

**NGATI TOA RANGATIRA**

**and**

**TRUSTEE OF THE TOA RANGATIRA TRUST**

**and**

**THE CROWN**

---

**DEED OF SETTLEMENT SCHEDULE:  
DOCUMENTS**

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**1. NGA PAIHAU**

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**1.1 NGA PAIHAU CREATED OVER KAPITI ISLAND**

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**1.1: NGA PAIHAU CREATED OVER KAPITI ISLAND**

**1. DESCRIPTION OF AREA**

- 1.1 Kapiti Island Nature Reserve site and any other land set apart as a reserve for the preservation of native flora and fauna by Gazette 1973 page 1381;
  - 1.2 Kapiti Island North Nature Reserve site; and
  - 1.3 Kapiti Marine Reserve;
- together known as "Kapiti Island" as described in schedule 2 of the draft settlement bill and shown on OTS-068- 20.

**2. PREAMBLE**

- 2.1 Pursuant to section 42 of the draft settlement bill (clause 5.16.1 of the deed of settlement), the Crown acknowledges the statement by Ngati Toa Rangatira of their cultural, spiritual, historic and/or traditional values relating to the Kapiti Island Nature Reserve, the Kapiti Island North Reserve and the Kapiti Marine Reserve.

**3. NGATI TOA RANGATIRA VALUES**

- 3.1 Kapiti Island is important to Ngati Toa Rangatira for historical, political, economic, cultural, and spiritual reasons.
- 3.2 In the early part of the nineteenth century Kapiti Island became the new home of Ngati Toa Rangatira and the place where the tribe's mana was restored and enhanced. From there, Ngati Toa Rangatira launched themselves into the new world of contact with Europeans, in which social and cultural practices including tikanga, trade, politics and religion, developed and flourished. The island remains the spiritual and cultural heart of Ngati Toa Rangatira as a tangible connection to their history and an enduring symbol of tribal identity.
- 3.3 Kapiti Island was initially settled by Ngati Toa Rangatira following an attack by a taua led by the Ngati Toa Rangatira Ariki (hereditary chief) Te Peehi Kupe. Prior to the capture of the island, relationships with previous inhabitants and other local iwi on the mainland had become one of escalating hostility, including an attempt on Te Rauparaha's life and the murder of his children. Te Rauparaha and Te Peehi Kupe immediately realised the importance of Kapiti Island as an impenetrable stronghold for Ngati Toa Rangatira, so in 1823 they devised a plan for Te Peehi Kupe to capture the Island by surprise while Te Rauparaha created a ruse on the mainland. Very soon after their occupation, Kapiti Island became the focus of one of the most significant moments in Ngati Toa Rangatira's history: the Battle of Waiorua in 1824, also known as Whakapaetai, and Te Pakanga o Umupakaroa.
- 3.4 At this battle, a coalition force consisting of warriors from both sides of Te Moana o Raukawa attacked Ngati Toa Rangatira on Kapiti Island. Although significantly outnumbered, Ngati Toa Rangatira were successful in defending the island and thus the battle marked the definitive establishment of Ngati Toa Rangatira in the Cook Strait area and set the stage for expansion into the wider Cook Strait / Te Moana o Raukawa region.
- 3.5 The success at Waiorua restored and enhanced the mana of Ngati Toa Rangatira, due to the inspirational force and leadership of Te Rauparaha. Having gained the valuable

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location of Kapiti Island, Te Rauparaha sought to revitalise the iwi and expand their interests. Kapiti Island however always remained the political centre of their rohe.

- 3.6 Kapiti Island was an ideal base because its higher points provided a view of imminent threat, the sheer cliffs on the western side of the island meant there were limited landing sites and, access points could be easily monitored. Its location at the northern entrance to Cook Strait was a significant strategic asset which allowed Ngati Toa Rangatira to cement their position in the region and develop extensive maritime trading networks. Ngati Toa Rangatira were from that time a trans-Cook Strait iwi; there was a great interconnectedness and frequent travel, for various reasons, between their areas of occupation.
- 3.7 In terms of resources and economic opportunities, Kapiti Island was an invaluable asset. Streams and natural springs provided a plentiful water supply, and the coastline abounded in seafood and a thriving population of birds inhabited the forests. In addition, kumara, potato and later corn crops were grown in the fertile soil near Rangatira and Waiorua Point. Kapiti Island was also located in an advantageous position for whalers, being one of the best anchorage points in the area. At least five whaling stations were located on Kapiti Island: Kahu o te Rangi, Rangatira, Taepiro, Wharekohu and Waiorua, as well as on the offshore islands of Motungarara and Tohoramaurea. The whaling stations were of great economic benefit to Ngati Toa Rangatira, providing them with a continuous source of trade-goods; Te Rauparaha particularly encouraged their occupation.
- 3.8 Many of the whalers built up close relationships with Ngati Toa Rangatira and married into the iwi. Three such marriages are of particular importance, and all have produced many Ngati Toa Rangatira descendents. These were the marriage of Joseph Thoms to Te Ua Torikiriki, daughter of Tohunga chief Te Watarauhi Nohorua (the tuakana of Te Rauparaha); the marriage of George Stubbs to Metapere Waipunahau, daughter of the chief Te Rangihoroa; and the marriage of John Nicol to Kahe Te Rau o te Rangi, daughter of the chief Te Matoha. The latter two marriages produced the noted politician Te Kakakura Wi Parata, and the first Maori doctor and politician Sir Maui Pomare respectively.
- 3.9 From the period of 1824 to 1834 the Kapiti region became settled by the allies and relations of Ngati Toa Rangatira from Taranaki and Waikato. Te Rauparaha made a special plea to, his mother's people, saying:

*Tenei taku kupu kia koutou, Haere e hoki ki te tiki i a Ngati Raukawa, kia haere mai ki konei ki te noho i te whenua i taroaroa e aku paihau, ki taku rakau, na e takoto nei haha te whenua.*

*Haere mai Haere mai.*

This is my word to all of you. Go back and bring Ngati Raukawa to occupy this land. With my weapons I have extended my horizons (spreading wings) and cleared the land spread before you.

- 3.10 However there was some reluctance to migrate so it was his sister Waitohi, who made an impassioned plea with carefully chosen words. She said:

*"Haere ki aku werewere, haeremai hei noho i taku whenua e takoto nei i te takutai moana atu ano i Kukutauaki puta noa ki Rangitikei".*

Go to the heirs of my body. Come and settle my land spread here along the

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coast/shore from Kukutauaki and beyond to Rangitikei.

- 3.11 The focus of Ngati Toa Rangatira settlement began to shift in the 1840s as the iwi became impacted by political and social change driven by European settlement and the establishment of the British Government resulting in pressure directed at them and their landholdings. It was also important for Ngati Toa Rangatira to ensure ongoing access to trade, by extending their relationship from whalers to settlers. Kapiti Island therefore became less desirable and other settlements with better access to Wellington were favoured. This saw the establishment of Taupo Pa and Takapuwahia Pa on the shore of Porirua Harbour.
- 3.12 However, all of this did not change Ngati Toa Rangatira's perception of Kapiti Island. It was still seen as the primary homeland although it was not inhabited to the same extent after 1850. During the latter half of the nineteenth century there were numerous attempts to purchase Kapiti Island, yet Ngati Toa Rangatira were determined to retain control of the island. By the late nineteenth century many Ngati Toa Rangatira whanau were dependent on monies from leasing Kapiti Island to Europeans.
- 3.13 In 1897 legislation was enacted that aimed to make Kapiti Island a sanctuary for indigenous flora and fauna. It created a mechanism to acquire the land by making it illegal for the owners to lease or sell their land to anyone other than the Government. By 1901 the majority of Kapiti had passed over to the Government.
- 3.14 Although the majority of Kapiti Island had been alienated from Ngati Toa Rangatira ownership at the close of the nineteenth century, it has remained an extremely significant site of cultural and historical importance. Ngati Toa Rangatira feel that Kapiti Island has a powerful influence that shaped and transformed the tribe in re-establishing its mana following the migration from Kawhia and forged a new identity which extended outward to all parts of the Cook Strait region. Ngati Toa Rangatira see Kapiti Island as a physical metaphor for the revitalisation of the tribe in the Cook Strait region.
- 3.15 Ngati Toa Rangatira drew strength from the energy of the island; they utilised its unique position and location and the many opportunities it afforded them; the flora and fauna that was abundant on the Island allowed them to prosper and flourish. The settlement of Ngati Toa Rangatira on Kapiti Island signalled their new beginning in the Cook Strait region and their renaissance as a tribe.
- 3.16 Some descendants of the Ngati Toa Rangatira chief Te Rangihiroa, younger brother of the hereditary chief Te Peehi Kupe, still have homes on Kapiti, however Ngati Toa Rangatira as an iwi have not been in occupation of the island for over a century. Yet its natural resources, wahi tapu, and historical sites continue to be of great significance. Te Rauparaha's decision to re-settle the iwi was the first step in the creation of a new Ngati Toa Rangatira identity; Kapiti Island, the springboard from which Ngati Toa Rangatira were able to expand, was fundamental to this and continues to be central to the cultural identity of Ngati Toa Rangatira.

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3.17 The following waiata expresses the significance of Kapiti Island to Ngati Toa Rangatira:

*Tau mai e Kapiti  
te kainga o te hunga kua wehe kit e iwi nui I te po.  
Te marae i Wai-o-rua tenei te mihia,  
te wahi i tanuku ait e whakaaro o te motu,  
kia patua o tamariki I kopaina e koe.  
Hei tohu ki nga uri whakaheke mai  
i te mana i tuawhakarere iho  
i te mana i te wehi o lo nui... i*

*Tau mai e Kapiti  
Te Whare Wananga o ia, o te nui, o te wehi, o te Toa.  
Whakakaupapa I te nohotahi, a Awa, a Toa, a Raukawa.  
I heke mai i Kawhia ki te kawe tikanga  
hei oramo nga uri o muri nei  
Tau mai e Kapiti te kainga tupu  
o te wehi, o te toa, o te whakamanawanui....i*

*Tau mai e Kapiti  
Te kainga te kino, o tem au-a-hara, o te kaitangata  
e air a hoki ki nga kupu whakapae o nga iwi maha o te motu nei  
Ko Rangatira te marae tenei te mihia  
Tona rite he marae paenga whakairo,  
ki roto o Kaiweka, he marae rongonui  
ki runga ki raro tawhio noa....a*

*Tau mai e Kapiti  
Whakataretare mai kit e rangatahi e hao nei.  
Waikahua, Waikatohu, e mau ki nga mana i nga mana i ngakia e koe.  
Uhia mai ra te manaakitanga a nga tupuna kua wehe kit e po  
hei mauri whakakaha i te hinengaro  
o Tama, o Hine e pae nei.*

The place that answered the desires of the country  
That your children should be sacrificed.  
A symbol for the coming generations  
Of the majestic authority of ancient times,  
Of the power and awe of lo-nui,  
We salute you Kapiti

The centre of learning devoted to the current of the great,  
O the awesome, of the warrior,  
Created for the unity of te Ati Awa, Ngati Toa Rangatira and Ngati Raukawa,  
Those who migrated from Kawhia with a legacy  
Nourishing and giving life to those generations to come.

Stand there Kapiti, the homeland  
Of the awesome, of the warrior, of the sure and confident.  
We salute you Kapiti,  
The home of evil, of vengeance, of cannibalism,  
According to the accusations of the many,



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We salute Rangatira,  
That which is likened to the gathering place of the great chiefs  
At Kaiweka, a famous plaza  
Known in the north, the south, at all points.  
We salute you Kapiti,

Gaze upon the youth that gather here.  
Who shall say who will take hold of the authority  
vested in you?  
Bestow the blessings of those ancestors who have passed on,  
As an empowering life-force for the minds and imaginations  
Of the children gathered here.

**Sites of Significance**

*Rau o Te Rangī Channel / Te Rauoterangi Channel*

- 3.18. The name of the sea between Kapiti Island and the mainland celebrates the epic swim made by Kahe Te Rauoterangi from Kapiti to Te Uruhi with her child, Ripeka, on her shoulders to warn other Ngati Toa Rangatira of an imminent attack. This attack culminated in the Battle of Waiorua in 1824. Kahe Te Rauoterangi was the daughter of a leading Ngati Toa Rangatira chief, Te Matoha, whose principal residence was on Kapiti Island.

*Okupe Lagoon Area*

- 3.19. Located at the North-East end of Kapiti Island, near Waiorua bay is the site of Ngati Toa Rangatira cultivations, as well as the burial ground of those tribes repulsed by Ngati Toa Rangatira in the early 1820s. This was also the site of great feasts.

*Kurukohatu*

- 3.20 This area, located at the Northern end of Kapiti Island near Okupe Lagoon, from the flat to the hills, is covered with relics of ancient kumara plantations. Cowan noted that there were hundreds of cleared rectangular plots and low walls which would have required extensive work in the days of Te Rauparaha.

*Tiwhapaua*

- 3.21 Tiwhapaua was a cultivation ground at the northern end of Kapiti Island situated about halfway between the Waiorua stream and the Okupe Lagoon. It was once worked by Rene te Tahua who refers to it in Land Court evidence.

*Ngaiopiko*

- 3.22 This site was the residence of the prominent Ngati Toa Rangatira chief Tungia and is located at the northern end of Kapiti Island near Waiorua.

*Kaititi*

- 3.23 Kaititi was a village located on the hills close to the settlement of Kahu-o-Te-Rangi. The Ngati Toa Rangatira chief Te Hiko and his uncle Te Rangihiroa resided here for a time. The name refers to the eating of mutton birds, which were plentiful on the island at the time.

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*Pikiwahine*

- 3.24 Pikiwahine is a place on Kapiti Island about three-quarters of a mile inland of the mouth of the Kahu-o-Te-Rangi stream. Matene te Whiwhi explained in Land Court evidence that two years after the fighting at Haowhenua on the mainland, Ngati Toa Rangatira cleared the bush at this place and Tuteremoana for cultivation grounds. "Then Ngati Raukawa arrived," he said and "Te Rauparaha and Rangihaeata said to me, 'Go and show your parents the land, as cultivations for them.' This was on the other side of Pikiwahine. Ngati Raukawa occupied it for two years and returned to Otaki."

*Te Kahu-o-Te-Rangi settlement*

- 3.25 This was the name of a stream as well as an occupation site located a little to the south of Waiorua on the eastern coast of Kapiti Island. According to Rene te Tahua of Ngati Toa Rangatira, his parents worked cultivations at Kahu-o-te-Rangi and at another village close by called Kaititi. Among those who lived there prior to the battle of Waiorua were the chiefs Tungia, Te Tahua and Mohi. This was also the site of a whaling station and today, this is the best preserved whaling site on Kapiti. There are still remains and visible signs of the cultivation areas and the underground kumara and potato storage pits associated with the whaling village established by Kahe Te Rau o Te Rangi and John Nicol.

*Rangatira*

- 3.26 This is the fine grassy flat projecting into the sea and backed by wooded hills located about half a mile south of Paripatea at the northern end of Kapiti Island. Rapihana te Otaota told the Land Court that Rangatira was occupied by Ngati Tumania, Ngati Hangai and Ngati Haumia, hapu of Ngati Toa Rangatira. Erenora Rangiuiira also mentioned Ngati Terakuao as one of the Ngati Toa Rangatira hapu that were in occupation there. In the early days of Ngati Toa Rangatira settlement, the main chiefs living there, according to Rapihana, were Mahurenga, Meke and Te Teke. They were later joined by Nohorua and Te Aratangata. Later, this was Te Rauparaha's pa and one of the three main pa on Kapiti. Rangatira was also the site of an important whaling station in the 1830s.

*Te Umukaiohau*

- 3.27 Te Umukaiohau, said to be located near Kahikatea in the Kapiti No.4A block, was a place where once stood a small carved house, constructed by Te Rauparaha to commemorate the killing of his children at Ohau.

*Kaiwharawhara*

- 3.28 Kaiwharawhara, situated towards the southern end of Kapiti Island, was an area of residence for various Ngati Toa Rangatira hapu, including Ngati Terakuao and Ngati Whakatere. According to Hemi Kuti, this place belonged to his mother, Waitaoro te Kanawa, who inherited it through her uncle, Te Rakaherea, a chief of the Ngati Terakuao hapu of Ngati Toa Rangatira. Waitaoro was said to have been one of the first to set foot at this place when Ngati Toa Rangatira made their first landing on Kapiti Island after their migration from Kawhia. Shortly after embarking from one of the canoes she set about picking wild cabbage there. "From that time," says Hemi Kuti, "the land I claim was made sacred to her." Te Rakaherea and his hapu resided for some time at Kaiwharawhara and, except for a small group of Ngati Terakuao, later

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moved to the shores of Porirua Harbour where their main headquarters became Paremata pa.

*Otehou Pa*

- 3.29 Ngati Toa Rangatira chieftainess Topeora invited another iwi to reside at Otehou, which was located between Kahikatea and Taepiro. The iwi occupied the pa until the Tokakawau dispute after which they relocated.

*Taepiro / Taipiro*

- 3.30 Taepiro was a pa taken by Ngati Toa Rangatira and one of the three main pa on Kapiti. This fortified pa was located at the mouth of the Taepiro Stream and, at the time of Te Rauparaha's first visit to Kapiti Island, was occupied by a group led by the chief Potau. The pa was later occupied by another iwi and, finally, by Ngati Toa Rangatira.

*Maraetakaroro*

- 3.31 Located in the southern end of Kapiti Island, this was an area which Ngati Toa Rangatira leased to a trader during the whaling period. Te Ohu, a Ngati Toa Rangatira chief, was named as the principal owner in the transaction.

*Te Mimi-o-Rakapa*

- 3.32 This is the name of a small waterfall close to the beach, about one-third of a mile south of Taepiro. It was named after the Ngati Toa Rangatira chieftainess Rakapa Kahoki who was the daughter of Topeora and the Arawa chief Te Wehi-o-Te-Rangi. Rakapa is said to have swum from this place to one of the small islands opposite and thus the waterfall was named after her to commemorate the event.

*Whakariki Pa (or Te Whakariki Pa)*

- 3.33 A pa, located near the Kaiwharawhara Stream toward the southern end of the island, that was occupied by Ngati Whakatere, a Ngati Toa Rangatira hapu. The area is said to have included cultivation areas and burial grounds.

*Pouatekarake*

- 3.34 According to Hemi Kuti this was the place on Kapiti Island, near Kaiwharawhara, where Ngati Toa Rangatira canoes landed on their first visit to the island following the attack at Te Wi. The name was probably in ancient times a reference to a boundary post (pou) belonging to a chief named Te Kareke. Ngati Toa Rangatira landed at Te Pou te Rehunga, a settlement on the North bank of the Rangitikei river, just inland of the estuary. There were about 200 people occupying the fighting pa, Awamate. Ngati Toa Rangatira made peace with them after the battle at Awamate; Te Rangihaeata married Pikanga and stayed on at Te Awamate for several days. At this time he indicated that a Ngati Toa Rangatira migration would possibly occur in the future. Ngati Toa Rangatira returned here during the migration and stayed with the occupants for between one and three months.

*Motungarara*

- 3.35 Motungarara Island, located on the south-east coast, is shown on old maps as being Te Hiko's Island. Te Hiko is said to have resided here with his parents. The island

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was also the site of one of Te Rauparaha's pa and on some maps is noted as being Te Rauparaha's Island.

*Kaitangata*

- 3.36 Kaitangata is sacred rock that is seen as the abode of the tutelary spirit of the area; it is situated at the southern end of Kapiti Island between Te Mingi and Maraetakaroro streams. According to Cowan, green leaves were deposited and incantations repeated by passers-by in order to appease the tupuna.

*Wharekohu*

- 3.37 Wharekohu was a pa at which rangatira of Ngati Toa Rangatira, including Nopera Te Ngiha, resided on Kapiti. It was one of the three main pa on Kapiti and located at the southern end of the island. It is the location of burial caves regarded as highly tapu by Ngati Toa Rangatira.

**4. PROTECTION PRINCIPLES - KAPITI ISLAND**

- 4.1 The following protection principles are directed at the Minister of Conservation preventing harm to, or the diminishing of, the Ngati Toa Rangatira values related to the Kapiti Island:

- 4.1.1 protection of wahi tapu, indigenous flora and fauna originally found here and the wider environment within Kapiti Island;
- 4.1.2 recognition of the mana, kaitiakitanga and tikanga of Ngati Toa Rangatira over, and within, Kapiti Island;
- 4.1.3 recognition of Ngati Toa Rangatira as kaitiaki over Kapiti Island;
- 4.1.4 acknowledgement of Ngati Toa Rangatira tikanga/kawa in Kapiti Island;
- 4.1.5 respect for the association of Ngati Toa Rangatira with Kapiti Island;
- 4.1.6 accurate portrayal of the association of Ngati Toa Rangatira with Kapiti Island;
- 4.1.7 recognition and acknowledgement of the historical, cultural and spiritual significance of Kapiti Island; and
- 4.1.8 recognition of the relationship of Ngati Toa Rangatira with their wahi tapu, wahi taonga and other sites of significance in Kapiti Island.

**5. ACTIONS BY THE DIRECTOR-GENERAL OF CONSERVATION IN RELATION TO SPECIFIC PRINCIPLES**

- 5.1 Pursuant to clause 5.16.7 of the deed of settlement, the Director-General of Conservation has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles:

- 5.1.1 The Department will encourage recognition of Ngati Toa Rangatira's significant spiritual, historical, cultural and physical relationship and association Kapiti Island.

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**1.1: NGA PAIHOU CREATED OVER KAPITI ISLAND**

- 5.1.2 Ngati Toa Rangatira's association with Kapiti Island will be accurately portrayed in all new DOC information, signs and educational material.
- 5.1.3 Ngati Toa Rangatira will be consulted regarding the content of such material and the location of any new signs under 5.1.2 above to accurately reflect cultural and spiritual values and the Department will only use Ngati Toa Rangatira's cultural material with the consent of Ngati Toa Rangatira.
- 5.1.4 Department of Conservation staff, contractors, conservation board members, concessionaires, volunteers and the public will be provided with information about Ngati Toa Rangatira's values and cultural connection with Kapiti Island and the existence of Nga Paihau, and will be encouraged to respect Ngati Toa Rangatira's mana, kaitiakitanga and association with Kapiti Island.
- 5.1.5 Protection of landscape, archaeological and historic sites, indigenous flora and fauna of Kapiti Island will be part of the future management through regular monitoring, vigilance regarding biosecurity and compliance threats and by advocating sound and sustainable environmental planning principles and processes.
- 5.1.6 In respect of the Kapiti Marine Reserve, the Department of Conservation will ensure that the marine reserve remains as far as possible in its natural state.
- 5.1.7 The Department of Conservation will ensure that their management of Kapiti Island maintains, or where possible enhances, the ecological health of the island and the marine reserve and acknowledges and provides for Ngati Toa Rangatira's spiritual, historical, cultural and physical relationship with the Kapiti Island Nature Reserve, the Kapiti Island North Reserve and the Kapiti Marine Reserve.
- 5.1.8 The Department of Conservation's work programme will include measures to monitor the health of and threats to Kapiti Island and, where necessary, take steps to protect the indigenous flora and fauna of the island and the marine reserve.
- 5.1.9 Department staff will consult Ngati Toa Rangatira and particular regard will be had to their views over any proposed introductions or removal of indigenous species to and from Kapiti Island Nature.
- 5.1.10 Significant earthworks of soil and / or vegetation removal will be avoided wherever possible. Where significant earthworks and disturbances of soil and /or vegetation cannot be avoided, Ngati Toa Rangatira will be consulted and particular regard will be had to their views, including those relating to koiwi (human remains), wahi tapu, other taonga and archaeological sites. Any koiwi or other taonga found or uncovered will be left untouched and contact made immediately with Ngati Toa Rangatira to enable them to deal with the koiwi or taonga according to custom.

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**1.2 NGA PAIHAU CREATED OVER THE BROTHERS**

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1.2: NGA PAHAU CREATED OVER THE BROTHERS

**1. DESCRIPTION OF AREA**

1.1 The area known as "The Brothers" is:

1.1.1 "The Brothers" as described in schedule 2 of the draft settlement bill as shown on OTS-068-21; which comprises

1.1.2 The Brothers Islands Wildlife Sanctuary (Wildlife Sanctuary; 12.0773 hectares more or less, being all those islands known as The Brothers Islands and adjacent small islands and rocks situated as shown on OTS-068-21, together with the foreshore of those islands and rock.) For The Brothers Islands North group, the land is primarily held for navigational and safety purposes with a secondary use of Wildlife Sanctuary. Statutory Regulations 1970 page 87, to the extent that the overlay classification is compatible with the primary purpose.

**2. PREAMBLE**

2.1 Pursuant to section 42 of the Settlement Legislation, the Crown acknowledges the statement by Ngati Toa Rangatira of their cultural, spiritual, historic and/or traditional values relating to the Nga Whatu Kaiponu (The Brothers).

**3. NGATI TOA RANGATIRA VALUES**

3.1 Nga Whatu Kaiponu (The Brothers) are of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. These islands are important to Ngati Toa Rangatira as waahi tapu, and were traditionally used as navigational aids when crossing Te Moana o Raukawa (Cook Strait).

3.2 According to traditional history, Nga Whatu Kaiponu are said to represent the eyes of the wheke (giant octopus) that was killed and cast back into the ocean by Kupe. The name 'Te Moana o Raukawa' also has its origins in the narrative of Kupe's voyage to Aotearoa. Having followed Te wheke a Maturangi from Hawaiiiki, Kupe killed the giant octopus at the entrance to Tory channel. Nga Whatu Kaiponu are said to be the eyes of the wheke and therefore, in order that the wheke not be reawakened, the eyes of rowers crossing the strait were always traditionally covered. This was done with kawakawa leaves, hence the original name of Cook Strait, 'Te Moana o Raukawakawa'.

3.3 Te Moana o Raukawa was considered tapu by Ngati Toa Rangatira, and traditional history provides various accounts of the practice of covering the eyes of those crossing the strait. According to Ngati Toa Rangatira tradition, those crossing the strait for the first time were prohibited from looking to the right, left or behind. If this rule was broken, the waka was held stationary for a day and night and only the most carefully conducted ritual of an expert could release it. All persons crossing the strait carefully veiled their eyes with Kawakawa leaves, lest they see the tapu rocks of Nga Whatu Kaiponu, or Kapiti Island, which was also banned. After a safe crossing the newcomers were carried ashore and their blindfolds laid on a tuahu or tuhinapo.

3.4 Other accounts, as recounted by members of Ngati Toa Rangatira in the early twentieth century, tell of the komako huariki, a bird that frequented and guarded the cod-fishing ground in Te Moana o Raukawa. If fishermen heard the cry of the bird, then no fish would be caught as it was a puhore, or omen of bad luck. This bird also detained and held waka immovable when a forbidden person looked upon Nga Whatu

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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1.2: NGA PAIHAU CREATED OVER THE BROTHERS

Kaiponu; the waka would be so held for a day (Ka puritia taua waka e te komako huariki tiaki tauranga hapuku, kotahi te ra e puritia ana e te komako huariki).

- 3.5 According to Sir Maui Pomare in "Legends of the Maori" this chant was recited to him by Aperahama of Wainui Paekakariki, who said it was sung by a woman named Tuhupu for her husband who had sailed across Te Moana o Raukawa. The chant also contains reference to the custom of kopare: covering the eyes of tauhou (strangers) to those waters with a kopare or a blindfold.

*Ao ma uru e tauhere mai ra na runga ana mai te hiwi kei Te Tawake.  
Katahi te aroha ka makuru I ahau ki te tau ra e nui ai te itinga.  
Pirangi noa ake ki te kimi moutere, kia utaina au Te ihu o Te Rewarewa,  
Te waka o Patutahi, e whiu ki tawhiti; kia koparetia te rerenga I Raukawa,  
Kia huna iho, kei huna iho, kei kite ai Nga Whatu, kia hipa ki muri ra  
Ka titiro kau, kia noho taku iti te koko ki Karauriue [sic], nga mahi a Kupe,  
I topetopea iho. Kei whea te tane i rangi ai te itinga? Mo nga riri ra,  
Ka rukea ki ahau, waiho I roto nei, ka nui te ngakau -i-i-i.*

*Far over the western sea a cloud clings to Tawake's peak it drifts this way, it  
brings me fond hope of one who's far away:*

*Of him to whom I was betrothed while still young.*

*Oh, I would go with you across the swelling sea to seek some island of our  
own.*

*I'd seat me in Te Rewa's bows Te Patutahi's great canoe and sail so far away.*

*I'd bind my eyes so carefully to cross Raukawa's rolling sea least I imprudently  
behold the dread crags of Nga Whatu. And when we'd safely cross the Straits  
and free to gaze around again I'd see the shores of Karaurupe [sic].*

*The wondrous works of Kupe"*

*Our ancestor who sailed these seas, and severed the island from the main*

*But where is my loved one? I'm left behind to mourn alone, my heart swells  
high with sorrow.*

- 3.6 In the mid-1820s Ngati Toa Rangatira traded widely in the wider Te Moana o Raukawa region. Nga Whatu Kaiponu were important as navigational aids during voyages from the principal Ngati Toa Rangatira settlements on Kapiti and Mana Islands to the whaling stations and Ngati Toa Rangatira settlements on Arapaoa Island and at Te Hoiere, Port Underwood, and Wairau in the south. These strategically located coastal epicentres, combined with a supremely competent sea-voyaging tradition, meant that Ngati Toa Rangatira were able to extend their mana over of a vast area of coastline that was of immense political and economic importance.
- 3.7 Nga Whatu Kaiponu came to be known as "The Brothers". Ngati Toa Rangatira associate this name with the Thoms brothers, Hori and Tame, who were grandsons of Nohorua the Ngati Toa Rangatira Tohunga.
- 3.8 Nga Whatu Kaiponu and the surrounding sea were a traditional source of kaimoana. Ngati Toa Rangatira continue to fish and collect kaimoana off Nga Whatu Kaiponu today, continuing the custom established by our tupuna.



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**1.2: NGA PAIHAU CREATED OVER THE BROTHERS**

**4. PROTECTION PRINCIPLES - NGA WHATU KAIPONU (THE BROTHERS)**

- 4.1 The following Protection Principles are directed at the Minister of Conservation preventing harm to, or the diminishing of, the Ngati Toa Rangatira values related to The Brothers:
- 4.1.1 protection of wahi tapu, indigenous flora and fauna and the wider environment within Nga Whatu Kaiponu (The Brothers);
  - 4.1.2 recognition of the mana, kaitiakitanga and tikanga of Ngati Toa Rangatira over, and within, Nga Whatu Kaiponu (The Brothers);
  - 4.1.3 recognition of Ngati Toa Rangatira as kaitiaki over Nga Whatu Kaiponu (The Brothers) mahinga kai and other traditional resources;
  - 4.1.4 respect for Ngati Toa Rangatira tikanga / kawa in regard to Nga Whatu Kaiponu (The Brothers);
  - 4.1.5 respect for the association of Ngati Toa Rangatira with Nga Whatu Kaiponu (The Brothers);
  - 4.1.6 recognition of the relationship of Ngati Toa Rangatira with their wahi tapu, wahi taonga and sites of significance; and
  - 4.1.7 recognition of the traditional, historical, cultural, and spiritual significance of Nga Whatu Kaiponu (The Brothers) to Ngati Toa Rangatira as navigational guides.

**5. ACTIONS BY THE DIRECTOR-GENERAL OF CONSERVATION IN RELATION TO SPECIFIC PRINCIPLES**

- 5.1 Pursuant to clause 5.20.7 of the deed of settlement, the Director-General of Conservation has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles:
- 5.1.1 Department of Conservation staff, contractors, conservation board members, concessionaires and the public will be provided with information about values and the existence of the overlay classification and will be encouraged to respect Ngati Toa Rangatira's association with the Nga Whatu Kaiponu (The Brothers).
  - 5.1.2 Ngati Toa Rangatira's association with the Nga Whatu Kaiponu (The Brothers), including the traditional, historical, cultural, and spiritual significance of Nga Whatu Kaiponu (The Brothers) to Ngati Toa Rangatira as navigational guides, will be accurately portrayed in all new Department of Conservation information and educational material.
  - 5.1.3 Ngati Toa Rangatira will be consulted regarding the provision of all new Department of Conservation public information or educational material, and the Department of Conservation will only use Ngati Toa Rangatira cultural information with the consent of Ngati Toa Rangatira;
  - 5.1.4 Department staff will consult Ngati Toa Rangatira and particular regard will be had to their views over any proposed introductions or removal of indigenous species to and from Nga Whatu Kaiponu (The Brothers);

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**1.2: NGA PAIHAU CREATED OVER THE BROTHERS**

- 5.1.5 The ecosystems, flora and fauna of the Nga Whatu Kaiponu (The Brothers) will be protected by the Department of Conservation through measures to monitor the health of and threats to the Nga Whatu Kaiponu (The Brothers) and, where necessary, take steps to protect the indigenous flora and fauna of the area; and
- 5.1.6 Significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible. Where significant earthworks and disturbances of soil and / or vegetation cannot be avoided, Ngati Toa Rangatira will be consulted and particular regard will be had to their views, including those relating to koiwi (human remains) and archaeological sites. Any koiwi (human remains) or other taonga found or uncovered by the Department of Conservation will be left untouched and Ngati Toa Rangatira informed as soon as possible to enable them to deal with the koiwi or taonga in accordance with their tikanga.

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**1.3 NGA PAHAU CREATED OVER WAIRAU LAGOONS (PART OF THE WAIRAU  
LAGOONS WETLAND MANAGEMENT RESERVE)**

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**1.3: NGA PAIHOU CREATED OVER WAIRAU LAGOONS**

**1. DESCRIPTION OF AREA**

- 1.1 2071 hectares as described in schedule 2 of the draft settlement bill as Wairau Lagoons (Part of the Wairau Lagoons Wetland Management Reserve) as shown on OTS-068-22.

**2. PREAMBLE**

- 2.1 Pursuant to section 42 of the draft settlement bill (clause 5.20.1(b) of the deed of settlement), the Crown acknowledges the statement by Ngati Toa Rangatira of their cultural, spiritual, historic and/or traditional values relating to the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve).

**3. NGATI TOA RANGATIRA VALUES**

- 3.1 The Wairau Lagoon is of cultural, historical, spiritual, and traditional significance to Ngati Toa Rangatira. Ngati Toa Rangatira have a longstanding association with the lagoon as the Wairau Valley and Cloudy Bay have been one of the most important areas of Ngati Toa occupation since the late 1820s.
- 3.2 The Wairau was first conquered by Te Rauparaha and Te Rangihaeata in 1827; the chiefs led a taua into Te Tau Ihu in retaliation for an insult given by a chief who resided at the Wairau. According to sources the chief had stated that Te Rauparaha was very brave, and that he would like to crush his skull with a 'tukituki aruhi' a fernroot pounder.
- 3.3 Following the initial victory, there was no immediate settlement as the taua continued on to conquer further lands of Te Tau Ihu. At the end of the campaign however, Te Rauparaha allocated the conquered land to various hapu and the Wairau was one region which he kept for Ngati Toa Rangatira. It was at this time that Ngati Toa Rangatira began their more intensive occupation of the area. In 1840 a European 'explorer' and naturalist recorded 400 'Ngati Toa' settled in the Wairau.
- 3.4 A large stockade was constructed by Te Rauparaha at the mouth of the Wairau River. According to a source in 1843, the pa was formerly very substantial; by that time the condition of the pa had begun to deteriorate. A description of the pa at 1843 gives an indication of its former size: the pa consisted of a very fine but somewhat dilapidated stockade, three-quarters of an acre of ground and a few broken and deserted whares. The posts of the stockade which were about six or eight feet apart stood from 15 to 20 feet high and upwards out of the ground. They posts were very stout and required great labour to erect. The intervals between these large posts was supplejack, whereas the posts themselves were manuka which must have been transported from a considerable distance.
- 3.5 The Wairau Lagoon and waterways were a vital source of food for those Ngati Toa Rangatira residing in the Wairau region providing plentiful resources such as species of galaxid, eel, koura, cockles, kahawai, whitebait, flounder, mullet, pipi and the giant kokopu. Whitebait were in abundance in these waterways and, according to stories from the 1940s, the schools of whitebait were so large that farmers had to clear the shoals away with tree branches in order for their horses to drink from the Opawa River. The smaller tributaries that fed into the swamp land of the lower plains of the Wairau provided Ngati Toa Rangatira with an abundant supply of wetland flora and fauna such as flax, swamp maire and kahikatea.

**1.3: NGA PAIHOU CREATED OVER WAIRAU LAGOONS**

- 3.6 The lagoon swarmed with birds of different species. The wild fowl, including the putangitangi (paradise duck) and the parera (grey duck), that frequented the lagoon were an important food source. As these birds were flightless they were taken by hand in the narrow water lanes of the lagoon. The birds were potted in their own fat, and stored in vessels made from the bark of the totara tree and from giant sea kelp, providing ongoing sustenance.
- 3.7 The resources of the Wairau Lagoon made the area a particularly hospitable environment. This is evidenced by the great number of mahinga kai, tauranga waka, and other waahi tapu located in the region. Along the boulder bank which separates the lagoon from Cloudy Bay are wāhi tapu such as middens, campgrounds, and urupā. The Wairau Lagoons stretched some distance inland and contained a large body of fresh water wetlands to the west of the present lagoons. This has since been drained and is now used for farming. Currently the river, lagoons and wetlands are home to 90 species of wetland bird; 22 of New Zealand's 42 native fish species and a number of threatened wetland plants.
- 3.8 It is a great concern of Ngati Toa Rangatira that the lagoon is in danger of being severely degraded and it is our view that it requires protection to ensure it continues to be a sustainable source of flora and wildlife for future generations.

**4. PROTECTION PRINCIPLES**

- 4.1 The following protection principles are directed at the Minister of Conservation preventing harm to, or the diminishing of, the Ngati Toa Rangatira values related to the Wairau Lagoons:
- 4.1.1 protection of wahi tapu, indigenous flora and fauna and the wider environment within the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve);
  - 4.1.2 recognition of the mana, kaitiakitanga and tikanga of Ngati Toa Rangatira over, and within, the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve);
  - 4.1.3 recognition of Ngati Toa Rangatira as kaitiaki over the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve) mahinga kai and other traditional resources;
  - 4.1.4 acknowledgement of Ngati Toa Rangatira tikanga/kawa over the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve);
  - 4.1.5 respect for the association of Ngati Toa Rangatira with the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve);
  - 4.1.6 recognition of the historical, cultural and spiritual significance of the Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve) to Ngati Toa Rangatira; and
  - 4.1.7 recognition of the relationship of Ngati Toa Rangatira with their wahi tapu, wahi taonga and sites of significance.

**1.3: NGA PAIHOU CREATED OVER WAIRAU LAGOONS**

**5. ACTIONS BY THE DIRECTOR-GENERAL OF CONSERVATION IN RELATION TO SPECIFIC PRINCIPLES**

- 5.1 Pursuant to clause 5.20.7 of the deed of settlement, the Director-General of Conservation has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles:
- 5.1.1 Department of Conservation staff, contractors, conservation board members, concessionaires and the public will be provided with information about Ngati Toa Rangatira values and cultural connection with Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve), as well as the existence of Nga Paihau, and will be encouraged to respect Ngati Toa Rangatira's mana, kaitiakitanga and association with Wairau Lagoons;
  - 5.1.2 the Department of Conservation will work with Ngati Toa Rangatira on the design and location of any new signs to discourage inappropriate behaviour, including fossicking, the modification of wahi tapu sites and disturbance of other taonga;
  - 5.1.3 Ngati Toa Rangatira's association with Wairau Lagoons (part of the Wairau Lagoons Wetland Management Reserve) will be recognised in all new Department of Conservation information and educational material;
  - 5.1.4 Ngati Toa Rangatira will be consulted regarding the provision of all new Department of Conservation public information or educational material, and the Department of Conservation will only use Ngati Toa Rangatira cultural information with the consent of Ngati Toa Rangatira;
  - 5.1.5 significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible;
  - 5.1.6 where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, Ngati Toa Rangatira will be consulted and particular regard will be had to their views, including those relating to koiwi (human remains) and archaeological sites; and
  - 5.1.7 any koiwi (human remains) or other taonga found or uncovered by the Department of Conservation will be left untouched and Ngati Toa Rangatira informed as soon as possible to enable them to deal with the koiwi or taonga in accordance with their tikanga, subject to any procedures required by law.

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**2. STATEMENTS OF ASSOCIATION**

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**2: STATEMENTS OF ASSOCIATION**

The statements of association of Ngati Toa Rangatira are set out below. These are statements of the particular cultural, spiritual, historical and traditional association of Ngati Toa Rangatira with identified areas.



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**2.1 STATEMENTS OF ASSOCIATION**

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**Clause 5.35**

2.1: STATEMENTS OF ASSOCIATION

**Balance of Mana Island**

Te Mana o Kupe ki Aotearoa is a site of great historical and cultural significance. It was discovered by Kupe and bears his name as Te Mana o Kupe ki Aotearoa. The name refers to the ability of Kupe to cross the ocean to Aotearoa and also to commemorate his defeat of Maturangi.

Archaeological excavation has found evidence of occupation from as early as 600 years ago. Middens dating from early settlement have been uncovered with the remains of a great variety of fish species, labrids, snapper, blue cod, greenbone, leatherjacket, and moki.

Ngati Toa Rangatira have a strong historical and cultural association with this site as it was regarded as the principal kainga of Te Rangihaeata who established his claim to the island following the battle of Waiorua in 1824. The island was the site of his renowned carved whare, Kai Tangata, and the tomb of his mother Waitohi. It was also from Te Mana o Kupe ki Aotearoa that Te Rangihaeata controlled much of Ngati Toa Rangatira's maritime trading networks through harakeke harvested from the swamps of Haretaunga and Ohariu. There are a number of Ngati Toa Rangatira wāhi tapu on the island, including: pa sites; urupa; gardens; pits and middens.

The coastline of Te Mana o Kupe ki Aotearoa is predominantly rocky and steep however, in the north-east of the island, where the Waikoko stream runs down to the coast, there is a flat area and beach. This was the tauranga waka of Te Ra Makiri and was gazetted as a Landing Place Reserve in 1979.

The sheltered and flat area located past the beach was named Matakītiki by Kupe and was a site of concentrated occupation by Ngati Toa Rangatira. This area is also of particular significance as it is the site of a Ngati Toa Rangatira urupa.

Mana was, and remains, an important area for customary fishing. It is a source of koura, paua, kina and a number of finfish species including moki, terakihi, kahawai, blue cod and butterfish.

**Red Rocks Scientific Reserve**

Pariwhero, or Red Rocks, take their name from the time of Kupe, "pari" meaning cliff or precipice and "whero" meaning red. There are two differing stories that seek to explain the red colouration of the rocks. In the first version Kupe was gathering paua here, when one shellfish clamped his hand. He bled, and stained the rocks red. In the second Kupe's daughters, fearing their father would never return from his pursuit of Maturangi, cut themselves as an act of grief and so stained the rocks with their blood.

