

**TERMS OF NEGOTIATION  
BETWEEN NGĀTI TAMA MANDATE LIMITED AND THE CROWN**

# Treaty Settlement Negotiations – Terms of Negotiation between Ngāti Tama Mandate Limited and the Crown

## Background

- A. Ngāti Tama ki Te Upoko o Te Ika Society Incorporated (the **Society**) and Ngāti Wai o Ngāti Tama Trust (the **Trust**) established Ngāti Tama Mandate Limited for the purposes of negotiating the settlement of Ngāti Tama's historical Treaty of Waitangi claims.
- B. The Society and the Trust work together through Ngāti Tama Mandate Limited in order to progress the settlement of those historical Treaty of Waitangi claims.
- C. On 23 December 2013 the Crown recognised the mandate of Ngāti Tama Mandate Limited to represent Ngāti Tama in direct negotiations with the Crown in respect of those historical Treaty of Waitangi claims.

## Purpose of this document

- 1. This document:
  - 1.1. records the intentions of Ngāti Tama and the Crown for negotiating the settlement of the Ngāti Tama historical Treaty of Waitangi claims; and
  - 1.2. is not legally binding and does not create a legal relationship, however both Ngāti Tama and the Crown acknowledge that each expects the other to comply with the terms set out in this document during the negotiations.

## Objective of the Negotiations

- 2. Ngāti Tama Mandate Limited's objective of the negotiations is to negotiate in good faith, as an equal partner with the Crown, a settlement of the historical claims of Ngāti Tama that:
  - 2.1. recognises te ihi, te mauri, te mana me te rangatiratanga of Ngāti Tama in equal partnership with the Crown;
  - 2.2. effects the development and implementation of a restoration programme aimed at the regeneration and revitalisation of Ngāti Tama, including Ngāti Tama tikanga and reo;
  - 2.3. redresses the effects that Crown breaches of Te Tiriti o Waitangi / the Treaty of Waitangi have had on the economic, social, cultural, health and political well-being of Ngāti Tama;
  - 2.4. provides a platform for Ngāti Tama to move forward in the development of its people;
  - 2.5. restores Ngāti Tama's ability to regain an economic base; and
  - 2.6. restores and Enhances Ngāti Tama's social, cultural, health, economic and political levels of achievement.

3. The Crown's objective of the negotiations is to negotiate in good faith a settlement of the historical claims of Ngāti Tama that:
  - 3.1. is comprehensive, final, durable and fair in the circumstances;
  - 3.2. recognises the nature, extent and injustice of breaches of the Crown's obligations to Ngāti Tama 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 Ngāti Tama;
  - 3.3. provides a platform to assist Ngāti Tama to develop their economic base. In addition, the Crown acknowledges that Ngāti Tama may view the settlement as a means of enhancing their social, cultural and political development;
  - 3.4. enhances the ongoing relationship between the Crown and Ngāti Tama (both in terms of Te Tiriti o Waitangi / The Treaty of Waitangi and otherwise);
  - 3.5. restores the honour of the Crown; and
  - 3.6. demonstrates and records that both the Crown and Ngāti Tama Mandate Limited have acted honourably and reasonably in negotiating the settlement.

#### **Actions Enabled by Final Settlement of All Historical Claims**

4. The final settlement of all the historical claims of Ngāti Tama will enable the:
  - 4.1. release and discharge of all of the Crown's obligations and liabilities in respect of those claims;
  - 4.2. discontinuance of the Office of Treaty Settlements landbank arrangement for the protection of potential settlement properties for the benefit of Ngāti Tama;
  - 4.3. removal of:
    - 4.3.1. statutory protection for historical claims against the Crown;
    - 4.3.2. 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;
    - 4.3.3. 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 Tama, 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
    - 4.3.4. discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to the historical claims of Ngāti Tama.

## **Matters Unaffected by Settlement**

5. The settlement will not:
  - 5.1. diminish or in any way affect any rights that Ngāti Tama 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;
  - 5.2. extinguish or limit any aboriginal title or customary rights that Ngāti Tama may have; or
  - 5.3. 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, hapū, or whānau 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.
6. In addition, 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.

## **Definitions**

7. The Crown’s understanding is that the Deed of Mandate for Ngāti Tama Mandate Limited sets out:
  - 7.1. that Ngāti Tama Mandate Limited is the representative body mandated by Ngāti Tama; and
  - 7.2. who Ngāti Tama is and the scope of their historical Treaty of Waitangi claims.
8. The definition of Ngāti Tama and Ngāti Tama historical claims may be further developed by the Crown and Ngāti Tama Mandate Limited during the negotiations for inclusion in the deed of settlement.
9. The Public Finance Act 1989 contains a definition of the Crown.

## **Other Matters**

10. 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.
11. 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*.

## Matters for Agreement by Crown and Ngāti Tama Mandate Limited

1. The Crown and Ngāti Tama Mandate Limited (**the parties**) agree:
  - 1.1. negotiations will be on a "without prejudice" basis and will be conducted in good faith and a spirit of open communication;
  - 1.2. negotiations will be conducted privately and in confidence between parties unless the parties agree otherwise;
  - 1.3. any agreement reached in the course of negotiations will remain confidential to the parties unless they agree otherwise;
  - 1.4. to make media statements only when mutually agreed;
  - 1.5. the Crown may be required by law to release information about the negotiations (for example, under the Official Information Act 1982). When the Crown is required by law to release information about the negotiations the Crown will provide Ngāti Tama Mandate Limited with notice of any such requests and a copy of the information released;
  - 1.6. the Crown will work with Ngāti Tama Mandate Limited to help identify, as far as possible, those elements of the Taranaki Whanui ki Te Upoko o Te Ika Deed of Settlement linked directly to the claims of Ngāti Tama;
  - 1.7. they may agree to extend their confidential negotiations to include other interested groups:
    - 1.7.1. the extended negotiations can apply to some or all of the issues in the negotiation;
    - 1.7.2. other interested groups included in the extended negotiations will be expected to agree to the same obligations of confidence to join the negotiations;
    - 1.7.3. for example, the Crown and Ngāti Tama Mandate Limited 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;
  - 1.8. to ensure regular and appropriate internal communication procedures through the negotiations;
  - 1.9. Ngāti Tama Mandate Limited will provide the Office of Treaty Settlements (OTS) with reports on the state of its mandate every six months while the parties are in negotiations and OTS will advise Ngāti Tama Mandate Limited of any correspondence it receives about the mandate of Ngāti Tama Mandate Limited;
  - 1.10. during negotiations Ngāti Tama Mandate Limited will not pursue any legal proceedings relating to the subject matter of negotiations;
  - 1.11. during negotiations Ngāti Tama Mandate Limited will endeavour to ensure that no registered claimants will pursue any legal proceedings relating to the subject matter of negotiations; and
  - 1.12. if Ngāti Tama Mandate Limited or the registered claimants initiate legal proceedings, the Crown will consider its position and may withdraw from negotiations.

## Overlapping Interests

2. 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.
3. The Crown will follow an overlapping claims process for Ngāti Tama Mandate Limited consistent with Crown policy and the settlements of the greater Wellington and Horowhenua regions.
4. 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.
5. The Crown will encourage Ngāti Tama Mandate Limited to engage with neighbouring groups from the outset of negotiations to agree how any interests in overlapped areas should be provided for.
6. The Crown will assist Ngāti Tama Mandate Limited by providing information on proposed redress items to groups with overlapped interests and facilitating discussions to resolve issues.
7. 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.
8. 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).
9. 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 Ngāti Tama Mandate Limited have also expressed an interest, the Crown, before finally offering the particular redress item or asset for inclusion in a settlement, will:
  - 9.1. notify Ngāti Tama Mandate Limited of the shared interest; and
  - 9.2. 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.

SIGNED THIS 31<sup>st</sup> DAY OF March 2014

For and on behalf of the Crown:



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

For and on behalf of Ngāti Tama Mandate Limited:

Handwritten signature of Karewa Arthur in black ink, written over a horizontal line. The signature is stylized and includes the initials 'JA' at the end.

Karewa Arthur  
Director of Ngāti Tama Mandate Limited

Handwritten signature of Eldon Andre Potaka in black ink, written over a horizontal line. The signature is stylized and includes the name 'Eldon Andre Potaka'.

Eldon Andre Potaka  
Director of Ngāti Tama Mandate Limited