

THE WAITANGI TRIBUNAL

WAI 51

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Waitomo claim (a claim by Josephine Huti Anderson on behalf of the hapu of Ruapuha and Uekaha)

JOINT MEMORANDUM FROM CROWN AND CLAIMANT

COUNSEL ADVISING THE WAITIANGI TRIBUNAL

OF THE SETTLEMENT OF THE WAITOMO CLAIM

1. Counsel for the claimants and the Crown hereby notify the Waitangi Tribunal that the parties have reached settlement in respect of the Waitomo claim.
2. After discussions between the parties facilitated by Judge Trapski, and exchanges of correspondence, a final agreement was reached on 14 June 1990. The final agreement involved among other things the whole of the Waitomo Domain being vested in the Wai 51 claimants as a Maori Reservation for the use and benefit of all New Zealanders.
3. Clause 3 of the final agreement has recently been amended as the Crown has, under the Public Works Act 1981, been obliged to offer back part of the Domain land covered by the settlement to the former owner.
4. The amendment mitigates the claimants' concern at the loss of part of their mediated settlement by vesting part of the Domain land in the claimants as Maori freehold land and adding to the Domain a strip of land currently in Maori freehold ownership.
5. Attached are Cabinet Minutes CAB (90) M 3/11 and TOW (95) M 18/2 and Cabinet paper TOW (90) 9 which together record the terms of the agreement.
6. Accordingly, Counsel for the claimants and the Crown request that the Waitangi Tribunal's claim register be amended to record the agreement.

DATED this 11th day of March 1996

Winifred Jardine

Counsel for the Claimants

DATED this 19 day of January 1996

E D France

Crown Counsel

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JOINT MEMORANDUM FROM CROWN AND

CLAIMANT COUNSEL ADVISING THE

WAITANGI TRIBUNAL OF THE

SETTLEMENT OF THE WAITOMO CLAIM

CROWN LAW OFFICE

(E D FRANCE)

WELLINGTON CENTRAL

AGREEMENT IN PRINCIPLE BETWEEN THE

CROWN AND THE CLAIMANTS IN WAI 51 (THE WAITOMO CLAIM)

The mediation should be on a "without prejudice" basis.

2. Ownership of the three acres claimed in the core cave area should be vested in the claimants, leaving one acre vested in the Crown. Control of the caves would be shared between the Crown and the claimants by means of a Management Committee composed of representatives from the Department of Conservation (DoC) and the claimants. The task of the Management Committee would be to protect both ecological and Maori interests. The Committee should be required to report on its stewardship to the owners. The operating

costs of the Management Committee are to be contributed to by both constituent groups of the Committee, with the claimants' contribution to be settled between DoC and the claimants with regard to all the circumstances in any year. In no case should that contribution exceed 50 percent of the total. It is affirmed that the three acres are owned, and belong to, the claimants in the full sense, subject only to the principle that the caves are accessible to the public, and to necessary limitations consequential on the terms of the licence and environmental covenants.

3. The claimants recognise the need to maintain the Domain as a resource for the whole community. A mechanism that will give that recognition a legal basis is provided by Section 439(12) of the Maori Affairs Act 1953. Under that section the Maori Land Court would be asked to declare the Domain a reservation to be held "for the common use and benefit of the people of New Zealand". Furthermore, the Court would be asked to appoint persons nominated by the local authority to sit as trustees alongside the Maori trustees, as is contemplated by sub-section 14 of Section 439.
4. The land occupied by the school and the school buildings is still required for public works purposes, ie education, and does not come within the "offer back" criteria of sections 40(1) and 40(3) (b) of the Public Works Act 1981. If and when the time comes that the land and buildings are no longer used for education purposes, the Ministry of Education envisages reversion under the appropriate statutory procedure.
5. Land ownership of the total museum should be vested in the claimants. The claimants should lease back to the Crown the whole museum complex on the same terms and conditions as the present museum extension. This may be done under Section 436 or Section 267 of the Maori Affairs Act 1953.
6. If the tavern closes then the claimants should have the first option to purchase at market rates.
7. The hotel site, including a small scenic acreage and surrounding staff housing etc should be transferred to the purchaser of the Tourist Hotel Corporation by means of a Glasgow lease (with right of perpetual renewal) from the Crown.
8. The balance of the land should be returned to the claimants with suitable covenants to ensure that the land above the caves is ecologically secure.
9. A Licence permitting commercial cave guiding and souvenir shop operations should be issued to the THC by the Crown, on behalf of the joint owners of the cave (ie, DoC and the claimants). The licence would run for 32 years subject to essential controls to protect both Maori and ecological values and would form part of the THC's assets for sale. The payable for this licence would be 15 percent of the annual gross revenue from caving guiding and 4 percent of the annual gross revenue from the souvenir shop. Of these fees, 25 percent would accrue to the Crown and 75 percent to the claimants. This ration reflects the proportions of ownership share in the core cave area which would be owned by the parties.
10. The emphasis of the agreement is on looking towards a constructive future and on co-operation between the Crown and its agencies on the one hand, and the claimants on the other.
11. The Crown would provide a loan of \$1 million to the claimants representing an advance on licence fee revenues expected to accrue to the claimants during the 32 year total term of the licence. Interest would be charged on the loan at the rate of 13 percent per annum (which is roughly equal to the current rate of 5-year New Zealand Government Stock plus 1 percentage point). The interest rate would be reviewable two yearly, at which intervals it

may be altered if both parties agree. The claimants would repay the loan by assigning part of their share of the annual licence fee for the caves until the loan is discharged. Based on current estimates of future revenue, it is expected that the loan would be repaid within 32 years, although the term is flexible. Repayment instalments would amount to 3.25 percent of gross cave revenue, leaving 8 percent of gross cave revenue (the balance of their share) available for other purposes. If at time these repayment instalments do not fully cover the accrued interest charges, the unmet portion or accrued interest charges owing would be added to the principal outstanding. In summary:

Cave Licence Fee (% of gross revenue per annum)

Claimant's share 11.25 (75% share)

Crown share 3.75 (25% share)

Total 15.00

Loan Repayment

Claimant share of licence fee 11.25 (100.00%)

LESS: Repayment instalments 3.25 (28.89%)

EQUALS: Amount available for 8.00 (71.11%)

Claimants' other purposes