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**TERMS OF NEGOTIATION  
BETWEEN THE CROWN AND THE NGĀTI HAUĀ TRUST BOARD**

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**20 December 2012**

# Terms of Negotiation

## between Ngāti Hauā Trust Board and the Crown

### BACKGROUND

#### Ngāti Hauā

- A. Ngāti Hauā descend from the eponymous ancestor Hauā and affiliates to Tainui Waka.
- B. Ngāti Hauā as a people, are predominately located within the Central Waikato region of New Zealand.
- C. Presently, Ngāti Hauā has five active marae and five active hapū. The active marae are Rukumoana, Kai-ā-Te-Mata, Raungaiti, Te Iti O Hauā, and Waimakariri. The active hapū are Ngāti Te Oro, Ngāti Werewere, Ngāti Waenganui, Ngāti Te Rangitaupi, and Ngāti Rangī Tawhaki.

#### Ngāti Hauā Historical Claims for Negotiation

- D. The following Ngāti Hauā Treaty claims for have been registered by the Waitangi Tribunal:

Wai No.	Claim Name	Claimant(s)
Wai 306	Ngāti Hauā Lands Claim	Alan Jay Mokoro Gillett, Eru Kaukau (dec) and Marsden Kaukau
Wai 1017	Ngāti Hauā Lands and Resources Claim	Eru Kaukau (dec), Alan Jay Mokoro Gillett and Marsden Kaukau

#### Key Commitment of the Ngāti Hauā Trust Board and the Crown

- E. These Terms of Negotiation are signed off by the Ngāti Hauā Trust Board with the acknowledgement and commitment by the Crown (as defined in clause 12) that the Crown will, from the date of the signing of these Terms of Negotiation, proceed to negotiate a Deed of Settlement of Ngāti Hauā's Historical claims (including Wai 306 and Wai 1017) with Ngāti Hauā through the Ngāti Hauā Trust Board.

### TERMS OF NEGOTIATION

#### Purpose

- 1. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and "ground rules" for formal discussions between Ngāti Hauā Trust Board and the Crown regarding the settlement of Ngāti Hauā Historical Claims (as defined in the clause 11 of these Terms).
- 2. In particular, these Terms of Negotiation record the intentions of the Ngāti Hauā Trust Board 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 Ngāti Hauā Trust Board and the Crown acknowledge that they expect each other to comply with the terms set out in this document during the negotiations.

### **Guiding Principles**

4. Guiding Principles are regarded as reciprocating attitudes and behaviour by which the opportunities and risks of negotiations will be explored in order to achieve the best settlement outcome. The attitudes and behaviours of Ngāti Hauā and the Crown in these negotiations will be founded upon the Tikanga of Korero Rangatira, which respects the following:
  - a. the mana motuhake of Ngāti Hauā and all parties;
  - b. the accountabilities and responsibilities owed to its constituent groups;
  - c. the negotiations and settlement achievements, priorities and values contribute to a new generation of relationship between Ngāti Hauā and the Crown with particular acknowledgement of the Tumuakitanga; and
  - d. a commitment to a constructive relationship which enables the parties to work together to achieve the best outcomes.

### **Objectives of the negotiations**

5. Ngāti Hauā Trust Board 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 Ngāti Hauā Historical Claims which is fair in the circumstances;
  - b. achieve a settlement that will not:
    - i. diminish or in any way affect any rights that Ngāti Hauā have arising from Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, except to the extent that the claims arising from those rights are settled; or
    - ii. extinguish any aboriginal or customary rights that Ngāti Hauā may have; and
  - c. achieve a settlement that:
    - i. recognises the nature and extent of the breaches of the Crown's obligations to Ngāti Hauā under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and
    - ii. will enhance the ongoing relationship between the parties (both in terms of te Tiriti o Waitangi/the Treaty of Waitangi and otherwise).

### **Ngāti Hauā - specific objectives**

6. The Crown acknowledges that the Ngāti Hauā Trust Board will engage in settlement negotiations to achieve the following:

- a. to provide a platform to assist Ngāti Hauā to regain and redevelop their respective economic, cultural, social and environmental bases;
- b. to redress the effect that Crown breaches have had on the economic, social, cultural, environmental and political well-being of Ngāti Hauā;
- c. to enhance Ngāti Hauā social, cultural, economic, environmental and political levels of achievement; and
- d. to effect a programme of restoration for Ngāti Hauā that is generationally relevant.

