

HE TOA TAKITINI

and

THE CROWN

TERMS OF NEGOTIATION

18 December 2011

Te umu tīrama nuku, Te umu tīrama rangi
Ko koe kei wetekia noatia e koe
Whiwhia ōu ngākau ōu mahara
Kia puta ki te whaiāo ki te ao mārama.
Tēnā te umu ka eke, Te umu kei a koe
Nā te umu o ēnei kōrero
Ka mā ngā koromatua
Ka mā hoki tēnei tangata¹.

Hāro ake rā e taku kāhu
Kanohi hōmiromiro
Mātaia rā ngā ararau ki Heretaunga
Tae noa atu ki ngā whenua i takahia e Tamatea.
Ko mātou ēnei ō koutou pōnonga
E tuku atu nei i ēnei kupu kī taurangi
Kia tutuki ai te āhukatanga ki a rātou kua wehe atu ki tua
Ki a tātou hoki me ō tātou uri whakaheke.
Ki te hoe e hika ma, ki te hoe!!²

TERMS OF NEGOTIATION BETWEEN HE TOA TAKITINI 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 He Toa Takitini (HTT), on behalf of Heretaunga Tamatea, 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 Heretaunga Tamatea 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 Heretaunga Tamatea Historical Claims:

- 3.1.1 Good Faith: negotiations will be conducted in good faith and in the spirit of co-operation;
- 3.1.2 Without Prejudice: negotiations will be on a "without prejudice" basis;
- 3.1.3 Constructive Working Relationship: the parties will seek to develop a constructive relationship, which enables them to work together to achieve the best outcomes, while recognising each other's legitimate interests;
- 3.1.4 Mana Orite: (Equal Partners): both parties are equally responsible for ensuring negotiations are conducted properly and fairly;
- 3.1.5 Turangawaewae: (Ownership of Process): both parties will "own" the negotiations process and will be equally responsible for ensuring a negotiation environment that is culturally inclusive and empowering;
- 3.1.6 Observe High Standards of Integrity: both parties will observe high standards of integrity and fair dealing;

- 3.1.7 Tika: (Appropriateness of Procedures and Behaviour): both parties must conduct themselves properly during negotiations and must comply with all agreed meeting procedures;
- 3.1.8 Open and Transparent Dealings: both parties acknowledge that meaningful communication and consultation is crucial for successful negotiations;
- 3.1.9 Recognition of Each Other's Interests: both parties acknowledge that each have particular interests and each undertake to seek an outcome that reflects these interests; and
- 3.1.10 No Surprises: both parties agree to keep each other fully informed of matters relating to the subject of the negotiations, and seek to avoid surprises.
- 3.2 To the extent necessary and consistent with clause 12 of the Deed of Mandate, HTT confirm and the Crown acknowledges that the following tikanga shall guide HTT in its interpretation of the guiding principles in clause 3.1 above:
- 3.2.1. **Mana Tīpuna/ Kāwai Rangatira / Whakapapa** - this defines who Kahungunu are as people. It is the bridge that links us to our ancestors, it defines our heritage, and gives us the stories which define our place in the world. Mana Tīpuna reminds us who we are, from whom we descend, and what our obligations are to those who come after us. This is achieved through the recital of whakapapa, tracing the descent from Te Kore, to Te Pō and eventually through to Te Ao Marama; and
- 3.2.2. **Manaakitanga Mana-ā-ki-Tangata** - this is the practice acknowledges the mana of others as having equal or greater *importance* than one's own, through the expression of aroha, hospitality, generosity and mutual respect. In doing so, all parties are elevated and their status is enhanced, building unity through humbleness and the act of giving. The claimants will express *Mana-ā-ki-Tangata* towards others be it political allies or opponents, Māori or non Māori organizations, taking care not to trample mana, while clearly defining their own.
- 3.2.3. **Rangatiratanga – Rangatira ki Te Rangatira** – this is the expression of the attributes of a rangatira including humility, leadership by example, generosity, altruism, diplomacy and knowledge of benefit to the people. As an organisation, the importance of walking the talk, following through on commitments made, integrity and honesty is demonstrated. As a people, rangatiratanga is reflected in the promotion of self determination for Māori and an expression of the rights defined by Mana Atua, Mana Tīpuna and Mana Whenua.
- 3.2.4. **Whanaungatanga** – Whanaungatanga underpins the social organisation of whānau, hapū and iwi and includes rights and reciprocal

obligations consistent with being part of a collective. It is the principle which binds individuals to the wider group and affirms the value of the collective. Whanaungatanga is interdependence with each other and recognition that people are our wealth.

