Terms of Negotiation between the Crown and Ngāti Whātua o Ōrākei

Purpose of these Terms of Negotiation

1. These terms of negotiation set out the scope, objectives, and general procedures for the negotiations between the Crown (as defined in clause 7) and the Ngāti Whātua o Ōrākei Māori Trust Board ("the Trust Board") on behalf of Ngāti Whātua o Ōrākei (as defined in clause 4) for the settlement of the Ngāti Whātua o Ōrākei Historical Claims (as defined in clauses 5 and 6).

2. This document records the stated intentions of the Crown and the Trust Board including the intention to negotiate in good faith, confidentially and without prejudice. This document is not legally binding and does not create a legal relationship.

Objectives of the Negotiations

3. The Crown and the Trust Board agree that the objectives of the negotiations will be to:

   a negotiate in good faith a comprehensive, final and durable settlement of all the Ngāti Whātua o Ōrākei Historical Claims, which is fair in the circumstances;

   b achieve a settlement that will not diminish or in any way affect any ongoing rights that Ngāti Whātua o Ōrākei have arising from te Tiriti o Waitangi/the Treaty of Waitangi and its principles, or extinguish any ongoing aboriginal or customary rights that Ngāti Whātua o Ōrākei may have;

   c achieve a settlement that recognises and acknowledges the nature and extent of the breaches of the Crown's obligations to Ngāti Whātua o Ōrākei under te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and as part of that the nature and extent of the losses suffered by Ngāti Whātua o Ōrākei;

   d provide a platform, which will assist Ngāti Whātua o Ōrākei to develop their economic base;

   e achieve a settlement that provides the basis for developing an 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 help restore the honour of the Crown; and

   g achieve a settlement that will recognise the mana of Ngāti Whātua o Ōrākei within its claim area.

Definition of Claimants

4. Ngāti Whātua o Ōrākei, as represented by the Ngāti Whātua o Ōrākei Māori Trust Board, are those who are descendants of their common ancestor Tuperiri.

Ngāti Whātua o Ōrākei are the Ngāti Whātua hapū of Ngā Oho, Te Uringutu and Te Taoū who have interests in the areas of Central Auckland, West Auckland, North Shore and the Tāmaki Isthmus.

Definition of the Ngāti Whātua o Ōrākei Historical Claims

5. Ngāti Whātua o Ōrākei Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngāti Whātua o Ōrākei claimant or anyone representing them that:

   a are founded on rights arising from te Tiriti o Waitangi /the Treaty of Waitangi, the principles of te Tiriti o Waitangi /the Treaty of Waitangi, whether based on legislation, common law (including customary law and aboriginal title), fiduciary duty, or 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;

   c includes the following claims registered with the Waitangi Tribunal: Wai 388, Wai 261 and Wai 276; and to the extent that the following claims relate to Ngāti Whātua o Ōrākei, Wai 261, Wai 279, Wai 887 and Wai 1045.

6. Ngāti Whātua o Ōrākei Historical Claims do not include claims and grievances settled by the Orakei Act 1991 as these were settled on a full and final basis.

Definition of the Crown

7. 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

8. The Crown recognises the statutory mandate of the Trust Board, as stated by section 19(1) of the Orakei Act 1991, to represent Ngāti Whātua o Ōrākei

claimants in negotiations with the Crown for the settlement of the Ngāti Whātua o Ōrākei Historical Claims.

Subject matter for Negotiation

9. 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.

10. The subject matters to be discussed will include Ngāti Whātua o Ōrākei's historical grievances against the Crown and the following categories of redress:

    - The Crown's Apology and Acknowledgements;
    - Cultural redress; and
    - Financial and Commercial redress.

Scope of Negotiations

11. Matters to be considered during negotiations will include the 1993 Deed of Settlement (the railways settlement) between the Crown, the Trust Board and Te Rūnanga o Ngāti Whātua. The 1993 Deed of Settlement was an on account and partial settlement of all claims by Ngāti Whātua and its members against the Crown, arising either at law, or under te Tiriti o Waitangi/the Treaty of Waitangi, or its principles.

12. The negotiations will not consider claims and grievances settled by the Orakei Act 1991 and matters covered by the Orakei Block Housing Agreement (1996).

Process of Negotiations

13. The Trust Board and the Crown agree that the general process of negotiations will include, but not necessarily be limited to:

    a <u>Agreement in Principle</u>

    Outlines the scope and nature in principle for settlement of the Ngāti Whātua o Ōrākei Historical Claims, which will be recorded in the Deed of Settlement.

    b <u>Initialled Deed of Settlement</u>

    Ngāti Whātua o Ōrākei and the Crown initial the Deed of Settlement, which will set out the terms and conditions of settlement of the Ngāti Whātua o Ōrākei Historical Claims.

    c <u>Ratification</u>

    The initialled Deed of Settlement will be presented to Ngāti Whātua o Ōrākei for ratification. An approved governance entity structure, either

existing or to be constituted, will be presented to Ngāti Whātua o Ōrākei for ratification before the settlement legislation can be introduced.

d Deed of Settlement signed if ratified

If Ngāti Whātua o Ōrākei ratifies the Deed of Settlement (in a manner to be determined), the Deed of Settlement will be signed on behalf of Ngāti Whātua o Ōrākei and by a Minister of the Crown.

e Governance Entity and Settlement Legislation

Settlement of the Ngāti Whātua o Ōrākei Historical Claims becomes effective on a suitable governance entity being in place to hold the settlement assets and when the required settlement legislation receives the Royal Assent.