#### **Crown-specific objectives**

- 7. Ngāti Hauā Trust Board acknowledges that the Crown will engage in settlement negotiations to achieve the following:
  - a. a comprehensive settlement of Ngāti Hauā Historical Claims;
  - b. to achieve a settlement that will restore the honour of the Crown; and
  - c. to demonstrate and record that the parties have acted honourably and reasonably in negotiating the settlement.

#### **Definition of the Claimant Iwi**

- 8. Ngāti Hauā comprises those persons who descend from the founding ancestor/s of Ngāti Hauā as defined in the public notification of the Deed of Mandate.
- 9. Ngāti Hauā also includes any person who is a member of any hapū or whānau of Ngāti Hauā, including Ngāti Te Oro, Ngāti Werewere, Ngāti Waenganui, Ngāti Te Rangitaupi, and Ngāti Rangi Tawhaki.
- 10. The detail of the definition of Ngāti Hauā will be developed further over the course of Ngāti Hauā negotiations for inclusion in any Deed of Settlement that may be agreed by Ngāti Hauā and the Crown.

#### **The Ngāti Hauā Historical Claims**

- 11. Ngāti Hauā Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by Ngāti Hauā or anyone representing them that:
  - a. are founded on rights arising from Te Tiriti o Waitangi/the Treaty of Waitangi, or its principles, whether based on legislation, common law (including customary law and aboriginal title), fiduciary duty, or otherwise;
  - 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 clauses b(i) and b(ii) apply, including the following claims registered at the Waitangi Tribunal, insofar as they relate to Ngāti Hauā:
  - i. Wai 306; and
  - ii. Wai 1017.

### **Definition of the Crown**

#### 12. 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.

### **Mandate to negotiate**

- 13. The Crown received the **attached** Ngāti Hauā Trust Board Deed of Mandate. Also **attached** is the Crown's letter which recognises the mandate of the Ngāti Hauā Trust Board for the purpose of settlement of the Ngāti Hauā Historical Claims with the Crown.
- 14. If representation issues arise during negotiations, the Crown will discuss with Ngāti Hauā a process to address those issues with a planned mutual strategy toward resolution.

### **Mandate maintenance**

- 15. Ngāti Hauā Trust Board agrees to provide the Office of Treaty Settlements with reports on the state of the Ngāti Hauā mandate every three months, and the Crown agrees to advise the Ngāti Hauā Trust Board of any correspondence it receives about the mandate of Ngāti Hauā Trust Board.
- 16. If representation issues arise during negotiations that cannot be resolved by agreement within Ngāti Hauā, the Crown will discuss further with the Ngāti Hauā Trust Board a process to address those issues.

### **Subject matter for negotiation**

- 17. The parties will together agree upon subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.
- 18. The list of subject matters to be discussed will include the following categories of redress:

- a. the Crown's apology and acknowledgements;
  - b. cultural redress; and
  - c. financial and commercial redress.
19. Ngāti Hauā Trust Board has identified the following list of subject matters it would like to be discussed and explored through the negotiation process. The Crown has yet to form a comprehensive view on these subject matters:

*Cultural*

- a. gifted cultural properties;
- b. Tumuakitunga – redress for the impact of Crown breaches on the Tumuakitunga. This grievance is epitomised in the petition of Wiremu Tamihana to the Crown on 18 July 1865. Redress is also sought to recognise and provide for the future role of the Tumuakitunga;
- c. Te Kauhanganui o Tawhiao (Whare) - This whare and its kaupapa have suffered with the Crown undermining of Kīngitanga and Tumuakitunga. The whare is in a state of disrepair. This building, now at Rukumoana Marae (originally at Maungakawa), was the original Parliament for King Tawhiao. Redress is sought for the restoration and acknowledgement of this building and its history as a whare taonga;
- d. Maungakawa - Maungakawa is an integral part of the Ngāti Hauā identity. Ngāti Hauā seek exclusive vestings of key wāhi tapu on Maungakawa to Ngāti Hauā and exclusive co management between Ngāti Hauā and the Crown;
- e. Te Wairere – Ngāti Hauā seek exclusive vesting and administration of Te Wairere;
- f. Te Weraiti ki Waianuanu – Ngāti Hauā seek vesting of title over Te Weraiti to Te Wairere and joint co management with neighbouring iwi;
- g. Tupuna Awa - Ngāti Hauā seek an extension of the Waikato River arrangements for Ngāti Hauā on the same terms as Ngāti Korokī Kahukura or in conjunction with Ngāti Korokī Kahukura;

