

TE RŪNANGA O NGĀTI MARU (TARANAKI) TRUST

and

THE CROWN

TERMS OF NEGOTIATION

JULY 2016

TERMS OF NEGOTIATION BETWEEN TE RŪNANGA O NGĀTI MARU (TARANAKI) TRUST 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 Te Rūnanga o Ngāti Maru (Taranaki) Trust (**Te Rūnanga**), on behalf of Ngāti Maru (Taranaki) (**Ngāti Maru**), as defined in clauses 5.1 and 7.

2 Purpose of these Terms of Negotiation

- 2.1 These Terms of Negotiation (Terms):

- 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 Ngāti Maru Historical Claims (as defined in clause 6.1);
- 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 principles for conducting the settlement negotiations:

a. *Utu/Whakaaronui*

The principle of utu means balance and reciprocity, including the accompanying value of manaakitanga, requiring respect, empathy and generosity.

b. *Future Prosperity/Tirohangaroa*

The principle of future prosperity means the commitment of the parties to negotiating outcomes that are to the greatest possible benefit of Ngāti Maru.

c. *Good Faith/Te Pono*

The principle of good faith means honesty and sincerity of intention and includes fostering a negotiating environment of mutual trust and confidence between the parties. In the interests of transparency, this involves the parties discussing their settlement framework, objectives and policies.

4 Objectives of the Negotiations

- 4.1 These Terms record the intention of the parties to settle the Historical Claims of Ngāti Maru by way of direct negotiations with the Crown.

4.2 The parties agree that the primary objective of the negotiations will be to develop a settlement that:

4.2.1 aligns with the Guiding Principles outlined at clause 3; and

4.2.2 settles all the Historical Claims of Ngāti Maru in a comprehensive, final, durable manner that is fair in the circumstances.

4.3 To that end, the objectives of Te Rūnanga in entering into these negotiations are captured in the following statement:

*Kia tū rangatira ai a Ngāti Maru ki runga i tōna whenua.
Kia whakapiki te ahurea rongomaiwhiti me te kotahitanga o Ngāti
Maru
Kia whakapiki te oranga o ngā uri katoa o Ngāti Maru, ā-whanau, ā-
tinana, ā-hinengaro, ā-wairua anō hoki*

4.4 In addition the parties agree the Terms will support the negotiation of a settlement that is intended to:

4.4.1 assist Ngāti Maru to build future prosperity;

4.4.2 assist the Crown in its ongoing endeavours to restore and maintain its honour with Ngāti Maru;

4.4.3 actively enhance the ongoing relationship of Ngāti Maru with the Crown in terms of Te Tiriti o Waitangi/The Treaty of Waitangi and otherwise;

4.4.4 recognise and address the unjust nature, manner and extent of the Crown's breaches of its obligations under the Te Tiriti o Waitangi/the Treaty of Waitangi to Ngāti Maru and acknowledge the effect that those breaches have had on the economic, social, cultural and political wellbeing of Ngāti Maru;

4.4.5 effect a programme of restoration that is generationally relevant;

4.4.6 provide a platform for Ngāti Maru to establish an economic base and assist their future cultural, political and economic development and the well-being of their hapū, marae/pā and whanau; and

4.4.7 otherwise demonstrate and record that both parties have acted in accordance with the Guiding Principles in negotiating the settlement

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

4.5 The settlement will not do any of the following:

4.5.1 diminish or in any way affect any rights that Ngāti Maru 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

4.5.2 in any way affect any rights that Ngāti Maru have arising from Te Tiriti o Waitangi/the Treaty of Waitangi; or

4.5.3 extinguish any aboriginal or customary rights of Ngāti Maru.

4.6 In addition, the Crown:

4.6.1 acknowledges that Te Rūnanga view the settlement as a means of removing the sense of grievance and restoring Ngāti Maru faith and trust in the Crown; and

4.6.2 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 Te Rūnanga o Ngāti Maru (Taranaki) Trust

5.1 Te Rūnanga is the representative body mandated by Ngāti Maru (as defined in clause 7.1) comprising of up to seven trustees elected by Ngāti Maru.

