

# **TERMS OF NEGOTIATION**

*Ngāti Kahu ki Whangaroa Trust Board*

*and*

*the Crown*

# TERMS OF NEGOTIATION BETWEEN THE NGĀTI KAHU KI WHANGAROA TRUST BOARD 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 Ngāti Kahu ki Whangaroa Trust Board (the Trust Board) and the Crown (as defined in paragraph 11) on behalf of Ngāti Kahu ki Whangaroa (as defined in paragraphs 5 and 6) regarding the settlement of Ngāti Kahu ki Whangaroa Historical Claims (as defined in paragraph 9).
2. In particular, these Terms of Negotiation record the intentions of the Trust Board 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 Trust Board 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 Trust Board 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 Ngāti Kahu ki Whangaroa Historical Claims (as defined in paragraph 9) that is fair in the circumstances;
  - b. achieve a settlement that will not:
    - i. diminish or in any way affect any rights that Ngāti Kahu ki Whangaroa 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 Ngāti Kahu ki Whangaroa may have;
  - c. achieve a settlement that recognises the nature and extent of the breaches of the Crown's obligations to Ngāti Kahu ki Whangaroa under te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
  - d. provide a platform to assist Ngāti Kahu ki Whangaroa 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 Ngāti Kahu ki Whangaroa**

5. The people of Ngāti Kahu ki Whangaroa are those persons who descend from the founding ancestor Kahukuraariki.
6. The detail of the definition of Ngāti Kahu ki Whangaroa 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.
7. The marae of Ngāti Kahu ki Whangaroa include those marae situated at Taemaro, Mangawhero, Waihapa, Taupo, Waimahana and Waitaruke.
8. Ngāti Kahu ki Whangaroa have identified the general area shown on the attached map (Appendix 1) as their area of interest (also described in document H19, page 442, of the Waitangi Tribunal's Wai 116 Record of Inquiry).

## **Ngāti Kahu ki Whangaroa Historical Claims**

9. Ngāti Kahu ki Whangaroa Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngāti Kahu ki Whangaroa claimant or anyone representing them that:
  - a. are founded on a right arising:
    - i. from te Tiriti o Waitangi/the Treaty of Waitangi; or
    - ii. under legislation; or
    - iii. at common law (including customary law and aboriginal title); or
    - iv. from a breach of 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
  - c. includes every claim to the Waitangi Tribunal to which paragraphs 9(a) and 9(b) apply, including the following claims registered at the Waitangi Tribunal, insofar as they relate to Ngāti Kahu ki Whangaroa:
    - i. Wai 45 (Muriwhenua Lands Claim);
    - ii. Wai 58 (Whangaroa Lands and Fisheries Claim);
    - iii. Wai 116 (Taemaro Land Claim);
    - iv. Wai 258 (Whangaroa Lands Claim);
    - v. Wai 262 (Indigenous Flora and Fauna Claim); and
    - vi. Wai 912 (Ngāti Kahu Ki Whangaroa Lands and Resources Claim).

10. The Crown acknowledges that Historical Claims do not include claims (if any) that Ngāti Kahu ki Whangaroa may have that arise from or relate to acts or omissions on or after 21 September 1992:
  - a. by or on behalf of the Crown; or
  - b. by or under legislation.

### **Definition of the Crown**

11. The Crown:
  - a. means Her Majesty the Queen 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**

12. The Crown received mandating documents from the Trust Board in April 1999. In September 2001, the Crown recognised the mandate of the Trust Board to negotiate with the Crown, on behalf of the people of Ngāti Kahu ki Whangaroa, the settlement of Ngāti Kahu ki Whangaroa Historical Claims, subject to the following four conditions:
  - a. re-election of trustees;
  - b. resolution of the issue of whether Mangawhero marae should be represented in the negotiations;
  - c. clarification of the accountability provisions of the Trust Deed; and
  - d. appointment of negotiators.
13. In December 2002, the Crown noted that the first two conditions listed above had been satisfied, and formally indicated that it recognised the Trust Board's mandate, but that the following work had to be completed:
  - a. clarification of the accountability provisions of the Trust Deed; and
  - b. appointment of negotiators.
14. In October 2004, the Crown noted by way of letter (attached as Appendix 2) that the final two conditions on the mandate had been satisfied.

