

**THE SOUTHERN WHANGANUI CLUSTER / TUPOHO
WORKING PARTY ON BEHALF OF TE RUNANGA O
TUPOHO AND THE SOUTHERN WHANGANUI CLUSTER
WAITANGI CLAIMANTS
and
THE CROWN**

TERMS OF AGREEMENT

Parties to these Terms

- 1 The Parties to this document, known as the **Terms of Agreement**, are the Crown, (as defined in paragraph 28) and the Southern Whanganui Cluster/Tupoho Working Party on behalf of Te Runanga o Tupoho and the Southern Whanganui Cluster Waitangi claimants (as referred to in paragraph 31) (together, **the Parties**).

Background

- 2 Over the past twelve months, with support from the Crown, Ngāti Apa (North Island) (**Ngāti Apa**) have led a consultation process with neighbouring iwi to work through any concerns those groups may have with aspects of the Ngāti Apa settlement package as contained in the Agreement in Principle between Ngāti Apa and the Crown dated 12 July 2007 (the **Agreement in Principle**).
- 3 In the course of this consultation process, Ngāti Apa engaged with the Southern Whanganui Cluster and Te Runanga o Tupoho, who formed a working party (the **Working Party**) of representatives to engage with Ngāti Apa on the redress package set out in the Agreement in Principle.
- 4 On 14 August 2008 Ngāti Apa and the Working Party exchanged letters setting out their respective positions on the issues at hand. The Working Party position as outlined in their letter can be summarised as follows:
 - a. they accept and acknowledge that both Ngāti Apa and the Whanganui Claimants have agreed that the overlapping claim area is between the Whangaehu River and Mōtū Karaka;
 - b. they do not agree to Ngāti Apa receiving exclusive redress within the area between the Whangaehu River and Motu Karaka unless the Crown gives an assurance that their rights and interests will be upheld and that the Crown also ensures mana whenua rights are sustained and protected within this area, as part of the Whanganui settlement;
 - c. they support Ngāti Apa to settle their historical Treaty claims but wish to ensure that their rights and interests in the area between the Whangaehu River and Motu Karaka are protected.

- 5 On 21 July 2008 the Associate Minister in Charge of Treaty of Waitangi Negotiations (Hon Mita Ririnui) met with Ngāti Apa and the Working Party to hear their views on any outstanding issues.
- 6 On 2 September 2008, the Minister in Charge of Treaty of Waitangi Negotiations, Hon Dr Michael Cullen, wrote to the Working Party. The key aspects of the Minister's letter are as follows:
- (a) the Minister set out his understanding that the key remaining issues arising through consultation on the Ngāti Apa Agreement in Principle were the transfer to Ngati Apa of certain Crown Forest licence lands, the Wanganui Forest and the Wanganui Prison.
 - (b) the Minister confirmed that he was willing to enter into a Terms of Agreement or similar document before the Ngāti Apa Deed of Settlement is signed, committing the Crown to enter into an on-account settlement with Whanganui Iwi;
 - (c) the Minister decided not to amend the Crown's offer to Ngāti Apa relating to the amount of land to be offered to Ngāti Apa in the Lismore Hill Forest.
- 7 Notwithstanding this Terms of Agreement the Working Party continue to have concerns with the exclusive redress being offered to Ngāti Apa in respect to the redress offered over Lismore Hill Forest.

The Purpose of these Terms of Agreement

- 8 These Terms of Agreement have been developed to express the Parties' formal commitment to negotiate the terms of an on-account settlement that will:
- a. enable the groups represented by the Working Party to purchase on behalf of Whanganui Iwi a half-share in the land under Wanganui Prison being offered to Ngāti Apa;
 - b. enable the Whanganui Iwi to receive half of the rentals associated with the lease over this property, as agreed with the parties;

- c. enable the groups represented by the Working Party to purchase on behalf of Whanganui Iwi the half of Wanganui Forest not offered in the Ngāti Apa settlement;
- d. note that it is the Crown's intention to retain the remaining portions of Lismore Hill Forest and Lismore Sand Forest for a future settlement with Whanganui Iwi; and
- e. note that Whanganui Iwi claim strong interests in the Whitiāu Scenic Reserve and intend to seek to negotiate ownership of all or some of that property in the context of its Treaty settlement negotiations.

- 9 The on-account settlement will form part of (and is a down payment on) the total value of the financial and commercial package the Crown and Whanganui Iwi, or a part of Whanganui Iwi, will agree to settle the group's comprehensive historical Treaty claims.
- 10 These Terms of Agreement record the intentions of the Working Party and the Crown to negotiate in good faith, confidentially and without prejudice.
- 11 Notwithstanding anything in the Ngāti Apa Deed of Settlement, the Crown agrees to inform the Working Party or any other entity established to negotiate the on-account settlement as soon as it is practically possible, of any decision made by the Ngāti Apa governance entity to exercise its right of deferred selection over the Wanganui Prison;
- 12 These Terms of Agreement are not legally binding and do not create a legal relationship. However, the Working Party and the Crown acknowledge that each expects the other to use their best endeavours to comply with the terms set out in this document during negotiations.

Issues to Address

- 13 In negotiating an on-account settlement the Parties acknowledge that the issues which need to be addressed include, but are not limited to:

- a. confirmation and definition of the groups to be represented by the Working Party;
- b. confirmation of the mandate held by the Working Party to represent these groups in negotiations;
- c. the formation of an appropriate governance entity to receive the redress included in the on-account settlement;
- d. an appropriate process for ratifying the on-account settlement and the governance entity;
- e. the way in which the on-account settlement will be implemented (such as through legislation); and
- f. the Crown contributing funding to support the Working Party's engagement in this process.

14 The Parties agree to address the following key matters pertaining to the Wanganui Prison:

- a. the development of an appropriate mechanism to give effect to the Crown's commitment to enable the groups represented by the Working Party the ability to purchase on behalf of Whanganui Iwi a half share in the land under Wanganui Prison by way of an on account settlement and the mechanism in relation to the receipt of rentals associated with the half-share of the land; and
- b. the protection of the interests of Whanganui Iwi in the Wanganui Prison, should the Ngāti Apa governance entity not exercise its right to purchase the Wanganui Prison.

Other Matters

15 The Parties note that the Working Party may wish to explore the inclusion of additional redress properties in the course of negotiating the on-account settlement.

16 For the avoidance of doubt, paragraph 15 does not place any obligations on the Crown to include additional redress.

Negotiations Schedule

- 17 The Parties agree to:
- a. commence discussions as soon as practicable;
 - b. meet regularly and often until an outcome is determined; and
 - c. take into account the fact that the ability of the Crown to substantively progress the on-account settlement will be constrained as a consequence of the 2008 General Election.

Negotiations Milestones

- 18 The Working Party and the Crown seek to finalise and sign an agreement in respect of the on-account settlement by the date of the introduction of the legislation giving effect to the Deed of Settlement between Ngāti Apa and the Crown to be signed on 8 October 2008.
- 19 The Parties will develop agreed milestones to reach the agreement recording the on-account settlement. The Parties will explore ways to expedite the negotiation process and milestones, such as whether it is appropriate to proceed directly to a draft Deed of Settlement for ratification.

Communication

- 20 The Parties will each ensure there is regular and appropriate consultation procedures throughout the negotiations, to endeavour to keep the groups represented by the Working Party informed, while also maintaining the need for confidentiality regarding third parties.
- 21 The Crown will advise the Working Party of all documentation received by the Crown that affects the groups represented by the Working Party, and forward on to them documentation subject only to the need for confidentiality regarding third parties.
- 22 The Parties agree to engage with other local stakeholder groups and relevant departments if issues raised during the course of negotiations impact on them.

Not bound until Agreement

23 The Parties agree this document is not legally binding on either Party.

Procedural matters

24 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 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;
- c. both Parties reserve the right to withdraw from negotiations if they become untenable. Either Party may terminate this agreement by giving ten days notice to the other Party;
- d. media statements concerning the negotiations will only be made when mutually agreed by both Parties;
- e. the location of meetings will be suitable and convenient to both Parties;
- f. the Crown will promptly provide the Working Party with any correspondence or documentation it receives about the negotiations if that information is of a kind that would require disclosure in response to a request for it under the Official Information Act 1982; and
- g. information requested by either Party will be provided and exchanged in a timely manner.

Amendments

25 The Working Party and the Crown acknowledge that it may be necessary to amend these Terms of Agreement from time to time and agree that all amendments must be approved by both Parties and recorded in writing.

Definition of Terms

- 26 **Lismore Hill Forest** means 4848.7285 hectares, more or less, being Lot 2 DP 63450, Lot 3 DP 63451, Lots 1 and 2 DP 70427, Lots 1 and 2 DP 70989, Lot 1 DP 83793 and Maputahi 1D3B1.
- 27 **Lismore Sand Forest** means 975.3360 hectares, more or less, being Lots 1, 2 and 3 DP 70437
- 28 **The Crown:**
- 26.1 Means the Sovereign in right of New Zealand; and
- 26.2 Includes all Ministers of the Crown and all government departments; but
- 26.3 Does not include:
- 26.3.1 An Office of Parliament; or
- 26.3.2 A Crown entity; or
- 26.3.3 A State Enterprise named in the First Schedule to the State-owned Enterprises Act 1986.
- 29 **Wanganui Forest** means 400 hectares, approximately, being Part Section 546 Left Bank Wanganui River and Part Section 1 Block X and Part Section 2 Block IX Ikitara Survey District.
- 30 **Wanganui Prison** means 45.2439 hectares, more or less, being Sections 478, 479 and 480 Left Bank Wanganui River, Lot 2 DP 46128, Section 1 SO 36413 and Sections 2 and 3 SO 340748.
- 31 **Southern Whanganui Cluster Waitangi Claimants/Tupoho** means the groups who agreed to work together in the Waitangi Tribunal's Whanganui District Inquiry.

SIGNED THIS 4 DAY OF OCTOBER 2008

For and on behalf of the Crown:



Hon Dr Michael Cullen

Minister in Charge of Treaty of Waitangi Negotiations



PETER GALVIN
DEPUTY DIRECTOR
OFFICE OF TREATY SETTLEMENTS

SIGNED for and on behalf of the Southern Whanganui Cluster Working Party:

Heemi Takarangi.

Jo Mairi

G.L. Parkes

M. M. Leki

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Le Wakaheka Hakarua
Wakaheka Mato.

Tupa Teki
Kaukau.