WAIKATO TAINUI

Right of First Refusal Statement

Published December 2015

Statement Content

The Waikato-Tainui Right of First Refusal 'Statement' is arranged in a number of broad sections outlined below.

- **Ngaa Maataapono (Principles)** – six principles that underpin the interpretation and implementation of the statement, and all matters associated with the Right of First Refusal or 'RFR'.
- **Section 1: Summary** – a summary of the statement purpose, and 13 key points that outline the position of Waikato-Tainui with respect to the RFR mechanism:
    1. The importance of the statement principles;
    2. Rights pre- and post-1995;
    3. Land transfers;
    4. A 'sale' by another name;
    5. Transfers under section 50 of the Public Works Act;
    6. Reading section 50 alongside section 11 of the Waikato Raupatu Claims Settlement Act 1995;
    7. Crown land and local authorities;
    8. Interpretation of other legislation in light of the RFR;

Front Cover - Rt Hon. Jim Bolger, Queen Elizabeth II, Dame Te Arikinui Te Atairangikaahu and Sir Douglas Graham. Photograph taken by John Nicholson. Reference No: EP/1995/4375B/33A-F. Alexander Turnbull Library, Wellington, New Zealand.

9. Returning any Department of Conservation (DoC) surplus land at nil value;
10. Long term arrangements on DoC lands;
11. DoC land for conservation purposes only;
12. Crown housing stock;
13. Compensation in lieu of land; and
14. Expectations of the Crown.

- **Section 2: Purpose and use** – the purpose of the Statement and who should use the Statement. This includes a comment on local government and entities with Crown delegated powers.
- **Section 3: Introduction** – discusses the new relationship between Waikato-Tainui and the Crown as outlined in the 1995 Deed of Settlement. Provides direction on understanding and interpreting the RFR.
- **Section 4: Issues and scenarios** – a more in-depth discussion of the issues that gives rise to the position statements in Section 1.
- **Section 5: Objectives, policies, and methods** – copied from Chapter 12 (Right of First Refusal on Crown Lands – i riro whenua atu, me hoki whenua mai) of Tai Tumu, Tai Pari, Tai Ao, the Waikato-Tainui Environmental Plan, specifically from section 12.3 of the Plan.

  These objectives, policies and methods continue to be relevant and are provided here for additional context and to assist with implementing the Statement.
- **Appendices** – contain relevant sections of the deed and legislation.

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Contents

Ngaa Maataapono – Principles

Maataapono Tuatahi – i riro whenua atu, me hoki whenua mai

First principle – as land was taken, land should be returned

E maarama pai ana Te Karauna teeraa ko teenei pouritanga tino toimaha, kaaore nei anoo kia whakatikaina i raro i te Tiriti o Waitangi kei te whakataairi i eenei puutake e rua a Waikato: "i riro whenua atu, me hoki whenua mai" te tuatahi;

The Crown appreciates that this sense of grief, the justice of which under the Treaty of Waitangi has remained unrecognised, has given rise to Waikato's two principles 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned)[1]

Maataapono Tuarua – ko te moni hei utu moo te hara

Second principle – the money is the acknowledgement by the Crown of their crime

"ko te mohi hei utu moo te hara" te tuarua.

…and 'ko te moni hei utu moo te hara' (the money is the acknowledgement by the Crown of their crime).[2]

1 Deed of Settlement (1995), sub-section 3(4) *Apology by the Crown*
2 Ibid.

Maataapono Tuatoru – whakahokia te whenua

Third principle – return as much land as possible

Hei whakatutuki, e whakaae ana Te Karauna ki te whakahoki ki te iwi i ngaa whenua e taea ai i roto i teenei whakaaetanga kei raro i toona mana i Waikato.[3]

Maataapono Tuawhaa – mahi tahi

Fourth principle – co-operation

Kia aarahi atu ki te ao hou o te mahi tahi a te Karauna, a te Kiingitanga me Waikato-Tainui.

To enter into a new age of co-operation between the Crown, the Kiingitanga and Waikato-Tainui.

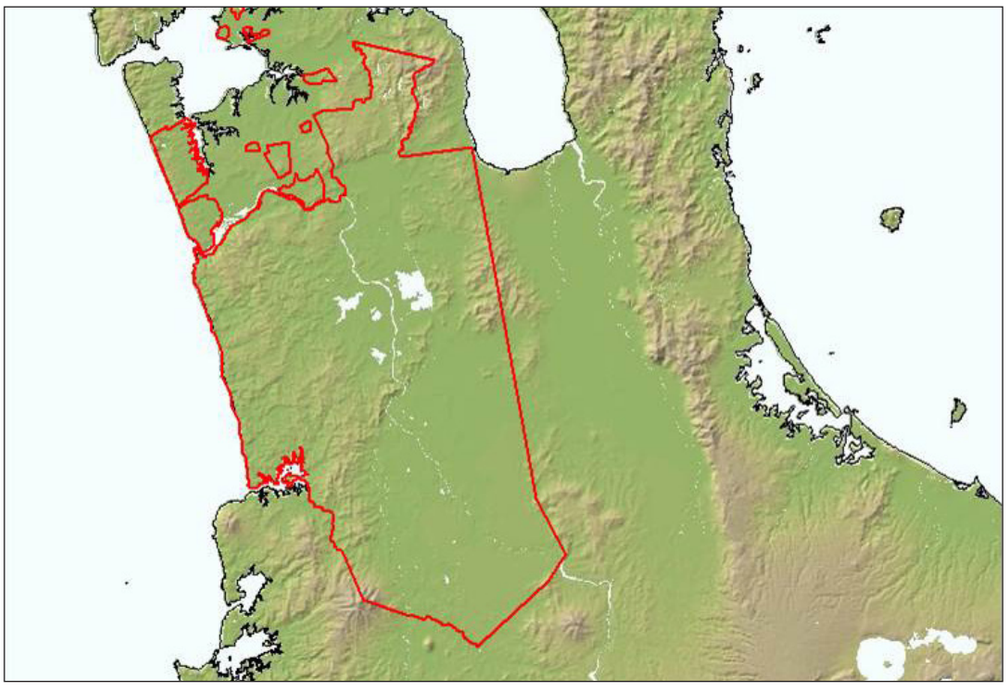
In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato.[4]

Maataapono Tuarima – whakamanahia ngaa whakaaetanga

Fifth principle – honour the agreements

Ka mahia te mahi ki te whakamana i ngaa whakaaetanga i waenganui i te Karauna me Waikato – Tainui.

