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**TERMS OF NEGOTIATION  
BETWEEN THE CROWN AND THE RAUKAWA TRUST BOARD**

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25 JUNE 2008

## **Parties to these Terms of Negotiation**

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- 1 The parties to this document, known as the Terms of Negotiation, are the Crown, (as defined in clause 12) and the Raukawa Trust Board (“the Trust Board”) on behalf of Raukawa (as defined in clause 10).

## **Purpose of these Terms of Negotiation**

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- 2 These terms of negotiation:
  - a set out the scope, objectives, and general procedures for the negotiations the parties will conduct in order to settle the historical claims of Raukawa (as defined in clause 11);
  - b record the intentions of the parties regarding the negotiation process, including the intention to negotiate in good faith, confidentially and without prejudice; and,
  - c are not legally binding and do not create a legal relationship. However, the parties acknowledge that during negotiations each expects the other to use best endeavours to comply with the terms set out in this document.

## **Negotiation Processes**

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- 3 The parties are currently engaged in two related negotiation processes:
  - a the Trust Board is part of the CNI Collective, and is negotiating a settlement of their historical CNI forests land claims; and,
  - b staged negotiations to settle the remaining historical claims of Raukawa, beginning with claims to the Waikato River and moving on to Raukawa comprehensive claims.
- 4 The parties agree that any settlement Raukawa receive through the CNI Collective process will be factored into the comprehensive negotiations to settle their historical claims. The parties agree to co-ordinate these negotiations, and acknowledge that they may need to revise the process of negotiations (as set out in clause 22).
- 5 The parties have agreed that, while the Trust Board is going through a formal mandating process, they will begin negotiations on Raukawa claims to the Waikato River in accordance with the objectives in clauses 7 and 8.
- 6 The parties agree that these terms of negotiation will be reviewed once the Trust Board has gone through a formal mandating process.

## Objectives of the Negotiations

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- 7 The parties agree that the primary objective of the negotiations will be to negotiate in good faith a settlement of all the historical claims of Raukawa that:
- a is comprehensive, final, durable and fair, just and reasonable in the circumstances;
  - b does not:
    - i diminish or in any way affect any rights that Raukawa 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;
    - ii extinguish or limit any aboriginal or customary rights Raukawa may have;
  - c recognises the nature and extent of the breaches of the Crown's obligations to Raukawa under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and where appropriate, acknowledges the effect these breaches have had on the economic, social, cultural and political well-being of Raukawa;
  - d provides a platform to assist Raukawa to develop their economic base. In addition, the Crown notes that Raukawa view the settlement as a means of enhancing their social, cultural and political development;
  - e enhances the ongoing relationship between the parties;
  - f is intended to address the Raukawa sense of grievance, restore their faith and trust in the Crown, and restore the honour of the Crown; and
  - g demonstrates and records that the parties have acted honourably and reasonably in negotiating the settlement.
- 8 In respect of the Waikato River claims, the parties agree the following additional objectives, that the settlement:
- a addresses or takes into account the parties' respective positions on a description of the Waikato River;
  - b assists to improve the quality and health of the Waikato River for the enjoyment of future generations; and
  - c supports the ongoing relationship of Raukawa with other iwi, and other interested groups.

## Definition of Claimants and Historical Claims

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- 9 The Trust Board and the Crown will continue to review the definitions of Raukawa and their historical claims provided in this section and will confirm this once the Trust Board has run a formal mandating process. Following this, the claimants and historical claims definitions may continue to be developed throughout the negotiations.
- 10 The intention is to settle all the outstanding historical claims of Raukawa. Raukawa means all those people who descend from Raukawa and affiliate to a Raukawa marae in the Waikato area.
- 11 For those people, the intention is to settle all their outstanding historical claims, insofar as those claims relate to Raukawa interests. This includes:
- a all claims made at any time (whether or not the claims have been researched, registered, considered or notified) by any Raukawa claimant or any person or group representing Raukawa that:
    - i are 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; and
    - ii arise from or relate to any policies, practices, acts or omissions before 21 September 1992:
      - I by or on behalf of the Crown; or
      - II or under legislation;
  - b and includes every claim to the Waitangi Tribunal to which clause 11(a) applies, including:
    - i Wai 254;
    - ii Wai 255;
    - iii Wai 290;
    - iv Wai 389;
    - v Wai 443;
    - vi Wai 538;
    - vii Wai 547;

- viii Wai 667;
- ix Wai 1340;
- x Wai 1472;
- xi Wai 1473;
- xii Wai 1474; and
- xiii Wai 557, to the extent that this is a Raukawa claim.

### **Definition of the Crown**

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- 12 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**

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- 13 The Crown acknowledges that the Trust Board has wide support from Raukawa to begin initial discussions with the Crown.
- 14 The Trust Board expects to be able to provide a Deed of Mandate to the Crown at the end of its mandate process. Once this Deed of Mandate is confirmed, it will be attached to these terms of negotiation. A letter from the Crown recognising that mandate will also be attached.
- 15 In the event that another body is mandated, the Crown and that mandated body will discuss appropriate amendments to these terms of negotiation to reflect the mandate.
- 16 If representation issues arise during negotiations that cannot be resolved by agreement within Raukawa, the Crown will discuss a process to address those issues with the Trust Board.

- 17 The Trust Board agrees to provide the Office of Treaty Settlements with reports on progress to a mandate or the state of the mandate as the case may be, every three months. The Crown agrees to advise the Trust Board of any correspondence it receives about the mandate of the Trust Board.
- 18 The Crown agrees to promptly provide the Trust Board with any relevant information, reports, or other documents relating to mandate that would be disclosed if it were to make a request under the Official Information Act 1982.

### **Subject Matter for Negotiation**

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- 19 The parties will together agree upon subject matters to be negotiated.
- 20 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.
- 21 The Trust Board will be seeking to engage with third parties as part of the redress negotiations. The Crown may facilitate those engagements as agreed between the parties.

### **Process of Negotiations**

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- 22 The parties agree that the general process of negotiations will include, but not necessarily be limited to:
  - a Deed of Mandate

The Trust Board is conducting a formal mandating process. If satisfied with the results of that process, the Crown will recognise the mandate of the Trust Board to continue negotiating on behalf of Raukawa.
  - b Terms of Negotiation

If the Crown recognises the mandate of the Trust Board, the parties will update these terms of negotiation to reflect that the Trust Board is a mandated body, and to make any other revisions that may be appropriate at that point in the negotiations.

c Agreement in Principle

The signing of an Agreement in Principle that will outline the scope and nature of the settlement redress to be recorded in the Deed of Settlement.

d Initialled Deed of Settlement

The initialling of a Deed of Settlement by the parties. The Deed will set out the terms and conditions of settlement of the historical claims of Raukawa.

e Ratification

The Trust Board will present the initialled Deed of Settlement to Raukawa for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Raukawa for ratification before the settlement legislation can be introduced.

f Deed of Settlement signed if ratified

If the Deed of Settlement is ratified, the Trust Board will sign the Deed of Settlement on behalf of Raukawa, and a Crown representative will sign on behalf of the Crown.

g Governance Entity and Settlement legislation

The settlement of the Raukawa historical claims will be effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

23 The parties agree that while the intention of both parties is to reach settlement of all the historical claims of Raukawa by way of the general process set out in clause 22, it may be necessary to settle certain claims or parts of those claims independently of this general process.

24 If the parties agree that this is necessary, the parties will discuss the process that those negotiations will follow, including the possibility of additional, partial, or issue-specific settlement agreements.

