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Te Tari Whakatau Take e pa ana ki te Tiriti o Waitangi

20 September 2001

Minister in Charge of Treaty of Waitangi Negotiations
Minister of Finance

CLAIMANT FUNDING: NGĀTI KAHU KI WHANGAROA

Introduction

1. This paper seeks your joint approval for an upper limit of total claimant funding of \$350,000 for pending Treaty settlement negotiations with Ngāti Kahū ki Whangaroa (NKKW).

Background

Cabinet Decisions on Claimant Funding

2. In April 1999 Cabinet agreed that the setting of overall funding limits for claimant groups, and other funding decisions under CAB (97) M 38/9, would be delegated to the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance [CAB (99) M11/20 refers].

Current Claimant Funding Policy

3. The Crown has a claimant funding policy, which provides funding to be made available to claimants to achieve negotiation milestones. The Crown's objectives for the provision of claimant funding are:
 - funding will be sufficient to allow claimants to meet Crown requirements for entering negotiations and to participate effectively in negotiations;
 - fairness and consistency between claimant groups will be maximised;
 - claimant costs will be minimised and value for money ensured;
 - the Crown's duty to act in good faith will be recognised and provided for; and
 - the Crown's financial and political risks will be minimised [CAB (97) M 19/31 refers].
4. Milestones include an approved Deed of Mandate; signing Terms of Negotiation; participation in formal negotiations to develop a Deed of Settlement; and ratification of the Deed of Settlement by beneficiaries.

25 SEP 2001

The NKKW Claims

4. The NKKW rohe is located in the Whangaroa peninsula between Mangonui and the Whangaroa harbours, east of the main Ngāti Kahu rohe and north of the Ngāpuhi rohe. Three hundred and sixty five people identified as NKKW in the 1996 Census.
5. The principal claim of NKKW is the Taemaro claim (Wai 116) lodged by Pita Pangari in 1986. This claim area is approximately 20,000 hectares. There are currently six other claims that cite NKKW interests. The key settlement asset is Stony Creek Station, which was purchased by OTS for \$3.97 million and landbanked in 1995. In March 2000 Cabinet agreed that OTS purchase the stock and plant associated with the Stony Creek Station (\$1.2 million), to enable the station to be managed by OTS until a settlement is reached with NKKW. An additional landbanked property in NKKW's rohe is the Thompson and Clark farm, which was purchased for \$1.7 million.
6. The NKKW claims are recognised by all Muriwhenua claimants as distinct from the Muriwhenua claims. However, in order to expedite the enquiry NKKW successfully lobbied to have the Wai 116 claim heard by the Waitangi Tribunal in conjunction with the Muriwhenua claims. The Waitangi Tribunal reported its findings in relation to that claim in the *Muriwhenua Land Report 1997*. Officials have assessed the Report and are satisfied that there is sufficient evidence of Crown breaches to warrant entering into negotiations with the Far North claimants, including NKKW.
7. Near the end of their term (mid 1999), the previous Government offered NKKW an early settlement. The offer was the return of Stony Creek Station. We understand claimants turned the offer down in anticipation that a new government might offer them more.

Deed of Mandate

8. The NKKW Charitable Trust (Trust Board) submitted their Deed of Mandate in April 1999 and the Deed of Mandate was publicised in October 2000. The Trust Board has expended considerable time and effort over the past several years in establishing a mandate to advance the NKKW claim. The Trust Board is representative of each of the NKKW marae. Each marae appoints two mandated trustees to the Trust Board. These trustees, who consult with their respective marae at regular meetings, represent each marae on the Trust. In accordance with the Trust Deed the Trustees appoint negotiators.
9. Objections to the Deed of Mandate were received mainly from supporters of Te Roopu Kaumātua o Te Rohe Potae o Kahukuraariki (Te Roopu Kaumātua). This group has not undertaken any mandating processes.

Claimant Funding and other assistance already received

10. In July 1997 Cabinet approved the funding of \$30,000 for NKKW, separate from funding for the Muriwhenua iwi, as a contribution to mandating expenses [CAB (97) M 25/16 refers]. This was paid to the Trust in July 1998. In addition:
 - a further \$3,655 was paid to Pita Pangari to reimburse expenses he incurred during pre-negotiation discussions in May and June 1999; and
 - \$4,012 was provided to assist the Trust Board with a hui-a-iwi in March of this year.

Recognition of a Conditional Mandate

11. Te Puni Kōkiri (TPK) officials prepared a risk assessment report of the Trust Board's Deed of Mandate. TPK and OTS officials concluded that Te Roopu Kaumātua has a level of support that cannot be ignored, to the extent that steps need to be taken to accommodate this group. Therefore, officials considered that the risk to the Crown of

accepting the Trust Board's mandate to negotiate the settlement of all NKKW Treaty claims covering the NKKW rohe is low, provided that the key objections to the Trust Board mandate concerning representation and the geographical boundary are addressed.

12. In July this year MICOTOWN and Minister of Māori Affairs agreed in principle to the recognition of the mandate of the Ngāti Kahu ki Whangaroa Trust Board to represent the Ngāti Kahu ki Whangaroa people in direct negotiations with the Crown for the settlement of their historical Treaty claims subject to certain conditions to address representation and boundary issues. The Ministers agreed that officials meet with the Trust Board and Te Roopu Kaumātua to seek agreement to this proposal. If agreement were reached, the Minister in Charge of Treaty of Waitangi Negotiations would write to the Trust Board advising them of the conditional recognition of the mandate.
13. A meeting between officials and the claimant parties was held on 1 August and resulted in a number of key agreements. The parties agreed that the Trust Board is an appropriate body to negotiate NKKW's claims and that the Crown should recognise the mandate of the Trust Board subject to a number of conditions. The Minister has advised the Trust Board advising them of the Crown's recognition of their mandate subject to the following conditions:
 - Fresh election of trustees;
 - Appropriate appointment of negotiators;
 - Resolution on whether Mangawhero Marae be represented in the Ngati Kahu ki Whangaroa claims; and
 - Clarification of accountability provisions of the Trust Deed.
14. It was agreed at the meeting that the conditions need to be fulfilled before negotiations can commence with the Trust Board. The conditions are in the process of being addressed and fresh elections of trustees to the Trust Board are scheduled to occur during October and November. The Crown reserves its right to revisit the conditional mandate if these issues have not been resolved by 30 April 2002.

Proposal

15. It is proposed that you approve a claimant funding upper limit of \$350,000 for the pending Treaty settlement negotiations with NKKW.
16. Officials have assessed the Far North claims within the Cabinet agreed policy for claimant funding through the application of the claimant funding matrix. The claimant funding matrix takes into account the specific features of each claimant group. These include:
 - the size of the claimant group, and the number of hapū within it;
 - the geographic dispersal of the groups members;
 - the degree of political unity and stability within the group;
 - cross-claim potential;
 - the likely complexity of the claim or claims to be negotiated (i.e. the nature of breaches); and
 - the scale and nature of likely redress.
17. Each of these features is assessed and dollar figures are allocated to each negotiation milestone. The outcome of this process for NKKW is illustrated in Table One.

Table One: Allocation of Funding to NKKW

Milestone	Amount of Claimant Funding (\$)	Purpose of Payment
Approved Deed of Mandate	52,000 (37,000 already released)	To cover costs incurred in achieving a mandate approved by MICOTOWN.
Terms of Negotiation	16,000	For costs in reaching agreement on Terms of Negotiations
Formal Negotiations to Deed of Settlement	238,000	Initial preparation of claimants' negotiating position Negotiation through to a proposed Deed of Settlement Ongoing consultation/reporting back to claimant community
Ratification	44,000	To cover costs in obtaining claimant ratification of the Deed
Total	350,000	

18. This funding will be released in instalments (of no more than \$50,000) linked to the achievement of negotiation milestones as shown in Table One, on the authority of the Minister in Charge of Treaty of Waitangi Negotiations. The release of each instalment depends on milestones being met, annual audited accounts being provided to the Office of Treaty Settlements and invoices being made available if requested.
19. It is proposed that this funding be charged against VOTE Treaty Settlements: Non-Departmental Multi-Year Appropriation for the Settlement of Historical Treaty of Waitangi Treaty claims. It is envisaged that this expenditure will occur over the 2001/2002 and 2002/2003 periods.

Proposed Release of Mandate Funding

20. Notwithstanding that money has already been released for mandate purposes (\$37,667), officials are of the view that the remaining \$14,333 of the mandate funding be released to the Trust Board. This funding would contribute to meeting the conditions attached to the recognition of the Trust Boards mandate to the satisfaction of the Crown.
21. While the current claimant funding policy requires an acceptable mandate be in place prior to the provision of claimant funding, there have been exceptions made to this policy. Cabinet has agreed that in special cases the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance:
- "may approve mandate funding to a claimant group in advance under additional criteria (e.g. where there is clear indication of a likely representative group, an agreed process for the resolution of cross-claims and the mandating process is almost completed" [CAB (99) M 11/20 paragraphs c), d) and h) refer]
22. OTS considers that an exception to the policy is critical in this case in order that the conditions on the mandate be met. If no funding is provided to assist the Trust Board it is unlikely that the conditions on their mandate will be met. The Trust Board has engaged with the Crown and has attempted to secure their mandate since 1995 and they have no further resources at their disposal. This exception is consistent with the Cabinet reference as a representative group has been clearly identified and the mandating process is almost complete. The likelihood that the Trust Board will meet the conditions is high as there has been agreement between key parties that the Trust Board is the

appropriate body and on the conditions that need to be met. If conditions are not met no further funding will be released.

Comment

23. Officials have assessed the NKKW claim within the Cabinet agreed policy for claimant funding. The NKKW Claim has the following characteristics:

- it involves a small claimant group of low geographic dispersal, with between 5-7 hapū;
- the claimant group is of medium political unity/stability; there is considered, at this stage to be low cross-claim potential; and
- a small number of potential breaches that are of medium complexity.

24. The likely redress involved was assessed being small and of simple to standard complexity, on the basis that officials anticipate that redress will potentially involve the transfer of one or two properties and cultural redress, for which precedents have been established by previous settlements.

25. Officials are satisfied that separate negotiations with NKKW, whose principal claim is exclusive to their rohe, will lead to a comprehensive settlement, with the Crown able to provide sufficient redress options.

26. Claimant funding of \$350,000 is an appropriate figure to progress negotiations for a relatively small claim of medium complexity.

Withheld under section
9(2)(j) of the Official
Information Act 1982.

Consultation

27. Treasury has been consulted on this paper and agrees with the recommendations.

Recommendations

28. It is recommended that you:

- a. note that Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance have the delegated authority to approve the overall level of claimant funding to be made available for Ngāti Kahu ki Whangaroa [CAB (99M11/20 refers);
- b. note that Minister in Charge of Treaty of Waitangi Negotiations and Minister of Māori Affairs have approved a conditional recognition of the Ngāti Kahu ki Whangaroa Trust Board's Deed of Mandate;
- c. note that officials have assessed the Ngāti Kahu ki Whangaroa claim in accordance with the claimant funding guidelines and propose a upper claimant-funding limit of \$350,000;
- d. approve a claimant funding upper limit of \$350,000 for the pending treaty negotiations with Ngāti Kahu ki Whangaroa;
- e. note that it is proposed that this amount be paid out in instalments (of no more than \$50,000) linked to the achievement of negotiations milestones, subject to conditions on mandate being met;
- f. note that this funding will be charged against VOTE: Treaty Settlements: Non-Departmental Multi-Year Appropriation for the Settlement of Historical Treaty of Waitangi Treaty claims over the 2001/2002 and 2002/2003 periods; and

- g. agree to release the remaining \$14,333 of the mandate milestone funding to the Trust Board in advance to allow the fulfilment of the conditions attached to the conditional mandate.



Andrew Hampton
Director

APPROVE/DECLINE

APPROVE/DECLINE



Hon Margaret Wilson
Minister in Charge of Treaty Negotiations



Hon Dr Michael Cullen
Minister of Finance

RELEASED UNDER THE
OFFICIAL INFORMATION ACT