

In Confidence

Office of the Deputy Prime Minister

Minister of Housing

Te Minita Whanaketanga Māori

Chair, Cabinet

Te Puke Tāpapatanga a Hape (Ihumātao) Proposal

Executive Summary

1. This paper puts forward a proposal to resolve the land dispute at Te Puke Tāpapatanga a Hape (more commonly referred to as - Ihumātao).
2. The principal objective of this proposal is to reconcile the need for appropriate housing on this site as well as recognising its cultural and historic significance. It will also provide the ability to promote the early settlement history in Tāmaki Makaurau
3. The first part of the proposal is the sale of the land at Ihumātao from Fletcher Residential to the Crown under the Land for Housing Programme.
4. The second part of the proposal includes the development of a Memorandum of Understanding between Kiingitanga, mana whenua, the Crown, and Auckland Council. This sets out how agreement will be reached between the parties on the future use and development of the land at Ihumātao.
5. The previous government agreed that authorised Ministers would finalise the agreements as set out above [CAB-20-MIN-0012 refers]. This paper refreshes that mandate.
6. Resolving the issue in this way mitigates the risk that the land will be subject to a Treaty claim in future. This two-part proposal has been designed to minimise risks to the Treaty settlement framework.

History of the Site

7. Te Puke Tāpapatanga a Hape is located in and around Ihumātao (Auckland's oldest pre-European settlement) and the Otuataua Stonefields Historic Reserve. Historically and culturally significant to Te Waiohua – it is the point at which Hape (Tohunga of Tainui waka and cited as one of Tamaki Makaurau's founding ancestors) came ashore and settled after his voyage from Hawaiki.
8. It is one of last surviving places where land and stone walls were used by Māori for growing new crops such as wheat and European vegetables for the Auckland

markets prior to 1863. The land was confiscated 'by proclamation' under the New Zealand Settlements Act in 1863.

9. These lands were not included in the Waikato-Tainui Raupatu Claims Settlement Act 1995 as they were held in private ownership by the former owners - the Wallace family. In agreeing to the 1995 settlement, Waikato-Tainui did not seek redress from private property owners.
10. The former Manukau City Council sought to ensure that pastoral lands on the slopes of Ihumatao would become part of Ōtuataua Stonefields Historic Reserve but its attempts to purchase the site were declined by the then landowner.
11. From 2011 – 2013 Te Kawerau ā Maki and other groups unsuccessfully opposed plans by Auckland Council to rezone the pastoral land from rural to urban. In 2014 Auckland City designated 32 hectares adjacent to the Ōtuataua Stonefields Historic Reserve as a Special Housing Area (SHA 62).

Current Situation

12. Fletcher Residential Ltd purchased the site from the Wallace family and successfully applied for a SHA to develop 480 homes on the Ihumātao site in February 2016. The decision was made by the then Accord Territorial Authority.
13. In July 2019 Fletcher Residential Ltd agreed to suspend development on the site so that further discussions could take place about its future. It was agreed that the Kiingitanga, mana whenua, Fletcher Residential, Auckland Council, and the Crown would enter into discussions on the site. The process was to be led by the Kiingitanga.
14. Heritage New Zealand have recognised the Ōtuataua Stonefields as a Category 1 historic place following a statutory review process. The new Ōtuataua Stonefields boundaries encompass all of the Special Housing Area, which has been referred to as Ihumātao. The review of the New Zealand Heritage List/Rārangi Kōrero listing will not alter the status of the Special Housing Area or any existing resource consents.
15. On 28 January 2020, Cabinet authorised a group of Ministers comprising the then Deputy Prime Minister, Minister for Māori Crown Relations: Te Arawhiti, Minister of Finance, Minister for Māori Development, and Hon Shane Jones to develop a government position on Ihumātao and to report to the Prime Minister on this as soon as possible [CAB-20-MIN-0012].
16. A proposal was developed that sought:
 - The purchase of the existing site owned by Fletcher Residential by the Crown through the Land for Housing Programme;
 - The development of an Memorandum of Understanding (He Pūmautanga) between the Crown, mana whenua and Kingitanga for a process to decide future development on the site, Council as observers;

17. On 9 March Cabinet further authorised the Ministers in para. 15 (together with the Prime Minister and Minister of Housing) to finalise the above two agreements. [CAB-20-MIN-0080].

Proposal – Land for Housing purchase

18. Discussions with Fletcher Residential have led to a proposed agreement about the sale of the land. The proposal (subject to final agreement) is that the Crown would acquire the land through the 'Land for Housing' Programme.
19. The land would be purchased under the Housing Act 1955 which states "The Minister [of Housing] may from time to time determine either generally or in any particular case what land or classes of land may be acquired for state housing purposes and the general scheme of development thereof, the number and classes of dwellings and ancillary commercial buildings to be constructed, and any other matters of state housing policy". State housing policy is wider than the simple provision of state or public housing, it's construed broadly as to allow for all the aspects of urban development to be undertaken.
20. Officials will prepare advice to joint Ministers of Finance and Housing, who have Cabinet delegations, to agree to the land acquisition. The final price for the site is currently the subject of on-going negotiations, and will be agreed jointly by the Minister of Finance and the Minister of Housing along with to the scope of the necessary appropriations. This price would have an upper limit of \$30m, against a claimed site valuation by Fletchers of \$45m.
21. Funds received from the sale of the land for housing or support for housing, or any other uses which are deemed to be more suitable than housing, will be returned to the Crown. These funds will be provided by any purchaser or recipient of the land, including any other Crown agencies or Council.
22. The final nature, scale, scope and use of any housing developed on the site are the subject of He Puumautanga. As is the case with other Land for Housing purchases we will be working positively with mana whenua on any development.
23. Purchasing the land through the Land for Housing scheme provides some flexibility for the end development. It allows for the site to both provide for housing, whilst also presenting an opportunity to address heritage and cultural considerations such as an increased buffer zone or cultural centre. Where land on the site is used for an activity other than housing or urban development, funds provided by the Crown will be returned to the Centre.

Development of a Memorandum of Understanding

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

Treaty Implications

- 30.** The previous government received advice that purchasing the site at Ihumātao in this way minimises any possibility that the transaction would trigger a Treaty of Waitangi claim.
- 31.** This is due to the fact that the land is being purchased by an agency (whose land is not generally available for use in Treaty settlements) for a specific purpose (e.g. housing). Further mitigation is arrived at by the level of engagement and agreement that has taken place with all groups at each stage of the process - in particular before any agreement is reached to transfer ownership.
- 32.** Crown Law and Te Arawhiti have been working through the Treaty implications of a purchase through the Land for Housing fund, and the use of the MOU to determine

future use of the land. They have stressed the need for adequate consultation of all affected mana whenua groups. Before an MOU is signed, we will ensure that engagement is undertaken to cover off this risk. Crown Law and Te Arawhiti have not identified any other significant risks with the proposal to date. If further risks are identified, Ministers will update Cabinet.

33. There are six iwi with an interest on the land at Ihumātao. These include:
- Te Ākitai-Waiohua
 - Te Kawerau ā Maki
 - Waikato Tainui
 - Ngāti Te Ata
 - Ngāi Tai ki Tāmaki
 - Ngāti Tamaoho
34. All of the iwi above have been engaged in the process and have been consulted on the text of the draft He Pūmautanga text.

Consultation

35. DPMC and Te Arawhiti were consulted as part of the production of this paper.

Financial Implications

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

Legislative Implications

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

Human Rights

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

Gender Implications

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

Publicity

40. No proactive publicity at this stage.

Treaty of Waitangi

41. The draft He Pūmautanga agreement states that it does not constitute a settlement of historical claims pursuant to the Treaty of Waitangi Act 1975

Proactive Release

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

Recommendations

43. The Ministers of Finance, Housing, and Māori Development recommend that the Committee:
44. **Note** that on 9th March 2020 Cabinet authorised a group of Ministers to finalise agreements on:
- 44.1.1. The purchase of the existing site owned by Fletcher Residential by the Crown through the Land for Housing scheme;
 - 44.1.2. The development of an Memorandum of Understanding (He Pūmautanga) between the Crown, Auckland Council, mana whenua and Kingitanga for a process to decide future development on the site;
45. Agree to the purchase of the site from the Land For Housing Programme up to a maximum price of \$30 million
46. Agree that the Crown sign the attached MOU to guide the process for the future development of the site.
47. Agree that a delegated group of Ministers have the power to finalise and execute these two agreements, and the communications strategy. These Ministers are:
- 47.1. Prime Minister
 - 47.2. Deputy Prime Minister
 - 47.3. Minister for Housing
 - 47.4. Minister for Crown-Maori Relations: Te Arawhiti
 - 47.5. Minister for Māori Development

Authorised for lodgement

Hon Grant Robertson

Deputy Prime Minister

Hon Dr. Megan Woods
Minister of Housing

Hon Willie Jackson
Te Minita Whanaketanga Māori