

NGĀTI TAMAOHO TRUST
and
HER MAJESTY THE QUEEN
In right of New Zealand

TERMS OF NEGOTIATION
BETWEEN NGĀTI TAMAOHO TRUST AND
THE CROWN

1 October 2010

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Ngāti Tamaoho Preamble

Ngāti Tamaoho have sought to enter into negotiations with the Crown to negotiate and settle all historical Treaty claims of Ngāti Tamaoho, including, any and all Crown historical breaches of the Treaty and principles of the Treaty which have prejudiced Ngāti Tamaoho.

The parties have agreed to engage in settlement negotiations with the Crown for the resolution of the historical claims of Ngāti Tamaoho.

These Terms of Negotiations have evolved out of objections from tangata whenua groups to the Ngāti Whatua o Orakei Agreement in Principle (AIP) entered into with the Crown in June 2006. Ngāti Tamaoho was one of the groups who objected on the basis that the AIP impacted on their interests in an unfair manner. The Crown has now implemented a strategy to facilitate individual settlement negotiations with those groups whose interests in and around Tāmaki Makaurau were affected by the Ngāti Whatua o Orakei settlement, including Ngāti Tamaoho.

On 3 June 2009, Cabinet agreed that Sir Douglas Graham present his settlement proposal (including quanta and cultural redress) to claimant groups in Tāmaki, Kaipara and Hauraki. Sir Douglas subsequently met with claimant groups, including Ngāti Tamaoho, on Wednesday 24 June 2009 at the Ellerslie Racecourse in Auckland.

Ngāti Tamaoho is a party to the Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement (“Framework Agreement”). The Framework Agreement was signed on 12 February 2010 and, if it proceeds to a signed Deed of Settlement, will make up part of the comprehensive settlement for Ngāti Tamaoho in terms of cultural redress relating to the maunga and motu. It is also part of their commercial redress package with regard to the right of first refusal.

Ngāti Tamaoho is one of the principal 33 hapū in the original 1995 Deed of Settlement of the Waikato Tainui Raupatu Claim, which our kaumatua signed on our behalf. Ngāti Tamaoho maintains a strong connection with the Kingitanga.

1.0 Parties to these Terms of Negotiation

- 1.1 The parties to these Terms of Negotiation are Ngāti Tamaoho Trust, on behalf of Ngāti Tamaoho, as defined in clause 4.0, and the Crown as defined in clause 6.0.

2.0 Purpose of the Terms of Negotiation

- 2.1 These Terms of Negotiation:

- 2.1.1 set out the scope, objectives, and general procedures for the negotiations the parties will conduct in order to settle the Historical Claim (as defined in clause 5.0) of Ngāti Tamaoho;
- 2.1.2 record the intentions of the parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice; and,
- 2.1.3 are not legally binding and do not create a legal relationship. However, the parties acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

3.0 Objectives of the Negotiations

- 3.1 The parties agree that the objectives of the negotiations will be to negotiate in good faith a settlement of the Historical Claims of Ngāti Tamaoho that:
 - 3.1.1 is comprehensive, final, durable and fair in the circumstances;
 - 3.1.2 will not:
 - (a) diminish or in any way affect any rights that Ngāti Tamaoho may have arising from Te Tiriti o Waitangi / The Treaty of Waitangi and its principles, except to the extent that claims arising from those rights are settled; or
 - (b) extinguish or limit any aboriginal or customary rights that Ngāti Tamaoho may have;
 - 3.1.3 recognises the nature, extent and injustice of breaches of the Crown's obligations to Ngāti Tamaoho under Te Tiriti o Waitangi / The Treaty of Waitangi and its principles and, where appropriate, acknowledges the effect that these breaches have had on the economic, social, cultural, environmental and political well-being of Ngāti Tamaoho and its people;
 - 3.1.4 provides a platform to assist Ngāti Tamaoho to develop their economic base. The Crown acknowledges that Ngāti Tamaoho view the settlement as a means of creating a platform for a new economic base to assist Ngāti Tamaoho and its people with their cultural, social, political, environmental and economic development;
 - 3.1.5 enhances the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi / The Treaty of Waitangi and otherwise);
 - 3.1.6 demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement;
 - 3.1.7 accurately reflects the Ngāti Tamaoho Historical Claims in the historical account; and