3 Deed of Settlement (1995), sub-section 3(6) Apology by the Crown
4 Ibid.



Waikato Raupatu Boundary (includes excluded claims of Wairoa and Waiuku)
North Island, New Zealand

For lands that are subject to Waikato-Tainui RFR refer to Surveyor Office Plan 60013, South Auckland

Implementation occurs so as to honour the agreements between the Crown and Waikato-Tainui.[5]

The Crown is to show good-faith and not deliberately adopt an artificial arrangement or legal strategy, in order to circumvent its contractual and statutory obligations under the Deed.

Maataapono Tuaono – whakamaariehia te hara e te puretumu tika

Sixth principle – atonement through appropriate redress

Tee ahei te Karauna ki te whakamaarie i oona hara me teetahi atu hara; maa te puretumu tika kee e whakamaarie.

It is not possible for the Crown to atone for its crimes with another crime; atonement must be through appropriate redress.

5 Waikato Raupatu Claims Settlement Act 1995, section 2 – "It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the deed of settlement."

1. Summary

1.1 Purpose

1.1.1 The Waikato-Tainui Right of First Refusal Statement **('Statement')** outlines the view of Waikato-Tainui regarding the Right of First Refusal **('RFR')** principles and process and how the RFR should operate.

1.1.2 In summary, the operation of the RFR process should be such that best furthers the Waikato-Tainui and Crown agreements in the 1995 Deed of Settlement consistent with the principles underpinning this Statement.

1.1.3 This Statement is particularly relevant for any Crown body, including local authorities, and those private individuals or entities undertaking or wishing to undertake activities on Crown owned land or land with an underlying Crown interest.

1.2 Key position statements

1.2.1 **Principles** – Any interpretation or implementation of the RFR process must be consistent with the six maataapono (principles) underpinning this Statement. Any implementation of the RFR process inconsistent with these principles is likely to trigger another breach of Te Tiriti o Waitangi or undermine the 1995 settlement and agreements between the Crown and Waikato-Tainui.

1.2.2 **Rights pre- and post-1995** – Rights in place over land owned by Crown including that with an underlying Crown interest at the time of the 1995 settlement are to be respected within the context of the settlement. New rights created over lands after the 1995 settlement are potentially subject to the RFR process.

1.2.3 **Land transfer** – Whether or not there is any exchange of money, the transfer of land between Crown entities is potentially subject to the RFR process.

1.2.4 **'Sale' by another name** – A long-term disposal, assignment, transfer, exchange and/or lease to a Crown or non-Crown entity for a purpose other than a public work is a 'sale' by any other name. This is particularly so if the lease is for a purpose inconsistent with the underlying purpose of the Crown entity.

1.2.5 **s50 transfers** – Where the intention to hold land for a public work has lapsed, section 50 of the Public Works Act 1981 should not be used as a means of transferring land between the Crown and local authorities. Nor can section 50 be invoked after a public work has been declared surplus under s40(1)(a) of the same Act.

1.2.6 **s50 with s11** – Section 50 of the Public Works Act 1981 must be read in conjunction with section 11 of the Waikato Raupatu Claims Settlement Act 1995, without undermining the intention of the Public Works Act and the underlying principles of the Deed of Settlement. That is, the Crown has the power to dispose of an existing public work to a local authority under section 50, but only after meeting obligations under the Settlement Act.

1.2.7 **Crown land and local authorities** – Any Crown land that is offered or in ownership of a local authority that is deemed surplus under the Public Works Act 1981 should be offered to Waikato-Tainui under the RFR process prior to going to the open market. Such a transfer to a local authority will be under terms agreed between Waikato-Tainui and the local authority.

1.2.8 **Legislation interpretation** – Best furthering the agreements between the Crown and Waikato-Tainui that are expressed in the Deed of Settlement means that any legislation should not be interpreted, created or amended so as to undermine these agreements, the two key principles of 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned) and 'ko too moni hei utu moo te hara' (the money is the acknowledgement by the Crown of their crime), or other principles underpinning this Statement.

1.2.9 **DoC land at nil value** – Should any of the Department of Conservation ('DoC') administered land that Waikato-Tainui provided as a free gift of claim to the nation (at nil value) become subject to the RFR process, it should be returned to Waikato-Tainui for no financial or other consideration [6].

1.2.10 **DoC land for conservation purposes only** – DoC administered land within the Waikato claim area is expressly held by the Crown for the purposes of conservation. Otherwise, it should be returned to Waikato-Tainui.

1.2.11 **Long term arrangements on DoC lands** – Long term leases, licenses and/or concessions over DoC administered land, particularly if they fall outside conservation purposes, will require engagement with Waikato-Tainui.

1.2.12 **Crown housing stock** – Crown disposing of housing stock need to engage with Waikato-Tainui.

1.2.13 **Notation of Title** – All Crown Land Interests that are held on title are to be notated with the Waikato-Tainui RFR notation. This includes those lands where the Crown retains an underling interest .

1.2.14 **Compensation** – should other parties be unable to satisfy the RFR process with the return of any land under discussion; the party must provide other mutually agreed compensation to Waikato-Tainui.

1.2.15 **Waikato-Tainui expects that the Crown:**

(a) Interprets and implements the RFR process and mechanisms consistent with the principles underpinning this Statement.

(b) Ensures that any one dealing with residual Crown lands must understand and comply with this RFR statement.

(c) Acts in good faith with offers made under the RFR process, including but not limited to agreeing on realistic timeframes, providing for a user-friendly process, and providing independent valuations of properties offered under the RFR.

6 Deed of Settlement (1995), sub-section 16(3) Apology by the Crown

2. Purpose and use

2.1 Purpose

2.1.1 The Waikato-Tainui Right of First Refusal Statement **('Statement')** outlines the Waikato-Tainui view regarding the Right of First Refusal **('RFR')** principles and process.

2.1.2 In summary, the RFR process should best further the agreements in the 1995 Deed of Settlement and any further Waikato-Tainui settlements. The operation of the RFR process must not create another Crown breach of Te Tiriti o Waitangi.

2.2 Use

2.2.1 **The Crown:** including, any Crown body, Crown entity, agency, agent or local government (see 2.3.1), must refer to this Statement when considering the disposal or use of lands in its ownership or control.

2.2.2 Those preparing plans for or undertaking land use or activities on land that has an underlying Crown interest including land that local authorities acquire from the Crown, must consider this Statement.

2.2.3 **Private entities and individuals:** includes publicly or privately owned organisations or private individuals. Private entities and individuals must assess their proposed or current activity against this Statement. This includes land that has an underlying Crown interest and land that local authorities acquire from the Crown.

2.2.4 **Waikato-Tainui:** use this Statement to consolidate its position on the RFR with the Crown into a single document.

2.3 A comment on local government

2.3.1 There are often obligations created by legislation that requires other agencies to administrate. These obligations must give effect to Te Tiriti o Waitangi as noted by the Waitangi Tribunal which states:

the Crown cannot avoid its Treaty duty of active protection by delegating responsibility for the control of natural resources to others (e.g. local authorities or other bodies whether under legislative provisions or otherwise). More particularly, it cannot avoid responsibility by delegating on terms that do not require such authorities or bodies to afford the same degree of protection as is required by the Treaty to be afforded by the Crown…If the Crown chooses to so delegate, it must do so in terms which ensure that its Treaty duty of protection is fulfilled.[7]

2.3.2 Waikato-Tainui supports the Tribunal's findings and expects that any entity with Crown delegated powers and/or responsibilities considers and appropriately gives effect to this Statement.

7 Waitangi Tribunal, (2011). "The report on the managment of the petroleum resource." [Wai 796] p. 149 Wellington.

Sir Robert Mahuta, Dame Te Arikinui Te Atairangikaahu, Rt Hon. Jim Bolger and Sir Douglas Graham.

3. Introduction

3.1 A new relationship between Waikato-Tainui and the Crown

3.1.1 On the 22nd of May 1995 Waikato-Tainui signed a Deed of Settlement **('DoS')** for the settlement of the Crown's historical breaches of Te Tiriti o Waitangi/the Treaty of Waitangi within the Raupatu or confiscation area of the Waikato-Tainui rohe. The first part of the DoS records the Crown's acknowledgements and the Apology to Waikato-Tainui for actions and breaches aganist Te Tiriti o Waitangi in respect to Waikato-Tainui. The DoS then records the good faith agreements entered into between the Crown and Waikato-Tainui.

3.1.2 The Crown acknowledged the contribution of Raupatu land to the development of New Zealand as estimated by Waikato-Tainui to have a minimum value as at 1995 of approximately $12 billion (sub-section 2.3, DoS) (Appendix 1). In parts 1 and 3 of the Apology to Waikato-Tainui (section 3, DoS), the Crown acknowledged their actions were unjust, wrongful and had a crippling effect on Waikato-Tainui. (Appendix 2)

3.1.3 In part 4 of the Apology, the Crown acknowledged their actions had

…given rise to two Waikato-Tainui principles 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned) and 'ko too moni hei utu moo te hara' (the money is the acknowledgement by the Crown of their crime). In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato-Tainui.

3.1.3.1 In part 6 of the Apology the Crown seek 'to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato.'

3.1.4 The Crown's settlement redress includes the return of some lands, the payment of money and a right of first refusal **('RFR')** over the Residual Crown Lands (sub-section 4.6, section 10, DoS). The RFR applies 'to any proposed sale of any Residual Crown Land by the Crown or any Crown Body to the Crown or a Crown Body.' (Sub-section 10.1, DoS) [See Appendix 3 for Section 10 of the DoS] In the Waikato-Tainui Claims (Waikato River) Settlement Act (sections 81 – 87), an additional RFR mechanism was established for the leasehold estate in Huntly Power Station and a Coal Mining Permit (Permit number 37152 currently held by Solid Energy New Zealand Limited).

3.1.5 Although the RFR sits with the Land Holding Trustee it is for the benefit of the wider Waikato-Tainui tribal collective.

3.1.6 Conservation land should be treated differently to all other Crown lands as per. Sub-section 16(3) of the DoS the Crown and Waikato-Tainui

acknowledge that the approximately 19,000 hectares (approximately 47,000 acres) of land (not including the Waikato River and the West Coast Harbours) within the Waikato Claim Area administered by the Department of Conservation is significant to Waikato. In recognition of the fact that the land is held by the Crown on behalf of all New Zealanders, for the purposes of conservation, and is therefore significant for all New Zealanders, Waikato in exercising their mana and as a free gift will through the Settlement give up their claim to that land and forgo further redress in respect of that claim, except the right of first refusal referred to section 10 [sic]

3.17 The intent of the RFR is to provide Waikato-Tainui with the real opportunity to reclaim the 1.2 million acres lost as a result of Raupatu and it is upon the principle of 'i riro whenua atu me hoki whenua mai' that the RFR is to be exercised. Further, section 2 of the Waikato Raupatu Claims Settlement Act 1995 (**'Settlement Act'**) states 'it is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the deed of settlement.'

3.1.8 Therefore the Crown cannot act in a manner that detracts from or undermines the agreements, apology or acknowledgements expressed in the Deed of Settlement particularly, for the purposes of this Statement, the RFR or the principle of 'i riro whenua atu me hoki whenua mai.'

3.2 Understanding and interpreting the RFR

3.2.1 The Waikato-Tainui settlement was a first of its kind written in a broad and open manner that reflects the new age of cooperation. The 1995 settlement is not to be re-interpreted against other Iwi settlements that may be of a more narrow and restricted nature.

3.2.2 As noted above, the interpretation and implementation of the RFR process is to be in the manner that best furthers the agreements between the Crown and Waikato-Tainui as expressed in the Deed of Settlement. For the purposes of the RFR process this includes the Crown agreement to return as much land as is possible that the Crown has in its possession to Waikato-Tainui.

3.2.3 Any such interpretation and implementation must not create another breach of Te Tiriti o Waitangi. The settlement embedded an underlying treaty settlement principle where the resolution of a grievance must not create a further grievance. Consequently rights existing at the time of settlement are to be respected. Conversely any proposal to create or grant new user rights over Residual Crown land to another entity or for a different use has the potential to create a fresh grievance that must be resolved.

3.2.4 In determining how the Crown gives effect to the intent of the RFR and associated mechanisms. The Crown must consider the Apology and the acknowledgement of unjust confiscation and the intent recognised in the Settlement Act and the DoS.

3.2.5 If land subject to RFR cannot reasonably be offered back to Waikato-Tainui then monetary or other mutually agreed compensation should be provided for that land.

4. Issues and scenarios

4.1 Introduction

4.1.1 This section discusses some of the issues that have arisen since entering into the 1995 DoS and some of the scenarios that could initiate the RFR process. The discussion is not meant to be exhaustive or inclusive of all issues and scenarios. Additionally it is difficult to predict future issues that will arise as the RFR process is implemented. Therefore this section is not intended to limit the issues or scenarios considered. Those affected by or implementing this Statement should continually bear in mind the previous comment that the interpretation and implementation of the RFR process needs to occur in a way that best furthers the agreements between the Crown and Waikato-Tainui that are expressed in the Deed of Settlement.

4.2 Issues and scenarios

Pre and Post 1995 Rights

4.2.1 Waikato-Tainui acknowledges that rights in place in 1995 are to be respected but, those rights should be to be tested against the RFR. In the interests of preserving and furthering the agreements in the 1995 DoS, Waikato-Tainui considers that the Crown and Waikato-Tainui need to confirm the nature of any rights in place as at 1995. Those rights, once understood, need to be assessed to see which rights are subject to the RFR process.

4.2.2 Waikato-Tainui considers new rights created since the 1995 settlement are potentially subject to the RFR. Such new rights could be created over any land that is Crown owned or that has an underlying Crown interest that is sold, transferred, leased or otherwise disposed of after 1995. However, Waikato-Tainui acknowledges its obligations and commitment to act in the best interests of the country while ensuring that Waikato-Tainui is able to benefit, where possible, from the RFR.

4.2.3 **Land purchased by Crown after 1995** – Land purchased outright by the Crown post-1995 within the Raupatu area (where there is a willing buyer, willing seller transaction) should be subject to the RFR under the fourth principle of the Crown returning as much land as possible to Waikato-Tainui. The Crown should discuss these situations with Waikato-Tainui.

A 'sale' by another name

4.2.4 Waikato-Tainui deems a 'sale' of Crown Land includes but is not restricted to:

- Exchange of Land
- Vesting in a local authority
- Transfer/disposal/vesting of land through other 'Acts'
- Creating new interests in land:
  - Concessions
  - License/ leases to occupy
- Transfer of land under Public Works Act 1981 including but not limited to:
  - Section 50
  - Section 52
  - Section 114

4.2.5 Waikato-Tainui is of the view that land use cannot be divorced from the underlying land ownership. A long-term disposal, assignment, transfers and/or lease to a Crown or non-Crown entity for a purpose other than a public work is a 'sale' by any other name. This is particularly so if the lease is for a purpose inconsistent with the underlying purpose of that entity. For example: Department of Conservation ('**DoC**') administered land is proposed for lease for a purpose unrelated to the preservation and protection of natural and historic resources and their intrinsic

values. Waikato-Tainui is of the view that any long-term disposal, assignment, transfer and/or lease to a Crown or non-Crown entity for any purpose requires engagement with Waikato-Tainui. This would enable the Crown and Waikato-Tainui to discuss and determined whether the RFR process needs to be implemented.

4.2.6 Waikato-Tainui may not learn of situations until a resource consent application is submitted to a local authority for the land under lease or other arrangement. It may be argued that as the underlying ownership is not changing, the RFR is not initiated. However, Waikato-Tainui view this as a breach of the principles of the DoS and of 'i riro whenua atu, me hoki whenua mai.'

Crown land administered by or transferred to local authorities

4.2.7 Section 50 of the Public Works Act 1981 (appendix 5) ensures that the Crown has the power to dispose of any existing public work to a local authority notwithstanding any other provisions. However, this doesn't override the entitlement for Waikato-Tainui under the RFR.

4.2.8 Where the intention to hold land for a public work has lapsed, section 50 should not be used as a means of transferring land between the Crown and local authorities. Nor can section 50 be invoked after a public work has been declared surplus under s40 (1)(a) of the Public Works Act.

4.2.9 Waikato-Tainui is concerned land that the Crown transfers to a local authority under section 50 may be considered to be outside the RFR process. Section 50 is to be read in conjunction with section 11 of the Waikato Raupatu Claims Settlement Act 1995, without undermining the intention of both Acts and the underlying principles of the Deed of Settlement. The Crown has the power to dispose of an existing public work to a local authority under section 50, but only after meeting obligations under the Settlement Act.

Any Crown land acquired or offered to local authorities is subject to the RFR process. Crown land already transferred to a local authority should be offered to Waikato-Tainui when it is deemed surplus. Such transfers will be under terms agreed between Waikato-Tainui and the local authority.

4.2.10 Legislation should not be interpreted, created or amended in a way that undermines the agreement in the Deed of Settlement or the right of first refusal statement principles.

4.2.11 For clarity, while Waikato-Tainui supports outstanding claims being progressed, the resulting settlement legislation should ensure the agreements of the 1995 DoS are upheld and not undermined.

Department of Conservation administered land

4.2.12 Sub-section 16.3 of the DoS as previously mentioned relates to the approximately 19,000 hectares of Department of Conservation (**'DoC'**) administered land. This land was a free gift of claim to the nation provided at nil value. In the event that there is an offer for any or all of this land to be returned under the RFR process, Waikato-Tainui is of the view that this land should be returned back to Waikato-Tainui at the no financial or other consideration.

