



PART OF THE MINISTRY OF JUSTICE

Office of Treaty Settlements
Justice Centre | 19 Aitken Street | DX SX10111 | Wellington
T 04 494 9800 | F 04 494 9801
www.ots.govt.nz

24 February 2017

Puna Wano-Bryant
Chairperson
Parihaka Papakāinga Trust
c/o 16 Rainsford Street
NEW PLYMOUTH 4310

Tēnā koe

Crown support package: \$9 million fund – interest, accountability arrangements and tax

This is to follow up on the recent discussions between the Parihaka Papakāinga Trust (**PPT**) and the Crown on whether interest will be applied to the \$9 million fund (**the fund**), approved by Cabinet in November 2016 as part of the reconciliation process between the Crown and Parihaka.

You also asked the Office of Treaty Settlements (**OTS**) to set out in writing the proposed accountability arrangements for the fund and tax implications.

Interest

The existing approval from Cabinet does not enable interest to accrue on the fund and then be passed onto Parihaka. As you are aware, the reconciliation process is outside of the Treaty settlement framework. This means that the Treaty settlement policy where interest accrues on quantum from the time of signing an agreement in principle, does not apply.

However, you have been clear the PPT's position is that Parihaka should benefit from interest earned on the \$9 million and that resolution of the issue is a high priority ahead of your report back on the engagement results to the Parihaka community on 26 February. OTS also recognises it is important for Parihaka to be able to maximise the value of the fund in order to achieve its development plans. We are working with other Crown agencies to develop a solution that addresses the interest issue, which meets the needs of both Parihaka and the Crown. For clarity, the fund will remain as \$9 million, as this was approved by Cabinet. Ministers have been clear that there is no additional funding available.

Proposal to be considered by Ministers

We have committed to providing a proposal to Ministers, for their consideration, on ways interest could potentially be earned on the fund for the benefit of Parihaka.

One option we have identified for Ministers to consider is for the fund be transferred from the Crown to a solicitors trust account, to be held on trust, and invested at a fixed rate likely to be between the Official Cash Rate (1.75%) and current banking rates (approximately 3.5%). Parihaka and the Crown would need

to agree the conditions for the release of funds from the trust account, some of which are described below.

When an approach has been decided upon the deed of reconciliation will set out the detail of the fund, including any arrangements for interest.

You advised that the PPT may want to access the interest to support the administrative costs of running the trust and we are considering this as part of the proposal to Ministers. OTS acknowledges that strengthening Parihaka's governance and increasing capacity is a high priority for Parihaka. We understand you will want to discuss this aspect of the proposal further with the Parihaka community.

Accountability arrangements

As we have discussed, Crown funding will be administered by Te Puni Kōkiri (TPK) and paid out in tranches, or lump sums, over a number of years as required by Parihaka for development projects. The exact timing of the tranches and the projects to be funded will need to be agreed between the Crown and the PPT. Prior to the release of the first tranche the PPT will need to implement any governance strengthening that we agree upon. For large projects, where significant expenditure is involved, we expect the PPT will prepare a business case which demonstrates the viability of the project. Once a project is underway there will need to be some reporting (as agreed between the PPT and TPK) on project progress and expenditure.

These accountability arrangements and any others we agree are needed will be set out in the deed of reconciliation.

Tax implications

As the reconciliation process is outside of the Treaty Settlement framework there may be tax implications for the Parihaka governance entity who receives the tranches of the fund, including goods and services tax (GST). You raised concerns about how the value of the \$9 million would be significantly reduced as a result.

A way of addressing this is to increase the amount of each of the tranches by 15% at the time of payment to account for GST. The Parihaka governance entity would be required to issue a tax invoice to TPK within 28 days of receiving each tranche of the fund (as required under the Goods and Services Act 1985). The Parihaka governance entity would be responsible for meeting all obligations under the Goods and Services Tax Act 1985 and Tax Administration Act 1994 in respect of the \$9 million fund. This is primarily the payment of GST to the Inland Revenue Department but also includes any applicable penalties and interest that may arise from non-compliance with the above Acts.

We recommend you seek independent tax advice on the tax proposal outlined above and provide feedback to OTS. Once we have received your feedback we will brief relevant Ministers on the agreed approach prior to the reconciliation event. The deed of reconciliation will set out the tax arrangements.

Next steps

We seek your feedback on the proposals in this letter by Wednesday 1 March 2017, in particular the proposal relating to interest. We can discuss the accountability arrangements and tax when we next meet, if necessary. Subject to your feedback on the interest proposal, we expect a decision to be made by Ministers on the proposal in early–mid March.

We thank you for raising these concerns and trust that the proposed solutions are satisfactory.

If you have any questions please contact Ian Hicks, Negotiation and Settlement Manager, at ian.hicks@justice.govt.nz or on (04) 913 2372 or Peter Kennedy, Principal Advisor, at peter.kennedy@justice.govt.nz or on (04) 4949780.

Nāku noa, nā

Nashwa Boys

Deputy Director, Negotiations