In the early nineteenth century Ngati Toa Rangatira established an important historical and cultural association with Pariwhero, which was linked to their wider relationship with the South Coast arising through the development of a maritime trading networks based around the Cook Strait/Te Moana o Raukawa.

The south west coast was the site of intensive harakeke harvesting activities that were a fundamental pillar of Ngati Toa Rangatira's trading economy. The area was also valued for collecting karaka berries, an important dietary resource of Ngati Toa Rangatira.

Pariwhero was an area much frequented by Ngati Toa Rangatira in early times although it was not a site of occupation. However, cultural material and taonga Maori have been discovered in the vicinity in small rock caves (now buried). In addition to the historical significance of

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**2.1: STATEMENTS OF ASSOCIATION**

Pariwhero, the waters around Pariwhero were, and remain, valued by Ngati Toa Rangatira as an abundant source of kaimoana including kina, koura, paua and finfish.

Ngati Toa Rangatira have always retained their connection to the area through unbroken use of the coastal area and its resources to today. The area occupies an important place in tribal traditions.

**Pukerua Bay Scientific Reserve**

Pukerua Bay was historically an area of concentrated Ngati Toa Rangatira settlement, and remains an area of historical and cultural significance. There were three pa located around the area known today as Pukerua Bay.

There are a number of Ngati Toa Rangatira wāhi tapu located at Pukerua Bay, including pa sites and urupa.

The Waimapihi pa complex is located at the northern end of the Taua-tapu track, which led to Taupo pa in Plimmerton. Waimapihi pa became an important settlement for Ngati Toa Rangatira when the former inhabitants left the area. Ngati Toa Rangatira's connection began initially with the Amiowhenua expedition in 1819 which was followed by the Te Heke Mai Raro migration of 1822. In the early nineteenth century the pa was occupied by Te Hiko, son of Te Peehi Kupe, and many of his relatives. It was also known for its extensive cultivations.

In close proximity to the former Ngati Toa Rangatira settlement is an urupa which features four rows of visible tombstones. When the coastal route was under construction many graves were disinterred and the koiwi were placed in a common grave.

Located at the western end of Pukerua Railway Station was Pukerua Pa, an important fortified settlement. The pa was constructed by Te Hiko following the battle of Kuititanga in 1839. Another Ngati Toa Rangatira pa site was Wairaka pa. This pa was also constructed by Te Hiko. There are a series of urupa associated with Wairaka pa located along the ridgeline at Te Hau Kopua.

Archaeological remains, including terraces and middens, have been identified at both Pukerua pa and Wairaka pa.

Pukerua Bay was traditionally a significant mahinga kai, and a source of paua, kina and koura. Ngati Toa Rangatira, as kaitiaki of Pukerua Bay, with the support of the local community, have established mechanisms founded in our tikanga to protect the marine environment.

**Oteranga Bay Marginal Strip**

Oteranga Bay is historically and culturally significant to Ngati Toa Rangatira as it is the site of a Ngati Toa Rangatira urupa which is the final resting place of Horomona Matakape. Horomona Matakape was a grandson of Nohorua and cousin to both Hohepa Tamaihengia and Rawiri Puaha with whom he was also a partner in a schooner (named "The Brothers") built by the renowned whaler and trader, Joseph Thoms and his sons, George and Thomas. Joseph Thoms married Te Uatorikiriki, who was a daughter of Nohorua, the Ngati Toa Rangatira Tohunga and half brother of Te Rauparaha. Thoms and sons built the schooner originally for themselves (hence the name "Brothers") to trade in the Cook Strait region and also Australia where Nohorua was known and traded as Tom Street.

According to Ngati Toa Rangatira tradition Thoms Rock commemorates the accidental grounding of "The Brothers" ship which led to the drowning of Horomona Matakape. Joseph

**2.1: STATEMENTS OF ASSOCIATION**

Thoms was piloting the vessel and it was this event that led the reef to be named after him. "The Brothers" was built by Joseph Thoms and sold to the brothers Rawiri Puaha, Hohepa Tamaihengia and Horomona Matekape.

The original burial site of Horomona Matakape is just north of Thoms Rock, directly inshore from the Karori Light. He remained buried there for approximately 100 years until the area was disturbed by the construction of an access road to the coast. Consequently, his remains were disinterred and relocated to the urupa at Oteranga Bay.

Ngati Toa Rangatira continue to exercise customary rights to the south west coast, including Oteranga Bay, through customary harvesting of kaimoana and the exercise of their kaitiaki role in relation to the protection and ongoing management of fisheries resources. Oteranga Bay continues to be highly valued by Ngati Toa Rangatira as an important area for customary fishing. Ngati Toa Rangatira harvests a number of finfish species from the area including moki, terakihi, kahawai, and butterfish. Koura, kina, and paua are also found here in relative abundance.

### **Queen Elizabeth Park**

Ngati Toa Rangatira have a strong historical, cultural, and spiritual association with the area which comprises Queen Elizabeth Park. The park is located within a historic Ngati Toa Rangatira reserve and includes the two settlements of Wainui and Whareroa. The park is included in the northern end of the reserve established in 1847 for Ngati Toa Rangatira.

The area contains a number of significant Ngati Toa Rangatira wāhi tapu, including urupa and kainga. It is not uncommon for koiwi and taonga Maori to be discovered within the park. In 2006, the prow of an early waka was discovered and retrieved from the mouth of the Wainui stream. Ngati Toa Rangatira still maintain an urupa located near the Wainui stream.

Ngati Toa Rangatira made initial contact with the area during a taua in 1819. Te Rauparaha, perhaps looking to the future, instructed Te Rako, a Ngati Toa Rangatira chief, to remain in the area. However it was not until after the Battle of Waiorua in 1824 that Ngati Toa Rangatira settled the area. At that point the land was apportioned by Waitohi, sister of Te Rauparaha and mother of Te Rangihaeata, to the various Nihoputa groups for settlement. Waitohi was a highly respected and influential rangatira who played an important role in the political affairs of Ngati Toa Rangatira.

From the 1820s and 1830s the area was settled by many other iwi/hapu at the invitation of Ngati Toa Rangatira. Ngati Haumia, a hapu of Ngati Toa Rangatira, also remained in occupation of the area until the late nineteenth century.

Queen Elizabeth Park has remained an important kainga of Ngati Toa Rangatira/Ngati Haumia. Ngati Toa Rangatira currently operate the Paekakariki Camping Ground. The park is still used by members of Ngati Toa Rangatira for cultural purposes.

### **Whareroa Farm**

Whareroa Farm is valued as an area of great historical, cultural, and spiritual significance to Ngati Toa Rangatira. It was the site of a Ngati Toa Rangatira settlement and contains a number of wāhi tapu.

Whareroa Farm takes its name from the historical site, Whareroa Pa, situated on a high dune close to the mouth of the Whareroa stream. At the foot of the pa's eastern and southern

**2.1: STATEMENTS OF ASSOCIATION**

approaches the steep face of the hillside was afforded extra protection by the deep stream which served as a kind of moat.

The Wainui Pa was located within a short distance from Whareroa, making the area an important cultural centre for Ngati Toa Rangatira. The small settlement of Tipapa remained occupied until about 1840 although both Whareroa and Wainui remained as important kainga for much longer.

Ngati Toa Rangatira made initial contact with the area during a taua in 1819. Te Rauparaha, perhaps looking to the future, instructed Te Rako, a Ngati Toa Rangatira chief to remain in the area which he did, covering the coastline from the South Coast to Paekakariki. However it was not until after the Battle of Waiorua in 1824 that Ngati Toa Rangatira settled the area. The land was then apportioned by Waitohi, sister of Te Rauparaha, to the various Nihoputa groups for settlement.

From the 1820s and 1830s the area was settled by many other iwi/hapu at the invitation of Ngati Toa Rangatira. Ngati Haumia, a hapu of Ngati Toa Rangatira also remained in occupation of the area until the late nineteenth century.

From early Ngati Toa Rangatira settlement, Whareroa Farm has remained an important kainga of Ngati Toa Rangatira/Ngati Haumia.

**Te Onepoto Bay**

Te Onepoto Bay, located on the Whitireia Peninsula, was a site of Ngati Toa Rangatira settlement. The Whitireia peninsula is of historical and cultural importance to Ngati Toa Rangatira as it contains numerous wāhi tapu and sites of significance, including urupa, kainga, pa, middens, pits, terraces and tauranga waka. There were numerous settlements along the coast at Te Onepoto, Te Kahikatoa, Te Neke, Kaiaua, Onehunga and Kaitawa. The coast of the peninsula remains an important area for the gathering of kaimoana.

Originally reserved under the 1847 Porirua Deed, the land at Whitireia was gifted to the Crown on the premise that an Anglican Mission school would be established to educate the children of Ngati Toa Rangatira. In 1850 the Crown granted the land to the Bishop of Wellington for the purpose of a school. When no school was established at Whitireia, the Crown grant was challenged by Ngati Toa Rangatira in 1877 in *Wi Parata v Bishop of Wellington*. The Supreme Court held that Ngati Toa Rangatira native title to the land was extinguished through the Crown grant, in a decision criticised and challenged by subsequent judgements.

The Whitireia Case highlights the unique historical significance of Whitireia to Ngati Toa Rangatira, including Te Onepoto Bay. The settlement at Te Onepoto was located at the western side of the entrance to the Porirua harbour, a site which had always been recognised by Maori as having considerable strategic importance. The Porirua Harbour is the northern shore of the shortest crossing of Cook Strait from the West Coast. It also lay astride the main route to Wellington. Te Rauparaha is reputed to have told Governor Grey that whoever held Paremata and Porirua Harbour controlled the northern approaches to Wellington.

Ngati Toa Rangatira almost exclusively utilised the harbour and its kaimoana resources such as cockles, mussels and finfish up until the 1950s when the government commenced large scale housing developments in the area. The harbour experienced huge development pressure from reclamation for what is now the city centre. Over the following decades, the effects of intensified land use, contamination and siltation have resulted in poor water quality and an inability to harvest kaimoana.

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**Pauatahanui Wildlife Reserve**

The Pauatahanui Wildlife Reserve is significant to Ngati Toa Rangatira because of their association to the entire Pauatahanui Inlet area. The Inlet is important to Ngati Toa Rangatira for cultural and historical reasons. The iwi's association with the area originates from their conquest of the greater Wellington region in the 1820s. It became a place of settlement and an important mahinga kai.

Motukaraka pā, which overlooked the inlet, was a site of extensive cultivations. The pa site was valued for its strategic importance as it was elevated, bordered by steep banks, and it projected out into the harbour far enough to command views in both directions. Te Rangihaeata set up a fighting pa beside the inlet at the point, but withdrew from it in 1845 as it was within firing distance for light gun boats. When tensions between Ngati Toa Rangatira and the Crown escalated in 1846, Te Rangihaeata moved from Mana Island to Motukaraka for a brief period, before establishing his palisaded Pa at Mataitaua. In 1846 Fort Strode was established at Motu-karaka.

Te Rangihaeata constructed Matai-taua pā, also near the inlet, as a gun-fighters pa between 1845 and 1846. It was the only pa in the region to be built specifically for this purpose and particular type of combat or defence. Fighting between Ngati Toa and the Crown occurred at the pa on 11 July 1846, but with little consequence. With the capture of Te Rauparaha, Te Rangihaeata abandoned the pa on 1 August 1846. St Albans Church (built in 1895) is now located on the site of Matai-taua Pa.

The Pauatahanui Inlet was also an important food resource and pipi and cockles could be gathered from the uncovered mud flats. Shellfish was of great importance as a food resource for the Ngati Toa Rangatira communities located around Pauatahanui and the Porirua Harbour.

Incidentally, the name Pauatahanui does not refer to paua as is often mistakenly believed, but rather takes its meaning from its shape which is similar to a large, flat, round dish.

**Horokiri Wildlife Management Reserve**

The Horokiri Wildlife Reserve is located within the Pauatahanui Inlet and was a site of cultural and historical significance to Ngati Toa Rangatira. The iwi's association with the area originates from their conquest of the greater Wellington region in the 1820s.

Motukaraka pā, overlooking the inlet, was a site of extensive cultivations. The pa site was valued for its strategic importance as it was elevated, bordered by steep banks, and projected out into the harbour far enough to command views in both directions. Te Rangihaeata set up a fighting pa beside the inlet at the point but withdrew from it in 1845 as it was within firing distance for light gun boats. When tensions between Ngati Toa Rangatira and the Crown escalated in 1846, Te Rangihaeata moved from Mana Island to Motukaraka for a brief period before establishing his palisaded Pa at Mataitaua. In 1846 Fort Strode was established at Motu-karaka.

Te Rangihaeata constructed Matai-taua pā, also in the vicinity of the inlet, as a gun-fighters pa between 1845 and 1846. It was the only pa in the region to be built specifically for this purpose and particular type of combat, or defence. Fighting between Ngati Toa and the Crown occurred at the pa on 11 July 1846 but, with little consequence. With the capture of Te Rauparaha, Te Rangihaeata abandoned the pa on 1 August 1846 and Crown forces entered the next day. St Albans Church (built in 1895) is now located on the site of Matai-taua Pa. The pa was described as having a double row of timber palisades, with trenches and

**2.1: STATEMENTS OF ASSOCIATION**

traverses across, about 80 paces long and 35 broad, in the shape of a parallel. The position was a very strong one and would have been almost impregnable without artillery.

The Horokiri Wildlife Reserve is also of significance as it is located near the beginning of the route which was used by Ngati Toa Rangatira to travel between the Hutt Valley and Porirua.

**Battle Hill Farm Forest Park**

Battle Hill Farm Forest Park has great historical significance to Ngati Toa Rangatira as it was the site of an important battle between Government forces and a party of Ngati Toa Rangatira and other iwi, under Te Rangihaeata, hence the name "Battle Hill".

Along with the rich history associated with the name, Battle Hill was also a site that was not settled, so was still rich with native vegetation housing native bird species such as Karearea (New Zealand Bush Falcon) and the North Island Kaka. The fauna were able to feast upon the rich offerings of the bush and iwi were also able to collect rongoa (traditional Maori medicine) from the forest.

The Te Puka and Horokiri Streams running near and through sections of the park were rich with kaiawa such as tuna and inanga and can still be fished further downstream outside of the park today.

Battle Hill is regarded as a waahi tapu site for Ngati Toa Rangatira given the ferocity of the Battle that occurred here. According to iwi tradition, Ngati Toa Rangatira lives were lost on Battle Hill during this period. These lives and the battle which Ngati Toa Rangatira participated in at this site establish a perpetual connection between Ngati Toa Rangatira and Battle Hill.

The origins for the events that took place there lie in the escalating conflict between the Crown and Māori over the ownership of Harataunga (the Hutt Valley). After several violent skirmishes between the Crown, settlers and Māori in the Hutt, the Crown decided to attack Te Rangihaeata, who they held responsible for the conflict. In 1846, Crown forces moved to the Porirua region in pursuit of Te Rangihaeata, who had built a stockaded pa at Pauatahanui named Mataitaua.

Te Rangihaeata, realising that Mataitaua pa would probably fall to the cannons of the HMS Driver, sought refuge in the dense Horokiwi forest and established a series of defences on Battle Hill. Crown forces pursued Te Rangihaeata and attacked the hill defences. Return fire from Te Rangihaeata halted the attack, killing three Government troops. Sending to Porirua for backup mortars, the government force settled into a siege and bombarded Te Rangihaeata's pa for several days not knowing that Te Rangihaeata had tricked them into believing he and his men were on one part of the hill when they were elsewhere. Eventually Te Rangihaeata decided to move north to Poroutawhao and vacated his position.

**Lake Rotoiti, Nelson Lakes National Park**

Lake Rotoiti is of historical and cultural significance to Ngati Toa Rangatira as the area is part of Ngati Toa Rangatira's extended rohe.

In the mid nineteenth century there were numerous Ngati Toa Rangatira settlements throughout Te Tau Ihu and the lake was a valuable resource to the iwi. Lake Rotoiti was used as a pataka kai, or food gathering place by Ngati Toa Rangatira travelling to and from the West Coast to collect and trade pounamu.

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Lake Rotoiti was a significant mahinga kai and the kakahi (a fresh-water mussel), tuna (eel), Kokopu Inanga and blue duck found in abundance at the lake were gathered by Ngati Toa Rangatira and were favourite foods of Te Rauparaha.

**Lake Rotoroa, Nelson Lakes National Park**

Lake Rotoroa is of historical and cultural significance to Ngati Toa Rangatira as the area is part of Ngati Toa Rangatira's extended rohe.

In the mid nineteenth century there were numerous Ngati Toa Rangatira settlements throughout Te Tau Ihu and the Lake was a valuable resource to the iwi. There are fern garden clearings on the western side of the Lake that were a site of temporary accommodation for parties travelling to resource areas and mahinga kai throughout the northern and western South Island.

Lake Rotoroa was a significant mahinga kai and the kakahi (a fresh-water mussel), Tuna (eel), Kokopu Inanga and blue duck found in abundance at the lake were favourite foods gathered by Ngati Toa Rangatira. The eels from the area are a prized delicacy.

**Wairau Pa**

The Wairau is of great significance to Ngati Toa Rangatira. Since the 1820s it has been one of the most important sites of Ngati Toa Rangatira occupation and settlement and is, therefore, both culturally and historically important.

It was originally captured during the Ngati Toa Rangatira invasion of Te Tau Ihu in the late 1820s with major Ngati Toa Rangatira victories taking place at Kowhai Pa and Hui waka.

The Wairau Pa, located at the mouth of the Wairau River, was rebuilt by Te Rauparaha following the southern taua. The large and imposing fortress was still standing at the time of the New Zealand Company surveys in 1843. The area of the pa has been recorded as three quarters of an acre with stockades that ran six or eight feet apart and stood 15 to 20 feet high. These were made of supplejack and manuka.

This area remains a site of historical and cultural significance to Ngati Toa Rangatira.

**Chetwode Islands**

The Chetwode Islands are of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Also known as Nukuwaiata, the Chetwode islands lie in the outer Pelorus Sound (Te Hoiere), on the edge of Te Moana o Raukawa, an area of immense cultural significance to Ngati Toa Rangatira. The Chetwode Islands are comprised of Nukuwaiata Island and Te Kakaho Island. These islands both contained settlements, Nukuwaiata pa being located at the southern end of that island. The Chetwode Islands mark the beginning of the Pelorus sound, an important area of Ngati Toa Rangatira settlement in the nineteenth century, the principal kainga being on Paruparu Island (known today as Forsyth Island).

Following the taua of 1829-1832, Ngati Toa Rangatira expanded their interests into the South Island, forging relationships with Europeans traders and whalers and trading in the natural resources of the area. During the 1830 and 1840s, there were relatively large scale flax harvesting activities being undertaken in Te Hoiere by those under the authority of Te Rauparaha.

The Pelorus Sound and Pelorus River were abundant with food resources, used intensively by



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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Ngati Toa Rangatira, including both freshwater and salt water species, as well as birds. The area is still of significance to Ngati Toa Rangatira, with many waahi tapu throughout the wider Pelorus basin.

**Malcolm's Bay Scenic Reserve, Arapaoa Island**

Located on, and in the vicinity of, Arapaoa Island are numerous sites of cultural significance to Ngati Toa Rangatira.

Within Onaukau Bay are located three pa and kainga sites; these were the Ruapara Bay Pa, the Mokopeke Bay Pa and the Fitzgerald Bay pa. These settlements were all occupied by Ngati Toa Rangatira at various times, originally being settled following the iwi's invasion of Te Tau Ihu in the 1820s.

Te Aroha Bay, located nearby, was an important area for resources, both gathered and grown as part of cultivations. The area remains a source of finfish and shellfish. Arapaoa was also strategic in that it enabled Ngati Toa Rangatira easy access to the fisheries resources of Te Moana o Raukawa.

Okukari Pa, located in Okukari Bay, was the first pa attacked by Ngati Toa Rangatira as part of Te Rauparaha's campaign to respond to the Tukituki aruhe insult. The final outcome of the campaign was the establishment of a vast area under the mana of Ngati Toa Rangatira and their allies. Following this action the Ngati Toa Rangatira settlement of Wharehunga pa was established in Okukari Bay.

Located at Te Awaiti was the Te Awaiti whaling station. Built in 1827, it was one of the first whaling stations to be established in New Zealand. The station provided a view of the whole of Te Moana o Raukawa and was home to a large body of Ngati Toa Rangatira who, according to historical sources, had established good quality houses and stores of pigs, potatoes and flax. Te Awaiti also has cultural significance as a wāhi tapu and urupa location. Lands at Te Awaiti were given by Te Rauparaha and Te Rangihaeata to Joseph Thoms at the behest of Nohorua. A small urupa is sited on the lands and Te Ua Torikiriki, Joseph Thom's wife and Nohorua's daughter, was interred there.

**Hutt River and its tributaries**

The Hutt River (Te Awa Kairangi) is of historical and cultural importance to Ngati Toa Rangatira. The iwi claim an association with the Hutt River from the time of their participation in the invasion of the Hutt Valley during 1819 and 1820.

During that campaign, the taua marched around the western side of Te Whanganui a Tara, defeating the local iwi as they went. When the war party reached the Hutt River, they constructed rafts which they used to aid them in their invasion of the Hutt Valley.

Although Ngati Toa Rangatira did not remain in the area after this invasion, the Hutt River continued to be important to the iwi following their permanent migration and settlement in the lower North Island in the late 1820s and early 1830s. The relationship of Ngati Toa Rangatira to the Hutt Valley and River was not one defined by concentrated settlement and physical presence. Rather, the iwi felt their claim to the land was strong based on the powerful leadership of Te Rauparaha and Te Rangihaeata and the relationship they had with iwi residing in the Hutt Valley who had been placed there by Ngati Toa in the 1830s. For some years these iwi in the Hutt Valley paid tribute of goods such as canoes, eels and birds to Te Rauparaha and Te Rangihaeata.

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Ngati Toa Rangatira have a strong historical connection with the Hutt River and its tributaries, and the iwi consider that the river is included within their extended rohe and it is an important symbol of their interests in the Harataunga area.

Te Awa Kairangi was traditionally an area for gathering piharau, or the freshwater blind eel, as well as tuna (eel) from its tributaries. Harataunga also supported flax plantations, which were used by early Maori for trading with settlers. The River was also of great importance as it was the largest source of freshwater in the area.

The river was also an important transport route, and small waka were used along the length of Te Awa Kairangi.

**Maitai River and its tributaries**

The Maitai River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. In the 1830s, some of Te Rauparaha's children were burned on the banks of the river while on route to Te Tai Tapu; because of this the land was declared tapu and subsequently was uninhabited by Maori at the time of European settlement. Therefore, contrary to the perception of the European colonisers, lack of settlement was not an indication of the cultural importance of the land; in fact, it remained an important site to Ngati Toa Rangatira and this was expressed in letters written to George Grey in 1851 and 1852 by a number of Ngati Toa Rangatira chiefs. Te Whatarauhi Nohorua, Rawiri Puaha, Matene Te Whiwhi, Hohepa Tamaihengia, Nopera Te Ngiha and Ropata Hurumutu, explained their claim to the land in the Nelson area, using the incident at Maitai to assert Te Rauparaha's personal interest in the region. According to the Ngati Toa Rangatira chiefs, Te Rauparaha and his children Tamihana, Aamina and their eldest brother suffered serious burns. The eldest brother and Aamina were both burned all over their heads and bodies; Tamihana was burned down one side from his arm to his leg. It was following this incident that Whakatu became a tapu area and, in the nineteenth century was not settled by Maori, but by the Pakeha.

Not all sections of the Maitai River were affected by the rahui imposed by Te Rauparaha, and the river was an important mahinga kai. Ngati Toa Rangatira had settlements in the surrounding region at Whakatu, Whakapuaka and Waimea, which utilised the eel resource of the river. Other pa in the area were the Bishop Peninsula Pa, the Ataata Point Pa and the Maori Beach Pa.

The Maitai River was historically a source of argillite, a highly valuable and useful rock used for toki (adzes) and working tools.

**Wairau River, Omaka River, Ōpaoa River, and Kaituna River and their tributaries**

The Wairau River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Ngati Toa Rangatira have a longstanding association with the Wairau River as the Wairau and Cloudy Bay have been important areas of Ngati Toa Rangatira settlement since the 1830s.

The Wairau was first conquered by Te Rauparaha and Te Rangihaeata in 1827; the chiefs led a taua into Te Tau Ihu in retaliation for an insult given by a chief who resided at the Wairau. According to sources, the chief had stated that Te Rauparaha was very brave and that he would like to crush his skull with a 'tukituki patu aruhe' (a fernroot pounder).

Following the initial fighting, there was no immediate settlement as the taua continued on a campaign across further lands of Te Tau Ihu. At the end of the fighting, Te Rauparaha assigned land to various hapu and the Wairau was one region which he retained for Ngati Toa

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Rangatira. It was at this time that Ngati Toa Rangatira began their more intensive settlement of the area, and by 1840 400 'Ngati Toa Rangatira' were recorded as being settled in the Wairau.

A large stockade was constructed by Te Rauparaha at the mouth of the Wairau River. According to a source in 1843, the pa was formerly very substantial; by that time the condition of the pa had begun to deteriorate. A description of the pa at 1843 gives an indication of its former size: the pa consisted of a very fine but somewhat dilapidated stockade, three-quarters of an acre of ground and a few broken and deserted whares. The posts of the stockade which were about six or eight feet apart stood from 15 to 20 feet high and upwards out of the ground. They posts were very stout and required great labour to erect. The intervals between these large posts was supplejack, whereas the posts themselves were manuka which must have been transported from a considerable distance.

The Wairau River, being a largely braided river, made the lands of the Wairau plains particularly suitable for occupation. The waterways of the Wairau provided Ngati Toa Rangatira with plentiful resources such as eel, koura, cockles, kahawai and the giant kokopu. The smaller tributaries fed into the swamp land of the lower plains of the Wairau, providing Ngati Toa Rangatira with abundant supply of wetland flora and fauna such as flax, swamp maire and kahikatea. Currently, the river, lagoons and wetlands are home to 90 species of wetland bird, 22 of New Zealand's 42 native fish species and a number of threatened wetland plants.

The resources of the Wairau River and Lagoon, combined with the resources of the sea made the Wairau plains a particularly hospitable environment. This is evidenced by the great number of wahi tapu and other sites of significance located in the region.

**Te Hoiere / Pelorus River and its tributaries**

The Pelorus or Te Hoiere River is a site of cultural, historical, spiritual, and traditional significance to Ngati Toa Rangatira. It was a very important waterway because it linked two areas of Ngati Toa Rangatira settlement: the Te Hoiere Sound and Tasman Bay. The access route of the valley, and particularly the river, allowed for frequent travel between the two areas, for the transportation of resources, and for communication between the people of Ngati Toa Rangatira. This gave Ngati Toa Rangatira a broader spatial relationship with the region which was vital to the maintenance of the maritime trading domain established by Te Rauparaha. The Pelorus River gave Ngati Toa Rangatira direct access to the inland of Te Tau Ihu from their coastal settlements, increasing the pool of resources from which the iwi drew sustenance.

Originally the Te Hoiere River Valley was rich in native forest and birdlife; both of which were a valuable resource to Ngati Toa Rangatira.

The river was an abundant source of tuna (eels), smelt, freshwater crayfish (koura) and whitebait (inanga), gathered extensively by Ngati Toa Rangatira.

**Tuamarina River and its tributaries**

The Tuamarina Stream is a site of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. The River was located within the core rohe of Ngati Toa Rangatira in Te Tau Ihu, the centre of which was in the Wairau and Port Underwood. The Tuamarina served as a valuable resource, supplying the nearby Ngati Toa Rangatira settlements with plentiful resources such as flax, swamp maire, kahikatea and species of eel, koura, cockles, kahawai and the giant kokopu. The Tuamarina Stream linked the Marlborough Sounds with the Wairau, two areas of Ngati Toa Rangatira settlement. The access route of the valley, and

**2.1: STATEMENTS OF ASSOCIATION**

particularly the river, allowed for frequent travel between the two areas, for the transportation of resources and trade goods, and for communication between the people of Ngati Toa Rangatira.

The Tuamarina Stream is culturally significant for other reasons however: it is the site of Te Rangihaeata's wife, Te Rongo's grave and the site of the infamous 'Wairau incident'.

Tension over the ownership of the Wairau between New Zealand Company surveyors and Ngati Toa Rangatira reached a head in June of 1843. Ngati Toa Rangatira objected to surveyors entering their land in the Wairau and, by various methods, forced the surveyors to retreat to Nelson. As a result, a party of special constables were sent to Tuamarina to arrest Te Rauparaha.

The party of special constables reached the Ngati Toa Rangatira party at the Tuamarina River on Saturday 17 June. The leaders of the party and a number of others crossed the creek and entered into a discussion with Ngati Toa Rangatira. Both Te Rauparaha and Te Rangihaeata were adamant that they would not be arrested.

The Police Magistrate then called on his party to cross the creek and arrest the chiefs. Some of the armed party moved down the bank, while the remainder stayed in position on the bank above the Tuamarina. As the men were crossing the creek a shot was fired, possibly accidentally, by one of the Europeans. The evidence of Ngati Toa Rangatira at the time, however, was that there was an order to fire, that the first shots were fired in response to this, and Maori were the first to die. At this point, both Te Rauparaha and Rawiri Puaha called on Ngati Toa Rangatira to fire. During the exchange of fire Te Rongo, the wife of Te Rangihaeata, was killed.

The party of special constables now broke and fled up the hill with Ngati Toa Rangatira chasing them. After an exchange of gunfire lasting for some minutes the decision was made to surrender and Wakefield and the others laid down their arms. By this time many of the party of special constables had escaped. Those who remained behind were killed. Tamihana Te Rauparaha wrote that his father was willing to spare the prisoners, but Te Rangihaeata was not. More Europeans escaped than were killed. Ngati Toa Rangatira then temporarily withdrew from the northern South Island, acting on the assumption that they were going to be attacked.

**Buller River and its tributaries (northern portion)**

The Buller River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Following the taua of 1829-1832, Ngati Toa Rangatira expanded their interests into the South Island; these interests extended at least as far south as the Buller River.

The source of Kawatiri is the Lake Rotoiti, another site of significance to Ngati Toa Rangatira. In the mid-1800's one of the valuable resources that the Kawatiri provided was gold. Maori miners, including Ngati Toa Rangatira, travelled along Kawatiri by waka to reach the more remote goldfields and also developed innovative mining methods.

Hohepa Tamaihengia of Ngati Toa Rangatira was a successful miner on the Buller goldfields. In the hope of securing a better gold price he built a beautifully modelled whale boat, which was about 30 feet long, at the Quartz Ranges, which his party sailed down the Buller River and on to Wellington.

Hohepa Tamaihenga was the son of Te Matoe and Hinekoto, both of Ngati Toa Rangatira. Hinekoto was the older half sister of Te Rauparaha. Hohepa Tamaihenga was the younger

**2.1: STATEMENTS OF ASSOCIATION**

brother of Rawiri Puaha. Rawiri married Ria Waitohi the daughter of Te Peehi Kupe - a paramount chief of Ngati Toa Rangatira killed at Kaiapohia Pa.

**Waimea River and its tributaries**

The river mouth of the Waimea is located in Tasman Bay, opposite Rabbit Island. The river itself, and the surrounding area is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

Ngati Toa Rangatira's association stems from the invasion by the Ngati Toa Rangatira taua into Te Tau Ihu in the 1820s. By the end of that decade, Ngati Toa Rangatira and their allies had secured rights and interests over the land in the districts of Te Tau Ihu. A further taua in 1831-1832 further secured the passing of the lands of Western Te Tau Ihu from the original inhabitants to the northern alliance. Ngati Toa Rangatira had a significant interest in the Tasman Bay area and the Waimea plains.

In the 1830s there were some scattered Ngati Toa Rangatira pa and kainga sites in the Tasman Bay area, and Te Rauparaha made frequent visits there.

At the time of the Ngati Toa Rangatira presence in Tasman Bay; the land surrounding the Waimea River was primarily covered in fern and scrub, as well as patches of swamp. Bird species and fish species were abundant in the region. The Waimea River was utilised as a travel route; and the mouth of the river used as a landing site.

**Motueka River and its tributaries**

The Motueka River is a site of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

Ngati Toa Rangatira's association stems from the invasion of the Ngati Toa Rangatira taua which set forth from the Kapiti region in the mid 1820s. A further taua in 1831-1832 further secured the passing of the lands of Western Te Tau Ihu from the original inhabitants to the northern alliance. Ngati Toa Rangatira had a significant interest in the Tasman Bay area, including Motueka and the Motueka River.

Te Whiro, a Ngati Toa Rangatira chief and younger brother of Rawiri Puaha, went to the area and died there.

In the 1830s and 1840s, the Motueka River was abundant with native bird life including, pukeko, ducks, weka, kereru and kaka. There was an extensive swamp system from which numerous species of flax could be harvested. The river itself was also of course an important mahinga kai from which tuna, inanga and koura could all be caught.

The Motueka River was an important inland route which linked Tasman Bay with the West Coast; this was an important trade route for many iwi, including Ngati Toa Rangatira, because of the valuable pounamu resources on the Western Coast. There was also an awa which linked the Wairau with Motueka via Wairoa; this was particularly important for Ngati Toa Rangatira who resided in the Wairau region.

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**2.2 STATEMENT OF COASTAL VALUES**

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**Clause 5.39**

## 2.2: STATEMENT OF COASTAL VALUES

### Te Tau Ihu coastal marine area

The Te Tau Ihu coastline is an area which has played an important role in the shaping of Ngati Toa Rangatira history and identity. While the political centre of Ngati Toa Rangatira was based in the North Island, Te Tau Ihu and the connecting link of Te Moana o Raukawa were a vital part of the iwi's rohe.

Te Moana o Raukawa was not only important as a means of transport and a rich source of various resources; it was also a political and economic asset to Ngati Toa Rangatira, as well as having great traditional and spiritual significance. The name 'Te Moana o Raukawa' has its origins in the narrative of Kupe's voyage to Aotearoa. Having followed the wheke a Muturangi from Hawaiiiki, Kupe killed the giant octopus at the entrance to Tory channel. Nga Whatu Kaiponu, The Brothers are said to be the eyes of the wheke, therefore, in order that the wheke not be reawakened, the eyes of rowers crossing the strait were always traditionally covered. This was done with kawakawa leaves, hence the original name, 'Te Moana o Raukawakawa'.

From 1829-1832 Ngati Toa Rangatira and their allies embarked upon a series of taua into Te Tau Ihu. Following the campaign, Ngati Toa Rangatira was in possession of large areas of valuable land, which they utilised in various ways: sometimes by physical occupation and cultivation of lands, but also by use of resources, maintenance of political authority and control, and by marriage to those with ancestral ties to the land.

The main areas of Ngati Toa Rangatira occupation were focused in coastal locations in Te Tau Ihu at Te Hoiere Sound, Port Underwood and the Wairau. These settlements were large and thriving. Ngati Toa Rangatira maintained ahi kaa through ongoing settlement and a degree of authority over geographical and economic resources. There were multiple smaller coastal settlements located at various locations in Golden Bay, Tasman Bay, the Marlborough Sounds and Arapaoa Island. These settlements were in some cases seasonal, or used for resource gathering, or just smaller and more isolated than the main areas of settlement.

This settlement pattern illustrates the Ngati Toa Rangatira attitude towards the coastal geography. It also illustrates their confidence in their own manawhenua and their abilities as a seafaring people. Their core zones of occupation were well-placed, both in terms of sea-travel and inland access routes via rivers and valleys, and in this way the larger settlements of Te Hoiere Sound, Port Underwood and the Wairau were all interconnected. However, via coastal and inland routes Ngati Toa Rangatira maintained connections between all of their settlements in Te Tau Ihu.

Ngati Toa Rangatira considered the sea itself to be part of their rohe hence the reason why their settlements were so widespread and numerous. They maintained interests in the Te Tau Ihu coastal area through a range of mechanisms which ranged from ongoing to more temporal settlement, and this demonstrates how Te Tau Ihu and its waters were considered a key part of their tribal rohe.

Ngati Toa Rangatira were able to utilise the sea and the coastline to gather a vast range of resources. As their settlements were predominantly coastal, this was the site of much of their day to day resource gathering. Their inland rohe provided eels, inanga, birds and other resources. From the sea and foreshore Ngati Toa Rangatira gathered kaimoana and kai ika. Species such as cod, snapper, shark, flounder, flatfish, paua, kina and mussels were plentiful and commonly a part of the peoples diet. Seabirds, such as titi were caught; and from the wetlands, flax and birdlife such as ducks, were gathered. The sea also provided rongoa (traditional medicine) in the form of kaimoana, plant life and the sea water itself.

**2.2: STATEMENT OF COASTAL VALUES**

From a strategic perspective, the expansion of Ngati Toa Rangatira into Te Tau Ihu was a vital step in consolidating Ngati Toa Rangatira's mana throughout the Cook Strait region. The geography of Te Tau Ihu materially shaped the iwi; as coastal resources and conditions influenced their social, economic and traditional way of life. Culturally and historically, Te Tau Ihu was and, still is, of great significance to Ngati Toa Rangatira due to the vision and incredible strength of their tupuna to conquer and settle the land.

**Cook Strait**

Te Moana o Raukawa, the Cook Strait, is of the highest significance to Ngati Toa Rangatira. Not only does Te Moana o Raukawa have great traditional and spiritual significance, it was crucial as a political and economic asset to Ngati Toa Rangatira and important as a means of transport and a rich source of various resources.

Te Moana o Raukawa is rich in its own kawa and tikanga, folklore and stories, handed down through the generations from Maui and Kupe through to the present day. As well as having great traditional and spiritual significance, the Strait was important as a navigable route between Te Ika a Maui and Te Waka a Maui which linked these two diverse islands. Lands on both sides of the moana were usually occupied by the same iwi groupings and thus it was important for the tribes to understand its differing moods and potential dangers, and to develop seafaring capabilities to cross with safety the stretch of notoriously dangerous water.

The name 'Te Moana o Raukawa' has its origins in the narrative of Kupe's voyage to Aotearoa. Having followed Te Wheke a Muturangi from Hawaiiiki, Kupe killed the giant octopus at the entrance to the Tory channel. Nga Whatu Kaiponu (The Brothers Islands) are said to be the eyes of the wheke. So, in order that the wheke not be reawakened, the eyes of people on their maiden crossing of the straits were always covered. This tradition was called Koparetia and was undertaken so that tauhou could not gaze at the rocks as so often the sea was rough and dangerous and in this area paddlers would have to concentrate on getting the waka across the sea.

This was done with kawakawa leaves, hence the original name, 'Te Moana o Raukawakawa'.

According to Sir Maui Pomare this chant was recited to him by Aperahama of Wainui, Paekakariki, who said it was sung by a woman named Tuhupu for her husband who had sailed across Te Moana o Raukawa. The chant contains reference to the custom of koparetia.

*Ao ma uru e tauhere mai ra na runga ana mai te hiwi kei Te Tawake.  
Katahi te aroha ka makuru I ahau ki te tau ra e nui ai te itinga.  
Pirangi noa ake ki te kimi moutere, kia utaina au Te ihu o Te Rewarewa,  
Te waka o Patutahi, e whiu ki tawhiti; kia koparetia te rerenga I Raukawa,  
Kia huna iho, kei huna iho, kei kite ai Nga Whatu, kia hipa ki muri ra  
Ka titiro kau, kia noho taku iti te koko ki Karauriupe [sic], nga mahi a Kupe,  
I topetopea iho. Kei whea te tane i rangi ai te itinga? Mo nga riri ra,  
Ka rukea ki ahau, waiho I roto nei, ka nui te ngakau -i-i-i.  
Far over the western sea a cloud clings to Tawake's peak it drifts this way, it brings me  
fond hope of one who's far away. Of him to whom I was betrothed while still young.  
Oh, I would go with you across the swelling sea to seek some island of our own.*

*I'd seat me in Te Rewa's bows Te Patutahi's great canoe and sail so far away.  
I'd bind my eyes so carefully to cross Raukawa's rolling sea least I imprudently behold  
the dread crags of Nga Whatu. And when we'd safely cross the Straits and free to  
gaze around again I'd see the shores of Karauriupe [sic].  
The wondrous works of Kupe.*



2.2: STATEMENT OF COASTAL VALUES

*Our ancestor who sailed these seas, and severed the island from the main.  
But where is my loved one?  
I'm left behind to mourn alone, my heart swells high with sorrow.*

Te Rau o Titapua (the feather plume of the Albatross) is said to be an island that stood at the east entrance to Te Moana o Raukawa that sank beneath the sea. This narrative ties in with the stories of how Te Whanganui a Tara (Wellington Harbour) was formed by nga taniwha Ngake and Whataitai. Ngake escaped, forming the entrance to the harbour, and as the water shallowed from what is now Wellington Harbour, Whataitai became stranded. The body of Whataitai became the hills close to the harbour entrance. The soul of Whataitai left him in the form of a bird named Te Keo. Mount Victoria is known by Maori as Tangi Te Keo or the weeping of Te Keo.

This ngeri or chant is taken from the whakapapa book of Miriama Ngapaki of Ngati Toa Rangatira who was a daughter of Horipoti Thoms.

*Ka tito au, ka tifo au, ka tito au ki a Kupe te tangata nana I hoehoe te moana  
Te tangata nana I topetope te whenua. Tu ke a Kapiti, tu ke a Mana tau ke a Arapaoa  
Ko nga tohu tena a taku tupuna a Kupe, nana I whakatomene Titapua,  
Ka toreke I a au te whenua nei.*

*I sing I sing I sing of Kupe the man who paddled over the ocean. The man who divided  
off the land. Solitary is Kapiti, separated is Mana, removed is Arapaoa. Such are the  
great signs of my ancestor Kupe. It was he who caused Titapua to sink then left this  
new found land.*

Te Moana o Raukawa was central to the development of Ngati Toa Rangatira's maritime trading domain. Its strategic importance became apparent to Te Rauparaha during the Amiwhehenua expedition when a trading ship was seen passing through the Strait. Te Rauparaha saw the ship from Omere, an important lookout commanding wide views over the Strait, located on the ridge above Cape Terawhiti (just north of Oteranga Bay). Te Rauparaha was advised by allied chiefs to seize these lands as the ship indicated potential access to Europeans and their technologies, particularly muskets and steel. A maritime domain which included the Straits would also bring Ngati Toa Rangatira closer to pounamu.

Following their migrations south from Kawhia in the 1820s, Ngati Toa Rangatira quickly established themselves in the Cook Strait Region. In 1824, only six years after the iwi's first taua, Amiwhehenua, into the southern North Island, a coalition of southern North Island tribes and northern South Island tribes attacked the Ngati Toa Rangatira pa at Waiorua on Kapiti Island only to be defeated by Ngati Toa Rangatira and their kinfolk of the Ngati Mango confederation.

With Kapiti Island safely under its mana Ngati Toa Rangatira was able to establish its influence over the extended Cook Strait region based on further battles with other iwi, invasions of key sites on both sides of the Cook Strait, and on its relationships with other related iwi groupings.

