

THE TRUSTEES OF TE TĀWHARAU O NGĀTI PŪKENGĀ TRUST

and

THE CROWN

**DEED TO AMEND THE NGĀTI
PŪKENGĀ DEED OF SETTLEMENT (HAURAKI)**

TABLE OF CONTENTS

BACKGROUND.....	2
1. FINANCIAL AND COMMERCIAL REDRESS AMOUNT AND INTEREST.....	4
2. MANAIA SCHOOL SITE IN THAMES.....	7
3. TE TIHI O HAUTURU.....	8
4. ADDITIONAL CULTURAL REDRESS	12
5. THE HAURAKI GULF / TĪKAPA MOANA.....	15
6. OTHER MATTERS.....	16
7. DEFINITIONS AND INTERPRETATION	17

SCHEDULE

Primary Industries Protocol

**DEED TO AMEND THE NGĀTI PŪKENGĀ DEED OF SETTLEMENT
(HAURAKI)**

THIS DEED is made between

THE TRUSTEES OF TE TĀWHARAU O NGĀTI PŪKENGĀ TRUST

and

THE CROWN

BACKGROUND

- A. Ngāti Pūkenga, the trustees of Te Tāwharau o Ngāti Pūkenga (the **governance entity**), and the Crown are parties to a deed of settlement settling the historical claims of Ngāti Pūkenga signed at Te Whetu o Te Rangi Marae on 7 April 2013.
- B. Ngāti Pūkenga and the Crown acknowledged in the deed of settlement (clause 8.2.1) that the Crown was currently negotiating collective redress, that included collective cultural, commercial and financial redress, in the Hauraki region with relevant iwi, including Ngāti Pūkenga, consistent with the Agreement in Principle Equivalent between the Crown and Ngāti Pūkenga dated 22 July 2011 and consistent with the Crown's "Revised financial offer to the iwi of the Hauraki Collective" dated 26 October 2012.
- C. The deed of settlement was amended by a deed, dated 16 October 2013, signed by the governance entity and the Crown and it is anticipated it will be amended on or about the date of this deed by another deed of amendment providing for the allocation of the Tauranga Moana redress.
- D. The deed of settlement remains conditional upon settlement legislation being enacted.
- E. The Crown and the governance entity have agreed to enter into this deed amending the deed of settlement to provide for additional and varied redress under that deed, by providing -
- (i) the financial and commercial redress amount is increased by \$2,000,000 from \$5,000,000 to \$7,000,000; and
 - (ii) Te Tihi o Hauturu is to be vested by the settlement legislation jointly in the trustees of the Ngāti Tamaterā Treaty Settlement Trust, in addition to the governance entity and the trustees of the Ngāti Maru Rūnanga Trust; and
 - (iii) the additional cultural redress in part 4; and
 - (iv) the Crown will negotiate in good faith redress in relation to the Hauraki Gulf / Tikapa Moana on the terms provided in part 5.
- F. The Crown and the governance entity have agreed also to enter into this deed amending the deed of settlement to provide for potential additional redress under that deed, being -
- (i) a contingent and joint right to purchase the Manaia School site in Thames, if that site is provided as redress in a Ngāti Maru deed of settlement and/or a Ngaati Whanaunga deed of settlement; and
 - (ii) subject to any such right being exercisable by the governance entity on the same terms and conditions, and subject to the same rights and obligations, as are exercisable, and would apply, under that or those deeds of settlement, and as if the governance entity had signed that or those deeds.

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

- G. The governance entity and the Crown have entered into a deed dated 4 August 2014 under which the Crown agrees to make, on account of the increase of \$2,000,000 in the financial and commercial redress amount referred to in paragraph E(i), –
- (i) a payment of \$800,000 to the governance entity; and
 - (ii) a further payment of \$100,000 to the governance entity if the governance entity so requests, on the terms and conditions specified in the deed.
- H. The governance entity has resolved, in accordance with the trust deed of Te Tāwharau o Ngāti Pūkenga Trust, to enter into this deed.

The parties, therefore, agree as follows.

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

1. FINANCIAL AND COMMERCIAL REDRESS AMOUNT AND INTEREST

Financial and commercial redress amount

1.1 The financial and commercial redress amount under the deed of settlement is increased from \$5,000,000 to \$7,000,000.

1.2 The deed of settlement is amended, to take account of the increase in the financial and commercial redress amount, and the on account payments, by –

1.2.1 deleting clause 7.1 and substituting the following clause:

“7.1 The Crown will pay the governance entity on the settlement date the amount which is determined according to the following calculation:

7.1.1 the financial and commercial redress amount of \$7,000,000; but

7.1.2 less the on-account payments, being –

- (a) the payment of \$1,000,000 referred to in clause 7.2; and
- (b) the payment of \$2,120,000 referred to in clause 7.3; and
- (c) the payment of \$800,000 under the on-account deed; and
- (d) a payment of \$100,000, if it is made under clause 2.4 of the on-account deed.”; and

1.2.2 inserting the following definition in part 6 of the general matters schedule in its appropriate alphabetical order:

“**on-account deed** means the deed recording on-account arrangements in relation to the Ngāti Pūkenga deed of settlement between the governance entity and the Crown dated 4 August 2014; and”;

1.2.3 deleting the definition of on-account payments in part 6 of the general matters schedule and substituting the following definition:

“**on-account payments** means each of the following amounts paid, or if paid, by the Crown on account of the settlement:

- (a) the amount of \$1,000,000 referred to in clause 7.2:
- (b) the amount of \$2,120,000 referred to in clause 7.3:

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

- (c) the amount of \$800,000 referred to in clause 2.1 of the on account deed; and
- (d) the amount of \$100,000, if it is paid to the governance entity under clause 2.4 of the on-account deed; and”.

