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# AGREEMENT

**between**

**THE MINISTER OF JUSTICE**

**ON BEHALF OF THE CROWN**

**and**

**PUKEROA-ORUAWHATA TRUSTEES**
**AND THE**
**PROPRIETORS OF NGATI WHAKAUE TRIBAL LANDS INC**

**FOR AND ON BEHALF OF**
**THE PEOPLE OF NGATI WHAKAUE**

**IN RELATION TO CLAIM WAI 94**

version: 2.2, 16SEP93

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## PURPOSE OF AGREEMENT

1. The purpose of this agreement is to record the details of the settlement of the informally amended Ngati Whakaue Waitangi Tribunal claim (Wai 94) which is set out below in paragraph 4.

## THE NGATI WHAKAUE CLAIM

2. Ngati Whakaue registered claim Wai 94 with the Waitangi Tribunal on 23 May 1989. The claim concerns grievances that Ngati Whakaue have over various actions of the Crown that are claimed to be in breach of the Fenton Agreement and the Thermal Springs Districts Act 1881. The Fenton Agreement was signed in November 1880 between hapu of Te Arawa, including Ngati Whakaue, and the Crown. It was negotiated to facilitate settlement of the Rotorua region, and the development of tourism, and to provide for the establishment of the township of Rotorua. The Thermal Springs Districts Act 1881 was passed to enable the Crown to carry out the Fenton Agreement and to open the thermal districts for settlement.

3. Ngati Whakaue have grievances concerning the Crown's actions over the leasing arrangements provided for by the Fenton Agreement and the Thermal Springs Districts Act 1881, the adequacy of the purchase price for the Pukeroa-Oruawhata block and the adequacy of compensation paid as a result of the recommendations of the Myers Commission of 1948. They also have grievances concerning the Crown's ownership and management of various reserves within the Pukeroa-Oruawhata block, free hospital treatment pursuant to the Fenton agreement and the Crown's acquisition of lands for railway purposes.

H.M.T.K.

4. In the original statement of claim under Wai 94 and in subsequent discussions which have informally amended that original claim, Ngati Whakaue claim that the Crown has breached the Fenton agreement and the Thermal Springs Districts Act 1881 in that:

a Ngati Whakaue have been prejudicially affected by section 12 of the Reserves and Other Lands Disposal Act 1926, section 12 of the Reserves and Other Lands Disposal Act 1960, the Crown's acquisition of the Rotorua High School endowment lands and their subsequent transfer to the Public Trustee pursuant to the School Trustees Act 1989;

b the Crown failed to fulfil its responsibilities as Ngati Whakaue's agent in relation to the Rotorua township leasing scheme;

c aspects of the Crown's acquisition, ownership, management, use and disposal of the various reserve lands, as listed in addendum A have been inconsistent with the terms of the gifting of the lands by Ngati Whakaue to the Crown when the township of Rotorua was established;

d the introduction of hospital user part-charging denies Ngati Whakaue free hospital treatment and is in breach of clause 6 of the Fenton Agreement;

e Ngati Whakaue considered the Crown had made no payment for an improper acquisition of lands acquired within the Ngati Whakaue rohe by the Crown for railway purposes including the 20,000 acres known as the Patetere block and land taken for the railway track.

## CROWN POSITION

5. Those grievances concerning leasing arrangements in the 1880s have been validated by research in the past. The Crown considers that review of previous compensation granted is justified. Research by the Department of Justice has not validated the grievances concerning alleged improper acquisition by the Crown of lands for railway purposes, although there may still be questions relating to the adequacy of the price paid. Research is currently being undertaken by the Department of Survey and Land Information in order to validate or invalidate grievances concerning reserves gifted by Ngati Whakaue to the Crown.

## AGREEMENTS OF THE CROWN

6. The following offer made by the Crown, set out in paragraphs 7-9, is made without prejudice or admission of any legal liability.

H.T.T.K.

7. The Crown agrees to transfer blocks I, II and III of the land known as the Rotorua railway reserve, as described in Addendum B, to Pukeroa-Oruawhata Holdings Limited as general land in settlement of their informally amended claim Wai 94 (as set out in paragraph 12 below), the Crown reimbursing Railcorp for the cost of that land, being not more than $5 million plus GST. Pukeroa-Oruawhata Holdings Limited is owned by the Pukeroa-Oruawhata Trust for and on behalf of Ngati Whakaue.

8. The Crown will address two further concerns of Ngati Whakaue, at administrative cost only to the Crown, as an expression of the good faith of the Crown and as part of the Crown's Article I Treaty of Waitangi objectives by:

a investigating the possibility of initiating legislation to amend the New Zealand Maori Arts and Crafts Institute Act 1963 so that two members of the Board of the Institute represent Ngati Whakaue, as nominated by the Pukeroa-Oruawhata Trust and Ngati Whakaue Tribal Lands Inc, with a maximum of a seven member Board;

b initiating legislation to amend the terms of the trust that administers the Rotorua High School endowment land under the terms of section 12 of the Reserves and Other Lands Disposal Act 1960 so that six members of the governing body (including the Chairperson) shall be representatives of Ngati Whakaue, as nominated by the Pukeroa-Oruawhata Trust and Ngati Whakaue Tribal Lands Inc, and five members shall be representatives of the Rotorua High Schools, and the name of the endowment shall be changed to the Ngati Whakaue Education Endowment; further, the Crown will seek to amend the terms of the endowment so that the purpose of the endowment shall be the general purpose of education;

9. The Crown agrees to make an ex-gratia payment of up to $210,000 (GST inclusive) to the Pukeroa-Oruawhata Trust to cover reasonable and substantiated costs incurred by Ngati Whakaue in negotiating their claim.

10. The Crown notes that the following additional claims have been made where Ngati Whakaue may have an interest: Maori Reserved Land Act 1955 with respect to perpetual leases (Wai 93), Whakarewarewa State Forest (Wai 282), Horohoro State Forest (Wai 293), Rotorua lakes (Wai 240), the generic geothermal claim (Wai 153) and the Rotorua Geothermal claim (Wai 335), and that Ngati Whakaue have stated they cannot guarantee that no further claims will be made that relate to issues that are outside of those specifically set out in paragraph 4 above except as detailed in paragraph 21 below. The Crown also notes the Ngati Whakaue interest in the Whakarewarewa Thermal reserve and Roto-a-Tamaheke as shown on list 4 of Addendum A.

H.M.T.K.

## REPRESENTATION

11. The trustees of the Pukeroa-Oruawhata Trust and the committee of management of the Proprietors of Ngati Whakaue Tribal Lands Inc confirm that they are the legitimate representatives of the people of Ngati Whakaue and of the beneficial descendants of those persons who were listed by the Crown as the original owners of the Pukeroa-Oruawhata block. They further confirm that they have consulted with the people of Ngati Whakaue at hui held in the ancestral meeting house of Tamatekapua ki Ohinemutu. The trustees of the Pukeroa-Oruawhata Trust also confirm that the Trust is the sole owner of Pukeroa-Oruawhata Holdings Limited and that they are the directors of that company.

## AGREEMENTS OF NGATI WHAKAUE

12. With the exceptions of paragraph 10 above and of that aspect of the gifted lands claim described in paragraph 21 below, Ngati Whakaue agree that this settlement will be in full and final settlement of their informally amended claim Wai 94, set out in paragraph 4 above, and any other claims whether legal or Treaty based arising from any alleged Crown acts or omissions since 6 February 1840 that relate to the Rotorua High School endowment (as outlined in paragraph 4(a) above), to any land within the Pukeroa-Oruawhata Block, the railway line land, or the land known as the Patetere Block, or that relate to the Fenton Agreement of 1880, or the Thermal Springs Districts Act 1881, as outlined in paragraph 4(b) to paragraph 4(e) above.

13. Ngati Whakaue agree not to take any legal action against the Crown, any Crown entities, or state-owned enterprises in respect of any claim covered by those things outlined in paragraph 12 of this agreement, provided that the terms of this agreement have been met.

14. Ngati Whakaue agree to pay hospital charges in the normal manner.

15. Ngati Whakaue agree to advise the Waitangi Tribunal, within two months of the signing of this agreement, that Ngati Whakaue agree to the Tribunal recommending to the Minister of Survey and Land Information that any land within the Pukeroa-Oruawhata Block, the railway line land and that land known as the Patetere Block that may currently be subject to resumption under section 27B of the State-Owned Enterprises Act 1986, section 212 of the Education Act 1989, section 39 of the New Zealand Railways Corporation Restructuring Act 1990, or Crown Forest land restricted from sale under section 35 of the Crown Forest Assets Act 1989 "the resumption statutes") no longer be so subject.

H.M.P.K.

Ngati Whakaue also agree that any land within the Pukeroa-Oruawhata Block, the railway line land and that land known as the Patetere Block that may in the future be subject to resumption under the above mentioned resumption statutes should not be so subject and Ngati Whakaue will, if the Crown so requests, advise the Waitangi Tribunal accordingly.

However, the Crown acknowledges that the lifting of the current memorials and the agreement by Ngati Whakaue in respect of future memorials does not affect the right of Ngati Whakaue to go to the Waitangi Tribunal at any time in respect of those matters covered by paragraph 21 below, although Ngati Whakaue agrees that if it should go to the Waitangi Tribunal it is precluded from seeking a recommendation under section 8A of the treaty of Waitangi Act 1975 in respect of the land within the Pukeroa-Oruawhata Block, the railway line land and that land known as the Patetere Block.

16. Ngati Whakaue agree that the price paid by the Crown to Railcorp for the railway reserve, together with the ex-gratia payment set out in paragraph 9 above are included in the costs of the Crown's settlement with Ngati Whakaue.

17. Ngati Whakaue acknowledge that in proposing to transfer the railway reserve as general land to Ngati Whakaue, the Crown is responding to the clear and express wishes of Ngati Whakaue for that land in settlement, and that all risks of ownership of that land pass to Ngati Whakaue, including responsibility for complying with the bonds presently registered against parts of the title. The costs of transfer of title are to be at the cost of the Crown.

## LANDS GIFTED BY NGATI WHAKAUE TO THE CROWN AS RESERVES

18. The Crown acknowledges that as part of the Fenton agreement Ngati Whakaue gifted lands to the Crown to be used for reserves and other public purposes. The lands claimed to be the gifted reserves are listed in addendum A. The Crown is currently investigating the titles and historical background of those lands listed in addendum A in order to determine whether Ngati Whakaue are the former owners pursuant to section 40 of the Public Works Act 1981.

19. Ngati Whakaue acknowledge that the redress sought for their specific claim relating to gifted reserve lands has not been included in the settlement of Wai 94 (see paragraph 12 above), as the Crown considers that the issue of land gifted by Maori raises questions of a generic nature.

H.M.P.K.

20. The Crown agrees, in respect of the Ngati Whakaue reserves listed in Addendum A, that after it has considered the generic issue of land gifted by Maori for a specific purpose it will, without obligation, investigate as soon as possible the question of:

a the disposal of those gifted lands should they ever become surplus;

b any future change of use of those gifted lands; and

c the appropriateness of incorporating in legislation any agreement that Ngati Whakaue may reach with the Rotorua District Council or any other owner, not being the Crown, in respect to the lands listed in addendum A.

21. Ngati Whakaue do not seek any interest in the reserves identified in list 1 of Addendum A other than that there be no change of use or alienation without the written consent of Ngati Whakaue which will not be unreasonably withheld. Ngati Whakaue acknowledges that the Crown has yet to determine its position on this matter but it is agreed that the Crown will consider it urgently. The Crown agrees that Ngati Whakaue reserves to itself the right to go to the Waitangi Tribunal if the Crown declines to seek the written consent of Ngati Whakaue for any change of use or alienation of any of the reserves gifted by Ngati Whakaue to the Crown, which the Crown still owns or controls but Ngati Whakaue acknowledges that it is precluded from seeking relief from the Waitangi Tribunal under section 8A of the Treaty of Waitangi Act 1975 in respect of any of the reserves gifted by them to the Crown.

22. The Crown acknowledges that any benefit Ngati Whakaue might be entitled to as a result of the Crown's eventual position on the generic question of gifting of land by Maori is not affected by this agreement.

23. Ngati Whakaue acknowledge this agreement is still in full and final settlement of the issues in the informally amended claim, Wai 94, as set out in paragraph 12 above excluding that aspect of the gifted lands claim described in paragraph 21 above.

24 Within two months of the signing of this agreement counsel for Ngati Whakaue and counsel for the Crown will file with the Waitangi Tribunal a joint memorandum informing the Tribunal settlement has been reached in this claim and will also file with the memorandum a copy of the signed agreement as evidence of the settlement.

H.M.T.K.

version: 2.2, 16SEP93

**SIGNED** this 23RD day of SEPTEMBER 1993

**BY:**

Honourable Douglas Graham
Minister of Justice
for and on behalf of the Crown

Hamilton Manaia Pihopa Kingi
for and on behalf of Pukeroa-Oruawhata Trustees

Malcolm Tukino Short
for and on behalf of Pukeroa-Oruawhata Trustees

John David Rangitauira
for and on behalf of Pukeroa-Oruawhata Trustees

Stuart Rotohiko Te Haupapa Harris
for and on behalf of Pukeroa-Oruawhata Trustees

James Alexander Wilson
for and on behalf of Pukeroa-Oruawhata Trustees

Andrew Shane Gibbons
for and on behalf of Pukeroa-Oruawhata Trustees

**AND SIGNED BY:**

The Proprietors of Ngati Whakaue Tribal Lands Inc. by Affixing its Common Seal the 23RD day of SEPTEMBER 1993, pursuant to a resolution of its Committee of Management passed the 23RD day of SEPTEMBER 1993 in the presence of us the undersigned being a majority of the Committee of Management for the time being in office:

The Proprietors of Ngati Whakaue Tribal Lands The Common Seal of

Selwyn Hemana Bennett

Hamuera Taiporutu Mitchell

Derek Mitchell Morrison

Laurie Tuhimata Hakopa Patikura

Hamilton Manaia Pihopa Kingi

Malcolm Tukino Short

John David Rangitauira

**IN ASSOCIATION WITH:**

Richard Thomas Charters
Solicitor/ Chief Negotiator

Don Murray Stafford
Historian/Negotiator

**ADDENDUM A**

**Schedule of Reserve Lands Gifted by Ngati Whakaue to the Crown under the terms of the Fenton Agreement and Summary of Current Ownership**

(Letters in square brackets refer to Department of Survey and Land Information investigation report into the current status and historical background of the reserve lands gifted by Ngati Whakaue).

1 <u>Properties still owned predominantly by the Crown/Crown Entities/Other Public Bodies</u>

i Rotorua Hospital / site of Pukeroa reserve [A]

- 10/10 sections owned by Crown

ii Rotorua Golf Course and the New Zealand Arts and Crafts Institute / site of the Arikapakapa reserve [B]

- 12/14 sections owned by Crown
- 02/14 sections owned by Rotorua District Council

iii Queen Elizabeth Hospital / site of museum [C]

- 3/3 sections owned by Crown

iv site of Rotorua Primary School in Arawa Street [D]

- 7/7 sections owned by Crown

v the Ngati Whakaue Educational Endowment [E]

vi the Rotorua Railway Reserve bounded by Amohau, Ranolf, Victoria and Fenton Streets [F]

- 11/12 sections owned by Crown
- 01/12 sections in private ownership

vii Rotorua Boys' High School [G]

- 3/3 sections currently held by the Public Trustee

H.M.T.P.K.

viii Government Buildings Reserve [H]

- 5/11 sections owned by Crown
- 2/11 sections owned by Rotorua District Council
- 1/11 sections owned by GPS Investments Ltd
- 2/11 sections owned by Landcorp
- 1/11 sections in private ownership

ix Medical Officers Reserve (Pukuatua Street) [R]

- 3/3 sections owned by Crown

x Town Belt (part, Pererika and Amohau Street) [N]

- 3/3 sections owned by Crown

xi Arawa Park (Arawa Park Racecourse and Fenton Park) [L]

- 01/17 sections owned by Crown
- 16/17 sections in private ownership

xii Marine Parade (Rotorua Lakefront site) [P]

- 5/8 sections owned by Crown
- 3/8 sections owned by Rotorua District Council

2 <u>Properties now owned predominantly by the Rotorua District Council</u>

xiii Sanatorium grounds (Government Gardens) [I]

- 8/12 sections owned by Rotorua District Council
- 4/12 sections owned by Crown

xiv Sanatorium Reserve (Te Ngae Road) [J]

- 7/13 sections owned by Rotorua District Council
- 6/13 sections owned by Crown

xv Kuirau reserve (Kuirau Park) [K]

- 4/6 sections owned by Rotorua District Council
- 2/6 sections owned by Crown

xvi Cemetery (Rotorua Public Cemetery) [M]

- 3/4 sections owned by Rotorua District Council
- 1/4 sections owned by Crown

H.M.P.K.

MR.

xvii Public Square (Civic Theatre and Rotorua District Council sites) [O]

- 2/3 sections owned by Rotorua District Council
- 1/3 sections owned by Crown

xviii Landing Ground (Soundshell site) [Q]

- 4/4 sections owned by Rotorua District Council

xix Eastern end of the town belt [S]

- 5/16 sections owned by Rotorua District Council
- 2/16 sections owned by Crown
- 9/16 sections in private ownership

3 Properties since sold by the Crown

xx Sanatorium Reserve (Ministry of Works yard and depot)

4 Those reserve lands acquired by the Crown outside the Fenton Agreement whose future ownership and management Ngati Whakaue wish to negotiate

a Te Roto-a-Tamaheke Reserve

b Whakarewarewa Thermal Valley

H.M.T.K.

ADDENDUM B

## SCHEDULE OF LAND

1. All that parcel of land containint 10.0009 hectares more or less situated in Block I Tarawera Survey District being Lot 1 on Deposited Plan S.49884 more particularly comprised and described in Certificate of Title Volume 43A folio 760 (South Auckland Registry).

2. All that parcel of land containing 3.0147 hectares more or less situatied in Block I Tarawera Survey District being Lot 2 on Deposited Plan S.49884 more particularly comprised and described in Certificate of Title Vollume 43A folio 761 (South Auckland Registry).

3. All that parcel of land containing 743 square metres more or less being Lot 1 on Deposited Plan S.30036 and being part Pukeroa-O-Ruawhata Block and part Railway Land more particularly comprised and described in Certificate of Title Volume 36C folio 295 (South Auckland Registry) SUBJECT TO AND TOGETHER WITH:

4. All that parcel of land containing 2453 square metres more or less situated in Block I Taraware Survey Distirct being Lots 1, 7 and 8 on Deposited Plan S.4651 more particulalry comprised and described in Certificate of Title Volume 49A folio 894 (South Auckland Registry ) SUBJECT TO AND TOGETHER WITH:

    1. Lease Number H.173328.
    2. Lease Number H.298005.1.
    3. Lease Number H.298005.3.

5. All that parcel of land containing 1139 square metres more or less situated in Block I Tarawera Survey District being Lot 1 on Deposited Plan S.54053 more particularly comprised and described in Certificate of Title Volume 45A folio 846 (South Auckland Registry).

6. All that parcel of land containing 787 square metres more or less being Lot 9 on Deposited Plan S.4651 and being part Pukeroa-O-Ruawhata Block more particularly comprised and described in Certificate of Title Volume 7A folio 882 (South Auckland Registry) SUBJECT TO AND TOGETHER WITH:

    1. Lease Number B.123094.

H.T.T.K.

MRS

7. All that parcel of land containing 716 square metres more or less being Lot 2 on Deposited Plan S.4651 and being part Pukeroa-O-Ruawhata Block more particularly comprised and described in Certificate of Title Volume 4B folio 1238 (South Auckland Registry) SUBJEDT TO AN TOGETHER WITH:

1. Lease Number H.315097
2. Certificate H.665064 Local Government Act 1974.

8. All that parcel of land containing 744 square metres more or less being Lot 3 on Deposited Plan S.4651 and being part Pukeroa-O-Ruawhata Block more particularly comprised and described in Certificate of Title Volume 4B folio 1284 (South Auckland Registry) SUBJECT TO AND TOGETHER WITH:

1. Lease Number H.315098.
2. Certificate H.665064 Local Government Act 1974.

9. All that parcel of land containing 2091 square metres more or less being Lot 1 on Deposited Plan S.19689 and being part Pukeroa-O-Ruawhata Block more particularly comprised and described in Certificate of Title Volume 18B folio 207 (South Auckland Registry) SUBJECT TO AND TOGETHER WITH:

1. Lease Number H.085269.4.

H.T.T.K.

M.T.S.