

TE RŪNANGA O NGĀTI WHĀTUA

and

THE CROWN

**AGREEMENT IN PRINCIPLE
TO SETTLE
HISTORICAL CLAIMS**

18 AUGUST 2017

AGREEMENT IN PRINCIPLE

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1 BACKGROUND

Mandate and terms of negotiation

- 1.1 By a hui-a-iwi on 20 February 1993, Ngāti Whātua gave Te Rūnanga o Ngāti Whātua a mandate to negotiate with the Crown a deed of settlement settling all of the remaining historical claims of Ngāti Whātua.
- 1.2 The Crown recognised this mandate on 22 December 2008.
- 1.3 The mandated negotiators and the Crown agreed the scope, objectives, and general procedures for the negotiations by terms of negotiation dated 14 October 2008.
- 1.4 Te Rūnanga o Ngāti Whātua was established through the efforts of Sir Hugh Kawharu, Taki Marsden, Tom Parore, Lovey Te Rore, Haahi Walker and others to bring unity to Ngāti Whātua. Te Rūnanga o Ngāti Whātua is currently settling the remaining Ngāti Whātua Treaty of Waitangi claims and the stewardship of the Kaipara Harbour. This must be done to bring the Treaty settlements to the rest of Ngāti Whātua.

Tāmaki Makaurau Collective Agreement

- 1.5 Te Rūnanga o Ngāti Whātua participated in the Tāmaki Makaurau Collective settlement. The Crown and the Tāmaki Collective signed the Tāmaki Makaurau Collective Redress Deed on 5 December 2012. The settlement vested 14 maunga in the Tāmaki Collective, to be held on trust by the Tūpuna Tāonga o Tāmaki Makaurau Trust, for the common benefit of iwi/hapū of the Tāmaki Collective and all other people of Auckland. The maunga were vested as reserves and public access and existing third party interests were protected.
- 1.6 The settlement provided that a co-governance body called the Tūpuna Maunga o Tāmaki Makaurau Authority, made up of 6 representatives from the Tāmaki Collective and 6 representatives from Auckland Council, would oversee the administration and management of the maunga.
- 1.7 The Tāmaki Makaurau Collective Agreement also provided the following redress:
 - 1.7.1 a right of first refusal for 172 years over Crown-owned land and certain Crown-Entity owned land that becomes surplus in the area of interest specified in the deed of settlement; and
 - 1.7.2 the right to purchase any deferred selection properties included in individual iwi settlements of the members of the Tamaki Collective that are not purchased by the individual iwi.

Kaipara Moana Framework Agreement

- 1.8 The Crown acknowledges that Kaipara Moana is of great traditional, cultural, historical, and spiritual importance to all of Ngāti Whātua.

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- 1.9 On 18 August 2014 the Crown entered into the Kaipara Moana framework agreement (the framework agreement) with Ngāti Whātua iwi. The signatories were Te Rūnanga o Ngāti Whātua, Te Roroa, Te Uri o Hau, Ngā Maunga Whakakii and Ngāti Whātua o Ōrākei.
- 1.10 While most of Ngāti Whātua historical claims have been settled by deeds of settlement for Te Uri o Hau, Te Roroa, Ngāti Whātua o Kaipara and Ngāti Whātua o Ōrākei, the remaining Ngāti Whātua historical claims and redress over Kaipara Moana are yet to be finalised. The Ngāti Whātua o Kaipara deed of settlement set aside the issue of cultural redress in relation to Kaipara Moana to be dealt with at a future time.
- 1.11 The framework agreement proposes a Kaipara Moana body be established through legislation to provide for Ngāti Whātua to have input into decisions affecting the Kaipara Moana at the governance level. The Kaipara Moana body will be comprised of the parties listed at clause 21 of the framework agreement.
- 1.12 The Crown acknowledges that the framework agreement:
- 1.12.1 represents the commitment of Ngāti Whātua and the Crown to progress the development of an agreed arrangement in respect of Kaipara Moana; and
 - 1.12.2 acknowledges Ngāti Whātua aspirations to have influence and involvement in the management of the Kaipara Moana.
- 1.13 The Crown agrees:
- 1.13.1 to provide redress in relation to Kaipara Moana; and
 - 1.13.2 that negotiating redress in relation to Kaipara Moana is important in concluding a settlement with Ngāti Whātua.
- 1.14 In light of the foregoing, the Crown agrees to work in good faith with Te Rūnanga o Ngāti Whātua, the signatories to the framework agreement, and other interested parties to develop cultural redress for Ngāti Whātua in relation to Kaipara Moana following the signing of this agreement in principle.

Nature and scope of deed of settlement agreed

- 1.15 The mandated negotiators and the Crown have agreed, in principle, the nature and scope of the deed of settlement.
- 1.16 This agreement in principle records that agreement and concludes substantive negotiations of the redress contemplated in this agreement in principle.

Approval and signing of this agreement in principle

- 1.17 The mandated body has –
- 1.17.1 approved this agreement in principle; and
 - 1.17.2 authorised the mandated negotiators to sign it on their behalf.

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2.1 Ngāti Whātua and the Crown agree –

- 2.1.1 that, in principle, the nature and scope of the deed of settlement is to be as provided in this agreement in principle and the framework agreement; and
- 2.1.2 to work together in good faith to develop, as soon as reasonably practicable, a deed of settlement based on this agreement, the framework agreement and any subsequently developed agreements. In particular, parties will work together to resolve any matters in relation to clause 3.5 of this agreement in principle, and agree or determine (where applicable) those matters under clauses 3.8 and 9.3; and
- 2.1.3 the deed of settlement is to be signed by or on behalf of Ngāti Whātua, the governance entity, and the Crown.

3 SETTLEMENT

Settlement of historical claims

- 3.1 The deed of settlement is to provide that, on and from the settlement date, -
- 3.1.1 the historical claims of Ngāti Whātua are settled; and
 - 3.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 3.1.3 the settlement is final.
- 3.2 The definitions of the historical claims, and of Ngāti Whātua are to be based on the definitions of those terms in schedule 1.

Terms of settlement

- 3.3 The terms of the settlement provided in the deed of settlement are to be:
- 3.3.1 those in schedule 2; and
 - 3.3.2 any additional terms agreed by the parties.

Redress

- 3.4 The deed of settlement is to provide for redress in accordance with this agreement in principle.
- 3.5 However, the deed of settlement will include –
- 3.5.1 redress contemplated by this agreement in principle only if any overlapping claim issues in relation to that redress have been addressed to the satisfaction of the Crown; and
 - 3.5.2 a property that this agreement in principle specifies as a potential commercial redress property, or a potential deferred selection property, subject to final written confirmation from the Crown that each of those properties is available. If any such potential property is not available, the Crown is under no obligation to substitute that property with another property.

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- 3.6 If the Crown is unable to confirm any redress contemplated by this agreement in principle due to overlapping claims, the parties may discuss alternative redress so that the nature of the redress contemplated by this agreement in principle is maintained so far as that is possible, in the deed of settlement.
- 3.7 If any new redress is offered by the Crown in accordance with clause 3.6 Ngāti Whātua acknowledge that clauses 3.5.1 and 3.5.2 apply to that redress.

Transfer of settlement properties

- 3.8 The settlement documentation is to provide that the transfer of:
- 3.8.1 a redress property or a purchased deferred selection property will be subject to –
- (a) any further identification and/or survey required; and
 - (b) Part 4A of the Conservation Act 1987 (unless the settlement documentation provides otherwise); and
 - (c) sections 10 and 11 of the Crown Minerals Act 1991; and
 - (d) any relevant provisions included in the settlement documentation.
- 3.8.2 a redress property, will be subject to any encumbrance or right, in relation to that property that the settlement documentation either –
- (a) describes as existing at the date of the deed of settlement; or
 - (b) requires to be created on or before the settlement date; and
- 3.8.3 a purchased deferred selection property will be subject to any encumbrance or right, or obligation in relation to that property, that is either:
- (a) described in the disclosure information provided for that deferred selection property (and not varied during the pre-purchase period); or
 - (b) entered into by the Crown during the pre-purchase period; or
 - (c) required to be created under the settlement documentation on or before the settlement date.

4 HISTORICAL ACCOUNT, ACKNOWLEDGEMENT AND APOLOGY

- 4.1 The deed of settlement is to include –
- 4.1.1 an agreed account of the historical relationship between Ngāti Whātua and the Crown based on the historical account at clause 4.2; and
 - 4.1.2 the Crown's acknowledgement of its acts and omissions which have breached the Treaty of Waitangi/ Te Tiriti o Waitangi and its principles or caused prejudice to Ngāti Whātua; and
 - 4.1.3 a Crown apology for those breaches of the Treaty of Waitangi/ Te Tiriti o Waitangi and its principles.

HISTORICAL ACCOUNT

- 4.2 This historical account is subject to further assessment, drafting changes and fact checking.

Ngāti Whātua before the Treaty

- 4.2.1 Ngāti Whātua are a confederation of autonomous whānau and hapū who are connected by tātai and long association over time. Their rohe is traditionally described as extending from Maunganui and Manaia (near Whangarei) in the north to the Tamaki River (in Auckland) in the south. At the edges of this area, whānau and hapū often shared affiliations to both Ngāti Whātua and other neighbouring groups.
- 4.2.2 At the start of the nineteenth century Ngāti Whātua were firmly established in their rohe and were generally successful in protecting the area from incursions from neighbouring groups. About 1807, for example, Ngāti Whātua forces defeated a large tauā from the north at the battle of Moremonui. However, the early 1800s was a period of significant change for Ngāti Whātua, mainly due to the acquisition of muskets by neighbouring groups which overturned traditional balances. In 1825 Ngāti Whātua suffered severe retribution for their earlier victory at the battle of Te Ika-a-Ranganui near Kaiwaka. Conflict continued into the 1830s, with the result that many Ngāti Whātua people were forced from their traditional homelands, resulting in widespread disruption for the iwi. Some Ngāti Whātua began to return in the early 1830s, and increasing numbers re-established themselves in the mid to late 1830s.
- 4.2.3 While there were few Pākehā settlers in the Ngāti Whātua rohe at this time, Ngāti Whātua leaders were aware of the potential benefits of trade with Pākehā. In addition to the possibility of acquiring arms, tribal leaders also recognised the wider economic advantages that could arise. They also hoped that the presence of settlers would reduce the likelihood of further inter-tribal warfare. Initially, Ngāti Whātua wished to carefully manage Pākehā

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settlement, and the first settlers were expected to adhere to the rules and laws that governed Māori communities. From the late 1830s some Ngāti Whātua began to enter into land transactions with Pākehā settlers. Some transactions were also carried out by members of other iwi for lands in which Ngāti Whātua had interests.

