

NGĀTI TUWHARETOA (BAY OF PLENTY)

and

HER MAJESTY THE QUEEN

in right of New Zealand

**DEED OF SETTLEMENT OF THE
HISTORICAL CLAIMS OF NGĀTI
TUWHARETOA (BAY OF PLENTY)**

6 June 2003

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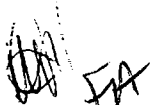
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FA

I TU TE TUTOHINGA nei i te ra 6 o te marama o Hune o te tau 2003


KI WAENGGANUI I A

- (1) NGĀTI TUWHARETOA (TE WAIARIKI)
- (2) TE ARIKINUI TE KUINI i te tika o Niu Tīreni e te Minita mo te Tari Whakatau Take e pa ana ki te Tiriti o Waitangi

E whai iho nei ko etahi waiata a Ngāti Tuwharetoa.

KARAKIA

KA HOKI NEI AU KI TO MAURI O TŌKU IWI
KEI KAWERAU KO TO KETE "POUTAMA"
KEI WAITAHANUI, KO IRAKEWA, KO TUPAI,
KO TE WHAKAKAU ARIKI
KEI OTAKAORA
KO TE WAI-U O TŌKU TIPUNA
O TUWHARETOA I TE AUPOURI
HEI WHAKAOHO AKE I TAKU MOE
KO, KO, KOIA E ARA – EEE

FA 

TAU PARAPARA

Kaore taku whiwhi taku raru
 ki taku mokopuna e tangi hoka hokai ake nei
 Heoi, me whakainu ki te wai u o ana Tupuna e tere nei
 E tu e tama, hikoi to waewae ngā tahora ka takoto
 Ko ngā pakanga ra tena a to tupuna Te Rama Apakura,
 I haere ai ki te huna i te tangata
 To whakawhitanga kei raro i te kohatu whakataka a Hine te Ariki

Opea mai ki muri e whai to kanohi whakatua ki Otakaora, ko te Parekura ra tena
 I riro ai to tupuna o Tohia o Te Rangi
 Hei aha koa te riro ai
 e rua kei te takotoranga ko Paraweranui ko Maniatutu
 Ka ea ko te mate
 e tama eee

Pinaki te haere te pou a to tupuna a Te Rangitepikitia
 Ko te aruhe ra tena i ngakia ai te mate o Tokoiwi
 I horo ai ko te pa ko Rakeihopukia i to tupuna i a Te Roropewa
 I riro mai ai ko Kupe, ko Te Rangitaunaha
 Kaati hei kupu korero mai i waenganui o nohoanga pahii o aua tangata ra,
 e tama eee

Hoki mai, i kona to taumata kei Titinaroa, to whakawhitianga a kei Parawai,
 to titahatanga kei raro o Hine Te Wai,
 ko to tupuna ra tena kei Te Huanui e takoto ana
 Tokorua tahi, ko Tuara raua ko Rangiiiria, to taumata kei Taranaki,
 ko te whakahoki ra tena a to tupuna a Te Akaurangi i hoki ai te waiora ki te iwi,
 e tama eee

To nohoanga kei Pukemaire, kai marama koe te titiro ngā tohu e rerere mai ra
 i runga o Kawerau
 Ko o tupuna ra ena, Ko Umutahi raua ko Tuwharetoa, e karanga mai nei ki a koe
 kia teretere te haere
 To turanga kei te roro o te whare, tomokia
 e tama eee

To nohoanga kei te Matapihi
 he nohoanga rangatira
 E whai to Kanohi whakaroto ki to Kuia
 Kia to Oparawa
 Kei kona te Kete rururu o Hine te Ariki
 hei whaka pange pange ana
 e whaka tange tange ai to manawa
 e tama eee

TE KAUPAPA

NGĀ WAKA

<u>Te Arawa</u>	<u>Te Rangimatoru</u>	<u>Paepae-ki-Rarotonga</u>
Taunga	Hape tumanui ki te rangi	Te Papakawheoro
Atuamatua	Tamarau	Te Ngararawhakawa
Rakauri	Tamamutu	Te Rakaupango
Ngatoroirangi	Te Iki o te rangi	Te Kotore nui o tawa
Tangihia	Te Pipirangi	Te Rakaupokapoka
Tangimoana	Te Koata	Te Huruhuru o Puketapu
Kahukura	Te Rangi kai te puanuku	Tini Kura
Takunui	Te Kohotua nui	Koutu
Mawakenui	Wheturoa	Te Papapururangi
Mawakeroa	Hine-Te-Ariki	Waitaha-Ariki-Kore
Mawake Taupo	Haahuru	
	Tuwharetoa Tangata	

E ai ki ngā korero tuku iho a Ngāti Tuwharetoa, he iwi ia e mura nei ōna ahi ka i te rohe o Te Waiariki:

Ko te tohunga ahurewa a Ngatoroirangi, i haere mai ki Aotearoa i runga i te waka Te Arawa, tetahi o ngā tīpuna nui mo Ngāti Tuwharetoa. E ai ki ngā kaumatua o Ngāti Tuwharetoa, no te taenga mai o te waka Te Arawa ki Aotearoa, i te wāhanga tōmua o te rau tau e 1300, i kuhu te waka ki te pūwaha o Te Awa-a-te-Atua, ki Te Mihimarino. Mai i reira ka ahu whaka-te-uta te waka, ka ū ki Kōpuakuku. Heke kau ana a Ngatoroirangi, ko tōna takahi tuatahi tera i te one ki Aotearoa. Koiane i te timatanga mai o Tuwharetoa, te tapuwae tūatahi i takahia e te iwi.

Kia taka ki etahi whakatipuranga, ka u te waka Te Paepae-ki-Rarotonga ki Te Moana-o-Toi-te-Huatahi mai i Rarotonga. Kotahi anake te tangata o runga i te waka, ko Waitaha-Ariki-Kore. Ka tau mai te waka ki uta i Otaramuturangi. Na ona kai-arahi na Rangīria raua ko Tuara te waka i to ki uta. Ka moe a Waitaha-Ariki-Kore i a Hine-Te-Ariki, he tīpuna nui o runga i te waka Rangimatoru. I mohio whanuitia ia mo tōna tohungatanga ki te ahua o te taiao. Ka moe ta raua tamahine a Haahuru i a Mawake Taupo, he uri whakaheke no Ngatoroirangi. Ko tona kainga i Mangawhakamana / Kaipara. Ka whānau mai ki a raua tetahi tama, ko Manaia te ingoa. Kia hipa ngā tau, i te tukuna o Mawake Taupo i tona mana ki tana tama, ka hurihia tōna ingoa Manaia ki a Tuwharetoa.

Ko Tuwharetoa te tipuna i tapāina ai te iwi. I whānau mai ia ki Te Pare-o-te-rāwahiria (kei Otamarakau), a, no muri ka noho ki Waitahanui (kei te taone o Kawerau).

Ka akona, ka Tohunga a Tuwharetoa ki ngā āhuatanga katoa o te whare wananga, a, tu ana ia hei tangata whai mātauranga, mohiotanga nui rawa atu. Me te mea ano, ka tu koia te kai-arataki mo te iwi. He kaha ano ia i roto i ngā mahi whaiwhaia.

I te wa i a Tuwharetoa, ka kaha ake te mana o ngā hapū o Ngāti Tuwharetoa. Tekau-ma-whitu ana tamariki, he maha o ratou i arataki i ngā hūnukutanga ki ngā rohe penei i a Taupo. Ko etahi i noho ki Kawerau me ona takiwa, ki reira pupuri ai i te mana o Tuwharetoa. I enei ra, e mohiotia ana ratou ko Ngāti Tuwharetoa.

Tika tonu te
Te tuki a ngā rau waka
Mai i Hawaiiiki
Ki Te Awa-a-te-Atua
Ki te koopua kuku
Ko te kukutanga
O te waka nei
Te Arawa
Titiro iho whakamuri
Ki Otaramuturangi
Ko te ūnga tanga
O te Pae Pae-ki Rarotonga
Mai te kohatu paatuki tangā
O te kauae
O te tupuna eee
Kei Oniao tena
I poua mai
I Hawaiiiki
Ko te wai u ra tena o
Tuwharetoa Tangata
Tuwharetoa Tūtuuru
Tuwharetoa-i-te-Aupouri
Hei ara ake i taku moe
Ko ko koia e ara eee



NGĀ WHAKAMARAMA MO TE TUTOHINGA NEI

Ki ta Ngāti Tuwharetoa, i takahia e te Karauna te Tiriti o Waitangi, me te aha, kua pa mai ngā whakawhiunga ki te iwi. Mai ano i te wa o te raupatu, kua rapu a Ngāti Tuwharetoa i te tika mo enei takahitanga o te Tiriti kei te whakapaetia. Puta noa i ngā rau tau e 19 me te e 20, kua pikauria e Ngāti Tuwharetoa tana whakamau ki te Karauna, ma ngā petihana me ngā hui me ngā apiha o te Karauna i te rohe o Kawerau me Te Whanganui-a-Tara. Kaore tonu i aro mai te Karauna ki enei tonu; kua noho tenei hei whakamau nui ma Ngāti Tuwharetoa.

No te tau 1988 rehitatia ai e Ngāti Tuwharetoa tana kereme raupatu (Wai 61), whai muri o tetahi whakahounga o Te Ture mo Te Tiriti o Waitangi e aha ai, e tareka ai te tirohia o ngā kereme hoki ra ano ki te tau e 1840. I roto i ngā tau 1994 me te 1995 i rongohia e Te Rōpu Whakamana i te Tiriti te kereme a Ngāti Tuwharetoa i te marae i Hāhuru me etahi atu wāhi; hei wāhanga noa enei noho o ngā noho a Te Rōpu Whakamana i te Tiriti i te rohe o Te Waiariki ki te rawhiti. I taua wa i aro nui Te Rōpu Whakamana i te Tiriti ki te tūranga o Ngāti Tuwharetoa hei rōpu motuhake me “ana kereme nui, whai kiko hoki” i te rohe o Te Waiariki ki te rawhiti. No te marama o Oketopa o te tau 1999 whakina ai ngā putanga a Te Rōpu Whakamana i te Tiriti e pā ana ki ana noho i Te Waiariki ki te rawhiti.

NGĀ WHAKARITENGA MO TE WHAKATAUNGA

No te marama o Hānuere o te tau 1998 tukuna ai e Ngāti Tuwharetoa tetahi Whakaaetanga Mana Kokiri ki te Karauna a, no te marama o Maehe o te tau 1998 mana ai te mana kokiri, ki ta te Karauna titiro. Ka whakamanatia ngā kai-whakarite i tetahi hui-a-iwi i tu ki te marae o Umutahi, a, tīmata ana ngā whakarite me te Karauna.

No te marama o Akuhata o te tau 1998 whakatakotoria ai e Ngāti Tuwharetoa ki mua i te aroaro o te Karauna te whakamarama mo ngā whakamau i te iwi i roto i ngā tau i mua o te tau 1992, kia tapaea ki te taha o te kereme Wai 62. I roto i ngā whakamau i tapaea e Ngāti Tuwharetoa ko ngā rongotanga i ngā mamae o te raupatu i runga i a Ngāti Tuwharetoa e rongohia tonu i tenei wā tonu, te tauwehe o ngā whenua i he te raupatu, te korenga ake o te whakamahi, whakahaere me te whai hua mai enei whenua me ngā rawa penei i ngā awaawa. I uru atu ki enei whakapa kino, ko te keria o te repo o Rangitaiki, te rironga atu o ngā rawa ngawha (he taonga nui rawa atu tenei a Ngāti Tuwharetoa) me ngā putanga o te whakatu o te taone o Kawerau me te ahumahi pepa.

No te ra 8 o te marama o Hepetema 1998 hainahia ai e Ngāti Tuwharetoa me te Karauna Ngā Tikanga Whakarite a, ko tana, he whakamarama i te hokai, ngā whāinga me ngā tikanga whakahaere i ngā whakaritenga.

I raro i Ngā Tikanga Whakarite, i whakau ngā Kai-whakarite Whai-mana ki te Karauna, he mana kokiri ta ratou ki te tu hei mangai mo Ngāti Tuwharetoa i roto i ngā whakaritenga me te Karauna mo te whakatau o ngā kereme katoa.

Tīmata ai ngā whakaritenga whai kiko i waenganui i te Karauna me Ngāti Tuwharetoa i te marama o Oketopa o te tau 1998. I titiro enei whakaritenga ki ngā whakamau i roto i ngā tau i whakaarahia ake e Ngāti Tuwharetoa penei i ngā ture whenua Maori, te whaka-takitahi i ngā taitara whenua me ngā ture mahi tumatanui. No te marama o Tihema o te 2000 whakaae tahi ai a Ngāti Tuwharetoa me te Karauna mo te whanui o te whakatika hapa a, no te marama o Hanuere o te tau 2001 whakatakotoria ai e te Karauna tana tapaetanga.

I runga i te whakaae a te Karauna i tukinotia a Ngāti Tuwharetoa, i takahia hoki te Tiriti me ona matapono, e hiahia ana ia ki te kuhu ki tetahi tutohinga whakaaetanga e mau ana ngā take e tika ana kia mau e aha ai, e eke pu ai te whakataunga o ngā kereme a Ngāti Tuwharetoa o roto i ngā tau.

NA REIRA, e hiahia ana a Ngāti Tuwharetoa raua ko te Karauna, i runga i te ngakau mahi tahi, whakaaro tetahi ki tetahi, ki te kuhu i runga i te ngakau tapatahi, ki tenei Tutohinga mo te whakatau i ngā Kereme o Roto i Ngā Tau.

WHAKAMANATIA hei tutohinga i te ra 6 o te marama o Hune o te tau 2003



THIS DEED is made on the 6th day of June 2003

BETWEEN

- (1) **NGĀTI TUWHARETOA (BAY OF PLENTY)**
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations

The following are Ngāti Tuwharetoa waiata.

KARAKIA

KA HOKI NEI AU KI TO MAURI O TŌKU IWI
KEI KAWERAU KO TO KETE "POUTAMA"
KEI WAITAHANUI, KO IRAKEWA, KO TUPAI,
KO TE WHAKAKAU ARIKI
KEI OTAKAORA
KO TE WAI-U O TŌKU TIPUNA
O TUWHARETOA I TE AUPOURI
HEI WHAKAOHO AKE I TAKU MOE
KO, KO, KOIA E ARA – EEE

FAY

TAU PARAPARA

Kaore taku whiwahi taku raru
 ki taku mokopuna e tangi hoka hokai ake nei
 Heoi, me whakainu ki te wai u o ana Tupuna e tere nei
 E tu e tama, hikoi to waewae ngā tahora ka takoto
 Ko ngā pakanga ra tena a to tupuna Te Rama Apakura,
 I haere ai ki te huna i te tangata
 To whakawhitanga kei raro i te kohatu whakataka a Hine te Ariki

Opea mai ki muri e whai to kanohi whakatua ki Otakaora, ko te Parekura ra tena
 I riro ai to tupuna o Tohia o Te Rangi
 Hei aha koa te riro ai
 e rua kei te takotoranga ko Paraweranui ko Maniatutu
 Ka ea ko te mate
 e tama eee

Pinaki te haere te pou a to tupuna a Te Rangitepikitia
 Ko te aruhe ra tena i ngakia ai te mate o Tokoiwi
 I horo ai ko te pa ko Rakeihopukia i to tupuna i a Te Roropewa
 I riro mai ai ko Kupe, ko Te Rangitaunaha
 Kaati hei kupu korero mai i waenganui o nohoanga pahii o aua tangata ra,
 e tama eee

Hoki mai, i kona to taumata kei Titinara, to whakawhitianga a kei Parawai,
 to titahatanga kei raro o Hine Te Wai,
 ko to tupuna ra tena kei Te Huanui e takoto ana
 Tokorua tahi, ko Tuara raua ko Rangiiiria, to taumata kei Taranaki,
 ko te whakahoki ra tena a to tupuna a Te Akaurangi i hoki ai te waiora ki te iwi,
 e tama eee

To nohoanga kei Pukemaire, kai marama koe te titiro ngā tohu e rerere mai ra
 i runga o Kawerau
 Ko o tupuna ra ena, Ko Umutahi raua ko Tuwharetoa, e karanga mai nei ki a koe
 kia teretere te haere
 To turanga kei te roro o te whare, tomokia
 e tama eee

To nohoanga kei te Matapihi
 he nohoanga rangatira
 E whai to Kanohi whakaroto ki to Kuia
 Kia to Oparawa
 Kei kona te Kete rururu o Hine te Ariki
 hei whaka pange pange ana
 e whaka tange tange ai to manawa
 e tama eee

TAU PARAPARA

I have no qualms about my grandchild crying insistently
However, I will give him nourishment from the waters of his ancestors
Stand up oh son and walk amongst the scattered remains that lie here.
For they are from the battles of your ancestor Te Rama Apakura,
the destroyer of men.
Your path traversing the boulders placed here by your ancestor Hine Te Ariki

Cast your mind back to the past and reflect upon the battle
that took place at Otakaora,
where your ancestor Tohia o Te Rangi was slain.
For what purpose are Paraweranui and Maniatutu?
To satisfy the ways of old, oh son.

The staff of your ancestor Te Rangitepikitia
dipping forward to tend the fernroot,
in atonement for the loss of Tokoiwa.
Thus the downfall of the pa, Rakeihopukia,
instigated by your ancestor Te Roropewa,
who gained Kupe and Te Rangitaunaha, with their secret intact,
oh son.

Return then to Titinaroa, your resting place, your crossing over at Parawai,
taking you below Hine Te Wai and there your ancestor lies at Te Huanui
Together as one, Tuara and Rangiiria, your gaze upon Taranaki,
where your ancestor Te Akaurangi returned to and restored the well being of
the people, oh son.

Remain alert at Pukemaire, so that you will clearly see the messages rising
from Kawerau.
They are your ancestors, Umutahi and Tuwharetoa, calling to you to
hasten your footsteps.

Your place is at the threshold of the house of leadership.
Take command, oh son.
Your position at the window reserved only for those of chiefly rank
Look inward and reflect upon Te Parawa and Hine Te Ariki kits of knowledge
For therein lies your heritage, to set your heart at ease
oh son.

BACKGROUND**NGĀ WAKA**

<u>Te Arawa</u>	<u>Te Rangimatoru</u>	<u>Paepae-ki-Rarotonga</u>
Taunga	Hape tumanui ki te rangi	Te Papakawheoro
Atuamatua	Tamarau	Te Ngararawhakawa
Rakauri	Tamamutu	Te Rakaupango
Ngatoroirangi	Te Iki o te rangi	Te Kotore nui o tawa
Tangihia	Te Pipirangi	Te Rakaupokapoka
Tangimoana	Te Koata	Te Huruhuru o Puketapu
Kahukura	Te Rangi kai te puanuku	Tini Kura
Takunui	Te Kohotua nui	Koutu
Mawakenui	Wheturoa	Te Papapururangi
Mawakeroa	Hine-Te-Ariki	Waitaha-Ariki-Kore
Mawake Taupo	Haahuru	
	Tuwharetoa Tangata	

According to the traditions of Ngāti Tuwharetoa, who have kept ahi kaa in the Bay of Plenty area:

The high priest Ngatoroirangi who came to Aotearoa on the Arawa canoe is a significant ancestor for Ngāti Tuwharetoa. According to the elders of Tuwharetoa when Te Arawa waka reached Aotearoa from Hawaiki in the early 1300s it entered the outlet of Te Awa-a-te-Atua at Te Mihimarino. It then travelled up river to a place called Kōpuakuku, where the canoe was beached. Ngatoroirangi immediately disembarked, taking his first step on to Aotearoa soil. This was the beginning of Tuwharetoa; the first print into the history of his tribe.

When Te Paepae-ki-Rarotonga waka arrived in the Bay of Plenty region from Rarotonga, some generations later, the sole occupant Waitaha-Ariki-Kore disembarked at Otaramuturangi. His canoe was hauled by two guardians Rangīria and Tuara. Waitaha-Ariki-Kore married Hine-Te-Ariki, a significant ancestor of the Rangimatoru waka. She was renowned for her expertise in the natural environment. Their daughter Haahuru married Mawake Taupo, a descendant of Ngatoroirangi. He lived at Maungawhakamana/Kaipara. To them a son, Manaia, was born. In later years, when Mawake Taupo passed on his mana to his son, Manaia was renamed Tuwharetoa.

Tuwharetoa is regarded as the eponymous ancestor of the iwi. He was born at Te Pare o te rāwahiria (at Otamarakau) and later lived at Waitahanui (near the town Kawerau).

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Tuwharetoa was educated and became skilled in all aspects of the whare wananga, becoming a man of great knowledge, wisdom and leadership. He had considerable powers in makutu.

It was under the mana of Tuwharetoa that ngā hapū o Ngāti Tuwharetoa grew. He had 17 children, many of whom led migrations to other areas such as Taupo. Others remained in the Kawerau and surrounding area, maintaining the mana of Tuwharetoa. They are now known as Ngāti Tuwharetoa.

Tika tonu te
Te tuki a ngā rau waka
Mai i Hawaiiiki
Ki Te Awa-a-te-Atua
Ki te koopua kuku
Ko te kukutanga
O te waka nei
Te Arawa

Titiro iho whakamuri
Ki Otaramuturangi
Ko te ūngā tanga
O te Pae Pae-ki Rarotonga
Mai te kohatu paatuki tangā
O te kauae
O te tupuna eee

Kei Oniao tena
I poua mai
I Hawaiiiki

Ko te wai u ra tena o
Tuwharetoa Tangata
Tuwharetoa Tūtuuru
Tuwharetoa-i-te-Aupouri
Hei ara ake i taku moe
Ko ko koia e ara eee

BACKGROUND TO THIS DEED

Ngāti Tuwharetoa considers that the Crown has breached the Treaty of Waitangi and caused significant prejudice to the iwi. Ngāti Tuwharetoa have sought justice for these alleged Treaty breaches since the raupatu. Throughout the 19th and 20th centuries a number of Ngāti Tuwharetoa tangata have carried their grievance to the Crown through petitions and in meetings with Crown officials in both the Kawerau area and in Wellington. The failure of the Crown to redress these wrongs has also become a significant grievance for Ngāti Tuwharetoa.

Ngāti Tuwharetoa registered their raupatu claim (Wai 62) in 1988, following a 1985 amendment to the Treaty of Waitangi Act to allow the hearing of claims back to 1840. The Ngāti Tuwharetoa claim was heard by the Waitangi Tribunal at Hāhuru marae and at other venues as part of the Eastern Bay of Plenty hearings during the course of 1994 and 1995. At that time the Waitangi Tribunal recognised the status of Ngāti Tuwharetoa as an independent group with “significant and compelling claims” in the Eastern Bay of Plenty area. The findings of the Waitangi Tribunal in relation to the Eastern Bay of Plenty hearings were released in October 1999.

THE SETTLEMENT NEGOTIATIONS

Ngāti Tuwharetoa submitted a Deed of Mandate to the Crown in January 1998 and the Crown recognised the mandate in March 1998. Negotiators were mandated at a hui-a-iwi at Umutahi marae, Matata, and negotiations with the Crown commenced.

In August 1998 Ngāti Tuwharetoa presented the Crown with a detailed statement of all the historical grievances of the iwi prior to 1992 to be addressed alongside the Wai 62 claim. The grievances that Ngāti Tuwharetoa presented included the ongoing impact of the raupatu on Ngāti Tuwharetoa, subsequent alienation of wrongly confiscated lands, the loss of use, control and benefits of these lands and resources including waterways. The drainage of the Rangitaiki wetlands, loss of the geothermal resource (a key taonga of Ngāti Tuwharetoa), and the impact on Ngāti Tuwharetoa of the development of the Kawerau township and the pulp and paper industry were also stated to be grievances of Ngāti Tuwharetoa.

Ngāti Tuwharetoa and the Crown signed Terms of Negotiation on 8 September 1998 which specified the scope, objectives and general procedures for negotiations.

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Under the Terms of Negotiation, the mandated negotiators confirmed to the Crown that they have a mandate to represent Ngāti Tuwharetoa in negotiations with the Crown for settlement of all the historical claims.

Substantive negotiations between the Crown and Ngāti Tuwharetoa began in October 1998. These negotiations addressed all the historical grievances raised by Ngāti Tuwharetoa including the native land laws, individualisation of title and public works legislation. The Crown and Ngāti Tuwharetoa agreed on the scope of the total redress package in December 2000 and the Crown made a settlement offer in January 2001.

The Crown, having acknowledged that Ngāti Tuwharetoa has suffered injustices and breaches of the Treaty of Waitangi and its principles, now wishes to enter into a deed of settlement recording the matters required to give effect to a final settlement of all Ngāti Tuwharetoa's historical claims. Ngāti Tuwharetoa, having agreed to the redress, also wishes to enter into a deed of settlement.

ACCORDINGLY, Ngāti Tuwharetoa (Bay of Plenty) and the Crown wish, in a spirit of co-operation and compromise, to enter in good faith into this Deed providing for the settlement of the Historical Claims.

FA 

EXECUTED as a deed on the 6th day of June 2003

SIGNED for and on behalf of
NGĀTI TUWHARETOA (BAY OF PLENTY) by the
Mandated Signatories

Rae Beverley Adlam

Rae Beverley Adlam

Waiata Hone

Takirua Hone
H. Hwaka

Makarua Te Rini *J. Te Pahi*

The Reverend Canon Robert David Schuster

The Reverend Canon Robert David Schuster

John A. Chapman
GK Hone

Rev. R. O. Schuster

Tai Tukiwaho Te Riini

Te Papa Rota

Ani Te Waikaretu Wickliffe

Ani Te Waikaretu Wickliffe

H. Te Riini

In the presence of:

Mita Rukunui

Name: MITA RUKUNUI

Occupation: M. P.

Address: Tauranga.

Meretenua Roesio Cammell

J. H. HURIANA Rookina Clarke

L. H. Myanare

L. J. P. Hohepa Hocken

P. Tehe EMR

W. P. H. H. H. H.

R. H. H. H. H.

A. K. A. O.

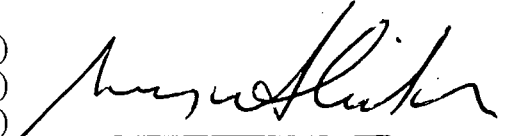
L. N. Selie

B. H. H. H. H. H.

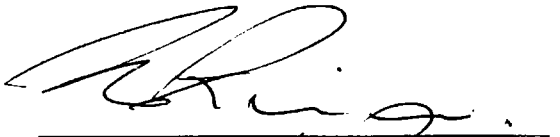
W. H. H. H. H.
H. H. H. H. H.
Ashley C. J. J. J.

H. H. H. H. H.
H. H. H. H. H.

SIGNED for and on behalf of **HER
MAJESTY THE QUEEN** in Right of
New Zealand by the Minister in Charge
of Treaty of Waitangi Negotiations

)
) 
)
) *Honourable Margaret Wilson*

In the presence of:



Name: *Nita Keremai*

Occupation: *M.P.*

Address: *Tauranga.*



SECTION 1: SCOPE AND NATURE OF SETTLEMENT

1.1 INTRODUCTION

1.1.1 Mutual agreement to settle the Historical Claims

This Section records the mutual agreement of Ngāti Tuwharetoa and the Crown to settle the Historical Claims.

1.1.2 Definitions

This Section also sets out definitions of Ngāti Tuwharetoa, the Historical Claims, and certain related terms. Those definitions apply in this Deed unless this Deed or the context requires otherwise.

1.2 MEANING OF NGĀTI TUWHARETOA

1.2.1 Definition of Ngāti Tuwharetoa

Ngāti Tuwharetoa:

- (a) means the collective group, composed of:
 - (i) individuals descended from a Ngāti Tuwharetoa Ancestor or Ancestors; and
 - (ii) individuals referred to in *clauses 1.2.1(b)(ii) and 1.2.1(b)(iii)*;
- (b) means:
 - (i) every individual who is descended from a Ngāti Tuwharetoa Ancestor or Ancestors;
 - (ii) every individual who is a member of a hapū, group, family or whānau referred to in *clause 1.2.1(c)*; and
 - (iii) every individual who is a Whangai of Ngāti Tuwharetoa;
- (c) includes:
 - (i) the following hapū, namely, Umutahi, Te Tawera, Ngāti Peehi, Ngai Tamarangi, Te Aotahi, Ngāti Poutomuri, Ngāti Iramoko, Ngāti Irawharo and Ngāti Manuwhare; and
 - (ii) any hapū, group, family or whānau, composed of individuals referred to in *clause 1.2.1(b)*.

1.2.2 Related definitions

For the purposes of the definition of *Ngāti Tuwharetoa* in *clause 1.2.1*, and in this Deed generally, the following terms or expressions have the following meanings:

Customary Rights means rights according to Māori customary law, including the following rights:

- (a) rights to occupy land; and
- (b) rights in relation to the use of:
 - (i) land; and/or
 - (ii) natural or physical resources;

Member of Ngāti Tuwharetoa means every individual referred to in *clause 1.2.1(b)*;

Representative Entity means:

- (a) the Governance Entity;
- (b) any person or persons appointed as agent for Ngāti Tuwharetoa under *clause 2.3*; and
- (c) any person (including any trust or trustees) acting for or on behalf of:
 - (i) the iwi, or collective group, referred to in *clause 1.2.1(a)*; and/or
 - (ii) any one or more of the individuals referred to in *clause 1.2.1(b)*; and/or
 - (iii) any one or more of the hapū, groups, families or whānau referred to in *clause 1.2.1(c)*.

