

NGĀTI PŪKENGA

and

THE CROWN

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**AGREEMENT IN PRINCIPLE EQUIVALENT**

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**July 2011**

## INTRODUCTION - SETTLEMENT STRUCTURE

1. The Iwi of Hauraki<sup>1</sup> entered into a Framework Agreement between the Hauraki Collective and the Crown dated 1 October 2010.
2. The Framework Agreement and Agreement in Principle Equivalents represent incremental steps towards a comprehensive Deed of Settlement between the Crown and the Iwi of Hauraki.
3. The Deed of Settlement will settle all Historical Claims<sup>2</sup> under the Te Tiriti o Waitangi / the Treaty of Waitangi<sup>3</sup> in the Hauraki region which arise from the whakapapa of each of the Iwi of Hauraki.
4. As a consequence of the Deed of Settlement, each of the Iwi of Hauraki will be entitled to a range of Treaty settlement redress.
5. The Crown and the Iwi of Hauraki acknowledge that the ultimate structure of a settlement with the Iwi of Hauraki is yet to be agreed, and will be developed in the course of negotiations. Thus, for example, it is not yet agreed whether there will be multiple deeds of settlement or a single deed of settlement with iwi specific redress.<sup>4</sup>
6. This Agreement in Principle Equivalent comprises both collective and iwi specific chapters and includes:
  - a. redress agreed to by the Crown;
  - b. redress the Crown is willing to explore; and
  - c. redress the Hauraki Collective and Ngāti Pūkenga seek.
7. The Crown acknowledges that the Collective and Ngāti Pūkenga has the right to seek redress, but notes that some of the redress iwi seek is outside current government policy.
8. Ngāti Pūkenga is party to the Hauraki Collective Framework Agreement and is undertaking iwi specific negotiations in respect of its interests.
9. Ngāti Pūkenga is party to the Hauraki Collective Framework Agreement and is undertaking iwi specific negotiations in respect of its interests. Ngāti Pūkenga is also part of the Tauranga Moana Iwi Collective, signing a Collective Negotiations Terms of Reference in August 2011. The redress provided to Ngāti Pūkenga through its various iwi specific and collective settlements will together settle the historical Treaty of Waitangi claims of Ngāti Pūkenga.

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<sup>1</sup> Ngāi Tai ki Tāmaki, Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Pāoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngāti Whanaunga and Te Patukirikiri.

<sup>2</sup> As defined, below.

<sup>3</sup> Attached as Appendix 4.

<sup>4</sup> And all references to the singular form therefore import the plural.

## CHAPTER 1 - HAURAKI COLLECTIVE SECTION

### PART 1 - HISTORICAL ACCOUNT, CROWN ACKNOWLEDGEMENTS AND CROWN APOLOGY

#### Historical Account

10. The Hauraki Collective Historical Account will include the following themes and other matters to be agreed:

- a. Iwi of Hauraki and the Crown;
- b. Te Tiriti o Waitangi / the Treaty of Waitangi;
- c. Pre-1840 transactions and pre-emption waiver purchases;
- d. Crown purchases: 1840-1865;
- e. War;
  - i. Crown military action in Hauraki;
  - ii. Crown naval blockade of Tikapa Moana;
- f. Raupatu (Katikati-Te Puna / Central and East Waikato / South Auckland);
- g. Gold and the opening of goldfields in Hauraki;
- h. Native Land Court: individualisation of tribal title, and costs of title determination;
- i. Te Reo Māori me ona tikanga;
- j. Crown purchase policy and legislation – 19th and 20th centuries:
  - i. Reihana and indebtedness;
  - ii. Crown use of pre-emption;
  - iii. timber licenses;
- k. marginalisation and protest: 19th and 20th centuries – including goldfields, and foreshore and seabed;
- l. Tāonga and wāhi tapu;
- m. Natural resources, including water and minerals;
- n. drainage of Hauraki Plains;
- o. rates and roads;
- p. public works and compulsory taking of land;
- q. Tikapa Moana and Te Tai Tamahine;
- r. landlessness and social deprivation;
- s. access to medical treatment and medicines;
- t. access to education;
- u. Iwi of Hauraki diaspora and urbanisation; and
- v. other socio-economic impacts.