3.2.5. **Kotahitanga** - this is the principle of unity of purpose and direction. It is demonstrated through the achievement of harmony and moving as one. All are encouraged to make a contribution, to have their say and then together a consensus is reached. As whānau, hapū and iwi this will promote harmonious relationships between all people.

3.2.6. **Mana Whenua** - this is the principle which defines Māori by the land occupied by right of ancestral claim. It defines tūrangawaewae and ūkaipo, the places where a person belongs, where we feel of value and where we can contribute. Mana Whenua is essential for Kahungunu well-being. The places we find ourselves, our strength, our energy are where we have mana whenua. Once grounded to the land and home, we are able to participate in society in a positive, productive manner.

3.2.7. **Kaitiakitanga** - Kaitiakitanga embraces the spiritual and guardianship of Te Ao Mārama, a responsibility derived from whakapapa. Kaitiakitanga entails an active exercise of responsibility in a manner beneficial to resources and the welfare of the people. To Kahungunu, it promotes the growth and development of our people in all spheres of livelihood so that we can anticipate a future of living in good health and in reasonable prosperity.

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 Heretaunga Tamatea 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 Heretaunga Tamatea 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 or customary rights that Heretaunga Tamatea may have;

4.1.3 recognises the nature, extent and injustice of breaches of the Crown's obligations to Heretaunga Tamatea 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 Heretaunga Tamatea;

- 4.1.4 will provide a platform to assist Heretaunga Tamatea to develop their economic base. In addition, the Crown acknowledges that Heretaunga Tamatea 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 HTT view the settlement as a means of restoring the mana Māori motuhake of the people of Heretaunga Tamatea (that is, masters of their own destiny);
 - 4.2.2 acknowledges that HTT view the settlement as a means of removing the sense of grievance and restoring Heretaunga Tamatea faith and trust in the Crown; and
 - 4.2.3 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 He Toa Takitini

- 5.1 He Toa Takitini is the representative body mandated by Heretaunga-Tamatea (as defined in clause 6.1) comprising of representatives for the following marae and representative claimant groups:
- (a) Aorangi Trust Board
 - Houngarea Marae
 - Kahuranaki Marae
 - Kairakau Lands Trust
 - Kohupatiki Marae
 - Korongota Marae
 - Mangaroa Marae
 - Matahiwi Marae
 - Mataweka Marae
 - Mihiroa Marae
 - Omahu Marae
 - Pourerere Marae
 - Pukehou Marae
 - Rakautatahi Marae
 - Rongo A Tahu
 - Rongomaraeroa Marae
 - Ruahapia Marae



Runanga Marae
Tapairu Pa
Taraia Marae
Te Awhina Marae
Te Whatuiapiti Marae
Te Whatuiapiti Tribal Authority
Waimarama Marae
Waipatu Marae

6. Definition of Heretaunga Tamatea

6.1 Heretaunga Tamatea is:

6.1.1 the collective group represented by He Toa Takitini composed of persons:

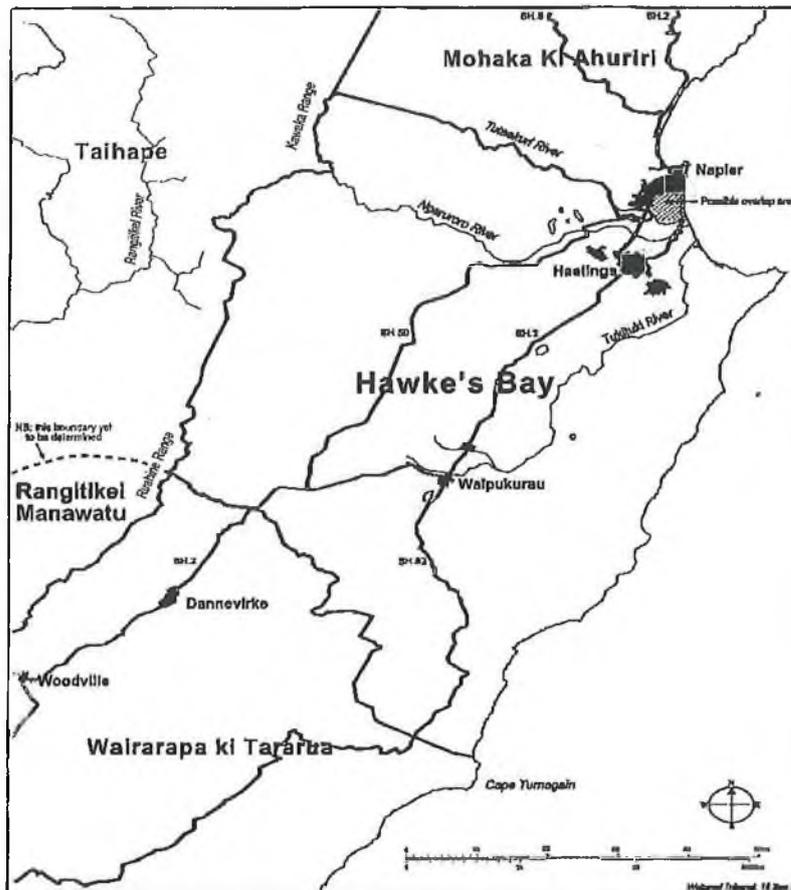
- (a) who exercised or who descend from persons who exercised customary rights predominantly within the Heretaunga Tamatea area of interest set out in the map below at clause 6.1.4 (and in Schedule XV of the Deed of Mandate) on or after 6 February 1840; and
- (b) who are members of one or more of the following hapū/descent groups:

Ngāi Tahu ki Takapau
Ngāi Tamaterā
Ngāi Te Ao
Ngāi Te Hauapu
Ngāi Te Hurihanga-i-te-rangi
Ngāi Te Kīkiri o Te Rangi
Ngāi Te Oatua
Ngāi Te Rangikoianake I
Ngāi Te Rangikoianake II
Ngāi Te Rangitekahutia
Ngāi Te Rangitotohu (also known as Rangitotohu)
Ngāi Te Ūpokoiri
Ngāi Te Whatuiāpiti
Ngāi Toroiwaho
Ngāti Hāwea
Ngāti Hikatoa
Ngāti Hinemanu
Ngāti Hinemoa
Ngāti Hinetewai
Ngāti Hoata
Ngāti Honomokai
Ngāti Hōri
Ngāti Kautere



Ngāti Kere
Ngāti Kotahi
Ngāti Kurukuru
Ngāti Mārau o Kahungunu (also known as Ngāti Mārau)
Ngāti Mahuika
Ngāti Manuhiri
Ngāti Mihiroa
Ngāti Ngarengare
Ngāti Papatuamāro
Ngāti Pīhere
Ngāti Pōporo
Ngāti Pukututu
Ngāti Rahunga
Ngāti Takaroa (also known as Ngāti Takaro)
Ngāti Tamatea
Ngāti Te Rehunga
Ngāti Toaharapaki
Ngāti Tukuaterangi (also known as Ngāti Tukua i te Rangi,
Ngāti Tukuoterangi, Ngāti Tuku(a)oterangi)
Ngāti Ura ki te Rangi (also known as Ngāti Urakiterangi)
Ngāti Whakaiti; and

- 6.1.2 every whānau, hapū or group of persons (and including members of the Kairakau Lands Trust, the Aorangi Maori Trust Board and Te Whatuiapiti Tribal Authority) to the extent that that whānau, hapū or group includes persons referred to in clause 6.1.1; and
- 6.1.3 every person referred to in clause 6.1.1
- 6.2 The parties acknowledge that the definition of Heretaunga-Tamatea (in clause 6.1.1) includes any whanau, hapu or group of persons who are members of Ngati Hinemanu only to the extent that those whanau, hapu or groups descend from the eponymous ancestor Taraia II (also known as Taraia Ruawhare) who exercised customary rights within the Heretaunga Tamatea area of interest.
- 6.3 The detail of the definition of Heretaunga Tamatea will be developed further over the course of the negotiations for inclusion in any Deed of Settlement that may be agreed between the parties.