- 3.1.8 will restore the faith and trust of Ngāti Tamaoho in the Crown, and restore the honour of the Crown.
- 3.2 The Crown acknowledges that Ngāti Tamaoho aim to ensure that the settlement also:
- 3.2.1 recognises Ngāti Tamaoho as being a tangata whenua group of Tāmaki Makaurau;
- 3.2.2 enhances the mana and tino rangatiratanga of Ngāti Tamaoho and provides a platform for affirming the identity, mana and mana whenua of Ngāti Tamaoho;
- 3.2.3 facilitates the enhancement of the relationship between Ngāti Tamaoho and local government;
- 3.2.4 helps remove the sense of grievance and restore the relationship between Ngāti Tamaoho and the Crown based on the principles of the Treaty of Waitangi; and
- 3.2.5 does not affect any decision, proposal or report of Te Ohu Kaimoana either under the Māori Fisheries Act 2004 or in respect of the “fisheries” deed dated 23 September 1992.

4.0 Definition of Ngāti Tamaoho

- 4.1 In these Terms of Negotiation Ngāti Tamaoho:
- 4.1.1 means:
- (a) the collective group composed of individuals who descended from one or more Ngāti Tamaoho Tupuna; and
- (b) the individuals referred to in clause 4.1.1(a); and
- 4.1.2 includes any whanau, hapu, or other group to the extent that it is composed of individuals referred to in clause 4.1.1.; and
- 4.2 In these terms Ngāti Tamaoho Tupuna means an individual who:
- 4.2.1 is descended from Tamaoho; and
- 4.2.3 exercised customary rights in the Ngāti Tamaoho Area of Interest (Appendix A) at any time after 6 February 1840.
- 4.3 For the purposes of clause 4.1, a person is descended from another person if the first person is descended from the other by:
- 4.3.1 whakapapa:
- 4.3.2 birth:

- 4.3.3 Māori customary adoption in accordance with Ngāti Tamaoho tikanga.
- 4.4 Ngāti Tamaoho within the Ngāti Tamaoho Area of Interest affiliate to the following marae;
- 4.4.1 Mangatangi
- 4.4.2 Whatapaka
- 4.4.3 Ngā Hau e Whā.
- 4.5 The detail of the definition of Ngāti Tamaoho may be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

5.0 Historical Claims of Ngāti Tamaoho

5.1 Historical Claims:

5.1.1 means all claims made at any time (whether or not the claims have been considered, researched, registered or notified) by Ngāti Tamaoho or any person or group representing Ngāti Tamaoho that:

(a) are founded on a right arising:

(i) from Te Tiriti o Waitangi / The Treaty of Waitangi, or its principles;

(ii) under legislation;

(iii) at common law (including customary law and aboriginal title);

(iv) from a fiduciary duty; or,

(v) otherwise; and

(b) arise from or relate to acts or omissions before 21 September 1992:

(i) by or on behalf of the Crown; or

(ii) by or under legislation; and

5.1.2 includes every claim to the Waitangi Tribunal which clause 5.1.1 applies, including: WAI 1126 and those parts of WAI 2039 and 1992 that relate to Ngāti Tamaoho.

5.1.3 does not include:

(a) any claims relating to the foreshore and seabed which may be dealt with under the Foreshore and Seabed Act 2004 or other amending legislation, however the parties will continue

dialogue regarding such claims if the Foreshore and Seabed Act 2004 is amended, repealed or replaced;

- (b) any claim that a member of Ngāti Tamaoho or a whanau, hapu or group of Ngāti Tamaoho may have, that is founded on a right arising as a result of being descended from an ancestor to whom clause 4.1.1 does not apply.

