

TERMS OF NEGOTIATION BETWEEN MANA AHURIRI 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 11, and Mana Ahuriri Incorporated (Mana Ahuriri) on behalf of the Ahuriri Hapū, 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 Historical Claims of the Ahuriri Hapū (as defined in clause 9);
 - 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 the Ahuriri Hapū would form a Large Natural Group for the purpose of historical Treaty settlement negotiations.
4. On 29 January 2010 the Minister for Treaty of Waitangi Negotiations and the Associate Minister of Māori Affairs recognised the mandate of Mana Ahuriri to represent the Ahuriri Hapū in negotiations with the Crown for the settlement of their Historical Claims. Recognition of the mandate was formally communicated in a letter dated 2 February 2010, attached as appendix 1.

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 Historical Claims of the Ahuriri Hapū (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 the Ahuriri Hapū 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 the Ahuriri Hapū may have;
- c recognises the nature and extent of the breaches of the Crown's obligations to the Ahuriri Hapū 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 the Ahuriri Hapū;
 - d recognises the mana of the Ahuriri Hapū;
 - e provides a platform to assist the Ahuriri Hapū 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. The Ahuriri Hapū means:

- a those who descend from:
 - i. Hikateko (for Ngati Hinepare);
 - ii. Tumahuki (for Ngati Mahu);
 - iii. Tawhao, other than the descendants of Tahywa (female) who did not maintain ahi kaa roa (for Ngai Tawhao);
 - iv. Hikawera II through Pitaka Te Otupeka, Tareha Te Moananui (for Ngati Paarau);
 - v. Te Atawhaki, Te Putanga-o-Te Rangi (for Ngati Matepu);
 - vi. Tukapua I (for Ngati Tu); and
 - vii. Whararakau, Te Hiku (for Ngai Te Ruruku);
- 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 6a 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.
8. The definition of the Ahuriri Hapū 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.

Historical Claims of the Ahuriri Hapū

9. Historical Claims of the Ahuriri Hapū means all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ahuriri Hapū claimant or any person or group representing the Ahuriri Hapū 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 the Ahuriri Hapū:
 - i. Wai 55 (Te Whanganui-a-Orotu claim);
 - ii. Wai 168 (Tutaekuri River/Waiohiki lands claim);
 - iii. Wai 201 (Wairoa ki Wairarapa claims/Ngati Kahungunu generic claim);
 - iv. Wai 299 (insofar as this claim relates to the Petane and Te Pahou Blocks);
 - v. Wai 400 (insofar as this claim relates to the interests of Ngati Hinepare, Ngati Mahu, Ngai Tawhao, Ngati Paarau, Ngati Matepu, and Ngai Te Ruruku under the Ahuriri Purchase);

- vi. Wai 692 (the historical aspects of the Napier Hospital and health services claim, which remain unsettled by the Deed of Settlement dated 3 October 2008);
 - vii. Wai 732 (particular claim by Eden whanau to Petane and Omaranui Blocks); and
 - viii. such other Wai claims identified by the Ahuriri Hapu in the course of negotiations;
- d does not include:
- i. Wai 299 (insofar as this claim relates to the Mohaka-Waikare Raupatu, as this will be negotiated by MTI);
 - ii. Wai 400 (insofar as this claim relates to interests of Ngati Tu and Ngati Hineuru in the Ahuriri Purchase, as set out in the area of interest map attached as **Appendix 1**, as these interests will be negotiated by MTI and NHII respectively).
- e have not already been settled.
10. 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

11. 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

12. The Crown received the Mana Ahuriri Deed of Mandate and attached is the Crown's letter (Appendix 1), which recognises the mandate of Mana Ahuriri for the purpose of negotiating the settlement of Historical Claims of the Ahuriri Hapū with the Crown.

Mandate Maintenance

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

Subject Matter for Negotiation

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

Process of Negotiations

19. For the purposes of these Terms, the following definitions apply:
 - a MTI means Maungaharuru Tangitu Incorporated, the group the Crown has recognised that holds a mandate to represent Ngāi Tatara, 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 NHII means Ngāti Hineuru Iwi Incorporated, the group the Crown has recognised that holds a mandate to represent Ngāti Hineuru as set out in Terms of Negotiation between NHII and the Crown signed in June 2010.

Parallel Negotiations

20. The parties will endeavour to progress the negotiations at the same pace and in parallel to the negotiations between the Crown and the claimant groups represented by MTI and NHII.
21. If the parallel negotiations are not able to proceed at the same pace as the negotiations between the Crown and MTI and NHII, the parties will meet and may discuss a new timetable.
22. Mana Ahuriri acknowledge that it may be appropriate and efficient for Mana Ahuriri to be at a discussion forum with NHII and/or MTI on shared issues to be agreed between the parties.

Milestones in Negotiations

23. 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 the Historical Claims of the Ahuriri Hapū, which will be recorded in the Deed of Settlement.
 - b **Initialled Deed of Settlement:** Mana Ahuriri 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 the Ahuriri Hapū.
 - c **Ratification:** The initialled Deed of Settlement will be presented to the Ahuriri Hapū for ratification in a manner to be agreed by the parties. A governance entity structure will also be presented to the Ahuriri Hapū 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 Mana Ahuriri on behalf of the Ahuriri Hapū 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 the Historical Claims of the Ahuriri Hapū 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 Mana Ahuriri, NHII and MTI 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.

What the Settlement of the Historical Claims of the Ahuriri Hapu will enable

24. The parties agree that the settlement of the Historical Claims of the Ahuriri Hapū will enable:
- a final settlement of all the Historical Claims of the Ahuriri Hapū, 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 the Ahuriri Hapū;
 - 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 the Historical Claims of the Ahuriri Hapū 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 Historical Claims of the Ahuriri Hapū, 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 the Ahuriri Hapū or the Deed of Settlement, or any settlement legislation); and
 - e discontinuance of legal proceedings in relation to the Historical Claims of the Ahuriri Hapū.

Communication

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

26. On the request of Mana Ahuriri, OTS will provide all documents that affect the Ahuriri Hapū negotiations that would be disclosed if Mana Ahuriri were to make a request under the Official Information Act 1982.

Overlapping Claims

27. 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 the Ahuriri Hapū as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
28. Mana Ahuriri 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.
29. 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 Ahuriri Hapū area of interest. The Crown will carry out its own consultation with overlapping claimants in addition to discussions between claimant groups.
30. Where the Crown is engaged in Treaty settlement negotiations with another claimant group whose area of interest includes part of the Ahuriri Hapū area of interest, the Crown will regularly update Mana Ahuriri on the progress of those negotiations (without disclosing any confidential information).
31. 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 the Ahuriri Hapū have also expressed an interest then the Crown, prior to signing an AIP, (but within a reasonable time) will:
- a notify Mana Ahuriri 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

32. 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 the Ahuriri Hapū (in a manner agreed by both parties);
 - b adequately represents the Ahuriri Hapū;
 - c has transparent decision-making and dispute resolution processes; and

d is accountable to, the Ahuriri Hapū.

Not bound until Deed of Settlement

33. 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

34. The parties acknowledge that the Crown will make a contribution to the negotiation costs of Mana Ahuriri. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.
35. 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.
36. On 2 February 2010 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 signing these Terms, Mana Ahuriri intended to provide a further submission on the funding set out in this letter.
37. The Crown acknowledges that the Crown's contribution to negotiation costs will be fair in relation to funding provided to other claimant groups.
38. Mana Ahuriri 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. Mana Ahuriri will provide an invoice for each instalment of funding received from the Crown.
39. In the event that funding issues arise for Mana Ahuriri 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

40. The parties agree that during these negotiations, neither the Ahuriri Hapū 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.
41. The parties note that the Waitangi Tribunal has begun preparations in respect of its Taihape: Rangitikei ki Rangipo Inquiry (**Taihape Inquiry**). The parties agree that nothing in these terms:

- a Will require the Ahuriri Hapū to withdraw as a party to the Taihape Inquiry;
 - b Will prevent the Ahuriri Hapū from continuing to participate in the Taihape 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 the Ahuriri Hapū that are the subject of the Taihape Inquiry; or
 - ii. adversely affect the identification, definition, nature, or extent of existing customary rights and interests of the Ahuriri Hapū; and
 - c Will prevent the Ahuriri Hapū providing research and evidence of mana whenua, ahi kaa roa, and customary activities within the traditional rohe of the Ahuriri Hapū.
42. Mana Ahuriri agrees that it will provide the Crown with 10 working days notice before initiating, pursuing or joining any further proceedings.
43. If satisfied that continuing negotiations with Mana Ahuriri is untenable, in light of any such proceedings, the Crown may withdraw from negotiations.

Procedural Matters

44. 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 Mana Ahuriri, OTS agrees to promptly provide any correspondence it receives about the negotiations of Mana Ahuriri that would be disclosed if Mana Ahuriri were to make a request under the Official Information Act 1982; and to discuss with Mana Ahuriri any issues arising from that correspondence or enquiry before replying to it.

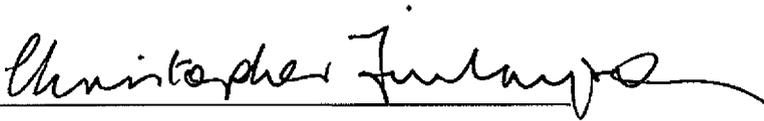
- d both parties reserve the right to withdraw from negotiations if they become untenable;
- e media statements concerning the negotiations will only be made when mutually agreed by both parties; and
- f the location of meetings will be suitable and convenient to both parties.

Amendments

45. 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 22nd DAY OF June 2010

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of Mana Ahuriri Incorporated

Authorised Signatory: 

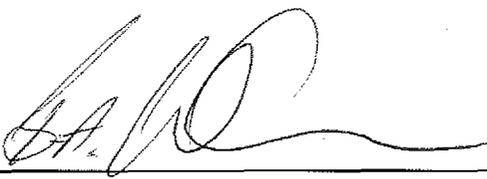
Printed Name: Dr Michael Cullen
Lead Negotiator

Authorised Signatory: 

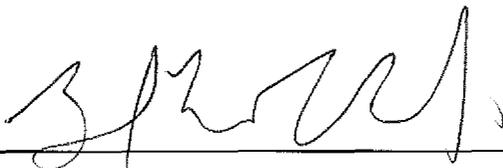
Printed Name: Piriniha Prentice
Chairman

Authorised Signatory:  _____

Printed Name: Ranui Toatoa
Deputy Chairman

Authorised Signatory:  _____

Printed Name: Barry Wilson
Komiti Member

Authorised Signatory:  _____

Printed Name: Nigel Hadfield
Komiti Member