

WORKING DRAFT

**TE KOTAHI Ā TŪHOE
and
THE CROWN**

TERMS OF NEGOTIATION

[Dated 31 July 2008]

Terms of Negotiation between Te Kotahi ā Tūhoe and the Crown

Purpose of these Terms of Negotiation

1. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and “ground rules” for formal discussions between Te Kotahi ā Tūhoe and the Crown (as defined in paragraph 7 below) on behalf of Ngai Tūhoe (as defined in paragraphs 4-5 below) regarding the settlement of Ngai Tūhoe Historical Claims (as defined in paragraph 12 below).
2. In particular, these Terms of Negotiation record the intentions of Te Kotahi ā Tūhoe and the Crown and regarding the negotiations process, including the intention to negotiate in good faith and honour.
3. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, Te Kotahi ā Tūhoe and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

Ngai Tūhoe

4. Ngai Tūhoe comprises those persons who descend from the eponymous ancestors, Tūhoe or Pōtiki and includes any person who is a member of any Ngai Tūhoe hapū or whānau, including the list of hapū identified in **Appendix 1** attached.
5. The detail of the definition of Ngai Tūhoe will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.
6. Ngai Tuhoe claims which make up part of the Ruapani claimant grouping in so far as they relate to Ngai Tuhoe will be included in these negotiations.

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.

Guiding Principles

8. 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 Te Kotahi ā Tūhoe and the Crown in these negotiations will be founded upon the tikanga of Korero Rangatira, which respects the following:
 - a. the mana motuhake of both parties;
 - b. the accountabilities and responsibilities owed to constituent groups;
 - c. the negotiations and settlement objectives, priorities and values contribute to a new generation of a Crown /Ngai Tūhoe relationship;
 - d. the formative literature of Te Urewera Hearings processes including the Waitangi Tribunal Te Urewera report; and
 - e. a commitment to a constructive relationship which enables the parties to work together to achieve the best outcomes.

Objectives of the negotiations

9. Te Kotahi ā Tūhoe and the Crown agree that the primary objective of the negotiations will be to negotiate in good faith and achieve a fair and generous settlement of all Ngai Tūhoe Historical Claims (as defined in paragraph 12 below) that:
 - a. is comprehensive, final, durable and fair in the circumstances;
 - b. will not:
 - i. diminish or in any way affect any rights that Ngai Tūhoe has 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 Ngai Tūhoe may have;
 - c. recognises the nature and extent of the breaches of the Crown's obligations to Ngai Tūhoe under te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and
 - d. will enhance the ongoing relationship between the parties (both in terms of te Tiriti o Waitangi/the Treaty of Waitangi and otherwise).
 - e. gives priority and urgency to the achievement of settlement goals and outcomes in a way that accommodates a Ngai Tūhoe and Crown negotiation process.

Ngai Tūhoe-specific objectives

10. The Crown acknowledges that Ngai Tūhoe will engage in settlement negotiations to achieve the following:

- a. whakaea – to achieve requit for raupatu from the Crown and other iwi, and to establish a new generation iwi/Crown/Ngai Tūhoe relationship;
- b. to redress the effect that Crown breaches have had on the economic, social, cultural, and political well-being of Ngai Tūhoe;
- c. to restore Ngai Tūhoe’s ability to regain their economic base;
- d. to enhance Ngai Tūhoe’s social, cultural, economic and political levels of achievement; and
- e. to effect a programme of restoration that is generationally relevant.

Crown-specific objectives

11. Ngai Tūhoe acknowledges that the Crown will engage in settlement negotiations to achieve the following:
 - a. a comprehensive settlement of all Ngai Tūhoe Historical Claims;
 - b. to restore the honour of the Crown; and
 - c. to demonstrate and record that both parties have acted honourably and reasonably in negotiating the settlement.

Ngai Tūhoe Historical Claims

12. Ngai Tūhoe Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngai Tūhoe claimant 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 12a and 12b apply, including the following claims registered at the Waitangi Tribunal, insofar as they relate to Ngai Tūhoe (refer **Appendix 2** for full details on the following Wai claims):

Wai 35	Wai 36	Wai 40	Wai 212	Wai 333	Wai 386
Wai 509	Wai 560	Wai 724	Wai 725	Wai 726	Wai 761
Wai 794	Wai 795	Wai 842	Wai 937	Wai 975	Wai 989
Wai 1009	Wai 1010	Wai 1011	Wai 1012	Wai 1026	Wai 1035
Wai 1036	Wai 1037	Wai 1039	Wai 1041	Wai 1042	Wai 1149

Wai 1225

[Additional Wai claims may be added subject to outcome of Ngāti Ruapani hui on 12 July 2008]

Ngai Tūhoe mandate to negotiate

13. The Crown received the Te Kotahi ā Tūhoe Deed of Mandate (attached as **Appendix 3**) which records their mandate to represent Ngai Tuhoë in negotiations. The Crown's letter (attached as **Appendix 4**), which recognising the deed of mandate of Te Kotahi ā Tūhoe.
14. It is intended that the successful achievement of the objectives to this document must add value to the lives and potential of Ngai Tūhoe whānau, hapū, and iwi over the future generations.
15. If representation issues arise during negotiations, the Crown will discuss further with Te Kotahi ā Tūhoe a process to address those issues with a planned mutual strategy toward resolution.
16. Te Kotahi ā Tūhoe agrees to provide the Office of Treaty Settlements with reports on the state of the mandate every three months, and the Crown agrees to advise Te Kotahi ā Tūhoe of any correspondence it receives about the mandate of Te Kotahi ā Tūhoe.

Crown mandate to negotiate

17. The Crown, through the Executive branch of government (i.e. the branch that carries out the administration of government), has accepted a moral obligation to resolving historical grievances resulting from Crown actions or inactions relating to the Treaty of Waitangi. In this, successive governments have worked towards the resolution of historical Treaty of Waitangi claims.

Key redress areas for negotiation

18. 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.
19. The list of subject matters to be explored in negotiations will include the following categories of redress:
 - a. Whenua: in respect of property in all forms. Ngai Tūhoe intend to develop a process for identifying properties of particular interest, and parties are to agree a process for identifying the appropriate redress mechanism to meet Ngai Tuhoë interest. May also include intangible whenua-related properties such as taonga;
 - b. Socioeconomic impact issues: may include exploring the impact of social policy issues that have had a direct impact on whānau, hapū and iwi with any redress being future focused;

- c. Constitution: aim to provide clarity between the Crown and Ngai Tuhoē regarding their constitutional relationship. Such discussions should focus on historical, current and future Treaty relationships;
 - d. [Kaingaroa (CNI)]: explore cultural and commercial redress options in respect of Kaingaroa Forest; and]
 - e. Crown Apology/Ngai Tūhoē Statement of Forgiveness: explore the most appropriate way for the Crown to apologise to Ngai Tūhoē and Ngai Tūhoē response to such an apology. Both the Apology and the 'Statement of Forgiveness' should make reference to the Crown and Ngai Tūhoē's future relationship.
20. Quantum is one component of the settlement redress, which needs to be considered in the context of an entire settlement package. The Crown applies certain standard factors to ensure fairness between claimant groups when developing a redress quantum offer. The primary factors are:
- a. the amount of land loss;
 - b. the nature of the Treaty breach; and
 - c. comparisons (benchmarks) with existing settlements.
21. 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.
22. The Crown agrees that financial redress provided to Ngai Tuhoē as part of the Central North Island forest settlement will not reduce or limit comprehensive settlement negotiations (attached as **Appendix 5**).

Deed of Settlement –

23. A Deed of Settlement is the final agreement reached between the Crown and Ngai Tūhoē. A Deed of Settlement sets out in detail the redress that the Crown will give to Ngai Tūhoē in order to settle their historical claims.
24. Cabinet must approve the content of a Deed of Settlement before it can be initialled by mandated representatives prior to ratification by Ngai Tūhoē. Legislation is then required for the Deed to become unconditional.

Process of Negotiations

25. Te Kotahi ā Tūhoē and the Crown agree that the general process of negotiations will include, but not necessarily be limited to:
 - a. Agreement in Principle (12-18 months from Terms of Negotiation)

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

b. Initialled Deed of Settlement

Ngai Tūhoe and Crown negotiators initial the Deed of Settlement, which will set out the terms and conditions of settlement of Ngai Tūhoe Historical Claims.

c. Ratification

The initialled Deed of Settlement will be presented by Te Kotahi ā Tūhoe to Ngai Tūhoe for ratification in a manner to be agreed by Te Kotahi ā Tūhoe and the Crown. An approved governance entity structure will also be presented to Ngai Tūhoe for ratification before the settlement legislation can be introduced.

d. Deed of Settlement signed if ratified (*12 months from Agreement in Principle*)

The Deed of Settlement will be signed on behalf of Ngai Tūhoe by Te Kotahi ā Tūhoe, and by a representative of the Crown if the Deed of Settlement is ratified.

e. Governance entity and settlement legislation

The settlement of Ngai Tūhoe 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 Ngai Tūhoe Historical Claims will enable

26. Te Kotahi ā Tūhoe and the Crown agree that the settlement of Ngai Tūhoe Historical Claims will enable the:
- a. renewed generation of a Crown and Ngai Tūhoe political relationship;
 - b. final settlement of all Ngai Tūhoe 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 Ngai Tūhoe;
 - 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 Ngai Tūhoe;
 - e. removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of Ngai Tūhoe 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 Ngai Tūhoe Historical Claims.

