



**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

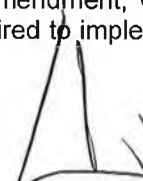
- 11 It is agreed by the Crown and the Ngati Makino Heritage Protection Trust that the objectives of the negotiations are as follows:
- a to negotiate a fair, comprehensive, final and durable settlement of all historical claims of Ngati Makino, including WAI 275;
  - b to conduct the negotiations in 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

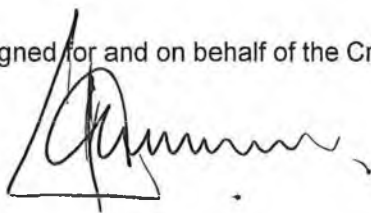
*14*

day of

*October*

1998

Signed for and on behalf of the Crown:



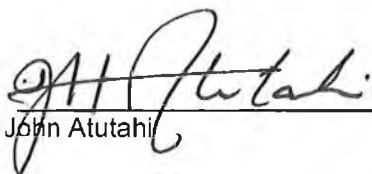
Rt. Hon. Douglas Graham  
Minister in Charge of Treaty of Waitangi Negotiations

*Cepurito Awaru*  
*Member of 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



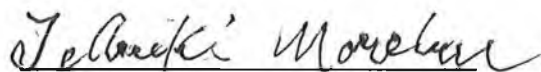
Marama Furlong



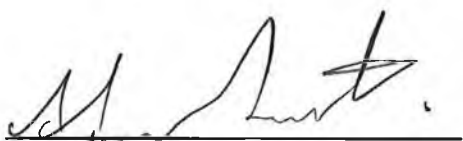
Whakarewa Hunuhunu



Tohuripeka Cousins



Te-Ariki Morehu



Awhimate Awhimate

*Hilda Sykes*

Hilda Sykes

*Wai Vercoe*

Wai Vercoe

*Neville P. Nepia*

Neville Nepia

*Ratema Tamati*

Ratema Tamati



