



## OVERVIEW OF THE NEGOTIATIONS PROCESS

### STEP I: Preparing claims for negotiations

#### Claims

A claimant group wishing to enter negotiations must have a claim registered with the Waitangi Tribunal. Claimants can initiate the settlement process for their historical claims by approaching either OTS or the Minister in Charge of Treaty of Waitangi Negotiations to begin negotiations.

The Crown strongly prefers to negotiate settlements with large natural groups of tribal interests, rather than with individual hapu or whanau within a tribe.

In Tāmaki, the Crown has offered to negotiate with groups with interests in Tāmaki arising out issues with the Ngāti Whātua o Orakei AIP.

#### Mandate

The first step in the negotiation process is for the claimant group to select a representative body to enter into negotiations with the Crown. The Ngāi Tai ki Tāmaki Tribal Trust is the mandated body on behalf of Ngāi Tai ki Tāmaki.

In obtaining the mandate, it is noted that there are limits on that mandate:

- The Mandate only confers authority on the Trust to negotiate a draft Deed of Settlement with the Crown;
- The mandated representatives cannot settle any of the claims without the approval of the iwi; and
- The iwi will have the final say on whether or not to accept the draft Deed of Settlement.

Once the mandate is conferred, a Deed of Mandate is drafted as a formal statement

outlining what the mandate covers and how the iwi has approved that mandate. That Deed of Mandate is formally recognised by the Treaty of Waitangi Negotiations and the Minister of Māori Affairs provided the mandate is sound and has been conferred through an open process.

The Ngāi Tai ki Tāmaki Deed of Mandate was formally recognised by the Ministers on ^.

## **Step II: Pre-negotiations**

### ***Terms of Negotiation***

Following recognition of the Deed of Mandate, the Crown and mandated representatives discuss how they will run the negotiations. This involves agreeing on “ground rules” and objectives for the formal talks between the Crown and mandated representatives. These are called the Terms of Negotiation (or Terms) and are a non-binding agreement between the parties.

Whilst other iwi within Tāmaki have not formally entered into Terms of Negotiation with the Crown given the unique way in which Tāmaki negotiations are evolving, Ngāi Tai ki Tāmaki felt that it was an appropriate way to begin negotiations with the Crown. The Trustees of the Ngāi Tai ki Tāmaki Tribal Trust will be signing Terms of Negotiation with the Crown on 4 June 2010 in Wellington.

### ***Claimant Funding***

The Crown does not necessarily provide funding for all the costs that a claimant group has to meet when negotiating its historical claims. But the Crown will **contribute** towards certain expenses for mandated groups:

- *The costs of pre-negotiations* – obtaining a mandate (payable once the Crown recognises the mandate), agreeing Terms of Negotiation, and starting formal negotiations;
- *The costs of negotiations* – reaching a draft Deed of Settlement. This funding may also be used to develop a post-settlement governance entity; and
- *The costs of ratification* – carrying out a process for the claimant group to confirm a Deed of Settlement.

This funding will be *over and above* any money or other assets eventually given to the claimant group as redress for its historical Treaty claims, including any accumulated Crown forestry rentals.

### ***Negotiating Parameters***

The Crown needs to:

- Discuss with the claimant group the general issues that the Crown needs to take into account, such as fairness between settlements, fiscal constraints and the wider public interest;
- Identify Crown properties in the claimant group’s area of interest and assess their potential availability (land in the conservation estate is not generally available apart from individual sites of special cultural significance); and

- Once it has precise information about the importance of specific sites and other interests of the claimant group, discuss with the mandated representatives and departments or agencies concerned redress options that may meet the claimant group's interests.

The Crown generally approaches the negotiations from within established policy parameters. A wide range of redress options has been developed to address claimant group and Crown interests and, where possible, the Crown prefers to use existing types of redress.

### **Step III: Negotiations**

#### ***Agreement in Principle/Letter of Offer***

Once a broad outline of the settlement is agreed, that settlement can be outlined in what is known as an Agreement in Principle. Any Agreement in Principle is between the iwi and the Crown and is "without prejudice". It is not legally binding on either the iwi or the Crown.

In Tāmaki, the process so far has been for the Crown to prepare Letters of Offer which have been very broad, high level documents. The idea is that the specific details of those offers will be worked through over the course of negotiations for inclusion in a draft Deed of Settlement.

Once an Agreement in Principle is reached, the Crown and the mandated representatives work towards developing the final Deed of Settlement.

#### ***Deed of Settlement***

The Deed of Settlement is the final agreement reached between the Crown and iwi. A Deed of Settlement generally includes the following:

- (a) A Crown apology;
- (b) An historical account of the Crown Treaty breaches against the claimant group;
- (c) An acknowledgment of what is being settled (i.e. all historical claims);
- (d) The redress being offered. This may include cash payments, the transfer of lands within the claim area and/or other mechanisms for recognising the iwi's key interests.

Once cabinet has approved the content of the Deed of Settlement, it is initialled by the mandated representatives.

### **Step IV: Ratification and Implementation**

#### ***Ratification by Claimant Group Members***

The Deed of Settlement is first initialled by the Crown and the mandated representatives, in this case, the Ngāi Tai ki Tāmaki Tribal Trust. That initialled Deed of Settlement must be approved by the iwi through a voting process before it becomes binding. This process is called ratification. In order for the Crown to formally recognise the Deed of Settlement they must be confident that the ratification process is a robust one which encompasses all beneficiaries.

### ***Governance entity Reviewed and Accepted***

The proposed post-settlement governance entity must also be ratified by the members of the claimant group and established as a legal entity before the Crown can introduce settlement legislation and transfer the redress provided in the settlement to the claimant group. This group can be the mandated body or a separate entity, provided that it is properly set up to receive settlement assets.

The proposed governance entity will be put to the vote at the same time as the initialled Deed of Settlement is voted on in the ratification process.

### ***Settlement Legislation***

Once approved, legislation can be drafted for the Deed to become unconditional. Settlement does not take effect until Parliament has passed an Act for this purpose.

### ***Implementation***

By the time the implementation phase of a settlement begins, the claimant group will have established a governance entity to hold and manage the settlement assets. The governance entity will also have responsibility for managing the implementation of the settlement.

OTS oversees the implementation of settlements on behalf of the Crown. OTS liaises with other government agencies involved in the settlement to ensure that all agreed deadlines for handing over settlement assets to the governance entity are met. OTS also monitors whether the Crown meets all other requirements of the settlement.