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

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24 JULY 2009

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

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- 1 The parties to this document, known as the Terms of Negotiation, are the Crown, (as defined in clause 13) and the Raukawa Trust Board (“the Trust Board”) on behalf of Raukawa (as defined in clause 11).

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

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

## **Negotiation Processes**

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- 3 The parties have been engaged in two related negotiation processes to date:
  - a the Trust Board is part of the CNI Collective, and entered into the Deed of Settlement of the Historical Claims of Central North Island Forests Iwi Collective to the CNI Forests Land (CNI Settlement Deed) for the settlement of the Historical CNI Forests Land Claims (as that term is defined in the CNI Settlement Deed) of Raukawa on Wednesday 25 June 2008; and,
  - b the Trust Board, together with Te Pumautanga o Te Arawa, on behalf of the relevant Affiliate Te Arawa Iwi/Hapu, entered into the Agreement in relation to co-management framework for the Waikato River on Thursday 4 September 2008, and is currently negotiating a binding Deed on this matter.
- 4 The parties signed initial terms of negotiation on Wednesday 25 June 2008. Under those terms, the parties agreed that, while the Trust Board was going through a formal mandating process, they would begin negotiations on Raukawa claims to the Waikato River in accordance with the objectives in clause 8.

- 5 The parties agreed that those terms of negotiation would be reviewed once the Trust Board had gone through a formal mandating process. The Trust Board has now been through a formal mandating process, and the Crown has recognised the Trust Board's mandate. The Trust Board's Deed of Mandate to represent Raukawa in negotiations with the Crown for the settlement of the Historical Claims is attached as Appendix 1. The Crown's letter recognising the Trust Board's mandate is attached as Appendix 2. Accordingly, the parties have now reviewed the terms of negotiation of 25 June 2008.
- 6 Under these terms of negotiation, the parties now confirm that they will begin negotiations for a comprehensive settlement of the remaining historical claims of Raukawa, including claims to the Waikato River.
- 7 The parties acknowledge that under clause 2.13.2 of the CNI Settlement Deed, the Raukawa share of the Financial Redress (as that term is defined in the CNI Settlement Deed) will be 'on account' for financial redress that may be provided in these negotiations.
- 8 The parties agree to co-ordinate these negotiations for a comprehensive settlement with other negotiations currently in process between the parties, and acknowledge that they may need to revise the process of negotiations (as set out in clause 23).

### **Objectives of the Negotiations**

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- 9 The parties agree that the underlying objectives of the negotiations will be to negotiate in good faith a settlement of all the historical claims of Raukawa that:
  - a is comprehensive, final and durable;
  - b is fair, just and reasonable in the circumstances;
  - c does not:
    - i diminish or in any way affect any rights that Raukawa have arising from Te Tiriti o Waitangi/The Treaty of Waitangi and its principles, except to the extent that claims arising from these rights are settled;
    - ii extinguish or limit any aboriginal or customary rights Raukawa may have;
  - d provides redress that is fair, just and reasonable, and recognises the nature and extent of the breaches of the Crown's obligations to Raukawa under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and where appropriate, acknowledges the effect these breaches have had on the economic, social, cultural and political well-being of Raukawa;

- e provides a platform to assist Raukawa to develop their economic base and enhance their social, cultural and political development;
- f enhances the ongoing relationship between the parties; and
- g demonstrates and records that the parties have acted honourably and reasonably in negotiating the settlement.

In addition, the parties acknowledge that the Crown views the settlement as a means of restoring the honour of the Crown.

### Definition of Raukawa and the Historical Claims

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- 10 The Trust Board and the Crown will continue to review the definitions of Raukawa and the Historical Claims provided in this section and may continue to develop these definitions throughout the negotiations.
- 11 **Raukawa** means all those people who descend from Raukawa and affiliate to a Raukawa marae in the Waikato area.
- 12 The intention is to settle all the outstanding historical claims of Raukawa insofar as those claims relate to Raukawa interests. **Historical Claims** means:
  - a all claims made at any time (whether or not the claims have been researched, registered, considered or notified) by any Raukawa claimant or any person or group representing Raukawa that:
    - i are, or are founded on, rights arising from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles, legislation, common law (including customary law and aboriginal title), a fiduciary duty, or otherwise; and
    - ii arise from or relate to any policies, practices, acts or omissions before 21 September 1992:
      - I by or on behalf of the Crown; or
      - II or under legislation;
  - b and includes every claim to the Waitangi Tribunal to which clause 12(a) applies, including:
    - i Wai 254;
    - ii Wai 255;
    - iii Wai 290;
    - iv Wai 389;

- v Wai 443;
- vi Wai 538;
- vii Wai 547;
- viii Wai 667;
- ix Wai 1340;
- x Wai 1472;
- xi Wai 1473;
- xii Wai 1474; and
- xiii Wai 557, to the extent that this is a Raukawa claim.

### **Definition of the Crown**

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#### **13 The Crown:**

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

### **Mandate to Negotiate**

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- 14 On signing initial terms of negotiation with the Trust Board on Wednesday 25 June 2008, the Crown acknowledged that the Trust Board had wide support from Raukawa to begin initial discussions with the Crown.
- 15 At that time, the Trust Board undertook to provide a Deed of Mandate to the Crown at the end of its mandate process. The Trust Board has now completed its mandate process and submitted a Deed of Mandate to the Crown.
- 16 The Trust Board's Deed of Mandate to represent Raukawa in negotiations with the Crown for the settlement of the Historical Claims is attached as Appendix

1. The Crown's letter recognising the Trust Board's mandate is attached as Appendix 2.
- 17 If representation issues arise during negotiations that cannot be resolved by agreement within Raukawa, the Crown will discuss a process to address those issues with the Trust Board.
- 18 The Trust Board agrees to provide the Office of Treaty Settlements with reports on the state of its mandate, every three months. The Crown agrees to advise the Trust Board of any correspondence it receives about the mandate of the Trust Board.
- 19 The Crown agrees to promptly provide the Trust Board with any relevant information, reports, or other documents relating to mandate that would be disclosed if it were to make a request under the Official Information Act 1982.

### **Subject Matter for Negotiation**

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- 20 The parties will together agree upon subject matters to be negotiated.
- 21 The list of subject matters to be negotiated will include the following categories of redress:
- a The Crown's Apology and Acknowledgements;
  - b Cultural redress; and
  - c Financial and Commercial redress.
- 22 The Trust Board will be seeking to engage with third parties as part of the redress negotiations. The Crown may facilitate those engagements as agreed between the parties.

### **Process of Negotiations**

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- 23 The parties agree that the general process of negotiations will include, but not necessarily be limited to:
- a Agreement in Principle  
The signing of an Agreement in Principle that will outline the scope and nature of the settlement redress to be recorded in the Deed of Settlement.
  - b Initialled Deed of Settlement

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

c Ratification

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

d Deed of Settlement signed if ratified

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

e Governance Entity and Settlement legislation

The settlement of the 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.

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

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

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

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26 The parties agree that the settlement of the Historical Claims will enable the:

a final settlement of all the Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;

b discontinuance of the Office of Treaty Settlements landbank arrangements for the protection of potential settlement properties for the benefit of Raukawa;

c removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the

Education Act 1989 and for statutory protection relating to the Historical Claims against the Crown for the benefit of Raukawa;

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

### **Communication**

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- 27 The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep Raukawa informed, but also the need for confidentiality regarding third parties.
- 28 The Crown will aim to ensure departments are aware of the nature and subject matter of the negotiations with the objective of advising the Trust Board of any issues that arise in the course of negotiations that may cause Raukawa concern. The parties will agree on a process to address such issues if they arise.

### **Overlapping Claims**

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- 29 The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Raukawa as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 30 The parties note that in areas where there are overlapping claims, the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be managed.
- 31 The parties will at an early stage in the negotiation process discuss the nature and extent of the interests of overlapping claimant groups in the Raukawa area of interest. The Trust Board and the Crown will then consider what further actions on the part of Raukawa are necessary to address overlapping claim



issues. The Trust Board will consult with neighbouring claimant groups at an early stage to assist in resolving overlapping claims issues.

- 32 The Crown will carry out its own consultation with overlapping claimant groups, and will keep the Trust Board informed of any issues that may arise during that consultation which may affect the Trust Board or Raukawa.

### **Overlapping Negotiations**

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

### **Conditions of Settlement**

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

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

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- 36 The parties agree that before settlement legislation can be introduced, an appropriate legal entity to receive the settlement redress will need to be in place that:
- a has been ratified by Raukawa (in a manner to be agreed by both parties);
  - b is in a form that both parties agree adequately represents all Raukawa;
  - c has transparent decision-making and dispute resolution processes; and
  - d is fully accountable to, and acts for the benefit of Raukawa.

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

### **Claimant Funding**

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- 38 The parties agree that the Crown will make a contribution to the negotiation costs of Raukawa. This contribution will be paid in instalments at specified milestones in the negotiation process.
- 39 The contribution referred to in paragraph 38 above relates to negotiation costs associated with the comprehensive settlement of the remaining historical claims of Raukawa as set out in these Terms. The approach for Crown contributions towards negotiation costs of Raukawa associated with negotiating a Co-management Framework in relation to the Waikato River, and the CNI Collective Settlement is set out in the respective Terms documents.
- 40 The parties agree to work together to ensure fairness and transparency in these funding arrangements, and agree to inform each other of issues that arise, and work together to resolve those issues if possible.
- 41 The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.
- 42 The details of the Crown's contribution to negotiation costs will be specified in a separate funding letter that sets out, amongst other things, the levels of funding, details of milestones, and timing of payments.
- 43 The Crown may meet the cost of specific tasks, projects, or other requirements of the negotiations where the likely outcome is for the benefit or use of both parties.
- 44 The Trust Board will provide the Crown with an annual report from an independent auditor for the claimant funding that it receives from the Crown, identifying that the funding has been spent on the negotiations. The Trust Board will provide an invoice for each instalment of funding received from the Crown.

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

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- 45 The Trust Board agrees not to initiate or pursue, before any court or tribunal, any proceedings for redress covering all or part of the same subject matter as the negotiations.
- 46 The parties note that the Waitangi Tribunal's Te Rohe Potae District Inquiry has begun. The parties agree that nothing in these terms:

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

### **Procedural Matters**

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- 49 The parties agree that:
- a negotiations will be on a “without prejudice” basis and will be conducted in good faith and in a spirit of co-operation;
  - b negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982, or where the parties are required to release information as required in the course of litigation;
  - c the Crown will provide the Trust Board with any correspondence or documentation it receives about the negotiations if that information is of a kind that would be disclosed to the Trust Board if it were to make a request for it under the Official Information Act 1982;
  - d both parties reserve the right to withdraw from negotiations if they become untenable.
  - e media statements concerning the negotiations will only be made when mutually agreed by both parties;
  - f Raukawa will have the opportunity to regularly meet with the Minister for Treaty of Waitangi Negotiations, and other relevant Ministers; and

- g Raukawa will operate under Raukawa tikanga throughout these negotiations which includes, but is not limited to, holding hui in te reo Maori, and in appropriate locations as agreed between the parties.

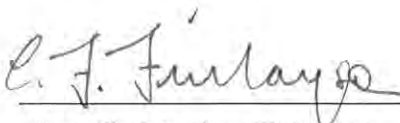
### Amendments

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- 50 As recorded in clause 5, the Trust Board has now completed its formal mandating process, and the parties have accordingly reviewed and amended these terms of negotiation.
- 51 The parties acknowledge that it may be necessary to further amend these terms of negotiation from time to time during the negotiations and agree that all amendments must be approved by both parties and recorded in writing.

SIGNED THIS 24th DAY OF JULY 2009

For and on behalf of the Crown:



Hon Christopher Finlayson  
Minister for Treaty of Waitangi  
Negotiations



Hon Dr Pita Sharples  
Minister of Maori Affairs

For and on behalf of Raukawa:




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George Whakatoai Rangitutia  
Chairman Raukawa Trust Board



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Thomas Tomairangi Smith  
Trustee Raukawa Trust Board




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Miriata Te Hiko  
Trustee Raukawa Trust Board



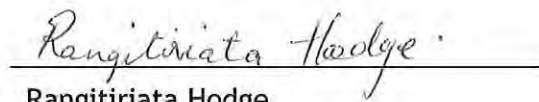
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Kataraina Hodge  
Trustee Raukawa Trust Board



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Andrew Paul  
Trustee Raukawa Trust Board



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Rangitiriata Hodge  
Trustee Raukawa Trust Board

OTHER SIGNATORIES: