

WITHOUT PREJUDICE

NGATI PAHAUWERA

and

THE CROWN

TERMS OF NEGOTIATION
BETWEEN NGATI PAHAUWERA AND THE CROWN

8 MAY 2008

Background

1. Ngati Pahauwera are a confederation of hapu centred on Mohaka in Hawke's Bay. Ngati Pahauwera have a large number of traditional hapu and ancestors who had customary use rights and long occupation (take whenua/noho tuturu/ahi ka roa) of the area within the traditional iwi boundaries (rohe tawhito) set by Te Kahu o te Rangi prior to the Treaty Of Waitangi.
2. Ngati Pahauwera have had two well founded claims reported on by the Waitangi Tribunal. The Tribunal found in the Mohaka River Report 1992 that the Crown breached the principles of the Treaty of Waitangi in its dealings with the Mohaka River and with Ngati Pahauwera in relation to the river. It recommended that the Crown enter into discussions with Ngati Pahauwera regarding the River and a proposed Water Conservation Order, which Ngati Pahauwera opposed.
3. In the Mohaka ki Ahuriri Report 2004, the Waitangi Tribunal found that the Crown had breached the Treaty of Waitangi in its dealings with Ngati Pahauwera over the Mohaka and Waihua blocks, its failure to protect Ngati Pahauwera from Te Kooti's attack, its passage of the native land legislation and ongoing land purchasing, its failure to adequately protect the Ngati Pahauwera land base at Mohaka in the twentieth century and its failure to respond to the recommendations in the Mohaka River report. The Tribunal also found that Ngati Pahauwera are a large natural grouping for the purposes of settlement, being a group of requisite standing with sufficiently distinct claims to be deserving of separate treatment, and that the Crown should hasten to comply with the principle of redress.
4. In 1994 the Maori Land Court made an order appointing 8 people to represent Ngati Pahauwera pursuant to section 30 of Te Ture Whenua Maori Act 1993 in the prosecution and settlement of the Ngati Pahauwera Treaty claims against the Crown ("the section 30 representatives"). The Tribunal in the Mohaka ki Ahuriri Report concluded that the section 30 representatives had the mandate to negotiate a settlement of Ngati Pahauwera's Treaty claims.
5. A Water Conservation Order was issued over part of the Mohaka River in 2004, without resolution of the issues raised by Ngati Pahauwera, which were the subject of the Mohaka River Report.

6. Following unsuccessful attempts to enter into negotiations, on 12 May 2006 Ngati Pahauwera filed a remedies application with the Waitangi Tribunal for resumption of all Crown Forest and State-owned Enterprise land in the Ngati Pahauwera claim area, including Mohaka Forest and Rawhiti station. After some preliminary steps in the remedies application, the Crown in January 2008 accepted that Ngati Pahauwera is a group of requisite standing with sufficiently distinct claims to be deserving of separate treatment. The Crown also filed an application with the Maori Land Court in February 2008 seeking a review of the 1994 section 30 order.
7. In the meantime, Ngati Pahauwera had already started developing a governance entity to take over responsibility from the section 30 representatives for negotiating a settlement of Ngati Pahauwera's claims, and to receive possible assets through Tribunal-ordered remedies or a negotiated settlement. A discussion booklet on a proposed governance entity was released in September 2007, and consultation took place in November and December 2007. A wananga was held on the claimant definition for Ngati Pahauwera in April 2008 in Mohaka (and this is included in these Terms of Negotiation).
8. In parallel to the Treaty claims process, members of Ngati Pahauwera filed an application for a customary rights order under the Foreshore and Seabed Act 2004. In February 2008 Ngati Pahauwera were the first group to have their application heard by the Maori Land Court. During the hearing, the Crown acknowledged the unbroken, inalienable and enduring mana of Ngati Pahauwera in the public foreshore and seabed and that this is held and exercised by Ngati Pahauwera as a collective right.
9. On 17 March 2008, the Deputy Prime Minister wrote to Ngati Pahauwera expressing a desire to meet urgently to discuss the settlement of Ngati Pahauwera's Treaty of Waitangi and Foreshore and Seabed claims. The section 30 representatives met with the Hon Dr Cullen (as Attorney-General and Minister in Charge of Treaty of Waitangi Negotiations) and his Associate Minister, the Hon Mita Ririnui along with the Minister of Maori Affairs, Hon Parekura Horomia, in Wellington on 2 April 2008. At this meeting the Crown expressed a desire to negotiate a comprehensive settlement of the Claims. The Crown proposed the three current sets of litigation (remedies, section 30 order review and customary rights order applications) be adjourned so that the parties could focus on negotiations and move very quickly towards signing Terms of Negotiations and shortly after, an Agreement in Principle.

10. The parties have indicated a desire to agree to Terms of Negotiation to pursue these negotiations. These Terms of Negotiation were presented to Ngati Pahauwera at consultation hui throughout the motu between 27 April and 1 May 2008.

Purpose of these Terms of Negotiation

11. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and “ground rules” for formal discussions between the section 30 representatives, on behalf of Ngati Pahauwera (as defined in paragraph [15]) and the Crown (as defined in paragraph [23]) regarding the settlement of all Ngati Pahauwera Historical Claims (as defined in paragraph [21]) and Foreshore and Seabed Claims (as defined in paragraph [22]) (“the Claims”).
12. In particular, these Terms of Negotiation record the intentions of the section 30 representatives and the Crown regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice.
13. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, the section 30 representatives and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

Objectives of the negotiations

14. The section 30 representatives and the Crown agree that the objectives of the negotiations will be to:
 - 14.1 Negotiate in good faith a comprehensive, final and durable settlement of the Claims which is fair in the circumstances;
 - 14.2 Achieve a settlement that will not:
 - 14.2.1 Diminish or in any way affect any rights that Ngati Pahauwera has arising from Te Tiriti o Waitangi/the Treaty of Waitangi and its

principles, except to the extent that the claims arising from those rights are settled; or

- 14.2.2 Extinguish any aboriginal or customary rights that Ngati Pahauwera may have;
- 14.3 Achieve a settlement that recognises the nature and extent of the breaches of the Crown's obligations to Ngati Pahauwera under te Tiriti o Waitangi (the Treaty of Waitangi) and its principles;
- 14.4 Provide a platform to assist Ngati Pahauwera to redevelop their economic base;
- 14.5 Achieve a settlement that will enhance the ongoing relationship between the parties (both in terms of te Tiriti o Waitangi (the Treaty of Waitangi) and otherwise);
- 14.6 Achieve a settlement that will restore the honour of the Crown; and
- 14.7 Demonstrate and record that both parties have acted honourably and reasonably in negotiating the settlement.

Ngati Pahauwera and related terms

15. Ngati Pahauwera means:

- 15.1 Those who descend from one or more of the hapu listed in Appendix A that together form the confederation of Ngati Pahauwera, who have exercised or descend from those who have exercised customary rights within Maungaharuru ki Tangitu centred upon the Mohaka River; and
- 15.2 Every individual referred to in paragraph [15.1]; and
- 15.3 Any whanau, hapu or group of individuals to the extent that that whanau, hapu or group of individuals is composed of individuals referred to in paragraph [15.1].

16. For the purpose of paragraph [15.1] **descend** means:
 - 16.1 Direct descent by birth from members of one or more of the hapu listed in Appendix A; or
 - 16.2 Adoption by members of one or more of the hapu listed in Appendix A.
17. For the purpose of paragraph [15.1], **customary rights** means rights held according to tikanga Maori (Maori customary law, values and practices) including:
 - 17.1 Rights to occupy land;
 - 17.2 Rights relating to the use and stewardship of:
 - 17.2.1 Land; or
 - 17.2.2 Other natural and physical resources;
 - 17.3 Rights to affiliate to marae; and
 - 17.4 Rights of burial.
18. **Member of Ngati Pahauwera** means every individual referred to in paragraph [15.1].
19. **Representative entity:**
 - 19.1 Means a person (including any trustee or trustees) acting for or on behalf of:
 - 19.1.1 The collective group referred to in paragraph [15.1];
 - 19.1.2 Any one or more of the Members of Ngati Pahauwera;
 - 19.1.3 Any one or more of the whanau, hapu or group of individuals referred to in paragraph [15.3]; and
 - 19.2 Includes the section 30 representatives.
20. The detail of the definitions of Ngati Pahauwera and related terms (as defined in this Terms of Negotiation) will be developed further over the course of negotiations for inclusion in any Agreement in Principle and/or Deed of Settlement that the parties may agree.