11. The Hauraki Collective also seeks that the Historical Account includes the following statements:

- a. the Crown waged war against its Treaty Partner, the Iwi of Hauraki;
- b. the Crown's military invasion of Hauraki and related actions were unlawful;
- c. the Crown's naval blockade of Tikapa Moana and related actions were unlawful;
- d. the Crown destroyed the tribal land holding in Hauraki;
- e. the Crown unilaterally suspended the rule of law when inconvenient foreshore and seabed decisions were made by the Judiciary;
- f. the Crown pursued predatory land policy and legislation in the 19th and 20th centuries; and
- g. the land loss suffered by the Iwi of Hauraki at the hands of the Crown resulted in tribal devastation and poverty.

## **Crown acknowledgements**

12. The Deed of Settlement will contain a full set of Crown acknowledgements that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.
13. The Deed of Settlement will include the following Crown acknowledgements:
- a. the Crown had a duty of active protection to ensure that there was sufficient land holding retained by the Iwi of Hauraki for their future sustenance and growth and that its failure to ensure they retained possession of adequate land constituted a breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles;
  - b. there was large scale and rapid Crown purchasing of Iwi of Hauraki land in the latter part of the 19th century. The Crown acknowledges that Crown purchasing contributed to the overall landlessness of the Iwi of Hauraki and this failure to ensure retention of sufficient land holding by the Iwi of Hauraki constituted a breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles; and
  - c. that the application of the confiscation policy in respect of land in East Wairoa and central Waikato (Maramarua) was unjust and in breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.
14. Furthermore, it is envisaged that the Deed of Settlement will include the Treaty breach acknowledgements made during Stage I of the Tauranga Moana Inquiry insofar as they relate to the Hauraki region, including acknowledgements with respect to:
- a. perceptions of rebellion and the subsequent confiscation of lands;
  - b. the failure to provide reserves; and
  - c. certain public works takings.

## **Crown apology**

15. The Deed of Settlement will contain a Crown Apology for the acknowledged Crown breaches of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

## **PART 2 - CULTURAL REDRESS**

16. The Crown and the Hauraki Collective will explore, for possible inclusion in the Deed of Settlement, the following types of cultural redress, that are being sought by the Hauraki Collective:
- a. land transfers;
  - b. statutory instruments, including:
    - overlay classifications;
    - statutory acknowledgements, including:
      - coastal statutory acknowledgements;
      - river statutory acknowledgements and deeds of recognition;
      - maunga statutory acknowledgements and deeds of recognition; and
  - c. deeds of recognition;
  - d. relationship agreements such as resource co-governance arrangements and protocols;
  - e. access to cultural resources, including nohoanga and other arrangements;
  - f. plans for management of resources; and
  - g. official geographic name changes.

## **Land transfers**

17. The Hauraki Collective seeks:

- a. the fee simple vesting of Crown owned parts of Moehau and Te Aroha Maunga;
- b. the fee simple vesting of other Crown lands of ancestral, spiritual and cultural significance to the Hauraki Collective, including Crown land administered by the Department of Conservation / Whenua Kura (conservation land), maunga and motu;
- c. other cultural lands to be returned to the Hauraki Collective for cultural purposes;
- d. the best endeavours of the Crown to facilitate requests by the Iwi of Hauraki to local authorities for the transfer of ancestral lands.

## **Co-governance and related arrangements**

18. The Crown and the Hauraki Collective will continue to explore, further to the Framework Agreement, co-governance and other similar arrangements including in respect of:

- a. the Waihou River and Piako River catchments, which includes the Ohinemuri River, with the Waikato Regional Council and the local authorities in those catchments;
- b. the rivers and waterways of the Coromandel Peninsula with the Waikato Regional Council and the local authorities in those catchments;
- c. conservation land / Whenua Kura in the Hauraki region with the Department of Conservation.

19. The Waikato-Tainui settlement provides for co-governance arrangements, which have now been implemented through the Waikato River Authority, in parts of the Whangamarino system, and Mangatawhiri and Mangatangi streams. The Iwi of Hauraki are not included in those co-governance arrangements.

20. The Hauraki Collective seeks recognition of their interests in the Whangamarino system, and Mangatawhiri and Mangatangi river catchments.

21. The Crown and Hauraki Collective will explore arrangements such as:

- a. formal Conservation Board representation;
- b. formal Hauraki Gulf Forum representation; and
- c. a relationship agreement issued by the Minister of Conservation.

22. The Hauraki Collective also seeks co-governance arrangements over Tikapa Moana (the Hauraki Gulf) and Te Tai Tamahine (the Coromandel East Coast), including harbours and waterways, with the Waikato Regional Council and other local authorities with responsibilities in those coastal marine areas.

