

SOUTH WAIRARAPA DISTRICT COUNCIL

10 AUGUST 2016

AGENDA ITEM G2

CROWN REDRESS PROPOSAL FOR WAIRARAPA WITH NGATI KAHUNGUNU AND RANGITANE

Purpose of Report

To inform Councillors about the final details of the Crown proposal to settle historic Treaty of Waitangi claims lodged by Ngati Kahungunu and Rangitane in relation to Lake Wairarapa and the Wairarapa region.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *Confirm Councils support for the proposed final Redress Proposal (dated 26 July 2016) for Wairarapa Claimants with the Crown*

1. Executive Summary

The treaty settlement process has reached the final stages of setting out the detail of the redress proposal between the Crown and the claimants.

These final details (they are additional to the draft previously reviewed by Council) have now been forwarded consideration and if acceptable, support. If the agreement is satisfactory this removes one of the last impediments to it going to Cabinet for ratification.

2. Background

At the April meeting a report was provided outlining the Crowns negotiations with Ngati Kahungunu and Rangitane about the redress for historic claims against breaches of the Treaty of Waitangi. The draft settlement proposals were tabled as part of the report.

Those negotiations with the claimants have continued since April and are the completion stage and are soon to be formalised by Cabinet.

In April, Council in broad terms supported the proposed terms of settlement but in doing so sought clarification on 2 points, representation on the proposed statutory board and links to Council's Long Term Plan / Annual Plan processes.

These latter matters have since been discussed with the Crown negotiator, Mr Rick Barker, and further information has been provided by the Crown.

The final details (not available when Council first considered its support for the settlement) are now available (see appendix 1) and the Crown has again asked for a statement of position to be made by Council on them.

3. Discussion

The 2 matters raised by Council in April relating to representation and financial linkages have been clarified.

It is now proposed to ensure a stronger local representative voice on the new statutory board, by requiring one of the 2 Wellington Regional Council representatives, to be the elected member for the Wairarapa constituency. However this provision is subject to WRC approval.

The Crown has also provided a legal review of the provisions of the settlement relating to the LTP /AP. The advice has confirmed that the provisions cannot bind Council. Consideration must still be given to any proposal requiring funding, but so long as that process is reasonable any decision of Council would be secure.

Lastly Council needs to consider the details of the attached "status" document. This sets out the matters of detail that have been discussed since Council first saw the draft in April.

These have been reviewed and appear fully consistent with the agreement already supported by Council.

4. Conclusion

Council needs to determine whether it is now satisfied with the settlement document as a whole, including the details contained in the attached 'status' document.

5. Appendices

Appendix 1 – Status Document

Contact Officer: Murray Buchanan, Group Manager, Planning and Environment

Appendix 1 – Status Document

NGĀTI KAHUNĀNU, RANGITĀNE AND THE CROWN SUMMARY OF AGREEMENT ON FINAL WAIRARAPA MOANA MATTERS FROM THE 14 JULY 2016 WORKSHOP AND E-MAIL ON DISCUSSION DOCUMENTS	
Matter	Status of agreement in principle between iwi and Crown agencies (subject to ministerial and Cabinet agreement)
Wairarapa Moana Reserve classifications	<p>Crown proposal for reserve re-classification of the Crown owned Wairarapa Moana conservation areas outlined in discussion document of 21 June.</p> <p>DOC to provide disclosure for remaining Wairarapa Moana properties by 18 July [now to be in early August] Site visit to be re-scheduled (time to be confirmed)</p> <p>Iwi to confirm position by 25 July [now to be in mid August after disclosure received].</p> <p>Crown to then confirm what classifications are proposed for Ministerial consideration.</p> <p>[Crown proposes reporting to Ministers at a later date within the next 4 months on this]</p>
Authorisations in relation to Wairarapa Moana reserves	<p>Agreed the shared redress legislation to give the Board the power to grant authorisations over all Wairarapa Moana reserves (WMRs) and to give the Board the same legislative role and delegations as a local authority under the Reserves Act 1977 and to give the Board the ability to grant concessions over an area of the Wairarapa Moana as if it were an authority under the Conservation Act 1987.</p> <p>Agreed provision in deed for DOC to process applications in the interim, until the Board confirms its approach to processing of application.</p>
Dispute Resolution	<p>Agreed to the provision of a dispute resolution process in the deed and bill.</p> <p>Agreed that the Deed and Bill would not specify which disputes it applied to do not need to specify how the dispute resolution procedure will be applied.</p>

