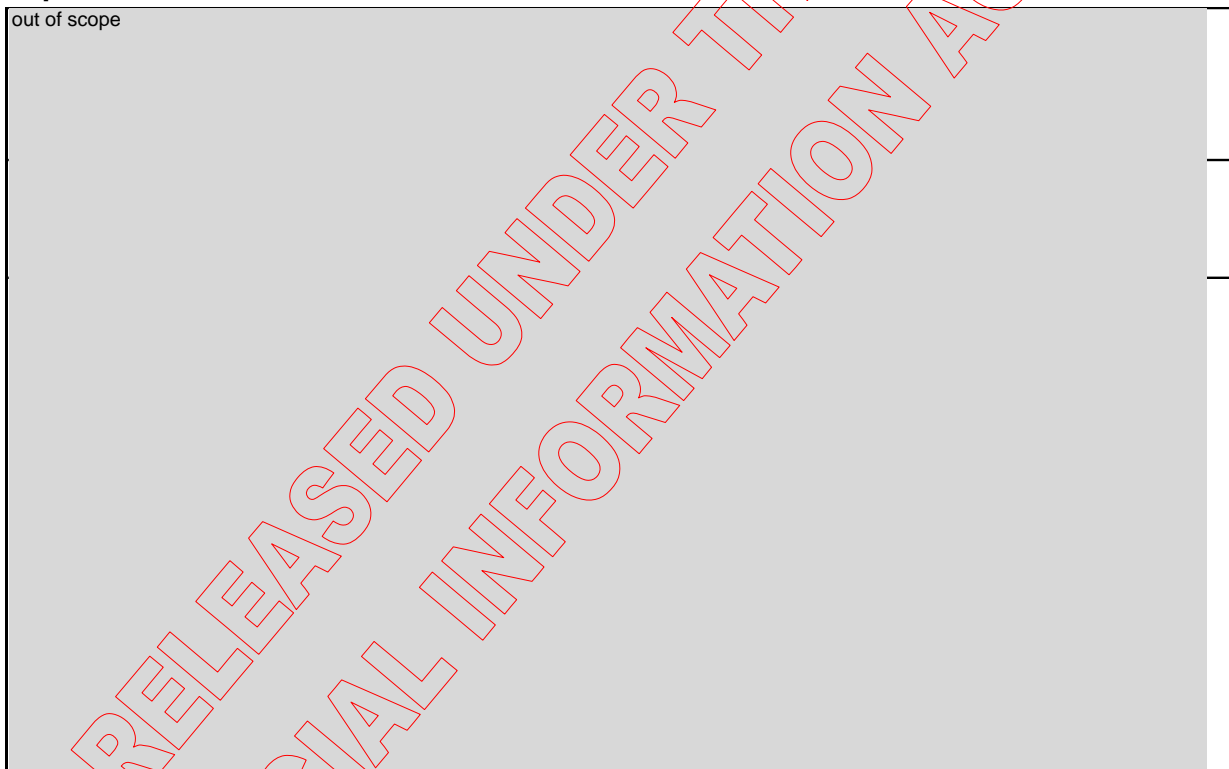
Draft Briefing for PreCab Meeting with the Treasury

14 December 2020

This briefing is based on the Treasury's understanding of the Cabinet agenda for Monday, 14 December 2020, at 11:00am. We will provide an updated briefing on Monday 14 December 2020, ahead of your PreCab meeting with the Treasury, if required.

Papers for Cabinet consideration

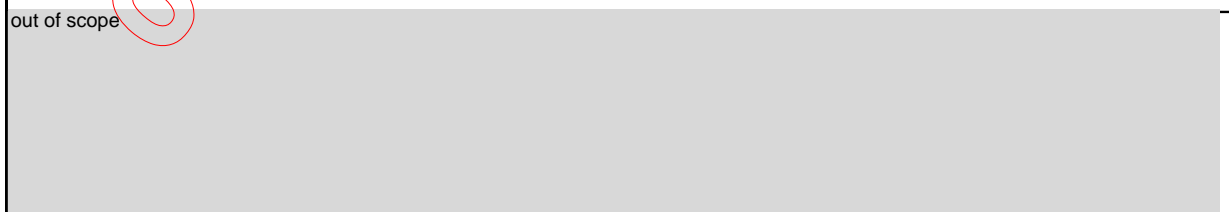
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Te Puke Tāpapatanga a Hape (Ihumātao) Proposal

