



OFFICE OF TREATY SETTLEMENTS
Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi

5

INTERNAL MEMORANDUM

File Number: TWP-01-05-06
To/Ki a: Rachel Houlbrooke/Collin Minnaar
From/Nā: Sarah Jardine
Date/Te Rā: 5 April 2005
Subject/Kaupapa: INFORMATION ON NGĀTI KAHU KI WHANGAROA CLAIMANT FUNDING

BACKGROUND

Ngāti Kahu ki Whangaroa

Ngāti Kahu ki Whangaroa ("NKKW") are a small iwi located on the Whangaroa peninsula, between the Mangonui and Whangaroa Harbours, in the Far North.

Mandate

In September 2001, the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognised the mandate of the Ngāti Kahu ki Whangaroa Trust Board ("the Trust Board") to negotiate a comprehensive settlement of the NKKW historical Treaty claims, subject to four conditions.

On 13 October 2004, the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs wrote to the Trust Board advising that the Crown recognises that the Trust Board has satisfied all four mandate conditions.

1. Crown's claimant funding policy

When funding was provided

In July 1997, Cabinet approved the funding of \$30,000 as a contribution to NKKW's 'pre-mandating' costs [CAB (97) M 25/16 refers – see documents 1 and 2], which was released to the Trust Board in August 1998. In June 2000, a further \$3,655 was released to Pita Pangari to reimburse expenses he incurred during pre-mandate discussions in May and June 1999. Then in March 2001, another \$4,012 was released to the Trust Board to assist with mandate hui-ā-iwi. In total, \$37,667 of 'pre-mandate' funding was released on the condition that it would be deducted from the total NKKW claimant funding amount, which had yet to be determined.

In September 2001, the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance approved an upper limit of total claimant funding for the

NKKW historical claims of \$350,000 (inclusive of the \$37,667 'pre-mandate' funding already released). In September 2001, you and the Minister of Finance agreed to the early release of \$14,333 associated with the "Recognised Deed of Mandate" milestone, in order to assist the Trust Board in fulfilling its mandate conditions. See documents 3 and 4.

In December 2002, the Minister in Charge of Treaty of Waitangi Negotiations agreed to the early release of \$16,000 funding associated with the "Terms of Negotiation" milestone, in order to assist the Trust Board in fulfilling the remaining mandate conditions. See document 5.

In October 2004, the Minister in Charge of Treaty of Waitangi Negotiations agreed to the release of \$50,000 as the first instalment of funding allocated to the milestone "Negotiations to Deed of Settlement". See document 6.

As at April 2005, \$118,000 of the allocated \$350,000 has been provided to the Trust Board.

NKKW claimant funding

Milestone	Amount allocated (\$)	Date milestone achieved	Date released	Amount released (\$)
Recognised Deed of Mandate	52,000	September 2001 (conditional mandate) October 2004 (conditions satisfied)	July 1998	30,000
			June 2000	3,655
			March 2001	4,012
			September 2001	14,333
Terms of Negotiation	16,000	October 2004	February 2003	16,000
Negotiations to Deed of Settlement	238,000	N/A	October 2004	50,000
			N/A	N/A
Ratification	44,000	N/A	N/A	N/A

Invoices

The Trust Board has always provided invoices when requesting instalments of funding.

Request forms

The Trust Board has never provided a filled-out request form when requesting instalments of funding, as they have not been considered necessary.

Comments/experience

The majority of claimant funding provided to the Trust Board to date has been provided in advance, following Ministerial or Cabinet approval. However, this latest instalment was provided *after* the appropriate milestone had been reached, and we are confident that the Trust Board understands that the earlier advance payments were "special case" scenarios, and unlikely to be repeated in the future.

2. Other sources of claimant funding

We are not aware that the Trust Board has received any funding other than OTS claimant funding to assist with negotiations costs.

We understand that NKKW have not claimed interests in any licensed Crown forest land, and therefore have not been eligible for CFRT funding.

3. Any other comments about claimant funding

Nil.

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OFFICIAL INFORMATION ACT



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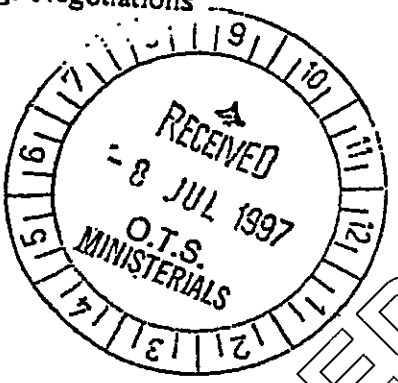
CABINET

CAB (97) M 25/16

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Acting Minister in Charge of Treaty of Waitangi Negotiations
B. CLARK

- **TE KOHA**
- J. CRAIG**
- P. DENSEM**
- A. BRIDGMAN**
- S. MACASKILL**
- M. DUGDALE**



Copies to:

- Prime Minister
- Deputy Prime Minister
- Treasurer
- Minister of Finance
- Minister of State Services
- Minister of Justice
- Minister in Charge of Treaty of Waitangi Negotiations
- Minister of Maori Affairs
- Attorney-General
- Secretary of the Cabinet
- Secretary, CSP

R. DORLING *A Snodgrass*
MURIWHENUA CLAIM

Reference: CAB (97) 461; CSP (97) M 23/3; CAB (97) M 23/12

the meeting on 7 July 1997, following reference from the Cabinet Committee on Strategy and Priorities, Cabinet:

BACKGROUND

- a noted that the Waitangi Tribunal released the report on Muriwhenua (Wai 45) in March 1997 [TOW (97) 20 and TOW (97) M 4/5 refers];
- b noted that the desired outcome for the Crown in respect of the Muriwhenua claim is to:
 - i negotiate the settlement of all the claims covered by the Muriwhenua report;
 - ii settle the claims fairly, affordably, and durably;

Not relevant to request

Not relevant
to request

Not relevant
to request

FUNDING TO SECURE MANDATES

h noted that a number of the iwi have sought funding to facilitate mandating for direct negotiations;

i agreed to each of the five Muriwhenua iwi and mandating funding in accordance with the claimant funding formula [CAB (97) M 19/31 ^{pre-}refers];

LAND BANK CAP

Not relevant
to request

Not relevant
to request

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Not relevant
to request

Not relevant
to request

Hanni Shust

Secretary of the Cabinet

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06 July 1998

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Minister in Charge of Treaty of Waitangi Negotiations

Ngāti Kahu ki Whangaroa pre-mandate funding

Introduction

1. This paper seeks your agreement to the provision of \$30,000 pre-mandate funding to the Ngāti Kahu ki Whangaroa Trust.

Background

2. Cabinet decided in July last year that \$30,000 funding should be provided to the five Muriwhenua iwi and Ngāti Kahu ki Whangaroa for mandating expenses [CAB (97)M25/16 refers]. You advised claimants in a letter dated 17 July 1997 that the funding could cover past mandating expenses or future mandating costs.
3. Following the letter, TPK undertook assessments of requests by iwi organisations for the funds to ascertain which iwi body would be most appropriate to administer the \$30,000. Four allocations have so far been approved and made to the Aupouri Māori Trust Board, Te Runanga a Iwi o Ngāti Kahu, Te Runanga o Te Rarawa and the Ngāti Kuri Trust Board. A request from Ngāitakoto is currently under consideration. We have released the funds only after each of the groups concerned has either provided accounts explaining how the funds have been spent on mandating, or budgets explaining how they will be spent.

Comment

4. TPK has recently provided us with an assessment of Ngāti Kahu ki Whangaroa, the group seeking resolution to Wai 116. There have been two requests for pre-mandate funds: from the Ngāti Kahu ki Whangaroa Trust and the Ngāti Kahu ki Whangaroa Co-operative Company. The assessment, recognising the distribution of support within the community, recommends that funds be provided to the Ngāti Kahu ki Whangaroa Trust. This recommendation is on the condition that the funding be used to resource a planned hui in September to address issues relating to the progress of the claim raised by the Ngāti Kahu ki Whangaroa Co-operative Company.
5. The TPK report suggests the Crown write to the Co-operative Company to explain the reasons why their request is declined in favour of the Trust. TPK also recommend that the Trust be asked to provide officials with a detailed written account of their response to the concerns raised by the Co-operative within one month of the September hui. We consider that both these steps are appropriate.
6. Officials propose that the pre-mandate funding be paid in two instalments. The Trust submitted details of its expenditure to date, viz \$18,191.68. This takes the form of invoices and receipts. We are satisfied that they are a sufficient basis upon which to provide \$18,191.68 as reimbursement of costs to date. We understand that expenditure projections are being prepared to take into account the costs associated with the September hui and other costs associated with developing a deed of mandate. The

Trust has been waiting several months for the finalisation of the assessment. Members of the Trust have been carrying personal debts to fund mandate activities to date. Given these circumstances we consider that costs to date of \$18,191.68 should be met immediately with up to a further \$11,808.32 available for allocation once a budget is finalised.

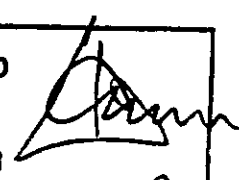

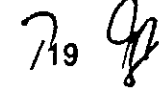
7. This allocation of \$30,000 will be included in the total pre-mandating funding (up to a maximum of \$100,000) provided to the claimants under the claimant funding policy. This \$30,000 will be allocated from the OTS Cash Settlements Account.

Recommendation

8. We recommend you

- a Note that the Crown has received two requests for \$30,000 pre-mandate funding approved for Ngāti Kahu ki Whangaroa;
- b Note that Te Puni Kokiri has recommended that pre-mandate funding be provided to the Ngāti Kahu ki Whangaroa Trust;
- c Note that this recommendation is conditional on the funds being used in part to fund a hui to address issues raised by dissentient interests in the Ngāti Kahu ki Whangaroa community;
- d Note that OTS will seek a revised budget showing projected mandating costs from the Ngāti Kahu ki Whangaroa Trust before payment is made;
- e Agree to the Office of Treaty Settlements providing the Ngāti Kahu ki Whangaroa Trust with \$30,000 pre-mandate funds;
- f Agree that \$18,191.68 be provided immediately to cover mandate costs to date, with up to a further \$11,808.32 to be paid on receipt of a budget for future mandate costs.


Director
Office of Treaty Settlements

APPROVED	
SEEN	
CONCUR	
	



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3

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 Kahu 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

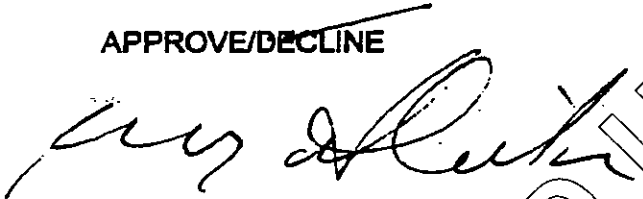
28. It is recommended that you:
- a. note that Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance have the delegated authority to approve the overall level of claimant funding to be made available for Ngāti Kahu ki Whangaroa [CAB (99M11/20 refers);
 - b. note that Minister 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 an 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.



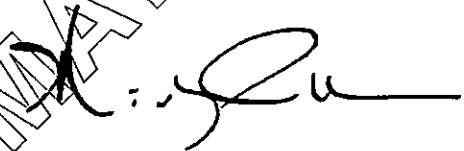
Andrew Hampton
Director

APPROVE/DECLINE



Hon Margaret Wilson
Minister in Charge of Treaty Negotiations

APPROVE/DECLINE



Hon Dr Michael Cullen
Minister of Finance

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OFFICIAL INFORMATION ACT

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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



NE 15 116 0001

OFFICE OF TREATY SETTLEMENTS
Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi

FILE 5
COPY

INTERNAL MEMORANDUM

File Number: NE 15 116 00 01
To/Ki a: Andrew Hampton
From/Nā: Kay Harrison
Date/Te Rā: 13 February 2003
Subject/Kaupapa: Ngāti Kahu ki Whangaroa claimant funding – release of next instalment

Purpose

1. This memo seeks your authorisation for the release of \$16,000 claimant funding to the Ngāti Kahu ki Whangaroa Trust Board (the Trust Board), the body conditionally mandated to negotiate the Ngāti Kahu ki Whangaroa historical Treaty of Waitangi claims.

Comment

2. On 25 September 2001, the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance approved the revised claimant funding upper limit of \$350,000 to contribute to the costs of negotiating a settlement of the NKKW historical Treaty of Waitangi claims (report attached as Appendix 1).
3. In April 1999, Cabinet confirmed that the Minister in Charge of Treaty of Waitangi Negotiations has delegated authority to release claimant funding in instalments once an overall funding limit has been approved [CAB (99) M11/20 refers]. On 11 December 2002, the Minister in Charge of Treaty of Waitangi Negotiations orally agreed to the early release of the \$16,000 associated with the "Terms of Negotiation" milestone at a meeting with representatives of the Trust Board. The Minister in Charge of Treaty of Waitangi Negotiations agreed to the early release of this funding to assist the Trust Board in completing the remaining conditions on its mandate (letter to the Trust Board confirming the Minister's verbal agreement attached as Appendix 2).
4. The early release of this instalment may mean that it will not be sufficient to reach the next milestone – signed Terms of Negotiation. In order to mitigate this risk, we will be advising the Trust Board to budget so that this instalment will last until Terms of Negotiation are signed.
5. For your information, the table below details the distribution of the \$350,000 claimant funding allocated to the Ngāti Kahu ki Whangaroa claims.

Table One: Allocation of Funding to Ngāti Kahu ki Whangaroa

Milestone	Amount of funding (\$)	Already released (\$)	Proposed for release (\$)	Remaining (\$)
Deed of Mandate	52,000	30,000 (July 1998) 3,655 (June 2000) 4,012 (March 2001) 14,333 (October 2001)	-	-
Terms of Negotiation	16,000	-	16,000	-
Formal Negotiations to Deed of Settlement	238,000	-	-	238,000
Ratification	44,000	-	-	44,000
Total	350,000	52,000	16,000	282,000

Recommendation

6. It is therefore recommended that you authorise the payment of \$16,000 to the Trust Board (account number 02-0192-0486585-00).

Kay Harris
 Kay Harrison
 Manager, Policy/Negotiations

APPROVED/DECLINED	DATE
<i>Andrew Hampton</i> for Andrew Hampton Director	



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**COPY FOR YOUR
INFORMATION**

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 Kahu 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.

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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:

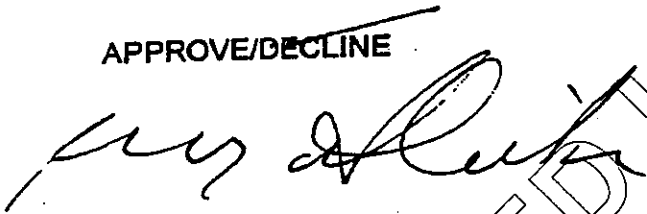
- a. note that Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Finance have the delegated authority to approve the overall level of claimant funding to be made available for Ngāti Kahu ki Whangaroa [CAB (99M11/20 refers);
- b. note that Minister in Charge of Treaty of Waitangi 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



Hon Margaret Wilson
Minister in Charge of Treaty Negotiations

APPROVE/DECLINE



Hon Dr Michael Cullen
Minister of Finance

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**COPY FOR YOUR
INFORMATION**



Minister in Charge of Treaty of Waitangi Negotiations

cc: Parliamentary Under-Secretary for Treaty Negotiations
Minister of Maori Affairs

Subject: Letter to Ngāti Kahu ki Whangaroa Trust Board

Date:	17 December 2002	Priority:	High
Report No:	155	File Ref:	NE 14 116 00 01

Action Sought

Action Sought	Timeframe
Sign the attached draft letter to Mr Pita Pangan, Chairperson of the Ngāti Kahu ki Whangaroa Trust Board, that records the undertakings you made at the 11 December 2002 meeting with Trust Board representatives.	by 18 December 2002
Forward a copy of this report and the attached letter to Hon Dover Samuels, for his information.	by 18 December 2002

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1 st Contact
Andrew Hampton	Director	04 494 9826	025 832 291
Kay Harrison	Manager	04 494 9803	025 281 4417 ✓

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Letter to Ngāti Kahu ki Whangaroa Trust Board

Purpose

1. This report attaches a draft letter to Pita Pangari, Ngāti Kahu ki Whangaroa Trust Board Chairperson, for your signature, recording the undertakings you made at your 11 December 2002 meeting with Trust Board representatives.

Comment

2. You, the Minister of Māori Affairs and Hon Dover Samuels met with representatives of the Trust Board on 11 December 2002 to discuss the Trust Board's conditional mandate.
3. At the meeting you undertook to:
 - a. formally indicate that the Crown recognises the Trust Board's mandate, and that the following outstanding work needs to be completed:
 - i. confirmation of the accountability provisions of the Trust Deed;
 - ii. appointment of negotiators; and
 - b. release the next instalment of claimant funding to the Trust Board.
4. Attached, for your signature, is a draft letter to Mr Pita Pangari, formally recording these undertakings. The letter specifically states that the Crown recognises the Trust Board's mandate, and that, once the outstanding work has been completed, discussions towards Terms of Negotiation can begin.
5. The letter also suggests that the Trust Board contact officials regarding the release of the next instalment of claimant funding, which we can process once the Trust Board provides evidence that the last instalment has been spent on reasonable costs associated with mandating. This next instalment of funding (\$16,000) is allocated to complete Terms of Negotiation. The early release of this instalment may mean that it will not be sufficient to reach the next milestone - signed Terms of Negotiation. We will attempt to mitigate this risk by advising the Trust Board on budgeting practices.
6. Hon Dover Samuels has requested follow up information from the 11 December 2002 meeting. We therefore suggest that you forward a copy of this report and the attached draft letter to Mr Samuels, for his information.

Recommendations

7. It is recommended that you:

1. sign the attached draft letter to Mr Pita Pangari, Trust Board Chairperson, that records the undertakings you made at the 11 December 2002 meeting with Trust Board representatives; and

2. forward a copy of this report and the attached draft letter to Hon Dover Samuels.

Kay Harrison

Kay Harrison
Manager, Policy/Negotiations
For Director

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Minister in Charge of Treaty of Waitangi Negotiations
Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi

FA X E D

18 DEC 2002

Pita Pangari
Chairperson
Ngāti Kahu ki Whangaroa Trust Board
283A Royal Road
Massey East
AUCKLAND

Tēnā koe e Pita

The Minister of Māori Affairs and I were pleased to be able to meet with you and representatives of the Ngāti Kahu ki Whangaroa Trust Board last week.

In accordance with my undertakings at the meeting, I wish to formally indicate that the Crown recognises that the Trust Board has the mandate to represent the Ngāti Kahu ki Whangaroa people in negotiations with the Crown, and that the following work needs to be completed:

- Clarification of accountability provisions in the Trust Deed; and
- Appointment of negotiators.

I suggest that you contact my officials so that they can arrange for the release of this funding in accordance with the usual process.

Once you are able to advise that the Trust Board has completed the outstanding work and is ready to proceed, discussions towards signing Terms of Negotiation can commence. The Crown is committed to entering into negotiations towards the settlement of Ngāti Kahu ki Whangaroa's historical Treaty of Waitangi claims.

I look forward to visiting the Far North next year to sign Terms of Negotiation with the Trust Board.

Yours sincerely

Hon Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations



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

6

FILE

DESPATCHED

14 OCT 2004

Minister's Office

RECEIVED

14 OCT 2004

Minister's Office

Minister in Charge of Treaty of Waitangi Negotiations

Subject: Ngāti Kahu ki Whangaroa – release of claimant funding instalment

Date:	13 October 2004	Priority:	High
Report No:	115	File Ref:	CLA-N116-NF-01-03

Action Sought

Action Sought	Timeframe
Approve the release of a \$50,000 instalment of claimant funding to the Ngāti Kahu ki Whangaroa Trust Board, to assist with costs associated with reaching the milestone "Negotiations to Deed of Settlement".	By 15 October 2004

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1 st Contact
Andrew Hampton	Director	04 494 9826	0274 832 291
Heather Baggott	Manager	04 494 9861	027 277 4214 ✓

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

OFFICIAL INFORMATION ACT

Ngāti Kahu ki Whangaroa – release of claimant funding instalment

Purpose

1. This report seeks your approval to release \$50,000 of claimant funding to the Ngāti Kahu ki Whangaroa Trust Board ("the Trust Board"), to assist with costs associated with reaching the milestone "Negotiations to Deed of Settlement".

Background

2. In April 1999, Cabinet delegated authority to the Minister in Charge of Treaty of Waitangi Negotiations to approve the release of claimant funding in instalments once an overall funding limit has been approved [CAB (99) M11/20 refers].
3. In September 2001, you and the Minister of Māori Affairs recognised the Trust Board's mandate to negotiate a comprehensive settlement of the historical Treaty claims of Ngāti Kahu ki Whangaroa ("NKKW"), subject to four conditions. On 13 October 2004 you and the Minister of Māori Affairs wrote to the Trust Board advising that the Crown recognises that the Trust Board has satisfied all four mandate conditions.
4. You have just approved the final draft of the Terms of Negotiation between the Trust Board and the Crown and signed the Terms. The Terms will shortly be counter-signed by Pita Pangari (Chairperson of the Trust Board).

NKKW claimant funding decisions

5. In July 1997, Cabinet approved the funding of \$30,000 as a contribution to NKKW's 'pre-mandating' costs [CAB (97) M 25/18 refers], which was released to the Trust Board in August 1998. In June 2000, a further \$3,655 was released to Pita Pangari to reimburse expenses he incurred during pre-mandate discussions in May and June 1999. Then in March 2001, another \$4,012 was released to the Trust Board to assist with mandate hui-ā-iwi. In total, \$37,667 of 'pre-mandate' funding was released on the condition that it would be deducted from the total NKKW claimant funding amount, which had yet to be determined.
6. In September 2001, you and the Minister of Finance approved an upper limit of total claimant funding for the NKKW historical claims of \$350,000 (inclusive of the \$37,667 'pre-mandate' funding already released).
7. In September 2001, you and the Minister of Finance agreed to the early release of \$14,333 associated with the "Recognised Deed of Mandate" milestone, in order to assist the Trust Board in fulfilling its mandate conditions.
8. In December 2002, you agreed to the early release of \$16,000 funding associated with the "Terms of Negotiation" milestone, in order to assist the Trust Board in fulfilling the remaining mandate conditions.

Release of next tranche of funding

9. The Trust Board has requested the release of the next tranche of claimant funding.
10. The table below outlines the allocation of the NKKW claimant funding against milestones in the negotiations process, demonstrates how funding has been spent to date, and shows the amount now proposed for release.

Table 1: NKKW claimant funding

Milestone	Allocated (\$)	Funding released to date (\$)	Proposed for release (\$)	Remaining (\$)
Recognised Deed of Mandate	52,000	30,000 (July 1998)		
		3,655 (June 2000)		-
		4,012 (March 2001)		
		14,333 (September 2001)		
Terms of Negotiation	16,000	16,000 (February 2003)	-	-
Negotiations to Deed of Settlement	238,000	-	50,000	188,000
Ratification	44,000	-	-	44,000
Total	350,000	68,000	50,000	232,000

11. In assessing the Trust Board's request for a further tranche of claimant funding, officials have considered whether the funding provided to date has been spent on reasonable negotiations costs, and whether progress has been made in negotiations.
12. The Trust Board has provided officials with a statement of accounts relating to costs associated with fulfilling the remaining mandate conditions and negotiating the Terms of Negotiation. Officials are satisfied, based on the statement of accounts, that the \$16,000 released in February 2003 has been spent on reasonable negotiations costs.
13. The Trust Board has made good progress since the release of the last tranche of funding in February 2003, having satisfied its remaining mandate conditions, and agreed Terms of Negotiation. The NKKW negotiators have indicated that they would like to meet monthly during the next phase of negotiations – the identification of interests.
14. Officials therefore propose that you approve the release of \$50,000 to the Trust Board, to assist with costs associated with reaching the "Negotiations to Deed of Settlement" milestone.
15. The remaining \$188,000 associated with the "Negotiations to Deed of Settlement" milestone will be released, in tranches of up to \$50,000, upon the achievement of specified sub-milestones within "Negotiations to Deed of Settlement", which will be discussed and agreed by officials and the Trust Board at a future meeting.

Recommendations

16. It is recommended that you:

1. **note** that the Trust Board has requested the release of the next tranche of claimant funding allocated to the NKKW negotiations;
2. **note** that officials are satisfied that the last tranche of funding (\$16,000 released in February 2003) has been spent on reasonable costs associated with satisfying the remaining mandate conditions and with negotiating the Terms of Negotiation;
3. **note** that the Trust Board has recently made good progress, having satisfied its remaining mandate conditions and agreed Terms of Negotiation;
4. **approve** the release of \$50,000 to the Trust Board to assist with costs associated with reaching the "Negotiations to Deed of Settlement" milestone. YES/NO

M: *Heather Baggott*

Heather Baggott
Manager, Policy/Negotiations
for Director

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APPROVED *He*

SEEN.

CONCUR

14/10/04