Interest

- 1.3 Part 2 (Interest) of the general matters schedule of the deed of settlement is amended, to take account of the increase in the financial and commercial redress amount and the on-account payments, by deleting paragraphs 2.1 and 2.2 and inserting the following paragraphs:

“2.1 The Crown must pay interest on the financial and commercial redress amount to the governance entity on the settlement date.

2.2 The interest is payable –

2.2.1 on \$5,000,000, for the period beginning on the date the deed is initialled and ending on the day before the on-account payment referred to in clause 7.2 is made; and

2.2.2 on \$4,000,000, for the period beginning on the date the on-account payment of \$1,000,000 referred to in clause 7.2 is made and ending on the day before the on-account payment referred to in clause 7.3 is made; and

2.2.3 on \$1,880,000, for the period beginning on the date the on-account payment of \$2,120,000 referred to in clause 7.3 is made and ending on the day before the settlement date; and

2.2.4 on \$2,000,000, for the period beginning on 17 May 2013 and ending on the day before the on-account payment of \$800,000 under the on-account deed is made; and

2.2.5 on \$1,200,000, for the period beginning on the day the on-account payment of \$800,000 under the on-account deed is made to the settlement date, if an on-account payment under clause 2.4 of the on-account deed is not made; or

2.2.6 if an on-account payment of \$100,000 under clause 2.4 of the on-account deed is made, -

- (a) on \$1,200,000, for the period beginning on the day the on-account payment of \$800,000 under the on-account deed is made to the day before the on-account payment under clause 2.4 of the on-account deed is made; and

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

(b) on \$1,100,000, for the period beginning on the day the on-account payment of \$100,000 under clause 2.4 of the on-account deed is made to the settlement date; and

2.2.7 at the rate from time to time set as the official cash rate by the Reserve Bank, calculated on a daily basis but not compounding.”

2. MANAIA SCHOOL SITE IN THAMES

2.1 The parties agree that any right to purchase the Manaia School site in Thames as a deferred selection property (land only and subject to a registrable ground lease to the Crown) will be -

2.1.1 a contingent and collective right exercisable only if that site is provided as redress in a Ngāti Maru deed of settlement and/or a Ngaati Whanaunga deed of settlement; and

2.1.2 exercisable by the governance entity on the same terms and conditions, and subject to the same rights and obligations, as are exercisable, and would apply, under that deed of settlement or those deeds of settlement, and as if the governance entity had signed that deed or those deeds.

2.2 The parties agree that, in relation to any transfer of the Manaia School site in Thames to the governance entity, including to the governance entity and another or other persons, under any right referred to in clause 2.1 -

2.2.1 the tax indemnity (as defined in the deed of settlement) does not apply to that transfer; and

2.2.2 that transfer is -

(a) subject to normal tax treatment; and

(b) a taxable supply for GST purposes; and

2.2.3 the definition of Crown redress (as defined in the general matters schedule to the deed of settlement) is amended by adding (with appropriate numbering) the following two paragraphs as paragraphs of that definition:

“includes any right of the governance entity to acquire the Manaia School site in Thames, including with another or other persons, under any right referred to in clause 2.1 of the second deed amending this deed; and

“does not include -

(i) an obligation of the Crown to transfer the Manaia School site in Thames under any right referred to in clause 2.1 of the second deed amending this deed; or

(ii) the Manaia School site in Thames; and”.

3. TE TIHI O HAUTURU

3.1 The deed of settlement is amended by deleting clauses 6.16-6.19 and substituting the following clauses:

“6.16 The settlement legislation will, on the terms provided by paragraph 7.6 of the legislative matters schedule:

6.16.1 provide Te Tihi o Hauturu (being part of the Coromandel Forest Park, as shown on deed plan OTS-060-010) ceases to be a conservation area under the Conservation Act 1987; and

6.16.2 vest the fee simple estate in Te Tihi o Hauturu as undivided third shares, with a one third share vested in each of the following as tenants in common:

(a) the governance entity:

(b) the trustees of the Ngāti Maru Rūnanga Trust:

(c) the trustees of the Ngāti Tamaterā Treaty Settlement Trust; and

6.16.3 specify that clauses 6.16.1 and 6.16.2 are subject to the entities referred to in clause 6.16.2 providing the Crown with a registrable conservation covenant in relation to Te Tihi o Hauturu on the terms and conditions in part 7 of the documents schedule, with any necessary modifications.

6.17 The settlement legislation will provide that, subject to clause 6.16.3, clauses 6.16.1 and 6.16.2 will apply on the latest of the settlement date, the Ngāti Maru settlement date, and the Ngāti Tamaterā settlement date.

6.18 Clauses 6.16 and 6.17 will not apply if the Ngāti Maru settlement legislation, and the Ngāti Tamaterā settlement legislation, are not enacted within 5 years of the settlement date, in which case clause 6.19 will apply.