Tapu Te Ranga Island on Wellington's south coast is another important site to Ngati Toa Rangatira and their association with the Cook Strait region. In 1827, Ngati Toa Rangatira were part of a force that attacked Tapu Te Ranga, the last refuge of the iwi residing on the south coast. Eventually, the defending force fled around the coast to Owhiro Bay where the greenstone mere Tawhito Whenua was relinquished to Te Rangihaeata.

Widespread coastal settlements provided the iwi with access to the abundant resources of the ocean, including extensive fisheries and shellfish resources. Their coastal settlements also

## 2.2: STATEMENT OF COASTAL VALUES

gave Ngati Toa Rangatira access to trade opportunities with early settlers. There was multiple whaling stations established within the rohe of Ngati Toa Rangatira, including on Kapiti Island, at Porirua, Mana Island, Port Underwood, Wairau and on Arapaoa Island.

Control of Te Moana o Raukawa was important to Ngati Toa Rangatira for political and economic reasons, but this was not the total extent of the significance of the lands and sea of this region. Te Moana o Raukawa could be relied upon at different parts of the seasons for its well-sheltered bays and the supplies of fish in the harbours.

Following the migration of the iwi from Kawhia, Ngati Toa Rangatira were re-established in an environment with great potential and opportunity for expansion; this allowed the iwi to revitalise their identity which was largely shaped by the material conditions of Te Moana o Raukawa.

To Ngati Toa Rangatira, Te Moana o Raukawa was never seen as a barrier to maintaining their areas of mana whenua on both sides of Cook Strait. Instead, Te Moana o Raukawa was more akin to a highway, which facilitated the transportation of resources and trade goods across Cook Strait, and enabled the development of key relationships between Ngati Toa Rangatira and their communities of interest. Thus, it has always been considered to be just as much a part of the iwi's rohe as the land upon which they settled.

Te Moana o Raukawa remains a site of immense cultural, historical, and spiritual significance to Ngati Toa Rangatira. Ngati Toa Rangatira are kaitiaki of Te Moana o Raukawa and its resources. Ngati Toa Rangatira regard Te Moana o Raukawa as one of their most significant resources. The extensive fisheries resources that exist in the strait provide for the iwi's customary fishing, and allow the iwi to manaaki manuhiri at Ngati Toa Rangatira hui.

### **Te Awarua-o-Porirua Harbour**

Te Awarua o Porirua is of primary cultural, historical, spiritual, and traditional significance to Ngati Toa Rangatira. The harbour includes both the Pauatahanui and Onepoto arms. Ngati Toa Rangatira continue to have a very strong association with the Te Awarua o Porirua which has played a fundamental role over the generations in sustaining their physical and cultural needs, and is integral to the identity of the iwi.

Coastal settlement and the use of marine resources largely influenced the way of life of those Ngati Toa Rangatira living around the harbour. The iwi initially settled around the harbour in the early 1820s and since that time Ngati Toa Rangatira have maintained an inextricable connection to the area. Ngati Toa Rangatira, maintained control over the harbour until the mid nineteenth-century when its control was challenged by the Crown and settlers. The harbour was regarded by both Maori and Pakeha as a valuable asset. Te Rauparaha is reputed to have told Governor Grey that whoever held Paremata and Porirua Harbour controlled the northern approaches to Wellington.

Te Awarua o Parirua is the name of the taniwha who is said to live in the harbour. Te Awarua o Parirua resides near Mana and created the distinctive shape of Te Mana o Kupe ki Aotearoa (Mana Island).

A large number of Ngati Toa Rangatira settlements and sites of significance are located around Te Awarua o Porirua. Takapuwahia, where Te Hiko established his principal residence, became the most important kainga of Ngati Toa Rangatira following the detention of Te Rauparaha. By the 1850s, Takapuwahia had become a substantial village comprised of residences, two reed chapels and intensive cultivations of potatoes, maize, wheat and kumara. Today, Takapuwahia is the site of the iwi's Marae matua, Takapuwahia, and the location of the wharetupuna, Toa Rangatira. This is the tūrangawaewae for the iwi and continues to be a site

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of great significance to Ngati Toa Rangatira. There are three urupa associated with Takapuwhia and located nearby. These urupa reflect early Christian allegiances: Anglican, Wesleyan and Catholic. Surprisingly the largest is the Wesleyan, followed by the Catholic and then the Anglican.

Te Rauparaha's principal residence was Taupo Pa at Plimmerton at the entrance to Porirua Harbour. This was the site where Te Rauparaha was captured by the Crown. Te Rangihaeata held Matai-taua Pa, located in the inner harbour at Pauatahanui, and a whare, Kai Tangata, on Mana Island. At the mouth of the Porirua Harbour, Paremata was another site of Ngati Toa Rangatira settlement. Paremata Pa was constructed in the 1830s and was the residence of Nohorua, Te Rauparaha's older brother. Joseph Thoms, in 1835, established a shore-based whaling station at Paremata. Thoms married Nohorua's daughter, Te Ua Torikiriki, and signed the Treaty of Waitangi at the insistence of Nohorua.

At the southern entrance of Porirua Harbour lies Whitireia Peninsula. This is another area of importance containing numerous wāhi tapu including burial places, kainga, pa, middens, pits, terraces, and tauranga waka. Areas of settlement included Te Kahikatoa, Te Neke, Te Onepoto, Kaiaua, Onehunga, and Kaitawa.

Te Awarua o Porirua was an important source of food for those settlements located around or near the harbour. Shellfish was of great importance as a food resource for the Ngati Toa Rangatira communities located around Porirua Harbour. Tuangi could be gathered from the uncovered mud flats. "Nga whatu o Topeora", a sand bank named for the niece of Te Rauparaha, in the eastern arm of the harbour was mahinga kai and the site of a storehouse. Toka-a-Papa, another mahinga kai, located in the sea between Rewarewa point and Whitireia Peninsula, was a location which was valued as a source of mussels. Koura, paua and kina were in abundance around the coastal fringes. Paua were referred to as "nga whatu o Tuhaha". Cockles, mussels, and finfish were extensively collected from the harbour. Parts of the harbour are still considered an important mahinga kai to this day.

During the 1950s and 1960s, the harbour experienced huge development pressure from reclamation for what is now the city centre. Over the following decades the effects of intensified land use, contamination, and siltation, resulted in poor water quality and an inability to harvest kaimoana. Today almost a third of the Porirua arm of the harbour has been lost to reclamations.

Ngati Toa Rangatira consider themselves the kaitiaki of the harbour itself, its resources, and the countless sacred and historical sites located in the vicinity of the harbour. Because of this, and the increasing pressures on the harbour, Ngati Toa Rangatira consider it vitally important that they play a role in its ongoing protection.

**Wellington Harbour (Port Nicholson)**

Wellington Harbour has high cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

A well known narrative tells of how Wellington harbour was formed by nga taniwha Ngake and Whataitai. Ngake escaped, forming the entrance to the harbour and, as the water shallowed from what is now Wellington Harbour, Whataitai became stranded. The body of Whataitai became the hills close to the harbour entrance. The soul of Whataitai left him in the form of a bird named Te Keo. Mount Victoria is known by Maori as Tangi Te Keo or the weeping of Te Keo.

## 2.2: STATEMENT OF COASTAL VALUES

Ngati Toa Rangatira's claim to the Wellington Harbour region is primarily based upon their early invasion of the region during the 1820s and their political and military influence, rather than occupation. Ngati Toa Rangatira also traded with the settler community at Wellington and sent produce to Wellington by sea.

Harataunga was an important source of large trees suitable for the construction of waka. These waka were fashioned in the area and tested in Te Whanganui a Tara. Te Whanganui a Tara was also important in conjunction with the Hutt River as access to and from Porirua and the developing Wellington town.

The Harbour is also an important source of kai moana.

### **Thoms Rock / Tokahaere**

Tokahaere (Thoms' rock) is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

The original name 'Tokahaere' can be translated as 'arrival rock' or 'farewell rock', indicating it may have been used as a navigation marker on canoe trips across Te Moana o Raukawa. However traditional Maori sources claim the reef is named after Tokahaere, one of the daughters of Kupe. Toka Haere was considered to be a toka tupua, or 'demon rock' as it was thought that the rock could change position.

The later name 'Thoms' Rock' itself gives an indication of the Ngati Toa Rangatira influence over the south west coast and Wellington coastal region. The rock was named after Joseph Thoms, husband of Te Ua Torikiriki, a daughter of Watarauhi Nohorua, who was an elder half-brother of Te Rauparaha. Joseph Thoms, with his sons Hori and Tametame, built and operated the Three Brothers, a trading vessel which was based in the Wellington region. The boat was owned by Rawiri Puaha, Hohepa Tamaihengia and Horomona Matakape, who is buried at Oteranga Bay.

According to Ngati Toa Rangatira tradition, the naming of Thoms' Rock commemorates the event which led to the death of Horomona Matakape. The Three Brothers vessel smashed into the reef traditionally known as Toka Haere, resulting in Matakape's drowning. Just north of Thoms' Rock, directly inshore from the Karori Light, is the original burial site of Horomona Matakape. He remained buried there for approximately 100 years until the area was disturbed by the construction of an access road to the coast. Consequently, his remains were disinterred and relocated to the urupa at Oteranga Bay.

### **Kapukapuariki Rocks**

The Kapukapuariki rocks are of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

Kapukapuariki rocks are located at the southern end of Paekakariki beach. Paripari Pa was located on the steep slopes above the Kapukapuariki rocks; and two other pa were situated close to the reef, at Whareroa and Wainui. The Wainui pa was the residence of Ngati Toa Rangatira chief Ropata Hurumutu. Ropata Hurumutu had moved from Kapiti to take up permanent residence at Wainui shortly after the Battle of Haowhenua in 1835. Prior to the battle at Waiorua, a group of Ngati Toa Rangatira were ambushed while gathering kaimoana from the rocks and several Ngati Toa Rangatira were killed.

The Rocks were an important source of kaimoana, particularly mussels. This reef continues to be highly valued by Ngati Toa Rangatira as one of the few reliable sources of kukutai or

## 2.2: STATEMENT OF COASTAL VALUES

mussels still used by the iwi for customary purposes. Kapukapuariki is just outside of the northern boundary of the marine rahui established by Ngati Toa Rangatira at Pukerua Bay. Ngati Toa Rangatira, as kaitiaki of this area, with the support of the community have established mechanisms founded in tikanga to protect the marine environment.

### **Toka-a-Papa Reef**

The Toka a Papa reef is of cultural and traditional significance to Ngati Toa Rangatira. The reef is located in the sea between Te Rewarewa Point and Whitireia Peninsula and marks the mouth of Te Awarua o Porirua (Porirua harbour).

This harbour is of primary cultural, historical, spiritual, and traditional significance to Ngati Toa Rangatira, and has played a fundamental role in shaping the culture, spirituality and identity of the iwi.

The iwi initially settled around the harbour in the early 1820s and, since that time, Ngati Toa Rangatira have maintained continuous occupation in the area. A large number of Ngati Toa Rangatira settlements and sites of significance are located around Te Awarua o Porirua. From the earliest times the harbour and its reefs and sand bars were an important source of food and other resources for those settlements located around or near the harbour.

Toka a Papa, is located near to the Ngati Toa Rangatira settlements at Hongoeka, Onehunga and Taupo pa. It is a mahinga kai, valued as a source of mussels (kukutai).

### **Tawhitikuri / Goat Point**

Tawhiti Kuri rocks (considered to be tapu rocks) are of cultural and traditional significance to Ngati Toa Rangatira.

The rocky point north of Taupo pa was originally called Tawhiti Kuri, and is located in a region of intensive coastal occupation which goes back many generations. The area onshore contains many middens and signs of early occupation. The point was the tohu, or boundary mark, of the Taupo land block considered to be Te Rauparaha's Pou. This was a pou herenga kingitanga site, meaning that it served as a physical expression of Ngati Toa Rangatira's allegiance to the Kingitanga movement.

The point and Taupo Pa was the start of the Ngati Toa Rangatira Tawa Tapu track to Pukerua.

While much of the onshore reef was destroyed when State Highway One and the rail corridor went through Mana, the site remains very important to Ngati Toa Rangatira. A number of significant heritage and archaeological features remain in the close vicinity, including Taupo Pa, and Ngati Toa Rangatira Domain at Paremata.

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**3. DEEDS OF RECOGNITION**

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**Clause 5.41**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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3: DEEDS OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Minister of Conservation and the Director-General of Conservation, who agree as follows:

**1. INTRODUCTION**

1.1 The Crown has granted this deed as part of the redress under a deed of settlement with:

1.1.1 Ngati Toa Rangatira; and

1.1.2 the Toa Rangatira Trust (the governance entity).

**2. STATEMENTS OF ASSOCIATION**

2.1 In the deed of settlement, Ngati Toa Rangatira made statements of their particular cultural, spiritual, historical and traditional association with the following areas (the statutory areas):

2.1.1 Balance of Mana Island (as shown on deed plan OTS-068-28);

2.1.2 Red Rocks Scientific Reserve (as shown on deed plan OTS-068-29);

2.1.3 Pukerua Bay Scientific Reserve (as shown on deed plan OTS-068-30);

2.1.4 Pauatahanui Wildlife Reserve (as shown on deed plan OTS-068-31);

2.1.5 Horokiri Wildlife Management Reserve (as shown on deed plan OTS-068-32);

2.1.6 Lake Rotoiti, Nelson Lakes National Park (as shown on deed plan OTS-068-33);

2.1.7 Lake Rotoroa, Nelson Lakes National Park (as shown on deed plan OTS-068-34);

2.1.8 Wairau Pa (as shown on deed plan OTS-068-35);

2.1.9 Chetwode Islands (as shown on deed plan OTS-068-36);

2.1.10 Malcolm's Bay Scenic Reserve, Arapaoa Island (as shown on deed plan OTS-068-37);

2.1.11 Hutt River and its tributaries (as shown on deed plan OTS-068-45);

2.1.12 Maitai River and its tributaries (as shown on deed plan OTS-068-46);

2.1.13 Wairau River, Omaka River, Ōpaoa River and Kaituna River and their tributaries (as shown on deed plan OTS-068-47);

2.1.14 Te Hoiere / Pelorus River and its tributaries (as shown on deed plan OTS-068-48);

2.1.15 Tuamarina River and its tributaries (as shown on deed plan OTS-068-49);

2.1.16 Buller River and its tributaries (northern portion) (as shown on deed plan OTS-068-50);

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**3: DEEDS OF RECOGNITION**

2.1.17 Waimea River and its tributaries (as shown on deed plan OTS-068-58); and

2.1.18 Motueka River and its tributaries (as shown on deed plan OTS-068-59).

2.2 Those statements of association are:

2.2.1 in the documents schedule to the deed of settlement; and

2.2.2 copied, for ease of reference, in the schedule to this deed.

2.3 The Crown has acknowledged the statements of association in the **[name]** Act **[year]**, being the settlement legislation that gives effect to the deed of settlement.

**3. CONSULTATION**

3.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 3.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning the association of Ngati Toa Rangatira with that statutory area as described in a statement of association.

3.2 Clause 3.1 applies to the following activities (the identified conservation activities):

3.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977; or

3.2.2 preparing a national park management plan under the National Parks Act 1980; or

3.2.3 preparing a non-statutory plan, strategy, programme, or survey in relation to a statutory area that is not a river for any of the following purposes:

(a) to identify and protect wildlife or indigenous plants; or

(b) to eradicate pests, weeds, or introduced species; or

(c) to assess current and future visitor activities; or

(d) to identify the appropriate number and type of concessions; or

3.2.4 preparing a non-statutory plan, strategy, or programme to protect and manage a statutory area that is a river; or

3.2.5 locating or constructing structures, signs, or tracks.

3.3 The Minister and the Director-General of Conservation must, when consulting the governance entity under clause 3.1, provide the governance entity with sufficient information to make informed decisions.

**4. LIMITS**

4.1 This deed:

4.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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3: DEEDS OF RECOGNITION

- 4.1.2 does not require the Crown to undertake, increase, or resume any identified conservation activity; and
- 4.1.3 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified conservation activity; and
- 4.1.4 is subject to the settlement legislation.

**5. TERMINATION**

- 5.1 This deed terminates in respect of a statutory area, or part of it, if:
  - 5.1.1 the governance entity and the Minister of Conservation and Director-General of Conservation agree in writing; or
  - 5.1.2 the relevant area is disposed of by the Crown; or
  - 5.1.3 responsibility for the identified conservation activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister or Crown official.
- 5.2 If this deed terminates under clause 5.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into the activities referred to in clause 3.2 in relation to or within the area concerned through negotiation with the new person or official within the Crown that is responsible for those activities.

**6. NOTICES**

- 6.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 5 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is:

Area Manager  
Department of Conservation - Whare Kaupapa Atawhai  
18-32 Manners Street  
Wellington 6143.

**7. AMENDMENT**

- 7.1 This deed may be amended only by written agreement signed by the governance entity and the Crown.

**8. NO ASSIGNMENT**

- 8.1 The governance entity may not assign its rights or obligations under this deed.

**9. DEFINITIONS**

- 9.1 In this deed:

**concession** has the meaning given to it in section 2 of the Conservation Act 1987; and

**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

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of the deed of settlement to participate in, any aspect of the redress under the deed of;  
and

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated [**date**] between Ngati Toa Rangatira, the governance entity and the Crown; and

**Director-General of Conservation** has the same meaning as Director-General in section 2(1) of the Conservation Act 1987;

**governance entity** means the Toa Rangatira Trust [**details**]; and

**identified conservation activities** means the activities specified in clause 3.2; and

**Minister** means the Minister of Conservation; and

**person** includes an individual, a corporation sole, a body corporate, and an unincorporated body; and

**Ngati Toa Rangatira** has the meaning given to it by clauses 8.8 and 8.9 of the deed of settlement; and

**settlement legislation** means the Act referred to in clause 2.3; and

**statement of association** means the statements in part 3 of the documents schedule to the deed of settlement and copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 2.1, the general location of which is indicated on the deed plan referred to in relation to that area (but which does not establish the precise boundaries of the statutory area); and

**writing** means representation in a visible form on a tangible medium (such as print on paper).

10. INTERPRETATION

10.1 The provisions of this clause 10 apply to this deed's interpretation unless the context requires otherwise.

10.2 Headings do not affect the interpretation.

10.3 Terms defined by:

10.3.1 this deed have those meanings; and

10.3.2 the deed of settlement, or the settlement legislation, but not by this deed, have those meanings where used in this deed.

10.4 All parts of speech and grammatical forms of a defined word or expression have corresponding meanings.

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- 10.5 The singular includes the plural and vice versa.
- 10.6 One gender includes the other genders.
- 10.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next day.
- 10.8 A reference to:
- 10.8.1 this deed or any other document means this deed or that document as amended, novated or replaced; and
  - 10.8.2 legislation is to that legislation as amended, consolidated, or substituted.
- 10.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

**SIGNED** as a deed on [*date*]

**SIGNED** for and on behalf of **THE CROWN**  
by the Minister of Conservation  
in the presence of:

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Signature of Witness

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Witness Name

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Occupation

---

Address

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**SIGNED** for and on behalf of **THE CROWN**  
by the Director-General of Conservation  
in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

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**Schedule**  
**Statements of Association**

**Balance of Mana Island** (as shown on deed plan OTS-068-28);

Te Mana o Kupe ki Aotearoa is a site of great historical and cultural significance. It was discovered by Kupe and bears his name as Te Mana o Kupe ki Aotearoa. The name refers to the ability of Kupe to cross the ocean to Aotearoa and also to commemorate his defeat of Muturangi.

Archaeological excavation has found evidence of occupation from as early as 600 years ago. Middens dating from early settlement have been uncovered with the remains of a great variety of fish species, labrids, snapper, blue cod, greenbone, leatherjacket, and moki.

Ngati Toa Rangatira have a strong historical and cultural association with this site as it was regarded as the principal kainga of Te Rangihaeata who established his claim to the island following the battle of Waiorua in 1824. The island was the site of his renowned carved whare, Kai Tangata, and the tomb of his mother Waitohi. It was also from Te Mana o Kupe ki Aotearoa that Te Rangihaeata controlled much of Ngati Toa Rangatira's maritime trading domain through harakeke harvested from the swamps of Haretaunga and Ohariu. There are a number of Ngati Toa Rangatira wāhi tapu on the island, including: pa sites; urupa; gardens; pits and middens.

The coastline of Te Mana o Kupe ki Aotearoa is predominantly rocky and steep however, in the north-east of the island, where the Waikoko stream runs down to the coast, there is a flat area and beach. This was the tauranga waka of Te Ra Makiri and was gazetted as a Landing Place Reserve in 1979.

The sheltered and flat area located past the beach was named Matakītaki by Kupe and was a site of concentrated occupation by Ngati Toa Rangatira. This area is also of particular significance as it is the site of a Ngati Toa Rangatira urupa.

Mana was, and remains, an important area for customary fishing. It is a source of koura, paua, kina and a number of finfish species including moki, terakihi, kahawai, blue cod and butterfish.

**Red Rocks Scientific Reserve** (as shown on deed plan OTS-068-29);

Pariwhero, or Red Rocks, take their name from the time of Kupe, "pari" meaning cliff or precipice and "whero" meaning red. There are two differing stories that seek to explain the red colouration of the rocks. In the first version Kupe was gathering paua here, when one shellfish clamped his hand. He bled, and stained the rocks red. In the second Kupe's daughters, fearing their father would never return from his pursuit of Muturangi, cut themselves as an act of grief and so stained the rocks with their blood.

In the early nineteenth century Ngati Toa Rangatira established an important historical and cultural association with Pariwhero, which was linked to their wider relationship with the South Coast arising through the development of a maritime trading networks based around the Cook Strait/Te Moana o Raukawa.

The south west coast was the site of intensive harakeke harvesting activities that were a fundamental pillar of Ngati Toa Rangatira's trading economy. The area was also valued for collecting karaka berries, an important dietary resource of Ngati Toa Rangatira.

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Pariwhero was an area much frequented by Ngati Toa Rangatira in early times although it was not a site of occupation. However, cultural material and taonga Maori have been discovered in the vicinity in small rock caves (now buried). In addition to the historical significance of Pariwhero, the waters around Pariwhero were, and remain, valued by Ngati Toa Rangatira as an abundant source of kaimoana including kina, koura, paua and finfish.

Ngati Toa Rangatira have always retained their connection to the area through unbroken use of the coastal area and its resources to today. The area occupies an important place in tribal traditions.

**Pukerua Bay Scientific Reserve** (as shown on deed plan OTS-068-30);

Pukerua Bay was historically an area of concentrated Ngati Toa Rangatira settlement, and remains an area of historical and cultural significance. There were three pa located around the area known today as Pukerua Bay.

There are a number of Ngati Toa Rangatira wāhi tapu located at Pukerua Bay, including pa sites and urupa.

The Waimapihi pa complex is located at the northern end of the Taua-tapu track, which led to Taupo pa in Plimmerton. Waimapihi pa became an important settlement for Ngati Toa Rangatira when the former inhabitants left the area. Ngati Toa Rangatira's connection began initially with the Amiowhenua expedition in 1819 which was followed by the Te Heke Mai Raro migration of 1822. In the early nineteenth century the pa was occupied by Te Hiko, son of Te Peehi Kupe, and many of his relatives. It was also known for its extensive cultivations.

In close proximity to the former Ngati Toa Rangatira settlement is an urupa which features four rows of visible tombstones. When the coastal route was under construction many graves were disinterred and the koiwi were placed in a common grave.

Located at the western end of Pukerua Railway Station was Pukerua Pa, an important fortified settlement. The pa was constructed by Te Hiko following the battle of Kuititanga in 1839. Another Ngati Toa Rangatira pa site was Wairaka pa. This pa was also constructed by Te Hiko. There are a series of urupa associated with Wairaka pa located along the ridgeline at Te Hau Kopua.

Archaeological remains, including terraces and middens, have been identified at both Pukerua pa and Wairaka pa.

Pukerua Bay was traditionally a significant mahinga kai, and a source of paua, kina and koura. Ngati Toa Rangatira, as kaitiaki of Pukerua Bay, with the support of the local community, have established mechanisms founded in our tikanga to protect the marine environment.

**Pauatahanui Wildlife Reserve** (as shown on deed plan OTS-068-31);

The Pauatahanui Wildlife Reserve is significant to Ngati Toa Rangatira because of their association to the entire Pauatahanui Inlet area. The Inlet is important to Ngati Toa Rangatira for cultural and historical reasons. The iwi's association with the area originates from their conquest of the greater Wellington region in the 1820s. It became a place of settlement and an important mahinga kai.

Motukaraka pā, which overlooked the inlet, was a site of extensive cultivations. The pa site was valued for its strategic importance as it was elevated, bordered by steep banks, and it projected out into the harbour far enough to command views in both directions.

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Te Rangihaeata set up a fighting pa beside the inlet at the point, but withdrew from it in 1845 as it was within firing distance for light gun boats. When tensions between Ngati Toa Rangatira and the Crown escalated in 1846, Te Rangihaeata moved from Mana Island to Motukaraka for a brief period, before establishing his palisaded Pa at Mataitaua. In 1846 Fort Strode was established at Motu-karaka.

Te Rangihaeata constructed Matai-taua pā, also near the inlet, as a gun-fighters pa between 1845 and 1846. It was the only pa in the region to be built specifically for this purpose and particular type of combat or defence. Fighting between Ngati Toa and the Crown occurred at the pa on 11 July 1846, but with little consequence. With the capture of Te Rauparaha, Te Rangihaeata abandoned the pa on 1 August 1846. St Albans Church (built in 1895) is now located on the site of Matai-taua Pa.

The Pauatahanui Inlet was also an important food resource and pipi and cockles could be gathered from the uncovered mud flats. Shellfish was of great importance as a food resource for the Ngati Toa Rangatira communities located around Pauatahanui and the Porirua Harbour.

Incidentally, the name Pauatahanui does not refer to paua as is often mistakenly believed, but rather takes its meaning from its shape which is similar to a large, flat, round dish.

**Horokiri Wildlife Management Reserve** (as shown on deed plan OTS-068-32);

The Horokiri Wildlife Reserve is located within the Pauatahanui Inlet and was a site of cultural and historical significance to Ngati Toa Rangatira. The iwi's association with the area originates from their conquest of the greater Wellington region in the 1820s.

Motukaraka pā, overlooking the inlet, was a site of extensive cultivations. The pa site was valued for its strategic importance as it was elevated, bordered by steep banks, and projected out into the harbour far enough to command views in both directions. Te Rangihaeata set up a fighting pa beside the inlet at the point but withdrew from it in 1845 as it was within firing distance for light gun boats. When tensions between Ngati Toa Rangatira and the Crown escalated in 1846, Te Rangihaeata moved from Mana Island to Motukaraka for a brief period before establishing his palisaded Pa at Mataitaua. In 1846 Fort Strode was established at Motu-karaka.

Te Rangihaeata constructed Matai-taua pā, also in the vicinity of the inlet, as a gun-fighters pa between 1845 and 1846. It was the only pa in the region to be built specifically for this purpose and particular type of combat, or defence. Fighting between Ngati Toa and the Crown occurred at the pa on 11 July 1846 but, with little consequence. With the capture of Te Rauparaha, Te Rangihaeata abandoned the pa on 1 August 1846 and Crown forces entered the next day. St Albans Church (built in 1895) is now located on the site of Matai-taua Pa. The pa was described as having a double row of timber palisades, with trenches and traverses across, about 80 paces long and 35 broad, in the shape of a parallel. The position was a very strong one and would have been almost impregnable without artillery.

The Horokiri Wildlife Reserve is also of significance as it is located near the beginning of the route which was used by Ngati Toa Rangatira to travel between the Hutt Valley and Porirua.

**Lake Rotoiti, Nelson Lakes National Park** (as shown on deed plan OTS-068-33);

Lake Rotoiti is of historical and cultural significance to Ngati Toa Rangatira as the area is part of Ngati Toa Rangatira's extended rohe.

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In the mid nineteenth century there were numerous Ngati Toa Rangatira settlements throughout Te Tau Ihu and the lake was a valuable resource to the iwi. Lake Rotoiti was used as a pataka kai, or food gathering place by Ngati Toa Rangatira travelling to and from the West Coast to collect and trade pounamu.

Lake Rotoiti was a significant mahinga kai and the kakahi (a fresh-water mussel), tuna (eel), Kokopu Inanga and blue duck found in abundance at the lake were gathered by Ngati Toa Rangatira and were favourite foods of Te Rauparaha

**Lake Rotoroa, Nelson Lakes National Park** (as shown on deed plan OTS-068-34);

Lake Rotoroa is of historical and cultural significance to Ngati Toa Rangatira as the area is part of Ngati Toa Rangatira's extended rohe.

In the mid nineteenth century there were numerous Ngati Toa Rangatira settlements throughout Te Tau Ihu and the Lake was a valuable resource to the iwi. There are fern garden clearings on the western side of the Lake that were a site of temporary accommodation for parties travelling to resource areas and mahinga kai throughout the northern and western South Island.

Lake Rotoroa was a significant mahinga kai and the kakahi (a fresh-water mussel), Tuna (eel), Kokopu Inanga and blue duck found in abundance at the lake were favourite foods gathered by Ngati Toa Rangatira. The eels from the area are a prized delicacy.

**Wairau Pa** (as shown on deed plan OTS-068-35);

The Wairau is of great significance to Ngati Toa Rangatira. Since the 1820s it has been one of the most important sites of Ngati Toa Rangatira occupation and settlement and is, therefore, both culturally and historically important.

It was originally captured during the Ngati Toa Rangatira invasion of Te Tau Ihu in the late 1820s with major Ngati Toa Rangatira victories taking place at Kowhai Pa and Hui waka.

The Wairau Pa, located at the mouth of the Wairau River, was rebuilt by Te Rauparaha following the southern taua. The large and imposing fortress was still standing at the time of the New Zealand Company surveys in 1843. The area of the pa has been recorded as three quarters of an acre with stockades that ran six or eight feet apart and stood 15 to 20 feet high. These were made of supplejack and manuka.

This area remains a site of historical and cultural significance to Ngati Toa Rangatira.

**Chetwode Islands** (as shown on deed plan OTS-068-36);

The Chetwode Islands are of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Also known as Nukuwaiata, the Chetwode Islands lie in the outer Pelorus Sound (Te Hoiere), on the edge of Te Moana o Raukawa, an area of immense cultural significance to Ngati Toa Rangatira. The Chetwode Islands are comprised of Nukuwaiata Island and Te Kakaho Island. These islands both contained settlements, Nukuwaiata pa being located at the southern end of that island. The Chetwode islands mark the beginning of the Pelorus sound, an important area of Ngati Toa Rangatira settlement in the nineteenth century, the principal kainga being on Paruparu Island (known today as Forsyth Island).

Following the taua of 1829-1832, Ngati Toa Rangatira expanded their interests into the South Island, forging relationships with Europeans traders and whalers and trading in the natural



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resources of the area. During the 1830 and 1840s, there were relatively large scale flax harvesting activities being undertaken in Te Hoiere by those under the authority of Te Rauparaha.

The Pelorus Sound and Pelorus River were abundant with food resources, used intensively by Ngati Toa Rangatira, including both freshwater and salt water species, as well as birds. The area is still of significance to Ngati Toa Rangatira, with many waahi tapu throughout the wider Pelorus basin.

**Malcolm's Bay Scenic Reserve, Arapaoa Island** (as shown on deed plan OTS-068-37);

Located on, and in the vicinity of, Arapaoa Island are numerous sites of cultural significance to Ngati Toa Rangatira.

Within Onaukau Bay are located three pa and kainga sites; these were the Ruapara Bay Pa, the Mokopeke Bay Pa and the Fitzgerald Bay pa. These settlements were all occupied by Ngati Toa Rangatira at various times, originally being settled following the iwi's invasion of Te Tau Ihu in the 1820s.

Te Aroha Bay, located nearby, was an important area for resources, both gathered and grown as part of cultivations. The area remains a source of finfish and shellfish. Arapaoa was also strategic in that it enabled Ngati Toa Rangatira easy access to the fisheries resources of Te Moana o Raukawa.

Okukari Pa, located in Okukari Bay, was the first pa attacked by Ngati Toa Rangatira as part of Te Rauparaha's campaign to respond to the Tukituki aruhe insult. The final outcome of the campaign was the establishment of a vast area under the mana of Ngati Toa Rangatira and their allies. Following this action the Ngati Toa Rangatira settlement of Wharehunga pa was established in Okukari Bay.

Located at Te Awaiti was the Te Awaiti whaling station. Built in 1827, it was one of the first whaling stations to be established in New Zealand. The station provided a view of the whole of Te Moana o Raukawa and was home to a large body of Ngati Toa Rangatira who, according to historical sources, had established good quality houses and stores of pigs, potatoes and flax. Te Awaiti also has cultural significance as a wāhi tapu and urupa location. Lands at Te Awaiti were given by Te Rauparaha and Te Rangihaeata to Joseph Thoms at the behest of Nohorua. A small urupa is sited on the lands and Te Ua Torikiriki, Joseph Thom's wife and Nohorua's daughter, was interred there.

**Hutt River and its tributaries** (as shown on deed plan OTS-068-45);

The Hutt River (Te Awa Kairangi) is of historical and cultural importance to Ngati Toa Rangatira. The iwi claim an association with the Hutt River from the time of their participation in the invasion of the Hutt Valley during 1819 and 1820.

During that campaign, the taua marched around the western side of Te Whanganui a Tara, defeating the local iwi as they went. When the war party reached the Hutt River, they constructed rafts which they used to aid them in their invasion of the Hutt Valley.

Although Ngati Toa Rangatira did not remain in the area after this invasion, the Hutt River continued to be important to the iwi following their permanent migration and settlement in the lower North Island in the late 1820s and early 1830s. The relationship of Ngati Toa Rangatira to the Hutt Valley and River was not one defined by concentrated settlement and physical presence. Rather, the iwi felt their claim to the land was strong based on the powerful

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leadership of Te Rauparaha and Te Rangihaeata and the relationship they had with iwi residing in the Hutt Valley who had been placed there by Ngati Toa in the 1830s. For some years these iwi in the Hutt Valley paid tribute of goods such as canoes, eels and birds to Te Rauparaha and Te Rangihaeata.

Ngati Toa Rangatira have a strong historical connection with the Hutt River and its tributaries, and the iwi consider that the river is included within their extended rohe and it is an important symbol of their interests in the Harataunga area.

Te Awa Kairangi was traditionally an area for gathering piharau, or the freshwater blind eel, as well as tuna (eel) from its tributaries. Harataunga also supported flax plantations, which were used by early Maori for trading with settlers. The River was also of great importance as it was the largest source of freshwater in the area.

The river was also an important transport route, and small waka were used along the length of Te Awa Kairangi.

**Maitai River and its tributaries** (as shown on deed plan OTS-068-46);

The Maitai River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. In the 1830s, some of Te Rauparaha's children were burned on the banks of the river while on route to Te Tai Tapu; because of this the land was declared tapu and subsequently was uninhabited by Maori at the time of European settlement. Therefore, contrary to the perception of the European colonisers, lack of settlement was not an indication of the cultural importance of the land; in fact, it remained an important site to Ngati Toa Rangatira and this was expressed in letters written to George Grey in 1851 and 1852 by a number of Ngati Toa Rangatira chiefs. Te Whatarauhi Nohorua, Rawiri Puaha, Matene Te Whiwhi, Hohepa Tamaihengia, Nopera Te Ngiha and Ropata Hurumutu, explained their claim to the land in the Nelson area, using the incident at Maitai to assert Te Rauparaha's personal interest in the region. According to the Ngati Toa Rangatira chiefs, Te Rauparaha and his children Tamihana, Aamina and their eldest brother suffered serious burns. The eldest brother and Aamina were both burned all over their heads and bodies; Tamihana was burned down one side from his arm to his leg. It was following this incident that Whakatuu became a tapu area and, in the nineteenth century was not settled by Maori, but by the Pakeha.

Not all sections of the Maitai River were affected by the rahui imposed by Te Rauparaha, and the river was an important mahinga kai. Ngati Toa Rangatira had settlements in the surrounding region at Whakatu, Whakapuaka and Waimea, which utilised the eel resource of the river. Other pa in the area were the Bishop Peninsula Pa, the Ataata Point Pa and the Maori Beach Pa.

The Maitai River was historically a source of argillite, a highly valuable and useful rock used for toki (adzes) and working tools.

**Wairau River, Omaka River, Ōpaoa River and Kaituna River and their tributaries** (as shown on deed plan OTS-068-47);

The Wairau River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Ngati Toa Rangatira have a longstanding association with the Wairau River as the Wairau and Cloudy Bay have been important areas of Ngati Toa Rangatira settlement since the 1830s.

The Wairau was first conquered by Te Rauparaha and Te Rangihaeata in 1827; the chiefs led a taua into Te Tau Ihu in retaliation for an insult given by a chief who resided at the Wairau.

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According to sources, the chief had stated that Te Rauparaha was very brave and that he would like to crush his skull with a 'tukituki patu aruhe' (a fernroot pounder).

Following the initial fighting, there was no immediate settlement as the taua continued on a campaign across further lands of Te Tau Ihu. At the end of the fighting, Ta Rauparaha assigned land to various hapu and the Wairau was one region which he retained for Ngati Toa Rangatira. It was at this time that Ngati Toa Rangatira began their more intensive settlement of the area, and by 1840 400 'Ngati Toa Rangatira' were recorded as being settled in the Wairau.

A large stockade was constructed by Te Rauparaha at the mouth of the Wairau River. According to a source in 1843, the pa was formerly very substantial; by that time the condition of the pa had begun to deteriorate. A description of the pa at 1843 gives an indication of its former size: the pa consisted of a very fine but somewhat dilapidated stockade, three-quarters of an acre of ground and a few broken and deserted whares. The posts of the stockade which were about six or eight feet apart stood from 15 to 20 feet high and upwards out of the ground. They posts were very stout and required great labour to erect. The intervals between these large posts was supplejack, whereas the posts themselves were manuka which must have been transported from a considerable distance.

The Wairau River, being a largely braided river, made the lands of the Wairau plains particularly suitable for occupation. The waterways of the Wairau provided Ngati Toa Rangatira with plentiful resources such as eel, koura, cockles, kahawai and the giant kokopu. The smaller tributaries fed into the swamp land of the lower plains of the Wairau, providing Ngati Toa Rangatira with abundant supply of wetland flora and fauna such as flax, swamp maire and kahikatea. Currently, the river, lagoons and wetlands are home to 90 species of wetland bird, 22 of New Zealand's 42 native fish species and a number of threatened wetland plants.

The resources of the Wairau River and Lagoon, combined with the resources of the sea made the Wairau plains a particularly hospitable environment. This is evidenced by the great number of wahi tapu and other sites of significance located in the region.

**Te Hoiere / Pelorus River and its tributaries** (as shown on deed plan OTS-068-48);

The Pelorus or Te Hoiere River is a site of cultural, historical, spiritual, and traditional significance to Ngati Toa Rangatira. It was a very important waterway because it linked two areas of Ngati Toa Rangatira settlement: the Te Hoiere Sound and Tasman Bay. The access route of the valley, and particularly the river, allowed for frequent travel between the two areas, for the transportation of resources, and for communication between the people of Ngati Toa Rangatira. This gave Ngati Toa Rangatira a broader spatial relationship with the region which was vital to the maintenance of the marine domain established by Te Rauparaha. The Pelorus River gave Ngati Toa Rangatira direct access to the inland of Te Tau Ihu from their coastal settlements, increasing the pool of resources from which the iwi drew sustenance.

Originally the Te Hoiere River Valley was rich in native forest and birdlife; both of which were a valuable resource to Ngati Toa Rangatira.

The river was an abundant source of tuna (eels), smelt, freshwater crayfish (koura) and whitebait (inanga), gathered extensively by Ngati Toa Rangatira.

**Tuamarina River and its tributaries** (as shown on deed plan OTS-068-49);

The Tuamarina Stream is a site of cultural, historical, spiritual and traditional significance to

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Ngati Toa Rangatira. The River was located within the core rohe of Ngati Toa Rangatira in Te Tau Ihu, the centre of which was in the Wairau and Port Underwood. The Tuamarina served as a valuable resource, supplying the nearby Ngati Toa Rangatira settlements with plentiful resources such as flax, swamp maire, kahikatea and species of eel, koura, cockles, kahawai and the giant kokopu. The Tuamarina Stream linked the Marlborough Sounds with the Wairau, two areas of Ngati Toa Rangatira settlement. The access route of the valley, and particularly the river, allowed for frequent travel between the two areas, for the transportation of resources and trade goods, and for communication between the people of Ngati Toa Rangatira.

The Tuamarina Stream is culturally significant for other reasons however: it is the site of Te Rangihaeata's wife, Te Rongo's grave and the site of the infamous 'Wairau incident'.

Tension over the ownership of the Wairau between New Zealand Company surveyors and Ngati Toa Rangatira reached a head in June of 1843. Ngati Toa Rangatira objected to surveyors entering their land in the Wairau and, by various methods, forced the surveyors to retreat to Nelson. As a result, a party of special constables were sent to Tuamarina to arrest Te Rauparaha.

The party of special constables reached the Ngati Toa Rangatira party at the Tuamarina River on Saturday 17 June. The leaders of the party and a number of others crossed the creek and entered into a discussion with Ngati Toa Rangatira. Both Te Rauparaha and Te Rangihaeata were adamant that they would not be arrested.

The Police Magistrate then called on his party to cross the creek and arrest the chiefs. Some of the armed party moved down the bank, while the remainder stayed in position on the bank above the Tuamarina. As the men were crossing the creek a shot was fired, possibly accidentally, by one of the Europeans. The evidence of Ngati Toa Rangatira at the time, however, was that there was an order to fire, that the first shots were fired in response to this, and Maori were the first to die. At this point, both Te Rauparaha and Rawiri Puaha called on Ngati Toa Rangatira to fire. During the exchange of fire Te Rongo, the wife of Te Rangihaeata, was killed.

The party of special constables now broke and fled up the hill with Ngati Toa Rangatira chasing them. After an exchange of gunfire lasting for some minutes the decision was made to surrender and Wakefield and the others laid down their arms. By this time many of the party of special constables had escaped. Those who remained behind were killed. Tamihana Te Rauparaha wrote that his father was willing to spare the prisoners, but Te Rangihaeata was not. More Europeans escaped than were killed. Ngati Toa Rangatira then temporarily withdrew from the northern South Island, acting on the assumption that they were going to be attacked.

**Buller River and its tributaries (northern portion)** (as shown on deed plan OTS-068-50);

The Buller River is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira. Following the taua of 1829-1832, Ngati Toa Rangatira expanded their interests into the South Island; these interests extended at least as far south as the Buller River.

The source of Kawatiri is the Lake Rotoiti, another site of significance to Ngati Toa Rangatira. In the mid-1800's one of the valuable resources that the Kawatiri provided was gold. Maori miners, including Ngati Toa Rangatira, travelled along Kawatiri by waka to reach the more remote goldfields and also developed innovative mining methods.

Hohepa Tamaihengia of Ngati Toa Rangatira was a successful miner on the Buller goldfields.

3: DEEDS OF RECOGNITION

In the hope of securing a better gold price he built a beautifully modelled whale boat, which was about 30 feet long, at the Quartz Ranges, which his party sailed down the Buller River and on to Wellington.

Hohepa Tamaihenga was the son of Te Matoe and Hinekoto, both of Ngati Toa Rangatira. Hinekoto was the older half sister of Te Rauparaha. Hohepa Tamaihenga was the younger brother of Rawiri Puaha. Rawiri married Ria Waitohi the daughter of Te Peehi Kupe - a paramount chief of Ngati Toa Rangatira killed at Kaiapohia Pa.

**Waimea River and its tributaries** (as shown on deed plan OTS-068-58); and

The river mouth of the Waimea is located in Tasman Bay, opposite Rabbit Island. The river itself, and the surrounding area is of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

Ngati Toa Rangatira's association stems from the invasion by the Ngati Toa Rangatira taua into Te Tau Ihu in the 1820s. By the end of that decade, Ngati Toa Rangatira and their allies had secured rights and interests over the land in the districts of Te Tau Ihu. A further taua in 1831-1832 further secured the passing of the lands of Western Te Tau Ihu from the original inhabitants to the northern alliance. Ngati Toa Rangatira had a significant interest in the Tasman Bay area and the Waimea plains.

In the 1830s there were some scattered Ngati Toa Rangatira pa and kainga sites in the Tasman Bay area, and Te Rauparaha made frequent visits there.

At the time of the Ngati Toa Rangatira presence in Tasman Bay; the land surrounding the Waimea River was primarily covered in fern and scrub, as well as patches of swamp. Bird species and fish species were abundant in the region. The Waimea River was utilised as a travel route; and the mouth of the river used as a landing site.

**Motueka River and its tributaries** (as shown on deed plan OTS-068-59).

The Motueka River is a site of cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.

Ngati Toa Rangatira's association stems from the invasion of the Ngati Toa Rangatira taua which set forth from the Kapiti region in the mid 1820s. A further taua in 1831-1832 further secured the passing of the lands of Western Te Tau Ihu from the original inhabitants to the northern alliance. Ngati Toa Rangatira had a significant interest in the Tasman Bay area, including Motueka and the Motueka River.

Te Whiro, a Ngati Toa Rangatira chief and younger brother of Rawiri Puaha, went to the area and died there.

In the 1830s and 1840s, the Motueka River was abundant with native bird life including, pukeko, ducks, weka, kereru and kaka. There was an extensive swamp system from which numerous species of flax could be harvested. The river itself was also of course an important mahinga kai from which tuna, inanga and koura could all be caught.

The Motueka River was an important inland route which linked Tasman Bay with the West Coast; this was an important trade route for many iwi, including Ngati Toa Rangatira, because of the valuable pounamu resources on the Western Coast. There was also an awa which linked the Wairau with Motueka via Wairoa; this was particularly important for Ngati Toa Rangatira who resided in the Wairau region.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

3: DEEDS OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Commissioner of Crown Lands

## 1 INTRODUCTION

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with:
- 1.1.1 Ngati Toa Rangatira; and
  - 1.1.2 the Toa Rangatira Trust (the governance entity).
- 1.2 In the deed of settlement, Ngati Toa Rangatira made statements of their particular cultural, spiritual, historical, and traditional association with the following areas (the statutory areas):
- 1.2.1 Hutt River and its tributaries (as shown on deed plan OTS-068-45);
  - 1.2.2 Maitai River and its tributaries (as shown on deed plan OTS-068-46);
  - 1.2.3 Wairau River, Omaka River, Ōpaoa River and Kaituna River and their tributaries (as shown on deed plan OTS-068-47);
  - 1.2.4 Te Hoiere / Pelorus River and its tributaries (as shown on deed plan OTS-068-48);
  - 1.2.5 Tuamarina River and its tributaries (as shown on deed plan OTS-068-49);
  - 1.2.6 Buller River and its tributaries (northern portion ) (as shown on deed plan OTS-068-50);
  - 1.2.7 Waimea River and its tributaries (as shown on deed plan OTS-068-58); and
  - 1.2.8 Motueka River and its tributaries (as shown on deed plan OTS-068-59).
- 1.3 Those statements of association are:
- 1.3.1 in the documents schedule to the deed of settlement; and
  - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statements of association in the [*name*] Act [*year*], being the settlement legislation that gives effect to the deed of settlement.

## 2 CONSULTATION

- 2.1 The Commissioner of Crown Lands will, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning the settling group's association with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to any of the following activities (the identified activities):
- 2.2.1 considering an application for a right of use or occupation (including renewing such a right);

- 2.2.2 preparing a plan, strategy, or programme for protection and management;
  - 2.2.3 conducting a survey to identify the number and type of users that may be appropriate;
  - 2.2.4 preparing a programme to eradicate noxious flora and fauna.
- 2.3. The Commissioner of Crown Lands must, when consulting the governance entity under clause 2.1:
- 2.3.1 provide the governance entity with sufficient information to make informed decisions, and
  - 2.3.2 inform the governance entity of an application referred to in clause 2.2.1, but may withhold commercially sensitive information and material including within, or relating to the application.

### 3 LIMITS

- 3.1 This deed:
- 3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and
  - 3.1.2 if it relates to a river or stream (including a tributary) it applies only to the bed of the river or stream, meaning the land that the waters of the river or stream cover at its fullest flow without flowing over its banks, but to avoid doubt does not apply to:
    - (a) a part of the bed of the river or stream that is not owned and managed by the Crown; or
    - (b) the bed of an artificial water course;
  - 3.1.3 does not require the Crown to undertake, increase, or resume any identified activity; and
  - 3.1.4 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
  - 3.1.5 is subject to the settlement legislation.

### 4 TERMINATION

- 4.1 This deed terminates in respect of a statutory area, or part of it, if:
- 4.1.1 the governance entity and the Commissioner of Crown Lands agree in writing; or
  - 4.1.2 the relevant area is disposed of by the Crown; or
  - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Commissioner of Crown Lands to another Minister and/or Crown official.



- 4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into the activities referred to in clause 2.2 in relation to or within the area concerned through negotiation with the new person or official within the Crown that is responsible for those activities.

## 5 NOTICES

- 5.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 5 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is:

Commissioner of Crown Lands  
[*address*].

## 6 AMENDMENT

- 6.1 This deed may be amended only by written agreement signed by the governance entity and the Commissioner of Crown Lands.

## 7 NO ASSIGNMENT

- 7.1 The governance entity may not assign its rights under this deed.

## 8 DEFINITIONS

- 8.1 In this deed:

**Commissioner of Crown Lands** means Her Majesty the Queen in right of New Zealand acting by and through the Commissioner of Crown Lands; and

**Crown** has the meaning given to it by section 2(1) of the Public Finance Act 1989; and

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated [*date*] between Ngati Toa Rangatira, the governance entity, and the Crown; and

**governance entity** means the Toa Rangatira Trust [*details*]; and

**identified activities** means the activities specified in clause 2.2; and

**person** includes an individual, a corporation sole, a body corporate, and an unincorporated body; and

**Ngati Toa Rangatira** has the meaning given to it by clauses [8.8] and 8.9 of the deed of settlement; and

**settlement legislation** means the Act referred to in clause 1.4; and

**statement of association** means the statements in part 3 of the documents schedule to the deed of settlement and copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 1.2, the general location of which is

indicated on the deed plan referred to in relation to that area (but which does not establish the precise boundaries of the statutory area); and

**writing** means representation in a visible form on a tangible medium (such as print on paper).

## 9 INTERPRETATION

- 9.1 The provisions of this clause 9 apply to this deed's interpretation unless the context requires otherwise.
- 9.2 Headings do not affect the interpretation.
- 9.3 Terms defined by:
- 9.3.1 this deed have those meanings; and
  - 9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, have those meanings where used in this deed.
- 9.4 All parts of speech and grammatical forms of a defined word or expression have corresponding meanings.
- 9.5 The singular includes the plural and vice versa.
- 9.6 One gender includes the other genders.
- 9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.
- 9.8 A reference to:
- 9.8.1 this deed or any other document means this deed or that document as amended, novated or replaced; and
  - 9.8.2 legislation is to that legislation as amended, consolidated, or substituted.
- 9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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**SIGNED** as a deed on [*date*]

**SIGNED** for and on behalf of  
**HER MAJESTY THE QUEEN**  
by the Commissioner of Crown Lands  
in the presence of:

---

Signature of Witness

---

Witness Name

---

Occupation

---

Address

---

**4. ENCUMBRANCES**

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**4.1 WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

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**Clause 5.45.3(a)**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

**CONSERVATION COVENANT**

**Section 27 Conservation Act 1987  
and  
Section 77 Reserves Act 1977**

THIS DEED of COVENANT is made this \_\_\_\_\_ day of \_\_\_\_\_ 20

BETWEEN TOA RANGATIRA TRUST (the Owner)

AND MINISTER OF CONSERVATION (the Minister)

**BACKGROUND**

- A Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values. Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values
- B The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [ ] and implemented by the [ ] Act [ ].
- C The Land contains Conservation Values and Reserve Values which the parties to the Deed of Settlement agreed should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the Land should be managed to protect those values.
- D The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Conservation Values and the Reserve Values.

**OPERATIVE PARTS**

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows:

**1. INTERPRETATION**

1.1 In this Covenant, unless the context otherwise requires:

**"Conservation Purposes"** means the preservation and protection of natural and historic resources including Conservation Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

**"Conservation Values"** means the conservation values specified in Schedule 1.

4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

"Covenant"	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
"Director-General"	means the Director-General of Conservation.
"Fence"	includes a gate
"Fire Authority"	means a fire authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
"Minister"	means the Minister of Conservation.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been re-aligned.
"Owner"	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
"Reserve Values"	means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
"Working Days"	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2. OBJECTIVES OF THE COVENANT**

2.1 The Land must be managed:

2.1.1 for Conservation Purposes;

2.1.2 so as to preserve the Reserves Values;

2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3. IMPLEMENTATION OF OBJECTIVE**

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

3.1.1 grazing of the Land by livestock;

3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;

3.1.3 the planting of any species of exotic tree, shrub or other plant;

3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;

3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;

3.1.6 any cultivation, earth works or other soil disturbances;

3.1.7 any archaeological or other scientific research involving disturbance of the soil;

3.1.8 the damming, diverting or taking of Natural Water;

3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;

3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;

3.1.12 the erection of utility transmission lines across the Land.



**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
  - 3.2.3 keep the Land free from exotic tree species;
  - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
  - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

**4. PUBLIC ACCESS**

- 4.1 The Owner must, subject to this Covenant, permit the public to enter upon the Land.

**5. THE MINISTER'S OBLIGATION AND OTHER MATTERS**

- 5.1 The Minister must:

- 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

**6. JOINT OBLIGATIONS**

6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually to better achieve the objectives set out in clause 2.

**7. DURATION OF COVENANT**

7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**8. OBLIGATIONS ON SALE OF LAND**

8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**9. CONSENTS**

9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**10. MISCELLANEOUS MATTERS**

**10.1 Rights**

10.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**10.2 Trespass Act**

10.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

10.2.2 For avoidance of doubt the rights described in clause 10.2.1 may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**10.3 Reserves Act**

10.3.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**10.4 Registration**

10.4.1 This Covenant must be signed by the parties and registered against the Computer Freehold Register to the Land.

**10.5 Acceptance of Covenant**

10.5.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

**10.6 Fire**

10.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

10.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

- (a) requested to do so; or
- (b) if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

10.6.3 The assistance provided under clause 10.6.2 will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

**11. DEFAULT**

11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

- 11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 11.2.1 advise the defaulting party of the default;
  - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
  - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**12. DISPUTE RESOLUTION PROCESSES**

- 12.1 The parties acknowledge and agree that they:
- 12.1.1 wish to minimise and promptly settle any dispute which may arise;
  - 12.1.2 must make active efforts in good faith to resolve any such disputes in accordance with clause 11; and
  - 12.1.3 will give the other written notice of the dispute including a description of the main issues.
- 12.2 The following process shall be undertaken once notice is received by the other party to this Covenant:
- 12.2.1 within 15 working days of being given written notice, the relevant contact person from the Department of Conservation and the PSGE will meet to work in good faith to resolve the issue;
  - 12.2.2 if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 12.1.3, the Director-General and the Chief Executive Officer of Ngati Toa Rangatira will meet to work in good faith to resolve the issue; and
  - 12.2.3 if the dispute has still not been resolved within 30 working days of the receipt of the notice referred to in clause 12.1.3, and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and both parties agree, the Minister and the Chair of the PSGE will meet to work in good faith to resolve the issue.
- 12.3 Where the dispute has not been resolved within a reasonable period of time in accordance with clause 12.2.2 or, if applicable, clause 12.2.3, then either party may require the dispute to be referred to mediation as follows:
- 12.3.1 the party requiring the dispute to be referred to mediation must provide written notice in accordance with this Covenant to the other party; and

**4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT**

12.3.2 the parties will seek to agree on a mediator or mediators and should the parties fail to reach an agreement within 15 working days of the date of the notice prescribed in clause 12.1.3 above, the mediator or mediators will be appointed by the President for the time being of the New Zealand Law Society. The mediator or mediators will be:

- (a) familiar with Ngati Toa Rangatira tikanga;
- (b) familiar with tikanga based dispute resolution; and
- (c) independent of the dispute.

12.3.3 The mediator or mediators will not have the power to determine the dispute, but may offer advice of a non-binding nature.

12.3.4 The costs of the mediator or mediators will be met jointly by the parties.

12.3.5 Each party will bear its own costs in every other respect.

**13. NOTICES**

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**14. SPECIAL CONDITIONS**

14.1 Special conditions relating to this Covenant are set out in Schedule 3.

14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

Executed as a Deed

Signed by the trustee of )  
**TOA RANGATIRA TRUST** )  
as Owner in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by [ ] )  
and acting under a written delegation from )  
the Minister of Conservation and exercising )  
his/her powers under section 117 of the )  
Reserves Act 1977 as designated )  
Commissioner in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

**SCHEDULE 1**

**Description of Land:**

Marlborough Land District - Marlborough District  
1.9973 hectares, more or less, being Section 2 SO 428338

**Conservation Values of the Land to be protected:**

The intrinsic value of the natural resources on this site, and the appreciation and recreational enjoyment that may be derived by the public from the opportunity to visit that area. This site, in the centre portion of Robin Hood Bay, is the mostly frequently used part of this popular recreational location by members of the public. The site also provides access to beach. This site is a particularly important location for a number of historic features including several well formed and preserved kumara pits.

**Reserve Values of the Land to be protected:**

This site forms an important part of the natural landscape at the centre of Robin Hood Bay as well as a picturesque backdrop for people accessing the beach adjacent to this site.

The site comprises undulating coastal terraces that are largely devoid of natural vegetation. The exception to this is the coastal riparian margin that is well vegetated with harakeke and other low native plants adapted to living in this harsh and windswept coastal environment. The vegetation cover that occurs at this site is an important factor in maintaining soil stability at this fragile marine-terrestrial interface.

The vegetated coastal riparian margin offers unique protection for Korora/Blue Penguin (*Eudyptula minor*) that are regularly observed coming ashore at this site.

4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

[Governance Entity]

The address for service of the Minister is:

(  
c/- Area Manager  
Department of Conservation  
Gee Street  
PO Box 51  
Renwick

Phone: +64 3 572 9100

Fax: +64 3 572 8824



4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

**SCHEDULE 3**

**Special Conditions**

1. The Owner may, for the purposes of maintaining access to the land, minimising fire risk, undertaking pest plant or animal control, or building and using the cultural facilities referred to in paragraph 3 below, undertake, only as reasonably necessary, the following activities
  - a. minor vegetation clearance;
  - b. earth works or other soil disturbances;
  - c. sowing of seed
  - d. erection of utility transmission lines
2. The Owner may erect fencing on the land providing that it does not prevent or impede public access by foot.
3. The Owner may erect and use facilities for the purposes of cultural activities. Such facilities and use must not significantly impact on the Conservation Values and Reserve Values specified in Schedule 1 including the public's access by foot to the site.
4. The Owner may, in consultation with the Minister of Conservation, restrict public access to the Land for the purposes of public health and safety.
5. The Owner may prohibit camping.
6. The following activities are expressly prohibited on the Land unless the Owner gives written consent:
  - a. passage on or through the Land by automobile, motorcycle, bicycle, or any other means of locomotion, mechanical, electrical or otherwise subject to clause 3.2.5;
  - b. passage on or through the Land by horses;
  - c. carrying or discharging of firearms and/or other weapons; and
  - d. dogs or pets of any description, whether retained on a leash or otherwise
7. Clause 4.1 is amended by adding after the words "the land" the words "on foot".

4.1: WAIKUTAKUTA / ROBIN HOOD BAY CONSERVATION COVENANT

GRANT of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under section 27 of the  
Conservation Act 1987 and  
section 77 of the Reserves  
Act 1977

[ ]

to

**MINISTER OF CONSERVATION**

---

Legal Services  
Department of Conservation

---

**4.2 ELAINE BAY CONSERVATION COVENANT**

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**Clause 5.45.3(b)**

4.2: ELAINE BAY CONSERVATION COVENANT

CONSERVATION COVENANT

Section 27 Conservation Act 1987  
and  
Section 77 Reserves Act 1977

THIS DEED of COVENANT is made this                      day of                      20

BETWEEN    TOA RANGATIRA TRUST (the Owner)

AND                MINISTER OF CONSERVATION (the Minister)

**BACKGROUND**

- A        Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values. Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values.
- B        The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [            ] and implemented by the [            ] Act [            ].
- C        The Land contains Conservation Values and Reserve Values which the parties to the Deed of Settlement agreed should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the Land should be managed to protect those values.
- D        The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Conservation Values and the Reserve Values.

**OPERATIVE PARTS**

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows:

**1.        INTERPRETATION**

1.1       In this Covenant, unless the context otherwise requires:

- "Conservation Purposes"        means the preservation and protection of natural and historic resources including Conservation Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
- "Conservation Values"            means the conservation values specified in Schedule 1.
- "Covenant"                            means this Deed of Covenant made under section 27

4.2: ELAINE BAY CONSERVATION COVENANT

	of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
"Director-General"	means the Director-General of Conservation.
"Fence"	includes a gate.
"Fire Authority"	means a fire authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
"Minister"	means the Minister of Conservation.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been re-aligned.
"Owner"	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
"Reserve Values"	means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
"Working Days"	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

**4.2: ELAINE BAY CONSERVATION COVENANT**

1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2. OBJECTIVES OF THE COVENANT**

2.1 The Land must be managed:

2.1.1 for Conservation Purposes;

2.1.2 so as to preserve the Reserves Values;

2.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3. IMPLEMENTATION OF OBJECTIVE**

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

3.1.1 grazing of the Land by livestock;

3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;

3.1.3 the planting of any species of exotic tree, shrub or other plant;

3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;

3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;

3.1.6 any cultivation, earth works or other soil disturbances;

3.1.7 any archaeological or other scientific research involving disturbance of the soil;

3.1.8 the damming, diverting or taking of Natural Water;

3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;

3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;

3.1.12 the erection of utility transmission lines across the Land.

**4.2: ELAINE BAY CONSERVATION COVENANT**

3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;

3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;

3.2.3 keep the Land free from exotic tree species;

3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;

3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;

3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.

3.3 The Owner acknowledges that:

3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;

3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

**4. PUBLIC ACCESS**

4.1 The Owner must, subject to this Covenant, permit the public to enter upon the Land.

**5. THE MINISTER'S OBLIGATION AND OTHER MATTERS**

5.1 The Minister must:

5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.

5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

**4.2: ELAINE BAY CONSERVATION COVENANT**

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

**6. JOINT OBLIGATIONS**

6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually to better achieve the objectives set out in clause 2.

**7. DURATION OF COVENANT**

7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**8. OBLIGATIONS ON SALE OF LAND**

8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**9. CONSENTS**

9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**10. MISCELLANEOUS MATTERS**

**10.1 Rights**

10.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**10.2 Trespass Act**

10.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.



**4.2: ELAINE BAY CONSERVATION COVENANT**

10.2.2 For avoidance of doubt the rights described in clause 10.2.1 may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**10.3 Reserves Act**

10.3.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**10.4 Registration**

10.4.1 This Covenant must be signed by the parties and registered against the Computer Freehold Register to the Land.

**10.5 Acceptance of Covenant**

10.5.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

**10.6 Fire**

10.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

10.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

- (a) requested to do so; or
- (b) if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

10.6.3 The assistance provided under clause 10.6.2 will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

**11. DEFAULT**

11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

**4.2: ELAINE BAY CONSERVATION COVENANT**

11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

11.2.1 advise the defaulting party of the default;

11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**12. DISPUTE RESOLUTION PROCESSES**

12.1 The parties acknowledge and agree that they:

12.1.1 wish to minimise and promptly settle any dispute which may arise;

12.1.2 must make active efforts in good faith to resolve any such disputes in accordance with clause 11; and

12.1.3 will give the other written notice of the dispute including a description of the main issues.

12.2 The following process shall be undertaken once notice is received by the other party to this Covenant:

12.2.1 within 15 working days of being given written notice, the relevant contact person from the Department of Conservation and the PSGE will meet to work in good faith to resolve the issue;

12.2.2 if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 12.1.3, the Director-General and the Chief Executive Officer of Ngati Toa Rangatira will meet to work in good faith to resolve the issue; and

12.2.3 if the dispute has still not been resolved within 30 working days of the receipt of the notice referred to in clause 12.1.3, and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and both parties agree, the Minister and the Chair of the PSGE will meet to work in good faith to resolve the issue.

12.3 Where the dispute has not been resolved within a reasonable period of time in accordance with clause 12.2.2 or, if applicable, clause 12.2.3, then either party may require the dispute to be referred to mediation as follows:

12.3.1 the party requiring the dispute to be referred to mediation must provide written notice in accordance with this Covenant to the other party; and

**4.2: ELAINE BAY CONSERVATION COVENANT**

12.3.2 the parties will seek to agree on a mediator or mediators and should the parties fail to reach an agreement within 15 working days of the date of the notice prescribed in clause 12.1.3 above, the mediator or mediators will be appointed by the President for the time being of the New Zealand Law Society. The mediator or mediators will be:

- (a) familiar with Ngati Toa Rangatira tikanga;
- (b) familiar with tikanga based dispute resolution; and
- (c) independent of the dispute.

12.3.3 The mediator or mediators will not have the power to determine the dispute, but may offer advice of a non-binding nature.

12.3.4 The costs of the mediator or mediators will be met jointly by the parties.

12.3.5 Each party will bear its own costs in every other respect.

**13. NOTICES**

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**14. SPECIAL CONDITIONS**

14.1 Special conditions relating to this Covenant are set out in Schedule 3.

14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.2: ELAINE BAY CONSERVATION COVENANT

Executed as a Deed

Signed by the trustee of )  
**TOA RANGATIRA TRUST** )  
as Owner in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

( \_\_\_\_\_  
Address

Signed by [ \_\_\_\_\_ ] )  
and acting under a written delegation from )  
the Minister of Conservation and exercising )  
his/her powers under section 117 of the )  
Reserves Act 1977 as designated )  
Commissioner in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

( \_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

4.2: ELAINE BAY CONSERVATION COVENANT

**SCHEDULE 1**

**Description of the Land**

Nelson Land District - Marlborough District  
0.5237 hectares, more or less, being Section 1 SO 427923.

**Conservation Values to be protected:**

The intrinsic value of the natural resources on the land, and the appreciation and recreational enjoyment that may be derived by the public from the opportunity to visit that area. A relatively well used track passes very close to the area.

The land contains advanced native regeneration following clearing and farming many years ago.

**Reserve Values to be protected:**

The natural landscape amenity values of the area which sits within a wider sea to ridge line vista of regenerating native vegetation in Elaine Bay. The bush clad landscape of the bay is very visible from the village of Elaine Bay and from the sea.

The natural environment values represented by the indigenous flora and fauna on the land. The existing native vegetation has an over story of large Manuka/Kanuka with an understory of hardwoods.

4.2: ELAINE BAY CONSERVATION COVENANT

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

[Governance Entity]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
Port Marlborough Building  
14 Auckland Street  
P O Box 161  
Picton 7250

Phone 03 520 3002

4.2: ELAINE BAY CONSERVATION COVENANT

**SCHEDULE 3**

**Special conditions**

1. The Owner may remove mature exotic trees from the Land.
2. The Owner may, for the purposes of maintaining access to the land, minimising fire risk, undertaking pest plant or animal control, or building and using the cultural facilities referred to in paragraph 3 below, undertake, only as reasonably necessary, the following activities
  - a. minor vegetation clearance;
  - b. earth works or other soil disturbances;
  - c. sowing of seed
  - d. erection of utility transmission lines
3. The Owner may erect and use facilities for the purposes of cultural activities. Such facilities must not significantly impact on the Conservation Values and Reserve Values specified in Schedule 1, including the public's access by foot to the Land.
4. The Owner may, in consultation with the Minister of Conservation restrict access to the land for the purposes of public health and safety.
5. The following activities are expressly prohibited on the Land unless the Owner gives written consent:
  - a. camping on the Land;
  - b. passage on or through the Land by automobile, motorcycle, bicycle, or any other means of locomotion, mechanical, electrical or otherwise, subject to clause 3.2.5;
  - c. passage on or through the Land by horses;
  - d. carrying or discharging of firearms and/or other weapons; and
  - e. dogs or pets of any description, whether retained on a leash or otherwise.
6. Clause 4.1 is amended by adding after the words "the land" the words "on foot".

**4.2: ELAINE BAY CONSERVATION COVENANT**

GRANT of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under section 27 of the Conservation Act  
1987 and section 77 of the Reserves  
Act 1977

[ ]

to

**MINISTER OF CONSERVATION**

---

Legal Services  
Department of Conservation



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**4.3 TOKOMARU / MOUNT ROBERTSON RIGHT OF WAY EASEMENT**

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**[Clause 5.45.5]**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.3: TOKOMARU / MOUNT ROBERTSON RIGHT OF WAY EASEMENT

Form 3

Easement instrument to grant easement or *profit à prendre*,  
or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

Nelson

BARCODE

Grantor

*Sumame must be underlined*

[THE TRUSTEES OF NGATI RARUA SETTLEMENT TRUST AND THE TRUSTEE OF [NGATI  
TOA RANGATIRA] TRUST]

Grantee

*Sumame must be underlined*

HER MAJESTY THE QUEEN in right of New Zealand acting by and through the MINISTER OF  
CONSERVATION

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A,  
**grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in  
Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or  
provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

Signature of [the trustees of the Ngati Rarua Settlement Trust] as Grantor	Signed in my presence by the Grantor
	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

Signature of [the trustee of the [Ngati Toa Rangatira Trust]] as Grantor	Signed in my presence by the Grantor
	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.3: TOKOMARU / MOUNT ROBERTSON RIGHT OF WAY EASEMENT

<hr/> <p>Signature [common seal] of Grantee</p>	<p>Signed in my presence by the Grantee</p> <hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p><i>Witness name</i></p> <p><i>Occupation</i></p> <p><i>Address</i></p>
---	--

**Certified correct** for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee]

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.3: TOKOMARU / MOUNT ROBERTSON RIGHT OF WAY EASEMENT

**Annexure**

**Schedule 1**

Easement instrument

Dated

Page 1 of 3 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	Marked "A" on SO 426595	Section 1 SO 426595	In Gross

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

All signing parties and either their witnesses or solicitors must sign or initial in this box

4.3: TOKOMARU / MOUNT ROBERTSON RIGHT OF WAY EASEMENT

**Annexure**  
**Schedule 2**

Easement instrument                      Dated                      Page 2    of    3 pages

**Operative Clause**

- 1        The Grantor transfers and grants to the Grantee in perpetuity a right of way easement in gross over the Servient Land on the terms, conditions, covenants and restrictions contained in this Easement.

**Right of Way Easement Terms**

- 2        The Grantee together with the employees, tenants, agents, workmen, licensees and invitees of the Grantee and any other person lawfully entitled (including the public) shall have the full free right, liberty and licence from time to time and at all times by day and by night to pass and repass over and along the Easement Land.
- 3        In exercising its rights under this Easement, the Grantee shall not interfere with the Grantor's use of the Easement Land.
- 4        The Grantee may not use the Easement Land or any part of the Easement Land other than for the purpose expressly set out in clause 2 of this Easement. In particular, the Grantee may not in any way obstruct the Easement Land.
- 5        Either or both the Grantee or Grantor may maintain an accessway on the Easement Land.
- 6        The cost of maintaining the accessway shall be borne by the parties in proportion to the amount, and nature, of their use of the Easement Land. It is acknowledged that, as of the date of this document, the easement land is maintained on a minimal basis by members of the public without the need for specialised machinery or financial input from the Grantee and the Grantee does not intend to make any future financial input. Neither party shall be liable to contribute to the improvement of the easement in the event that improvement is not necessary for their use. However, if any repair or maintenance is rendered necessary as a result of any act, omission or neglect by either party causing damage to the Easement Land then the cost of such maintenance and repair shall be borne by the party that caused the damage.
- 7        The Grantor may contract with licensees, and/or tenants on the adjacent land administered by it requiring them to contribute, in whole or in part, to the maintenance of this easement.
- 8        The Grantor shall not be responsible to the Grantee or to any other person for any loss or damage sustained by the Grantee or by any such person using any part of the Easement Land at its own risk in all respects.

**General Terms**

- 9        No power is implied for the Grantor to determine the Easement for breach of any provision (whether express or implied) or for any other cause, it being the intention of the parties that rights granted under this the Easement shall subsist for all time or until it is duly surrendered.
- 10       The covenants and powers contained in the Land Transfer Regulations 2002 in respect of easements shall apply to the extent that they are not expressly negated in this Easement. The rights set out in Schedule 5 to the Property Law Act 2007 are excluded from this Easement.

**Annexure  
Schedule 2**

Easement instrument:

Dated

Page 3 of 3 pages

**Dispute Resolution**

- 11 If any dispute arises between the Grantor and Grantee concerning the rights created by this Easement the parties shall enter into negotiations in good faith to resolve their dispute.
- 12 If the dispute cannot be resolved by the parties themselves then they shall explore whether the dispute can be resolved by use of an alternative dispute resolution technique.
- 13 If the dispute is not resolved within one month of the date on which the parties begin their negotiations the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the New Zealand Law Society. Such arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution. The parties' execution of this Easement shall be deemed a submission to arbitration.

**Interpretation**

- 14 In these conditions, unless the context otherwise requires:
  - Easement* means the right of way easement recorded by this easement instrument; and
  - Easement Land* means that part of the land marked "A" on SO 426595.
- 15.2 In the interpretation of this Easement, unless the context otherwise requires:
  - 15.1 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement;
  - 15.2 references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
  - 15.3 the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

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4.4 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

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**Clause 5.9.2**

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**CONSERVATION COVENANT**

**Section 77 Reserves Act 1977**

**THIS DEED of COVENANT** is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN** Insert the name of trustee of the TOA RANGATIRA TRUST (the Owner)

**AND** MINISTER OF CONSERVATION (the Minister)

**BACKGROUND**

- A. Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values.
- B. The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [ ] and implemented by the [ ] Act [ ].
- C. The Land contains Reserve Values which the parties to the Deed of Settlement agreed should be subject to a covenant under the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- D. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Reserve Values.

**OPERATIVE PARTS**

In accordance with section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

**1 INTERPRETATION**

**1.1 In this Covenant unless the context otherwise requires:**

- |                           |   |
|---------------------------|---|
| <b>"Covenant"</b>         | means this Deed of Covenant made under section 77 of the Reserves Act 1977.                         |
| <b>"Director-General"</b> | means the Director-General of Conservation.   |
| <b>"Fence"</b>            | includes a gate.  |
| <b>"Fire Authority"</b>   | means a fire authority as defined in the Forest and Rural Fires Act 1977.                           |
| <b>"Land"</b>             | means the land described in Schedule 1.   |
| <b>"Minerals"</b>         | means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991. |
| <b>"Minister"</b>         | means the Minister of Conservation.   |
| <b>"Natural Water"</b>    | includes water contained in streams the banks of which  |



4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

have, from time to time, been re-aligned.

- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVES OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Reserve Values;

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of exotic tree, shrub or other plant;

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.6 any cultivation, earth works or other soil disturbances;
  - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
  - 3.1.8 the damming, diverting or taking of Natural Water;
  - 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
  - 3.1.10 any other activity which might have an adverse effect on the Reserve Values;
  - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
  - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
  - 3.2.3 keep the Land free from exotic tree species;
  - 3.2.4 keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
  - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.

**4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT**

3.3 The Owner acknowledges that:

3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;

3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

**4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

4.1 The Minister must:

4.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.

4.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

4.2 The Minister may:

4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

**5 JOINT OBLIGATIONS**

5.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

**6 DURATION OF COVENANT**

6.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**7 OBLIGATIONS ON SALE OF LAND**

7.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

7.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

7.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**8 CONSENTS**

8.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**9 MISCELLANEOUS MATTERS**

**9.1 Rights**

9.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**9.2 Trespass Act**

9.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

9.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**9.3 Reserves Act**

9.3.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**9.4 Registration**

9.4.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**9.5 Acceptance of Covenant**

9.5.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

**9.6 Fire**

9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

9.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

(a) requested to do so; or

(b) if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

9.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wild fire through willful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

**10 DEFAULT**

10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.2.1 advise the defaulting party of the default;

10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**11 DISPUTE RESOLUTION PROCESSES**

11.1 The parties acknowledge and agree that they:

11.1.1 wish to minimise and promptly settle any dispute which may arise;

11.1.2 must make active efforts in good faith to resolve any such disputes in accordance with clause 11; and

11.1.3 will give the other written notice of the dispute including a description of the main issues.

11.2 The following process shall be undertaken once notice is received by the other party to this Covenant:

11.2.1 within 15 working days of being given written notice, the relevant contact person from the Department of Conservation and the PSGE will meet to work in good faith to resolve the issue;

11.2.2 if the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 12.1.3, the Director-General and the Chief Executive Officer of Ngati Toa Rangatira will meet to work in good faith to resolve the issue; and

11.2.3 if the dispute has still not been resolved within 30 working days of the receipt of the notice referred to in clause 12.1.3, and where the matter is of such

**4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT**

significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and both parties agree, the Minister and the Chair of the PSGE will meet to work in good faith to resolve the issue.

11.3 Where the dispute has not been resolved within a reasonable period of time in accordance with clause 12.2.2 or, if applicable, clause 12.2.3, then either party may require the dispute to be referred to mediation as follows:

11.3.1 the party requiring the dispute to be referred to mediation must provide written notice in accordance with this Covenant to the other party; and

11.3.2 the parties will seek to agree on a mediator or mediators and should the parties fail to reach an agreement within 15 working days of the date of the notice prescribed in clause 12.1.3 above, the mediator or mediators will be appointed by the President for the time being of the New Zealand Law Society. The mediator or mediators will be:

- (a) familiar with Ngati Toa Rangatira tikanga;
- (b) familiar with tikanga based dispute resolution; and
- (c) independent of the dispute.

11.3.3 The mediator or mediators will not have the power to determine the dispute, but may offer advice of a non-binding nature.

11.3.4 The costs of the mediator or mediators will be met jointly by the parties.

11.3.5 Each party will bear its own costs in every other respect.

**12 NOTICES**

12.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

12.2 A notice given in accordance with clause 13.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

12.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**13 SPECIAL CONDITIONS**

13.1 Special conditions relating to this Covenant are set out in Schedule 3.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

13.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

**Executed as a Deed**

**SIGNED** by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

SIGNED by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

SIGNED by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

SIGNED by \_\_\_\_\_ )  
[ \_\_\_\_\_ ] )  
as Owner, in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

Witness  
Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**SIGNED** by the Minister through his delegate )  
**ALAN STEPHEN McKENZIE** )  
[acting under a written delegation from the )  
Minister of Conservation and exercising his )  
powers under section 117 of the Reserves )  
Act 1977 as designated Commissioner] )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

Witness

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**SCHEDULE 1**

**Description of Land**

Wellington Land District - Kapiti Coast

1.0000 hectares, approximately, being part Waiorua Kapiti 7 ML plan 5553. As shown on OTS-068-01. Final description to be inserted once survey has been completed.

**Reserve Values to be protected:**

The natural landscape amenity of the area.

The land is part of a continuum of low wave formed uplifted pebble ridges with an overlay of regenerating native shrub species. Sited on Kurukohatu Point, the largest flat area on Kapiti Island, a feature of the site is a seamless attachment to the surrounding landscape.

A feature of the site and surrounding area is the uninterrupted views across the point to Okupe Lagoon in the north and to the rest of Kapiti Island in the south.

The natural environment values as represented by the indigenous flora and fauna on the land

A wide range of indigenous species of flora and fauna, both rare and commonplace, are present in the area of grassland and native shrub cover on Kurukohatu Peninsula. The area, and the entire island, is free from introduced mammals. The area is habitat for Little Spotted Kiwi and Takahe and, during fruiting of shrub species, is intensively used by Kereru, Tui and Bellbirds. The adjacent Okupe Lagoon area is visited by a wide range of waterfowl and has a nesting colony of Royal Spoonbills. The area is also in close proximity to other colony nesting birds such as Red Billed and Black Backed Gulls along the coastline.

The historic/archaeological values of the area

Being the largest flat area on the island Kuukohatu Point was a centre of occupation very early in the history of Kapiti Island.

Early occupation centred around the daily requirements of life, finding or growing food, making shelter etc, while later activities included whaling, trading and farming.

Today little evidence remains of these past activities and apart from possible garden sites none specifically on the land to be transferred. In the general vicinity six sites are recorded by the New Zealand Archaeological Association, fence posts mark past farming activity, a concrete block to the east was part of the Civil Aviation hazard beacon used between 1950 and 1977.

Ngati Toa Rangatira cultural values of the area

The site and surrounding area is of immense cultural, historical and spiritual significance to Ngati Toa Rangatira. This area was the scene of the Battle of Waiorua, one of the most defining moments in the history of Ngati Toa Rangatira in the Cook Strait area. This site and surrounding area was historically extensively occupied by Ngati Toa Rangatira and there are numerous wahi tapu present here.

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

[Governance Entity]

[to insert]

The address for service of the Minister is:

The Conservator  
Department of Conservation  
Wellington Hawkes Bay Conservancy  
181 Thorndon Quay  
PO Box 5086  
WELLINGTON

Phone 04472 5821

Fax 04 499 0077

or

Kapiti Area Manager  
Department of Conservation  
Kapiti Area Office  
Parata Street  
WAIKANAE

Phone 04 296 1112

Fax 04 296 1115

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**SCHEDULE 3**

**Special conditions**

1. The Owner may undertake minor clearance of vegetation for the purposes of access to the land and for pest plant or pest animal control, or for the activities specified in paragraph [3] of this Schedule.
2. The Owner may undertake activities otherwise prohibited by clause 3.1 of the Covenant as are reasonably necessary for the development of the facility and the activities specified in paragraph [3] of this Schedule.
3. The Owner has the power to build in the context of this covenant a marae facility on the Land, consistent with the reserve values of the Land specified in Schedule 1. The marae facility will provide for the usual marae activities and may also include:
  - a. accommodation for a long-term caretaker;
  - b. freshwater storage, wastewater disposal, and power generation facilities;
  - c. facilities to store and maintain fire-fighting equipment;
  - d. general storage facilities; and
  - e. quarantine/visitor checking facility, to receive all visitors for bag checks upon arrival.
4. Special conditions 1 to 3 in this schedule are subject to special conditions 5 to 8.
5. The Owner must take all steps possible to prevent the introduction of mammals to Kapiti Island, in particular:
  - a. be vigilant about rodents and make careful checks of equipment, materials, food etc before going to the island;
  - b. control refuse;
  - c. not allow pets to be taken onto the island;
  - d. participate in the maintenance of a bait station defensive line, in conjunction with the Department of Conservation, as relevant to the site; and
  - e. participate in contingency action if a mammal invasion incident is detected anywhere on the island.
6. The Owner must take the following steps to minimise the fire risk:
  - a. not allow smoking except in a safe designated area;
  - b. not allow fires except in a safe designated area;
  - c. keep vegetation at least four metres back from buildings; and
  - d. control of machinery use, particularly in drought conditions.

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

7. The Owner must take the following steps to prevent the spread or introduction of weeds:
  - a. not plant exotic species
  - b. check equipment etc before taking to the island for seeds etc; and
  - c. control weed species present.
8. The Owner must take the following steps to minimise disturbance to wildlife
  - a. discourage the feeding of birds; and
  - b. ensure that all those on the Land are aware that they may not catch or handle wildlife.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.4: 1 HA OF KAPITI ISLAND CONSERVATION COVENANT

**GRANT** of

Certified correct for the purposes  
of the Land Transfer Act 1952

\_\_\_\_\_  
Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under section 77 of the  
Reserves Act 1977

**NGATI TOA GOVERNANCE ENTITY**

to

**MINISTER OF CONSERVATION**

**Legal Services  
Department of Conservation**

**4.5 TITAHU BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK**

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**Clause 5.45.2**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.5: TITAHI BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK

Form 3

**Easement instrument to grant easement or *profit à prendre*,  
or create land covenant**  
*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Wellington

BARCODE

Grantor

*Surname must be underlined*

[insert name of trustee] [Ngati Toa Rangatira Trust]

Grantee

*Surname must be underlined*

PORIRUA CITY COUNCIL

**Grant\* of easement or *profit à prendre* or creation or covenant**

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or **creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

**Attestation**

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantee

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.5: TITAHU BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 2 of 6 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient Land (Identifier/CT)	Dominant Land (Identifier/CT or in gross)
Right of Way and Right to Park	Marked "C", "D", "E" on SO 446371	Section 2 SO 38131	Section 99, Block I, Belmont Survey District (GN817236).

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

All signing parties and either their witnesses or solicitors must sign or initial in this box

4.5: TITAHI BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK

**Annexure  
Schedule 2**

Easement instrument

Dated

Page 3 of 6 pages

**Right of Way and Right to Park**

1. The Grantor grants to the Grantee as an easement in perpetuity a right of way over and along, and a right to park on the Easement Land for the purpose of accessing the Dominant Land on the terms set out in this Instrument.

**Rights and Powers of Right of Way and Right to Park**

2. The Grantor grants to the Grantee from time to time and at all times:
  - (a) the full, free, uninterrupted and unrestricted right, liberty and privilege to pass and repass on foot or with vehicles over and along the Easement Land for the purpose of accessing the Dominant Land;
  - (b) the right to go over and along the Easement Land on foot or with vehicles, and with or without machines, equipment and implements; and
  - (c) the right to stop, leave and park vehicles on the Easement Land.
3. The rights granted under clause 2 of this Instrument include the right for the Grantee (at its cost) to form the surface of the Easement Land, to repair and maintain the Easement Land and the right to enter onto the Easement Land for those purposes.

**Repair and Maintenance**

4. Without limiting clause 3, the Grantee shall keep and maintain the Easement Land in the same clean order, repair and condition as it is in at the date of this Instrument.
5. In exercising its rights under this Instrument the Grantee shall use reasonable endeavours to minimise and avoid any unnecessary damage to the Easement Land.
6. Any damage caused by the Grantee will be promptly remedied. The costs of repair and maintenance of the Easement Land (including restoring the surface thereof) will be met by the Grantee. Where any repair or maintenance has become necessary by the act, neglect or default of the Grantor, the Grantor shall bear the cost of such repair and maintenance.

**Erection of Notices / Equipment**

7. The Grantee may take such measures as it reasonably thinks necessary for the safety of persons or property on or about the Easement Land including without limitation the right for the Grantee to erect barriers, signs and/or notices warning of any danger.
8. The Grantee shall be entitled to install any equipment necessary to exercise its rights under this Instrument and shall repair and maintain such equipment at its cost, so as to keep such equipment in good order, condition and repair and to prevent the equipment from becoming a danger or nuisance.
9. Any equipment constructed or installed by the Grantee on the Easement Land shall remain the property of the Grantee and may at any time be removed by it **PROVIDED THAT** any damage caused by such removal shall immediately be remedied by the Grantee at its cost.

4.5: TITAHU BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK

Easement instrument

Dated

Page 4 of 6 pages

**Minimisation of Disruption**

10. Without limiting the rights granted under this Instrument, the Grantee shall use all reasonable endeavours to cause as little disturbance and disruption to the carrying on of the enjoyment of the Servient Land by the Grantor.

**Grantor not to interfere with Grantee's Rights**

11. The Grantor shall not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Instrument may be interfered with. Without limiting this clause, the Grantor will not, without the Grantee's prior written consent:

- (a) use or permit any other person to use the Easement Land for the purposes of accessing any adjoining land; or
- (b) create or allow any other person to create any access ways to or from the Easement Land.

12. For the avoidance of doubt, the Grantor shall not at any time create, or allow to be created, any other accessways on, to, or from the Easement Land, or use (or allow to be used) the Easement Land as an accessway to the Servient Land.

**Default**

13. If either party fails (**Defaulting Party**) to perform or join with the other party (**Other Party**) in performing any obligation under this Instrument, the following provisions will apply:

- (a) the Other Party may serve a written notice on the Defaulting Party (**Default Notice**) specifying the default and requiring the Defaulting Party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the Default Notice, the other party may perform the obligation;
- (b) if after the expiry of one month from service of the Default Notice, the Defaulting Party has not performed or joined in performing the obligation, the Other Party may:
  - (i) perform the obligation; and
  - (ii) for that purpose enter on to the Dominant Land or the Servient land;
- (c) the Defaulting Party must pay to the other party the costs of:
  - (i) the Default Notice; and
  - (ii) the Other Party in performing the obligation of the Defaulting Party; within one month of receiving written notice of the Other Party's costs; and
- (d) the Other Party may recover any money payable under clause 13(c) from the Defaulting Party as a liquidated debt.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.5: TITAHI BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK

Easement instrument

Dated

Page 5 of 6 pages

**Dispute Resolution**

14. In the event of any dispute arising between the parties in respect of or in connection with this Instrument, the parties shall, without prejudice to any other right or entitlement they may have under this Instrument or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
15. In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

**Notices**

16. All notices and communications under this Instrument shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

**No Power to Terminate**

17. There is no implied power in this Instrument for the Grantor to terminate the easement rights due to the Grantee breaching any term of this Instrument for any other reason, it being the intention of the parties that the easement rights will continue forever unless surrendered.

**Definitions and Interpretation**

18. In this Instrument unless the context otherwise requires:

"**Dominant Land**" means the land described in Schedule A of this Instrument.

"**Easement Land**" means that part of the Servient Land marked "C", "D" and "E" on SO plan 446371.

"**Grantee**" means the Porirua City Council and includes any licensee, lessee, its employees, contractors, invitees (including the general public), successors or assigns.

"**Grantor**" means [Ngati Toa Rangatira Trust] and includes any other owners from time to time of the Servient Land.

"**Instrument**" means this instrument.

"**Servient Land**" means the land described in Schedule A of this Instrument.

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

**4.5: TITAHI BAY ROAD SITE B - RIGHT OF WAY AND RIGHT TO PARK**

Easement instrument

Dated

Page 6 of 6 pages

19. In the interpretation of this Instrument, unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Instrument;
- (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

**SIGNED** as a Deed on [date]

( **SIGNED** by for and on behalf of [insert )  
**name of trustee] Ngati Toa Rangatira )**  
**Trust** as Grantor )  
in the presence of

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

( **SIGNED** by for and on behalf of )  
**PORIRUA CITY COUNCIL** as Grantee )  
in the presence of

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

---

**4.6 TITAHU BAY ROAD SITE B - RIGHT TO DRAIN SEWAGE, STORMWATER, AND  
RIGHT TO CONVEY WATER**

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**Clause 5.45.2**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.6: TITAHU BAY ROAD SITE B - RIGHT OF DRAIN SEWAGE, STORMWATER,  
AND RIGHT TO CONVEY WATER

Form 3

**Easement instrument to grant easement or *profit à prendre*,  
or create land covenant**

*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Wellington

**BARCODE**

Grantor

*Surname must be underlined*

**[insert name of trustee] [Ngati Toa Rangatira Trust]**

Grantee

*Surname must be underlined*

**PORIRUA CITY COUNCIL**

**Grant\* of easement or *profit à prendre* or creation or covenant**

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

**Dated this**

day of

20

**Attestation**

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantee

**Certified correct for the purposes of the Land Transfer Act 1952.**

\_\_\_\_\_  
[Solicitor for] the Grantee

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

**4.6: TITAHI BAY ROAD SITE B - RIGHT OF DRAIN SEWAGE, STORMWATER,  
AND RIGHT TO CONVEY WATER**

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 1 of 5 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient land (Identifier/CT)	Dominant land (Identifier/CT or in gross)
Right to Drain Sewage	Marked "B", "D", "G", "H", "J", "K", "M", "N", "O", on SO 446371	Section 2 SO 38131	In Gross
Right to Drain Stormwater and Water	Marked "A", "B", "F", "H", "I", "K", "L", "N", "Q", "R" on SO 446371	Section 2 SO 38131	In Gross
Right to Convey Water	Marked "P" on SO 446371	Section 2 SO 38131	In Gross

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are varied by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.6: TITAHU BAY ROAD SITE B - RIGHT OF DRAIN SEWAGE, STORMWATER,  
AND RIGHT TO CONVEY WATER

Easement instrument

Dated

Page 2 of 5 pages

**1. DEFINITIONS**

1.1 In this easement instrument unless the context indicates otherwise:

**"Drain Stormwater"** and **"Drain Water"** means rain, spring, soakage or seepage and includes water accumulated on other land and from any public land or street.

**"Easement Facility"** means any pipes, conduits, open drains, open channels, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), as at the date of this Instrument;

**"Grantee"** means the person shown as grantee on the first page of this Instrument and where applicable includes its successors and its agents, employees, contractors, tenants, licensees and invitees;

**"Grantor"** means the person named as grantor on the first page of this Instrument and where applicable includes its successors in title and its agents, employees, contractors, tenants, licensees and invitees;

**"Servient Land"** means the servient land described in Schedule A of this Instrument;

**"Stipulated Course"** means:

- (i) in relation to the right to drain sewage, area "B", "D", "G", "H", "J", "K", "M", "N" and "O" on SO 446371;
- (ii) in relation to the right to drain stormwater and water, area "A", "B", "F", "H", "I", "K", "L", "N", "Q", "R" on SO 446371; and
- (iii) in relation to the right to convey water, area "P" on SO 446371.

**2. GRANT OF DRAINAGE EASEMENT**

2.1 **Rights to Drain Stormwater and Convey and Drain water:** The Grantor grants to the Grantee as an easement in gross in perpetuity the right to take, convey and drain stormwater and water without obstruction and in any quantity through the Easement Facility via any mix of open channel or closed conduits now laid through the Stipulated Course and to discharge the stormwater and water beyond the Servient Land.

2.2 **Right to Drain Sewage:** The Grantor grants to the Grantee as an easement in gross in perpetuity the right to convey and drain sewage and other waste material and fluid without obstruction and in any quantity through the Easement Facility now laid through the Stipulated Course and to discharge it into the public sewer beyond the Servient Land.

2.3 The Grantee also has the right, subject to clause 3, to enter the Stipulated Course and any other parts of the Servient Land as are reasonable to do the following work:

2.3.1 to inspect, maintain, repair, dig up, alter, enlarge, renew or replace the Easement Facility (including replacement with an Easement Facility of the same or larger diameter); and

2.3.2 to do anything else in the full exercise of the rights in this Instrument, with the Grantee's agents, contractors and employees, and with or without tools, plant, equipment, and vehicles.

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**4.6: TITAHI BAY ROAD SITE B - RIGHT OF DRAIN SEWAGE, STORMWATER,  
AND RIGHT TO CONVEY WATER**

Easement instrument	Dated	Page 3 of 5 pages
2.4	The Grantee may leave any vehicles or equipment on the Servient Land for a reasonable period of time if work is proceeding.	
2.5	The Grantee will ensure that any work it performs is carried out in a proper and workmanlike manner.	
2.6	The Grantee will not be liable for, or pay any compensation for any damage to any improvements such as fences, structures, paving, surfacing, tree, shrub or plants etc that have extended or encroached upon the Stipulated Course if such damage arises due to a breach of the Grantor's obligations in clause 4 of this Instrument.	
2.7	The Grantee has no obligation to direct, convey or lead stormwater and water through the Easement Facility via any mix of open channel or closed conduits through the Servient Land continuously or at all.	
<b>3.</b>	<b>ACCESS</b>	
3.1	The Grantee's right of access in clause 2.3 may only be exercised on giving reasonable notice to the Grantor, except in an emergency.	
3.2	When obtaining access to the Stipulated Course, the Grantee must:	
3.2.1	so far as is practicable, use existing driveways and other areas suitable for access;	
3.2.2	in exercise of the powers hereby granted, endeavour to take reasonable and proper care not to damage the Servient Land or any property of the Grantor;	
3.2.3	reinstate the surface of the Servient Land to the same condition as soon as possible after any works have been completed, and resurface it if necessary with appropriate materials; and	
3.2.4	repair any fences or other improvements and replace any trees, shrubs and plants which have been destroyed or severely damaged on the Servient Land by the Grantee while accessing the Stipulated Course.	
<b>4.</b>	<b>GRANTOR'S OBLIGATIONS</b>	
	The Grantor may not:	
4.1	permit the growth of any trees, shrubs or other vegetation or the erection or establishment of any structure or surfacing whatsoever (excluding approved standard pathways, driveways and boundary fences that may cross over the Stipulated Course or Easement Facility at a right angle for a short length) on any part of the Stipulated Course, or do or permit or suffer thereon any act or acts which:	
4.1.1	in the opinion of the Grantee interfere with the Grantee's rights to this Instrument; or	
4.1.2	endanger or cause nuisance to the Grantee's operations, works, employees, agents or contractors in the course of their duties under this Instrument; or	
4.1.3	transgress any by-law of the Grantee or any statutory regulation relating to any of the Grantee's installations, works, or facilities on the Stipulated Course;	



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.6: TITAHI BAY ROAD SITE B - RIGHT OF DRAIN SEWAGE, STORMWATER,  
AND RIGHT TO CONVEY WATER

Easement instrument

Dated

Page 5 of 5 pages

9.4 [The Grantee may assign, transfer or licence all or any part of its interest in this Instrument or part thereof without the consent of the Grantor.]

**10. INDEMNITY**

The Grantee shall indemnify the Grantor against all actions, suits, proceedings, claims and demands which may be brought or made against the Grantor as a direct result of the exercise by the Grantee of any of the rights granted by this Instrument.

**11. NOTICES**

Any notice required to be given to the Grantor by the Grantee shall be deemed sufficiently served if delivered personally or sent by prepaid post to the addressee's last known address in New Zealand or in the case of a body corporate, its registered office. Any notice personally delivered or posted shall be valid if served or given under the hand of any authorised representative of the notifying party.

**SIGNED** as a Deed on [date]

**SIGNED** by for and on behalf of [Insert )  
name of trustee] **[Ngati Toa Rangatira )  
Trust]** as Grantor in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by for and on behalf of )  
**PORIRUA CITY COUNCIL** as Grantee )  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

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**4.7 WHITIANGA SITE**

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**Clause 5.45.6(c)**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.8: WHITIANGA SITE

Form 3

Easement instrument to grant easement or *profit à prendre*,  
or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

Wellington

BARCODE

Grantor

Sumame must be underlined

[insert name of trustee] [Ngati Toa Rangatira Trust]

Grantee

Sumame must be underlined

PORIRUA CITY COUNCIL

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
Signature of witness

Witness to complete in BLOCK letters (unless legibly printed)

Witness name

Occupation

Address

\_\_\_\_\_  
Signature [common seal]  
of Grantee

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.8: WHITIANGA SITE

**Annexure  
Schedule**

Easement instrument

Dated

Page 1 of 5 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient land (Identifier/CT)	Dominant land (Identifier/CT or in gross)
Right to Drain Sewage	Marked "A" on SO 446636	Section 1 SO 446636	In Gross
Right to Drain Stormwater	Marked "B" and "C" on SO 446636	Section 1 SO 446636	In Gross

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are varied by the provisions set out in Annexure Schedule 2.

All signing parties and either their witnesses or solicitors must sign or initial in this box

4.8: WHITIANGA SITE

Easement instrument Dated Page 2 of 5 pages

**1. DEFINITIONS**

1.1 In this easement instrument unless the context indicates otherwise:

"**Drain Stormwater**" means rain, spring, soakage or seepage and includes water accumulated on other land and from any public land or street;

"**Easement Facility**" means any pipes, conduits, open drains, open channels, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution;

"**Grantee**" means the person shown as grantee on the first page of this Instrument and where applicable includes its successors and its agents, employees, contractors, tenants, licensees and invitees;

"**Grantor**" means the person named as grantor on the first page of this Instrument and where applicable includes its successors in title and its agents, employees, contractors, tenants, licensees and invitees;

"**Servient Land**" means the servient land described in Schedule A of this Instrument;

"**Stipulated Course**" means:

- (i) in relation to the right to drain sewage, area "A" on SO 446636; and
- (ii) in relation to the right to drain stormwater, areas "B" and "C" on SO 446636.

**2. GRANT OF DRAINAGE EASEMENT**

2.1 **Right to Convey and Drain Stormwater:** The Grantor grants to the Grantee as an easement in gross in perpetuity the right to take, convey and drain stormwater without obstruction and in any quantity through the Easement Facility via any mix of open channel or closed conduits now laid or to be laid through the Stipulated Course and to discharge the stormwater beyond the Servient Land.

2.2 **Right to Convey and Drain Sewage:** The Grantor grants to the Grantee as an easement in gross in perpetuity the right to convey and drain sewage and other waste material and fluid without obstruction and in any quantity through the Easement Facility now laid or to be laid through the Stipulated Course and to discharge it into the public sewer beyond the Servient Land.

2.3 The Grantee also has the right, subject to clause 3, to enter the Stipulated Course and any other parts of the Servient Land as are reasonable to do the following work:

- 2.3.1 to dig and lay the Easement Facility through or on the Stipulated Course, at a width of 3 metres and a depth and line determined by the Grantee;
- 2.3.2 to inspect, maintain, repair, dig up, alter, enlarge, renew or replace the Easement Facility (including replacement with an Easement Facility of the same or larger diameter); and
- 2.3.3 to do anything else in the full exercise of the rights in this Instrument, with the Grantee's agents, contractors and employees, and with or without tools, plant, equipment, and vehicles.



4.8: WHITIANGA SITE

Easement instrument Dated Page 3 of 5 pages

- 2.4. The Grantee may leave any vehicles or equipment on the Servient Land for a reasonable period of time if work is proceeding.
- 2.5. The Grantee will ensure that any work it performs is carried out in a proper and workmanlike manner.
- 2.6. The Grantee will not be liable for, or pay any compensation for any damage to any improvements such as fences, structures, paving, surfacing, tree, shrub or plants etc that have extended or encroached upon the Stipulated Course if such damage arises due to a breach of the Grantor's obligations in clause 4 of this Instrument.
- 2.7. The Grantee has no obligation to direct, convey or lead stormwater through the Easement Facility via any mix of open channel or closed conduits through the Servient Land continuously or at all.

**3. ACCESS**

- 3.1. The Grantee's right of access in clause 2.3 may only be exercised on giving reasonable notice to the Grantor, except in an emergency.
- 3.2. When obtaining access to the Stipulated Course, the Grantee must:
- 3.2.1 so far as is practicable, use existing driveways and other areas suitable for access;
  - 3.2.2 in exercise of the powers hereby granted, endeavour to take reasonable and proper care not to damage the Servient Land or any property of the Grantor;
  - 3.2.3 reinstate the surface of the Servient Land to the same condition as soon as possible after any works have been completed, and resurface it if necessary with appropriate materials; and
  - 3.2.4 repair any fences or other improvements and replace any trees, shrubs and plants which have been destroyed or severely damaged on the Servient Land by the Grantee while accessing the Stipulated Course.

**4. GRANTOR'S OBLIGATIONS**

The Grantor may not:

- 4.1 permit the growth of any trees, shrubs or other vegetation or the erection or establishment of any structure or surfacing whatsoever (excluding approved standard pathways, driveways and boundary fences that may cross over the Stipulated Course or Easement Facility at a right angle for a short length) on any part of the Stipulated Course, or do or permit or suffer thereon any act or acts which:
- 4.1.1 in the opinion of the Grantee interfere with the Grantee's rights to this Instrument; or
  - 4.1.2 endanger or cause nuisance to the Grantee's operations, works, employees, agents or contractors in the course of their duties under this Instrument; or
  - 4.1.3 transgress any by-law of the Grantee or any statutory regulation relating to any of the Grantee's installations, works, or facilities on the Stipulated Course;
  - 4.1.4 change the existing surface levels of the Stipulated Course except with the Grantee's prior approval;

4.8: WHITIANGA SITE

Easement instrument Dated Page 4 of 5 pages

4.1.5 cause or allow any damage to occur to the Easement Facility; or

4.1.6 do anything or allow anything to be done which would interfere with, or affect, the rights of the Grantee under this Instrument.

**5. MAINTENANCE**

The Grantee shall use its best endeavours to maintain the Easement Facility in the Stipulated Course so that it does not become a nuisance or a danger.

**6. NO POWER TO TERMINATE**

There is no implied power in this Instrument for the Grantor to terminate the rights granted under this Instrument due to the Grantee breaching any term of this Easement or for any other reason, it being the intention of the parties that the rights granted will continue forever unless surrendered.

**7. STATUTORY RIGHTS**

The easement rights are in substitution for those set out in the Fourth Schedule to the Land Transfer Regulations 2002, but otherwise this Instrument does not affect any statutory powers which the Grantee may have.

**8. DISPUTES**

If any dispute arises between the Grantor and Grantee about the rights in this Instrument which cannot be resolved by negotiation, the parties must submit at the request of either party to the arbitration of an independent arbitrator. This arbitrator is to be appointed jointly by the parties, and if they cannot agree on one within 14 days, by the President for the time being of the District Law Society where the Servient Land is situated. The arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any statute which replaces it. The parties' execution of this Instrument is to be treated as a submission to arbitration.

**9. GRANTEE'S RIGHTS AND OBLIGATIONS**

9.1 The Grantee may exercise and enjoy with regard to this Instrument all authorities, powers, rights, remedies, immunities from liability, privileges, liberties and licences contained or implied herein or (without being limited or restricted by anything herein) which it now or in the future may possess or be entitled to or have vested in it by virtue of any statute or at law. In particular nothing herein contained shall be deemed to abrogate, limit, restrict or abridge any of the rights, powers and remedies vested in the Grantee by the Local Government Act 1974 or the Public Works Act 1981 or any amendment thereto or any Act or Acts passed in substitution therefore.

9.2 The Grantee will endeavour to maintain any installations, works and facilities in a workable and efficient state of repair for the purposes for which they are used or designed and will endeavour to prevent the same from becoming a nuisance.

9.3 Any installations laid by the Grantee on the Easement Facility shall remain at all times the property of the Grantee subject to its exclusive supervision and control, and may at any time be removed by the Grantee in its sole discretion without incurring any liability to the Grantor except as may be herein expressly provided.

9.4 [The Grantee may assign, transfer or licence all or any part of its interest in this Instrument or part thereof without the consent of the Grantor.]

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

---

**4.8: WHITIANGA SITE**

Easement instrument      Dated      Page 5 of 5 pages

**10. INDEMNITY**

The Grantee shall indemnify the Grantor against all actions, suits, proceedings, claims and demands which may be brought or made against the Grantor as a direct result of the exercise by the Grantee of any of the rights granted by this Instrument.

**11. NOTICES**

Any notice required to be given to the Grantor by the Grantee shall be deemed sufficiently served if delivered personally or sent by prepaid post to the addressee's last known address in New Zealand or in the case of a body corporate, its registered office. Any notice personally delivered or posted shall be valid if served or given under the hand of any authorised representative of the notifying party.

**SIGNED** as a Deed on [date]

**SIGNED** by for and on behalf of [Insert name of trustee] **[Ngati Toa Rangatira Trust]** as Grantor in the presence of: )  
)  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by for and on behalf of **PORIRUA CITY COUNCIL** as Grantee in the presence of: )  
)  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

---

4.8 ONEHUNGA BAY

---

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.8: ONEHUNGA BAY

Form 3

Easement instrument to grant easement or *profit à prendre*,  
or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

Wellington

BARCODE

Grantor

Surname must be underlined

[insert name of trustee] Ngati Toa Settlement Trust

Grantee

Surname must be underlined

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND ACTING BY AND THROUGH  
THE MINISTER OF CONSERVATION

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

\_\_\_\_\_  
Signature [common seal]  
of Grantor

Signed in my presence by the Grantor

\_\_\_\_\_  
Signature of witness  
Witness to complete in BLOCK letters (unless legibly  
printed)  
Witness name  
Occupation  
Address

See annexure schedule

\_\_\_\_\_  
Signature [common seal]  
of Grantee

Signed in my presence by the Grantee

\_\_\_\_\_  
Signature of witness  
Witness to complete in BLOCK letters (unless legibly  
printed)  
Witness name  
Occupation  
Address

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.8: ONEHUNGA BAY

**Annexure  
Schedule**

Easement instrument

Dated

Page 1 of 5 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient land (Identifier/CT)	Dominant land (Identifier/CT or in gross)
Right to convey water	Marked "A" on SO 446704	Section 2 SO 446704	Section 4 SO 446704 [WN447/193] (limited as to parcels)

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

4.8: ONEHUNGA BAY

**Annexure  
Schedule**

Easement instrument

Dated

Page 2 of 5 pages

**Right to convey water**

The Grantor grants to the Grantee the right to convey water over and/or through that part of the servient land described as "A" on survey office plan 446704 ("the Easement Land") to the dominant land.

**Access**

1. The Grantee shall have a right of access along such parts of the Easement Land as are allocated for such purpose by the Grantor from time to time with or without vehicles, plant and/or equipment, solely for the purpose of allowing the Grantee to exercise any of the rights granted under this Easement, at any time provided that:
  - (a) except in the case of emergency no such rights of access will be exercised without the prior consent of the Grantor; and
  - (b) in exercising such rights of access the Grantee shall use reasonable endeavours to minimise and avoid any unnecessary damage to the Easement Land and shall immediately reinstate the Easement Land or any improvements thereon (including restoring the surface thereof and replanting vegetation) where any damage is caused in the process of exercising any rights under this Easement; and
  - (c) if the Grantee fails within six months after the date when written notice of such damage is provided by the Grantor to the Grantee to reinstate the Easement Land and any improvements thereon (including destroying the surface thereof and replanting vegetation), the Grantor may, after first having given the Grantee at least one month's written notice of its intention to do so, undertake the necessary work and recover costs for this work from the Grantee.

**Repair and Maintenance**

2. The Grantee shall be entitled to install any equipment necessary to exercise its rights under this Easement and shall repair and maintain such equipment at its cost in all things, so as to keep such equipment in good order, condition and repair and to prevent the equipment from becoming a danger or nuisance.

**Erection of Notice etc**

3. The Grantee may take such measures as it reasonably thinks necessary for the safety of persons or property on or about the Easement Land including without limitation the right to erect fences, barriers and signs and notices warning of any danger. The Grantee must obtain the Grantor's prior written consent before taking any such measures.

**Grantor's Consent**

4. In all cases where the prior consent or approval of the Grantor is required under this Easement such consent shall not be unreasonably withheld, delayed or granted upon unreasonable conditions.

4.8: ONEHUNGA BAY

Easement instrument

Dated

Page 3 of 5 pages

**Application for Resource Consents**

5. The Grantee shall be entitled from time to time to apply for any resource consents and any other statutory consents required for the purposes of the exercise of any of the Grantee's rights under this Easement in the same manner as if it were a registered proprietor of the Easement Land provided that it shall at the time of making the relevant application forward a copy to the Grantor and the Grantor shall provide, upon written request from the Grantee, at the reasonable cost of the Grantee, a reasonable degree of cooperation. Where any relevant application would not grant, if successful, to the Grantee any additional rights or powers over and above those held by it pursuant to its existing resource consents or other statutory consents or the provisions of this Easement, then the Grantor shall be obliged to provide its written support to such application.

**Equipment Property of Grantee**

6. Any equipment constructed or installed by the Grantee on the Easement Land shall remain the property of the Grantee and may at any time be removed by it **PROVIDED THAT** any damage caused by such removal shall immediately be remedied by the Grantee at its cost. If within six months after the date when written notice of such damage is provided to the Grantee by the Grantor, it fails to remedy such damage, the Grantor may, after first having given the Grantee at least one month's written notice of its intention to do so, remedy all or any of the damage and recover costs for this from the Grantee.

**Minimisation of Disruption**

7. The Grantee shall use all reasonable endeavours to cause as little disturbance and disruption to the carrying on of the enjoyment of the Easement Land by the Grantor although the Grantor accepts that this provision shall not prevent, restrict or hinder the Grantee from carrying out its farming or public conservation (including recreation) business in a normal manner consistent with the rights granted to it in this Easement.

**Surrender of Easement**

8. The Grantee shall be entitled at any time to surrender at its own cost all of the interest granted to it pursuant to this Easement. The Grantor shall execute any easement instrument to surrender easement (or similar document) in a form acceptable to the Grantor upon request by the Grantee.

**Dispute Resolution**

9. (a) In the event of any dispute arising between the parties in respect of or in connection with this Easement, the parties shall, without prejudice to any other right or entitlement they may have under this Easement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (b) In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.8: ONEHUNGA BAY

Easement instrument

Dated

Page 4 of 5 pages

**Notices**

10. All notices and communications under this Easement shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

**Grantor not to interfere with Grantee's Rights**

11. The Grantor shall not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Easement may be interfered with.

**Grantee not to interfere with Grantor's Rights**

12. The Grantee shall not at any time, do permit or suffer to be done any act whereby the rights of the Grantor may be interfered with, subject to the within rights granted to the Grantee.

**SIGNED** as a Deed on [date]

SIGNED for and on behalf of )  
**HER MAJESTY THE QUEEN** )  
in right of New Zealand, as Grantee by )  
the Conservator for the Wellington )  
Conservancy acting for the Minister of )  
Conservation under delegated authority )  
in accordance with sections 57 and 58 of )  
the conservation Act 1987 and section 41 )  
of the State Sector Act 1988 )  
)  
Signature of Conservator for the )  
Wellington Conservancy )  
[ insert name ] )  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

---

4.8: ONEHUNGA BAY

**Annexure  
Schedule**

Easement instrument

Dated

Page 4 of 5 pages

**SIGNED** by for and on behalf of )  
[insert trustee names of] )  
**NGATI TOA SETTLEMENT TRUST** )  
as Grantor in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

---

**4.9 TE ARAI O WAIRAU**

---

**Clause 5.45.6(d)**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.9: TE ARAI O WAIRAU

Form 3

Easement instrument to grant easement or *profit à prendre*,  
or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

Nelson

BARCODE

Grantor

*Surname must be underlined*

[insert name of trustee] [Ngati Toa Rangatira Trust]

Grantee

*Surname must be underlined*

MARLBOROUGH DISTRICT COUNCIL

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantee

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.9: TE ARAI O WAIRAU

**Annexure  
Schedule**

Easement instrument

Dated

Page 2 of 6 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient Land (Identifier/CT)	Dominant Land (Identifier/CT or in gross)
Right to place monument	Marked "A" on SO 446375	Section 2 SO 446375	In gross

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

---

4.9: TE ARAI O WAIRAU

**Annexure  
Schedule**

Easement instrument

Dated

Page 3 of 6 pages

**Background**

- A. The Grantor is the registered proprietor of that land contained in computer freehold register [ ] which is held for historic purposes under the Reserves Act 1977.
- B. The parties acknowledge and agree the Grantee owns the monument commemorating the Wairau Affray and known as the Wairau Affray Plaque, located on the Servient Land.
- C. The Grantor has agreed to grant to the Grantee an easement right to place a monument on the Servient Land on the terms and conditions set out in this Instrument.
- D. The parties have entered into this Instrument to record the arrangements between them.

**Grant of Right to Place and Access the Monument**

- 1. The Grantor grants to the Grantee as an easement in perpetuity a right to place the monument on the Easement Land for commemorative purposes on the terms and conditions set out in this Instrument.
- 2. The Grantee also has the right to enter onto the Easement Land and any other parts of the Servient Land as are reasonable, on foot or with or without vehicles (subject to prior written approval from the Grantor, not to be unreasonably withheld), plant and equipment at anytime, for the purposes of allowing the Grantee to exercise any of the rights granted under this Instrument, including inspecting, maintaining, renewing or replacing the monument with a monument similar in purpose and construction (subject to prior written approval from the Grantor not to be unreasonably withheld).

**Obligations of the Grantee**

- 3. In exercising its rights under this Instrument the Grantee shall cause as little damage or disturbance as possible to the Servient Land and will complete all works on the Easement Land promptly and in a proper workmanlike manner and shall at its cost restore the surface of the Servient Land as nearly as reasonably possible to its former condition prior to the Grantee's use pursuant to this Instrument.
- 4. The Grantee will ensure at all times, in the exercise of its rights as set out in this Instrument, that it will not obstruct or hamper the Grantor in its normal or reasonable use of the Servient Land.
- 5. The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove or otherwise dispose of any vegetation on the Servient Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written consent of the Grantor.
- 6. The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Instrument.

4.9: TE ARAI O WAIRAU

Easement instrument

Dated

Page 4 of 6 pages

**Grantor not to interfere with Grantee's Rights**

7. The Grantor shall not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Instrument may be interfered with.

**Default**

8. If either party fails (**Defaulting Party**) to perform or join with the other party (**Other Party**) in performing any obligation under this Instrument, the following provisions will apply:
- (e) the Other Party may serve a written notice on the Defaulting Party (**Default Notice**) specifying the default and requiring the Defaulting Party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the Default Notice, the other party may perform the obligation;
  - (f) if after the expiry of one month from service of the Default Notice, the Defaulting Party has not performed or joined in performing the obligation, the Other Party may:
    - (i) perform the obligation; and
    - (ii) for that purpose enter on to the Servient land;
  - (g) the Defaulting Party must pay to the other party the costs of:
    - (i) the Default Notice; and
    - (ii) the Other Party in performing the obligation of the Defaulting Party, within one month of receiving written notice of the Other Party's costs; and
  - (h) the Other Party may recover any money payable under clause 8(c) from the Defaulting Party as a liquidated debt.

**Dispute Resolution**

9. In the event of any dispute arising between the parties in respect of or in connection with this Instrument, the parties shall, without prejudice to any other right or entitlement they may have under this Instrument or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
10. In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

**Notices**

11. All notices and communications under this Instrument shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.9: TE ARAI O WAIRAU

Easement instrument

Dated

Page 5 of 6 pages

**No Power to Terminate**

12. There is no implied power in this Instrument for the Grantor to terminate the easement rights due to the Grantee breaching any term of this Instrument for any other reason, it being the intention of the parties that the easement rights will continue forever unless surrendered.

**Definitions and Interpretation**

13. In this Instrument unless the context otherwise requires:

"**Easement Land**" means that part of the Servient Land over which the monument is to be placed marked "A" on SO Plan 446375.

"**Grantee**" means the Marlborough District Council and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns.

"**Grantor**" means [Ngati Toa Rangatira Trust] and includes any other owners from time to time of the Servient Land.

"**Instrument**" means this instrument.

"**monument**" means that monument known as the Wairau Affray Plaque and subject to clause 2 of this Instrument includes any replacement monument.

"**Servient Land**" means the land over which the monument is to be placed as described in Schedule A of this Instrument.

14. In the interpretation of this Instrument, unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Instrument;
- (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

SIGNED as a Deed on [date]

SIGNED by for and on behalf of [insert  
name of trustee] Ngati Toa Rangatira )  
Trust as Grantor in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

4.9: TE ARAI O WAIRAU

Easement instrument

Dated

Page 6 of 6 pages

**SIGNED** by for and on behalf of )  
**MARLBOROUGH DISTRICT COUNCIL** )  
as Grantee in the presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

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**5. LEASES**

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**5.1 AGREED FINAL FORM OF LEASE WITH THE MINISTRY OF EDUCATION**

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

5.1: AGREED FINAL FORM OF LEASE WITH THE MINISTRY OF EDUCATION

AGREED FINAL FORM

29 August 2012

MINISTRY OF EDUCATION  
TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ]	[ ]	[ ]
-----	-----	-----

Lessor

[ ]

Lessee

**HER MAJESTY THE QUEEN** for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number " etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

**5.1: AGREED FINAL FORM OF LEASE WITH THE MINISTRY OF EDUCATION**

**Attestation**

<b>Signature of the Lessor</b>	<b>Signed in my presence by the Lessor</b>
<hr/> <p>[                    ]</p>          <hr/> <p>[                    ]</p>          <hr/> <p>[                    ]</p>          <hr/> <p>[                    ]</p>          <hr/> <p>[                    ]</p>	<hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p> <hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p> <hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p> <hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

**5.1: AGREED FINAL FORM OF LEASE WITH THE MINISTRY OF EDUCATION**

<p>_____</p> <p>[                                    ]</p>    <p>_____</p> <p>[                                    ]</p>    <p>_____</p> <p>[                                    ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>  <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>  <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p><b>Signature of the Lessee</b></p> <p>Signed for and on behalf of <b>HER MAJESTY THE QUEEN</b> as Lessee by</p> <p>[                                    ]</p> <p>(acting pursuant to a written delegation given to him/her by the Secretary for Education) in the presence of:</p>	<p><b>Signed in my presence by the Lessee</b></p>  <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Lessee

\* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

---

5.1 AGREED FINAL FORM OF LEASE WITH THE MINISTRY OF EDUCATION

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between **Ngati Toa Rangatira** and the Crown, under which the parties agreed to transfer the Land to **the Trustee(s) of the Toa Rangatira Trust** and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

**SCHEDULE A**

**ITEM 1 THE LAND**

*[insert full legal description - note that improvements are excluded].*

**ITEM 2 START DATE**

*[insert start date].*

**ITEM 3 ANNUAL RENT**

\$(*insert agreed rent*) plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

**ITEM 4 TERM OF LEASE**

21 Years.

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

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**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each with the first renewal date being the 21<sup>st</sup> anniversary of the Start Date, and then each subsequent renewal date being each 21<sup>st</sup> anniversary after that date.

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

As defined in clause 1.9 and including the following existing improvements:  
***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

[                    ]

The above information is taken from the Lessee's records as at [                    ].

A site inspection was not undertaken to compile this information.







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**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "Business Day" means a day that is not:

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington.

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by one or more of the following:
  - (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).

1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.

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- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

**2 Payment of Annual Rent**

- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A without any deduction or set off.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6.25% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

**3 Rent Review**

When a party initiates the rent review process as set out in clause 3.5:

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6.25% of the midpoint between:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; and
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.

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- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
  - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
  - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
  - (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
  - (e) The parties must try to agree on a new Annual Rent.
  - (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
    - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
    - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
  - (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will

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determine the new Annual Rent and that determination will be binding on both parties.

- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

**4 Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

**5 Valuation Roll**

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

**6 Utility Charges**

- 6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.
- 6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.
- 6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

**7 Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

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**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

**9 Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

**10 Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease. The Lessee must remove the designation at the end of the lease.

**11 Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

**12 Hazards**

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

**13 Damage or Destruction**

**13.1 Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

**13.2 Partial Destruction**

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.

(b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent

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and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:

- (i) the repair and reinstatement of the Land have been completed; and
  - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
- (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
  - (ii) any necessary council consents shall not be obtainable,

then the term will terminate with effect from the date that either such fact is established.

**13.3 Natural Disaster or Civil Defence Emergency**

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
  - (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
  - (i) the relevant clause has applied for a period of 6 months or more; or
  - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

**14 Contamination**



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- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

**15 Easements**

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

**16 Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.

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- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.
- 17 Rubbish Removal**
- The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.
- 18 Signs**
- The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.
- 19 Insurance**
- 19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.
- 19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.
- 20 Fencing**
- 20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.
- 20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.
- 21 Quiet Enjoyment**
- 21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

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**22 Assignment**

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
- (a) any Department or Crown Body; or
  - (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).
- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

**24 Occupancy by School Board of Trustees**

- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.
- 24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

**25 Lessee Break Option**

- 25.1 The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.
- 25.2 For the initial term of the Lease only, the Lessee will pay a further 6 months' rent to the Lessor in addition to the 12 months specified in clause 25.1.

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**26 Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

**27 Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

**28 Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

**29 Right of First Refusal for Lessor's Interest**

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

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29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

**30 Exclusion of Implied Provisions**

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

(a) Clause 11 - Power to inspect premises.

**31 Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

**32 Disputes**

32.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

32.2 If the parties cannot resolve a dispute or difference within fifteen working days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).

32.3 If the parties cannot agree on any dispute resolution technique within a further fifteen working days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 33.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996.

32.4 The parties will co-operate to ensure the efficient conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

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33 **Service of Notices**

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6011

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

34 **Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

35 **Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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5.2 DRAFT LEASE WITH THE DEPARTMENT OF CORRECTIONS

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

5.2: DRAFT LEASE WITH THE DEPARTMENT OF CORRECTIONS

Form F

**Lease Instrument**

(Section 115 Land Transfer Act 1952)

Affected instrument identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

#1-CC=computer register or  
instrument ref. no. (if instrument  
state type)#

Lessor

[TO BE CONFIRMED]

Lessee

**HER MAJESTY THE QUEEN** acting by and through the Chief Executive of the Department of  
Corrections

Estate or Interest

*Insert "fee simple"; "leasehold in lease number" etc.*

Fee Simple

Lease Memorandum Number (if applicable)

[ ]

Term

[to be confirmed]

Rental

[to be confirmed]

Lease and Terms of Lease

*If required, set out the terms of lease in Annexure Schedules*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the above Lease Memorandum or in the Annexure schedule(s) (if any)



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Annexure Schedule

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Continue in additional Annexure Schedule, if required

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions:** In this Lease, unless the context indicates otherwise:

**Annual Rent** means the annual rent for the Land specified in Schedule One, subject to changes resulting from the Lessor's exercise of any right to review the Annual Rent or on the Lessee's exercise of any right to renew this Lease;

**Authority** means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Land or its use;

**Commencement Date** means the date of commencement of the Initial Term specified in Schedule One;

**CPI** means the consumer price index (all groups) as published by Statistics New Zealand or its successor (or, if that index ceases to be published or otherwise ceases to be available to the parties, means such other index as measures, in a manner which most clearly resembles the manner in which the consumer price index (all groups) measures, inflation or deflation in New Zealand immediately prior to becoming unavailable to the parties or ceasing to be published);

**District Plan** means an operative or proposed district plan under the Resource Management Act 1991;

**Government Agency** includes any department or instrument of the Executive Government of New Zealand; and, includes:

- (a) A body corporate or corporation sole (whether called a corporation, commission, council, board, authority, or by any other name) that has been established or constituted by a public Act of Parliament and that is named in that Act;
- (b) A body corporate, entity or organisation that is controlled or wholly owned by the Crown, a Minister of the Crown or by any Government Department;
- (c) A Crown Entity within the meaning of the Crown Entities Act 2004.

**GST** means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution of that tax;

**Land** means the land described on the first page of this instrument and for the avoidance of doubt excludes all of the Lessee's Improvements which remain the property of the Lessee at all times irrespective of their degree of annexation to the Land;

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**Lessee** means Her Majesty the Queen, in any capacity, and includes all the respective executors, administrators, successors, assigns and successors in title of the lessee and if more than one jointly and severally;

**Lessee's Improvements** means the Lessee's Improvements situated in, or on, the Land and includes (but is not limited to):

- (a) buildings, or other fixed structures including any fencing;
- (b) concrete, asphalt, paved or tiled roadway, sealed yards, paths, lawns, gardens;
- (c) all of the Lessee's equipment, plant and machinery located on the Land including infrastructure required for the conduct of electricity, water, sewage, stormwater, gas, telecommunications and computer media to and from the Prison; and
- (d) other like property of any kind whatsoever;

whether those improvements are made, constructed or placed on the Land by the Lessee before or after the Commencement Date.

**Lessee's Outgoings** mean:

- (a) Rates or levies payable to any local or territorial authority;
- (b) Charges for water, gas, electricity, telephones and other utilities or services;
- (c) Rubbish collection charges;
- (d) All charges relating to the repair and maintenance of any Lessee Improvements (whether of a structural nature or not);
- (e) The cost of landscaping and ground maintenance;
- (f) Car parking area maintenance and repair;
- (g) All costs associated with the repair, maintenance or replacement of any fencing on the Land;

and includes any other outgoings related to the Permitted Uses or for any use consented to under clause 3.4;

**Lessor** means [TO BE CONFIRMED] and includes all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally;

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Annexure Schedule

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**Plan** means the plan of the Land attached as Schedule Two;

**Prison** means the [TO BE CONFIRMED] Prison operated on the Land;

**Prison Manager** means the prison manager for the time being of the [TO BE CONFIRMED] Prison and includes any person acting in that capacity;

**Term** means the term of this Lease and includes the Initial Term and any further Subsequent Terms; and

**Working Day** has the meaning given to it in the Property Law Act 2007.

**1.2 Interpretation:** In this Lease, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Lease have the defined meaning throughout this Lease, including the background;
- (b) **Headings:** section, clause and other headings are for ease of reference only and will not affect this Lease's interpretation;
- (c) **Parties:** the expressions "Lessor" and "Lessee" include their respective successors and assigns (if permitted in the case of the Lessee under clause 9) and where the context permits the Lessee includes the Lessee's sublessee's and other lawful occupiers of the Land and Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee);
- (d) **Persons:** references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Lease. Each such schedule and attachment forms part of this Lease;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

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- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Schedule Terms:** the terms Initial Term, Permitted Use, Renewal Term(s), Rent Review Dates and Termination Date, together with the other terms set out in Schedule One, will be interpreted by reference to Schedule One;
- (j) **Inclusive Expressions:** the term includes or including (or any similar expression) is deemed to be followed by the words without limitation; and
- (k) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. LEASE AND TERM

- 2.1 **Grant of Lease:** The Lessor leases the Land to the Lessee and the Lessee takes the Land on Lease for the Initial Term beginning on the Commencement Date and ending on the Termination Date at the Annual Rent, as specified in Schedule One.

3. LESSEE'S COVENANTS

- 3.1 **Payment of Annual Rent:** The Lessee must pay the Annual Rent to the Lessor by equal annual payments in advance, with the first payment to be made on the Commencement Date, and all subsequent payments to be paid on the anniversary of the Commencement Date.
- 3.2 **No Deduction or Set-Off:** All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.
- 3.3 **GST:** The Lessee will pay to the Lessor, or as the Lessor directs, the GST payable by the Lessor in respect of the Annual Rent and any other payments payable by the Lessee under this Lease. The GST in respect of the Annual Rent will be payable on each occasion when any rental payment falls due for payment and in respect of any other payment will be payable on demand.
- 3.4 **Payment of Outgoings:** The Lessee will pay the Lessee Outgoings in respect of the Land direct to the relevant Authority or supplier concerned and, if permitted by law the Lessee will be entered on the rating information database and the district valuation roll as the ratepayer in respect of the Land.

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- 3.5 **Use of Land:** The Lessee will not, without the prior written consent of the Lessor, use the Land for any purpose other than the Permitted Uses. The Lessor must not unreasonably or arbitrarily withhold its consent to any change of, or addition to, the Permitted Uses. For the avoidance of doubt, the parties agree that any cessation or suspension of the use the Land or part of the Land for the Permitted Uses for any period of time is not a breach of this clause.
- 3.6 **Compliance with the Law:** The Lessee will comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to, or affecting the Land or the conduct of the Permitted Uses on the Land and will also at the Lessee's own cost comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any Authority in respect of the Land or the Lessee's conduct of the Permitted Uses on the Land or the Lessee's Improvements on the Land including (but not limited to) compliance with the Corrections Act 2004 and Corrections Regulations 2005.
- 3.7 **Avoidance of Danger:** The Lessee will:
- (a) Take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and must not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and
  - (b) Promptly remedy any danger or hazard that may arise on the Land.
- 3.8 **Maintenance of Lessee's Improvements:** The Lessee will at the Lessee's own expense keep any Lessee's Improvements on the Land in good order, condition and repair during the Term of this Lease.
- 3.9 **No Lessor Maintenance:** The Lessee acknowledges that the Lessor has no repair or maintenance obligations for any of the Lessee's Improvements on the Land.
- 3.10 **Rubbish Removal:** The Lessee will regularly cause all rubbish and garbage to be removed from the Land and will keep any rubbish bins or containers in a tidy condition. The Lessee will also at the Lessee's own expense cause to be removed all trade waste boxes and other goods or rubbish not removed in the ordinary course by the Territorial Authority.
- 3.11 **Signage:** The Lessee may affix names, signs, nameplates, and signboards relating to the Permitted Uses without the consent of the Lessor.

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3.12 **Construction or Alteration to Lessee's Improvements:** The Lessee may construct Lessee's Improvements and make any alterations or additions to Lessee's Improvements necessary or incidental to the Permitted Use without any consent or approval from the Lessor. The Lessee must obtain the prior written consent of the Lessor, (which must not be unreasonably withheld or delayed) to the construction of any Lessee's Improvements that are not necessary or incidental to the Permitted Use.

**4. LESSOR'S COVENANTS**

4.1 **Quiet Enjoyment:** The Lessor will permit the Lessee to occupy and enjoy the Land during the Term without any interruption or disturbance by the Lessor or any person claiming under the Lessor except as authorised by this Lease.

4.2 **Lessor's Property:** The Lessor must not during the Term of this Lease place any Lessor's property on the Land.

4.3 **Grant of Additional Rights:** The Lessor must not cancel, surrender, modify or grant any easement, mortgage or any other registered or unregistered interest over the Land or change the status of the Land in any way that would prejudice the ability of the Crown to exercise its option to reacquire the Land under clause 16.5, without the Lessee's prior written consent, which may be withheld at the Lessee's sole discretion or may be granted subject to conditions.

4.4 **Consent not to be Unreasonably Withheld:** If this Lease states that the Lessor's consent is required for anything done or proposed to be done, then unless otherwise stated, in each case, the Lessor:

- (a) must not unreasonably withhold consent, and
- (b) must, within a reasonable time of the Lessor's consent being requested:
  - (i) grant that consent; or
  - (ii) notify the Lessee in writing that the consent is withheld.

**5. RIGHT OF LESSOR TO ENTER AND INSPECT LAND**

5.1 **Entry to Land:** Pursuant to section 217 of the Property Law Act 2007, and notwithstanding section 218 and clause 11 of Schedule 3 of that Act, the parties agree that the Lessee will permit the Lessor to enter the Land to inspect its condition, on no more than two occasions in each calendar year, and subject to compliance with the conditions of entry set out in this section 5.

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5.2 **Conditions of Entry:** Entry under clause 5.1 is subject to:

- (a) the Lessor providing the Lessee with at least 10 working days prior notice, in writing; and
- (b) compliance with the Lessee's safety and access protocols including direct supervision at all times by an authorised representative of the Lessee;
- (c) entry being limited to two persons named in the notice under clause 5.2(a), authorised by the Lessee, and approved in writing by the Lessee, in advance of entry.

5.2 **Lessor's Acknowledgment:** The Lessor acknowledges that the Land is a working prison and that the Prison Manager will have the discretion to impose such reasonable conditions on the Lessor's ability to enter the Land for inspection purposes under this section 5, as the Prison Manager thinks necessary or appropriate to the operational requirements of the Prison.

5.3 **Lessor Representations:** The Lessor may make representations to the Prison Manager regarding the times entry to the Land is requested for inspection purposes but the Lessor acknowledges that the Prison Manager may at his/her discretion upon the giving of either oral or written notice, vary any consent to entry given under this Lease if the Prison Manager deems this to be necessary or appropriate to the operational requirements of the Prison.

5.4 **Compliance with Statutes:** When exercising any right of entry under this section the Lessor will at all times comply with all statutes, ordinances, bylaws or other enactments affecting or relating to the Land including (but not limited to) the Corrections Act 2004 and the Corrections Regulations 2005, and with all instructions which may be given by the Prison Manager or any Authority, and will keep the Lessee indemnified in respect of any non-compliance by the Lessor.

5.5 **Prison Manager's Powers:** The Lessor acknowledges that in the event that the Prison ceases to have a Prison Manager, the Prison Manager's powers under this Lease may be exercised by any agent, employee or servant of the Lessee to whom a written authorisation in this regard is made or by any assignee under section 9.

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**6. LESSEE'S IMPROVEMENTS**

6.1 **Lessor's Acknowledgement:** The Lessor acknowledges in relation to the Lessee's Improvements that:

- (a) Notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements will remain with the Lessee during the Term of this Lease, and also at and from the expiry or earlier termination of the Lease irrespective of how such property is annexed to the Land, and may be dealt with by the Lessee without reference to the Lessor;
- (b) The Lessor does not have any rights of ownership or proprietary interest in any of the Lessee's Improvements, either during the Term of the Lease, or at the expiry or earlier termination of the Lease; and
- (c) When any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds (if any) is also solely with the Lessee.

6.2 **Demolition:** The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon the condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such demolition or removal.

6.3 **Removal:** The parties acknowledge that:

- (a) The Lessee may, either prior to or on the expiry or earlier termination of this Lease, demolish or remove all Lessee's Improvements from the Land and will, if required by the Lessor on the expiry of the Term of this Lease, demolish or remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land without being obliged to pay the Lessor any compensation for their demolition or removal, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee and that no prior written consent or any other consent of the Lessor is required in respect of any such demolition or removal elected by the Lessee.
- (b) The Lessor will be deemed by the provisions of clause 6.3(a) to have granted to the Lessee a licence to enter the Land and demolish or remove the Lessee's Improvements and further that the provision will enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and will also bind any successor in title to the Lessor subsequent to the expiry of the Lease.
- (c) In the event that the Lessee demolishes or removes its Lessee's Improvements from the Land under clause 6.3(a), it will restore the Land to a neat, tidy and safe condition subsequent to any such demolition or removal.



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(d) The Lessor will do nothing to obstruct or otherwise impede the demolition or removal of any Lessee's Improvements from the Land at any time prior to the expiration or earlier termination of the Lease or within three months after this time and notwithstanding any rule of law or equity to the contrary.

(e) The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease if the Lessee remains on the Land after the expiration or earlier termination of the Lease for the purposes of demolishing or removing the Lessee's Improvements under this clause.

**7. DESIGNATION**

7.1 **Designation:** The Lessor consents to the Lessee maintaining a designation under the Resource Management Act 1991 for the construction, operation and maintenance of the Permitted Uses and for any use consented to under clause 3.4 for the Term of this Lease, and further consents to the inclusion of any new or further designation for such purposes in any operative or proposed District Plan.

7.2 **No Right to Object:** The Lessor agrees that it will not:

(a) Complain or object to, or cause others to complain or object to, or publicly comment on, any variation, change or modification to existing or future lawful uses of the Land and any designations or consents either in place at the Commencement Date or lawfully granted to the Lessee at a later date, provided the variations, changes or modifications are related to, or ancillary to, the Permitted Uses or any use consented to under clause 3.4;

(b) Directly or indirectly lobby any Authority or other interested party, or directly or indirectly fund any objections, in relation to any variation, change or modification to existing or lawful future uses, designations or consents either in place at the Commencement Date or lawfully granted to the Lessee at a later date;

7.3 **No Right to Object to Permitted Uses:** The Lessor agrees that it will not complain or object to, or directly or indirectly fund any objection relating to, or otherwise publicly comment about, any activities on the Land in accordance with the Permitted Uses.

**8. LESSEE'S ACKNOWLEDGMENT**

8.1 **Lessee Uses Land at Own Risk:** The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any personal property in or about the Land, except when this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

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**9. SUBLETTING AND ASSIGNMENT**

**9.1 Subletting and Assignment:** Subject to clauses 9.2 and 9.3, the Lessee must not sublet, assign or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:

- (a) The Lessee proves to the satisfaction of the Lessor that the proposed sublessee or assignee is (or in the case of a company the shareholders of the company of the proposed assignee or sublessee are) respectable, responsible and has the financial resources to meet the commitments under any sublease or lease.
- (b) All rent and other moneys payable under this Lease have been paid and there is no subsisting breach of any of the Lessee's covenants.
- (c) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed sublessee or assignee.
- (d) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.
- (e) Where the assignee is a company, the Lessor may require the deed of covenant referred to in paragraph (d) above to be executed by that company and also by such directors and/or shareholders of that company as the Lessor requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.

**9.2 Transfer of Operation, Management or Ownership:** If, by any statutory provision or regulation, the Lessee is obliged or authorised to:

- (a) enter into an agreement to transfer or assign the operation, management, or ownership of the Prison and/or the Lessee's Improvements or any aspect of operation, management, or ownership of the Prison and/or the Lessee's Improvements to a third party; or
- (b) enter into a public/private partnership with a third party relating to the funding and/or operation, management or ownership of the Prison and/or the Lessee's Improvements or any aspect of the funding, operation, management, or ownership of the Prison and/or the Lessee's Improvements:

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the provisions of clause 9.1 will not apply and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of the operation, management or ownership of the Prison and/or the Lessee's Improvements, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.

9.3 **Breach of Covenant or Condition by Assignee:** If the Crown (as Lessee, acting by and through the Department of Corrections) transfers or assigns its interest as Lessee under this Lease to a third party under clause 9.2, and the assignee breaches any covenant or condition imposed on the Lessee under this Lease (including, without limitation, a covenant or condition to pay rent), the following provisions will apply:

- (a) the Lessor (without prejudice to any rights or remedies available to it against the Assignee, whether under this Lease or otherwise), may notify the Crown in writing of the breach by the Assignee (**Notice of Breach**); and
- (b) as soon as practicable after receipt of the **Notice of Breach [Designation of Senior Representative]** representing the Crown, and **[Designation of Senior Representative]** representing the Lessor, will meet in good faith to discuss the Assignee's breach and, if possible, to agree upon a process for the Crown and the Lessor to work together to resolve all matters relating to the Assignee's breach in a manner that minimises any effect of that breach on the Lessor.

9.4 **Transfer to a Government Agency:** The Lessee may transfer, assign or sublet its interest as Lessee under this Lease to any Government Agency without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.

9.5 **Subletting:** Where the Lessor consents to a subletting, the consent will extend only to the subletting and, notwithstanding anything contained or implied in the sublease, the consent will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

10. RENEWAL

10.1 **Exercise of Perpetual Right of Renewal:** If the Lessee has observed and performed its covenants under this Lease and has given written notice to renew the Lease at least twelve calendar months prior to the end of the initial term of 50 years (time not being of

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the essence of such notice) then the Lessor will at the cost of the Lessee renew this Lease for the next further term from the renewal date as follows:

- (a) The annual rent for the first five years will be agreed upon or failing agreement will be determined in accordance with clause 11 as if the renewal date is a review date;
- (b) Otherwise the renewed lease will be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.

**11. RENT REVIEW**

- 11.1 **Annual Rent Review:** The Annual Rent payable from any review date will be determined in accordance with clauses 11.2 to 11.7 plus GST.
- 11.2 **Commencement of Review:** The Lessor will commence a review by not earlier than three (3) months prior to a review date giving written notice to the Lessee specifying the sum considered by the Lessor to be the market rental as at that review date;
- 11.3 **Lessee's Notice:** If, by written notice to the Lessor within twenty eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the proposed market rental is the market rental, then the market rental will be determined in accordance with the provisions of clause 11.7;
- 11.4 **Application of Reviewed Annual Rent:** The Annual Rent so determined or accepted will be the annual rent from the review date or the date of the Lessor's notice if such notice is given later than three (3) months after the review date;
- 11.5 **Payment of Annual Rent Pending Determination:** Pending the determination of the new Annual Rent, the Lessee will pay the annual rent based on the market rental specified in the Lessor's notice. Upon determination of the new Annual Rent, an appropriate adjustment will be made;
- 11.6 **Documenting New Annual Rent:** The new Annual Rent at the option of either party may be recorded in a variation of this Lease, the cost of which will be payable by the Lessee.

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11.7 **Process to Determine New Annual Rent:** Immediately following receipt by the Lessor of the Lessee's notice, under clause 11.3 the parties will endeavour to agree upon the market rental but if agreement is not reached within twenty eight (28) days, then the market rental for the Land will be determined by registered valuers acting as experts and not as arbitrators as follows:

- (a) each party will appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to so determine the market rental;
- (b) the valuers appointed before commencing their determination will appoint an umpire who will be a registered valuer or Solicitor of the High Court. In the event the valuers fail to agree upon an umpire, the appointment of an umpire will be made by the President of the Arbitrators and Mediators Institute of New Zealand Incorporated on the application of either of the valuers;
- (c) the valuers will determine the market rental of the Land as at the review date;
- (d) each party will be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time or other limits as the valuers or the umpire may prescribe and they will have regard to any such representations but not be bound by them;

When the market rental has been determined, the umpire or valuers will give written notice of the new market rental to the parties. Any umpire notice will provide how the costs of the determination will be apportioned and will be binding on the parties. Where the Annual Rent is determined by the parties' valuers and not the umpire, the parties will pay their own costs.

**12. RE-ENTRY**

11.1 **No Right of Re-Entry:** Notwithstanding section 218 and clause 12 of Schedule 3 of the Property Law Act 2007, and pursuant to section 217 of that Act, and due to the nature of the Permitted Uses and the need to ensure the ongoing operational integrity and security of the Prison, the Lessor agrees that it may not cancel the Lease because of the breach of any covenant or condition by the Lessee (including a covenant or condition to pay rent) while the Lessee remains Her Majesty the Queen and the Permitted Use continues to include a prison as defined in section 3 of the Corrections Act 2004. For the avoidance of doubt, if the Lease is assigned to a third party under clause 9.1 and the Permitted Use is changed to a use that does not include a prison, the rights and obligations in Part 4, subsection 6 of the Property Law Act 2007 will apply to the Lease from the effective date of assignment and change of Permitted Use.

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**13. LESSEE'S RIGHT OF EARLY TERMINATION**

13.1 **Lessee's Ability to Terminate:** The Lessee may, in its sole discretion and without giving any reasons, terminate this Lease by providing no less than twenty-four months notice in writing at any time to the Lessor.

13.2 **Right to Terminate Without Prejudice to Rights Accrued:** This Lease and the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination, including (without limitation) the Lessee's right to remove any Lessee's Improvements under clause 6.3.

**14. LESSEE'S RIGHT OF EARLY SURRENDER**

14.1 **Exercise of Partial Surrender:** The Lessee may, in its sole and absolute discretion and without giving any reasons, partially surrender and convey to the Lessor, this Lease, as it relates to any part of the Land (**Surrender Land**) by providing no less than six months' notice (**Surrender Notice**) in writing at any time to the Lessor. The Lessor must accept any partial surrender of the Lease under this clause.

14.2 **Surrender Notice:** A Surrender Notice issued under clause 14.1 must clearly set out the terms and conditions of the partial surrender and must clearly identify the Surrender Land.

14.3 **Effective Date of Partial Surrender:** The partial surrender will be effective from the date that is six months from the date of receipt of the Surrender Notice by the Lessor or such other later date as may be specified in the Surrender Notice (**Surrender Date**).

14.4 **Merger with Residual Estate:** The residue of the Term of this Lease as it applies to the Surrender Land will merge with the Lessor's residual estate and be extinguished from the Surrender Date but without prejudice to either party's rights arising in relation to the Surrender Land before the Surrender Date.

14.5 **Tasks and Actions Following Issue and Receipt of a Surrender Notice:** Following the issue and receipt of a Surrender Notice under clause 14.1, the Lessor and Lessee will complete all tasks and actions necessary to give legal effect to the partial surrender. In particular, the parties will meet as soon as practicable to implement any steps required to give legal effect to the partial surrender which will include, without limitation:

- (a) establishing the adjusted Annual Rent payable under this Lease from the Surrender Date, which will be a pro-rated proportion of the Annual Rent payable at the date of the Surrender Notice, adjusted to reflect the proportion that the Surrender Land bears to the total area of the Land; and

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(b) the preparation and execution of a deed to be registered against the Computer Freehold Register for the Land, to record the terms of the partial surrender and to reflect the adjusted Annual Rent and otherwise set out the legal requirements of the parties and roles and responsibilities to give legal effect to the partial surrender, including, without limitation, survey and re-definition of the land remaining subject to this Lease, subdivision consent and issue of a replacement leasehold title (as applicable).

14.6 **Costs and no Compensation:** The parties must pay their own costs in relation to any actions or tasks required to give effect to this clause 14 and otherwise to give legal effect to any partial surrender. The Lessor will not be entitled to claim from the Lessee any damages or compensation arising in any way, either directly or indirectly, from any partial surrender under this clause 14.

14.7 **Right to Surrender Without Prejudice to Rights Accrued:** Any partial surrender under this clause 24 will be without prejudice to any rights which have accrued up to the Surrender Date, including (without limitation) the Lessee's right to remove any Lessee's Improvements from the Surrender Land under clause 6.3.]

**15. INSURANCE**

15.1 **Lessee Responsible for Insurance:** The Lessee will be responsible for insuring any Lessee's Improvements on the Land and may elect to arrange and maintain any such insurance that it considers appropriate, at its sole discretion, and without reference to the Lessor.

15.2 **Reinstatement at Lessee's Discretion:** If any of the Lessee's Improvements are damaged or destroyed, then it will be the sole responsibility of the Lessee to decide whether to effect reinstatement or not.

15.3 **Public Liability Insurance:** The Lessor and Lessee must each keep a public liability insurance policy applicable to the Land and the Permitted Use current throughout the Term. The policies must provide cover for:

(a) **Set Amount:** the amount of \$2,000,000.00 (being the amount which may be paid out arising from any single accident or event); and

(b) **Escalation:** any reasonable escalation in the policy limit, required by either party, subject to one month's notice, and mutual agreement.

15.4 **Particulars of Insurance Policies:** The insurance policies effected by the Lessor and Lessee under clause 15.3 must:

(a) **Recognition of Interest Insured:** recognise the Lessor and Lessee for their respective rights and interests; and

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(b) **Approved Insurer Rating:** be with an insurer carrying a rating of no less than A- Standard & Poors/B+ A M Best.

15.5 **Evidence of Insurance:** Each party must, if required, produce a certificate of insurance of evidence as evidence that the insurances required by this clause have been, and continue to be, in effect.]

16. **RIGHT OF FIRST REFUSAL FOR LESSOR'S INTEREST**

16.1 **Sale of Premises:** If at any time before the expiry or earlier termination of the Term, the Lessor:

(a) decides to sell or transfer the Lessor's interest in the Land; or

(b) receives an offer to purchase the Lessor's interest in the Land and wishes to accept that offer;

the Lessor must immediately give written notice (**Lessor's Notice**) to the Lessee setting out the terms on which the Lessor wishes to sell the Land, or the terms of the offer received (as the case may be). In each case, the Lessor's Notice must include an offer in the form of an agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society, modified as set out in clause 16.8.

16.2 **Exercise of Option:** The Lessee will have ninety (90) Working Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor (**Lessee's Notice**) accepting the offer contained in the Lessor's Notice.

16.3 **Lapse of Option:** If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 16.2, then the Lessor may sell or transfer the Lessor's interest in the Land to any other person on no more favourable terms than those previously offered to the Lessee.

16.4 **Re-offer on Better Terms:** If the Lessor wishes, or agrees, to offer more favourable terms for selling or transfer of the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms, by written notice to the Lessee (**Lessor's Second Notice**). This offer must comprise the agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society, modified as set out in clause 16.8.



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- 16.5 **Acceptance of Second Offer:** The Lessee will have 40 Working Days after and excluding the date of receipt of the Lessor's Second Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Lessor's interest in the Land on those more favourable terms, by serving written notice on the Lessor (Lessee's Second Notice) accepting the offer contained in the Lessor's Second Notice.
- 16.6 **Lapse of Second Option:** If the Lessee does not serve the Lessee's Second Notice on the Lessor in accordance with clause 16.5, then the Lessor may sell the Lessor's interest in the Land to any other person (including the party who originally made the offer under clause 16.1.(b), if applicable) on any terms the Lessor thinks fit.
- 16.7 **Formation of Contract:** On the Lessee serving a valid Lessee's Notice or Lessee's Second Notice (as the case may be), the parties will be taken to have entered into a contract for the sale and purchase of the Lessor's interest in the Land on the terms contained in the Lessor's Notice or the Lessor's Second Notice (as the case may be) (**Contract**).
- 16.8 **Terms of Contract:** The terms of the Contract will be modified as follows:
- (a) **Title:** the Lessee will be deemed to have accepted the title to the Lessor's interest in the Land;
  - (b) **No Requisition:** the provisions of the Contract under which the Lessee has the right to requisition or object to the title to the Lessor's interest in the Land will not apply; and
  - (c) **Completion:** the Lessee will not be required to complete the purchase earlier than three months from the date of service of the Lessee's Notice or Lessee's Second Notice (as the case may be).
17. **BREACH OF COVENANT BY LESSOR**
- 17.1 **Acknowledgement of Significance of Prison:** The Lessor and Lessee acknowledge that the Prison operated on the Land has great significance to the Crown and is a key element of the Crown's law and order function. The Lessor and Lessee agree that the provisions of this clause 17 are intended to reflect this significance and to ensure that the Lessee is able to carry out the Permitted Uses effectively on the Land. For the avoidance of doubt, the Lessor and the Lessee agree that, notwithstanding the definition of "Lessee" in clause 1.1, for the purposes of clause 17, the definition of "Lessee" is limited to Her Majesty the Queen, and excludes any third party.
- 17.2 **Consequences of Breach of Covenant by Lessor:** If, in the opinion of the Lessee (acting reasonably) the Lessee is unable to carry out the Permitted Uses on the Land, as a direct result of a breach of the Lessor's covenants and obligations under clauses 4.1, 4.2 or 4.3 of this Lease, the Lessee may, by notice in writing to the Lessor, specify the breach on which the notice is based and require the Lessor to remedy the breach.

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- 17.3 **Failure to Remedy:** If, within 20 Working Days after receipt of a notice from the Lessee under clause 17.2 the Lessor fails to remedy the breach to the Lessee's satisfaction (acting reasonably) the Lessee, without prejudice to any other rights that it may have under this Lease or at common law against the Lessor, may suspend payment of the Annual Rent payable under this Lease until the breach is remedied or the dispute is resolved, without liability for interest under clause 24 or any other claim.
- 17.4 **Effect of Suspension of Rent:** The suspension of payment of Annual Rent under clause 17.3 by the Lessee will not in any way affect the continuing obligations of the Lessor or the Lessee under this Lease. Suspension of payment of Annual Rent may continue at the Lessee's sole discretion until the breach has been remedied or dispute has been resolved.
- 17.5 **Prior Notice of Intention to Reacquire Land:** if, after following the process set out in clauses 17.2 and 17.3, the Lessor has failed to remedy the breach to the Lessee's satisfaction (acting reasonably), the Lessee may provide written notice to the Lessor of its intention to reacquire the fee simple interest in the Land under clause 17.8 (**Reacquisition Notice**).
- 17.6 **Reference to Senior Representatives:** Within **[10]** Working Days of receipt of a Reacquisition Notice, the parties must refer the Lessee's intention to reacquire the fee simple interest in the Land to [ ] representing the Lessee and [ ] representing the Lessor, and the [ ] and [ ] must meet as soon as practicable to jointly consider and, if possible agree, whether the Lessee should reacquire the fee simple interest in the Land.
- 17.7 **Consequences of Failure to Reach Agreement:** If there is no joint agreement reached by the [ ] and the [ ] as to whether the Lessee should reacquire the fee simple interest in the Land within a further period of **[30]** Working Days from their initial meeting to consider the issue, and the breach has not otherwise been resolved, then the Lessee may exercise the right of reacquisition in accordance with clauses 17.8 and 17.9.
- 17.8 **Lessee's Right of Reacquisition:** If, after following the process set out in clauses 17.2, 17.3, 17.5, 17.6, and 17.7 the Lessor has failed to remedy the breach to the Lessee's satisfaction (acting reasonably) the Lessee may, by notice in writing to the Lessor from the Minister of Corrections, elect to reacquire the fee simple interest in the Land.
- 17.9 **Terms of Reacquisition:** The terms of any reacquisition of the fee simple interest in the Land under clause 17.5 will be as follows:
- (a) **Title:** the Lessee will be deemed to have accepted the title to the Lessor's interest in the Land;

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- (b) **No Requisition:** the provisions of the Contract under which the Lessee has the right to requisition or object to the title to the Lessor's interest in the Land will not apply; and
- (c) **Completion:** the Lessee will not be required to complete the purchase earlier than three months from the date of service of notice under clause 17.5; and
- (d) **Purchase Price:** the Purchase Price payable will be the purchase price paid by the Lessor when it acquired the Land, increased by an amount which is commensurate with any increase in the CPI over the Term of the Lease from the Commencement Date, up until the time of reacquisition.

**18. ENTIRE AGREEMENT**

**18.1 Entire Agreement:** This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation will be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

**19. DIFFERENCES AND DISPUTES**

**19.1 Disputes:** If a dispute or difference arises between the Lessor and the Lessee (other than a dispute or difference to which clause 17 applies), the dispute must be resolved in accordance with the provisions of this clause.

**19.2 Resolution of Disputes:** Nothing in this clause prevents:

- (a) a party seeking urgent injunctive or declaratory relief from a court in connection with a dispute without first having attempted to negotiate or settle the dispute in accordance with this clause;
- (b) the parties meeting at any time to seek to resolve a dispute.

**19.3 Notice of Dispute:** If the Lessor or the Lessee becomes aware of a dispute between the Lessor and the Lessee, that party must notify the other party of the existence and nature of the dispute by serving on the other party a notice setting out detailed particulars of the dispute ("Notice of Dispute").

**19.4 Request for Further Information:** A party who receives a Notice of Dispute under clause 19.3 may, within five (5) Working Days after such receipt, on reasonable grounds, require the party who served the Notice of Dispute to provide further or more detailed information relating to the dispute.

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- 19.5 **Negotiation:** Upon receipt of a Notice of Dispute and, if applicable, the provision of further or more detailed information in relation to the dispute, the parties must negotiate to resolve the dispute as follows:
- (a) **Meeting of Representatives:** One or more representatives of each party will meet, within ten (10) Working Days of the receipt of the Notice of Dispute or the further information, if any (whichever is later) to discuss and attempt to resolve the dispute; and
  - (b) **Meeting of Chief Executives:** If those representatives do not resolve the dispute within five (5) Working Days of their first meeting, then within ten (10) Working Days of that first meeting, the Chief Executives or Chairpersons of the parties must meet to discuss and attempt to resolve the dispute.
- 19.6 **Appointment of a Mediator:** If a dispute is not resolved within ten (10) Working Days of the meeting of the Chief Executives or Chairpersons of the parties under clause 19.5(b), then the dispute must be referred to a mediator. The parties must agree upon the selection and appointment of a mediator who will act in respect of the dispute.
- 19.7 **Failure to Appoint Mediator:** If no agreement is reached on the selection and appointment of a mediator within fifteen (15) Working Days of the meeting of the Chief Executives or Chairpersons under clause 19.5(b), then either party may request the president of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a mediator.
- 19.8 **Initial Mediation Meeting:** The parties must as soon as practicable after notification of the dispute to the mediator, meet in the presence of the mediator to:
- (a) identify the subject matter of the dispute;
  - (b) identify the provisions of this Lease relevant to the dispute;
  - (c) discuss each others' position in relation to the dispute;
  - (d) listen to any comments made by the mediator; and
  - (e) attempt to resolve the dispute by mutual agreement.
- 19.9 **Mediation:** The mediation will be conducted by the mediator at a time, place and in a manner agreed between the parties or otherwise determined by the mediator.
- 19.10 **Role of Mediator:** The parties agree that the mediator will act as an aid to assist them to resolve the dispute and not as an arbitrator or decider of any matter.

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- 19.11 **Costs of Mediation:** The parties will share equally the costs of the mediation unless otherwise agreed by the parties.
- 19.12 **Arbitration:** If the dispute is not resolved by mediation within a further twenty (20) Working Days after the appointment of a mediator, either party may then require the dispute to be referred to arbitration. If this clause is invoked:
- (a) the dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996;
  - (b) the arbitration will take place in New Zealand; and
  - (c) the award in the arbitration will be final and binding on the parties.
- 19.13 **Time Limits:** The parties may agree to extend any of the time limits in this clause.
- 19.14 **Appointment of Arbitrator:** If the parties are unable to agree on the arbitrator, an arbitrator will be appointed, upon the request of any party, by the President of the Arbitrators and Mediators Institute of New Zealand Incorporated. That appointment will be binding on all parties to the arbitration with no right of appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this clause and varied accordingly.
- 19.15 **Rent Review Excluded:** This clause does not apply to any rent review under clause 11.
- 20. NOTICES**
- 20.1 **Service of Notices:** Any notice or document required or authorised to be given or served under this Lease may be given or served unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
- (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - (b) by personal delivery, or by posting by registered mail or ordinary mail, or by facsimile, or by email to the address of the party to be notified, as set out in Schedule One, or to such other address as either party may notify to the other in writing.
- 20.2 **Time of Service:** Any notice or other document will be treated as given or served and received by the other party:
- (a) **Delivery:** when received by the addressee;

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- (b) **Post:** three (3) Working Days after being posted to the addressee's last known address in New Zealand;
- (c) **Facsimile:** on completion of an error free transmission, when sent by facsimile; or
- (d) **Email:** when acknowledged by the addressee by return email or otherwise in writing.
- 20.3 **Signature of Notices:** Any notice or document to be given or served under this Lease must be in writing and may be signed by:
- (a) **Attorney etc:** any attorney, officer, employee or solicitor for the party serving or giving the notice; or
- (b) **Authorised Person:** the party serving the notice or any other person authorised by that party.
21. **PROPERTY LAW ACT**
- The covenants and powers contained in clauses 4, 5, 6, 9, 10, 11 and 12 of Part 2 and clause 13 of Part 3 of Schedule 3 of the Property Law Act 2007 will not be implied in this Lease and are expressly negated.
22. **REGISTRATION OF LEASE**
- 22.1 **Lease to be Registered:** The parties agree that this Lease will be registered against the Computer Freehold Registers for the Land under the provisions of the Land Transfer Act 1952 at the expense of the Lessee. The Lessor consents to the Lessee caveating the Computer Freehold Registers for the Land to protect the Crown's interest prior to registration.
23. **COSTS**
- 23.1 **Parties to Pay Own Costs:** The parties will pay their own costs of and incidental to the negotiation, preparation and execution of this Lease.
- 23.2 **Lessee to Pay Costs of Variation, Renewal or Surrender:** The Lessee will pay the Lessors' costs of and incidental to the negotiation, preparation and execution of any variation (where a variation is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.

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**24. INTEREST**

**24.1 Interest Payable:** If the Lessee fails:

- (a) to pay any instalment of rent or other sum of money payable by the Lessee to the Lessor under this Lease within 14 days of the day on which it fell due; or
- (b) to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date the demand is received by the Lessee;

then any amount outstanding will bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% accruing on a daily basis from the due date from payment or the due date of payment by the Lessor (as the case may be) to the date the outstanding amount is paid by the Lessee. The Lessor will be entitled to recover such interest in the same manner as if it were rent in arrears.

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**SCHEDULE ONE**

Commencement Date: [to be completed]

Initial Term: [to be confirmed]

Termination Date: [to be completed - 50 years from Commencement Date subject to the Lessee's right of earlier termination in clause 13.1]

Subsequent Terms: perpetual rights of renewal of fifty years each from [insert date which is the day after the expiry date of the Initial Term] and each fiftieth yearly anniversary after that date

Annual Rent: (a) [to be completed] plus GST for the first five years of the Initial Term from [x] to [y];  
(b) [to be completed] plus GST for the second five years of the Initial Term from [a] to [b];

then to be determined in accordance with the procedure set out in section 11 of the Lease.

[to be confirmed]

Rent Review Dates: Five yearly from the Commencement Date (with the first such review date for the initial term only being on the tenth anniversary of the Commencement Date)

Permitted Uses: (a) a prison as defined in section 2 of the Corrections Act 2004, including (but not limited to) a men's facility, women's facility, open facility, child youth and family service facility, refugee facility, and mental health facility; and  
(b) ancillary prison or Ministry of Justice related uses, including forestry, farming, horticulture or agriculture operations, and Corrections Inmate Employment business initiatives and such other reasonable ancillary uses deemed necessary from time to time by the Lessee for the operation of a prison on the Land; and  
(c) emergency use by the Crown or local authority as part of disaster recovery operations; and  
(d) provision for a secondary use for government works under the Public Works Act 1981 if part of the Land (but not a significant part being more than half of the Land) is not required for prison purposes.



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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Lessor's Contact Details:	The Property Manager P O Box 50079 Porirua 5240 Wellington Facsimile: 04 238 4701
Lessee's Contact Details:	Department of Corrections Mayfair House 44-52 The Terrace Private Box 1206 Wellington Facsimile: [                    ] Email: [                    ]

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**SCHEDULE 2  
PLAN**

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

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5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

MINISTRY OF JUSTICE

LONG TERM LEASE OF BARE GROUND

FOR COURTHOUSE PURPOSES

[ ] (hereafter called "the Lessor") being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed on Computer Freehold Register [ ] ([ ] Registry), in that piece of land situated in [ ] Land District containing [ ] square metres more or less, being Section [ ] and being comprised and described therein.

does hereby lease to **HER MAJESTY THE QUEEN** acting through the Chief Executive of the Ministry of Justice (hereafter called "**the Lessee**") all the said land (hereafter called "**the Land**") to be held by the Lessee as tenant for a term of [ ] ( ) years at the yearly rental of \$[ ] plus GST payable annually in advance on the [ ] day of [ ] in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

The Lessee doth hereby accept the lease of the above described land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants set forth in Schedules A and B following.

Dated this [ ] day of [ ] 20

**SIGNED** by [ ] )  
**GOVERNANCE ENTITY** as Lessor )

**SIGNED for and on behalf of HER** )  
**MAJESTY THE QUEEN** as Lessee )  
**by Philip Grant Maitland** )  
(acting by and through the Chief )  
Executive of the Ministry of Justice) )

5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

SCHEDULE A

**ITEM 1 THE LAND**

All that parcel of land being the Land previously specified.

**ITEM 2 THE COMMENCEMENT DATE**

The commencement date of this Lease shall be the                      day of                      201

**ITEM 3 ANNUAL RENTAL**

(Value in words) (\$[                      ]00)  
per annum plus GST payable annually in advance on the first day of each year during  
the continuance of this lease with a first payment due on the                      day of  
201

**ITEM 4 TERM OF LEASE**

**4.1 Initial term**

                    years from the Commencement Date, to determination on the                      day of  
20

**4.2 Subsequent terms**

Rights of renewal for terms of [] years each forever from the                      day of  
201                      and each 20<sup>th</sup> anniversary after that date, subject to clause 4.02(a)(v)

**ITEM 5 LESSEE OUTGOINGS**

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority (subject to Item 5.5).

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.

5.5 The amount by which the land tax of the Lessor (if any) has been increased by virtue of its ownership of the Land, but excluding any other taxes levied against the Lessor in respect of its interest in the Land and excluding any income tax assessed in respect of the Lessor's income from the Land.

**ITEM 6 PERMITTED USE**

(a) For the purposes of the administration of justice by the Crown, including use as a courthouse and related facilities which can include cells for overnight prisoner accommodation; and/or

(b) any other commercial use permitted as of right by the operative District Plan from time to time of the territorial authority having jurisdiction in respect of the Land.

5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

ITEM 7 RIGHTS OF RENEWAL

Perpetually renewable as provided in Item 4.2 above.

ITEM 8 RENT REVIEW DATES

[ ] yearly from the Commencement Date of this Lease.

ITEM 9 LESSOR'S PROPERTY

Nil.

ITEM 10 LESSEE'S IMPROVEMENTS

As defined in clause 1.07.

ITEM 11 CLAUSE 4.01(e) CHARGEHOLDER'S NOTICE

To: The Lessor  
(hereafter called "**the Lessor**")

And to: The Lessee  
(hereafter called "**the Lessee**")

From: Mortgagee / Chargeholder  
(hereafter called "**the Lender**")

In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("**the Land**") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (i) It has notice of the provisions of clause 4.01(e) and (f) of the said Lease; and
- (ii) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six (6) months after the expiration or sooner determination of the Lease (hereafter collectively called "**the relevant period**");
- (iii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (iv) It agrees that this acknowledgement is irrevocable.

**SCHEDULE \*\*\***

[That parcel of land containing [ ]]

.....  
(LENDER EXECUTION)

/ / 200

5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

ITEM 12      **CLAUSE 4.01(f) CHARGEHOLDER'S NOTICE**

To:            The Lessor  
                  (hereafter called "**the Lessor**")

And to:        The Lessee  
                  (hereafter called "**the Lessee**")

From:          Mortgagee/Chargeholder  
                  (hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of clause 4.01(f) of the Lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (ii) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six (6) months after the expiration or sooner determination of the Lease.

ITEM 13      **ADDRESS FOR SERVICE**

Lessor:

Lessee:        Chief Executive  
                  Ministry of Justice  
                  Vogel Centre (Third Floor)  
                  Kate Sheppard Place

WELLINGTON (PO Box 180, WELLINGTON)

Facsimile:    (04) 918 8820

5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

(a) The expression "**the Lessor**" shall include and bind:

- (i) the persons executing this lease as Lessor; and
- (ii) any Lessor for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.

(b) The expression "**the Lessee**" shall include and bind:

- (i) the person executing this lease as Lessee;
- (ii) all the Lessees for the time being under it; and
- (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall include the Lessee's agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.

(c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 "District Plan" means a district plan within the meaning of the Resource Management Act 1991

1.03 "Goods and Services Tax" or "GST" means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.

1.04 "Government Agency" includes any department or instrument of the Executive Government of New Zealand; and, includes:

- (a) a body corporate or corporation sole (whether called a corporation sole, a corporation, commission, council, board, authority, or by any name that has been established or constituted by a public Act of Parliament and that is named in that Act;
- (b) a body corporate or organisation that is controlled wholly by the Crown or by any department, instrument, corporate, corporation sole, or organisation;
- (c) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;



**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

(d) a State enterprise within the meaning of the State-Owned Enterprises Act 1986;

1.05 "Government Work" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.

1.06 "Lease" means, unless the context otherwise requires, this lease and any further renewal term thereof.

1.07 "Lessee's Improvements" shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude "Lessor's Property".

1.08 "Lessee's Outgoings" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.

1.09 "Lessor's Property" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this Lease.

1.10 "Working Day" means any day of the week other than:

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand Anniversary Day or the Anniversary Day celebrated in the locality of the Premises; and

(b) A day in the period starting on 24 December in any year and ending on 5 January in the following year, both days included.

A Working Day shall be deemed to start at 9:00 am and finish at 5:00 pm.

1.11 "The Land", "the Commencement Date", "Annual Rental", "Term of the Lease" and "Permitted Use" shall have the meanings ascribed to them in Schedule A.

1.12 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.

1.13 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.

1.14 A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

1.15 Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

**PART II - LESSEE'S COVENANTS**

**2.00 LESSEE'S COVENANTS**

**2.01 PAYMENT OF ANNUAL RENT**

The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 3 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.

**2.02 PAYMENT OF LESSEE OUTGOINGS**

- (a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

**2.03 USE OF LAND**

The Lessee shall not use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor.

**2.04 COMPLIANCE WITH LAW**

- (a) The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.
- (b) Without limiting the generality of the foregoing the Lessee will take all reasonable steps to maintain a current warrant of fitness in respect of any building on the Land where such warrant of fitness is required in terms of the Building Act 2004.

**2.05 AVOIDANCE OF DANGER**

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from the Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) Promptly remedy any danger or hazard that may arise on the Land;

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

**2.06 LESSEE'S MAINTENANCE AND REPAIR OBLIGATION IN RESPECT OF THE LAND**

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

**2.07 SIGNAGE**

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor, such approval not to be unreasonably or arbitrarily withheld. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby PROVIDED THAT the Lessee shall not be required to remove signage that is permanently affixed or part of the building fabric.

**2.08 INSURANCE**

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at any rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of clause 2.08(a) shall be of no application whilst the Lessee is **HER MAJESTY THE QUEEN**.

**2.09 SUNDRY LESSEE ACKNOWLEDGEMENTS**

The Lessee acknowledges:

- (a) That the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

**2.10 GST**

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

**2.11 LESSEE'S ACKNOWLEDGEMENT**

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

**PART III**

**3.00 LESSOR'S COVENANTS**

**3.01 QUIET ENJOYMENT**

Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

**3.02 LESSOR'S PROPERTY**

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

**3.03 LESSOR CONSENT TO GROUND WORKS**

- (a) Notwithstanding anything to the contrary in this Lease, the Lessee shall not:
- (i) Make any excavation of the Land; or
  - (ii) Conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
  - (iii) Remove any boundary-fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed removal;

### 5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

- (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision shall be final and binding on the parties. The engineer's costs shall be met in full by the Lessor where the Lessor has unreasonably or arbitrarily failed to give an approval within 14 days but otherwise the engineer shall direct how the engineer's costs shall be met by the parties, and in what proportion.

### 3.04 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for courthouse purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.

### 3.05 PROVISION OF CERTAIN NOTICES TO THE LESSEE

Whenever the Lessor receives any notice from any local or governmental authority relating to the Land, including any notice concerning the payment of local authority rates or the rating valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant governmental authority, as the case may be.

## PART IV - MUTUAL COVENANTS

### 4.00 MUTUAL COVENANTS

#### 4.01 LESSEE'S IMPROVEMENTS

##### Maintenance

- (a) The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease, and in respect of buildings on the Land, will keep such buildings water tight throughout the term of the Lease.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (b) The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

**Construction or Alterations to Lessee's Improvements**

- (c) Whilst Her Majesty the Queen is the Lessee the Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land, and such consent shall not be unreasonably or arbitrarily withheld. In the event that the Lessee wishes to grant any easements over the Land, the Lessee shall first obtain the Lessor's consent, such consent not to be unreasonably or arbitrarily withheld.

**Lessor's Acknowledgements as to Lessee's Improvements**

- (d) The Lessor acknowledges in relation to Lessee's Improvements that:
- (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease irrespective of how such property is annexed to the Land;
  - (ii) the Lessee's Improvements are to be fully insured by the Lessee in its own name PROVIDED THAT whilst Her Majesty the Queen is the Lessee hereunder the Lessee shall be entitled to self-insure the Lessee's Improvements; and
  - (iii) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.

**Acknowledgments from Mortgagees or Chargeholders**

- (e) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land in the form prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (f) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement in the form prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

**Removal of Lessee's Improvements**

- (g) The Lessee may at its option remove all or any of the Lessee's Improvements from the Land at any time during the continuance of this Lease, and also during the period of six (6) months from the expiration or sooner determination of this Lease. It is acknowledged and agreed by the parties that property in all Lessee's Improvements remains with the Lessee until the expiration of the six (6) month period in the absence of any agreement between the parties to the contrary. No prior written consent or any other consent of the Lessor shall be required in respect of any such removal effected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to enter the Land for a period of up to six (6) months subsequent to the expiration of this Lease to remove Lessee's Improvements, and the Lessee shall give no less than twelve (12) months notice as to whether it requires the full six (6) months licence period or a lesser period. This provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
- (h) In the event that the Lessee removes any of the Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land caused by such removal and will leave the Land in a neat, tidy and safe condition subsequent to any such removal;
- (i) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the date of expiration or sooner determination of the Lease or within six (6) months after such date, notwithstanding any rule of law or equity to the contrary;
- (j) The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the six (6) month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- (k) The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall ensure for the benefit of the party entitled until completely performed;
- (l) Subject to subclause (m) the Lessee shall not be required by the Lessor to remove any Lessee's Improvements as at the expiration of the term of the Lease or at any time subsequent to such expiration, and all Lessee's Improvements remaining upon the Land at the option of the Lessee after the expiration of the six (6) month period provided in subclause 4.01(g) shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor pursuant to this subclause, and the Lessor shall have no claim upon the Lessee in respect of any such Lessee's Improvements.
- (m) If the Lessee is not a Government Agency as at the expiry of the term of this Lease, the Lessee will if required by the Lessor in writing demolish or remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land at the expiry of the term without being obliged to pay to the Lessor any compensation for their demolition or removal. Following such

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

demolition or removal the Lessee shall make good any damage to the Land and will leave the Land in a neat, tidy and safe condition.

**4.02 ASSIGNMENT AND SUBLETTING**

- (a) Subject to clauses 4.02(c) and (d) and 4.03, the Lessee must not assign or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:
- (i) The Lessee proves to the reasonable satisfaction of the Lessor that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under this lease.
  - (ii) The Lessee proves to the reasonable satisfaction of the Lessor that the use to which the proposed assignee or subtenant intends putting the Land is appropriate considering the nature, location and characteristics of the Land. (iii) All rent and other moneys payable under this Lease have been paid and there is no subsisting (in the case of a Government Agency a material, willful and deliberate) breach of any of the Lessee's covenants.
  - (iv) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed assignee.
  - (v) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.
  - (vi) Where the assignee is a party which is not a Government Agency, the Lessee will at the Lessee's own expense procure the execution by the assignee of a variation of this Lease whereby the Lease will cease to be perpetually renewable and the number of further terms will be reduced to four (4) (of 20 years each) so that the Lease will have a final expiry date (if all rights of renewal are exercised) at the date of expiration of a period of 80 years following the expiration of the term of the Lease during which the assignment is effected.
  - (vii) Where the assignee is a company not listed on the main board of a public stock exchange, the Lessor may require the deed of covenant referred to in paragraph (v) above to be executed by that company and also by such other shareholders of that company as the case may be, as the Lessor reasonably requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.
- (b) For the purposes of clause 4.02(a) any change in the shareholding of the Lessee (where the Lessee not being a Government Agency is a company which



**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

is not listed on the main board of a public stock exchange) or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clauses 4.02(c) and 4.02(d).

- (c) If, by any statutory provision or regulation enacted during the Term of this Lease, the Lessee is obliged to transfer or assign management of the Land or any aspect of such management to a third party, the provisions of clause 4.01(a) will not apply to such a transfer or assignment and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of management of the Land, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.
- (d) Despite clause 4.02(a), the Lessee may at any time and from time to time transfer or assign its interest as Lessee under this Lease, or grant a sublease or licence of the whole or any part(s) of the Land, to any Government Agency without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.
- (e) Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to a person other than a Government Agency, the Lessee must first obtain the written consent of the Lessor which shall not be unreasonably or arbitrarily withheld. The Lessor shall be entitled to take into account the conditions detailed in clause 4.02(a)(i) to (vii) in determining whether to give consent to the proposed subtenant or licensee.
- (f) Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to any other person, the Lessee will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (g) Notwithstanding any rule of law or anything expressed or implied in this Lease to the contrary, where a Government Agency as Lessee assigns its interest in this Lease under the provisions of this clause 4.02, all the liabilities of the Government Agency as Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other money or the future observance or performance of any of the covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of assignment, but without releasing the Lessee from liability for any antecedent breach of this Lease.

**4.03 RIGHT OF FIRST REFUSAL FOR LESSOR IF LESSEE TO ASSIGN**

- (a) The following subclauses of this clause 4.03 will only apply in the event that the Lessee proposes to assign the Lessee's interests in this Lease to a party which is not a Government Agency. The Lessor shall have no right of first refusal in the event of the Lessee wishing to transfer or assign its interest as Lessee under this Lease to a Government Agency.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (b) If at any time before the expiration or earlier termination of the term or any renewed or extended term the Lessee wishes to assign the Lessee's interest in this Lease (including any assignment by way of sale of the Lessee's Improvements) the Lessee must immediately give written notice ('Lessee's Notice') to the Lessor setting out the terms on which the Lessee wishes to assign its interest in the Lease and/or sell the Lessee's Improvements ('the Lessee's Interest').
- (c) The Lessor will have 60 Working Days following the date of receipt of the Lessee's Notice (time being of the essence) in which to exercise the Lessor's right to purchase the Lessee's Interest, by serving written notice on the Lessee ('Lessor's Notice') accepting the offer contained in the Lessee's Notice.
- (d) If the Lessor does not serve the Lessor's Notice on the Lessee in accordance with subclause (c) then the Lessee may assign the Lessee's Interest to any other person on no more favourable terms than those previously offered to the Lessor. The provisions of clause 4.02 of this Lease will apply to any such assignment.
- (e) If the Lessee wishes to offer more favourable terms for assignment of the Lessee's Interest than the terms contained in the Lessee's Notice, the Lessee must first re-offer its interest therein to the Lessor on those terms by written notice to the Lessor and clauses 4.03(b), (c), and (d) (inclusive) shall apply. If the re-offer is made within six (6) months of the initial Lessee's Notice, the 60 Working Day period for acceptance shall be reduced to 30 Working Days.

**4.04 LESSOR MAY REMEDY LESSEE DEFAULT**

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee. In the event that the Lessor is entitled to access the Land under the terms of this Lease, notwithstanding anything to contrary contained in this Lease, the Lessor may only exercise such access at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. At the Lessee's discretion, the Lessee shall be entitled to withhold consent for any of the Lessor's employees or contractors who do not pass the Lessee's reasonable security checks, in the Lessee's unfettered discretion.
- (b) Any notice served under the provisions of clause 4.04(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non-compliance with these requirements shall render any such notice void.
- (c) Where the Lessor has a right to enter the Land or the Lessee's Improvements for any purpose, including inspection requirements, the Lessor shall give notice

### 5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

to the Lessee and must comply with any reasonably security measures as are required by the Lessee, bearing in mind the use to which the Land shall be put by the Lessee, including hearing and housing accused offenders.

#### 4.05 RENEWAL

- (a) The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the Term of the Lease or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in Schedule One from the date of expiry of the Term of the Lease or any subsequent term as follows:
- (i) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 4.06 as though the commencement date of the renewed term were a Rent Review Date; and
  - (ii) the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.
- (b) No earlier than two (2) years prior to the expiration of the initial term or any subsequent term, the Lessor shall give written notice to the Lessee ("Lessor's Notice") specifying that the term of the Lease is due to expire and that if the Lessee fails to exercise the right of renewal referred to in clause 4.05(a) within six (6) months from the date of receipt of the Lessor's Notice from the Lessor (time being of the essence), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease PROVIDED THAT the Lessor must give further written notice to the Lessee no later than four (4) months after the date the Lessee receives the Lessor's Notice (time being of the essence). The parties acknowledge and agree that the earliest date by which the Lessee can be required to give notice of renewal as a result of the operation of this clause 4.05(b) is the date which falls 18 months prior to the expiration of the relevant term.
- (c) In the event that the Lessor does not give notice to the Lessee pursuant to clause 4.05(b), the Lessee shall be entitled to renew this Lease by notice in writing to that effect given to the Lessor at any time, up until the expiry date of the then current Lease term.

#### 4.06 RENT REVIEW

- (a) The Annual Rental payable as from each review date shall be determined as follows:
- (i) Either party may not earlier than three (3) months prior to a review date and not later than one (1) year after any review date (time being of the essence) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant review date.
  - (ii) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 Working Days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current

### 5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

market rent, then the new rent shall be determined in accordance with clause 4.06(b).

- (iii) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
  - (iv) The Annual Rental agreed, determined or imposed pursuant to this clause shall be the annual rental payable as from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than six (6) months after the relevant rent review date but subject to clause (c) and (d).
  - (v) The rent review at the option of either party may be recorded in a Deed.
- (b) Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent of the Land, but if agreement is not reached within 20 working days then the same may be determined either:
- (i) By one party giving written notice to the other requiring the current market rent of the Land to be determined by arbitration; or
  - (ii) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
    - (aa) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent;
    - (ab) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
    - (ac) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer;
    - (ad) The valuers appointed by the parties shall determine the current market rent of the Land but if they fail to agree then the rent shall be determined by the third expert;
    - (ae) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any such representations but not be bound thereby.

In ascertaining the new annual rental to apply from a review date:

- (af) the value of any building or improvements then existing upon the Land shall not be taken into consideration; and

### 5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

- (ag) for so long as the Lessee is a Government Agency, the parties and their valuers shall have regard only to the actual use the land is put to by the Lessee (which in the case of the Ministry of Justice or its successor is recorded in Item 6(a) of Schedule A), and shall disregard the use specified in Item 6(b) of Schedule A.

When the new rent has been determined, the person or persons determining the same shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and which provision shall be binding on the parties.

- (c) The annual rent so determined or accepted:
  - (i) shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payable at the commencement of such subsequent term; and
  - (ii) shall be the Annual Rental from the Rent Review Date, or the date of the initiated notice if such notice is given later than six (6) months after the Rent Review Date.
- (d) For the avoidance of doubt, where a rent review date coincides with the commencement of a renewed or subsequent term, the annual rent shall be the current market rent of the Land agreed or determined as at that date in accordance with the foregoing provisions, and no minimum rent shall apply.
- (e) Pending determination of the current market rent of the Land, the Lessee if it is a Government Agency shall from the relevant review date, or the date of service of the Initiator's notice if such notice is served later than three (3) months after the relevant review date, until the determination of the current market rent of the Land, pay an interim rent equivalent to that prior to the review date, however if the Lessee is not a Government Agency it will pay an interim rent as follows:
  - (i) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties, or
  - (ii) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
  - (iii) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant review date.
- (f) Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

#### 4.07 RE-ENTRY

- (a) The Lessor may re-enter the Land where:

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (i) rental is in arrears for a period exceeding twenty (20) days after any rent payment date;
- (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
- (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
- (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry and subject to the provisions of clause 4.01(g) herein all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.

- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding twenty (20) days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The Default Notice notwithstanding anything to the contrary contained in clause 4.07(a) above shall specify that:
  - (i) the Lessee must within 30 days of receipt of such notice remedy the default specified; and
  - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.07.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.07(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.07(b) shall be null and void ab initio.

**4.08 LESSEE'S RIGHT OF EARLY TERMINATION**

- (a) Notwithstanding anything to the contrary herein contained or implied it is agreed that the Lessee may at any time in its sole discretion and without being required to give any reason, terminate this Lease by providing to the Lessor not less than 12 months notice in writing to that effect PROVIDED THAT:
  - (i) no such notice may be given during the initial 20 year term of this Lease; and
  - (ii) no such notice may be given so as to effect termination of this lease within the first 10 years of any renewed term of this Lease.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (b) The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

**4.09 INSURANCE**

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land.
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land.
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.
- (d) In the event of any building comprising a Lessee's Improvement being destroyed or so damaged as to render the Land untenable for the purpose specified in Item 6(a) of Schedule A in the reasonable opinion of the Lessee, then the Lessee may at its discretion terminate this Lease by giving three (3) months notice in writing to that effect to the Lessor. At the expiration of such period this Lease will come to an end and neither party will have any claim upon the other except in respect of any antecedent breach by either party. The Lessee will demolish any remaining Lessee's Improvements and will clear the Land of all improvements, structures, rubbish and debris.
- (e) In the event of a natural disaster (including but not limited to an earthquake) causing damage to the Land or to the Lessee's Improvements, or imposing an unreasonable restriction upon the Lessee accessing the Land or the Lessee's Improvements for a period of no less than one (1) month so as to make it unreasonable, and the Lessee's opinion, for the Lessee to continue using the Land for the Permitted Use then the Lessee may at its discretion terminate this Lease by giving three (3) months notice in writing to that effect to the Lessor. At the expiration of such period this Lease will come to an end and neither party will have any claim upon the other except in respect of any antecedent breach by either party. The Lessee will demolish any materially damaged Lessee's Improvements and will make good any damage to the Land caused by such removal (but not by the natural disaster, for example liquefaction or land remediation) and will leave the Land in a neat, tidy and safe condition subsequent to any such removal.

**4.10 RATING ASSESSMENTS**

The parties agree that the Lessee may at any time make application to the Territorial Authority for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

**4.11 ENTIRE AGREEMENT**

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

**4.12 DIFFERENCES AND DISPUTES**

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies under this Lease.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.06(b)(ii).

**4.13 SERVICE OF NOTICES**

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party by registered post addressed to the registered office or principal place of business of the party intended to be served; and any notice or other document given or served shall be deemed to have been given or served and received by the other party two (2) Working Days after the date of posting.

**4.14 REGISTRATION OF LEASE**

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the Lessee's expense. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

**4.15 COSTS**

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.



**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

**4.16 INTEREST**

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

**4.17 ESSENTIAL TERMS**

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) **Payment of Rental:**

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) **Assignment and Sub Leasing:**

The provisions dealing with assignment and sub leasing; or

(c) **Use of Land:**

The provisions restricting the use of the Land.

**4.18 WAIVER**

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

**4.19 RENT MORATORIUM**

If any moratorium or other law, act or regulation that (notwithstanding clause 4.06 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

**5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE**

**4.20 ARTEFACTS OR FOSSILS**

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

**4.21 EXCLUSION OF IMPLIED CONDITIONS**

The parties agree that the following covenants, conditions, and powers implied in leases of Land pursuant to Schedule 3 of the Property Law Act 2007 shall not apply to this Lease;

- (i) Schedule 3, part 2, clause 4(2) - (5);
- (ii) Schedule 3, part 2, clause 5;
- (iii) Schedule 3, part 2, clause 10;
- (iv) Schedule 3, part 2, clause 11;
- (v) Schedule 3, part 2, clause 13.

5.3 DRAFT LEASE WITH THE MINISTRY OF JUSTICE

(MINISTRY OF JUSTICE)

LESSOR:

[ ]

Correct for the purposes of the Land  
Transfer Act 1952

.....  
SOLICITOR FOR THE LESSEE

LESSEE:

HER MAJESTY THE QUEEN

acting by and through the Chief

Executive of the Ministry of Justice

Particulars entered in the  
Register as shown herein  
on the date and at the  
time endorsed below

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MEMORANDUM OF LEASE

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THE CHIEF EXECUTIVE

MINISTRY OF JUSTICE

WELLINGTON

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

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5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

[NGATI TOA LEASING ENTITY]

HER MAJESTY THE QUEEN

acting by and through the

COMMISSIONER OF POLICE

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MEMORANDUM OF LEASE

---

5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

MEMORANDUM OF LEASE

DATE:

PARTIES:

- (A) [NGATI TOA LEASING ENTITY] (Lessor)
- (B) HER MAJESTY THE QUEEN acting by and through the COMMISSIONER OF POLICE (Lessee)

THE LESSOR DOES HEREBY LEASE TO THE LESSEE and THE LESSEE DOES TAKE ON LEASE the Land for the term and at the rental set out in the Reference Schedule and subject to the covenants, conditions, agreements and restrictions set out in this Lease which comprises the Schedule of Terms, the Reference Schedule and the Schedule of Land.

IN WITNESS WHEREOF these presents have been executed this        day of        20

SIGNED for and on behalf of        )  
[NGATI TOA LEASING ENTITY]        )  
in the presence of:                )

\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

**SIGNED** for and on behalf of )  
**HER MAJESTY THE QUEEN** )  
acting by and through the )  
**COMMISSIONER OF POLICE** by )  
[ ] )  
authorised agent of the Commissioner )  
of New Zealand Police, on behalf of the )  
Commissioner of New Zealand Police )  
in the presence of: )

---

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

THE REFERENCE SCHEDULE

ITEM 1: LESSOR PARTICULARS

Name: [NGATI TOA LEASING ENTITY]  
Address:  
Fax:  
Telephone:  
Contact Person:

ITEM 2: LESSEE PARTICULARS

Name: HER MAJESTY THE QUEEN acting by and through the  
Commissioner of Police  
Address: New Zealand Police  
National Property Office  
PO Box 3017  
Wellington  
Fax: (04) 498 7414  
Telephone: (04) 474 9473  
Contact Person: National Property Manager

ITEM 3: LAND [ ]

ITEM 4: TERM Ten (10) years.

ITEM 5: DATE OF  
COMMENCEMENT [ ]

ITEM 6: FURTHER TERMS Perpetual rights of renewal, each of ten (10) years.

ITEM 7: RENEWAL DATES [ ] 20... and every tenth (10<sup>th</sup>) anniversary date  
thereafter.

ITEM 8: ANNUAL RENT \$[ ] plus GST

ITEM 9: REVIEW DATES 5 yearly computed from the Commencement Date of this  
lease and including each Renewal Date.

ITEM 10: PERMITTED USE For Police purposes and any permitted activity under  
the relevant Regional and District Plans or use  
permitted under any resource consent held in respect  
of the Land.



5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

THE SCHEDULE OF TERMS

1. INTERPRETATION

1.1 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:

- (i) Words importing any gender shall include all other genders.
- (ii) Words importing the singular shall include the plural and vice versa.
- (iii) Payments shall be made in the lawful currency of New Zealand.
- (iv) Headings are for ease of reference only and do not in any way limit or govern the construction of the terms of this Lease.
- (v) References to schedules are references to schedules in this Lease and clauses are references to clauses in this Schedule of Terms and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) unless expressly stated otherwise.
- (vi) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
- (vii) A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise in each case whether or not having separate legal personality.
- (viii) "writing" shall include words visibly represented or reproduced.
- (ix) No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.
- (x) Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
- (xi) The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
- (xii) The parties acknowledge and agree that certain covenants set out in this Lease (in particular provisions relating to the treatment of Improvements on termination or sooner determination of this Lease) shall continue beyond determination of this Lease for the benefit of the parties notwithstanding such determination.
- (xiii) This Lease shall be construed and take effect in accordance with the laws of

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

New Zealand.

- (xiv) Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- (xv) Any reference in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly.
- (xvi) "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Improvements.
- (xvii) "Business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday.
- (xviii) "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- (xix) "Improvements" means all Improvements excluding Lessor's Improvements whether constructed or installed on the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, signage, fixtures and fittings.
- (xx) "The Land" means that land described in the Schedule of Land excluding the Improvements.
- (xxi) The expression "Lessor" and "Lessee" includes their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) and where the context permits the Lessee includes the Lessee's Sublessees and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee).
- (xxi) "Lessor's Improvements" means work done or material used on or for the benefit of the Land (whether before or during the term of this Lease including any renewal or variation extending the term of this Lease) in:
  - (a) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
  - (b) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
  - (c) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
  - (d) the alteration of soil fertility or of the structure of the soil; or
  - (e) the arresting or elimination of erosion or flooding.
- (xxiii) "Reference Schedule" means the schedule preceding this Schedule of Terms described as such and forming part of this Lease.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

- (xxiv) "Regional Plan" and "District Plan" shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and "Regional and District Plans" shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (xxv) "Schedule of Land" means the schedule described as such and forming part of this Lease.
- (xxvi) "Schedule of Terms" means this schedule described as such and forming part of this Lease.

**2. TERM**

The term of this Lease shall commence on the Date of Commencement and shall be for the period specified in Item 4 of the Reference Schedule.

**3. RIGHT OF RENEWAL OF LEASE**

- 3.1 If the Lessee has not been in any material breach of this Lease and has given to the Lessor written notice to renew this Lease at least six (6) calendar months before the end of each term, then the Lessee shall have the right, in accordance with the provisions hereinafter contained, to obtain a renewed lease of the Land for the term of years specified in Item 6 of the Reference Schedule, computed from the relevant date specified in Item 7 of the Reference Schedule and subject to the same covenants and provisions expressed and implied in this Lease.
- 3.2 If the Lessee fails within the time aforesaid to give any notice under Clause 3.1 as to whether it desires a renewed lease and the Lessor at any time after such expired time has given one month's written notice to the Lessee advising the Lessee that it has one further month from the date of such letter to exercise its right of renewal, and the Lessee still fails to advise the Lessor of its desire to renew, then the Lessee shall be deemed to have given notice that a renewed lease is not required. If the Lessee gives notice in writing that it does not desire a renewed lease or there is a deemed notice that a renewal is not required then its right for a renewed lease shall cease on expiry of the one month notice period aforesaid or on the date at which notice is received by the Lessor (as the case may be).
- 3.3 Any notice by the Lessee under clause 3.1 or clause 3.2 of its desire to accept a renewed lease shall be deemed to constitute a contract between the Lessor and the Lessee for the granting and acceptance of a renewed lease at the rent to be determined under Clause 5 for the term and subject to the covenants and provisions referred to in Clause 3.1.
- 3.4 The term of any renewed lease shall run from the day immediately after the expiry of the prior lease, and the rent thereunder shall accrue from that date instead of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date. Clause 5.11 shall otherwise apply.
- 3.5 The Lessor shall prepare each memorandum of renewal of this Lease and the Lessee will forthwith enter into and execute such memorandum of renewal of lease.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

**3.A. RIGHT OF EARLY TERMINATION**

3.6 Notwithstanding clauses 2 and 3, it is agreed that the Lessee may at any time at its sole discretion terminate this Lease by providing to the Lessor not less than 24 months notice in writing to that effect, provided that no such notice may be given during the initial ten year term of this Lease. The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

**4. RENT**

4.1 The Lessee shall pay the annual rent specified in Item 8 of the Reference Schedule from the Date of Commencement until the rent is varied under Clause 5 at which time the Lessee will pay rent at the varied rate.

4.2 Rent shall be paid on the first day of each month by equal monthly payments in advance with broken period payments due on a proportionate basis for any broken period at the Date of Commencement and on expiry of the Lease term.

4.3 All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.

**5. RENT REVIEW PROVISIONS**

5.1 In this clause "Initiating Party" means the party that gives the Notice defined in Clause 5.2 and "Recipient" means the party that receives that Notice.

5.2 The annual rent may be reviewed by the Lessor or by the Lessee on the dates specified in Item 9 of the Reference Schedule. At any time not earlier than three (3) months prior to the relevant date specified in Item 9 of the Reference Schedule (each of such dates being called the "review date") either party may give notice in writing to the other ("the Notice") of that party's assessment of the annual rent of the Land to apply from that particular review date.

5.3 The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:

(i) Disregard:

- (a) any deleterious condition of the Land if such condition results from any breach of this lease by the Lessee;
- (b) the value of any goodwill attributable to the Lessee's business; and
- (c) all Improvements made to the Land.

(ii) Have regard to:

- (a) the Lessor's Improvements; and
- (b) the permitted use under this Lease; and
- (c) Regional and District Plans.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

- 5.4 In the event that the Recipient does not agree with the Initiating Party's assessment of the annual rent of the Land to apply from the particular review date, the Recipient shall notify the Initiating Party in writing ("the Counter Notice") within twenty-one (21) days (in which respect time shall be of the essence) that the Recipient requires such rent to be determined in accordance with Clause 5.7 and the Recipient shall set out in the Counter Notice the amount which the Recipient considers to be the annual rent as at the particular review date.
- 5.5 Unless such notice is given by the Recipient within twenty-one (21) days, then the amount stated in the Notice shall become the annual rent of the Land reserved by this Lease as and from the particular review date in substitution of the previous amount payable.
- 5.6 Neither party shall by reason of its failure to give the Notice prior to any review date forfeit its right to have the annual rent reviewed as from that particular review date and the reviewed annual rent which should have been paid from that particular review date shall date back to and be payable from that particular review date and any payment of or receipt for the payment of ground rent due on or after a particular review date shall not prejudice either party's right to demand repayment or payment thereafter of any additional annual rent overpaid or payable pursuant to the provisions of Clause 5.7(ii).
- 5.7 Where the Counter Notice is given, the Lessor and Lessee shall enter into negotiations to resolve the dispute. Should agreement not be reached within fourteen (14) days (or such longer period as the Lessor and Lessee shall agree upon in writing) after the date on which the Recipient gives the Counter Notice then:
- (i) The Lessor and Lessee shall, within twenty-one (21) days after the date on which the Recipient gives the Counter Notice, each appoint a valuer to jointly determine the ground rent of the Land. A valuer nominated by either party pursuant to this Clause shall be a full registered member of the New Zealand Institute of Valuers and shall be competent to practice as a valuer of ground leases and shall have at least five (5) years experience in valuing ground leases within the district in which the Land is situated and be active in the market at the time of his or her appointment.
  - (ii) If either the Lessor or the Lessee fails to appoint a valuer within twenty-one (21) days as aforesaid, then the determination of the annual rent shall be made by the sole valuer as nominated by either the Lessor or Lessee as the case may be, within one (1) month of the expiry of the twenty-one (21) days as aforesaid and his or her determination shall be final and binding on both parties as if his or her appointment had been by consent.
  - (iii) Before proceeding with their determination, the said valuers shall agree upon and appoint an umpire (also qualified in the manner referred to in Clause 5.7(i)) and obtain the umpire's acceptance in writing of his or her appointment and who, as a condition of his or her acceptance, undertakes to hand down his or her determination of the annual rent within one month of being instructed to proceed or such other time period as the Lessor and Lessee may agree, whichever is the latest.
  - (iv) If the said valuers within fourteen (14) days of the date of their appointment either fail to appoint an umpire or are unable to agree upon an umpire, then either the Lessor or the Lessee may request the President, for the time being, of the New Zealand Institute of Valuers or any successor to such Institute to

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

appoint an umpire (also qualified in the manner aforesaid) and obtain the umpire's acceptance in writing of his or her appointment and who as a condition of his or her acceptance undertakes to hand down his or her determination of the annual rent in the same manner as if he or she had been appointed pursuant to Clause 5.7(i).

- (v) Subject to Clauses 5.7(ii), 5.7(iii) and 5.7(iv) the valuers so nominated shall within one (1) month of the date of appointment jointly determine the annual rent as at that particular review date.
- (vi) In the event that either valuer fails to provide to the other valuer his or her written assessment of the annual rent within one month of the date of appointment, then the annual rent shall be determined by the other valuer and his or her determination shall be final and binding on both parties.
- (vii) If the said valuers are unable to agree upon a determination within one month of their appointment or within such extended time as the Lessor and Lessee may agree, then the annual rent shall be determined by the umpire whose determination shall be final and binding on the parties. The umpire shall without limiting his or her enquiries and conduct of any hearing:
  - (a) arrange for a hearing to be conducted without delay;
  - (b) call for evidence in chief to be presented on behalf of each party to be circulated prior to a hearing;
  - (c) allow representation of each party and cross-examination of evidence and any re-examination of evidence at the hearing;
  - (d) have due regard to any evidence submitted by the valuers as to their assessment of the annual rent;
  - (e) take into account any expert witness evidence considered relevant to the hearing;
  - (f) have regard to the legal rules of evidence and the interests of natural justice in the conduct of any hearing as between the parties;
  - (g) give in his or her determination the reasons therefor in writing.
- (viii) The costs incurred in the determination pursuant to Clause 5.7 of the annual rent shall be borne by the parties in the following manner:
  - (a) subject to Clause 5.7(viii)(b) each party shall be responsible for the cost of its own appointed valuer;
  - (b) where the determination is made by a single valuer pursuant to Clause 5.7(ii) the cost of his or her determination shall be apportioned equally as between the Lessor and Lessee;
  - (c) the parties shall share equally the costs of the umpire unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this Clause 5.7 in which case the umpire may determine the manner in which such costs shall be apportioned between the parties PROVIDED THAT in all cases if the annual rent to

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

apply from the review date is:

- (1) equal to or exceeding the annual rent nominated in the notice given by the Lessor (whether the Notice or the Counter Notice) then all costs of the valuers and the umpire (where applicable) shall be borne by the Lessee alone, or
- (2) equal to or less than the annual rent nominated in the notice given by the Lessee (whether the Notice or the Counter Notice) then all costs of valuers and the umpire (where applicable) will be borne by the Lessor alone;
- (3) other than the foregoing then all costs of valuers and the umpire (where applicable) will be borne equally by the Lessor and the Lessee.

- 5.8 The valuers or umpire shall be deemed to be acting as experts and not as arbitrators.
- 5.9 Any variation in the annual rent resulting from such determination shall take effect on and from that particular review date.
- 5.10 Notwithstanding any other provision of this lease, the annual rent payable from a rent review date shall:
- (a) not be less than the annual rent payable as at the commencement date of the immediately preceding lease term where the rent review date coincides with a Renewal Date; and
  - (b) shall not be less than the annual rent payable as at the commencement date of the then current lease term where a rent review date does not coincide with a Renewal Date.
- 5.11 Where a review pursuant to this Clause 5 of the annual rent reserved by this Lease is completed after the review date, then:
- (i) Pending completion of the review, annual rent shall be paid at the rate prevailing immediately prior to the relevant review date;
  - (ii) On completion of the review, any increased annual rent payable as from the review date shall be paid by the Lessee to the Lessor no later than the date on which the next instalment of annual rent is payable hereunder;
  - (iii) On completion of the review, any overpayment of annual rent paid as from the review date shall be held by the Lessor to the Lessee's credit on account of annual rent next falling due for payment unless the Lessee requests the Lessor in writing to refund such payment in which case the Lessor will comply with that request.
- 5.12 If any moratorium or other law Act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at the review date then if and whenever such moratorium is lifted or the law, Act or regulation is repealed or amended so as to permit the annual rent to be reviewed then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, Act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed review date but any

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

subsequent rent review shall take place on the next following review date fixed in accordance with Clause 5.

- 5.13 Immediately upon the parties agreeing to pay a revised annual rent or on determination under Clause 5.7 the Lessee shall enter into an appropriate registrable Memorandum of Variation of Lease recording such revised annual rent prepared by the Lessor.

**6. CHARGES**

- 6.1 The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.
- 6.2 The Lessor will pay for all costs of service, installation, maintenance and connection to the nearest approved local authority connection points.

**7. PAYMENT OF RATES AND IMPOSITIONS AND OTHER OUTGOINGS**

- 7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.
- 7.2 In addition to the charges and costs referred to in clause 6, and in clause 7.1, the Lessee shall pay all costs associated with the repair and maintenance of the Land including without limitation the maintenance of grounds and gardens, and the repair, maintenance or replacement of any fencing on or about the Land.

**8. GOODS AND SERVICES TAX**

The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefore including all amendments and any enactments in substitution therefore or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease (including the payment of annual rent) or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**9. INTEREST ON OVERDUE RENT OR OTHER MONEYS**

Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such unpaid moneys shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such moneys at a rate equal to the bank overdraft rate of the Lessor's bank at the time of any default, plus a margin of 4%, and the said interest shall be recoverable in the same manner as rent in arrears.



**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

**10. USE OF THE LAND AND IMPROVEMENTS**

- 10.1 The Lessee shall be permitted the right to carry on the business specified in Item 10 of the Reference Schedule.
- 10.2 Should any of the uses of the Land and any Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.
- 10.3 Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority such as required under section 348 of the Local Government Act 1974, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.
- 10.4 Despite any other provision in this Lease, if at any time during the term of this Lease, the Land cannot be, or can no longer be lawfully used for Police purposes, the Lessee may terminate this Lease on giving reasonable notice to the Lessor. This clause will only apply while Her Majesty the Queen acting by and through the Minister of Police is the Lessee under this Lease.

**11. NO FENCING**

The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any land owned or occupied by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee of the Lessor of any adjoining land.

**12 STATUTORY REQUIREMENTS**

- 12.1 The Lessee must comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- (i) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;
  - (ii) comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
  - (iii) ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

12.2 The Lessee shall not, during the term of this Lease:

- (i) Make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (ii) Suffer insolvency, bankruptcy or liquidation;
- (iii) Suffer distress or allow execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court in a sum in excess of twenty five thousand dollars (\$25,000.00) provided however that this subclause 12.2(iii) shall have no application or effect whilst Her Majesty the Queen Acting By and Through the Minister of Police is the Lessee hereunder.

**13 ASSIGNMENT OR SUBLETTING**

13.1 The Lessee will not without the previous consent in writing of the Lessor assign or transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee or transferee or sublessee. Notwithstanding this Clause where the Crown (as that term is defined in section 2 of the Public Finance Act 1989) remains as the Lessee under this Lease and in occupation from the Lessor the consent of the Lessor shall not be required when another Crown entity assumes occupation of all or any part of the Land except that on each occasion that a different Crown entity (as defined in section 7(1) of the Crown Entities Act 2004) or other Crown body or state owned enterprise assumes the role and obligations of the Lessee under this Lease the Lessee shall notify the Lessor in writing of that change.

13.2 In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the directors and/or the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form reasonably acceptable to the Lessor.

13.3 Clause 13 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.

13.4 For the purposes of Clause 13.1 any proposed change in the shareholding of the Lessee or any amalgamation under Section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in Clause 13.5.

13.5 For the purposes of Clause 13.1 any proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control in the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this Clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.

13.6 Where any assignment or transfer of this Lease is consented to by the Lessor, (including any assignment or transfer to a Crown entity or a State Owned Enterprise)

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessor's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.

- 13.7 Notwithstanding any Rule of Law or anything herein expressed or implied to the contrary where Her Majesty the Queen acting by and through the Minister of Police in New Zealand as Lessee assigns this Lease under the provisions of this clause 13, all the liabilities of the Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other moneys or the future observance or performance of any of the Covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of the Assignment thereof, but without releasing the Lessee from liability for any antecedent breach thereof.

**14. LESSEE'S ACKNOWLEDGEMENT OF RISK**

The Lessee agrees to occupy and use the Land and any Improvements at the Lessee's risk and release to the full extent permitted by law the Lessor its employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Improvements thereon except where the Lessor or any person under the control of the Lessor is at fault or negligent through their own acts or omissions.

**15. QUIET ENJOYMENT/REPUDIATION**

- 15.1 Provided the Lessee performs and observes the covenants provisos conditions and agreements contained in this Lease the Lessee shall peaceably hold and enjoy the Land and Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease. For the avoidance of doubt, the phrase "person or persons claiming under the Lessor" does not include beneficiaries of any trust of which the Lessor is trustee.
- 15.2 The Lessor is to compensate the Lessee and the Lessee shall be entitled to recover any damages for any loss or damage suffered by reason of any acts or omissions of the Lessor constituting a repudiation of the Lease or the Lessor's obligations under the Lease. Such entitlement shall subsist notwithstanding any cancellation or early termination of the Lease and shall be in addition to any other right or remedy which the Lessee may have.

**16 REGISTRATION**

- 16.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 1952.
- 16.2 The Lessee will be responsible for survey and other costs incurred in obtaining registration of this Lease.

**17. IMPROVEMENTS DURING LEASE**

- 17.1 Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

the Lessor and the Lessee otherwise agree in writing.

- 17.2 Throughout the term of this Lease and on any renewal the Lessee shall have the right to remove, alter, construct and demolish any Improvements on the Land without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Improvements on the Land are satisfied.

**18. IMPROVEMENTS ON TERMINATION OF LEASE**

- 18.1 No later than twelve (12) months prior to the expiry of any ten (10) year term of Lease the Lessee may give notice ("the Lessee's Transfer Notice") to the Lessor specifying any Improvements which the Lessee wishes to transfer to the Lessor following expiry of the Lease or renewal. The Lessee's Transfer Notice shall contain details of those Improvements, their current market value and the proposed terms of transfer of the Improvements.
- 18.2 The Lessor agrees to consult with the Lessee regarding the Improvements specified in the Lessee's Transfer Notice, and to consider any proposal to transfer such Improvements. Nevertheless, the Lessee acknowledges that nothing in this clause or in the Lessee's Transfer Notice shall oblige the Lessor to take a transfer of, or to pay any compensation or consideration for, such Improvements.
- 18.3 If no agreement is reached regarding the transfer of Improvements pursuant to this clause (before six months prior to the expiry of the Lease, or before the earlier termination of the Lease), the following provisions of this Clause 18 shall apply.
- 18.4 On termination of this Lease (whether by expiry of time or otherwise) except where the Lessee has exercised any rights of renewal, the Lessee may, but shall not be required by the Lessor to, remove any Improvements specified in a written notice ("the Lessee's Removal Notice") given to the Lessor in accordance with Clause 18.5.
- 18.5 The Lessee shall be under no obligation to give a Lessee's Removal Notice, but any such Notice to be effective shall be given no later than three (3) months prior to the expiry of the term (time being of the essence) or one (1) month after any sooner termination.
- 18.6 The Lessee must remove all Improvements specified in the Lessee's Removal Notice within six (6) months from the date of termination (time being of the essence) and must ensure within that time that all services to any Improvements are properly and lawfully disconnected, the Land under any Improvements is adequately filled with soil so that the surface of the Land is stable and restored to the Lessor's reasonable satisfaction and such Land is otherwise grassed and left in a neat and tidy condition.
- 18.7 If the Lessee fails to remove any Improvements specified in the Lessee's Removal Notice in accordance with Clause 18.6 then the Lessor may remove them and all costs and expenses incurred directly and indirectly shall be recoverable against the Lessee.
- 18.8 Any Improvements remaining on the Land after the period referred to in Clause 18.6 not specified in the Lessee's Renewal Notice shall become the property of the Lessor without any compensation or other payment whatsoever to the Lessee.
- 18.9 The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease until it has met its obligations under Clause 18.6.
- 18.10 Whenever resource consent is required to remove or demolish any Improvements the

#### 5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE

Lessee shall use all reasonable endeavours to obtain all necessary consents and shall continue to be obliged to pay rent and outgoings under this Lease until such time that the Lessor is satisfied on reasonable grounds that the Lessee has used all reasonable endeavours to obtain all necessary consents and produced to the Lessor evidence satisfactory to the Lessor to satisfy this requirement.

#### 19. DESTRUCTION AND REDEVELOPMENT

19.1 The Lessee shall be entitled to carry out repairs, demolition, relocation, additions, reinstatement or redevelopment to any Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to demolish, relocate, redevelop, replace or add to any Improvements on the Land provided the following conditions are or will be satisfied:

- (i) any repair, demolition, relocation, addition, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
- (ii) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;

and, on satisfaction of such conditions, the Lessee shall repair, demolish, relocate, reinstate, rebuild or add to (as the case may be) any Improvements or such part of Improvements requiring such work, in accordance with the conditions set out above.

19.2 In the event that the Lessee is prevented or unable to reinstate or rebuild in the event of total or partial destruction it may terminate this Lease on giving three month's notice in writing to the Lessor, provided that the Lessee demolishes the Improvements and clears and restores the Land all in accordance with the requirements of Clause 18.6.

#### 20 NOTICES

20.1 All notices must be in writing and must be served by one of the following means:

- (i) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (ii) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
  - (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - (b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile transmission.

20.2 All notices to be given to the Lessor or to the Lessee hereunder shall be deemed sufficiently served:

- (i) in the case of personal delivery, when received by the addressee at the address detailed in clause 20.3; and
- (ii) in the case of posting by registered mail, on the third working day following the date of posting to the addressee at the address detailed in clause 20.3; and

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

- (iii) in the case of facsimile transmission, on the working day following the date of sending to the addressee's facsimile number designated in clause 20.3 provided that the sender produces a confirmation notice that the facsimile has been sent on that day.

**20.3 Details for Notices:**

**[Ngati Toa Leasing Entity]**

[insert address / contact details]

**New Zealand Police**

The District Commander  
Central Region  
Private Bag 11040  
Palmerston North

Fax: 06 350 3865

- 20.4 A notice shall be valid if given by the duly authorised representative of the party giving the notice. If a notice is not given by the Lessor, it is to be supported by satisfactorily written delegation from the Lessor confirming the appointment of the party giving the notice.

**21. DEFAULT BY LESSEE**

- 21.1 The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the land at the time or any time thereafter:

- (i) If the rent shall be in arrear twenty (20) working days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
- (ii) In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with Section 246 of the Property Law Act 2007;

and the term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

**22. DISPUTE RESOLUTION**

- 22.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

- 22.2 If the parties cannot resolve a dispute or difference within fifteen (15) business days of any dispute or difference arising then, unless otherwise expressly provided in this

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).

- 22.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 22.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.
- 22.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

**23. COSTS**

- 23.1 The parties shall each pay their own solicitors' costs of preparing, negotiating, and finalising this Lease, or any renewal or variation of this Lease.
- 23.2 The Lessee shall be responsible for payment of all registration fees including agency charges imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.
- 23.3 The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.

