

TERMS OF NEGOTIATION BETWEEN NGĀTI HINEURU IWI 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 12, and Ngāti Hineuru Iwi Incorporated (NHII) on behalf of Ngāti Hineuru, 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 Ngāti Hineuru Historical Claims (as defined in clause 10);
 - 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 Ngāti Hineuru would form a large natural grouping, with Ngai Tatara, Ngāti Kurumokihi, Marangatuhetaua (Ngāti Tu) and Ngai Te Ruruku ki Tangoio (hapu represented by Maungaharuru-Tangitu Incorporated (MTI)), for the purpose of historical Treaty settlement negotiations.
4. On 29 October 2010 the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognised the mandate of NHII to represent Ngāti Hineuru 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 MTI".

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 Ngāti Hineuru Historical Claims (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 Ngāti Hineuru 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 Ngāti Hineuru may have;
- c recognises the nature and extent of the breaches of the Crown's obligations to Ngāti Hineuru 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 Ngāti Hineuru;
- d recognises the mana of Ngāti Hineuru;
- e provides a platform to assist the Ngāti Hineuru 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. Ngāti Hineuru means:
 - a those who descend from the eponymous ancestress, Hineuru (through her first marriage to Kiripakeke);
 - b every individual referred to in clause 6a and
 - c any whanau, hapu or group of individuals to the extent that the whanau, hapu or group of individuals is composed of individuals referred to in clause 6a
- 7. For the purposes of clause 7a a person is descended from another if the first person is descended from the other by virtue of the following categories:
 - a Birth; or
 - b Legal adoption; or

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- c Whāngai adoption insofar as Ngāti Hineuru acknowledges customary whāngai adoption within their own tikanga and recognise whāngai for the purposes of their respective claims.
8. At the signing of these Terms, the Crown and NHII have a different view as to whether a spouse of an individual described in clauses 6 and 7, or a person who has a relationship with an individual described in clauses 6 and 7 similar to that of a spouse, may be included within NHII's Claimant Definition. The parties will reach resolution on this matter prior to reaching an Agreement in Principle
9. The definition of Ngāti Hineuru 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.

Ngāti Hineuru Historical Claims

10. Ngāti Hineuru Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngāti Hineuru claimant or any person or group representing Ngāti Hineuru 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 Ngāti Hineuru:
 - i. Wai 1034 (Urewera and Central North Island Inquiries);
 - ii. Wai 599 (Tarawera no. 7 block claim);
 - iii. Wai 600 (Tarawera no. 1F block claim);
 - iv. Wai 191 (Tarawera confiscations claim (Napier/Taupo));
 - v. Wai 299 (Mohaka-Waikare Raupatu/Confiscation claim);
 - vi. Wai 400 (Ahuriri Purchase claim) and;
 - vii. such other Wai claims made by Ngāti Hineuru claimants as identified by Ngāti Hineuru in the course of negotiations; and
 - d have not already been settled.



11. 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

12. 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

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

Mandate Maintenance

14. NHII 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 NHII copies of any correspondence it receives about the mandate of NHII that would be disclosed if NHII were to make a request under the Official Information Act 1982; and to discuss with NHII any issues arising from that correspondence or enquiry before replying to it.
15. If representation issues arise during negotiations that cannot be resolved by agreement within Ngāti Hineuru, the Crown and NHII will discuss how to proceed. The Crown will provide assistance where both parties agree it is appropriate.

Subject Matter for Negotiation

16. The parties agree:
- a that during the course of negotiations they will aim to agree on the nature and extent of Ngāti Hineuru'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.
17. 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.
18. 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.
19. In the event that the Crown has conceded breaches of Te Tiriti o Waitangi/the Treaty of Waitangi that relate directly to Ngāti Hineuru during the course of Waitangi Tribunal hearings, the Crown accepts these concessions as relevant to these negotiations.

Process of Negotiations

20. For the purposes of clauses 20 to 30 below, the following definitions apply:
- a MTI means Maungaharuru Tangitu Incorporated, the group the Crown has recognised that holds a mandate to represent Ngāi Tataua, Ngāti Kurumokihi, Marangatuhetaua (Ngāti Tu) and Ngāi te Ruruku ki Tangoio as set out in Terms of Negotiation between MTI 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

21. The single negotiating table will be used for the identification of the claims, interests and issues that NHII and MTI wish to have addressed in settlement.
22. The Parties agree that a single negotiating table will be used to progress any collective claims, interests or issues that NHII and MTI are respectively mandated to progress. It will comprise negotiators appointed from NHII and MTI of a size that keeps negotiations manageable.



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

Parallel Negotiations

30. 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.
31. 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.
32. NHII acknowledges that it may be appropriate and efficient for NHII to be at a discussion forum with MAI on shared issues to be agreed between the parties.

Milestones in Negotiations

33. 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 Ngāti Hineuru's Historical Claims, 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 NHII and MTI. The AIP will



contain two distinct and severable parts setting out the redress packages for NHII and MTI

- b **Initialled Deed of Settlement:** Ngāti Hineuru 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 Ngāti Hineuru. 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 Ngāti Hineuru for ratification in a manner to be agreed by the parties. A governance entity structure will also be presented to Ngāti Hineuru 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 NHII on behalf of Ngāti Hineuru 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 Ngāti Hineuru's Historical Claims 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 NHII, MTI 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

34. 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

35. The parties agree that the settlement of the Ngāti Hineuru Historical Claims will enable:
- a final settlement of all Ngāti Hineuru Historical Claims, 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 Ngāti Hineuru;



- 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 Ngāti Hineuru Historical Claims 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 Ngāti Hineuru Historical Claims, 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 Ngāti Hineuru or the Deed of Settlement, or any settlement legislation); and
- e discontinuance of legal proceedings in relation to the Historical Claims of Ngāti Hineuru.

Communication

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

Overlapping Claims

- 38. 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 Ngāti Hineuru as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 39. NHII 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.
- 40. 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 Ngāti Hineuru area of interest. The Crown will carry out its own consultation with overlapping claimants in addition to discussions between claimant groups.
- 41. Where the Crown is engaged in Treaty settlement negotiations with another claimant group whose area of interest includes part of the Ngāti Hineuru



area of interest, the Crown will regularly update NHII on the progress of those negotiations (without disclosing any confidential information).

42. 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 Ngāti Hineuru have also expressed an interest then the Crown, prior to signing an AIP, (but within a reasonable time) will:
- a notify NHII 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

43. 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 Ngāti Hineuru (in a manner agreed by both parties);
 - b adequately represents Ngāti Hineuru;
 - c has transparent decision-making and dispute resolution processes; and
 - d is accountable to, Ngāti Hineuru.

Not bound until Deed of Settlement

44. 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

45. The parties acknowledge that the Crown will make a contribution to the negotiation costs of NHII. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
46. 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.
47. 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, NHII intended to provide a further submission on the funding set out in this letter.



48. The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.
49. NHII 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. NHII will provide an invoice for each instalment of funding received from the Crown.
50. In the event that funding issues arise for NHII 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

51. The parties agree that during these negotiations, neither Ngāti Hineuru 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.
52. The parties note that the Waitangi Tribunal has begun preparations in respect of its Rangitikei ki Rangipo Inquiry. The parties agree that nothing in these terms, and in particular clause 46:
- a will require Ngāti Hineuru to withdraw as a party to the Rangitikei ki Rangipo Inquiry;
 - b will prevent Ngāti Hineuru from continuing to participate in the Rangitikei ki Rangipo Inquiry for the purposes of responding by way of cross-examination and/or submission to evidence and/or arguments advanced by other parties, including the Crown, which may:
 - i. Adversely affect the Tribunal's consideration of historical events relevant to Ngāti Hineuru that are a subject of the Rangitikei ki Rangipo Inquiry; or
 - ii. Adversely affect the identification, definition, nature, or extent of existing customary rights and interests of Ngāti Hineuru; and
 - c Will prevent Ngāti Hineuru filing submissions, research and evidence of mana whenua, ahi kaa roa, and customary activities within the traditional Ngāti Hineuru rohe;
53. Ngāti Hineuru agrees that it will provide the Crown with 10 working days notice before initiating, pursuing or joining any further proceedings.
54. If satisfied that continuing negotiations with Mana Ahuriri is untenable, in light of any such proceedings, the Crown may withdraw from negotiations.

Procedural Matters

55. 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 NHII, OTS agrees to promptly provide any correspondence it receives about the negotiations of NHII that would be disclosed if NHII were to make a request under the Official Information Act 1982; and to discuss with NHII 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

56. 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 DAY OF

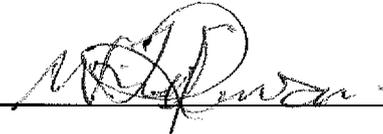
For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of Ngāti Hineuru Iwi Incorporated

Authorised Signatory: _____



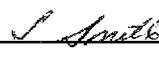
Printed Name: Whetu Tipiwai
Chairperson

Authorised Signatory: _____



Printed Name: Karauna Brown
Deputy Chairperson

Authorised Signatory: _____

Printed Name: Ivy Kahukiwa-Smith
Secretary

Authorised Signatory: _____



Printed Name: Gladys (Hine) Campbell
Board member