4.2.13 Prior to DoC entering into concessions, leases and licenses on land that it administers they must engage with Waikato-Tainui. Refer to section 5.2.3

4.2.14 For clarity, DoC administered land within the area subject to RFR is expressly to be held by the Crown for the purposes

of conservation. Otherwise, it should be returned to Waikato-Tainui.

Disposal of Crown owned houses

4.2.15 Waikato-Tainui acknowledges the importance of access to low-cost housing for community prosperity and resilience. The Crown has long been involved in providing access to such housing and is now going through a process of disposing of some of its housing stock.

4.2.16 From a housing perspective the RFR mechanism does not distinguish these properties from others but rather just considers them as part of "Crown properties" which may become subject to the RFR mechanism under the settlement legislation. Although there is specific reference to Housing New Zealand properties within the DoS.

4.2.17 Waikato-Tainui is of the view that an 'existing tenant' (sub-section 11(1)(c) of the Settlement Act) of a Crown owned house is a tenant that has been continuously resident in the house being disposed of prior to the DoS being signed until the time of the disposal. In that case Waikato-Tainui respects the rights in place in 1995. In any other situation the disposal of a Crown owned house needs to be considered under the RFR process.

4.2.18 For disposal of crown owned houses under the RFR, the process has been assisted by a much more robust process that has been in place with Housing New Zealand (**'HNZ'**). Along with the "formal process" of 30 days to provide notice an "informal process" of 60 days (an additional 30 days) has now been added. The concept of this is to provide more lead in time for the tribe and in most other cases tribal members to engage with HNZ. The current process is based on the goodwill of individuals rather than the obligations of the settlement so it does make this process more vulnerable to change and therefore the challenges of not having enough notice to consider an offer as well as not being financially ready makes it difficult for tribal members to genuinely engage in the process.

Crown implementation of the RFR process, matters of good faith, and valuations

4.2.19 Section 10 of the DoS outlines the RFR process that the Crown and Waikato-Tainui are to follow. At times, in addition to the other issues and scenarios outlined in this section, the RFR process implementation threatens to undermine the DoS agreements and Waikato-Tainui Right of First Refusal Statement principles

(a) **Differences in interpretation** – The Waikato-Tainui experience of Crown implementation of the RFR process have been mixed. The Waikato-Tainui settlement is a regional settlement and Waikato-Tainui first refers to the DoS when it comes to the RFR process. However, agencies tend to refer primarily or give priority to national legislation, such as sections 40 and 50 of the Public Works Act 1981. Waikato-Tainui believes that the Crown tends to interpret the DoS to suit their individual perspective. For example, the Crown interprets s.50 of the Public Works Act in a way that can, undermine the intent of the RFR process and DoS agreements and principles

However, regardless of the interpretation of the RFR process, the outcome cannot be the creation of another grievance or Tiriti o Waitangi breach.

(b) **Continuity of process and personnel** – Waikato-Tainui appreciates those individuals representing the Crown or Crown agencies change from time to time. However, the understanding of the RFR process needs to have

continuity though all parts of those organisations.

Crown restructuring sometimes means that RFR processes have been devolved to external Crown appointed contractors to administer. These contractors and administers must be fully aware of their responsibilities, on behalf of the Crown, to the agreements and principles of the DoS.

(c) **Good faith offer** – Waikato-Tainui has had experiences where it believes that the Crown has already arranged for land offered under the RFR process to be on-sold to another party prior to it being offered to Waikato-Tainui. Waikato-Tainui considers a re-offer a breach of the good faith underpinning the DoS.

(d) **Good faith process timeframes and 'user-friendliness'** – Sub-section 10.2 of the DoS provides Waikato-Tainui with one month to give notice to the Crown that it will purchase land on the terms that the Crown sets out in its notice to Waikato-Tainui. In practice, one month has often proven insufficient time for Waikato-Tainui to undertake necessary due diligence for the lands on offer, including testing if Waikato-Tainui hapuu, marae, or beneficiaries wish to purchase the land on offer. Additionally, this is often insufficient time for Waikato-Tainui to secure independent valuations of the land under discussion, particularly when the Crown withholds valuation information.

It is the view of Waikato-Tainui that a time-frame or process that is, in practice, often unworkable or overly onerous risks breaching the good faith underpinning the DoS particularly, but not limited to the intended new-age of co-operation between Waikato-Tainui and the Crown. If Waikato-Tainui has an interest in purchasing land provided under the RFR process, and accepting that the process is underpinned by good faith, Waikato-Tainui expects that it will be accorded the courtesy of an extension of time to reasonably conclude its due diligence process and any ensuing purchase. An extension of time is consistent with section 2 of the Waikato Raupatu Claims Settlement Act 1995 where it confirms that 'it is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the deed of settlement.'

(e) **Crown provision of independent valuations** – In an era of increased co-operation between the Crown and Waikato-Tainui, one way that the Crown can demonstrate good faith and honouring the principles of the DoS is in the provision of independent valuations that the Crown has relied upon in providing its notice to Waikato-Tainui under sub-section 10.2 of the DoS. These valuations need to be robust, fair, and provide full disclosure so that Waikato-Tainui is assisted to provide a more timely response to the Crown regarding the land on offer. However, Waikato-Tainui has experienced some resistance from the Crown in providing valuations. Waikato-Tainui notes that its requests for valuations is no different to the access to valuations conducted using an agreed methodology anticipated and outlined in Attachment 8, 'Valuation Methodology' of the DoS for determining the transfer value of lands transferred under the DoS and subsequent legislation.

5. Objectives, policies, and methods

5.1 Introduction

5.1.1 This section should be read in conjunction with the previous sections. The following section is from Chapter 12 (Right of First Refusal on Crown Lands – i riro whenua atu, me hoki whenua mai) of Tai Tumu, Tai Pari, Tai Ao, the Waikato-Tainui Environmental Plan. These objectives, policies and methods continue to be relevant and are provided here for additional context and to assist with implementing the Statement.

5.2 Objectives, policies, methods

Objective – a 'sale' by another name

5.2.1 Arrangements for private use of Crown land are tested to see if the Right of First Refusal process is triggered.

Policy – a 'sale' by another name

5.2.1.1 To ensure that arrangements for private use of Crown land are tested to see if the Right of First Refusal process is triggered.

Methods

(a) In the spirit of the 1995 Deed of Settlement, the Crown contacts Waikato-Tainui to discuss any arrangements for the private use of Residual Crown Land to test if the RFR process is triggered.

(b) The above method is particularly important prior to entering into any agreement with private person(s) or entity/ies.

(c) Private person(s), entity/ies and/or local authorities undertaking or wanting to undertake resource management, use or activities on Crown owned land contact Waikato-Tainui to test if the RFR process is triggered.

(d) Waikato-Tainui will not generally progress applications for resource management, use or activities on Crown owned land until it is satisfied that matters relating to the principles of RFR are settled.

Objective – Crown land administered by or transferred to local authorities

5.2.2 Arrangements for Crown land administered by or transferred to local authorities are tested to see if the Right of First Refusal process is triggered.

5.2.2.1 ***Policy – Crown land administered by or transferred to local authorities***

5.2.3 To ensure that arrangements for Crown land administered by or transferred to local authorities are tested to see if the Right of First Refusal process is triggered.

5.2.3.1 *Methods*

(a) In the spirit of the 1995 Deed of Settlement, the Crown contacts Waikato-Tainui to discuss any arrangements for the transfer of administration or title of Residual Crown Land to local authorities to test if the RFR process is triggered.

(b) The above method is particularly important prior to entering into any agreement with local authorities.

(c) If the RFR process is triggered the Crown first makes the land available to Waikato-Tainui under the RFR process.

(d) Waikato-Tainui may choose

to re-acquire the land under section 40 of the Public Works Act as the owner prior to the Crown. Waikato-Tainui can then pass the land on to the local authority acquiring the land under mutually agreed terms.

(e) Local authorities undertaking or wanting to undertake resource management, use or activities on Crown owned land contact Waikato-Tainui to test if the RFR process is triggered.

(f) Waikato-Tainui will not generally progress applications for resource management, use or activities on Crown owned land until it is satisfied that matters relating to the principles of RFR are settled.

(g) Mention of the RFR is made in Reserve Management Plans and on land that has an underlying Crown interest.

(h) Those preparing plans or activities on land that has an underlying Crown interest, including land that Local Authorities acquired from the Crown, must consider this Chapter.

Appendix 1:

Acknowledgment by the Crown (Section 2 of Deed of Settlement)

Section 2. ACKNOWLEDGEMENT BY CROWN

The Crown acknowledges:

2.1 The legitimacy of the Waikato-Tainui Claim and the breach of the Treaty of Waitangi by the Crown in relation to the raupatu; and

2.2 The fact that the recognition of the grievance of Waikato-Tainui in relation to the raupatu is overdue; and

2.3 The contribution of the raupatu land to the development of New Zealand (such raupatu land being estimated by Waikato-Tainui to have a minimum value today of approximately $12 billion); and

2.4 that Waikato-Tainui, by agreeing to the Settlement, is forgoing a substantial part of the redress sought by Waikato-Tainui in respect of the raupatu, and that this is recognised by the Crown as a contribution to the development of New Zealand; and

2.5 that the Settlement does not diminish or in any way affect the Treaty of Waitangi or any of its articles or the ongoing relationship between the Crown and Waikato-Tainui in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights; and

2.6 that the decision of Waikato-Tainui in relation to the Settlement is a decision that Waikato-Tainui take for themselves alone and does not purport to affect the position of other tribes.

Appendix 2:

Apology by the Crown (Section 3 of Deed of Settlement)

Section 3 APOLOGY BY CROWN

The Crown apologises formally and will apologise publicly to Waikato-Tainui for its actions in sending imperial forces across the Mangataawhiri, for the loss of life and devastation of property that ensued, for the confiscation of Waikato-Tainui lands and for the crippling effects of raupatu on Waikato-Tainui. The form of the apology, which is set out in Maaori as Attachment 13 in the Deed, is as follows:

"1. The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangataawhiri in July 1863 and in unfairly labelling Waikato as rebels.

2. The Crown expresses its profound regret and apologises unreservedly for the loss of lives because of the hostilities arising from its invasion, and at the devastation of property and social life which resulted.

3. The Crown acknowledges that the subsequent confiscations of land and resources under the New Zealand Settlements Act 1863 of the New Zealand Parliament were wrongful, have caused Waikato to the present time to suffer feelings in relation to their lost lands akin to those of orphans, and have had a crippling impact on the welfare, economy and development of Waikato.

4. The Crown appreciates that this sense of grief, the justice of which under the Treaty of Waitangi has remained unrecognised, has given rise to Waikato's two principles 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned) and 'ko to moni hei utu mo te hara' (the money is the acknowledgement by the Crown of their crime). In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato.

5. The Crown recognises that the lands confiscated in the Waikato have made a significant contribution to the wealth and development of New Zealand, whilst the Waikato tribe has been alienated from its lands and deprived of the benefit of its lands.

6. 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 grievance of raupatu finally settled as to the matters set out in the Deed of Settlement signed on 22 May 1995 to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato."

Appendix 3:
Right of first refusal (Section 10 of Deed of Settlement)

Section 10 RIGHT OF FIRST REFUSAL

The Crown grants to the Land Holding Trustee a right of first refusal over the Residual Crown Land on the following terms:

10.1 Subject to clause 10.6 and clause 17, the right will apply to any proposed sale of any Residual Crown Land by the Crown or the relevant Crown Body to anyone other than the Crown or another Crown Body. In the event of a sale of any Residual Crown Land by the Crown or any Crown Body to the Crown or a Crown Body, the right set out in this clause 10 will continue in existence.

10.2 The Crown or Crown Body proposing to sell any Residual Crown Land must give notice to the Land Holding Trustee of the proposed sale setting out the price and other proposed terms and giving the Land Holding Trustee one month to give a notice to the Crown or the Crown Body that it will purchase the land on the terms set out in the notice. If the land Holding Trustee gives such a notice it must purchase the land for the price, on the terms, and at the date specified in the notice given to the Land Holding Trustee by the Crown or the Crown Body.

10.3 If the Land Holding Trustee does not give a notice to the Crown or Crown Body within the one month period referred to in the notice given under clause 10.2 (time being of the essence) that it will purchase the relevant Residual Crown Land on such terms, the Crown or Crown Body will be entitled to sell that land to any person. However,:

10.3.1 if the Crown or Crown Body proposes to sell the relevant Residual Crown Land at a price or on terms more favourable to a purchaser than those set out in the notice given under clause 10.2, the Crown or Crown Body must give another notice to the Land Holding Trustee in accordance with clause 10.2 and the procedure set out in that clause will apply again; and

10.3.2 if the Crown or Crown Body has not entered into an agreement to sell the relevant Residual Crown Land at a price or on terms which are not more favourable to a purchaser than those set out in the notice given under clause 10.2 on or before the date which is 2 years after the end of the one month period referred to in the most recent notice given in respect of the relevant Residual Crown Land under clause 10.2, and the Crown or Crown Body proposes to sell that parcel of Residual Crown Land, the Crown or Crown Body must again give notice to the Land Holding Trustee in accordance with clause 10.2 and the procedure set out in that clause will apply again.

10.4 The Crown will include in the Bill introduced in Parliament to give legislative effect to the Settlement, a provision incorporating the right referred to in this clause 10 and to provide a mechanism for the right to be noted on the titles (if any) of the relevant Residual Crown Land while the right continues in force or, where there is no title for any part of

the relevant Residual Crown Land, for the right to be noted on the title when the title is created. The Crown will arrange for the District Registrar of Lands to provide to Waikato-Tainui quarterly reports listing all Residual Crown Land in respect of which the right has been noted on the title in the previous quarter.

10.5 The right will continue in force in respect of any Residual Crown Land held by a Crown Body even if the Crown or a Crown Body ceases to be the owner of the Crown Body, but will not affect the right of the Crown or a Crown Body to sell any Crown Body or require the Crown or a Crown Body to offer to the Land Holding Trustee a right to buy the Crown Body.

10.6 The right referred to in this clause will be subject to, and will not apply in respect of, any parcel of Residual Crown Land until after the Crown or Crown Body has complied with, section 40 of the Public Works Act 1981 or equivalent legislation, any other statutory provisions which must be complied with before any disposal of such land and the Crown's or any Crown Body's current policy to provide tenants of houses owned by the Crown or a Crown Body with the opportunity of buying the house in which they dwell and the relevant land is free to be disposed of to third parties and is also subject to:

10.6.1 the terms of any gifts ·or endowments relating to the parcel of land or any improvements on the land; and

10.6.2 the terms of any trust relating to the parcel of land or any improvements on the land; and

10.6.3 any feature of the title to the parcel ofland held by the Crown or a Crown Body which prevents or limits the right of the Crown or Crown Body to transfer the parcel of land or any improvements on the land; and

10.6.4 any other legal requirement which impedes the Crown's or the Crown Body's ability to transfer the parcel of land or any improvements on the land and which the Crown or Crown Body cannot satisfy after taking reasonable steps to do so. For the avoidance of doubt, "reasonable steps" does not include initiating a change in the law.

The Crown or the Crown Body will diligently and expeditiously seek to satisfy the above requirements with a view to removing any impediment to the transfer of such land to the Land Holding Trustee.

10.7 The right referred to in this clause will terminate in respect of any Residual Crown Land at the time of the occurrence of the first of the following events:

10.7.1 the exercise of the right by the Land Holding Trustee;

10.7.2 the disposal of the Residual Crown Land under clause 10.3 where clause 10.3.1 and clause 10.3.2 do not apply;

10.7.3 the disposal of the Residual Crown Land to any person to whom it has been offered under section 40 of the Public Works Act or equivalent or to any person having a prior right to it under the other requirements referred to in clause 10.6 or, in the case of any Residual Crown Land which is a house owned by the Crown or Crown Body, its disposal to the existing tenant. At the time the right terminates,

any notation of the right on the title for the relevant land will be removed.

10.8 The provisions of this clause 10 shall apply to any parcel of Rejected Land in the period before that Rejected Lartd becomes Residual Crown Land as if a notice had been given in respect of such parcel under clause 10.2 offering such parcel for sale on the terms and for the price specified in clause. 5 in respect of that parcel, the Land Holding Trustee had not given a notice pursuant to clause 10.3 within the period prescribed in that clause and the one month period referred to in clause 10.2 had expired on the date that Waikato-Tainui exercise their rights under clause 8 in respect of that parcel. Once any parcel of the Rejected Land becomes Residual Crown Land, this clause 10 will apply to any proposal to sell such parcel.

10.9 On the passing of the legislation referred to in clause 19, including a provision which provides for a right of first refusal as described in this clause 10, the legislation will govern the rights and obligations of the Crown, any Crown Body, the Land Holding Trustee and Waikato-Tainui in relation to the right of first refusal to the exclusion of this clause.

Appendix 4:

Section 11 of Waikato Raupatu Claims Settlement Act 1995

Section 11, 12 and 13 Right of land holding trustee to acquire residual Crown land in certain circumstances

(1) Where a Crown body (or any body that was a Crown body at the date on which this section comes into force or on which the body first acquired the residual Crown land concerned, whichever is the later) proposes to sell any residual Crown land to any person other than—

(a) another Crown body; or

(b) a person who is entitled to purchase the land pursuant to an offer made under—

(i) section 40 of the Public Works Act 1981 or that section as applied by any other enactment; or

(ii) section 23(1) or section 24(4) of the New Zealand Railways Corporation Restructuring Act 1990; or

(iii) any enactment equivalent to any of the enactments referred to in subparagraphs (i) and (ii); or

(c) the existing tenant of a house situated on any residual Crown land that is—

(i) land of Housing New Zealand Limited or of Housing New Zealand Corporation; or

(ii) land held for education purposes by the Crown; or

(iii) land held by any Crown body which, at the date on which this section comes into force, has a policy under which houses that are to be sold are first offered for purchase by the existing tenants; or

(d) a person who has, at the date on which this section comes into force, a legal right to purchase the land; or

(e) a person who is entitled to purchase the land under the terms of any gift, endowment, or trust relating to the land, or under any enactment or rule of law,—

the body shall give to the land holding trustee notice of the proposed sale setting out the price and other proposed terms of sale and offering to sell the land to the land holding trustee on those terms.

