

TE KAWERAU IWI TRIBAL AUTHORITY

and

THE CROWN

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**TERMS OF NEGOTIATION  
BETWEEN THE CROWN AND TE KAWERAU A MAKI**

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7 August 2008

# TERMS OF NEGOTIATION

## BETWEEN THE CROWN AND TE KAWERAU A MAKI

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### **Preamble**

He huarahi ki te puawaitanga a nga moemoea o te Iwi o Te Kawerau A Maki.

Since 2000 Te Kawerau a Maki have been seeking to enter into negotiations with the Crown to negotiate and settle all historical Treaty claims of Te Kawerau a Maki, including, any and all Crown historical breaches of the Treaty and principles of the Treaty which have prejudiced Te Kawerau a Maki.

The parties have agreed to engage in settlement negotiations for the resolution of the historical claims of Te Kawerau a Maki against the Crown.

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

1.1 The parties to these Terms of Negotiation are the Crown as defined in clause 6.1 and Te Kawerau Iwi Tribal Authority, on behalf of Te Kawerau a Maki, as defined in clause 4.1.

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

2.1 These Terms of Negotiation:

2.1.1 set out the scope, objectives, and general procedures for the negotiations the parties will conduct in order to settle the Historical Claims (as defined in clause 5.1) of Te Kawerau a Maki;

2.1.2 record the intentions of the parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice in the manner set out in clause 19; and

2.1.3 are not legally binding and do not create a legal relationship. However Te Kawerau Iwi Tribal Authority and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

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

3.1 The parties agree that the primary objective of the negotiations will be to negotiate in good faith a settlement of the Historical Claims of Te Kawerau a Maki that:

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

3.1.2 will not:

(a) diminish or in any way affect any rights that Te Kawerau a Maki may have arising from Te Tiriti o Waitangi / The Treaty of Waitangi and its principles, except to the extent that claims arising from those rights are settled; or

- (b) extinguish or limit any aboriginal or customary rights that Te Kawerau a Maki may have;
- 3.1.3 recognises the nature, extent and injustice of breaches of the Crown's obligations to Te Kawerau a Maki under Te Tiriti o Waitangi / The Treaty of Waitangi and its principles and, where appropriate, acknowledges the effect that these breaches have had on the economic, social, cultural and political well-being of Te Kawerau a Maki;
- 3.1.4 provide a platform to assist Te Kawerau a Maki to develop their economic base. The Crown acknowledges that Te Kawerau a Maki view the settlement as a means of creating a platform for a new economic base to assist Te Kawerau a Maki with their cultural, social, political and economic development;
- 3.1.5 enhances the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi / The Treaty of Waitangi and otherwise);
- 3.1.6 restores the honour of the Crown;
- 3.1.7 demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement; and
- 3.1.8 accurately reflects the Te Kawerau a Maki Historical Claims in the historical account.
- 3.2 The Crown acknowledges that Te Kawerau a Maki aim to ensure that the settlement;
  - 3.2.1 recognises Te Kawerau a Maki as being a tangata whenua group of Tamaki Makaurau, Kaipara and Mahurangi;
  - 3.2.2 enhances the mana and tino rangatiratanga of Te Kawerau a Maki and achieves a settlement that provides a platform for affirming the identity and mana of Te Kawerau a Maki; and
  - 3.2.3 facilitates the enhancement of Te Kawerau a Maki's relationship with local government.

#### **4. Definition of Te Kawerau a Maki**

##### **4.1 Te Kawerau a Maki is:**

- 4.1.1 the collective group composed of persons:
  - (a) who descend from two or more of the following ancestors:
    - (i) Tawhia ki te Rangi (also known as Te Kawerau a Maki); and/or,
    - (ii) Mana; and/or,
    - (iii) Te Au o Te Whenua; and/or,
    - (iv) Kowhatu ki te Uru.

- 4.1.2 every whānau, hapū or group of persons to the extent that that whānau, hapū or group includes persons referred to in clause 4.1.1; and
- 4.1.3 every person referred to in clause 4.1.1.
- 4.2 For the purposes of clause 4.1, a person is descended from another person if the first person is descended from the other by:
- 4.2.1 birth;
- 4.2.2 legal adoption; or
- 4.2.3 Māori customary adoption in accordance with Te Kawerau a Maki tikanga.
- 4.3 The detail of the definition of Te Kawerau a Maki may be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

## **5. Historical Claims of Te Kawerau a Maki**

### **5.1 Historical Claims:**

- 5.1.1 means all claims made at any time (whether or not the claims have been considered, researched, registered or notified) by Te Kawerau a Maki or any person or group representing Te Kawerau a Maki that:
- (a) are founded on a right arising:
    - (i) from Te Tiriti o Waitangi / The Treaty of Waitangi, or its principles;
    - (ii) under legislation;
    - (iii) at common law (including customary law and aboriginal title);
    - (iv) from a fiduciary duty; or
    - (v) otherwise; and
  - (b) arise from or relate to acts or omissions before 21 September 1992:
    - (i) by or on behalf of the Crown; or
    - (ii) by or under legislation; and
- 5.1.2 includes every claim to the Waitangi Tribunal to which clause 5.1.1 applies, including:
- (a) Wai 470 – a claim by Hariata Ewe and Te Warena Taua for and on behalf of Te Kawerau a Maki;

5.1.3 does not include:

- (a) a claim that a member of Te Kawerau a Maki or a whānau, hapū or group of Te Kawerau a Maki may have that is founded on a right arising as a result of being descended from an ancestor to whom clause 4.1.1(a) does not apply.

5.2 Attached to these Terms of Negotiation as Appendix A is a map showing the Area of Interest claimed by Te Kawerau a Maki.

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

6.1 The Crown:

6.1.1 means the Sovereign in right of New Zealand; and

6.1.2 includes all Ministers of the Crown and all government departments; but

6.1.3 does not include:

- (a) an Office of Parliament;
- (b) a Crown entity; or
- (c) a State Enterprise.

## **7. Mandate to Negotiate**

7.1 The Crown has approved the mandate strategy of Te Kawerau Iwi Tribal Authority.

7.2 These Terms of Negotiation, and the commencement of negotiations, are conditional on the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Mācric Affairs recognising the Deed of Mandate for Te Kawerau Iwi Tribal Authority confirming that it has a mandate from Te Kawerau a Maki to negotiate the settlement of the Historical Claims.

7.3 If representation issues arise during negotiations that cannot be resolved by agreement within Te Kawerau a Maki, the Crown will discuss with Te Kawerau Iwi Tribal Authority a process to address those issues.

7.4 Te Kawerau Iwi Tribal Authority agrees to provide the Office of Treaty Settlements with reports on the state of the mandate every three months, and the Crown agrees to advise Te Kawerau Iwi Tribal Authority of any correspondence it receives about the mandate of Te Kawerau Iwi Tribal Authority.

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

8.1 The parties will together agree on subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed on.

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

- 8.2.1 the Crown's apology and acknowledgements;
- 8.2.2 cultural redress; and

8.2.3 financial and commercial redress.

## **9. Process of Negotiations**

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

### *Agreement in Principle*

9.1.1 the signing of an Agreement in Principle which will outline the scope and nature, in principle, of the settlement redress which will be recorded in the Deed of Settlement;

### *Initialled Deed of Settlement*

9.1.2 the initialling of a Deed of Settlement by the parties. The Deed of Settlement will set out the terms and conditions of the settlement of the Historical Claims of Te Kawerau a Maki;

### *Ratification*

9.1.3 the presentation by Te Kawerau Iwi Tribal Authority of the initialled Deed of Settlement to Te Kawerau a Maki for ratification in a manner to be agreed by the parties;

### *Deed of Settlement Signed if Ratified*

9.1.4 the signing of the Deed of Settlement on behalf of Te Kawerau a Maki by Te Kawerau Iwi Tribal Authority if the Deed of Settlement is ratified;

### *Governance Entity*

9.1.5 the approval by the Crown, and the ratification by Te Kawerau a Maki, of a governance entity to represent Te Kawerau a Maki, and to receive and manage the settlement assets; and

### *Settlement Legislation*

9.1.6 the passage of settlement legislation. The settlement of the Historical Claims of Te Kawerau a Maki will be effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

## **10. Negotiations Schedule**

10.1 Te Kawerau Iwi Tribal Authority and the Crown agree to work towards the indicative Negotiations Schedule set out below:

- (a) commence substantive negotiations as soon as reasonably practicable;
- (b) endeavour to work towards signing an Agreement in Principle by July 2009;
- (c) endeavour to agree, within twelve months of signing the Agreement in Principle, a draft Deed of Settlement between the Crown and Te Kawerau Iwi Tribal Authority; and

- (d) meet as often as necessary until a settlement is given effect.
- 10.2 The parties acknowledge the progress of negotiations are subject to various matters, some of which are outside the parties' control.

**11. What the Settlement of the Historical Claims of Te Kawerau a Maki Will Enable**

- 11.1 The parties agree that the settlement of the Historical Claims of Te Kawerau a Maki will enable the:
  - 11.1.1 final settlement of all the Historical Claims of Te Kawerau a Maki, and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
  - 11.1.2 discontinuance of the Office of Treaty Settlements' landbank arrangement for the protection of potential settlement properties for the benefit of Te Kawerau a Maki;
  - 11.1.3 removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection for claims against the Crown to be removed for the benefit of Te Kawerau a Maki;
  - 11.1.4 removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Historical Claims of Te Kawerau a Maki, the Deed of Settlement, the redress provided or the settlement legislation (but not for the removal of such jurisdiction in respect of the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation); and
  - 11.1.5 discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to the Historical Claims of Te Kawerau a Maki.

**12. Communication**

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

**13. Overlapping Claims**

- 13.1 The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Te Kawerau a Maki as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 13.2 Te Kawerau Iwi Tribal Authority will discuss Te Kawerau a Maki's interests with overlapping claimants at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be addressed.

13.3 The Crown may assist Te Kawerau a Maki as it considers appropriate and will carry out its own engagement with overlapping claimants.

13.4 Te Kawerau a Maki acknowledge that the Crown may be in Treaty settlement negotiations with other iwi who also claim an interest in the Te Kawerau a Maki Area of Interest. Issues arising in those negotiations, including issues concerning licensed Crown Forest land, may be relevant to these negotiations, and vice versa. The Office of Treaty Settlements will ensure that Te Kawerau Iwi Tribal Authority is kept informed of these negotiations subject to the confidentiality of matters specific to the other negotiations.

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

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

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

15.1 The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:

15.1.1 has been ratified by Te Kawerau a Maki (in a manner to be agreed by both parties);

15.1.2 is in a form which both parties agree adequately represents Te Kawerau a Maki;

15.1.3 has transparent decision making processes, and

15.1.4 is accountable to Te Kawerau a Maki.

#### **16. Claimant Funding**

16.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Te Kawerau a Maki. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.

16.2 Te Kawerau Iwi Tribal Authority agrees to adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, Te Kawerau Iwi Tribal Authority will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.

16.3 Te Kawerau Iwi Tribal Authority will also provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.

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

17.1 During these negotiations, Te Kawerau Iwi Tribal Authority agrees not to initiate or to pursue any legal proceedings relating to the subject matter of the negotiations, including claims to the Waitangi Tribunal, except as provided in clause 18.



**18. Participation in Waitangi Tribunal – Te Paparahi o te Raki/Northland District Inquiry**

18.1. Te Kawerau a Maki are parties to the Te Paparahi o te Raki/Northland District Inquiry. During negotiations to a Deed of Settlement, Te Kawerau Iwi Tribal Authority will not pursue claims against the Crown in the Northland District Inquiry. Te Kawerau Iwi Tribal Authority agree to participate in the inquiry only to the extent of:

18.1.1. responding to draft research that has been prepared by the Crown Forestry Rental Trust and/or the Tribunal or by responding by way of cross examination and/or submissions on evidence and/or arguments advanced by other parties, including the Crown, which may;

a. adversely affect the Tribunal's consideration of historical events relevant to Te Kawerau a Maki that are a subject of the Northland District Inquiry; or

b. adversely affect the identification, definition, nature or extent of the existing customary rights and interests of Te Kawerau a Maki;

18.2 The parties agree that, before Te Kawerau a Maki takes any of the steps in paragraph 18.1 above, the Te Kawerau Iwi Tribal Authority and the Crown will use their best endeavours to reach agreement regarding the nature and extent of any proposed steps or participation in the Te Paparahi o te Raki/Northland District Inquiry.

**19. Procedural Matters**

19.1 The parties agree that:

19.1.1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;

19.1.2 negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982; and

19.1.3 media statements concerning the negotiations will only be made when mutually agreed by both parties.

**20. Amendments**

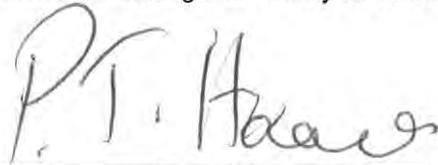
20.1 The parties acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that no amendment is effective until approved by both parties and recorded in writing.

SIGNED THIS 7 DAY OF August 2008

**For and on behalf of the Crown:**



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



Hon Parekura Horomia  
*Minister of Māori Affairs*

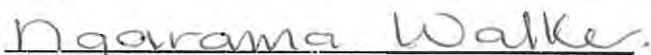
Hon Mita Rinui  
*Associate Minister in Charge of Treaty of Waitangi Negotiations*

Hon Shane Jones  
*Associate Minister in Charge of Treaty of Waitangi Negotiations*

**For and on behalf of Te Kawerau Iwi Tribal Authority:**

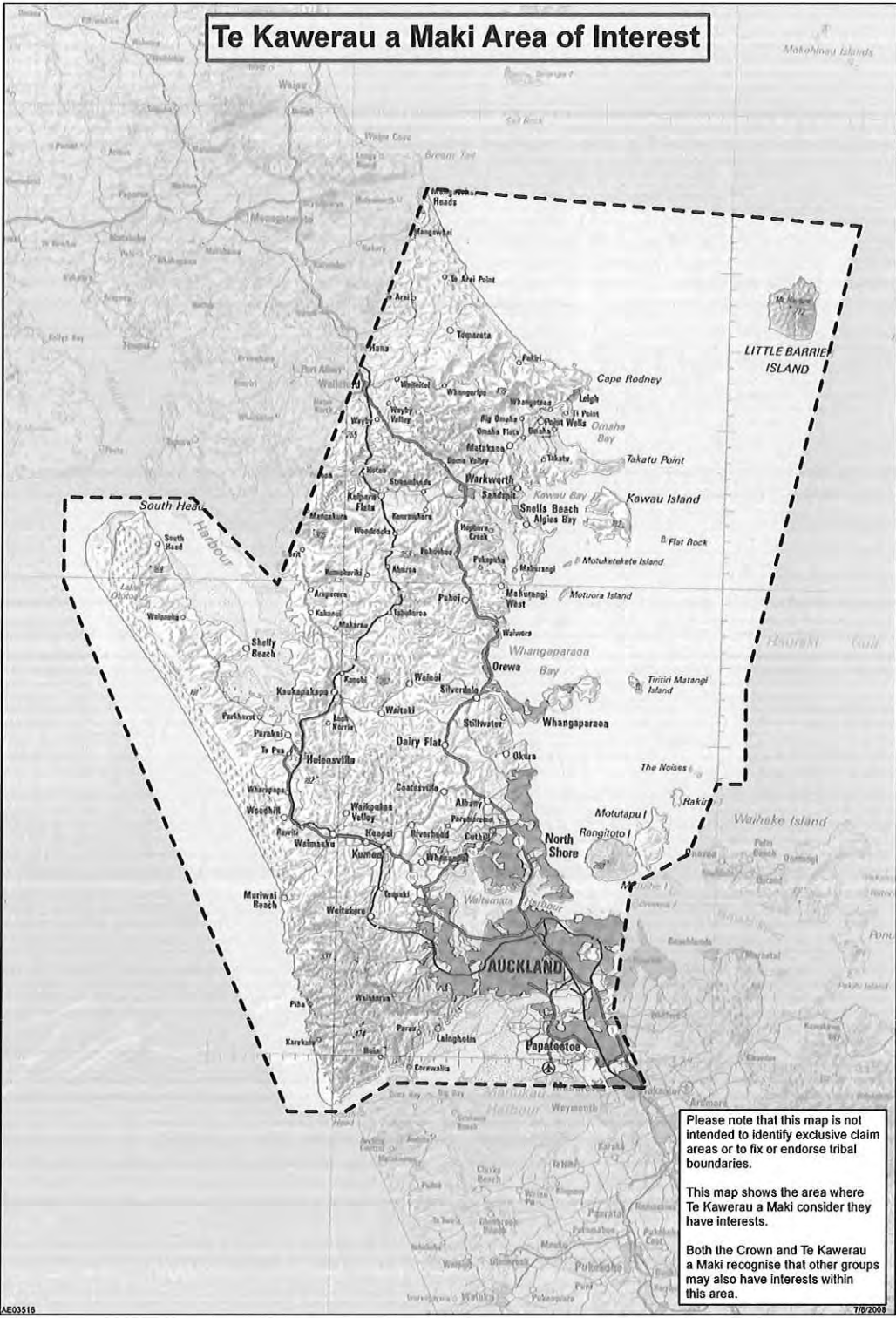


Te Warena Taua  
*Chairman and Chief Negotiator*



Ngararna Walker  
*Trustee*

# Te Kawerau a Maki Area of Interest



Please note that this map is not intended to identify exclusive claim areas or to fix or endorse tribal boundaries.

This map shows the area where Te Kawerau a Maki consider they have interests.

Both the Crown and Te Kawerau a Maki recognise that other groups may also have interests within this area.