	<p>Agreed to an ‘for avoidance of doubt’ exclusion clause to be included in the deed to make it clear that the mediation process cannot be used as an appeal process.</p> <p>Crown notes NkWTNAR and RSNT suggestions of 12 July 2016 for drafting provisions. Deed and bill drafting to be provided to iwi for review. The application of the dispute resolution process does not apply to statutory timelines (such as reserve management plan/consultation).</p>
Liabilities and indemnities	The Crown notes NkWTNAR suggestions of 6 July 2016 for drafting provisions. Once agencies have received ministerial decision on liability proposals, the Deed and bill drafting will be provided to iwi. Proposals for specific liabilities are below.
<i>Iwi liabilities</i>	Agree to seek Cabinet approval to limit the PSGEs’ liability for reserves they own to their own acts of negligence and intentional damage under the shared redress bill (as opposed to the unauthorised acts of its members).
<i>Members of the Board</i>	Agree to seek ministerial and Cabinet approval to exempt members of the Wairarapa Moana Statutory Board from individual liability for the Statutory Board’s actions.
<i>The Board</i>	<p>Agree to seek ministerial and Cabinet approval that the shared redress bill specifically exempt the Board from:</p> <ul style="list-style-type: none"> - certain liabilities – rates and Fire Authority levies; and - liabilities arising from contamination and structures occurring prior to settlement. <p>Agree to seek ministerial and Cabinet approval that if the PSGEs are exempt from liability as landowners, the Board will carry responsibility for liabilities as the administering body for iwi owned reserves.</p> <p>Agree to seek ministerial and Cabinet approval that if the Board is unable to meet the liabilities associated with Wairarapa Moana reserves as the administering body, it will be able to approach relevant Ministers with a request to meet their liability.</p>
<i>DOC</i>	Note that the Department will continue to have direct responsibility for its employees and their

	actions relating to the WMRs. The Crown would also continue to have residual liability as landowner for the reserves still vested in the Crown.
<i>Local authorities</i>	Note that local authorities will continue to have direct responsibility for their employees and their actions relating to the WMRs. [Note the local authority would also continue to have residual liability as landowner for the reserve still vested in the local authority.]
Annual operational management programme	<p>Agreed that no provision is required in the deed and bill regarding timeframes for completing the annual operational management programme. The Board is to decide its timeframes in discussion with Board appointees to align process for the operational management programme.</p> <p>Agreed to inclusion of provisions in the deed regarding the process and content of the operational management programme. Drafting to align with the agreed provisions in the NKKWTNAR AIP and Rangitāne deed. Crown notes NKKWTNAR suggestions of 6 July 2016 for drafting provisions.</p> <p>Draft provisions to be provided for consideration as part of the Ngāti Kahungunu deed drafting provisions for the board.</p>
Appointment and eligibility of membership	<p>Agreed that the Deed and Bill provisions will be drafted for the Board and also for the sub-committee(s) based on the provisions in the second discussion document of 28 June.</p> <p>Agreed to include new clause 1.2.2 proposed by NKKWTNAR in relation to consideration of the overall skill sets/experience of the other Board members in relation to Wairarapa Moana, with an equivalent clause for the sub-committee for natural resources in relation to the Ruamahanga River catchment.</p>
Public notification and submission requirements for the natural resources document	<p>It was agreed at the July workshop that the deed and bill drafting is to reflect that:</p> <ul style="list-style-type: none"> • the Statutory Board will be the named party for the public notification process • the sub-committee will run the entire drafting process for the natural resources document, under the auspices of the Statutory Board • the Statutory Board will notify the natural resources document once it has been drafted and approved

	<ul style="list-style-type: none"> • <u>the Statutory Board hears and analyses the submissions</u> • the Statutory board may delegate the hearing and analysing of the submissions to the sub committee • the Statutory Board will have final approval of the natural resources document; and • <u>the Statutory Board initiate a review of the natural resources document, on advice from the sub-committee</u> • <u>the sub-committee undertakes a review of the natural resources document under the auspices of the Board and provides recommendations to the Statutory Board; and</u> • <u>the Statutory Board then makes the decision on whether amendments should be made having considered the recommendations of the sub-committee.</u> • the Statutory Board may delegate the subsequent amendment of the natural resources document to the sub-committee. <p>Draft provisions to be provided for consideration as part of the Ngāti Kahungunu deed drafting provisions for the board and the shared redress bill provisions.</p>
Administrative support for the Board	Agreed that at the annual business planning meeting for the Board, that appointers to discuss and decide what administrative and technical support they can provide to the Board.
Schedule of reserves to be administered by the Board	<p>GWRC officials advise no GWRC sites available for administration by the Board.</p> <p>SWDC advised Lake Shore Domain Reserve to be administered by the Board, subject to maintenance of public access.</p>
Membership	GWRC and SWDC officials support proposal for local representation on the Wairarapa Moana Statutory Board, for 1 of the 2 GWRC appointed members on the Statutory Board to be the GWRC Wairarapa councillor. GWRC to decide appointments to the Statutory Board – deed does not set out specific requirements.

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2 AUGUST 2016 WITHOUT PREJUDICE- FOR CONFIRMATION BY IWI

Avoidance for doubt clause	<p>Agreed to proposal by GWRC officials to the inclusion of an 'for avoidance of doubt' clause in the deed that the Wairarapa Moana Statutory Board and its functions is separate from the Lower Wairarapa Valley Development Scheme.</p> <p>Draft provision to be provided for consideration as part of the Ngāti Kahungunu deed drafting provisions for the board.</p>
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