

**MANIAPOTO MĀORI TRUST BOARD**

**and**

**THE CROWN**

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**TERMS OF NEGOTIATION**

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**December 2016**



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# TERMS OF NEGOTIATION BETWEEN MANIAPOTO MĀORI TRUST BOARD AND THE CROWN

## 1. Parties to these Terms of Negotiation

- 1.1 The parties to this document, known as the Terms of Negotiation, are the Crown, as defined in clause 8.1, and Maniapoto Māori Trust Board (**MMTB**), on behalf of Maniapoto, as defined in clauses 5.1 and 6.

## 2. Purpose of these Terms of Negotiation

- 2.1 These Terms of Negotiation:

2.1.1 set out the scope, objectives, general procedures and “ground rules” for the formal discussions the parties will conduct in order to settle the Maniapoto Historical Claims (as defined in clause 7.1);

2.1.2 record the intentions of the parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice; and

2.1.3 are not legally binding and do not create a legal relationship. However, the parties acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

## 3. Guiding Principles

- 3.1 The parties agree to the following guiding principles for the negotiation of Maniapoto Historical Claims:

### 3.1.1 Maungārongo

The principle of maungārongo means restoring balance, faith and trust between the parties

### 3.1.2 Tirohangaroa

The principle of tirohangaroa means the commitment of the parties to negotiating the best possible outcomes for the benefit of Te Iwi o Maniapoto.

### 3.1.3 Manaakitanga

The principle of manaakitanga means requiring respect, empathy and generosity of each other as negotiating parties.

### 3.1.4 Te Ihi Te Wehi me Te Pono

The principle of Te Ihi Te Wehi me Te Pono means acting with integrity, honesty and sincerity of intention and includes fostering a negotiating environment of mutual trust and confidence between the parties.

#### **4. Objectives of the Negotiations**

4.1 The parties agree that the primary objective of the negotiations will be to negotiate in good faith a settlement of the Maniapoto Historical Claims that:

4.1.1 is comprehensive, final, durable and fair in the circumstances;

4.1.2 will not:

(a) diminish or in any way affect any rights that Maniapoto have arising from Te Tiriti o Waitangi / The Treaty of Waitangi and its principles, except to the extent that claims arising from those rights are settled; or

(b) extinguish or limit any aboriginal or customary rights that Maniapoto may have;

4.1.3 recognises the nature, extent and injustice of breaches of the Crown's obligations to Maniapoto under Te Tiriti o Waitangi / The Treaty o Waitangi and its principles, and where appropriate, acknowledges the effect that these breaches have had on the economic, social, cultural and political well-being of Maniapoto;

4.1.4 will provide a platform to assist Maniapoto to develop their economic base. In addition, the Crown acknowledges that Maniapoto view the settlement as a means of enhancing their social, cultural and political development;

4.1.5 will enhance the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi / The Treaty of Waitangi and otherwise);

4.1.6 will restore the honour of the Crown; and

4.1.7 demonstrates and records that both parties have acted honourably and reasonably in negotiating the settlement.

4.2 In addition, the Crown:

4.2.2 acknowledges that MMTB view the settlement as a means of removing the sense of grievance and restoring Maniapoto faith and trust in the Crown; and

4.2.3 confirms that the settlement is not intended to affect any decision, proposal or report of Te Ohu Kaimoana either under the Māori Fisheries Act 2004 or in respect of the "fisheries" deed dated 23 September 1992.

## 5. Definition of MMTB

- 5.1 MMTB is the representative body mandated by Maniapoto (as defined in clause 6.1) comprising of 15 representatives, representing the following groups:
- one Maniapoto Kaumatua Kaunihera representative;
  - one Te Arikinui representative;
  - one Mokau Ki Runga Regional Management Committee representative;
  - one Hauauru Ki Uta Regional Management Committee representative;
  - one Te Tokanganui-a-noho Regional Management Committee representative;
  - one Nehenehenui Regional Management Committee representative;
  - one Nga Tai o Kawhia Regional Management Committee representative;
  - one Tuhua Hikurangi Regional Management Committee representative;
  - one Rereahu Regional Management Committee representative; and
  - six generally elected representatives, elected by all members of Maniapoto.

## 6. Definition of Maniapoto

- 6.1 Maniapoto is defined in the MMTB Deed of Mandate.

## 7. Maniapoto Historical Claims

- 7.1 Maniapoto Historical Claims:

7.1.1 means all claims made at any time (whether or not the claims have been considered, researched, registered or notified) by any Maniapoto claimant or any person or group representing Maniapoto that:

- (a) are, or are founded on, rights arising from Te Tiriti o Waitangi / The Treaty of Waitangi or its principles; legislation; common law (including customary law and aboriginal title); a fiduciary duty; or otherwise; and
- (b) arise from or relate to acts or omissions before 21 September 1992:
  - (i) by or on behalf of the Crown; or
  - (ii) or under legislation; and

7.1.2 includes every claim to the Waitangi Tribunal to which clause 7.1.1 applies.

- 7.2 The parties acknowledge that the definition of Maniapoto Historical Claims includes those historical claims of Maniapoto only to the extent that those historical claims relate to Maniapoto as defined in clause 6.1.

## 8. Definition of the Crown

### 8.1 The Crown:

8.1.1 means the Sovereign in right of New Zealand; and

8.1.2 includes all Ministers of the Crown and all government departments; but

8.1.3 does not include:

- (a) an Office of Parliament;
- (b) a Crown entity; or
- (c) a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

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## 9. Mandate to Negotiate

9.1 MMTB's Deed of Mandate to represent Maniapoto in negotiations with the Crown for the settlement of Historical Claims is **attached** at **Appendix 1**. The Crown's letter recognising MMTB's Deed of Mandate to represent Maniapoto is **attached** as **Appendix 2**.

9.2 If representation issues arise during negotiations that cannot be resolved by agreement within Maniapoto, the Crown will discuss with MMTB a process to address those issues.

9.3 MMTB agrees to provide the Office of Treaty Settlements with reports on the state of the mandate every three months, and the Crown agrees to advise MMTB of any correspondence it receives about the mandate of MMTB.

## 10. Subject Matter for Negotiation

10.1 The parties will together agree upon subject matters to be negotiated. Any party may raise for discussion subject matters in addition to those agreed upon.

10.2 The list of subject matters to be discussed will include the following categories of redress:

10.2.1 the Crown's apology and acknowledgements;

10.2.2 cultural redress; and

10.2.3 financial and commercial redress.

10.3 The parties acknowledge that the Wai 903 He Whiritaunoko: The Whanganui Land Report (2015), Wai 167 The Whanganui River Report (1999), Wai 143 The Taranaki Report Kaupapa Tuatahi: The Muru and Raupatu of the Taranaki Land and People (1996), Wai 1200 He Maunga Rongo: Report on Central North

Island Claims Part III (2008) Wai 145 Te Whanganui A Tara Me Ona Takiwa: Report on the Wellington District (2008) reports of the Waitangi Tribunal may contain discussion of issues that may be relevant to the subject matters to be negotiated.

## **11. Process of Negotiations**

- 11.1 The parties agree that the general process of negotiations will include, but not necessarily be limited to:

### Agreement in Principle

- 11.1.1 the signing of an Agreement in Principle which will outline the scope and nature, in principle, of the settlement redress which will be recorded in the Deed of Settlement;

### Initialled Deed of Settlement

- 11.1.2 the initialling of a Deed of Settlement by the parties. The Deed of Settlement will set out the terms and conditions of the settlement of the historical claims of Maniapoto;

### Governance Entity

- 11.1.3 the approval by the Crown, of a governance entity to represent Maniapoto, and to receive and manage the settlement redress;

### Ratification

- 11.1.4 the presentation by MMTB of the initialled Deed of Settlement to Maniapoto for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Maniapoto for ratification in a manner to be agreed by the parties;

### Deed of Settlement Signed if Ratified

- 11.1.5 if the Deed of Settlement is ratified, MMTB will sign the Deed of Settlement on behalf of Maniapoto and a Crown representative will sign on behalf of the Crown;

### Governance Entity Establishment

- 11.1.6 the establishment of the approved governance entity. This will only occur if Maniapoto ratify the governance entity to represent Maniapoto, and to receive and manage the settlement redress; and

### Settlement Legislation

- 11.1.7 the passage of settlement legislation. The settlement of the historical claims of Maniapoto will come into effect once the settlement legislation receives the Royal Assent.

## **12. What the Settlement of the Historical Claims of Maniapoto will enable**

12.1 The parties agree that the settlement of all historical claims of Maniapoto will enable the:

12.1.1 final settlement of all historical claims of Maniapoto, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;

12.1.2 discontinuance of the Treaty Settlements Landbank arrangement for the protection of potential settlement properties for the benefit of Maniapoto;

12.1.3 removal, for the benefit of Maniapoto of any resumptive memorials from the titles of land subject to the State Owned Enterprises Act 1986, the Railways Corporation Restructuring Act 1990, the Crown Forest Assets Act 1989 and the Education Act 1989 and for statutory protection for claims against the Crown to be removed; and

12.1.4 discontinuance of any legal proceedings and removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the historical claims of Maniapoto, 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).

12.2 Notwithstanding clause 12.1, the parties acknowledge that the Wai 898 Te Rohe Potae Inquiry process will continue and that:

12.2.1 the jurisdiction of the Waitangi Tribunal will be maintained for the purpose of issuing reports and making any non-binding recommendations regarding the Wai 898 Te Rohe Potae Inquiry; and

12.2.2 the settlement negotiations will proceed in parallel and the parties will consider the development of stages and the shape of the settlement process as negotiations progress.

12.3 The parties note their different perspectives on some issues may mean that they are unable to reach resolution on all matters. In any such case, the parties will discuss how these matters are recorded in the settlement.

## **13. Communication**

13.1 The parties will each ensure regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed, but also the need for confidentiality regarding third parties.

## **14. Overlapping Claims**



- 14.1 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 MMTB as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 14.2 MMTB will discuss Maniapoto's interests with overlapping claimant 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 addressed.
- 14.3 The Crown may assist MMTB as it considers appropriate and will carry out its own consultation with overlapping claimant groups.

## **15. Overlapping Negotiations**

- 15.1 Where the Crown is engaged in negotiations for the settlement of historic claims with claimant groups whose rohe includes part of the Maniapoto area of interest, the Crown will regularly update MMTB on the progress of those negotiations (without disclosing any confidential information).
- 15.2 Where the Crown becomes aware that the mandated representative of another claimant group has expressed an interest in potential settlement assets, or other settlement redress, in which MMTB have also expressed an interest then the Crown, prior to offering the particular redress item or asset for inclusion in a settlement, will:
- (a) notify MMTB of the shared interest; and,
  - (b) facilitate a discussion between the relevant mandated representatives in order to resolve, at an early stage, any potential conflicts between claimant groups regarding the potential redress.

## **16. Not Bound until Deed of Settlement**

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

## **17. Governance Structure for Settlement Assets**

- 17.1 The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:
- 17.1.1 has been ratified by Maniapoto (in a manner to be agreed by both parties);
  - 17.1.2 is in a form that both parties agree adequately represents Maniapoto;
  - 17.1.3 has transparent decision making processes; and
  - 17.1.4 is accountable to Maniapoto.

## **18. Claimant Funding**

- 18.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Maniapoto. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
- 18.2 MMTB will adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, MMTB will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.
- 18.3 MMTB will also provide the Crown with independently audited accounts for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations.

## **19. Waiver of Other Avenues of Redress**

- 19.1 During these negotiations, MMTB agree neither to initiate nor to pursue any legal proceedings relating to the subject matter of the negotiations.
- 19.2 If Maniapoto registered claimants were to pursue legal proceedings this may lead to a pause in negotiations.

## **20. Procedural Matters**

- 20.1 The parties agree that:
- 20.1.1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of open co-operation;
  - 20.1.2 negotiations will be conducted in private and will remain confidential unless agreed otherwise (such as when consultation with third parties is necessary) or when the Crown is required to release information under the Official Information Act 1982;
  - 20.1.3 either party may withdraw from negotiations if the negotiations become untenable;
  - 20.1.4 consistent with the obligations of good faith negotiations, if the Office of Treaty Settlements becomes aware of changes in the legal control, or ownership of, or the granting of long term interests in, land of the Crown in which Maniapoto claims an interest, the Office of Treaty Settlements will inform MMTB of the proposal where possible;
  - 20.1.5 early in the negotiation process both parties will discuss Maniapoto's redress interests and the Crown's policies in respect of those interests. Based on these discussions the Office of Treaty Settlements will also provide information on relevant Crown assets potentially available for redress, including possible transfer, in a settlement;
  - 20.1.6 media statements concerning the negotiations will only be made when mutually agreed by both parties;

20.1.7 the location of meetings will be suitable and convenient to both parties;  
and

20.1.8 the Crown and MMTB recognise the importance of using Te Reo Māori in the negotiations, where appropriate. MMTB will provide the Crown with adequate notice should a translator be required.

## 21. Amendments

21.1 The parties acknowledge that it may be necessary to amend these Terms of Negotiation from time to time and agree that all amendments must be approved by both parties and recorded in writing.

Signed this 17<sup>th</sup> day of December 2016

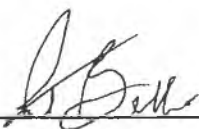
For and on behalf of the Crown:



*Hon Christopher Finlayson*

*Minister for Treaty of Waitangi Negotiations*

For and on behalf of Maniapoto Māori Trust Board:



*R Tiwaha Bell*

*Chairperson*