The Treaty of Waitangi and early European contact

- 4.2.4 In 1840 Ngāti Whātua rangatira Āpihai Te Kawau, Ihikiera Te Tinana and Te Reweti Tamahiki signed te Tiriti o Waitangi / the Treaty o Waitangi. Soon after the signing Te Kawau sold 3,000 acres of land on Waitemata Harbour to the Crown for the establishment of the new capital of Auckland.
- 4.2.5 In the 1840s and 1850s Ngāti Whātua conducted regular trade with the growing settlement at Auckland using canoes to deliver produce and seafood. In the northern areas of their rohe, Ngāti Whātua were also participating in the trade of kauri timber and gum. On more than one occasion, Ngāti Whātua came to the assistance of Pākehā shipwreck survivors whose vessels had foundered while attempting to enter Kaipara Harbour.

Land alienation in the Ngāti Whātua rohe

- 4.2.6 In 1841 the Crown purchased a large area of land at Mahurangi to the north of the Waitemata Harbour from other iwi who claimed interests in the area. Ngāti Whātua were not involved in the original transaction. The Crown dealt with Ngāti Whātua interests in this land through later payments. Between 1844 and 1845 settlers purchased at least 54,000 acres of land directly from Māori within the Ngāti Whātua rohe after Governor FitzRoy waived Crown pre-emption. However a new Governor re-instated pre-emption and in 1846 he announced that the earlier pre-emption waiver purchases would be investigated. In cases where purchases were found to be valid, the Crown granted some land to settlers but retained several thousand acres of the balance as “surplus” land. In addition, a commitment the Crown had made to retain one-tenth of the land sold under pre-emption waivers and to use it for public purposes, and especially for the future benefit of Māori, was later revoked. Ngāti Whātua did not receive the full benefits the Crown had assured them would accrue from these transactions.
- 4.2.7 Over the following twenty years, the Crown purchased significant areas of land across the Ngāti Whātua rohe, including around Auckland, Mahurangi, and north and south Kaipara. In the Auckland region, where the demand for land was most intensive, Ngāti Whātua were left virtually landless by 1855. The following year, the Ngāti Whātua rangatira Paora Tūhaere protested about the limited benefits Māori received from land sales. By 1865 Ngāti Whātua hapū elsewhere in the rohe were also virtually landless.

Ngāti Whātua and political action

- 4.2.8 Ngāti Whātua increasingly saw political representation as the best means of protecting their interests, but many Ngāti Whātua were denied the vote through the 1853 electoral franchise as they did not own freehold or leasehold land. In 1860 Governor Gore Browne convened a conference of Māori at Kohimarama that was attended by several Ngāti Whātua rangatira. During the

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conference Paora Tūhaere advocated Māori representation in Parliament as a means of giving Māori an equal voice in the decision-making process involving land. Tūhaere also reminded the Governor that "we have always firmly adhered to you and to the Queen's sovereignty". When the conference ended, the Governor indicated another conference would be convened the following year at which Māori and the Crown could continue to discuss important issues. However requests for further conferences were rejected by the Governor.

- 4.2.9 Around this time, growing opposition among Māori to Crown purchasing led the Crown to introduce a new system of laws governing Māori land, which it intended to facilitate the alienation of Māori land for Pakeha settlement. The Native Lands Acts of 1862 and 1865 provided for a Native Land Court to convert customary Māori title into individualised legal titles derived from the Crown. This enabled land purchasers to acquire individual interests without the consent of the wider community of customary owners.
- 4.2.10 During the 1870s the Native Land Court awarded title for a number of Ngāti Whātua blocks and substantial areas of these were subsequently alienated. In 1876 Ngāti Whātua protested about "hidden laws" had been passed without their knowledge and described land legislation as "acts of murder".
- 4.2.11 In the 1870s Māori across New Zealand initiated their own political movements to address their concerns about land. In the late 1870s and 1880s a series of meetings or 'Parliaments' were held in the Ngāti Whātua rohe to discuss ongoing land loss and the need for Māori to make decisions about land on Māori terms. At one such meeting in 1877, Ngāti Whātua passed a number of resolutions including "that all the laws of God be religiously kept" and that "the Ngatiwhatua live under the protection of Her Majesty the Queen, for ever and ever".
- 4.2.12 Another meeting in Auckland in 1879 was attended by a number of Ngāti Whātua rangatira including Paora Tūhaere, Te Hemara Tauhia, Te Keene Tangaroa, Manihera, Arama Karaka, Te Otene Kikokiko, Pairama Ngūtahi, Te Wikiriwhi, Te Retimana, Te Reweti, Tiopira Kinaki, Parata Mate, Te Hakuene and Paraone Ngāweke. Paora Tūhaere called for Land Courts to be abolished and asked that "Māori mana" remain over land that had not yet been adjudicated through the Court. Arama Karaka objected to the low prices being paid for Māori land and stated that no further land should be sold.
- 4.2.13 Ngāti Whātua hosted several further Māori parliaments during the 1880s where land grievances were discussed, including one where a dedicated 'Parliament House', Aotearoa, was opened at Aotea. At a meeting there the following year Ngāti Whātua and other Māori unanimously claimed the right to manage their own affairs under te Tiriti o Waitangi / the Treaty o Waitangi and again condemned the native land laws. However, Ngāti Whātua remained committed to a positive relationship with the Crown, demonstrated in 1885 when Ngāti Whātua rangatira unveiled a bust of Queen Victoria at Aotearoa.
- 4.2.14 By the mid-1880s the Māori population within areas of the Ngāti Whātua rohe was in decline. Many were suffering the effects of poor housing conditions, which contributed to tuberculosis and outbreaks of typhoid. In 1901 a Crown official reported that the Māori population in the Kaipara and Whangarei

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regions was “rapidly diminishing”. The following year a member of the clergy noted the incidence of disease among Māori in Auckland and asked for medical fee subsidies if the Government was ‘honestly desirous of saving the Maoris from extinction’. Following a 1911 outbreak of typhoid among Māori that resulted in six deaths, the Health Department established a special hospital at Repia in Kaipara District. By the 1920s, extractive industries such as kauri-logging and gum digging in which many Ngāti Whātua had found employment in the central and northern parts of their rohe had almost disappeared, leaving many reliant on low-paid or seasonal employment.

- 4.2.15 During the 1920s many Ngāti Whātua aligned themselves with political leader and faith healer Tahupōtiki Wiremu Rātana. In the early 1920s Rātana established a political movement, and in 1928 nominated the Ngāti Whātua leader Paraire (Friday) Karaka Paikea to contest the Northern Māori electoral seat. In the 1930s Rātana established a formal relationship with the Labour Party, and in the 1938 election Paikea was elected Member of Parliament for Northern Māori. After the outbreak of war in 1938, Paikea set up informal organisations to assist the war effort, and in 1942 was appointed Minister in Charge of the Maori War Effort. Paikea died in office in 1943 and was succeeded in the electorate by his son, Tapihana (Dobson) Paraire Paikea.
- 4.2.16 In the second half of the twentieth century other Ngāti Whātua leaders emerged to advocate for their people and for other Māori in New Zealand. In 1956 Sir Graham Latimer was nominated to act as spokesman for the iwi. Sir Graham later served as secretary of the Tai Tokerau District Māori Council, chairman of the Tai Tokerau Māori Trust Board and president of the New Zealand Maori Council. He later encouraged successive governments to honour their obligations under the Treaty of Waitangi, and campaigned against the sale of Crown assets including fisheries and forests. In the late 1970s Joe Hawke led Ngāti Whātua in their prolonged struggle with the Crown over its proposed sale of Crown lands at Bastion Point.

Ngāti Whātua today

- 4.2.17 During the twentieth century many Ngāti Whātua experienced social and economic marginalization within their own rohe. With little land left to sustain them, significant numbers of Ngāti Whātua sought employment in urban areas, which contributed to the dispersal of traditional communities, the loss of customary knowledge, language, and other cultural practices. Meanwhile, economic development on their traditional lands contributed to environmental degradation that has caused acute distress to Ngāti Whātua. At the same time, land reclamation and coastal development have resulted in the degradation of harbours within the Ngāti Whātua rohe and have limited the ability of Ngāti Whātua to access traditional resources.
- 4.2.18 Today Ngāti Whātua are virtually landless and are among the most deprived people in a rohe that today includes some of the wealthiest parts of New Zealand. In 2013, the median income of Ngāti Whātua people was 25% lower than that of other New Zealanders, and their unemployment rate was about two-and-a-half times higher. About 11% of Ngāti Whātua people held a higher academic qualification, compared to 20% of all New Zealanders.

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- 4.2.19 While these socio-economic indicators are poor, the resilience of Ngāti Whātua is demonstrated in some significant recent improvements. Between 2006 and 2013 alone, the number of Ngāti Whātua people with higher qualifications almost doubled, while their median income has increased by 15%.

5 CULTURAL REDRESS

General

5.1 All items of cultural redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:

5.1.1 the Crown confirming that any residual overlapping claim issues in relation to any item of cultural redress have been addressed to the satisfaction of the Crown; and

5.1.2 any other conditions specified in the cultural redress tables provided below and set out in clauses 3.5 and 9.3 of this agreement in principle.

Cultural redress amount

5.2 The deed of settlement is to provide that the Crown will pay the governance entity on the settlement date the cultural redress amount of \$0.5 million to be used to advance cultural aspirations of Ngāti Whātua.

