



Office of Hon Dr Michael Cullen

Deputy Prime Minister

Attorney-General

Minister of Finance

Minister in Charge of Treaty of Waitangi Negotiations

Leader of the House of Representatives

23 OCT 2008

Dr Apirana Mahuika
Chairman
Ngāti Porou Negotiations Subcommittee (Te Haeata)
Porou Ariki
PO Box 394
GISBORNE

Tēnā koe Dr Mahuika

Thank you for meeting with me on 23 September 2008.

At that meeting we discussed the high level aspects of commercial and financial redress in settlement of the historical Treaty of Waitangi claims of Ngāti Porou *mai Potikirua ki Te Toka a Taiau*. Those discussions built on negotiations between the Ngāti Porou Negotiations Subcommittee (Te Haeata) and Crown representatives over these last few months. For the avoidance of doubt, the historical Treaty of Waitangi claims of Ngāti Porou ki Hauraki are excluded from the negotiations.

I would now like to make a formal offer on behalf of the Crown for consideration by Te Haeata. This offer records those elements we discussed and also those matters both parties have committed to negotiate and resolve in order to complete an historical Treaty of Waitangi settlement between the Crown and Ngāti Porou.

The offer is made in good faith, to demonstrate the Crown's continuing commitment to reaching an historical Treaty settlement between Ngāti Porou and the Crown.

The Crown's offer is broadly in five parts:

- 1 a cash figure of \$90 million;
- 2 interest to be payable on the cash figure;
- 3 commitments in respect of Tauwhareparae Farm;
- 4 commitments in respect of other commercial property redress; and

- 5 a commitment to discuss and, within a reasonable timeframe to be agreed between the parties, negotiate:
- a. Ngāti Porou cultural redress (e.g. Ngāti Porou customary interests in the natural resources within its rohe);
 - b. reconciliation between Ngāti Porou and the Crown (e.g. Crown support and funding of a compiled Ngāti Porou history); and
 - c. all outstanding commercial elements of the redress package for Ngāti Porou.

Cash figure and interest

At our meeting on 23 September 2008 we discussed a cash figure of \$90 million.

In addition, interest will be payable on the cash figure of \$90 million from the date that you countersign this letter to the date of the signing of the deed of settlement, or for a period of two years from the date that you countersign this letter, whichever is the lesser. Interest will be at the Official Cash Rate calculated on a daily basis, non-compounding. If a deed of settlement is not signed within the two year period specified, the Crown will extend the period during which interest will continue to be paid for a reasonable period, if it is reasonable to do so, taking into account all of the circumstances, including the negotiations to date.

Tauwhareparae Farm

As you know, officials are working to negotiate the Crown's purchase of Tauwhareparae Farm for use in the Ngāti Porou Treaty Settlement. The Crown cannot compel the present owner, the Gisborne District Council, to sell it to the Crown. Furthermore the Crown will only pay what it considers to be a fair market value for the property.

I am prepared to make a commitment that the Crown will continue working to purchase the farm. If it can be secured, it will be held in the Office of Treaty Settlements' land bank, for use in a Treaty settlement with Ngāti Porou.

I confirm that the Crown will consult with Ngāti Porou before coming to any agreement with Gisborne District Council for the purchase of the farm. At the same time as negotiations are being held with Gisborne District Council, the Crown will discuss with Ngāti Porou the possible transfer value of the farm to be paid by Ngāti Porou to the Crown as part of the settlement.

The Crown will not purchase the farm if it is not able to agree a transfer value with Ngāti Porou.

If the Crown is unable to purchase the farm, the Crown and Ngāti Porou will explore what alternative redress options may be available.

Commercial property redress

This redress relates to commercial properties owned by Crown agencies or entities. This part of the offer comprises consideration of:

- 1 a right of first refusal over Housing New Zealand Corporation properties in the Ngāti Porou rohe if Housing New Zealand Corporation chooses to dispose of them;
- 2 a number of properties could be made available at nil consideration. At present, there are five properties within your rohe in the Office of Treaty Settlements' land bank, with a combined value of just over \$1.6 million. These properties are:
 - a. Hoia Station, Hicks Bay;
 - b. a three-bedroom house at 58 Wainui Road (Lot 1 DP 3391);
 - c. the former post office at Te Araroa;
 - d. the former Whakaangi school and school house; and
 - e. a bare plot of residential land at Whakarua Park Road, Ruatoria (Ruatorea).

