

**THE NGĀTI MAKINO HERITAGE TRUST**

**and**

**WAITAHA RAUPATU TRUST**

**and**

**THE CROWN**

**JOINT TERMS OF NEGOTIATION**

**Dated this 21<sup>st</sup> day of February 2008**

## JOINT TERMS OF NEGOTIATIONS

### 1. The Parties to these Joint Terms of Negotiation

- 1.1 The parties to this document, known as the Joint Terms of Negotiation ("Joint Terms"), are:
- 1.1.1 the Crown, as defined in clause 10.1;
  - 1.1.2 the Waitaha Raupatu Trust, on behalf of the iwi of Waitaha, one of the acknowledged iwi of Te Arawa, as defined in clause 4.1 of Schedule A to this document ("Waitaha"); and
  - 1.1.3 the Ngāti Makino Heritage Trust, on behalf of the peoples of Ngāti Makino, one of the acknowledged iwi of the confederated tribes of Te Arawa ("Ngāti Makino").

### 2. Background

- 2.1 Waitaha and Ngāti Makino are kin with whakapapa from the tupuna Hei, and his son Waitaha, who arrived on the Te Arawa waka.

#### Ngāti Makino

- 2.2 Ngāti Makino have traditionally occupied the area between the Rotorua lakes and the Bay of Plenty coast. They were also known as Waitaha, after their ancestor Waitaha-a-Hei. To the west of the Ngāti Makino tribal territory lived Ngati Whakahemo, who are also descended from Waitaha-a-Hei, and with whom Ngāti Makino were and are closely allied. To the east lived Ngati Awa of the Mataatua canoe, and particularly Ngati Hikakino and Ngati Rangihouru hapu who are also close kin from Mataatua.

- 2.3 Ngāti Makino are raupatu claimants in those inquiries. In the Eastern Bay of Plenty Inquiry and the Central North Island Inquiry, the Tribunal found, among other things, that the Crown breached the Treaty of Waitangi<sup>1</sup>:

- 2.3.1 by disempowering Maori self-government and abolishing the New institutions, which some Ngāti Makino had embraced;
- 2.3.2 by forcing Ngāti Makino into a position where they had to choose whether or not to defend their Ngati Awa kin and their lands;
- 2.3.3 by making war on some Ngāti Makino without the slightest justification, given that the Ngati Awa Tribunal correctly characterised it as an unwarranted invasion which did not in fact have the character of a police action;
- 2.3.4 by confiscating Ngāti Makino land per se;
- 2.3.5 by confiscating Ngāti Makino land without the slightest justification, given that Ngāti Makino had had no involvement in the killings of Volkner and Fulloon;
- 2.3.6 by returning land to 'loyal' Ngāti Makino in a form foreign to the customary title in which it was taken, without their volition or consent to such a change;

<sup>1</sup> Waitangi Tribunal *He Maunga Rongo: The Report from the Central North Island Claims, Part 2, "Rangaiaratanga and Kawanatanga: Political Engagement, (2007) p116"*

- 2.3.7 by branding some Ngāti Makino as 'rebels' and excluding them from the new title;
- 2.3.8 by establishing a Compensation Court which was not tasked with investigating customary title or awarding land to its former right-holders, but with granting land to 'loyalists' in compensation for taking their land; and
- 2.3.9 by not providing even minimal redress in the twentieth century, via the Sim Commission, when other tribes received at least something.

2.4 In 1997, the Ngāti Makino claimant community mandated the Ngāti Makino Heritage Trust to negotiate a settlement of Ngāti Makino's historical Treaty of Waitangi claims. Following the signing of a Terms of Negotiation in 1998, the Crown broke off negotiations, and they were not resumed in the years that followed despite Ngāti Makino's efforts to engage with the Crown.

2.5 In 2004 and again in 2005, the Waitangi Tribunal acknowledged that Ngāti Makino had suffered prejudice as a result of the Crown's delay in negotiating with them recommending that Ngāti Makino's unique circumstances required that they be prioritised in any Central North Island negotiations.

Waitaha

2.6 Waitaha have occupied the lands in the Tauranga area ever since the arrival of Te Arawa. Hei stood as Te Arawa came along the coast and made a claim to the mana of the land for his son Waitaha, *Te takapū o tāku tama, Waitahanui a Hei*. For the purpose of these negotiations, Waitaha will focus on their ancestral lands along the coast from Mauao to Maketu.

2.7 The Tauranga raupatu and its aftermath is the central theme of the Waitaha Treaty claims. In the *Te Raupatu o Tauranga Moana* report, the Tribunal found that:

2.7.1 in attacking Tauranga Maori in 1864, and subsequently confiscating their land without justification, the Crown was in breach of its Treaty obligations actively to protect Maori and to allow them the continued exercise of their rangatiratanga, and in clear violation of the Article II guarantees;<sup>2</sup>

2.7.2 the Crown "deliberately discriminated" against Waitaha by reducing the amount of land returned to them after the confiscation, as punishment for the 'rebellion' of their rangatira Hakaraia;<sup>3</sup>

2.7.3 the Waitangi Tribunal concluded that Waitaha "suffered harshly from land loss" resulting directly from the Crown's Treaty breaches in the confiscation and purchase of Waitaha land.<sup>4</sup>

2.8 The Waitaha claim also embraces the aftermath of the raupatu on their remaining lands at Te Puke, for which the Central North Island Tribunal has made findings that:

<sup>2</sup> Waitangi Tribunal, *Te Raupatu o Tauranga Moana* (2004), pp399-400.

<sup>3</sup> *Te Raupatu o Tauranga Moana*, pp300 & 307.

<sup>4</sup> *Te Raupatu o Tauranga Moana*, p405.

