

**CROWN EXPECTATIONS
AND MATTERS FOR AGREEMENT**

between the

CROWN

and

MŌKAI PĀTEA WAITANGI CLAIMS TRUST

Dated this 20th day of September 2021

Crown Expectations and Matters of Agreement

Parties

Between: The Crown as defined in the Public Finance Act 1989 (“**the Crown**”)

And: Mōkai Pātea Waitangi Claims Trust, a charitable trust constituted pursuant to the Charitable Trusts Act 1957 (“**Mōkai Pātea Waitangi Claims Trust**”)

Hau mai i Waitapu
Ō mai i te taumata o Ruahine
Piri mai i Hautapu
Whiti mai i Ngaruroro
Kia Mōkai Pātea

Purpose of this Document

1. This document:
 - (a) sets out the scope, objectives, and procedure relating to the negotiations process that the parties will conduct in order to settle the historical claims arising under Te Tiriti o Waitangi / the Treaty of Waitangi for the claimant community of Mōkai Pātea Nui Tonu;
 - (b) records the intentions of the parties regarding the negotiation process, including the intention to negotiate in good faith, confidentially and without prejudice; and
 - (c) is not legally binding and does not create a legal relationship; however, the parties acknowledge that it is the intention of each party to comply with the terms set out in this document during negotiations.

Definitions

2. In this document, the following terms are defined:
 - (a) **Deed of Mandate** is the mandate deed of Mōkai Pātea Waitangi Claims Trust as recognised by the Crown on 16 March 2021, and which sets out the definition of the claimant community and the scope of the historical claims under negotiation;
 - (b) **Mōkai Pātea Waitangi Claims Trust** is the Trust established by the hapū and Iwi of Ngāi Te Ohuake, Ngāti Hauiti, Ngāti Tamakōpiri and Ngāti Whitikaupeka to negotiate historical claims of the claimant community of Mōkai Pātea Nui Tonu arising under Te Tiriti o Waitangi,

and is the Trust recognised by the Crown to be the representative body mandated by the claimant community of Mōkai Pātea Nui Tonu;

- (c) **Mōkai Pātea Nui Tonu** is the claimant community as defined in the Mōkai Pātea Waitangi Claims Trust Deed of Mandate;
- (d) **Negotiations** are the negotiations between the parties concerning the settlement of historical claims of the claimant community of Mōkai Pātea Nui Tonu arising under Te Tiriti o Waitangi / the Treaty of Waitangi and as particularised in the Deed of Mandate.

3. The definition of Mōkai Pātea Nui Tonu and Mōkai Pātea Nui Tonu historical claims may be further developed by the Crown and the Mōkai Pātea Waitangi Claims Trust during the negotiations for inclusion in the deed of settlement.

Guiding Principles of Mōkai Pātea Nui Tonu

4. Mōkai Pātea Nui Tonu is guided by the following principles within tikanga:

- (a) *Kotahitanga*: Mōkai Pātea Nui Tonu is a traditional structure based on the *kotahitanga* (unity) whānau, hapū and iwi of Mōkai Pātea Nui Tonu.
- (b) *Rangatiratanga*: Mōkai Pātea Nui Tonu acknowledges and affirms the tino rangatiratanga of whānau, hapū and iwi of Mōkai Pātea Nui Tonu, as expressed by:
 - (i) Te Rūnanga o Ngāi Te Ohuake;
 - (ii) Te Rūnanga o Ngāti Hauiti;
 - (iii) Te Rūnanga o Ngāti Tamakōpiri; and
 - (iv) Te Rūnanga o Ngāti Whitikaupeka.

Objective of the Negotiations

5. The parties agree that the objective of the negotiations is to negotiate in good faith a settlement of the historical claims of Mōkai Pātea Nui Tonu that:

- (a) is comprehensive, final, durable and fair in the circumstances, subject to the matters unaffected by the settlement as set out in clause 7;
- (b) recognises the nature, extent and injustice of breaches of the Crown's obligations to Mōkai Pātea Nui Tonu under Te Tiriti o Waitangi / The Treaty of Waitangi and its principles and, where appropriate, acknowledges the effect of these breaches on the economic, social, cultural, and political well-being of Mōkai Pātea Nui Tonu;
- (c) acknowledges that the Mōkai Pātea Waitangi Claims Trust views the settlement as a means to resolve the grievances and mamae of Mōkai Pātea Nui Tonu and contributing towards the restoration of well-being and *mauri-ora* within the whānau, hapū and iwi of Mōkai Pātea Nui Tonu;

- (d) provides a platform to assist Mōkai Pātea Nui Tonu to develop their economic base. In addition, the Crown acknowledges that Mōkai Pātea Nui Tonu may view the settlement as a means of enhancing their social, cultural, and political development;
- (e) enhances the ongoing relationship between the Crown and Mōkai Pātea Nui Tonu, both in terms of Te Tiriti o Waitangi / The Treaty of Waitangi and otherwise;
- (f) restores the honour of the Crown; and
- (g) demonstrates and records that both the Crown and Mōkai Pātea Waitangi Claims Trust have acted honourably and reasonably in negotiating the settlement.

Actions Enabled by the Final Settlement of All Claims

6. The final settlement of all the historical claims of Mōkai Pātea Nui Tonu will:
- (a) release and discharge all of the Crown's obligations and liabilities in respect of those claims;
 - (b) discontinue the Treaty Settlements landbank arrangement for the protection of potential settlement properties for the benefit of Mōkai Pātea Nui Tonu;
 - (c) provide that the following enactments will not apply to any property transferred to Mōkai Pātea under the settlement or any right of first refusal (RFR) land, for the benefit of Mōkai Pātea:
 - (i) Part 3 of the Crown Forest Assets Act 1989;
 - (ii) sections 568 to 570 of the Education and Training Act 2020;
 - (iii) Part 3 of the New Zealand Railways Corporation Restructuring Act 1990;
 - (iv) sections 27A to 27C of the State-Owned Enterprises Act 1986;
 - (v) sections 8A to 8HJ of the Treaty of Waitangi Act 1975.
 - (d) remove any resumptive memorials entered on a record of title under any of the following enactments for any property transferred to Mōkai Pātea under the settlement or any right of first refusal (RFR) land:
 - (i) section 27A of the State-Owned Enterprises Act 1986;
 - (ii) section 568 of the Education and Training Act 2020;
 - (iii) section 38 of the New Zealand Railways Corporation Restructuring Act 1990.
 - (e) remove the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the historical claims of Mōkai

Pātea Nui Tonu, 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

- (f) discontinue any legal proceedings or proceedings before the Waitangi Tribunal in relation to the historical claims of Mōkai Pātea Nui Tonu.

Matters Unaffected by the Settlement

7. The settlement will not:

- (a) diminish or in any way affect any rights that Mōkai Pātea Nui Tonu 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;
- (b) extinguish or limit any aboriginal or customary rights that Mōkai Pātea Nui Tonu may have;
- (c) have the effect of granting, creating, or providing evidence of any rights or interests under the Marine and Coastal Area (Takutai Moana) Act 2011, nor does it affect the ability of the iwi or hapū to make applications for recognition of protected customary rights or for customary marine title under the same Act, or pursue any other remedies available to them;
- (d) 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.

Negotiation Principles

8. The parties agree:

- (a) negotiations will be on a "without prejudice" basis and will be conducted in good faith and a spirit of open communication;
- (b) negotiations will be conducted privately and in confidence between parties unless the parties agree otherwise;
- (c) any agreement reached in the course of negotiations will remain confidential to the parties unless they agree otherwise;
- (d) to make media statements concerning the negotiations only after first discussing with the other party the subject matter and the proposed media statement and providing a reasonable opportunity for the parties to reach mutual agreement on key messages to the media;
- (e) the Crown may be required by law to release information about the negotiations (for example, under the Official Information Act 1982) and the Crown will promptly inform Mōkai Pātea Waitangi Claims Trust of such requests or requirements and discuss its intention to release

information with the Mōkai Pātea Waitangi Claims Trust prior to releasing such information;

- (f) to ensure regular and appropriate internal communication procedures through the negotiations;
 - (g) that using correct spelling for Mōkai Pātea Nui Tonu names is of the utmost importance, including the use of macrons where appropriate and that best endeavours will be used to ensure the correct spelling of Māori words throughout the negotiations;
 - (h) to recognise the importance of using te reo Māori during negotiations and in documents;
 - (i) the Mōkai Pātea Waitangi Claims Trust can continue to participate in the Taihape: Rangitīkei ki Rangipō District Inquiry while in negotiations;
 - (j) should negotiations conclude before the conclusion of the Taihape: Rangitīkei ki Rangipō District Inquiry the parties will discuss next steps;
 - (k) during negotiations, should the Mōkai Pātea Waitangi Claims Trust wish to pursue or initiate any legal proceedings relating to the subject matter of negotiations the Mōkai Pātea Waitangi Claims Trust will first inform the Crown and the parties will discuss next steps;
 - (l) if the Mōkai Pātea Waitangi Claims Trust or the registered claimants initiate legal proceedings relating to the subject matter of negotiations, the Crown will consider its position and may withdraw from negotiations;
9. The parties may agree to extend their confidential negotiations to include other interested groups:
- (a) the extended negotiations can apply to some or all of the issues in the negotiation;
 - (b) other interested groups included in the extended negotiations will be expected to agree to the same obligations of confidence to join the negotiations;
 - (c) for example, the Mōkai Pātea Waitangi Claims Trust may agree to include one or more neighbouring groups in negotiations to jointly address common redress sought by the groups and the overlapping interests of the neighbouring groups.
10. Mōkai Pātea Waitangi Claims Trust will provide The Office for Māori Crown Relations – Te Arawhiti with reports on the state of its mandate every three months and Te Arawhiti will advise the Mōkai Pātea Waitangi Claims Trust of any correspondence it receives about the mandate of the Mōkai Pātea Waitangi Claims Trust.
11. This document, and any negotiations held, do not bind the parties to reach a settlement. All agreements reached during negotiation are not binding on either

party until and unless expressly provided for in the signed deed of settlement and settlement legislation.

12. Crown guidance on the process for negotiations is set out in *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*.
13. Mōkai Pātea Waitangi Claims Trust and the Crown will each undertake regular and appropriate internal consultation procedures throughout the negotiations, taking into account the need to keep the claimant community informed of the general progress of negotiations, but also the principle of confidentiality particularly concerning third parties.
14. Mōkai Pātea Waitangi Claims Trust reserves its right to withdraw from negotiations with the Crown.

Overlapping Interests

15. The overlapping interests of all groups, either settled or unsettled, must be addressed to the satisfaction of the Crown before a deed of settlement is initialled.
16. Redress negotiated as part of the deed of settlement may need to reflect the significance of an area or feature to overlapped groups. Non-exclusive redress instruments may be used.
17. The Crown will encourage the Mōkai Pātea Waitangi Claims Trust to engage with neighbouring groups from the outset of negotiations to agree how any interests in overlapped areas should be provided for.
18. The Crown will assist the Mōkai Pātea Waitangi Claims Trust by providing information on proposed redress items to groups with overlapped interests and facilitating discussions to resolve issues.
19. The Crown's preference is that groups decide between them how best to deal with overlapped interests. If this is not possible, a Ministerial decision may be necessary.
20. Where the Crown is engaged in negotiations with claimant groups whose rohe overlap, the Crown will regularly update each mandated body on the progress of each negotiation (but will preserve any necessary confidentiality of information in those negotiations).
21. Where the Crown becomes aware that the mandated representative of another claimant group has expressed an interest in potential settlement assets or redress in which the Mōkai Pātea Waitangi Claims Trust have also expressed an interest, the Crown, before finally offering the particular redress item or asset for inclusion in a settlement, will:
 - (a) notify the Mōkai Pātea Waitangi Claims Trust of the shared interest; and

- (b) facilitate a discussion between the relevant mandated representatives in order to attempt to resolve, at an early stage, any potential conflicts between claimant groups about the potential redress.

General

22. The Crown will make a contribution to the negotiation costs of Mōkai Pātea Waitangi Claims Trust, including in relation to this document, and such funding will be paid in instalments in accordance with specified milestones in the negotiation process being achieved.
23. Mōkai Pātea Waitangi Claims Trust will adhere to the Crown's claimant funding policy guidelines.
24. Any amendments to this document must be approved by both parties and recorded in writing.


Signed this 20th day of SEPTEMBER 2021

For and on behalf of the **Crown**:



Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

For and on behalf of **Mōkai Pātea Nui Tonu**:



For Te Rūnanga o Ngāi Te Ohuake



For Te Rūnanga o Ngāti Hauiti



For Te Rūnanga o Ngāti Tamakōpiri



For Te Rūnanga o Ngāti Whitikaupeka



For Mōkai Pātea Waitangi Claims Trust