## **Freshwater and marine fisheries**

23. The Iwi of Hauraki assert mana moana and kaitiaki responsibilities over fisheries in Tikapa Moana and Te Tai Tamahine, and seek arrangements that reflect those direct relationships.

24. The Ministry of Fisheries will explore with the Iwi of Hauraki the development of a protocol that will set out how the Ministry and the Iwi will engage in the future, to recognise and provide for the Iwi input and participation into sustainability and processes that relate to freshwater and marine fisheries managed under the Fisheries Act.

25. The Ministry of Fisheries will also explore other mechanisms with the Hauraki Collective that may recognise the interests of the Hauraki Collective in marine and freshwater fisheries in Tikapa Moana and Te Tai Tamahine, and the waterways of Hauraki.

### **Other Crown protocols**

26. The Deed of Settlement will provide for protocols issued by Ministers setting out the way in which specific government agencies will interact with the Iwi of Hauraki in the future. Protocols issued by the following Ministers will be explored:

- a. Minister of Energy; and
- b. Minister for Arts, Culture and Heritage.

### **Relationships with other agencies**

27. The Hauraki Collective seeks meaningful relationships with other agencies and the Crown and the Hauraki Collective will explore how the Crown can facilitate these relationships.

### **Te Reo Māori and tāonga**

28. The Hauraki Collective seeks redress in respect of the following matters:

- a. Te Reo Māori me ona tikanga; and
- b. enhancement and return of all forms of tāonga.

### **Geographic name changes**

29. The Crown and Hauraki Collective will explore amending or assigning an agreed list of place names of significance to the Iwi of the Hauraki Collective:

- a. in consultation with the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa); in accordance with the requirements of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, and the orthographic conventions of Te Taura Whiri i te Reo Māori (the Māori Language Commission); and
- b. as included in the Deed of Settlement.

## **PART 3 - FINANCIAL REDRESS**

### **Crown financial redress offer**

30. The Crown will make a financial redress offer during negotiations to the Hauraki Collective for the settlement of all Treaty claims of the Iwi of Hauraki in the Hauraki region.

### **Interest**

31. The Crown will explore non-compounding interest accruing on the agreed financial redress amount from the date that amount is agreed to the day before settlement date.

### **Iwi Proportions**

32. It is intended that the proportion for each of the Iwi of Hauraki to the financial redress will be agreed between the Iwi of Hauraki in a timely fashion. Failing that, on the basis that no agreement between the Iwi has been reached, the Crown will propose the proportions of the total financial redress offer it considers relates to each of the Iwi of Hauraki.

### **On-account payment and incentive**

33. The Hauraki Collective seeks an incentive for collectivity over and above the financial redress amount as and when agreements are made.
34. The Crown will explore the Hauraki Collective's request for on account cash payments as and when agreements are made.

### **PART 4 - COMMERCIAL REDRESS**

#### **Crown forest lands**

35. Once relevant Deed of Settlement have been ratified and become unconditional, the Hauraki Collective will have the right to purchase the following Crown Forest Licensed lands at market valuation with the associated accumulated rentals being passed on to the Hauraki Collective:
- a. Kauaeranga;
  - b. Tairua;
  - c. Waihou;
  - d. Whangamata;
  - e. Whangapoua.
36. The Hauraki Collective will also receive the ETS credits, as provided for under the Climate Change Response Act 2002, associated with these Crown forests.
37. The Hauraki Collective and Tauranga Moana iwi will also receive redress in relation to the Athenree Crown Forest Licensed land.

#### **Landcorp properties**

38. On settlement date the Hauraki Collective will have the right to purchase Whenuakite Landcorp farm at market valuation.
39. Hauraki Collective seeks to purchase approximately 315 hectares of Pouarua Landcorp farm at market valuation.

#### **Acquisition of other Crown properties**

40. The Hauraki Collective seeks the right to purchase the following types of land and receive fee simple title:
- a. Crown lands, including Ministry of Justice properties, such as courts, and Ministry of Education school properties (land only); and
  - b. Office of Treaty Settlements' land bank properties.
41. The Hauraki Collective seeks the right to purchase non-core Crown lands.
42. Purchase mechanisms the Crown and Hauraki Collective may explore in respect of land made available for transfer include purchase, leaseback and / or deferred selection.
43. The Hauraki Collective seeks other commercial redress mechanisms.
44. The Crown and the Hauraki Collective will explore the ability for the Collective to purchase commercial redress properties over and above the financial redress amount.
45. The Hauraki Collective also seeks the right to acquire certain lands via gift from the Crown.