6.19 The settlement legislation will provide that, if this clause applies, on the date that is five years after the settlement date:

6.19.1 Te Tihi o Hauturu ceases to be a conservation area under the Conservation Act 1987; and

6.19.2 the fee simple estate in Te Tihi o Hauturu vests in the governance entity; and

6.19.3 clauses 6.19.1 and 6.19.2 are subject to the governance entity providing the Crown with a registrable covenant in relation to Te Tihi o Hauturu on the terms and conditions in part 7 of the documents schedule, with any necessary modifications; and

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

- 6.19.4 the Minister of Conservation must, as soon as reasonably practicable after the date Te Tihi o Hauturu vests in the governance entity, publish a notice in the gazette stating that –
- (a) Te Tihi o Hauturu has ceased to be a conservation area; and
 - (b) the fee simple estate in Te Tihi o Hauturu has vested in the governance entity, and
 - (c) the date on which it has vested in the governance entity.”

- 3.2 The deed of settlement is amended by deleting clause 7.6 of the legislative matters schedule and substituting the following clause:

“7.6 The settlement legislation is to provide that:

- 7.6.1 Te Tihi o Hauturu (being part of the Coromandel Forest Park, as shown on deed plan OTS-060-010) ceases to be a conservation area under the Conservation Act 1987; and
- 7.6.2 the fee simple estate in Te Tihi o Hauturu vests as undivided third shares, with a one third share vested in each of the following as tenants in common:
 - (a) the trustees of Te Tāwharau o Ngāti Pūkenga Trust;
 - (b) the trustees of the Ngāti Maru Rūnanga Trust;
 - (c) the trustees of the Ngāti Tamaterā Treaty Settlement Trust; and
- 7.6.3 paragraph 7.6.1 and 7.6.2 are subject to the entities referred to in paragraph 7.6.2 providing the Crown with a registrable covenant in relation to Te Tihi o Hauturu on the terms and conditions in part 7 of the documents schedule, with any necessary modifications; and
- 7.6.4 the covenant is to be treated as a conservation covenant for the purposes of section 77 of the Reserves Act 1977 and section 27 of the Conservation Act 1987; and
- 7.6.5 subject to clause 7.6.3, paragraphs 7.6.1 to 7.6.4 will apply on the latest of the settlement date, the Ngāti Maru settlement date, and the Ngāti Tamaterā settlement date; and
- 7.6.6 paragraphs 7.6.1 to 7.6.4 will not apply if the Ngāti Maru settlement legislation, and the Ngāti Tamaterā settlement legislation, are not enacted within five years of the settlement

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

date, in which case clauses 7.6.7 and 7.6.8 will apply on the date that is five years after the settlement date; and

- 7.6.7 Te Tihi o Hauturu ceases to be a conservation area under the Conservation Act 1987; and
- 7.6.8 the fee simple estate in Te Tihi o Hauturu vests in the governance entity; and
- 7.6.9 clauses 7.6.7 and 7.6.8 are subject to the governance entity providing the Crown with a registrable covenant in relation to Te Tihi o Hauturu on the terms and conditions in part 7 of the documents schedule, with any necessary modifications; and
- 7.6.10 the covenant is to be treated as a conservation covenant for the purposes of section 77 of the Reserves Act 1977 and section 27 of the Conservation Act 1987; and
- 7.6.11 the Minister of Conservation must, as soon as reasonably practicable after the date Te Tihi o Hauturu vests in the governance entity, publish a notice in the gazette stating that –
 - (a) Te Tihi o Hauturu has ceased to be a conservation area; and
 - (b) the fee simple estate in Te Tihi o Hauturu has vested in the governance entity, and
 - (c) the date on which it has vested in the governance entity.”

3.3 The deed of settlement is amended by inserting the following definitions in part 6 of the general matters schedule, in their appropriate alphabetical order, -

“**Ngāti Maru Rūnanga Trust** means the trust known by that name and established by a trust deed dated 15 October 2013; and”

“**Ngāti Tamaterā Treaty Settlement Trust** means the trust known by that name and established by a trust deed dated 22 October 2013; and”

“**Ngāti Tamaterā settlement date** means the settlement date under the Ngāti Tamaterā settlement legislation; and”

“**Ngāti Tamaterā settlement legislation** means the settlement legislation that settles the historical claims of Ngāti Tamaterā; and”

“**trustees of the Ngāti Maru Rūnanga Trust** means the trustees from time to time of the Ngāti Maru Rūnanga Trust, in their capacity as trustees of that trust; and”

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

“trustees of the Ngāti Tamaterā Treaty Settlement Trust means the trustees from time to time of the Ngāti Tamaterā Treaty Settlement Trust, in their capacity as trustees of that trust; and”.

4. ADDITIONAL CULTURAL REDRESS

- 4.1 The deed of settlement is amended by providing the additional cultural redress in this part.

