

TE RUNANGA o NGATI WHATUA

and

THE CROWN

TERMS OF NEGOTIATION
BETWEEN TE RUNANGA o NGATI WHATUA AND THE CROWN

14 October 2008

Parties to these Terms of Negotiation

1. The Parties to this document, known as the Terms of Negotiation, are the Crown, as defined in paragraph 8, and Te Runanga o Ngati Whatua (the Runanga), on behalf of Ngati Whatua, as defined in paragraph 4.

Purpose of these Terms of Negotiation

2. These Terms of Negotiation:
 - 2.1 set out the scope, objectives, and general procedures for the formal discussions the parties will conduct in order to settle the historical claims of Ngati Whatua (as defined in paragraph 7);
 - 2.2 record the intentions of the parties regarding the negotiation process, including the intention to negotiate in good faith, confidentially and without prejudice; and
 - 2.3 are not legally binding and do not create a legal relationship. However, the parties acknowledge that each expects the other to use best endeavours to comply with the terms set out in this document during negotiations.

Objectives of the Negotiations

3. The parties agree that the objectives of the negotiations will be to negotiate in good faith a settlement of all the historical claims of Ngati Whatua (as defined in paragraph 7) that:
 - 3.1 is comprehensive, final, durable and fair in the circumstances;
 - 3.2 will not in any way:
 - 3.2.1 diminish or affect any rights that Ngati Whatua have arising from Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, except to the extent that claims arising from these rights are settled; or
 - 3.2.2 extinguish or limit any aboriginal or customary rights Ngati Whatua may have;
 - 3.3 recognises the nature and extent of the breaches of the Crown's obligations to Ngati Whatua under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and where appropriate, acknowledges the effect these breaches have had on the political, economic, social, and cultural well-being of Ngati Whatua;
 - 3.4 provides a platform to assist Ngati Whatua to redevelop their economic base. In addition, the Crown acknowledges that Ngati Whatua view the settlement as a means of enhancing their political, economic, social, and cultural, well-being;
 - 3.5 will enhance the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);

- 3.6 will restore the faith and trust of Ngati Whatua in the Crown, and restore the honour of the Crown; and
- 3.7 demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement.

Definition of Claimant Group

4. Ngati Whatua means:
 - 4.1 those who descend from Haumoewarangi and other recognised tupuna;
 - 4.2 every individual referred to in paragraph 4.1; and
 - 4.3 any whanau, hapu or group of individuals to the extent that the whanau, hapu or group of individuals is composed of individuals referred to in paragraph 4.1.
5. For the purposes of paragraph 4.1, a person is descended from another person if the first person is descended from the other by:
 - 5.1 birth;
 - 5.2 legal adoption; or
 - 5.3 Māori customary adoption in accordance with Ngati Whatua tikanga.
6. The detail of the definition of Ngati Whatua will be developed further over the course of the negotiations for inclusion in any Agreement in Principle and Deed of Settlement that may be agreed between the parties.

Ngati Whatua Historical Claims

7. Ngati Whatua Historical Claims:
 - 7.1 means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngati Whatua claimant or any person or group representing Ngati Whatua that:
 - 7.1.1 are founded on a right 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; and
 - 7.1.2 arise from or relate to any acts or omissions before 21 September 1992 by or on behalf of the Crown, or by or under legislation; and
 - 7.2 includes every claim to the Waitangi Tribunal to which paragraph 7.1 applies, including the following claims registered with the Waitangi Tribunal insofar as they relate to Ngati Whatua:
 - 7.2.1 Wai 303;
 - 7.2.2 Wai 121;
 - 7.2.3 Wai 313;
 - 7.2.4 Wai 719;

- 7.2.5 Wai 887;
- 7.2.6 Wai 1045;
- 7.2.7 Wai 1046;
- 7.2.8 Wai 188;
- 7.2.9 Wai 504;
- 7.2.10 Wai 619;
- 7.2.11 Wai 683;
- 7.2.12 Wai 688;
- 7.2.13 Wai 745;
- 7.2.14 Wai 763;
- 7.2.15 Wai 857;
- 7.2.16 Wai 861;
- 7.2.17 Wai 985;
- 7.2.18 Wai 1114;
- 7.2.19 Wai 1343; and
- 7.2.20 such other Wai claims made by Ngati Whatua claimants as identified by the Runanga in the course of negotiations;

7.3 does not include claims by descendants of Haumoewarangi and other recognised tupuna where such claims:

- 7.3.1 have been settled by the Te Uri o Hau Claims Settlement Act 2002;
- 7.3.2 are included as the historical claims to be settled by the Te Roroa, Ngati Whatua o Orakei or Ngati Whatua o Kaipara negotiations; or
- 7.3.3 are included as the historical claims to be settled by Te Kawerau a Maki

Definition of the Crown

8. The Crown:

8.1 means the Sovereign in right of New Zealand; and

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

8.3 does not include:

- 8.3.1 an Office of Parliament; or

8.3.2 a Crown entity; or

8.3.3 a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

Mandate to Negotiate

9. The Crown has approved the mandate strategy of the Runanga attached as **Appendix 1**.
10. The Runanga agrees to complete the mandating process by December 2008.
11. These Terms of Negotiation, and the commencement of negotiations, are conditional on the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognising the Deed of Mandate for the Runanga confirming that it has a mandate from Ngati Whatua to negotiate the settlement of the Historical Claims.

Mandate Maintenance

12. The Runanga 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 Runanga of any correspondence it receives relating to the mandate of the Runanga.
13. On request of the Runanga, the Crown agrees to promptly provide them with any relevant information, reports, or other documents relating to mandate that would be disclosed if the Runanga were to make a request under the Official Information Act 1982.
14. If representation issues arise during negotiations that cannot be resolved by agreement within Ngati Whatua, the Runanga and the Crown will discuss a process to address those issues. The Crown will provide assistance where both parties agree it is appropriate.

Subject Matter for Negotiation

15. 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.
16. The negotiations will include the following categories of redress:
 - 16.1 the Crown's apology and acknowledgements;
 - 16.2 cultural redress; and
 - 16.3 financial and commercial redress.

