

NGATI WHATUA O KAIPARA

and

THE CROWN

TERMS OF NEGOTIATION

BETWEEN NGATI WHATUA O KAIPARA AND THE CROWN

DATED THURSDAY 5 JUNE 2008

Terms of Negotiation between Ngati Whatua o Kaipara and the Crown

Purpose of these Terms of Negotiation

1. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and "ground rules" for formal discussions between the Ngati Whatua o Kaipara Claim Committee on behalf of Ngati Whatua o Kaipara (as defined in paragraph 5) and the Crown (as defined in paragraph 13) regarding the settlement of Ngati Whatua o Kaipara Historical Claims (as defined in paragraph 12).
2. In particular, these Terms of Negotiation record the intentions of the Ngati Whatua o Kaipara Claim Committee and the Crown regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice.
3. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, the Ngati Whatua o Kaipara Claim Committee 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

4. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that the objectives of the negotiations will be to:
 - a. negotiate in good faith a comprehensive, final and durable settlement of all Ngati Whatua o Kaipara Historical Claims (as defined in paragraph 12) which is fair in the circumstances;
 - b. achieve a settlement that will not:
 - i diminish or in any way affect any rights that Ngati Whatua o Kaipara 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
 - ii extinguish any aboriginal or customary rights that Ngati Whatua o Kaipara may have;

- c. achieve a settlement that recognises the nature and extent of the breaches of the Crown's obligations to Ngati Whatua o Kaipara under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
- d. provide a platform to assist Ngati Whatua o Kaipara to redevelop their economic base;
- e. 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);
- f. achieve a settlement that will restore the honour of the Crown; and
- g. demonstrate and record that both parties have acted honourably and reasonably in negotiating the settlement.

Definition of Ngati Whatua o Kaipara Claimant and related terms

5. Ngati Whatua o Kaipara means:

- a. those who descend from:
 - i Haumoewaarangi; or
 - ii a recognised ancestor of Ngati Whatua Tuturu, Te Taou, Ngati Rango, Ngati Rongo, Ngati Hine and Te Uri o Hau who exercised customary rights predominantly within the area of interest at any time after 6 February 1840;
- b. every individual referred to in clause 5(a); and
- c. 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 clause 5(a).

6. For the purpose of 5(a) a person is **descended from another person if the first person is descended from the other by:**

- a. birth;
- b. legal adoption; and/or
- c. Maori customary adoption in accordance with Ngati Whatua o Kaipara tikanga.

7. For the purpose of clause 5(a), **Customary Rights** means rights held according to tikanga Maori (Maori customary law, values and practices), including through:
- a. rights to occupy land;
 - i rights relating to the use and stewardship of lands or resources;
 - ii rights of burial; and/or
 - iii rights to affiliate to Ngati Whatua o Kaipara marae at Haranui, Reweti, Araparera, Kakanui and Puatahi.
8. **Area of Interest** means the area identified on the map marked **Appendix A** attached to these Terms of Negotiations.
9. **Member of Ngati Whatua o Kaipara** means every individual referred to in clause 5(a).
10. **Representative Entity** means a person (including any trustee or trustees) acting for or on behalf of:
- a. the collective group referred to in clause 5(a);
 - b. any one or more of the Members of Ngati Whatua o Kaipara;
 - c. any one or more of the whanau, hapu or group of individuals referred to in clause 5(c); and
 - d. includes the Ngati Whatua o Kaipara Claim Committee.
11. The detail of the definition of Ngati Whatua o Kaipara and related terms (as defined in this Terms of Negotiation) will be developed further over the course of the negotiations for inclusion in any Agreement in Principle and/or Deed of Settlement that may be agreed between the parties.

Ngati Whatua o Kaipara Historical Claims

12. Means every claim (whether or not the claim has arisen or been considered, researched, registered or notified) that Ngati Whatua o Kaipara (or any representative entity) has that:

- a. is founded on rights arising from Te Tiriti o Waitangi/the Treaty of Waitangi, or its principles, whether based on legislation, common law (including customary law and aboriginal title), fiduciary duty, or otherwise;
- 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
- c. includes every claim to the Waitangi Tribunal to which paragraph 12 applies, including:
 - iii Wai 312; and
 - iv such other Wai claims made by Ngati Whatua o Kaipara claimants as identified by the Ngati Whatua o Kaipara Claim Committee in the course of negotiations;

but does not include claims by descendants of Haumoewaarangi where such claims have been settled by the Te Uri o Hau Claims Settlement Act 2002.