### **Right of First Refusal**

46. The Deed of Settlement will provide the Hauraki Collective a right of first refusal, on similar terms as in recent Treaty settlements, for the period of 170 years in relation to Crown properties within the Hauraki region.
47. The Crown and the Hauraki Collective will continue to explore a Right of First Refusal for the period of 170 years in relation to land currently held by non-Core Crown entities within the Hauraki region.
48. The Hauraki Collective also seeks a right of first refusal over certain other lands in the rohe of the Iwi of Hauraki.

### **Other commercial redress**

49. The Hauraki Collective also seeks inclusion of the following in the Deed of Settlement:
- a. rights relating to nationalised and non-nationalised Crown-owned minerals and information held by the Crown or Crown Research Institutes on these minerals; and
  - b. in relation to conservation land / Whenua Kura, Tikapa Moana and Te Tai Tamahine, preferential access to concessions;
  - c. opportunities to enter into formal arrangements with the Crown over its proposed commercial arrangements in the Hauraki region, particularly in relation to infrastructure development and investment.
50. In relation to minerals, the Iwi of Hauraki reaffirm that since the 19<sup>th</sup> century they have consistently resisted the Crown's construct of a Royal prerogative, whether at common law or under statute, and never gave their free, prior and informed consent to the Crown's use of their minerals. Thus, within Hauraki, the Crown's arguments about legislative mineral rights are erroneous as the Crown never had lawful title to the minerals on which to found their purported legislative assumption of ownership.
51. The Crown asserts ownership of minerals under the Crown Minerals Act 1991 and does not accept that the nationalisation of minerals is a breach of the Treaty. Section 10 of the Crown Minerals Act 1991 provides that all gold, silver, uranium and petroleum existing in its natural condition in land shall be the property of the Crown. Section 11 of the Crown Minerals Act 1991 reserves all minerals to the Crown in any future alienation of Crown land and upholds all reservations of minerals made in earlier enactments. Decision-making regarding prospecting, exploration and mining of petroleum and minerals is prescribed under the Crown Minerals Act 1991.

### **Iwi proportions to collective commercial redress**

52. It is intended that any allocation between the Iwi of Hauraki of commercial redress will be agreed between the Iwi of Hauraki in a timely fashion. Failing that, on the basis that no agreement between the iwi has been reached, the Crown will propose the proportions of the total commercial redress offer it considers relates to each of the Iwi of Hauraki.

### **PART 5 - OTHER ISSUES FOR DISCUSSION**

53. The Crown and the Hauraki Collective acknowledge that certain other matters which are the subject of historical claims have either not yet been discussed in negotiations or require further discussion, and agree to commence / continue those discussions following the signing of this Agreement in Principle Equivalent and any other documents through to Deed of Settlement and Settlement Legislation.



## PART 6 - TERMS AND CONDITIONS

54. This chapter is subject to the following terms and conditions:

- a. it is without prejudice;
- b. it may not be used as evidence in any proceedings before, or presented to, the courts, the Waitangi Tribunal, any court or any other judicial body or tribunal (except as agreed between the parties);
- c. it is non-binding and does not create legal relations;
- d. the final settlement is conditional upon Cabinet agreement;
- e. statements regarding redress the Hauraki Collective seeks represent the wishes of the Hauraki Collective and do not represent;
  - a Crown endorsement of that type of redress; or
  - a Crown Commitment to negotiate either the type of redress or the provision of the actual redress specified in the statement, or both;
- f. the Crown will only provide redress over Crown land unless otherwise agreed with the land-holding agency;
- g. protocols will be, in substance, on the same terms as protocols provided in recent Treaty settlements;
- h. with respect to cultural redress offers, a final list of prioritised areas and / or properties and agreed redress over those areas and /or properties;
- i. any transfer of properties as cultural redress will be subject to public access, the protection of appropriate conservation values, and third party rights as applicable, along with the finalisation of all outstanding matters relating to transfer;
- j. cultural redress properties transferred will not be offset against the financial redress amount unless otherwise agreed;
- k. any offer in regard to Ministry of Education properties (land only) will be made following further analysis by the Ministry of its approach to requests for sale and leaseback and subject to Cabinet approval;
- l. all outstanding elements of the financial and commercial redress offer being finalised, including property identification and any associated valuations;
- m. the transfer value of commercial redress properties will be offset against the principal financial redress amount;
- n. the transfer value of the Crown Forest Licensed land will be offset against the principal financial redress amount;
- o. the transfer to the Hauraki Collective of the Crown Forest Licensed land will be subject to:
  - survey;
  - determination or agreement of a transfer value based upon agreed valuation instructions and a fair valuation process in a similar form to previous Treaty settlements;

