

**Terms of Negotiation
between Ngāti Kuri and the Crown**



Preamble

In entering into these Terms of Negotiation, both Ngāti Kuri and the Crown acknowledge that:

The Crown has committed historical breaches of Te Tiriti o Waitangi/The Treaty of Waitangi and the principles of Te Tiriti/The Treaty which have prejudiced Ngāti Kuri.

Ngāti Kuri and the Crown have agreed to engage in settlement negotiations for the resolution of the historical grievances of Ngāti Kuri against the Crown.



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1. Purpose of the Terms of Negotiation

- 1.1. These Terms of Negotiation set out the scope, objectives and general procedures for the negotiations between the Ngāti Kuri Trust Board ("the Board") and the Crown (as defined in clause 6) for the settlement of the Historical Claims (as defined in clause 7) of Ngāti Kuri (as defined in clause 5).
- 1.2. This document records the intentions of the Board and the Crown, including the intention to negotiate in good faith, confidentially and without prejudice. The Terms of Negotiation are not legally binding and do not create a legal relationship.

2. Negotiation process principles

- 2.1. The Board and the Crown agree that it is intended that the negotiation process be guided by the following principles:

2.1.1. Ngāti Kuri has its own tikanga. In the course of the negotiations process Te Tikanga-a-Ngāti Kuri will be respected;

2.1.2. Both the Māori and English versions of Te Tiriti o Waitangi/The Treaty of Waitangi and the principles of Te Tiriti/The Treaty will inform the negotiations; and

2.1.3. Ngāti Kuri recognises that the Government is currently considering its position in relation to international instruments concerning indigenous human rights. Ngāti Kuri wishes these current negotiations to be informed by indigenous human rights standards relating to:

- a. self-determination;
- b. ownership, control and management of traditional territories, lands and resources;
- c. exercise of customary law;
- d. self-representation through their own institutions;
- e. free, prior and informed consent to developments on their land; and
- f. controlling and sharing in the benefits of the use of their traditional knowledge;

but recognises that the Government will be guided solely by the international instruments that have been adopted by New Zealand.

3. Crown principles and key policies for settlement

3.1. The Crown's guiding principles for the settlement of historical Treaty of Waitangi claims are as follows; good faith, restoration of relationship, just redress, fairness between claims, transparency, Government negotiated.

4. Objectives of the negotiations

4.1. The Board and the Crown agree that the objectives of the negotiations is to negotiate in good faith a settlement that:

4.1.1. Is just in the circumstances, durable and timely; and

4.1.2. Is comprehensive, in that it settles all the Historical Claims of Ngāti Kurī; and

4.1.3. Is final; and

4.1.4. Enhances the mana of Ngāti Kurī and the integrity and honour of the Crown; and

4.1.5. Enables a process of healing the past for both Ngāti Kurī and the Crown; and

4.1.6. Provides a new foundation for a meaningful and enduring Te Tiriti / Treaty relationship between Ngāti Kurī and the Crown that recognises Articles I, II and III of Te Tiriti / The Treaty; and

4.1.7. Facilitates the enhancement of Ngāti Kurī 's relationship with local government; and

4.1.8. Addresses a broad range of Ngāti Kurī 's interests, and is meaningful to Ngāti Kurī given its particular situation and range of interests;

4.1.9. Will settle all Historical Claims but will not in any way, except as expressly provided in the deed of Settlement or settlement legislation;

a. Diminish or affect any other ongoing rights that Ngāti Kurī has arising from Te Tiriti o Waitangi / The Treaty of Waitangi and its principles; or

b. In any way diminish or extinguish any ongoing aboriginal or customary rights that Ngāti Kurī may have; and



- c. Diminish or absolve any ongoing obligations that the Crown has arising from Te Tiriti o Waitangi/The Treaty of Waitangi and its principles; and
- 4.1.10. Acknowledges the nature and extent of the breaches of the Crown's obligations to Ngāti Kuri under Te Tiriti o Waitangi / the Treaty of Waitangi and its principles; and
- 4.1.11. Provides a useful and meaningful platform, which will assist Ngāti Kuri in developing its economic base; and
- 4.1.12. Accurately documents the history of Ngāti Kuri's Historical Claims in the Historical Account; and
- 4.1.13. Demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement.

4.2. In addition:

- 4.2.1. The Crown acknowledges that Ngāti Kuri views this settlement as a means of enhancing its tino rangatiratanga by enabling it to achieve, maintain and manage its economic, social, political and cultural wellbeing; and
- 4.2.2. Ngāti Kuri acknowledges that the Crown views an objective of the settlement as restoring its honour.

5. Definition of Ngāti Kuri for the purposes of the settlement of Historical Claims

- 5.1. For the purposes of the Deed of Settlement a definition of Ngāti Kuri will be defined and agreed upon during the course of negotiations. In particular, there will need to be identification of:
- 5.1.1. Named Ngāti Kuri Tupuna.
- 5.1.2. A comprehensive list of the hapū of Ngāti Kuri, including older tribal identities through which customary rights may have been exercised, after 6 February 1840; and
- 5.1.3. An appropriate Ngāti Kuri area of interest for the purposes of claimant definition which may include Ngāti Kuri marae.
- 5.2. Ngāti Kuri consider that it exercised customary interests:
- 5.2.1. From North Cape, across to Te Rerenga Wairua, south to Hukatere on the West Coast, across to the Southern tip of Maunga Tohoraha, north along the East Coast and back to North Cape; and
- 5.2.2. Extending out to sea from the territory described in 5.2.1 to all offshore islands, including Manawatawhi (Three Kings) and Rangitahua (Kermadec) Islands.

6. Definition of the Crown

6.1. The Crown:

6.1.1. Means Her Majesty the Queen in right of New Zealand; and

6.1.2. Includes all Ministers of the Crown and all government departments; but

6.1.3. Does not include:

a. An Office of Parliament; or

b. A Crown entity; or

c. A State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

6.2. To avoid doubt, the Crown does not include local authorities. However, all Ngāti Kuri claims relating to Crown acts or omissions concerning local authorities are intended to be covered by any agreed settlement.

7. Definition of Ngāti Kuri Historical Claims

7.1. Ngāti Kuri Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by Ngāti Kuri or anyone representing it that:

7.1.1. 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

7.1.2. Arise from or relate to acts or omissions before 21 September 1992:

a. By or on behalf of the Crown; or

b. By or under legislation; and

7.1.3. Includes the following claims registered at the Waitangi Tribunal, insofar as they relate to Ngāti Kuri and to acts and omissions before 21 September 1992:



Wai No.	Claim Title	Claimant
Wai 22	Muriwhenua Fisheries and SOE claim	Hon Matiu Rata
Wai 41	Ngāti Kuri lands claims	Rātahi Murupaenga
Wai 45	Muriwhenua Land claim	Hon Matiu Rata and others
Wai 262	Indigenous Flora and Fauna and Cultural Intellectual Property claim	Haana Murray
Wai 292	Te Kao lands and waterways	Hoana Karekare
Wai 633	Ngāti Kuri claim	Graeme Noho
Wai 739	Rewiri Hongi Whānau Trust claim	Sam Pōmare
Wai 747	Ngāti Kuri Tribal Lands claim	H.S., B.H., and P. Waitai
Wai 916	Parenga 6 and 7 blocks claim	Edward Henare
Wai 1359	Muriwhenua Land Blocks claim	
Wai 1692	Muriwhenua Land claims	Peter Pene Moses and others

8. Acknowledgements

8.1. The Board and the Crown acknowledge:

- 8.1.1. All the prior work of the Board and Ngāti Kuri to reach this point, including the background and context of the claims process, in particular concerning significant historical mandate issues particular to claimant groups of Te Hiku o Te Ika/ the Far North;
- 8.1.2. That the Board and the Crown will draw on a number of sources to inform the negotiations, including the Waitangi Tribunal Muriwhenua Reports (pre and post-1865) and that these sources will not be binding on the parties;
- 8.1.3. That during the course of the negotiations and in the settlement, the Board and the Crown will agree on the nature, extent and consequences of Ngāti Kuri's Te Tiriti o Waitangi/The Treaty of Waitangi grievances and any breaches of Te Tiriti / the Treaty and its principles on the part of the Crown; and
- 8.1.4. That in the settlement the Crown:
- a. Will acknowledge and apologise for any agreed breaches of Te Tiriti o Waitangi/The Treaty of Waitangi and its principles; and
 - b. Will acknowledge the nature and impact of those breaches where they can be established.

9. Mandate to negotiate

- 9.1. The Crown recognises the Board as the mandated body to negotiate an offer for the settlement of the Ngāti Kuri Historical Treaty Claims, as acknowledged in the attached letter (Appendix 1) from the Minister for Treaty of Waitangi Negotiations.
- 9.2. Attached (Appendix 2) is a chart of the governance and operational structure of the Board and a statement on the composition of the Negotiations Team that is representing the Board in negotiations with the Crown for the settlement of Ngāti Kuri Historical Claims
- 9.3. The Board and the Crown agree to exchange information with each other that pertains to the Board's mandate at least once every three months during the course of the negotiations, including:
- 9.3.1. The Board advising the Office of Treaty Settlements on the ways it is informing Ngāti Kuri about the negotiations process and progress and about any mandate issues that may arise; and
 - 9.3.2. The Office of Treaty Settlements, on behalf of the Crown, advising and consulting with the Board about any objections or otherwise to the Board's mandate that it receives.
- 9.4. The Board and the Crown agree that if serious mandate issues arise during the course of the negotiations that cannot be resolved by agreement within Ngāti Kuri the Crown may review its recognition of the mandate.

10. Shared iwi interests

- 10.1. Shared iwi interests may occur where Ngāti Kuri and other iwi are able to establish an interest in any potential matter for redress in the Ngāti Kuri area of interest that is the subject of negotiations.
- 10.2. The Board and the Crown agree that as part of the negotiations process they will develop a Protocol for the purpose of identifying and addressing any shared iwi interest's issues that arise during the course of the negotiations. The Protocol will detail process, procedure and the manner by which a number of matters will be dealt with including:
- 10.2.1. An agreement to share information regarding shared iwi interests matters that are likely to affect the negotiations; and
 - 10.2.2. An acknowledgement that negotiations between the Board and the Crown will not unduly prejudice other claimant groups with shared iwi interests; and



10.2.3. An acknowledgement that shared iwi interests may relate not only to assets, but also concern issues of mana; and

10.2.4. A strategy for consulting with other claimant groups on shared iwi interest issues; and

10.2.5. A statement of the Crown's role in the resolution of shared iwi interest issues; and

10.2.6. An agreement that where there are acknowledged shared iwi interests, redress may sometimes be required to reflect those interests.

10.3. The Board and the Crown agree that any shared iwi interest issues over redress assets or interests concerning mana will need to be addressed to the satisfaction of both parties before a Deed of Settlement can be concluded.

10.4. The Board and the Crown intend to address shared iwi interest matters, but acknowledge that it may become necessary to defer addressing certain shared iwi interest matters.

11. Governance entity for managing settlement assets

11.1. The Board and the Crown agree that:

11.1.1. The Board, in consultation with Ngāti Kuri, will develop an appropriate legal entity that the Board and the Crown are satisfied:

a. Is an appropriate body to receive settlement assets; and

b. Complies with the following principles:

i. It adequately represents all Ngāti Kuri; and

ii. Has transparent decision making and dispute resolution processes; and

iii. Is fully accountable to all Ngāti Kuri; and

11.1.2. The governance entity will be ratified in a manner to be agreed by the Board and the Crown; and

11.1.3. Ngāti Kuri's governance entity, as ratified, will be in place prior to settlement; and

11.1.4. The governance entity may, following settlement, transfer or distribute settlement assets to other Ngāti Kuri entities in accordance with the constitutional rules of the governance entity.



12. Procedural matters

12.1. The Board and the Crown agree that:

12.1.1. Negotiations will be conducted in good faith and in a spirit of co-operation; and

12.1.2. Negotiations will be conducted in private on a “without prejudice” basis and will remain confidential, subject to the following exceptions:

a. The Board will need to keep Ngāti Kuri informed on the general process and progress of negotiations;

b. The Crown is bound by the statutory requirements of the Official Information Act 1982; and

c. Participation in Court or Waitangi Tribunal proceedings (this does not apply to without prejudice confidential offers); and

12.1.3. The location of meetings will be suitable and convenient to both parties, taking into account Ngāti Kuri’s particular needs such as resource constraints and accountability requirements to Ngāti Kuri; and

12.1.4. Either party may, from time to time, provide general briefings to third parties on the Treaty settlement process as it relates to the Far North, and will notify the other party before such meetings take place where possible; and

12.1.5. Either party may from time to time meet with other interested parties in order to seek information on matters that may be relevant to the settlement process and will notify and discuss this intention with the other party in advance of those meetings; and

12.1.6. Media statements about the negotiations will only be made when mutually agreed by the Board and the Crown.

12.2. The Board and the Crown will each ensure regular and appropriate internal consultation procedures are established and maintained throughout the negotiations and will report regularly to one another on such communications.

12.3. In accordance with the commitment to negotiate in good faith, the Office of Treaty Settlements on behalf of the Crown agrees to ensure regular and appropriate consultation with the Board on issues that may impact on the negotiations.



13. Waitangi Tribunal and Courts

- 13.1. The Board and the Crown agree that during the negotiations neither party will pursue nor initiate, before any court or tribunal, any proceedings covering all or part of the same subject matter as these negotiations.
- 13.2. The Board and the Crown will consult each other about the nature of their participation and the level of support provided to the Board by the Crown in any proceedings brought by a third party relating in whole or in part to either:
- 13.2.1. The Ngāti Kuri Historical Claims covered by these negotiations; or
 - 13.2.2. The mandate of the Board.

14. Subject matter for negotiation

- 14.1. The parties will together agree upon the subject matter to be negotiated.
- 14.2. Subject matter to be discussed may include, and is not necessarily limited to, the following:
- 14.2.1. The Crown apology and acknowledgements;
 - 14.2.2. Cultural redress;
 - 14.2.3. Financial and commercial redress;
 - 14.2.4. Ongoing Tiriti o Waitangi / Treaty of Waitangi relationships between Ngāti Kuri and the Crown; and
 - 14.2.5. Such other matters as may be agreed.
- 14.3. The Crown agrees that it will consider all settlement options proposed by the Board and that it will do so in good faith.



15. Stages of the negotiations process

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

15.1.1. Agreement in Principle: an outline of the scope and nature in principle for settlement of Ngāti Kuri's Historical Claims, which will be recorded in the Deed of Settlement;

15.1.2. Initialled Deed of Settlement: the Deed of Settlement which sets out the terms and conditions of settlement of the Historical Claims of Ngāti Kuri which is initialled by representatives of the Board and the Crown;

15.1.3. Ratification: a process whereby the initialled Deed of Settlement is presented to Ngāti Kuri for approval. An approved governance entity structure will also be presented to Ngāti Kuri for ratification before the settlement legislation can be introduced but this need not necessarily occur contemporaneously with ratification of the Deed of Settlement;

15.1.4. Deed of Settlement signed if ratified: the Deed of Settlement will then be signed by senior representatives of Ngāti Kuri and the Crown in a ceremony which appropriately reflects the significance of the event;

15.1.5. Governance Entity and Settlement legislation: settlement of Ngāti Kuri's Historical Claims becomes effective once a suitable governance entity is formed to hold the settlement assets and following that the required settlement legislation receives the Royal Assent.

16. What the settlement of Ngāti Kuri Historical Claims will enable

16.1. The Board and the Crown agree that the settlement of the Historical Claims of Ngāti Kuri will be final and will enable:

16.1.1. The release and discharge of all of the Crown's obligations and liabilities in respect of those claims; and

16.1.2. The discontinuation of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for Ngāti Kuri; and

16.1.3. The removal of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection for claims against the Crown to be removed; and



- 16.1.4. The removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal over Ngāti Kuri Historical Claims, the Deed of Settlement, the redress provided or settlement legislation (but will not enable the removal of such jurisdiction over the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation); and
- 16.1.5. The discontinuance of legal proceedings or proceedings before the Waitangi Tribunal in relation to Ngāti Kuri Historical Claims.

17. Settlement conditions

17.1. The Board and the Crown acknowledge that this document does not bind either party to reach a settlement and that (subject to clause 12.1.2) any agreement reached in negotiation discussions is confidential, without prejudice and will not be binding until:

- 17.1.1. Embodied in a Deed of Settlement; and
- 17.1.2. Ratified by Ngāti Kuri in a process to be agreed by the Board and the Crown; and
- 17.1.3. A suitable governance entity has been formed to receive settlement assets; and
- 17.1.4. Settlement legislation comes into force.

18. Claimant funding

- 18.1. The Crown acknowledges the disparity of resources between Ngāti Kuri and the Crown.
- 18.2. The Board and the Crown note that the Crown makes a contribution to the negotiation costs of the Board, which is paid in instalments for the achievement of specified milestones in the negotiation process.
- 18.3. The Crown acknowledges that:
- 18.3.1. The cost to Ngāti Kuri of reaching this point in the process has been more than the Crown's financial contribution to that cost; and
- 18.3.2. The cost to Ngāti Kuri of completing a settlement is likely to be more than the Crown's financial contribution to that cost.

18.4. The 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. A breakdown of expenses will be made available by the Board, if required, for each instalment of funding received from the Crown.

18.5. If good progress is made in negotiations but all claimant funding has been expended, the Crown will consider, in good faith, any application from The Board for further resourcing or a cash advance on Settlement.

19. Amendments

19.1. The 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.



Terms of Negotiation between Ngāti Kuri and the Crown

SIGNED THIS DAY OF



For and on behalf of the Crown:

Christopher Finlayson

Hon Christopher Finlayson, Minister for Treaty of Waitangi Negotiations

For and on behalf of the Board:

Authorised Signatory:

Graeme Noho

Graeme Noho

Authorised Signatory:

Harry Burkhardt

Harry Burkhardt

Authorised Signatory:

Tom Petricevich

Tom Petricevich

Authorised Signatory:

Catherine Davis

Catherine Davis

Authorised Signatory:

Alice Palmer

Alice Palmer

Supporting Signatory:

Printed Name

Supporting Signatory:

Timothy Murray TIM MURRAY

Printed Name

Supporting Signatory:

Merimeri

Printed Name

MERIMERI

Supporting Signatory:

Selwyn Mura

Printed Name

Supporting Signatory:

SELWYN MURU

Printed Name

Supporting Signatory:

Printed Name



Appendix 1



Office of Hon Christopher Finlayson

Attorney-General
Minister for Treaty of Waitangi Negotiations
Minister for Arts, Culture and Heritage

23 SEP 2009

Graeme Neho
Chairman
Ngāti Kuri Trust Board
Te Manawa O Ngāti Kuri
5399 Main North Road
Ngataki
RD 4
KAITAIA

Tēnā koe

On 17 April 2009 we wrote to inform you of our decision to recognise, on behalf of the Crown, the Treaty negotiations mandate of the Ngāti Kuri Trust Board. At that time we stipulated that Crown recognition of the Trust Board's mandate was conditional on Ngāti Kuri passing further resolutions at hui-a-iwi confirming the iwi's support for the Trust Board's constitutional arrangements and mandate.

We are pleased to learn that the Ngāti Kuri Trust Board has completed a series of hui to consult with the wider iwi on the Crown offer to Te Hiku Forum and to pass the required resolutions. The Trust Board has provided evidence that it commands the support of the Ngāti Kuri claimant community and that strong accountability measures have been put in place. Accordingly, we have decided to formally and unconditionally recognise the mandate of the Trust Board to negotiate the comprehensive settlement of all the historical Treaty claims of Ngāti Kuri.

We wish to record our appreciation for the work the Trust Board has completed to date in representing Ngāti Kuri interests in Treaty settlement discussions with the Crown and with other iwi. We wish you all the best as Ngāti Kuri continues to progress towards a comprehensive Treaty settlement.

Nā māua noa,

Hon Christopher Finlayson
Minister for Treaty of Waitangi
Negotiations

Hon Dr Pita R Sharples
Minister of Māori Affairs

Appendix 2 – Ngāti Kuri Trust Board

Topic	Comment												
Ngāti Kuri Rohe	The Ngāti Kuri Southern boundary is Maunga Tohoraha (Mount Camel) on the East, across to Hukatere on the West then Northward to Te Rerenga Wairua, then across to Murimotu (North Cape) on the East. Manawatawhi (3 King Islands) and Rangitahua (Kermedec Islands) and all other off shore Islands are also included.												
Marae	Te Reo Mihi Marae, Te Hāpua Waiora Marae, Ngātaki.												
Kaumātua	<table border="0"> <tr> <td>Charlie Petera</td> <td>Whare Mehana</td> <td>Karaka Roberts</td> </tr> <tr> <td>Tom Petricevich</td> <td>Pineaha Murray</td> <td>Merimeri Penfold</td> </tr> <tr> <td>Selwyn Murupaenga</td> <td>Saana Murray</td> <td>Whiti Maaka</td> </tr> <tr> <td>Hoana Karekare</td> <td>Bob Wells</td> <td>Dolly Brown</td> </tr> </table>	Charlie Petera	Whare Mehana	Karaka Roberts	Tom Petricevich	Pineaha Murray	Merimeri Penfold	Selwyn Murupaenga	Saana Murray	Whiti Maaka	Hoana Karekare	Bob Wells	Dolly Brown
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Ngāti Kuri Contact People	Graeme Neho, Chairman, Ngāti Kuri Trust Board Harry Burkhardt, Deputy Chairman, Ngāti Kuri Trust Board and Treaty Negotiator												
Ngāti Kuri Board Members	<table border="0"> <tr> <td>Graeme Neho</td> <td>Catherine Davis</td> <td>Whiti Abraham</td> </tr> <tr> <td>Harry Burkhardt</td> <td>Nellie Norman</td> <td>Charlie Sucich</td> </tr> <tr> <td>Tom Petricevich</td> <td>Hope Sucich</td> <td>Pani Petera</td> </tr> <tr> <td>Alice Palmer</td> <td>Walter Wells</td> <td></td> </tr> </table>	Graeme Neho	Catherine Davis	Whiti Abraham	Harry Burkhardt	Nellie Norman	Charlie Sucich	Tom Petricevich	Hope Sucich	Pani Petera	Alice Palmer	Walter Wells	
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Treaty Negotiators Mandated	By formal resolution at a hui a iwi, 23 August 2008												
Treaty Settlement Redress Considerations	<p>All Crown lands All waterways, catchments, wetlands, subterranean water deposits All forests, flora and fauna All mountains and hills All sand, dunes and beaches All farms and farm lands All offshore islands Quantum of redress All minerals and soils All airspace All wāhi tapu and sites of significance Social, economic and environmental revitalisation Cultural acknowledgement Management and co-management authority over all Ngāti Kuri lands, assets, activities and interests Directly influencing territorial authorities, councils, Crown Entities and other Crown and government departments involved with or having jurisdiction over assets, interests and activities within the Ngāti Kuri Rohe The return and repatriation of Ngāti Kuri taonga currently stored and/or on display in museums throughout New Zealand A Crown Apology</p>												

Appendix 2



