

TERMS OF NEGOTIATION BETWEEN MAUNGAHARURU TANGITU INCORPORATED AND THE CROWN

Parties to these Terms of Negotiation

1. The parties to this document, known as the Terms of Negotiation, are the Crown, as defined in clause 11, and Maungaharuru Tangitu Incorporated (MTI) on behalf of Ngai Tataara, Ngāti Kurumokihi, Marangatuhetaua (Ngāti Tu) and Ngai Te Ruruku ki Tangoio (the Hapū), as defined in clause 6.

Purpose of these Terms of Negotiation

2. These Terms of Negotiation:
 - a set out the scope, objectives, and general procedures for the negotiations the parties will conduct in order to settle the Historical Claims of the Hapū (as defined in clause 9);
 - b record the intentions of the parties regarding the negotiation process, including the intention to negotiate in good faith, confidentially and without prejudice; and
 - c are not legally binding and do not create a legal relationship. However, the parties acknowledge that during negotiations each expects the other to use best endeavours to comply with the terms set out in this document during negotiations.

Background

3. On 18 July 2008 the Minister for Treaty of Waitangi Negotiations confirmed that Ngai Tataara, Ngāti Kurumokihi, Marangatuhetaua (Ngāti Tu) and Ngai Te Ruruku ki Tangoio would form a large natural grouping, with Ngāti Hineuru, for the purpose of historical Treaty settlement negotiations.
4. On 20 October 2010 the Minister for Treaty of Waitangi Negotiations and the Associate Minister of Māori Affairs recognised the mandate of MTI to represent the Hapū in negotiations with the Crown for the settlement of their Historical Claims. In recognising the mandate, the Ministers acknowledged that "the mandate clearly allows for joint negotiations with NHII".

Objectives of the Negotiations

5. The parties agree that the objectives of the negotiations will be to negotiate in good faith a settlement of all the Historical Claims of the Hapū (as defined in clause 10) that:
 - a is comprehensive, final, durable and fair in the circumstances;

- b will not in any way:
 - i. diminish or affect any rights that the Hapū have arising from Te Tiriti o Waitangi/The Treaty of Waitangi and its principles, except to the extent that Historical Claims arising from these rights are settled; or
 - ii. extinguish or limit any aboriginal or customary rights the Hapū may have;
- c recognises the nature and extent of the breaches of the Crown's obligations to the Hapū under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and where appropriate, acknowledges the effect these breaches have had on the economic, social, cultural and political well-being of the Hapū;
- d recognises the mana of the Hapū;
- e provides a platform to assist the Hapū to redevelop their economic base, and enhance their social, cultural, and political wellbeing;
- f enhances the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise);
- g restores the honour of the Crown; and
- h demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement.

Definition of Claimant Group

- 6. the Hapū means:
 - a those who descend from:
 - i. Tataramoa (for Ngai Tatara and Ngati Kurumokihi);
 - ii. Tukapua I (for Marangatuhetaua (Ngati Tu));
 - iii. Whakaari (for Ngati Whakaari, a sept of Ngati Tu); and
 - iv. Te Ruruku through Hemi Puna and Taraipene Tuaitu (for Ngai Te Ruruku ki Tangoio);
 - b every individual referred to in clause 6.a)
 - c any whanau, hapū or group of individuals to the extent that the whanau, hapū or group of individuals is composed of individuals referred to in clause 6.a)

7. At the signing of these Terms, the Crown and MTI have a different view as to whether persons who have been legally adopted must be included within MTI's Claimant Definition as a matter of law. The parties will reach resolution on this matter prior to reaching an Agreement in Principle.
8. The definition of the Hapū may be developed further over the course of the negotiations for inclusion in any Agreement in Principle and Deed of Settlement that may be agreed between the parties.

Historical Claims of the Hapū

9. Historical Claims of the Hapū means all claims made at any time (whether or not the claims have been researched, registered or notified) by any claimant of the Hapū or any person or group representing the Hapū that:
 - a are founded on a right arising from Te Tiriti o Waitangi/the Treaty of Waitangi, or its principles, or founded on the rights arising under legislation, or at common law (including customary law or aboriginal title), or from a breach of fiduciary duty, or otherwise arising; and
 - b arise from or relate to any acts or omissions before 21 September 1992 (that is, are historical) by or on behalf of the Crown; or by or under legislation; and
 - c include the historical components of every claim to the Waitangi Tribunal to which clause 9a and 9b apply, including the following claims registered with the Waitangi Tribunal insofar as they relate to the Hapū:
 - i. 201 (Wairoa ki Wairarapa claims/Ngati Kahungunu generic claim);
 - ii. 299 (Mohaka-Waikare Raupatu/Confiscation claim);
 - iii. 400 (Ahuriri Purchase claim); and
 - iv. such other Wai claims identified by the Hapū in the course of negotiations;
 - d does not include the following claims (the interests of the Hapū in these claims will be negotiated by MAI):
 - i. Wai 55 (Te Whanganui a Orotu claim); and
 - ii. Wai 692 (Napier Hospital and Health Services claim).
 - e have not already been settled.
10. The definition of Historical Claims may be developed further over the course of the negotiations for inclusion in any Agreement in Principle and Deed of Settlement that may be agreed between the Parties

Definition of the Crown

11. The Crown:
- a means the Sovereign in right of New Zealand; and
 - b includes all Ministers of the Crown and all government departments; but
 - c does not include:
 - i. an Office of Parliament; or
 - ii. a Crown entity; or
 - iii. a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

Mandate to Negotiate

12. The Crown received the MTI Deed of Mandate and attached is the Crown's letter (Appendix 1), which recognises the mandate of MTI for the purpose of negotiating the settlement of the Historical Claims of the Hapū with the Crown.

Mandate Maintenance

13. MTI agrees to provide the Office of Treaty Settlements (OTS) with reports on the state of its mandate every three months. OTS agrees to promptly provide MTI copies of any correspondence it receives about the mandate of MTI that would be disclosed if MTI were to make a request under the Official Information Act 1982; and to discuss with MTI any issues arising from that correspondence or enquiry before replying to it.
14. If representation issues arise during negotiations that cannot be resolved by agreement within the Hapū, the Crown and MTI will discuss how to proceed. The Crown will provide assistance where both parties agree it is appropriate.

Subject Matter for Negotiation

15. The parties agree:
- a that during the course of negotiations they will aim to agree on the nature and extent of the Hapū's Tiriti o Waitangi/ Treaty of Waitangi historical grievances and any Crown breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and
 - b that the Crown will acknowledge and apologise for any breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles as part of the settlement.

16. The list of subject matters to be discussed will include the following categories of redress:
 - a the Crown's apology and acknowledgements;
 - b cultural redress; and
 - c financial and commercial redress.
17. The parties will together identify and agree upon subject matters to be negotiated. Any party may raise for discussion and negotiation subject matters in addition to those agreed upon.
18. In the event that the Crown has conceded breaches of Te Tiriti o Waitangi/the Treaty of Waitangi that relate directly to the Hapū during the course of Waitangi Tribunal hearings, the Crown accepts these concessions as relevant to these negotiations.

Process of Negotiations

19. For the purposes of clauses 20 to 31 below, the following definitions apply:
 - a NHII means Ngāti Hineuru Iwi Incorporated, the group the Crown has recognised that holds a mandate to represent Ngāti Hineuru as set out in Terms of Negotiation between NHII and the Crown signed in June 2010.
 - b MAI means Mana Ahuriri Incorporated, the group the Crown has recognised that holds a mandate to represent the Ahuriri Hapū as set out in Terms of Negotiation between MAI and the Crown signed in June 2010. The Crown has acknowledged that the group that MAI represents is a large natural group.

Framework for Negotiations

20. The single negotiating table will be used for the identification of the claims, interests and issues that MTI and NHII wish to have addressed in settlement.
21. The Parties agree that a single negotiating table will be used to progress any collective claims, interests or issues that MTI and NHII are respectively mandated to progress. It will comprise negotiators appointed from MTI and NHII of a size that keeps negotiations manageable.
22. In the event that MTI or NHII take a different position on any shared claim, issue or interest the Crown will provide an opportunity to MTI or NHII to discuss these issues individually with the Crown.
23. The Parties agree that claims, interests or issues which are not shared and which are distinct to MTI and NHII will be negotiated between the Crown and MTI or NHII individually and separately.

24. The Parties agree that, subject to clauses 21 to 24, as much discussion as possible will take place at the single table.
25. MTI and NHII will negotiate with the Crown their own separate redress packages for the benefit of their respective claimant groups.
26. The Crown may offer certain redress items jointly to the claimant groups represented by each of MTI and NHII. The Crown will advise MTI and NHII at the earliest reasonable opportunity of the prospect of any particular redress item being offered jointly.
27. MTI or NHII may request the Crown to offer certain redress items jointly. MTI will advise the Crown at the earliest reasonable opportunity of the prospect of any request for a particular redress item to be offered jointly.
28. If the negotiations which deal with settlement of MTI or NHII claims are not able to proceed together as contemplated in clauses 21 to 28 (for whatever reason) and as a consequence the negotiations for MTI will be unreasonably delayed or become untenable, the Parties (i.e. MTI and the Crown) will meet to review this and may discuss a new approach to completing the negotiations.

Parallel Negotiations

29. The Parties will endeavour to progress the negotiations at the same pace as and in parallel to the negotiations between the Crown and the claimant groups represented by MAI.
30. If the parallel negotiations are not able to proceed at the same pace as the negotiations between the Crown and MAI, the Parties will meet and may discuss a new timetable.
31. MTI acknowledges that it may be appropriate and efficient for MTI to be at a shared discussion forum with MAI on shared issues to be agreed between the parties.

Milestones in Negotiations

32. The parties agree that the general milestones in negotiations will include, but not necessarily be limited to:
 - a **Agreement in Principle:** Outlines the scope and nature of the settlement of the Historical Claims of the Hapū, which will be recorded in the Deed of Settlement. The Parties agree that their intention is to achieve a single, joint, Agreement in Principle between the Crown and the Claimant Groups represented by MTI and NHII. The Agreement in Principle will contain two distinct and severable packages for MTI and NHII;
 - b **Initialled Deed of Settlement:** The Hapū and Crown negotiators will initial the Deed of Settlement which will set out the terms and conditions of the settlement of the Historical Claims of the Hapū. The

Parties will agree on the number of Deeds of Settlement for the Single Negotiation Table once an Agreement in Principle has been achieved;

- c **Ratification:** The initialled Deed of Settlement will be presented to the Hapū for ratification in a manner to be agreed by the parties. A governance entity structure will also be presented to the Hapū for ratification in a manner to be agreed before the settlement legislation can be introduced;
- d **Deed of Settlement signed if ratified:** The signing of the Deed of Settlement by MTI on behalf of the Hapū and a Crown representative on behalf of the Crown if the Deed of Settlement is ratified in the manner agreed
- e **Governance Entity and Settlement Legislation:** the settlement of the Historical Claims of the Hapū will be effective once a suitable governance entity is identified and ratified to hold the settlement assets; and the required settlement legislation receives the Royal Assent. The Parties acknowledge that an Omnibus Bill may be used to effect the settlements negotiated by MTI, NHII and MAI if the groups have remained aligned through the negotiations process. This will involve introducing a single collective settlement bill for the three groups that would separate into three Claims Settlement Acts during the Parliamentary process.

Negotiations Schedule

33. The parties agree that it is their common aim to use their best endeavours to reach an Agreement in Principle before 30 June 2011.

What the Settlement of the Historical Claims of Ngāti Hineuru will enable

34. The parties agree that the settlement of the Historical Claims of the Hapū will enable:
- a final settlement of all Historical Claims of the Hapū, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;
 - b the discontinuance of the Office of Treaty Settlements landbank for the protection of potential settlement properties for the Hapū;
 - c the removal of any resumptive memorials from the titles to land subject to the State Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection relating to Historical Claims of the Hapū against the Crown to be removed;
 - d the removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the Historical Claims of

the Hapū, the Deed of Settlement, the redress provided or settlement legislation (but not for the removal of such jurisdiction in respect of the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation, and proceedings initiated by any third party which involve or may affect the historical claims of the Hapū or the Deed of Settlement, or any settlement legislation); and

- e discontinuance of legal proceedings in relation to the Historical Claims of the Hapū.

Communication

- 35. The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the Hapū informed, but also the need for confidentiality regarding third parties.
- 36. On the request of MTI, OTS will promptly provide all documents that affect negotiations with the Hapū that would be disclosed if MTI were to make a request under the Official Information Act 1982.

Overlapping Claims

- 37. The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to the Hapū as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 38. MTI and the Crown note that in areas where there are overlapping claims, the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be managed.
- 39. The parties will at an early stage in the negotiation process discuss the nature and extent of the interests of overlapping claimant groups in the area of interest of the Hapū. The Crown will carry out its own consultation with overlapping claimants in addition to discussions between claimant groups.
- 40. Where the Crown is engaged in Treaty settlement negotiations with another claimant group whose area of interest includes part of the area of interest of the Hapū, the Crown will regularly update MTI on the progress of those negotiations (without disclosing any confidential information).
- 41. Where the Crown becomes aware that the mandated representative of another claimant group has expressed an interest in settlement assets, or other settlement redress, in which the Hapū have also expressed an interest then the Crown, prior to signing an AIP, (but within a reasonable time) will:
 - a notify MTI of the shared interest; and

- b discuss the best way forward to resolve, at an early stage, any potential conflicts.

Governance Structure for Settlement Assets

- 42. The parties agree that before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:
 - a has been ratified by the Hapū (in a manner agreed by both parties);
 - b adequately represents the Hapū;
 - c has transparent decision-making and dispute resolution processes; and
 - d is accountable to, the Hapū.

Not bound until Deed of Settlement

- 43. The parties acknowledge that this document does not bind either party to reach a settlement and that any agreement reached in negotiations is confidential, without prejudice, and will not be binding until given effect in a signed Deed of Settlement and settlement legislation.

Claimant Funding

- 44. The parties acknowledge that the Crown will make a contribution to the negotiation costs of MTI. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
- 45. The parties agree to work together to ensure fairness and transparency in these funding arrangements, and agree to inform each other of issues that arise, and work together to resolve those issues if possible.
- 46. On 22 December 2009 the details of the Crown's contribution to negotiation costs was specified in a separate funding letter that set out, amongst other things, the levels of funding, details of milestones, and timing of payments. At the time of drafting these Terms, MTI intended to provide a further submission on the funding set out in this letter.
- 47. The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.
- 48. MTI will provide the Crown with independently audited accounts annually for the claimant funding that it receives from the Crown, identifying that the funding has been spent on the negotiations. MTI will provide an invoice for each instalment of funding received from the Crown.
- 49. In the event that funding issues arise for MTI with Crown Forestry Rental Trust (CFRT) funding, which either hinders, or has the potential to hinder the

negotiations process, the Crown will support the resolution of issues through the provision of information and attendance at meetings.

Waiver of Other Avenues of Redress

50. The parties agree that during these negotiations, neither the Hapū nor the Crown will pursue or initiate, before any court or tribunal, any proceedings for redress covering all or part of the same subject matter as these negotiations.

Procedural Matters

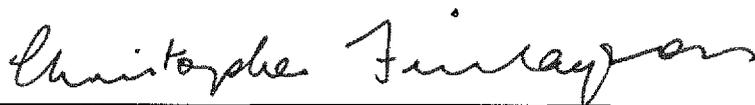
51. The parties agree that:
- a negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of co-operation;
 - b negotiations will be conducted in private and will remain confidential except:
 - i. where both parties agree otherwise (such as when consultation with third parties is necessary); or
 - ii. when the Crown is required to release information under the Official Information Act 1982; or
 - iii. where a party is required to release information as required in the course of litigation.
 - c On the request of MTI, OTS agrees to promptly provide any correspondence it receives about the negotiations of MTI that would be disclosed if MTI were to make a request under the Official Information Act 1982; and to discuss with MTI any issues arising from that correspondence or enquiry before replying to it.
 - d both parties reserve the right to withdraw from negotiations if they become untenable;
 - e media statements concerning the negotiations will only be made when mutually agreed by both parties; and
 - f the location of meetings will be suitable and convenient to both parties.

Amendments

52. The parties acknowledge that it may be necessary or desirable to amend these terms of negotiation from time to time during the negotiations and agree that all amendments must be approved by both parties and recorded in writing.

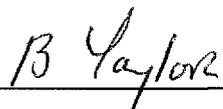
SIGNED THIS 26th DAY OF Pipiri 2010

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of Maungaharuru Tangitu Incorporated

Authorised Signatory: 

Printed Name: Bevan Taylor
Chairperson

Authorised Signatory: 

Printed Name: Tania Hopmans
Deputy Chairperson