PRIMARY INDUSTRIES PROTOCOL

- 4.2 The primary industries protocol must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister.
- 4.3 The primary industries protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.
- 4.4 The primary industries protocol will be –
- 4.4.1 in the form in the schedule; and
 - 4.4.2 issued under, and subject to, the same terms as are provided by paragraphs 6.2 to 6.10 of the legislative matters schedule in relation to the taonga tūturu protocol (with any necessary changes).
- 4.5 The settlement legislation must provide that –
- 4.5.1 the chief executive of the Ministry for Primary Industries must note a summary of the terms of the primary industries protocol in any fisheries plan that affects the primary industries protocol area; and
 - 4.5.2 the noting of the summary is –
 - (a) for the purpose of public notice only; and
 - (b) not an amendment to a fisheries plan for the purposes of section 11A of the Fisheries Act 1996; and
 - 4.5.3 the primary industries protocol does not grant, create, or provide evidence of an estate or interest in, or rights relating to, assets or other property rights (including in relation to fish, aquatic life, or seaweed) that are held, managed, or administered under any of the following enactments:
 - (a) the Fisheries Act 1996;
 - (b) the Maori Commercial Aquaculture Claims Settlement Act 2004;
 - (c) the Maori Fisheries Act 2004;
 - (d) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
 - 4.5.4 in this clause –

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

- (a) **fisheries plan** means a plan approved or amended under section 11A of the Fisheries Act 1996; and
- (b) **fisheries protocol area** means the area shown on the map attached to the primary industries protocol, together with adjacent waters.

4.6 A failure by the Crown to comply with the primary industries protocol is not a breach of this deed or the deed of settlement.

CONSERVATION RELATIONSHIP AGREEMENT

4.7 The parties must use reasonable endeavours to agree, and enter into, a conservation relationship agreement by the settlement date.

4.8 A conservation relationship agreement will be entered into by the governance entity and the Minister of Conservation and the Director-General of Conservation.

4.9 A party is not in breach of this deed if the conservation relationship agreement has not been entered into by the settlement date if the party has negotiated in good faith in an attempt to enter into it.

4.10 A failure by the Crown to comply with the conservation relationship agreement is not a breach of the deed of settlement.

STATEMENTS OF ASSOCIATION WITH MOEHAU AND TE AROHA

4.11 The Crown acknowledges that the following maunga are of significant spiritual, cultural, historical and traditional importance to Ngāti Pūkenga and the other Iwi of Hauraki:

4.11.1 Moehau maunga:

4.11.2 Te Aroha maunga.

4.12 The parties acknowledge that the acknowledgement in clause 4.11 is not intended to give rise to any rights or obligations.

SECTION 11 OF CROWN MINERALS ACT 1991 DOES NOT APPLY TO CERTAIN CULTURAL REDRESS PROPERTIES

4.13 The settlement legislation will provide that --

4.13.1 Crown owned mineral has the same meaning as in section 2(1) of the Crown Minerals Act 1991; and

4.13.2 despite section 11 of the Crown Minerals Act 1991, any Crown owned mineral in each of the following cultural redress properties vests with, and forms part of, the property:

DEED TO AMEND THE NGĀTI PŪKENGĀ DEED OF SETTLEMENT (HAURAKI)

- (a) Liens Block (being the property described in the column by that name in appendix 2 to the legislative matters schedule):
- (b) Pae ki Hauraki (being the property described in the column by that name in appendix 2 to the legislative matters schedule):
- (c) Te Tihi o Hauturu (being the property described in the column by that name in appendix 2 to the legislative matters schedule).

4.14 Paragraph 8.23.3 of the legislative matters schedule is amended by –

4.14.1 including the words “(other than the Liens Block, Pae ki Hauraki, and Te Tihi o Hauturu)” after the words “cultural redress property” in subparagraph (a) of the paragraph; and

4.14.2 deleting the full stop at the end of the paragraph and replacing it with a semi-colon and the word “and”.

4.15 The following paragraph is included as paragraph 8.24.4 of the legislative matters schedule:

“the vesting of the fee simple estate in the Liens Block, Pae ki Hauraki, and Te Tihi o Hauturu does not –

- (a) limit section 10 of the Crown Minerals Act 1991; or
- (b) affect other lawful rights to subsurface minerals.”

ACKNOWLEDGEMENT IN RELATION TO MINERALS IN MĀORI CUSTOMARY LAND

4.16 The Crown acknowledges, to avoid doubt, that it has no property in any minerals existing in their natural condition in Maori customary land (as defined in Te Ture Whenua Maori Act 1993), other than those minerals referred to in section 10 of the Crown Minerals Act 1991 or under any other enactment.

5. THE HAURAKI GULF / TĪKAPA MOANA

- 5.1 The parties acknowledge and agree that -
- 5.1.1 the harbours of the Hauraki Gulf / Tīkapa Moana (the **harbours**) are of great cultural, historical, and spiritual importance to Ngāti Pūkenga and other iwi of Hauraki; and
 - 5.1.2 even though the historical claims are settled, this deed does not provide for redress in relation to the harbours.
- 5.2 The Crown acknowledges the aspirations of Ngāti Pūkenga for redress in relation to the harbours include co-governance in order to –
- 5.2.1 restore and enhance the ability of the harbours to provide nourishment and spiritual sustenance; and
 - 5.2.2 recognise the significance of the harbours as maritime pathways to settlements throughout the Hauraki rohe; and
 - 5.2.3 enable the exercise by Ngāti Pūkenga of kaitiakitanga and rangatiratanga.
- 5.3 The Crown and iwi share many goals for natural resource management, including environmental integrity, the sustainable use of natural resources to promote economic development, and community and cultural well-being for all New Zealanders.
- 5.4 The Crown recognises the relationships iwi have with natural resources and that iwi have an important role in their management.
- 5.5 The Crown agrees to negotiate redress in relation to the harbours, at a time agreed by all parties, and will seek durable arrangements based on Te Tiriti o Waitangi/the Treaty of Waitangi that are consistent with its policies on natural resources and that provide for –
- 5.5.1 involvement by iwi in decision-making affecting the health of those waterbodies; and
 - 5.5.2 recognition of iwi and Pare Hauraki values, including the Pare Hauraki World View and Programme of Action on a Culture of Natural Resource Partnership.
- 5.6 The Crown owes Ngāti Pūkenga a duty consistent with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi to negotiate redress in relation to the harbours in good faith.
- 5.7 Ngāti Pūkenga are not precluded from making a claim to the Waitangi Tribunal in respect of the process referred to in clause 5.5.

6. OTHER MATTERS

6.1 The deed of settlement is amended by deleting the definition of cultural redress from part 6 of the general matters schedule and substituting the following definition:

“**cultural redress** means the redress provided by or under –

- (a) part 6 of the deed of settlement; or
- (b) part 3 or part 4 of the second deed amending the deed of settlement; or
- (c) the settlement legislation giving effect to part 6 of the deed of settlement or part 3 or part 4 of the second deed amending the deed of settlement; and”.

6.2 The deed of settlement is amended by deleting -

6.2.1 the words “Otānewainuku, Pūwhenua and” from paragraph 8.7 of the legislative matters schedule; and

6.2.2 the words to the full stop in paragraph 8.7.1 of the legislative matters schedule and substituting the following words:

“create a computer freehold register for an undivided one third share of the fee simple estate in the property in the names of each of the trustees of Te Tāwharau o Ngāti Pūkenga Trust, the trustees of the Ngāti Maru Rūnanga Trust, and the trustees of the Ngāti Tamaterā Treaty Settlement Trust”.

6.3 The deed of settlement remains unchanged, except to the extent provided by this deed.

6.4 This deed may be signed in counterparts which together constitute one agreement binding on the parties, notwithstanding that both parties, or any trustee or trustees of Te Tāwharau o Ngāti Pūkenga Trust, are not signatories to the original or same counterpart.

6.5 This deed takes effect when it is signed by the parties.

7. DEFINITIONS AND INTERPRETATION

7.1 In this deed, unless the context otherwise requires, -

deed of settlement means the deed referred to in clause A of the Background (as amended by the deeds of amendment referred to in clause C of the Background); and

harbours has the meaning given to it by clause 5.1.1; and

Ngaati Whanaunga means the iwi known as Ngaati Whanaunga; and

Ngaati Whanaunga deed of settlement means a deed of settlement between the Crown and Ngaati Whanaunga settling the historical claims of Ngaati Whanaunga; and

Ngāti Maru means the iwi known as Ngāti Maru; and

Ngāti Maru deed of settlement means a deed of settlement between the Crown and Ngāti Maru settling the historical claims of Ngāti Maru; and

Ngāti Maru Rūnanga Trust means the trust known by that name and established by trust deed dated 15 October 2013; and

Ngāti Tamaterā Treaty Settlement Trust means the trust known by that name and established by trust deed dated 22 October 2013; and

party means each of –

(a) the governance entity, being the trustees for the time being of Te Tāwharau o Ngāti Pūkenga Trust, in their capacity as trustees of the trust; and

(b) the Crown; and

primary industries protocol means the protocol in the form set out in the schedule; and

responsible Minister means, for the primary industries protocol, the Minister for Primary Industries or any other Minister of the Crown authorised by the Prime Minister to exercise powers and perform functions and duties in relation to the protocol; and

schedule means the schedule to this deed, as it may be amended from time to time; and

trustees of the Ngāti Maru Rūnanga Trust means the trustees from time to time of the Ngāti Marū Rūnanga Trust, in their capacity as trustees of that trust; and

DEED TO AMEND THE NGĀTI PŪKENGA DEED OF SETTLEMENT (HAURAKI)

trustees of the Ngāti Tamaterā Treaty Settlement Trust means the trustees from time to time of the Ngāti Tamaterā Treaty Settlement Trust, in their capacity as trustees of that trust.

- 7.2 Unless the context requires otherwise -
- 7.2.1 this deed means this deed of amendment, including the schedule, as amended from time to time; and
 - 7.2.2 the terms or expressions defined in the deed of settlement have the same meanings in this deed; and
 - 7.2.3 the rules of interpretation in the deed of settlement apply (with all appropriate changes) to this deed.

DEED TO AMEND THE NGĀTI PŪKENGĀ DEED OF SETTLEMENT (HAURAKI)

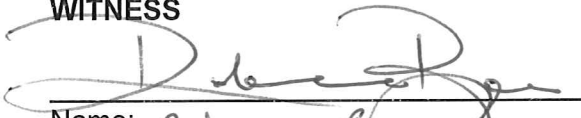
SIGNED as a deed on 20 October 2014

SIGNED by
the trustees of
TE TĀWHARAU O NGĀTI PŪKENGĀ
in their capacity as trustees
in the presence of –



Rahera Ohia

WITNESS



Name: Rebecca Boyce

Occupation: Administrator

Address: Tauranga



Harry Haerengarangi Mikaere

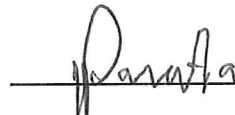
WITNESS



Name: Walter Nyamane

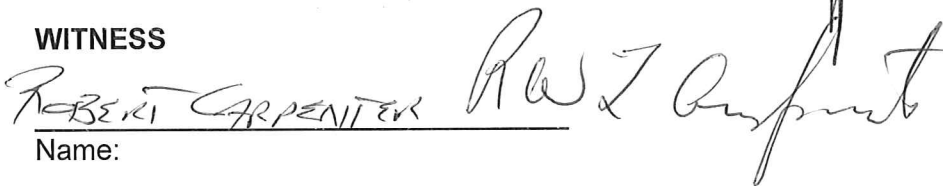
Occupation: Teacher

Address: THAMES



Hori Parata

WITNESS



Name: ROBERT CARPENTER

Occupation: Driver

Address: Waiyanga



Rehua Smallman

WITNESS

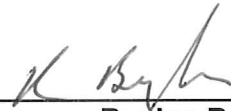


Name: Andrea Donna Gray

Occupation: Manager


Address: Tauranga

DEED TO AMEND THE NGĀTI PŪKENGĀ DEED OF SETTLEMENT (HAURAKI)



Regina Berghan

WITNESS



Name:

Marie Tata

Occupation:

finance/HR manager

Address:

2 Te Atatu Place
Tauranga

DEED TO AMEND THE NGĀTI PŪKENGĀ DEED OF SETTLEMENT (HAURAKI)

SIGNED for and on behalf of
THE CROWN

by the Minister for Treaty of Waitangi
Negotiations in the presence of:



Hon Christopher Finlayson QC

WITNESS

B. Consigned

Name: BERNADETTE CONSIGNÉ

Occupation: PRIVATE SECRETARY

Address: WELLINGTON

by the Minister of Finance
(in relation to only the amendments to the
tax indemnities) in the presence of:



Hon Simon William English

WITNESS

A. Houkama

Name: Amohaere Houkama

Occupation: Senior Ministerial Advisor

Address: Wellington

THE TRUSTEES OF TE TĀWHARAU O NGĀTI PŪKENGA TRUST

and

THE CROWN

**SCHEDULE TO THE DEED TO AMEND THE
NGĀTI PŪKENGA DEED OF SETTLEMENT
(HAURAKI)**

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

Ministry for Primary Industries
Manatū Ahu Matua



THE PRIMARY INDUSTRIES PROTOCOL WITH NGĀTI PŪKENGA

Issued by
the Minister for Primary Industries

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

PART ONE – RELATIONSHIP

PURPOSE

1. The purpose of this Primary Industries Protocol (the “**Protocol**”) is to set out how Ngāti Pūkenga, the Minister for Primary Industries (the “**Minister**”) and the Director-General of the Ministry for Primary Industries (the “**Director-General**”) will establish and maintain a positive, co-operative and enduring relationship.

CONTEXT

2. The Protocol should be read in a manner that best furthers the purpose of the Ngāti Pūkenga Deed of Settlement (the “**Deed of Settlement**”).
3. The Protocol is a living document that should be updated to take account of the relationship between the parties, future developments and additional relationship opportunities.

PRINCIPLES UNDERLYING THE PROTOCOL

4. The Ministry and Ngāti Pūkenga are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to the Protocol. The relationship created by the Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
5. The parties recognise that to successfully implement the Protocol, the parties will need to work in partnership and in the spirit of collaboration.
6. The parties also acknowledge the below relationship and their importance to successfully achieve the purpose of the Protocol. These relationship principles provide that the Ministry and Ngāti Pūkenga will:
 - a. work in a spirit of co-operation;
 - b. ensure early engagement on issues of known mutual interest;
 - c. operate on a ‘no surprises’ approach;
 - d. acknowledge that the relationship is evolving, not prescribed;
 - e. respect the independence of the parties and their individual mandates, roles and responsibilities; and
 - f. recognise and acknowledge that both parties benefit from working together by sharing their vision, knowledge and expertise.
7. The Minister and the Director-General have certain functions, powers and duties in terms of legislation that they are responsible for administering. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāti Pūkenga and the Ministry. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

8. The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngāti Pūkenga or with another iwi or hapū with interests inside the Protocol Area on matters that could affect the interests of Ngāti Pūkenga.

PART TWO - SCOPE AND INTERPRETATION

SCOPE

9. The Protocol applies to agriculture (agriculture includes animal welfare and horticulture), forestry, fisheries, biosecurity and food safety portfolios administered by the Ministry for Primary Industries (the "**Ministry**").
10. The Protocol does not cover processes regarding the allocation of aquaculture space, or the Treaty settlement processes established for assets held by the Ministry's Crown Forestry unit.
11. The Ministry is required to provide for the utilisation of fisheries resources while ensuring sustainability, to meet Te Tiriti o Waitangi/the Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.
12. The Protocol applies to the Protocol Area as noted and described in the attached map ("**Appendix A**").

