

# OIA Response to Request for information about Te Motuni Epa o Aotearoa

10 January 2019

Date: 4 October 2019

Title: OIA Response to Request for information about Te Motuni Epa o Aotearoa

Author: Ministry for Culture and Heritage

This document has been proactively released.

Some parts of this response would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Section 9(2)(a) Information has been withheld to protect the privacy of natural persons

4 October 2019

9(2)(a)



I refer to your request received on 5 July 2019, which has been considered under the Official Information Act 1982 (OIA), for records that document successive governments' attempts to return Te Motunui Epa to Aotearoa in 2005 and 2007.

Your request involves a substantial number of documents. To release the documents the Ministry would need to withhold much of the information and to carry out substantial research and consultation which would have impaired efficient administration for the Ministry. We have therefore responded to your request by summarising information we can release to you in the attached document.

The following information has been withheld from the summary document in full under one or more of the following sections of the OIA, as applicable:

- section 9(2)(a) – to protect the privacy of natural persons
- section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions
- section 9(2)(h) – to maintain legal professional privilege
- section 9(2)(j) - enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

In addition, some information has been withheld where it is not within the scope of your request.

The reasons for withholding information are not outweighed by other considerations that render it desirable, in the public interest, to make that information available.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) on the Ministry's website.

Yours sincerely



Jonathan Easthope  
Director Policy (Acting)



## Official Information Act RESPONSE: S9(2)(a) Motunui Panels – Summary of information available for release

This detailed summary provides an overview of all records held by the Ministry for Culture and Heritage (the Ministry) documenting successive attempts to repatriate Te Motunui Epa (the Panels) back to New Zealand following offers for the New Zealand Government to purchase the Panels in 2005 and 2007. Please note that all documents held in relation to these negotiations are summarised. Some documents are as in draft form and may include inaccuracies or information that was not used by the Ministry. The summary notes documents where this applies. Text in this summary paraphrases the original documents and does not include direct quotes.

The history of the Panels is referred to often throughout this summary and all documents held by the Ministry use the same historic background which is attached to this text at **Appendix 1**.

### 2005 Documents

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Please note that no documents were identified in the Ministry's records from 2005.

### 2006 Documents

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#### 1 Background paper – The Motunui Pātaka Panels and the “Ortiz” Case – 7 April 2006

In summary, the background paper was a short excerpt of the history of the Panels. The document described the Panels as a true masterpiece of Māori art. The paper outlined that the Panels were dug up from a swamp in Taranaki and exported from New Zealand illegally. In 1978 the Motunui Panels were put up for sale at Sotheby's auction house in London which prompted the Crown to issue proceedings in the English Courts in an attempt to recover the Panels. The claim to recover the Panels failed in the House of Lords on the grounds that the (then applicable) legislation did not automatically vest title to illegally exported artefacts in the Crown.

#### 2 Internal facsimile of article: Return and Restitution of Cultural Property – The Taranaki Panels – a case study in the recovery of Cultural Heritage by R. R Carter – date of facsimile – 20 October 2006

The facsimile was sent within the Ministry with a copy of an article by R. R. Carter, the original article was published in 1982 and is publicly available here: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0033.1982.tb00407.x>.

#### 3 Copy of briefing paper prepared by the Museum of New Zealand Te Papa Tongarewa in 1995 – sent to the Ministry for information to provide background context – 6 November 2006

In summary, in 2006 Te Papa Tongawera Museum of New Zealand (Te Papa) provided the Ministry with a copy of a briefing paper it prepared in 1995 to the former Minister for Cultural Affairs (this title is now the Minister for Arts, Culture and Heritage). The briefing paper provided background information to the Minister on attempts to have the Panels returned to New Zealand.

In summary, the 1995 paper described that all avenues to have the Panels returned were exhausted by 1983. Negotiations by the New Zealand Government at the time were

exhausted on the basis that George Ortiz, as the possessor, resisted negotiation attempts. The paper also noted that George Ortiz was likely aware of the Panels being illegally exported. The New Zealand Government incurred significant legal costs due to court proceedings before the House of Lords. International protocols for the return were not acceded to the New Zealand Government during this court case. The historical paper confirmed that in 1995 Te Papa officials met with representatives of George Ortiz who confirmed the Panels were for sale. George Ortiz stated at the time that he would be interested in selling the Panels to the Government if they were to recognise him as the rightful owner, which the Government declined to do. Ongoing negotiations were kept confidential to reduce the risk of George Ortiz potentially withdrawing his offer. The original briefing recommended different sources of funding be explored including:

- Purchase by a Third Party – the briefing advised that this could be seen as a neutral source of funds. Getty Museums in Los Angeles was interested in assisting and had a tradition of assisting in the care and protection of internationally significant cultural heritage. The briefing recommended iwi may regard this as the most acceptable option but that further consultation would need to take place to establish that.
- Corporate Sponsorship – corporate sponsorship would not be appropriate given the mana of the Panels and iwi being the rightful owners.
- Purchase of the Panels by the New Zealand Government – the paper recommended that due to the significance of the Panels to Te Atiawa it could form part of the Crown's the Treaty settlement negotiations with the iwi. However, this was likely to be perceived negatively as essentially it would be like returning an object to for which they had never relinquished ownership. The paper noted there would therefore be some risk if funds were set aside from the Te Atiawa Treaty settlement to pay for something that was already rightfully theirs.

The briefing concluded by recommending that if the Government wished to pursue the purchase of the Panels that Te Atiawa be consulted as the first step. Te Papa suggested that it assist the Government with the consultation and the repatriation of the Panels.

**NOTE:** The Ministry holds no further original records from earlier attempts to repatriate this taonga.

#### **4 Motunui Pātaka Panels briefing – New developments - BR2006/825 - 7 November 2006**

This briefing provided information in preparation for the then Minister for Arts, Culture and Heritage, Rt Hon Helen Clark's, visit to Europe in 2006. The briefing was the first of its kind to the Minister and it provided significant background history on the Panels. Please refer to **Appendix 1**.