Overlay classification

5.3 The deed of settlement is to provide for the settlement legislation to:

5.3.1 declare the Manukapua Government Purpose (Wildlife Management) Reserve described in Table 1 below and shown on the map in attachment 2 as subject to an overlay classification; and

5.3.2 provide the Crown's acknowledgement of a statement of Ngāti Whātua values in relation to the area; and

5.3.3 require the New Zealand Conservation Authority, and relevant conservation boards -

(a) when considering a conservation document, in relation to the area, to have particular regard to –

(i) the statement of Ngāti Whātua values; and

(ii) the protection principles agreed by the parties; and

(b) before approving a conservation document, in relation to the area to –

(i) consult with the governance entity; and

(ii) have particular regard to its views as to the effect of the document on Ngāti Whātua values and the protection principles; and

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- 5.3.4 require the Director-General of Conservation to take action in relation to the protection principles; and
- 5.3.5 enable the making of regulations by the Governor General on the recommendation of the Minister of Conservation and bylaws made by the Minister of Conservation, in relation to the area.

Table 1 – Overlay classification

Overlay areas to which the overlay classification is to apply	General description/location
Manukapua Government Purpose (Wildlife Management) Reserve.	Pt Okahukura 1, 63.53 hectares (DOC Conservation Unit Number Q09330). Mahuhu waka landing site. Site of Mahuhu waka landing.

- 5.4 The inclusion of the overlay classification referred to in clause 5.3 in the deed of settlement is subject to the agreement of Te Uri o Hau.

Recognition of sites of significance to all of Ngāti Whātua

- 5.5 The Crown recognises that Ngāti Whātua and other Māori fell in the battles of Moremonui and Te Ika-a-Ranganui.
- 5.6 The Crown and Ngāti Whātua will explore options for updating or replacing Heritage New Zealand Pouhere Taonga plaques and monuments at the sites described in Table 2.
- 5.7 The deed of settlement is to state that any updates or replacement of plaques and monuments at the sites described in Table 2 will not interfere with private property rights and that any updates are subject to the consent of the registered owner.
- 5.8 The deed of settlement is to provide that the cost of any updates or replacement of the plaques and monuments will be taken, as necessary, from the cultural redress amount set out in paragraph 5.2.
- 5.9 If the registered owners of the properties do not consent to the update or replacement of the plaques and monuments the deed of settlement is to provide for alternative means of recognising the significance of these sites to Ngāti Whātua.

Table 2 – Monument sites

Sites	General description/location
Moremonui	Lot 2 DP 471312 CFR 639325, Moremonui Gully
Te Ika-a-Ranganui	Lot 3 DP 487118. 219 Kaiwaka-Mangawhai Road, Kaiwaka 0975.

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Protocol

- 5.10 The deed of settlement is to require that the responsible Minister issue the governance entity with the protocol referred to in Table 3 below.
- 5.11 The protocol will provide for the Crown's interaction with the governance entity in relation to specified matters.

Table 3 – Protocol

Responsible Minister	Protocol
Minister for Primary Industries	Ministry for Primary Industries protocol

Cultural redress non-exclusive

- 5.12 The Crown may do anything that is consistent with the cultural redress contemplated by this agreement in principle, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

6 FINANCIAL AND COMMERCIAL REDRESS

General

- 6.1 All items of commercial redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:
- 6.1.1 the Crown confirming that any residual overlapping claim issues in relation to any item of commercial redress have been addressed to the satisfaction of the Crown; and
 - 6.1.2 any other conditions specified in the commercial redress table provided below and set out in clauses 3.5, 3.8 and 9.3 of this agreement in principle.

Financial and commercial redress amount

- 6.2 The deed of settlement is to provide that the Crown will pay the governance entity on the settlement date the financial and commercial redress amount of \$7.218 million less the total of the transfer values (determined in accordance with the valuation process in schedule 3) of any properties that the deed of settlement provides are commercial redress properties to be transferred to the governance entity on the settlement date.

Intention to agree potential commercial redress properties

- 6.3 As soon as reasonably practicable after the date of this agreement in principle the parties will agree to a list of properties that are to be potential commercial redress properties and/or potential deferred selection properties. The parties will also agree which, if any, of the potential commercial redress properties or deferred selection properties will be a leaseback property.

Potential commercial redress properties

- 6.4 The deed of settlement is to provide that the Crown must transfer to the governance entity on the settlement date those of the potential commercial redress properties that the parties agree are to be commercial redress properties.

Table 4 - Potential commercial redress property

Landholding Agency	Property Name/Address	General description/ location <small>[Legal descriptions can be included if list is manageable]</small>	Conditions of transfer / Specific conditions currently known <small><i>[Note only: indicate whether licensed land or leaseback property]</i></small>
Land Information New Zealand	10598 - Awataha Marae. 58 Akoranga Drive, Northcote	<i>North Auckland Land District – Auckland Council</i> 3.6702 hectares, more or less, being Allotment 698	

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		Parish of Takapuna. All computer freehold register NA75C/536.	
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- 6.5 If a commercial redress property to be transferred to the governance entity is a leaseback commercial redress property, the deed of settlement is to provide that the property is to be leased back by the governance entity to the Crown, from the settlement date, –
- 6.5.1 on the terms and conditions provided by a registrable ground lease for that property (ownership of the improvements remaining unaffected by the purchase) incorporated in the deed; and
 - 6.5.2 in the case of a Crown leaseback that is not a school site, at its initial annual rent determined or agreed in accordance with the valuation process in schedule 4 (plus GST, if any, on the amount so determined or agreed); or
 - 6.5.3 in the case of a Crown leaseback of a school site, at an initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).

Potential deferred selection properties

- 6.6 The deed of settlement is to provide the governance entity may, for 18 months after the settlement date, provide a written notice of interest to the Crown in purchasing any or all of those of the potential deferred selection properties that the parties agree are to be deferred selection properties. The deed of settlement will provide for the effect of the written notice and will set out a process where the property is valued and may be acquired by the governance entity.
- 6.7 If a deferred selection property to be transferred to the governance entity is a leaseback deferred selection property, then clause 6.5.1 shall apply.

School site

- 6.8 Transfer and leaseback of a school site will be subject to standard Ministry of Education policies and operational considerations. Transfer and leasebacks of a school site is for land only and is subject to an agreed registrable ground lease for the property with ownership of the improvements remaining unaffected by the transfer. Operational considerations, such as shared school sites or some Board of Trustees house site issues may mean a specific site can be available but would be subject to specific processes in the deed of settlement (or lease).
- 6.9 Availability of transfer and leaseback of a Ministry of Education site is subject to the transfer value (for commercial redress properties) and to the lease (for both commercial redress and deferred selection properties) being agreed one month prior to initialling of the deed of settlement.

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- 6.10 A school site will cease to be a transfer and leaseback property if before the settlement date (in respect of commercial redress properties) or before receipt of an election notice (in respect of deferred selection properties) the Ministry of Education notifies the mandated body or the governance entity as the case may be, that the site has become surplus to its requirements.

Fisheries quota right of first refusal

- 6.11 The deed of settlement is to provide that by or on the settlement date, the Crown will provide the governance entity with a right of first refusal to purchase a proportion of a quota of any new fish species that are introduced into the quota management system as set out in the fisheries RFR deed over quota in schedule 4.
- 6.12 The Ministry for Primary Industries has made available up to 30% of Crown quota to iwi who have a fisheries RFR deed at the time a new species is introduced into the quota management system managed under the Fisheries Act 1996. This fisheries RFR redress is additional to and does not affect the 20% of fishing quota that would be provided to Te Ohu Kaimoana under the Māori Fisheries Act 2004 for distribution to iwi for new fish stocks being introduced into the quota management system.

Shared right of first refusal with Te Kawerau a Maki and Marutuahu iwi

- 6.13 Te Rūnanga o Ngāti Whātua has a shared right of first refusal with the Te Kawerau a Maki governance entity, and the Marutuahu Iwi governance entity over "non-exclusive RFR land" (as defined in section 109 of the Te Kawerau a Maki Claims Settlement Act 2015 (the Act)) on the terms and for the period specified in that Act.
- 6.14 The settlement documentation will include the shared RFR provisions.

7 OVERLAPPING CLAIMS PROCESS

Process for resolving overlapping claims

- 7.1 The Crown is ultimately responsible and accountable for the overall overlapping claims process set out in attachment 3 and it must act in accordance with its Treaty obligations. The Crown –
- 7.1.1 has a duty to act in good faith to other claimant groups (including those who have already settled with the Crown (the settled groups)) who have interests in the Ngāti Whātua area of interest (refer attachment 1); and
 - 7.1.2 must ensure it actively protects the interests of other claimant groups (whether already mandated or not) and settled groups; and
 - 7.1.3 must avoid unreasonably prejudicing its ability to reach a fair settlement with other claimant groups in the future, while not unduly devaluing the settlement of other settled groups and with Ngāti Whātua.
- 7.2 Following the signing of this agreement in principle, parties will work together with overlapping claimants and settled groups to resolve any remaining overlapping claims matters. If after working together the overlapping claims remain unresolved, the Crown may have to make a final decision. In reaching any decisions on overlapping claims, the Crown is guided by two general principles:
- 7.2.1 the Crown's wish to reach a fair and appropriate settlement with Ngāti Whātua without compromising the existing settlements of settled groups; and
 - 7.2.2 the Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.

8 INTEREST AND TAX

Interest

8.1 The deed of settlement is to provide for the Crown to pay the governance entity, on the settlement date, interest on the financial and commercial redress amount specified in clause 6.2 -

8.1.1 for the period –

(a) beginning on the date of this agreement in principle; and

(b) ending on the day before the settlement date; and

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

8.2 The interest is to be –

8.2.1 subject to any tax payable; and

8.2.2 payable after withholding any tax required by legislation to be withheld.

Tax

8.3 Subject to the Minister of Finance's consent, the deed of settlement is to provide that the Crown must indemnify the governance entity for any GST or income tax payable in respect of the provision of Crown redress.

8.4 The governance entity agrees that neither it, nor any other person, will claim with respect to the provision of Crown redress -

8.4.1 an input credit for GST purposes; or

8.4.2 a deduction for income tax purposes.

9 NEXT STEPS

Disclosure information

- 9.1 The Crown will, as soon as reasonably practicable, prepare and provide Ngāti Whātua disclosure information in relation to –
- 9.1.1 each potential commercial redress property.

Resolution of matters relating to Kaipara Moana

- 9.2 The Crown and Ngāti Whātua will work together with the other parties to the framework agreement to agree, as soon as reasonably practicable, all matters necessary to finalise Kaipara Moana redress.

