

**Ngāti Kahungunu ki Wairarapa
Tāmaki nui ā Rua Trust**

and

THE CROWN

TERMS OF NEGOTIATION

JUNE 2013

TERMS OF NEGOTIATION BETWEEN THE NGĀTI KAHUNGUNU KI WAIRARAPA TĀMAKI NUI Ā RUA TRUST AND THE CROWN

1. Parties to these Terms of Negotiation

- 1.1 The parties to these Terms of Negotiation are the Trustees of the **Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust** (the Trustees), on behalf of Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua (NKKWTNAR), as defined in clause 6.1, and the **Crown**, as defined in clause 6.2.

2. Purpose of this document

This document:

- (a) sets out the objectives of the parties for negotiating the settlement of historical Treaty of Waitangi claims and the intentions of the parties regarding the negotiation process.
- (b) is not legally binding and does not create a legal relationship.

3. Objective of the Negotiations

- 3.1 The parties agree the objective of the negotiations is to negotiate in good faith a settlement of the historical Treaty of Waitangi claims of NKKWTNAR that:
- (a) is comprehensive, final, durable and fair in the circumstances;
 - (b) recognises the nature, extent and injustice of breaches of the Crown's obligations to NKKWTNAR 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 NKKWTNAR;
 - (c) provides a platform to assist NKKWTNAR to develop their economic base and enhance their social, cultural and political development;
 - (d) enhances the ongoing relationship between the Crown and NKKWTNAR (both in terms of Te Tiriti o Waitangi/ The Treaty of Waitangi and otherwise);
 - (e) restores the honour of the Crown; and

- (f) demonstrates that both the Crown and NKKWTNAR have acted honourably and reasonably in negotiating the settlement.

4. Actions enabled by the Final Settlement of all claims

4.1 The parties agree that the settlement of the NKKWTNAR historical claims will enable the:

- (a) release and discharge of all the Crown's obligations and liabilities in respect of those claims;
- (b) discontinuance of the Office of Treaty Settlements (OTS) landbank arrangement for the protections of potential settlement properties for the benefit of NKKWTNAR;
- (c) removal, for the benefit of NKKWTNAR, of:
 - (i) Statutory protection relating to the NKKWTNAR historical claims against the Crown;
 - (ii) 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;
- (d) removal of the jurisdiction of the courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of the NKKWTNAR historical claims, the deed of settlement, the redress provided or settlement legislation (but not the removal of such jurisdiction in respect of the implementation or interpretation of terms in any deed of settlement or any settlement legislation); and
- (e) discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to the NKKWTNAR historical claims.

4.2 The Crown acknowledges that NKKWTNAR aims to ensure that the settlement provides a platform for affirming the identity, mana and mana whenua of NKKWTNAR.

5. Matters unaffected by Settlement

5.1 The settlement will not:

- (a) diminish or in any way affect any rights that NKKWTNAR have arising from Te Tiriti o Waitangi / The Treaty of Waitangi; or
- (b) extinguish or limit any aboriginal or customary rights that NKKWTNAR may have; or
- (c) affect the ability of the iwi or hāpu to make applications for recognition of protected customary rights or for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011, or pursue any other remedies available to them.

5.2 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.

6. Definitions

6.1 The definition of Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua/NKKWTNAR, the Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua/NKKWTNAR area of interest and Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua /NKKWTNAR historical claims are set out in Appendix A. The definition of NKKWTNAR and the NKKWTNAR historical claims may be further developed by the Crown and the Trustees during the negotiations for inclusion in the deed of settlement.

6.2 The Crown has the meaning contained in the the Public Finance Act 1989.

7. Representation

7.1 The parties agree that for the purposes of negotiating a settlement of the NKKWTNAR historical claims under these Terms of Negotiation, the Trustees are the sole mandated representatives of NKKWTNAR. Accordingly, the Crown also agrees that it will not enter into any negotiations with any other group seeking to represent NKKWTNAR in relation to the settlement of the NKKWTNAR historical claims.