2.8.1 Waitaha sold their Te Puke land in the 1870s for fear they would otherwise lose their land to the Crown's wartime allies (the Te Arawā 'toa' claimants who argued Waitaha had forfeited their land through their 'rebellion'), or to possible confiscation. Waitaha sought the Crown's assistance to manage their lands, but instead suffered the Treaty breaches associated with purchase of individual interests.<sup>5</sup>

2.8.2 As a result of these events, and the individualisation of title through the Native Land Court, the Crown was guilty of a "serious breach of Treaty principles that had severe and lasting effects on tribal land entitlements, tribal land bases, and tribal relationships" and caused serious prejudice to Waitaha.<sup>6</sup>

2.9 The overarching principle of the Waitaha claim is that the Crown has failed to give effect to the Treaty principle of autonomy, and failed to protect the tino rangatiratanga of Waitaha over their affairs, lands, and resources.<sup>7</sup>

2.10 In 2004, and again in 2005, the Waitangi Tribunal recommended that on account of Waitaha's history of raupatu and "unique circumstances", Waitaha should be accorded priority for settling their Treaty claims.<sup>8</sup> The Crown did not act on this recommendation.

#### Agreement between Ngāti Makino and Waitaha

2.11 In 2004, the Tribunal decided that the Crown was obligated both morally and under its Treaty duty of good faith conduct to honour its undertaking to Ngāti Makino at last, and recommended that the Crown now find some way to negotiate contemporaneously with Ngāti Makino with the rest of Te Arawa. The Tribunal further recommended that, if Ngāti Makino agreed, Waitaha and Tapuika should be invited to join those negotiations.<sup>9</sup>

2.12 Ngāti Makino invited Waitaha to join them, and Waitaha accepted that invitation. The alliance between Ngāti Makino and Waitaha was formed on the basis of their common whakapapa to Hei, and their desire not to lose further time in securing Treaty settlements for their people.

#### Joint Negotiations

2.13 In late 2007, the Crown began discussing the possibility of engaging in negotiations with a collective of central North Island iwi to settle historical Treaty claims to Crown forest land in the central North Island ("CNI Iwi Collective process").

2.14 Ngāti Makino have a claim to Rotoehu forest which is located in the Central North Island and which was one of the forest lands which fell within the ambit of settlements negotiated for and on behalf of all Maori by the Federation of Maori Authorities and the New Zealand

<sup>5</sup> Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims Stage One*, Pre-publication version (2007), Part II, p122.

<sup>6</sup> *He Maunga Rongo: Report on Central North Island Claims Stage One*, Part II, p123.

<sup>7</sup> *He Maunga Rongo: Report on Central North Island Claims Stage One*, Part VI, Chap 21, p22.

<sup>8</sup> Waitangi Tribunal, *Te Arawa Mandate Report* (2004), p117; Waitangi Tribunal, *The Te Arawa Mandate Report: Te Wahanga Tuarua* (2005), p97.

<sup>9</sup> *Te Arawa Mandate Report* (2004), pp116-117, and *The Te Arawa Mandate Report: Te Wahanga Tuarua* (2005), p 98.

Maori Council and the Crown in 1989 and which formed the basis of the Crown Forests Assets Act 1989.

- 2.15 During the Eastern Bay of Plenty Inquiry, claimants for Ngāti Makino, Ngāti Awa, Ngāti Pūkiao and Tuwharetoa ki Kawerau claimed customary interests in Rotoehu Forest.

*Having heard each group, the Tribunal [was] satisfied that all can properly claim customary interests in the forest.<sup>10</sup>*

- 2.16 The Waitangi Tribunal found further that Ngāti Makino had a prima facie case based upon the record of Crown involvement in the management and alienation of Ngāti Makino land.<sup>11</sup>
- 2.17 Ngāti Makino and Waitaha are in principle supportive of the prospect of settling CNI Crown forest claims in a collective fashion, but have raised their concerns regarding the delay in settling their other Treaty claims if this initiative was to proceed without a commitment to the parallel negotiation of the rest of their claims in a comprehensive manner. Since the beginning of 2008, both iwi have been engaged in discussions with the Crown regarding the possibility of entering into direct negotiations as a matter of urgency.
- 2.18 By letter dated 8 February 2008, the Honourable Dr Michael Cullen, Minister in Charge of Treaty of Waitangi Negotiations, confirmed that the Crown was committed to entering into negotiations with Waitaha and Ngāti Makino over their historical Treaty of Waitangi claims.
- 2.19 The Minister's letter was also supportive of Ngāti Makino and Waitaha being able "to consider their approach to negotiations through engagement with the Office of Treaty Settlements alongside the CNI Collective process". These Joint Terms arise out of that context.
- 2.20 At the time of the signing these Joint Terms, Ngāti Makino were not included in the CNI Iwi Collective process. Ngāti Makino have been advised by the Crown that the opportunity to join that process may arise at a future time in the course of negotiations.
- 2.21 The Crown acknowledges the several and unique characteristics of all Waitaha and Ngāti Makino Treaty of Waitangi claims including the importance of all lands and taonga within their respective tribal rohe.
- 2.22 These Joint Terms encapsulate the intentions of the parties, Ngāti Makino and Waitaha and the Crown, to enter into a joint negotiation process that proceeds contemporaneously with the CNI Iwi Collective process.
- 2.23 All parties have agreed to proceed on this basis in good faith.

### **3. Purpose of these Joint Terms**

#### **3.1 These Joint Terms:**

- 3.1.1 apply to the negotiations to settle;

<sup>10</sup> Waitangi Tribunal Ngāti Awa Raupatu Report – Wai 46 (Wellington: Legislation Direct, 1999) p4

<sup>11</sup> Waitangi Tribunal Ngāti Awa Raupatu Report – Wai 46 (Wellington: Legislation Direct, 1999) p4

- a) the Waitaha Historical Claims, as defined in clause 5.1 of Schedule A to this document; and
  - b) the Ngāti Makino Historical Claims, including Wai 275, Wai 334, Wai 1071 and Wai 1372;
- 3.1.2 record the intentions of the parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially and in a without prejudice manner; and
- 3.1.3 are not legally binding and do not create a legal relationship. However, the parties acknowledge that each expects the others to comply with the terms set out in this document during negotiations.

#### **4. Objectives, scope, general procedures and 'ground rules'**

- 4.1 The Joint Terms as agreed will support the development of a settlement which will:
- 4.1.1 assist Waitaha and Ngāti Makino to enhance their mana and tino rangatiratanga; and
  - 4.1.2 assist the Crown to restore its honour, and enhance its relationships with its Treaty partners; and
  - 4.1.3 bring to the peoples a level of peace through the settlement of long standing injustices; and
  - 4.1.4 enhance the on-going relationship between the parties both in terms of Te Tiriti o Waitangi/The Treaty of Waitangi and otherwise; and
  - 4.1.5 recognise the nature, manner and extent of the Crown's breaches of its obligations to Waitaha and Ngāti Makino under Te Tiriti o Waitangi/The Treaty of Waitangi; and
  - 4.1.6 settle all the claims of Waitaha and Ngāti Makino in a comprehensive, durable and fair manner in accordance with nga tikanga o Waitaha and Ngāti Makino.
- 4.2 The Joint Terms as agreed will not do any one or more of the following:
- 4.2.1 diminish any rights that Waitaha and Ngāti Makino have arising from the Tiriti o Waitangi/The Treaty of Waitangi; or
  - 4.2.2 in any way affect any rights that Waitaha and Ngāti Makino have arising from Te Tiriti o Waitangi/The Treaty of Waitangi; or
  - 4.2.3 extinguish any aboriginal or customary rights of Waitaha or Ngāti Makino.
- 4.3 These Joint Terms record the intention of the parties to settle the Waitaha Historical Claims and the Ngāti Makino Claims by way of joint negotiations with the Crown.
- 4.4 The parties agree that the negotiations will be conducted:
- 4.4.1 by way of an intensive, co-operative, problem solving approach to achieve resolution of these claims;

- 4.4.2 in relation to the Waitaha Historical Claims, in accordance with the Terms of Negotiation between the Crown and Waitaha attached as Schedule A to these Joint Terms;
- 4.4.3 in relation to the Ngāti Makino Historical Claims, in accordance with the Terms of Negotiation between the Crown and Ngāti Makino dated October 1998, attached as Schedule B to these Joint Terms; and
- 4.4.4 in relation to Ngāti Makino the Crown agrees that the Terms of Negotiation signed between Ngāti Makino and the Crown will be maintained out of respect for the kaumatua many of whom have passed on since those terms were signed, these Joint Terms being consistent with those terms.
- 4.5 The parties agree to adopt a joint negotiation process whereby:
- 4.5.1 the Waitaha representatives negotiate settlement of the Waitaha Historical Claims;
- 4.5.2 the Ngāti Makino representatives negotiate settlement of the Ngāti Makino Historical Claims; and
- 4.5.3 the Crown negotiates jointly with Waitaha and Ngāti Makino in relation to issues or redress that affect both iwi.
- 4.6 In addition, the parties agree that:
- 4.6.1 Waitaha and Ngāti Makino will each enter into separate agreements in principle, and separate deeds of settlement with the Crown; and
- 4.6.2 one piece of settlement legislation may give effect to both settlements; and
- 4.6.3 if during the course of the joint negotiations any conflict arises in relation to the interpretation of these Joint Terms, Schedule A or Schedule B, the parties will attempt to resolve that dispute in good faith in an effort to ensure joint resolution of the Waitaha Historical Claims and Ngāti Makino Historical Claims.
- 4.7 These Joint Terms are conditional on the following matters:
- 4.7.1 the Minister of Māori Affairs and the Minister in Charge of Treaty of Waitangi Negotiations:
- 4.7.1.1 approving the deed of mandate for the Waitaha Raupatu Trust confirming that it has a mandate from the iwi of Waitaha to negotiate the settlement of the Waitaha Historical Claims; and
- 4.7.1.2 being satisfied that the Ngāti Makino Heritage Trust continues to hold a mandate from Ngāti Makino to negotiate the settlement of the Ngāti Makino Historical Claims.
- 4.8 The parties acknowledge that time is of the essence in confirming the conditions in clause 4.7.1, and that:
- 4.8.1 Ngāti Makino have provided the Crown with a sworn affidavit from Awhimate Awhimate, sworn on 19 February 2008

detailing how the mandate confirmed by the Crown in 1998 with the Ngāti Makino Heritage Trust has been maintained;

- 4.8.2 the Crown acknowledge that Ngāti Makino have a mandate and that it is appropriate to proceed with negotiations on all Ngāti Makino claims;
- 4.8.3 Waitaha have provided the Crown with a sworn affidavit from Maru Tapsell, sworn on 18 February 2008, detailing why the Waitaha Raupatu Trust consider that they already have a mandate to represent their respective iwi;
- 4.8.4 the Crown will take the affidavits into account in assessing the matters referred to in clause 4.7.1; and
- 4.8.5 the Crown has approved the mandate strategy of Waitaha, and the Waitaha Raupatu Trust have undertaken to complete the mandating process by 31 March 2008.

## **5. Negotiations Schedule**

- 5.1 The parties agree to:
  - 5.1.1 commence substantive negotiations as soon as reasonably practicable;
  - 5.1.2 endeavour to be ready to sign Agreements in Principle by 30 June 2008;
  - 5.1.3 endeavour to agree, within six months of the commencement of negotiations:
    - 5.1.3.1 a draft Deed of Settlement between the Crown and Waitaha; and
    - 5.1.3.2 a draft Deed of Settlement between the Crown and Ngāti Makino; and
  - 5.1.4 meet regularly and often until each Deed of Settlement is achieved.

## **6. Communication**

The parties will all ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed, but also the need for confidentiality regarding third parties.

## **7. Not Bound until Deed of Settlement**

- 7.1 The parties will take all reasonable efforts to expedite the achievement of a settlement but acknowledge that this document does not bind any party to reach a settlement.
- 7.2 Any agreement reached within negotiation discussions in the progress toward settlement is confidential, without prejudice and will not be binding until embodied in a signed Deed of Settlement.



**8. Procedural Matters**

The parties agree that:

- 8.1 negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties or claimant communities 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 in the normal practice and procedure associated with any form of litigation;
- 8.2 any party may withdraw from negotiations if the negotiations become untenable; and
- 8.3 media statements concerning the negotiations will only be made when mutually agreed by all parties.

**9. Amendments**

The parties acknowledge that it may be necessary to amend these Joint Terms from time to time and agree that all amendments must be approved by all parties and recorded in writing.

**10. Definitions**

For the purpose of this agreement the following definitions apply:

**10.1 "The Crown":**

**10.1.1** means Her Majesty the Queen in right of New Zealand; and

- a) includes all her Ministers of the Crown and all government departments; but
- b) does not include:
  - i) an office of Parliament; or
  - ii) a Crown entity; or
  - iii) a State Owned Enterprise named in the First Schedule to the State Owned Enterprises Act 1986.

Signed this 21<sup>ST</sup> day of February 2008


For and on behalf of the Crown:



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



Hon Parekura Horomia  
Minister of Maori Affairs

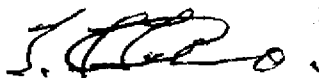


Hon Mita Rinui  
Associate Minister in Charge of Treaty of Waitangi Negotiations

For and on behalf of Waitaha:

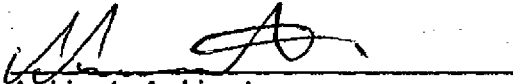


Thomas Abraham McCausland  
Kaumatua and claimant

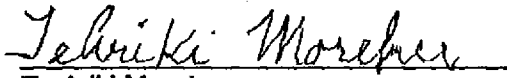


Tapua Te Amo  
Chairman of the Waitaha Raupatu Trust

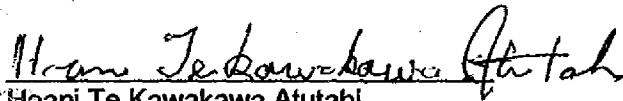
For and on behalf of Ngāti Makino:



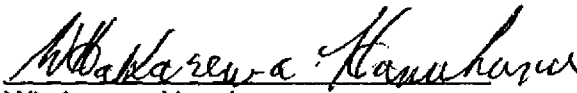
Awhimate Awhimate  
Chairman of the Ngāti Makino Heritage Trust  
Principal co-claimant of WAI 334



Te Ariki Morehu  
Trustee of Ngāti Makino Heritage Trust  
Principal claimant of WAI 275, WAI 1071 and WAI 1372



Hoani Te Kawakawa Atutahi  
Trustee of Ngāti Makino Heritage Trust



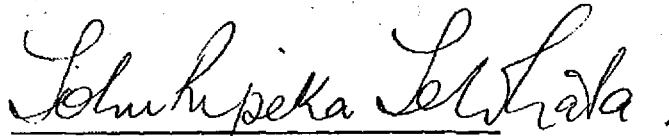
Whakarewa Hunuhunu  
Trustee of Ngāti Makino Heritage Trust



Te Hirata Sykes  
Trustee of Ngāti Makino Heritage Trust



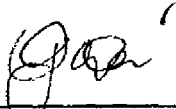
Marama Furlong  
Trustee of Ngāti Makino Heritage Trust



Tohuripeka Te Whata  
Trustee of Ngāti Makino Heritage Trust



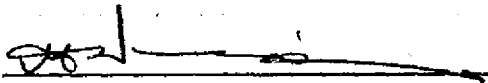
Neville Nepia  
Trustee of Ngāti Makino Heritage Trust



Heneri Ngatai  
Trustee of Ngāti Makino Heritage Trust



Laurence Tamati  
Trustee of Ngāti Makino Heritage Trust



Hare Wiremu  
Trustee of Ngāti Makino Heritage Trust

**SCHEDULE A**

**Terms of Negotiation between Waitaha Raupatu Trust and the Crown**

**WAITAHA RAUPATU TRUST**

**and**

**THE CROWN**

**TERMS OF NEGOTIATION**

**Dated the 21<sup>st</sup> day of February 2008**

## **TERMS OF NEGOTIATIONS**

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

- 1.1. The parties to this document, known as the Terms of Negotiation, are the Crown, as defined in clause 6.1, and the Waitaha Raupatu Trust, on behalf of the iwi of Waitaha, as defined in clause 4.1.

### **2. Purpose of these Terms of Negotiation**

- 2.1. These Terms of Negotiation:

2.1.1. set out the objectives, scope, general procedures and "ground rules" for the formal discussions the parties will conduct in order to settle the Waitaha Historical Claims (as defined in clause 5.1);

2.1.2. record the intentions of the parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice; and

2.1.3. are not legally binding and do not create a legal relationship. However, the parties acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

### **3. Objectives of the Negotiations**

- 3.1. The parties agree that the primary objective of the negotiations will be to negotiate in good faith a settlement of the Waitaha Historical Claims that:

3.1.1. is comprehensive, final, durable and fair in the circumstances;

3.1.2. will not:

3.1.2.1. diminish or in any way affect any rights that Waitaha have arising from Te Tiriti o Waitangi/The Treaty of Waitangi and its principles, except to the extent that claims arising from those rights are settled; or

3.1.2.2. extinguish or limit any aboriginal or customary rights that Waitaha may have;

3.1.3. recognises the nature, extent and injustice of breaches of the Crown's obligations to Waitaha under Te Tiriti o Waitangi/The Treaty of Waitangi and its principles, and where appropriate, acknowledges the effect that these breaches have had on the economic, social, cultural and political well-being of Waitaha;

3.1.4. will provide a platform to assist Waitaha to develop their economic base. In addition, the Crown acknowledges that Waitaha view the settlement as a means of promoting their social, cultural and political development;

3.1.5. will establish and enhance the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi/The Treaty of Waitangi and otherwise);

3.1.6. will restore the honour of the Crown; and

3.1.7. demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement.

3.2. In addition, the Crown acknowledges that:

3.2.1 breaches of the Treaty of Waitangi have occurred, and accordingly it is appropriate to proceed with negotiations on all Waitaha Historical Claims;

3.2.2. the Waitaha Raupatu Trust does not accept the Crown's settlement policies, but intends to enter discussions in good faith and attempt to negotiate a settlement of its grievances, and any such settlement will be one to which both parties agree;

3.2.3. Waitaha place considerable significance on promoting a proper understanding of the history of Waitaha and restoring the mana of Hakaraia through this settlement;

3.2.4. Waitaha view the settlement as a means of restoring and enhancing the mana and identity of Waitaha; and



3.2.5. Waitaha trust that reaching a settlement with the Crown will remove the sense of grievance for the injustices of the past, and restore Waitaha's faith and trust in the Crown.

#### **4. Definition of Waitaha**

4.1 Waitaha is:

4.1.1 the collective group composed of persons:

4.1.1.1. who descend from one or more of the Waitaha tupuna Te Iwikoroke, Kumaramaoa, Te Puku o Hakoma and Rehu; and

4.1.1.2. who are members of one or more of the following hapu/descent groups:

4.1.1.2.1. Ngati Haraki

4.1.1.2.2. Ngati Te Moemiti

4.1.1.2.3. Ngati Ngauru

4.1.1.2.4. Ngati Kapo

4.1.1.2.5. Ngati Rereamanu

4.1.1.2.6. Ngati Kahu

4.1.1.2.7. Ngati Nga Pareparenga

4.1.1.2.8. Ngati Te Puku o Hakoma

4.1.1.2.9. Kumaramaoa

4.1.1.2.10. Ngati Tama

4.1.1.2.11. Ngati Rehu

4.1.1.2.12. Ngati Rakei

4.1.1.2.13. Ngati Te Awhai

4.1.2. every whanau, hapu or group of persons to the extent that that whanau, hapu or group includes persons referred to in clause 4.1.1; and

4.1.3. every person referred to in clause 4.1.1.

4.2. The detail of the definition of Waitaha may be developed further over the course of negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

## **5. Waitaha Historical Claims**

### **5.1 Waitaha Historical Claims:**

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

5.1.1.1 are founded on a right arising:

5.1.1.2 from Te Tiriti o Waitangi/The Treaty of Waitangi, or its principles;

5.1.1.3 under legislation;

5.1.2. or otherwise; and

5.1.2.1. arise from or relate to acts or omissions before 21 September 1992:

5.1.2.2. by or on behalf of the Crown;

5.1.2.3. by or under legislation; and

5.1.3. includes every claim to the Waitangi Tribunal to which clause 5.1.1 applies, including:

5.1.3.1. Wai 664 - a claim filed by Thomas Abraham McCausland, Te Runui Wharearere and Tukaha Ngaki on behalf of Waitaha;

5.1.3.2. Wai 702 - Waitaha Hapu Lands and Resources - a claim filed by Taane Karaka and others;

5.1.3.3. Wai 1178 - a claim filed by Te Awanuiarangi Black and David Ashby on behalf of Ngati Te Puku o Hakoma, a hapu of Waitaha.

## **6. Definition of the Crown**

### **6.1. The Crown:**

- 6.1.1. means Her Majesty the Queen in right of New Zealand; and
- 6.1.2. includes all Ministers of the Crown and all government departments; but
- 6.1.3. does not include:
  - 6.1.3.1. an Office of Parliament;
  - 6.1.3.2. a Crown entity;
  - 6.1.3.3. a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

## **7. Mandate to Negotiate**

- 7.1. The Waitaha Raupatu Trust acknowledges that it is required to satisfy the Crown that it has a mandate from the iwi of Waitaha to negotiate the settlement of Waitaha Historical Claims.
- 7.2. The Waitaha Raupatu Trust considers that it has a mandate to represent Waitaha because:
  - 7.2.1. the Waitaha claimants were a unified group through the course of the Waitangi Tribunal hearings in the Tauranga Moana and Central North Island inquiries, and the claimants support the Waitaha Raupatu Trust;
  - 7.2.2. the outcome of three hui-a-iwi held at Hei Marae, Motunganara on 23 April 2006, 28 May 2006 and 2 July 2006 resulted in Waitaha resolving to establish a trust as the body to represent Waitaha in negotiating a comprehensive settlement of Waitaha historical Treaty claims;
  - 7.2.3. at the hui on 2 July 2006, seven trustees were also appointed to the trust;

7.2.4 the Waitaha Raupatu Trust was established on 12 September 2007, after a hui-a-iwi on 9 August 2007 in which Waitaha reviewed and ratified the trust deed;

7.2.5 as otherwise set out in the affidavit of Maru Tapsell sworn on 18 February 2008.

7.3 To confirm its mandate, the Waitaha Raupatu Trust will hold a further series of hui-a-iwi that comply with its mandating strategy by 31 March 2008.

7.4 The Waitaha Raupatu Trust agrees to provide the Crown with a report on the state of its mandate following the hui-a-iwi in March 2008, and then every three months, and the Crown agrees to advise Waitaha Raupatu Trust of any correspondence it receives about the mandate of the Waitaha Raupatu Trust.

## **8. Subject Matter for Negotiation**

8.1. The Waitaha Raupatu Trust and the Crown jointly record their readiness to negotiate redress for the Waitaha claims, subject to the completion of the mandating process.

8.2. 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.

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

8.3.1. the Crown's apology and acknowledgments;

8.3.2. cultural redress; and

8.3.3. financial and commercial redress.

## **9. Process of Negotiations**

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

*Agreement in Principle*

- 9.1.1. The signing of an Agreement In Principle which will outline the scope and nature, in principle, of the settlement redress which will be recorded in the deed of settlement.

*Initialled Deed of Settlement*

- 9.1.2. The initialling of a Deed of Settlement by the parties. The Deed of Settlement will set out the terms and conditions of the settlement of the Waitaha Historical Claims.

*Ratification*

- 9.1.3. The presentation by the Waitaha Raupatu Trust of the initialled Deed of Settlement to Waitaha for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Waitaha for ratification before the settlement legislation can be introduced.

*Deed of Settlement Signed if Ratified*

- 9.1.4. The signing of the Deed of Settlement on behalf of Waitaha by the Waitaha Raupatu Trust if the Deed of Settlement is ratified.

*Governance Entity*

- 9.1.5. The approval by the Crown, and the ratification by the claimant group, of a governance entity to represent Waitaha and to receive and manage the settlement assets; and

*Settlement Legislation*

- 9.1.6. The passage of settlement legislation. The settlement of Waitaha 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.

- 9.2. In addition, the parties agree that it is the intention of the parties that negotiations proceed by way of an intensive, cooperative, problem solving approach to achieve resolution of this claim.

## **10. What the Settlement of Waitaha Historical Claims Will Enable**

10.1. The parties agree that the settlement of Waitaha Historical Claims will enable the:

10.1.1. final settlement of all Waitaha Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of them;

10.1.2. discontinuance of the Office of Treaty Settlements landbank arrangement for the protection of potential settlement properties for the benefit of Waitaha;

10.1.3. removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1991 in the claim area, and for statutory protection for claims against the Crown to be removed for the benefit of Waitaha;

10.1.4. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Waitaha 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

10.1.5. discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to Waitaha Historical Claims.

## **11. Communication**

11.1. The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed, but also the need for confidentiality regarding third parties.

## **12. Overlapping Claims**

- 12.1. The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Waitaha as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 12.2. The Waitaha Raupatu Trust will discuss Waitaha's interests with overlapping claimants at any early stage in the negotiation process and endeavour to establish a process by which they can reach agreement on how such interests can be addressed.
- 12.3. The Crown may assist Waitaha as it considers appropriate and will carry out its own consultation with overlapping claimants.
- 12.4. The Crown may be in Treaty settlement negotiations with overlapping claimants. Issues arising in those negotiations, including issues concerning Crown forest land, may be relevant to these negotiations and vice versa. The Crown will ensure that Waitaha is kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

## **13. Not Bound until Deed of Settlement**

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

## **14. Governance Structure for Settlement Assets**

- 14.1. The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:
- 14.1.1. has been ratified by Waitaha;
  - 14.1.2. is in a form which both parties agree adequately represents Waitaha;
  - 14.1.3. has transparent decision making processes; and

14.1.4. is accountable to Waitaha.

## **15. Claimant Funding**

15.1. The parties acknowledge that the Crown will make a contribution to the negotiations costs of the Waitaha Raupatu Trust. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.

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

15.3. The Waitaha Raupatu Trust will provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.

## **16. Waiver of Other Avenues of Redress**

16.1. During these negotiations, the Waitaha Raupatu Trust agrees neither to initiate nor to pursue any legal proceedings relating to the subject matter of the negotiations.

## **17. Procedural Matters**

17.1. The parties agree that:

17.1.1. Negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;

17.1.2. 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;

17.1.3. Either party may withdraw from negotiations if the negotiations become untenable;



17.1.4. Consistent with the obligations of good faith negotiations, if the Office of Treaty Settlements becomes aware of changes in the legal control, or ownership of, or the granting of long term interests in, land of the Crown in which Waitaha claim an interest, the Office of Treaty Settlements will inform the Waitaha Raupatu Trust of the proposal where possible;

17.1.5. Early in the negotiation process both parties will discuss Waitaha's redress interests and the Crown's policies in respect of those interests. Based on these discussions the Office of Treaty Settlements will also provide information on relevant Crown assets potentially available for redress, including possible transfer, in a settlement;

17.1.6. Media statements concerning the negotiations will only be made when mutually agreed by both parties.

17.2. The parties will endeavour to ensure that the location of meetings will be suitable and convenient to both parties, but particularly to Waitaha when kaumatua are attending the meeting.

17.3. The parties recognise the importance of using Te Reo Maori in the negotiations. The Waitaha Raupatu Trust will provide the Crown with adequate notice when a translator is required in the negotiations.

## **18. Amendments**

18.1 The parties 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 21<sup>ST</sup> day of February 2008

For and on behalf of the Crown:

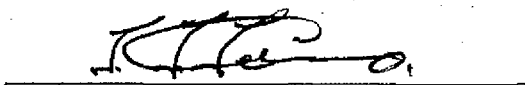


**Hon Dr Michael Cullen**  
Minister in Charge of Treaty of Waitangi Negotiations

For and on behalf of Waitaha



**Thomas Abraham McCausland**  
Kaumatua and claimant



**Tapua Te Amo**  
Chairman of the Waitaha Raupatu Trust

**SCHEDULE B**

**Terms of Negotiation between the Ngāti Makino Heritage Trust and the Crown**



**TERMS OF NEGOTIATION FOR  
NGATI MAKINO  
(WAI 275)**

## TERMS OF NEGOTIATIONS FOR NGATI MAKINO'S TREATY OF WAITANGI CLAIMS (WAI 275)

### RECITAL A – PURPOSE OF NEGOTIATION

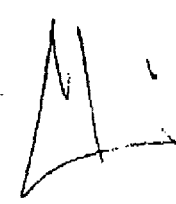
- 1 This document records:
  - a the agreement of the Minister in Charge of Treaty of Waitangi Negotiations on behalf of the Crown and the Ngati Makino Heritage Protection Trust on behalf of Ngati Makino to the objective, scope and general procedures for negotiations concerning the settlement of all of the historical claims of Ngati Makino, including WAI 275;
  - b the Crown's acceptance of the necessary preconditions for negotiations being met by the Ngati Makino Heritage Protection Trust;
  - c agreements between the Ngati Makino Heritage Protection Trust and the Crown as to the terms applying to the negotiations process;
  - d details of the Ngati Makino Heritage Protection Trust's negotiating mandate; and
  - e details of the process being adopted for the resolution of cross claims.
- 2 This document records the stated intentions of the Crown and the Ngati Makino Heritage Protection Trust, including the intention to negotiate in good faith, but does not create a legal relationship and is not legally binding.

### RECITAL B - BACKGROUND

- 3 In June 1995 the Waitangi Tribunal heard the substantive aspects of Ngati Makino's claim. The Tribunal heard evidence, and adjourned hearings prior to Crown evidence being presented. The Tribunal is preparing an interim report, reserving the parties' rights of response and rejoinder, in order to expedite direct negotiations.
- 4 Ngati Makino and the Crown have been in discussions since December 1995, jointly working through the processes for direct negotiations in good faith. The discussions have included a number of important considerations for both parties including the production of an interim report by the Tribunal, Crown requirements for mandating, claimant funding, comprehensiveness and overlapping claims.

### RECITAL C – CROWN/NGATI MAKINO ACKNOWLEDGEMENTS

#### Crown Acknowledgements

- 5 The Crown notes the nature and extent of each of the breaches of the Treaty of Waitangi alleged by the Ngati Makino Heritage Protection Trust.
  - 6 The Crown accepts that prima facie breaches have occurred and reserves its right to present its detailed position on the breaches in negotiations, which will be the subject of negotiations between the Crown and the Ngati Makino Heritage Protection Trust.
- 

7 The Crown acknowledges that:

- a it is appropriate to proceed with negotiations on all historical claims of Ngati Makino, including WAI 275;
- b the attached map shows Ngati Makino's claim area as presented by Ngati Makino to the Waitangi Tribunal, and that the area claimed by Ngati Makino stretches from the coast to Pongakawa Stream in the west, to Lake Rotoma in the south, and includes the whole of the Whakarewa block;
- c the Ngati Makino Heritage Protection Trust has been properly mandated by Ngati Makino to enter into negotiations with the Crown over the claims described in paragraph 1;
- d the Ngati Makino Heritage Protection Trust intends to negotiate in good faith and considers that it has rights entrenched in the Treaty of Waitangi which have been affirmed in the Treaty of Waitangi Act, the Crown Forest Assets Act and the State Owned Enterprise Act; and
- e the Ngati Makino Heritage Protection Trust does not accept and does not consider itself bound by the Crown's settlement policies, but that the Ngati Makino Heritage Protection Trust intends to enter discussions in good faith and attempt to negotiate a settlement of its grievances, and any such settlement will be one to which both parties agree.

8 The Crown acknowledges the several distinct and unique characteristics of all of Ngati Makino's Treaty claims, including the importance of the Rotoehu Forest lands to Ngati Makino.

**Ngati Makino Acknowledgement**

9 The Ngati Makino Heritage Protection Trust acknowledges that:

- a the Crown intends to enter discussions in good faith;
- b the Crown will negotiate with the intention of reaching a settlement of all Ngati Makino's grievances;
- c it will waive all other avenues of redress that may be available to it while in negotiations that might relate to all or part of the same subject matter as those negotiations; and
- d the Crown intends to negotiate redress of its Treaty claims comprehensively.

**ACCEPTANCE OF THE NGATI MAKINO CLAIM FOR NEGOTIATIONS**

10 The Ngati Makino Heritage Protection Trust and the Crown jointly record their readiness to negotiate redress for the Ngati Makino claims, subject to the completion of all pre-negotiations requirements.



## **AGREEMENTS AS TO THE NEGOTIATIONS PROCESS**

### **Objectives of the Negotiations**

- 11 It is agreed by the Crown and the Ngati Makino Heritage Protection Trust that the objectives of the negotiations are as follows:
- a to negotiate a fair, comprehensive, final and durable settlement of all historical claims of Ngati Makino, including WAI 275;
  - b to conduct the negotiations in good faith and in such a way that the negotiations and the resolution of grievances will restore and enhance the mana of Ngati Makino and restore the honour of the Crown;
  - c to negotiate giving due recognition to the distinctive and unique characteristics of the Ngati Makino claim and to the findings of the Waitangi Tribunal interim report to the extent that it may be available to inform negotiations; and
  - d to secure an agreement that will establish a continuing relationship between the Crown and Ngati Makino based on the principles of the Treaty of Waitangi.

### **Negotiation Conditions**

- 12 The Ngati Makino Heritage Protection Trust and the Crown agree that:
- a the negotiations will be held in private, will remain confidential unless agreed otherwise by both parties, and are on a "without prejudice" basis. Media statements concerning the advancement of negotiations will be made when mutually agreed upon by both parties;
  - b it is the intention of the parties that negotiations proceed by way of an intensive, cooperative, problem solving approach to achieve resolution of this claim;
  - c the Ngati Makino Heritage Protection Trust and the Crown will each ensure regular and appropriate internal consultation procedures throughout the negotiations; and
  - d the Ngati Makino Heritage Protection Trust will report regularly to the Crown on the steps taken to consult and inform beneficiaries of the progress of the negotiations.

### **Scope of Negotiations**

- 13 The Crown and the Ngati Makino Heritage Protection Trust agree that the general scope of negotiations shall include discussion on;
- a the form of any Crown apology;
  - b the type, form and quantum of redress that is appropriate to settle Ngati Makino's grievances, including redress as it applies to Rotoehu forest lands (governed by the Crown Forests Assets Act 1989) to be returned to Ngati Makino (if forestry land is returned, accumulated rentals owing to Ngati Makino will be paid on top of the fiscal quantum for redress);
  - c implementation issues including legislation or legislative amendment, Orders in Council and other administrative actions which may be required to implement any

agreements made between the Crown and the Ngati Makino Heritage Protection Trust;

and in doing so the settlement will enable:

- d settlement of all Ngati Makino's historical Treaty, common law and aboriginal title claims against the Crown ;
- e the removal of any landbank in the claim area;
- f the removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990 and the Education Act 1991 in the claim area;
- g the removal of the jurisdiction of the Waitangi Tribunal or the courts to re-open issues settled by the settlement; and
- h the removal of application of the Crown Forest Assets Act 1989 in the claim area.

#### **Negotiations Schedule**

- 14 The Ngati Makino Heritage Protection Trust and the Crown agree to:
- a commence substantive negotiations as soon as reasonably practicable;
  - b endeavour to be ready to sign a Heads of Agreement within six months;
  - c endeavour to agree on a draft Deed of Settlement within twelve months of the commencement of negotiations;
  - d meet regularly and often until a Deed of Settlement is achieved; and
  - e hold negotiations meetings at venues to be agreed.

#### **Resolution of Cross Claims**

- 15 The Ngati Makino Heritage Protection Trust acknowledges and accepts that the Crown requires cross claims to be resolved before a Deed of Settlement can be concluded, and that redress may sometimes need to reflect the importance of an area or feature to other claimant groups. The Crown will assist by taking a facilitative role in the process of resolving cross claims.

#### **CLAIMANT FUNDING**

- 16 The Ngati Makino Heritage Protection Trust and Crown note that the Crown makes a contribution to the negotiations costs of the Ngati Makino Heritage Protection Trust which is paid in instalments for the achievement of specified milestones in the negotiation process.
- 17 The Ngati Makino Heritage Protection Trust will provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, identifying that the funding has been spent on the negotiations.





## RATIFICATION OF SETTLEMENT AND GOVERNANCE SYSTEM

- 18 The Crown and the Ngati Makino Heritage Protection Trust acknowledge that this document does not bind either party to reach a settlement and that any agreement reached in negotiation discussions will not be binding until embodied in an unconditional Deed of Settlement and ratified by Ngati Makino and the Crown.
- 19 The Ngati Makino Heritage Protection Trust and the Crown agree that before settlement assets can be transferred to Ngati Makino, the Crown will need to be satisfied that the proposed Governance structure for the distribution and management of settlement assets is an appropriate legal structure which has transparent decision-making and dispute resolution processes and is fully accountable to Ngati Makino, and:
- a has been fairly and clearly presented to and endorsed by Ngati Makino;
  - b contains an independent appeals process to protect minority interests against an oppressive majority and majority interests against an unreasonable minority; and
  - c allows the rules relating to membership to be contested.

## AMENDMENTS

- 20 The Ngati Makino Heritage Protection Trust and the Crown acknowledge that it may be necessary to amend this document from time to time and agree that all amendments must be approved by both parties and recorded in writing.

## AGREEMENTS ON THE TERMS OF NEGOTIATION

14. The Ngati Makino Heritage Protection Trust and the Crown agree that these Terms of Negotiations are accepted as signed by the parties on:

SIGNED THIS

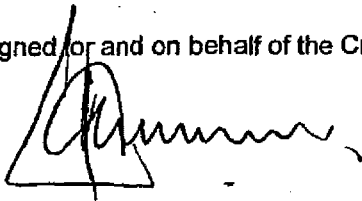
*10*

day of

*October*

1998

Signed for and on behalf of the Crown:



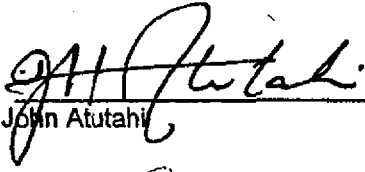
Rt. Hon. Douglas Graham  
Minister in Charge of Treaty of Waitangi Negotiations

*Christopher Hansen*  
*Member Parliament - Associate Minister*  
*Tauranga*

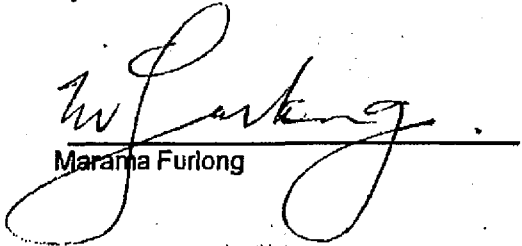
Signed for and on behalf of the Ngati Makino Heritage Protection Trust



Para Ngatai  
Chairman of the Ngati Makino Heritage Protection Trust



John Atutahi



Marania Furlong



Whakarewa Hunuhunu



Tohuripeka Cousins



Te-Ariki Morehu



Awhimate Awhimate

*Hilda Sykes*

Hilda Sykes

*Wai Vercoe*

Wai Vercoe

*Neville P. Nepia*

Neville Nepia

*Ratema Tamati*

Ratema Tamati

