

TE ĀKITAI WAIOHUA IWI AUTHORITY

On behalf of TE ĀKITAI WAIOHUA

and

HER MAJESTY THE QUEEN

In Right of New Zealand

TERMS OF NEGOTIATION

BETWEEN

TE ĀKITAI WAIOHUA

AND

THE CROWN

DATE: 4 December, 2012

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Preamble

Te Ākitai Waiohua has longstanding grievances relating to historical breaches by the Crown of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles and the effect of these breaches on Te Ākitai Waiohua.

Te Ākitai Waiohua wishes to ensure its interests in Tamaki Makaurau are not prejudicially affected by other settlements. Te Ākitai Waiohua is party to Ngā Mana Whenua o Tāmaki Makaurau and Crown Framework Agreement of 12 February 2010 (Framework Agreement) and to the Record of Agreement of 5 November 2011 and to the Collective Deed of 8 September 2012.

Te Ākitai Waiohua and the Crown now wish to enter into negotiations for a comprehensive settlement of Te Ākitai Waiohua's historical Treaty claims.

Te Ākitai Waiohua records its wish to enter into iwi specific negotiations but notes it has limited resources to undertake these negotiations.

The Crown's commitment to provide claimant finding for Te Ākitai Waiohua is outlined in clause 17 of these Terms of Negotiations.

In addition, the Crown and Te Ākitai Waiohua acknowledge there are gaps in research which the Crown will work with Te Ākitai Waiohua to address as a matter of priority as these negotiations proceed.

1. Parties to these Terms of Negotiation

- 1.1 The Parties to these Terms of Negotiation are Te Ākitai Waiohūa Iwi Authority (the Iwi Authority), mandated on behalf of Te Ākitai Waiohūa, as defined in clause 4.0 and the Crown as defined in clause 6.0.

2. Purpose of the Terms of Negotiation

- 2.1 These Terms of Negotiation:

- 2.1.1 set out the scope, objectives, and general procedures for the negotiations the Parties will conduct in order to settle the Historical Claims (as defined in clause 5.0) of Te Ākitai Waiohūa;
- 2.1.2 record the intention of the Parties regarding the negotiations process, including the intention to negotiate in good faith, confidentially, without prejudice; and
- 2.1.3 are not legally binding and do not create a legal relationship. However, the Iwi Authority and the Crown acknowledge that each expects the other to comply with the terms set out in this document during negotiations.

3. Objectives of the Negotiations

- 3.1 The parties agree that the objectives of the negotiations will be to negotiate in good faith a settlement of the Historical Claims of Te Ākitai Waiohūa that:
- 3.1.1 is comprehensive, final, durable and fair in the circumstances;
- 3.1.2 will not:
- (a) diminish or in any way affect any rights that Te Ākitai Waiohūa may 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
- (b) extinguish or limit any aboriginal, customary or international law rights that Te Ākitai Waiohūa may have;
- 3.1.3 recognises the nature, extent, and injustice of breaches of the Crown's obligations to Te Ākitai Waiohūa under Te Tiriti o Waitangi / The Treaty of Waitangi and its principles and, where appropriate, acknowledges the effect that Treaty breaches have had on the economic, social, cultural, environmental and political well-being of Te Ākitai Waiohūa;
- 3.1.4 provides financial and commercial redress for damage caused by breaches of the Crown's obligations under Te Tiriti o Waitangi / The Treaty of Waitangi and its principles that helps to create an economic base for the long term and sustainable cultural, social, political and economic renaissance of Te Ākitai Waiohūa;
- 3.1.6 helps rebuild the relationship between the Parties (both in terms of Te Tiriti o Waitangi/The Treaty of Waitangi and otherwise);

- 3.1.7 demonstrates and records that the Parties have acted honourably and reasonably in negotiating the settlement;
 - 3.1.8 accurately reflects the Te Ākitai Waiohua Historical Claims and historical account; and
 - 3.1.9 will restore the honour of the Crown.
- 3.2 The Crown acknowledges that the aims of Te Ākitai Waiohua are to ensure that the settlement also:
- 3.2.1 recognises the Mana and Tino Rangatiratanga of Te Ākitai Waiohua in Tamaki Makaurau;
 - 3.2.2 facilitates the enhancement of the relationship between Te Ākitai Waiohua and local government;
 - 3.2.3 does not affect any decision, proposal or report of Te Ohu Kaimoana either under the Maori Fisheries Act 2004 or in respect of the “fisheries” deed dated 23 September 1992; and
 - 3.2.2 provides for and addresses the rightful sense of grievance of Te Ākitai, thereby creating a relationship between Te Ākitai Waiohua and the Crown, based on Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

4. Definition of Te Ākitai Waiohua

- 4.1 In these Terms of Negotiation Te Ākitai Waiohua:
- 4.1.1 means:
 - (a) the collective group composed of individuals who whakapapa to Kiwi Tamaki;
 - (b) the individuals referred to in clause 4.1.1(a) and;
 - 4.1.2 includes any hapū, whānau, or other group that is composed entirely of persons referred to in clause 4.1.1.
- 4.2 For the purposes of clause 4.1, a person is descended from another person if the first person is descended from the other by:
- 4.2.1 birth;
 - 4.2.2 whakapapa; or
 - 4.2.3 Maori customary adoption in accordance with Te Ākitai Waiohua tikanga.
- 4.3 Te Ākitai Waiohua affiliate to the following marae:
- 4.3.1 Pūkaki;
 - 4.3.2 Makaurau;

4.3.3 Te Puea; or

4.3.4 other marae.

4.4 The detail of the definition of Te Ākitai Waiohua may be developed further over the course of the negotiations by Te Ākitai Waiohua for inclusion in any Deed of Settlement that may be agreed between the Parties.

5. Historical Claims of Te Ākitai Waiohua

5.1 Historical Claims:

5.1.1 means all claims made at any time (whether or not the claims have been considered, researched, registered or notified) by Te Ākitai Waiohua, its affiliated tribes of Ngāti Pou Waiohua and Ngāti Pare Waiohua, or any person or group representing these tribes that:

- (a) are founded on legal rights and entitlements pursuant to the laws of New Zealand:
 - (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.

5.1.2 includes every claim to the Waitangi Tribunal to which clause 5.1.1 applies including:

- (a) Wai 8 – Te Puaha ki Manuka (insofar as it relates to Te Ākitai);
- (b) Wai 961 – Waiohua ki te Akitai Land and Resources Claim;
- (c) Wai 2122 – The Te Akitai Claim 2008.

5.1.3 does not include:

- (a) any claims relating to the marine and coastal area or;
- (b) any claim that a member of Te Ākitai Waiohua or a whānau, hapū or Te Ākitai Waiohua group may have, that is founded on a right arising as a result of being descended from an ancestor to whom cl 5.1 does not apply.

- 5.2 The boundaries of the current area of interest of Te Akitai Waiohū are described as “In the West from Otakanini Pa, South Kaipara which is situated on a navigable creek that joins the Kaipara Harbour about south of Aotea Bluff, thence across east to Puhōi and then in a straight line to the coast to the north of Wenderholm Regional Park, thence south down the Eastern Coast, excluding the Hauraki islands, to Tapapakanga Regional Park on the western shores of the Firth of Thames, thence across the Hunua Ranges including the Clevedon/Wairoa district, Papakura, Drury, Ararimu to Mangatawhiri and Pokeno, thence to Tuakau and Onewhero on the left bank of the Waikato River, thence along the left bank of the Waikato River including Tuhimata and Pukekohe to Port Waikato, thence northward, excluding Awhitu, Maioro and Waiuku, but including Patamahoe, Tuhimata and Pukekohe, Karaka, Manurewa, Clendon, Mangere, Onehunga and Hillsborough and the islands of the Manukau Harbour such as Puketutu Island; thence to Auckland Central including the eastern suburbs and Meadowbank, thence westward to the Waitakere Ranges and up the west coast to Otakanini Pa at South Kaipara.”
- 5.3 Attached to these Terms of Negotiation as **Appendix A** is a map showing the current Area of Interest claimed by Te Akitai Waiohū. The Parties acknowledge there may be other areas of interest when the Parties have completed research.

6. Definition of the Crown

6.1 The Crown:

6.1.1 means the Sovereign in right of Aotearoa New Zealand and;

6.1.2 includes all Ministers of the Crown and all government departments; but

6.1.3 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.

7. Mandate to Negotiate

- 7.1 The Iwi Authority Deed of Mandate was formally submitted to the Crown in June 2011. The Crown first advertised that mandate on 11 June 2011. No submissions in opposition were received in relation to the Deed of Mandate.
- 7.2 On 18 July 2011, the Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations wrote to formally recognise the mandate of the Iwi Authority. A copy of the letter is attached as **Appendix B**.

8. Mandate Maintenance

- 8.1 The Iwi Authority agrees to provide the Office of Treaty Settlements with a report on the state of its mandate every three months and the Crown agrees to

provide copies to the Iwi Authority of any correspondence it receives relating to the mandate of the Iwi Authority.

- 8.2 The Crown agrees to provide the Iwi Authority in a prompt manner any relevant information, reports, or other documents relating to mandate that would be disclosed if the Iwi Authority were to make a request under the Official Information Act 1982.
- 8.3 If representation issues arise during negotiations that cannot be resolved by agreement within Te Ākitai Waiohū, the Crown will discuss with the Iwi Authority a process to address those issues.

9. Subject Matter for Negotiation

- 9.1 The Parties will together agree on subject matters to be negotiated. Any Party may raise for discussion subject matters in addition to those already agreed on and these subject matters will be negotiated as if both Parties originally agreed upon their inclusion.
- 9.2 The list of subject matters to be discussed will include, inter alia the following categories of redress:
 - 9.2.1 the Crown's apology and acknowledgments;
 - 9.2.2 re-establishing an accurate historical record concerning Te Ākitai Waiohū;
 - 9.2.3 cultural redress including return of mana and land; and
 - 9.2.4 financial and commercial redress.
- 9.3 Whilst the subject matters will be agreed upon between the Parties, it is noted that there have also been collective negotiations which have resulted in a Collective Deed.

10. Process of Negotiations

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

Agreement in Principle

- 10.1.1 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

- 10.1.2 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 Ākitai Waiohū;

Ratification

- 10.1.3 the presentation by the Iwi Authority of the initialled Deed of Settlement to Te Ākitai Waiohua for ratification in a manner to be agreed to by the Parties;

Deed of Settlement Signed if Ratified

- 10.1.4 the signing of the Deed of Settlement on behalf of Te Ākitai Waiohua by the Iwi Authority if the Deed of Settlement is ratified;

Governance Entity

- 10.1.5 the approval by the Crown, and the ratification by Te Ākitai Waiohua, of a governance entity to represent Te Ākitai Waiohua and to receive and manage the settlement assets, prior to settlement legislation being introduced and;

Settlement Legislation

- 10.1.6 the passage of settlement legislation. The settlement of the Historical Claims of Te Ākitai Waiohua will be effective once a suitable governance entity is formed to hold the settlement assets and any required settlement legislation receives the Royal Assent.

11. Negotiations Schedule

- 11.1 The Parties agree to work towards the indicative Negotiations Schedule set out below:
- (a) continue the negotiations that commenced in August 2009;
 - (b) endeavour to work towards signing an Agreement in Principle in 2014;
 - (c) endeavour to agree, within twelve months of signing the Agreement in Principle, on a draft Deed of Settlement between the Iwi Authority and the Crown; and
 - (d) meet as often as necessary until a settlement is given effect.
- 11.2 The Parties acknowledge the progress of negotiations is subject to various matters, some of which are outside the Parties' control.

12. What the Settlement of the Historical Claims of Te Ākitai Waiohua will Enable

- 12.1 The Parties agree that the settlement of the Historical Claims of Te Ākitai Waiohua will enable the:
- 12.1.1 settlement of part of the Historical Claims of Te Ākitai Waiohua and the release and discharge of the Crown's obligations and liabilities in respect of them;
 - 12.1.2 discontinuance of the Office of Treaty Settlements' landbank arrangements for the protection of potential settlement properties for the benefit of Te Ākitai Waiohua;

- 12.1.3 removal 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 for the benefit of Te Ākitai Waiohūa;
- 12.1.4 removal of the jurisdiction of the courts, the Waitangi Tribunal and any other judicial body or tribunal in respect of the Historical Claims of Te Ākitai Waiohūa, the Deed of Settlement, the redress provided or settlement legislation (but not for the removal of such jurisdiction in respect of the Deed of Settlement and the redress provided or settlement legislation or the implementation or interpretation of terms in any Deed of Settlement or any settlement legislation); and
- 12.1.5 discontinuance of proceedings before any court or tribunal in relation to the Historical Claims of Te Ākitai Waiohūa.

13. 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;
- 13.2 With regards to commercial and cultural redress, the Parties agree that there is a need for significant communication and discussion with other hapū/iwi within Tāmaki Makaurau. Those discussions have already commenced amongst Ngā Mana Whenua o Tāmaki Makaurau and will continue where appropriate;
- 13.3 The Parties agree that certain information will need to be disclosed by the Crown to other hapū/iwi within Tāmaki Makaurau. The Parties also agree that they will first approve the disclosure of any confidential information before it is disclosed to any third party;
- 13.4 The Iwi Authority agrees to provide all reasonable information that will assist the Crown in discharging its obligations to other hapū/iwi within Tāmaki Makaurau given the unique nature of these settlement negotiations. In this regard, the Iwi Authority expects that the Crown will conduct its settlement negotiations with all other hapū/iwi within these areas on the same basis;
- 13.5 The Crown will advise the Iwi Authority of all information and documentation received by the Crown that affects Te Ākitai Waiohūa and forward on to them this information and documentation (subject only to the need for confidentiality regarding third parties);
- 13.6 The Crown will aim to ensure departments are aware of the nature and subject matter of the negotiations with the objective of advising the Iwi Authority of any issues that arise in the course of negotiations that may cause Te Ākitai Waiohūa concern. The Parties will agree on a process to address such issues if these arise.

14. Overlapping Claims

- 14.1 The Parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of both Parties before a Deed of Settlement can be concluded. The Parties also agree that certain items of redress provided to Te Ākitai Waiohū as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups;
- 14.2 The Iwi Authority will discuss Te Ākitai Waiohū interests with their whanaunga during the settlement negotiation process and will endeavour to reach agreement on how such interests will be addressed;
- 14.3 The Crown will assist the Iwi Authority in ways they agree are appropriate and will carry out its own engagement with overlapping claimants;
- 14.4 The Iwi Authority acknowledges that the Crown is in Treaty Settlement negotiations with other iwi who also claim an interest in the Te Ākitai Waiohū Area of Interest. Issues arising in those negotiations, including issues concerning Crown Forest Licensed land, rights of first refusal areas and the iconic maunga within Tamaki Makaurau, may be relevant to those negotiations and vice versa. The Office of Treaty Settlements will ensure that the Iwi Authority is kept fully informed of these negotiations insofar as they impact upon the Te Ākitai Waiohū Iwi Authority claim.

15. Not Bound until Deed of Settlement

- 15.1 The Parties acknowledge that this document does not bind either party to reach a settlement, or agree to any particular terms and that any agreement reached in negotiation discussions is confidential, without prejudice and will not be binding until given effect, in a signed Deed of Settlement and in any settlement legislation.

16. Governance Structure for Settlement Assets

- 16.1 The Parties agree that, before any settlement legislation can be introduced, an appropriate legal entity will, after consultation with the Crown, be in place that:
- 16.1.1 has been ratified by Te Ākitai Waiohū;
- 16.1.2 is in a form which adequately represents Te Ākitai Waiohū;
- 16.1.3 has transparent decision making processes and;
- 16.1.4 is accountable to and acts for the benefit of Te Ākitai Waiohū.

17. Claimant Funding

- 17.1 The Parties acknowledge that the Crown will make a contribution to the negotiation costs of Te Ākitai. The Parties acknowledge the unique nature of these negotiations and in particular the significant engagement that will be required with other iwi and third parties. The contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.

- 17.2 The Iwi Authority agrees to adhere to the Office of Treaty Settlements' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, the Iwi Authority will provide the Crown with invoices that demonstrate that the previous instalment of claimant funding was applied to negotiation expenses.
- 17.3 The Iwi Authority 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 these negotiations.
- 17.4 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.
- 17.5 The Crown's contribution to negotiation costs will be fair and equitable in relation to funding provided to other claimant groups.
- 17.6 The details of the Crown's contribution to negotiation costs are specified in a separate funding letter that sets out, amongst other things, the levels of funding, details of milestones, and timing of payments.

18 Waiver of Other Avenues of Redress

- 18.1 During these negotiations, the Iwi Authority agrees not to initiate or to pursue, before any court or tribunal, any legal proceedings relating to any of the claims that are within the scope of the negotiations.

19 Procedural Matters

- 19.1 The Parties agree that:

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

19.1.2 negotiations will be conducted in private except:

- (a) where the Parties agree otherwise (such as when consultation with third parties is necessary) or;
- (b) when the Crown is required to release information under the Official Information Act 1982 or other rule of law or;
- (c) where a party is required to release information as required in the course of litigation involving other parties, (to avoid doubt, the negotiations will remain without prejudice as between the Parties, including for the purpose of any future litigation between the Parties).

19.1.3 media statements concerning the negotiations will only be made when mutually agreed to by the Parties;

19.1.4 the Parties as Treaty Partners commit to acting in the utmost good faith and in active protection of the Treaty guarantees and shall seek at all times to maintain the ongoing nature of the negotiations;

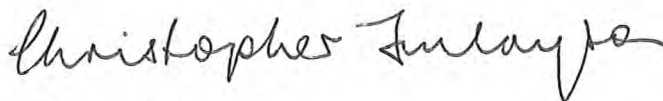
- 19.1.5 the Crown will endeavour to ensure that the location of meetings will be suitable and convenient to the Parties;
- 19.1.6 consistent with the obligations of good faith negotiations, if the Office of Treaty Settlements becomes aware of changes in the legal control, or ownership of, or the granting of long term interests in, Crown-owned land within the Te Akitai Waiohua area of interest, the Office of Treaty Settlements will inform the Iwi Authority of the proposal where possible; and
- 19.1.7 early in the negotiation process both parties will discuss Te Akitai Waiohua'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. Amendments

- 20.1 The Parties acknowledge that it may be necessary to amend these Terms of Negotiation from time to time.

SIGNED THIS DAY OF DATE

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of Te Akitai Waiohua Iwi Authority:



Karen Wilson
Chair



Brownie Rauwhero
Representative



David Wilson
Representative