Hon Grant Robertson, Deputy Prime Minister
Hon Dr Megan Woods, Minister of Housing
Hon Willie Jackson, Te Minita Whanaketanga Māori
Treasury contact: Gabrielle Groube ^{s9(2)(a)}
Sign out contact: John Beaglehole ()

Description: The paper proposes to resolve the land dispute at Ihumātao by:

- purchasing the land at Ihumātao under the Land for Housing Programme, and
- developing a Memorandum of Understanding between Kingitanga, mana whenua, the Crown, and Auckland Council. This Memorandum of Understanding would set out how the parties will reach an agreement regarding future use and development of the land at Ihumātao.

Comments:

If Cabinet wants the Crown to purchase the land at Ihumātao, we do not recommend doing so through the Land for Housing Programme. Land for Housing is a KiwiBuild programme focussed on rapidly providing new housing through a recycled capital model. This appears to be at odds with the proposed approach to develop a Memorandum of Understanding across several parties regarding how future use and development will be agreed. There are fiscal risks associated with progressing the proposal using the Land for Housing Programme, detailed below.

Should Cabinet want to progress this proposal, we recommend establishing a tagged contingency of \$30.0m against the between Budget contingency, and authorising the Minister of Finance and te Minita Whanaketanga Māori to create further appropriations in Vote Māori Development to draw funding down to on purchase. Once there is agreement over the future use and development of the land at Ihumātao, futher transfers can occur or appropriations made to reflect the agreement.

Treasury Recommendation

Do not support purchasing the land under the Land for Housing Programme.

If Cabinet agrees to progress the proposal, we recommend tabling alternative recs to create a \$30.0m contingency charged against the between Budget contingency and authorise the Minister of Finance and te Minita Whanaketanga Māori to create further appropriations in Vote Māori Development to draw funding down to on purchase. We will produce draft alternative recommendations on Monday 14 December.

Fiscal Implications

The paper states that any financial implications would be managed through the existing appropriations for the Land for Housing Programme. We do not agree that current and possible financial implications of the proposal can be managed through the existing Land for Housing appropriations. This is because the proposal is at odds with the Land for Housing Programme's intent, operating model, and scopes of related appropriations.

- There is a risk that Audit considers the expense does not fit within the appropriation scope and is unappropriated spend.
- If agreement does not occur within the recycled capital window in the Land for Housing model (10 years), additional funding will be required.
- If part or all of the future use and development agreed does not fit within the Land for Housing appropriation scope or recycled capital model, additional funding will be required.

Pages 3- 7 made been removed as out of scope

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Office of the Minister of Finance

Office of the Minister of Housing

Office of the Minister for Māori Development

Chair, Cabinet

Te Puke Tāpapatanga a Hape (Ihumātao) Proposal

Executive Summary

1. This paper puts forward a refreshed proposal to resolve the land dispute at Te Puke Tāpapatanga a Hape (more commonly referred to as - Ihumātao).
2. The proposal recognises an aspiration to provide for appropriate housing development, the cultural and historic significance of the site, and the ability to promote the early settlement history in Tamaki Makaurau.
3. The first part of the proposal is the sale of the land at Ihumātao from Fletcher Buildings to the Land for Housing scheme.
4. The second part of the proposal includes the development of a Memorandum of Understanding between mana whenua, the Crown, and Auckland Council. This sets out how agreement will be reached between the parties on the future use and development of the land at Ihumātao.
5. Resolving the issue in this way mitigates the the risk that the land will be subject to a Treaty claim in future. The proposal as has been designed to ensure that Treaty issues are unaffected.

History of the Site

6. Te Puke Tāpapatanga a Hape is located in and around Ihumātao (Auckland's oldest pre-European settlement) and the Otataua Stonefields Historic Reserve. Historically and culturally significant to Te Waiohūa – it is the point at which Hape (Tohunga of Tainui waka and cited as one of Tamaki Makaurau's founding ancestors) came ashore and settled after his voyage from Hawaiki.
7. It is one of last surviving places where the land and stone walls were used by Māori for growing new crops such as wheat and European vegetables for the Auckland markets prior to 1863. The land was confiscated 'by proclamation' under the New Zealand Settlements Act in 1863.
8. These lands were not included in the Waikato-Tainui Raupatu Claims Settlement Act 1995 as they were held in private ownership by the former owners - the Wallace

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family. In agreeing to the 1995 settlement, Waikato-Tainui did not seek redress from private property owners.