Process of Negotiations

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

- 17.1 **Agreement in Principle:** 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;
- 17.2 **Initialed Deed of Settlement:** The initialling of a Deed of Settlement by the parties. The Deed will set out the terms and conditions of the settlement of the Ngati Whatua Historical Claims;
- 17.3 **Ratification:** The presentation by the Runanga of the initialed Deed of Settlement to Ngati Whatua for ratification in a manner to be agreed by the parties. A governance entity structure approved by the Crown, will also be presented to Ngati Whatua for ratification before the settlement legislation can be introduced but this need not necessarily occur contemporaneously with ratification of the Deed of Settlement;
- 17.4 **Deed of Settlement signed if ratified:** The signing of the Deed of Settlement by the Runanga on behalf of Ngati Whatua and a Crown representative on behalf of the Crown if the Deed of Settlement is ratified;
- 17.5 **Settlement Legislation:** The required settlement legislation receiving the Royal Assent.

Negotiations Schedule

18. The Parties agree to work towards the indicative Negotiations Schedule set out below:
 - 18.1 commence substantive negotiations as soon as reasonably practicable; and
 - 18.2 endeavour to be ready to sign an Agreement in Principle within 12 months of signing Terms of Negotiation; and
 - 18.3 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; and
 - 18.4 meet regularly until a settlement is given effect.
19. The Parties acknowledge the process of negotiations is subject to various matters, some of which are outside the Parties' control.

What the Settlement of the Ngati Whatua Historical Claims will enable

20. The parties agree that the settlement of the Ngati Whatua Historical Claims will enable the:
 - 20.1 final settlement of all the Ngati Whatua Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;
 - 20.2 discontinuance of the Office of Treaty Settlements landbank arrangements for the protection of potential settlement properties for the benefit of Ngati Whatua;
 - 20.3 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 relating to Ngati Whatua's historical claims against the Crown for the benefit of Ngati Whatua to be removed;

20.4 removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Ngati Whatua 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.) To avoid doubt the settlement legislation will not remove the ability of Te Runanga o Ngati Whatua to respond to proceedings initiated by any third party which involve or affect the Ngati Whatua Historical Claims or the Deed of Settlement, or any settlement legislation; and

20.5 discontinuance of proceedings before any Court or Tribunal in relation to the Ngati Whatua Historical Claims.

Communication

21. The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep Ngati Whatua informed, but also the need for confidentiality regarding third parties.
22. The Crown will advise the Runanga of all documentation received by the Crown that affects Ngati Whatua and forward on to them documentation (subject only to the need for confidentiality regarding third parties).
23. The Crown will aim to ensure departments are aware of the nature and subject matter of the negotiations with the objective of advising the Runanga of any issues that arise in the course of negotiations that may cause Ngati Whatua concern. The parties will agree on a process to address such issues if these arise.

Overlapping Claims

24. The parties agree that overlapping claim issues 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 Ngati Whatua as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
25. The parties will at an early stage in the negotiation process discuss the nature and extent of the interests of overlapping claimant groups in Ngati Whatua's area of interest. The parties will then consider what further actions on the part of Ngati Whatua are necessary to address overlapping claim issues.
26. The Crown will carry out its own consultation with overlapping claimant groups, and will keep the Runanga informed of any issues that may arise during that consultation which may affect the Runanga or Ngati Whatua.

Overlapping Negotiations

27. Where the Crown is engaged in Treaty settlement negotiations with another claimant group whose area of interest includes part of Ngati Whatua's area of interest, the Crown will regularly update the Runanga on the progress of those negotiations, subject only to the confidentiality of matters specific to the other negotiations.
28. Where the Crown becomes aware that the mandated representative of another claimant group has expressed an interest in settlement assets, or other settlement

redress, in which the Runanga have also expressed an interest then the Crown, prior to offering the particular redress item or asset for inclusion in a settlement, will:

28.1 notify the Runanga of the shared interest; and

28.2 facilitate a discussion between the relevant mandated representatives in order to resolve, at an early stage, any potential conflicts between the claimant groups regarding the settlement assets and/or settlement redress.

Governance Structure for Settlement Assets

29. The parties agree that before settlement legislation can be introduced, an appropriate legal entity to receive the settlement redress will need to be in place that:

29.1 has been ratified by Ngati Whatua (in a manner to be agreed by both parties);

29.2 is in a form which both parties agree adequately represents Ngati Whatua;

29.3 has transparent decision-making and dispute resolution processes; and

29.4 is accountable to, and acts for the benefit of, Ngati Whatua.

Not bound until Deed of Settlement

30. 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 settlement legislation.

Claimant Funding

31. The parties agree that the Crown will make a contribution to the negotiation costs of Ngati Whatua. This contribution will be paid in instalments at specified milestones (to be agreed by the parties) in the negotiation process.

32. 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.

33. The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.

34. The Runanga agrees to adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, the Runanga will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.

35. The Runanga will provide the Crown with an annual report from an independent auditor for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.

36. 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.

Waiver of Other Avenues of Redress

37. The parties agree that during these negotiations, the Runanga 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, except as provided in paragraph 38.

Participation in Waitangi Tribunal Northland District Inquiry

38. The Runanga is a party to the Northland District Inquiry. During these negotiations the Runanga will not pursue claims against the Crown in the Northland District inquiry. The Runanga agree to participate in the inquiry only to the extent of:
- 38.1 Providing research and evidence of mana whenua, ahi kaa roa, customary interests and customary activities within the traditional Ngati Whatua rohe and extends;
 - 38.2 Responding to research prepared by CFRT, the Tribunal and/or any other party or by responding by way of cross-examination and/or submission to evidence and/or arguments advanced by other parties, including the Crown, which may:
 - 38.2.1 adversely affect the Tribunal's consideration of historical events relevant to Ngati Whatua that are a subject of the Northland Inquiry; or
 - 38.2.2 adversely affect the identification, definition, nature, or extent of Ngati Whatua's existing customary rights and interests.
 - 38.3 The parties agree that, before Ngati Whatua take any of the steps in paragraphs 38.1 and 38.2 above, the Runanga and the Crown will use their best endeavours to reach agreement regarding the nature and extent of any proposed steps or participation in the Northland District Inquiry.
39. Notwithstanding paragraphs 37 and 38 above, if the Runanga decide to initiate, pursue or participate in the Northland District Inquiry beyond what is contemplated in paragraph 38, it will provide the Crown with 10 working days notice.

Procedural Matters

40. The parties agree that:
- 40.1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;
 - 40.2 negotiations will be conducted in private and will remain confidential except:
 - 40.2.1 where both parties agree otherwise (such as when consultation with third parties is necessary); or
 - 40.2.2 when the Crown is required to release information under the Official Information Act 1982; or
 - 40.2.3 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.)

- 40.3 on request of the Runanga, the Crown will provide the Runanga with any correspondence or documentation it receives about the negotiations if that information is of a kind that would be disclosed to the Runanga if it were to make a request for it under the Official Information Act 1982;
- 40.4 both parties reserve the right to withdraw from negotiations if they become untenable;
- 40.5 both parties recognise the value of maintaining consistency in negotiating personnel;
- 40.6 media statements concerning the negotiations will only be made when mutually agreed by both parties;
- 40.7 the parties will endeavour to ensure that the location of meetings will be suitable and convenient to both parties;
- 40.8 in the event that the Crown has conceded breaches of Te Tiriti o Waitangi/the Treaty of Waitangi that relate directly to Ngati Whatua during the course of Waitangi Tribunal hearings, the Crown accepts these concessions as relevant to these negotiations; and
- 40.9 The parties recognise the importance of using Te Reo Maori in the negotiations, where appropriate. The Runanga will provide the Crown with adequate notice when a translator is required in the negotiations.

Amendments

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

SIGNED THIS 14th DAY OF October 2008

For and on behalf of the Crown:



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

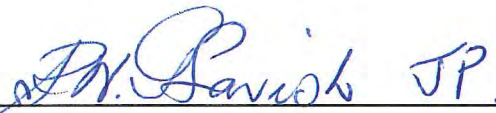


Hon Mita Rinui
Associate Minister in Charge of Treaty of Waitangi Negotiations

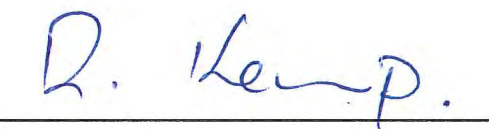


Hon Parekura Horomia
Minister of Maori Affairs

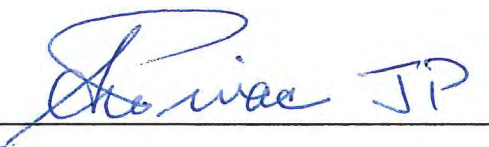
For and on behalf of Te Runanga o Ngati Whatua

Authorised Signatory:  JP

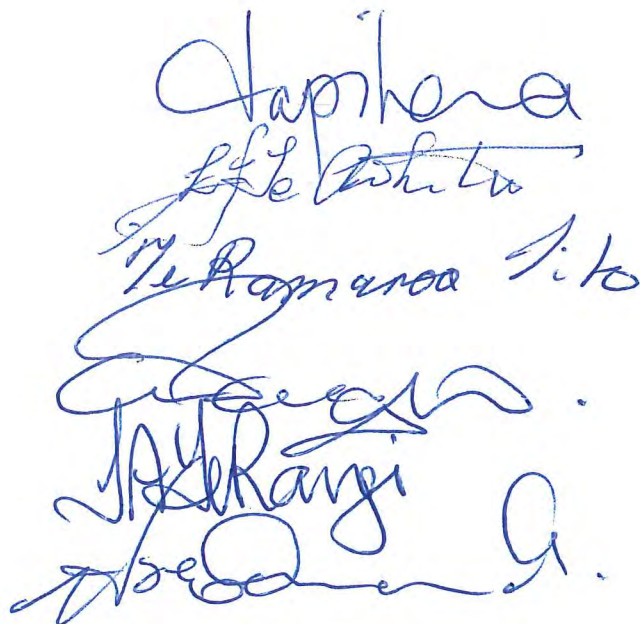
Printed Name: Rangimarie Naida Glavish J.P.
Chairperson

Authorised Signatory: 

Printed Name: Russell Rata Kemp
Trustee

Authorised Signatory:  JP

Printed Name: Allan Matthew Pivac J.P.
Secretary


Tapihana
Te Runanga o Ngati Whatua
Te Rangimarie Naida
Glavish
Chairperson

Te Runanga  Ngati Whatua

Ngati Whatua Historical Treaty Claims

Moving Towards Negotiation and Settlement

MAY 2008

NGATI WHATUA HISTORICAL TREATY CLAIMS

Moving Towards Negotiation and Settlement

Introduction

Te Runanga o Ngati Whatua was constituted by Te Runanga o Ngati Whatua Act 1988 and is a Maori Trust Board under the Maori Trust Boards Act 1955. It is the sole representative body and authorised voice to deal with issues affecting the whole of Ngati Whatua.

Since 1992, the Runanga has carried out a key role in progressing the iwi claims of Ngati Whatua through the claim, Wai 303. Over that period, the Runanga has established and maintained relationships with Ministers of the Crown and key organisations involved with the preparation, presentation and negotiation of Ngati Whatuas claims. These include the Office of Treaty Settlements (OTS), the Waitangi Tribunal and the Crown Forestry Rental Trust (CFRT).

The Runanga has managed the Wai 303 claim on behalf of all of Ngati Whatua to ensure the iwi moves forward and settles its historical claims. In addition, the Runanga is committed to providing a unified approach across Ngati Whatua hapu who have not yet been settled. The Runanga views the resolution of Ngati Whatuas claims as being for the ancestors of Ngati Whatua, those living today and future generations.

What should be done now?

To date, the division of Ngati Whatuas claims between several Tribunal inquires has been costly both in terms of resources and time and has also delayed the negotiation and settlement of those claims. The question before the iwi at this time is whether to continue to progress down the Tribunal path as part of the Northland Inquiry, or proceed directly to negotiations with the Crown.

There are two distinct processes for addressing Treaty claims:

- a The first is to have claims heard by the Waitangi Tribunal. The Tribunal then produces an independent report which contains findings and recommendations to the Crown.
- b The second option is to bypass the Tribunal process and proceed to direct negotiations. Often a claimant group might head down the Tribunal path but then shift to direct negotiations with the Crown. Alternatively, it can begin the direct negotiations process after completing the Tribunal process.

A Tribunal inquiry can often help to define the claim issues to be settled and the seriousness of the Treaty breach and prejudice. The Tribunals recommendations are however not binding on the Crown; the Crown is free to make its own determination on claims. The Tribunal process can take at least 3-4 years and will not provide redress in relation to Ngati Whatuas claims. Ngati Whatua would still need to enter into direct negotiations with the Crown at some point for the settlement of the outstanding claims. Delaying that process will reduce the parity of that settlement in relation to other settlements. In other words, the real value of the settlement will diminish.

The direct negotiations path is faster and less costly than the Tribunal path. It is sometimes referred to as a short-cut to reaching settlement. When considered against the income forgone in settlement investments, as well as the parity issue referred to above, the Runanga sees clear benefits with this option. That said, entering direct negotiations will mean that some claims will not be heard and researched as part of a Tribunal inquiry. However, direct negotiations also allow targeted research to be undertaken to assist the negotiations. The Runanga has already commenced a research programme which will investigate the issues raised in Wai 303 regarding the iwi grievances.

The Runanga is of the view that, on balance, the direct negotiations path is strongly preferable. The Runanga believes it is in the best interests of the iwi that it progress to direct negotiations to settle the remaining claims, for the betterment of Ngati Whatua.

What is a Treaty settlement?

A Treaty settlement is an agreement between the Crown and a claimant group to settle all of the claimant groups historical Treaty claims against the Crown. It is usually made up of the following:

a. **Historical Redress**

This includes the Historical Account which provides an outline of historical events that are agreed between the Crown and the claimant group, Crown Acknowledgements of Treaty breaches and the Crown Apology.

b. **Cultural Redress**

Cultural redress is the instrument used to safeguard the claimant groups rights to customary areas, where the group may wish to negotiate for the authority to manage, control or own sites, areas or customary resources on Crown-owned land with which the claimant group has traditional and cultural associations

c. **Financial and Commercial Redress**

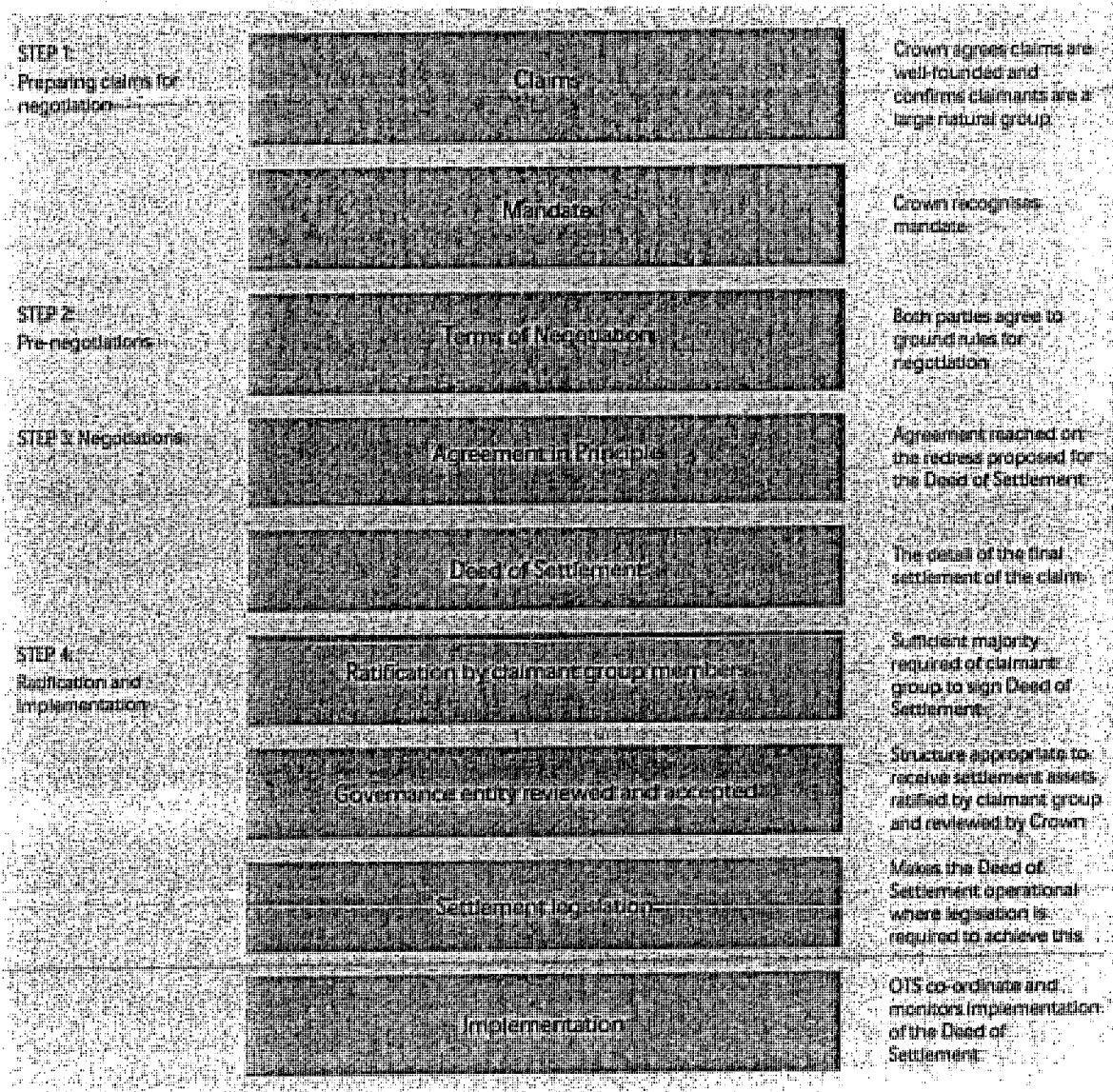
This is made up of an overall quantum or value in dollar terms agreed between the Crown and the claimant group in settlement of their historical claims against the Crown

The settlement is expressed in detail in a document known as a Deed of Settlement. Legislation is usually required to fully implement the Deed of Settlement.

As part of the settlement, the claimant group accepts that the settlement is fair and final and settles all of the historical claims of the claimant group, whether they have been lodged at the Waitangi Tribunal or not. Both the Crown and the claimant group accept that it is not possible to fully compensate the claimant group for their grievances. Redress instead focuses on providing redress in recognition of the claimant groups historical grievances, on restoring the relationship between the claimant group and the Crown, and on contributing to a claimant groups economic development.

What are the steps involved in a negotiation?

The key steps involved in a negotiation are as follows:



What is a mandate?

When a claimant group chooses representatives and gives them the authority to enter into negotiations with the Crown on their behalf, this is known as conferring a mandate. The mandate to negotiate only gives the mandated representatives the authority to negotiate a draft Deed of Settlement with the Crown. The claimant group (Ngati Whatua) will then determine whether the draft Deed of Settlement is accepted or not.

Mandating is the name given to the process by which a claimant group authorises a representative group to enter into negotiations on their behalf. In this case, the Runanga is seeking a mandate from Ngati Whatua to negotiate with the Crown on their behalf.