Definition of the Crown

13. The Crown:

- a. means the Sovereign in right of New Zealand; and
- b. includes all Ministers of the Crown and all government departments; but
- c. does not include:
 - i an Office of Parliament; or
 - ii a Crown entity; or
 - iii a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

Mandate to negotiate

14. On 24 August 2002 at a hui a iwi at Haranui marae, Ngati Whatua o Kaipara approved the mandate for the Ngati Whatua o Kaipara Claim Committee to initiate negotiations with the Crown.

15. The Ngati Whatua o Kaipara Claim Committee held a hui a iwi on 10 May 2008 at Reweti marae and obtained the approval of Ngati Whatua o Kaipara for the Ngati Whatua o Kaipara Claim Committee to sign these Terms of Negotiation and commence negotiations.
16. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that by February 2009 an appropriate legal entity ratified by Ngati Whatua o Kaipara (in a manner to be agreed between the parties) which adequately represents Ngati Whatua o Kaipara, has transparent decision-making processes, and is accountable to Ngati Whatua o Kaipara, will be established ("the Governance Entity").
17. 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 Whatua o Kaipara, and all reference in these Terms to the Ngati Whatua o Kaipara Claim Committee will be deemed to refer to the Governance Entity.
18. As a result of the processes undertaken to date and the ongoing commitment to developing a governance entity, the Crown is prepared to commence negotiations with the Ngati Whatua o Kaipara Claim Committee on behalf of Ngati Whatua o Kaipara.

Representation Maintenance

19. The Ngati Whatua o Kaipara Claim Committee agree to undertake regular internal consultation and communication with Ngati Whatua o Kaipara throughout the negotiations process by providing regular updates including through hui, newsletters and the creation of a Ngati Whatua o Kaipara website.
20. The Ngati Whatua o Kaipara Claim Committee agree to report at three monthly intervals, or as appropriate, to the Crown on the steps taken to consult with, or inform Ngati Whatua o Kaipara of the progress of the negotiations, including any representation issues that arise.
21. The Crown agrees to advise the Ngati Whatua o Kaipara Claim Committee about any correspondence it receives about the representative status of the Ngati Whatua o Kaipara Claim Committee to undertake the negotiations.

Subject matter for negotiation

22. The parties will together agree upon subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.
23. The negotiations will include the following categories of redress:
 - a. the Crown's apology and acknowledgements;
 - b. cultural redress; and
 - c. financial and commercial redress including negotiation of quantum.
24. The Crown agrees, at the request of Ngati Whatua o Kaipara, that if an Agreement in Principle is reached, including agreement on financial and commercial redress, then the Crown will transfer title to the land that is subject to the Woodhill Crown Forest Licence (subject to the resolution of overlapping claims).

Negotiations milestones

25. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that the general process of negotiations will include, but not necessarily be limited to:
 - a. **Agreement in Principle** - The Agreement in Principle outlines the scope and nature in principle of the settlement of Ngati Whatua o Kaipara Historical Claims, which will be recorded in the Deed of Settlement.
 - b. **Draft Deed of Settlement** - the Ngati Whatua o Kaipara Claim Committee and Crown negotiators finalise the Deed of Settlement, which will set out the terms and conditions of settlement of the Historical Claims of Ngati Whatua o Kaipara.
 - c. **Ratification** - The finalised Deed of Settlement will be presented by the Ngati Whatua o Kaipara Claim Committee to Ngati Whatua o Kaipara for ratification.
 - d. **Deed of Settlement signed if ratified** - If Ngati Whatua o Kaipara ratifies the Deed of Settlement (in a manner to be agreed), the Deed of Settlement will be signed on behalf of Ngati Whatua o Kaipara, and by a representative of the Crown.

- e. **Settlement legislation** - The settlement of Ngati Whatua o Kaipara Historical Claims is effective once the required settlement legislation receives the Royal Assent.

Negotiations Schedule

- 26. The Ngati Whatua o Kaipara Claim Committee and the Crown agree to:
 - a. commence substantive negotiations as soon as reasonably practicable; and
 - b. endeavour to be ready to sign an Agreement in Principle by March 2009; and
 - c. endeavour to agree, within twelve months of the signing of the Agreement in Principle, a draft Deed of Settlement between the Crown and Ngati Whatua o Kaipara; and
 - d. meet regularly and often until a settlement is given effect.