The briefing advised that the Ministry had been contacted, in March 2005, by a representative from the Musée du quai Branly in Paris. The museum professional had an ongoing working relationship with George Ortiz and was familiar with the case of the Panels. The Musée du quai Branly mentioned at this time that should they encounter George Ortiz that they would register New Zealand's interest in the Panels but advised the Ministry to proceed with caution.

The Ministry informed Minister Clark that the Ministry had been contacted by a New Zealand-based businessman regarding an approach to him by an Australian art dealer. The art dealer had allegedly been approached by George Ortiz in relation to the sale of the Panels. George Ortiz was reportedly seeking USD20 million for the sale of the Panels, a

sum well beyond the reach of any New Zealand party. The Ministry advised the Minister of the cultural significance of the Panels, outlined that consulting with Te Atiawa would be a crucial first step should the decision be to proceed with negotiating to purchase the Panels and secure their return.

The briefing concluded by informing the Minister that this topic was likely to be raised with her during her trip to Europe. Should that be the case, then she was advised to proceed with caution as the next steps for the Government were not yet clear.

**Note:** The documents from 2005 referred to in this summary were not located in our search or in archives. Therefore, we are unable to supply these in response to your request.

## **5 Emails arranging Minister Clark's visit to Paris – 16 November 2006**

An email from the Ministry to a museum professional from the Musée du quai Branly. In summary, the purpose of the email chain was to confirm Minister Clark's visit to the museum during her upcoming visit to Europe. The museum professional informed the Ministry that they had met George Ortiz and advised that Ortiz had commented that the Panels were not for sale unless a sum of USD20 million was offered but the representative noted that this would need further exploration.

## **2007 Documents**

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### **6 Email George Ortiz' Australian art dealer update – 22 May 2007**

An email which confirmed that the Ministry's Chief Executive had spoken with the Australian art dealer by phone. The art dealer had confirmed he had approached some private buyers to assist the New Zealand Government with the purchase the Panels. The Ministry requested the art dealer put this in writing to the Ministry to ensure no one was misunderstood or misled.

### **7 Motunui Pātaka Panels briefing: Further developments – BR2007/3151 – June 2007 briefing included appendix: Email from George Ortiz's Australian art dealer – 24 May 2007**

This briefing paper to Minister Clark, stated that the Ministry had been contacted by the Australian art dealer on 24 May 2007 to confirm the Panels were for sale for USD8 million and that they were in storage and available for viewing by New Zealand Government representatives.

The art dealer said George Ortiz was interested in selling urgently as he needed money and suggested the Government make an expression of interest. The previous USD20 million was reportedly a guess and was no longer accurate, the new price of USD8 million was the price quoted by George Ortiz. The art dealer recommended to the Ministry that a private consortium of donors be established to purchase the Panels. The art dealer also claimed to be trying to sell to other parties globally. The briefing highlighted that a number of issues were unclear, including if the art dealer had contacted private buyers and had a selection of private buyers in mind who might have assisted the Government. The paper recommended that Te Papa take the lead on negotiations with George Ortiz/ the art dealer and the first step was to clarify all aspects of the proposal. Te Papa, having been involved in all earlier negotiations, and having the appropriate expertise and knowledge, was best placed to lead these discussions. Te Papa's collections acquisitions budget of NZD3 million was also highlighted as a possible avenue of funding. The briefing mentioned the possibility that the Panels be allocated towards a future Treaty settlement with Te Atiawa. The briefing

raised the importance for Te Atiawa to be consulted on their view, especially regarding the concept of having to purchase the Panels from George Ortiz who in Te Atiawa's view was never the rightful owner of the taonga. The briefing sought final agreement from Minister Clark to allow Te Papa to act on behalf of the Government to clarify further details with the art dealer and to consult with Te Atiawa. A further briefing followed once this was completed (refer to summary of Briefing paper BR2007/695 at summary number 29).

**8 Motunui Panels background for Te Papa – 13 June 2007 and letter to Te Papa Chief Executive – 21 June 2007**

This paper was addressed to Te Papa from the Ministry for Culture and Heritage's Chief Executive, outlining the history of the Panels from 1972 – 2007 (refer to **Appendix 1**). The paper provided a very detailed history and outlined previous efforts by the New Zealand Government to return the Panels to the New Zealand Government in 1985, 1995 and more recently. The paper outlined details in the previous briefings to the Minister (BR2006/825 and BR2007/315) and notified Te Papa that they were mandated to lead the negotiations to return the Panels.

The letter requested Te Papa's assistance to return the Panels, acknowledging them as the organisation with the appropriate expertise. The letter also advised that no decision had yet been taken about whether the Government would purchase the Panels and that the next step was to gather the full information from George Ortiz and his representatives. Minister Clark had instructed the Ministry on the importance of establishing the full picture and most importantly the view of Te Atiawa towards the purchase before proceeding with negotiations. The letter outlined the importance of keeping the iwi involved in discussions. The letter requested that Te Papa lead these communications.

**9 Email chain between the Ministry, Te Papa and George Ortiz's Australian art dealer – 5 – 6 July 2007**

A confirmation email chain following a phone conversation between the Ministry and Te Papa. In summary, it was agreed that the following steps be undertaken:

- Te Papa to contact the art dealer to confirm details of his proposal
- Te Papa to arrange a European-based conservator to view the Panels at the Ministry's cost
- The Ministry to arrange a meeting between the Associate Minister for Arts, Culture and Heritage, Hon Mahara Okeroa, and Te Atiawa representatives
- The Ministry to contact its representative from Musée du quai Branly to request the museum contact George Ortiz regarding his collection
- Te Papa to follow up with an email to the art dealer to confirm interest in the Panels but to initially arrange a conservator to assess the Panels before proceeding.

**10 Email from George Ortiz's Australian art dealer – 9 July 2007**

This email from Te Papa to the Ministry confirms that Te Papa followed up on the art dealer's original email and arranged a viewing of the Panels and to establish some further information regarding their sale. The art dealer's response confirmed that the Panels were still for sale but as it had been some time since his initial communication, he had offered the Panels for sale to other interested parties, both privately and also to other institutions including the National Gallery (NGA) in Australia. The art dealer again proposed that perhaps the Panels be purchased by a consortium of buyers and suggested the Government approach notable private collectors in New Zealand. The art dealer attached a copy of the letter he had sent to the NGA offering the Panels for sale. In his letter to the

NGA, the art dealer notes the history of the Panels. He also compared the Panels to the Pierre Verité Fang Mask which sold for USD8 million to demonstrate the expected sale price for such items.