- discussion and agreement on the definition of / and appropriate legal access and other rights required;
  - the preservation of any existing third party rights of access to the Crown Forest Licensed land; and
  - discussion and agreement on any provision for access to, and preservation of, wāhi tapu of other iwi/hapū;
- p. the Deed of Settlement will provide for the accumulated rentals (held by the Crown Forestry Rental Trust) associated with the Crown Forest Licensed land selected for transfer to be paid to a suitable post settlement governance entity in accordance with the Trust Deed of the Crown Forestry Rental Trust dated 30 April 1990 (as if the Waitangi Tribunal had made a final recommendation for the return of that land to the Governance Entity). The accumulated rentals are in addition and separate to the financial redress amount;
- q. the accumulated rentals associated with the Crown Forest Licensed land will be paid in accordance with the terms of the agreed settlement legislation;
- r. the Crown confirming that any overlapping claimant group interest in relation to any part of the settlement redress has been addressed to the satisfaction of the Crown in respect of that item of redress;
- s. agreed tax and other commercial arrangements for the Hauraki Collective Governance Entity;
- t. the Hauraki Collective obtaining, before the Deed of Settlement is signed, a mandate from their iwi constituents (through a process agreed by the Collective and the Crown) authorising them to enter into the Deed of Settlement and settling the Historical Claims on the terms provided in the Deed of Settlement; and
- u. the establishment of a governance entity that –
- is appropriate to receive the redress; and
  - provides, for the settling group –
    - appropriate representation;
    - transparent decision making and dispute resolution processes;
    - full accountability; and
- v. the Crown being satisfied that, through a ratification process approved by the Crown, members of the settling group have approved –
- the governance entity to receive the redress; and
  - the settlement on the terms provided in the deed of settlement.

## **PART 7 - DEFINITIONS**

55. The “Crown” means:

- a. the Sovereign in right of New Zealand; and
- b. includes all Ministers of the Crown and all Departments; but
- c. does not include:
  - an Office of Parliament;
  - a Crown Entity; or
  - a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

56. The deed of settlement will provide that historical claims means

a. every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –

- is, or is founded on, a right arising –
  - from Te Tiriti o Waitangi / the Treaty of Waitangi or its principles; or
  - under legislation; or
  - at common law, including aboriginal title or customary law; or
  - from fiduciary duty; or
  - otherwise; and
- arises from, or relates to, acts or omissions before 21 September 1992 –
  - by, or on behalf of, the Crown; or
  - by or under legislation; and
- includes every claim to the Waitangi Tribunal that relates exclusively or in part to the settling group or a representative entity; and
- does not include claims –
  - that a member of the settling group, or a whānau, hapū, or group, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in the claimant definition:

57. Except as explicitly agreed, the Deed of Settlement will not affect any rights of the Iwi of Hauraki, including aboriginal title or customary rights.

## CHAPTER 2 – NGĀTI PŪKENGA SECTION

### PREAMBLE

Ngāti Pūkenga record the following

Ngāti Pūkenga today is an iwi comprising the descendants of Te Tāwera, Ngāti Ha and Ngāti Pūkenga. Ngāti Pūkenga have exercised tino rangatiratanga from time to time over their lands and resources.

Ngāti Pūkenga ancestral lands are located in the Bay of Plenty at Tauranga Moana, their kāinga mātua, and Maketu. Ngāti Pūkenga also acquired landholdings at Manaia in Hauraki and Pakikaikutu in Whangarei during the period of intense intertribal warfare which followed the introduction of muskets in the early nineteenth century.

Accordingly, Ngāti Pūkenga are now established in four major kāinga in: Tauranga; Manaia (Hauraki); Pakikaikutu (Whangarei); and Maketu all of which are active communities. Ngāti Pūkenga struggles to function as one because the kāinga are discrete and independent,

The Manaia kāinga is a special and unique community within the Hauraki region. The kāinga sits within the "Pataka kai" which includes the Manaia valley, Manaia Awa, and Manaia Harbour.