7.2 The parties also agree that the Trustees will ensure that a representative governance entity ratified by NKKWTNAR (in a manner to be agreed between the parties) which adequately represents NKKWTNAR, has transparent decision-making processes, and is accountable to NKKWTNAR, will be established by the settlement date (“the Governance Entity”).

8. Subject Matter for Negotiations

- 8.1 NKKWTNAR seek to negotiate a comprehensive settlement of all their historical Treaty of Waitangi claims including all those claims the Waitangi Tribunal found to be well-founded in the Wairarapa ki Tararua Report. The Crown will respond to all historical issues which NKKWTNAR raise during negotiations.

9. Overlapping Claims

- 9.1 The parties agree that overlapping claim issues will need to be addressed to the satisfaction of the parties before a Deed of Settlement can be concluded and that certain items of redress provided to NKKWTNAR as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 9.2 The Crown will endeavour to undertake parallel negotiations with NKKWTNAR and any overlapping groups in order to achieve their respective Agreements in Principle concurrently.
- 9.3 The Trustees have already entered into a Treaty Settlement Engagement Policy with the representatives for one overlapping iwi group, the Trustees of the Rangitāne Settlement Negotiations Trust, regarding overlapping claims and shared interests. The parties may also discuss the need for further Treaty settlement engagement policies (or similar documents) with other overlapping claimant groups during the early stages of negotiations in order to ensure that the interests of all relevant parties are protected and provided for.
- 9.4 The Trustees agree to report to the Crown regarding overlapping claims discussions on a three monthly basis once substantive negotiations commence. Until that time, the Trustees will report to the Crown regarding overlapping claims as appropriate.
- 9.5 The Crown may assist the Trustees to carry out discussions with overlapping claimants as it considers appropriate and may carry out its own consultation with overlapping claimant groups. In that regard, the Trustees acknowledge that the Crown may also be entering into Treaty settlement discussions with overlapping claimant groups who claim interests within the NKKWTNAR area of interest.
- 9.6 Where necessary, the Crown will invite both the Trustees and representatives from the Rangitāne Settlement Negotiations Trust to participate in joint negotiations over redress of mutual interest. The Trustees may consider whether to accept this

invitation. The Crown acknowledges that the objective for NKKWTNAR is to negotiate a separate and distinct settlement package.

10. Claimant Funding

- 10.1 The parties acknowledge that the Crown will make a contribution towards the negotiation costs of the Trustees.
- 10.2 Contributions from the Crown will be paid in instalments for the achievement of specified milestones in the negotiation process. The Crown's contribution to negotiation costs is specified in a separate letter that sets out the claimant funding available.
- 10.3 The Trustees will adhere to OTS' claimant funding policy guidelines. In particular, before each instalment of claimant funding is approved, the Trustees will provide the Crown with invoices that demonstrate the previous instalment of claimant funding was applied to negotiation expenses as requested.
- 10.4 The Trustees 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.
- 10.5 The parties agree to work together to ensure fairness in these funding arrangements, and agree to inform each other of issues that arise, and work together to resolve such issues if possible.
- 10.6 The Crown's claimant funding contribution to the Trustees' negotiation costs will be fair and equitable in relation to funding provided to other claimant groups.

11. Not Bound until Deed of Settlement

- 11.1 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 given effect in a signed Deed of Settlement and/or in settlement legislation.

12. Procedural Matters

- 12.1 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 open co-operation;

- (b) negotiations will be conducted privately and in confidence between parties unless the parties agree otherwise or where the Crown may be required by law to release information about the negotiations (for example, under the Official Information Act 1982);
- (c) to make media statements only when mutually agreed;
- (d) consistent with the obligations of good faith negotiations, if the OTS becomes aware of proposed changes in the legal control, or ownership of, or the granting of long term interests in, land of the Crown in the NKKWTNAR area of interest, the OTS will inform NKKWTNAR;
- (e) the OTS will ensure that government departments and local authorities are aware of the nature and subject of the negotiations with the object of advising the Trustees of any issues that arise in the course of negotiations that make cause NKKWTNAR concern. Where issues arise in relation to government departments the parties will agree a process to address those issues.
- (f) during these negotiations neither party will pursue or initiate, before any Court or Tribunal, any proceedings for recognition or redress against the other party covering all or part of the same subject matter as these negotiations;
- (g) both parties reserve the right to withdraw from negotiations if they become untenable; and
- (h) the Trustees will provide OTS with reports on the state of their mandate every three months. OTS will advise the Trustees of any correspondence it receives about the Trustees' mandate and forward on to them such documentation subject only to any need for confidentiality regarding third parties.

13. Negotiations Schedule

13.1 The parties agree to:

- a) commence substantive negotiations as soon as reasonably practicable; and
- b) endeavour to be ready to sign an Agreement in Principle within twelve months from the commencement of negotiations; and

- c) endeavour to agree, within twenty four months of the commencement of negotiations, a draft Deed of Settlement between the Crown and NKKWTNAR; and
- d) meet regularly and often until a settlement is given effect.

14. Amendments

- 14.1 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 in writing.

Signed this day of 2013

For and on behalf of the Crown:

Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of the Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua Trust:

Ian Perry
Chair, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Hone Oneroa

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Kahu Pene

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Hayden Hape

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Pani Himona

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

William David Workman

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Ron Mark

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Robin Potangaroa

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Marama Tuuta

Trustee and Deputy Chairperson, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Haami Te Whaiti

Trustee, Ngāti Kahungunu ki Wairarapa Tāmaki nui ā Rua Trust

Appendix One: Claimant Definition

1. **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua** means:

- (a) any collective group composed of all or some of the individuals referred to in paragraph (c) of this definition; and
- (b) the members of the Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua hapū to the extent that they are referred to in paragraph (c) of this definition;
- (c) every individual who is descended from a Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua tupuna;

The detail of the definition of Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua and the related terms set out below may be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.

2. **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua tupuna** means an individual or individuals who:

- (a) exercised customary rights by virtue of being descended from Kahungunu and one or more of Hamua, Hinewaka, Kahutapere, Kaiparuparu, Kirikohatu Mahanga, Manawatu, Moeteao, Moetekakara, Nuku, Pakuia, Pouri, Raekaumoana, Rakaihikuroa through Te Rangitataia or Umuroa or a recognised ancestor of Te Uma Whanui, Rakairangi, Tapuke, Te Matau, Te Opekai, Te Rangihakahaka, Te Rangihirawea, Te Rehunga and Tuohungia, Te Hinaariki, Te Rangitawhanga, Te Whakumu, Tuhakeke, Tukoko, Tumapuhiaarangi, Tumaiteuru, Tuohungia, Tupurupuru, Turanga, Turaumoa, Waipuhoro and/or any other recognised ancestor of a Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua hapū; and
- (b) exercised those customary rights predominantly in relation to the Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua area of interest at any time after 6 February 1840;

3. For the purpose of 2(a) a person a person is **descended** from another person if the first person is descended from the other by:

- (i) birth;
- (ii) legal adoption, or
- (iii) whangai (Māori customary adoption in accordance with Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua tikanga).

4. For the purpose of 2(a) and (b), **customary rights** means rights held according to Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua tikanga (customary law, values and practices) including through:

- (i) Rights to belong to and to occupy land;
- (ii) Rights relating to the use stewardship of lands or resources;

- (iii) Rights to the land acquired through *tuku*, marriage and conquest;
 - (iv) Rights of burial; and/or
 - (v) Rights to affiliate to the hapū, marae and papakainga within the Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua area of interest.
5. For the purposes of clause 2 **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua area of interest** means the area identified on the map at *Appendix Two* to these Terms of Negotiation;
6. **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua historical claims** means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –
- (a) is, or is founded on, a right arising -
 - (i) from the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law, including aboriginal title or customary law; or
 - (iv) from fiduciary duty; or
 - (v) otherwise; and
 - (b) arises from, or relates to, acts or omissions before 21 September 1992 -
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and

Includes every claim to the Waitangi Tribunal to which this clause applies that relates exclusively to Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua or a representative entity, and every other claim to the Waitangi Tribunal to which this clause applies, so far as it relates to Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua or a representative entity.

However, **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua historical claims** does not include the following claims:

- (a) any of the Rangitāne historical claims, being claims to be settled by any Rangitāne deed of settlement;
 - (b) a claim that a member of Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua, or a whānau, hapū, or group referred to in clause 1(a) or 1(b) may have that is, or is founded on, a right arising as a result of being descended from an tupuna that is not a Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua tupuna;
 - (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 (a) or (b) above.
7. **Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua hapū** means the hapū listed in the following table:

Mere Te Huinga	Ngā ti Hinewaka	Ngā ti Pohatu	Ngā ti Te Kari
Nga Tangimoana	Ngā ti Hopara	Ngā ti Pohoi	Ngā ti Te

			Kawekairangi
Ngā i Hangarakau	Ngā ti Horohanga	Ngā ti Puha	Ngā ti Te Korou^
Ngā i Herukokiri	Ngā ti Ihaka Rautahi^	Ngā ti Punarewa^	Ngā ti Te Noti**
Ngā i Pakaru	Ngā ti Ira*^	Ngā ti Puta*	Ngā ti Te Opekai
Ngā i Tahu**	Ngā ti Kahukuraawhitia	Ngā ti Raekaumoana^	Ngā ti Te Rangikoianake
Ngā i Tahu-Makakanui	Ngā ti Kahukuranui	Ngā ti Raetia**	Ngā ti Te Rangitawhanga^
Ngā i Tahuahi^	Ngā ti Kahungunu	Ngā ti Rakaihikuroa	Ngā ti Te Rangiwhakaoma
Ngā i Tamahau**	Ngā ti Kaihuitu	Ngā ti Rakaipaaka*	Ngā ti Te Rautangata^
Ngā i Taneroa^ a.k.a. Ngā i Taneroroa	Ngā ti Kaingaahi	Ngā ti Rakairangi	Ngā ti Te Riponga
Ngā i Tangihia	Ngā ti Kaiparuparu^	Ngā ti Rakaiwhakairi a.k.a. Ngā i Rangiwhakairi	Ngā ti Te Rore
Ngā i Te Ao*	Ngā ti Kaitahi	Ngā ti Rangaranga	Ngā ti Te Ruinga
Ngā i Te Aomataura	Ngā ti Kaiwahie	Ngā ti Rangiakau	Ngā ti Te Tohinga^
Ngā i Te Huki	Ngā ti Kakawa^	Ngā ti Rangitaitaia	Ngā ti Te Tomo
Ngā i Te Rangi	Ngā ti Kauhi^	Ngā ti Rangitehewa	Ngā ti Te Umuiti
Ngā i Te Rangitā whanga	Ngā ti Kaumoana^	Ngā ti Rangitotohu***	Ngā ti Te Whaiwhenua
Ngā i Te Rehunga*	Ngā ti Kere*	Ngā ti Rangiwhakaewa**	Ngā ti Te Whatui**
Ngā i Torohewaho	Ngā ti Kikiri	Ngā ti Raukau	Ngā ti Te Wheke
Ngā i Tukaihara	Ngā ti Kirikohatu^	Ngā ti Rongomaiaia	Ngā ti Te Whiunga
Ngā i Tukoko**	Ngā ti Komuka	Ngā ti Rua	Ngā ti Tu*
Ngā i Tū mapuhia-ā - Rangi**	Ngā ti Koro**	Ngā ti Ruawahia	Ngā ti Tuhakeke^
Ngā i Tumokai	Ngā ti Koura*	Ngā ti Ruawahine	Ngā ti Tukoko**
Ngā i Tunuiarangi	Ngā ti Maahu^	Ngā ti Tahitokuru	Ngā ti Tumanawa
Ngā i Tuohungia^	Ngā ti Marere	Ngā ti Taitama	Ngā ti Tumanuhiri
Ngā i Tutemiha	Ngā ti Maru	Ngā ti Takoto	Ngā ti Tupai

Ngā i Whaiwhati	Ngā ti Mariunga^	Ngā ti Tamaiwhakakitea^	Ngā ti Turanga* ^
Ngā ti Hakeke	Ngā ti Matangihia	Ngā ti Tangatakau**	Ngā ti Tutawake^
Ngā ti Hamua**	Ngā ti Matangiuru**	Ngā ti Tapatu	Ngā ti Tutohengarangi
Ngā ti Hikarahui^	Ngā ti Matehou	Ngāti Tatuki	Ngā ti Upokoiri*
Ngā ti Hikarara	Ngā ti Meroiti**	Ngā ti Tauiao**	Ngā ti Waipuhoro^
Ngā ti Hikawera	Ngā ti Moe***	Ngā ti Te Ahuahu	Ngā ti Wananga
Ngā ti Hinaariki^	Ngā ti Mopuna	Ngā ti Te Ao* ^	Ngā ti Whakamana**
Ngā ti Hineararangi	Ngā ti Muretu^	Ngā ti Te Aokino	Ngā ti Whatangarerewa
Ngā ti Hinekorako	Ngā ti Mutuahi**	Ngā ti Te Aomatarahi	Ngā ti Whā tuiā piti
Ngā ti Hinemanu*	Ngā ti Ngapuoterangi	Ngā ti Te Aomataura^	Ngā ti Whiritoroa
Ngā ti Hinepare^	Ngā ti Noti	Ngā ti Te Atawha**	Te Ahu a Turanga
Ngā ti Hinerangi	Ngā ti Pa te Ika^	Ngā ti Te Hangarakau	Te Hika o Pā pā uma**
Ngā ti Hinerarau	Ngā ti Pakapaka**	Ngā ti Te Hau	Te Uma Whanui
Ngā ti Hineraumoa	Ngā ti Pakuahi^	Ngā ti Te Hauaitu^	Tu mai te Uru^
Ngā ti Hinetauira**	Ngā ti Pakuia^	Ngā ti Te Hina**	
Ngā ti Hinetea	Ngā ti Parakiora**	Ngā ti Te Hukairangi	
Ngā ti Hinetearorangi**	Ngā ti Parera	Ngā ti Te Kai^	

The hapū marked with asterisks (*) are also included in the claimant definitions of other large natural groups. The Trustees will agree the approach to these hapū with the Crown following discussions with the relevant groups.

The Trustees acknowledge that some of the hapū listed above are also claimed by Rangitāne and have been identified by the Rangitāne Settlement Negotiations Trust ("RSNT") in its Deed of Mandate. Those hapū are marked with two asterisks (**). Discussions regarding the extent of each group's interest in those hapū will take place in accordance with the Treaty Settlement Engagement Policy agreed between the Trustees and RSNT. Where hapū appear in both the claimant definition of RSNT and another large natural group they are marked with three asterisks (***).

RSNT has not included hapū in its Deed of Mandate which it considers to be historical. RSNT has however identified historical hapū as part of the Treaty Settlement Engagement Policy agreed between the Trustees and RSNT. The hapū

marked with a caret (^) have been identified by RSNT as having Rangitāne whakapapa.

Appendix Two: Ngāti Kahungunu ki Wairarapa- Tāmaki Nui ā Rua area of interest

Ngāti Kahungunu ki Wairarapa- Tāmaki Nui ā Rua area of interest or NKKWTNAR area of interest means the area set out in the map below:



Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua Claim Boundary

NOTE: This area of interest is for the purposes of the negotiations for the settlement of the Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua Claims and does not delineate iwi boundaries.