Resolution of final matters

- 9.3 The parties will work together to agree, as soon as reasonably practicable, all matters necessary to complete the deed of settlement, including agreeing on or determining as the case may be –
- 9.3.1 the terms of the –
- (a) historical account; and
 - (b) Crown's acknowledgements and apology; and
- 9.3.2 a list of properties that are to be potential commercial redress properties and/or potential deferred selection properties; and
- 9.3.3 the commercial redress properties and deferred selection properties from the potential properties, and if applicable, any conditions that will apply; and
- 9.3.4 the transfer values of the commercial redress properties (in accordance with the valuation process in schedule 3, or by another valuation process as agreed in writing between the landholding agency and Ngāti Whātua); and
- 9.3.5 the terms of a registrable ground lease for any leaseback property; and
- 9.3.6 the initial annual rent for any leaseback commercial redress property other than a school site¹; and
- 9.3.7 the terms of the following (which will, where appropriate, be based on the terms provided in recent settlement documentation):
- (a) the transfer of the commercial redress properties; and

¹ For a school site, the initial annual rent will be as a result of the processes in clause 6.6.1(c).

AGREEMENT IN PRINCIPLE

(b) the right to purchase a deferred selection property, including the process for determining its market value and if it is a leaseback property that is not a school site, its initial annual rent; and

(c) the tax indemnity; and

9.3.8 the following documents:

(a) the statement of Ngāti Whātua values and the protection principles in relation to the overlay classification area; and

(b) the Ministry for Primary Industries Protocol; and

(c) the settlement legislation; and

9.3.9 all other necessary matters.

Development of governance entity and ratification process

9.4 Ngāti Whātua will, as soon as reasonably practicable after the date of this agreement, and before the signing of a deed of settlement –

9.4.1 form a single governance entity that the Crown is satisfied meets the requirements of clause 10.1.2(a); and

9.4.2 develop a ratification process referred to clause 10.1.2(a)(i) that is approved by the Crown.

10 CONDITIONS

Entry into deed of settlement conditional

- 10.1 The Crown's entry into the deed of settlement is subject to –
- 10.1.1 Cabinet agreeing to the settlement and the redress; and
 - 10.1.2 the Crown being satisfied Te Rūnanga o Ngāti Whātua have –
 - (a) established a governance entity that –
 - (i) is appropriate to receive the redress; and
 - (ii) provides, for Ngāti Whātua–
 - (I) appropriate representation; and
 - (II) transparent decision-making and dispute resolution processes; and
 - (III) full accountability; and
 - (b) approved, by a ratification process approved by the Crown, –
 - (i) the governance entity to receive the redress; and
 - (ii) the settlement on the terms provided in the deed of settlement; and
 - (iii) signatories to sign the deed of settlement on Ngāti Whātua's behalf.

Settlement legislation

- 10.2 The deed of settlement is to provide that following the signing of the deed of settlement the Crown will propose a draft settlement bill for introduction to the House of Representatives.
- 10.3 This draft settlement bill will provide for all matters for which legislation is required to give effect to the deed of settlement.
- 10.4 The draft settlement bill must:
- 10.4.1 comply with the drafting standards and conventions of the Parliamentary Counsel Office for Governments Bills, as well as the requirements of the Legislature under Standing Orders, Speakers' Rulings, and conventions; and

AGREEMENT IN PRINCIPLE

- 10.4.2 be in a form that is satisfactory to Ngāti Whātua and the Crown.
- 10.5 The deed of settlement is to provide that Ngāti Whātua and the governance entity must support the passage of the draft settlement bill through Parliament.

Settlement conditional on settlement legislation

- 10.6 The deed of settlement is to provide that the settlement is conditional on settlement legislation coming into force although some provisions may be binding on and from the date the deed of settlement is signed.

11 GENERAL

Nature of this agreement in principle

11.1 This agreement in principle –

11.1.1 is entered into on a without prejudice basis; and

11.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal; and

11.1.3 is non-binding; and

11.1.4 does not create legal relations.

Termination of this agreement in principle

11.2 The Crown or the mandated negotiators, on behalf of Ngāti Whātua may terminate this agreement in principle by notice to the other.

11.3 Before terminating this agreement in principle, the Crown or the mandated negotiators, as the case may be, must give the other at least 20 business days notice of an intention to terminate.

11.4 This agreement in principle remains without prejudice even if it is terminated.

Definitions

11.5 In this agreement in principle –

11.5.1 the terms defined in the definitions schedule have the meanings given to them by that schedule; and

11.5.2 all parts of speech, and grammatical forms, of a defined term have a corresponding meaning.

Interpretation

11.6 In this agreement in principle –

11.6.1 headings are not to affect its interpretation; and

11.6.2 the singular includes the plural and vice versa.

11.7 Provisions in –

AGREEMENT IN PRINCIPLE

11.7.1 the schedules to this agreement in principle are referred to as paragraphs;
and

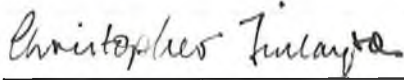
11.7.2 other parts of this agreement are referred to as clauses.

AGREEMENT IN PRINCIPLE


SIGNED on 18 day of August 2017

SIGNED for and on behalf of **THE CROWN** by -


The Minister for Treaty of Waitangi
Negotiations in the presence of -

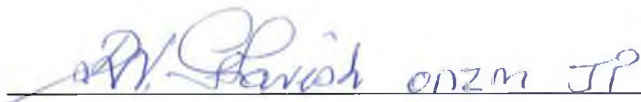

Hon Christopher Finlayson

WITNESS

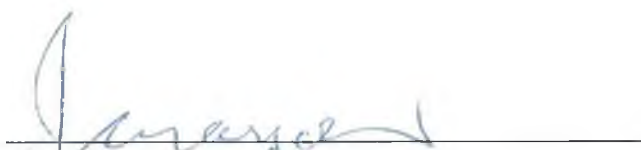

Name: Maureen Healy
Occupation: Manager
Address: 296 Helewaite Rd
Wellington

SIGNED for and on behalf of **Te Rūnanga o Ngāti Whātua**


Russell Kemp
Chairman


Rangimarie Naida Glavish
Deputy Chair


Ngaio Kemp
Trustee


John Marsden
Trustee

AGREEMENT IN PRINCIPLE



Lillian Patuawa
Trustee



George Nathan-Patuawa
Trustee



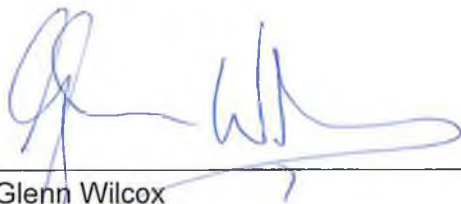
John Rahui
Trustee



Waimarie Ratu
Trustee



Lucy Te Awhitu
Trustee



Glenn Wilcox
Trustee

AGREEMENT IN PRINCIPLE

WITNESSES:



Benjamin de Thierry



Pene Taranui Hita



Hazel Te Poi Kaio



Barbara Kemp



Kim Phillips



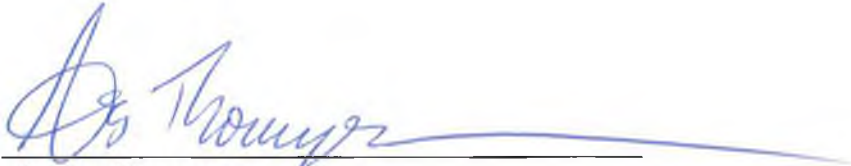
Cherie Povey




Diva-Ataahua Ratu

AGREEMENT IN PRINCIPLE


WITNESSES:




Antony Thompson



Patricia Murray



Mai Chen



R Deslie Gravatt



Anmol Shankar

SCHEDULES

1 DEFINITIONS

Ngāti Whātua

- 1.1 In this agreement in principle, Ngāti Whātua means -
- 1.1.1 the collective group composed of individuals who descend from a Ngāti Whātua ancestor;
 - 1.1.2 every whānau, hapū, or group to the extent that it is composed of those individuals including the following groups:
 - (a) Ngā Oho
 - (b) Ngāti Hinga
 - (c) Ngāti Mauku
 - (d) Ngāti Rongo (sometimes referred to as Ngāti Rango)
 - (e) Ngāti Ruinga
 - (f) Ngāi Tahuhu
 - (g) Ngāti Weka
 - (h) Ngāti Whiti
 - (i) Te Kuihi
 - (j) Te Roroa
 - (k) Te Taou
 - (l) Te Uri o Hau
 - (m) Te Uri Ngutu
 - (n) Ngāti Torehina
 - (o) Patuharakeke
 - (p) Te Parawhau
 - (q) Te Pōpoto
 - (r) Te Uriroroi

AGREEMENT IN PRINCIPLE

- 1.1.3 every individual referred to in paragraph 1.1.1.
- 1.2 **area of interest** means the area that Ngāti Whātua identifies as its area of interest, as set out in the deed.
- 1.3 **customary rights** means rights exercised according to tikanga o Ngāti Whātua, including
- 1.3.1 rights to occupy land; and
- 1.3.2 rights in relation to the use of land or other natural or physical resources.
- 1.4 **descended** means that a person is descended from another person by –
- 1.4.1 birth;
- 1.4.2 legal adoption;
- 1.4.3 Māori customary adoption in accordance with Ngāti Whātua tikanga
- 1.5 **Ngāti Whātua ancestor** means an individual who-
- 1.5.1 exercised customary rights by virtue of being descended from -
- (a) Haumoewarangi; and
- (b) a recognised ancestor of any of at least one of any of the groups referred to in clause 1.1.2; and
- 1.5.2 exercised the customary rights predominantly in relation to the area of interest after 6 February 1840.

Ngāti Whātua tikanga means the customary values and practices of Ngāti Whātua.