Ngāti Tuwharetoa Ancestor or ***Ancestors*** means an individual or individuals who:

- (a) exercised Customary Rights by virtue of being descended from:
 - (i) Tuwharetoa; or



- (ii) a recognised ancestor of any of the following hapū, namely, Umutahi, Te Tawera, Ngāti Peehi, Ngai Tamarangi, Te Aotahi, Ngāti Poutomuri, Ngāti Iramoko, Ngāti Irawharo and Ngāti Manuwhare; and
- (b) exercised the Customary Rights referred to in paragraph (a) of this definition predominantly in relation to the Ngāti Tuwharetoa Area of Interest at any time after 6 February 1840;

Ngāti Tuwharetoa Area of Interest means the area of interest identified in Attachment 1.1 as the area which Ngāti Tuwharetoa identifies as its area of interest, together with the adjacent waters and the Rurima Islands;

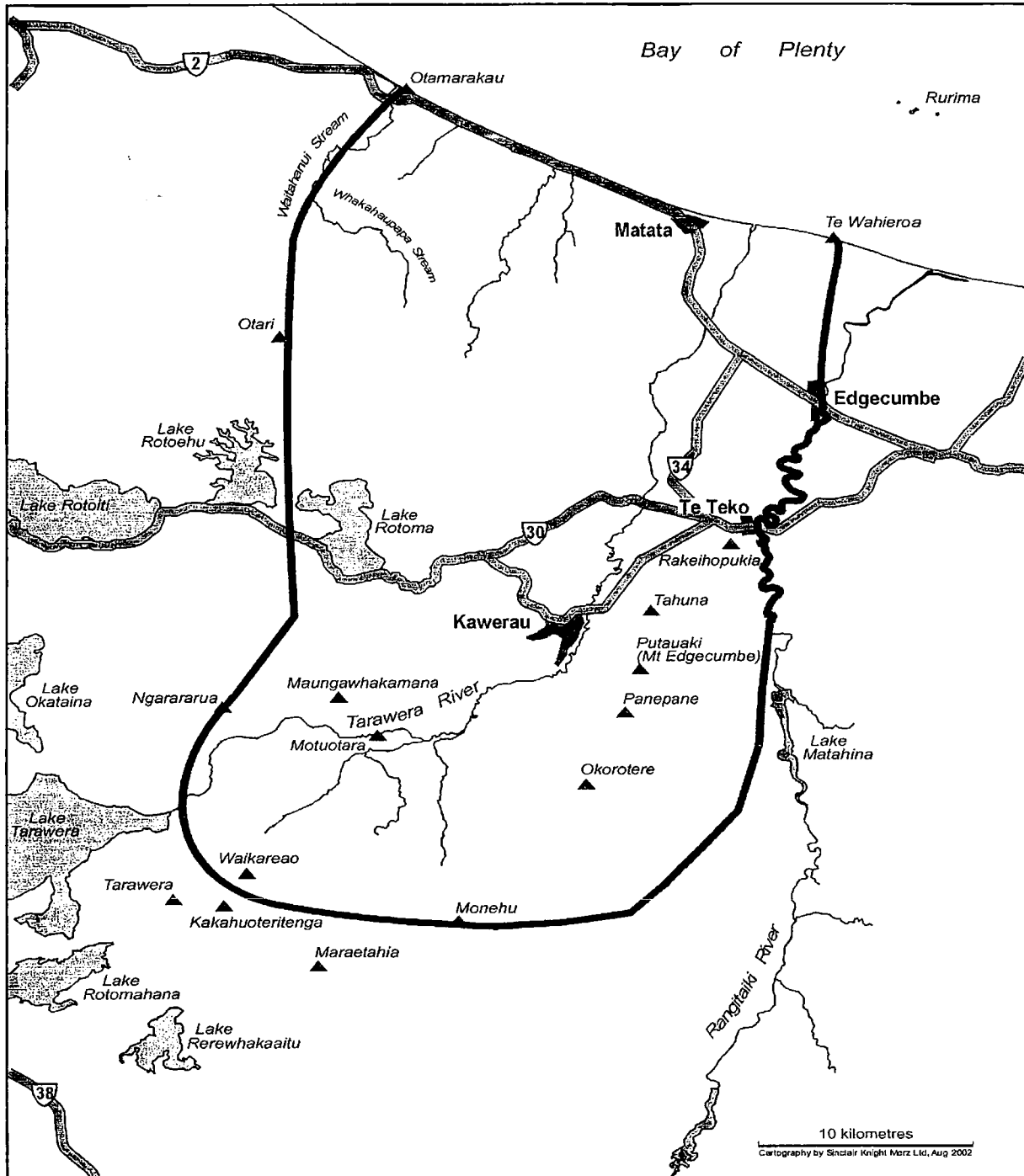
Whangai of Ngāti Tuwharetoa means a Māori who is recognised as a whangai in accordance with Ngāti Tuwharetoa tikanga.



ATTACHMENT 1.1

AREA OF INTEREST

(Clause 1.2.2, Definition of Area of Interest)



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1.3 MEANING OF HISTORICAL CLAIMS

1.3.1 Definition of Historical Claims

Historical Claims:

- (a) (Subject to *clause 1.3.2*) means every Claim that Ngāti Tuwharetoa (or any Representative Entity) had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date, that:
- (i) Is, or is founded on, a right arising:
 - (aa) From Te Tiriti o Waitangi/the Treaty of Waitangi, or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi; or
 - (bb) Under legislation or at common law (including in relation to customary law or aboriginal title); or
 - (cc) From a fiduciary duty; or
 - (dd) Otherwise; and
 - (ii) Arises from or relates to acts or omissions before 21 September 1992:
 - (aa) By or on behalf of the Crown; or
 - (bb) By or under legislation;
- (whether or not the Claim has arisen or been considered, researched, registered, notified, or made on or before the Settlement Date); and
- (b) (without limiting *clause 1.3.1(a)*) means every Claim to the Waitangi Tribunal to which *clause 1.3.1(a)* applies, including the Wai 62 Claim to the Waitangi Tribunal made in February 1988 as amended by the following:
- (i) undated statement of claims received by the Waitangi Tribunal on 19 October 1990;
 - (ii) statement of claim dated December 1990 and received by the Waitangi Tribunal on 12 April 1991; and
 - (iii) second amended statement of claim dated 16 October 1995.

1.3.2 Exclusions from the definition of Historical Claims

The term *Historical Claims* does not include the following Claims:

- (a) Wai 411 (Tarawera Forests Claim) as filed with the Waitangi Tribunal on 14 June 1993 and amended by an amended statement of claim dated 26 April 2000;
- (b) Wai 21 (Tasman Company Pollution) Claim as filed with the Waitangi Tribunal on 26 April 1985 and amended by an amended statement of claim dated 23 October 1992, but does include any further amendment to the Wai 21 Claim to the extent that the further amendment is a Claim referred to in *clause 1.3.1(a)*;
- (c) Any Claim that a Member of Ngāti Tuwharetoa, or a hapū, group, family or whānau referred to in *clause 1.2.1(c)*, had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date, that is, or is founded on, a right arising from being descended from an ancestor who is not a Ngāti Tuwharetoa Ancestor;
- (d) Any Claim based on descent from a recognised ancestor of Te Tawera to the extent that any Claim is, or is founded on, a right arising from Awanuiarangi II; and
- (e) Any Claim that a Representative Entity may have to the extent that Claim is, or is based on, a Claim referred to in *clause 1.3.2(c)*.

1.4 THE HISTORICAL CLAIMS ARE SETTLED

1.4.1 Settlement

Ngāti Tuwharetoa and the Crown agree that this Deed settles the Historical Claims from the Settlement Date.

1.4.2 Release

From the Settlement Date, Ngāti Tuwharetoa releases and discharges the Crown from any obligations, liabilities and duties in respect of the Historical Claims.

1.5 RELATIONSHIP TO CERTAIN RIGHTS AND DECISIONS

1.5.1 Deed does not derogate from, or affect, certain matters

Nothing in this Deed:

- (a) Except as expressly provided in or under this Deed, derogates from any rights or powers that Ngāti Tuwharetoa or the Crown might have arising:



- (i) From Te Tiriti o Waitangi/the Treaty of Waitangi, or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi;
 - (ii) Under legislation, or at common law (including in relation to customary law and aboriginal title);
 - (iii) From a fiduciary duty; or
 - (iv) Otherwise;
- (b) Is intended to affect any decision, proposal or report of the Treaty of Waitangi Fisheries Commission:
- (i) Under the Māori Fisheries Act 1989; or
 - (ii) In respect of the Deed of Settlement between Māori and the Crown dated 23 September 1992 or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.


1.5.2 Clause 1.5.1 does not affect Settlement

Clause 1.5.1 does not limit clauses 1.4.1 or 1.4.2.

1.6 ABORIGINAL TITLE AND CUSTOMARY RIGHTS NOT AFFECTED BY SETTLEMENT

Ngāti Tuwharetoa and the Crown acknowledge that:

- (a) Nothing in this Deed extinguishes any aboriginal title or customary rights that Ngāti Tuwharetoa may have, or constitutes or implies any acknowledgement or acceptance by the Crown that such title or rights exist either generally or in any particular case;
- (b) The Settlement:
 - (i) Is not intended to prevent any Member of Ngāti Tuwharetoa or Representative Entity from pursuing Claims against the Crown based on aboriginal title or customary rights which do not come within the definition of the Historical Claims or to prevent the Crown from disputing such Claims or the existence of such title or rights; but
 - (ii) Is intended to prevent any Member of Ngāti Tuwharetoa or Representative Entity from pursuing Claims against the Crown



(including claims based on aboriginal title or customary rights) if such claims come within the definition of the Historical Claims, such Claims having been settled in accordance with *clauses 1.1.1 and 1.4*; and

- (c) *Clause 1.6(a)* does not limit *clauses 1.1.1, 1.4.1 or 1.4.2*.

1.7 SETTLEMENT TO ENHANCE THE ONGOING RELATIONSHIP

The Settlement is intended to enhance the ongoing relationship between Ngāti Tuwharetoa and the Crown in terms of Te Tiriti o Waitangi/the Treaty of Waitangi.

1.8 ACKNOWLEDGEMENTS BY NGĀTI TUWHARETOA AND THE CROWN CONCERNING THE SETTLEMENT

Ngāti Tuwharetoa and the Crown acknowledge:


- (a) That the Settlement represents the result of extended negotiations conducted in good faith and in a spirit of co-operation and compromise;
- (b) The difficulty in assessing redress for the loss and prejudice suffered by Ngāti Tuwharetoa;
- (c) That the acceptance of this settlement by Ngāti Tuwharetoa involves them having to forego full redress for all loss and prejudice suffered by Ngāti Tuwharetoa;
- (d) That this foregoing of redress by Ngāti Tuwharetoa is intended to contribute to the development of New Zealand;
- (e) That the Parties have acted honourably and reasonably in relation to the Settlement;

and that, taking all matters into consideration (some of which are specified in this *clause 1.8*), the Settlement is fair in the circumstances.

1.9 ACKNOWLEDGEMENTS BY NGĀTI TUWHARETOA CONCERNING THE SETTLEMENT

Ngāti Tuwharetoa acknowledge that:

- (a) The Settlement will be final;



- (b) It is intended that the Settlement and the obligations on the part of Ngāti Tuwharetoa under this Deed will be binding upon Ngāti Tuwharetoa and any Representative Entity;
- (c) It is intended that the Settlement and the rights on the part of Ngāti Tuwharetoa and the Governance Entity under this Deed:
 - (i) Will be for the benefit of Ngāti Tuwharetoa; and
 - (ii) May be for the benefit of particular individuals, or any particular hapū, group of individuals, family, whānau or marae if, after the Settlement Date, the Governance Entity so determines in accordance with its relevant governance procedures; and
- (d) The Settlement Legislation will, with effect from the Settlement Date, provide that:
 - (i) The Courts, the Waitangi Tribunal, and any judicial body or tribunal will not have jurisdiction (including, without limitation, the jurisdiction to inquire, or further inquire into, or to make any finding or recommendation) in respect of:
 - (aa) The Historical Claims;
 - (bb) This Deed;
 - (cc) The redress provided to Ngāti Tuwharetoa or to the Governance Entity under this Deed; and
 - (dd) The Settlement Legislation;

(but not for the removal of that jurisdiction in respect of the implementation or interpretation of this Deed or the Settlement Legislation); and
 - (ii) Certain statutory protections be removed in accordance with *Section 7*.

1.10 REDRESS FROM THE CROWN

1.10.1 Summary of Redress

The Crown acknowledges that the redress provided or to be provided by the Crown includes:



- (a) The acknowledgements and apology by the Crown given under *Section 3*;
- (b) Cultural redress as specified in *Sections 4 and 5*, including:
 - (i) The vesting in the Governance Entity of the fee simple estate in the following properties, subject to the Reserves Act 1977:
 - (aa) Te Wahieroa, being part of the Western Whakatane Recreation Reserve;
 - (bb) Te Kaukahiwi o Tirotirowhetu, being part of the Parimahana Scenic Reserve;
 - (cc) Whakapaukorero, being part of the Matata Scenic Reserve;
 - (ii) The vesting in the Governance Entity of the fee simple estate in Te Atua Reretahi, being part of the Rotoma Forest Conservation Area, subject to a conservation covenant;
 - (iii) The vesting in the Governance Entity of the fee simple estate in Otitapu Lookout, being part of the Lake Rotoma Scenic Reserve, subject to a protected private land agreement;
 - (iv) The establishment of a Joint Advisory Committee to advise:
 - (aa) the Minister of Conservation and the Director-General of Conservation in respect of Te Awa a Te Atua, and the Matata Scenic Reserve (less Whakapaukorero); and
 - (bb) the Governance Entity in respect of Whakapaukorero;
 - (v) Provision for the issue of Protocols by the Minister of Conservation, the Minister of Fisheries, and the Minister for Arts, Culture and Heritage, which set out how the relevant Department/Ministry will exercise or perform its functions, powers and duties in relation to specified matters, interact with Ngāti Tuwharetoa, and provide for input into certain decision-making processes by Ngāti Tuwharetoa;
 - (vi) A Statutory Acknowledgement of the special association of Ngāti Tuwharetoa with the Statutory Areas, being:
 - (aa) Rotoma Forest Conservation Area;

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- (bb) Lake Tamarenuui Wildlife Management Reserve;
- (cc) Lake Rotoma Scenic Reserve; and
- (dd) parts of the Rangitaiki River and the Tarawera River;
- (vii) Entering into Deeds of Recognition over:
 - (aa) Rotoma Forest Conservation Area;
 - (bb) Lake Tamarenuui Wildlife Management Reserve;
 - (cc) Lake Rotoma Scenic Reserve; and
 - (dd) parts of the Rangitaiki River and the Tarawera River;
- (viii) A Geothermal Statutory Acknowledgement of the special association of Ngāti Tuwharetoa with the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System;
- (ix) The granting of a renewable Nohoanga Entitlement over the Nohoanga Site, being situated near Te Awa a Te Atua within Matata Wildlife Refuge Reserve;
- (x) An acknowledgement of Ngāti Tuwharetoa Values in respect of the Owhakatihi Area within the Parimahana Scenic Reserve.
- (c) Financial and commercial redress as specified in *Section 6*, comprising:
 - (i) \$10,500,000, represented by:
 - (aa) payment of the amounts specified in *clause 6.1.3*;
 - (bb) payment of the Cash Settlement Amount on the Settlement Date; and
 - (cc) the transfer to the Governance Entity of certain Commercial Redress Properties;
 - (ii) the granting of a Deed of Grant of Right of First Refusal over Crown Geothermal Assets in favour of the Governance Entity;

- (iii) the granting of a right of first refusal in favour of the Governance Entity over the KA 30 Bore.

1.10.2 General description only

Clause 1.10.1 contains a general description of the redress to be provided under *Sections 3 to 6* of this Deed and is not intended to modify or affect the interpretation of the specific provisions of this Deed. If there is any discrepancy between *clause 1.10.1* and the provisions elsewhere in this Deed, those provisions elsewhere in this Deed shall prevail.

1.10.3 Defined terms

Words and phrases appearing in *clause 1.10.1* with capitalised initial letters and which are not defined in this Section or *Section 11* are defined in the Section or clause of this Deed in which the substantive provisions, which are summarised in *clause 1.10.1*, appear, and are intended to have the same meaning in *clause 1.10.1* as they have in the Section or clause in which they are defined.

SECTION 2: AUTHORITY TO ACT FOR NGĀTI TUWHARETOA

2.1 THE GOVERNANCE ENTITY

2.1.1 Establishment of the Governance Entity

Ngāti Tuwharetoa agree, as soon as reasonably practicable after the Date of this Deed, and in any event within 6 months of the Date of this Deed:

- (a) To procure the establishment of a body (the “*Governance Entity*”) which the Crown has advised Ngāti Tuwharetoa by Notice that the Crown is satisfied:
 - (i) Will be an appropriate body to which the Crown will provide the redress under this Deed (other than the acknowledgements and apology given under *Section 3* which are given to Ngāti Tuwharetoa generally); and
 - (ii) Will have a structure that provides for:
 - (aa) Representation of the people of Ngāti Tuwharetoa;
 - (bb) Transparent decision-making, and dispute resolution, processes; and
 - (cc) Accountability to the people of Ngāti Tuwharetoa; and
 - (iii) Has been ratified by the people of Ngāti Tuwharetoa (by a ratification process agreed in writing by Ngāti Tuwharetoa and the Crown) as an appropriate body to receive the redress referred to in *clause 2.1.1(a)(i)*; and
- (b) To procure the execution by the Governance Entity of a Deed of Covenant in the form set out in *Schedule 2.1*.

2.1.2 Redress to be provided to the Governance Entity

Ngāti Tuwharetoa agree that the Crown will provide the redress under this Deed (other than acknowledgements and apology given under *Section 3* which are given to Ngāti Tuwharetoa generally) to the Governance Entity on the terms set out in this Deed.

2.1.3 Perpetuities Act 1964

The Settlement Legislation will provide that, if the Governance Entity is a trust, the rule against perpetuities and any relevant provisions of the Perpetuities Act 1964 will not prescribe or restrict the period:

- (a) during which the Governance Entity may exist in law; or
- (b) during which the Governance Entity may deal with property.

2.1.4 Not conditional

Clause 8.1.1 (which provides that this Deed is conditional) does not apply to *clause 2.1.1*.

2.2 RATIFICATION OF SETTLEMENT AND MANDATE TO SIGN DEED

2.2.1 Ngāti Tuwharetoa confirm that:

- (a) This Deed was ratified by the people of Ngāti Tuwharetoa by a majority of 95.8% of the valid votes cast in a postal ballot of the Eligible members of Ngāti Tuwharetoa; and
- (b) The Mandated Signatories have a mandate from Ngāti Tuwharetoa to sign this Deed on behalf of Ngāti Tuwharetoa by virtue of the ratification of the settlement as set out in clause 2.2.2(a); and

2.2.2 The Crown has considered the ratification process of Ngāti Tuwharetoa in good faith, and having taken into account the outcome of the postal ballot and other relevant considerations, confirms that it is satisfied with:

- (a) The ratification of this Deed by the people of Ngāti Tuwharetoa; and
- (b) The mandate to the Mandated Signatories from Ngāti Tuwharetoa to sign this Deed on behalf of Ngāti Tuwharetoa.

2.3 APPOINTMENT OF AGENT FOR NGĀTI TUWHARETOA

2.3.1 Ngāti Tuwharetoa agent to agree ratification processes

Ngāti Tuwharetoa appoints collectively, as its agent to agree with the Crown a process for the establishment and ratification of a Governance Entity which is satisfactory to the Crown under *clause 2.1.1*:

- (a) Rae Beverley Adlam, Graham Kahu Te Rire, Ani Te Waikaretu Wickliffe and the Reverend Canon Robert David Schuster; or

- (b) on the death or incapacity of any such individual, the remaining individuals.

2.3.2 Ngāti Tuwharetoa agent for other matters under this Deed


The persons appointed by Ngāti Tuwharetoa under *clause 2.3.1* as the agent for Ngāti Tuwharetoa may (in addition to their powers under that clause) take any of the following actions on behalf of Ngāti Tuwharetoa under this Deed (until the Governance Entity signs the Deed of Covenant under *clause 2.1.1*):

- (a) Give and receive any Notice or other communication;
- (b) Exercise any right or power;
- (c) Waive any provision; and
- (d) Agree to any amendment.

2.3.3 Governance Entity to replace agent

Upon execution by the Governance Entity of the Deed of Covenant in accordance with the provisions of *clause 2.1.1*:

- (a) The appointment of any agent for Ngāti Tuwharetoa under *clause 2.3.1* terminates; and
- (b) All powers under *clause 2.3.2* may be exercised by the Governance Entity.



**SECTION 3: TĀHUHU KORERO, NGĀ MANAKOHANGA A TE
KARAUNA ME TE WHAKAPAHA**

3.1 TĀHUHU KORERO

- 3.1.1 Ko ta tenei wāhanga, he whakatakoto i te tāhū korero e whakakaupapa mai ana i ngā manakohanga me te whakapaha a te Karauna.

Te rohe o Ngāti Tuwharetoa

Ko Pūtauaki te Maunga

Ko Te Takanga i ō Apa te Awa

Ko Te Aotahi te Tangata

Ko Ngāti Tuwharetoa te Iwi

- 3.1.2 E ki ana a Ngāti Tuwharetoa, ko tona rohe mai Otamarakau ka whai i te awa o Waitahanui ki Otari ki Motu-o-tara ki Maunga-whakamana ki Ngarararua takiwa ki Haehaenga ki Kākahu-o-te-ritenga ki Wai-kareao ki Marae-tāhia ki Monehu ki Okoro-tere ki Panepane ki Pūtauaki ki Tāhuna ki Rakei-hopukia ki Wahie-roa ki Rurima ki Otamarakau. Ko te rohe o Ngāti Tuwharetoa kua huaina i runga ake nei, kei ko atu o te rārangi raupatu. Ko te Rangitaiki raua ko Tarawera ngā awa nui o roto i te rohe.

Tāpae atu ki ngā tohu whenua nei ko ngā pū-korero nui a te iwi.

- 3.1.3 I runga i tona tūranga hei tangata whenua o te rohe nei, ko etahi o ngā wāhi nui kei roto i ngā korero a te iwi o Ngāti Tuwharetoa ko O-tama-rakau, ko Otari ko Motu-o-tara, ko Maunga-whakamana, ko Ngarara-rua, ko Haehaenga, ko Kakahu-o-te-ritenga, ko Wai-kareao, ko Marae-tahia, ko Te Monehu, ko Okorotere, ko Panepane, ko Putauaki, ko Tahuna, ko Rakei-hopukia, ko Wahie-roa, ko Ngā Moutere o Rurima, ko O-tara-mutu-rangi, ko Pa-niwha-niwha (Ngā-pari-whakairo), ko Mangā-ti, ko Tū-watawata, ko Te Wai-koukou, ko Motu-roa, ko Puke-tapu, ko Otukoiro, ko Te Kiore Poho-roa, ko Korotiwha, ko Oti-tapu, ko Pao-koroiti, ko Te Pa-taua, ko Te Pakipaki, ko Taina-pekapeka, ko Tau-manawa, ko Tu-manuka, ko Peke-ta, ko Te Waha-o-te-Parata, ko O-peke, ko Tahuna-roa, ko Tahutu, ko Whakarewa, ko O-niao, ko Umu-hika, ko Hāhūru, ko O-kotuku, ko O-whirirangi, ko Whatangi, ko Koro-aha, ko Tutarautawhai, ko Para-ngaehe, ko Manga-pehi, ko O-te-rangi-kaha-mai, ko Pou-taka-moko, ko Puke-hinau, ko Poka-nui, ko O-te-ao, ko Te Ahi-nanga, ko Po-kohu, ko O-tangi-waka, ko Taranaki, ko Ma-tira-whaiti, ko Whakapau-korero, ko Whakapau-karakia, ko

Mokai-ngarara, ko O-hine-te-wai, ko Tu-hae-po, ko Te Kohika, ko Te Ahi-koko-wai, ko Kakaramea, ko Whaka-horo, ko Manga-whio, ko Rua-taniwha.

Ko etahi o ngā awaawa ko: Wai-taha-nui, ko Hau-one, ko Herepuru ko Piko-wai, ko Mimiha/Whakarewa, ko O-hine-ko-ao, ko Wai-hoko, ko Kohi-o-Awa, ko Wai-te-Ariki, ko Wai-te-puru, ko Awa-kaponga, ko Whariki-te-toki, ko Wai-ka-mihi, ko Wairere-a-tu (te ingoa mohiotia ai e Ngāti Tuwharetoa a Braemar Springs), ko Po-kerekere, ko Te Kaokao-roa.

- 3.1.4 I ki a Ngāti Tuwharetoa i mua o te tau 1866 ko a ratou mahi i aua wa ko te whakatipu mara kumara, riwai, witi, harakeke hoki hei hoko ki ngā kai-hokohoko Pakeha, ko te hari hoki i aua taonga ki ngā makete. Ko Okākāru (wāhi ngāwaha) i te takiwā o Kawerau tetahi wāhi motuhake mo te whakaora me te whakamaui, me te whakato moata o ngā tipu penei i te kumara. I rongonui te wāhi nei mo te mahi a te tuna, a te ika, hei wāhi hoki mo te whāngai tuna, me ki i ngā wāhi e mahana ana i te waiariki. Ko te haere ma runga waka ka mutu, nui ana te kai i ngā repo.

Ngā whakamārama mo te Raupatu – Te Riri i te Waiariki ki te Rawhiti

- 3.1.5 No te marama o Hurae o te tau 1863 pakaru mai ai te riri ki waenganui i te Karauna me ngā Māori i Waikato; hei wāhanga o te riri nei, i pakaru etahi whawhai ki te Waiariki i te haurua tomua o te tau 1864.
- 3.1.6 No te marama o Hurae o te tau 1865, whai muri o tetahi wa whakariuka, ka patua a James Fulloon, tetahi apiha na te Karauna, me etahi heremana tokotoru o runga i te kai-puke *Kate*, e etahi Māori i Whakatane. Na TH Smith, te Komihana Karauna i Maketu te whakamana kia hopukina era te hunga i whai wāhi ki ngā mahi kohuru i te hunga i runga i te kai-puke *Kate*.
- 3.1.7 No te marama o Akuhata o te tau 1865 takatu ai tetahi ope taua a te Karauna e 500 ngā hoia, tae noa ki etahi Māori mai i ngā hapū me ngā iwi e noho tata ana, kei raro i ngā whakahau a Meiha William Mair, Kai-whakawa a-Rohe, ki te mau-here i era i ingoatia i te whakamana. Ka whaia era i ingoatia i te whakamana, ka awhitia etahi pa i te Waiariki ki te rawhiti. Ko etahi o Ngāti Tuwharetoa e noho ana ki aua pa.
- 3.1.8 No te hipanga o te ope taua i te pa o Pārawai ka pakaru mai te whawhai. Ka murua e ngā hoia o te Karauna ngā kararehe me ngā pātaka kai engari kore rawa te pa i horo. Katahi ka neke ngā hoia ki Te Umu-hika, i reira tu ano te puehu i waenganui i ngā hoia me etahi tangata mai i te pa o Pārawai. I te pakanga nei, ka mate e Hoete o te hapū o Te Tāwera, i a ia e aukati ana i ngā hoia e whakaeke ana i te pa. E toru taima a ia e puhia ana. Ko te whakapae i whiua ki runga i etahi o Ngāti Tuwharetoa, na ratou etahi o ngā “tangata hara” i atawhai. Ka whakamatea enei e

te ope taua a te Karauna, katahi ia ka neke ki Te Kupenga. E ai ki a Ngāti Tuwharetoa ko etahi o ngā tangata i whakamatea, kaore i te paku aha, i te manaaki noa iho i era i te whaia e te Karauna.

3.1.9 No te ra e 2 o Hepetema o te tau 1865 whakaputaina ai e te Karauna tetahi Pānui Rongomau e ki ana kua mutu te pakanga. I ki te Pānui, kaore e hāmenetia era i tū maro ki te Karauna mai i te tau 1863, mo a ratou hara o mua. Kaore i whakaurua ki te Pānui Rongomau te hunga na ratou a Fulloon me etahi atu i kōhuru. I ki ano te Pānui, ki te kore e hoatuna ki te Karauna te hunga na ratou a Fulloon ma i kohuru, “ka raupatutia e te Karauna tetahi wāhanga o ngā whenua o ngā Iwi kei te huna i ngā kai-kohuru nei”.

3.1.10 No te ra 4 o te marama o Hepetema o te tau 1865 whakaputaina ai e te Kawana tetahi Pānui Ture Taua ki ngā rohe o Whakatane me Opotiki, e tareka ai te hopu i te hunga na ratou a Fulloon ma i kōhuru. Noho ai ngā hoia a te Karauna ki waho o etahi pā, ki te whai i te hunga tera i roto ratou i ngā mahi kōhuru.

3.1.11 I te marama o Oketopa o te tau 1865, ka mahue te pa o Parawai e ngā tangata i roto, ka haere ki te pa o Te Kupenga, ki reira hono atu ai ki etahi atu o ngā iwi o te Waiariki, tae rawa ki etahi o te hunga i ingoatia he tangata hara. Ka whakaekea a Te Kupenga e te Karauna. No te 20 o Oketopa o te tau 1865 taka ai te toenga o ngā tangata i te pa o Te Kupenga ki raro i te mana o te Karauna.

Te Raupatu i raro i Te Ture Whakatau Manene ki Niu Tireni 1863.

3.1.12 No te ra 17 o Hanuere o te tau 1866, na tetahi Whakahau Kaunihera, i raupatutia e te Karauna etahi e 448,000 eka i te Waiariki ki te rawhiti, i raro i Te Ture Whakatau Manene ki Niu Tireni 1863. I whakahouhia te raina raupatu i raro i tetahi panui Karauna i te ra 1 o Hepetema o te tau 1866. I uru atu ki ngā whenua raupatu nei ko te e 87,000 eka o Ngāti Tuwharetoa.

3.1.13 E ai ki ngā korero a te ture, ko etahi take i whakaturia Te Ture Whakatau Manene ki Niu Tireni 1863, ko te whakau i te rongomau me te maru, me te whakatu me te pupuri i te mana o te Kuini. E ai ki ta te Ture nei, ko te whakakuhu mai i etahi tangata whai te “huarahi pai, tōtika rawa” e tūtuki ai aua kaupapa.