*Commercial and Financial*

- h. property redress comprising sale and leaseback properties and Crown forest lands;
  - i. gifting of landbank properties; and
  - j. quantum.
20. In addition to the above, Ngāti Hauā Trust Board and the Crown will work towards maximising opportunities for pre-leasing and/or on account settlement of properties as identified and agreed by the parties.
21. The Crown applies certain standard factors to ensure fairness between claimant groups when developing a redress quantum offer. Quantum is one component of the

settlement redress, which needs to be considered in the context of an entire settlement package. The primary factors are:

- a. the amount of land loss;
- b. the nature of the Treaty breach; and
- c. comparisons (benchmarks) with existing settlements.

22. The secondary factors that the Crown takes into account are:

- a. the current population size of a claimant group;
- b. overlapping interests; and
- c. any other special factors that may affect the claim.

### **Negotiations milestones**

23. Ngāti Hauā Trust Board and the Crown agree that the general process of negotiations with Ngāti Hauā will include, but not necessarily be limited to:

a. Negotiation Work Plan

The parties will develop a negotiation work plan.

b. Agreement in Principle

The Agreement in Principle outlines the scope and nature in principle of the settlement of Ngāti Hauā Historical Claims, which will be recorded in the Deed of Settlement.

c. Initialled Deed of Settlement

Ngāti Hauā and a representative of the Crown will initial a Deed of Settlement, which will set out the terms and conditions of settlement of Ngāti Hauā Historical Claims.

d. Ratification

The initialled Deed of Settlement will be presented by the Ngāti Hauā Trust Board to Ngāti Hauā for ratification. An approved governance entity structure will also be presented to Ngāti Hauā for ratification before the settlement legislation can be introduced.

e. Deed of Settlement signed if ratified

If Ngāti Hauā ratifies the Deed of Settlement (in a manner to be agreed), then the Deed of Settlement will be signed on behalf of Ngāti Hauā, and by a representative of the Crown.

f. Governance entity and settlement legislation

The settlement of Ngāti Hauā Historical Claims is effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

## **What the settlement of Ngāti Hauā Historical Claims will enable**

24. Ngāti Hauā Trust Board and the Crown agree that the settlement of Ngāti Hauā Historical Claims will enable the:
  - a. renewed generation of a political relationship between Ngāti Hauā and the Crown with particular regard to the Tumuakitanga;
  - b. final settlement of all Ngāti Hauā Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
  - c. discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of Ngāti Hauā;
  - d. 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 and the Education Act 1989 and for statutory protection of claims against the Crown to be removed for the benefit of Ngāti Hauā;
  - e. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Ngāti Hauā 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 any Deed of Settlement or any settlement legislation); and
  - f. discontinuance of legal proceedings or proceedings before the Waitangi Tribunal in relation to Ngāti Hauā Historical Claims.

## **Communication**

25. Ngāti Hauā Trust Board and the Crown will each undertake regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed of the general process and progress of negotiations, but also the need for confidentiality regarding third parties.

## **Overlapping claims**

26. Ngāti Hauā Trust Board and the Crown agree that overlapping claims 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 Ngāti Hauā as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
27. Ngāti Hauā Trust Board will discuss the Ngāti Hauā interests in redress 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.
28. The Crown may assist Ngāti Hauā as it considers appropriate and will carry out its own consultation with overlapping claimants.
29. 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 Office of Treaty

Settlements will ensure that Ngāti Hauā are kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

### **Not bound until Deed of Settlement**

30. Ngāti Hauā Trust Board 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 signed Deed of Settlement and Settlement Legislation.