5.2 Attached to these Terms of Negotiation as Appendix A is a map showing the Area of Interest claimed by Ngāti Tamaoho.

6.0 Definition of the Crown

6.1 The Crown:

6.1.1 means the Sovereign in right of Aotearoa New Zealand; and

6.1.2 includes all Ministers of the Crown and all government departments; but

6.1.3 does not include:

- (a) an Office of Parliament;
- (b) a Crown entity; or
- (c) a State Enterprise named in the First Schedule to the State Owned Enterprises Act 1986.

7.0 Mandate to Negotiate

7.1 The Ngāti Tamaoho Trust (the Trust) Deed of Mandate was formally submitted to the Crown in February 2010. That mandate was advertised by Te Puni Kokiri on 20 and 27 February 2010. No submissions were received in relation to the Deed of Mandate.

7.2 On 23 April 2010, a letter was received from the Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations formally recognising the mandate of the Trust. A copy of that letter is attached as Appendix B.

8.0 Mandate Maintenance

8.1 The Trust agrees to provide the Office of Treaty Settlements with a report on the state of its mandate every three months, and the Crown agrees to provide copies to the Trust of any correspondence it receives relating to the mandate of the Trust.

8.2 On request of the Trust, the Crown agrees to promptly provide it with any relevant information, reports, or other documents relating to mandate that would be disclosed if the Trust were to make a request under the Official Information Act 1982.

8.3 If representation issues arise during negotiations that cannot be resolved by agreement within Ngāti Tamaoho, the Crown will discuss with the Trust a process to address those issues.

9.0 Subject Matter for Negotiation

9.1 The parties will together agree on subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed on.

9.2 The list of subject matters to be discussed will include the following categories of redress:

9.2.1 the Crown's apology and acknowledgments;

9.2.2 cultural redress; and

9.2.3 financial and commercial redress.

9.3 Whilst the subject matters will be agreed between the parties, it is noted that there is also a Framework Agreement (refer to Preamble) in place which is the subject of a separate process.

10.0 Process of Negotiations

10.1 The parties agree that the general process of negotiations will include, but not necessarily be limited to:

Agreement in Principle

10.1.1 the signing of an Agreement in Principle which will outline the scope and nature, in principle, of the settlement redress which will be recorded in the Deed of Settlement;

Initialed Deed of Settlement

10.1.2 the initialling of a Deed of Settlement by the parties. The Deed of Settlement will set out the terms and conditions of the settlement of the Historical Claims of Ngāti Tamaoho;

Ratification

10.1.3 the presentation by the Trust of the initialed Deed of Settlement to Ngāti Tamaoho for ratification in a manner to be agreed by the parties;

Deed of Settlement Signed if Ratified

10.1.4 the signing of the Deed of Settlement on behalf of Ngāti Tamaoho by the Trust if the Deed of Settlement is ratified;

Governance Entity

10.1.5 the approval by the Crown, and the ratification by Ngāti Tamaoho, of a governance entity to represent Ngāti Tamaoho, and to receive and

manage the settlement assets, prior to settlement legislation being introduced; and

Settlement Legislation

10.1.6 the passage of settlement legislation. The settlement of the Historical Claims of Ngāti Tamaoho will be effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

11.0 Negotiations Schedule

11.1 The Trust and the Crown agree to work towards the indicative Negotiations Schedule set out below:

- (a) negotiations with the Crown have already commenced as of October 2009;
- (b) endeavour to work towards signing an Agreement in Principle by June 2011;
- (c) endeavour to agree, within twelve months of signing the Agreement in Principle, on a draft Deed of Settlement between the Trust and the Crown; and,
- (d) meet as often as necessary until a settlement is given effect.

11.2 The parties acknowledge the progress of negotiations are subject to various matters, some of which are outside the parties' control.