9. The former Manukau City Council sought to ensure that pastoral lands on the slopes of Ihumatao would become part of Ōtuataua Stonefields Historic Reserve but its attempts to purchase Te Puke Tāpapatanga a Hape were declined by the then landowner.
10. From 2011 – 2013 Te Kawerau a Maki and other groups unsuccessfully opposed plans by Auckland Council to rezone the pastoral land from rural to urban. In 2014 Auckland City designated 32 hectares adjacent to the Ōtuataua Stonefields Historic Reserve as a Special Housing Area (SHA 62).

Current Situation

11. In November 2018 the Environment Court confirmed Heritage New Zealand's decision to approve Fletcher Building's application to develop a 480-home subdivision. Several groups associated with Ihumātao mounted a campaign to raise the public consciousness of the Ihumātao lands and challenge the decisions of authorities.
12. In July 2019 Fletcher Buildings agreed to suspend development on the site so that further discussions could take place about its future. It was agreed that the Kiingitanga, mana whenua, Fletcher Buildings, Auckland Council, and the Crown would enter into discussions on the site. The process was to be led by the Kiingitanga.
13. In August 2019, Cabinet engaged officials to negotiate with the Ihumātao parties to resolve the dispute related to impinging housing development on a culturally significant area.
14. The guiding principles for negotiating an outcome included;
 - that any solution reached was outside of the Treaty Settlement process
 - recognition of the cultural and historical significance of the whenua
 - that the opportunity to provide for sensitive housing solutions remain a key priority in particular for the people who belong and live in the area
 - that the mana of the Kiingitanga, their relationship to the whenua and with the mana whenua community be respected
 - that the interests of the landowner be respected in resolving the issue.
15. Heritage New Zealand have recently confirmed that decision to recognise the Ōtuataua Stonefields as Category 1 historic place. The new Ōtuataua Stonefields boundaries encompass all of the Special Housing Area which has been referred to as Ihumātao. The review of the New Zealand Heritage List/Rārangī Kōrero listing will not alter the status of the Special Housing Area or any existing resource consents.

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16. During the past year the Crown has spent a significant amount of time working with all parties on a range of alternative mechanisms to solve the issues on the site. These have ranged from the provision of alternative financing arrangements to third-party landholding. None of these approaches has proven to be viable upon further examination.

Proposal – Land for Housing purchase

17. Recent discussions with Fletcher Buildings have led to a proposed agreement about the sale of the land. The proposal (subject to final agreement) is that the Crown would acquire the land through the 'Land for Housing' scheme.
18. The land would be purchased under Section 3 of the Housing Act 1955 which states "The Minister [of Housing] may from time to time determine either generally or in any particular case what land or classes of land may be acquired for State housing purposes and the general scheme of development thereof, the number and classes of dwellings and ancillary commercial buildings to be constructed, and any other matters of State housing policy". State housing policy is wider than the simple provision of Kainga Ora housing.
19. The Land for Housing model operates as follows:
- MHUD purchases land from private vendors.
 - MHUD sells the land to a developer (giving iwi the first opportunity where applicable), which uses its own capital to develop the land to its own design.
 - The Government is prepared to defer receipt of the land price without charging interest in order to compensate the developer for any costs they may incur to deliver the Development Outcomes.
 - The developer carries all of the development and sales risk.
 - Under the terms of the development agreement, the Crown retains sufficient powers to maintain the land's status as a public work.
20. The scheme has sufficient capital on-hand to purchase the site. The final price for the site is currently the subject of on-going negotiations, and will be agreed jointly by the Minister of Finance and the Minister of Housing, along with any necessary changes to appropriations.
21. s9(2)(j)
- s9(2)(j) Officials will prepare advice to joint Ministers of Finance and Housing, who have Cabinet delegations, to agree to the land acquisition.
22. The final nature, scale, scope and use of any housing developed on the site would be the subject of an agreement between the Crown, Auckland Council and mana

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whenua. As is the case with other Land for Housing purchases we will be working positively with mana whenua on any development.

23. Purchasing the land through the Land for Housing scheme provides the maximum flexibility for the end development. It allows for the site to both provide for housing, whilst also presenting an opportunity to address heritage and cultural considerations such as an increased buffer zone or cultural centre.

Development of a Memorandum of Understanding

24. Concomitant with discussions on the current ownership of the site, the Crown has been in discussions with Kīngitanga and Auckland Council on a potential He Pūmautanga for the future of the site (a governance relationship agreement).
25. This agreement that would see all parties work “together for the protection and enhancement of the Whenua, through a process to develop, discuss, and reach consensus on housing, heritage and land use options for the benefit of the Ahi Kā and the people of Tāmaki Makaurau (and by extension Aotearoa) to resolve this matter of national interest”.
26. It is important to note that within the draft He Pūmautanga text it states “the Parties acknowledge and agree that He Pūmautanga does not constitute a settlement of historical claims pursuant to the Treaty of Waitangi Act 1975”.
27. Central to the current discussions is the development of a “Roopu Whakahaere” or governance group who will operate in accordance with the He Pūmautanga agreement, and would consist of seven members, including:
- Three Ahi Kā representatives, supported by the Kīngitanga;
 - One representative representing the Kīngitanga;
 - Two representatives representing the Crown; and
 - One observer representing the Council.
28. The Roopu Whakahaere will endeavour to clarify the use of the whenua and the kaitiakitanga arrangements having regard to housing for mana whenua families, papakainga housing, some public/community housing, heritage issues (taking into account the application for a heritage listing upgrade as well as the application for waahi tūpuna status), and access to appropriate funding.

Commented [TR1]: There is a question here around whether this also includes Redress? It would be useful to clarify this.

Treaty Implications

29. We have received legal advice that purchasing the site at Ihumātao in this way minimises any possibility that the transaction would trigger a Treaty of Waitangi claim.
30. s9(2)(j)

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s9(2)(j)

Next Steps

31. These two agreements provide the best pathway for the long term development of the site at Ihumatao. Completion and execution of these two agreements should see the current difficulties end on the site, in a way that does not put current or future treaty agreements in jeopardy.

Consultation

32. The paper has been consulted with the Office of the Prime Minister (and Minister for Culture and Heritage), the Deputy Prime Minister, and the Ministers for Māori Crown Relations: Te Arawhiti and Housing.
33. The Treasury, DPMC, Ministry of Housing and Urban Development, and Te Arawhiti have all been consulted.

Financial Implications

34. Any financial implications are being managed through the existing Land for Housing appropriation. The Minister of Finance and Minister of Housing will jointly establish any new appropriations as necessary.

Legislative Implications

35. There are no legislative implications as a result of the proposals in this paper.

Human Rights

36. There are no legislative implications as a result of the proposals in this paper

Gender Implications

37. There are no gender implications as a result of the proposals in this paper.

Publicity

38. No proactive publicity.

Treaty of Waitangi

34. The Parties acknowledge and agree that He Pūmautanga does not constitute a settlement of historical claims pursuant to the Treaty of Waitangi Act 1975

Proactive Release

39. This paper is not intended to be proactively released. Release will be considered once a solution has been resolved with all parties.

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Recommendations

The Ministers of Finance, Housing, and Māori Development recommend that the Committee:

1. **note** that Crown negotiators have been working with mana whenua, the Kingitanga, Auckland Council and the private property owners to resolve the land dispute at Te Puke Tāpapatanga a Hape;
2. **note** that the proposal involves:
 - 2.1. the purchase of the existing site owned by Fletcher Buildings by the Crown through the Land for Housing scheme
 - 2.2. the development of an agreement (He Pūmautanga) between the Crown, Auckland Council, and Kingitanga for a process to decide future development on the site;

3. **authorise** the Minister of Finance and Minister of Housing jointly to agree any necessary changes to appropriations to give effect to the proposal.

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Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Hon Dr. Megan Woods
Minister of Housing

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Hon Nanaia Mahuta
Te Minita Whanaketanga Māori

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