What the settlement of Ngati Whatua o Kaipara Historical Claims will enable

- 27. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that the settlement of Ngati Whatua o Kaipara Historical Claims will enable:
 - a. final settlement of all the Historical Claims of Ngati Whatua o Kaipara and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
 - b. discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of Ngati Whatua o Kaipara;
 - c. removal of rights of Ngati Whatua o Kaipara in respect to any resumptive memorials from the titles of land 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 Ngati Whatua o Kaipara claims against the Crown to be removed;
 - d. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Ngati Whatua o Kaipara Historical 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

- e. discontinuance of legal proceedings or proceedings before the Waitangi Tribunal in relation to Ngati Whatua o Kaipara Historical Claims.

Communication

- 28. The Ngati Whatua o Kaipara Claim Committee and the Crown will each undertake 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.
- 29. The Crown will advise the Ngati Whatua o Kaipara Claim Committee of all documentation received by the Crown that affects Ngati Whatua o Kaipara and forward on to them documentation (subject only to the need for confidentiality regarding third parties).

Overlapping claims

- 30. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that overlapping claims issues over redress assets 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 24 above. The parties also agree that certain items of redress provided to Ngati Whatua o Kaipara as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 31. The Ngati Whatua o Kaipara Claim Committee will discuss Ngati Whatua o Kaipara interests with overlapping claimants at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interest can be addressed.
- 32. The Crown may assist the Ngati Whatua o Kaipara Claim Committee as it considers appropriate and will carry out its own consultation with overlapping claimants.
- 33. 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 Office of Treaty Settlements will ensure that the Ngati Whatua o Kaipara Claim Committee is kept

informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

Not bound until Deed of Settlement

34. The Ngati Whatua o Kaipara Claim Committee and the Crown 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 settlement legislation.

Claimant funding

35. The Crown will make a contribution to the negotiation costs of Ngati Whatua o Kaipara, which is paid in instalments for the achievement of specified milestones in the negotiation process.
36. The Ngati Whatua o Kaipara Claim Committee will adhere to the Crown's claimant funding policy guidelines. In particular, the Ngati Whatua o Kaipara Claim Committee 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

37. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that during these negotiations the Ngati Whatua o Kaipara Claim Committee will not pursue or initiate, before any court or tribunal, in relation to any of the claims that are within the scope of the negotiations, any proceedings for redress covering all or part of the same subject matter as these negotiations.
38. The South Kaipara remedies' application will be adjourned sine die on signing these Terms of Negotiation.

Procedural matters

39. The Ngati Whatua o Kaipara Claim Committee and the Crown agree that:
- a. negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;

- b. 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;
- c. both parties reserve the right to withdraw from negotiations if they become untenable;
- d. media statements concerning the negotiations will only be made when mutually agreed by both parties;
- e. the location of meetings will be suitable and convenient to both parties.

Amendments

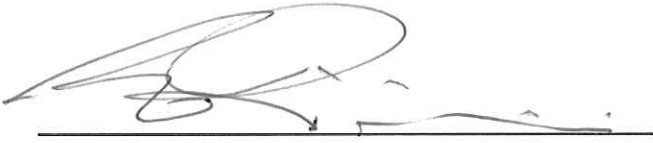
- 40. The Ngati Whatua o Kaipara Claim Committee and the Crown acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that all amendments must be approved by both parties and recorded in writing.

SIGNED THIS 5th DAY OF June 2008

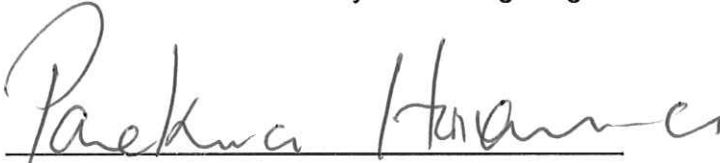
For and on behalf of the Crown:



Hon Dr Michael Cullen
Minister in Charge of Treaty of Waitangi Negotiations



Hon Mita Rinui
Associate Minister of Treaty of Waitangi Negotiations



Hon Parekura Horomia
Minister of Maori Affairs

For and on behalf of the Ngati Whatua o Kaipara Claim Committee:

Authorised Signatory:



Printed Name:

Waata Richards

Authorised Signatory:



Printed Name:

Takutaimoana Wikiriwhi

Authorised Signatory:



Printed Name:

Whero Nahi

Authorised Signatory:

Whero Nahi

Printed Name:

Gloria Timoti

Authorised Signatory:

Gloria Timoti

Printed Name:

Te Kahui-iti-Morehu

Authorised Signatory:

Te Kahui-iti-Morehu

Printed Name:

Margaret Kawharu

Authorised Signatory:

Margaret Kawharu

Written name:

Kataraina Nahi

Authorised Signatory:

Written name:

Authorised Signatory:

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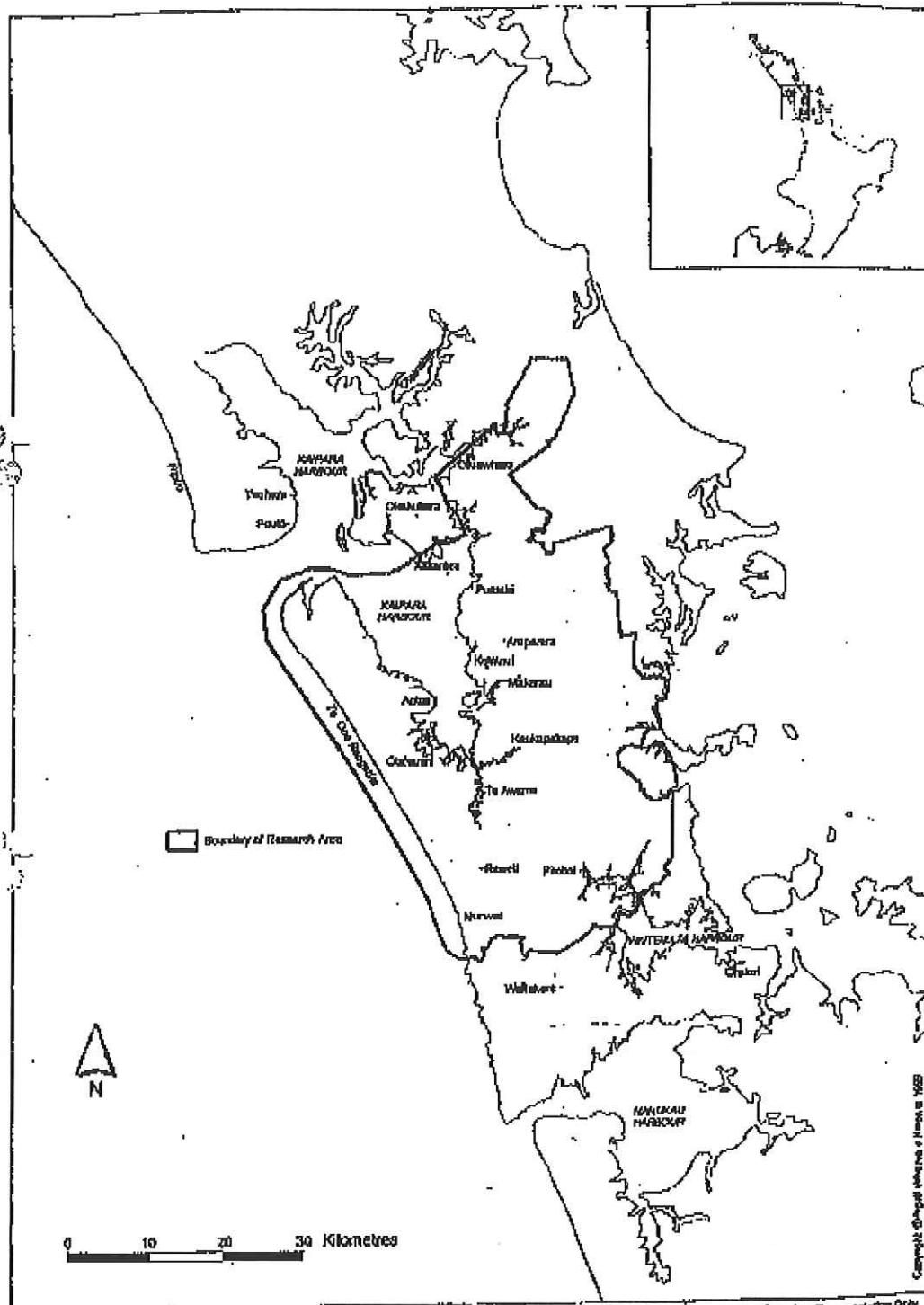
Authorised Signatory:



Written name:

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WAI 312 - RESEARCH AREA