Manutahi Forest (administered by Ministry of Agriculture and Forestry) may be available, bringing the total to a little over \$2 million;

- 3 Ruatoria (Ruatorea) and Tokomaru Forests are subject to Crown Forestry licences. These forests would be made available for purchase by Ngāti Porou at fair market valuation. They would bring with them accumulated rentals, which currently stand at just over \$10 million (and would be in addition to the cash figure of \$90 million);
- 4 an option to purchase schools (land only) and lease them back to the Crown. I am informed that there are some 26 schools in your rohe, with a provisional valuation of \$7.5 million based on rateable value, which are available for sale and lease back to the Crown; and
- 5 consideration of the application of commercial redress mechanisms such as sale, sale and leaseback, or right of first refusal over other Crown properties in your rohe that could be made available. One or more of these properties may be found suitable to go into the pool of nil-consideration properties under paragraph 2 above.

The values ascribed to the assets in paragraphs 1 to 5 above are indicative valuations obtained by the Crown. I understand that Ngāti Porou may want to have the assets independently valued before the parties agree any transfer value.

Commitments to future discussion and negotiation

The Crown commits to negotiate all remaining elements of commercial, cultural and reconciliation redress within a reasonable timeframe, to be agreed between Te Haeata and Crown officials. I understand that Ngāti Porou wishes to pursue issues in 4 distinct categories. They are:

- 1 ngā mea hei whakamāramatanga – Ngāti Porou matters of historical record, sacrifice and contribution to New Zealand;

- 2 ngā mana me te tino rangatiratanga o Ngāti Porou – Ngāti Porou matters of authority and autonomy;
- 3 kō te ū o ngā mana tūturu, ngā mana me ngā taonga tuku iho o Ngāti Porou – the resources and other means by which Ngāti Porou, and its hapu, sustain their distinctive identities, languages, knowledge and practices; and
- 4 ērā atu kaupapa e ū ai te tino rangatiratanga o Ngāti Porou – matters concerning the ongoing partnership between Ngāti Porou and the Crown outside the settlement of (Treaty) claims.

I would be happy for the final deed to set out redress in relation to the first 3 categories you propose.

To illustrate, some of the specific matters to be negotiated and agreed with you in these categories include:

- 1 the Crown acknowledgement and apology, including a Crown acknowledgement of Ngāti Porou's service to New Zealand;
- 2 an agreed historical account, to form the basis of the Crown acknowledgement and apology;
- 3 an opportunity for Ngāti Porou to voice its own history by:
 - a. the Crown facilitating (including making archives available where possible) and funding historical research for Ngāti Porou to produce a comprehensive Ngāti Porou history; and
 - b. a process that will enable Ngāti Porou to air its historical Treaty of Waitangi grievances before a Crown representative or independent commissioner;
- 4 cultural redress (including consideration of conservation land; those of the guardians of Hikurangi that are in Crown ownership (Taitai, Aorangi and Whanokao); Whangaokeno (East Island); wāhi tapu; and awa, particularly the Waiapu and its tributaries and catchment);
- 5 means by which the military service of Ngāti Porou could be honoured including service as part of Te Hokowhitu a Tu and C Company, Māori Battalion;
- 6 Crown support for Ngāti Porou's retention and development of its language, knowledge and customary practices;
- 7 other matters of cultural interest that have been raised by you for discussion in your three categories of redress, such as marae development grants, and interests in geothermal and other resources;
- 8 a process for establishing a suitable governance entity to receive the redress on behalf of Ngāti Porou; and
- 9 any Ngāti Porou claims in the foreshore and seabed that are not addressed as part of the current Ngāti Porou foreshore and seabed negotiations.

Your fourth category, which includes enhanced infrastructure (such as roads, utilities and erosion control) and social services (such as health and education) extend beyond the Crown's Treaty settlement framework and the core brief of Office of Treaty Settlements officials. Accordingly, I have instructed Treasury officials to explore what can be done to meet Ngāti Porou's infrastructure and social service concerns as a separate stream of work. While this work does not form part of this high-level agreement in principle between the Crown and Ngāti Porou, it is intended that this work will occur concurrently with the settlement negotiations.

Mandate

I confirm that the Crown acknowledges the mandate of Te Rūnanga o Ngāti Porou for the purposes of the high level agreement set out in this letter.

I would appreciate it if you could arrange for Te Rūnanga o Ngāti Porou to provide the Office of Treaty Settlements with a brief written summary on the state of the mandate four-monthly. For my part, I will ensure that Te Rūnanga o Ngāti Porou is advised of any correspondence the Crown receives about the mandate of Te Rūnanga o Ngāti Porou.

Communication

Te Rūnanga o Ngāti Porou and the Crown will each undertake regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the members of Ngāti Porou informed, but also the need for confidentiality regarding third parties.

Procedural Matters

I look forward to the Crown continuing negotiations with Te Haeata towards a final deed of settlement with Ngāti Porou. In that regard:

- 1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;
- 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, or when either party is required in the course of litigation; and
- 3 media statements concerning the negotiations will only be made when agreed by both parties.

Conditions

Despite the offer contained in this letter, Ngāti Porou and the Crown will not be able to enter into a deed of settlement until:

- 1 Te Rūnanga o Ngāti Porou and the Crown reach agreement on settling all the historical Treaty of Waitangi claims of Ngāti Porou;

- 2 the Crown and Ngāti Porou are satisfied that overlapping claims have been addressed. Certain items of redress provided to Ngāti Porou as part of a deed of settlement may need to reflect the importance of an area or feature to other claimant groups. It will be necessary for discussions about overlapping claims to occur at an early stage in the negotiations process. I also acknowledge the Ngāti Porou position that lands forming part of the Mangatu Forest are within the Ngāti Porou rohe. Ngāti Porou's interest in the Mangatu Forest will need to be addressed through a similar cross claim process.
- 3 Cabinet has given its approval of the settlement package as a whole; and
- 4 Te Rūnanga o Ngāti Porou has obtained a mandate (through a ratification process agreed with the Crown) from Ngāti Porou to:
 - a. enter into the deed of settlement on behalf of Ngāti Porou; and
 - b. in particular, settle the historical claims on the terms set out in the deed of settlement.

Any deed of settlement arising out of this letter (or any subsequent agreement in principle) will be conditional on:

- 1 the establishment of a governance entity that:
 - a. will:
 - i. be appropriate to receive the redress; and
 - ii. have a structure that provides for:
 - representation of members of Ngāti Porou;
 - transparent decision-making, and dispute resolution, processes; and
 - accountability to members of Ngāti Porou; and
 - b. has been ratified by Ngāti Porou (by a ratification process agreed with the Crown) as appropriate to receive the redress that would be provided to it under a deed of settlement;
- 2 that governance entity signing a deed of covenant; and
- 3 the coming into force of settlement legislation.

A way forward

I hope that the Crown's offer, as outlined in this letter, is sufficient for Ngāti Porou's consideration and as a formal endorsement of the important stage that we have reached in the negotiations. Much has been achieved in the short time of negotiations to date.

Once this letter is countersigned, it will take effect as a non-binding high level agreement in principle between the Crown and Ngāti Porou.

I look forward to the Crown and Ngāti Porou continuing the negotiations towards a fair, durable and comprehensive settlement of Ngāti Porou's historical Treaty of Waitangi claims.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'M. Cullen', with a long horizontal line extending to the right.

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

Acknowledged by:

A handwritten signature in blue ink, appearing to read 'Apirana Mahuika', with a long horizontal line extending to the right.

Dr Apirana Mahuika
Chairman of the
Ngāti Porou Negotiations Subcommittee (Te Haeata)

On 23rd OCTOBER

2008