What the Settlement of the Ngāti Whātua o Ōrākei Historical Claims will Enable

14. The Trust Board and the Crown agree that the settlement of the Ngāti Whātua o Ōrākei Historical Claims will enable:

a final settlement of all the Ngāti Whātua o Ōrākei Historical Claims, and release and discharge of all of the Crown's obligations and liabilities in respect of them;

b the discontinuance of the Office of Treaty Settlements landbank for the protection of potential settlement properties for Ngāti Whātua o Ōrākei;

c the removal of 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 for claims against the Crown to be removed;

d the removal of the benefit for Ngāti Whātua o Ōrākei of any statutory protections and rights arising from 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;

e the removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Historical Claims of Ngāti Whātua o Ōrākei, 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 in relation to the Ngāti Whātua o Ōrākei Historical Claims.

Acknowledgements

15. The Crown and the Trust Board agree:

    a that during the course of historical account negotiations, the Trust Board and the Crown will aim to agree on the nature, extent and consequence of Ngāti Whātua o Ōrākei's te Tiriti o Waitangi/the Treaty of Waitangi historical grievances and any Crown breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and

    b that in the Deed of Settlement the Crown will acknowledge and apologise for any breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Communication

16. The Trust Board and the Crown will each ensure regular and appropriate internal consultation procedures throughout the negotiations. The Trust Board agrees to advise the Office of Treaty Settlements of any significant objections to its right to negotiate with the Crown on behalf of Ngāti Whātua o Ōrākei. The Crown agrees to advise the Trust Board of any objections that the Crown may receive to the Trust Board's right to negotiate with the Crown on behalf of Ngāti Whātua o Ōrākei. The Crown also agrees to notify the Trust Board when it has briefed the Minister in Charge of Treaty of Waitangi Negotiations in relation to significant negotiations milestones.

Cross-Claims

17. The Trust Board and the Crown agree that cross-claim issues over redress assets will need to be addressed to the satisfaction of the Crown and Ngāti Whātua o Ōrākei before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to Ngāti Whātua o Ōrākei as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.

18. The Trust Board and the Crown note that in areas where there are cross-claims the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be managed.

19. The Trust Board and the Crown will at an early stage in the negotiation process discuss the nature and extent of the interests of cross-claimant groups in the Ngāti Whātua o Ōrākei area of interest. The Trust Board and the Crown will then consider what further action on the part of Ngāti Whātua o Ōrākei is necessary to address cross-claim issues. The Trust Board will make reasonable endeavours at an early stage to assist in resolving cross-claims issues. The Crown will assist Ngāti Whātua o Ōrākei as it considers

appropriate. The Crown will carry out its own consultation with cross-claimant groups.

Conditions of Settlement

20. The Trust Board and the Crown acknowledge that this document does not bind either party to reach a settlement of the Ngāti Whātua o Ōrākei Historical Claims and that any agreement reached in negotiations is confidential, without prejudice and will not be binding until:

    a embodied in a signed Deed of Settlement; and

    b ratified by Ngāti Whātua o Ōrākei and the Crown; and

    c a suitable governance entity is in place to receive settlement assets; and

    d settlement legislation comes into force.

Governance Structure for Settlement Assets

21. The Trust Board and the Crown agree that an appropriate legal entity that adequately represents all Ngāti Whātua o Ōrākei claimants, has transparent decision making and dispute resolution processes, and is fully accountable to Ngāti Whātua o Ōrākei, will need to be in place prior to settlement to receive settlement assets.

Claimant Funding

22. The Trust Board and the Crown note that the Crown makes a contribution to the negotiation costs of Ngāti Whātua o Ōrākei, which is paid in instalments for the achievement of specified milestones in the negotiation process.

23. The Trust Board will provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, identifying that the funding has been spent on the negotiations. Invoices will be available for each instalment of funding received from the Crown.

Waive Other Avenues of Redress

24. The Trust Board and the Crown agree that during these negotiations neither party will pursue or initiate, before any court or tribunal, any proceedings for redress covering all or part of the same subject matter as these negotiations.

Procedural Matters

25. The 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 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;

c media statements concerning the negotiations will only be made when mutually agreed by both parties;

d the location of meetings will be suitable and convenient to both parties;

e the Trust Board will present their historical grievances to the Crown in a forum that is open to all members of Ngāti Whātua o Ōrākei;

f the Trust Board may consult with and inform Ngāti Whātua o Ōrākei of general matters relating to the Treaty settlement negotiations between the Crown and Ngāti Whātua o Ōrākei; and

g the Trust Board will advise the Crown on the steps taken to consult with and inform Ngāti Whātua o Ōrākei of the progress of the negotiations.

Amendments

26. The Trust Board and the Crown acknowledge that it may be necessary to amend these terms of negotiation from time to time and agree that all amendments must be approved by both parties and recorded in writing.

SIGNED THIS 2 DAY OF MAY 2003

For and on behalf of the Crown:

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

For and on behalf of Ngāti Whātua o Ōrākei:

Authorised Signatory:

Printed Name: Sir Ian Hugh Kawharu
Chairman, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Daniel Te Puna Tumahai
Deputy Chairman, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Rangimarie Rawiri
Secretary, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Puawai Rameka
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Whetumarama Porter
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Grant Pakihana Hawke
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Phillip Te Waka Davis
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Lance Hawke
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Wyllis Pateoro Maihi
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Authorised Signatory: _____

Printed Name: Bob Wirihana Hawke
Trustee, Ngāti Whātua o Ōrākei Māori Trust Board

Joe Hawke

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