### **What the Settlement of Historical Claims of Raukawa will enable**

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25 The parties agree that the settlement of the historical claims of Raukawa will enable the:

- a final settlement of all the historical claims of Raukawa, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;
- b discontinuance of the Office of Treaty Settlements landbank arrangements for the protection of potential settlement properties for the benefit of Raukawa;



- c 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 Raukawa historical claims against the Crown for the benefit of Raukawa to be removed;
- d removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the historical claims of Raukawa, the Deed of Settlement, the redress provided or settlement legislation; but not for the removal of such jurisdiction in respect of:
  - i the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation; or
  - ii proceedings initiated by any third party which involve or may affect the historical claims of Raukawa or the Deed of Settlement, or any settlement legislation; and
- e discontinuance of legal proceedings in relation to the historical claims of Raukawa.

### **Communication**

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- 26 The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep Raukawa informed, but also the need for confidentiality regarding third parties.
- 27 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 Board of any issues that arise in the course of negotiations that may cause Raukawa concern. The parties will agree on a process to address such issues if they arise.

### **Overlapping Claims**

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- 28 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 Raukawa as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 29 The parties note that in areas where there are overlapping claims, the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be managed.



- 30 The parties will at an early stage in the negotiation process discuss the nature and extent of the interests of overlapping claimant groups in the Raukawa area of interest. The Trust Board and the Crown will then consider what further actions on the part of Raukawa are necessary to address overlapping claim issues. The Trust Board will consult with neighbouring claimant groups at an early stage to assist in resolving overlapping claims issues.
- 31 The Crown will carry out its own consultation with overlapping claimant groups, and will keep the Trust Board informed of any issues that may arise during that consultation which may affect the Trust Board or Raukawa.

### **Overlapping Negotiations**

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- 32 Where the Crown is engaged in negotiations for the settlement of historic claims with claimants whose rohe includes part of the Raukawa area of interest, the Crown will regularly update the Trust Board on the progress of those negotiations.
- 33 Where the Crown becomes aware that the mandated representative of another claimant group has expressed an interest in potential settlement assets, or other settlement redress, in which the Trust Board have also expressed an interest then the Crown, prior to offering the particular redress item or asset for inclusion in a settlement, will:
- a notify the Trust Board of the shared interest; and,
  - b facilitate a discussion between the relevant mandated representatives in order to resolve, at an early stage, any potential conflicts between claimant groups regarding the potential redress.

### **Conditions of Settlement**

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- 34 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 embodied in a Deed of Settlement and settlement legislation.

### **Governance Structure for Settlement Assets**

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- 35 The parties agree that an appropriate legal entity ratified by Raukawa that adequately represents all Raukawa, is fully accountable to, and acts for the benefit of Raukawa, will need to be in place prior to settlement to receive assets for a comprehensive settlement of the historical claims of Raukawa.

- 36 The parties agree to discuss and agree an appropriate governance structure in the event that an additional partial, or issue-specific settlement is reached before a comprehensive settlement of the historical claims of Raukawa.

### **Claimant Funding**

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- 37 The parties agree that the Crown will make a contribution to the negotiation costs of Raukawa. This contribution will be paid in instalments at specified milestones in the negotiation process.
- 38 In respect of negotiations pertaining to the Waikato River, the Crown has determined its contribution to the negotiation costs of Raukawa. The Crown's contribution to the negotiation costs of Raukawa comprehensive claims will be determined following the completion of mandate, and is separate from the Waikato River funding contribution. The Trust Board may also receive funding contributions in the context of its CNI Collective negotiations.
- 39 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.
- 40 The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.
- 41 The Trust Board will provide the Crown with an annual report from an independent auditor for the claimant funding that it receives from the Crown, identifying that the funding has been spent on the negotiations. The Trust Board will provide an invoice for each instalment of funding received from the Crown.
- 42 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.
- 43 The Crown may meet the cost of specific tasks, projects, or other requirements of the negotiations where the likely outcome is for the benefit or use of both parties.

### **Waiver of Other Avenues of Redress**

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- 44 The Crown acknowledges that, as the Trust Board has not yet gone through a formal mandating process, the Trust Board can not yet commit members of Raukawa not to initiate or pursue, before any court or tribunal, any proceedings for redress covering all or part of the same subject matter as the negotiations.
- 45 The parties note that the Waitangi Tribunal's Te Rohe Potae District Inquiry has begun. The parties agree that nothing in these terms:

- a will require Raukawa to withdraw as a party to Te Rohe Potae District Inquiry;
  - b will prevent Raukawa from continuing to participate in Te Rohe Potae District Inquiry for the purposes of responding by way of cross-examination and/or submission to evidence and/or arguments advanced by other parties, including the Crown, which may:
    - i adversely affect the Tribunal's consideration of historical events relevant to Raukawa that are the subject of Te Rohe Potae District Inquiry; or
    - ii adversely affect the identification, definition, nature, or extent of existing customary rights and interests of Raukawa.
- 46 The Trust Board agrees that it will provide the Crown with 10 working days notice before initiating, pursuing, or joining any further proceedings.
- 47 If satisfied that continuing negotiations with Raukawa is untenable, in light of any such proceedings, the Crown may withdraw from negotiations.
- 48 This section will be revised once the Trust Board has been formally mandated to be consistent with other Terms of Negotiation.

#### **Procedural Matters**

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- 49 The parties 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, or where the parties are required to release information as required in the course of litigation;
  - c the Crown will provide the Trust Board with any correspondence or documentation it receives about the negotiations if that information is of a kind that would be disclosed to the Trust Board if it were to make a request for it under the Official Information Act 1982;
  - d media statements concerning the negotiations will only be made when mutually agreed by both parties; and,
  - e Raukawa will operate under Raukawa tikanga throughout these negotiations which includes but is not limited to holding hui in te reo Maori, and in appropriate locations as agreed between parties.

## Amendments

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- 50 As recorded in clause 6, the parties will review these terms once the Trust Board has been formally mandated.
- 51 In addition, the parties acknowledge that it may be necessary to amend these terms of negotiation from time to time during the negotiations and agree that all amendments must be approved by both parties and recorded in writing.

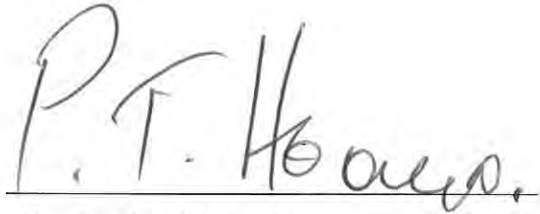
SIGNED THIS 25<sup>th</sup> DAY OF JUNE 2008

For and on behalf of the Crown:




Hon Dr Michael Cullen

Minister of Treaty of Waitangi  
Negotiations



Hon Parekura Horomia

Minister of Maori Affairs



Hon Mita Rinui

Associate Minister of Treaty of Waitangi  
Negotiations



Hon Shane Jones

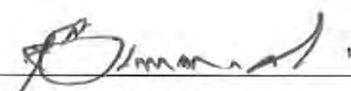
Associate Minister of Treaty of Waitangi  
Negotiations

For and on behalf of Raukawa:

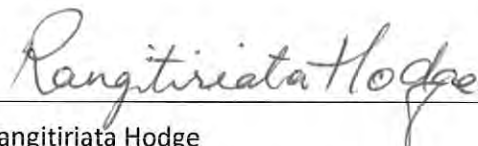
  
George Whakatoi Rangitūtia  
Chairman Raukawa Trust Board

  
Thomas Tomairangi Smith  
Trustee Raukawa Trust Board

  
Miriata Te Hiko  
Trustee Raukawa Trust Board

  
John Taka Edmonds  
Trustee Raukawa Trust Board

  
Horohuia Simmonds  
Trustee Raukawa Trust Board

  
Rangitiriata Hodge  
Trustee Raukawa Trust Board

OTHER SIGNATORIES:

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Waka Interimparadi  
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