6 Historical Claims

6.1 In this document, **historical claims** -

6.1.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that -

(a) is, or is founded on, a right arising -

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 -

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

6.1.2 includes every claim to the Waitangi Tribunal to which clause 6.1.1 applies that relates exclusively to the settling group or a representative entity, including the following claims:

(a) Wai 136 – Ngati Maru Land Claim:

(b) Wai 1609 – Ngati Maru (Burrows and Hohaia) Claim; and

6.1.3 includes every other claim to the Waitangi Tribunal to which clause 6.1.1 applies, so far as it relates to the settling group or a representative entity, including the following claims:

- (a) Wai 54 – Nga Iwi o Taranaki Claim:
- (b) Wai 131 – Taranaki Maori Trust Board Claim
- (c) Wai 139 – Taranaki Land Confiscation Claim
- (d) Wai 583 – Te Iwi o Ngati Maru Inc. Claim
- (e) Wai 889 (historical aspects only) – Ngati Ruanui Deed of Settlement (South Taranaki) Claim

6.2 However, **historical claims** does not include the following claims:

6.2.1 a claim that a member of the settling group, or a whānau, hapū, or group referred to in clause 7.1.2, may have that is, or is founded on, a right arising as a result of being descended from an tupuna who is not referred to in clause 7.1.1:

6.2.2 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 6.2.1.

6.3 To avoid doubt, clause 6.1.1 is not limited by clauses 6.1.2 or 6.1.3.

6.4 To avoid doubt, this settlement does not affect the right of any group to apply for recognition of customary interests under the Marine and Coastal Area (Takutai Moana) Act 2011.

6.5 The detail of the historical claims of Ngāti Maru will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

7 **Definition of Ngāti Maru (Taranaki)**

7.1 **Ngāti Maru or the settling group means -**

7.1.1 **the collective group composed of individuals who descend from one or more of the Ngāti Maru tupuna; and**

7.1.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 6.1.1, including the following groups:

- (a) Ngāti Maruwharanui;
- (b) Ngāti Hinemōkai;
- (c) Ngāti Te Ika;

- (d) Ngāti Kui;
- (e) Ngāti Kōpu/Kōpua;
- (f) Ngāti Tamatāpui;
- (g) Ngāti Tamakehu;
- (h) Ngāriki; and

7.1.3 every individual referred to in clause 7.1.1.

7.2 For the purposes of clause 7.1.1 -

7.2.1 a person is descended from another person if the first person is descended from the other by -

- (a) birth; or
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with the settling group's tikanga (Māori customary values and practices); and

7.2.2 **Ngāti Maru tupuna** means an individual who:

- (a) exercised customary rights by virtue of being descended from:
 - (i) Maruwharanui; or
 - (ii) a recognised tupuna of any of the groups referred to in clause 7.1.2; and
- (b) exercised customary rights predominantly in relation to Ngāti Maru (Taranaki) area of interest after 6 February 1840; and

7.2.3 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including -

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources.

7.3 The detail of the definition of Ngāti Maru will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

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.

9 Mandate to Negotiate

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

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

9.3 Te Rūnanga 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 Te Rūnanga of any correspondence it receives about the mandate of Te Rūnanga.

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 Without in any way limiting the matters to be negotiated between the parties or committing the parties to an outcome, Te Rūnanga and the Crown acknowledges that the following matters will be the subject of settlement negotiations:

10.2.1 Crown apology - the parties will explore the most appropriate way for the Crown to apologise to Ngāti Maru;

10.2.2 Historical account and Crown acknowledgements - the parties will explore the historical relationship between the Crown and Ngāti Maru in a way that recognises and acknowledges the impact of Crown Treaty breaches against Ngāti Maru;

10.2.3 Cultural redress - the parties will negotiate cultural redress elements, including redress instruments that seek to enhance the relationship between the Crown and Ngāti Maru;

10.2.4 Financial and commercial redress;

10.2.5 Socio economic impact issues - the parties will explore the impact of social policy issues that have had a direct impact on Ngāti Maru hapu, marae/pa and whanau;

10.3 In addition to the matters referred to in clause 10.2, the Crown and Te Rūnanga will explore the use of innovative and appropriate settlement mechanisms intended to reflect and provide for Ngāti Maru interests.

10.4 The parties acknowledge that the Taranaki Report: Kaupapa Tautahi, *He Whiritaunoka: The Whanganui Land Report* and The Whanganui River Report of the Waitangi Tribunal may contain discussion of issues that may be relevant to the subject matters to be negotiated.

11 Taranaki Maunga Negotiations

11.1 The parties agree that negotiations for an apology and cultural redress in relation to any of the historical claims that relate Taranaki Maunga will be developed in conjunction with the other iwi of Taranaki through a separate collective negotiation.

11.2 The apology and cultural redress for Ngāti Maru, and the other iwi of Taranaki, in relation to the historical claims that relate to Taranaki Maunga will not include any financial or commercial redress.

11.3 To avoid doubt, clauses 11.1 and 11.2 do not limit clause 6.

11.4 "Taranaki Maunga" means the feature with the official geographical name 'Mount Taranaki' or 'Mount Egmont'.

11.5 "Other iwi of Taranaki" means Ngā Rauru Kiihahi, Ngāruahine, Ngāti Mutunga, Ngāti Tama, Ngāti Ruanui, Taranaki Iwi and Te Atiawa.

12 Process of Negotiations

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

Agreement in Principle

12.1.1 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;

Initialed Deed of Settlement

12.1.2 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 Ngāti Maru;

Governance Entity

12.1.3 the approval by the Crown, of a governance entity to represent Ngati Maru, and to receive and manage the settlement redress;

Ratification

- 12.1.4 the presentation by Te Rūnanga of the initialled Deed of Settlement to Ngāti Maru for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Ngāti Maru for ratification in a manner to be agreed by the parties;

Deed of Settlement Signed if Ratified

- 12.1.5 if the Deed of Settlement is ratified, Te Rūnanga will sign the Deed of Settlement on behalf of Ngāti Maru and a Crown representative will sign on behalf of the Crown;

Governance Entity Establishment

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

Settlement Legislation

- 12.1.7 the passage of settlement legislation. The settlement of the historical claims of Ngāti Maru will come into effect once the settlement legislation receives the Royal Assent.

13 What the Settlement of the Historical Claims of Ngāti Maru will enable

- 13.1 The parties agree that the settlement of all historical claims of Ngāti Maru will enable the:
- 13.1.1 facilitation of a relationship between Ngāti Maru and the Crown based on the Guiding Principles of utu, future prosperity and good faith as expressed in clause 3;
- 13.1.2 renewal of the political relationship between the Crown and Ngāti Maru;
- 13.1.3 final settlement of all historical claims of Ngāti Maru, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;
- 13.1.4 discontinuance of the Land Information New Zealand landbank arrangement for the protection of potential settlement properties for the benefit of Ngāti Maru;
- 13.1.5 removal, for the benefit of Ngāti Maru 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
- 13.1.6 removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the historical claims of Ngāti Maru, 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.

14 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.

15 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 Te Rūnanga as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 14.2 Te Rūnanga will discuss Ngāti Maru'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 Te Rūnanga as it considers appropriate and will carry out its own consultation with overlapping claimant groups.

16 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 Ngāti Maru area of interest, the Crown will regularly update Te Rūnanga 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 Te Rūnanga 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 Te Rūnanga 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.

17 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.

18 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 Ngāti Maru (in a manner to be agreed by both parties);
 - 17.1.2 is in a form that both parties agree adequately represents Ngāti Maru;
 - 17.1.3 has transparent decision making processes; and
 - 17.1.4 is accountable to Ngāti Maru.

19 Claimant Funding

- 18.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Ngāti Maru. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
- 18.2 Te Rūnanga will adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, Te Rūnanga will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.
- 18.3 Te Rūnanga 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.

20 Waiver of Other Avenues of Redress

- 19.1 During these negotiations, Te Rūnanga and Ngāti Maru registered claimants agree neither to initiate nor to pursue any legal proceedings relating to the subject matter of the negotiations.

21 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 Ngāti Maru claims an interest, the Office of Treaty Settlements will inform Te Rūnanga of the proposal where possible;
 - 20.1.5 early in the negotiation process both parties will discuss Ngāti Maru'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;

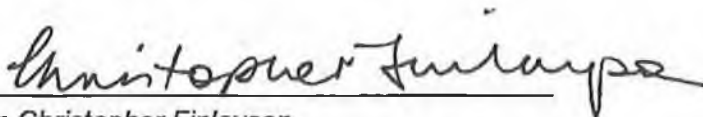
- 20.1.6 media statements concerning the negotiations will only be made when mutually agreed by both parties;
- 20.1.7 the location of meetings will be suitable and convenient to both parties; and
- 20.1.8 the Crown and Te Rūnanga recognise the importance of using Te Reo Māori in the negotiations, where appropriate. Te Rūnanga will provide the Crown with adequate notice should a translator be required.

22 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.

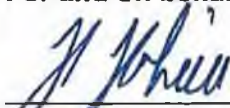
Signed this 27 day of July 2016

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of Te Rūnanga o Ngāti Maru (Taranaki) Trust:



Holden Hohaia
Chair, Te Rūnanga o Ngāti Maru Trust