Confidentiality

- 27. Te Kotahi ā Tūhoe and the Crown agree that:
 - a. terms of confidentiality will not limit but promote the goal of whakaea and the principle of korero rangatira.
 - b. negotiations will be conducted in private and will remain confidential, except when:
 - i. Te Kotahi ā Tūhoe needs to release information to keep Ngai Tūhoe 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. mutual consent is required (but is not to be unreasonably withheld) to allow observers to attend negotiation meetings;
 - d. media statements concerning the negotiations will only be made when mutually agreed by both parties.

Overlapping claims

- 28. Te Kotahi ā Tūhoe 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 Ngai Tūhoe as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 29. Te Kotahi ā Tūhoe will discuss Ngai Tūhoe interests with overlapping claimants at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interest can be addressed.
- 30. The Crown may assist Ngai Tūhoe as it considers appropriate and will carry out its own consultation with overlapping claimants.
- 31. 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 Ngai Tūhoe are kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).

Not bound until Deed of Settlement

32. Te Kotahi ā Tūhoe 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.
33. The Crown will resume with its continued support for Te Kotahi a Tuhoe through the legislative process and the implementation of the settlement.

Governance structure for settlement assets

34. Te Kotahi ā Tūhoe and the Crown agree that an appropriate legal entity ratified by Ngai Tūhoe (in a manner to be agreed between the parties) that both agree adequately represents Ngai Tūhoe, has transparent decision-making processes, and is accountable to Ngai Tūhoe, will need to be in place prior to settlement to the introduction of settlement legislation.

Claimant funding

35. Te Kotahi ā Tūhoe and the Crown note that the Crown will make a contribution to the negotiation costs of Ngai Tūhoe, which is paid in instalments for the achievement of specified milestones in the negotiation process.
36. Te Kotahi ā Tūhoe will adhere to the Crown's claimant funding policy guidelines. In particular, Te Kotahi ā Tūhoe 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 negotiation.

Waiver of other avenues of redress

37. Te Kotahi ā Tūhoe and the Crown agree that during these negotiations Te Kotahi ā Tūhoe 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

38. Te Kotahi ā Tūhoe and the Crown agree that:
 - a. negotiation team members are to be informed by the following foundation literature:
 - i. Te Urewera Statement of Claims and Briefs of Evidence;
 - ii. Crown Forestry Rental Trust Te Urewera-commissioned research;
 - iii. relevant Waitangi Tribunal reports and documents; and
 - iv. Te Urewera Waitangi Tribunal Report;

- b. negotiation team members will have regard to commissioned expert research and advice that will be required over the course of negotiations;
- c. the location of meetings will be suitable and convenient to both parties; and
- d. following each negotiation meeting, the Crown will draft a record of negotiation, which will be finalised by both parties unless otherwise agreed.
- e. Either party may withdraw from negotiations if negotiations become untenable.

Amendments

- 39. Te Kotahi ā Tūhoe 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 DAY OF 20

For and on behalf of the Crown:

Hon Dr Michael Cullen, Minister in Charge of Treaty of Waitangi Negotiations

For and on behalf of Ngai Tūhoe:

Authorised Signatory:

[Name of signatory]

APPENDIX 1

Ngai Tūhoe Hapū

The Deed of Mandate submitted by Te Kotahi ā Tūhoe identifies the following 64 hapū of Ngai Tūhoe:

1. Hapuoneone
2. Kākahu Tāpiki (Ngāti Kākahutāpiki)
3. Kurī Kino (Ngāti Kuri)
4. Murakareke
5. Ngā Maihi
6. Ngā Pōtiki
7. Ngai Te Rūrehe (Ngāi Te Riu)
8. Ngai Taraparoa
9. Ngai Tātua
10. Ngai Te Amohanga
11. Ngai te Au
12. Ngai Te Kahu
13. Ngai Te Kapo o te Rangi (Ngāi Te Kapo)
14. Ngai Tūmatawhā
15. Ngai Tūranga Pikitoi
16. Ngāti Hā
17. Ngāti Haka Patuheuheu
18. Ngāti Hāmua
19. Ngāti Hape
20. Ngāti Haua
21. Ngāti Hiki
22. Ngāti Hinekura
23. Ngāti Hinewhakarau
24. Ngāti Karetehe
25. Ngāti Koira
26. Ngāti Korokaiwhenua
27. Ngāti Kōurakino (Ngāti Kōura)
28. Ngāti Kūmara
29. Ngāti Manunui
30. Ngāti Maru
31. Ngāti Mātaatua
32. Ngāti Matewai
33. Ngāti Murahōi
34. Ngāti Muriwai
35. Ngāti Pakitua
36. Ngāti Peehi
37. Ngāti Raka
38. Ngāti Rākei
39. Ngāti Rautao
40. Ngāti Rere
41. Ngāti Rerekahika
42. Ngāti Rongokārae (Ngāti Rongo)
43. Ngāti Ruapani ki Waikaremoana
44. Ngāti Ruatāhuna
45. Ngāti Ruri
46. Ngāti Tahu
47. Ngāti Tamakere
48. Ngāti Tamatea
49. Ngāti Tamatuhirae / Ngāti Tama
50. Ngāti Tāwhaki
51. Ngāti Te Paena
52. Ngāti Te Umuiti
53. Ngāti Tūmatawhero
54. Ngāti Wehi o te Rangi
55. Tamakaimōana
56. Tamaruarangi
57. Te Māhurehure
58. Te Mārangaranga
59. Te Urewera
60. Te Warahoe
61. Te Whakatāne
62. Te Whānau ā Ēria
63. Tūhoe Pōtiki
64. Whānaupani

APPENDIX 2

Ngai Tūhoe Wai Claims

The Deed of Mandate submitted by Te Kotahi ā Tūhoe identifies the following Wai claims (in so far as these relate to Ngai Tūhoe):

Wai No	Claim Title	Named Claimant
35	Tuhoe Lands & SOE Act Claim	James Milroy & Ors
36	Tuhoe Land Claim	James Milroy & Ors
40	Waiohau B9B Block & other Blocks Claim	Tama Nikora and Ors
187	Awataha Land	R O Wilson
212	Ikawhenua Lands & Waterways	Hohepa Waiti
333	Lake Waikaremoana	T Tait
386	Matahina F Block	T Tait
509	Tuhoe Lands	Norma Pakau
560	Waiohau 1B Block & Te Houhi Village Claim	Te Whiti McGarvey
724	Murupara Section & Ratings Power Act 1888 Claim	Roland Mason
725	Te Pahou Blocks	Hiraina Hona
726	Ngāti Haka & Patuheuheu lands, forests & resources	Robert Pouwhare
761	Urewera Lands & Waters Claim	Pita Keepa
794	Opouriao Lands & Resources	Tame Iti
795	Tumatawhero - Waikaremoana	Hirini Paine
842	The Tuawhenua Blocks & Te Urewera National Park	Wharekiri Biddle
937	Noa Tiwai Lakes, Lands & Other Resources	Trainor Tait & another
975	The Crown Settlement Policy	Sir John Turei
989	Tuhoe Cultural Heritage	Tame Iti
1009	Ngai Te Kapo Waahi Tapu	Te Weeti Tihi
1010	Ngāti Hinekura & Te Whanau Pani Rating	Rose Lackner
1011	The Tamakaimoana Public Works	Kirituia Tumarae
1012	Kereopa Alienation of Land	Hohepa Kereopa
1026	Tamaikoha Ancestral Land	Robert Takao
1035	The Nga Hapu o Te Waimana Economic & Social Policy	Matthew Te Pou
1036	The Ruatoki Hapu Social & Economic Policy	Te Hue Rangī
1037	The Ngai Hinekura & Ngati Pani Social & Economic Policy	J Moses
1039	Te Urewera Tiriti o Waitangi	T Kruger
1041	The Nga Hapu o Te Urewera I nga Taone Assimilation Policy	M Rakuraku
1042	The Descendants of Tamaikoha Land Confiscation	Billy McLean
1149	The Pohokura 3B & 7A Land Block	Hohepa Harawene
1181	Urewera 2A2 Block Claim	
1225	Ngā Rauru o Ngā Potiki Claims	Matthew Te Pou & Ors

APPENDIX 3

Te Kotahi ā Tūhoe Deed of Mandate

[To be inserted]

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APPENDIX 4

Crown Recognition of Mandate Letter

[To be inserted]

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