As a result Ngāti Pūkenga is participating in two regional negotiations - Hauraki and Tauranga Moana.

### PART 1 - MANDATE RECOGNITION

1. On 25 January 2010, by letter from the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs, the Crown recognised the Treaty negotiation mandate of Te Au Māro ō Ngāti Pūkenga Charitable Trust to negotiate and settle the historical Treaty of Waitangi Claims of Ngāti Pūkenga. A Terms of Negotiation was signed by both parties on the same day. The letter is attached as Appendix 1.

### PART 2 - HISTORICAL ACCOUNT, CROWN ACKNOWLEDGEMENTS AND CROWN APOLOGY

2. The Crown and Ngāti Pūkenga will agree an historical account that, in addition to the Collective account, includes the following themes:
  - a. The Ngāti Pūkenga community at Manaia;
  - b. Issues of title determination for Ngāti Pūkenga at Manaia;
  - c. The alienation of Ngāti Pūkenga interests in the Manaia Block;
  - d. Crown purchase of individual interests;
  - e. Impact of survey and partition costs;
  - f. Gold and timber resources on the Manaia Block;
  - g. Lands gifted for education purposes;
  - h. Environmental impacts of mining and forestry;
  - i. Environmental degradation of the Manaia and other Awa of the Manaia catchment;
  - j. The impact of raupatu in Tauranga upon the Ngāti Pūkenga community at Manaia; and,
  - k. Such other matters as agreed for inclusion in the historical account.
3. Ngāti Pūkenga also seeks that the Historical Account includes the following statements:
  - a. The Crown failed to ensure that Ngāti Pūkenga customary interests at Manaia were properly recognised by the Native Land Court;
  - b. The Crown failed to return land gifted for a school when that land was no longer used for the purpose of the gift;

- c. The Crown used sharp practices when purchasing lands from Ngāti Pūkenga individuals, resulting in the alienation of 1,976 acres of Ngāti Pūkenga land; and
- d. The Crown failed to adequately protect the environment from the impact of mining and forestry.

4. The Deed of Settlement will also contain:

- a. Crown acknowledgements to Ngāti Pūkenga that certain actions or omissions of the Crown were a breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles; and
- b. A Crown Apology to Ngāti Pūkenga for the acknowledged Crown breaches of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

### **PART 3 - CULTURAL REDRESS**

5. In addition to or as part of the cultural redress provided to the Hauraki Collective, the Crown and Ngāti Pūkenga will explore, for possible inclusion in the Deed of Settlement the following types of cultural redress specifically for Ngāti Pūkenga:

- a. land transfers;
- b. statutory instruments, including:
  - overlay classifications;
  - statutory acknowledgements, including:
    - coastal statutory acknowledgements;
    - river statutory acknowledgements and deeds of recognition;
    - maunga statutory acknowledgements and deeds of recognition; and
- c. deeds of recognition;
- d. relationship agreements such as resource co-governance arrangements and protocols;
- e. access to cultural resources, including nohoanga and other arrangements;
- f. plans for management of resources; and
- g. official geographic name changes.

6. Ngāti Pūkenga also seeks:

- a. return of and access to tāonga; and
- b. specific recognition of Ngāti Pūkenga within relevant co-governance arrangements that may be negotiated.

7. The Hauraki Region sites of ancestral, spiritual and cultural significance to Ngāti Pūkenga that Ngāti Pūkenga seeks to negotiate cultural redress over include those areas identified in Appendix 2.

### **PART 4 - FINANCIAL REDRESS**

8. Ngāti Pūkenga will receive Hauraki Region financial redress as agreed in accordance with Part 3 of the Collective Section.
9. The Crown will explore associated non-compounding interest accruing on the Ngāti Pūkenga Hauraki Region financial redress amount from the date that amount is agreed to the day before Settlement Date.

## **PART 5 - COMMERCIAL REDRESS**

10. The parties have agreed to explore the availability of other commercial redress because there are no Crown properties within the core area of interest of Ngāti Pūkenga.
11. Should the Crown and the Hauraki Collective not include the Manaia School (land only) as Hauraki Collective redress, then the Crown will explore providing Ngāti Pūkenga with a right alongside other Hauraki iwi as agreed, to acquire the school (although outside the core area of interest of Ngāti Pūkenga) by purchase and lease-back.

## **PART 6 - OTHER NGĀTI PŪKENGA SPECIFIC ISSUES**

12. Ngāti Pūkenga seeks that the Crown discuss or explore redress to address other specific Ngāti Pūkenga specific issues, including:
  - a. initiatives to maintain the unique sustainability of Ngāti Pūkenga as a special Maori community in Hauraki;
  - b. assistance with cultural revitalisation;
  - c. Support for the management and investment of settlement assets.

## **PART 7 - OTHER ISSUES FOR DISCUSSION**

13. The Crown and Ngāti Pūkenga acknowledge that certain other matters which are the subject of Hauraki Region historical claims have either not yet been discussed in negotiations or require further discussion, and agree to commence/continue those discussions following the signing of this Agreement in Principle Equivalent and other documents through to Deed of Settlement and Settlement Legislation

## **PART 8 - TERMS AND CONDITIONS**

14. This chapter is subject to the following terms and conditions:
  - a. it is without prejudice;
  - b. it may not be used as evidence in any proceedings before, or presented to, the courts, the Waitangi Tribunal, any court or any other judicial body or tribunal (except as agreed between the parties);
  - c. it is non-binding and does not create legal relations;
  - d. the final settlement is conditional upon Cabinet agreement;
  - e. statements regarding redress Ngāti Pūkenga seeks represent the wishes of Ngāti Pūkenga and do not represent;
    - a Crown endorsement of that type of redress; or
    - a Crown Commitment to negotiate either the type of redress or the provision of the actual redress specified in the statement, or both;
  - f. the Crown will only provide redress over Crown land unless otherwise agreed with the land-holding agency;
  - g. protocols will be, in substance, on the same terms as protocols provided in recent Treaty settlements;
  - h. with respect to cultural redress offers, a final list of prioritised areas and / or properties and agreed redress over those areas and /or properties;

- i. any transfer of properties as cultural redress will be subject to public access, the protection of appropriate conservation values, and third party rights as applicable, along with the finalisation of all outstanding matters relating to transfer;
- j. cultural redress properties transferred will not be offset against the financial redress amount unless otherwise agreed;
- k. any offer in regard to Ministry of Education properties (land only) will be made following further analysis by the Ministry of its approach to requests for sale and leaseback and subject to Cabinet approval;
- l. all outstanding elements of the financial and commercial redress offer being finalised, including property identification and any associated valuations;
- m. the transfer value of commercial redress properties will be offset against the principal financial redress amount;
- n. the Crown confirming that any overlapping claimant group interest in relation to any part of the settlement redress has been addressed to the satisfaction of the Crown in respect of that item of redress;
- o. agreed tax and other commercial arrangements for the Ngāti Pūkenga Governance Entity;
- p. Ngāti Pūkenga obtaining, before the Deed of Settlement is signed, a mandate from their iwi constituents (through a process agreed by the Collective and the Crown) authorising them to enter into the Deed of Settlement and settling the Historical Claims on the terms provided in the Deed of Settlement; and
- q. the establishment of a governance entity that –
  - is appropriate to receive the redress; and
  - provides, for the settling group –
    - appropriate representation;
    - transparent decision making and dispute resolution processes;
    - full accountability; and
- r. the Crown being satisfied that, through a ratification process approved by the Crown, members of the settling group have approved –
  - the governance entity to receive the redress; and
  - the settlement on the terms provided in the deed of settlement.

## **PART 9 - DEFINITIONS**

15. The "Crown" means:
- a. the Sovereign in right of New Zealand; and
  - b. includes all Ministers of the Crown and all Departments; but
  - c. does not include:
    - an Office of Parliament;
    - a Crown Entity; or

- a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

16. The deed of settlement will provide that historical claims means

- a. every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –
  - is, or is founded on, a right arising –
    - from Te Tiriti o Waitangi / the Treaty of Waitangi or its principles; or
    - under legislation; or
    - at common law, including aboriginal title or customary law; or
    - from fiduciary duty; or
    - otherwise; and
  - arises from, or relates to, acts or omissions before 21 September 1992 –
    - by, or on behalf of, the Crown; or
    - by or under legislation; and
  - includes every claim to the Waitangi Tribunal that relates exclusively or in part to the settling group or a representative entity; and
  - does not include claims –
    - that a member of the settling group, or a whānau, hapū, or group, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in the claimant definition.