Ngati Pahauwera Historical Claims

21. Historical Claims:

21.1 Means every claim (whether or not the claim has arisen or been considered, researched, registered or notified) that Ngati Pahauwera (or any representative entity) has that:

21.1.1 Is, or is founded on, a right arising:

- (a) From Te Tiriti o Waitangi (the Treaty of Waitangi), or its principles;
- (b) Under legislation;
- (c) At common law (including in relation to aboriginal title or customary law);
- (d) From a fiduciary duty; or
- (e) Otherwise; and

21.1.2 Arises from, or relates to, acts or omissions before 21 September 1992:

- (a) By or on behalf of the Crown; or
- (b) By or under legislation; and

21.2 Includes every claim to the Waitangi Tribunal to which paragraph [21.1] applies and that relates exclusively to Ngati Pahauwera (or a representative entity) including:

21.2.1 Wai 119 (the Mohaka river and land claim);

21.2.2 Wai 430 (the Rawhiti Station claim); and

21.2.3 Wai 731 (the Kupa whanau claim); and

21.3 Includes every other claim to the Waitangi Tribunal to which paragraph [21.1] applies so far as it relates to Ngati Pahauwera (or a representative entity); and

- 21.4 Includes such other claims to the Waitangi Tribunal made by Ngati Pahauwera as are identified in negotiations.

Ngati Pahauwera Foreshore and Seabed Claims

22. Foreshore and Seabed Claims:

- 22.1 Means every claim (whether or not the claim has arisen or been considered, researched, filed, notified or been heard) that Ngati Pahauwera (or any representative entity) has under the Foreshore and Seabed Act 2004.

Definition of the Crown

23. The Crown:

- 23.1 Means the Sovereign in right of New Zealand; and
- 23.2 Includes all Ministers of the Crown and all government departments; but
- 23.3 Does not include:
- 23.3.1 An Office of Parliament; or
 - 23.3.2 A Crown entity; or
 - 23.3.3 A State Enterprise named in the First Schedule to the State-owned Enterprises Act 1986.

Representation of Ngati Pahauwera

24. The Crown and Ngati Pahauwera agree that it is desirable that a representative governance entity be established as soon as possible for Ngati Pahauwera. The Crown and Ngati Pahauwera further agree that in the recent past, Ngati Pahauwera has demonstrated commitment to this outcome and has made progress towards the establishment of a governance entity that will hold the mandate to negotiate a final settlement of the Claims and hold the benefits of a settlement of the Claims.

25. The Crown and Ngati Pahauwera agree that for the purposes of negotiating a settlement of the Claims under these Terms of Negotiation, the three remaining active members of the section 30 representatives, Toro Waaka, Kuki Green and Tom Gemmell, have demonstrated that they currently act in a representative capacity for Ngati Pahauwera and have a mandate to enter into these negotiations.
26. The section 30 representatives and the Crown agree that the section 30 representatives will use their best endeavours to ensure an appropriate legal entity ratified by Ngati Pahauwera (in a manner to be agreed between the parties) which adequately represents Ngati Pahauwera, has transparent decision-making processes, and is accountable to Ngati Pahauwera, will be established by late August 2008 ("the Governance Entity").
27. As soon as the Governance Entity is operational, it will execute a Deed of Covenant on terms to be agreed. From the date of signing of the Deed of Covenant, the Governance Entity shall be recognised as holding the mandate for Ngati Pahauwera, and all reference in these Terms to the section 30 representatives will be deemed to refer to the Governance Entity.

Representation Maintenance

28. The section 30 representatives agree to undertake regular internal consultation and communication with Ngati Pahauwera throughout the negotiations process by providing regular updates including through hui, newsletters and updates to the Ngati Pahauwera website.
29. The section 30 representatives agree to report at three monthly intervals, or as appropriate, to the Crown on the steps taken to consult with, or inform Ngati Pahauwera of the progress of the negotiations, including any representation issues that arise.
30. The Crown agrees to advise the section 30 representatives about any correspondence it receives about the representative status of the section 30 representatives to undertake the negotiations.

Subject matter for negotiation

31. The subject matter for negotiations is the resolution of the Claims. The parties will together agree upon particular subject matters to be negotiated.
32. The negotiations will include the following categories of redress:
 - 32.1 The Crown's apology and acknowledgements;
 - 32.2 Cultural redress; and
 - 32.3 Financial and commercial redress
33. Ngati Pahauwera has sought a commitment from the Crown that the settlement of the Claims will include the transfer to Ngati Pahauwera of:
 - 33.1 Title to the Mohaka licensed Crown forest;
 - 33.2 Title to Rawhiti Station; and
 - 33.3 Title to the Crown-owned portions of the Mōhaka, Waihua and Waikari riverbeds (within the rohe of Ngati Pahauwera.)
34. The Crown agrees that this is a priority subject for negotiations. The Crown will use its best endeavours to find mechanisms to deliver the specific redress sought by Ngati Pahauwera in paragraph [33] above within the context of the Crown's settlement policies. In addition, the Crown is committed to offering other redress to settle the claims of Ngati Pahauwera, including offering to recognise and protect at law specified customary uses, activities and practices in the public foreshore and seabed.

Negotiations Schedule

35. The parties agree to:
- 35.1 Commence substantive negotiations as soon as reasonably practicable; and
 - 35.2 Endeavour to be ready to sign an Agreement in Principle by 7 September 2008; and
 - 35.3 Endeavour to agree, within twelve months of the commencement of negotiations, a draft Deed of Settlement between the Crown and Ngati Pahauwera; and
 - 35.4 Meet regularly and often until a settlement is given effect.

Negotiations milestones

36. The section 30 representatives and the Crown agree that the general process of negotiations will include, but not necessarily be limited to:
- 36.1 **Agreement in Principle** - The Agreement in Principle outlines the scope and nature in principle of the settlement of the Claims, which will be recorded in the Deed of Settlement.
 - 36.2 **Draft Deed of Settlement** - Ngati Pahauwera and the Crown negotiators finalise the Deed of Settlement, which will set out the terms and conditions of settlement of the Claims.
 - 36.3 **Ratification** - The finalised Deed of Settlement will be presented to Ngati Pahauwera for ratification.
 - 36.4 **Deed of Settlement signed if ratified** - If Ngati Pahauwera ratifies the Deed of Settlement (in a manner to be agreed), the Deed of Settlement will be signed on behalf of Ngati Pahauwera, and by a representative of the Crown.
 - 36.5 **Settlement legislation** - The settlement of the Claims is effective once the required settlement legislation receives the Royal Assent.

What the settlement of the Claims will enable

37. Ngati Pahauwera and the Crown agree that the settlement of the Claims will enable:
- 37.1 Final settlement of the Claims and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
 - 37.2 Discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of Ngati Pahauwera;
 - 37.3 Removal of rights of Ngati Pahauwera in respect to any resumptive memorials on the titles of land within the Ngati Pahauwera claim area, subject to the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection relating to the Claims to be removed;
 - 37.4 Removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Claims, the Deed of Settlement, the redress provided or settlement legislation (but not for the removal of such jurisdiction in respect of the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation); and
 - 37.5 Discontinuance of legal proceedings relating to the Claims.

Communication

38. The section 30 representatives and the Crown will each ensure regular and appropriate consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed, but also the need for confidentiality regarding third parties.
39. The Crown will advise the section 30 representatives of all documentation received by the Crown that affects Ngati Pahauwera, and forward on to them documentation subject only to the need for confidentiality regarding third parties.

Overlapping claims

40. The section 30 representatives and the Crown agree that overlapping claims issues over all redress will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. This includes the redress identified at paragraph [33] above. The parties also agree that certain items of redress provided to Ngati Pahauwera as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
41. The section 30 representatives will discuss Ngati Pahauwera's interests with overlapping claimants (if any) at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be addressed.
42. The Crown may assist Ngati Pahauwera as it considers appropriate and will carry out its own consultation with overlapping claimants.
43. The Crown may be in Treaty settlement negotiations with overlapping claimants. Issues arising in those negotiations, including issues concerning licensed Crown forest land may be relevant to these negotiations, and vice versa. The Crown will ensure that the section 30 representatives are kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

Not bound until Deed of Settlement

44. Ngati Pahauwera and the Crown acknowledge that this document does not bind either party to reach a settlement and that any agreement reached in negotiations is confidential, without prejudice and will not be binding until embodied in a Deed of Settlement.

Claimant funding

45. The section 30 representatives and the Crown note that the Crown makes a contribution to the negotiation costs of the section 30 representatives, which is paid in instalments for the achievement of specified milestones in the negotiation process.

46. Before an instalment of negotiation funding is approved, the section 30 representatives will provide the Crown with a tax invoice for this purpose along with its certified advice demonstrating how the previous instalment of negotiation funding was applied to negotiation expenses.
47. The section 30 representatives will adhere to the Crown's claimant funding policy guidelines. In particular, the section 30 representatives will provide the Crown with independently audited accounts annually for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiation.

Waiver of other avenues of redress

48. Ngati Pahauwera and the Crown agree that during these negotiations neither party will pursue or initiate, before any court or tribunal, any proceedings for recognition or redress covering all or part of the same subject matter as these negotiations.
49. With regards to present applications, the following steps are to be taken:
 - 49.1 Remedies application to Waitangi Tribunal to be adjourned sine die pending the outcome of negotiations;
 - 49.2 Application to Maori Land Court for review of section 30 order to be adjourned sine die pending the establishment of the Ngati Pahauwera governance entity, at which time the section 30 representatives will apply for a discharge of the section 30 order and the Crown will withdraw this application.
 - 49.3 Applications to Maori Land Court for customary rights orders to be adjourned sine die pending the outcome of negotiations.

Procedural matters

50. Ngati Pahauwera and the Crown agree that:
 - 50.1 Negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;

- 50.2 Negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982;
- 50.3 Both parties reserve the right to withdraw from negotiations if they become untenable;
- 50.4 Media statements concerning the negotiations will only be made when mutually agreed by both parties
- 50.5 The location of meetings will be suitable and convenient to both parties.

Amendments

- 51. The section 30 representatives and the Crown acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that all amendments must be approved by both parties and recorded in writing.

SIGNED THIS DAY OF MAY 2008

For and on behalf of the Crown:



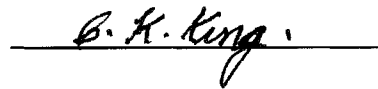
Minister in Charge of Treaty of Waitangi Negotiations
Attorney-General



Minister of Maori Affairs

For and on behalf of Ngati Pahauwera:

Authorised Signatory:



Printed Name:

Charles Kohi II King

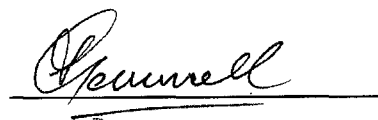
Authorised Signatory:



Printed Name:

Marea Aranui

Authorised Signatory:



Printed Name:

Tom Gemmell

Authorised Signatory:



Printed Name:

Kuki Green

Authorised Signatory:



Printed Name:

Toro Waaka

APPENDIX A

Hapu of the Ngati Pahauwera Confederation

- Ngarangiaitu
- Nga Uri-o-Mamangu
- Ngaitahuao / Ngaitahiao
- Ngaitaraparoa
- Ngai Kautata
- Ngai Taane
- Ngai Tahu
- Ngai Tapui
- Ngai Tatakū
- Ngai Tatara
- Ngai Tauhere
- Ngai Taumau
- Ngai Te Ao Kapiti
- Ngai Te Aonui
- Ngai Te Awha
- Ngai Te Huki
- Ngai Te Maaha
- Ngai Te Ngau Patea
- Ngai Te Paanga
- Ngai Te Rangi Takuao
- Ngai Te Rau
- Ngai Te Rauiri
- Ngai Te Rongo
- Ngai Te Ruatai
- Ngai Te Ruruku
- Ngati Ao Kino
- Ngati Heki
- Ngati Heouri
- Ngati Hikapi
- Ngati Hineiro
- Ngati Hine Kete
- Ngati Hinekino
- Ngati Hine Ku
- Ngati Hinemokai
- Ngati Hine Mura
- Ngati Hine Rakai
- Ngati Hine-te-Rangi /
Hine Paia
- Ngati Hine Tunge
- Ngati Honomokai
- Ngati Ira
- Ngati Irirangi
- Ngati Iriwhata
- Ngati Kahu-o-te Rangi
- Ngati Kaihaere
- Ngati Katihe
- Ngati Kapekape
- Ngati Kapua Matotoru
- Ngati Kapukapu
- Ngati Kawe
- Ngati Kotihe
- Ngati Kukura
- Ngati Kura/
Kurahikakawa
- Ngati Matengahuru
- Ngati Matewai
- Ngati Mawete
- Ngati Moe
- Ngati Mouru
- Ngati Paeahi
- Ngati Pahauwera
- Ngati Paikea
- Ngati Pari
- Ngati Paroa
- Ngati Patupaku
- Ngati Pehi
- Ngati Peke
- Ngati Poporo
- Ngati Pouanga
- Ngati Poupou
- Ngati Puraro
- Ngati Purua/ Popoia
- Ngati Rahui
- Ngati Rangi Haere Kau
- Ngati Rangitohumare/
Ngai Te Rangiohumere
- Ngati Ririwehi
- Ngati Ruakohatu
- Ngati Tahiroa
- Ngati Tahu
- Ngati Tangopu
- Ngati Taponga / Tapunga
- Ngati Tatua
- Ngati Taumau
- Ngati Tuhemata
- Ngati Wera
- Ngati Huatu