12.0 What the Settlement of the Historical Claims of Ngāti Tamaoho will enable

12.1 The parties agree that the settlement of the Historical Claims of Ngāti Tamaoho will enable the:

- 12.1.1 final settlement of all the Historical Claims of Ngāti Tamaoho, and the release and discharge of all the Crown's obligations and liabilities in respect of them;
- 12.1.2 discontinuance of the Office of Treaty Settlements' landbank arrangements for the protection of potential settlement properties for the benefit of Ngāti Tamaoho;
- 12.1.3 removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection for claims against the Crown to be removed for the benefit of Ngāti Tamaoho;
- 12.1.4 removal of the jurisdiction of the Courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Historical Claims of Ngāti Tamaoho, 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

12.1.5 discontinuance of proceedings before any Court or Tribunal in relation to the Historical Claims of Ngāti Tamaoho.

13.0 Communication

- 13.1 The parties will each ensure regular and appropriate internal 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.
- 13.2 These negotiations will be unique in the sense that, with regards to commercial and cultural redress, the parties agree that there is a need for significant communication and discussion with other hapu/iwi within Tāmaki Makaurau. Those discussions have already commenced amongst Ngā Mana Whenua o Tāmaki Makaurau and will continue where appropriate.
- 13.3 The parties agree that certain information will need to be disclosed by the Crown to other hapu/iwi within Tāmaki Makaurau. The parties also agree that the disclosure of any confidential information will first be approved by the Trust before such information is disclosed to any third party.
- 13.4 The Trust agrees not to unreasonably withhold information which will assist the Crown in discharging its obligations to other hapu/iwi within Tāmaki Makaurau given the unique nature of these settlement negotiations. In this regard, it is expected that the Crown will conduct its settlement negotiations with all other hapu/iwi within these areas on the same basis.
- 13.5 The Crown will advise the Trust of all information and documentation received by the Crown that affects Ngāti Tamaoho and forward on to them this information and/or documentation (subject only to the need for confidentiality regarding third parties).
- 13.6 The Crown will aim to ensure departments are aware of the nature and subject matter of the negotiations with the objective of advising the Trust of any issues that arise in the course of negotiations that may cause Ngāti Tamaoho concern. The parties will agree on a process to address such issues if these arise.

14.0 Overlapping Claims

- 14.1 The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Ngāti Tamaoho as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.

- 14.2 The Trust will discuss Ngāti Tamaoho's interests with their whanaunga throughout the settlement negotiation process and will establish a process by which they can reach agreement on how such interests can be addressed.
- 14.3 The Crown may assist the Trust as it considers appropriate and will carry out its own engagement with overlapping claimants.
- 14.4 The Trust acknowledges that the Crown is in Treaty settlement negotiations with other iwi who also claim an interest in the Ngāti Tamaoho Area of Interest. Issues arising in those negotiations, including issues concerning licensed Crown Forest land, rights of first refusal areas and the maunga within Tāmaki Makaurau, may be relevant to those negotiations, and vice versa. The Office of Treaty Settlements will ensure that the Trust is kept informed of these negotiations subject to the confidentiality of matters specific to the other negotiations.

15.0 Not Bound until Deed of Settlement

- 15.1 The parties acknowledge that this document does not bind either party to reach a settlement and that any agreement reached in negotiation discussions is confidential, without prejudice and will not be binding until given effect in a signed Deed of Settlement and in settlement legislation.

16.0 Governance Structure for Settlement Assets

- 16.1 The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will be in place that:
- 16.1.1 has been ratified by Ngāti Tamaoho (in a manner to be agreed by both parties);
 - 16.1.2 is in a form which both parties agree adequately represents Ngāti Tamaoho;
 - 16.1.3 has transparent decision making processes; and
 - 16.1.4 is accountable to, and acts for the benefit of, Ngāti Tamaoho.

17.0 Claimant Funding

- 17.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Ngāti Tamaoho. The parties acknowledge the unique nature of these negotiations and in particular the significant engagement that will be required with other iwi and third parties. The contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
- 17.2 The Trust agrees to adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, the Trust will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.

- 17.3 The Trust will also provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.
- 17.4 The parties agree to work together to ensure fairness and transparency in these funding arrangements, and agree to inform each other of issues that arise, and work together to resolve those issues if possible.
- 17.5 The Crown acknowledges that the Crown's contribution to negotiation costs will be fair and equitable in relation to funding provided to other claimant groups.
- 17.6 The details of the Crown's contribution to negotiation costs will be specified in a separate funding letter that sets out, amongst other things, the levels of funding, details of milestones, and timing of payments.

