

**NGA KAIHAUTU O TE ARAWA
EXECUTIVE COUNCIL**

and

THE CROWN

TERMS OF NEGOTIATION

26 November 2004

TERMS OF NEGOTIATION BETWEEN NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN

Purpose of these Terms of Negotiation

1. This document, known as the Terms of Negotiation, sets out the scope, objectives and general procedures for formal discussions between the Crown (as defined in paragraph 13) and Nga Kaihautu o Te Arawa Executive Council (the Kaihautu Executive Council) on behalf of Te Arawa (as defined in paragraph 6) regarding the settlement of Te Arawa Historical Claims (as defined in paragraphs 10, 11 and 12).
2. In particular, these Terms of Negotiation record the intentions of the Kaihautu Executive Council and the Crown regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice.
3. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, the Crown and the Kaihautu Executive Council acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

Objectives of the Negotiations

4. The Kaihautu Executive Council and the Crown agree that the objectives of the negotiations will be to:
 - a. negotiate in good faith a comprehensive, final and durable settlement of all Te Arawa Historical Claims (as defined in paragraphs 10, 11 and 12) that is fair in the circumstances;
 - b. achieve a settlement that will not in any way:
 - i. diminish or affect any rights that Te Arawa have arising from te Tiriti o Waitangi/the Treaty of Waitangi, except to the extent that the claims arising from those rights are settled; or
 - ii. extinguish any aboriginal or customary rights that Te Arawa may have;
 - c. achieve a settlement that recognises the nature and extent of the breaches of the Crown's obligations to Te Arawa under te Tiriti o Waitangi/the Treaty of Waitangi;
 - d. provide a platform to assist Te Arawa to redevelop their economic base;
 - e. achieve a settlement that will enhance and improve the ongoing relationship between the parties (both in terms of te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);
 - f. achieve a settlement that will restore the honour of the Crown; and
 - g. demonstrate and record that both parties have acted honourably and reasonably in negotiating the settlement.

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5. The Crown acknowledges that Te Arawa view the settlement as a means of enhancing their tino rangatiratanga by enabling them to achieve, maintain and manage their social, cultural, economic and political wellbeing.

Definition of Te Arawa

6. Te Arawa means, for the purposes of these Terms of Negotiations, those persons who are members of any Te Arawa iwi/hapu including:
- a. Ngati Tuara/Ngati Kea: Ngati Ngata;
 - b. Tuhourangi: Ngati Hinemihi, Ngati Tumatawera, Ngati Taoi, Ngati Tuohonoa, Ngati Uruhina, Ngati Tionga, Ngati Te Apiti;
 - c. Whakaue: Ngati Te Roro o Te Rangi, Ngati Ngararanui, Ngati Tuteaiti, Ngati Tura, Ngati Te Ngakau;
 - d. Ngati Rangiwewehi¹: Ngati Kereru, Ngati Te o Kotahi;
 - e. Ngati Uenukukopako: Ngati Te Kanawa, Ngati Hauora;
 - f. Ngati Rangiteaorere: Ngati Tuteniu;
 - g. Ngati Tahu/Ngāti Whaoa: Ngati Tahu, Ngati Whaoa, Ngati Pareauru, Ngati Rahurahu, Ngati Mataarae, Ngati Maru, Ngati Te Rama;
 - h. Ngati Rangitihj: Ngati Mahi, Ngati Tionga;
 - i. Ngati Pikiāo: Ngati Te Takinga, Ngati Paruaharanui, Ngati Rangiunuora, Ngati Tamateatutahi, Ngati Kawiti, Ngati Whakahemo, Ngati Wahatuoro, Ngati Hinekura;
 - j. Ngati Tarawhai: Ngati Hinehua; and
 - k. Ngati Rongomai: Ngati Rakeiao.
7. For the purposes of these Terms of Negotiation, and despite paragraph 6 above, Te Arawa does not include:
- a. Ngati Makino, Waitaha and Tapuika as these groups have decided to remain outside the mandate of the Kaihautu Executive Council; and

¹ Ngati Rangiwewehi have advised the Crown that they have scheduled a hui on 12 December 2004 to formally withdraw their support from the Kaihautu Executive Council.

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- b. the following hapu have withdrawn their mandate from the Kaihautu Executive Council:
- i. Ngati Whakauae: Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Te Kahu, Ngati Tunohopu, Ngati Pukaki, Ngati Karenga, Ngati Waoku, Ngati Rautao, Ngati Hika, Ngati Riri, Ngati Te Rangiwaho; and
 - ii. Ngati Wahiao.
8. The Crown wishes to make clear it is according priority to negotiate a settlement with the iwi/hapu that have mandated the Kaihautu Executive Council to negotiate a settlement of their claims.
9. The detail of the definition of Te Arawa will be developed further over the course of the negotiations for inclusion in any Agreement in Principle and Deed of Settlement that may be agreed between the parties.

Te Arawa Historical Claims

10. Te Arawa Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Te Arawa claimant or anyone representing them that:
- a. are founded on a right arising:
 - i. from te Tiriti o Waitangi/the Treaty of Waitangi; or
 - ii. under legislation; or
 - iii. at common law (including customary law and aboriginal title); or
 - iv. from a breach of 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
 - c. includes every claim to the Waitangi Tribunal to which paragraphs 10(a) and 10(b) apply, including the following claims registered with the Waitangi Tribunal, insofar as they relate to Te Arawa (as defined in paragraph 6 above):

Wai 4	Wai 7	Wai 32	Wai 57	Wai 115	Wai 154
Wai 164	Wai 165	Wai 193	Wai 194	Wai 195	Wai 196
Wai 197	Wai 198	Wai 199	Wai 204	Wai 205	Wai 217
Wai 218	Wai 219	Wai 231	Wai 233	Wai 252	Wai 262
Wai 268	Wai 288	Wai 293	Wai 296	Wai 316	Wai 317

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Wai 319	Wai 361	Wai 363	Wai 391	Wai 444	Wai 453
Wai 459	Wai 471	Wai 524	Wai 531	Wai 533	Wai 550
Wai 564	Wai 628	Wai 635	Wai 675	Wai 676	Wai 749
Wai 787	Wai 791	Wai 803	Wai 837	Wai 839	Wai 840
Wai 872	Wai 893	Wai 911	Wai 918	Wai 929	Wai 936
Wai 980	Wai 996	Wai 1032	Wai 1053	Wai 1075	Wai 1101
Wai 1103	Wai 1111	Wai 1116	Wai 1117	Wai 1118	Wai 1119
Wai 1120	Wai 1125	Wai 1134	Wai 1135	Wai 1141	Wai 1194
Wai 1195	Wai 1199				

Note: in respect of italicised Wai numbers, refer to footnote 1 on page 3

11. Notwithstanding paragraph 10 above, Te Arawa Historical Claims does not include:
 - a. the historical claims relating to the 14 Te Arawa lakes; and
 - b. the claims of the Ngati Whakaue hapu listed in paragraph 7(b)(i), and Ngati Wahiao.
12. The negotiations will take into account the claims that have been settled by, and the redress that has been provided in, the following:
 - a. the Ngati Rangiteaorere Agreement – Wai 32 (1993);
 - b. the Ngati Whakaue Agreement – Wai 94 (1993);
 - c. the Rotoma Agreement – Wai 90 (1996); and
 - d. the Pouakani Deed of Settlement – Wai 33 (1999).

Definition of the Crown

13. The Crown:
 - a. means Her Majesty the Queen 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.

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Background Events Leading to the Mandate to Negotiate

14. The Crown and Central North Island (CNI) iwi began a dialogue to discuss the progression of their historical Treaty claims in early 2002. This dialogue culminated with a hui at Parliament on 6 December 2002, hosted by the Minister in Charge of Treaty of Waitangi Negotiations and attended by CNI iwi.
15. Following this, the Crown and CNI iwi each formed a working party to identify issues relating to direct negotiations. The CNI Iwi Working Party then sought advice from Te Arawa people on how to progress CNI historical claims. Therefore, a series of hui were scheduled for this purpose.
16. These hui were held between February and March 2003 to discuss progressing CNI claims, with a focus on the licensed Crown forest land in the CNI. As a result of these hui, Te Arawa appointed interim representatives to continue engaging with the Crown and to establish a programme for a formal mandating process. This was with a view to entering into negotiations with the Crown on a Te Arawa-wide basis.
17. In April 2003, the Government gave a commitment to CNI iwi to progress their claims and it was collectively agreed to aim for a settlement agreement in a two year timeframe.
18. Between July and October 2003 a number of Te Arawa iwi/hapu decided, in accordance with their respective tikanga, to hold mandating hui. At each mandating hui, Te Arawa iwi/hapu resolved to enter into comprehensive negotiations with the Crown and appointed representatives to a new representative structure called Nga Kaihautu o Te Arawa (Te Arawa Kaihautu). From this, Te Arawa Kaihautu representatives from each of the iwi/hapu elected from amongst themselves representatives onto a Kaihautu Executive Council. At that time, there were 17 seats on the Kaihautu Executive Council, including one seat each reserved for Ngati Makino, Waitaha and Tapuika, in the event that they may choose to join at a later date.
19. The Crown received a Deed of Mandate from the Kaihautu Executive Council on 1 December 2003. The Crown assessed the Deed and considered that the Kaihautu Executive Council had demonstrated, through an open and inclusive mandating process, that it had the broad support of the people of Te Arawa. On 1 April 2004 the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Maori Affairs recognised the mandate of the Kaihautu Executive Council for the purpose of the settlement of Te Arawa Historical Claims with the Crown. The mandate does not cover the historical claims of Ngati Makino, Waitaha and Tapuika, and the 14 Te Arawa lakes. Attached is the Crown letter recognising the mandate (Appendix 1).
20. On 21-23 and 25 June 2004 the Waitangi Tribunal held an urgent inquiry to hear challenges to the Crown's actions in relation to the Kaihautu Executive Council's mandate. On 10 August 2004 the Waitangi Tribunal released its *Te Arawa Mandate Report* and found that whilst there were some procedural flaws in the processes undertaken during the mandating phase, none of the flaws were so fundamental that they amounted to a breach of the Treaty of Waitangi at that stage. The Tribunal recognised that the majority of Te Arawa wanted to continue the process already embarked upon and suggested a process for moving forward.

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21. The Kaihautu Executive Council and the Crown jointly developed a Proposed Reconfirmation Strategy (the Reconfirmation Strategy). The Reconfirmation Strategy proposed a three stage approach to address the key issues raised in the Tribunal's report. The Kaihautu Executive Council and the Crown consulted with key Te Arawa groups, as well as Te Arawa Taumata, at two consultation hui on 9 and 14 September 2004. After consultation, the Reconfirmation Strategy was modified to the following four stages:
- a. the Kaihautu Executive Council to reconsider its composition and proportionality of representation;
 - b. consultation on the Reconfirmation Strategy with Te Arawa Maori Trust Board, Te Pukenga Kaumatua o Te Arawa, Te Kotahitanga o Te Arawa Fisheries Trust Board and Te Arawa Taumata (Pihopa Kingi, Malcolm Short and Pirihira Fenwick);
 - c. four regional reconfirmation hui of Te Arawa Kaihautu to discuss and decide whether to adopt the reconfirmation proposals; and
 - d. a hui-a-Kaihautu to exchange information on the outcomes of the four regional reconfirmation hui.
22. These stages were implemented between September and October 2004. In line with the Kaihautu Executive Council's Reconfirmation Strategy, the four reconfirmation hui decided:
- a. to provide three additional seats for Ngati Pikiāo and one additional seat for Ngati Rangiwewehi on the Kaihautu Executive Council;
 - b. for the Kaihautu Executive Council to undertake a review of its Trust Deed in relation to its accountability mechanisms;
 - c. no Kaihautu Executive Council seats be formally retained for Ngati Makino, Waitaha and Tapuika; and
 - d. the mandating process for Ngati Rangitihī has been completed.
23. A special meeting of the Kaihautu Executive Council was subsequently held on 27 October 2004 to amend the Trust Deed to give effect to the resolutions of the four regional reconfirmation hui. The newly reconstituted Kaihautu Executive Council first met on 12 November 2004 and has now agreed to these Terms of Negotiations with the Crown.

Mandate Maintenance

24. The Kaihautu Executive Council agrees to provide the Office of Treaty Settlements with reports on the state of its mandate every three months, and the Crown agrees to provide copies to the Kaihautu Executive Council of any correspondence it receives about the Kaihautu Executive Council's mandate.

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25. If further mandate issues arise during negotiations that cannot be resolved by agreement within Te Arawa, the Kaihautu Executive Council and the Crown will discuss a process to address those issues. The Crown will provide assistance as it considers appropriate.
26. The Kaihautu Executive Council states that if Te Arawa iwi/hapu not included in paragraph 6 choose to join or rejoin the Kaihautū Executive Council, they would be welcome to do so.

Subject Matter for Negotiation

27. The parties will together agree upon the subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.
28. Comprehensive negotiations will include the core grievances identified by Te Arawa. Excepting those matters specified in paragraphs 11 and 12, these core grievances relate to:
 - a. land;
 - b. freshwater; and
 - c. geothermal.
29. The negotiations will also include the following categories of redress:
 - a. the Crown's apology and acknowledgements;
 - b. cultural redress; and
 - c. financial and commercial redress.
30. The Kaihautu Executive Council and the Crown will also discuss:
 - a. settlement implementation issues; and
 - b. processes for the drafting of settlement legislation.

Negotiation Milestones

31. The Kaihautu Executive Council and the Crown agree that the negotiation milestones will include, but not necessarily be limited to:
 - a. Agreement in Principle

The Agreement in Principle outlines the scope and nature in principle for the settlement of Te Arawa Historical Claims that will be recorded in a Deed of Settlement.
 - b. Initialed Deed of Settlement

Representatives of the Kaihautu Executive Council and the Crown initial a Deed of Settlement that will set out the terms and conditions of the settlement of Te Arawa Historical Claims.

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c. Ratification

The initialled Deed of Settlement will be presented by the Kaihau Executive Council to Te Arawa for ratification. A governance entity structure will also be presented for ratification by the people before settlement legislation can be introduced but this need not necessarily occur contemporaneously with ratification of the Deed of Settlement.

d. Deed of Settlement signed if ratified

If the Deed of Settlement is ratified (in a manner to be agreed), the Deed of Settlement will be signed by Te Arawa and by representatives of the Crown.

e. Governance Entity and Settlement Legislation

The settlement of Te Arawa Historical Claims is effective once a suitable governance entity is formed to receive and manage the settlement assets and the required settlement legislation receives the Royal Assent.

What the Settlement of Te Arawa Historical Claims Will Enable

32. The Kaihau Executive Council and the Crown agree that the settlement of Te Arawa Historical Claims will enable:
- a. a final settlement of all Te Arawa Historical Claims, and release and discharge of all of the Crown's obligations and liabilities in respect of them;
 - b. discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of Te Arawa;
 - c. removal of any resumptive memorials from the titles of land subject to the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 insofar as the application of these memorials to Te Arawa is concerned, and the Education Act 1989 and for statutory protection for claims by Te Arawa against the Crown to be removed;
 - d. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Te Arawa Historical Claims, the Deed of Settlement, the redress provided or settlement legislation (but not for the removal of such jurisdiction in respect of the implementation or interpretation of terms in the Deed of Settlement or the settlement legislation); and
 - e. discontinuance of legal proceedings including proceedings before the Waitangi Tribunal in relation to Te Arawa Historical Claims.

Whakakotahitanga

Objectives

33. As reflected in the mandating process referred to in paragraphs 18 and 19 above, Te Arawa have chosen to act collectively in negotiating the settlement of their historical claims against the Crown.

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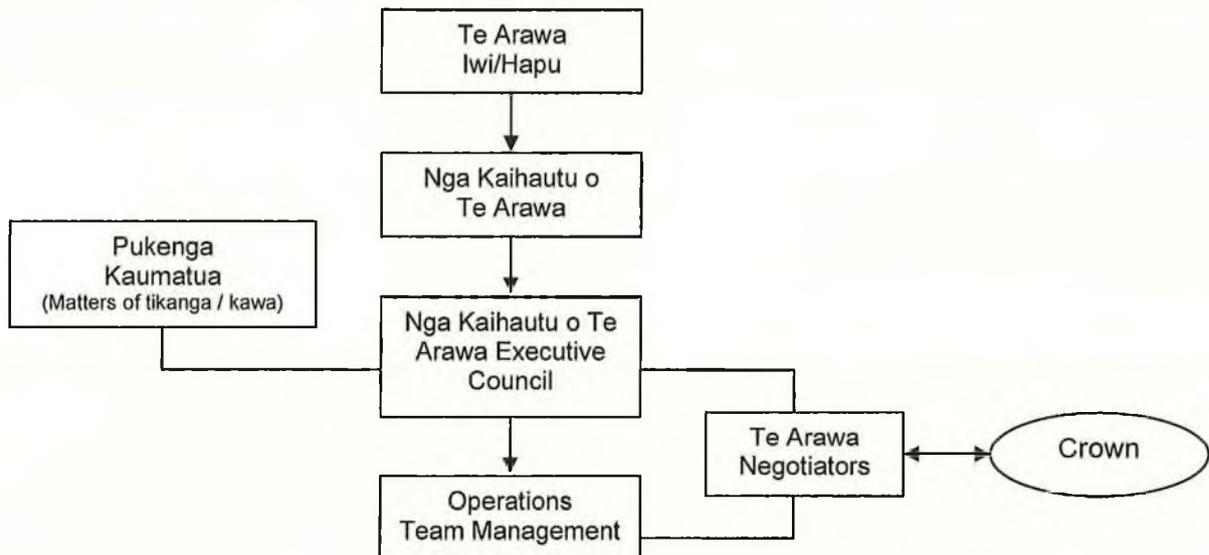
34. The Kaihautu Executive Council has therefore developed a strategy, called *Whakakotahitanga*, to ensure that the diversity of interests and views arising from the various iwi/hapu are reflected in all elements of the Kaihautu Executive Council's work to settle Te Arawa Historical Claims. Before finalising this strategy, the Kaihautu Executive Council will consult with iwi/hapu.
35. *Whakakotahitanga* focuses on:
- a. accountability and decision-making structures;
 - b. iwi/hapu telling the story of their core grievances;
 - c. the process for the selection and appointment of settlement negotiators;
 - d. conducting the negotiations process with the Crown;
 - e. issues surrounding future governance proposals; and
 - f. redress-specific issues for iwi/hapu.

The Kaihautu Executive Council wishes to record this strategy, *Whakakotahitanga*, in this document.

Accountability and decision-making structures

36. The Kaihautu Executive Council has the mandate to negotiate a proposed Deed of Settlement with the Crown. It does not have the mandate to act as a governance structure for receiving settlement assets.
37. The internal decision-making structures, outlined in the Kaihautu Executive Council's Deed of Mandate and Trust Deed, have been carefully designed to ensure sound accountability and so that the views of individual iwi/hapu are fairly represented. As a result of the resolutions passed at the four regional reconfirmation hui, the Kaihautu Executive Council has undertaken, in consultation with Te Arawa Kaihautu, a review of its Trust Deed in terms of its accountability back to Te Arawa Kaihautu members.
38. In summary, the Trust Deed provides that each iwi/hapu appoints representatives to the Kaihautu. In turn, Te Arawa Kaihautu representatives elect from amongst themselves a representative for each iwi/hapu onto the Kaihautu Executive Council. The Kaihautu Executive Council is the mandated body responsible for instructing the negotiators. Guidance is also taken from the Pukenga Kaumatua on matters of tikanga and kawa. The overall structure is as follows:

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39. Therefore, in accordance with its Trust Deed, the Kaihautu Executive Council is accountable to those iwi/hapu who have mandated it to negotiate the settlement of Te Arawa Historical Claims with the Crown. Within those iwi/hapu, the Kaihautu Executive Council recognises and acknowledges the various claims committees and Wai claimants.
40. To ensure that the Kaihautu Executive Council remains in close contact with the iwi/hapu, processes have been established by the Kaihautu Executive Council to ensure that ongoing consultation, feedback and discussions occur. This process includes:
- a. regular information sharing and briefing from the Kaihautu Executive Council with Te Arawa Kaihautu, and from Te Arawa Kaihautu to their iwi/hapu claimants;
 - b. the Kaihautu Executive Council will hold at least three hui a year to update iwi/hapu on the negotiations;
 - c. regular newsletters distributed to all registered Te Arawa members; and
 - d. regular contact with the Pukenga Kaumatua, Te Kotahitanga o Te Arawa Fisheries Trust Board and Te Arawa Maori Trust Board.
41. In addition, once a proposed settlement has been negotiated, it is subject to ratification by the people.

Iwi/hapu telling the story of their core grievances

42. The Kaihautu Executive Council and the Crown recognise the benefit of iwi/hapu speaking on their marae directly to the Crown of their core grievances.
43. Accordingly, the Kaihautu Executive Council has developed a process in paragraph 44 for consultation with iwi/hapu and, if agreed to, the Crown is committed to participating

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in this process. This process will be undertaken before formal negotiations commence and is designed to:

- a. assist with the reconciliation of the relationship between Te Arawa and the Crown; and
 - b. ensure Crown negotiators are aware of key matters and so assist with the development of a durable settlement.
44. It is proposed to divide this process into two stages:
- a. Stage One: four one-day hui at which the iwi/hapu tell the story of their core grievances directly to the Crown; and
 - b. Stage Two: one full-day hui where the Kaihau Executive Council discusses with the Crown negotiators the key themes that have emerged from Stage One.
45. The Kaihau Executive Council suggests that Stage One will reflect the four iwi regional clusters identified in the Kaihau Executive Council's scoping report, *Nga Mana o Te Whenua o Te Arawa*. The report refers to these clusters as East, West, South and Coast. Stage One will provide the opportunity for the core grievances and claims of each regional section to be told.
46. In addition:
- a. at each hui the Crown has offered to fund a transcriber to assist the Kaihau Executive Council with the recording of the information;
 - b. the process should begin shortly after the signing of this document and be conducted over the course of a month; and
 - c. following the completion of Stage Two, the Kaihau Executive Council intends to collect relevant information gathered from the iwi/hapu and provide it to the Minister in Charge of Treaty of Waitangi Negotiations.

The process for the selection and appointment of settlement negotiators

47. The Kaihau Executive Council intends to develop a process for the selection and appointment of individuals to negotiate with the Crown for the settlement of Te Arawa Historical Claims.
48. The process to be developed by the Kaihau Executive Council will include the selection of two to three individuals from each of the four iwi regional clusters (referred to in paragraph 45). Before a process is finally approved, the Kaihau Executive Council will consult with iwi/hapu.

Conducting the negotiations process with the Crown

49. During negotiations, the Kaihau Executive Council wishes to ensure that iwi/hapu with Te Arawa Historical Claims provide input into discussions involving issues that are of specific relevance or knowledge to that iwi/hapu.

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50. Accordingly, the Kaihau Executive Council will arrange for individual iwi/hapu to provide, amongst other things, the following processes:
- a. hikoi – at the commencement of negotiations, iwi/hapu will invite Crown negotiators on a hikoi around their rohe, explaining issues surrounding key cultural sites and other important events that have shaped the relationship of Te Arawa and the Crown;
 - b. negotiations involving cultural redress will, if appropriate, be located on the marae of the relevant iwi/hapu; and
 - c. discussions with the Crown on elements of the Historical Account that are specific to an iwi/hapu will include individuals of that iwi/hapu.

Issues surrounding the future governance of settlement assets

51. The Kaihau Executive Council recognises the need to ensure the ongoing role of iwi/hapu in respect of settlement redress. Accordingly, the future proposals for the governance of settlement assets may draw upon the four iwi regional clusters referred to in paragraph 45 above.
52. The Kaihau Executive Council has indicated that, in respect of post-settlement governance arrangements over areas of licensed Crown forest land, it may be appropriate for the Crown to be involved in such governance arrangements for a defined interim period. Without suggesting that the Crown considers any such arrangement appropriate, it is willing to explore such arrangements with the Kaihau Executive Council.

Redress-specific issues for iwi/hapu

53. It is envisaged that most redress negotiated with the Crown will be provided in respect of all Te Arawa Historical Claims, and will not be linked directly to individual grievances or claims. However, in respect of some items of cultural redress, or some aspects of the Crown Apology, it may be appropriate to link specific redress to an individual grievance, or to return the redress direct to an iwi/hapu.
54. The transfer of redress from the Crown will be subject to considerable discussion during negotiations. Some redress could be more appropriately transferred to individual iwi/hapu, such as:
- a. wahi tapu sites;
 - b. specific elements of the Crown Acknowledgements and Apology that relate to breaches of the Treaty affecting a particular iwi/hapu; and
 - c. other cultural redress items, for example, place name changes and statutory acknowledgements of the importance of a site to an iwi/hapu.

Communication

55. The Kaihau Executive Council and the Crown will each undertake regular and appropriate internal consultation throughout the negotiations, taking into account the

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need to keep iwi/hapu and Crown stakeholders (respectively) informed, but also the need for confidentiality regarding third parties.

Issues of Common Interest to Central North Island Iwi

56. The Kaihautu Executive Council has indicated to the Crown that it may wish to work collectively with other Central North Island iwi on issues of common interest, including redress involving licensed Crown forest land.
57. The Kaihautu Executive Council acknowledges that such a collective approach will be subject to the consent of the mandated body of each of these iwi and timing issues.
58. The Crown acknowledges this desire and is willing to discuss how this could be accommodated within the negotiations.

Overlapping Claims

59. Overlapping claimants include those iwi/hapu of Te Arawa who have withdrawn from or have not mandated the Kaihautu Executive Council to negotiate a comprehensive settlement of their historical claims, as well as other iwi/hapu who may have customary interests within the Te Arawa area of interest.
60. The Kaihautu Executive Council and the Crown 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 finalised. The parties also agree that certain items of redress provided to Te Arawa as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.

The process by which the claims of overlapping claimants will be assessed is, in summary:

- a. following the signing of this document:
 - i. the Crown will inform potential overlapping claimants of the Crown's intention to negotiate a comprehensive settlement of Te Arawa Historical Claims, seek the overlapping claimants' views as to their interests in Te Arawa's area of interest, and outline the Crown's overlapping claims policies and processes; and
 - ii. the Kaihautu Executive Council will initiate dialogue with overlapping claimants and seek to establish a process for addressing issues of common interest;
- b. prior to making an initial redress offer for the settlement of Te Arawa Historical Claims, the Crown will ensure that it:
 - i. has knowledge of the interests of both Te Arawa and overlapping claimants; and
 - ii. has considered if redress can be provided in a way that accommodates these interests; and

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- c. following the signing of an Agreement in Principle, the Crown will undertake a consultation process with overlapping claimants;
 - i. if Te Arawa and the overlapping claimants are unable to reach an agreement as to their respective interests, the Minister in Charge of Treaty of Waitangi Negotiations will make a provisional decision on contested redress. The Minister will invite overlapping claimants and the Kaihautu Executive Council to comment on that provisional decision; and
 - ii. the Minister will make a final decision on contested redress after taking any additional responses into consideration.

- 61. The Crown may be in Treaty settlement negotiations with overlapping claimants. Issues arising in those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa. The Crown will ensure that Te Arawa is kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

Not Bound Until Deed of Settlement

- 62. The Kaihautu Executive Council and the Crown 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.

Process for Establishing the Governance Structure for Settlement Assets

- 63. The Kaihautu Executive Council has the mandate to negotiate a proposed Deed of Settlement with the Crown. It does not have the mandate to act as a governance structure for receiving settlement assets.

- 64. An appropriate legal entity to receive settlement assets will, therefore, need to be developed by the Kaihautu Executive Council and the Crown, in consultation with the people of Te Arawa. The legal entity will need to represent Te Arawa, be accountable to Te Arawa, and include transparent decision-making and dispute resolution processes. The legal entity will be ratified in a manner to be agreed between the parties, and be in place prior to the introduction of settlement legislation.

Claimant Funding

- 65. The Kaihautu Executive Council and the Crown note that the Crown will make a contribution to negotiation costs of the Kaihautu Executive Council, paid in instalments for the achievement of specified milestones in the negotiation process.

- 66. The Kaihautu Executive Council will adhere to the Crown's claimant funding policy guidelines. In particular, the Kaihautu Executive Council will provide the Crown with independently audited accounts annually for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.

**TERMS OF NEGOTIATION
NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN**

Waiver of Other Avenues of Redress

67. The Kaihau Executive Council and the Crown agree that, in the spirit of good faith negotiations, the Kaihau Executive Council will not initiate or pursue, before any court or tribunal, any redress for Te Arawa Historical Claims while these negotiations continue.
68. Both the Kaihau Executive Council and the Crown recognise, however, that the Waitangi Tribunal's Central North Island Inquiry:
- a. is producing valuable historical research that will be of high value during the course of negotiations; and
 - b. provides a forum for the iwi/hapu to tell their core grievances.
69. Now, as substantive negotiations are commencing, the Kaihau Executive Council and the Crown agree to:
- a. jointly seek a deferral of the claims represented by the Kaihau Executive Council in the Waitangi Tribunal's Central North Island Inquiry, upon the signing of the Terms of Negotiation; and
 - b. the Crown attending, as part of the Whakakotahitanga strategy, a series of hui on Te Arawa marae at which the iwi/hapu tell the story of their core grievances directly to the Crown (outlined in paragraphs 42-46).
70. The Kaihau Executive Council will request claimants of Te Arawa Historical Claims not to pursue claims, and to withdraw from inquiries before the Waitangi Tribunal. However, the decision to defer the Waitangi Tribunal Central North Island Inquiry is for the Waitangi Tribunal. If the Waitangi Tribunal continues, nonetheless, with its Central North Island Inquiry, the Kaihau Executive Council and the Crown agree that claimants of Te Arawa Historical Claims should continue to participate only to the extent necessary to "defend their honour", that is, to respond:
- a. to other parties in that Inquiry, including the Crown, whose evidence or submissions in the opinion of claimants of Te Arawa Historical Claims will likely adversely affect the Waitangi Tribunal's consideration of relevant historical events, or adversely affect the identification, definition, nature or extent of existing customary rights and interests of claimants of Te Arawa Historical Claims; and
 - b. by way of cross-examination, or submissions, or both to evidence and submissions advanced by other parties in the Central North Island Inquiry, but only after the Kaihau Executive Council and the Crown have used their best endeavours to reach agreement about the need for and nature and extent of any proposed response.

**TERMS OF NEGOTIATION
NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN**

Procedural Matters

71. The Kaihautu Executive Council and the Crown 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 on a "without prejudice" basis and will remain confidential, except when:
 - i. the Kaihautu Executive Council needs to release information to keep Te Arawa informed on the general process and progress of negotiations;
 - ii. the Crown is required to release information under the Official Information Act 1982; or
 - iii. agreed otherwise (such as when consultation with third parties is necessary); and
 - c. in the spirit of good faith negotiations, each party will make available to the other, where appropriate, information that it holds relevant to these negotiations;
 - d. media statements concerning the negotiations will only be made when mutually agreed by both parties;
 - e. the location of meetings will be suitable and convenient to both parties;
 - f. following each negotiation meeting, the Crown will draft a record of negotiation, which will be finalised by both parties;
 - g. each party recognises the value of maintaining consistency in negotiating personnel;
 - h. in the event that the Crown has conceded breaches of te Tiriti o Waitangi/the Treaty of Waitangi that relate directly to Te Arawa during the course of Waitangi Tribunal hearings, the Crown accepts these concessions as relevant to these negotiations; and
 - i. the Crown may be in Treaty settlement negotiations with overlapping claimant groups. Issues arising from those negotiations, including issues concerning Crown forest land, may be relevant to these negotiations, and vice versa.

Amendments

72. The Kaihautu Executive Council and the Crown 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.

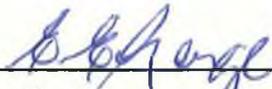
**TERMS OF NEGOTIATION
NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN**

SIGNED THIS 26 DAY OF November 2004

For and on behalf of Te Arawa:

Authorised Signatory:

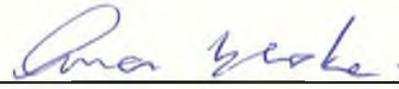
Printed Name:



Eru George
Ngati Tuara-Ngati Kea
Chairperson

Authorised Signatory:

Printed Name:



Eva Moke
Ngati Pikiao
Deputy Chairperson

Authorised Signatory:

Printed Name:



Rangipuawhe Maika
Tuhourangi and hapu

Authorised Signatory:

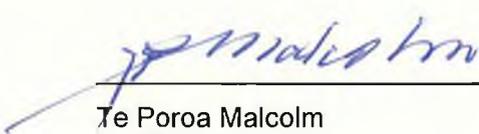
Printed Name:



Anaru Rangiheuea
Tuhourangi and hapu

Authorised Signatory:

Printed Name:



Te Poroa Malcolm
Ngati Tarawhai

Authorised Signatory:

Printed Name:



Henare Pryor
Ngati Rangitahi

**TERMS OF NEGOTIATION
NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN**

Authorised Signatory:

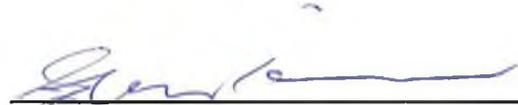
Printed Name:



Te Amotawa Pirika
Ngati Te Roro o Te Rangi

Authorised Signatory:

Printed Name:



Edwin McKinnon
Ngati Pikiāo

Authorised Signatory:

Printed Name:



Mita Pirika
Ngati Tuteniu

Authorised Signatory:

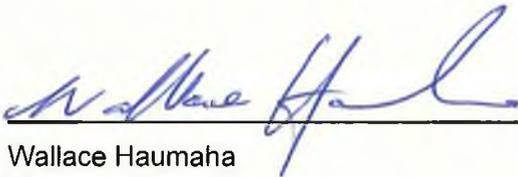
Printed Name:



Ruka Hughes
Ngati Rongomai

Authorised Signatory:

Printed Name:



Wallace Haumaha
Ngararanui

Authorised Signatory:

Printed Name:

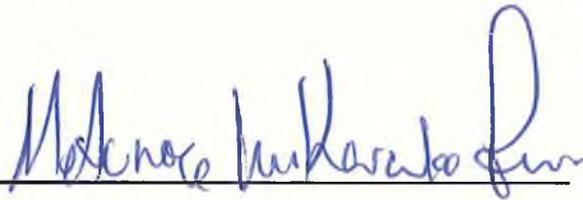


Jim Schuster
Ngati Pikiāo

**TERMS OF NEGOTIATION
NGA KAIHAUTU O TE ARAWA EXECUTIVE COUNCIL AND THE CROWN**

Authorised Signatory:

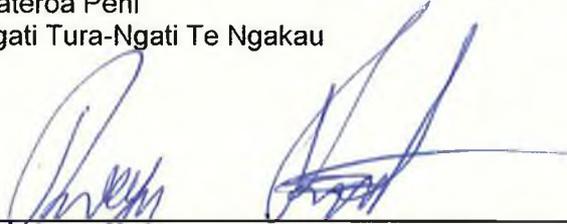
Printed Name:



Materoa Peni
Ngati Tura-Ngati Te Ngakau

Authorised Signatory:

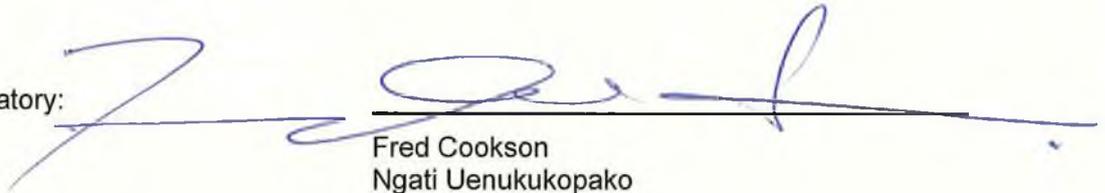
Printed Name:



Roger Pikia
Ngati Tahu-Ngati Whaoa

Authorised Signatory:

Printed Name:



Fred Cookson
Ngati Uenukukopako

For and on behalf of the Crown:



Hon Margaret Wilson, Minister in Charge of Treaty of Waitangi Negotiations

APPENDIX 1



Minister in Charge of Treaty of Waitangi Negotiations

**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

01 APR 2004

Eru George
Chairperson
Ngā Kaihautū o Te Arawa Executive Council
PO Box 6084
ROTORUA

Tēnā koe

Thank you for the Deed of Mandate submitted to the Crown in December 2003 stating the intention of Ngā Kaihautū o Te Arawa Executive Council ("the Executive Council") to represent the people of Te Arawa in negotiations for the settlement of their historical Treaty of Waitangi claims. We would like to acknowledge the considerable effort of the Executive Council, and in particular Mr Rawiri Te Whare, to submit the Deed of Mandate.

As you are aware the Crown publicly notified the Deed of Mandate in December 2003 and January 2004. In response to the public notification, 52 submissions were received, of which 39 submissions expressed support for the Executive Council, and 13 were opposed.

The Crown has completed its assessment of the Deed of Mandate and the submissions. We have come to the conclusion that the Executive Council has considerable support from the Te Arawa claimant community, and is an appropriate entity to represent the people of Te Arawa in negotiations. We are therefore pleased to recognise the mandate of the Executive Council.

The Crown is strongly committed to addressing the wrongs of the past and establishing the basis for a strong, ongoing relationship with Te Arawa. We look forward to working with you in negotiations. The negotiation and signing of the Terms of Negotiation is the next milestone to be achieved in the settlement process. Following that, formal negotiations can begin.

It is important for you to continue to build on your mandate, and there are several matters that it would be prudent for you to address. At the Ngati Rangitahi mandating hui (held on 10 August 2003), the hui minutes do not show that specific resolutions seeking a mandate were put to the people. While the minutes suggest that there was overall consensus for Ngati Rangitahi to give their mandate to the Executive Council, Ngati Rangitahi should have the opportunity to again demonstrate their support for the Executive Council at a reconfirmation hui, to be held before Terms of Negotiation between the Crown and Te Arawa are signed.

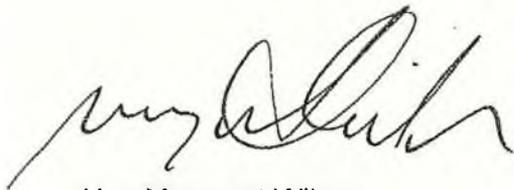
We note that two groups (Ngāti Rangiwewehi and Ngāti Rangiteaorere) have yet to finalise the appointment of their representatives on the Executive Council. We encourage the Executive Council to assist those groups to complete this election process.

We note that although the Executive Council's mandate does not currently cover the historical claims of Ngāti Makino, Waitaha and Tapuika, there are seats available on both the Kaihautū and the Executive Council for representatives of these groups, should they choose to join the negotiations. The Crown's preference is that these groups be included in the negotiations, and officials will continue to encourage these groups to join with Te Arawa.

Given the size of the Te Arawa population that has come together for the purpose of negotiations, we consider that open and regular communication between the Executive Council, the Kaihautū and Ngā Uri o Te Arawa is particularly essential in order to achieve a durable settlement. We understand that the Executive Council is developing a communication strategy. It will be important for the strategy to reinforce the point to the people of Te Arawa that it is the Executive Council that holds the mandate. Office of Treaty Settlements officials will monitor these processes throughout the negotiations.

In conclusion, we congratulate the Executive Council in achieving this significant milestone. We look forward to meeting you in Rotorua to celebrate this achievement with you and the people of Te Arawa.

Nāku noa, nā



Hon Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations



Hon Parekura Horomia
Minister of Māori Affairs