3.1.14 Kaore te Ture i korero mo te whakawhiu, engari koia tera tona whaingā. I whakamahia te Ture ki te raupatu i ngā whenua Māori ina tau ana te Kāwana kei te “hara tetahi iwi, tetahi wāhanga ranei o tetahi iwi, etahi tangata tokomaha ranei mai i tetahi iwi” ki te mana o te Kuini mai i te ra 1 o te marama o Hanuere o te tau 1863. Ka ahei te Kāwana te whakatau i tetahi Rohe i raro i te Ture, i runga i te mea he whenua kei taua rohe no etahi tangata e kiia nei he tangata hara ratou.

3.1.15 I whakatau te Karauna, he iwi hara ngā iwi o te Waiariki i te mea i “ātete” ratou ki ngā hoia i haere ki te rohe ki te mau-here i te hunga na ratou a Fulloon ma i kohuru.

Te Tikanga Pāremata

3.1.16 I whakaturia Te Kōti Pāremata i raro i ngā tikanga o Te Ture Whakatau Manene ki Niu Tireni 1863, ki te whakarongo ki ngā kereme mo te whakahoki i ngā whenua raupatu. I mua o te wā noho o te Kōti Pāremata, i te marama o Pepuere o te tau 1866, tohungia ai ko Apiha Karauna John A Wilson hei komihana motuhake, ki te whakarongo ki ngā wawāhitanga o ngā whenua raupatu i Te Waiariki.

3.1.17 I whakaritea e Wilson kia wehea ki etahi poraka ngā whenua e 87,000 eka i raupatutia, mai i te raina raupatu ki te uru, ahu atu ki te Awa o Tarawera. He rahi tonu te wāhanga o te whenua nei, e keremehia ana e Ngāti Tuwharetoa me etahi atu iwi, i tukuna ke ki etahi iwi mai i Te Arawa me etahi atu hei utu mo ngā mahi hoia. I riro atu ano ngā whenua he pānga o Ngāti Tuwharetoa i te taha rāwhiti o te awa o Tarawera.

3.1.18 I rongō Te Kōti Pāremata etahi korero mai etahi tangata o Ngāti Tuwharetoa e pa ana ki ngā whenua kei roto i te raupatu, kei te taha hau-a-uru o te awa o Tarawera. Ko etahi o ngā kereme a Ngāti Tuwharetoa e whakaae ana te Koti, mo ngā poraka whenua o Tawhiti-nui (e 6,320 eka) raua ko Rotoiti-paku (e 13,675 eka).

3.1.19 No te marama o Tihema o te tau 1867 whakawhiwhia ai e Te Kōti Pāremata te poraka o Rotoiti-paku ki etahi tangata tekau a, ko te poraka o Tawhiti-nui i whakawhiwhia ki etahi tangata tekau-ma-tōru. I whakawhiwhia enei tangata i te mea ko ratou te hunga whai pānga ki aua whenua, a, kaore ratou i kuhu ki ngā mahi “hara”.

3.1.20 Ko te titiro a Ngāti Tuwharetoa ki enei whakawhiwhinga, mo te iwi ke, a, ko ngā tangata i tohungia, i te tu ke hei kai-tiaki mo te hapū. Haunga, no te pānuitanga o ngā whakawhiwhinga a Te Kōti Pāremata i roto i *Te Kāhiti o Niu Tireni* i te tau 1874, kaore he korero mo te kai-tiaki, engari he korero ke mo te whakawhiwhi noa ki te hunga nei.

3.1.21 I whakawhiwhia etahi o ngā tangata o te hapū o Te Tāwera ki etahi whenua i te takiwa o Umu-hika, i runga tonu i ngā whakaritenga a Wilson; hei tana, he rahi tonu ngā whenua o Te Tāwera i taua takiwa i mua o te pakaru mai o te riri.

3.1.22 No te marama o Tihema o te tau 1867, whakawhiwhia ai e Te Kōti Pāremata etahi pito whenua e 50 eka te rahi mai i ngā poraka whenua o Rotoiti-paku me Tawhiti-



nui ki etahi tangata tekau. Katoa enei whakawhiwhinga i raro i ngā tekiona 4 me te 6 o Te Ture Whenua Raupatu 1867, e ahei ana te Karauna ki te whakahoki whenua ki etahi tangata e whakaaro ana te Karauna kua “tangata hara kua tuohu ki te Karauna”.

- 3.1.23 I mahia e Wilson āna mahi i raro i ngā tekiona o Te Ture Whakatau Manene ki Niu Tireni 1863, me ana whakarereketanga. No muri ke ka whakatakoto ture hou te Karauna, penei i Te Ture Whenua Raupatu 1867 e aha ai, e mana a-ture ai ngā whakaritenga a Wilson.
- 3.1.24 Ahakoa te mea i whakawhiwhia a Ngāti Tuwharetoa ki etahi whenua ma te huarahi o te tikanga pāremata, i ngaro a ratou tika ki te kuhu ki era o o ratou whenua me a ratou rawa.
- 3.1.25 Ko ngā whenua i hoki mai ma te tikanga pāremata, i hoki mai ke ki ngā tangata takitahi, apa te hapū, te iwi ranei. Kaore i hangai ngā momo whakawhiwhinga nei ki ngā tikanga tiaki whenua o mua, na reira i morearea te noho o aua whenua kei wehea.

Ngā hoko a te Karauna

- 3.1.26 No te tau 1873 timata ai ngā apiha hoko whenua a te Karauna ki te whakarite mo te rihi i ngā poraka whenua o Rotoiti-paku me Tawhiti-nui. Tokowaru ngā tangata o Ngāti Tuwharetoa i haina i tetahi whakaaetanga rihi mo ngā poraka. Ko etahi o ngā tangata nei i ingoatia hei kai-tiaki mo ngā poraka e rua i roto i ngā whakamarama a Wilson i te wa o ngā whiwhi pāremata.
- 3.1.27 No te tau 1874, whai muri i te panuitanga o ngā whakawhiwhinga mo ngā poraka o Rotoiti-paku me Tawhiti-nui i roto i *Te Kāhiti o Niu Tireni*, i marama te kitea atu, i te he ke ngā ingoa i runga i ngā whakaaetanga rihi. I ngana ngā apiha hoko whenua a te Karauna ki te tutuki i te whakaaetanga rihi ma te tiki i ngā hainatanga mai i te hunga katoa i roto i te rarangi i te pānui kāhiti. Uaua te mahi nei, i te taha whakahaere me te mea i te ngaro etahi o te hunga i rārangitia i te kāhiti. No muri ka whakatau te Karauna kia hokona ke aua poraka.
- 3.1.28 No te tau 1878 ata wehea ai etahi wāhi i roto i ngā poraka whenua o Rotoiti-paku me Tawhiti-nui, a, i te nuinga o te wā, i ruritia enei whenua hei whenua rāhui, i raro tonu i ngā whakahau a ngā āpiha a te Karauna. I te tau o muri mai, i te wā o ngā whakaritenga me etahi o te hunga i te rārangi kāhiti, i whakaae ngā āpiha hoko whenua a te Karauna kia kaua e urū aua whenua i rāhuitia ki ngā hokohoko.

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- 3.1.29 I roto i ngā tau ka whai, ka whakarite te Karauna me etahi o te hunga no rātou ngā whenua kia hokona te katoa o te poraka o Tawhiti-nui; no te tau 1883 i tutuki tēra. I wehea mai tetahi whenua rāhui e 88 eka te korahi i ngā mahi hokohoko.
- 3.1.30 I whakarite ano ngā apiha a te Karauna kia hokona ngā pānga o etahi tokorima o te hunga i whakawhiwhia ki te poraka o Rotoiti-paku. I tuhi reta ki te Minita mo Ngā Take Māori etahi atu o te hunga i whakawhiwhia, i runga i ta rātou whakahe ki te hoko o te whenua. Ka tonu te Karauna ki Te Kōti Whenua Māori kia pānuitia ona pānga i roto i te poraka. I te wā e noho ana Te Kōti Whenua Māori, ka whakahe etahi o te hunga kaore i hiahia ki te hoko i te whenua, kia whakaae ra ano ki tenei ngā tangata tekau katoa i whakawhiwhia ki te poraka, tae rawa ki o ratou hapū. Ahakoa o ratou whakahe, no te ra 25 o Hune o te tau 1883 whakawhiwhia ai e te Kōti ki te Karauna te hāwhe whaka-te-tonga o te poraka whenua o Rotoiti-paku. No te ra 25 o Hune o te tau 1883 tuhi atu ai etahi o Ngāti Tuwharetoa ki te Minita mo Ngā Take Māori, e whakamarama ana i ngā whakahe o etahi o Ngāti Tuwharetoa me Ngāti Umutahi ki te hoko, me te pātai mēna e pai ana kia whakahokia ngā moni he mea homai e te Karauna mo ngā whenua.
- 3.1.31 No te rironga atu o o ratou whenua ma te raupatu, ma ngā māhi hoko a te Karauna me etahi atu tikanga wehe i te tangata mai i ōna whenua, he mea uaua inaianei mo Ngāti Tuwharetoa ki te whatoro ki ana rawa penei i te takutai me ngā repō, me ki ngā kai-whakārato kai, rongoa, haumaruru hoki. Ka ngaro hoki ta rātou mana i runga i etahi o o rātou urupā me o rātou wāhi nui. Hei ta Ngāti Tuwharetoa he pēhi kino tenei i runga i to ratou hononga a-wairua, a-kikokiko me te whenua.

Ngā Nekeneke o te Rau Tau 20

- 3.1.32 Mai i te timatanga o te tekau tau 1890 i nganā ngā tangata whai kia whakatāhea ngā wai o te repō o Rangitaiki, e noho ataahua ake ai te whenua mo ngā mahi ahuwhenua. I whakaae te Karauna ki tenei mahi. No te tau 1910 ka riro ma te Karauna e whakahaere ngā mahi whakatahe wai, a, no te tau 1914 oti ai te keria o tetahi maero e puta tika ai te awa o Rangitaiki ki te moana. Rereke katoa te ahua o ngā repō i ngā mahi kerikeri me te aha, ka raru ngā wāhi tapu me ngā wāhi kohi kai, aha noa atu.
- 3.1.33 No te tekau tau 1950 whakaturia ai te taone me te mira pēpa o Kawerau, i runga paku noa ake o te kainga o Ngāti Tuwharetoa. Ko te otinga o tenei, ko te whakaparuparu me te whakaparahako i te awa o Tarawera (he wāhi nui mo te mahi kai, rawa hoki) me te takiwā o Ōkakāru (e ai ki a Ngāti Tuwharetoa, he wāhi tenei mo te whakaora me te whakana) i ngā paru mai i ngā kainga, ahumahi hoki. Na te *Tasman Pulp and Paper Company Enabling Act* mana ai te tuku para mai i te mira ki te awa o Tarawera, i raro i ngā arātohu a te *Pollution Advisory Council*.

3.1.34 Na te whakamanatanga o te *Geothermal Energy Act* 1953, ka riro ki te Karauna anake ngā tika mo ngā rawa ngāwhā. Kaore te Karauna i korero ki a Ngāti Tuwharetoa i mua o tana haere i tenei huarahi. Na runga i tenei mahi, kua kore te mana me te āheinga o Ngāti Tuwharetoa ki ngā rawa ngāwhā kei te takiwa o Kawerau.

3.2 NGĀ WHAKAAETANGA NA TE KARAUNA

3.2.1 E whakaae ana te Karauna, mai ano i te wā o te raupatu kua rapū a Ngāti Tuwharetoa kia whakaaetia o ratou whakamau, a, kua roa rawa te wā e tariana tenei. Na reira e whakaae ana te Karauna ki te tika o ngā whakamau a Ngāti Tuwharetoa i roto i ngā tau, na reira e whai iho nei ko ana whakaaetanga.

3.2.2 E whakaae ana te Karauna:

- (a) Na tana raupatu i ngā whenua o Ngāti Tuwharetoa i te Waiariki-ki-te-rāwhiti i raro i Te Ture Whakatau Manene ki Niu Tireni 1863, i tineia te mana tuku iho a te Māori ki runga i te whenua, a, riro tonu atu ngā whenua me ngā rawa o Ngāti Tuwharetoa;
- (b) Na te raupatu o ngā whenua o Ngāti Tuwharetoa ka pa te kino ki runga i te noho, te ohanga me te whakapakaritanga o Ngāti Tuwharetoa, ka aukatia te iwi ki ona rawa taiao me ona wāhi tapu, ka whai wāhi hoki ki te noho wehe me te marara o te iwi;
- (c) Kaore i te tika tana raupatu i ngā whenua o Ngāti Tuwharetoa, i tua atu, he takahitanga tenei o te Tiriti o Waitangi me ona matapono.

3.2.3 E whakaae ana te Karauna:

- (a) I pupū ake i te raupatu, ko te whakatoihara a, na ngā tupuhitanga o te whakahaere o Te Kōti Pāremata ka kino ake te pa mai o taua whakatoihara;
- (b) Kaore he tikanga o te raupatu whenua, ināra kaore te Karauna i whakahoki ngā whenua katoa o te hunga - ki ta ratou titiro – kaore i roto i ngā mahi i raupatutia ai ngā whenua i te tuatahi;
- (c) I whakawhiwhia etahi whenua o Ngāti Tuwharetoa ki iwi ke. Ko te otinga atu o tenei, i wehe mai etahi o te iwi o Ngāti Tuwharetoa i ngā whenua kua roa nei e nohia ana e ratou, e whakatipuria ana ki te kai mai ra ano;

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- (d) Na ngā whakawhiti whenua i raro i ngā ture whenua Māori, penei i ngā hoko whenua a te Karauna, ka iti haere te korahi o ngā whenua o Ngāti Tuwharetoa;
- (e) I whakawhiwhia e Te Kōti Pāremata me Te Kōti Whenua Māori ngā whenua ki ngā tangata takitahi, apa ngā hapū, te iwi ranei. Kaore tenei i te tika i raro i ngā whakahaere whenua a te Māori, me te mea ano na tenei mahi, ka noho morearea ngā whenua nei, kei wehea, kei hokona;
- (f) Na enei mahi i raru te noho a-hapori, te mana me te rangatiratanga o Ngāti Tuwharetoa. Kaore i eke te tiaki a te Karauna i a Ngāti Tuwharetoa i ngā whakawhiunga o enei mahi, na reira he takahitanga tenei o Te Tiriti o Waitangi me ona matapono.

3.2.4 E whakaae ana te Karauna, ko te pūtanga o te kore nganā a te Karauna ki te tiaki i ngā pānga a Ngāti Tuwharetoa ki ngā whenua i hiahia te iwi ki te pupūri, kua tata kore nei ngā whenua o te iwi inaianei. I takahi te Karauna i Te Tiriti o Waitangi, i tana kore ngāna kia toe mai he whenua ki a Ngāti Tuwharetoa, e tutuki ai ona hiahia mo tenei wa, mo ngā ra hoki kei te tu.

3.2.5 E whakaae ana te Karauna na:

- (a) Te whakamanatanga o te *Geothermal Energy Act 1953* e te Karauna (kaore i whakaae a Ngāti Tuwharetoa);
- (b) Te rironga atu o te mana whakahaere o Ngāti Tuwharetoa ki runga i ngā Ngawha o Kawerau;
- (c) Te whakaparariko i te awa o Tarawera me te takiwa o Ōkākāru;

ka whakamau a Ngāti Tuwharetoa a, e whakamau tonu nei i enei ra.

3.2.6 E whakaae ana te Karauna:

- (a) I whiwhi, i whai hua a Niu Tireni mai i ngā whenua o Ngāti Tuwharetoa i raupatutia;
- (b) Ko etahi atu o ngā rawa penei i ngā ngāwhā, i tangohia me te kore whakaae o Ngāti Tuwharetoa; whiwhi katoa a Niu Tireni, mo tātā ora me tātā whanaketanga, i ngā rawa a Ngāti Tuwharetoa;
- (c) Mai ano i te tau 1840, kua whakaatu mai te nuinga o ngā tangata o Ngāti Tuwharetoa i te pai o ta ratou noho me te Kāwanatanga. Kua tutuki e Ngāti

Tuwharetoa ona kawenga i raro i Te Tiriti o Waitangi, ko tetahi wāhi o enei kawenga me ki, ko te haere ki ngā pakānga o Aotearoa ki tāwāhi. E mihi ana te Karauna ki te wāhi a Ngāti Tuwharetoa i roto i te tiaki me te arai i te whenua nei o Niu Tirenī.

3.3 TE WHAKAPAHA A TE KARAUNA

E aro ana te Karauna ki ngā okeoke a ngā tīpuna o Ngāti Tuwharetoa i a ratou ka whai i a ratou kereme mo te tika ki te Karauna mai i te wā o te raupatu. I tua atu ka tuku whakapaha te Karauna ki a Ngāti Tuwharetoa, ki o ratou tīpuna me o ratou uri whakaheke.

E tino awhitu ana, e tino whakapaha ana te Karauna mo ana takahitanga i Te Tiriti o Waitangi me ona matapono, e whakamaramatia ana i runga ake nei.

Ko te mea nui, e tino awhitu ana, e tino whakapaha ana te Karauna mo tana raupatu i ngā whenua o Ngāti Tuwharetoa, me ngā whakawhiunga mai i ana mahi i pa ki ngā whakatipūranga, tapae atu ko ngā putanga kino ki te hapori, te ohanga, te taiao me te whakapakaritanga o Ngāti Tuwharetoa.

Ka tino awhitu te Karauna mo tana kore aro ki te mana me te rangatiratanga o Ngāti Tuwharetoa.

Na reira, i runga i tenei whakapaha, e rapū ana te Karauna kia whakahāngaitia enei he ōna, katahi ia ka tīmata ki te whakapai i te hononga. E rika ana te Karauna kia tu mai tetahi hononga, ko tona putake ko te whakawhirinakitanga me te mahi tahi me Ngāti Tuwharetoa.

SECTION 3: HISTORICAL ACCOUNT, THE CROWN'S ACKNOWLEDGEMENTS AND APOLOGY

3.1 HISTORICAL ACCOUNT

3.1.1 This section sets out the historical account of the events upon which the Crown's acknowledgements and apology in this Section are based.

Rohe of Ngāti Tuwharetoa

Ko Pūtauaki te Maunga

Ko Te Takanga i ō Apa te Awa

Ko Te Aotahi te Tangata

Ko Ngāti Tuwharetoa te Iwi

3.1.2 Ngāti Tuwharetoa describe their rohe as running from Otamarakau following the Waitahanui Stream to Otari to Motuotara to Maungawhakamana to Ngarararua in Haehaenga territory to Kākahuoteritenga to Waikareao to Maraetahia to Monehu to Okorotere to Panepane to Pūtauaki to Tāhuna to Rakeihopukia to Wahieroa to Rurima to Otamarakau. The rohe of Ngāti Tuwharetoa as described extends beyond the confiscation lines. The Rangitaiki and Tarawera rivers are the major rivers within the rohe.

Significant tribal pūkorero are connected to these tribal landmarks.

3.1.3 As tangata whenua of the described rohe, places of historical and cultural significance to Ngāti Tuwharetoa include Otamarakau, Otari, Motuotara, Maungawhakamana, Ngarararua, Haehaenga, Kakahu-o-te-Ritenga, Waikareao, Maraetahia, Te Monehu, Okorotere, Panepane, Putauaki, Tahuna, Rakeihopukia, Wahieroa, Rurima Islands, Otaramuturangi, Paniwhaniwha (Ngapariwhakairo), Mangāti, Tūwatawata, Te Waikoukou, Moturoa, Puketapu, Otukoiro, Te Kiore Pohoroa, Korotiwaha, Otitapu, Paokoroiti, Te Pataua, Te Pakipaki, Tainapekapeka, Taumanawa, Tumanuka, Peketa, Te Waha o te Parata, Opeke, Tahunaroa, Tahutu, Whakarewa, Oniao, Umuhika, Hāhūru, Okotuku, Owahirangi, Whatangi, Koroaha, Tutarautawhai, Parangaeha, Mangapehi, Oterangihakamai, Poutakamoko, Pukehinau, Pokanui, Oteao, Te Ahinanga, Te Atua Reretahi, Te Kopua, Huratoki, Te Haehaenga, Otangihia, Pokohu, Otangiwaka, Taranaki, Matirawhaiti, Whakapaukorero, Whakapaukarakia, Mokaingarara, Ohinetewai, Tuhaepo, Te Kohika, Te Ahikokowai, Kakaramea, Whakahoro, Mangawhio, and Ruataniwha. Waterways include: Waitahanui, Hauone, Herepuru, Pikowai, Mimiha/Whakarewa, Ohinekoao, Waihoko, Kohi-o-Awa, Wai-te-Ariki, Wai-te-

puru, Awakaponga, Whariki-te-toki, Waikamihi, Wairere-a-tu (the name by which Ngāti Tuwharetoa know the Braemar Springs), Pokerekere and Te Kaokaoroa.

3.1.4 Ngāti Tuwharetoa state that prior to 1866 they were actively engaged in the cultivation of large kumara gardens, potatoes, wheat and flax for sale to and barter with local European traders, and the transport of goods to markets. They were also involved in customary trade with other iwi. The area at Okākāru (geothermal region) in the Kawerau area was used as a special place of healing and recuperation and for early cultivation of plants, in particular kumara. The area was also famous for the plentiful supply of eels and fish and the breeding of eels, especially in the warmest thermal waters. Transport was by waka and the surrounding wetlands were plentiful in kai.

Background to Raupatu – Conflict in the Eastern Bay of Plenty

3.1.5 In July 1863 war broke out between the Crown and Māori in the Waikato; as part of this conflict hostilities occurred in the Bay of Plenty during the first half of 1864.

3.1.6 Following a period of unrest, a Crown official, James Fulloon, and three crew members of the vessel *Kate* were killed by some local Māori at Whakatane in July 1865. T. H. Smith, the Civil Commissioner at Maketu, issued a warrant for the arrests of those alleged to have taken part in the murders on board the *Kate*.

3.1.7 In August 1865 a Crown expedition of some 500 men, including Māori from neighbouring iwi and hapū, was mounted under Major William Mair, Resident Magistrate, to apprehend those named in the warrant. They pursued those named in the warrant, laying siege to a number of pa in the eastern Bay of Plenty. Ngāti Tuwharetoa hapū resided at some of these pa.

3.1.8 Fighting broke out as the Crown expedition passed Pārawai pa. Crown troops raided livestock and pillaged crops and food supplies but failed to take the pa. The troops moved onto Te Umuhika where they became involved in a skirmish with some people from Pārawai pa. In the ensuing conflict Hoete, of Te Tāwera hapū, was shot three times and died, defending the pa and his kin from the troops. Others of Ngāti Tuwharetoa who were accused of harbouring “tangata hara” were killed as the Crown expedition moved towards Te Kupenga. According to Ngāti Tuwharetoa a number of those killed were providing customary hospitality to those being pursued by the Crown.

3.1.9 On 2 September 1865 the Crown issued a Proclamation of Peace, declaring the war at an end. The Proclamation stated that those who had taken up arms against

the Crown since 1863 would not be prosecuted for past offences. Those responsible for the killings of Fulloon and others were among those excluded from this amnesty. The Proclamation also stated that if those responsible for the killing of Fulloon were not given up then “the Governor will seize a part of the lands of the Tribes who conceal these murderers”.

3.1.10 On 4 September 1865 the Governor issued a Proclamation of Martial Law in the Whakatane and Opotiki areas to enable the capture of those accused of the murder of Fulloon and others. Crown troops remained stationed outside some pa, for the purpose of pursuing those thought to be involved in the murders.

3.1.11 Around October 1865 the occupants of Parawai pa evacuated and went to Te Kupenga pa, joining other Bay of Plenty iwi, including some of the individuals listed in the arrest warrant. Crown troops attacked Te Kupenga. On 20 October 1865 all those remaining at Te Kupenga surrendered to the Crown force.

Confiscation under the New Zealand Settlements Act 1863

3.1.12 By an Order in Council on 17 January 1866 the Crown confiscated approximately 448,000 acres of land in the eastern Bay of Plenty, under the New Zealand Settlements Act 1863. The description of the confiscation boundary was amended by a subsequent Crown proclamation of 1 September 1866. The confiscated area included approximately 87,000 acres of the traditional lands of Ngāti Tuwharetoa.

3.1.13 According to the legislation two of the purposes of the New Zealand Settlements Act 1863 were to provide permanent peace and security, and establish and maintain the Queen’s authority. The Act described the introduction of a sufficient number of settlers as “the best and most effectual means” of achieving those purposes.

3.1.14 The Act did not mention punishment, but was punitive in nature. It was used to effect the confiscation of Māori land whenever the Governor in Council was satisfied that “any Native Tribe or Section of a Tribe or any considerable number thereof” had been engaged in “rebellion” against the authority of the Queen since 1 January 1863. The Governor could proclaim a District, for the purposes of the Act, where there was any land owned in that district by those deemed to have been in rebellion.

3.1.15 The Crown considered the Bay of Plenty tribes to have been in rebellion because of the “resistance” to the forces sent into the area to arrest those responsible for the deaths of Fulloon and others.

The Compensation Process

- 3.1.16 The Compensation Court was established under the provisions of the New Zealand Settlements Act 1863 to hear claims for the return of confiscated land. Prior to the sitting of the Compensation Court Crown Agent John A Wilson was appointed as a special commissioner in February 1866 to deal with the allocation of confiscated land in the Bay of Plenty.
- 3.1.17 Wilson arranged for approximately 87,000 acres of confiscated land between the western confiscation boundary and the Tarawera River to be divided into blocks. Much of this area, which Ngāti Tuwharetoa and other iwi also claim, went to certain Te Arawa iwi and others as military awards. Ngāti Tuwharetoa also lost lands, which they traditionally held interests in, on the eastern side of the Tarawera River.
- 3.1.18 The Compensation Court heard evidence from members of Ngāti Tuwharetoa in relation to land within the confiscation boundary on the west side of the Tarawera River. The Ngāti Tuwharetoa claims recognised by the Court included those for the Tawhitinui block (6,320 acres) and the Rotoitipaku block (13,675 acres).
- 3.1.19 In December 1867 the Compensation Court awarded the Rotoitipaku block to ten people and the Tawhitinui block to thirteen people. These awards were made on the basis that they were the rightful owners and not implicated in the “rebellion”.
- 3.1.20 Ngāti Tuwharetoa viewed the awards of these blocks as a tribal endowment with the named individuals acting as kaitiaki or trustees for the hapū. However, when the Compensation Court awards were officially notified in the *New Zealand Gazette* seven years later, in 1874, there was no mention of trustees. Rather the blocks were officially awarded to the listed individuals as grantees.
- 3.1.21 Members of Te Tāwera hapū were granted land in the Umuhika area, in accordance with an arrangement made by Wilson, who noted that Te Tāwera had been major landholders in the area prior to the war.
- 3.1.22 In December 1867 the Compensation Court also awarded ten individuals 50 acre blocks within the Rotoitipaku and Tawhitinui blocks. All of these awards were made under sections 4 and 6 of the Confiscated Land Act 1867, which allowed the return of land to those considered by the Crown to be “surrendered rebels”.
- 3.1.23 Wilson carried out his activities under the provisions of the New Zealand Settlements Act 1863 and its amendments. The Crown then enacted further legislation, including the Confiscated Lands Act 1867, in order to validate Wilson’s arrangements.



3.1.24 While Ngāti Tuwharetoa were granted some land through the compensation process, they lost their customary rights of access to other traditional lands and resources.

3.1.25 Land restored through the compensation process was returned to individuals rather than to the hapū or iwi. The awards did not reflect the customary forms of tenure and land became more susceptible to partition and alienation.

Crown purchases

3.1.26 In 1873 Crown land purchase agents began negotiating to lease the Rotoitipaku and Tawhitinui blocks. Eight Ngāti Tuwharetoa men signed a deed of lease for the blocks. Some of these men were listed as trustees for the two blocks in the schedules Wilson prepared of the compensation awards.

3.1.27 In 1874, after publication of the awards for the Rotoitipaku and Tawhitinui blocks in the *New Zealand Gazette*, it became clear that the existing deed of lease did not have the appropriate signatories. Crown land purchase agents attempted to complete the lease deeds by obtaining the signatures for all the grantees listed in the gazette notice. This proved difficult for a number of reasons, including administrative difficulties and the absence of some grantees from the area. The Crown subsequently decided to attempt to purchase the blocks instead.

3.1.28 In 1878 a number of areas within the Rotoitipaku and Tawhitinui blocks were set aside and, in many cases, surveyed as reserves under instruction from Crown officials. During negotiations with some of the grantees the following year, the Crown land purchase agent agreed that these reserves would be excluded from purchase.

3.1.29 Over the next few years the Crown negotiated with some of the owners, purchasing all of the Tawhitinui block in 1883. An 88 acre reserve was excluded from the sale.

3.1.30 Crown agents also negotiated the purchase of the interests of five of the grantees of the Rotoitipaku block. Some of the other grantees wrote to the Minister of Native Affairs in December 1882 objecting to the sale. The Crown applied to the Native Land Court to have its interest in the block declared. During the Native Land Court hearing some non-selling grantees opposed the land being sold without the consent of all ten of the grantees and the backing of their hapū. Despite their objections the Court awarded the southern half of Rotoitipaku to the Crown on 25 June 1883. There was no provision for reserves within the section of Rotoitipaku awarded to the Crown. Members of Ngāti Tuwharetoa wrote to the Minister of Native Affairs on 25 June 1883, outlining the objections of some

Ngāti Tuwharetoa and Ngāti Umutahi to the sale and asking to be allowed to return the money advanced by the Government.