NOTE: The Heretaunga Tamatea area of interest matches directly with the Waitangi Tribunal District Inquiry areas.

7. Heretaunga Tamatea Historical Claims

7.1 Heretaunga Tamatea 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 Heretaunga Tamatea claimant or any person or group representing Heretaunga Tamatea 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) or under legislation; and

7.1.2 includes every claim to the Waitangi Tribunal to which clause 7.1.1 applies.

7.2 The parties acknowledge that the definition of Heretaunga Tamatea Historical Claims includes those historical claims of Ngati Hinemanu only to the extent that those historical claims relate to the interests of Ngati Hinemanu that are derived through the eponymous ancestor Taraia II (also known as Taraia Ruawhare).

7.3. For the avoidance of doubt, the definition of Heretaunga Tamatea Historical Claims does not include those historical claims of Ngati Hinemanu to the extent that those historical claims relate to the interests of Ngati Hinemanu that are derived through the eponymous ancestor Punakiao.

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 HTT's Deed of Mandate to represent Heretaunga Tamatea in negotiations with the Crown for the settlement of Historical Claims is attached at Appendix 1. The Crown's letter conditionally recognising HTT's Deed of Mandate to represent Heretaunga Tamatea is attached as Appendix 2. [The Crown's letter confirming that the condition in respect of the Deed of Mandate has been satisfied is attached as Appendix 3].

9.2 If representation issues arise during negotiations that cannot be resolved by agreement within Heretaunga Tamatea, the Crown will discuss with HTT a process to address those issues.

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

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:
- 10.2.1 the Crown's apology and acknowledgements;
 - 10.2.2 cultural redress; and
 - 10.2.3 financial and commercial redress.
- 10.3 The parties acknowledge that the Mohaka ki Ahuriri and Wairarapa ki Tararua reports of the Waitangi Tribunal contain discussion of issues that will be relevant to the subject matters to be negotiated.

11. Process of Negotiations

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

Agreement in Principle

- 11.1.1 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

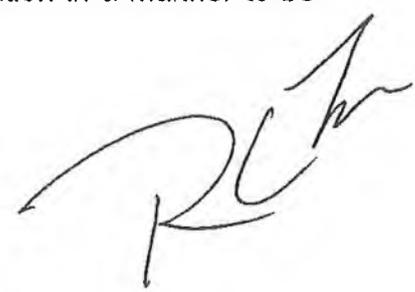
- 11.1.2 the initialling of a Deed of Settlement by the parties. The Deed of Settlement will set out the terms and conditions of the settlement of the historical claims of Heretaunga Tamatea;

Governance Entity

- 11.1.3 the approval by the Crown, of a governance entity to represent Heretaunga Tamatea, and to receive and manage the settlement redress;

Ratification

- 11.1.4 the presentation by HTT of the initialled Deed of Settlement to Heretaunga Tamatea for ratification in a manner to be agreed by the parties. An approved governance entity structure will also be presented to Heretaunga Tamatea for ratification in a manner to be agreed by the parties;

A handwritten signature in black ink, appearing to be 'R. C. H.', is located in the bottom right corner of the page.

Deed of Settlement Signed if Ratified

- 11.1.5 if the Deed of Settlement is ratified, HTT will sign the Deed of Settlement on behalf of Heretaunga Tamatea and a Crown representative will sign on behalf of the Crown;

Governance Entity Establishment

- 11.1.6 the establishment of the approved governance entity. This will only occur if Heretaunga Tamatea ratify the governance entity to represent Heretaunga Tamatea, and to receive and manage the settlement redress; and

Settlement Legislation

- 11.1.7 the passage of settlement legislation. The settlement of the historical claims of Heretaunga Tamatea will come into effect once the settlement legislation receives the Royal Assent.

12. What the Settlement of the Historical Claims of Heretaunga Tamatea will enable

- 12.1 The parties agree that the settlement of all historical claims of Heretaunga Tamatea will enable the:

12.1.1 final settlement of all historical claims of Heretaunga Tamatea, and the release and discharge of all of the Crown's obligations and liabilities in respect of those claims;

12.1.2 discontinuance of the Office of Treaty Settlements landbank arrangement for the protection of potential settlement properties for the benefit of Heretaunga Tamatea;

12.1.3 removal, for the benefit of Heretaunga Tamatea 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;

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 Heretaunga Tamatea, 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

12.1.5 discontinuance of any legal proceedings or proceedings before the Waitangi Tribunal in relation to the historical claims of Heretaunga Tamatea. The parties acknowledge that this will not affect the claims of Ngati Hinemanu-Taihape that are currently before the Waitangi Tribunal.

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.

14. Overlapping Claims

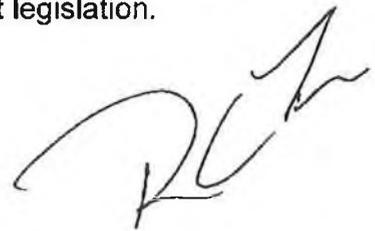
- 14.1 The parties agree that overlapping claim issues over redress assets will need to be addressed to the satisfaction of the Crown before a Deed of Settlement can be concluded. The parties also agree that certain items of redress provided to HTT as part of the Deed of Settlement may need to reflect the importance of an area or feature to other claimant groups.
- 14.2 HTT will discuss Heretaunga Tamatea'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.
- 14.3 The Crown may assist HTT as it considers appropriate and will carry out its own consultation with overlapping claimant groups.

15. Overlapping Negotiations

- 15.1 Where the Crown is engaged in negotiations for the settlement of historic claims with claimant groups whose rohe includes part of the Heretaunga Tamatea area of interest, the Crown will regularly update HTT on the progress of those negotiations (without disclosing any confidential information).
- 15.2 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 HTT 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 HTT 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.

16. Not Bound until Deed of Settlement

- 16.1 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.

A handwritten signature in black ink, appearing to be 'RCH', is located in the bottom right corner of the page.

17. Governance Structure for Settlement Assets

17.1 The parties agree that, before settlement legislation can be introduced, an appropriate legal entity will need to be in place that:

17.1.1 has been ratified by Heretaunga Tamatea (in a manner to be agreed by both parties);

17.1.2 is in a form that both parties agree adequately represents Heretaunga Tamatea;

17.1.3 has transparent decision making processes; and

17.1.4 is accountable to Heretaunga Tamatea.

18. Claimant Funding

18.1 The parties acknowledge that the Crown will make a contribution to the negotiation costs of Heretaunga Tamatea. This contribution will be paid in instalments for the achievement of specified milestones in the negotiation process.

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

18.3 HTT 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.

19. Waiver of Other Avenues of Redress

19.1 During these negotiations, HTT and Heretaunga Tamatea registered claimants agree neither to initiate nor to pursue any legal proceedings relating to the subject matter of the negotiations.

20. Procedural Matters

20.1 The parties agree that:

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

20.1.2 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;

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

- 20.1.4 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 Heretaunga Tamatea claims an interest, the Office of Treaty Settlements will inform HTT of the proposal where possible;
- 20.1.5 early in the negotiation process both parties will discuss Heretaunga Tamatea'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;
- 20.1.6 media statements concerning the negotiations will only be made when mutually agreed by both parties;
- 20.1.7 the location of meetings will be suitable and convenient to both parties; and
- 20.1.8 the Crown and HTT recognise the importance of using Te Reo Maori in the negotiations, where appropriate. HTT will provide the Crown with adequate notice should a translator be required.

21. Amendments

- 21.1 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 19th day of December 2011

For and on behalf of the Crown:



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

For and on behalf of He Toa Takitini:



Professor Roger CA Maaka
Chairman He Toa Takitini