18.0 Waiver of Other Avenues of Redress

- 18.1 During these negotiations, the Trust agrees not to initiate or to pursue, before any court or tribunal, any legal proceedings relating to any of the claims that are within the scope of the negotiations.

19.0 Procedural Matters

- 19.1 The parties agree that:

19.1.1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;

19.1.2 except insofar as disclosure is required under clause 13, negotiations will be conducted in private and will remain confidential except:

- (a) where both parties agree otherwise (such as when consultation with third parties is necessary); or
- (b) when the Crown is required to release information under the Official Information Act 1982; or
- (c) where a party is required to release information as required in the course of litigation involving other parties (to avoid doubt, the negotiations will remain without prejudice as between the Parties, including for the purpose of any future litigation between the Parties.)

19.1.3 media statements concerning the negotiations will only be made when mutually agreed by both parties;

19.1.4 both parties reserve the right to withdraw from negotiations if they become untenable;

19.1.5 the parties will endeavour to ensure that the location of meetings will be suitable and convenient to both parties;


- 19.1.6 The parties recognise the importance of using Te Reo Māori in the negotiations, where appropriate. The Trust will provide the Crown with adequate notice when a translator is required in the negotiations;
- 19.1.7 consistent with the obligations of good faith negotiations, if the Office of Treaty Settlements becomes aware of changes in the legal control, or ownership of, or the granting of long term interests in, Crown-owned land within the Ngāti Tamaoho area of interest, the Office of Treaty Settlements will inform the Trust of the proposal where possible; and
- 19.1.8 early in the negotiation process both parties will discuss Ngāti Tamaoho redress interests and the Crown's policies in respect of those interests. Based on these discussions, the Office of Treaty Settlements will also provide information on relevant Crown assets potentially available for redress, including possible transfer, in a settlement.

20.0 Amendments

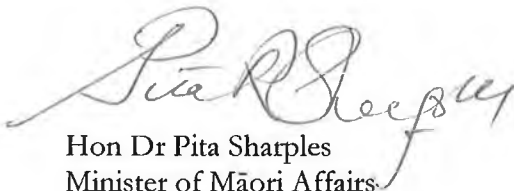
- 20.1 The parties acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that no amendment is effective until approved by both parties and recorded in writing.

SIGNED THIS DAY OF

For and on behalf of the Crown:




Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations



Hon Dr Pita Sharples
Minister of Māori Affairs

For and on behalf of Ngāti Tamaoho Trust:

Warahi Te Huinga Paki II
Trustee



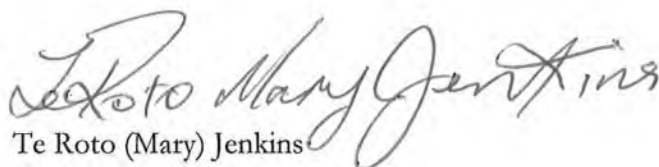
Ted Ngataki
Trustee



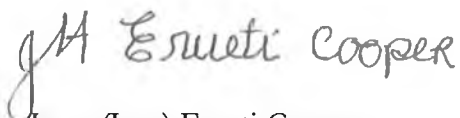
David Taka
Trustee



Te Roto (Mary) Jenkins
Trustee



Janet (Jean) Erueti-Cooper
Trustee



Kiriwaiti (Kiri) Wirihana (Wilson)
Trustee



Other representatives of Ngāti Tamaoho:

Sokoa Pohiri (Kaka) Tompey
M. Kaka
L. [Signature]

[Signature]
S. H. Tutwood

Denis [Signature] v. h. B. h.
[Signature]

James Brown.

A. [Signature]

Tama-a Taka

Roku Rae

Penny Duncan [Signature]

[Signature]

Demp Gason

[Signature]

Andrew Peckok

[Signature] BNZ.

[Signature]

Pat Smith (Te-Uroa)

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