At the end of its mandating process, the Runanga will submit a Deed of Mandate to the Crown. The Deed of Mandate defines the claimant group, the claim area and makes it clear who has

authority to represent the claimant group in negotiations. The Deed explains how the mandated body obtained the mandate and how it proposes to be accountable to the claimant group. The Crown will need to be satisfied that the representative group is properly mandated to negotiate on behalf of the claimant group for the settlement of their historical claims. If it is satisfied, it will recognise the representatives mandate to commence settlement negotiations with the Crown.

What is the Runangas mandate proposal?

The Runanga is seeking a mandate from Ngati Whatua to enter into direct negotiations with the Crown on their behalf for the comprehensive settlement of all of the remaining historical claims of Ngati Whatua, excluding the claims associated with the South Kaipara Claims Committee. In other words, the proposal is that the Runanga would be the mandated body.

The Runanga is of the view that it is the most appropriate organisation to carry out these negotiations. The Runanga has been in existence for almost 20 years and is well known within Ngati Whatua. It has a positive track record in representing the iwi and, in our view, has the widespread confidence and support of Ngati Whatua. There are also clear efficiency gains to be made with using the Runanga given its existing infrastructure and administrative support.

What is the Runangas vision for the settlement?

The vision of the Runanga is to create a strategic and durable settlement for all of Ngati Whatua, and in doing so, ensure that the iwi achieves:

- a a comprehensive, robust and fair settlement of all outstanding historical claims of Ngati Whatua
- b a settlement within as short a time as possible but consistent with the first objective
- c a settlement which will provide for acknowledgements, apologies and redress which properly satisfy the outstanding grievances of Ngati Whatua

How does the mandate proposal relate to the South Kaipara Claims Committee?

The mandate proposal does not include the claims associated with the South Kaipara Claims Committee as these will form the subject of separate negotiations. The Minister in Charge of Treaty of Waitangi Negotiations, Hon Dr Michael Cullen, has agreed that the Crown will negotiate with the South Kaipara Claims Committee regarding the settlement of their claims. This will occur through a parallel but separate process to the negotiations that would be led by the Runanga for the settlement of the iwi claims and all other remaining claims. In other words, there will be two streams of negotiations.

Who would be covered by the mandate?

OTS requires that a representative group specify who it is negotiating on behalf of. The Runanga would be negotiating on behalf of all of Ngati Whatua in terms of the settlement of the Ngati Whatua iwi claims. The claimant group therefore includes all individuals, whanau and hapu within the iwi of Ngati Whatua who descend from the tupuna, Haumoewarangi and other recognised tupuna.

This definition is consistent with the Runanga Charter and Te Runanga o Ngati Whatua Act 1988. Therefore, all 19 hapu of Ngati Whatua are included as are all 35 marae of Ngati Whatua.

The Runanga would also be negotiating on behalf of those hapu who have unsettled claims who are not aligned with the South Kaipara Claims Committee.

What historical claims would be settled?

The mandate proposal refers to negotiating the settlement of the remaining claims. This can be separated into three groups as follows:

- a the Ngati Whatua iwi claims
- b claims of hapu which have not yet been the subject of settlement negotiations
- c claims of hapu who have been in settlement negotiations but who have unsettled claims outside their settlement area of interest.

The claims associated with the South Kaipara Claims Committee are not included.

Under the mandate proposal, the Runanga would negotiate the full and final settlement of the following claims:

WAI NO	NAME
303	Te Runanga o Ngati Whatua Claim
121	Ngati Whatua lands and fisheries (known as Manukau whanau claim)
313	Waimamaku land claim
719	Kaipara Land and Resources (Pirika Ngati Whanau) Claim
887	Ngawaka Tautari Lands
1045	Ngati Marua
1046	Ngati Whatua Tuturu

The mandate proposal also includes the negotiation of a number of partial settlements. The settlement will only be considered to be partial because there are other iwi interests involved in the particular claims. Therefore, only the Ngati Whatua interest can be, and would be, settled. Any claims arising from other descent lines will not be settled under this negotiation. The claims that fall within this group are listed below.

WAI NO	NAME
188	Opanake and other land claims
	Te Keti and Hiore Kata Lands
279	Te Uruamo whanau
504	South Whangarei District Claim
619	Ngati Kahurangi o Torongare/Te Parawhau Hapu claim
683	Weretapu Tito Te Parawhau
688	Nga Hapu o Whangarei claim
763	Kapehu Blocks and Rating claim
	Opanake Blocks et al
857	Ngati Whatua ki Maunganui
861	Taitokerau District Maori Council
985	Hokianga regional lands claim
1114	Te Taou
1343	Ngati Torehina

What historical claims would NOT be settled?

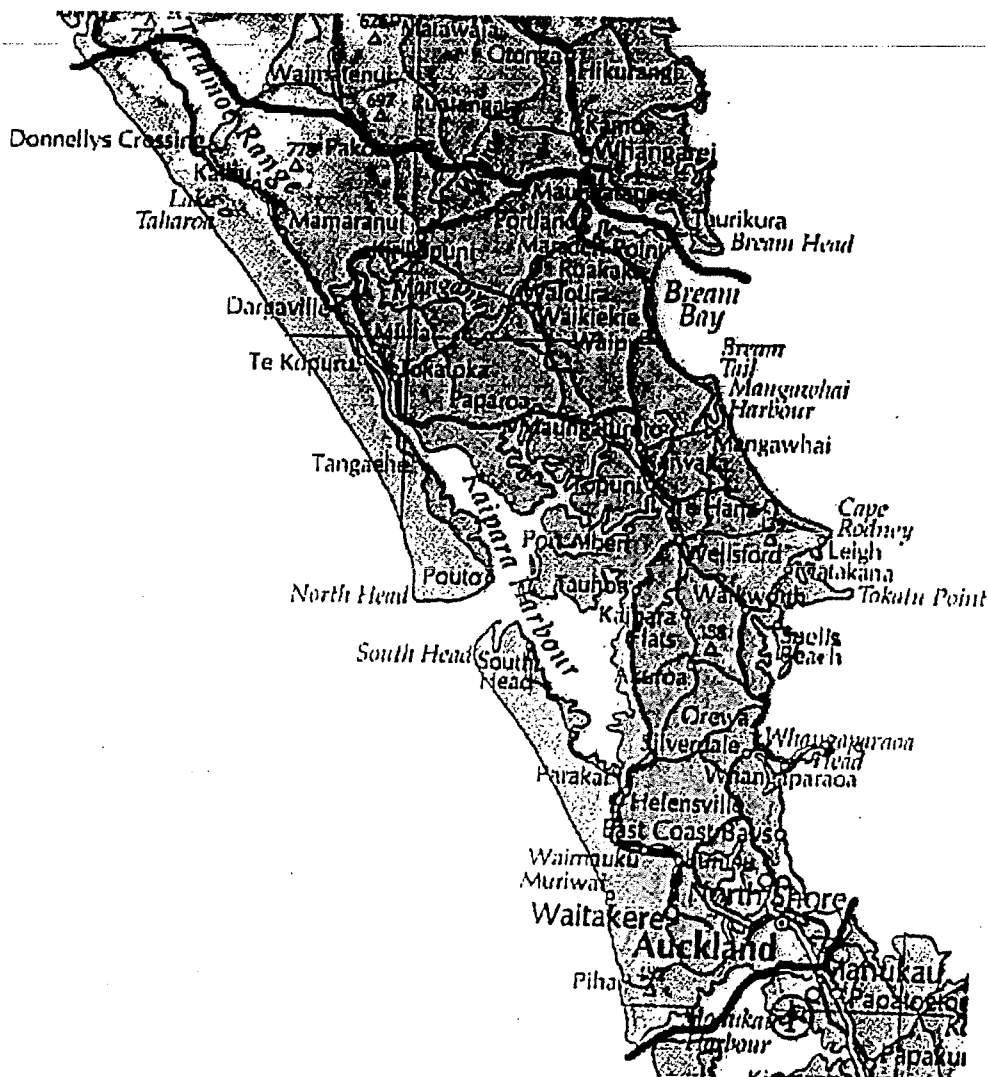
The claims associated with the South Kaipara Claims Committee do not form part of the mandate proposal and would not therefore be settled as part of these negotiations.

Further, for the avoidance of doubt, the Wai claims that have been, or are in the process of being, settled as part of the Te Roroa, Te Uri o Hau and Ngati Whatua o Orakei do not form part of the mandate proposal and will not be settled again

What area will be covered by the negotiations?

OTS has a requirement that the area to be covered by the claims be defined. This is known as the Area of Interest.

The geographical area that would be covered by the negotiations would be the traditional rohe of Ngati Whatua which is expressed as Tamaki ki Maunganui i te Tai Hauauru and Tamaki ki Manaia i te Rawhiti. The northern boundary is expressed as Manaia titiro ki Whatitiri, Whatitiri titiro ki Tutamoe, Tutamoe titiro ki Maunganui. The northern neighbours are various hapu of Ngapuhi. The southern boundary is expressed Te Awa o Tamaki. The southern neighbours are various hapu of Tainui.

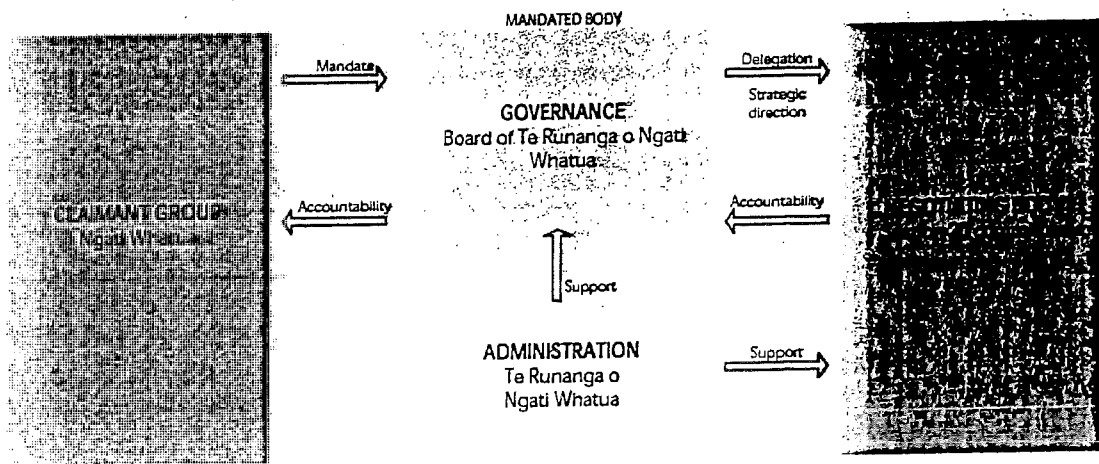


How does the Runanga propose to organise itself to undertake the negotiations?

The term negotiation structure is often used to describe how a group organises itself to undertake settlement negotiations. The Runanga has developed a negotiation structure for this purpose. The following principles have guided and informed its development:

- a Ensure measures and procedures honour and respect the tikanga of Ngati Whatua
- b Promote collaboration and co-operation across Ngati Whatua
- c Respect the autonomy and mana of individual hapu
- d Ensure effective and appropriate representation of Ngati Whatua
- e Recognise the importance of the use of traditional structures and relationships
- f Build on existing structures and processes as much as possible
- g Ensure regular reporting to beneficiaries and meaningful consideration of their views.

In terms of organisational arrangements, there will be four components within the negotiation structure: Ngati Whatua iwi, the Board, the Runanga, and the negotiating body that will be established. The diagram below illustrates the relationship between each group.



The Board of the Runanga would carry out a steering group type role, with responsibility for matters such as holding the mandate for negotiations and the accountability relationship with the iwi, overseeing the process and setting the strategic direction for the negotiations.

The administration arm of the Runanga would be responsible for overseeing the day-to-day operation of the negotiations. It would ensure the proper implementation of policies and work plans, compliance with statutory requirements and contractual obligations, and would also ensure that funds are managed appropriately.

While the Runanga would be the mandated body, for timeliness and to optimise efficiency, the Board would delegate the task of carrying out the negotiations to a negotiating body (known as a section 20 committee). The Negotiating Body would be delegated the task of negotiating a draft Deed of Settlement.

Will there be policies and processes regarding the operation of the negotiation structure?

The Runanga has developed policies and processes with regard to the operation of the negotiation structure. These can be broadly grouped into the four areas: decision-making, representation, accountability and dispute resolution.

Decision-making

Decision-making would occur at two levels: the Board level, and the Negotiating Body level. Decision-making on substantive matters (such as redress) would rest with the Board and would be informed by the views of the Negotiating Body as well as any consultation that has been carried out with the wider Ngati Whatua community. To ensure efficiency and timeliness, select powers would be delegated from the Board to the Negotiating Body to enable it to carry out its day-to-day business effectively.