Historical claims

- 1.6 The deed of settlement will provide that historical claims –
- 1.6.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that -
- (a) is, or is founded on, a right arising –
- (i) from the Treaty of Waitangi or its principles; or
- (ii) under legislation; or
- (iii) at common law, including aboriginal title or customary law; or

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- (iv) from fiduciary duty; or
 - (v) otherwise; and
- (b) arises from, or relates to, acts or omissions before 21 September 1992 -
- (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and
- 1.6.2 includes every claim to the Waitangi Tribunal to which clause 1.6.2 applies , so far as it relates to Ngāti Whātua or a representative entity of Ngāti Whātua, including the following claims:
- (a) Wai 121—Ngāti Whātua Lands and Fisheries claim; and
 - (b) Wai 187 – Awataha Land claim; and
 - (c) Wai 188—Opanake, Kaihu and Waimata blocks; and
 - (d) Wai 279—Te Taoū Reweti Charitable Trust claim; and
 - (e) Wai 297 – Auckland Maccess and Mana claim; and
 - (f) Wai 303—Te Rūnanga o Ngāti Whātua claim; and
 - (g) Wai 313—Waimamaku Land claim; and
 - (h) Wai 468 – Ngāpuhi Whanui Trust claim; and
 - (i) Wai 504—South Whangarei District claim; and
 - (j) Wai 619—Ngāti Kahu o Torongare/Te Parawhau
 - (k) Wai 683—Te Iwi O Te Parawhau claim; and
 - (l) Wai 688—Ngā Hapū o Whangarei Lands, Waters, Forests and resources claim;
 - (m) Wai 719—Kaipara Land and resources (Pirika Ngāi Whanau) claim; and
 - (n) Wai 745—Patuharakeke Hapū Lands and resources claim; and
 - (o) Wai 798 – Kaipara Ki Watemata (Ngāti Rongo) claim; and
 - (p) Wai 857—Opanake blocks and other lands claim; and
 - (q) Wai 861—Tai Tokerau District Māori Council claim; and

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- (r) Wai 881- Descendants of Haumaiwarangi and Maki claim; and
- (s) Wai 884 – Te Pa O Tahuhu (Mt Richmond, Auckland) claim; and
- (t) Wai 887—Ngāwaka Tautari Lands (Auckland/Kaipara) claim; and
- (u) Wai 985—Hokianga Regional Lands claim; and
- (v) Wai 1045—Ngāti Maura Land and Resources claim; and
- (w) Wai 1046—Ngāti Whātua Tūturu o Te Taou claim; and
- (x) Wai 1114—Te Rūnanga o Te Taou Lands and Resources claim; and
- (y) Wai 1127 – Ngā Oho o Te Taou Tribal Territory claim; and
- (z) Wai 1146 – Te Taou Land and Resource claim; and
- (aa) Wai 1248 – Te Parawhau claim; and
- (bb) Wai 1308 –Patuharakeke Hapū ki Takahiwai claim; and
- (cc) Wai 1343—Ngāti Torehina ki Ngā Puhi / Ngāti Whātua claim; and
- (dd) Wai 1479 – Hapū of Te Parawhau (Moera Wairoro Hilton) claim; and
- (ee) Wai 1517 – Ngāti Hau, Te Parawhau and Rewarewa D Incorporation claim; and
- (ff) Wai 1519 – Ngāti Whātua (Joseph) claim; and
- (gg) Wai 1825 – Descendants of Hetaraka Takapuna claim; and
- (hh) Wai 2060 – Apetera Whānau and Te Parawhau Whānau claim; and
- (ii) Wai 2181 – Ngā Uri o Maki-Nui Lands (Kapea and Beazley Claim); and
- (jj) Wai 2206 – Ngā WaHapū o Mahurangi – Ngāti Whātua Ngāpuhi claim; and
- (kk) Wai 2355 The Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim; and
- (ll) Wai 2365 - Te ra whānau o Reihana raua ko Ngāhinu Netana me ngā hapū ko Te Parawhau me Patuharakeke te kereme.

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1.6.3 However, historical claims does not include the following claims –

- (a) a claim that a member of Ngāti Whātua, or a whānau, hapū or group referred to in clause 1.1.2 had or may have that is founded on a right arising as a result of being descended from an ancestor who is not referred to in clause 1.1.1; or
- (b) any claim to the extent that it has been settled by the Te Uri o Hau Claims settlement Act 2002, the Te Roroa Claims Settlement Act 2008, the Ngāti Whātua o Ōrakei Claims Settlement Act 2012, or the Ngāti Whātua o Kaipara Claims Settlement Act 2013; or
- (c) a claim that a representative entity may have to the extent the claim is, or is founded on, a claim referred to in clause 1.6.5(a); or
- (d) any claim based on descent from a recognised ancestor of Patuharakeke, Te Parawhau and Te Uriroroi to the extent any claim is, or is founded on, a right arising as a result of being descended from an ancestor other than a Ngāti Whātua ancestor.

1.7 To avoid doubt, the settlement of the historical claims of Ngāti Whātua iwi will not affect the right of iwi, hapū or whānau to apply for the recognition of protected customary rights or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011.

Other Definitions

1.8 In this agreement in principle –

arbitration commencement date, in relation to the determination of the market value and/or market rental of a valuation property means:

- (a) in relation to a referral under paragraph 3.12.2 the date of that referral; and,
- (b) in relation to an appointment under paragraph 3.12.3 or 3.12.4, a date specified by the valuation arbitrator; and

arbitration meeting, in relation to the determination of the market value and/or market rental of a valuation property, means the meeting notified by the valuation arbitrator under paragraph 3.13.1; and

business day means a day that is not –

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour day; or
- (c) if Waitangi Day or ANZAC Day falls on a Saturday or Sunday, the following Monday; or

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- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of –
 - (i) Wellington; or
 - (ii) Auckland.

commercial redress property means each property described as a commercial redress property in the deed of settlement; and

conservation document means a national park management plan, conservation management strategy, or conservation management plan; and

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

Crown leaseback, in relation to a leaseback commercial redress property or a leaseback deferred selection property, means the lease the deed of settlement will provide to be entered into by the governance entity and the Crown as described in clauses 6.5 and 6.7; and

Crown redress –

- (a) means redress provided by the Crown to the governance entity; and
- (b) includes any right of the governance entity under the settlement documentation –
 - (i) to acquire a deferred selection property; or
 - (ii) of first refusal in relation to RFR land; but
- (c) does not include
 - (i) an obligation of the Crown under the settlement documentation to transfer a deferred selection property; or
 - (ii) a deferred selection property or RFR land; or
 - (iii) any on-account payment made before the date of the deed or to entities other than the governance entity; and

cultural redress means the redress to be provided under the settlement documentation referred to in part 5; and

deed of settlement means the deed of settlement to be developed under clause 2.1.2; and

deferred selection property means each property described as a deferred selection property in the deed of settlement; and

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disclosure information means –

- (a) in relation to a redress property, the information provided by the Crown to the governance entity under clause 9.1; and
- (b) in relation to a purchased deferred selection property, the disclosure information about the property the deed of settlement requires to be provided by the Crown to the governance entity; and

encumbrance, in relation to a property, means a lease, tenancy, licence, easement, covenant, or other right or obligation affecting that property; and

financial and commercial redress means the redress to be provided under the settlement documentation referred to in part 6; and

financial and commercial redress amount means the amount referred to as the financial and commercial redress amount in clause 6.2; and

fisheries RFR area means the area identified as the Fisheries RFR area in the attachment; and

governance entity means the governance entity to be formed by the settling group under clause 9.4.1; and

initial annual rent, in relation to a leaseback property, means the rent payable under the Crown leaseback from its commencement determined or agreed in accordance with schedule 3; and

land holding agency, in relation to a potential commercial redress property, or a potential deferred selection property means the department that administers that property; and

leaseback commercial redress property means:

- (a) a potential commercial redress property that the parties agree under clause 6.3 will be a leaseback property; or
- (b) a commercial redress property identified in the deed of settlement as a leaseback property; and

leaseback deferred selection property means a potential deferred selection property that the parties agree under clause 6.3 will be a leaseback property; and

leaseback property means each leaseback commercial redress property and each leaseback deferred selection property; and

mandated negotiators means –

- (a) the following individuals:

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- (i) Russell Kemp, 1939 State Highway One, Kaiwaka, Retired;
 - (ii) Tame Te Rangi, 3292 Mangakahia Road, RD2, Whangarei, 0172, Self-Employed;
 - (iii) Patricia Murray, 1/5 Hilltop Avenue, Whangarei, Transition Manager, Te Rūnanga o Ngāti Whātua; or
- (b) if one or more individuals named in paragraph (a) dies, or becomes incapacitated, the remaining individuals; and

mandated body means Te Rūnanga o Ngāti Whātua;

market rental, in relation to a valuation property, has the meaning provided in the valuation instructions in appendix 1 to schedule 3; and

market value, in relation to a valuation property, has the meaning provided in the valuation instructions in appendix 1 to schedule 3; and

party means each of the settling group and the Crown; and

potential commercial redress property means the property described in Table 4 and each property that the parties agree under clause 6.3 will be a potential commercial redress property; and

potential deferred selection property means each property that the parties agree under clause 6.3 will be a potential deferred selection property; and

protocol means the protocol referred to in Table 3; and

purchased deferred selection property means each deferred selection property in relation to which the governance entity and the Crown are to be treated under the deed of settlement as having entered into an agreement for its sale and purchase; and

redress means the following to be provided under the settlement documentation –

- (a) the Crown's acknowledgment and apology referred to in clause 4.1; and
- (b) the financial and commercial redress; and
- (c) the cultural redress; and

redress property means each commercial redress property; and

registered valuer means any valuer for the time being registered under the Valuers Act 1948; and

representative entity means a person or persons acting for or on behalf of the settling group; and

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resumptive memorial means a memorial entered on a certificate of title or computer register under any of the following sections:

- (a) 27A of the State-Owned Enterprises Act 1986; or
- (b) 211 of the Education Act 1989; or
- (c) 38 of the New Zealand Railways Corporation Restructuring Act 1990; and

RFR means the shared right of first refusal referred to in clause 6.13; and

RFR land means the land referred to as non-exclusive RFR land in the deed of settlement; and

school site, means a leaseback property in respect of which the land holding agency is the Ministry of Education; and

settlement means the settlement of the historical claims under the settlement documentation; and

settlement date means the date that will be defined in the deed of settlement and settlement legislation; and

settlement document means a document to be entered into by the Crown to give effect to the deed of settlement; and

settlement documentation means the deed of settlement and the settlement legislation; and

settlement legislation means the legislation giving effect to the deed of settlement; and

settlement property means –

- (a) each commercial redress property; and
- (b) each deferred selection property; and
- (c) any RFR land; and

tax indemnity means the indemnity to be provided in the deed of settlement under clauses 8.3 and 8.4; and

transfer value, in relation to a potential commercial redress property, means the amount payable by the governance entity for the transfer of the property determined or agreed in accordance with schedule 3; and

Treaty of Waitangi means the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975; and

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valuation arbitrator, in relation to a valuation property means the person appointed under paragraphs 3.3.2 or 3.4, in relation to the determination of its market value, and if applicable its market rental; and

valuation date, in relation to a valuation property, means the notification date in relation to the property; and

valuation property means each potential commercial redress property that is to be valued in accordance with schedule 3.