## **Mandate maintenance**

15. The Trust Board agrees to provide the Office of Treaty Settlements with reports on the state of its mandate every three months, or at such other times as agreed upon, and the Crown agrees to advise the Trust Board of any correspondence it receives about the mandate of the Trust Board.
16. If representation issues arise during negotiations that cannot be resolved by agreement within Ngāti Kahu ki Whangaroa, the Crown will discuss further with the Trust Board a process to address those issues.

## **Subject matter for negotiation**

17. The parties will agree upon subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.
18. The list of subject matters to be discussed will include the following categories of redress:
  - a. the Crown's apology and acknowledgements;
  - b. cultural redress; and
  - c. financial and commercial redress.

## **Negotiations milestones**

19. The Trust Board 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 Ngāti Kahu ki Whangaroa Historical Claims, which will be recorded in the Deed of Settlement.
  - b. Initialled Deed of Settlement

Ngāti Kahu ki Whangaroa and Crown negotiators initial the Deed of Settlement, which will set out the terms and conditions of settlement of the Ngāti Kahu ki Whangaroa Historical Claims.
  - c. Ratification

The initialled Deed of Settlement will be presented by the Trust Board to Ngāti Kahu ki Whangaroa for ratification. An approved governance entity structure will also be presented to Ngāti Kahu ki Whangaroa for ratification before the settlement legislation can be introduced.
  - d. Deed of Settlement signed if ratified

If Ngāti Kahu ki Whangaroa ratify the Deed of Settlement (in a manner to be agreed), the Deed of Settlement will be signed on behalf of Ngāti Kahu ki Whangaroa, and by a representative of the Crown.



e. Governance entity and settlement legislation

The settlement of Ngāti Kahu ki Whangaroa Historical Claims is effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

**What the settlement of Ngāti Kahu ki Whangaroa Historical Claims will enable**

20. The Trust Board and the Crown agree that the settlement of Ngāti Kahu ki Whangaroa Historical Claims will enable:
- a. final settlement of all Ngāti Kahu ki Whangaroa Historical Claims, 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 Ngāti Kahu ki Whangaroa;
  - c. removal of 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 in so far as the application of these memorials to Ngāti Kahu ki Whangaroa is concerned and for statutory protection for claims by Ngāti Kahu ki Whangaroa 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 Ngāti Kahu ki Whangaroa 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 Ngāti Kahu ki Whangaroa Historical Claims.

**Communication**

21. The Trust Board and the Crown will each undertake regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community and Crown stakeholders (respectively) informed, but also the need for confidentiality regarding third parties.

**Overlapping claims**

22. The Trust Board and the Crown agree that overlapping claims issues over redress will need to be addressed to the satisfaction of the Trust Board and the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Ngāti Kahu ki Whangaroa as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
23. The Trust Board will discuss Ngāti Kahu ki Whangaroa's interests with overlapping claimants at an early stage in the negotiation process and seek to establish a process by which they can reach agreement on how such interests can be addressed.

24. The Crown may assist Ngāti Kahu ki Whangaroa as it considers appropriate and will carry out its own consultation with overlapping claimants.
25. 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 Ngāti Kahu ki Whangaroa is kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

### **Not bound until Deed of Settlement**

26. The Trust Board 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 embodied in a Deed of Settlement.

### **Governance structure for settlement assets**

27. The Trust Board and the Crown agree that an appropriate legal entity ratified by Ngāti Kahu ki Whangaroa (in a manner to be agreed between the parties) that both parties agree adequately represents Ngāti Kahu ki Whangaroa, has transparent decision-making processes, and is accountable to Ngāti Kahu ki Whangaroa, will need to be in place prior to the introduction of settlement legislation.