*Note: The Ministry holds no further documents relating to this communication with other potential private and institutional buyers.*

**11 Minutes of meeting with Associate Minister for Arts, Culture and Heritage's office – 16 July 2007**

Summary of minutes of a meeting held with Associate Minister for Arts, Culture and Heritage Okeroa. Attendees included ministerial officials and Ministry representatives. The meeting discussed the approach from George Ortiz's Australian art dealer offering to sell the Panels to the New Zealand Government. Initial concerns were raised as to the art dealer's authenticity and if he had the mandate from George Ortiz to enter discussions with other parties or if he was acting alone. Associate Minister Okeroa requested that this be investigated.

At the meeting discussions took place regarding what had happened in previous government efforts to return the Panels. It was confirmed that Department of Internal Affairs and Te Papa led previous engagement in the 1980s however little record is kept from this time. Associate Minister Okeroa requested that this be followed up so the same people could continue to be involved, especially from Te Atiawa. It was agreed that the first step would be to establish the right contacts and correct hapū from Te Atiawa that were involved initially.

The next step was for Te Papa to arrange a Geneva-based conservator to assess the condition of the Panels. The Ministry agreed to pay for the conservator's assessment. Associate Minister Okeroa agreed and was recorded as saying consultation with Te Atiawa would take place when more information was clear about the condition of the Panels. It was also agreed Te Papa would attend the next meeting – the meeting was confirmed for later that same week. It was agreed to regroup with Te Papa and discuss possible funding options for the purchase.

*Note: The Ministry was unable to locate further notes or minutes from the second meeting referred to in this summary.*

**12 Action plan developed by the Ministry for Arts, Culture and Heritage – 16 July 2007**

The Ministry developed an action plan, following the meeting summarised above, with Associate Minister Okeroa. This plan forecasted that the project would be a nine-week process. The plan outlined a step-by-step process starting from receipt of the initial offer from the art dealer. This was to be followed by the conservator's assessment, then consultation with iwi and establishing a confirmed line of communication with George Ortiz. Following these steps, the outcomes would be collated to enable advice to Cabinet on whether to proceed with negotiations to purchase the Panels.

**13 Arts Culture and Heritage Fortnightly Ministerial Report week ending - 20 July 2007**

The Ministry's fortnightly update to Minister Clark confirmed that Te Papa had been following up on the proposal from George Ortiz's Australian art dealer proposal that the Panels be purchased for USD8 million. The update also highlighted the need for greater clarity on a number of issues before an offer could be made. The update confirmed that Associate Minister Okeroa had met with Te Papa and would be consulting with Te Atiawa to gain an understanding of the iwi's position on issues relating to return of the Panels.

**14 Emails between Te Papa and the Ministry for Culture and Heritage regarding engaging an external conservator – 24 July 2007**

Emails with the purpose of arranging payment for the external conservator in Switzerland. The emails agreed that the Ministry would cover the costs of the evaluation of the Panels, the agreed cost was NZD3,400, and it would be paid on receipt of the completed conservator's report.

**15 Emails between Te Papa, the Ministry for Culture and Heritage and conservator in Switzerland assessing the Panels – 28 July – 9 August 2007**

Summary of an email chain regarding the inspection of the Panels and when to expect the report update confirmed:

- the Panels were inspected by the conservator on 27 July 2007 in a Geneva Freeport warehouse
- the report was received by Te Papa on 8 August 2007 and noted that the Panels were in very good condition and confirmed the hard copy of the report was to be couriered
- that engagement with Te Atiawa would proceed

The remainder of the email chain was about arranging a suitable timeframe for consultation and engagement to take place.

**16 Condition report for the Panels – July 2007 – August 2007**

A thorough condition report of the Panels provided to the Ministry for Culture and Heritage by the conservator based in Switzerland. The condition report outlined each individual panel in great detail, including the size of each panel that make up the whole Pātaka, and any cracks or irregularities. The report goes further into detail to explain the storage location, security and environmental conditions. Overall, the condition report stated that the Panels were in good condition and that while they needed cleaning and some superficial work they were in a stable condition. The conservator also advised that the Panels would be safe to travel.

**17 Arts, Culture and Heritage Fortnightly Ministerial Report week ending 17 August 2007**

The fortnightly update to Minister Clark confirmed that the Ministry for Culture and Heritage paid for an objects conservator to assess the condition of the Panels at a Geneva Freeport warehouse. The assessment confirmed the Panels were in good condition. Associate Minister Okeroa would be meeting with Te Atiawa representatives later in August 2007 and another update would follow the meeting (refer to the summary of BR2007/695 at summary no. 29).

**18 Motunui Panels summary of facts – 17 August 2007**

This Ministry of Culture and Heritage internal paper provided a summary of the history of the Panels (see **Appendix 1**) and New Zealand Government involvement from 1972-2007. The paper discussed the various attempts made by successive Governments to return the Panels, court proceedings, and information related to the development of the Antiquities Act (1975) and Protected Objects Act (1975). The paper included background information and contact details for the key parties involved in the earlier efforts to return the Panels.

**19 Motunui Panels briefing - Preparation for meeting with Te Atiawa - BR2007/494 – 24 August 2007**

This briefing to Associate Minister Okeroa provided advice in preparation for his meeting with Te Atiawa on 29 August 2007. The purpose of the discussion was to ascertain an understanding of what Te Atiawa's position might be in relation to the return of the Panels. The Ministry was concerned that to enter negotiations and potentially purchase the Panels would indicate that George Ortiz was the natural owner of the Panels, when Te Atiawa was the rightful owner. The paper raised potential points for conversation with Te Atiawa to gauge their view towards the possibility of purchasing of the Panels including:

- would Te Atiawa support the Government purchasing the Panels?
- who should have formal ownership?
- where should the final resting place be?

The briefing paper advised Associate Minister Okeroa that once the positions of both Te Atiawa and George Ortiz were known, a further briefing would follow updating the Minister on options on how to proceed (refer to summary BR2007/695 below number 29).

**20 Minutes from Associate Minister Okeroa's meeting with Te Atiawa representatives– 29 August 2007**

The meeting minutes outlined the discussions between Associate Minister Okeroa and Te Atiawa representatives. The minutes reflected that Te Atiawa representatives supported the return of the Panels, irrespective of where ownership sat between George Ortiz and the iwi. Te Atiawa stated that the ownership could be resolved once the Panels were returned. Te Atiawa expressed its preference for the Panels to remain in the rohe, however it said that Te Papa may be able to display the Panels on short-term loan. Again this would be finalised once the return was secured. Te Atiawa nominated a representative for meetings with George Ortiz/his Australian art dealer. The Government notified the iwi that George Ortiz was seeking USD8 million and that the Government would not be able to make an offer of that scale but hoped to negotiate a lower price with George Ortiz and his representatives.

**21 Arts, Culture and Heritage Fortnightly Ministerial Report week ending 31 August 2007 – BR2007/512**

This update provided to Minister Clark confirmed that Associate Minister Okeroa had met with Te Atiawa representatives on 29 August. Te Atiawa confirmed the importance of the return of the Panels and requested that all steps possible be taken to secure their return.

**22 Emails between Te Papa and the Ministry for Culture and Heritage – 20 September 2007 – Panels' valuation**

Emails between Te Papa and the Ministry regarding an internal assessment and informal valuation of the Panels. The Ministry requested a formal market price indication for the Panels. The email provided confirmation that a paper discussing the market value of the Panels would follow and noted that this was an internal assessment by Te Papa only and it could not be used as an independent market valuation.

**23 File Note: Telephone discussion with museum professional from a university in the United Kingdom – 25 September 2007**

This Ministry file note included talking points prepared for a phone conversation with a museum professional from a university in the United Kingdom. The professional was an acquaintance of George Ortiz's and had offered assistance with negotiations to return the

Panels. The file note outlined the Government's view that the Panels had been illegally exported, subsequently having an impact on the value placed on the Panels.

The file note listed a set of questions which were posed to the museum professional. The questions were:

- how would the museum professional be able to assist?
- how best to proceed with negotiations with George Ortiz?
- were they aware of any other interested buyers?

The paper also referred to the history of the Panels, refer to **Appendix 1**.

**24 Arts, Culture and Heritage Fortnightly Ministerial Report week ending - BR2007/588 - 28 September 2007**

Fortnightly update provided to Minister Clark that confirmed a call between the Ministry and the museum professional from a university in the United Kingdom had taken place to discuss making an offer for the return of the Panels.

***Note:** The update was followed by a formal briefing which outlined the parameters of future negotiations with George Ortiz (please refer to summary of BR2007/695 at number 29 below).*

**25 Email between Te Papa and the Ministry for Culture and Heritage – valuation of Motunui Panels – 4 October 2007**

Summary of emails between the Ministry and Te Papa requesting to use Te Papa's internal assessment as a market valuation. Te Papa advised the Ministry that it could not be used as a formal market valuation unless an external valuation was also completed. Te Papa noted that one of the biggest factors to take into account was that the value was significantly less than anticipated, due to the nature of how the Panels were acquired, and their alleged illegal ownership status.

**26 File Note briefing paper re: George Ortiz and Motunui Pātaka Panels – 4 October 2007**

This file note provided background on a meeting between the Ministry for Culture and Heritage's Deputy Chief Executive (DCE) and the museum professional from the Musée du quai Branly commenting that the DCE had provided the museum with a draft version of the briefing paper [BR2007/695]. The file note also mentioned that Te Papa needed to verify the value of the Panels with an assessment from an external source, and that ministerial permission would be needed for that to proceed.

**27 Arts, Culture and Heritage Fortnightly Ministerial Report - Friday 12 October 2007**

Fortnightly update provided to Minister Clark that a briefing paper updating her on the negotiation process would soon be provided [BR2007/695].

**28 Emails between Te Papa and the Ministry for Culture and Heritage re Motunui Panels' valuation assessment follow up – 12 November 2007**

The purpose of this email chain between Te Papa and the Ministry was to establish a guide to use for the valuation of the Motunui Panels. The emails provided background that it was difficult to establish a value for the Panels as they were the first purchase of this kind for the New Zealand Government. Te Papa noted some previous international

sales of Māori taonga as an indicative guide many of which sold for over double the reserve price.

In the email chain, the Ministry also noted that the Motunui Panels would be priced differently due to being constrained by the Protected Objects Act (1975) and the alleged illicit purchase of the Panels.

## **29 BR2007/695 Motunui Panels – Future Action – 13 November 2007**

This briefing provided an update to Minister Clark on progress and sought Ministerial approval to pursue negotiations, (a commitment of up to USD3 million NZD4.5 million) and agreement to the parameters for the negotiations. The paper outlined two courses of action:

- Option 1 – negotiate to purchase the Panels
- Option 2 – defer consideration of purchase and deal with the beneficiaries of George Ortiz's Estate.

The paper established parameters around the future offer and negotiations, including that any offer for the Panels should be made on the following grounds:

- that any offer was presented as a one-off 'take it or leave it' offer
- negotiations would be undertaken directly with George Ortiz rather than through his art dealer
- that if George Ortiz secured other private donors willing to part-fund the difference between the New Zealand Government's offer and a price acceptable to George Ortiz, any additional funding would be discounted from the Government's offer. This would follow the precedent set during negotiations for purchase of the Upham medals
- that the Ministry would draft a declaration that indicated the Government was unaware of it having any interest in pursuing the repatriation of other objects held within George Ortiz's collection by legal means.

The briefing further advised Minister Clark that the Ministry had made contact and received advice from two museum professionals in Europe that held a long-standing relationship with George Ortiz. It was advised that all approaches to negotiate be made directly to George Ortiz rather than his agents. Furthermore, the Ministry believed that any offer must be made with the agreement that the New Zealand Government would not seek to negotiate the return of any other items held in George Ortiz's collection. The briefing sought Minister Clark's agreement for the Ministry to make an offer of USD3 million for the purchase of the Panels, as well as agree for the Ministry to make a Budget bid for the 2008 Budget for USD3 million.