### **Governance structure for settlement assets**

31. Ngāti Hauā Trust Board and the Crown agree that an appropriate legal entity ratified by Ngāti Hauā (in a manner to be agreed between the parties) that the parties agree adequately represents Ngāti Hauā, has transparent decision-making processes, and is accountable to Ngāti Hauā, will need to be in place prior to the introduction of settlement legislation for Ngāti Hauā.
32. The Crown will ensure its continued support for Ngāti Hauā through the legislative process and the implementation of the settlement.

### **Claimant funding**

33. Ngāti Hauā Trust Board and the Crown note that the Crown will make a contribution to the negotiation costs of Ngāti Hauā, which is paid in instalments for the achievement of specified milestones in the negotiation process.
34. The Ngāti Hauā Trust Board will adhere to the Crown's claimant funding policy guidelines.

### **Waiver of other avenues of redress**

35. Ngāti Hauā Trust Board and the Crown agree that during these negotiations the Ngāti Hauā Trust Board will not pursue or initiate, before any court or tribunal, in relation to any of the claims that are within the scope of the negotiations, any proceedings for redress covering all or part of the same subject matter as these negotiations.

### **Procedural matters**

36. Ngāti Hauā Trust Board 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. negotiation team members are to be informed by literature and research including:
    - i. relevant Waitangi Tribunal reports and documents; and
    - ii. relevant documents pertaining to the 1995 Waikato-Tainui settlement;
  - c. negotiation team members will have regard to commissioned expert research and advice that will be required over the course of negotiations;

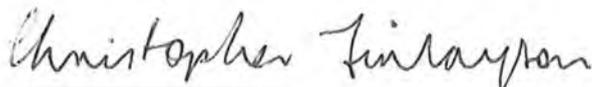
- d. negotiations will be conducted in private and will remain confidential except for internal communications within Ngāti Hauā and unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982;
- e. media statements concerning the negotiations will only be made when mutually agreed by both parties;
- f. the location of meetings will be suitable and convenient to both parties;
- g. Ngāti Hauā may withdraw from the negotiations with the Crown; and
- h. the Crown may be in Treaty settlement negotiations with overlapping claimant groups. Issues arising from those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa.

### **Amendments**

37. Ngāti Hauā Trust Board and the Crown agree that any amendments to these Terms of Negotiation must be approved by the parties and recorded in writing.

SIGNED THIS                      DAY OF

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



\_\_\_\_\_  
Hon Christopher Finlayson, Minister for Treaty of Waitangi Negotiations

**For and on behalf of Ngāti Hauā:**



\_\_\_\_\_  
Anaru Thompson, Tumuaki

**For and on behalf of the Ngāti Hauā Trust Board:**

Authorised Signatory:

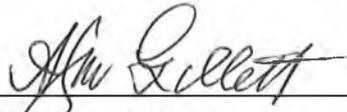
Printed Name:

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Lance Rapana  
Co-Chair  
Trustee

Authorised Signatory:

Printed Name:



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Mokoro Gillet  
Co-Chair  
Trustee

Authorised Signatory:

Printed Name:



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Bob Penetito  
Advisor  
Trustee

Authorised Signatory:

Printed Name:



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Te Ao Marama Maaka  
Kai a te mata Marae  
Trustee

Authorised Signatory:

Printed Name:



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Te Ihingarangi Rakatau  
Rukumoana Marae  
Trustee

Authorised Signatory:

Printed Name:

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Delia Wilson  
Te iti o Hauā Marae  
Trustee

Authorised Signatory:

Printed Name:

Linda Raupita  
Waimakariri Marae  
Trustee



Authorised Signatory:

Printed Name:

Rangitona Kaukau  
Raungaiti Marae  
Trustee

**WITNESSES:**

W. Wilson

Rangitona Matarauka

M. Deane

Ngaparetaurimu Holders.



Wilson

M. Whaiapan

Te Waiora PK

Whaiapan

Weka

W. Wilson

Whaiapan

me Temara.

P. White

**WITNESSES:**

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