### **Claimant funding**

28. The Trust Board and the Crown note that the Crown will make a contribution to the negotiation costs of Ngāti Kahu ki Whangaroa, which is paid in instalments for the achievement of specified milestones in the negotiation process.
29. The Trust Board will adhere to the Crown's claimant funding policy guidelines. In particular, the Trust Board 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**

30. The Trust Board and the Crown agree that during these negotiations the Trust Board 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.

### **Procedural matters**

31. The Trust Board 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, subject to the following exceptions:
    - i. the Trust Board will need to keep the claimant community informed on the general process and progress of negotiations;

- ii. the Crown is bound by the statutory requirements of the Official Information Act 1982; and
- iii. participation in Court or Waitangi Tribunal proceedings (this does not apply to without prejudice confidential offers); and
- c. media statements concerning the negotiations will only be made when mutually agreed by both parties; and
- d. the location of meetings will be suitable and convenient to both parties; and
- e. the Crown may be in Treaty settlement negotiations with overlapping claimant groups. Issues arising from those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa.

### **Amendments**

32. The Trust Board 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.

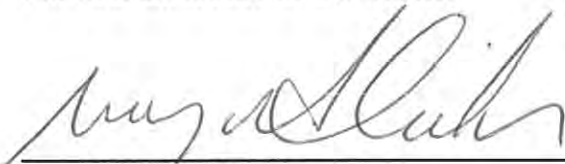
SIGNED THIS 19<sup>th</sup> DAY OF October 2004

**For and on behalf of Ngāti Kahu ki Whangaroa:**



Pita Pangari  
Chairperson  
Ngāti Kahu ki Whangaroa Trust Board

**For and on behalf of the Crown:**



Hon Margaret Wilson  
Minister in Charge of Treaty of Waitangi Negotiations



# APPENDIX 1

## NGĀTI KAHU KI WHANGAROA GENERAL AREA OF INTEREST<sup>1</sup>

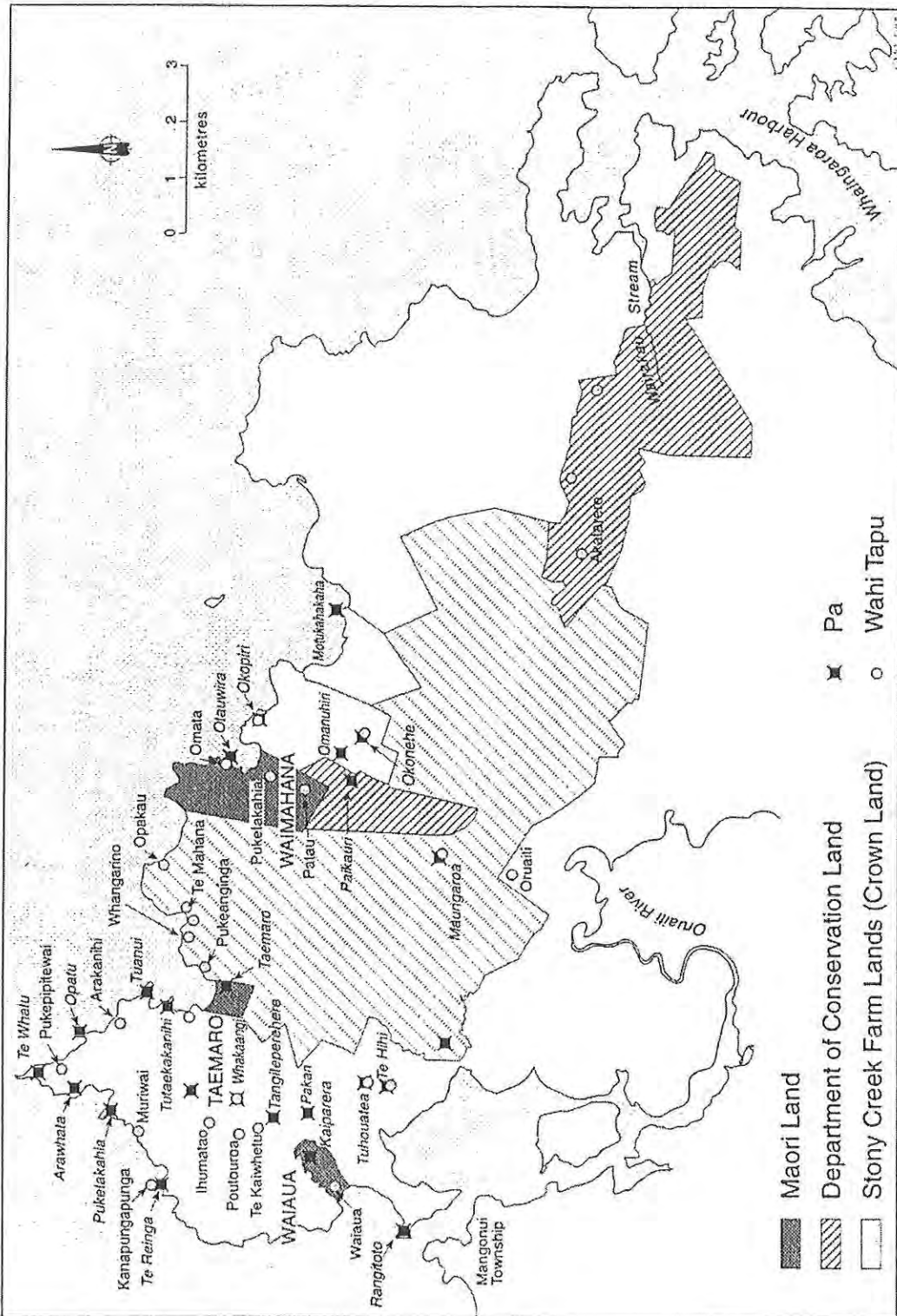


Figure 53: Taemaro lands – Crown and Maori holdings

<sup>1</sup> Waitangi Tribunal, *Muriwhenua Land Report* (1997), page 287.

## APPENDIX 2

### LETTER FROM MINISTER IN CHARGE OF TREATY OF WAITANGI NEGOTIATIONS AND MINISTER OF MĀORI AFFAIRS



Minister in Charge of Treaty of Waitangi Negotiations  
Minita Nōna te Mana Whakarite Take e pā ana ki  
Te Tiriti o Waitangi

14 OCT 2004

Pita Pangari  
Chairman  
Ngāti Kahu ki Whangaroa Trust Board  
224 Hokianga Road  
DARGAVILLE

Tēnā koe e Pita

Tēnā hoki koe i roto i ngā āhuatanga o te wā.

Firstly, we would like to acknowledge the hard work and personal sacrifices you have made in carrying the kaupapa of the Ngāti Kahu ki Whangaroa historical claims this far.

We are pleased to advise you that the Crown recognises that all four conditions on the mandate of the Ngāti Kahu ki Whangaroa Trust Board have now been satisfied.

We would like to congratulate you on reaching this significant milestone. Mandate issues are never easy, but the Trust Board has worked hard to be inclusive and open in meeting the mandate conditions, and we acknowledge that. As you will appreciate, the Crown expects that the Trust Board will continue meeting the challenge of ensuring that its mandate remains robust throughout the negotiations process.

This government is committed to working closely with you and your negotiation team towards the timely settlement of Ngāti Kahu ki Whangaroa's historical claims. We look forward to hearing about continued good progress towards our shared goal of settling the long-standing grievances of Ngāti Kahu ki Whangaroa.

Nō reira, noho ora mai koe i roto i ngā manaakitangi katoa.

Nā māua noa, nā

Hon Margaret Wilson  
Minister in Charge of Treaty of Waitangi Negotiations

Hon Parekura Horomia  
Minister of Māori Affairs