## **30 Potential Budget bids 2007 – November 2007**

Summary of an internal document which outlined a future budget bid for 2008/2009 Financial Year for the purchase of the Panels. Advice provided in the document recommended that despite the seller's requested sale price of USD8 million the Ministry considered the value may be a lot less due to the illicit circumstance of their collection by George Ortiz. The paper recommended an offer of USD3 million to be made for the Panels (approx. NZD4.5 million at the time). Te Papa had indicated it may provide up to NZD2 million from its acquisitions budget, drawn from over three financial years, towards the purchase but this was to be confirmed by the Board of Te Papa at a later date.

### **31 Emails re: Motunui Budget bid documents – 10-11 December 2007**

Emails sent internally within the Ministry, which contained a link to the final Motunui Panels' Budget bid documents. In summary, the documents attached to the email outlined that USD3 million was sought as a tagged contingency in the 2008/2009 Financial Year to enable the Ministry to enter negotiations and offer to purchase the Panels.

Funding would have allowed the Ministry to enter negotiations with George Ortiz and eventually purchase the Panels. Following Budget approval, the purchase would have seen the Panels returned to the rightful owners, Te Atiawa. The Budget bid outlined that George Ortiz's representatives have made a purchase price offer to the Government of USD8.0 million. However, the Ministry recommended the market value was likely to be in the vicinity of USD5-8 million. Taking into account the disputed acquisition of the Panels the value was believed to be reduced to around USD3-5 million. The offer by the Government was proposed to be significantly lower so as to not endorse the purchase of illegal items. The Budget request also outlined that there were no alternative funding arrangements. However, Te Papa indicated it would potentially allocate NZD2 million (USD1.5 million) from its acquisitions budget over three financial years.

## **2008 Documents**

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### **32 Budget 2008 – Comments on initial recommendations from The Treasury - BR2008/52 – 15 February 2008**

This briefing provided background to Minister Clark on the Ministry's response to The Treasury's Budget recommendations. The briefing highlighted concern regarding the Budget bid for the Motunui Panels, particularly that if the Government did not take an opportunity to purchase the Panels in 2008, it could become harder to negotiate their return in the future.

### **33 Emails re: Motunui Panels and Te Papa's contribution – 26 March 2008**

This email chain was distributed internally within the Ministry. The emails confirmed feedback had been received from Minister Clark. Minister Clark indicated that the Ministry should receive confirmation from Te Papa that it could provide NZD2 million of funding before proceeding with the Budget bid application.

### **34 Budget 2008 – Final recommendations – 11 April 2008**

This briefing paper provided an update to Minister Clark on the status of potential Budget bids across the Ministry. The briefing informed the Minister that while no money was allocated in this Budget for the Panels, there were ongoing conversations taking place and the funding allocation could be part of Vote Treaty Negotiations, the Office of Treaty Settlement's Budget.

### **35 Letter to the Chief Executive of Te Papa – 15 April 2008**

Letter from the Ministry to Te Papa which reconfirmed the New Zealand Government's offer to purchase the Panels. The letter indicated that while George Ortiz was seeking USD8 million, the Ministry was willing to make an offer that was considerably less. The paper requested that Te Papa seek approval from its Board to contribute NZD2 million from Te Papa's Acquisitions Budget over a number of years to be allocated towards the purchase of the Panels.

### **36 Emails – Motunui Panels valuation assessments – 9 May 2008**

This paper provided a full valuation report of the Panels prepared by Te Papa. The valuation was based on Te Papa's knowledge and experience working with Māori carvings and taonga. This was to be used as an internal assessment only, particularly because the Panels valuation process was very subjective due to a number of market factors, including the illegal acquisition of the Panels.

The paper further noted that Te Papa was cautious about becoming involved and noted that often when a museum becomes involved with a negotiation to purchase an item it can inflate the price on the market. The paper discussed previous historic valuations (refer to **Appendix 1**) in previous attempts to purchase the Panels. The assessment noted that the Sotheby's London valuation of the Panels in 1978 was GBP £500,000 which at a rate of inflation would have been GBP £2,208,500 in 2007. However, this did not take into account the market prices for Māori taonga over the last 20 years.

Te Papa's final valuation was reached by a detailed comparative analysis with similar Māori taonga, including its insurance valuations and processes at auction over the last 15 years. Te Papa's final view was that in the open market the Panels would hold a sale price of anywhere between USD5 million-USD8 million. However, most buyers would be aware of the illegal history of the Panels which, in Te Papa's view, could prevent a sale on the open market.

***Note:** The valuation assessment also contains a copy of the 1995 briefing summarised at item number 3 of this document.*

### **37 Emails communication with the Office of Treaty Settlements – 17 June 2008**

This email chain confirmed discussions between the Ministry and the Office of Treaty Settlements (OTS).

### **38 Arts, Culture and Heritage Fortnightly Ministerial Report – 4 July 2008**

Update provided to Minister Clark that the Ministry was seeking Cabinet approval for NZD2 million in funding to make an offer to George Ortiz for the purchase of the Panels. Te Papa had agreed in principle to offer an additional NZD2 million. The paper further discussed options for how the Government might fund its NZD2 million allocation towards the purchase.

### **39 Notes from action plan meeting – 6 August 2008**

These Ministry notes outlined a set of questions that needed to be discussed at a meeting with OTS, including an update on the Treaty Settlement discussions with Te Atiawa. The rest of the notes were administrative in purpose and assigned duties to staff members.

### **40 Arts, Culture and Heritage Fortnightly Ministerial Report – 15 August 2008**

Fortnightly update provided to Minister Clark which advised that a draft Cabinet paper was being prepared to seek approval for negotiations to begin with George Ortiz to purchase the Panels. The update also confirmed that Te Papa's Board had agreed to allocate NZD2 million towards the purchase.