3.1.31 The loss of their traditional lands through confiscation, Crown purchases and other alienations under the native land laws has impacted on the access of Ngāti Tuwharetoa to resources such as the coast and the swamp that traditionally provided food, medicine and shelter. They also lost control over some of their urupā and significant sites. Ngāti Tuwharetoa state that this has had an ongoing impact on the spiritual and physical relationship of the iwi with the land.

20th Century Developments

3.1.32 From the early 1890s onwards attempts were made by settlers, with the sanction of the Government, to drain the Rangitaiki swamp area to make it more suitable for farming. The Government took over the local land drainage scheme in 1910 and in 1914 a channel was cut to provide the Rangitaiki River with a direct route to the sea. The physical characteristics of these wetlands were significantly altered by the drainage and river diversion scheme and this affected Ngāti Tuwharetoa wāhi tapu and traditional gathering areas for food and other resources.

3.1.33 In the 1950s the Kawerau township and pulp and paper mill were established above the settlement of Ngāti Tuwharetoa. These developments resulted in the pollution and degradation of the Tarawera River (which was a valuable food and water resource for Ngāti Tuwharetoa) and the Ōkākāru area (which Ngāti Tuwharetoa hold to be a historically significant area for healing and recuperation), by urban and industrial waste. The Tasman Pulp and Paper Company Enabling Act 1954 authorised the discharge of waste from the mill into the Tarawera River in accordance with Pollution Advisory Council guidelines.

3.1.34 With the passing of the Geothermal Energy Act 1953, the Crown established for itself, without the consent of Ngāti Tuwharetoa, the sole right to the geothermal energy resource. In relation to the Kawerau geothermal field, this has resulted in Ngāti Tuwharetoa losing control of and access to geothermal resources in the area.

3.2 ACKNOWLEDGEMENTS BY THE CROWN

3.2.1 The Crown acknowledges that the people of Ngāti Tuwharetoa have sought acknowledgement of their grievances since the raupatu and that recognition of these grievances is long overdue. The Crown hereby acknowledges the legitimacy of the Ngāti Tuwharetoa historical grievances and makes the following acknowledgements:

3.2.2 The Crown acknowledges that:

- (a) Its confiscation of Ngāti Tuwharetoa lands in the Eastern Bay of Plenty by means of the New Zealand Settlements Act 1863 extinguished Māori customary title to land and deprived Ngāti Tuwharetoa of tribal lands and resources;
- (b) The confiscation of Ngāti Tuwharetoa lands had a damaging effect on the welfare, economy and development of Ngāti Tuwharetoa, deprived the iwi of access to its traditional natural resources and wāhi tapu and contributed significantly to the subsequent dislocation and fragmentation of the iwi;
- (c) Its confiscation of Ngāti Tuwharetoa lands was unjust and a breach of the Treaty of Waitangi and its principles.

3.2.3 The Crown acknowledges that:

- (a) The prejudice created by the confiscation was compounded by inadequacies in the Compensation Court process;
- (b) The confiscations were indiscriminate in that the Crown failed to return land in full to those it did not consider to have been involved in the actions that prompted the confiscation;
- (c) Some Ngāti Tuwharetoa land was awarded to other iwi. As a result some Ngāti Tuwharetoa tangata were dislocated from the lands they traditionally occupied and cultivated;
- (d) Ngāti Tuwharetoa's traditional tribal estate was further reduced by transfer under the native land laws, including Crown purchases;
- (e) The Compensation Court and the Native Land Court awarded land to individuals rather than iwi or hapū. This was not consistent with customary tenure and made those lands more susceptible to partition and alienation;
- (f) These actions eroded the traditional social structures, mana and rangatiratanga of Ngāti Tuwharetoa. The Crown failed to adequately protect Ngāti Tuwharetoa from the impact of these actions and this was a breach of the Treaty of Waitangi and its principles.

3.2.4 The Crown acknowledges that the cumulative effect of the Crown's actions, particularly its failure to actively protect Ngāti Tuwharetoa interests in the land they wished to retain has left the iwi virtually landless. The Crown breached the Treaty of Waitangi by failing to ensure that Ngāti Tuwharetoa were left with sufficient land for their present and future needs.

3.2.5 The Crown acknowledges that:

- (a) The passing of the Geothermal Energy Act 1953 by the Crown (without the consent of Ngāti Tuwharetoa);
- (b) Ngāti Tuwharetoa having lost control of, and access to, the Kawerau Geothermal System; and
- (c) The pollution and degradation of the Tarawera River and the Okākāru area;

have caused a sense of grievance within Ngāti Tuwharetoa that is still held today.

3.2.6 The Crown acknowledges that:

- (a) The lands confiscated from Ngāti Tuwharetoa have made a valuable contribution to the wealth and development of the nation;
- (b) The other resources, such as the geothermal resource, taken without the consent of Ngāti Tuwharetoa, have made a valuable contribution to the wealth and development of the nation;
- (c) Most Ngāti Tuwharetoa people have demonstrated a record of co-operation with the Government from 1840. Ngāti Tuwharetoa has honoured its obligations and responsibilities under the Treaty of Waitangi, especially, but not exclusively, in its contribution to New Zealand's war effort overseas. The Crown pays tribute to the contribution made by Ngāti Tuwharetoa to the defence of the nation.

3.3 THE CROWN'S APOLOGY

The Crown recognises the struggles of the ancestors of Ngāti Tuwharetoa in pursuit of their claims for justice against the Crown since the raupatu and hereby makes this apology to Ngāti Tuwharetoa, to their ancestors and to their descendants.

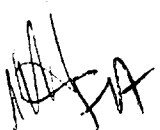
The Crown profoundly regrets and unreservedly apologises for the breaches of the Treaty of Waitangi and its principles acknowledged above.

In particular, the Crown profoundly regrets and unreservedly apologises for its confiscation of Ngāti Tuwharetoa lands and for the cumulative effect of its actions over the generations, which have had a damaging effect on the welfare, economy, environment and development of Ngāti Tuwharetoa.

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The Crown profoundly regrets its failure to acknowledge the mana and rangatiratanga of Ngāti Tuwharetoa.

Accordingly, with this apology, the Crown seeks to atone for these wrongs and to begin the process of healing. The Crown looks forward to building a relationship of mutual trust and co-operation with Ngāti Tuwharetoa.

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SECTION 4: CULTURAL REDRESS PROPERTIES

4.1 TE WAHIEROA

4.1.1 Definition

In this *clause 4.1*, *Te Wahieroa* means that part of the Western Whakatane Recreation Reserve as described in *Clause 4.1* of *Attachment 4.1*.

4.1.2 Vesting of Te Wahieroa

The Settlement Legislation will provide:

- (a) For the cancellation of the vesting in the Whakatane District Council of Te Wahieroa;
- (b) For the revocation of the reservation of Te Wahieroa as a recreation reserve subject to section 17 of the Reserves Act 1977;
- (c) That when the reservation of Te Wahieroa as a recreation reserve is revoked, it will vest in the Crown as Crown land and be subject to section 82 of the Reserves Act 1977;
- (d) That, following the vesting described in *clause 4.1.2(c)*, the fee simple estate in Te Wahieroa will be vested in the Governance Entity;
- (e) For the reservation of Te Wahieroa as a recreation reserve subject to section 17 of the Reserves Act 1977, for which the Governance Entity will be the Administering Body; and
- (f) That, notwithstanding section 16(10) of the Reserves Act 1977, the name of the reserve created under *clause 4.1.2(e)* will be Te Wahieroa Recreation Reserve.

4.1.3 Remainder of Western Whakatane Recreation Reserve unaffected

For the avoidance of doubt, that part of the Western Whakatane Recreation Reserve not vested in the Governance Entity in accordance with *clause 4.1.2* is unaffected by this *clause 4.1* and continues to be a recreation reserve vested in the Whakatane District Council subject to section 17 of the Reserves Act 1977 under that name and administration as at the Settlement Date.

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4.2 TE ATUA RERETAHI

4.2.1 Definition

In this *clause 4.2*, *Te Atua Reretahi* means that part of the Rotoma Forest Conservation Area as described in *Clause 4.2 of Attachment 4.1*.

4.2.2 Vesting of Te Atua Reretahi

The Settlement Legislation will provide:

- (a) That Te Atua Reretahi ceases to be a conservation area under the Conservation Act 1987;
- (b) That the fee simple estate in Te Atua Reretahi shall vest in the Governance Entity subject to the conservation covenant referred to in *clause 4.2.4*; and
- (c) That the conservation covenant referred to in *clause 4.2.4* is deemed to be a conservation covenant for the purposes of section 77 of the Reserves Act 1977.

4.2.3 Remainder of Rotoma Forest Conservation Area unaffected

For the avoidance of doubt, that part of the Rotoma Forest Conservation Area not vested in the Governance Entity in accordance with *clause 4.2.2* is unaffected by this *clause 4.2* and continues to be a conservation area subject to the Conservation Act 1987 as at the Settlement Date.

4.2.4 Conservation Covenant

On the Settlement Date, the Governance Entity shall enter into a conservation covenant with the Minister of Conservation in the form set out in *Schedule 4.2*, in respect of Te Atua Reretahi.

4.3 TE KAUKAHIWI O TIROTIROWHETU

4.3.1 Definition

In this *clause 4.3*, *Te Kaukahiwi o Tirotirowhetu* means that part of the Parimahana Scenic Reserve as described in *Clause 4.3 of Attachment 4.1*.

4.3.2 Vesting of Te Kaukahiwi o Tirotirowhetu

The Settlement Legislation will provide:

- (a) For the revocation of the reservation of Te Kaukahiwi o Tirotirowhetu as a scenic reserve subject to section 19 of the Reserves Act 1977;

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- (b) That when the reservation of Te Kaukahiwi o Tirotirowhetu as a scenic reserve is revoked, it will vest in the Crown as Crown land and be subject to section 82 of the Reserves Act 1977;
- (c) That, following the vesting described in *clause 4.3.2(b)* the fee simple estate in Te Kaukahiwi o Tirotirowhetu will be vested in the Governance Entity;
- (d) For the reservation of Te Kaukahiwi o Tirotirowhetu as a scenic reserve subject to section 19 of the Reserves Act 1977, for which the Governance Entity will be the Administering Body; and
- (e) That, notwithstanding section 16(10) of the Reserves Act 1977, the name of the reserve created under *clause 4.3.2(d)* will be Te Kaukahiwi o Tirotirowhetu Scenic Reserve.

4.3.3 Remainder of Parimahana Scenic Reserve unaffected

For the avoidance of doubt, that part of the Parimahana Scenic Reserve not vested in the Governance Entity in accordance with *clause 4.3.2* is unaffected by this *clause 4.3* and continues to be a scenic reserve subject to section 19 of the Reserves Act 1977 as at the Settlement Date.

4.4 OTITAPU LOOKOUT

4.4.1 Definition

In this *clause 4.4*, *Otitapu Lookout* means that part of the Lake Rotoma Scenic Reserve as described in *Clause 4.4* of *Attachment 4.1*.

4.4.2 Vesting of Otitapu Lookout

The Settlement Legislation will provide:

- (a) For the revocation of the reservation of Otitapu Lookout as a scenic reserve subject to section 19 of the Reserves Act 1977;
- (b) That when the reservation of Otitapu Lookout as a scenic reserve is revoked, it will vest in the Crown as Crown land and be subject to section 82 of the Reserves Act 1977;
- (c) That following the vesting described in *clause 4.4.2(b)* the fee simple estate in Otitapu Lookout will be vested in the Governance Entity subject to the protected private land agreement referred to in *clause 4.4.4*;

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- (d) That the protected private land agreement referred to in *clause 4.4.4* is deemed to be an agreement for the purpose of section 76 of the Reserves Act 1997; and
- (e) That Otitapu Lookout is declared to be protected private land under section 76 of the Reserves Act 1977, and the Registrar-General of Land will note a memorial on the certificate or certificates of title or computer freehold register or registers to record this declaration.

4.4.3 Remainder of Lake Rotoma Scenic Reserve unaffected

For the avoidance of doubt, that part of the Lake Rotoma Scenic Reserve not vested in the Governance Entity in accordance with *clause 4.4.2* is unaffected by this *clause 4.4* and continues to be a scenic reserve subject to section 19 of the Reserves Act 1977 as at the Settlement Date.

4.4.4 Protected private land agreement

On the Settlement Date, the Governance Entity shall enter into a protected private land agreement with the Minister of Conservation in the form set out in *Schedule 4.3*, in respect of Otitapu Lookout.

4.5 WHAKAPAU KORERO

4.5.1 Definition

In this *clause 4.5*, *Whakapaukorero* means that part of the Matata Scenic Reserve described in *Attachment 4.1*.

4.5.2 Vesting of Whakapaukorero

The Settlement Legislation will provide:

- (a) For the revocation of the reservation of Whakapaukorero as a scenic reserve subject to section 19 of the Reserves Act 1977;
- (b) That when the reservation of Whakapaukorero as a scenic reserve is revoked, it will vest in the Crown as Crown land and be subject to section 82 of the Reserves Act 1977;
- (c) That following the vesting described in *clause 4.5.2(b)*, the fee simple estate in Whakapaukorero will be vested in the Governance Entity;
- (d) For the reservation of Whakapaukorero as a historic reserve subject to section 18 of the Reserves Act 1977 for which the Governance Entity will be the Administering Body; and

- (e) That, notwithstanding section 16(10) of the Reserves Act 1977, the name of the reserve created under *clause 4.5.2(d)* will be Whakapaukorero.

4.5.3 Remainder of Matata Scenic Reserve unaffected

For the avoidance of doubt, that part of the Matata Scenic Reserve not vested in the Governance Entity in accordance with *clause 4.5.2* is unaffected by this *clause 4.5* and continues to be a scenic reserve subject to section 19 of the Reserves Act 1977 as at the Settlement Date.

4.6 VESTING OF CULTURAL REDRESS PROPERTIES

Each Cultural Redress Property shall vest in the Governance Entity:

- (a) As redress and without charge to, or consideration to be provided or paid by, the Governance Entity or any other person; and
- (b) Subject to and, where applicable, with the benefit of all Encumbrances that relate to that property, which are specified in *Attachment 4.1*, and the terms of this Deed.

4.7 SETTLEMENT DATE

The Settlement Legislation will provide that steps outlined in *clauses 4.1* to *4.5* will take place on, and with effect from, the Settlement Date.

4.8 DETERMINATION OF BOUNDARIES AND COSTS

Where the precise boundaries of any Cultural Redress Properties have not been determined, the Crown will, at its cost, arrange for the relevant Cultural Redress Property to be surveyed and for a survey plan to be prepared and approved (and where applicable deposited). The Crown will pay for all costs required in order to vest the Cultural Redress Properties in the Governance Entity.

4.9 TITLE TO PROPERTIES

4.9.1 Settlement Legislation

The Settlement Legislation will provide for the matters set out in *clauses 4.9.2* and *4.9.3* to give effect to each vesting of the fee simple estate in a Cultural Redress Property under this *Section 4*.

4.9.2 Existing Title

Where the land, that forms all or part of the Cultural Redress Property, is all of the land contained in an existing certificate of title or computer freehold register, the

Registrar-General of Land must on written application by any person authorised by the Chief Executive of Land Information New Zealand:

- (a) Register the Governance Entity as the proprietor of the fee simple estate in that land; and
- (b) Make such entries in the register, and generally do all things, as may be necessary to give effect to this *Section 4*.

4.9.3 Issue of Title

Where *clause 4.9.2* does not apply, the Registrar-General of Land must on written application by any person authorised by the Chief Executive of Land Information New Zealand (and after completion of survey (if any) as may be necessary) create, in accordance with that application, one or more computer registers in the name of the Governance Entity for the fee simple estate in land that forms all or part of the Cultural Redress Property subject to, and where applicable, with the benefit of, any Encumbrances that are registrable or notifiable and are described on the written application.

4.10 ISSUE OF TITLE AS SOON AS REASONABLY PRACTICABLE

The Settlement Legislation will further provide that one or more computer freehold registers for each of the Cultural Redress Properties, must be created under *clause 4.9.3* as soon as reasonably practicable after the Settlement Date and, in any event, no later than 24 months after the vesting of the Cultural Redress Property (or such later date as may be agreed in writing by the Governance Entity and the Crown).

4.11 SETTLEMENT LEGISLATION

The Settlement Legislation will provide that:

- (a) Sections 24 and 25 of the Reserves Act 1977 will not apply to a revocation of the reserve status of a Cultural Redress Property to give effect to the vesting of the property in the Governance Entity under this *Section 4*;
- (b) Sections 78(1)(a), 79, 80 and 81 of the Reserves Act 1977 will not apply to any fee simple estate vested in the Governance Entity under this *Section 4*;
- (c) Section 11 or Part X of the Resource Management Act 1991 will not apply to the vesting of the fee simple estate in a Cultural Redress Property in the Governance Entity, or anything incidental to, or required for the purposes of, any such vesting;

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- (d) The vesting of a Cultural Redress Property under this *Section 4* does not affect any privately owned rights to sub-surface minerals or limit sections 10 or 11 of the Crown Minerals Act 1991; and
- (e) The vesting of the fee simple estate to give effect to this *Section 4* is a disposition for the purposes of Part IVA of the Conservation Act 1987, but sections 24(2A), 24A and 24AA of that Act do not apply to the disposition,

and will contain such other provisions as are necessary or desirable to give effect to this *Section 4*.

4.12 DISCLOSURE INFORMATION

4.12.1 Warranty

The Crown warrants to the Governance Entity that the Disclosure Information contains all the material information that relates to the Cultural Redress Properties contained in the Department of Conservation's records. This warranty does not extend to information which may be apparent from a physical inspection of the Cultural Redress Properties or an enquiry beyond the Department of Conservation's records.

4.12.2 Acknowledgement by Ngāti Tuwharetoa

Ngāti Tuwharetoa acknowledges and agrees that other than those set out in *clause 4.12.1*, no representation or warranty is given, whether express or implied, nor is any responsibility accepted by the Crown with respect to:

- (a) The completeness or accuracy of the Disclosure Information;
- (b) The physical condition of the Cultural Redress Properties;
- (c) The compliance or otherwise of the Cultural Redress Properties with any legislation, regulations, bylaws or any powers, rights and obligations under them, including any outstanding enforcement or other notice, requisition or proceeding issued under any code by any relevant authority, relating to or affecting the Cultural Redress Properties; and
- (d) Any other matter relating to the ownership, occupation, use or management of the Cultural Redress Properties.

4.12.3 Acknowledgement by Ngāti Tuwharetoa and the Crown

Ngāti Tuwharetoa and the Crown acknowledge and record that prior to the date of this Deed, Ngāti Tuwharetoa had the opportunity to inspect the Cultural Redress

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Properties and satisfy itself as to the state and condition of the Cultural Redress Properties.

4.13 CULTURAL REDRESS PROPERTIES TO VEST IN THEIR STATE AND CONDITION AS AT THE DATE OF THIS DEED

Ngāti Tuwharetoa and the Crown agree that the Cultural Redress Properties are to be vested in substantially the same state and condition as at the date of this Deed and that subject to the Crown complying with *clause 4.14*, neither Ngāti Tuwharetoa nor any Representative Entity has future recourse, claim or action against the Crown, nor will Ngāti Tuwharetoa or any Representative Entity seek future recompense from the Crown in relation to the state or condition of the Cultural Redress Properties.

4.14 THE CROWN TO MAINTAIN CONDITION OF PROPERTY OR PROPERTY INTERESTS AND STRUCTURES

The Crown agrees that between the date of this Deed and the Settlement Date it will maintain and administer the Cultural Redress Properties (other than those which are not administered by the Crown) in substantially the same state and condition as at the date of this Deed (subject to events beyond the control of the Crown) and in accordance with its existing management and administration of such Cultural Redress Properties.

4.15 ACCESS

4.15.1 No formal arrangements

Ngāti Tuwharetoa acknowledge that no formal arrangements for access by Ngāti Tuwharetoa to the Cultural Redress Properties following vesting of them in the Governance Entity are, at the date of this Deed, required to be made by the Crown or under the Settlement Legislation.

4.15.2 Future Access

If at any time the Crown proposes to dispose of, or change the status of, any Crown-owned land over which legal access to any of the Cultural Redress Properties in *clauses 4.2 and 4.4* is gained, the Crown agrees to use reasonable endeavours to ensure that access to the Cultural Redress Properties in *clauses 4.2 and 4.4* remains following such disposal or change of status.

4.16 NOT CONDITIONAL

Clause 8.1.1 (which provides that this Deed is conditional upon the Settlement Legislation coming into force) does not apply to *clauses 4.8 and 4.14*.



ATTACHMENT 4.1
CULTURAL REDRESS PROPERTIES
(Clauses 4.1-4.5)

Property	Land Description	Encumbrances
Te Wahieroa (Part of the Western Whakatane Recreation Reserve) <i>(Clause 4.1)</i>	South Auckland Land District – Whakatane District. 10.0 hectares approximately, being Part Allotments 272 and 273 Rangitaiki Parish. Part Gazette Notice H.024770. Subject to survey. As shown marked A on SO 61715.	
Te Atua Reretahi (Part of the Rotoma Forest Conservation Area) <i>(Clause 4.2)</i>	South Auckland Land District – Whakatane District. 10.0 hectares approximately, being Part Allotment 889 Matata Parish. Part New Zealand Gazette 1920 page 2107. Subject to survey. As shown marked A on SO 61716.	Subject to the conservation covenant referred to in <i>clause 4.2.4.</i>

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Property	Land Description	Encumbrances
<p>Te Kaukahiwi o Tirotirowhetu (Part of the Parimahana Scenic Reserve)</p> <p>(Clause 4.3)</p>	<p>South Auckland Land District – Kawerau District.</p> <p>10.0 hectares approximately, being Part Allotment 927 Matata Parish. Part Gazette Notice H.257899. Subject to survey.</p> <p>As shown marked A on SO 61718.</p>	
<p>Otitapu Lookout (Part of the Lake Rotoma Scenic Reserve)</p> <p>(Clause 4.4)</p>	<p>South Auckland Land District – Whakatane District.</p> <p>6.0 hectares approximately, being Part Section 11 Block XI Rotoma Survey District. Part New Zealand Gazette 1939 page 311. Subject to survey.</p> <p>As shown marked A on SO 61720.</p>	<p>Subject to the protected private land agreement as referred to in <i>clause 4.4.4.</i></p>

Property	Land Description	Encumbrances
<p>Whakapaukorero (Part of the Matata Scenic Reserve)</p> <p>(Clause 4.5)</p>	<p>South Auckland Land District – Whakatane District.</p> <p>29.9189 hectares approximately, being Part Allotment 982 Waimana Parish and Part Section 1 Block II and Part Section 1 Block VI Awaateatua Survey District. Part Gazette Notice H.011708. Subject to survey.</p> <p>AND</p> <p>811 square metres, more or less, being Lot 1 DPS 39703. All Transfer H.652435.</p> <p>As shown marked A on SO 61721.</p>	

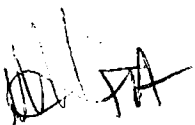
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SECTION 5: CULTURAL REDRESS

5.1 PROTOCOLS

5.1.1 Issue of Protocols

- (a) On the Settlement Date the Crown, through the Minister of Conservation, will issue a Protocol in the form set out in *Schedule 5.1* on the following matters within the Ngāti Tuwharetoa DOC Protocol Area:
 - (i) Input into business planning at area office level;
 - (ii) The provision of access to, and the use of, cultural materials (not including Artifacts);
 - (iii) The management of historic resources (including wāhi tapu and wāhi taonga of, and places of historical and cultural significance to, Ngāti Tuwharetoa); and
 - (iv) Visitor and public information.
- (b) On the Settlement Date the Crown, through the Minister of Fisheries, will issue a Protocol in the form set out in *Schedule 5.2* on the following matters:
 - (i) Recognition of the interests of Ngāti Tuwharetoa in all species of fish, aquatic life or seaweed that exist within the Ngāti Tuwharetoa Fisheries Protocol Area;
 - (ii) Development of sustainability measures, fisheries regulations and fisheries plans;
 - (iii) Management of customary non-commercial fisheries;
 - (iv) Research planning;
 - (v) Consultation on the Ministry of Fisheries annual business plan;
 - (vi) Contracting for services; and
 - (vii) Employment of staff with non-commercial customary fisheries responsibilities.
- (c) On the Settlement Date the Crown, through the Minister for Arts, Culture and Heritage, will issue a Protocol in the form set out in *Schedule 5.3* on:



- (i) Newly found Artifacts;
- (ii) The export of Artifacts; and
- (iii) The Antiquities Act 1975 and any amendment or substitution thereof.

5.1.2 Authority to issue, amend or cancel Protocols

The Settlement Legislation will provide that:

- (a) Subject to *clause 5.1.2(c)*, each Minister may issue a Protocol in the form referred to in *clause 5.1.1*, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to *clause 5.1.2(a)* at the initiative of either the Minister or the Governance Entity; and
- (c) The relevant Minister may amend or cancel the Protocol, only after consulting with, and having particular regard to the views of, the Governance Entity.

5.1.3 Protocols subject to Crown obligations

The Settlement Legislation will provide that all Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) The obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

5.1.4 Noting of Protocols

The Settlement Legislation will provide that:

- (a) The existence of the Ngāti Tuwharetoa DOC Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* and a summary of the terms of issue of the Protocol, shall be noted in conservation management strategies, conservation management

plans and national park management plans from time to time affecting the area covered by the Protocol;

- (b) Such noting of the Ngāti Tuwharetoa DOC Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 17I of the Conservation Act 1987 or section 46 of the National Parks Act 1980;
- (c) The existence of the Ngāti Tuwharetoa Fisheries Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* and a summary of the terms of issue of the Protocol, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) Such noting of the Ngāti Tuwharetoa Fisheries Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5.1.5 Enforceability of Protocols

The Settlement Legislation will provide that:

- (a) The Crown must comply with its obligations under a Protocol as long as it remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding *clause 5.1.5(b)*, the Governance Entity may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with a Protocol; and
- (d) This clause will not apply to any guidelines developed in relation to a Protocol.

5.1.6 Not breach of Deed

Any failure by the relevant Minister to comply with a Protocol shall not constitute a breach of this Deed.

5.1.7 Limitation of rights

The Settlement Legislation will provide that:

- (a) The Ngāti Tuwharetoa DOC Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna administered, under the Conservation Act 1987 or the statutes listed in the First Schedule to that Act;
- (b) The Ngāti Tuwharetoa Fisheries Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights held, managed or administered under the Fisheries Legislation and/or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (including fish, aquatic life or seaweed);
- (c) The Ngāti Tuwharetoa Antiquities Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities, or artifacts managed or administered under the Antiquities Act 1975.

5.1.8 Consistency with the Conservation Act 1987

The Ngāti Tuwharetoa DOC Protocol is consistent with section 4 of the Conservation Act 1987 and does not override or diminish the requirements of that Act or of the statutes listed in the First Schedule to that Act, or the functions, powers and obligations of the Minister of Conservation or the Department of Conservation under those Acts, or the rights of Ngāti Tuwharetoa or a Representative Entity under those Acts.

5.1.9 Consistency with other Acts

The Ngāti Tuwharetoa Fisheries Protocol and the Ngāti Tuwharetoa Antiquities Protocol do not override or diminish the requirements of, respectively, the Fisheries Legislation and the Antiquities Act 1975, or the functions, powers and obligations of the relevant Minister or Ministry under those Acts, or the rights of Ngāti Tuwharetoa or a Representative Entity under those Acts.



5.2 STATUTORY ACKNOWLEDGEMENTS RELATING TO STATUTORY AREAS

5.2.1 Purposes of a Statutory Acknowledgement

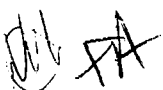
The Settlement Legislation will provide that, without limiting *clauses 5.4.1 to 5.4.3*, the only purposes of the Statutory Acknowledgements will be:

- (a) To require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity, as provided in *clause 5.2.7*;
- (b) To require that Relevant Consent Authorities, the Environment Court, or the New Zealand Historic Places Trust, as the case may be, have regard to the Statutory Acknowledgements in relation to the Statutory Areas, as provided in *clauses 5.2.3 to 5.2.5*; and
- (c) To enable the Governance Entity, and any Member of Ngāti Tuwharetoa, to cite Statutory Acknowledgements as evidence of the association of Ngāti Tuwharetoa to the Statutory Areas, as provided in *clause 5.2.9*.

5.2.2 Provision of Statutory Acknowledgements by the Crown

The Crown agrees that it will make Statutory Acknowledgements in the Settlement Legislation relating to the Statutory Areas, which will comprise:

- (a) The descriptions of the Statutory Areas set out in *Schedules 5.4 to 5.8*;
- (b) The texts of the statements by Ngāti Tuwharetoa of the particular cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Statutory Areas as set out in *Schedules 5.4 to 5.8*;
- (c) An acknowledgement by the Crown of the statement of association of Ngāti Tuwharetoa with the Statutory Areas;
- (d) A statement of the purposes of the Statutory Acknowledgements as described in *clause 5.2.1*;
- (e) A statement of the limitations on the effect of the Statutory Acknowledgements as provided in *clauses 5.4.1 to 5.4.3*; and
- (f) A statement that a Statutory Acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the relevant Statutory Area to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.



5.2.3 Relevant Consent Authorities to have regard to Statutory Acknowledgements

The Settlement Legislation will provide that, from the Effective Date, and without derogating from its obligations under Part II of the Resource Management Act 1991, a Relevant Consent Authority must have regard to the Statutory Acknowledgement relating to a Statutory Area in forming an opinion in accordance with sections 93 to 94C of the Resource Management Act 1991 as to whether the Governance Entity is a person who may be adversely affected by the granting of a Resource Consent for activities within, adjacent to, or impacting directly on a Statutory Area.

5.2.4 Environment Court to have regard to Statutory Acknowledgements

The Settlement Legislation will provide that, from the Effective Date and without derogating from its obligations under Part II of the Resource Management Act 1991, the Environment Court must have regard to the Statutory Acknowledgement relating to a Statutory Area in determining, for the purposes of section 274 of the Resource Management Act 1991, whether the Governance Entity is a person having an interest in the proceedings greater than the public generally in respect of an application for a Resource Consent for activities within, adjacent to, or impacting directly on the Statutory Area.

5.2.5 New Zealand Historic Places Trust and Environment Court to have regard to a Statutory Acknowledgement

The Settlement Legislation will provide that, from the Effective Date, the New Zealand Historic Places Trust or the Environment Court (as the case may be) must have regard to the Statutory Acknowledgement relating to a Statutory Area:

- (a) In forming an opinion under section 14(6)(a) of the Historic Places Act 1993; and
- (b) For the purpose of section 20(1) of the Historic Places Act 1993;

as to whether the Governance Entity may be, or is, a person directly affected in relation to an archaeological site (as defined in section 2 of that Act) within the Statutory Area.

5.2.6 Recording of Statutory Acknowledgements on Statutory Plans

The Settlement Legislation will provide that:

- (a) Relevant Consent Authorities must attach to all Statutory Plans information recording all Statutory Acknowledgements affecting Statutory Areas covered wholly or partly by such Statutory Plans, either by way of reference to the relevant part of the Settlement Legislation or by setting out the Statutory Acknowledgements in full; and

- (b) The attachment of information to any Statutory Plan under this clause is for the purpose of public information only and the information is not:
 - (i) Part of the Statutory Plan (unless adopted by the Relevant Consent Authority); or
 - (ii) Subject to the provisions of the First Schedule to the Resource Management Act 1991.

5.2.7 Forwarding Summaries of Resource Consent Applications to the Governance Entity

The Settlement Legislation will provide that:

- (a) Subject to *clause 5.2.7(b)*, for a period of 20 years from and after the Effective Date, a Relevant Consent Authority that receives an application for a Resource Consent for activities within, adjacent to, or impacting directly on a Statutory Area must forward a summary of the Resource Consent application to the Governance Entity:
 - (i) As soon as reasonably practicable after receiving that application; and
 - (ii) Prior to making any determination under sections 93 to 94C of the Resource Management Act 1991;
- (b) The summary of the Resource Consent application which is to be forwarded to the Governance Entity under *clause 5.2.7(a)* must contain:
 - (i) The same information which would be contained in a notice to persons who may be adversely affected under section 93 of the Resource Management Act 1991; or
 - (ii) Any other information that is agreed between the Governance Entity and the particular Relevant Consent Authority from time to time; and
- (c) The Governance Entity may from time to time waive its rights under *clause 5.2.7(a)* by notice in writing to the Relevant Consent Authority, either:
 - (i) Generally; or
 - (ii) In respect of particular types of Resource Consent applications, particular Relevant Consent Authorities, or for specified periods of time,



so that the Relevant Consent Authority is no longer required to discharge its obligations in terms of *clause 5.2.7(a)* in respect of the matter waived.

5.2.8 Discretion of Relevant Consent Authorities not affected

The Settlement Legislation will provide that, to avoid doubt, nothing in *clause 5.2.7* will in any way affect the discretion of a Relevant Consent Authority as to whether or not:

- (a) To notify any application under sections 93 to 94C of the Resource Management Act 1991; and
- (b) The Governance Entity is a person who may be adversely affected under sections 93 to 94C of the Resource Management Act 1991.

5.2.9 Use of Statutory Acknowledgement with submissions

The Settlement Legislation will provide that the Governance Entity, and any Member of Ngāti Tuwharetoa, may cite the relevant Statutory Acknowledgement in submissions to, and proceedings before, a Relevant Consent Authority, the Environment Court, or the New Zealand Historic Places Trust concerning activities within, adjacent to, or impacting directly on the Statutory Area.

5.2.10 Content not nature of fact

The Settlement Legislation will provide that the content of the statement of association, as recorded in a Statutory Acknowledgement, is not by virtue of the Statutory Acknowledgement binding as deemed fact on Relevant Consent Authorities, the Environment Court, the New Zealand Historic Places Trust, parties to proceedings before those bodies, or any other person able to participate in those proceedings, but the Statutory Acknowledgement may be taken into account by them.

5.2.11 Other Association with the Statutory Area may be Stated

Neither the Governance Entity nor any Member of Ngāti Tuwharetoa is precluded from stating that Ngāti Tuwharetoa has an association with the Statutory Area that is not described in the relevant Statutory Acknowledgement, nor shall the content or existence of the Statutory Acknowledgement derogate from any such statement.

5.3 DEEDS OF RECOGNITION

5.3.1 Purposes of Deeds of Recognition

The Settlement Legislation will provide:

- (a) That, without limiting *clauses 5.4.1 to 5.4.3*, the only purpose of the Deeds of Recognition will be to require that the Governance Entity be consulted, and regard had to its views, as provided in *clause 5.3.4*; and
- (b) A recognition that the Crown may undertake only limited management or administrative functions in relation to a Statutory Area in respect of which a Deed of Recognition is to be given; and
- (c) That entry into a Deed of Recognition does not require the Crown to:
 - (i) Increase its management or administrative functions; or
 - (ii) Resume any management or administrative function.

5.3.2 Authorisation to enter into Deeds of Recognition

The Settlement Legislation will provide in respect of the Statutory Areas referred to in *Schedules 5.9 to 5.15* only that the Minister of the Crown responsible for the management or administration of the land within a Statutory Area, or the Commissioner of Crown Lands, as the case may be, will have power to enter into and amend a Deed of Recognition with the Governance Entity in respect of the relevant land within the Statutory Area.

5.3.3 Crown obligation to enter into Deeds of Recognition

No later than the Settlement Date, the Crown will enter into the Deeds of Recognition set out in *Schedules 5.9 to 5.15* in respect of those parts of the Statutory Areas described in those Schedules which are owned or managed by the Crown.

5.3.4 Form and terms of Deeds of Recognition

The Settlement Legislation will provide that a Deed of Recognition entered into under *clause 5.3.3* will provide that the Governance Entity must be consulted and regard must be had to its views relating to the association described in the Deed of Recognition, concerning the management or administration of the Statutory Area by the responsible Minister of the Crown, or the Commissioner of Crown Lands, as the case may be, on the matters specified in the Deed of Recognition.

5.3.5 Termination of Deeds of Recognition

The Settlement Legislation will provide that a Deed of Recognition will terminate in relation to a Statutory Area or part of it (the "*Identified Area*") if:

- (a) The Governance Entity and the Crown agree in writing that the Deed of Recognition is no longer appropriate in respect of the Identified Area; or

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- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

5.3.6 Continued input in respect of Deeds of Recognition

If a Deed of Recognition terminates in relation to an Identified Area, and the responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of that Identified Area, through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

5.3.7 No limitation on Crown in respect of Statutory Acknowledgements and Deeds of Recognition

The Settlement Legislation will provide that neither the providing of a Statutory Acknowledgement to the Governance Entity nor the entry into a Deed of Recognition with the Governance Entity will prevent the Crown from providing a statutory acknowledgement to, or entering into a deed of recognition with, a person or persons other than Ngāti Tuwharetoa or a Representative Entity, with respect to the same Statutory Area.

5.4 PROVISIONS IN RELATION TO BOTH STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

5.4.1 Exercise of powers, duties and functions in respect of Statutory Acknowledgements and Deeds of Recognition

The Settlement Legislation will provide that, except as expressly provided in *clauses 5.2.1, 5.2.3 to 5.2.5, 5.2.9, 5.3.1 and 5.3.4*:

- (a) Neither a Statutory Acknowledgement nor a Deed of Recognition will affect, or may be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
- (b) Without limiting *clause 5.4.1(a)*, no person or entity, in considering any matter, or making any decision or recommendation under any statute, regulation, or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with a Statutory Area (as described in the relevant Statutory Acknowledgement) than that person or entity would give under the relevant statute, regulation or bylaw, if no Statutory Acknowledgement or Deed of Recognition existed in respect of that Statutory Area.

5.4.2 Rights not affected by Statutory Acknowledgements and Deeds of Recognition

The Settlement Legislation will provide that, except as expressly provided in *clauses 5.2 to 5.4*, neither a Statutory Acknowledgement provided to the Governance Entity, nor a Deed of Recognition entered into with the Governance Entity, will affect the lawful rights or interests of a person who is not a party to this Deed.

5.4.3 Limitation of rights

The Settlement Legislation will provide that, except as expressly provided in *clauses 5.2 to 5.4*, neither a Statutory Acknowledgement provided to the Governance Entity, nor a Deed of Recognition entered into with the Governance Entity, will have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, a Statutory Area.

5.4.4 Resource Management Act 1991

The Settlement Legislation will provide for an amendment to Schedule 11 to the Resource Management Act 1991, to add the short title of the Settlement Legislation to that Schedule.

5.4.5 Statutory Acknowledgements in relation to Rivers

The Settlement Legislation will provide that, where a Statutory Acknowledgement is to be given in relation to a river, river:

(a) means:

- (i) A continuously or intermittently flowing body of fresh water, including a stream and modified water course; and
- (ii) The bed of the river; but

(b) does not include:

- (i) Any part of the bed of the river that is not owned by the Crown;
- (ii) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (iii) Any artificial watercourse; or
- (iv) Any tributary flowing into the river.

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5.4.6 Deeds of Recognition in relation to the beds of Rivers

The Settlement Legislation will provide that, where a Deed of Recognition is to be given in relation to the bed of a river, the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned or managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5.5 GEOTHERMAL STATUTORY ACKNOWLEDGEMENT

5.5.1 Purposes of the Geothermal Statutory Acknowledgement

The Settlement Legislation will provide that, without limiting *clauses 5.5.11 to 5.5.13*, the only purposes of the Geothermal Statutory Acknowledgement will be:

- (a) To require that Relevant Consent Authorities forward summaries of certain kinds of Resource Consent applications to the Governance Entity, as provided in *clause 5.5.6*; and
- (b) To require that Relevant Consent Authorities and the Environment Court, as the case may be, have regard to the Geothermal Statutory Acknowledgement, as provided in *clauses 5.5.3 and 5.5.4*;
- (c) To enable the Governance Entity, and any Member of Ngāti Tuwharetoa, to cite the Geothermal Statutory Acknowledgement as evidence of Ngāti Tuwharetoa's association with and use of the Geothermal Water and Geothermal Energy located in the Kawerau Geothermal System, as provided in *clause 5.5.8*.

5.5.2 Provision of Geothermal Statutory Acknowledgement by Crown

The Crown agrees that it will make the Geothermal Statutory Acknowledgement in the Settlement Legislation, which will comprise:

- (a) The description of the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System;
- (b) The texts of the statements by Ngāti Tuwharetoa of their particular cultural, spiritual, historic, and traditional association with and use of



Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System as set out in *Schedule 5.16*;

- (c) An acknowledgement by the Crown of the statement of association of Ngāti Tuwharetoa with the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System;
- (d) A statement of the purposes of the Geothermal Statutory Acknowledgement as described in *clause 5.5.1*;
- (e) A statement of the limitations on the effect of the Geothermal Statutory Acknowledgement as provided in *clauses 5.5.11 to 5.5.13*; and
- (f) A statement that the Geothermal Statutory Acknowledgement will not prevent the Crown from providing a statutory acknowledgement to a person or persons other than Ngāti Tuwharetoa with respect to the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System.

5.5.3 Relevant Consent Authorities to have regard to the Geothermal Statutory Acknowledgement

The Settlement Legislation will provide that, from the Effective Date, and without derogating from its obligations under Part II of the Resource Management Act 1991, a Relevant Consent Authority must have regard to the Geothermal Statutory Acknowledgement in forming an opinion in accordance with sections 93 to 94C of the Resource Management Act 1991 as to whether the Governance Entity is a person who may be adversely affected by the granting of a Resource Consent under section 14(1) of the Resource Management Act 1991 in respect of Geothermal Water or Geothermal Energy located in the Kawerau Geothermal System.

5.5.4 Environment Court to have regard to Geothermal Statutory Acknowledgement

The Settlement Legislation will provide that, from the Effective Date and without derogating from its obligations under Part II of the Resource Management Act 1991, the Environment Court must have regard to the Geothermal Statutory Acknowledgement in determining, for the purposes of section 274 of the Resource Management Act 1991, whether the Governance Entity is a person having an interest in the proceedings greater than the public generally in respect of an application under section 14(1) of the Resource Management Act 1991 in respect of Geothermal Water or Geothermal Energy located in the Kawerau Geothermal System.

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5.5.5 Recording of Geothermal Statutory Acknowledgements on Statutory Plans

The Settlement Legislation will provide that:

- (a) Relevant Consent Authorities must attach to all Statutory Plans that cover wholly or partly the Kawerau Geothermal System information recording the Geothermal Statutory Acknowledgement, either by way of reference to the relevant part of the Settlement Legislation or by setting out the Geothermal Statutory Acknowledgement in full; and
- (b) The attachment of information to any Statutory Plan under this clause is for the purpose of public information only and the information is not:
 - (i) Part of the Statutory Plan (unless adopted by the Relevant Consent Authority); or
 - (ii) Subject to the provisions of the First Schedule to the Resource Management Act 1991.

5.5.6 Forwarding Summaries of applications to the Governance Entity

The Settlement Legislation will provide that:

- (a) Subject to *clause 5.5.6(b)*, for a period of 20 years from and after the Effective Date, a Relevant Consent Authority that receives an application under section 14(1) of the Resource Management Act 1991 in respect of Geothermal Water or Geothermal Energy located in the Kawerau Geothermal System must forward a summary of the application to the Governance Entity:
 - (i) As soon as reasonably practicable after receiving that application; and
 - (ii) Prior to making any determination under sections 93 to 94C of the Resource Management Act 1991;
- (b) The summary of the application which is to be forwarded to the Governance Entity under *clause 5.5.6(a)* must contain:
 - (i) The same information which would be contained in a notice to persons who may be adversely affected under section 93 of the Resource Management Act 1991; or
 - (ii) Any other information that is agreed between the Governance Entity and the Relevant Consent Authority from time to time; and

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(c) The Governance Entity may from time to time waive its rights under *clause 5.5.6(a)* by notice in writing to the Relevant Consent Authority, either:

- (i) Generally; or
- (ii) In respect of particular types of applications, particular Relevant Consent Authorities, or for specified periods of time,

so that the Relevant Consent Authority is no longer required to discharge its obligations in terms of *clause 5.5.6(a)* in respect of the matter waived.

5.5.7 Discretion of Relevant Consent Authorities not affected

The Settlement Legislation will provide that, to avoid doubt, nothing in *clause 5.5.6* will in any way affect the discretion of a Relevant Consent Authority as to whether or not:

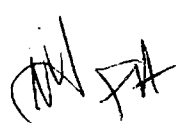
- (a) To notify any application under sections 93 to 94C of the Resource Management Act 1991; and
- (b) The Governance Entity is a person who may be adversely affected under sections 93 to 94C of the Resource Management Act 1991.

5.5.8 Use of Geothermal Statutory Acknowledgement with submissions

The Settlement Legislation will provide that the Governance Entity, and any Member of Ngāti Tuwharetoa, may cite the Geothermal Statutory Acknowledgement as evidence of Ngāti Tuwharetoa's association with and use of the Geothermal Water and Geothermal Energy located in the Kawerau Geothermal System in submissions to, and proceedings before, a Relevant Consent Authority or the Environment Court concerning the taking, use, damming or diverting of any Geothermal Water or Geothermal Energy from any site located in the Kawerau Geothermal System.

5.5.9 Content not nature of fact

The Settlement Legislation will provide that the content of the statement of association, as recorded in the Geothermal Statutory Acknowledgement, is not by virtue of the Geothermal Statutory Acknowledgement binding as deemed fact on Relevant Consent Authorities, the Environment Court, parties to proceedings before those bodies, or any other person able to participate in those proceedings, but the Statutory Acknowledgement may be taken into account by them.



5.5.10 Other association may be stated

Neither the Governance Entity, nor any Member of Ngāti Tuwharetoa is precluded from stating that Ngāti Tuwharetoa has an association with the Geothermal Water and Geothermal Energy located in the Kawerau Geothermal System that is not described in the Geothermal Statutory Acknowledgement, nor shall the content or existence of the Geothermal Statutory Acknowledgement derogate from any such statement.

5.5.11 Exercise of powers, duties and functions in respect of the Geothermal Statutory Acknowledgement

The Settlement Legislation will provide that, except as expressly provided in *clauses 5.5.1, 5.5.3, 5.5.4 and 5.5.8*:

- (a) The Geothermal Statutory Acknowledgement will not affect, and may not be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) Without limiting *clause 5.5.11(a)*, no person or entity, in considering any matter, or making any decision or recommendation, under any statute, regulation, or bylaw, may give any greater or lesser weight to the association and use of Ngāti Tuwharetoa with the Geothermal Water and the Geothermal Energy located in the Kawerau Geothermal System (as described in the Geothermal Statutory Acknowledgement) than that person or entity would give under the relevant statute, regulation or bylaw, if the Geothermal Statutory Acknowledgement had not been made.

5.5.12 Rights not affected by Geothermal Statutory Acknowledgement

Except as expressly provided in this *clause 5.5*, the Geothermal Statutory Acknowledgement will not affect the lawful rights or interests of a person who is not a party to this Deed.

5.5.13 Limitation of rights

Except as expressly provided in this *clause 5.5*, the Geothermal Statutory Acknowledgement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Geothermal Water or the Geothermal Energy located in the Kawerau Geothermal System, or the Kawerau Geothermal System itself.

5.5.14 No limitation on Crown in respect of Geothermal Statutory Acknowledgement

The Settlement Legislation will provide that the provision of the Geothermal Statutory Acknowledgement will not prevent the Crown from providing a statutory acknowledgement to a person or persons other than Ngāti Tuwharetoa or

a Representative Entity with respect to the Geothermal Water or the Geothermal Energy located in the Kawerau Geothermal System.

5.5.15 Exclusion where land not owned by Crown

In respect of the acknowledgement made by the Crown of the association of Ngāti Tuwharetoa with the Geothermal Water and Geothermal Energy located in the Kawerau Geothermal System, such Geothermal Water and Geothermal Energy does not include any Geothermal Water or Geothermal Energy above the ground on land that is not owned by the Crown.

5.5.16 Statement by Ngāti Tuwharetoa

- (a) Without limiting *clauses 5.5.2(f), 5.5.14 and 5.10.1*, Ngāti Tuwharetoa records that *clauses 5.5.2(f), 5.5.14 and 5.10.1* do not necessarily mean that Ngāti Tuwharetoa considers that other groups have interests in the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System over which the redress specified in *clause 5.5.2* has been provided;
- (b) Ngāti Tuwharetoa considers that:
 - (i) The geothermal resource is a taonga for Ngāti Tuwharetoa;
 - (ii) The traditional association of Ngāti Tuwharetoa with the geothermal resource dates from the time when Ngatoroirangi, tohunga of the Arawa canoe, called his two sisters in Hawaiiki to send heat to the area; and
 - (iii) Notwithstanding the Geothermal Energy Act 1953, Ngāti Tuwharetoa considers that Ngāti Tuwharetoa continues to have interests in the Kawerau Geothermal System.

5.6 NOHOANGA ENTITLEMENT

5.6.1 Purpose of granting Nohoanga Entitlement

The Settlement Legislation will provide that, without limiting *clauses 5.6.25 or 5.6.26*, the granting of a Nohoanga Entitlement under this *clause 5.6* will be for the sole purpose of permitting Members of Ngāti Tuwharetoa on a temporary and non-commercial basis, to occupy the Entitlement Land:

- (a) So as to have access to a Waterway for lawful fishing; and
- (b) For lawful gathering of other natural resources in the vicinity of the Entitlement Land.

5.6.2 Grant and renewal of Nohoanga Entitlement

The Settlement Legislation will provide:

- (a) For the Crown, in accordance with this *clause 5.6*, to grant a Nohoanga Entitlement over the Nohoanga Site to the Governance Entity;
- (b) For the grant of the Nohoanga Entitlement over the Nohoanga Site to be:
 - (i) In the form set out in *Schedule 5.18*, or as varied in accordance with *clause 5.6.3*; and
 - (ii) For an initial term of 10 years with effect from the Settlement Date;
- (c) For a Nohoanga Entitlement to be renewed at the expiry of its term at the option of the Governance Entity for further terms of 10 years, unless the Nohoanga Entitlement is terminated under *clause 5.6.18* or *5.6.19*;
- (d) That the granting of a Nohoanga Entitlement under this *clause 5.6.2* must be notified by the Land Holding Agent in the *New Zealand Gazette*;
- (e) That the Chief Executive of Land Information New Zealand must note the granting of a Nohoanga Entitlement under this *clause 5.6.2*, and the notice in the *New Zealand Gazette* published under *clause 5.6.2(d)*, in his or her records; and
- (f) That *clauses 5.6.2(c) to (e)* apply to:
 - (i) The renewal of a Nohoanga Entitlement as if it were the grant of the Nohoanga Entitlement; and
 - (ii) The grant of a Nohoanga Entitlement under *clauses 5.6.18(c)* and *5.6.19(e)*.

5.6.3 Variation of terms of Nohoanga Entitlement

The Settlement Legislation will provide that:

- (a) The form of a Nohoanga Entitlement granted under *clause 5.6.2* may vary from the form in *Schedule 5.18* by:
 - (i) The addition of terms reasonably required by the Crown to protect and preserve the Entitlement Land, the surrounding land, or associated flora or fauna; or

- (ii) Agreement between the Land Holding Agent and the Governance Entity.
- (b) Any additional terms and any variation of terms under *clause 5.6.3(a)* must be in writing and not inconsistent with this *clause 5.6*.

5.6.4 Criteria for Nohoanga Entitlements

The Nohoanga Site is, and any site over which a Nohoanga Entitlement is granted under *clause 5.6.18(c)* or *5.6.19(e)* must be, land:

- (a) Which is not a national park, a marginal strip, a nature reserve, an esplanade reserve, a scientific reserve or any part of an unformed road (including a road reserve) within 20 metres of a Waterway;
- (b) Which is already in Crown ownership;
- (c) Of approximately 1 hectare in area and suitable for temporary occupation;
- (d) Situated sufficiently close to a Waterway to permit convenient access to the Waterway (normally land adjacent to a marginal strip or esplanade reserve or similar strip bordering the Waterway itself);
- (e) To which practical and legal access exists;
- (f) Where the existing practices and patterns of public use at the time the Nohoanga Entitlement is to be created would not be unreasonably impaired by the granting of a Nohoanga Entitlement; and
- (g) Where the location of the Nohoanga Entitlement shall not unreasonably exclude public access to any Waterway.

5.6.5 Execution of the Nohoanga Entitlement

- (a) The Crown must, by or on the Settlement Date, provide the Governance Entity with a form of Nohoanga Entitlement for the Nohoanga Site:
 - (i) In the form specified in *Schedule 5.18* along with any specific conditions specified in *Schedule 5.17*; and
 - (ii) Signed in duplicate by the Land Holding Agent.
- (b) The Governance Entity must:
 - (i) Sign the form of Nohoanga Entitlement in duplicate; and

- (ii) Return one copy to the Crown by no later than the date which is 10 Business Days after the Settlement Date.

5.6.6 Occupation of Entitlement Land by Members of Ngāti Tuwharetoa

The Settlement Legislation will provide that:

- (a) Subject to *clauses 5.6.6(b) to (d)*, the Governance Entity will have the right to permit Members of Ngāti Tuwharetoa to occupy Entitlement Land:
 - (i) For the purpose of a Nohoanga Entitlement as set out in *clause 5.6.1*; and
 - (ii) To the exclusion of other persons during the period or periods that it exercises the right to occupy the land;
- (b) *Clause 5.6.6(a)* and the grant and exercise of a Nohoanga Entitlement does not prevent agents of the Crown or persons exercising statutory powers undertaking their functions in relation to Entitlement Land;
- (c) The Governance Entity may permit Members of Ngāti Tuwharetoa to occupy Entitlement Land for such period or periods in a calendar year that do not exceed 210 days in total; and
- (d) The Governance Entity must not permit Members of Ngāti Tuwharetoa to occupy Entitlement Land in a calendar year during the period beginning on 1 May and ending on the close of 15 August.

5.6.7 Right to erect temporary dwelling

The Settlement Legislation will provide that:

- (a) The Governance Entity may permit Members of Ngāti Tuwharetoa, while occupying Entitlement Land, to erect camping shelters or similar temporary dwellings on the land; and
- (b) The Governance Entity shall ensure the removal of any camping shelters or similar temporary dwellings that are erected on Entitlement Land under a Nohoanga Entitlement whenever the right to occupy that Entitlement Land is not being exercised.

5.6.8 Condition of Entitlement Land when ceasing to occupy it

The Settlement Legislation will provide that:

- (a) The Governance Entity must ensure, whenever Members of Ngāti Tuwharetoa who have been permitted by the Governance Entity to occupy the Entitlement Land cease to exercise the right to occupy that Entitlement Land:
 - (i) The removal of all rubbish and waste material (including human waste) from that Entitlement Land and any adjacent reserve; and
 - (ii) That the Entitlement Land is left in substantially the same condition as it was in at the beginning of the period of occupation being ceased; and
- (b) *Clause 5.6.8(a)(ii)* does not apply to temporary effects normally associated with occupation of Entitlement Land under a Nohoanga Entitlement.

5.6.9 Activities on Entitlement Land

The Settlement Legislation will provide that:

- (a) The Governance Entity may, with the consent of the Land Holding Agent, undertake such activities on the Entitlement Land that are reasonably necessary for the Entitlement Land to be used for the purpose of a Nohoanga Entitlement set out in *clause 5.6.1*;
- (b) When applying for the Land Holding Agent's consent under *clause 5.6.9(a)*, the Governance Entity must provide to the Land Holding Agent details relating to the proposed activities, including (but not limited to):
 - (i) The effect of the activities on the Entitlement Land and, if the Entitlement Land is land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, on the surrounding land and associated flora or fauna; and
 - (ii) Any measures that the Governance Entity proposes to take (if the Land Holding Agent's consent is given) to avoid, remedy, or mitigate any adverse effects;
- (c) In considering whether to give consent in relation to land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, the Land Holding Agent may require the Governance Entity to obtain, at the Governance Entity's expense, an environmental impact report about the proposed activities, and an audit of that report;

- (d) The giving of consent under *clause 5.6.9(a)* is at the complete discretion of the Land Holding Agent;
- (e) The Land Holding Agent may give consent under *clause 5.6.9(a)* subject to such conditions as he or she thinks fit to impose;
- (f) Without limiting *clause 5.6.9(e)*, in giving consent in relation to land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, the Land Holding Agent may impose reasonable conditions to avoid, remedy, or mitigate any adverse effects of the proposed activities on the Entitlement Land, the surrounding land, or associated flora or fauna;
- (g) If the Crown has complied with its obligations under the Nohoanga Entitlement, the Crown is not liable to compensate the Governance Entity (whether on termination of a Nohoanga Entitlement or at any other time) for any activities undertaken by the Governance Entity on the Entitlement Land; and
- (h) This *clause 5.6.9* applies subject to *clause 5.6.7*.

5.6.10 Crown's obligation to provide lawful access

The Settlement Legislation will provide that:

- (a) If an event described in *clause 5.6.10(b)* occurs during the term of a Nohoanga Entitlement, the Crown will use its best endeavours to ensure that the Governance Entity continues, for the rest of the term of the Nohoanga Entitlement, to have the same type of lawful access to the Entitlement Land as it had before the event occurred;
- (b) The events are:
 - (i) The alienation by the Crown of land adjacent to the Entitlement Land; or
 - (ii) A change in the classification or status of land adjacent to the Entitlement Land; and
- (c) The Crown's obligation in *clause 5.6.10(a)* is subject to compliance with any applicable provisions in or under any legislation.

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5.6.11 Nohoanga Entitlement not to restrict public access

The Settlement Legislation will provide that the grant and exercise of a Nohoanga Entitlement must not impede access by members of the public along the Waterway that the Nohoanga Entitlement relates to.

5.6.12 Compliance with laws, bylaws, and land and water management practices

The Settlement Legislation will provide that:

- (a) The Governance Entity (and Members of Ngāti Tuwharetoa permitted by the Governance Entity to occupy Entitlement Land under *clause 5.6.6*), and the activities carried on by the Governance Entity on the Entitlement Land (including any activities undertaken on the Entitlement Land under *clause 5.6.9*) are subject to all laws, bylaws, regulations, and land and water management practices that apply to the Entitlement Land including the need, as required, to apply for Resource Consent under the Resource Management Act 1991; and
- (b) The Land Holding Agent must, in carrying out land and water management practices relating to the Entitlement Land, have regard to the existence of the Nohoanga Entitlement and must:
 - (i) Notify the Governance Entity of any activity which may adversely affect the Governance Entity's Nohoanga Entitlement; and
 - (ii) Avoid unreasonable disruption to the Governance Entity's Nohoanga Entitlement.

5.6.13 Rights of the Governance Entity under Nohoanga Entitlement not assignable

The Settlement Legislation will provide that the rights of the Governance Entity under a Nohoanga Entitlement are not assignable.

5.6.14 Nohoanga Entitlement not to restrict the Crown's right to alienate land

The Settlement Legislation will provide that the grant and exercise of a Nohoanga Entitlement does not restrict the Crown's right to alienate the Entitlement Land, land adjacent to the Entitlement Land, or land adjacent to the associated Waterway.

5.6.15 Governance Entity may enforce rights against other persons

The Settlement Legislation will provide that, while Members of Ngāti Tuwharetoa (who have been permitted by the Governance Entity to occupy Entitlement Land under *clause 5.6.6*) are exercising the right to occupy the Entitlement Land under the terms of a Nohoanga Entitlement, the Governance Entity may enforce its

rights under the Nohoanga Entitlement against persons who are not parties to this Deed as if the Governance Entity were the owner of the Entitlement Land.

5.6.16 Crown not obliged to enforce

Ngāti Tuwharetoa and the Crown agree that the Crown shall not be obliged to enforce the rights of the Governance Entity under a Nohoanga Entitlement against any person who is not a party to this Deed, on behalf of the Governance Entity.

5.6.17 Suspension of Nohoanga Entitlement

The Settlement Legislation will provide that:

- (a) The Land Holding Agent may suspend a Nohoanga Entitlement in accordance with this *clause 5.6.17*;
- (b) The Land Holding Agent must not suspend a Nohoanga Entitlement unless he or she first:
 - (i) Consults the Governance Entity; and
 - (ii) Has particular regard to the views of the Governance Entity;
- (c) The Land Holding Agent must not suspend a Nohoanga Entitlement unless he or she considers the suspension is necessary for the management of the land, having regard to the purposes for which the Entitlement Land is held;
- (d) At any time after the end of suspension of a Nohoanga Entitlement, the Governance Entity may permit Members of Ngāti Tuwharetoa to occupy the Entitlement Land for the number of days that the Governance Entity would otherwise have been entitled to permit occupation during the period of suspension, had the Nohoanga Entitlement not been suspended; and
- (e) The occupation of Entitlement Land under *clause 5.6.17(d)* is not subject to the restrictions in *clause 5.6.6(d)*.

5.6.18 Termination of Nohoanga Entitlement

The Settlement Legislation will provide that:

- (a) The Crown may terminate a Nohoanga Entitlement by giving written notice to the Governance Entity on one or more of the following grounds:
 - (i) That the Crown has alienated the Entitlement Land;

- (ii) That the Entitlement Land has, by a natural cause, been destroyed or permanently and detrimentally affected;
 - (iii) That the Entitlement Land is on reserve land which may be required for the specific purpose for which it is held as a reserve and the Entitlement Land is required for that purpose;
 - (iv) That the Entitlement Land is an unformed road that has become formed; or
 - (v) That, notwithstanding the Crown's best endeavours, there is no lawful access to the Entitlement Land following the occurrence of an event described in *clause 5.6.10(b)*;
- (b) The Governance Entity and the Crown may terminate a Nohoanga Entitlement by agreement in writing;
- (c) On termination of a Nohoanga Entitlement under this *clause 5.6.18*, the Crown must take reasonable steps to grant a replacement Nohoanga Entitlement to the Governance Entity;
- (d) *Clause 5.6.18(c)* does not apply if the fee simple estate in the Entitlement Land is vested in the Governance Entity; and
- (e) The grant of a replacement Nohoanga Entitlement under *clause 5.6.18(c)* must be in the form set out in *Schedule 5.18* (or as varied in accordance with *clause 5.6.3*) and be over land that:
- (i) Meets the criteria set out in *clause 5.6.4*; and
 - (ii) Is identified by similar processes used by the Crown and Ngāti Tuwharetoa to identify the Nohoanga Site prior to entry into this Deed.

5.6.19 Termination of Nohoanga Entitlement for breach of obligations

The Settlement Legislation will provide that:

- (a) If the Governance Entity defaults in performing any of its obligations under a Nohoanga Entitlement, and such default is capable of remedy, the Crown may give written notice to the Governance Entity specifying the default and the remedy that the Crown requires (which remedy must be reasonable in the circumstances);

- (b) Unless within 41 Business Days after the giving of notice pursuant to *clause 5.6.19(a)* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given pursuant to *clause 5.6.19(a)*, the Crown may immediately terminate the Nohoanga Entitlement by notice in writing to the Governance Entity;
- (c) If the default is not one that is capable of remedy the Crown may immediately terminate the Nohoanga Entitlement by notice in writing to the Governance Entity;
- (d) On termination of a Nohoanga Entitlement pursuant to *clause 5.6.19(b)* or *clause 5.6.19(c)*, the Governance Entity may, after the expiry of two years from the date of termination of the Nohoanga Entitlement, apply to the Minister of Māori Affairs for the grant of a replacement Nohoanga Entitlement meeting the criteria set out in *clause 5.6.4*;
- (e) On receipt of an application under *clause 5.6.19(d)*, the Crown may, in its discretion, take reasonable steps to grant a replacement Nohoanga Entitlement in the form set out in *Schedule 5.18* (or as varied in accordance with *clause 5.6.3*) and over land that:
 - (i) Meets the criteria set out in *clause 5.6.4*; and
 - (ii) Is identified by similar processes used by the Crown and Ngāti Tuwharetoa to identify the Nohoanga Site prior to entry into this Deed; and
- (f) That *clauses 5.6.2(d)* and *(e)* will apply to a termination under *clauses 5.6.18* and *5.6.19*.

5.6.20 Section 11 or Part X of Resource Management Act 1991 not to apply

The Settlement Legislation will provide that the grant of a Nohoanga Entitlement is not a subdivision for the purposes of section 11 or Part X of the Resource Management Act 1991.

5.6.21 Part IIIB of Conservation Act 1987 not to apply

The Settlement Legislation will provide that Part IIIB of the Conservation Act 1987 does not apply to the granting of a Nohoanga Entitlement.

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5.6.22 Section 44 Reserves Act 1977 not to apply

The Settlement Legislation will provide that section 44 of the Reserves Act 1977 does not apply in relation to a Nohoanga Entitlement granted over land subject to that Act.

5.6.23 Local Government (Rating) Act 2002

The Settlement Legislation will provide confirmation that the grant of a Nohoanga Entitlement does not alter the non-rateable status of the Entitlement Land under section 8 of the Local Government (Rating) Act 2002.

5.6.24 Targeted Rates

The Settlement Legislation will provide that:

- (a) Section 9 of the Local Government (Rating) Act 2002 will apply to the Entitlement Land; and
- (b) The Governance Entity is liable to pay targeted rates payable under section 9 of the Local Government (Rating) Act 2002 in respect of the Entitlement Land only in proportion to the period for which the Governance Entity is entitled to occupy the Entitlement Land under *clause 5.6.6*.

5.6.25 Rights not affected

The Settlement Legislation will provide that, except as expressly provided in this *clause 5.6*, the existence of a Nohoanga Entitlement will not affect the lawful rights or interests of any person who is not a party to this Deed.

5.6.26 Limitation of rights

The Settlement Legislation will provide that, except as expressly provided in this *clause 5.6*, the existence of a Nohoanga Entitlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Entitlement Land.

5.7 OWHAKATIHI

5.7.1 Declaration as an Owhakatihi

The Settlement Legislation will provide for the area described in *Schedule 5.19* to be declared as an Owhakatihi.

5.7.2 Description of Ngāti Tuwharetoa Values

The Settlement Legislation will describe and acknowledge Ngāti Tuwharetoa Values in relation to the Owhakatihi as set out in *Schedule 5.19*.

5.7.3 Purposes of declaration as an Owhakatihi

The Settlement Legislation will provide that, without limiting *clauses 5.7.16 to 5.7.18*, the declaration of an area as an Owhakatihi under *clause 5.7.1* and the acknowledgement of Ngāti Tuwharetoa Values in respect of the area in *clause 5.7.2* will be for the following purposes only:

- (a) An agreement on Protection Principles under *clause 5.7.4*;
- (b) That the New Zealand Conservation Authority and the relevant Conservation Boards will be required to have particular regard to Ngāti Tuwharetoa Values and those Protection Principles, as provided in *clauses 5.7.6 and 5.7.7*; and
- (c) The taking of action in respect of such Protection Principles as provided in *clauses 5.7.9 to 5.7.12*.

5.7.4 Minister of Conservation and Governance Entity may agree on Protection Principles in relation to the Owhakatihi

The Settlement Legislation will provide that:

- (a) The Governance Entity and the Crown may agree from time to time upon specific principles which relate to:
 - (i) Avoiding harm to Ngāti Tuwharetoa Values in relation to the Owhakatihi; or
 - (ii) Avoiding the diminishing of Ngāti Tuwharetoa Values in relation to the Owhakatihi,(the “*Protection Principles*”); and
- (b) The Protection Principles, including any agreed changes to the Protection Principles, shall be notified by the Minister of Conservation in the *New Zealand Gazette*.

5.7.5 Protection Principles Agreed

Ngāti Tuwharetoa and the Crown agree:

- (a) On the specific principles set out in *Schedule 5.19* as Protection Principles in relation to the Owhakatihi for the purposes of *clause 5.7.4*; and

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- (b) That the specific principles set out in *Schedule 5.19* shall, following the Settlement Date, be notified by the Minister of Conservation in the *New Zealand Gazette*.

5.7.6 New Zealand Conservation Authority and Conservation Boards to have particular regard to Ngāti Tuwharetoa Values

The Settlement Legislation will provide that when the New Zealand Conservation Authority or any Conservation Board approves or otherwise considers any general policy, national park management plan, conservation management strategy or conservation management plan in relation to the Owhakatihi, it must have particular regard to:

- (a) Ngāti Tuwharetoa Values in relation to the Owhakatihi; and
- (b) Any Protection Principles agreed between the Governance Entity and the Crown from time to time under *clause 5.7.4*.

5.7.7 New Zealand Conservation Authority and relevant Conservation Boards to consult with the Governance Entity

The Settlement Legislation will provide that the New Zealand Conservation Authority or relevant Conservation Board must consult with the Governance Entity and have particular regard to its views as to the effect of any policy, strategy or plan referred to in *clause 5.7.6* on Ngāti Tuwharetoa Values in relation to the Owhakatihi.

5.7.8 Notification of Owhakatihi in Plans and Strategies

The Settlement Legislation will provide:

- (a) That the declaration of the Owhakatihi under *clause 5.7.1* must be identified and described in the relevant national park management plans, conservation management strategies and conservation management plans; and
- (b) That the initial identification and description of the Owhakatihi in a national park management plan, conservation management strategy or conservation management plan is:
 - (i) For the purpose of public notice only; and
 - (ii) Is not an amendment to the national park management plan, conservation management strategy or conservation management plan for the purposes of section 17I of the Conservation Act 1987 or section 46 of the National Parks Act 1980.

5.7.9 Actions by Director-General

The Settlement Legislation will provide:

- (a) That the Director-General, on notification by the Minister of Conservation in the *New Zealand Gazette* of the Protection Principles shall, subject to *clauses 5.7.9(b) to (d)*, take action in relation to such principles;
- (b) That the Crown, through the Director-General, shall retain a complete discretion to determine the method and extent of the action referred to in *clause 5.7.9(a)*;
- (c) That the Crown, through the Director-General, shall notify the Governance Entity of what action it intends to take under *clause 5.7.9(a) and (b)*; and
- (d) That, if requested in writing by the Governance Entity, the Director-General must not take action in respect of the Protection Principles to which the request relates.

5.7.10 Amendments to Plans and Strategies

The Settlement Legislation will provide:

- (a) That, without limiting *clause 5.7.9(b)*, the Director-General, after consultation with the Conservation Boards affected, may initiate an amendment of any relevant national park management plan, conservation management strategy or conservation management plan to incorporate objectives relating to Protection Principles, including a recommendation to make bylaws or promulgate regulations; and
- (b) That any amendment initiated under *clause 5.7.10(a)* is an amendment for the purposes of section 171(1) to (3) of the Conservation Act 1987 or section 46(1) to (4) of the National Parks Act 1980.

5.7.11 Regulations and Bylaws

The Settlement Legislation will provide, in respect of the Owhakatihi, for the power for the Crown to make bylaws, or promulgate regulations, or issue Orders-in-Council:

- (a) To implement the objectives of any such national parks management plan, conservation management strategy or conservation management plan;
- (b) To prescribe conditions of behaviour and activities by the public on the Owhakatihi; and

- (c) For the enforcement of any such prohibitions or conditions.

5.7.12 Notification of actions in Gazette

The Settlement Legislation will provide that:

- (a) The declaration of the Owhakatihi will be notified by the Minister of Conservation in the *New Zealand Gazette*;
- (b) Subject to *clause 5.7.12(c)*, the Director-General may, at his or her discretion, notify any action intended to be taken under any of *clauses 5.7.9 to 5.7.11* in the *New Zealand Gazette*; and
- (c) The Director-General must notify in the *New Zealand Gazette* any action taken or intended to be taken in respect of making bylaws under *clause 5.7.11*.

5.7.13 Notification of actions by Director-General

The Crown confirms that the actions set out in *Schedule 5.19* are actions which the Director-General has in his discretion determined to take in accordance with *clauses 5.7.9 to 5.7.11*, which actions shall be notified, following the Settlement Date, by the Director-General in the *New Zealand Gazette*.

5.7.14 Existing classification of Owhakatihi

The Settlement Legislation will provide that, notwithstanding the declaration of the Owhakatihi, or termination of the Owhakatihi under *clause 5.7.15*, the purpose or classification of the area in which the Owhakatihi is located as a national park, conservation area or reserve is not overridden.

5.7.15 Termination of status

The Settlement Legislation will provide that:

- (a) If:
- (i) The Governance Entity and the Crown agree in writing that the Owhakatihi status is no longer appropriate in respect of the site or part of it; or
- (ii) The site or part of it that has been declared as an Owhakatihi is alienated by the Crown to a person or body other than the Crown; or
- (iii) The responsibility for managing the site or part of it that has been declared as an Owhakatihi is transferred to a different Ministerial Portfolio, Ministry or Department of the Crown:

the Governor-General may, on the recommendation of the Minister of Conservation, by Order-in-Council declare that area previously declared as an Owhakatihi is no longer an Owhakatihi; and

- (b) If either of the events specified in *clause 5.7.15(a)(ii)* and *(iii)* occurs or there is a change in the applicable statutory management regime over the site or part of it that has been declared as an Owhakatihi, the Crown agrees that it will take reasonable steps to ensure that the Governance Entity continues to have input into the management of that particular site or part of it through negotiation with the Governance Entity, by the Minister responsible for the new management or management regime, the Commissioner of Crown Lands or other responsible officer, as the case may be.

5.7.16 Exercise of powers, duties and functions

The Settlement Legislation will provide that, except as expressly provided in this *clause 5.7*:

- (a) Neither the declaration of the Owhakatihi under *clause 5.7.1* nor the acknowledgement of Ngāti Tuwharetoa Values in *clause 5.7.2* will affect or may be taken into account in the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) Without limiting *clause 5.7.16(a)*, no person or entity, in considering any matter or making any decision or recommendations under any statute, regulation or bylaw may give any greater or lesser weight to Ngāti Tuwharetoa Values than that person or entity would give under the relevant statute, regulation or bylaw, as if no Owhakatihi had been declared and no Ngāti Tuwharetoa Values acknowledged.

5.7.17 Rights not affected

The Settlement Legislation will provide that, except as expressly provided in this *clause 5.7*, neither the declaration of the Owhakatihi under *clause 5.7.1* nor the acknowledgement of Ngāti Tuwharetoa Values made in *clause 5.7.2* will affect the lawful rights or interests of any person who is not a party to this Deed.

5.7.18 Limitation of rights

The Settlement Legislation will provide that, except as expressly provided in this *clause 5.7*, neither the declaration of the Owhakatihi under *clause 5.7.1* nor the acknowledgement of Ngāti Tuwharetoa Values made in *clause 5.7.2* will have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Owhakatihi.

5.8 JOINT ADVISORY COMMITTEE IN RESPECT OF MATATA SCENIC RESERVE, WHAKAPAU KORERO AND TE AWA A TE ATUA (MATATA WILDLIFE REFUGE RESERVE)

5.8.1 Definitions

In this *clause* 5.8:

Matata Scenic Reserve means the land described by that name in *Attachment 5.1*;

Members means members of the Joint Advisory Committee;

Minister means the Minister of Conservation;

Retained Sites means:

- (a) Te Awa a Te Atua; and
- (b) the Matata Scenic Reserve less Whakapaukorero;

Te Awa a Te Atua means the land described by that name in *Attachment 5.1*; and

Whakapaukorero has the meaning given to it by *Section 4*.

5.8.2 Appointment and functions of Joint Advisory Committee

Subject to *clause* 5.8.10, no later than 12 months after the Settlement Date and subject to nominations being received as described in *clause* 5.8.4, the Minister will appoint a Joint Advisory Committee on terms of reference that require it to advise:

- (a) the Minister and Director-General on Conservation matters affecting the Retained Sites; and
- (b) the Governance Entity on Conservation matters affecting Whakapaukorero.

5.8.3 Advice on Conservation Matters

- (a) The Minister and the Director-General will consult with, and have regard to the views of, the Joint Advisory Committee in relation to Conservation matters affecting the Retained Sites.
- (b) In particular, the Director-General will consult with, and have regard to the advice of, the Joint Advisory Committee in relation to:

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- (i) the preparation of any Conservation Management Plans relating to the Retained Sites; and
- (ii) annual planning (including annual conservation priorities) in relation to the Retained Sites,
- (c) The Governance Entity will have regard to the advice of the Joint Advisory Committee in relation to Conservation matters affecting Whakapaukorero.

5.8.4 Membership of Joint Advisory Committee

Subject to *clause 5.8.10*, the Crown and Ngāti Tuwharetoa agree that:

- (a) the Minister will appoint as Members of the Joint Advisory Committee:
 - (i) two individuals from time to time nominated in writing by the Governance Entity to the Director-General;
 - (ii) two individuals from time to time nominated in writing by the Director-General; and
- (b) the initial nominations of Members under *clause 5.8.4* must be made within six (6) months of the Settlement Date;
- (c) the Minister must publish appointments of Members in the *New Zealand Gazette*;
- (d) Members must be appointed for a term of five (5) years (and may be re-appointed).

5.8.5 Proceedings of Joint Advisory Committee

The Crown and Ngāti Tuwharetoa agree that:

- (a) unless all Members of the Joint Advisory Committee agree otherwise:
 - (i) Members must appoint a chairperson;
 - (ii) the chairperson will have a casting vote; and
 - (iii) the Joint Advisory Committee will meet twice a year;
- (b) the failure by the Governance Entity, or the Director-General from time to time to nominate individuals under *clause 5.8.4(a)* as Members will not affect the validity of:

- (i) the Joint Advisory Committee;
 - (ii) any advice given by it; or
 - (iii) any exercise of its rights or powers; and
- (c) subject to this clause, the Joint Advisory Committee may regulate its own procedure.

5.8.6 Funding of Joint Advisory Committee

- (a) The Crown will meet:
- (i) the costs and expenses of the Members nominated by the Director-General incurred in acting as Members; and
 - (ii) that proportion of the administrative costs and expenses of the Joint Advisory Committee that equates to the proportion the Members nominated by the Director-General bears to the total number of Members.
- (b) The Governance Entity will meet:
- (i) the costs and expenses of the Members nominated by it incurred in acting as Members; and
 - (ii) that proportion of the administrative costs and expenses of the Joint Advisory Committee that equates to the proportion the Members nominated by the Governance Entity bears to the total number of Members.

5.8.7 Rights preserved

- (a) Ngāti Tuwharetoa agree that, subject to *clause 5.8.8*, if the Minister decides to discharge the Joint Advisory Committee, that decision is not a breach of this Deed.
- (b) Nothing in this Deed limits the ability of the Minister to appoint any person as an adviser and take their advice or the ability of the Director-General to take advice from or consult with any person in relation to the Retained Sites.

5.8.8 Consultation prior to discharge of committee

The Crown and Ngāti Tuwharetoa agree that the Minister will consult with the Joint Advisory Committee prior to exercising her powers to discharge the Joint

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Advisory Committee or change its composition (unless that change of composition is in accordance with *clause 5.8.9* or *5.8.10*).

5.8.9 Changes in ownership of Retained Sites

- (a) Ngāti Tuwharetoa acknowledge that the Crown may vest parts of the Retained Sites in one or more Other Claimants on similar terms to the vesting of Whakapaukorero in the Governance Entity and accordingly, agree in the event that:
 - (i) the obligations in *clause 5.8.3(a)* may apply to a reduced area (not including parts of the Retained Sites vested in one or more Other Claimants); and
 - (ii) the Minister may require that the Other Claimants must have regard to the advice of the Joint Advisory Committee in relation to Conservation matters affecting the part of the Retained Site vested in the Other Claimants; and
 - (iii) notwithstanding *clause 5.8.4* nominees of Other Claimants may be appointed to the Joint Advisory Committee by the Minister.
- (b) Ngāti Tuwharetoa agree that the reduction in the extent of the obligations in *clause 5.8.3(a)* and the change in composition of the Joint Advisory Committee as described above is not a breach of this Deed.

5.8.10 Committee already established

- (a) Ngāti Tuwharetoa acknowledge that the Crown may agree with Other Claimants that the Minister will appoint a committee:
 - (i) with members appointed by Other Claimants; and
 - (ii) on terms of reference in relation to the Retained Sites that are substantially similar to those described in *clause 5.8.2(a)*.
- (b) If, prior to the appointment of the Joint Advisory Committee in accordance with *clause 5.8.2(a)*, the Crown has appointed a committee of the kind referred to in *clause 5.8.10(a)*, Ngāti Tuwharetoa acknowledge and agree that:
 - (i) the terms of reference in *clause 5.8.2(a)* and the terms of reference that the Crown has agreed with Other Claimants in relation to the committee referred to in *clause 5.8.10(a)* could be carried out by a single committee;

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- (ii) the requirements in *clause 5.8.2(a)* (about the time by which the committee must be appointed) and *clauses 5.8.3, 5.8.4, 5.8.5 and 5.8.6* would be unaffected but references in those clauses to the Joint Advisory Committee could be treated as references to the single committee; and
- (iii) the Crown will ensure that the number of members of the committee that can be nominated by the Governance Entity is the same as the number of members that can be nominated by each of:
 - (aa) each group of Other Claimants; and
 - (bb) the Director-General

and nothing in *clause 5.8.4(a)(i)* will prevent that.

5.8.11 Settlement Legislation

The Settlement Legislation will:

- (a) oblige the Crown, the Director-General and the Governance Entity to fulfil their obligations as set out in *clause 5.8*;
- (b) confer on the Minister the powers, functions, discretion and authority necessary to fulfil the provisions of *clause 5.8*; and
- (c) state that section 9 of the Reserves Act 1977 does not apply to the powers, functions, discretion and authority exercised by the Minister in fulfilling the provisions of *clause 5.8*.

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ATTACHMENT 5.1

LEGAL DESCRIPTIONS

Name	Land Description
Matata Scenic Reserve (including Whakapaukorero)	South Auckland Land District – Whakatane District. 491.4176 hectares, more or less, being Parts Allotment 227, Part Allotment 982 and Allotment 833 Matata Parish, Part Section 1 Block II and Section 1 Block VI Awaateatua Survey District, Lot 1 DPS 25135, Lot 1 DPS 25136 and Lot 1 DPS 39703. Balance Computer Freehold Register SA10A/600, Balance Gazette Notice H.011708, All Gazette Notice S.554446, Balance Transfer H.326804.1 and All Transfer H.652435. As shown on SO 61722.
Te Awa a Te Atua (also known as Matata Wildlife Refuge Reserve)	South Auckland Land District – Whakatane District 110.1756 hectares, more or less, being Section 6 Block VI Awaateatua Survey District. All Gazette Notice S.594936. As shown on SO 61723.

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5.9 CONSISTENCY WITH LEGISLATION

5.9.1 The parties agree and acknowledge that a number of the items of redress described in *Section 5* (Cultural Redress) are directed at providing the Governance Entity with meaningful input into Department of Conservation and Ministry of Fisheries decision-making processes relating to specified aspects of the management and administration of certain areas of land and species, but those items of redress do not override or diminish:

- (a) The requirements of:
 - (i) The Conservation Legislation; or
 - (ii) The Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
- (b) The functions, powers and obligations of:
 - (i) The Minister of Conservation or the Department of Conservation under the Conservation Legislation; or
 - (ii) The Minister of Fisheries or the Ministry of Fisheries under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
- (c) The rights of Ngāti Tuwharetoa or any Representative Entity under the Conservation Legislation, the Fisheries Legislation, or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

5.10 THE CROWN'S ABILITY TO PROVIDE OTHER REDRESS

5.10.1 Acknowledgement relating to non-exclusive redress

The Parties agree and acknowledge that to avoid doubt and without limiting *clauses 5.1.3(a), 5.2.2(f), 5.3.7, 5.5.2(f), 5.5.14* and *5.8.9*, the existence of the redress described in *clauses 5.1, 5.2, 5.3, 5.4, 5.5* and *5.8* does not prevent the Crown from:

- (a) providing the same or similar non-exclusive redress or other non-exclusive redress in respect of the relevant areas of land to a person or persons other than Ngāti Tuwharetoa or a Representative Entity; and
- (b) doing anything else (including disposing of land to a person or persons other than Ngāti Tuwharetoa or a Representative Entity) if that thing is consistent with the terms of the specified redress.

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5.10.2 Statement by Ngāti Tuwharetoa

Without limiting *clause 5.10.1*, Ngāti Tuwharetoa records that *clause 5.10.1* does not necessarily mean that Ngāti Tuwharetoa considers that other groups have interests in areas over which the redress specified in *clause 5.10.1* has been provided.

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SECTION 6: FINANCIAL AND COMMERCIAL REDRESS

6.1 REDRESS AMOUNT

6.1.1 The Redress Amount

The Parties agree that the Redress Amount is \$10,500,000 being the sum of:

- (a) The aggregate of the Redress Values listed in *Schedule 6.1*;
- (b) The amounts referred to in *clause 6.1.3*; and
- (c) The Cash Settlement Amount of \$6,451,500.

6.1.2 Valuation, Election and Transfer of Redress Licensed Land

- (a) The Crown and Ngāti Tuwharetoa acknowledge that the Transfer Value of the Redress Licensed Land does not form a part of the Redress Amount under *clause 6.1.1*, but the agreement for sale and purchase of the Redress Licensed Land shall be a distinct transaction as provided for in this *clause 6.1.2*.
- (b) The Transfer Value of the Redress Licensed Land shall be determined in accordance with the process as set out in *Schedule 6.6*, and the Parties agree that they will initiate, follow, complete or procure the completion of the process set out in *Schedule 6.6*.
- (c) Ngāti Tuwharetoa shall, within 20 Business Days of the Election Date (time being of the essence), give notice to the Crown whether or not it elects to acquire the Redress Licensed Land.
- (d) The "Election Date" for the purposes of *clause 6.1.2(c)* is the date which is 20 Business Days after the date upon which the Transfer Value is agreed or determined under the process set out in *Schedule 6.6*.
- (e) If Ngāti Tuwharetoa gives notice to the Crown that it does not elect to acquire the Redress Licensed Land, or if no notice is given by Ngāti Tuwharetoa within the prescribed time:
 - (i) Ngāti Tuwharetoa shall be deemed not to have elected to acquire the Redress Licensed Land, and the parties acknowledge that all obligations of the Crown to the Governance Entity or Ngāti Tuwharetoa in relation to the Redress Licensed Land shall have been discharged; and

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- (ii) Where a clause in this *Section 6* or *Section 7* requires the Settlement Legislation to provide for something if Ngāti Tuwharetoa elects to acquire the Redress Licensed Land under *clause 6.1.2(c)*, and a notice is given under this *clause 6.1.2(e)* or the prescribed time has elapsed without that notice having been given before the Settlement Legislation is enacted, then the Settlement Legislation does not have to make the provision.
- (f) If Ngāti Tuwharetoa gives notice that it elects to acquire the Redress Licensed Land within the prescribed time:
 - (i) the Crown and the Governance Entity shall be deemed to have entered into an agreement for sale and purchase of the Redress Licensed Land on the Terms of Transfer set out in *Schedule 6.3* (as varied by *Schedule 6.7*); and
 - (ii) *clauses 6.3.4* to *6.3.8* (inclusive) apply.
- (g) *Clause 8.1.1* (which provides that this Deed is conditional) does not apply to *clauses 6.1.2(a)* to *(e)* (inclusive).

6.1.3 Advances on settlement

- (a) Ngāti Tuwharetoa acknowledges receipt of the amounts of:
 - (i) \$50,000 paid on 25 July 2002; and
 - (ii) \$100,000 paid on 22 October 2002,in each case by the Crown to Te Runanga o Tuwharetoa ki Kawerau on behalf of Ngāti Tuwharetoa which Ngāti Tuwharetoa and the Crown agree, is to be treated as part payment of the Redress Amount.
- (b) The Crown shall pay \$200,000 to Te Runanga o Tuwharetoa ki Kawerau on the date which is 10 Business Days after the date of this Deed, which payment Ngāti Tuwharetoa and the Crown agree, is to be treated as part payment of the Redress Amount.
- (c) The Crown shall pay \$100,000 to the Governance Entity on the date which is 10 Business Days after completion of the requirements of *clause 2.1.1*.
- (d) *Clause 8.1.1* (which provides that this Deed is conditional) does not apply to *clause 6.1.3(b)* or *clause 6.1.3(c)*.

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6.1.4 Status of initial payments if Deed does not become unconditional

If for any reason this Deed does not become unconditional:

- (a) The amount of any redress which the Crown may provide in respect of the settlement of any of the Historical Claims will be adjusted to reflect the amounts referred to in *clause 6.1.3*; and
- (b) The Crown may produce this Deed to any Court or tribunal considering the quantum of any redress to be provided by the Crown in relation to any of the Historical Claims to give effect to *clause 6.1.4(a)*.

6.2 PAYMENT BY THE CROWN OF THE CASH SETTLEMENT AMOUNT

The Crown must pay the Governance Entity the Cash Settlement Amount on the Settlement Date.

6.3 TRANSFER OF THE COMMERCIAL REDRESS PROPERTIES

6.3.1 Transfer to Governance Entity

The Crown shall transfer:

- (a) the Redress Licensed Land to the Governance Entity on the Redress Licensed Land Possession Date; and
- (b) the other Commercial Redress Properties to the Governance Entity on the Settlement Date,

subject to the Encumbrances.

6.3.2 Terms of Transfer

Subject to *clause 6.1.2(f)*, the terms which apply to the transfer of each Commercial Redress Property are those set out in *Schedule 6.3* which is to be treated as a separate agreement in respect of each Commercial Redress Property.

6.3.3 Settlement Legislation

The Settlement Legislation will:

- (a) Provide that nothing in section 11 or Part X of the Resource Management Act 1991 applies to:
 - (i) The transfer of a Commercial Redress Property; or

- (ii) Any matter incidental to, or required for the purpose of, the transfer of a Commercial Redress Property,
- for the purpose of giving effect to this Deed;
- (b) Provide that the laying out or forming, granting or reserving of any private road, private way or right of way that may be required for the purposes of this *clause 6.3* or *clause 6.4.6* shall not require the prior permission of any council under section 348 of the Local Government Act 1974;
- (c) Provide that:
- (i) Where the land that forms all or part of the Commercial Redress Property is not all of one or more allotments specified in an existing certificate of title or computer freehold register the Registrar-General of Land must on written application by any person authorised by the Chief Executive of Land Information New Zealand (and after completion of survey (if any) as may be necessary) create, in accordance with that application, one or more computer registers in the name of the Crown for the fee simple estate in that land subject to, and where applicable, with the benefit of, any Encumbrances that are registrable or notifiable and are described on the written application. The reference in this clause to one or more allotments means one or more allotments as “allotment” is defined in section 218 of the Resource Management Act 1991; and
- (ii) Where, immediately before a computer register is created under *clause 6.3.3(c)(i)*, the land is held for different purposes a single computer register for that land can be created in the name of the Crown without any statement of purpose.
- (d) Provide that, if Ngāti Tuwharetoa elects to acquire the Redress Licensed Land under *clause 6.1.2(c)*, in addition to those parts of *clause 7.2* that relate to Crown Forest Land, in relation to the Redress Licensed Land:
- (i) With effect from the Redress Licensed Land Settlement Date, the Governance Entity will be a “Confirmed Beneficiary” under clause 11.1 of the trust deed of the Crown Forestry Rental Trust and dated 30 April 1990 (that is, the Governance Entity will become entitled to Rental Proceeds (as defined in that trust deed) payable since the commencement of the Crown Forestry Licence and all the provisions of the Crown Forestry Rental Trust shall apply accordingly); and



- (ii) With effect from the Redress Licensed Land Settlement Date, the Crown must give a notice described in section 17(4)(b) of the Crown Forest Assets Act 1989 even though the Waitangi Tribunal has not made a recommendation under section 8HB(1)(a) of the Treaty of Waitangi Act 1975 for the return of the Redress Licensed Land, and the notice will have effect as if such a recommendation had been made and had become final;
- (iii) *Clauses 6.3.3(d)(i) and (ii)* apply even if:
 - (aa) The transfer of the fee simple estate in the Redress Licensed Land has not been registered by the Redress Licensed Land Settlement Date; and
 - (bb) The processes under clause 17.4 of the Crown Forestry Licence have not been completed by the Redress Licensed Land Settlement Date; and
- (iv) With effect from the Redress Licensed Land Settlement Date, clause 17.4 of the Crown Forestry Licence shall continue to apply:
 - (aa) on the basis that the Crown remains responsible for obligations in that clause to be undertaken by the Crown; and
 - (bb) as if references to “the prospective Proprietors” were references to the Governance Entity; and
- (v) With effect from the Redress Licensed Land Settlement Date, the Governance Entity will be the Licensor under the relevant Crown Forestry Licence as if the Redress Licensed Land had been returned to Māori ownership on the Redress Licensed Land Settlement Date pursuant to section 36 of the Crown Forest Assets Act 1989, but section 36(1)(b) of that Act does not apply to that return; and
- (vi) *Clauses 6.3.3(d)(i) to (v)* (inclusive) lapse if the agreement constituted by *clause 6.1.2(f)* is cancelled.
- (e) Provide that, on the registration of the transfer of the fee simple estate in the Redress Licensed Land to the Governance Entity, the land ceases to be Crown Forest Land;
- (f) Enable the grant and registration of covenants by the Crown to arrange for the later creation of one or more computer freehold registers for any

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Commercial Redress Property that is to be transferred to the Governance Entity;

- (g) Empower the Crown to grant the easements referred to in *clause 6.3.6(b)* and provide that any such easement over any conservation area:
 - (i) Is registerable under section 17ZA(2) of the Conservation Act 1987, as if it were a deed to which that provision applied; and
 - (ii) Is enforceable in accordance with its terms despite Part IIIB of the Conservation Act 1987;
- (h) Empower the Crown to sign transfers and do anything else necessary to give effect to the Crown's obligations under this *clause 6.3* without complying with any other enactment that regulates or applies to those activities;
- (i) Provide that the transfer of a Commercial Redress Property under this *clause 6.3* does not affect any privately owned rights to sub-surface minerals or limit sections 10 or 11 of the Crown Minerals Act 1991;
- (j) Provide that the transfer of the fee simple estate to give effect to this *clause 6.3* is a disposition for the purposes of Part IVA of the Conservation Act 1987, but sections 24(2A), 24A and 24AA of that Act do not apply to the disposition; and
- (k) Make such other provisions as are necessary or desirable to give effect to this *clause 6.3*.

6.3.4 Provisions Relating to the Management of Crown Forestry Licence

- (a) From the date of this Deed until the Redress Licensed Land Settlement Date, the Crown shall:
 - (i) Continue to manage the licensor's interest in the Redress Licensed Land prudently and having regard to the commercial interests of the Governance Entity as licensor from the Redress Licensed Land Settlement Date;
 - (ii) Give Ngāti Tuwharetoa all material information (unless to do so would breach any obligation to keep that information confidential) relating to the obligation in *clause 6.3.4(a)(i)*, where practicable in sufficient time to enable Ngāti Tuwharetoa to make submissions to the Crown on its management of the licensor's interest in the Redress Licensed Land; and

- (iii) In complying with *clause 6.3.4(a)*, have regard to any submissions made to it by Ngāti Tuwharetoa about the management of the licensor's interest in the Redress Licensed Land and the conduct of Licence Fee Reviews.

- (b) Following the Redress Licensed Land Settlement Date:
 - (i) The Governance Entity shall conduct the Licence Fee Reviews insofar as they relate to the Redress Licensed Land; and
 - (ii) the Crown shall conduct them in relation to the balance of the land under the Crown Forestry Licence,

independently and in a manner that does not prejudice the other's position as licensor under the reviews.

- (c) From the Redress Licensed Land Settlement Date, the Governance Entity shall be responsible for all the licensor's obligations under the Crown Forestry Licence insofar as they relate to the Redress Licensed Land (other than obligations of the Crown under clause 17.4 of the Crown Forestry Licence), including, without limitation, the obligation to pay any overpayment to the Licensee (and interest on it) on completion of a Licence Fee Review in respect of a period prior to the Redress Licensed Land Settlement Date.

- (d) *Clauses 6.3.4(a) to (c)* (inclusive) lapse if the agreement constituted by *clause 6.1.2(f)* is cancelled.

6.3.5 Apportionment of Licence Fees

- (a) For the purposes of:
 - (i) *clause 6.3.4* of this Deed; and
 - (ii) *clause 4.1* of the Crown Forestry Licence,

the licence fee attributable to the Redress Licensed Land until completion of the process referred to in *clause 6.3.7* is:

$$A \times (B \div C)$$

where:

- A = The licence fee for the Crown Forestry Licence;
- B = The area of the Redress Licensed Land as specified in *paragraph 1.1 of Schedule 6.2*; and
- C = The area of all the land covered by the Crown Forestry Licence.

- (b) If the area of the Redress Licensed Land is finally determined following survey and the approval of the survey plan by the Chief Executive (as defined in the Cadastral Survey Act 2002) after the Redress Licensed Land Settlement Date, the Crown or the Governance Entity (as the case may be) shall make a balancing payment to the other within 10 Business Days of the date on which the area is finally determined if the finally determined area differs from the area specified in *paragraph 1.1 of Schedule 6.2*. The balancing payment to be made by the payer will be the difference between the amount of the licence fees the payer received on the basis set out in *clause 6.3.5(a)* and the amount of licence fees that would have been received by the payer if the area had been finally determined by the Redress Licensed Land Settlement Date.
- (c) The Settlement Legislation will make provision to give effect to *clause 6.3.5(a)(ii)*.

6.3.6 Easements to be granted

- (a) On registration of the transfer of the Redress Licensed Land, or on completion of any necessary survey if later, the Governance Entity shall grant to the Crown a right of way easement in gross on the terms and conditions set out in *Schedule 6.8* (subject to any variations in form necessary only to ensure its registration) over Pukehangi Road from Eono Road to Wairoa Valley Road (being over part Lot 1 DPS 57551 and shown M on DPS 57551).
- (b) On registration of the Transfer of the Redress Licensed Land or, on completion of any necessary survey if later, the Crown shall grant to the Governance Entity right of way easements on the terms and conditions set out in *Schedule 6.9* over land held under the Conservation Act 1987 being:
- (i) Part Section 2 Block III Rotoma Survey District and shown marked A on DPS 57550 (Martins Road connecting Lot 1 DPS 57551 to Lot 1 DPS 57550) in favour of Lot 1 DPS 57550; and
- (ii) Sections 5 and Part Sections 4 and 7 Block II, Sections 7 and 10 and Part Sections 6 and 9 Block VI Rotoma Survey District and part

Closed Road SO 32378 and shown A on DPS 68064 (extension of Wairoa Valley Road south of the Redress Licensed Land) in favour of the Redress Licensed Land.

- (c) The Crown shall bear its own costs and the reasonable costs of the Governance Entity incurred in complying with this *clause 6.3.6*.
- (d) From the Redress Licensed Land Settlement Date until grant of the easements under *clauses 6.3.6(a)* and *(b)*, the Governance Entity and the Crown shall be bound as if the easements had been granted on the Redress Licensed Land Settlement Date.

6.3.7 Rights arising out of subdivided licence

- (a) The Crown shall carry out and complete the processes set out in clause 17.4 of the Crown Forestry Licence as soon as practicable and shall take reasonable steps to ensure that the processes are completed by the Redress Licensed Land Settlement Date. However, Ngāti Tuwharetoa acknowledges that the Crown is only able to carry out the processes before the Redress Licensed Land Settlement Date to the extent that the Licensee voluntarily takes part in them.
- (b) The Crown and the Governance Entity agree that, as part of the processes described in *clause 6.3.7(a)*, they will procure the grant of reciprocal permanent right of way easements along those roads that are on or adjacent to the boundary between the Redress Licensed Land and the balance of the land covered by the Crown Forestry Licence, the easements applying from the time that the road ceases to be subject to a Crown Forestry Licence, unless the Licensee agrees to an earlier application. The agreement in this clause does not affect the operation of clause 17.4 of the Crown Forestry Licence in relation to other rights contemplated by that clause.
- (c) Ngāti Tuwharetoa acknowledges that:
 - (i) the process referred to in *clause 6.3.7(a)* may not be completed by the Redress Licensed Land Settlement Date and that the Redress Licensed Land will be subject to, and have the benefit of, matters arising out of the process; and
 - (ii) the Governance Entity shall execute all documents and do all other things required of it as owner of the Redress Licensed Land to give effect to the matters agreed or determined under that process.



- (d) *Clauses 6.3.7(a) and (b)* lapse if the agreement constituted by *clause 6.1.2(f)* is cancelled.

6.3.8 Access to Wāhi Tapu sites

- (a) The Crown and Ngāti Tuwharetoa acknowledge that Māori other than Ngāti Tuwharetoa also have associations with the Redress Licensed Land and this *clause 6.3.8* is included to give effect to that acknowledgement.
- (b) For the purposes of *clause 6.3.8(c)*, “*Protected Site*” means any area of land situated in the Redress Licensed Land that:
- (aa) becomes a registered place within the meaning of the Historic Places Act 1993; and
 - (bb) is wāhi tapu or a wāhi tapu area within the meaning of the Historic Places Act 1993.
- (c) The Settlement Legislation will provide that if Ngāti Tuwharetoa elects to acquire the Redress Licensed Land under *clause 6.1.2(c)*:
- (i) the registered proprietor of the Redress Licensed Land and any person holding title or occupancy rights from the registered proprietor must allow access across the Redress Licensed Land to each Protected Site to Māori for whom the Protected Site is of special spiritual, cultural or historical significance;
 - (ii) the access right may be exercised:
 - (aa) by vehicles over any reasonably convenient routes in existence from time to time and specified by the registered proprietor;
 - (bb) by foot over reasonably convenient routes specified by the registered proprietor;
 - (iii) the access right is subject to the following conditions:
 - (aa) reasonable notice of intention to exercise the right must be given in writing to the registered proprietor;
 - (bb) the right must be exercised at reasonable times and is only permitted during hours of daylight; and

- (cc) such conditions made by the registered proprietor relating to the time, location and manner of access as are reasonably required for the safety of people or for the protection of land, improvements, flora and fauna, plant and equipment and livestock or for operational reasons; and
- (iv) the Registrar-General of Land must, as soon as reasonably practicable after the Redress Licensed Land Settlement Date, make a notation on the computer freehold register or registers for the Redress Licensed Land that the Redress Licensed Land is subject to *clause 6.3.8(c)*.
- (d) The Settlement Legislation will provide that *clause 6.3.8(c)* is subject to, and does not override, the terms of the Crown Forestry Licence, except where the Licensor has agreed to an exercise of the access right.
- (e) The Settlement Legislation will provide that an amendment to the Crown Forestry Licence will be void and of no effect to the extent that the amendment would have, but for this clause:
 - (i) delayed the date from which access under *clause 6.3.8(c)(i)* would otherwise have been available; or
 - (ii) otherwise adversely affected the rights created under this *clause 6.3.8*.
- (f) The Settlement Legislation will provide that *clauses 6.3.8(c) to (e)* (inclusive) lapse if the agreement constituted by *clause 6.1.2(f)* is cancelled.

6.4 KA 30 BORE

6.4.1 Definition

In this *clause 6.4*, KA 30 Bore means that parcel of land in the South Auckland Land District – Kawerau District, being 7883 square metres, more or less, being Section 1 SO 57099. All Computer Freehold Register SA62D/51.

6.4.2 Delivery of Deed by the Crown

The Crown must, by or on the Settlement Date, provide the Governance Entity with a deed:

- (a) In the form specified in *Schedule 6.4* (a “Deed of Grant of Right of First Refusal”); and
- (b) Signed in duplicate by the Crown.

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6.4.3 Term and Subject Matter of Deed

The Deed of Grant of Right of First Refusal shall be in force for a period of 50 years from the Settlement Date and relates to the KA 30 Bore.

6.4.4 Execution by the Governance Entity

The Governance Entity must:

- (a) Sign the Deed of Grant of Right of First Refusal in duplicate; and
- (b) Return one copy to the Crown by no later than the date which is 10 Business Days after the Settlement Date.

6.4.5 Parties bound from Settlement Date

The Deed of Grant of Right of First Refusal shall have effect from the Settlement Date as if it had been validly executed by both the Crown and the Governance Entity on the Settlement Date.

6.4.6 Easement

On the Settlement Date, the Governance Entity shall grant the Crown a right of way over those parts of Section 1 SO 58814 as shown marked "D", "H" and "I" on DPS 84594 on the terms set out in Schedule Four of the Land Transfer Regulations 2002 in favour of the KA 30 Bore (Section 1 SO 57099).

6.5 CROWN GEOTHERMAL ASSETS

6.5.1 Deed of Grant of Right of First Refusal over Crown Geothermal Assets

The Crown must, by or on the Settlement Date, provide the Governance Entity with a deed:

- (a) In the form specified in *Schedule 6.5* ("*Deed of Grant of Right of First Refusal over Crown Geothermal Assets*"); and
- (b) Signed in duplicate by the Crown.

6.5.2 Term of Deed

The Deed of Grant of Right of First Refusal over Crown Geothermal Assets shall be in force for a period of 50 years from the Settlement Date.

6.5.3 Assets covered by the Deed

The Deed of Grant of Right of First Refusal over Crown Geothermal Assets relates to the Crown Geothermal Assets held by the Crown at the date the Crown must give an RFR Notice (as defined in the Deed of Grant of Right of First



Refusal over Crown Geothermal Assets) to the Governance Entity in accordance with the Deed of Grant of Right of First Refusal over Crown Geothermal Assets.

6.5.4 Execution by the Governance Entity

The Governance Entity must:

- (a) Sign the Deed of Grant of Right of First Refusal over Crown Geothermal Assets in duplicate; and
- (b) Return one copy to the Crown by no later than the date which is 10 Business Days after the Settlement Date.

6.5.5 Parties bound from Settlement Date

The Deed of Grant of Right of First Refusal over Crown Geothermal Assets shall have effect from the Settlement Date as if it had been validly executed by both the Crown and the Governance Entity on that date.



SECTION 7: THE SETTLEMENT LEGISLATION AND EFFECT OF SETTLEMENT ON HISTORICAL CLAIMS

7.1 NGĀTI TUWHARETOA TO SUPPORT SETTLEMENT LEGISLATION

Ngāti Tuwharetoa agree to support the passing of the Settlement Legislation referred to in *clause 8.3.1* and any other legislation required to:

- (a) Give effect to this Deed;
- (b) Achieve certainty in respect of the obligations undertaken by each Party to this Deed; and
- (c) Achieve a final and durable Settlement.

7.2 REMOVAL OF JURISDICTION AND OF PROTECTION MECHANISMS

Ngāti Tuwharetoa agree:

7.2.1 That the Settlement Legislation will, with effect from the Settlement Date:

- (a) Declare that, without limiting the acknowledgments expressed in, or any of the provisions of, this Deed, the Settlement is final and the Crown is released and discharged from any obligations, liabilities and duties in respect of the Historical Claims; and
- (b) Provide that the Courts, the Waitangi Tribunal, and any other judicial body or tribunal will not have jurisdiction (including, without limitation, the jurisdiction to inquire, or to further inquire into, or to make any finding or recommendation) in respect of:
 - (i) The Historical Claims;
 - (ii) This Deed;
 - (iii) The redress provided to Ngāti Tuwharetoa or to the Governance Entity under this Deed; and
 - (iv) The Settlement Legislation,

(but not for the removal of such jurisdiction in respect of the implementation or interpretation of this Deed or the Settlement Legislation);

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7.2.2 That the Settlement Legislation will, with effect from the Settlement Date, remove certain statutory protections of existing and future claims by Māori and rights in respect of those claims to the extent those protections relate to any Commercial Redress Property and that *clause 7.2.3* (which, in the case of any inconsistency, has precedence over the description of its effect under this clause) sets out how the Settlement Legislation will remove those protections. The protections to be removed are:

- (a) The power of the Waitangi Tribunal to make binding recommendations to return to Māori ownership certain categories of land, being:
 - (i) Land transferred to or vested in a State enterprise under the State-Owned Enterprises Act 1986 (whether or not the land is still owned by the State enterprise);
 - (ii) Land transferred to or vested in certain tertiary education institutions under the Education Act 1989 (whether or not the land is still owned by the institution);
 - (iii) Land held by the Crown under the Crown Forest Assets Act 1989 which is subject to a Crown Forestry Licence; and
 - (iv) Land vested in a Crown transferee company under the New Zealand Railways Corporation Restructuring Act 1990 (whether or not the land is still owned by the company);
- (b) The obligation of the Crown to resume any land that is the subject of any such binding recommendation from the person who owns the land;
- (c) The obligation of the Crown to transfer any land that is the subject of any such binding recommendation to Māori ownership in accordance with the recommendation;
- (d) In the case of land held under the Crown Forest Assets Act 1989:
 - (i) The obligation of the Crown to pay compensation; and
 - (ii) Certain restrictions on sale or other disposition; and
- (e) The existence of Memorials on the certificate or certificates of title or computer register or registers to the land which give notice that those protections apply.



7.2.3 That accordingly, to give effect to the removal of the protections referred to in *clause 7.2.2*, the Settlement Legislation will, with effect from the Settlement Date:

(a) Provide for the disapplication of:

- (i) Sections 8A to 8HJ of the Treaty of Waitangi Act 1975;
- (ii) Sections 27A to 27C of the State-Owned Enterprises Act 1986;
- (iii) Sections 211 to 213 of the Education Act 1989;
- (iv) Part III of the Crown Forest Assets Act 1989; and
- (v) Part III of the New Zealand Railways Corporation Restructuring Act 1990,

in relation to each Commercial Redress Property (but subject to *clause 7.2.3(c)* in relation to the Redress Licensed Land) and each Cultural Redress Property to which those provisions apply;

(b) Provide a mechanism that will ensure the removal of Memorials from those Commercial Redress Properties and Cultural Redress Properties;

(c) Provide that *clause 7.2.3*:

- (i) applies to the Redress Licensed Land only if Ngāti Tuwharetoa elects to acquire the Redress Licensed Land under *clause 6.1.2(c)*; and
- (ii) lapses if the agreement constituted by *clause 6.1.2(f)* is cancelled.

7.3 NGĀTI TUWHARETOA WILL NOT OBJECT TO REMOVAL OF STATUTORY PROTECTIONS ELSEWHERE

7.3.1 Ngāti Tuwharetoa will not object to removal of protections

Ngāti Tuwharetoa agree that, except in respect of Claims excluded from Historical Claims under *clause 1.3.2*, Ngāti Tuwharetoa and any Representative Entity no longer have the benefit of any of the protections and rights described generally in *clause 7.2.2* wherever they apply with effect from the Settlement Date and so neither Ngāti Tuwharetoa nor any Representative Entity will object to their removal anywhere else (except in respect of Claims excluded from Historical Claims under *clause 1.3.2*).

7.3.2 Ngāti Tuwharetoa to assist in removing protections in Area of Interest

Ngāti Tuwharetoa agree to assist in any process aimed at removing the protections and rights described generally in *clause 7.2.2* in so far as they relate to land in the Ngāti Tuwharetoa Area of Interest including, without limitation, promptly giving a consent in relation to that land under sections 8D(1)(b)(ii) and 8HE(1)(b)(ii) of the Treaty of Waitangi Act 1975.

7.4 TERMINATION OF LAND BANK ARRANGEMENTS

Ngāti Tuwharetoa agree that, except to the extent necessary to give effect to:

- (a) This Deed; and
- (b) Any arrangements reached between Ngāti Tuwharetoa and the Crown in relation to land within the land bank prior to the Settlement Date,

any land bank arrangement will cease in relation to Ngāti Tuwharetoa (or any Representative Entity) after this Deed becomes unconditional.

7.5 SETTLEMENT LEGISLATION TO EFFECT SETTLEMENT AGREEMENTS

The Crown records that:

- (a) The provisions of *clauses 6.3.3(d)* and *6.3.3(e)* and *clause 7.2.3* are to be included in the Settlement Legislation to give effect to specific items of redress or to the agreements in *clause 7.2.2*;
- (b) The provisions of those clauses are to be included in the Settlement Legislation as a result of the Settlement; and
- (c) It does not follow from the fact that the Crown and Ngāti Tuwharetoa have chosen to affect land and other assets through the mechanism described in those clauses that the Waitangi Tribunal could lawfully have made a binding recommendation to return or not to return to Māori under the Treaty of Waitangi Act 1975 in respect of that land or other assets.

7.6 WAITANGI TRIBUNAL

Ngāti Tuwharetoa agree that the Crown:

- (a) Will, at any time after the Settlement Date, advise the Waitangi Tribunal by written memorandum of the Settlement, and the terms on which the Settlement has been reached; and

- (b) May, at any time after the Settlement Date, request that the Waitangi Tribunal amend its register and adapt its procedures to reflect the effect of the Settlement on the Historical Claims.

7.7 DISCONTINUANCE OF PROCEEDINGS

7.7.1 Notice of discontinuance

The Governance Entity must, on or before the Settlement Date, obtain from any applicant or plaintiff in respect of proceedings brought in relation to the Historical Claims, and deliver to the Crown, a notice of discontinuance of the proceedings in respect of those proceedings, signed by the solicitor for the applicant or plaintiff to those proceedings.

7.7.2 Discontinuance or termination through Settlement Legislation

In the event that the Governance Entity is unable to provide any notice of discontinuance under *clause 7.7.1* prior to the Settlement Date:

- (a) the Governance Entity must continue to use its best endeavors to secure a notice of discontinuance from the relevant applicant or plaintiff in the proceedings; and
- (b) Ngāti Tuwharetoa acknowledge that the Crown may through the Settlement Legislation or other legislation terminate such proceedings on the same basis as if they had been discontinued by the applicant or plaintiff.

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SECTION 8: CONDITIONS AND SETTLEMENT LEGISLATION

8.1 CONDITIONAL DEED

8.1.1 Deed and Settlement are conditional

This Deed and the Settlement are conditional on:

- (a) Within 6 months of the Date of this Deed, the Crown being satisfied that Ngāti Tuwharetoa have established the Governance Entity in accordance with *clause 2.1* and the Governance Entity signing the Deed of Covenant in accordance with *clause 2.1*; and
- (b) The passing of the Settlement Legislation and the coming into force of those provisions of the Settlement Legislation which are required to give effect to this Deed within 24 months of the Date of this Deed.

8.1.2 Some provisions not conditional

Although this Deed and the Settlement are conditional on the matters specified in *clause 8.1.1*, where any provision of this Deed says that any provision is not conditional as described in *clause 8.1*:

- (a) The provision concerned shall be binding upon Ngāti Tuwharetoa and the Crown unless and until termination of this Deed under *clause 8.2*; and
- (b) Any amount payable by one Party to the other under any such provision in relation to the period prior to the date of termination shall be paid notwithstanding such termination.

8.2 TERMINATION IF DEED REMAINS CONDITIONAL

8.2.1 Notice of termination

If either of the conditions referred to in *clause 8.1.1* has not been satisfied by the date for satisfaction of that condition (or such later date as Ngāti Tuwharetoa and the Crown may agree in writing), then either Ngāti Tuwharetoa or the Crown may, by Notice to the other, terminate this Deed.

8.2.2 Without Prejudice Basis

Except as provided in *clause 6.1.4*, Ngāti Tuwharetoa and the Crown agree that this Deed will be treated as having been entered into on a “without prejudice” basis, in particular this Deed may not be used as evidence in any proceedings before, or presented to, any Court, the Waitangi Tribunal, or any other judicial body or tribunal (except for proceedings concerning the implementation or interpretation of this Deed or the Settlement Legislation), until it becomes unconditional.

8.2.3 Effect of notice of termination

- (a) If this Deed is terminated under *clause 8.2.1*, this Deed will be at an end and, except as provided in *clause 8.2.3(b)*, neither Ngāti Tuwharetoa (nor any Representative Entity) nor the Crown will have any rights or obligations under it.
- (b) The rights and obligations of the Parties under *clauses 8.2.2* and *6.1.4* continue if this Deed is terminated.

8.3 INTRODUCTION OF SETTLEMENT LEGISLATION

8.3.1 Crown to propose legislation for introduction

- (a) The Crown agrees that it will, within 6 months after the Crown is satisfied the Governance Entity has been established in accordance with *clause 2.1* and the Governance Entity has signed the Deed of Covenant in accordance with *clause 2.1* (or such longer period as Ngāti Tuwharetoa and the Crown may agree in writing), propose Settlement Legislation to give effect to the Settlement, and to achieve certainty in respect of, and to record the approval by Parliament of, the Settlement.
- (b) The Settlement Legislation proposed by the Crown must be in a format that:
 - (i) Ngāti Tuwharetoa has advised to the Crown in writing is satisfactory to Ngāti Tuwharetoa; and
 - (ii) Is satisfactory to the Crown.

8.3.2 Content of the Settlement Legislation

The proposed Settlement Legislation will, without limitation:

- (a) Provide for the settlement of the Historical Claims;
- (b) Provide for those matters required by this Deed to be provided for in the Settlement Legislation;
- (c) Include such provisions as are required to give effect to the Crown's obligations in respect of the Settlement Legislation under this Deed; and
- (d) Include any other provisions required to achieve certainty, finality and durability of the Settlement and to give effect to this Deed.



8.3.3 Not conditional

Clause 8.1.1 (which provides that this Deed is conditional) does not apply to *clause 8.3.1*.

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SECTION 9: TAX

9.1 DEFINITIONS AND INTERPRETATION

9.1.1 Definitions

For the purposes of this Section, unless the context requires otherwise:

Commercial Properties/Rights means:

- (a) the Crown Geothermal Assets;
- (b) the Redress Licensed Land; and
- (c) the assets over which the Crown gives the Governance Entity a right of first refusal under *clause 6.4*.

Other Properties/Rights means those properties, interests, rights or assets which are to be transferred to the Governance Entity (the value of which is not taken into account under the Redress Amount), the particulars and/or arrangements in respect of which are specified in:

- (a) *Section 4*;
- (b) *Section 5*;
- (c) *Section 6*, to the extent that section relates to the grant of rights of refusal to the Governance Entity under *clause 6.4* and *clause 6.5*;

Redress Amount Properties means the Redress Land; and

Tangible Redress means:

- (a) The amounts referred to in *clause 6.1.1* paid or payable by the Crown to the Governance Entity;
- (b) The Redress Amount Properties; and
- (c) The Other Properties/Rights.

9.1.2 Interpretation

For the purposes of this Section, unless the context requires otherwise:



TAX

- (a) The expression “*indemnity payment*” means any indemnity payment made by the Crown under or for the purposes of this Section;
- (b) References to the payment, crediting or transferring of the “*Tangible Redress*” (or any equivalent wording) include a reference to the payment, crediting, or transferring of any part (or the applicable part) of the Tangible Redress;
- (c) The expression “*GST*” (where the context permits) also extends to and includes any interest or penalties payable in respect of, or on account of the late or non-payment of, any GST;
- (d) The expression “*income tax*” (where the context permits) also extends to and includes any interest or penalties payable in respect of, or on account of the late or non-payment of, any income tax;
- (e) The expression “*gift duty*” (where the context permits) also extends to and includes any interest or penalty payable in respect of, or on account of the late or non-payment of, any gift duty;
- (f) The expression “*tax*” includes income tax, GST, and gift duty;
- (g) The word “*payment*” extends to the transferring or making available of cash amounts as well as to the transferring of non cash amounts (such as land);
and
- (h) The word “*transferring*” includes recognising, creating, vesting, granting, licensing, leasing, or any other means by which the relevant properties, interests, rights or assets are disposed of or made available or are recognised as being available to the Governance Entity and “transfer” and “transferred” have corresponding meanings.

9.2 STATEMENT OF AGREED TAX PRINCIPLES

9.2.1 Principles

The Crown and Ngāti Tuwharetoa agree to the following:

- (a) The payment, crediting or transferring of Tangible Redress by the Crown to the Governance Entity (as redress provided by the Crown) is not intended to be, or to give rise to, a taxable supply for GST purposes, nor gross income for income tax purposes;

- (b) Neither the Governance Entity, nor any person associated with the Governance Entity, will claim an input credit (for GST purposes) or a deduction (for income tax purposes) with reference to the payment, crediting or transferring by the Crown of any Tangible Redress;
- (c) The transferring of the Other Properties/Rights to or in the Governance Entity (as redress provided by the Crown) is not intended to be, or to give rise to, a dutiable gift;
- (d) The transferring of the Commercial Properties/Rights by the Crown (whether under an exercise of the relevant right of first refusal or otherwise) is intended to be a taxable supply for GST purposes;
- (e) Any interest paid by the Crown under any provision of this Deed is either gross income or exempt income, for income tax purposes, depending on the recipient's status for income tax purposes; and, furthermore, the receipt or payment of such interest is not subject to indemnification for tax by the Crown under this Deed;
- (f) The payment of any indemnity payment by the Crown is not intended to be, or to give rise to, a taxable supply for GST purposes nor gross income for income tax purposes;
- (g) The Governance Entity (at all applicable times) is or will be a registered person for GST purposes;
- (h) The receipt by the Governance Entity of any Crown Forestry Licence fees (and any accumulated interest on them) from the Crown Forestry Rental Trust or from the Crown is to be treated in accordance with ordinary taxation principles, and is not to be subject to indemnification for tax by the Crown under this Deed.

9.2.2 Acknowledgments

For the avoidance of doubt, Ngāti Tuwharetoa and the Crown acknowledge:

- (a) That the tax indemnities given by the Crown in this *Section 9* and the principles and acknowledgments in *clauses 9.2.1* and *9.2.2* apply only to the receipt by the Governance Entity of the Tangible Redress or indemnity payments and do not apply to any subsequent dealings, distributions, payments, uses or applications by the Governance Entity with or of the Tangible Redress or indemnity payments;

- (b) Each obligation to be performed by the Crown in favour of the Governance Entity under this Deed is performed as redress and without charge to, or consideration to be provided by, the Governance Entity or any other person, but this *clause 9.2.2(b)* does not affect the obligation of the Governance Entity to pay the purchase price relating to:
- (i) any sale entered into in accordance with the deeds to be entered into under *clause 6.4* and *clause 6.5*; or
 - (ii) the transfer of the Redress Licensed Land under *Section 6* ;
- (c) Without limiting *clause 9.2.2(b)*, the payment of amounts and the bearing of costs from time to time by the Governance Entity in relation to the Other Properties/Rights and the Redress Amount Properties (including without limitation rates/charges/fees, the apportionment of outgoings and incomings, maintenance/repair/upgrade costs and rubbish/pests/weed control costs) is not intended to be consideration for the transfer of those properties for GST or other purposes; and, furthermore (and without limiting *clause 9.2.2(a)*) the payment of such amounts and the bearing of such costs is not subject to indemnification for tax by the Crown under this Deed; and
- (d) Without limiting *clause 9.2.2(b)*, the agreement to enter into, the entering into and the performance by the Governance Entity of:
- (i) the conservation covenant described in *clause 4.2.4*;
 - (ii) the protected private land agreement referred to in *clause 4.4.4*; and
 - (iii) the easements to be granted by the Governance Entity referred to in *Schedule 6.2*,

is not consideration for GST or other purposes for the transfer of those properties by the Crown to the Governance Entity.

9.2.3 Act consistent with principles

Neither the Governance Entity (nor any person associated with the Governance Entity) nor the Crown shall act in a manner that is inconsistent with the principles or acknowledgments set out in *clauses 9.2.1 and 9.2.2*.

9.2.4 Matters not to be implied from principles

Nothing in *clause 9.2.1* is intended to suggest or imply:

- (a) That the payment, crediting or transferring of Tangible Redress, or the payment of an indemnity payment, by the Crown to the Governance Entity is or will be chargeable with GST;
- (b) If the Governance Entity is a charitable trust or other charitable entity, that:
 - (i) payments, properties, interests, rights or assets the Governance Entity receives or derives from the Crown under this Deed are received or derived other than exclusively for charitable purposes; or
 - (ii) the Governance Entity derives or receives amounts, for income tax purposes, other than as exempt income; or
- (c) That gift duty should or can be imposed on any payment to or transaction with the Governance Entity under this Deed.

9.3 INDEMNITY FOR GST IN RESPECT OF TANGIBLE REDRESS AND INDEMNITY PAYMENTS

9.3.1 Tangible redress provided exclusive of GST

If and to the extent that:

- (a) The making of redress through the payment, crediting or transferring of Tangible Redress; or
- (b) The payment of an indemnity payment,

by the Crown to the Governance Entity is chargeable with GST, the Crown must, in addition to the payment, crediting or transferring of Tangible Redress or the payment of the indemnity payment, pay the Governance Entity the amount of GST payable in respect of the Tangible Redress or the indemnity payment.

9.3.2 Indemnification

If and to the extent that:

- (a) The making of redress through the payment, crediting or transferring of Tangible Redress; or
- (b) The payment of an indemnity payment,

by the Crown to the Governance Entity is chargeable with GST and the Crown does not, for any reason, pay the Governance Entity an additional amount equal to that GST at the time the Tangible Redress or the indemnity payment is paid,

credited or transferred, the Crown shall, on demand in writing, indemnify the Governance Entity for any GST that is or may be payable by the Governance Entity or for which the Governance Entity is liable in respect of the making of the redress and/or the payment, crediting or transferring of Tangible Redress and/or the payment of the indemnity payment.

9.4 INDEMNITY FOR INCOME TAX IN RESPECT OF TANGIBLE REDRESS OR INDEMNITY PAYMENTS

The Crown agrees to indemnify the Governance Entity on demand against any income tax that the Governance Entity is liable to pay if and to the extent that receipt of the payment, crediting or transferring of the Tangible Redress or of an indemnity payment from the Crown is treated as, or as giving rise to, gross income of the Governance Entity for income tax purposes.

9.5 INDEMNIFICATION FOR GIFT DUTY IN RESPECT OF OTHER PROPERTIES/RIGHTS

The Crown agrees to pay, and to indemnify the Governance Entity against any liability that it has to pay in respect of, any gift duty assessed as payable by the Commissioner of Inland Revenue in respect of the transfer of the Other Properties/Rights by the Crown under this Deed.

9.6 DEMANDS FOR INDEMNIFICATION

9.6.1 Notification of indemnification event

The Governance Entity and the Crown agree to Notify the other as soon as reasonably possible after becoming aware of an event or occurrence in respect of which the Governance Entity is or may be entitled to be indemnified by the Crown for or in respect of tax under this Section.

9.6.2 How demands are made

Demands for indemnification for tax by the Governance Entity in accordance with this Section must be made by the Governance Entity in accordance with the provisions of *clause 10.6 (Notices)* and may be made at any time, and from time to time, after the Settlement Date.

9.6.3 When demands are to be made

Except with the agreement of the Crown or where this Deed specifies otherwise, no demand for payment by way of indemnification for tax under this *Section 9* may be made by the Governance Entity more than five Business Days before the due date for payment by the Governance Entity of the applicable tax (whether such date is specified in an assessment or is a date for the payment of provisional tax or otherwise).



9.6.4 Evidence to accompany demand

Without prejudice to *clause 9.6.1*, each demand for indemnification by the Governance Entity under this Section must be accompanied by:

- (a) Appropriate evidence (which may be a notice, notice of proposed adjustment, assessment, a certificate issued by the Governance Entity and confirmed or certified by the Governance Entity's tax advisers or accountants for the time being, or any other evidence which is reasonably satisfactory to the Crown) setting out with reasonable detail the amount of the loss, cost, expense, liability or tax that the Governance Entity claims to have suffered or incurred or be liable to pay, and in respect of which indemnification is sought from the Crown under this Deed; and
- (b) Where the demand is for indemnification for GST, if the Crown requires, an appropriate GST tax invoice.

9.6.5 Repayment of amount on account of tax

If payment is made by the Crown on account of tax to the Governance Entity or the Commissioner of Inland Revenue (for the account of the Governance Entity) and it is subsequently determined or held that no such tax (or an amount of tax that is less than the payment which the Crown made on account of tax) is or was payable or properly assessed, to the extent that the Governance Entity has retained the payment made by the Crown or has been refunded the amount of that payment by the Inland Revenue Department or has had the amount of that payment credited or applied to its account with the Inland Revenue Department, the Governance Entity must repay the applicable amount to the Crown free of any set-off or counterclaim.

9.6.6 Payment of amount on account of tax

The Governance Entity shall pay to the Inland Revenue Department any payment made by the Crown to the Governance Entity on account of tax on the latter of:

- (a) The "due date" for payment of that amount to the Inland Revenue Department as provided for by the applicable tax legislation; and
- (b) The next Business Day following receipt by the Governance Entity of that payment from the Crown.

9.6.7 Payment of costs

The Crown will indemnify the Governance Entity for any reasonable costs incurred by the Governance Entity for actions undertaken by the Governance Entity at the Crown's direction, in connection with:

- (a) Any demand for indemnification of the Governance Entity under or for the purposes of this Section; and
- (b) Any steps or actions taken by the Governance Entity in accordance with the Crown's requirements under *clause 9.8*.

9.7 DIRECT PAYMENT OF TAX: CONTROL OF DISPUTES

Where any liability arises to the Crown under this Section, the following provisions shall also apply:

- (a) If the Crown so requires and notifies the Governance Entity in writing of that requirement, the Crown may, instead of paying the requisite amount on account of tax, pay that amount to the Commissioner of Inland Revenue, such payment to be effected on behalf, and for the account, of the Governance Entity;
- (b) Subject to the Governance Entity being indemnified to its reasonable satisfaction against any reasonable cost, loss, expense or liability or any tax which it may suffer, incur or be liable to pay, the Crown shall have the right, by Notice to the Governance Entity, to require the Governance Entity to do either or both of the following things, namely:
 - (i) To take into account any right permitted by any relevant law to defer the payment of any tax; and/or
 - (ii) To take all steps the Crown may specify to respond to and/or contest any notice, notice of proposed adjustment or assessment for tax, where expert legal tax advice indicates that it is reasonable to do so; and
- (c) The Crown reserves the right:
 - (i) To nominate and instruct counsel on behalf of the Governance Entity whenever it exercises its rights under *clause 9.7(b)*; and
 - (ii) To recover from the Commissioner of Inland Revenue the amount of any tax paid and subsequently held to be refundable.

9.8 RULINGS, APPLICATIONS

If the Crown requires, the Governance Entity will consult and/or collaborate with the Crown in the Crown's preparation (for the Crown, the Governance Entity and/or any other person) of an application for a non binding or binding ruling from

the Commissioner of Inland Revenue with respect to any part of the arrangements relating to the payment, crediting or transferring of Tangible Redress.

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SECTION 10: MISCELLANEOUS MATTERS

10.1 NO ASSIGNMENT

Except as expressly provided in this Deed or any other document entered into under this Deed, neither the Crown nor Ngāti Tuwharetoa may transfer or assign any rights or obligations arising from this Deed.

10.2 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed by, or on behalf of, Ngāti Tuwharetoa and the Crown.

10.3 ENTIRE AGREEMENT

This Deed constitutes the entire agreement between the Parties in relation to the matters referred to in this Deed. This Deed supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between Ngāti Tuwharetoa, and/or any Representative Entity and/or any Member of Ngāti Tuwharetoa and the Crown relating to such matters but not Te Tiriti o Waitangi/the Treaty of Waitangi itself.

10.4 NO WAIVER

A failure, delay or indulgence by any Party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

10.5 INTEREST

10.5.1 Settlement Interest

The Crown will pay interest ("*Settlement Interest*") on:

- (a) \$10,050,000 (being the Redress Amount less the amounts referred to in, or payable under, *clause 6.1.3*) from and including the Date of this Deed until and including the Settlement Date; and
- (b) \$100,000 (being the amount payable under *clause 6.1.3(c)*) from and including the date of this Deed until the date of payment of that amount to the Governance Entity.

10.5.2 Calculation and payment of Interest

Settlement Interest will:



- (a) Be calculated on each Calculation Date and will be at a rate, expressed as a percentage per annum, equal to the weighted average of the successful yield for 1 year Treasury Bills resulting from the Treasury Bill tender process that takes place during the week prior to each Calculation Date;
- (b) Not compound;
- (c) Be payable for the period from and including the Date of this Deed:
 - (i) to (and including) the Settlement Date, in the case of Settlement Interest under *clause 10.5.1(a)*; and
 - (ii) to (and including) the date of payment, in the case of Settlement Interest under *clause 10.5.1(b)*;
- (d) Be paid to the Governance Entity:
 - (i) on the Settlement Date, in the case of Settlement Interest under *clause 10.5.1(a)*; and
 - (ii) on the date of payment, in the case of Settlement Interest under *clause 10.5.1(b)*;
- (e) Be subject to normal taxation law.

10.6 NOTICES

The provisions of this clause apply to Notices under this Deed:

10.6.1 Notices to be signed

The Party giving a Notice must sign it.

10.6.2 Notices in writing

Any Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number.

10.6.3 Address for notices

Until any other address or facsimile number of a Party is given by Notice to the other Party, they will be as follows:

Crown:

C/- The Solicitor-General
Crown Law Office
St Pauls Square
45 Pipitea Street
(PO Box 5012)
WELLINGTON

Facsimile: 04 473 3482

Ngāti Tuwharetoa:

Te Runanga o Tuwharetoa ki Kawerau
R23/60 Onslow Street
PO Box 334
Kawerau

Facsimile: 07 323 4164

10.6.4 Delivery

Delivery of a Notice may be effected by hand, by post with postage prepaid, or by facsimile.

10.6.5 Timing of Delivery

A Notice delivered:

- (a) by hand will be treated as having been received at the time of delivery;
- (b) by prepaid post will be treated as having been received on the third day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission.

10.6.6 Deemed date of Delivery

If a Notice is treated as having been received on a day that is not a Business Day, or after 5.00 p.m. on a Business Day, that Notice will (despite *clause 10.6.5*) be treated as having been received the next Business Day.

SECTION 11: DEFINITIONS AND INTERPRETATION

11.1 DEFINITIONS

In this Deed, unless the context requires otherwise:

Act means an Act of the Parliament of New Zealand or of the General Assembly;

Administering Body has the same meaning as in section 2 of the Reserves Act 1977;

Antiquity has the meaning set out in *Attachment C* to the Ngāti Tuwharetoa Antiquities Protocol;

Artifact has the meaning set out in *Attachment C* to the Ngāti Tuwharetoa Antiquities Protocol;

Business Day means the period of 9am to 5pm on any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) The days observed as the anniversaries of the provinces of Wellington and Auckland;

Calculation Date means:

- (a) The Date of this Deed, in respect of the period commencing on the Date of this Deed and expiring on the date before the first Rate Setting Date; and
- (b) Each Rate Setting Date, in respect of the period commencing on the first Rate Setting Date and expiring on the Settlement Date;

Cash Settlement Amount means the amount specified in *clause 6.1.1(c)* to be paid by the Crown to the Governance Entity under *clause 6.2*;

Claim includes the right to make a claim;

Commercial Redress Property means each Redress Land and the Redress Licensed Land;

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Consent Authority has the meaning given in section 2 of the Resource Management Act 1991;

Conservation Board has the same meaning as in section 2 of the Conservation Act 1987;

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

Conservation Management Plan has the meaning given to it by section 2 of the Conservation Act 1987, and includes a conservation management strategy as defined by section 2 of the Conservation Act 1987;

Crown:

- (a) means Her Majesty the Queen in right of New Zealand; and
- (b) includes all Ministers of the Crown and all Departments; but
- (c) does not include:
 - (i) an Office of Parliament (as defined in the Public Finance Act 1989);
 - (ii) a Crown entity (as defined in the Public Finance Act 1989);
 - (iii) a State enterprise (as defined in the State-Owned Enterprises Act 1986);

Crown Agency means:

- (a) A Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (b) A State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (c) Any company or body which is wholly-owned or controlled by:
 - (i) The Crown, a Crown entity or a State enterprise; or
 - (ii) A combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises, and includes any subsidiary of or related company to, any such company or body;

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Crown Forest Land has the meaning given to it in section 2 of the Crown Forest Assets Act 1989;

Crown Forestry Licence has the meaning given to it in section 2 of the Crown Forest Assets Act 1989 and in relation to the Redress Licensed Land means the Licence described in *paragraph 1.4(c) of Schedule 6.2*;

Crown Forestry Rental Trust means the forestry rental trust referred to in section 34 of the Crown Forest Assets Act 1989;

Crown Geothermal Assets means:

- (a) the physical assets (including wells, wellheads, geothermal pipelines and buildings) from time to time owned by the Crown; and
- (b) any easements granted in favour of the Crown in respect of any geothermal pipelines falling within the class of assets described in paragraph (a) above,

associated with the supply of geothermal steam to Tasman under the terms of the Tasman Contract;

- (c) a novation or, in the absence of Tasman's consent, an assignment, to Ngāti Tuwharetoa of the Crown's rights and obligations under the Tasman Contract; and
- (d) a novation or, in the absence of any other relevant party's consent, an assignment, to Ngāti Tuwharetoa of the Crown's rights and obligations under any other contract for the supply by the Crown of geothermal energy from the assets described in (a) and (b) above, in substitution for or in addition to the Tasman Contract;

Cultural Redress Property means each of the properties set out in *Attachment 4.1*;

Customary Rights has the meaning set out in *clause 1.2.2*;

Date of this Deed means the date this Deed is signed by the Parties;

Deed means this Deed of Settlement, including the Schedules and Attachments to it;

Deed of Covenant means the Deed of Covenant referred to in *clause 2.1.1*;

Deed of Recognition means a deed of recognition entered into by the Crown under *clause 5.3.2*;

Department means a department or instrument of the Government, or a branch or division of the Government, but does not include a body corporate, or other legal entity that has the power to contract, or an Office of Parliament (as defined in the Public Finance Act 1989);

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

Disclosure Information means:

- (a) in respect of each Cultural Redress Property, the information already provided by, or on behalf of, the Crown to Ngāti Tuwharetoa and referred to in *Schedule 4.1*;
- (b) in respect of each Redress Land, the information already provided by, or on behalf of, the Crown to Ngāti Tuwharetoa and referred to in *Schedule 6.1*; and
- (c) in respect of the Redress Licensed Land, the information given under *paragraph 2.1 of Schedule 6.6*;

Effective Date means the date that is 6 months after the Settlement Date;

Encumbrances means, in respect of each Cultural Redress Property, and each Commercial Redress Property, the tenancies, leases, licences to occupy, easements, covenants or other property rights affecting that property set out in *Attachment 4.1* in relation to each Cultural Redress Property and in *Schedules 6.1* and *6.2* in relation to each Commercial Redress Property;

Entitlement Land means a site over which a Nohoanga Entitlement is granted;

Fisheries Legislation means the Fisheries Act 1983 and the Fisheries Act 1996;

Geothermal Energy has the meaning given in section 2 of the Resource Management Act 1991;

Geothermal Statutory Acknowledgement means an acknowledgement made by the Crown in the Settlement Legislation relating to the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System, comprising the



acknowledgement made by the Crown under *Clause 5.5.2*, on the terms set out in this Deed;

Geothermal Water has the meaning given in section 2 of the Resource Management Act 1991;

Governance Entity means a body established in accordance with *clause 2.1*;

GST means goods and services tax chargeable under the Goods and Services Tax Act 1985;

Historical Claims has the meaning set out in *clause 1.3*;

Imperial Act means any Act of the Parliament of England, or of the Parliament of Great Britain, or of the Parliament of the United Kingdom;

Joint Advisory Committee means the advisory committee appointed in accordance with *clause 5.8.2* and continuing subject to *clause 5.8.7*;

Kawerau Geothermal System means the geothermal system within the boundary indicated on SO 61730 South Auckland Land District. SO references are included in the relevant schedules for the purposes of indicating the general location of the geothermal system and are not intended to establish the precise boundaries of the geothermal system;

Land Holding Agent means the Minister of the Crown responsible for the Department which manages the Entitlement Land;

Licence Fee Review means a review under clause 4 of the Crown Forestry Licence that has not been concluded at the Settlement Date;

Licensee means the registered holder for the time being of the Crown Forestry Licence;

Local Authority has the meaning given by section 2 of the Resource Management Act 1991;

Mandated Signatories means Rae Beverley Adlam, The Reverend Canon Robert David Schuster, Tai Tukiwaho Te Riini, and Ani Te Waikaretu Wickliffe, who collectively have authority from Ngāti Tuwharetoa to sign this Deed;

Member of Ngāti Tuwharetoa has the meaning set out in *clause 1.2.2*;

Memorials means resumptive memorials imposed on land under the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990 or the Education Act 1989;

Minister means a Minister of the Crown;

New Zealand Conservation Authority has the same meaning as in section 2 of the Conservation Act 1987;

New Zealand Historic Places Trust has the meaning given by section 38 of the Historic Places Act 1993;

Ngāti Tuwharetoa has the meaning set out in *clause 1.2*; and **Ngāti Tuwharetoa (Bay of Plenty)** has the same meaning;

Ngāti Tuwharetoa Ancestor or **Ancestors** has the meaning set out in *clause 1.2.2*;

Ngāti Tuwharetoa Antiquities Protocol means the Protocol to be issued under *Clause 5.1.1(c)* in the form set out in *Schedule 5.3*;

Ngāti Tuwharetoa Antiquities Protocol Area means the area shown on the map attached to the Ngāti Tuwharetoa Antiquities Protocol together with the adjacent waters;

Ngāti Tuwharetoa Area of Interest has the meaning set out in *clause 1.2.2*;

Ngāti Tuwharetoa DOC Protocol means the Protocol to be issued under *clause 5.1.1(a)* in the form set out in *Schedule 5.1*;

Ngāti Tuwharetoa DOC Protocol Area means the area shown on the map attached to the Ngāti Tuwharetoa DOC Protocol;

Ngāti Tuwharetoa Fisheries Protocol means the Protocol to be issued under *clause 5.1.1(b)* in the form set out in *Schedule 5.2*;

Ngāti Tuwharetoa Fisheries Protocol Area means the area shown on the map attached to the Ngāti Tuwharetoa Fisheries Protocol together with the adjacent waters;

Ngāti Tuwharetoa Values means, in relation to the Owhakatihi, the statement of Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Owhakatihi;

Nohoanga Entitlement means an entitlement granted under *clauses 5.6.2, 5.6.18(c) or 5.6.19(e)*;

Nohoanga Site means the area described in *Schedule 5.17*;

Notice means a notice in writing given under *clause 10.6* and *Notify* has a corresponding meaning;

Other Claimants means a group of individuals, or their governance entity, who have entered into a deed of settlement with the Crown to settle claims made by that group of a kind described in *clause 1.3.1(a)*;

Owhakatihi means the area of land which is administered under the Reserves Act 1977 having Ngāti Tuwharetoa Values, and declared as Owhakatihi under the Settlement Legislation on the terms set out in *clause 5.7*;

Parties means Ngāti Tuwharetoa and the Crown;

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage, to the Governance Entity under the Settlement Legislation and *clause 5.1.1* of the Deed of Settlement.

Rate Setting Date means the first Business Day after the expiry of each period of 12 months commencing on the Date of this Deed or on the previous Rate Setting Date (as the case may be);

Redress Amount is the amount specified in *clause 6.1.1*;

Redress Land means each property set out in *Schedule 6.1*;

Redress Licensed Land means those parcels of land described in *Schedule 6.2* and shown on SO 306594, South Auckland Land District, but excludes:

- (a) All trees growing or standing or, in the case of windthrow, lying on those parcels of land; and
- (b) All improvements that have been acquired by any purchaser of the trees on those parcels of land or made thereafter by such purchaser or the Licensee;

Redress Licensed Land Possession Date means the later of the Settlement Date and the date which is 40 Business Days after the date upon which the Transfer Value is determined under *clause 6.1.2(b)*;

Redress Licensed Land Settlement Date means the date on which settlement of the transfer of the Redress Licensed Land under *paragraph 1 of Schedule 6.7* takes place;

Redress Value means, in respect of each Redress Land, the amount set out in *Schedule 6.1*, as being the Redress Value for that property;

Regulation means a regulation, rule, order, proclamation, notice, bylaw, warrant or other statutory instrument made, issued or given under an Act;

Relevant Consent Authority means:

- (a) for the purposes of the Geothermal Statutory Acknowledgment, a Consent Authority of a region or district which contains or is adjacent to the Kawerau Geothermal System; or
- (b) for the purposes of a Statutory Acknowledgement, a Consent Authority of a region or district which contains or is adjacent to the Statutory Area to which the Statutory Acknowledgement relates;

Representative Entity has the meaning given in *clause 1.2.2*;

Resource Consent has the meaning given to it in section 87 of the Resource Management Act 1991;

Settlement means the settlement of the Historical Claims to be effected under this Deed;

Settlement Date means the date which is 20 Business Days after this Deed becomes unconditional;

Settlement Legislation means the bill to give effect to the Settlement referred to in *clause 8.3* and, where the bill has become law, means, if the context requires, the Act resulting from the passing of such bill;

Statutory Acknowledgement referred to in *Schedules 5.4 – 5.8* means an acknowledgement made by the Crown in the Settlement Legislation relating to the Statutory Areas, comprising the acknowledgement made by the Crown under *clause 5.2.2*, on the terms set out in this Deed;

Statutory Areas means the areas, defined in *Schedules 5.4 to 5.15*, the general locations of which are indicated on the SO plans indicated in those Schedules, and **Statutory Area** means any one of them; SO references are included in the relevant

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Schedules for the purposes of indicating the general location of the Statutory Areas and are not intended to establish the precise boundaries of the Statutory Areas;

Statutory Plans means all regional policy statements, regional coastal plans, district plans, regional plans and proposed plans as defined in section 2 of the Resource Management Act 1991;

Tasman means Norske Skog Tasman Limited, including its permitted successors and assignees;

Tasman Contract means the Agreement for the Supply of Geothermal Energy dated 23 October 1998 between the Crown and Tasman (being the assignee of the rights under the agreement from Tasman Pulp and Paper Company Limited) as amended from time to time;

Transfer Value means the amount referred to as such, and determined by, the process set out in *Schedule 6.6*;

Transferor Agency means:

- (a) In respect of each Redress Land, the Office of Treaty Settlements; and
- (b) In respect of the Redress Licenced Land, Land Information New Zealand;
and

Waterway means:

- (a) any lake, being a body of fresh water which is entirely or nearly surrounded by land, or a river, being a continuously or intermittently flowing body of fresh water, and includes a stream and modified water course, but does not include any artificial water course (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal); and
- (b) coastal waters, including harbours;

11.2 INTERPRETATION

In the interpretation of this Deed, unless the context otherwise requires:

- (a) The Background is intended to set out the background to this Deed but is not to affect the interpretation of this Deed;

- (b) Headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (c) Words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- (d) Where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (e) The singular includes the plural and vice versa, and words importing one gender include the other genders;
- (f) A reference to the Background, Recitals, Sections, clauses, Schedules and Attachments is to the Background, Recitals, Sections, clauses, Schedules and Attachments to this Deed. A Recital is a paragraph in the Background to this Deed;
- (g) A reference within a Schedule or Attachment to a paragraph or an Appendix means the paragraph in, or the Appendix to, that Schedule or Attachment;
- (h) A reference to any Act or Regulations includes a reference to that Act or those Regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (i) A reference to a party to this Deed or any other document or agreement includes that party's permitted successors;
- (j) A reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced from time to time;
- (k) A reference to any monetary amount is to New Zealand currency;
- (l) A reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (m) A reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;



- (n) A reference in this Deed to the Crown or a Crown Agency endeavoring to do something or to achieve some result means reasonable endeavors to do that thing or achieve that result and, in particular, does not oblige the Crown or the Government of New Zealand to promote any legislation, except as so far as this Deed anticipates Settlement Legislation;
- (o) Where a clause includes a preamble, that preamble is intended to set out the background to, and intention of, the clause, but is not to affect the interpretation of the clause;
- (p) In the event of a conflict between the terms of the main body of the Deed (namely, any part of the Deed except the Schedules or Attachments) and the Schedules or Attachments, then the terms of the main body of the Deed shall prevail;
- (q) A reference to any document being in the form specified in a Schedule or Attachment includes that document with such amendments as may be agreed in writing between Ngāti Tuwharetoa and the Crown;
- (r) A reference to a date on which something must be done includes any other date which may be agreed in writing between Ngāti Tuwharetoa and the Crown;
- (s) Where something is required to be done on a day which is not a Business Day, that thing must be done on the next Business Day after that day;
- (t) A reference to the Settlement Legislation including a provision set out in this Deed includes that provision with any amendment:
 - (i) where the amendment results in a provision that is similar to that provided in this Deed and does not have a material adverse effect on either of the Parties; or
 - (ii) as may be agreed in writing between Ngāti Tuwharetoa and the Crown;
- (u) A reference in this Deed to a particular Minister of the Crown includes any Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant Act or matter;

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- (v) Where the name of a reserve or other place is amended under this Deed, either the existing name or new name is used to mean that same reserve or other place;
- (w) Where an area of land is defined by reference to a plan in an Attachment to this Deed but there is an SO Plan for the same area, then the plan in the Attachment is for identification only and the SO Plan prevails; and
- (x) A reference in this Deed to a clause or section of this Deed is also a reference to the provision in the Settlement Legislation that gives effect to that clause or section.

10/17/17