(2) Where, within 1 month after the date on which the land holding trustee receives a notice under subsection (1) from a Crown body or other body (time being of the essence), the land holding trustee—

(a) accepts the offer set out in the notice by giving written notice of acceptance to the body; or

(b) otherwise agrees with the body in writing to purchase the land concerned,—

a contract for the sale and purchase of that land shall be thereby constituted between the body and the land holding trustee and that contract may be enforced accordingly.

(3) If, within 1 month after the date on which the land holding trustee receives a notice under subsection (1) from a Crown body or other body (time being of the essence),

a contract for the sale and purchase of the land to which the notice relates is not constituted under subsection (2), the body—

(a) may, at any time during the period of 2 years following the expiry of 1 month from the date of receipt of the notice under subsection (1) by the land holding trustee, sell the land to any person it wishes on terms not more favourable to the purchaser than those set out in that notice; but

(b) may not sell the land after the expiry of that 2-year period without first re-offering it to the land holding trustee in accordance with subsection (1), and subsection (2) and this subsection shall apply to any such re-offer.

(4) Where a body—

(a) has offered to sell any residual Crown land to the land holding trustee under subsection (1); and

(b) wishes to again offer that land for sale, but on terms more favourable to the purchaser than the terms of the first offer,—

the body may do so, so long as it first re-offers the land for sale on the more favourable terms to the land holding trustee in accordance with subsection (1); and subsections (2) and (3) shall apply to any such re-offer.

(5) The obligation of a Crown body or other body under subsections (1) to (4) in respect of any particular land shall terminate on the completion of the sale of the land—

(a) to the land holding trustee; or

(b) in accordance with subsection (3); or

(c) to a person of a kind referred to in any of paragraphs (b) to (e) of subsection (1),— whichever first occurs.

(6) Nothing in this section affects or derogates from, and the rights created by this section are subject to,—

(a) the terms of any gift, endowment, or trust relating to, and the rights of any holders of mortgages or other securities over, residual Crown land or any improvements on any such land:

(b) any other enactment or rule of law that must be complied with before any residual Crown land is disposed of:

(c) any feature of the title to any residual Crown land which prevents or limits a body's right to transfer the land or any improvements on the land:

(d) any legal requirement which impedes a body's ability to sell or otherwise dispose of any residual Crown land or any improvements on any such land and which the body cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps does not include initiating a change in the law).

(7) Nothing in this section affects or derogates from the right of a Crown body to sell or otherwise dispose of any Crown body, or requires a Crown body to offer to the land holding trustee any Crown body that is to be sold or otherwise disposed of.

(8) In the case of residual Crown land that is a settlement property that Waikato have elected under clause 8 of the deed of settlement not to take, this section shall be read subject to section 12.

(9) Where any residual Crown land—

(a) Becomes, under subsection (2), subject to a contract for the sale and purchase of that land; or

(b) is transferred (without breaching this section) to any person that is not a Crown body,—

this section and section 12 shall cease to apply to that residual Crown land.

(10) Clause 10 of the deed of settlement shall cease to have effect from the date on which sections 12 and 13 and this section come into force.

Section 12. Rights of land holding trustee in regard to property that it has previously elected not to take

Where a settlement property becomes residual Crown land by virtue of Waikato electing under clause 8 of the deed of settlement not to take that property, section 11 shall apply to that property as if—

(a) a notice had been given to the land holding trustee under subsection (1) of that section offering to sell the property to the land holding trustee for the price and on the other terms on which the property was offered to the land holding trustee under the deed of settlement; and

(b) the land holding trustee had not, within the time prescribed by subsection (2) of that section,—

(i) Given, under that subsection, written notice of acceptance of the offer; or

(ii) Otherwise agreed in writing to purchase the property; and

(c) the land holding trustee had received the notice under subsection (1) of that section on the date on which the election takes effect.

Section 13. Noting of right to acquire residual Crown land on certificates of title

(1) As soon as reasonably practicable after the date on which this section comes into force, the Director-General shall issue to the District Land Registrar 1 or more certificates that identify all the certificates of title for the residual Crown land for which certificates of title have been issued at that date.

(2) As soon as reasonably practicable after the date on which a certificate of title is issued for any residual Crown land, being a date after the date on which this section comes into force, the Director-General shall issue to the District Land Registrar a certificate that identifies the certificate of title concerned.

(3) As soon as reasonably practicable after receiving a certificate from the Director-General under either subsection (1) or subsection (2), the District Land Registrar shall, without fee, note on the certificate or certificates of title to the land to which the certificate from the Director-General relates, the words "Subject to section 11 of the Waikato Raupatu Claims Settlement Act 1995 (which provides for residual Crown land to be offered for purchase to a land holding trust for Waikato in certain circumstances)".

(4) Where any residual Crown land for which a certificate of title has been issued is to be transferred (without breaching section 11) to any person other than a Crown body,—

(a) the transferor shall notify the Director-General of the transfer; and

(b) the Director-General shall, before registration of the transfer, issue to the District Land Registrar a certificate stating that the land is to be so transferred and identifying the certificate of title concerned.

(5) On receipt of a certificate under subsection (4) and before registration of the transfer, the District Land Registrar shall, without fee, delete by endorsement the words previously noted on the certificate of title for the land in accordance with subsection (3).

(6) Whenever the Director-General issues a certificate to the District Land Registrar under this section, the Director-General shall send a copy of the certificate to the land holding trustee.

Right of First Refusal Statement

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