### **41 Email from the Ministry for Arts, Culture and Heritage to The Treasury and the Department of Prime Minister and Cabinet re: Motunui Panels Cabinet paper – 25 August 2008**

Follow-up email from the Ministry to The Treasury and Department of Prime Minister and Cabinet (DPMC) officials which informed them that a draft Cabinet paper was to be circulated on 26 August 2008, seeking approval to:

- make an in-principle offer of USD3 million for the purchase of the Panels
- authorise the Minister for Arts, Culture and Heritage and the Minister for Treaty of Waitangi Negotiations and the Minister of Finance the power to act to finalise financial decisions on the fiscal impacts of the paper
- make payment of up to USD3 million (NZD4.5 million) to purchase the Panels.

**42 Email – Motunui Panels Cabinet paper feedback – OTS – 27 August 2008**

Acknowledgement from the Ministry for Culture and Heritage that the feedback received from OTS had been taken on board and considered in the final Cabinet paper.

**43 Arts, Culture and Heritage Fortnightly Ministerial Report – 29 August 2008**

Fortnightly update provided to Minister Clark advising that a draft Cabinet paper had been prepared by the Ministry seeking Cabinet approval to make a one-off offer to George Ortiz to purchase the Panels. The Ministry confirmed it was working with The Treasury and OTS to determine which funding mechanism would be the most suitable if the Government's offer was to be accepted by George Ortiz.

**44 Motunui Pātaka Panels Cabinet paper BR2008/524 – 29 August 2008 and attached draft Cabinet paper**

In summary, this briefing paper provided a background of the project to-date. It stated that in November 2007 the Minister approved a workplan for the Ministry to review options to purchase the Panels. The recommended outcome was to make a one-off 'take it or leave it' offer of USD3 million (NZD4.5 million) to George Ortiz for the Panels. The Ministry subsequently made a Budget bid for the funds which did not proceed. The Ministry explored alternative ways of funding the purchase. Te Papa had agreed to contribute NZD2 million over five financial years, leaving the Government to contribute the remaining NZD2.5 million. The briefing also provided further recommendations to the Minister for the project to proceed including on avenues to purchase the panels and how to enter negotiations with Ortiz.

Attached to the briefing was a draft Cabinet paper, seeking a Cabinet mandate for the Ministry to proceed with putting an offer of USD3 million (NZD4.5 million) to George Ortiz for the Panels. The paper provided historical background to provide further context for the Cabinet members. The paper advised that all avenues to purchase the Panels had been exhausted by the New Zealand Government over a long-term period from 1975-2005 and the final option was a one-off 'take it or leave it' offer of USD3million. The paper sought the mandate to make this offer.

The Cabinet paper also sought approval to establish a non-departmental capital expenditure appropriation titled the 'Purchase of the Panels,' should the offer be accepted by George Ortiz. The paper highlighted the benefits of purchasing the Panels as:

- the Panels are a taonga of national significance
- the Panels are significantly important to Te Atiawa and would build the Government's relationship with them
- ensuring that the Panels could not be sold to another buyer.

The draft paper's final recommendations were that Cabinet agree to mandate the Ministry to make a one-off offer of USD3 million and to:

- agree that, if required, a non-departmental capital expenditure appropriation be established
- agree that the scope of the appropriation be limited to the purchase of the Panels
- authorise the Minister for Arts, Culture and Heritage, the Minister for Treaty of Waitangi Negotiations and the Associate Minister of Finance to make final financial decisions
- agree that the changes to the appropriations for Financial Year 2008/2009 be included in the Financial Year 2008/2009 Supplementary Estimates
- note that the ownership, custody and display would need to be discussed at a further time, as would whether the purchase was inside or outside of the Treaty settlement process
- note that the Te Papa contribution would need to be further negotiated.

**Note:** The above text was for the DRAFT Cabinet paper, the final version that was delivered to the Cabinet Committee differed slightly. Please refer to document 50 for a summary for the final version.

**45 Email of Motunui Panels Cabinet paper – Email Update internal – 2 September 2008**

This email chain confirmed that Minister Clark had viewed and signed the Cabinet paper and provided some feedback and changes. The Paper was set to go to Cabinet the following week (refer to previous summary of BR2008/524 at number 44) once these changes were made

**46 Te Papa's financial situation briefing – 10 September 2008**

Briefing updating the Minister on Te Papa's financial situation. The briefing outlined Te Papa's operating budget in full. Te Papa advised that while it had the funds to allocate to the purchase of the Panels, it would have significant implications for other acquisitions and would impact funding available to support other strategic priorities for Te Papa.

**47 Motunui Panels Cabinet paper – Approval required to make an offer to purchase the Motunui Panels – 10 September 2008**

This Cabinet paper, to the Cabinet Policy Committee, sought approval for the Ministry to make an offer of USD3 million (NZD4.5 million) for the purchase of the Panels.

**48 Arts, Culture and Heritage Fortnightly Ministerial Report – 12 September 2008**

Fortnightly update provided to Minister Clark that confirmed that following the Cabinet Policy Committee meeting, the Ministry had approached Te Papa to seek confirmation they would provide funding for the full offer amount of NZD4.5 million, instead of the original contribution of NZD2 million. Te Papa had been given a one-week deadline to confirm they could allocate funding. The Ministry would provide the Minister's Office with a response for forwarding to the Associate Minister of Finance once received. (Refer to Summary of *Memo from Te Papa dated 12 September 2008* at summary number 49).

**49 Memo from Te Papa to the Ministry for Culture and Heritage – Motunui Panels – 12 September 2008**

This paper, addressed to the Ministry, confirmed that the Te Papa Board had agreed to supply the full offer amount of NZD4.5 million from its acquisitions fund over a period of six years.

**50 BR2008/575 Motunui Panels Cabinet paper – Budget funding – 12 September 2008**

This briefing attached a copy of the draft Cabinet paper seeking Cabinet approval for the Ministry to make an offer of USD3 million (NZD4.5 million) for the purchase of the Panels. At the 10 September meeting, the Cabinet Committee requested that before proceeding the Ministry approach Te Papa on whether its Board would agree to contribute the full purchase price of the Panels from its acquisitions budget. Following this, the Ministry wrote to Te Papa and it was agreed the Board would fund the full purchase price of USD3 million (NZD4.5million) over a six-year period. This would require the establishment of a new non-departmental Capital Expenditure budget line.

**51 Cabinet minute CAB MIN(08) 36/8) following Cabinet meeting – 15 September 2008**

On 15 September 2008, Cabinet approved the Ministry and Te Papa entering into negotiations with George Ortiz and making an offer of up to USD3 million for the purchase and return of the Panels.

**52 Memo to Te Papa - Motunui Panels mandate to make a non-negotiable offer for purchase – 19 September 2008**

This briefing provided by the Ministry to Te Papa confirmed background information on the Panels (see **Appendix 1**). The paper reconfirmed in writing that:

- on 10 September 2008, the Cabinet Policy Committee considered a paper to give approval for the Ministry to make an offer to George Ortiz for the Panels. Following this, the Cabinet Policy Committee requested the Ministry confirm if Te Papa could provide the full funding for the purchase price of the Panels before any decisions could be confirmed
- on 12 September 2008, Te Papa's Board wrote to the Ministry and confirmed it would provide the full funding.

The memo noted that the Cabinet paper had been resubmitted to Cabinet on 15 September 2008, and that Cabinet agreed to mandate the Ministry and Te Papa to make an offer of up to USD3 million (NZD4.5 million). This was on the proviso that should another high priority item become available in the next six years, then a variation to the agreement could be negotiated. The paper also agreed that Te Papa would lead discussions on consultation and ownership, custody and future display with Te Atiawa.

**53 Arts, Culture and Heritage Fortnightly Ministerial Report– BR2008/607 – 26 September 2008**

The fortnightly update provided to Minister Clark confirmed that Te Papa had agreed to contribute USD3 million (NZD4.5 million) from its acquisitions budget over six years to enable to the Government to make an offer to George Ortiz. This was approved by Cabinet on 15 September 2008. The update noted that should the exchange rate fluctuate then the Government would be required to meet the price difference. As a next step the Ministry would work with Te Papa to discuss the best way to make an offer to George Ortiz.

#### **54 Motunui Panels' workplan – 8 October 2008**

A draft workplan prepared following a meeting between the Ministry and Te Papa, to discuss next steps. The Ministry agreed that Associate Minister Okeroa would be asked to approach Te Atiawa to keep them informed of the process. The workplan timeframe was from 8 October to 3 November 2008.

Key questions discussed at the meeting to continue to move the project forward were:

- when would be the best time to make an offer?
- how should an offer be approached?
- what is the best approach?
- who should make an offer?
- what is the key state of mind of George Ortiz in regard to selling?

#### **55 Email to Musée du quai Branly – 22 October 2008**

Email between the Ministry and Musée du quai Branly which sought to set an appropriate time to talk with the museum representative over the phone. The purpose of the call was to inform the representative that the Ministry was going to proceed with negotiations and wanted to seek advice on the best way to approach George Ortiz to open them. The Musée du quai Branly representative mentioned at that time that George Ortiz was unwell and had been hospitalised but confirmed that they would follow this up.

#### **56 File note: Phone conversation with Musée du quai Branly – 23 October 2008**

The Ministry held a telephone call with the museum professional from Musée du quai Branly to discuss the best way to approach George Ortiz to negotiate the return of the Panels. The conversation discussed the possibility that George Ortiz's health had declined and proceeding with negotiations may be difficult. The museum representative mentioned that there would be no buyer for the Panels other than the New Zealand Government as so many institutions were now aware of the background to the Panels.

#### **57 Arts, Culture and Heritage Fortnightly Ministerial Report– BR2008/645 – 24 October 2008**

Fortnightly update provided to Minister Clark highlighted that Te Papa would soon make an offer to George Ortiz and advice was being sought from key contacts so that an offer could be made to George Ortiz once the correct process was established.

#### **58 File Note: Phone conversation with museum professional from a university in the United Kingdom – 24 October 2008**

File note recording a phone conversation between the Ministry and a museum professional from a university in the United Kingdom on 24 October 2008 to discuss the best way to approach George Ortiz to negotiate the return of the Panels. The museum professional mentioned that George Ortiz was unwell, and they were unsure of who was currently responsible for his collection, but they would contact the Ortiz family to request further information. The museum professional from the university advised that it could be seen favourably if Te Atiawa was to make an offer directly and perhaps that would be an option for further consideration. The agreed action was that the museum professional from the university and the Musée du quai Branly would contact George Ortiz's wife to ascertain if Ortiz's health was improving and to enquire about the collection in more general terms.

**59 Email update from Musée du quai Branly – 29 October 2008**

The museum professional from the Musée du quai Branly emailed the Ministry to advise that George Ortiz's estate had entered the joint care of an administrator and the Ortiz family. The museum professional from the Musée du quai Branly advised the Ministry that it was important that the Government at least acknowledge its interest in entering negotiations with the temporary administrators. The Ministry confirmed that it agreed this would be the best option and would be drafting a letter for the Minister's consideration for sending to George Ortiz.

**60 Motunui Pātaka Panels: Update and draft Letter – 31 October 2008**

The Ministry provided an update to the Minister to relay that George Ortiz was seriously unwell and that his collection had temporarily entered independent administration. The museum professionals from the university in the United Kingdom and the Musée du quai Branly had advised the Ministry that, due to George Ortiz's medical situation, the Government should send a letter registering their interest in the Panels. They advised a letter would be sensitive to the current circumstances while also establishing a link to George Ortiz's estate. It had been reported that the family had no interest in keeping the collection following George Ortiz's death. The final letter drafted to George Ortiz requested to view the Panels and to enter further negotiation discussions.

**61 Email from Ministry for Culture and Heritage to the Arts, Culture and Heritage Private Secretary in Associate Minister Okeroa's Office – 11 November 2008**

An email from the Ministry to the Private Secretary in Associate Minister Okeroa's Office requested that because Hon Okeroa had not been re-elected in the 2008 General Election could he update his contact at Te Atiawa about the Panels before departing. Hon Okeroa was unable to contact Te Atiawa but provided the Ministry with the appropriate contact details.

**62 File Note – Conversation with Te Atiawa representative – 21 November 2008**

The purpose of the call was to update Te Atiawa on developments on the project. The Te Atiawa representative was advised that due to George Ortiz's ill health an offer would regrettably not be made at this time. Te Atiawa were informed that the Minister had sent a letter expressing the New Zealand Government's interest in entering negotiations for the Panels' return in the future. The Te Atiawa representative expressed the view that the Government was being too sensitive, and the offer should go ahead. Te Atiawa did acknowledge the circumstance for why an offer would not be made and noted the Panels would return to the rohe when they were ready.

**63 Motunui Pātaka Panels update – BR2008/696 – 2 December 2008**

The 2008 New Zealand General Election was held on 8 November 2008 and resulted in a change in Government. Hon Chris Finlayson was appointed as the Minister for Arts, Culture and Heritage. The Ministry for Culture and Heritage provided a briefing to the incoming Minister to update him on the background of the Panels. The briefing also included more recent decisions such as the previously outlined Cabinet Minutes of 15 September 2008 which approved the Ministry and Te Papa to make an in-principle offer of USD3 million (NZD4.5 million) for the purchase of the Panels. The briefing paper outlined that George Ortiz was now unwell and not fit to participate in negotiations; and that a letter had been sent to George Ortiz's administrators registering the New Zealand Government's interest in the Panels. At the time of writing the briefing a response had yet to be received from the

administrators. The paper also informed the Minister that Te Atiawa had been kept informed during the process.

**64 Letter received 5 December 2008 from Ortiz family**

Letter received from the Ortiz family. The purpose of the letter was to inform the Ministry that Mr Ortiz was regrettably unwell, and his affairs had been put on hold. The Ortiz family gave her assurances that if the Panels were to be sold in the future then the New Zealand Government would be contacted.

## **2009 Documents**

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**65 Motunui Pātaka Panels– Update and return letter – BR2009/09 – 14 January 2009**

The Ministry provided Minister Finlayson with an update on 14 January 2009 regarding the letter received from the Ortiz family in early December. The Ministry recommended that a response letter be sent to reaffirm New Zealand's interest in the Panels but to leave the decision to the George Ortiz family to recommence negotiations at its request. The formal response letter confirmed that there had been a General Election in New Zealand in November 2008 and that there was now a new Government, but it reaffirmed that the new Government was still interested in negotiating the return of the Panels and would welcome the opportunity to enter into discussions when the time was more suitable for the family.

**66 Letter to Te Papa – January 2009**

A formal letter was sent to Te Papa's Chief Executive advising that all steps to return the Panels were on temporary hold. The Minister had indicated that due to George Ortiz's health issues all negotiations be postponed until the Ortiz family was in a position to recommence discussions. New Zealand's interest in the Panels was reconfirmed by return letter.

**END OF SUMMARY – No further records held by the Ministry documenting the return of the Motunui Panels between 2005 – 2007.**

## Appendix 1: History of Motunui Panels referred to throughout summary of documents

### Background

"In 1972 Melville Manukonga found five carved panels from the front of a pātaka in a swamp near Motunui (Taranaki). The five separate panels form the end wall of a pātaka. They were probably carved before 1820 by Atiawa, in the Waitara area, and illustrate the ariki lines of Taranaki. They were hidden in a swamp during a period of intertribal warfare. The panels depict the unity of Te Atiawa, represent their tribal mana and have a known whakapapa. There is no doubt that they are of major significance to the iwi and are considered to be of national significance. A number of scholars attest to the unique artistic and spiritual significance of the panels.

Shortly after finding them, Manukonga sold them to Lance Entwistle, a visiting artefacts dealer from London, who illegally exported them contrary to the Historic Articles Act 1962 (predecessor to the Antiquities Act 1975, now the Protected Objects Act 1975). Entwistle subsequently sold them to Bolivian/Swiss tin magnate George Ortiz, along with falsified provenance documents. Subsequently in 1978, Ortiz was forced to raise money to pay a ransom for his kidnapped daughter and put the panels up for sale. A member of the New Zealand public recognised the panels on a television news item about the sale and drew the attention of the appropriate New Zealand authorities.

The matter was taken to Cabinet and the then government agreed that Crown Counsel should be instructed to take all necessary steps to secure the return to New Zealand of the five panels. Under threat of a court order preventing the sale of the panels, they were withdrawn from sale by mutual agreement pending clarification of their ownership and the matter eventually came before the British High Court. On a preliminary matter the Court found in New Zealand's favour, but subsequent appeals to the Court of Appeal and the House of Lords reversed that decision. It has been a consistent basis of the attempts to recover the panels that Ortiz has never had actual *ownership* of them. The New Zealand case was lost on preliminary matters (status of the enforceability of the Historic Articles Act 1962 in a foreign court), and the question of Ortiz's ownership has not been tested in court.

It is worth noting that a Cabinet paper of 10 October 1985 put the direct cost to the government at approximately \$320,000. At that time the carvings were estimated to be worth approximately \$1.2 million. Discussions in 1995 with dealers indicated a price of around US\$5 million was being sought.

It should also be noted that the Ortiz case was one of the main reasons for the recent amendment of antiquities legislation by the Protected Objects Amendment Act 2006, including provisions allowing for New Zealand's accession to the 1970 UNESCO Convention and 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Our imminent accession to the 1995 UNIDROIT Convention affects this case in no way, as proceedings under both Conventions cannot be retrospective.

### Subsequent attempts to repatriate the panels

There is a long history of attempts to repatriate the panels. Immediately following the government's court proceedings, the Atiawa owners of the land where the panels had been found took an action, but this failed against provisions of the Limitations Act.

On 28 April 1983, Ortiz made an indirect approach to the Attorney-General of New Zealand with an offer to exchange the panels for "Kawe", a carving from Nukuoro Atoll in the Carolines, and internationally regarded as one of the most important Pacific artefacts in the world. The value of "Kawe" was far in excess of the panels, and the deal did not, of course, proceed. "Kawe" is currently in Auckland Museum's collection.

Another effort towards return was made in 1995, when Carrad and Fitzgerald, a New Zealand public relations firm, made an approach to the then Prime Minister with information that the panels were on the market and that Ortiz had indicated through his London agent that he was prepared to sell them to New Zealand. Te Papa staff met with Paul Carrad, and it became clear that Ortiz was only prepared to sell to New Zealand if it was acknowledged that he was the rightful owner of the panels. On this basis the offer lapsed."

**Text taken directly from BR2006/825 at document 4 in the summary.**

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