Representation

The Negotiating Body would follow the Board structure model and will be composed of a representative from each of the five takiwa as well as Runanga representatives (under the Maori Trust Boards Act 1955, a section 20 committee must include at least one Board member).

The appointment, replacement and removal of takiwa representatives will be carried out by each takiwa. The process for appointment will be similar to that which is used for appointing Board representatives. It will consist of each marae reaching agreement on a nominee and putting that nomination to the vote at a takiwa hui. The highest polling candidate within each takiwa will be the takiwa representatives on the Negotiating Body. If a replacement is needed, it will be the next highest polling candidate or if the takiwa prefers, a new election can be called.

The appointment of representatives to the Negotiating Body would not occur until such time that the Deed of Mandate submitted by the Runanga is recognised by the Crown.

Accountability

Within the negotiation structure, there are two direct lines of accountability. The first line is between the Runanga and Ngati Whatua. The Runanga will have the ultimate responsibility for the negotiations, including ensuring that reporting and communication processes are adhered to. The Runanga currently has a number of existing structures and processes that it uses to report to its beneficiaries and these will be used as much as possible. These include the following:

- a *Reports (both written and verbal) at the annual hui.* The Runanga is required to hold an annual hui to report on its activities and plans for the future. This would include a report on settlement negotiations.
- b *Regular reporting to beneficiaries through the Runanga Poupuu hui.* Each marae within Ngati Whatua is represented in this forum and it is the responsibility of each marae representative to keep the people of the marae informed of all happenings at Runanga Poupuu hui and to pass on information received from the Runanga office. Their job is also to convey to the Runanga any issues of concern that their marae members might have. This mechanism would be used both to provide update reports on settlement negotiations and where necessary, seek input from the beneficiaries.

The Runanga would also use other communication methods such as newsletters and website updates so that those who are not able to attend hui can obtain updates.

The second line of accountability is between the Negotiating Body and the Runanga. The Negotiating Body will be required to provide monthly updates on progress at Board meetings and verbal updates when required throughout the course of the negotiations. These obligations will be included in the terms of reference for the Negotiating Body. Also, while the Negotiating Body will have a general responsibility and duty to the broader Ngati Whatua community, the collective group will not be directly accountable to Ngati Whatua in terms of having specific reporting obligations. The takiwa representative will have obligations to the takiwa he or she represents. Having said that, both the Negotiating Body and the Board will participate in the presentation of the draft Deed of Settlement to the members of Ngati Whatua.

Dispute resolution

In terms of the process for addressing disputes regarding mandate:

- a If a group has a concern regarding the Runangas representation of their interests in the negotiations, they would need to inform the Board in writing. The Board would then consider the matter and seek further information as required from the group to ensure it has a clear understanding of the nature of their concern;
- b Once that information has been received, the Board will then consider the matter again and determine whether or not further action is required. If it is the latter, the Board will then meet with the group and if necessary, enter into a dispute resolution process;
- c If the matter cannot be resolved, both parties will agree on the appropriate process for formal withdrawal of mandate.

A statement will be included within the Deed of Mandate that in the event that a dispute relating to the negotiations cannot be resolved, members of Ngati Whatua may take away the authority of some or all of the mandated representatives or replace them. This would be the last point of call if the issue or dispute is not able to be resolved.

MANDATING PLAN: INFORMATION SHEET

The Runanga is aware of its responsibility to create the most transparent, fair and robust mandating process possible. The process by which the Runanga will seek a mandate from Ngati Whatua consists of the following three broad phases.

Phase I: Pre-hui communications

Public notifications will be made during this period regarding the Runanga's mandate proposal and the information hui that will be held to present and discuss the proposal.

In addition, voting packs regarding the Runanga's mandate proposal will be distributed to all adult members on the Runanga's iwi roll.

Phase II: Information Hui

The Runanga will hold eight hui around the country to present its mandate proposal to its beneficiaries and to provide an opportunity for Ngati Whatua to discuss the proposal with Runanga representatives. The schedule of hui is as follows:

17 May 2008	10am	Te Houhanga marae (Northern Wairoa takiwa)
18 May 2008	10am	Tirarau marae (Whangarei takiwa)
20 May 2008	10am	Copthorne Hotel, Durham St, Christchurch
21 May 2008	10am	Copthorne Hotel, Oriental Bay, Wellington
22 May 2008	10am	Alcarno Hotel, Ulster St, Hamilton
24 May 2008	10am	Puatahi marae (South Kaipara takiwa)
26 May 2008	10am	Orakei marae (Orakei takiwa)
27 May 2008	10am	Otamatea marae (Otamatea takiwa)

Phase III: Voting

This phase will involve registered adult members of the Runanga casting their votes on whether to accept or reject the Runanga's mandate proposal. This will occur by way of postal ballot. The Runanga considers this to be the most appropriate way to allow for the wider Ngati Whatua membership to participate in the mandating process.

By this stage in the process, public notifications will have been made regarding the Runanga's mandate proposal with a description of how the voting will occur. As well, all registered adult members of the Runanga will have been provided with a voting pack explaining the mandate proposal in detail, and beneficiaries will have had the opportunity to discuss the mandate proposal with Runanga representatives. The mandating plan has been designed so that by this phase, voting members should have been provided with sufficient information about the Runanga's mandate proposal to be able to make an informed decision.

When this process is completed, the Runanga will submit a Deed of Mandate to the Crown.

PUBLIC NOTIFICATION

Te Runanga o Ngati Whatua



HE PANUI

Ngati Whatua Settlement Negotiations

Te Runanga o Ngati Whatua is seeking a mandate from Ngati Whatua to enter into negotiations with the Crown on their behalf for the comprehensive settlement of all of the remaining historical claims of Ngati Whatua (that is, the iwi claims and the outstanding hapu claims). The Runanga's mandate proposal excludes the claims associated with the South Kaipara Claims Committee as these will form the subject of separate negotiations. It also excludes the claims that have been, or are in the process of being, settled as part of the Te Roroa, Te Uri o Hau and Ngati Whatua o Orakei negotiations.

The Runanga will hold a series of hui around the country to present its mandate proposal to its beneficiaries and to provide an opportunity for Ngati Whatua to discuss the proposal with Runanga representatives. All those of Ngati Whatua descent are encouraged to attend.

The schedule of hui is as follows:

17 May 2008	10am	Te Houhanga marae (Northern Wairoa takiwa)
18 May 2008	10am	Tirarau marae (Whangarei takiwa)
20 May 2008	10am	Copthorne Hotel, Durham St, Christchurch
21 May 2008	10am	Copthorne Hotel, Wellington, Oriental Bay
22 May 2008	10am	Alcorno Hotel, 290 Ulster St, Hamilton
24 May 2008	10am	Puatahi marae (South Kaipara takiwa)
26 May 2008	10am	Orakei marae (Orakei takiwa)
27 May 2008	10am	Otamatea marae (Otamatea takiwa)

Mandate Voting Process: Postal Ballot

Voting on the mandate proposal will occur by way of postal ballot of registered adult members (18 years or older) of the Runanga. The mandate proposal is as follows:

That Te Runanga o Ngati Whatua is mandated to represent Ngati Whatua in negotiations with the Crown regarding the comprehensive settlement of all of the remaining historical claims of Ngati Whatua, excluding the claims associated with the South Kaipara Claims Committee

Voting packs will be distributed on 5 May 2008 to all registered adult members of the Runanga in advance of the scheduled hui. The pack will include information sheets explaining the Runanga's mandate proposal as well as the Crown's Treaty settlement process. If you do not receive a pack, or are not yet a registered member, please contact the Information Officer at the Runanga.

The voting period will commence on 17 May 2008 and will close at 5pm on 11 June 2008.

Further information on the mandate proposal, as well as how to register with the Runanga can be obtained by contacting the Information Officer at Te Runanga o Ngati Whatua, PO Box 1784, Whangarei, 09 470 0720 or at runanga@ngatiwhatua.iwi.nz

POSTAL BALLOT: INFORMATION SHEET

This information sheet addresses a series of matters that are often queried during the course of a voting process. If a matter in which you seek clarification is not covered here, please contact the Information Officer at the Runanga on 09 470 0720 or at runanga@ngatiwhatua.iwi.nz

Voter eligibility

All of the following criteria must be met to deem you eligible to vote:

- you must be of Ngati Whatua descent;
- you must be 18 years of age or older before the end of the voting period; and
- you must be a registered member of the Runanga. If you have not already registered, please contact the Information Officer and request an application for enrolment form. In this situation, any vote cast will be referred to as a 'special vote' and will only be considered valid once the application for enrolment has been accepted.

Voting period

The period for voting begins on 17 May 2008 and ends on 11 June 2008. Votes can only be submitted during this period.

Voting rules

Each voter can only vote once.

Voters must use the original voting paper provided; photocopies will not be accepted. If you make an error on the voting paper, please contact the Information officer at the Runanga who will provide you with a replacement voting paper.

The voting form must be completed and signed by the registered member.

The votes will be authenticated by the Independent Returning Officer whose judgment will be final. A voting paper will be deemed invalid if:

- a replacement voting paper has been issued for the same number (where a replacement voting paper has been issued, the original voting paper is no longer valid)
- the vote is not clearly marked in indelible ink
- it has been altered in such a way that the voting decision is not clear
- the voting number is not able to be reconciled with the iwi roll
- it is post-marked after 11 June 2008.

Results

The results of the postal ballot process will be notified in a public notice in national and regional print media as well as on the Runanga website www.ngatiwhatua.iwi.nz on 28 June 2008.

POSTAL BALLOT: VOTING INSTRUCTIONS

Te Runanga o Ngati Whatua Mandate Proposal

Please follow these instructions:

Step 1: Check you have received all documentation. In addition to these instructions, your Voting Pack should contain the following documents:

- Ngati Whatua Historical Treaty Claims: Moving Towards Negotiation and Settlement
- Slides from the powerpoint presentation, Ngati Whatua Historical Treaty Claims: Moving Towards Negotiation and Settlement
- Mandating Plan: Information Sheet
- Public Notification
- Postal Ballot: Information Sheet
- Postal Ballot: Voting Paper
- A freepost envelope addressed to the Independent Returning Officer.

If any of these papers are missing from your pack, please contact the Information Officer.

Step 2: Use the official voting paper to cast your vote by selecting either the I ACCEPT or I REJECT option.

Step 3: Sign and date the voting paper and enter your full name.

Step 4: Place your completed voting paper into the freepost envelope and seal that envelope.

Step 5: Post that envelope on or before 11 June 2008.

Any questions:

If you have any questions about your Postal Ballot Voting Pack or about how to lodge your vote, please contact the Information Officer.

Information Officer
Te Runanga o Ngati Whatua
PO Box 1784
WHANGAREI 0140

Phone: 09 470 0720
Fax: 09 438 2824
Email: runanga@ngatiwhatua.iwi.nz
Website: www.ngatiwhatua.iwi.nz

POSTAL BALLOT: VOTING PAPER

VOTER NUMBER

Te Runanga o Ngati Whatua Mandate Proposal

The proposal is:

That Te Runanga o Ngati Whatua is mandated to represent Ngati Whatua in negotiations with the Crown regarding the comprehensive settlement of all of the remaining historical claims of Ngati Whatua, excluding the claims associated with the South Kaipara Claims Committee

Before you cast your vote on this proposal, please firstly read all documentation contained in this voting pack, especially the Postal Ballot Voting Instructions.

	Please tick one box only
I ACCEPT the proposal	<input type="checkbox"/>
I REJECT the proposal	<input type="checkbox"/>

Signed:

Date:...../...../.....

Name (please print):

Please indicate which Ngati Whatua hapu you affiliate to (you may select more than one):

Nga Oho	<input type="checkbox"/>	Ngati Torehina	<input type="checkbox"/>	Te Uriroroi	<input type="checkbox"/>
Ngai Tahu	<input type="checkbox"/>	Ngati Weka	<input type="checkbox"/>	Te Taou	<input type="checkbox"/>
Ngati Hinga	<input type="checkbox"/>	Ngati Whiti	<input type="checkbox"/>	Te Uri Ngutu	<input type="checkbox"/>
Ngati Mauku	<input type="checkbox"/>	Patuharakeke	<input type="checkbox"/>	Te Kuihi	<input type="checkbox"/>
Ngati Rango	<input type="checkbox"/>	Te Parawhau	<input type="checkbox"/>	Te Uri o Hau	<input type="checkbox"/>
Ngati Rongo	<input type="checkbox"/>	Te Popoto	<input type="checkbox"/>		
Ngati Ruinga	<input type="checkbox"/>	Te Roroa	<input type="checkbox"/>		

Please return your completed voting paper in the envelope provided to:

Independent Returning Officer

Mallett Angelo Quinn Ltd
Chartered Accountants
PO Box 609
WHANGAREI 0140