2 TERMS OF SETTLEMENT

Rights unaffected

- 2.1 The deed of settlement is to provide that, except as provided in the settlement documentation, the rights and obligations of the parties will remain unaffected.

Acknowledgments

- 2.2 Each party to the deed of settlement is to acknowledge in the deed of settlement that –
- 2.2.1 the other party has acted honourably and reasonably in relation to the settlement; but
 - 2.2.2 full compensation of Ngāti Whātua is not possible; and
 - 2.2.3 Ngāti Whātua intends their foregoing of full compensation to contribute to New Zealand's development; and
 - 2.2.4 the settlement is intended to enhance the ongoing relationship between Ngāti Whātua and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).
- 2.3 Ngāti Whātua are to acknowledge in the deed of settlement that –
- 2.3.1 taking all matters into consideration (some of which are specified in paragraph 3.2), the settlement is fair in the circumstances; and
 - 2.3.2 the redress –
 - (a) is intended to benefit Ngāti Whātua collectively; but
 - (b) may benefit particular members, or particular groups of members, of Ngāti Whātua if the governance entity so determines in accordance with the governance entity's procedures.

Implementation

- 2.4 The deed of settlement is to provide the settlement legislation will, on terms agreed by the parties (based on the terms in recent settlement legislation), –
- 2.4.1 settle the historical claims; and
 - 2.4.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and
 - 2.4.3 provide that certain enactments do not apply –
 - (a) to a redress property, a purchased deferred selection property; or

AGREEMENT IN PRINCIPLE

- (b) for the benefit of Ngāti Whātua or a representative entity; and
- 2.4.4 require any resumptive memorials to be removed from the certificates of title to, or the computer registers for, a redress property and a purchased deferred selection property; and
- 2.4.5 provide that the rule against perpetuities and the Perpetuities Act 1964 does not apply –
 - (a) where relevant, to any entity that is a common law trust; and
 - (b) to any settlement documentation; and
- 2.4.6 require the Secretary for Justice to make copies of the deed of settlement publicly available.
- 2.5 The deed of settlement is to provide –
 - 2.5.1 the governance entity must use its best endeavours to ensure every historical claim is discontinued by the settlement date or as soon as practicable afterwards; and
 - 2.5.2 the Crown may: –
 - (a) cease any land bank arrangement in relation to Ngāti Whātua, the governance entity, or any representative entity, except to the extent necessary to comply with its obligations under the deed;
 - (b) after the settlement date, advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement.

3 VALUATION PROCESS FOR POTENTIAL COMMERCIAL REDRESS PROPERTIES

Note: Unless otherwise agreed in writing between the relevant landholding agency and the parties will enter into the following valuation process for potential commercial redress properties

A DETERMINING THE TRANSFER VALUE AND INITIAL ANNUAL RENT OF A PROPERTY

APPLICATION OF THIS SUBPART

- 3.1 This subpart provides how the following are to be determined in relation to a valuation property:
- 3.1.1 its transfer value; and
 - 3.1.2 if it is a leaseback property that is not a school site, its initial annual rent.
- 3.2 The transfer value, and if applicable the initial annual rent, are to be determined as at a date agreed upon in writing by the parties (the **notification date**).

APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

- 3.3 The parties, in relation to a property, not later than [10] business days after the notification date:
- 3.3.1 must each:
 - (a) instruct a valuer using the form of instructions in appendix 1; and
 - (b) give written notice to the other of the valuer instructed; and
 - 3.3.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the property.
- 3.4 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within 15 business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
- 3.5 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

- 3.6 Each valuer must be a registered valuer.
- 3.7 The valuation arbitrator –

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3.7.1 must be suitably qualified and experienced in determining disputes about –

- (a) the market value of similar properties; and
- (b) if applicable, the market rental of similar properties; and

3.7.2 is appointed when he or she confirms his or her willingness to act.

VALUATION REPORTS FOR A PROPERTY

3.8 Each party must, in relation to a valuation, not later than:

3.8.1 [50] business days after the notification date, provide a copy of its final valuation report to the other party; and

3.8.2 [60] business days after the notification date, provide its valuer's written analysis report to the other party.

3.9 Valuation reports must comply with the International Valuation Standards 2017, or explain where they are at variance with those standards.

EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR A PROPERTY

3.10 If only one valuation report for a property that is not a school site is delivered by the required date, the transfer value of the property, and if applicable its initial annual rent, is the market value and the market rental, as assessed in the report.

3.11 If only one valuation report for a property that is a school site is delivered by the required date, the transfer value of the property is the market value as assessed in the report, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%),

NEGOTIATIONS TO AGREE A TRANSFER VALUE AND INITIAL ANNUAL RENT FOR A PROPERTY

3.12 If both valuation reports for a property are delivered by the required date:

3.12.1 the parties must endeavour to agree in writing:

- (a) the transfer value of a property that is not a school site; or
- (b) if the property is a school site, the transfer value (being the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
- (c) if the property is a leaseback property that is not a school site, its initial annual rent;

3.12.2 either party may, if the transfer value of the property, or if applicable, its initial annual rent, is not agreed in writing within [70] business days after the notification date and if a valuation arbitrator has been appointed under paragraph 3.3.2 or paragraph 3.4, refer that matter to the determination of the valuation arbitrator; or

AGREEMENT IN PRINCIPLE

- 3.12.3 if that agreement has not been reached within the [70] business day period but the valuation arbitrator has not been appointed under paragraph 3.3.2 or paragraph 3.4, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further [5] business days; and
- 3.12.4 if paragraph 3.12.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further [5] business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and
- 3.12.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

VALUATION ARBITRATION

- 3.13 The valuation arbitrator must, not later than [10] business days after the arbitration commencement date, –
 - 3.13.1 give notice to the parties of the arbitration meeting, which must be held –
 - (a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but
 - (b) not later than [30] business days after the arbitration commencement date; and
 - 3.13.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable, –
 - (a) each valuer; and
 - (b) any other person giving evidence.
- 3.14 Each party must –
 - 3.14.1 not later than 5pm on the day that is [5] business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer –
 - (a) its valuation report; and
 - (b) its submission; and
 - (c) any sales, rental, or expert evidence that it will present at the meeting; and
 - 3.14.2 attend the arbitration meeting with its valuer.
- 3.15 The valuation arbitrator must –
 - 3.15.1 have regard to the requirements of natural justice at the arbitration meeting; and

AGREEMENT IN PRINCIPLE

- 3.15.2 no later than [50] business days after the arbitration commencement date, give his or her determination –
- (a) of the market value of the property (which in respect of a school site is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
 - (b) if applicable, of its market rental; and
 - (c) being no higher than the higher, and no lower than the lower, assessment of market value and/or market rental, as the case may be, contained in the parties' valuation reports.
- 3.16 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

TRANSFER VALUE AND INITIAL ANNUAL RENT FOR ALL PROPERTIES

- 3.17 The transfer value of the property, and if applicable its initial annual rent, is:
- 3.17.1 determined under paragraph 3.10 or 3.11, (as the case may be); or
 - 3.17.2 agreed under paragraph 3.12.1; or
 - 3.17.3 the market value and, if applicable, market rental determined by the valuation arbitrator under paragraph 3.15.2, if the determination is in respect of a property that is not a school site; or
 - 3.17.4 if the property is a school site, the market value determined by the valuation arbitrator under paragraph 3.15.2, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

B GENERAL PROVISIONS

TIME LIMITS

- 3.18 In relation to the time limits each party must use reasonable endeavours to ensure -
- 3.18.1 those time limits are met and delays are minimised; and
 - 3.18.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

DETERMINATION FINAL AND BINDING

- 3.19 The valuation arbitrator's determination under subpart A is final and binding.

COSTS

- 3.20 In relation to the determination of the transfer value, and initial annual rent, of a property, each party must pay –

AGREEMENT IN PRINCIPLE

3.20.1 its costs; and

3.20.2 half the costs of a valuation arbitration; or

3.20.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

AGREEMENT IN PRINCIPLE

APPENDIX 1

[Valuer's name]

[Address]

Valuation instructions

INTRODUCTION

Ngāti Whātua and the Crown have entered into an agreement in principle to settle Ngāti Whātua historical claims dated [date] (the **agreement in principle**).

PROPERTY TO BE VALUED

Ngāti Whātua have given the land holding agency an expression of interest in purchasing -

[describe the property including its legal description]

[PROPERTY TO BE LEASED BACK

If Ngāti Whātua purchases the property from the Crown as a commercial redress property under its deed of settlement, the governance entity will lease the property back to the Crown on the terms provided by the attached lease in (the **agreed lease**).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the **Lessee's improvements**), remains unaffected by the transfer.]

AGREEMENT IN PRINCIPLE

A copy of the agreement in principle is enclosed.

Your attention is drawn to –

- (a) schedule 3; and
- (b) the attached agreed lease of the property.

All references in this letter to subparts or paragraphs are to subparts or paragraphs of schedule 4.

A term defined in the agreement in principle has the same meaning when used in these instructions.

The property is a property for the purposes of part 6. Subpart A of schedule 4 applies to the valuation of properties.

AGREEMENT IN PRINCIPLE

ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property [that is a school site in accordance with the methodology below] as at [date] (the **valuation date**).

[As the Lessee's improvements will not transfer, the market value of the property is to be the market value of its land (i.e. not including any Lessee's improvements).]

The [land holding agency][settling group][~~delete one~~] will require another registered valuer to assess the market value of the property [,and its market rental,] as at the valuation date.

The two valuations are to enable the market value of the property, [and its market rental,] to be determined either:

- (a) by agreement between the parties; or
- (b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which Ngāti Whātua may elect to purchase the property as a commercial redress property under part 6, plus GST (if any).