DEFINITIONS AND INTERPRETATION

13. In the Protocol:
 - a. "**Protocol**" means a statement in writing, issued by the Crown through the Minister to the trustees of Te Tāwharau o Ngāti Pūkenga Trust under the Settlement Legislation and the Deed of Settlement and includes this Protocol;
 - b. "**Protocol Area**" means the land area as noted in the attached map at **Appendix A**;
 - c. "**Crown**" means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by, the terms of the Deed of Settlement to participate in any aspect of the redress under the Deed of Settlement;
 - d. "**Fisheries Legislation**" means the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1983 and the Fisheries Act 1996, and any regulations made under the Fisheries Act 1983 and the Fisheries Act 1996;
 - e. "**Governance Entity**" and "**the trustees of Te Tāwharau o Ngāti Pūkenga Trust**" mean the trustees for the time being of Te Tāwharau o Ngāti Pūkenga Trust, in their capacity as trustees of that trust;
 - f. "**iwi of Hauraki**" means the iwi referred to in clause 23 of this Protocol; and

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

- g. "the parties" means the trustees of Te Tāwharau o Ngāti Pūkenga Trust, the Minister for Primary Industries (acting on behalf of the Crown), and the Director-General of the Ministry of Primary Industries (acting on behalf of the Ministry for Primary Industries).

TERMS OF ISSUE

14. The Protocol is issued pursuant to section *[insert number]* of the Ngāti Pūkenga Claims Settlement Act *[date]* (the "Settlement Legislation") and clause 4.2 of the deed (No.2) amending the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

PART THREE - FISHERIES

15. The Minister and the Director-General have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāti Pūkenga and the Ministry.
16. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

INPUT INTO AND PARTICIPATION INTO THE MINISTRY'S NATIONAL FISHERIES PLANS

17. The Ministry's national fisheries plans will reflect the high level goals and outcomes for fisheries. The plans will guide annual identification of the measures (which may include catch limits, research, planning and compliance services) required to meet these goals and outcomes.
18. There are five National Fisheries Plans, which relate to:
- a. inshore fisheries;
 - b. shellfish;
 - c. freshwater fisheries;
 - d. highly migratory fisheries; and
 - e. deepwater fisheries.
19. The National Fisheries Plans are implemented through an Annual Review Report and Annual Operational Plan.
20. The Annual Review Report presents information on:
- a. the current status of fisheries relative to the performance measures recorded in the National Fisheries Plans; and

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

- b. the extent of the delivery of previous and existing services and management actions.
21. The Annual Review Report is developed through engagement with tāngata whenua about what future services are required to meet agreed objectives, address gaps in performance and meet tāngata whenua interests, including research, compliance and special permits. The Ministry will engage with the parties to produce the Annual Review Report.
22. The Annual Operational Plan will record the future services agreed through the Annual Review Report process to be delivered to fisheries for the next financial year (1 July - 30 June). The demand for services is often greater than can be provided by the Ministry. The Ministry undertakes a prioritisation of proposed services to address competing interests.
23. The Ministry will provide for the input and participation of the twelve iwi of Hauraki, Hako, Ngāi Tai ki Tāmaki, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Pūkenga, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngaati Whanaunga and, Te Patukirikiri, which includes Ngāti Pūkenga, into national fisheries plans through iwi forum fisheries plans. Iwi forum fisheries plans allow the Ministry to engage and involve iwi in fisheries management activities and national fisheries planning.

IWI FORUM FISHERIES PLANS

24. The twelve iwi of Hauraki collectively will have input into the relevant forum fisheries plan. The plan must incorporate:
- a. the objectives of the iwi of Hauraki for the management of their customary, commercial, recreational, and environmental interests;
 - b. views of the iwi of Hauraki on what constitutes the exercise of kaitiakitanga within the Protocol Area;
 - c. how the iwi of Hauraki will participate in fisheries planning and management; and
 - d. how the customary, commercial, and recreational fishing interests of forum members will be managed in an integrated way.
25. The iwi of Hauraki, which includes Ngāti Pūkenga, will have the opportunity to jointly develop an iwi fisheries plan that will inform the content of the relevant forum fisheries plan.
26. Any person exercising functions, powers and duties under sections 12 to 14 of the Fisheries Act 1996 will have particular regard to forum plans interpretation of kaitiakitanga (see section 12(1) (b) of the Fisheries Act 1996).

MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

27. The Ministry, with available resources, undertake to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

- a. discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Protocol Area; and
- b. making available existing information relating to the sustainability, biology, fishing activity and fisheries management within the Protocol Area.

RĀHUI

28. The Ministry recognises that rāhui is a traditional use and management practice of Ngāti Pūkenga and supports their rights to place traditional rāhui over their customary fisheries.
29. The Ministry and the Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. The Governance Entity undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngāti Pūkenga over their customary fisheries, and also the reasons for the rāhui.
30. The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngāti Pūkenga over their customary fisheries, in a manner consistent with the understandings outlined in clause 28 of this Protocol.
31. As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngāti Pūkenga over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

PROVISION OF FISHERIES SERVICES AND RESEARCH

32. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
33. Ngāti Pūkenga input and participation into Ministry fisheries services and research will occur through Ngāti Pūkenga input and participation into the Ministry's national fisheries plans.

PART FOUR – STRATEGIC PARTNERSHIPS

INFORMATION SHARING AND COLLABORATION

34. The Governance Entity and the Ministry will use reasonable endeavours to exchange and share information relevant of mutual benefit, subject to the provisions of the Governance Entity legislation, any other enactment, and the general law.
35. For the purpose of carrying out its function, the Governance Entity may make a request of the Ministry to:
 - a. provide information or advice to the Governance Entity requested by the Governance Entity, but only on matters relating to fisheries, agriculture

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

(agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity; and/or

- b. provide a Ministry representative to attend a meeting with the Governance Entity.
36. In respect of the above requests for information or advice:
- a. where reasonably practicable, the Ministry will provide the information or advice; and
 - b. in deciding whether it is reasonably practicable to provide the information or advice, the Ministry will have regard to any relevant consideration, including:
 - i. whether, where a request has been made under the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, there are permitted reasons for withholding the information;
 - ii. whether making the information available would contravene the provisions of an enactment;
 - iii. the time and cost involved in researching, collating and providing the information or advice; and
 - iv. whether making the information available would put at risk any of the Ministry's wider stakeholder relationships.
37. In respect of requests for the Ministry to attend a meeting with the Governance Entity:
- a. only where reasonably practicable, the Ministry will comply with the request;
 - b. the Ministry will determine the appropriate representative to attend any meeting; and
 - c. in deciding whether it is reasonably practicable to comply with the request, the Ministry may have regard to any relevant consideration, including:
 - i. the number and frequency of such requests the Ministry has received from the Governance Entity;
 - ii. the time and place of the meeting and the adequacy of notice given; and
 - iii. the time and cost involved in complying with the request.

JOINT WORK PROGRAMMES

38. If agreed to by both parties, the Ministry and the Governance Entity, will work together to develop and implement joint work programmes on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity.
39. The work programme/s must be beneficial to both parties, must align with the parties objectives and priorities relating to the primary sector, and be based on agreed-to terms of delivery.

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

PROVISION OF SERVICE AND RESEARCH RELATING TO AGRICULTURE, FORESTRY, FOOD SAFETY AND BIOSECURITY

40. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
41. Where the Ministry undertakes or contracts for services or research relating to agriculture (agriculture includes animal welfare and horticulture), forestry, food safety or biosecurity, and where the Ministry considers it to have a direct impact on the Protocol Area, the Ministry will:
- a. notify the Governance Entity of its intention to do so and provide the Governance Entity with an opportunity to be involved in the planning for services or research, as appropriate;
 - b. where applicable, invite the Governance Entity to provide a representative to be a member of the tender evaluation panel, subject to the Ministry's conflict of interest policy;
 - c. advise the Governance Entity of the provider it has chosen;
 - d. require any research provider to engage with the Governance Entity; and
 - e. provide the Governance Entity with the results of that research, as appropriate.

CONSULTATION

42. Where the Ministry is required to consult in relation to the Protocol, the principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- a. ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - b. providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - c. ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - d. ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and
 - e. where the Ministry has consulted with the Governance Entity in relation to this Protocol, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

PART FIVE – IMPLEMENTATION

MAINTAINING THE RELATIONSHIP

43. Each party will identify a senior representative to oversee the implementation of the Protocol. The senior representatives will be the key point of contact for any matters relating to the Protocol, and will be responsible for ensuring the outcomes and deliverables of the Protocol are monitored, and achieved.
44. Where elements of the Protocol may not be achievable, the parties will communicate this as soon as possible and work towards a common understanding of the issues and a positive way forward for both parties to achieve the outcomes of the Protocol.
45. Representatives of the parties will meet as required, and as agreed to by both parties.

ESCALATION OF MATTERS

46. If one party considers that there has been a breach of the Protocol then that party may give notice to the other that they are in dispute.
47. As soon as possible, upon receipt of the notice referred to in clause 46, the Ministry and the Governance Entity representative(s) will meet to work in good faith to resolve the issue.
48. If the dispute has not been resolved within 45 working days despite the process outlined in clauses 46 and 47 having been followed, the Ministry and Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

REVIEW AND AMENDMENT

49. The parties agree that this Protocol is a living document which should be updated and adapted to take account of any future developments and relationship opportunities.
50. The parties may only vary or terminate this Protocol in writing.

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Primary Industries

WITNESS

Name:

Occupation:

Address:

SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

APPENDIX A: PROTOCOL AREA



SCHEDULE

PRIMARY INDUSTRIES PROTOCOL

APPENDIX B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting with the Governance Entity and having particular regard to their views (*section [number]*).

2. Noting

- 2.1 A summary of the terms of this Protocol must be noted in the fisheries plans affecting the Protocol Area, but the noting:

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the fisheries plans for the purposes of the Fisheries Act 1996 (*section [number]*).

3. Limits

- 3.1 This Protocol does not:

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including:

- (a) introducing legislation; or
- (b) changing government policy; or
- (c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tāngata whenua (*section [number]*); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Pūkenga (*section [number]*); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, assets or property rights (including in relation to fish, aquatic life, or seaweed) under:

- (a) the Fisheries Act 1996; or
- (b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
- (c) the Maori Commercial Aquaculture Claims Settlement Act 2004; or
- (d) the Maori Fisheries Act 2004 (*section [number]*).

4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the Governance Entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section [number]*).

- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (*clause [number]*).