

**UENUKU CHARITABLE TRUST**

**and**

**THE CROWN**

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**TERMS OF NEGOTIATION**

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# TERMS OF NEGOTIATION BETWEEN UENUKU CHARITABLE 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 Uenuku Charitable Trust (**UCT**), on behalf of central Whanganui (**Te Korowai o Wainuiārua**), 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 Te Korowai o Wainuiārua 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 Te Korowai o Wainuiārua Historical Claims. All decisions made in relation to the resolution of outstanding Uenuku claims will be measured against the following two statements:

- 3.1.1 To honour tūpuna
- 3.1.2 To provide a foundation for tamariki and mokopuna

## 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 Te Korowai o Wainuiārua 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 Te Korowai o Wainuiārua has 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 Te Korowai o Wainuiārua may have;

4.1.3 recognises the nature, extent and injustice of breaches of the Crown's obligations to Te Korowai o Wainuiārua under Te Tiriti o Waitangi / The Treaty of 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 Te Korowai o Wainuiārua;

4.1.4 will provide a platform to assist Te Korowai o Wainuiārua to develop their economic base. In addition, the Crown acknowledges that Te Korowai o Wainuiārua 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:

4.2.1 acknowledges that UCT views the settlement as a means of removing the sense of grievance and restoring Te Korowai o Wainuiārua's faith and trust in the Crown; and

4.2.2 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 Uenuku Charitable Trust**

5.1 UCT is the representative body mandated by Te Korowai o Wainuiārua (as defined in clause 6.1) comprising 38 available trustee seats. These are made up of 26 hapū seats, 3 marae seats, 3 Wai claimants seats, 3 uri seats and 3 rangatahi seats.

## **6. Definition of Te Korowai o Wainuiārua**

6.1 Te Korowai o Wainuiārua is:

6.1.1 the collective group represented by UCT composed of persons:

(a) who descend from a Te Korowai o Wainuiārua ancestor; and

- (b) who exercised or who whakapapa from persons who exercised customary rights predominantly within the Te Korowai o Wainuiārua area of interest set out in the area of interest map below and in clause 3.3.1 of the Deed of Mandate on or after 6 February 1840; and
- (c) who are members of one or more of the following hapū/descent groups:

Ngāti Atamira  
Ngāti Hae  
Ngāti Hineiti  
Ngāti Hinekoropango  
Ngāti Hinekumara  
Ngāti Hinekura  
Ngāti Hineraro  
Ngāti Hinerua  
Ngāti Kahukurapane  
Ngāti Kahukurapango  
Ngāti Kahutuna  
Ngāti Kaponga  
Ngāti Kowhaikura  
Ngāti Kura  
Ngāti Kuratangiwharau  
Ngāti Maringi  
Ngāti Matakaha  
Ngāti Ngarongoā  
Ngāti Paekawa  
Ngāti Pare  
Ngāti Parekītai  
Ngāti Poumua  
Ngāti Puku  
Ngāti Rangi ki Manganui-o-te-Ao  
Ngāti Ratuhi  
Ngāti Rongotehengia  
Ngāti Ruakōpiri  
Ngāti Ruru  
Ngāti Taipoto  
Ngāti Takapupapa  
Ngāti Tamahaki  
Ngāti Tamahuatahi  
Ngāti Tamakana  
Ngāti Taongakorehu  
Ngāti Tara  
Ngāti Tauengarero  
Ngāti Taumatamahoe

Ngāti Te Aomāpuhia  
Ngāti Tuāwhiti  
Ngāti Tūhoro  
Ngāti Tūkaiora  
Ngāti Tukapua  
Ngāti Tūkoio  
Ngāti Tūmanuka  
Ngāti Tūtehi-o-te-rangi  
Ngāti Tuwharekai  
Ngāti Uenuku  
Ngāti Waikaramihi  
Ngāti Whaikiterangi  
Ō Te Rangitautahi  
Rakaetoia  
Tangatakore

- 6.1.2 UCT also represents hapū that affiliate to both Te Korowai o Wainuiārua and other large natural groups. These shared hapū are included in the mandate to the extent that they trace descent from Tamakana, Tamahaki or Uenuku ki Manganui o te Ao. These hapū include:

Ngāti Hau  
Ngāti Hekeāwai  
Ngāti Hinewai  
Ngāti Kurawhatia  
Patutokotoko

- 6.1.3 UCT represents Patutokotoko insofar as it relates to the tūpuna Tamakana, Tamahaki or Uenuku ki Manganui o te Ao.

6.2 The parties acknowledge that the definition of Te Korowai o Wainuiārua includes any whānau, hapū or group of persons who are members of Te Korowai o Wainuiārua only to the extent that those whānau, hapū or groups whakapapa from the ancestor Tamakana, Tamahaki, or Uenuku ki Manganui o te Ao, nā Tukaihoru who exercised customary rights within the Te Korowai o Wainuiārua area of interest.

6.3 The detail of the definition of Te Korowai o Wainuiārua will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

6.4 For the purposes of clause 6.1.1 –

- 6.4.1 a person is **descended** from another person if the first person is descended from the other by –

- (a) birth;
- (b) legal adoption; or

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

6.4.2 a **Te Korowai o Wainuiārua ancestor** means an individual who:

- (a) exercised customary rights by virtue of being descended from:
  - (i) Tamakana; or
  - (ii) Tamahaki; or
  - (iii) Uenuku ki Manganui-o-te-Ao, nā Tūkaihoru; or
  - (iv) a recognised ancestor of any groups listed in clause 6.1.1 (c) ;  
and
- (b) exercised the customary rights referred to in clause 6.5.2 (a) predominantly in relation to the Te Korowai o Wainuiārua Area of Interest after 6 February 1840.

6.5 **Customary rights** means rights according to tikanga māori (Māori customary values and practices), including –

6.5.1 rights to occupy land; and

6.5.2 rights in relation to the use of land or other natural or physical resources.

6.6 The detail of the definition of Te Korowai o Wainuiārua will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

# UENUKU AREA OF INTEREST

Total Area  
1,264,257 Acres  
511,627 Hectares



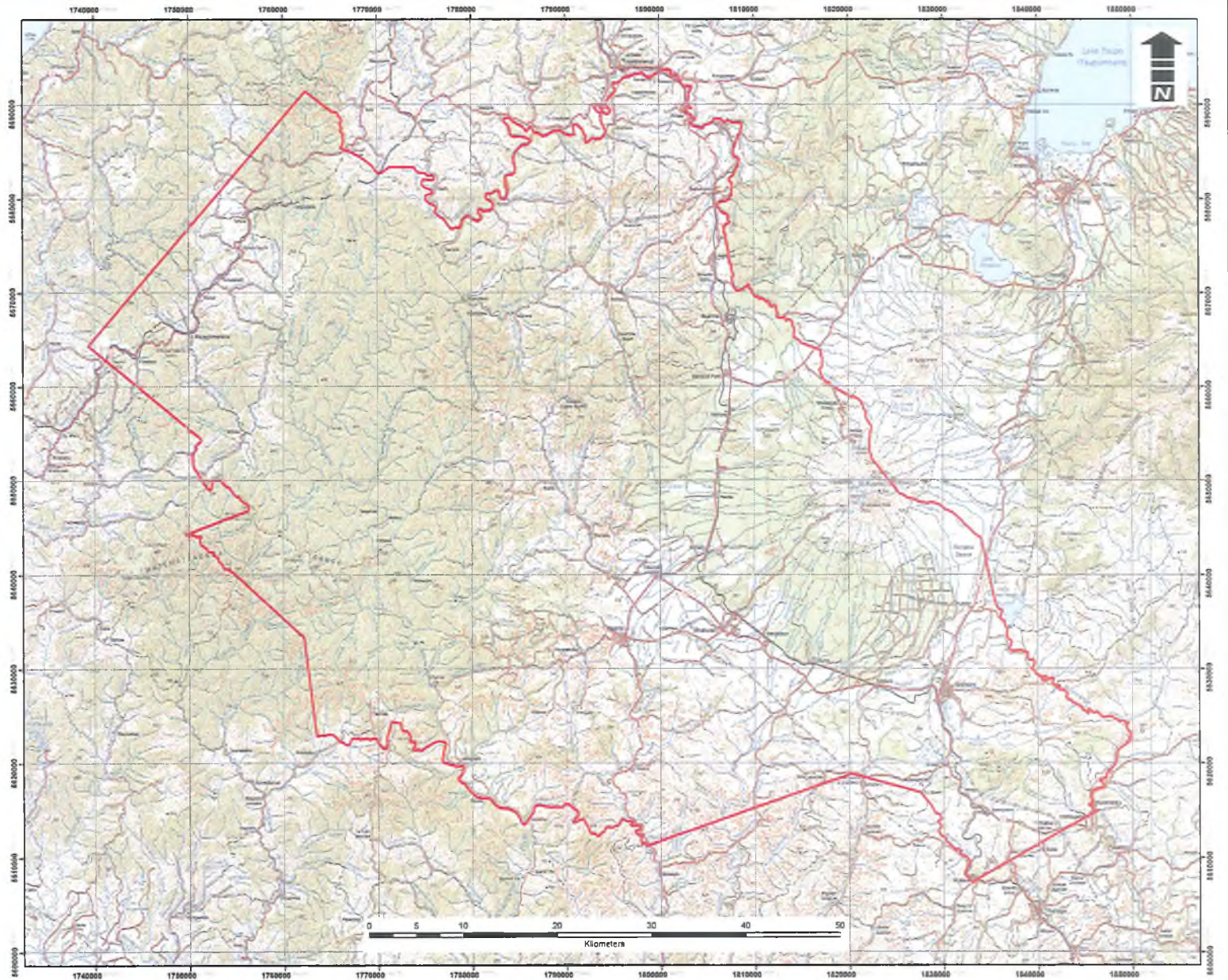
Coordinate System: NZGD2000 New Zealand  
Transverse Mercator 2000  
Projection: Transverse Mercator  
Datum: NZGD 2000  
false easting: 1,600,000.0000  
false northing: 10,000,000.0000  
central meridian: 173.0000  
Units: Meters

Data Sources:

Basemap - LINZ Topo250 Series sourced from  
LINZ online database.

Uenuku rohe boundary composed with information  
supplied from the Uenuku Charitable Trust.

Date of Composition: 08/06/2015



## 7. Te Korowai o Wainuiārua Historical Claims

### 7.1 Te Korowai o Wainuiārua 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 Te Korowai o Wainuiārua claimant or any person or group representing Te Korowai o Wainuiārua 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) under legislation; and

7.1.2 includes every claim to the Waitangi Tribunal to which clause 7.1.1 applies that relates exclusively to Te Korowai o Wainuiārua or a representative entity, including the following claims:

- (a) Wai 73 (Waimarino Lands);
- (b) Wai 458 (Ohotu 1C2 Block);
- (c) Wai 836 (Makotuku Block IV);
- (d) Wai 843 (Waimarino Block and Waikune Prison);
- (e) Wai 954 (Tamakana Waimarino (No. 1) Block);
- (f) Wai 1072 (Ngāti Ruakopiri Waimarino Block Alienation);
- (g) Wai 1073 (Ngāti Kowhaikura Waimarino and Ruapehu Blocks);
- (h) Wai 1084 (Te Tangata Whenua o Uenuku Foreshore and Seabed);
- (i) Wai 1170 (Tangata Whenua o Uenuku Land);
- (j) Wai 1181 (Urewera 2A2 Block);
- (k) Wai 1189 (Ngāti Kahukurapango and Ngāti Matakaha land);
- (l) Wai 1192 (Ngāti Maringi Land);
- (m) Wai 1197 (Te Hauhangaroa No. 3 and Associated Blocks);



- (n) Wai 1202 (Whanganui River Trust Board Act representation claim);
- (o) Wai 1224 (Uenuku Tuwharetoa lands and minerals);
- (p) Wai 1261 (Ngāti Tara Lands);
- (q) Wai 1388 (Tamakana, Ruakopiri and Maringi Mana Whenua);
- (r) Wai 1393 (Te Whare Ponga Taumatamahoe Inc Society and Te Whare Ponga Whanau Trust);
- (s) Wai 1394 (Tahana Whanau);
- (t) Wai 1633 (Raetihi 2B 3B Blocks);
- (u) Wai 1738 (Waimarino Block (Bristol));
- (v) Wai 2203 (Waimarino No. 3 Non-sellers Reserve);
- (w) Wai 2204 (Waimarino 3, Waimarino 4 and Ngapakihi Blocks); and

7.1.3 includes every other claim to the Waitangi Tribunal to which clause 7.1.1 applies, so far as it relates to Te Korowai o Wainuiārua or a representative entity, including the following claims:

- (a) Wai 48 (Whanganui Ki Maniapoto);
- (b) Wai 81 (Waihaha and other Lands);
- (c) Wai 146 (King Country Lands);
- (d) Wai 167 (Whanganui River);
- (e) Wai 221 (Waimarino No. 1 Block and Railway Lands);
- (f) Wai 428 (Pipiriki Township);
- (g) Wai 555 (Taumatamahoe Block);
- (h) Wai 759 (Whanganui Vested Lands);
- (i) Wai 1191 (Ngāti Hinewai Land);
- (j) Wai 1229 (Atihau Lands);
- (k) Wai 1594 (Descendants of Te Hore Te Waa Nukurarae); and
- (l) Wai 1607 (Ngāti Kurawhatia Lands).

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

- (a) a claim that a member of Te Korowai o Wainuiārua, or a whānau, hapū, or group referred to in clause 6.1.2, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in clause 6.1.1 (a);
- (b) a claim that a member of Ngāti Hau, Ngāti Hekeāwai, Ngāti Hinewai, Ngāti Kurawhatia, and Patutokotoko referred to in clause 6.1.2 may have that is, or is founded on, a right arising from being descended from an ancestor not referred to in clause 6.1.1 (a);
- (c) a claim that a representative entity may have to the extent the claim is, or is founded on, a claim referred to in clause 7.1.4(a) or clause 7.1.4(b).

7.1.5 To avoid doubt, clause 7.1.1 is not limited by clauses 7.1.2 or 7.1.3.

7.2 The parties acknowledge that the definition of Te Korowai o Wainuiārua Historical Claims includes those historical claims of Te Korowai o Wainuiārua only to the extent that those historical claims relate to Te Korowai o Wainuiārua 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.

## **9. Mandate to Negotiate**

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

9.2 If representation issues arise during negotiations that cannot be resolved by agreement within Te Korowai o Wainuiārua, the Crown will discuss with UCT a process to address those issues.

9.3 UCT 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 UCT of any correspondence it receives about the mandate of UCT.

## **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:

(a) the Crown's apology and acknowledgements;

(b) cultural redress; and

(c) financial and commercial redress.

10.3 The parties acknowledge that the *He Whiritaunoka: The Whanganui Land Report* and reports of the Waitangi Tribunal may contain discussion of issues that may be relevant to the subject matters to be negotiated.

## **11. Matters to be excluded**

11.1 The Crown has made an offer to all iwi and hapū with interests in Tongariro National Park and Whanganui National Park to enter into collective negotiations focussed on current and future arrangements over Tongariro National Park and Whanganui National Park. Collective negotiations in respect of Tongariro National Park and Whanganui National Park will be separate from any comprehensive negotiations that those iwi and hapū with interests in Tongariro National Park and Whanganui National Park may be engaged in, including UCT. It is the expectation that the individual comprehensive negotiations with UCT will provide Crown apology redress, cultural redress, and commercial and financial redress, including in relation to Tongariro National Park and Whanganui National Park. However, any redress focussed on current and future arrangements within Tongariro National Park and Whanganui National Park will be addressed in the collective negotiations.

11.2 The Crown and UCT acknowledge that other iwi and hapū have interests in Tongariro National Park and Whanganui National Park and agree that, should they wish to, those iwi and hapū with interests will actively engage in collective redress discussions with a view to negotiating a collective redress model for the benefit of the iwi and hapū with interests in Tongariro National Park and Whanganui National Park. It is envisaged that this will include all iwi and hapū with interests in Tongariro National Park and Whanganui National Park agreeing upon a process to negotiate a collective settlement of their interests in Tongariro National Park and Whanganui National Park.

## **12. Matters already settled**

- 12.1 The parties acknowledge all claims as they relate to the Whanganui River are settled. The Te Awa Tupua (Whanganui River Claims Settlement) Bill (and resulting enactment) defines the claimants (Whanganui Iwi) and the scope of the claims settled by that legislation. For the avoidance of doubt, this includes Tamakana, Tamahaki, and Uenuku ki Manganui-o-te-Ao, nā Tūkaihoru.
- 12.2 Through the negotiation UCT may raise matters as they relate to its rohe and its governance.

## **13. Process of Negotiations**

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

### Agreement in Principle

- 13.1.1 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

- 13.1.2 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 Te Korowai o Wainuiārua;

### Governance Entity

- 13.1.3 the approval by the Crown of a governance entity to represent Te Korowai o Wainuiārua, and to receive and manage the settlement redress;

### Ratification

- 13.1.4 the presentation by UCT of the initialled Deed of Settlement to Te Korowai o Wainuiārua for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Te Korowai o Wainuiārua for ratification in a manner to be agreed by the parties;

### Deed of Settlement Signed if Ratified

- 13.1.5 if the Deed of Settlement is ratified, UCT will sign the Deed of Settlement on behalf of Te Korowai o Wainuiārua and a Crown representative will sign on behalf of the Crown.

### Governance Entity Establishment

- 13.1.6 the establishment of the approved governance entity. This will only occur if Te Korowai o Wainuiārua ratify the governance entity to

represent Te Korowai o Wainuiārua, and to receive and manage the settlement redress; and

#### Settlement Legislation

13.1.7 the passage of settlement legislation. The settlement of the historical claims of Te Korowai o Wainuiārua will come into effect once the settlement legislation receives the Royal Assent.

### **14. What the Settlement of the Historical Claims of Te Korowai o Wainuiārua will enable**

14.1 The parties agree that the settlement of all historical claims of Te Korowai o Wainuiārua will enable the:

14.1.1 final settlement of all historical claims of Te Korowai o Wainuiārua, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;

14.1.2 discontinuance of the Office of Treaty Settlements landbank arrangement for the protection of potential settlement properties for the benefit of Te Korowai o Wainuiārua;

14.1.3 removal, for the benefit of Te Korowai o Wainuiārua 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;

14.1.4 removal other judicial body or tribunal in respect of the historical claims of Te Korowai o Wainuiārua, 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

14.1.5 discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to the historical claims of Te Korowai o Wainuiārua. The parties acknowledge that this will not affect the claims of Te Korowai o Wainuiārua that are currently before the Waitangi Tribunal.

### **15. Communication**

15.1 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.

## **16. Overlapping Claims**

- 16.1 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 UCT as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups. UCT will discuss Te Korowai o Wainuiārua'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.
- 16.2 The Crown may assist UCT as it considers appropriate and will carry out its own consultation with overlapping claimant groups.

## **17. Overlapping Negotiations**

- 17.1 Where the Crown is engaged in negotiations for the settlement of historic claims with claimant groups whose rohe includes part of the Te Korowai o Wainuiārua area of interest, the Crown will regularly update UCT on the progress of those negotiations (without disclosing any confidential information).
- 17.2 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 UCT 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 UCT 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**

- 17.1 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**

- 18.1 The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:
- 18.1.1 has been ratified by Te Korowai o Wainuiārua (in a manner to be agreed by both parties);
  - 18.1.2 is in a form that both parties agree adequately represents Te Korowai o Wainuiārua);

18.1.3 has transparent decision making processes; and

18.1.4 is accountable to Te Korowai o Wainuiārua.

## **19. Claimant Funding**

19.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Te Korowai o Wainuiārua. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.

19.2 UCT will adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, UCT will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.

19.3 UCT 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**

20.1 During these negotiations, UCT and Te Korowai o Wainuiārua registered claimants agree neither to initiate nor to pursue any legal proceedings relating to the subject matter of the negotiations.

## **21. Procedural Matters**

21.1 The parties agree that:

21.1.1 negotiations will be on a "without prejudice" basis and will be conducted in good faith and in a spirit of open co-operation;

21.1.2 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;

21.1.3 either party may withdraw from negotiations if the negotiations become untenable;

21.1.4 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 Te Korowai o Wainuiārua claims an interest, the Office of Treaty Settlements will inform UCT of the proposal where possible;

21.1.5 early in the negotiation process both parties will discuss Te Korowai o Wainuiārua'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;

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

## 22. Amendments

- 22.1 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 20<sup>th</sup> day of February 2017

For and on behalf of the Crown:



*Hon Christopher Finlayson*  
*Minister for Treaty of Waitangi Negotiations*

For and on behalf of Uenuku Charitable Trust:

