

**TERMS OF NEGOTIATION**

between

**NGĀITAKOTO-A-IWI RESEARCH UNIT TRUST**  
as the mandated representative of NgāiTakoto

and

**THE CROWN**

**9 JULY 2009**

## ***Terms of Negotiation between NgāiTakoto-a-Iwi Research Unit Trust and the Crown***

### **Purpose of these Terms of Negotiation**

1. This document, known as the Terms of Negotiation, sets out the scope, objectives, general procedures and "ground rules" for formal discussions between NgāiTakoto-a-Iwi Research Unit Trust ("the Research Unit Trust"), on behalf of NgāiTakoto (as defined in paragraph 5), and the Crown (as defined in paragraph 10), regarding the settlement of the NgāiTakoto Historical Claims (as defined in paragraph 9).
2. In particular, these Terms of Negotiation record the intentions of the Research Unit Trust and the Crown regarding the negotiations process, including the intention to negotiate in good faith, confidentially and without prejudice.
3. These Terms of Negotiation are not legally binding and do not create a legal relationship. However, the Research Unit Trust and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

### **Objectives of the negotiations**

4. The Research Unit Trust and the Crown agree that the objectives of the negotiations will be to negotiate in good faith a settlement of the NgāiTakoto Historical Claims which:
  - a is comprehensive, final, durable, and fair in the circumstances;
  - b will not:
    - i diminish or in any way affect any rights that NgāiTakoto has arising from Te Tiriti o Waitangi / the Treaty of Waitangi and its principles, except to the extent that the historical claims arising from those rights are settled; or
    - ii extinguish or limit any aboriginal or customary rights that NgāiTakoto may have;
  - c recognises the nature and extent of the breaches of the Crown's obligations to NgāiTakoto under Te Tiriti o Waitangi / the Treaty of Waitangi and its principles;
  - d will provide a platform to assist NgāiTakoto to redevelop their economic base;
  - e will enhance the ongoing relationship between the parties (both in terms of Te Tiriti o Waitangi / the Treaty of Waitangi and otherwise);
  - f will restore the honour of the Crown; and

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

### **Definition of NgāiTakoto**

5. NgāiTakoto comprises those persons who descend from Tuwhakaterere, the founding ancestor of NgāiTakoto, and who descend from a tupuna that exercised customary rights in the NgāiTakoto Area of Interest on or after 6 February 1840.
6. The marae of NgāiTakoto are Mahimaru, Waimanoni, Te Pa a Parore, Paparore, and Kaimaumau.
7. The detail of the definition of NgāiTakoto will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

### **NgāiTakoto Area of Interest**

8. The Research Unit Trust states that the NgāiTakoto area of interest encompasses all those lands and waterways within the following land boundaries including the moana / awa which are part of that territory, and those waterways which abut the shoreline:

Mai i nga moutere o Rangitahua, ka heke mai ki te motu o Manawatawhi,  
A ka tae atu ki Te Rerenga Wairua, neke atu ki te motu a Pao, a, ka haere tonu ana ki te awa o Waimimiha, a ka heke mai ki te maunga o Okahu, ka hau atu to awa o Whangatane, ka puta noa atu ki te wahapu o Rangaunu ki a Rangiawhia, a, ka haere hoki ki a Murimotu, a ka tae mai ano ki nga moutere o Rangitahua.

From the Kermadec Islands across to Three Kings Island, across to Te Rerenga Wairua (Cape Reinga), south to the island of Pao, and south along the ninety mile beach to the river of Waimimiha (Ahipara), inland to the hills of Okahu, linking up to the Whangatane river and out to the Rangaunu Harbour via Rangiawhia on the east coast then north to Murimotu (North Cape) and back to the Kermadec Islands.

## NgāiTakoto Tribal Area



### NgāiTakoto Historical Claims

9. NgāiTakoto Historical Claims means all claims made at any time (whether or not the claims have been researched, registered or notified) by any NgāiTakoto claimant or anyone representing them that:
- a are, or are founded on, rights arising:
    - i. from Te Tiriti o Waitangi / the Treaty of Waitangi, or its principles;
    - ii. under legislation;
    - iii. at common law (including customary law and aboriginal title);
    - iv. from a fiduciary duty; or
    - v. 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. by or under legislation; and
  - c includes every claim to the Waitangi Tribunal to which clauses 9(a) and (b) apply, including the following claims registered at the Waitangi Tribunal, insofar as they relate to NgāiTakoto:
    - i. Wai 22;
    - ii. Wai 45;

- iii. Wai 613;
- iv. Wai 861;
- v. Wai 913; and
- vi. Wai 1359.

### **Definition of the Crown**

10. 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; or
  - iv. local authorities.

11. For the avoidance of doubt, all NgāiTakoto claims relating to Crown acts and or omissions concerning local authorities are intended to be covered by any agreed settlement.

### **Mandate to negotiate**

12. The Crown has recognised the NgāiTakoto-a-Iwi Research Unit's Deed of Mandate. **Attached** is the Crown's letter which recognises the mandate of the Research Unit. The Crown acknowledges that the Research Unit has restructured itself as the Research Unit Trust, which will act on behalf of NgāiTakoto for the purpose of negotiating the settlement of the NgāiTakoto Historical Claims with the Crown.

### **Mandate maintenance**

13. The Research Unit Trust agrees to provide the Office of Treaty Settlements with reports on the state of its mandate every three months, and the Crown agrees to advise the Research Unit Trust of any correspondence it receives about the mandate of the Research Unit Trust.

14. If representation issues arise during negotiations that cannot be resolved by agreement within NgāiTakoto, the Crown will discuss further with the Research Unit Trust a process to address those issues.

### **Subject matter for negotiation**

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

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.

### **Negotiations milestones**

17. The Research Unit Trust and the Crown agree that the general process of negotiations will include, but not necessarily be limited to:
- a Agreement in Principle  
The Agreement in Principle will outline the scope and nature, in principle, of the settlement of the NgāiTakoto Historical Claims, which will be recorded in the Deed of Settlement.
  - b Initialled Deed of Settlement  
NgāiTakoto and Crown negotiators initial the Deed of Settlement, which will set out the terms and conditions of settlement of the Historical Claims of NgāiTakoto.
  - c Ratification  
The initialled Deed of Settlement will be presented by the Research Unit Trust to NgāiTakoto for ratification. An approved governance entity structure will also be presented to NgāiTakoto for ratification before the settlement legislation can be introduced.
  - d Deed of Settlement signed if ratified  
If NgāiTakoto ratifies the Deed of Settlement (in a manner to be agreed), the Deed of Settlement will be signed on behalf of NgāiTakoto, and by a representative of the Crown.
  - e Governance entity and settlement legislation  
The settlement of NgāiTakoto Historical Claims is effective once a suitable governance entity is formed to hold the settlement assets and the required settlement legislation receives the Royal Assent.

### **What the settlement of NgāiTakoto Historical Claims will enable**

18. The Research Unit Trust and the Crown agree that the settlement of the NgāiTakoto Historical Claims will enable:
- a final settlement of all NgāiTakoto Historical Claims, and the release and discharge of all of the Crown's obligations and liabilities in respect of them;
  - b discontinuance of the Office of Treaty Settlements' landbank for the protection of potential settlement properties for the benefit of NgāiTakoto;

- c removal of any resumptive memorials from the titles of 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 of claims against the Crown to be removed for the benefit of NgāiTakoto;
- d removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of NgāiTakoto 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
- e discontinuance of legal proceedings or proceedings before the Waitangi Tribunal in relation to NgāiTakoto Historical Claims.

### **Communication**

19. The Research Unit 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, but also the need for confidentiality regarding third parties.

### **Overlapping claims**

20. The Research Unit Trust and the Crown agree that overlapping claims 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 NgāiTakoto as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
21. The Research Unit Trust and the Crown both acknowledge that NgāiTakoto is participating in Te Hui Tōpū o Te Hiku o Te Ika (the Te Hiku Forum) with other Te Hiku o Te Ika iwi (Ngāti Kuri, Te Rarawa, Ngāti Kahū and Te Aupouri) to reach agreement on shared interests in potential settlement redress.
22. The Crown is in Treaty settlement negotiations with overlapping claimants. Issues arising in those negotiations, including issues concerning licensed Crown forest land, may be relevant to these negotiations, and vice versa. Notwithstanding the Forum, the Crown will ensure that NgāiTakoto is kept informed of these issues (subject only to the confidentiality of matters specific to the other negotiations).
23. The Crown may assist NgāiTakoto negotiators on matters it considers appropriate and will if necessary carry out its own consultation with overlapping claimants.

### **Not bound until Deed of Settlement**

24. The Research Unit Trust and the Crown 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 Deed of Settlement and settlement legislation.

### **Governance structure for settlement assets**

25. The Research Unit Trust and the Crown agree that an appropriate legal entity ratified by NgāiTakoto (in a manner to be agreed between the parties) that both agree

adequately represents NgāiTakoto, has transparent decision-making processes, and is accountable to NgāiTakoto, will need to be in place prior to the introduction of settlement legislation.

### **Claimant funding**

26. The Research Unit Trust and the Crown note that the Crown will make a contribution to the negotiation costs of NgāiTakoto, which will be paid in instalments for the achievement of specified milestones in the negotiation process.
27. The Research Unit Trust and the Crown 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.
28. The Research Unit Trust agrees to adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, the Research Unit Trust will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.
29. The Research Unit Trust will provide the Crown with independently audited accounts annually for the claimant funding that it receives from the Crown, certifying that the funding has been spent on the negotiations or associated work.

### **Waiver of other avenues of redress**

30. The Research Unit Trust and the Crown agree that during these negotiations the Research Unit Trust will not pursue or initiate, before any court or tribunal, in relation to any of the claims that are within the scope of the negotiations, any proceedings for redress covering all or part of the same subject matter as these negotiations.

### **Procedural matters**

31. The Research Unit Trust and the Crown 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 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;
  - c the Research Unit Trust and the Crown each reserve the right to withdraw from negotiations if they become untenable. Either party is required to give written notice within 7 days of their intentions to withdraw from negotiations;
  - d media statements concerning the negotiations will only be made when mutually agreed by both parties;
  - e the location of meetings will be suitable and convenient to both parties; and
  - f the Crown may be in Treaty settlement negotiations with overlapping claimant groups. Issues arising from those negotiations, including issues concerning



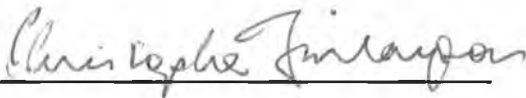
licensed Crown forest land, may be relevant to these negotiations, and vice versa.

### Amendments

32. The Research Unit Trust and the Crown 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 9<sup>th</sup> DAY OF July

For and on behalf of the Crown:



Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

For and on behalf of Ngāi Takoto:

Authorised Te Pa a Parore Marae Signatory:

Printed Name: METK NORMAN



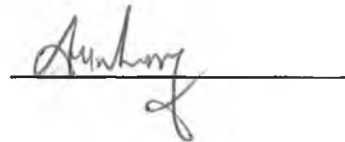
Authorised Mahimaru Marae Signatory:

Printed Name: Mary Peterson



Authorised Waimanoni Marae Signatory:

Printed Name: A MURRAY



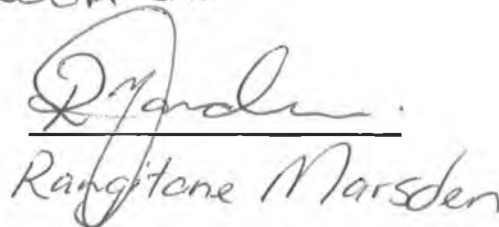
Authorised Kaimaumau Marae Signatory:

Printed Name: David Cook Sr

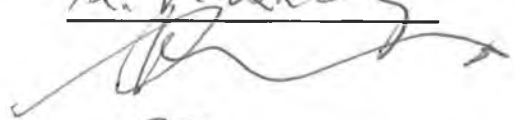


Authorised Signatory:

Printed Name:

  
Rangitane Marsden

Authorised Signatory:

T.K. Murray  


Printed Name:

Authorised Signatory:

M. Awarau  


Printed Name:

M Awarau



Office of Hon Dr Michael Cullen

Deputy Prime Minister

Attorney-General

Minister of Finance

Minister in Charge of Treaty of Waitangi Negotiations

Leader of the House of Representatives

18 AUG 2008

Rangitane Marsden  
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Tēnā koe

We refer to the Deed of Mandate submitted by the Ngāi Takoto a Iwi Research Unit. The documentation demonstrates an open and transparent process through which the claimant community has chosen to mandate the Ngāi Takoto a Iwi Research Unit.

On this basis, we are pleased to formally recognise the Ngāi Takoto a Iwi Research Unit as the mandated body to represent Ngāi Takoto in negotiations with the Crown for the comprehensive settlement of all historical Treaty claims of Ngāi Takoto.

Officials from the Office of Treaty Settlements will contact you shortly regarding Terms of Negotiation and claimant funding. We look forward to being updated on your progress towards Terms of Negotiation.

Nā māua noa,

Hon Dr Michael Cullen  
Minister in Charge of  
Treaty of Waitangi Negotiations

Hon Parekura Horomia  
Minister of Māori Affairs

cc: Mr David Russell - Chairperson, Ngāi Takoto a Iwi Research Unit  
cc: Hon Mita Ririnui - Associate Minister in Charge of Treaty of Waitangi Negotiations  
cc: Hon Shane Jones - Associate Minister in Charge of Treaty of Waitangi Negotiations