Except as explicitly agreed, the Deed of Settlement will not affect any rights of the Iwi of Hauraki, including aboriginal title or customary rights



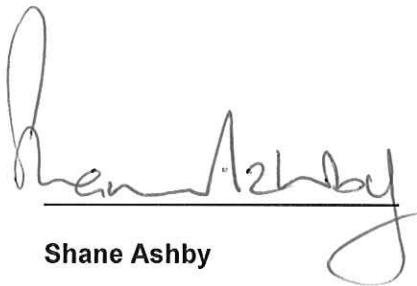
SIGNED for and on behalf of THE CROWN by –



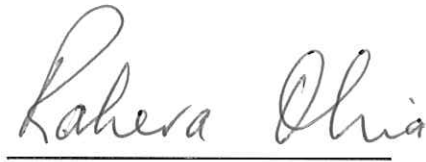
The Minister for Treaty of Waitangi Negotiations

Hon Christopher Finlayson

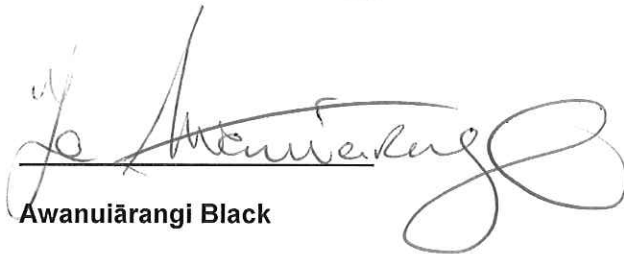
SIGNED for and on behalf of Ngāti Pūkenga by the mandated negotiators -



**Shane Ashby**



**Rahera Ohia**



**Awanuiārangi Black**

APPENDIX 1

LETTER OF MANDATE RECOGNITION



Office of Hon Christopher Finlayson

Attorney-General  
Minister for Treaty of Waitangi Negotiations  
Minister for Arts, Culture and Heritage

25 JAN 2010

Chairperson  
Te Au Māro o Ngāti Pūkenga  
652 Welcome Bay Road  
RD 5  
TAURANGA

Tēnā koe

We write to confirm the Crown's recognition of the mandate of Te Au Māro o Ngāti Pūkenga (Te Au Māro) to negotiate a settlement of all the historical Treaty claims of Ngāti Pūkenga with the Crown.

The deed of mandate you have submitted shows a very high level of support for Te Au Māro from the four regions in which you claim interests. We have concluded that Te Au Māro is an appropriate body to represent Ngāti Pūkenga in settlement negotiations with the Crown.

We note that you have been working through representation issues relating to the Hauraki Māori Trust Board mandate and your interests in Manala. We understand that you have been engaging in discussions with the Hauraki Māori Trust Board and we encourage you to continue these discussions to ensure that they do not hamper progress with your negotiations.

In conclusion, we are pleased to recognise the mandate of Te Au Māro to represent Ngāti Pūkenga in negotiations for the settlement of their historical Treaty claims. Congratulations on attaining this milestone in your path to reaching settlement with the Crown. We look forward to working with you.

Nā māua noa,

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

Hon Dr Pita R Sharples  
Minister of Māori Affairs

## APPENDIX 2

### NGĀTI PŪKENGĀ HAURAKI REGION CULTURAL REDRESS AREAS / PROPERTIES

- a. Manaia survey liens blocks (the Manaia (1B & 2B) E1 and (1B & 2B) D1 blocks of approximately 129.6258 ha.);
- b. Manaia Crown purchase block including the maunga Hauturu (Section 31, Block II Hastings Survey District of approximately 799.6588 ha. and formerly known as the Manaia (1B & 2B) sections E2A1 and E2E1);
- c. The Manaia Awa;
- d. The Manaia Harbour;
- e. The Otamatoa awa; and
- f. The Tawaawahi awa.

## **APPENDIX 3**

### **NGĀTI PŪKENGA HAURAKI REGION COMMERCIAL REDRESS AREA / PROPERTIES**

The parties have agreed to explore the availability of other commercial redress because there are no Crown properties within the core area of interest of Ngāti Pūkenga.

## Te Tiriti o Waitangi (The Text in Maori)

### Preamble

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

### Ko te Tuatahi

- Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

### Ko te Tuarua

- Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

### Ko te Tuatoru

- Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,  
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.  
Ko nga Rangatira o te wakaminenga.

## **The Treaty of Waitangi (The Text in English)**

### **Preamble**

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

### **Article The First**

- The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

### **Article The Second**

- Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

### **Article The Third**

- In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc]