

THE WAITANGI TRIBUNAL

WAI 51 A12

IN THE MATTER of the Treaty of Waitangi  
Act 1975

AND

IN THE MATTER of the Waitomo claim (a  
claim by Josephine Huti  
Anderson on behalf of the  
hapu of Ruapuha and  
Uekaha)

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JOINT MEMORANDUM FROM CROWN AND  
CLAIMANT COUNSEL ADVISING THE  
WAITANGI TRIBUNAL OF THE  
SETTLEMENT OF THE WAITOMO CLAIM

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THE WAITANGI TRIBUNAL

WAI 51

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IN THE MATTER of the Treaty of Waitangi  
Act 1975

AND

IN THE MATTER of the Waitomo claim (a  
claim by Josephine Huti  
Anderson on behalf of the  
hapu of Ruapuha and  
Uekaha)

JOINT MEMORANDUM FROM CROWN AND CLAIMANT  
COUNSEL ADVISING THE WAITANGI TRIBUNAL  
OF THE SETTLEMENT OF THE WAITOMO CLAIM

1. Counsel for the claimants and the Crown hereby notify the Waitangi Tribunal that the parties have reached settlement in respect of the Waitomo claim.
2. After discussions between the parties facilitated by Judge Trapski, and exchanges of correspondence, a final agreement was reached on 14 June 1990. The final agreement involved among other things the whole of the Waitomo Domain being vested in the Wai 51 claimants as a Maori Reservation for the use and benefit of all New Zealanders.
3. Clause 3 of the final agreement has recently been amended as the Crown has, under the Public Works Act 1981, been obliged to offer back part of the Domain land covered by the settlement to the former owner.

4. The amendment mitigates the claimants' concern at the loss of part of their mediated settlement by vesting part of the Domain land in the claimants as Maori freehold land and adding to the Domain a strip of land currently in Maori freehold ownership.
5. Attached are Cabinet Minutes CAB (90) M 3/11 and TOW (95) M 18/2 and Cabinet paper TOW (90) 9 which together record the terms of the agreement.
6. Accordingly, Counsel for the claimants and the Crown request that the Waitangi Tribunal's claim register be amended to record the agreement.

DATED this *11<sup>th</sup>* day of *March* 1996



Winifred Jardine  
Counsel for the Claimants

DATED this *19<sup>th</sup>* day of *January* 1996



E D France  
Crown Counsel



CABINET COMMITTEE ON  
TREATY OF WAITANGI ISSUES

TOW (95) M 18/2

Copy No: 24

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MINUTES of a meeting of the Committee held on Wednesday, 25 October 1995 at 11am

PRESENT: Hon Douglas Graham (Chair)  
Hon John Falloon  
Hon Denis Marshall

IN ATTENDANCE: Officials from Department of Prime Minister and Cabinet  
Office of Treaty Settlements  
Department of Survey and Land Information

WAITOMO CLAIM (WAI 51): AMENDMENT TO CLAUSE 3 OF THE FINAL AGREEMENT


Reference: TOW (95) 95

The Committee:

- a noted that clause 3 of the Final Agreement for the settlement of the Wai 51 claim proposes that the whole of the Waitomo Domain would be vested in the Wai 51 claimants as a Maori reservation for the use and benefit of all New Zealanders;
- b noted that the Crown obtained the Domain from two different owners and that the descendant of the former owner of two acres (8775 square metres) of that land is not part of the claimant group;
- c noted that those two acres of land have been offered back subject to a Maori Reservation Order being brought down over the land, similar to that to be imposed on the balance of the Domain. This condition has been accepted by the descendant of the former owner;
- d noted that, as a consequence, this reduces the amount of redress originally agreed between the Crown and the claimants;
- e agreed to a variation to clause 3 of the Final Agreement to separately vest part of the Domain area (Block 18) measuring 5643 square metres (approximately 1.34 acres), in the Wai 51 claimants as Maori freehold land and that the current walkway will be realigned across Block 15;

- f agreed to a variation to clause 3 of the Final Agreement to vest a strip of Domain land measuring 3271 square metres (0.81 acres) owned by the Crown within the front of the Domain in the Wai 51 claimants and members of the claimant hapu as unencumbered Maori freehold land;
- g agreed to a variation to clause 3 of the Final Agreement to add a strip of land, currently in Maori freehold ownership, measuring 2300 square metres (0.57 acres) to the Domain area;
- h noted that the claimants intend to apply for a resource consent to change part of the Domain zoning from a Maori reservation for the use and benefit of all New Zealanders to commercial;
- i noted that the claimants have agreed to meet all the costs associated with this proposal;
- j noted that the variation of clause 3 of the Final Agreement has no fiscal implications for the Crown.

COPY

  
Murray Newth  
Secretary

COPIES TO:

Cabinet Committee on Treaty of Waitangi Issues  
Minister of Finance  
Secretary to the Treasury  
Chief Executive, PM&C  
Miriam Evans [PM&C]  
Peter Douglas [PM&C]  
Solicitor-General  
Director, Office of Treaty Settlements  
Director-General, DOSLI  
Department of Conservation  
Chief Executive, Te Puni Kōkiri



# CABINET

## COMMITTEE ON TREATY OF WAITANGI ISSUES

IN CONFIDENCE

TOW (90) 9

Copy No //

8 May 1990

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### AGREEMENT IN PRINCIPLE BETWEEN THE CROWN AND THE CLAIMANTS IN WAI 51 (THE WAITOMO CLAIM)

At its meeting on 12 February 1990 Cabinet authorised the Director of the Treaty of Waitangi Policy Unit, assisted by Mr Graham Quinn (Crown consultant on the proposed THC sale) to seek an agreement in principle in terms of the eleven points detailed in the minute. The minute also authorised this Committee to approve details of the package in light of further discussions with the claimants and approved the provision of \$1 million of additional funding subject to a settlement being reached [CAB (90) M 3/11 attached as Appendix D refers]. The eleven points were communicated to the claimants (attached as Appendix A) and responded to (letter from Mr Toogood attached as Appendix B). Discussions were held and changes to the eleven points are proposed as a result. The proposed amendments, with one exception, are regarded as matters of clarification (points 2, 4 and 10 of the Proposed Agreement in Principle detail the changes, attached as Appendix C).

The exception is detailed in point 3 of Appendix C, page 16 (the original is first and the new 3 is in square brackets underneath). The claimants, whilst recognising that the domain must continue to serve all people, require a recognition of their mana whenua (mana over the land).

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The Minister of Justice recommends that the Committee:

- i note that on 12 February 1990 Cabinet authorised the (then) Director of the Treaty of Waitangi Policy Unit, assisted by Mr Graham Quinn, to make an offer to the Waitomo claimants in terms of eleven points [CAB (90) M 3/11 refers];
- ii note that the claimants responded by letter and further discussions were held between representatives of the claimants and the Crown;
- iii agree to the variations of the original 11 point proposal specified in paragraph 5 of the paper under TOW (90) 9;
- iv agree to additional funding of \$1 million in Vote : Justice in 1990/91, without compensatory savings, as a loan at commercial rates against future revenue advanced to the claimants as part of the settlement of the Waitomo claim, the terms of the advance to be as follows:
  - interest at 13 percent a year (roughly equal to the current of five year New Zealand Government Stock plus 1 percentage point);
  - interest to be reviewable two yearly, at which point it may be altered if both parties agree;

- repayment to be by way of assignment of 3.25 percent of gross cave revenue;
  - if at any time these repayment instalments do not fully cover the accrued interest charges, the unmet portion of accrued interest owing is to be added to the principal outstanding.
- v note that, based on current estimates of future revenue, the loan will be repaid within 32 years;
- vi agree that the \$1 million loan be regarded as a charge against the sale of the Tourist Hotel Corporation.

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*Secretary's Note: Treasury will be reporting separately on the recommendations.*

(Signed) Philip Mair

COPIES TO:

Cabinet Committee on Treaty of Waitangi Issues

14 Minister of Conservation

15 Director-General of Conservation

16, 17 Secretary to the Treasury

18 Chief Executive, Manatu Maori

19 Secretary for Justice

20 Secretary for Justice (Treaty of Waitangi Policy Unit)

21 Solicitor-General

13 Convener, Officials Core Group on Treaty of Waitangi Issues



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**CABINET**

CAB (90) M 3/11

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Minister of Justice

Copies to:

Prime Minister  
Minister of Finance  
Minister of Maori Affairs  
Minister for State Owned Enterprises  
Chairperson, Cabinet Committee on Treaty of  
Waitangi Issues  
Minister of Education  
Minister of Tourism  
Minister of Conservation  
Attorney-General

**WAITOMO CLAIM : MEDIATION**

Reference: CAB (90) 48

At the meeting on 12 February 1990 Cabinet:

- a agreed that an offer be made to the claimants, in respect of the claim by the hapu of Ruahupa and Uekaha of the Ngati Maniopoto involving the Waitomo cave complex and adjacent land, on the basis of the following points:
- i the mediation should be on a "without prejudice" basis;
  - ii ownership of the three acres claimed in the core cave area should be vested in the claimants, leaving one acre vested in the Crown. Control of the caves would be shared between the Crown and the claimants by means of a Management Committee composed of representatives from the Department of Conservation (DoC) and the claimants. The task of the Management Committee would be to protect both ecological and Maori interests. The Committee should be required to report on its stewardship to the owners;
  - iii the claimants recognise that the Domain is a benefit to the whole community. They understand that they may achieve representation on the Domain Management Board by due process, ie by standing for election. The claimants' main concern is that the local body consults them on any significant use of domain land. Thus the Domain remains in the possession and administration of the local authority;

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- iv the land occupied by the school and the school buildings is still required for public works purposes, ie education, and does not come within the "offer back" criteria of sections 40(1) and 40(3)(b) of the Public Works Act 1981. If and when the time comes that the land and buildings are no longer used for education purposes, the Ministry of Education envisages reversion by way of the Public Works Act;
- v land ownership of the total museum should be vested in the claimants. The claimants should lease back to the Crown the whole museum complex on the same terms and conditions as the present museum extension. This may be done under section 436 or section 267 of the Maori Affairs Act 1953;
- vi if the tavern closes then the claimants should have the first option to purchase at market rates;
- vii the hotel site, including a small scenic acreage and surrounding staff housing etc, should be transferred to the purchaser of the Tourist Hotel Corporation by means of a Glasgow lease (with right of perpetual renewal) from the Crown;
- viii the balance of the land should be returned to the claimants with suitable covenants to ensure that the land above the caves is ecologically secure;
- ix a licence permitting commercial cave guiding and souvenir shop operations should be issued to the THC by the Crown, on behalf of the joint owners of the Cave (ie, DoC and the claimants). The licence would run for 32 years subject to essential controls to protect both Maori and ecological values and would form part of the THC's assets for sale. The fee payable for this licence would be 15% of the annual gross revenue from cave guiding and 4% of the annual gross revenue from the souvenir shop. Of these fees, 25% would accrue to the Crown and 75% to the claimants. This ratio reflects the proportions of ownership share in the core cave area which would be owned by the parties;
- x the emphasis of the agreement is on looking towards a constructive future. The claimants will not receive any part of the lump sum paid to the Crown by the purchasers of the Tourist Hotel Corporation;
- xi the Crown would provide a loan of \$1 million to the claimants representing an advance on licence fee revenues expected to accrue to the claimants during the 32 year total term of the licence. Interest would be charged on the loan at the rate of 13% per annum (which is roughly equal to the current rate at 5-year New Zealand Government Stock plus 1 percentage point). The interest rate would be reviewable two yearly, at which intervals it may be altered if both parties agree. The claimants would repay the loan by assigning part of their share of the annual licence fee for the caves until the loan is discharged. Based on current estimates of future revenue, it is expected that the loan would be repaid within 32 years, although the term is flexible. Repayment instalments would amount to 3.25% of gross cave revenue, leaving 8% of gross cave revenue (the balance of their share) available for other purposes. If at any time these repayment instalments do not fully cover the accrued interest charges, the unmet portion of accrued interest charges owing would be added to the principal outstanding. In summary:

Cave Licence Fee (% of gross revenue per annum)

Claimant's share	11.25	(75% share)
Crown share	<u>3.75</u>	(25% share)
Total	<u>15.00</u>	

## Loan Repayment

Claimant share of licence fee	11.25	(100.00%)
LESS: Repayment instalments	<u>3.25</u>	<u>(28.89%)</u>
EQUALS: Amount available for claimant's other purposes	<u>8.00</u>	<u>(71.11%)</u>

- b authorised the Director of the Treaty of Waitangi Policy Unit, assisted by Mr Graham Quinn (Crown consultant on the proposed THC sale) to seek an agreement in principle on the above basis;
- c authorised the Cabinet Committee on Treaty of Waitangi Issues to approve details of the package in the light of further discussions with the claimants.
- d approved the provision of \$1 million of additional funding in a Vote (such Vote to be decided later), subject to a settlement being reached between the Government and the claimants as outlined in (a) above.



Secretary of the Cabinet