

Reference: 20210545

28 January 2022

Dear [REDACTED]

Thank you for your Official Information Act request, received on 18 November 2021.  
You requested the following:

- a. *Confirmation of whether any advice has been provided to the Ministers of Finance, Maori-Crown Relations, and Treaty of Waitangi Negotiations, in relation to:*
  - i. *the potential fiscal impact of resumption of the s27B memorialised lands at Pouakani, the subject of the Wai 85/Wai 863 Waitangi Tribunal proceedings;*
  - ii. *the position the Crown should take in these proceedings; and*
  - iii. *the date(s) of that advice; and*
- b. *Copies of any advice that has been provided to the Ministers of Finance, Maori-Crown Relations, and Treaty of Waitangi Negotiations in relation to the potential fiscal impact of resumption of the s27B memorialised lands at Pouakani the subject of the Wai 85/Wai 863 Waitangi Tribunal proceedings.*

The time to respond was extended by 16 working days due to time needed for consultation.

We have interpreted the period covered by your request as beginning in February 2017 when Wai 85 proceedings were initiated, from which date there became a possibility of the Pouakani lands in question being resumed under the Treaty of Waitangi Act 1975.

## Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	5 February 2020	Joint Report Waitangi Tribunal Binding Recommendations - accounting for awards and treatment of financial risks	Release in part
2.	10 March 2020	Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee 10 March 2020	Release in part
3.	28 July 2020	Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee Tuesday 28 July 2020	Release in part

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

- contact details of officials, under section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment
- legal advice, under section 9(2)(h) – to maintain legal professional privilege
- confidential information, under section 9(2)(j) – to enable the Crown to negotiate without prejudice or disadvantage, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Some information has been redacted because it is outside the scope of your request.

## Other information to be released by Te Arawhiti

We are aware you have made an identical request to Te Arawhiti. We hold other advice related to your request, as listed in the table below, which Te Arawhiti prepared. As Te Arawhiti's response will cover this material, we concluded it was unnecessary to transfer this part of the request under section 14(b)(ii) of the OIA.

Item	Date	Document Description
1.	23 July 2019	Joint Report: Ngāti Kahungunu ki Wairarapa Tamaki Nui-a-Rua: Update and options to mitigate risks in remedies litigation
2.	23 January 2020	Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua: Strategy to mitigate risks in remedies litigation
3.	11 February 2020	Joint Report: Meeting with Mercury NZ regarding remedies litigation
4.	28 February 2020	Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua: Approval for counter offer to resolve litigation

Item	Date	Document Description
5.	2 March 2020	Joint Report: Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua: Meeting with Mercury NZ regarding remedies litigation
6.	18 June 2020	Ngati Kahungunu ki Wairarapa Tamaki nui-a-Rua next steps (following March 2020 preliminary determinations)
7.	1 June 2021	Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua: Proposed settlement of litigation
8.	3 September 2021	Ngati Kahungunu ki Wairarapa Tamaki nui-a-Rua: update on litigation and deed signing

### **Information to be withheld**

There is an additional document covered by your request that I have decided to withhold in full under section 9(2)(j) of the Official Information Act: confidential information – to enable the Crown to negotiate without prejudice or disadvantage.

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

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

Colin Hall  
**Manager, Justice, Security and Government Services**

# OIA 20210545

## Information for Release

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1.	<a href="#"><u>Joint Report Waitangi Tribunal Binding Recommendations - accounting for awards and treatment of financial risks</u></a>	1
2.	<a href="#"><u>Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee 10 March 2020</u></a>	10
3.	<a href="#"><u>Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee Tuesday 28 July 2020</u></a>	11



## Joint Report: Waitangi Tribunal Binding Recommendations – Treatment of Financial Risks and Mechanisms for Funding

<b>Date:</b>	5 February 2020	<b>Report No:</b>	T2019/4147
		<b>File Number:</b>	AL-3-1-1

### Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<b>Agree</b> that officials prepare a paper for Cabinet consideration to put in place mechanisms to account for any financial implications of binding recommendations made by the Waitangi Tribunal.	11 February 2020
Minister for Treaty of Waitangi Negotiations (Hon Andrew Little)	<b>Agree</b> that officials prepare a paper for Cabinet consideration to put in place mechanisms to account for any financial implications of binding recommendations made by the Waitangi Tribunal.	11 February 2020

### Contacts for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Michael Lonergan	Analyst, Justice, Security and Government Services	s9(2)(k) (wk)	N/A (mob) ✓
Colin Hall	Manager, Justice, Security and Government Services	s9(2)(k) (wk)	s 9(2)(g)(ii) (mob)
Adam Levy	Specialist Advisor, Policy & Operations, Te Arawhiti	s9(2)(k) (wk)	N/A (mob) ✓
Emily Owen	Director Strategy, Policy & Legal, Te Arawhiti	s9(2)(k) (wk)	s 9(2)(g)(ii) (mob)

### Minister's Office actions (if required)

Return the signed report to Treasury.

**Enclosure:** No

## **Joint Report: Waitangi Tribunal Binding Recommendations – Treatment of Financial Risks and Mechanisms for Funding**

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### **Executive Summary**

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The Waitangi Tribunal may make binding recommendations requiring the Crown to transfer land and pay compensation as redress for breaches of the Treaty of Waitangi, outside of the Crown's Treaty settlement negotiation process.

Any recommendations are initially made on an interim basis, and become final after 90 days unless parties agree an alternative arrangement.

The Tribunal's power to make binding recommendations is largely untested, but recent decisions of higher courts have increased the likelihood of the Tribunal making binding recommendations.

There are a number of active inquiries before the Tribunal with varying levels of uncertainty as to the likelihood and amount of financial liability involved in any binding recommendations. The first recommendations may be made before the end of March 2020.

On 12 November 2019, Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR) [MCR-19-MIN-0042 refers] directed officials to provide advice to Ministers on the appropriate treatment of the financial risks of binding recommendations and noted that advice would be provided to Ministers on options to ensure funding is in place to accommodate any binding recommendations.

The financial risks of binding recommendations are recorded as unquantified contingent liabilities in each Economic and Fiscal Update and the year-end financial statements of the government. We consider this is appropriate based on currently available information. As more information on the current inquiries becomes available the current treatment of the financial risks may need to change.

Appropriations must be in place before the Crown incurs expenses. Depending on the nature and circumstances of a Tribunal decision, appropriations may need to be in place immediately upon an interim recommendation being made.

It will be difficult to confidently estimate the financial impacts of any interim recommendations before they are made. To manage these uncertainties, and ensure appropriate authority is in place to meet the costs of any binding recommendations, we recommend Cabinet agree to:

- establish, but not initially provide any funding for, suitable appropriations, and
- authorise joint Ministers to make necessary changes to the appropriations in accordance with any decisions by the Tribunal.

We seek your approval to prepare a Cabinet paper seeking agreement to these proposals for consideration at MCR in March 2020.

We recommend the fiscal impacts of binding recommendations are managed as part of the Budget in-year revisions process.

As further information becomes available following any Tribunal rulings, the Crown may have a better understanding of the future implications of binding recommendations. We will keep the proposed approach to accounting for binding recommendations under review and report back if changes are required.

## Recommended Action

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We recommend that you:

- a **note** that officials consider the current treatment of the financial risks of binding recommendations as unquantified contingent liabilities is appropriate based on the information currently available but that this judgement will be kept under review as further information becomes available on the inquiries before the Tribunal
- b **note** that appropriations will likely need to be in place before any interim recommendations are made by the Tribunal, due to the requirements of the Public Finance Act 1989 and generally accepted accounting practice
- c **agree** that officials prepare a paper for consideration by Cabinet Māori Crown Relations: Te Arawhiti Committee on 10 March 2020 so that appropriate mechanisms are in place in time for the first interim recommendations by the Tribunal

*Agree/disagree.*

**Minister of Finance**

*Agree/disagree*

**Minister for Treaty of Waitangi Negotiations**

- d **agree** that the Cabinet paper seek approval to:
  - i. establish two new appropriations in Vote Treaty Negotiations with an initial upper spending limit of nil, and
  - ii. authorise the Minister of Finance and Minister for Treaty of Waitangi Negotiations to allocate funding to the appropriations in accordance with any recommendations made by the Tribunal

*Agree/disagree.*

**Minister of Finance**

*Agree/disagree*

**Minister for Treaty of Waitangi Negotiations**

- e **agree** that the responsible Minister for the Cabinet paper should be the Minister for Treaty of Waitangi Negotiations, and

*Agree/disagree.*

**Minister of Finance**

*Agree/disagree.*

**Minister for Treaty of Waitangi Negotiations**

- f **agree** that the fiscal impacts of Tribunal recommendations be managed through the Budget in-year revisions process.

*Agree/disagree.*

**Minister of Finance**

*Agree/disagree.*

**Minister for Treaty of Waitangi Negotiations**

Colin Hall  
**Manager, Justice, Security and  
Government Services  
The Treasury**

Emily Owen  
**Director, Strategy, Policy & Legal  
Te Arawhiti**

Hon Grant Robertson  
**Minister of Finance**

Hon Andrew Little  
**Minister for Treaty of Waitangi Negotiations**

## **Joint Report: Waitangi Tribunal Binding Recommendations – Treatment of Financial Risks and Mechanisms for Funding**

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### **Purpose of Report**

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1. This report:
  - a provides advice on the treatment of financial risks arising from binding recommendations that may be made by the Waitangi Tribunal
  - b provides advice on the mechanisms necessary to ensure any funding is in place to meet the costs of binding recommendations, and
  - c seeks your approval to prepare a paper for consideration by the Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR) on 10 March 2020 to put in place those mechanisms.

### **Background on Tribunal and binding recommendations**

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2. The Waitangi Tribunal can make binding recommendations requiring the Crown to return land and pay compensation to Māori as redress for breaches of the Treaty of Waitangi, outside of the Crown's Treaty settlement negotiation processes and frameworks<sup>1</sup>. Any recommendations are initially made on an interim basis, and after 90 days become binding on the Crown, unless the Crown and claimants agree an alternative settlement.
3. The Tribunal's powers are largely untested, with one exception in 1998. Recent Supreme Court and Court of Appeal rulings have changed the binding recommendations landscape. There is now an increased likelihood of the Tribunal exercising its powers. The Courts directed that the Tribunal cannot concern itself with the downstream consequences of exercise of its jurisdiction relative to the Crown's Treaty settlements programme.
4. Binding recommendations may have significant financial implications for the Crown, and the first interim recommendations may be made between April and June 2020, though the recommendations could not become binding until the end of a statutory 90 day negotiations period.
5. Binding recommendations made by the Tribunal may require the following.
  - a The transfer of Crown Forest Licensed land, or memorialised land, to claimants. Memorialised land may either be owned by a State Owned Enterprise (SOE), or by a private owner who has bought land that was previously on-sold by an SOE. The land is to be resumed via public works acquisition and transferred to claimants, and the Crown must pay compensation to the owner of the land.
  - b Where Crown Forest Licenced land is transferred, the payment of a minimum of 5% of a compensation amount that is to be calculated under schedule 1 of the Crown Forests Assets Act 1989. The Tribunal has discretion in deciding how much compensation above the 5% minimum must be paid.

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<sup>1</sup> Further information is available in the paper under MCR-19-SUB-0042 considered in November 2019.

6. s9(2)(j) [Redacted] Such issues are outside the scope of this advice. This advice focuses on the liabilities that arise in the event that binding recommendations are made.

7. It is difficult to confidently estimate the likely values of binding recommendations at this stage. Te Arawhiti has estimated the maximum value of resumable land and compensation in four current inquiries – see table below. Where Crown Forrest Land is involved, Te Arawhiti can provide an estimate of both the minimum and maximum levels of compensation. The Tribunal has broad discretion to make recommendations (or not recommend resumption at all). It has acknowledged that any recommendations it makes must be “proportionate to the prejudice that the applicant suffered as a result of the Crown’s acts”, although the Tribunal’s view of proportionate redress may differ significantly from that of the Crown.

Inquiry	CFL land and compensation (\$m)	Memorialised land (\$m)	Total maximum liability (\$m)	Earliest possible timing of interim recommendations
Withheld out of scope of request				
Pouākani (Maraetai Power Station)		s9(2)(j)		
Withheld out of scope of request				
Withheld out of scope of request				

8. In November 2019, Cabinet Māori Crown Relations Committee considered the implications of binding recommendations [MCR-19-MIN-0042 refers], and:
- a directed officials from Te Arawhiti and the Treasury to determine, and report to the Minister of Finance, on the appropriate treatment of the financial risks outlined in the paper under MCR-19-SUB-0042, and
  - b noted that the Treasury and Te Arawhiti will provide the Minister of Finance and the Minister for Treaty of Waitangi Negotiations with further technical advice on existing mechanisms and options to ensure funding, including any new funding, is in place to accommodate a binding recommendation.

### Treatment of financial risks

9. The Treasury reports regularly on financial risks through the publication of month-end financial statements and the Economic and Fiscal Updates. The reporting of financial risks will depend on whether a matter relates to potential costs from a present obligation or potential costs from a future obligation.
10. The potential for the Tribunal to make binding recommendations is currently disclosed as an unquantifiable contingent liability. This contingent liability is disclosed in both the Financial Statements of the Government and in the Specific Fiscal Risks chapter of each Half Year Economic and Fiscal Update (under “Treaty of Waitangi Claims”). Contingent liabilities are a type of financial risk and are costs that the Crown will have to meet if a particular event occurs, or are known liabilities that are unable to be measured.

11. Specific fiscal risks are required under the Public Finance Act 1989 to be disclosed in the context of each economic and fiscal forecast. Specific Fiscal Risks are government decisions and other circumstances known to the Government that may have a material effect on the fiscal outlook, but that are not certain enough in timing or quantum to include in the fiscal forecast.
12. There is criteria for inclusion and exclusion of fiscal risks in the Specific Fiscal Risks Chapter of each economic and fiscal update. The Crown's approach to the treatment of financial risks takes into consideration the likelihood of an event occurring that results in a financial liability, the timing of any such event, and the size of the financial impact<sup>2</sup>.
13. We consider that the current recognition of binding remedies orders as an unquantified contingent liability is appropriate at the moment. However, as noted above, Te Arawhiti expects increased activity relating to Tribunal interim or binding recommendations over the next few months. As a result, the likely fiscal impacts of Tribunal recommendations, if any, will need to be considered by Te Arawhiti (with assistance from the Treasury) for inclusion in the updated fiscal forecast and for updating the specific fiscal risks and contingent liabilities disclosed in Budget Economic and Fiscal Update 2020.

### Accounting treatment

14. In the event of a binding recommendation, the Crown will need to recognise a liability and corresponding expense in the financial statements of the government. In effect, the previous reported contingent liability is "realised". However, in some circumstances recognition of a liability may need to occur earlier.
15. Agencies use generally accepted accounting practice to determine when expenses arise and liabilities are recognised with a liability recognised when:
  - a the Crown has a present obligation as a result of a past event
  - b it is probable (there is a 50% or greater likelihood) that an outflow of cash or assets will be required to settle the obligation, and
  - c a reliable estimate can be made of the amount of the obligation.
16. Determining the point at which a liability must be recognised (and the Crown has an expense) requires judgement and understanding of all of the facts and circumstances. In the context of Tribunal decisions, recognition of the liability may need to occur:
  - a immediately upon an interim order being made by the Tribunal – for example, there may be a very low chance of successful negotiations to avoid a binding recommendation, if the Tribunal makes interim recommendations of a significant financial or cultural value

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<sup>2</sup> The Crown's approach to the treatment of fiscal risks in respect of economic and fiscal updates:

Potential costs from future obligations:

- Where a matter has a reasonable probability of occurring (operationalised as having greater than 50% probability), and the matter can be quantified for a particular year with reasonable certainty – it is included **in the fiscal forecasts**.
- Where a matter has reasonable probability or reasonable possibility of occurring (operationalised as between 20% and 50% probability), but the matter cannot be quantified or assigned to particular years with reasonable certainty – it is recorded as a **specific fiscal risk**. Where it is more than \$100 million over five years it is publicly disclosed in each Economic and Fiscal Update.

Potential costs from present obligations

Where there are possible costs that have arisen from past events, but the amount of the liability (or whether it will eventuate) will not be confirmed until a particular event occurs, or present liabilities that are unable to be measured with sufficient reliability to be recorded in the financial statements – it is recorded as a **contingent liability** in each Economic and Fiscal Update and the Financial Statements of the Government. This typically involves legal disputes and claims.

- b during or at the end of the 90 day negotiation period – there may have initially been reasonable prospects of success, but negotiations were ultimately fruitless
  - c if the Crown begins judicial review proceedings during the 90 day period, the point at which the Crown considers there to be little prospect of success in proceedings, or
  - d once any order becomes final.
17. At the point an expense and liability are recognised, this may still require the use of an estimation because the actual costs of the recommendation (e.g. the final transfer value of land) may not be known until a future point.

## Mechanisms for funding

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18. In November 2019 MCR noted that officials would provide advice on mechanisms to ensure funding is in place to account for any binding recommendations. In developing this advice, we have focussed on:
- a determining the necessary appropriation treatment that results from the Crown recognising an expense and liability in relation to a binding recommendation, and
  - b how to treat issues based on the Fiscal Management Approach (FMA).

### Appropriation treatment

19. Appropriations must be in place before the Crown incurs expenses or capital expenditure. Given Te Arawhiti's view that the Tribunal may issue recommendations by the end of March, which may lead to expenses being incurred by the Crown, we recommend establishing appropriations before any interim recommendation is made.
20. As the quantum of fiscal cost to the Crown is unknown, we recommend establishing all aspects of the appropriation now, except for agreeing any initial funding. The funding could be agreed by joint Ministers when more information is known (discussed further below).
21. The liabilities associated with binding recommendations are not within the scope of the Treaty Settlements Multi-year Appropriation (MYA), because redress pursuant to a binding recommendation is not part of a Treaty settlement, and any such redress is outside the Crown's Treaty settlements framework. Therefore new appropriations are required<sup>3</sup>.
22. The Tribunal may make binding recommendations for the transfer of CFL land to claimants, which would result in an expense to the Crown. The Crown may also be required to acquire memorialised land from the current owner (e.g. an SOE) and pay compensation under the Public Works Act, prior to a transfer (which may be considered a form of capital expenditure). While the detailed accounting treatment is likely to be fact-specific, at a macro level we consider it likely that two appropriations will be required to effect the transfer of land to claimants. We recommend a non-departmental other expenses appropriation, and a non-departmental capital expenditure appropriation, be established within Vote Treaty Negotiations.
23. Crown Forest compensation payments are authorised under a permanent legislative authority (PLA) in section 36(3) of the Crown Forest Assets Act 1989 so there is no need for an annual appropriation.

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<sup>3</sup> Even if the preferred approach was to change the scope of the MYA, this would not be possible in the current fiscal year.

### **Joint Ministers approval**

24. At the moment, Te Arawhiti's estimates of total financial liability in current inquiries are speculative, with significant uncertainty as to the actual quantum. The final amounts can be confirmed by Te Arawhiti as further information becomes available and the Tribunal issues further indications and recommendations. Any amounts are likely to be confirmed at short notice. There is also a risk that publicising the funding appropriated in advance could impact on any 90 day negotiations with claimants.
25. To manage these issues, we recommend Cabinet authorise the Minister for Treaty of Waitangi Negotiations and Minister of Finance to make changes to appropriations to meet the liabilities of binding recommendations. This would allow the allocated funding to be quickly changed, to reduce the risk of unappropriated expenditure. Any joint Ministers' decisions would be technical, and would reflect judicial decisions that the Crown is bound by. The amounts appropriated would only be publicised at the following Supplementary Estimates, which reduces the risk of figures being publicised before or during 90 day negotiations.

### **Managing the fiscal impacts**

26. While binding recommendations are non-discretionary, there are choices within the FMA in how to manage the impacts of binding recommendations to transfer land. The FMA is the core tool, or 'rules of the game', for ensuring that the Government's decisions are consistent with its fiscal strategy. It constitutes a flexible set of rules applied to the day-to-day operations of government to inform decision-making. This includes the setting of allowances for new spending, with the principle that all discretionary policy decisions are managed against the allowances.
27. The FMA also covers in-year revisions of forecast non-discretionary spending to inform the setting of Budget allowances. This would involve any funding being treated in the same way as other non-discretionary forecast spending is managed, such as benefit payments. At each baseline update, the aggregate impacts of forecast and technical changes are presented, and can be added to (if positive) or charged against (if negative) Budget allowances.
28. Any Crown Forest compensation required to be paid as a result a binding recommendation is paid under a Permanent Legislative Authority (PLA). Any payments under that PLA would be treated as forecast changes and managed as part of the in-year revisions process. It therefore follows that liabilities resulting from all binding recommendations are also managed as part of the in-year revisions process. Given the current approach taken by Ministers in managing in-year revisions, it is likely any fiscal impacts from binding recommendations directly flow through to key fiscal indicators.

### **The proposed approach will be kept under review**

29. Following any binding recommendations being made, we can develop a better understanding of the financial implications of any future binding recommendations. We will keep the proposed approach under review, and keep Ministers informed of any necessary changes, including whether all future binding recommendations expenses incurred should be authorised through a PLA. This would effectively result in the impacts being managed through the in-year revisions process but in an administratively simpler way, although this approach would require legislative change.

## March Cabinet paper

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30. We seek your approval to begin preparing a paper for consideration by MCR at its 10 March 2020 meeting. This will ensure that appropriate mechanisms are in place prior to the first interim recommendations being made.
31. The Treasury and Te Arawhiti will jointly prepare the paper jointly and we recommend the Minister for Treaty of Waitangi Negotiations is the responsible Minister for the paper.
32. We provide below an indicative timeline for preparation of the Cabinet paper. The timetable truncates the normal consultation process in order to get the proposal in place before the first possible interim recommendations are made. We consider that because this is a technical rather than a policy proposal, it is unlikely to require lengthy consideration by Ministers following a decision being made through this report.

Draft Cabinet paper provided	Thursday 19 February
Ministerial consideration of Cabinet paper	Thursday 19 February – Monday 24 February
Ministerial consultation	Monday 24 February – Friday 28 February
Incorporate Ministerial comments	Monday 2 – Thursday 5 March
Lodge paper	Thursday 5 March
MCR meeting	Tuesday 10 March
Cabinet confirmation of decisions	Monday 16 March

**Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee 10 March 2020**

Comments	Fiscal implications	Recommendation
<b>Waitangi Tribunal Binding Recommendations: Funding Mechanism</b>		
Hon Andrew Little, Minister for Treaty of Waitangi Negotiations		
Treasury contacts: Michael Loneragan s9(2)(k), Colin Hall s9(2)(k)		
<b>Description:</b> Seeks agreement to establish new funding mechanisms to account for any costs arising from binding recommendations made by the Waitangi Tribunal.		
<p>This paper implements decisions made by the Minister of Finance and the Minister for Treaty of Waitangi Negotiations on how to account for any financial implications of binding recommendations made by the Waitangi Tribunal (T2019/4147 refers).</p> <p>Binding recommendations may require the transfer of land and payment of compensation to claimants for historical breaches of the Treaty of Waitangi, outside of the Crown’s negotiated settlements framework.</p> <p>The proposed funding mechanism involves:</p> <ul style="list-style-type: none"> <li>• establishing two new appropriations within Vote Treaty Negotiations with no funding initially allocated</li> <li>• seeking authority for the Minister of Finance and the Minister for Treaty of Waitangi Negotiations to jointly allocate funding to those appropriations in accordance with any Tribunal decisions, and</li> <li>• managing the fiscal impacts of such changes through the Budget in-year revisions process.</li> </ul>	<p>The proposals have no direct fiscal implications.</p> <p>Te Arawhiti has estimated the maximum possible value of compensation and land transfers subject to current inquiries is s9(2)(j) and s9(2)(h). The likely values of any binding recommendations are subject to considerable uncertainty.</p> <p>The aggregate in-year revisions impact may either be charged against the Budget allowance, or allowed to directly flow through to key fiscal indicators.</p>	<p><b>Support.</b></p>

**Extract Briefing for Cabinet Maori Crown Relations – Te Arawhiti Committee Tuesday 28 July 2020:**

<p><b>Ngāti Kahungunu Ki Wairarapa Tāmaki Nui-A-Rua: Litigation and Negotiation Strategy</b></p> <p>Treasury contact: Michael Lonergan s9(2)(k)</p> <p>Sign out contact: Colin Hall s9(2)(k)</p>		
<p><b>Description:</b> Provides an update on key developments in remedies inquiries impacting Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua, s9(2)(j)</p>		
<p>On 24 March 2020 the Tribunal issued preliminary determinations outlining its intentions in the litigation. s9(2)(j)</p> <p>The Crown will also join judicial review proceedings initiated by Mercury NZ, given the proceedings focus on significant matters regarding the Tribunal’s jurisdiction.</p>	<p>s9(2)(j)</p> <p>The preliminary determinations have provided further indications of the maximum costs to the Crown if the Tribunal makes binding recommendations. The total value of the assets and compensation could be s9(2)(j) s9(2)(h) and s9(2)(j)</p> <p>[CAB-20-MIN-0096 refers].</p>	<p><b>Support.</b></p>