**24. LESSOR'S RIGHTS TO INSPECT AND DISPLAY SIGNS**

- 24.1 The Lessor will have the right to inspect the Land no more than twice each year during the term or any renewal of this Lease with valuers or other experts and consultants provided such inspections are carried out at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. Any such inspections should be carried out in accordance with the Lessee's security and health and safety requirements and the Lessee shall have the right to change any suggested time to a mutually convenient time.
- 24.2 Notwithstanding anything else herein, the parties agree that the Lessee may require any person wishing to enter the Land for inspection purposes to first provide their details to the Lease for a security check. If the results of such check are not acceptable to the Lessee for any reason then such person may be refused entry to the Land.
- 24.3 If the Lessor desires to, or is required to, undertake any works on the Land, including any repair or maintenance works, that involves the use of contractors or other third parties, the Lessor must procure any contractor or other third party who will have access to the Land to undertake such works to:

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

- (i) Complete a security check on terms reasonably acceptable to the Lessee;
- (ii) Provide the Lessee with a copy of the contractor's Health and Safety Plan which shall be subject to the Lessee's reasonable approval prior to any work commencing; and
- (iii) Familiarise themselves with and commit to complying with the Lessee's own Health and Safety Plan in all material respects.

24.4 The Lessor will not provide or allow the provision of any information relating to the structure, or access to, the buildings on the Land in any way to any person without first obtaining the written permission of the Lessee.

24.5 The Lessee will during the period of three (3) months prior to the termination date of this Lease permit the Lessor to exhibit the Land to prospective lessees or purchasers and allow the Lessor to affix to the Land appropriate sale or reletting notices.

**25. DISPOSAL OF LESSOR'S INTEREST**

25.1 Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided:

- (i) any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and
- (ii) that while Her Majesty the Queen is the Lessee and occupies the Land the following further provisions shall apply:
  - (a) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
  - (b) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
    - (1) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
    - (2) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within five (5) working days of receiving the Lessor's advice pursuant to clause 25.1(ii)(a) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (c) If the Lessor does not receive written notice from the Lessee pursuant to clause 25.1(ii) 2(1) or (2) above together with grounds to substantiate its reasonable apprehension within five (5) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (d) If the Lessee objects to the proposed Assignee in accordance with



**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

clause 25.1(ii) 2(1) or (2) above, then the Lessor shall not dispose of its interest to the proposed Assignee.

- (e) If the Lessor fails to advise the Lessee in writing of the disposal of its interest in the Land and the Lessee has objections to the proposed Assignee based on those reasons set out in clauses 25.1(ii)(3)(c) above, then the Lessee shall be entitled at any time thereafter to terminate this Lease on seven (7) days written notice and the Lessee's obligations under this Lease shall cease from the expiration of such notice.

**26. RIGHT OF FIRST REFUSAL FOR LESSOR IF LESSEE TO ASSIGN**

- 26.1
- (a) The following subclauses of this clause 26 will only apply in the event that the Lessee proposes to assign the Lessee's interests in this Lease to a party which is not a Crown entity or a State Owned Enterprise.
  - (b) If at any time before the expiration or earlier termination of the term or any renewed or extended term the Lessee wishes to assign the Lessee's interest in this Lease (including any assignment by way of sale of the Improvements) the Lessee must immediately give written notice ('Lessee's Notice') to the Lessor setting out the terms on which the Lessee wishes to assign its interest in the Lease and sell the Improvements (together 'the Lessee's Interest').
  - (c) The Lessor will have 30 Working Days following the date of receipt of the Lessee's Notice (time being of the essence) in which to exercise the Lessor's right to purchase the Lessee's Interest, by serving written notice on the Lessee ('Lessor's Notice') accepting the offer contained in the Lessee's Notice.
  - (d) If the Lessor does not serve the Lessor's Notice on the Lessee in accordance with subclause (c) then the Lessee may assign the Lessee's Interest to any other person on no more favourable terms than those previously offered to the Lessor. The provisions of clause 13 of this Lease will apply to any such assignment.
  - (e) If the Lessee wishes to offer more favourable terms for assignment of the Lessee's Interest than the terms contained in the Lessee's Notice, the Lessee must first re-offer its interest therein to the Lessor on those terms by written notice to the Lessor and clauses 26(b), (c) and (d) (inclusive) shall apply. If the re-offer is made within 6 months of the initial Lessee's Notice, the 30 Working Day period for acceptance shall be reduced to 15 Working Days.

**27. HOLDING OVER**

If the Lessor permits the Lessee to remain in occupation of the Land after the expiration or sooner determination of this Lease, such occupation shall be a tenancy at will only terminable by twenty (20) working days written notice at the rent then payable per month for the Land and otherwise on the same covenants and agreements (so far as applicable to a tenancy at will) as herein expressed or implied.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

**28. EXCLUSION OF IMPLIED PROVISIONS**

28.1 The following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 10 - Premises unable to be used for particular purpose;
- (b) Clause 11 - Power to inspect premises;
- (c) Clauses 13(2) and 13(3) - Lessee to keep and yield up premises in existing condition.

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

**SCHEDULE OF LAND**

**5.4 AGREED FINAL FORM OF LEASE WITH THE NEW ZEALAND POLICE**

**LEASE OF FREEHOLD**

Correct for the purposes of the Land  
Transfer Act 1952

**[NGATI TOA LEASING ENTITY]**

Lessor

**HER MAJESTY THE QUEEN**

acting by and through the

**COMMISSIONER OF POLICE**

Lessee

Particulars entered in the Register  
on the date and at the time recorded

District Land Registrar Assistant of  
the Wellington Land Registry

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**6. ENCUMBRANCES FOR LICENSED LAND PROPERTIES**

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**Clause [6.18.2]**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.1 TYPE A ENCUMBRANCE

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.1: TYPE A ENCUMBRANCE

Approved by Registrar-General of Land under No. 2007/6225  
**Easement instrument to grant easement or *profit à prendre*, or create land covenant**  
*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

BARCODE

Grantor

Surname must be underlined or in CAPITALS

[Name of Trustee] of the Toa Rangatira Trust

Grantee

Surname must be underlined

HER MAJESTY THE QUEEN in right of New Zealand acting by and through the MINISTER OF CONSERVATION

Grant of easement or profit à prendre or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

Signature of [common seal] of Grantor	<b>Signed in my presence by the Grantor</b>
	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

Signature of [common seal] of Grantee	<b>Signed in my presence by the Grantee</b>
	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

\*If the consent of any person is required for the grant, the specified consent form must be used.  
REF: 7003 - AUCKLAND DISTRICT LAW SOCIETY

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**Annexure Schedule 1**

Easement instrument Dated  Page  of  Pages

**Schedule A**

*(Continue in additional Annexure Schedule if required.)*

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	[to be inserted]	[to be inserted]	In gross

*Delete phrases in [ ] and insert memorandum number as required.  
Continue in additional Annexure Schedule if required.*

**Easement or profits à prendre  
rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are ~~[varied]~~ ~~[negatived]~~ ~~[added to]~~ or ~~[substituted]~~ by:

[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952].

[the provisions set out in Annexure Schedule 2].

**Covenant provisions**

*Delete phrases in [ ] and insert memorandum number as required.  
Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952].

[Annexure Schedule 2].

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

REF: 7003 - AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2003/5041  
Annexure Schedule



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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(Continue in additional Annexure Schedule, if required.)

**1 DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions:**

In this Easement Instrument, unless the context otherwise requires:

["**Crown Forestry Licence**" means a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantor's Land and includes the successors and assigns of the Crown Forestry Licensee;]

*[These definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

"**Her Majesty the Queen** in right of New Zealand acting by and through the Minister of Conservation" includes the servants, tenants, agents, workmen, licensees and invitees of the Minister but does not include members of the general public.

**1.2 Construction**

In the construction of this Easement Instrument unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Easement Instrument;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

**2 GRANT OF ACCESS RIGHTS**

2.1 The Grantor hereby grants to the Grantee a right of way in gross over that part of the Grantor's Land shown marked [Insert details] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement Instrument.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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*(Continue in additional Annexure Schedule, if required.)*

2.2 In consideration of the Grantor agreeing to enter into this Easement Instrument the Grantee shall duly observe the obligations imposed on it under this Easement Instrument.

**3 OBLIGATIONS OF THE GRANTEE**

The rights and powers conferred under clause 2 are granted subject to the following conditions and obligations:

3.1 The Grantee shall when passing or repassing over the Grantor's Land:

3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;

3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):

(a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and

(b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

**If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.**

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*(Continue in additional Annexure Schedule, if required.)*

- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Easement Instrument that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

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3.7.4 change the nature of the road surface; or

3.7.5 park or store equipment or material on the Grantor's Land,

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.

3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.

3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.

3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

3.11 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement Instrument.

**4 GRANTOR'S RIGHTS**

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

**If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.**

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5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the preparation, registration and enforcement of any provision in this Easement Instrument.

6. LICENCE *[this clause will be omitted if there is no Crown forestry licence at the time the easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantor's Land and this Easement Instrument is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement Instrument.

7 ASSIGNMENT

7.1 The Grantee may assign its rights and obligations under this Easement Instrument to any one of the following who acquires land for an estate or interest in land from the Grantee and requires rights under this Easement Instrument as the means of providing reasonable access to that land:

7.1.1 any Crown entity as defined in section 2(1) of the Public Finance Act 1989;

7.1.2 any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986;

7.1.3 any person who holds the land in trust for the Grantee; or

7.1.4 any other person with the prior consent of the Grantor, which shall not be unreasonably withheld.

7.2 As from the date of assignment the Grantee shall cease to have any liability whatsoever in respect of this Easement Instrument and the Grantor agrees to release the Grantee from all obligations under this Easement Instrument from that date, but only if the assignee enters into a deed of covenant with the Grantor agreeing to be bound by the terms of this Easement Instrument from the date of release of the Grantee.

8 DELEGATION

All rights, benefits, and obligations of a party to this Easement Instrument arising under this Easement Instrument may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement Instrument.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

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**9 NOTICES**

9.1 Any notices to be given by one party under this Easement Instrument to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

9.1.1 the Grantor's address as set out in paragraph 1 of the First Schedule; and

9.1.2 the Grantee's address as set out in paragraph 2 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement Instrument which shall remain in full force.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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**6.2 TYPE B ENCUMBRANCE**

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6.2: TYPE B ENCUMBRANCE

Date

**PARTIES**

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the "**Grantor**")
- 2 [Insert name of \_\_\_\_\_ governance entity] (the "**Grantee**")

**BACKGROUND**

- A. The Grantee wishes to enter upon and cross the Grantor's Land for the purpose of gaining access to and egress from the Grantee's Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor's Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee's Land on the terms and conditions set out in this Deed.

**BY THIS DEED IT IS AGREED AND DECLARED** as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions:** In this Deed, unless the context otherwise requires:

"**Commencement Date**" means the date first written above;

"**Deed**" means this deed, the **Background** and the Schedule annexed hereto;

"**Grantee**" also includes the registered proprietors of the Grantee's Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

"**Grantor**" also includes the other registered proprietors from time to time of the Grantor's Land;

"**Grantee's Land**" means the land described in paragraph 3 of the First Schedule;

"**Grantor's Land**" means the land described in paragraph 1 of the First Schedule and includes any part thereof;

*[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

"**Crown Forestry Licence**" means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantee's Land and includes the employees, agents, contractors and successors and assigns of the **Crown Forestry Licensee**;



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
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6.2: TYPE B ENCUMBRANCE

- 1.2 **Construction:** In the construction of this Deed unless the context otherwise requires:
- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
  - 1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Deed;
  - 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
  - 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

**2 GRANT OF ACCESS RIGHTS**

- 2.1 Pursuant to section [enter appropriate section and title of settlement legislation] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor's Land shown marked [ ] on DP [ ] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.
- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

**3 OBLIGATIONS OF THE GRANTEE**

The rights and powers conferred under clause 2 of this Deed are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:
- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
  - 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);
  - 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
  - 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.2: TYPE B ENCUMBRANCE

- 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):
- (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
  - (b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.
- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.1.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land,

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.2: TYPE B ENCUMBRANCE

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.

- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section [**enter appropriate section and title of settlement legislation**], this easement will be enforceable in accordance with its terms, notwithstanding Part 3B of the Conservation Act 1987.

4 **GRANTOR'S RIGHTS**

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage PROVIDED THAT the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

5 **COSTS**

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

6 **LICENCE**

[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.2: TYPE B ENCUMBRANCE

**7 REGISTRATION**

The parties shall take and do all such acts and things necessary to ensure that this Deed (or an Easement Instrument Grant of Right of Way on substantially the same terms) is registered as soon as the Registrar-General of Land confirms that this Deed, or such an easement instrument, can be registered against the Grantor's Land.

**8 DELEGATION**

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party PROVIDED THAT the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

**9 NOTICES**

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

**11 DISPUTES RESOLUTION**

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the New Zealand Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.2: TYPE B ENCUMBRANCE**

11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

**IN WITNESS WHEREOF** this Deed has been duly executed on the date first written above.

**SIGNED** for and on behalf of )  
**HER MAJESTY THE QUEEN** )  
as Grantee by: )  
[ ] )  
the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** for and on behalf of the )  
**TOA RANGATIRA TRUST** )  
as Grantor by: )  
[ ] )  
in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.2: TYPE B ENCUMBRANCE

**FIRST SCHEDULE**

1. **GRANTOR'S LAND:**

*[enter details]*

2. **GRANTOR'S ADDRESS:**

Department of Conservation

*[enter details]*

3. **GRANTEE'S LAND:**

*[enter details]*

4. **GRANTEE'S ADDRESS:**

Toa Rangatira Trust

*[enter details]*

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.3 TYPE C ENCUMBRANCE**

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.3: TYPE C ENCUMBRANCE

**Form 3**  
**Easement instrument to grant easement or *profit à prendre*,**  
**or create land covenant**

*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Nelson

BARCODE

Grantor

*Sumame must be underlined*

[insert trustee names of] Ngati Toa Settlement Trust

Grantee

*Sumame must be underlined*

[insert trustee names of] Te Ātiawa o Te Waka-a-Māui Trust

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or **creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantee

**Certified correct** for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.3: TYPE C ENCUMBRANCE

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 2 of [7] pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	Marked "[ ]" on SO [ ]	Section [ ] SO [ ]	Section [ ] SO [ ]

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are **varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

6.3: TYPE C ENCUMBRANCE

**Annexure  
Schedule 2**

**Right of Way**

1. The Grantor grants to the Grantee the right of way over that part of the Servient Land described as [ ] on survey office plan [ ] ("the Easement Land").

**Right of Way Easement Terms and Conditions**

2. The Grantee shall have the full, free, uninterrupted and unrestricted right, liberty and privilege to pass and re-pass from time to time and at all times, on foot or with vehicles, over and along the Easement Land subject to the following conditions:
  - (a) in exercising such rights of access the Grantee shall use reasonable endeavours to minimise and avoid any unnecessary damage to the Easement Land and shall take all reasonable and proper precautions to guard against danger (including, but without limitation, fire, physical damage, disease or spread of noxious weed and pests) on the Servient Land or adjoining land, and, notwithstanding clause 3, shall immediately reinstate the Easement Land or any improvements thereon (including restoring the surface thereof and replanting vegetation) where any damage is caused in the process of exercising any rights under this Easement;
  - (b) the Grantor will at all times be entitled to maintain locked gateways across the Easement Land for the purpose of controlling other vehicular access;
  - (c) the Grantee will ensure that at all times all gates are shut and locked immediately after use;
  - (d) the Grantee will not light any fire on or adjacent to the Easement Land;
  - (e) the Grantee will not use the Easement Land for any purpose other than for access purposes;
  - (f) wherever possible, the Grantee will remain on the roads and tracks constructed on the Servient Land and when on those roads or tracks will comply with all applicable traffic laws and regulations and travel at a responsible speed across the Easement Land having due regard to the nature of the formation of the Easement Land and shall avoid inconvenience to users of any areas adjacent to the Easement Land;
  - (g) the Grantee shall not erect any structures on the Servient Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - (h) the Grantee shall take all due care when taking any welding equipment over the Servient Land and shall not use or operate or cause to be used or operated any welding equipment on the Servient Land without the prior written approval of the Grantor.

6.3: TYPE C ENCUMBRANCE

**Repair and Maintenance**

3. The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Servient Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to the Easement Land which was the sole result of the Grantor's negligent use of the Easement Land.
4. When carrying out any repairs, maintenance or improvements to a road under clause 3, the Grantee shall not:
  - (a) widen the road; or
  - (b) alter the location of the road; or
  - (c) alter the way in which the run-off from the road is disposed of; or
  - (d) change the nature of the road surface; or
  - (e) park or store equipment or material on the Servient Land,without the Grantor's prior written approval, such approval not to be unreasonably withheld or delayed.
5. If either party neglects or refuses to carry out or pay for works required in respect of the right of way on the Easement Land and reasonable agreement cannot be reached between them on the issue, then the party willing to proceed may serve notice on the other party requiring that party to join in or pay for the work and if after the expiry of twenty-one days from the delivery of the notice the party in default refuses to join in or pay for the work, then the party willing to proceed may carry out and pay for the work and the party in default shall be liable to pay its share of the cost of the work and the same may be recoverable by action at law as a liquidated debt.
6. If the Grantor or the Grantee desire to upgrade the right of way for the convenience of its servants, agents and lawful visitors then it shall first obtain the approval in writing from the other party and then proceed to carry out such works and future maintenance of those works at its own cost.
7. The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove or otherwise dispose of any forest produce on the Servient Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.
8. The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm or other offensive weapon, or kill or trap any animals or birds, over or on the Servient Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.
9. The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement.

6.3: TYPE C ENCUMBRANCE

**Licence**

10. The Grantor and the Grantee record that at the time that this Easement is granted there is a Crown Forestry Licence in respect of the Servient Land and this Easement is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement.

**Grantor not to interfere with Grantee's Rights**

11. The Grantor will not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Easement may be interfered with.

**Grantee not to interfere with Grantor's Rights**

12. The Grantee will not at any time, do permit or suffer to be done any act whereby the Grantor's use and enjoyment of the Servient Land will be interfered with.

**Dispute Resolution**

13. (a) In the event of any dispute arising between the parties in respect of or in connection with this Easement, the parties shall, without prejudice to any other right or entitlement they may have under this Easement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of
- (b) In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

**Notices**

14. All notices and communications under this Easement shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

**Surrender of Easement**

15. The Grantee shall be entitled at any time to surrender at its own cost all of the interest granted to it pursuant to this Easement. The Grantor shall execute any easement instrument to surrender easement (or similar document) in a form acceptable to the Grantor upon request by the Grantee.

**Definitions and Interpretation**

- 16.1 **Definitions:** In this Easement unless the context otherwise requires:

"**Crown Forestry Licence**" means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.3: TYPE C ENCUMBRANCE

“**Easement**” means this easement;

“**Easement Land**” means that part of the Servient Land over which the right of way under this Easement is granted marked [ ] on SO Plan [ ];

“**Grantee**” means the [the trustees from time to time of Te Ātiawa o Te Waka-a-Māui Trust] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns; and

“**Grantor**” means the [the trustees from time to time of Ngati Toa Rangatira Trust] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns;

“**Servient Land**” means all the land in [computer freehold register [ ]].

16.2 **Interpretation:** In the interpretation of this Easement, unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement;
- (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.3: TYPE C ENCUMBRANCE

Annexure  
Schedule 2

**SIGNED** as a Deed on [date]

**SIGNED** by )  
[insert trustee names of] )  
[Ngati Toa Rangatira Trust] )  
as Grantor in the presence of: )

\_\_\_\_\_  
Signature

( \_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by )  
[insert trustee names of] Te Ātiawa )  
o Te Waka-a-Māui Trust )  
as Grantee in the presence of: )

\_\_\_\_\_  
Signature

( \_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

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6.4 TYPE D ENCUMBRANCE

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.4: TYPE D ENCUMBRANCE

**Form 3**  
**Easement instrument to grant easement or *profit à prendre*,**  
**or create land covenant**

*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Nelson

BARCODE

Grantor

*Surname must be underlined*

**[insert trustee names of] Te Ātiawa o Te Waka-a-Māui Trust**

Grantee

*Surname must be underlined*

**[insert trustee names of] Ngati Toa Settlement Trust**

**Grant\* of easement or *profit à prendre* or creation or covenant**

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantor

See annexure schedule

Signed in my presence by the Grantee

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

*Address*

\_\_\_\_\_  
Signature [common seal]  
of Grantee

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
[Solicitor for] the Grantee



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.4: TYPE D ENCUMBRANCE

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 2 of [7] pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	Marked "[ ]" on SO [ ]	Section [ ] SO [ ]	Section [ ] SO [ ]

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

6.4: TYPE D ENCUMBRANCE

**Annexure  
Schedule 2**

**Right of Way**

1. The Grantor grants to the Grantee the right of way over that part of the Servient Land described as [ ] on survey office plan [ ] ("the Easement Land").

**Right of Way Easement Terms and Conditions**

2. The Grantee shall have the full, free, uninterrupted and unrestricted right, liberty and privilege to pass and re-pass from time to time and at all times, on foot or with vehicles, over and along the Easement Land subject to the following conditions:
  - (a) in exercising such rights of access the Grantee shall use reasonable endeavours to minimise and avoid any unnecessary damage to the Easement Land and shall take all reasonable and proper precautions to guard against danger (including, but without limitation, fire, physical damage, disease or spread of noxious weed and pests) on the Servient Land or adjoining land, and, notwithstanding clause 3, shall immediately reinstate the Easement Land or any improvements thereon (including restoring the surface thereof and replanting vegetation) where any damage is caused in the process of exercising any rights under this Easement;
  - (b) the Grantor will at all times be entitled to maintain locked gateways across the Easement Land for the purpose of controlling other vehicular access;
  - (c) the Grantee will ensure that at all times all gates are shut and locked immediately after use;
  - (d) the Grantee will not light any fire on or adjacent to the Easement Land;
  - (e) the Grantee will not use the Easement Land for any purpose other than for access purposes;
  - (f) wherever possible, the Grantee will remain on the roads and tracks constructed on the Servient Land and when on those roads or tracks will comply with all applicable traffic laws and regulations and travel at a responsible speed across the Easement Land having due regard to the nature of the formation of the Easement Land and shall avoid inconvenience to users of any areas adjacent to the Easement Land;
  - (g) the Grantee shall not erect any structures on the Servient Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - (h) the Grantee shall take all due care when taking any welding equipment over the Servient Land and shall not use or operate or cause to be used or operated any welding equipment on the Servient Land without the prior written approval of the Grantor.

**Repair and Maintenance**

3. The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Servient Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to the Easement Land which was the sole result of the Grantor's negligent use of the Easement Land.

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.4: TYPE D ENCUMBRANCE**

4. When carrying out any repairs, maintenance or improvements to a road under clause 3, the Grantee shall not:
- (a) widen the road; or
  - (b) alter the location of the road; or
  - (c) alter the way in which the run-off from the road is disposed of; or
  - (d) change the nature of the road surface; or
  - (e) park or store equipment or material on the Servient Land,
- without the Grantor's prior written approval, such approval not to be unreasonably withheld or delayed.
5. If either party neglects or refuses to carry out or pay for works required in respect of the right of way on the Easement Land and reasonable agreement cannot be reached between them on the issue, then the party willing to proceed may serve notice on the other party requiring that party to join in or pay for the work and if after the expiry of twenty-one days from the delivery of the notice the party in default refuses to join in or pay for the work, then the party willing to proceed may carry out and pay for the work and the party in default shall be liable to pay its share of the cost of the work and the same may be recoverable by action at law as a liquidated debt.
6. If the Grantor or the Grantee desire to upgrade the right of way for the convenience of its servants, agents and lawful visitors then it shall first obtain the approval in writing from the other party and then proceed to carry out such works and future maintenance of those works at its own cost.
7. The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove or otherwise dispose of any forest produce on the Servient Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.
8. The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm or other offensive weapon, or kill or trap any animals or birds, over or on the Servient Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.
9. The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement.

**Licence**

10. The Grantor and the Grantee record that at the time that this Easement is granted there is a Crown Forestry Licence in respect of the Servient Land and this Easement is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement.

**Grantor not to interfere with Grantee's Rights**

11. The Grantor will not at any time, do, permit or suffer to be done any act whereby the rights granted to the Grantee under this Easement may be interfered with.

6.4: TYPE D ENCUMBRANCE

**Grantee not to interfere with Grantor's Rights**

12. The Grantee will not at any time, do permit or suffer to be done any act whereby the Grantor's use and enjoyment of the Servient Land will be interfered with.

**Dispute Resolution**

13. (a) In the event of any dispute arising between the parties in respect of or in connection with this Easement, the parties shall, without prejudice to any other right or entitlement they may have under this Easement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (b) In the event the dispute is not resolved within twenty-eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any successor legislation. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

**Notices**

14. All notices and communications under this Easement shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.

**Surrender of Easement**

15. The Grantee shall be entitled at any time to surrender at its own cost all of the interest granted to it pursuant to this Easement. The Grantor shall execute any easement instrument to surrender easement (or similar document) in a form acceptable to the Grantor upon request by the Grantee.

**Definitions and interpretation**

- 16.1 **Definitions:** In this Easement unless the context otherwise requires:

"**Crown Forestry Licence**" means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Easement**" means this easement;

"**Easement Land**" means that part of the Servient Land over which the right of way under this Easement is granted marked [ ] on SO Plan [ ];

"**Grantee**" means the [the trustees from time to time of Ngati Toa Rangatira Trust] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns;

"**Grantor**" means the [the trustees from time to time of Te Ātiawa o Te Waka-a-Māui Trust] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns; and

"**Servient Land**" means all the land in [computer freehold register [ ]].

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.4: TYPE D ENCUMBRANCE

- 16.2 **Interpretation:** In the interpretation of this Easement, unless the context otherwise requires:
- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement;
  - (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
  - (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.4: TYPE D ENCUMBRANCE

**Annexure  
Schedule 2**

**SIGNED** as a Deed on [date]

**SIGNED** by )  
[insert trustee names of] )  
**Te Ātiawa o Te Waka-a-Māui Trust** as )  
Grantor in the presence of:

\_\_\_\_\_  
Signature

(  
\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by )  
[insert trustee names of] )  
**[Ngati Toa Rangatira Trust]** )  
as Grantee in the presence of:

\_\_\_\_\_  
Signature

(  
\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

---

6.5 TYPE E ENCUMBRANCE

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.5: TYPE E ENCUMBRANCE

**Form 3**

**Easement instrument to grant easement or *profit à prendre*,  
or create land covenant**

*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Wellington

BARCODE

Grantor

*Sumame must be underlined*

[insert name of trustee of Ngāti Toa Rangatira Trust]

Grantee

*Sumame must be underlined*

KAPITI COAST DISTRICT COUNCIL

Grant\* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

*Witness name*

*Occupation*

\_\_\_\_\_  
Signature [common seal]



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.5: TYPE E ENCUMBRANCE

of Grantor	Address
------------	---------

See annexure schedule	Signed in my presence by the Grantee.
	_____
	<i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>
	<i>Witness name</i>
	<i>Occupation</i>
_____	<i>Address</i>
Signature [common seal] of Grantee	

Certified correct for the purposes of the Land Transfer Act 1952.

--

[Solicitor for] the Grantee

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.5: TYPE E ENCUMBRANCE

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 1 of 7 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient land (Identifier/CT)	Dominant land (Identifier/CT or in gross)
Right to Drain Stormwater	Marked red on OTS-068-76  Subject to survey	Part Section 2 SO 446259 as shown on OTS-068-76  Subject to survey	In Gross

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers are **varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.5: TYPE E ENCUMBRANCE

initial in this box

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

---

6.5: TYPE E ENCUMBRANCE

**1. DEFINITIONS**

**1.1** In this easement instrument unless the context indicates otherwise:

"**Drain Stormwater**" means rain, spring, soakage or seepage and includes water accumulated on other land and from any public land or street.

"**Easement Facility**" means any pipes, conduits, open drains, open channels, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), as at the date of this Instrument;

"**Grantee**" means the person shown as grantee on the first page of this Instrument and where applicable includes its successors and its agents, employees, contractors, tenants, licensees and invitees;

"**Grantor**" means the person named as grantor on the first page of this Instrument and where applicable includes its successors in title and its agents, employees, contractors, tenants, licensees and invitees;

"**Servient Land**" means the servient land described in Schedule A of this Instrument;

"**Stipulated Course**" means area "A" on SO [            ].

**2. GRANT OF DRAINAGE EASEMENT**

**2.1 Rights to Drain Stormwater:** The Grantor grants to the Grantee as an easement in gross in perpetuity the right to take, convey and drain stormwater without obstruction and in any quantity through the Easement Facility via any mix of open channel or closed conduits now laid through the Stipulated Course and to discharge the stormwater beyond the Servient Land.

**2.2** The Grantee also has the right, subject to clause 3, to enter the Stipulated Course and any other parts of the Servient Land as are reasonable to do the following

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.5: TYPE E ENCUMBRANCE

work:

- 2.2.1** to inspect, maintain, repair, dig up, alter, enlarge, renew or replace the Easement Facility (including replacement with an Easement Facility of the same or larger diameter); and
- 2.2.2** to do anything else in the full exercise of the rights in this Instrument, with the Grantee's agents, contractors and employees, and with or without tools, plant, equipment, and vehicles.
- 2.3** The Grantee may leave any vehicles or equipment on the Servient Land for a reasonable period of time if work is proceeding.
- 2.4** The Grantee will ensure that any work it performs is carried out in a proper and workmanlike manner.
- 2.5** The Grantee will not be liable for, or pay any compensation for any damage to any improvements such as fences, structures, paving, surfacing, tree, shrub or plants etc that have extended or encroached upon the Stipulated Course if such damage arises due to a breach of the Grantor's obligations in clause 4 of this Instrument.
- 2.6** The Grantee has no obligation to direct, convey or lead stormwater through the Easement Facility via any mix of open channel or closed conduits through the Servient Land continuously or at all.

**3. ACCESS**

- 3.1** The Grantee's right of access in clause 2.3 may only be exercised on giving reasonable notice to the Grantor, except in an emergency.
- 3.2** When obtaining access to the Stipulated Course, the Grantee must:

  - 3.2.1** so far as is practicable, use existing driveways and other areas suitable for access;
  - 3.2.2** in exercise of the powers hereby granted, endeavour to take reasonable

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

---

6.5: TYPE E ENCUMBRANCE

and proper care not to damage the Servient Land or any property of the Grantor;

**3.2.3** reinstate the surface of the Servient Land to the same condition as soon as possible after any works have been completed, and resurface it if necessary with appropriate materials; and

**3.2.4** repair any fences or other improvements and replace any trees, shrubs and plants which have been destroyed or severely damaged on the Servient Land by the Grantee while accessing the Stipulated Course.

**4. GRANTOR'S OBLIGATIONS**

The Grantor may not:

**4.1** permit the growth of any trees, shrubs or other vegetation or the erection or establishment of any structure or surfacing whatsoever (excluding approved standard pathways, driveways and boundary fences that may cross over the Stipulated Course or Easement Facility at a right angle for a short length) on any part of the Stipulated Course, or do or permit or suffer thereon any act or acts which:

**4.1.1** in the opinion of the Grantee interfere with the Grantee's rights to this Instrument; or

**4.1.2** endanger or cause nuisance to the Grantee's operations, works, employees, agents or contractors in the course of their duties under this Instrument; or

**4.1.3** transgress any by-law of the Grantee or any statutory regulation relating to any of the Grantee's installations, works, or facilities on the Stipulated Course;

**4.1.4** change the existing surface levels of the Stipulated Course except with the Grantee's prior approval;

**4.1.5** cause or allow any damage to occur to the Easement Facility; or

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.5: TYPE E ENCUMBRANCE

4.1.6 do anything or allow anything to be done which would interfere with, or affect, the rights of the Grantee under this Instrument.

**5. MAINTENANCE**

The Grantee shall use its best endeavours to maintain the Easement Facility in the Stipulated Course so that it does not become a nuisance or a danger.

**6. NO POWER TO TERMINATE**

There is no implied power in this Instrument for the Grantor to terminate the rights granted under this Instrument due to the Grantee breaching any term of this Easement or for any other reason, it being the intention of the parties that the rights granted will continue forever unless surrendered.

**7. STATUTORY RIGHTS**

The easement rights are in substitution for those set out in the Fourth Schedule to the Land Transfer Regulations 2002, but otherwise this Instrument does not affect any statutory powers which the Grantee may have.

**8. DISPUTES**

If any dispute arises between the Grantor and Grantee about the rights in this Instrument which cannot be resolved by negotiation, the parties must submit at the request of either party to the arbitration of an independent arbitrator. This arbitrator is to be appointed jointly by the parties, and if they cannot agree on one within 14 days, by the President for the time being of the District Law Society where the Servient Land is situated. The arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any statute which replaces it. The parties' execution of this Instrument is to be treated as a submission to arbitration.

**9. GRANTEE'S RIGHTS AND OBLIGATIONS**

9.1 The Grantee may exercise and enjoy with regard to this Instrument all authorities,

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.5: TYPE E ENCUMBRANCE**

powers, rights, remedies, immunities from liability, privileges, liberties and licences contained or implied herein or (without being limited or restricted by anything herein) which it now or in the future may possess or be entitled to or have vested in it by virtue of any statute or at law. In particular nothing herein contained shall be deemed to abrogate, limit, restrict or abridge any of the rights, powers and remedies vested in the Grantee by the Local Government Act 1974 or the Public Works Act 1981 or any amendment thereto or any Act or Acts passed in substitution therefore.

**9.2** The Grantee will endeavour to maintain any installations, works and facilities in a workable and efficient state of repair for the purposes for which they are used or designed and will endeavour to prevent the same from becoming a nuisance.

**9.3** Any installations laid by the Grantee on the Easement Facility shall remain at all times the property of the Grantee subject to its exclusive supervision and control, and may at any time be removed by the Grantee in its sole discretion without incurring any liability to the Grantor except as may be herein expressly provided.

**9.4** The Grantee may assign, transfer or licence all or any part of its interest in this Instrument or part thereof without the consent of the Grantor.

**10. INDEMNITY**

The Grantee shall indemnify the Grantor against all actions, suits, proceedings, claims and demands which may be brought or made against the Grantor as a direct result of the exercise by the Grantee of any of the rights granted by this Instrument.

**11. NOTICES**

Any notice required to be given to the Grantor by the Grantee shall be deemed sufficiently served if delivered personally or sent by prepaid post to the addressee's last known address in New Zealand or in the case of a body corporate, its registered office. Any notice personally delivered or posted shall be valid if served or given under the hand of any authorised representative of the notifying party.



Annexure  
Schedule 3

# Stormwater easement



**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.5: TYPE E ENCUMBRANCE**

**SIGNED** as a Deed on [*date*]

**SIGNED** by for and on behalf of [Insert )  
name of trustee of **Ngāti Toa Rangatira** )  
**Trust]** as Grantor )

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

(  
\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by for and on behalf of **KAPITI** )  
**COAST DISTRICT COUNCIL** as Grantee )  
)

(  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**6.6 TYPE F ENCUMBRANCE**

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NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.6: TYPE F ENCUMBRANCE

**Form 3**

**Easement instrument to grant easement or *profit à prendre*,  
or create land covenant**

*Sections 90A and 90F, Land Transfer Act 1952*

Land registration district

Wellington

BARCODE

Grantor

*Surname must be underlined*

[Her Majesty the Queen in Right of New Zealand acting by and through the Minister of Conservation]

Grantee

*Surname must be underlined*

[insert name of trustee of Ngāti Toa Rangatira Trust]

**Grant\* of easement or *profit à prendre* or creation or covenant**

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this

day of

20

Attestation

See annexure schedule

Signed in my presence by the Grantor

\_\_\_\_\_  
*Signature of witness*

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.6: TYPE F ENCUMBRANCE

<hr/> Signature [common seal] of Grantor	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>  <i>Witness name</i>  <i>Occupation</i>  <i>Address</i>
--	--

See annexure schedule     <hr/> Signature [common seal] of Grantee	Signed in my presence by the Grantee  <hr/> <i>Signature of witness</i>  <i>Witness to complete in BLOCK letters (unless legibly printed)</i>  <i>Witness name</i>  <i>Occupation</i>  <i>Address</i>
---	--

Certified correct for the purposes of the Land Transfer Act 1952.

--

[Solicitor for] the Grantee

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

6.6: TYPE F ENCUMBRANCE

**Annexure  
Schedule 1**

Easement instrument

Dated

Page 1 of 7 pages

**Schedule A**

*Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement, <i>profit</i> , or covenant	Shown (plan reference)	Servient land (Identifier/CT)	Dominant land (Identifier/CT or in gross)
Right of Way, Right to Convey Electricity, Right to Convey and Drain Water, Sewage, Stormwater, Right to Convey Telecommunications and Computer Media, Right to Convey Gas	Marked red on the plan attached as Annexure Schedule 3  Subject to survey	Section 3 and Part Section 2 SO 446259. Part computer freehold register 453989.  Subject to survey	Part Section 2 SO 446259 marked 'A' and 'B' on the plan attached as Annexure Schedule 3.  Subject to survey

**Easements rights and powers (including terms, covenants, and conditions)**

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

**All signing parties and either their witnesses or solicitors must sign or**

NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.6: TYPE F ENCUMBRANCE

initial in this box

6.6: TYPE F ENCUMBRANCE

**Annexure  
Schedule 2**

**Variations to Schedule 4 of the Land Transfer Regulations 2002 in relation to this Easement**

1. Clauses 6(3)(a) and 10(1)(b) of Schedule 4 of the Regulations are amended by adding at the end "after first obtaining the prior written consent of the Grantor, such consent is not to be unreasonably withheld."
2. Clause 6(1) and (2) of Schedule 4 of the Regulations are not applicable.
3. "Easement Facility" means those items described in Clause 1 of Schedule 4 of the Land Transfer Regulations 2002 which were in place at the time this Easement was granted.

**RIGHT OF WAY TERMS AND CONDITIONS**

**Grant of Right of Way**

4. The Grantor grants to the Grantee the right of way over that part of the Servient Land described as [ ] on survey office plan [ ] ("the Easement Land") for the purposes of accessing the Dominant Land.
5. The Grantee shall have the full, free, uninterrupted and unrestricted right, liberty and privilege to pass and re-pass from time to time and at all times, on foot or with vehicles, over and along the Easement Land subject to the following conditions:
  - (a) in exercising such rights of access the Grantee shall minimise and avoid any unnecessary damage to the Easement Land and shall take all reasonable and proper precautions to guard against danger (including, but without limitation, fire, physical damage, disease or spread of noxious weed and pests) on the Servient Land or adjoining land, and, notwithstanding clause 6, shall immediately reinstate the Easement Land or any improvements thereon (including restoring the surface thereof and replanting vegetation) where any damage is caused in the process of exercising any rights under this Easement;
  - (b) the Grantor will at all times be entitled to maintain locked gateways across the Easement Land for the purpose of controlling other vehicular access;
  - (c) the Grantor will ensure that in the event locked gateways across the Easement Land are maintained, the Grantee will be supplied with keys to enable access; and
  - (d) the Grantee will ensure that at all times all gates are left as they were found.

**Right of Way Repair and Maintenance**

6. The Grantee shall pay to the Grantor upon demand any cost associated with any repair or maintenance of the Easement Land rendered necessary by the act, neglect or default of the Grantee. The costs associated with such work shall be recoverable by the Grantor as a liquidated debt.



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.6: TYPE F ENCUMBRANCE

**Access over Right of Way**

7. The Grantee acknowledges that despite the terms of this Easement for so long as the Servient Land remains subject to the Reserves Act 1977, the Grantor and members of the public have (in accordance with the Reserves Act 1977) full and unencumbered access to pass and re-pass at all times along the Easement Land.

**Definitions and Interpretation**

8. **Definitions:** In this Easement unless the context otherwise requires:

"**Dominant Land**" means [insert details once land has been surveyed].

"**Easement**" means this easement;

"**Grantee**" means the [insert name of trustee of Ngāti Toa Rangatira Trust] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns; and

"**Grantor**" means [Her Majesty the Queen in Right of New Zealand acting by and through the Minister of Conservation] and includes any licensee, lessee, its employees, contractors, invitees, successors or assigns;

"**Servient Land**" means [insert details once land has been surveyed].

9. **Interpretation:** In the interpretation of this Easement, unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement;
- (b) references to any statute, regulation or other statutory instrument or bylaw are references to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and
- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

Annexure

Schedule 3



NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE

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6.6: TYPE F ENCUMBRANCE

**SIGNED** as a Deed on [date]

**SIGNED** by for and on behalf of [HER )  
MAJESTY THE QUEEN IN RIGHT OF )  
NEW ZEALAND acting by and through )  
the Minister of Conservation] as  
Grantor

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**SIGNED** by for and on behalf of [Insert )  
name of trustee of Ngāti Toa Rangatira )  
Trust] as Grantee )

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

---

**7. MUSEUMS FOR LETTERS OF INTRODUCTION**

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**Clause 5.52**

**MUSEUMS FOR LETTERS OF INTRODUCTION**

**Regional Museums for Letters of Introduction**

- 1 Akaroa Museum Te Whare Taonga (Akaroa)
- 2 Aratoi Museum of Art and History (Masterton)
- 3 Archive of Maori and Pacific Music (Auckland)
- 4 Arts Centre of Christchurch
- 5 Auckland War Memorial Museum
- 6 Canterbury Museum (Christchurch)
- 7 Christchurch Art Gallery Te Puna o Waiwhetu
- 8 City Gallery Wellington
- 9 Fyffe House (Kaikoura)
- 10 Golden Bay Museum and Gallery
- 11 Hocken Collections Uare Taoka o Hakena (Dunedin)
- 12 Hokitika Museum
- 13 Kaiapoi Museum
- 14 Kaikoura District Museum and Archives
- 15 Kapiti Coast Museum (Waikanae)
- 16 Kawhia Regional Museum Gallery
- 17 Marlborough Provincial Museum and Archives (Blenheim)
- 18 Motueka District Museum
- 19 Museum of Wellington City and Sea
- 20 National Paleontological Research Collections, GNS Science (Wellington)
- 21 New Zealand Portrait Gallery (Wellington)
- 22 Okains Bay Maori and Colonial Museum (Banks Peninsula)
- 23 Otaki Museum
- 24 Otago Museum (Dunedin)
- 25 Otago Settlers Museum (Dunedin)
- 26 Paekakariki Rail and Heritage Museum
- 27 Pataka Museum of Arts and Cultures (Porirua)
- 28 Petone Settlers Museum Te Whare Whakaaro o Pito-One

**NGATI TOA RANGATIRA DEED OF SETTLEMENT  
DOCUMENTS SCHEDULE**

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**MUSEUMS FOR LETTERS OF INTRODUCTION**

- 29 Porirua Hospital Museum
- 30 Puke Ariki (New Plymouth)
- 31 Rotorua Museum of Art and History – Te Whare Taonga o Te Arawa
- 32 Sound Archives / Nga Taonga Korero (Christchurch)
- 33 Te Awamutu Museum
- 34 The Nelson Provincial Museum
- 35 The Suter Te Aratoi O Whakatu (Nelson)
- 36 Waikato Museum Te Whare Taonga o Waikato
- 37 Whanganui Regional Museum