[MARKET VALUE OF A SCHOOL SITE

For the purposes of these instructions the intention of the parties in respect of a school site is to determine a transfer value to reflect the designation and use of the land for education purposes.

The market value of a school site is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

A two step process is required:

- 1) firstly, the assessment of the unencumbered market value (based on highest and best use) by;
 - a) disregarding the designation and the Crown leaseback; and
 - b) considering the zoning in force at the valuation date and
 - c) excluding any improvements on the land; and;
- 2) secondly the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).]

[If, in the relevant district or unitary plan, the zoning for the school site is Specialised (as defined below), the zoning for the school site for the purposes of step 1(b) of the two-step process above will be deemed to be the Alternative Zoning (as defined below).

For the purposes of these instructions:

- "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).

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- "Alternative Zoning" means the most appropriate probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):
 - (a) the underlying zoning for the school site (if any);
 - (b) the zoning for the school site immediately prior to its Specialised zoning;
 - (c) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;
 - (d) if the school site is within the area governed by Auckland Council, the underlying zoning applied to the school site in the Draft Auckland Unitary Plan publicly notified 15 March 2013, namely *[insert the zoning from the Draft Auckland Unitary Plan publicly notified 15 March 2013]*; and
 - (e) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the school site.

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).]

[ASSESSMENT OF MARKET RENTAL REQUIRED

You are also required to assess the market rental (exclusive of GST) for the property, as at the valuation date, being the rental payable from the commencement of the agreed lease.

The market rental for the property is to be the market rental payable under the agreed lease, being a ground lease. So it will be the rent payable for its land (i.e. excluding any Lessee's improvements).]

VALUATION OF PROPERTY

You must, in relation to a property:

- (a) before inspecting the property, determine with the other valuer:
 - (i) the valuation method or methods applicable to the property; and
 - (ii) the comparable sales[, and comparable market rentals if the property is not a school site,] to be used in determining the market value of the property [and its market rental if the property is not a school site]; and
- (b) inspect the property, where practical, together with the valuer appointed by the other party; and

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- (c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and
- (d) by not later than [30] business days after the valuation date prepare, and deliver to us, a draft valuation report; and
- (e) by not later than [45] business days after the valuation date:
 - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) deliver a copy of your final valuation report to us; and
- (f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property [and its market rental if the property is not a school site]; and
- (g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value [and its market rental if the property is not a school site]; and
- (h) if a consensus on market value [and its market rental if the property is not a school site] is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and
- (i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property [and its market rental if the property is not a school site]; and
- (j) if a review valuer has been appointed by parties, you must within [5] business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and
- (k) participate in any arbitration process required under subpart A to determine the market value of the property [and its market rental if the property is not a school site].

REQUIREMENTS OF YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the property is a current asset and was available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

AGREEMENT IN PRINCIPLE

- (a) to assess market value on the basis of market value as defined in the current edition of the Australia and New Zealand Valuation and Property Standards 2012 and International Valuation Standards 2017; and
- (b) to take into account –
 - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date[; and
 - (ii) the terms of the agreed lease]; and
 - (iii) the attached disclosure information about the property that has been given by the land holding agency to Ngāti Whātua, including the disclosed encumbrances; and
 - (iv) the attached terms of transfer (that will apply to a purchase of the property by the governance entity); but
- (c) not to take into account a claim in relation to the property by or on behalf of Ngāti Whātua; and
- (d) in relation to the market rental for the property, to be on the basis of a willing lessor and a willing lessee, in an arm's length transaction, the parties having acted knowledgeably, prudently, and without compulsion].

REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the current edition of the Australia and New Zealand Valuation and Property Standards 2012 and International Valuation Standards 2017, including -

- (a) an executive summary, containing a summary of –
 - (i) the valuation; and
 - (ii) [the market rental; and]
 - (iii) the key valuation parameters; and
 - (iv) the key variables affecting value; and
- (b) a detailed description, and a clear statement, of the land value; and
- (c) a clear statement as to any impact of –
 - (i) the disclosed encumbrances[; and
 - (ii) the agreed lease]; and
- (d) details of your assessment of the highest and best use of the property; and
- (e) comment on the rationale of likely purchasers[, and tenants,] of the property; and

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- (f) a clear identification of the key variables which have a material impact on the valuation; and
- (g) full details of the valuation method or methods; and
- (h) appendices setting out –
 - (i) a statement of the valuation methodology and policies; and
 - (ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation, and other relevant standards, insofar as they are consistent with subpart A.

You may, with our prior consent, obtain specialist advice, such as engineering or planning advice.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than:

- (a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and
- (b) [45] business days after the valuation date, to:
 - (i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) deliver a copy of your final valuation report to us; and
- (c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and
- (d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

ACCESS

[You should not enter on to the property without first arranging access through the **[landholding agency]** **[give contact details].**]

[Where the property is a school site, you should not enter on to **[insert name(s) of school site(s)]** without first arranging access through the Ministry of Education **[give contact details]** and should not contact the school(s) directly.]

OPEN AND TRANSPARENT VALUATION

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

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In particular, you must:

- (a) copy any questions you have or receive with regard to the valuation, together with the responses, to the settling group, the land holding agency, and the other valuer: and
- (b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final valuation report to us.

Yours faithfully

[Name of signatory]

[Position]

[Settling group/Land holding agency][delete one]

4 FISHERIES RFR DEED OVER QUOTA

DEED GRANTING A RIGHT OF FIRST REFUSAL OVER QUOTA

BETWEEN

[Insert the name of the Governance Entity] (the Governance Entity).

AND

HER MAJESTY THE QUEEN in right of New Zealand acting by the Minister for Primary Industries (the **Crown**).

BACKGROUND

- A. [insert name of the governance entity] and the Crown are parties to a Deed to settle the Historical Claims of dated [Insert the date of the Deed] (the **Deed**).
- B. The Crown agreed under the Deed that (if the Deed became unconditional) the Crown would, by or on the Settlement Date under that Deed, provide the Governance Entity with a deed in this form granting the Governance Entity a right of first refusal over certain Quota.
- C. The Deed has become unconditional and this Deed is entered into:
 - by the Crown in satisfaction of its obligations referred to in clause Y of the Deed; and
 - by the Governance Entity in satisfaction of its obligations under clause Z of the Deed.

IT IS AGREED as follows:

1. **THIS RFR DEED OVER QUOTA APPLIES IF THE MINISTER SETS A TACC OF A CERTAIN KIND**
 - 1.1 This RFR Deed Over Quota applies only if, during the period of 176 years from the Settlement Date:
 - 1.1.1 the Minister for Primary Industries declares, under the Fisheries Legislation, a species to be subject to the Quota Management System; and
 - 1.1.2 nominates that species as an 'applicable species', meaning one to which they wish to have a right of first refusal (**RFR**); and
 - 1.1.3 the Minister for Primary Industries sets, under the Fisheries Legislation, a Total Allowable Commercial Catch (a **TACC**) for that Applicable Species for one or more Quota Management Areas that include some or all of the areas identified in the map of the RFR Area in schedule 1) (an **Applicable TACC**).

AGREEMENT IN PRINCIPLE

2. THIS RFR DEED OVER QUOTA APPLIES ONLY TO QUOTA ALLOCATED TO THE CROWN UNDER AN APPLICABLE TACC

2.1 This RFR Deed Over Quota applies only to Quota (Applicable Quota) that:

2.1.1 relates to an Applicable TACC; and

2.1.2 has been allocated to the Crown as either:

- (a) Individual Transferable Quota (and not as Provisional Individual Transferable Quota) under section 49(1) of the Fisheries Act 1996; or
- (b) Provisional Individual Transferable Quota that has become Individual Transferable Quota under section 49(3) of the Fisheries Act 1996.

3. THE CROWN MUST OFFER MINIMUM AMOUNT OF APPLICABLE QUOTA TO THE GOVERNANCE ENTITY

3.1 Before the Crown sells any Applicable Quota relating to an Applicable TACC, the Crown must offer (in accordance with clause 3.2) the Governance Entity the right to purchase the Required Minimum Amount or more of the Applicable Quota relating to that Applicable TACC, calculated in accordance with clause 4.1 or clause 4.2 or clause 5.1 (whichever is applicable).

3.2 For the purposes of clause 3.1:

3.2.1 Where the Crown offers an RFR to the Governance Entity for any fish stock that is entered into the Quota Management System, the Crown shall determine the quantity of each fish stock to be offered to the Governance Entity in accordance with any coastline agreements reached between iwi in accordance with the provisions of the Māori Fisheries Act 2004, or absent such agreements, in accordance with the allocation provisions of the Māori Fisheries Act 2004;

3.2.2 Where a fish stock is brought into the Quota Management System and no allocation mechanism has been developed in accordance with the Māori Fisheries Act 2004, the Crown reserves the right, after consultation with affected parties, to develop an RFR allocation mechanism for that stock, noting that the allocation mechanism will not be based on coastlines.

4. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED WHERE COASTLINE IS USED TO DETERMINE THAT MINIMUM APPLICABLE QUOTA

4.1 Where:

4.1.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.1.2 no person was eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

AGREEMENT IN PRINCIPLE

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \left[\frac{2}{5} \times \frac{A}{B} \times C \right]$$

4.2 Where:

4.2.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.2.2 a person, or persons, were eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \text{the lesser of } \left[\frac{2}{5} \times \frac{A}{B} \times C \right] \text{ or } \left[\frac{A}{B} \times D \right]$$

4.3 For the purposes of this clause:

"A" is the length of coastline of the RFR Area that is within the coastline of the relevant Quota Management Area to be determined in accordance with any coastline agreements reached between iwi in accordance with the provisions of the Māori Fisheries Act 2004, or absent such agreements, in accordance with the allocation provisions of the Māori Fisheries Act 2004;

"B" is the length of coastline of the relevant Quota Management Area;

"C" is the total amount of Quota relating to the relevant Applicable TACC;

"D" is the amount of Applicable Quota held by the Crown in relation to the relevant Applicable TACC; and

"x" is the Required Minimum Amount of Applicable Quota.

5. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED WHERE COASTLINE IS NOT USED TO DETERMINE THAT MINIMUM APPLICABLE QUOTA

5.1 Where coastline is not used to determine a Minimum Applicable Quota, the required Minimum Amount of that Applicable Quota must be calculated in accordance with the formula:

$$x = [2/5 \times A \times B]$$

5.2 For the purpose of this clause:

"A" is the proportion of quota allocated to Governance Entity in accordance with clauses 3.2.1 or 3.2.2.

"B" is the total amount of Quota relating to the relevant Applicable TACC; and

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“x” is the Required Minimum Amount of Applicable Quota.

6. CROWN MUST GIVE NOTICE BEFORE SELLING APPLICABLE QUOTA **Crown must give RFR Notice**

- 6.1 Before the Crown Sells any Applicable Quota, the Crown must give a written notice (an RFR Notice) to the Governance Entity which offers to sell not less than the Required Minimum Amount of that Applicable Quota to the Governance Entity at the price and on the terms and conditions set out in the RFR Notice.

Crown may withdraw RFR Notice

- 6.2 The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that RFR Notice under clause 6.

Effect of withdrawing RFR Notice

- 6.3 If the Crown withdraws an RFR Notice, clause 3 still applies to the Applicable Quota referred to in that RFR Notice.

Crown has no obligation in relation to balance of Applicable Quota

- 6.4 Where the Crown has given, in accordance with clause 5.1, an RFR Notice in relation to Applicable Quota relating to an Applicable TACC, the Crown has no obligations under this Deed in relation to the balance of the Applicable Quota (if any) not referred to in that RFR Notice that also relate to that Applicable TACC.

7. ACCEPTANCE OF RFR NOTICE BY THE GOVERNANCE ENTITY

- 7.1 A contract for the Sale of the Applicable Quota referred to in an RFR Notice (or a lesser amount referred to in the acceptance) is constituted between the Crown and the Governance Entity, at the price and on the terms and conditions set out in the RFR Notice, if the Governance Entity accepts the offer in that RFR Notice (or accepts a lesser amount) of Applicable Quota:

7.1.1 by notice in writing to the Crown; and

7.1.2 by the relevant Expiry Date.

8. NON-ACCEPTANCE BY THE GOVERNANCE ENTITY

- 8.1 If:

8.1.1 the Crown gives the Governance Entity an RFR Notice; and

8.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date, the Crown -:

- (a) may, at any time during the period of two years from the Expiry Date, Sell any of the Applicable Quota referred to in that RFR Notice that is not accepted by the Governance Entity if the price per Quota Share, and the other terms and

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conditions of the Sale, are not more favourable to the purchaser than the price per Quota Share, and the other terms and conditions, set out in the RFR Notice to the Governance Entity; but

- (b) must, promptly after entering into an agreement to Sell any Applicable Quota referred to in the RFR Notice to a purchaser, give written notice to the Governance Entity of that fact and disclose the terms of that agreement; and
- (c) must not Sell any of that Applicable Quota referred to in the RFR Notice after the end of the two year period after the Expiry Date without first offering to Sell that Applicable Quota to the Governance Entity in an RFR Notice under clause 5.1.

9. RE-OFFER REQUIRED

9.1 If:

- 9.1.1 the Crown gives the Governance Entity an RFR Notice;
- 9.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date; and
- 9.1.3 the Crown during the period of two years from the Expiry Date proposes to offer any of those Applicable Quota not accepted by the Governance Entity for Sale again but at a price (per Quota Share), or on other terms and conditions, more favourable to the purchaser than on the terms and conditions in the RFR Notice. The Crown may do so only if it first offers that Applicable Quota for Sale on those more favourable terms and conditions to the Governance Entity in another RFR Notice under clause 5.1.

10. EFFECT OF THIS RFR DEED OVER QUOTA

10.1 Nothing in this RFR Deed Over Quota will require the Crown to:

- 10.1.1 purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996;
- 10.1.2 introduce any of the Applicable Species into the Quota Management System; or
- 10.1.3 offer for sale any Applicable Quota held by the Crown except on the terms of the Fisheries RFR Deed over quota.

10.2 The Governance Entity acknowledges that the introduction of any of the Applicable Species into a Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota for that species.

10.3 Nothing in this RFR Deed Over Quota affects, or limits, and the rights and obligations created by this Deed are subject to:

10.3.1 any requirement at common law or under legislation that:

- (a) must be complied with before any Applicable Quota is sold to the Governance Entity; or

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(b) the Crown must Sell the Applicable Quota to a third party; and

10.3.2 any legal requirement that:

(a) prevents or limits the Crown's ability to Sell the Applicable Quota to the Governance Entity; and

(b) the Crown cannot satisfy after taking reasonable steps to do so (and, to avoid doubt, reasonable steps do not include changing the law).

11. THIS DEED DOES NOT APPLY IN CERTAIN CASES

11.1 Neither clause 3 nor clause 5.1 apply, if the Crown is Selling Applicable Quota to the Governance Entity.

12. TIME LIMITS

12.1 Time is of the essence for the time limits imposed on the Crown and the Governance Entity under this RFR Deed Over Quota.

11.2 The Crown and the Governance Entity may agree in writing to an extension of a time limit.

13. ENDING OF RIGHT OF FIRST REFUSAL

RFR ends on Sale which complies with this Deed

13.1 The obligations of the Crown set out in this RFR Deed Over Quota end in respect of any Applicable Quota on a transfer of the Applicable Quota in accordance with this RFR Deed Over Quota.

RFR ends after 176 years

13.2 The obligations of the Crown set out in this RFR Deed Over Quota end 176 years after the Settlement Date.

14. NOTICES

14.1 The provisions of this clause apply to Notices under this RFR Deed Over Quota:

Notices to be signed

14.1.1 the Party giving a Notice must sign it;

Notice to be in writing

14.1.2 any Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

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Addresses for notice

14.1.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

The Crown:

Governance Entity:

[Address]

[Address]

Delivery

14.1.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with prepaid postage;
- (c) by facsimile; or
- (d) by electronic mail to the recipient's email address;

Timing of delivery

14.1.5 a Notice:

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

Deemed date of delivery

14.1.6 if a Notice is treated as having been received on a day that is not a Working Day, or after 5pm on a Working Day, that Notice will (despite clause 13.1.5) be treated as having been received the next Working Day.

15. AMENDMENT

15.1 This RFR Deed Over Quota may not be amended unless the amendment is in writing and signed by, or on behalf of, the Governance Entity and the Crown.

16. NO ASSIGNMENT

16.1 The Governance Entity may not assign its rights or obligations under this RFR Deed Over Quota.

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17. DEFINITIONS AND INTERPRETATION

Definitions

17.1 In this RFR Deed Over Quota, unless the context otherwise requires:

Applicable Quota means Quota of the kind referred to in clause 2;

Applicable Species means a species which nominates as one to which they wish to have a right of first refusal (RFR), under circumstances set out in clause 1;

Applicable TACC has the meaning given to that term by clause 1.1.2;

Crown has the meaning given to that term by section 2(1) of the Public Finance Act 1989 (which, at the date of this Deed, provides that the Crown means:

- (a) 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 section 2(1) of the Public Finance Act 1989);
 - (ii) a Crown entity (as defined in section 2(1) of the Public Finance Act 1989); or
 - (iii) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986));

Deed means the Ngāti Whātua Redress Deed;

RFR Deed Over Quota means this Deed granting a right of first refusal over quota;

Expiry Date, in respect of an RFR Notice, means the date one calendar month after the RFR Notice is received by the Governance Entity;

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

Individual Transferable Quota has the same meaning as in section 2(1) of the Fisheries Act 1996;

Minister for Primary Industries means the Minister of the Crown who is for the time being responsible for the administration of the Fisheries Legislation;

Party means the Governance Entity or the Crown;

Provisional Individual Transferable Quota has the same meaning as under section 2(1) of the Fisheries Act 1996;

Quota means Quota in relation to an Applicable Species (being a species referred to in schedule 1);

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Quota Management Area means any area declared by or under the Fisheries Legislation to be a quota management area;

Quota Management System means a quota management system established under Part IV of the Fisheries Act 1996;

Quota Share has the same meaning as in the Fisheries Act 1996;

Required Minimum Amount, in relation to Applicable Quota, means an amount of that Applicable Quota calculated under clause 4.1 or clause 4.2 (whichever is applicable);

RFR Area means the area identified in the map included in attachment 1;

RFR Notice and **Notice** means a notice under clause 5.1;

Sell means to transfer ownership of Quota for valuable consideration and **Sale** has a corresponding meaning, but neither term includes the transfer by the Crown of Quota under section 22 of the Fisheries Act 1996;

Settlement Date means the date which is 60 Working Days after the Redress Deed becomes unconditional;

Total Allowable Commercial Catch or **TACC** means a total allowable commercial catch for a species under section 20 of the Fisheries Act 1996; and

Working Day means a day that is not –

- (a) a Saturday or a Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or
- (c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of –
 - (i) Wellington; or
 - (ii) Auckland.

17.2 Terms or expressions that are not defined in this RFR Deed Over Quota, but are defined in the Redress Deed, have the meaning given to them by the Deed unless the context requires otherwise.

Interpretation

17.3 In the interpretation of this RFR Deed Over Quota, unless the context requires otherwise:

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- (a) headings appear as a matter of convenience and are not to affect the interpretation of this RFR Deed Over Quota;
- (b) defined terms appear in this RFR Deed Over Quota with capitalised initial letters and have the meanings given to them by this RFR Deed Over Quota;
- (c) where a word or expression is defined in this RFR Deed Over Quota, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (d) the singular includes the plural and vice versa;
- (e) words importing one gender include the other genders;
- (f) a reference to legislation is a reference to that legislation as amended, consolidated or substituted;
- (g) a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced;
- (h) a reference to a schedule is a schedule to this RFR Deed Over Quota Deed;
- (i) a reference to a monetary amount is to New Zealand currency;
- (j) 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;
- (k) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (l) a reference to a date on which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
- (m) where the day on or by which anything to be done is not a Working Day, that thing must be done on or by the next Working Day after that day; and
- (n) a reference to time is to New Zealand time.

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SIGNED as a Deed on []

[Insert appropriate signing clauses for the Governance Entity]

WITNESS

Name:

Occupation:

Address:

SIGNED for and on behalf of **HER**

MAJESTY THE QUEEN in right of

New Zealand by the Minister for

Primary Industries

in the presence of:

WITNESS

Name:

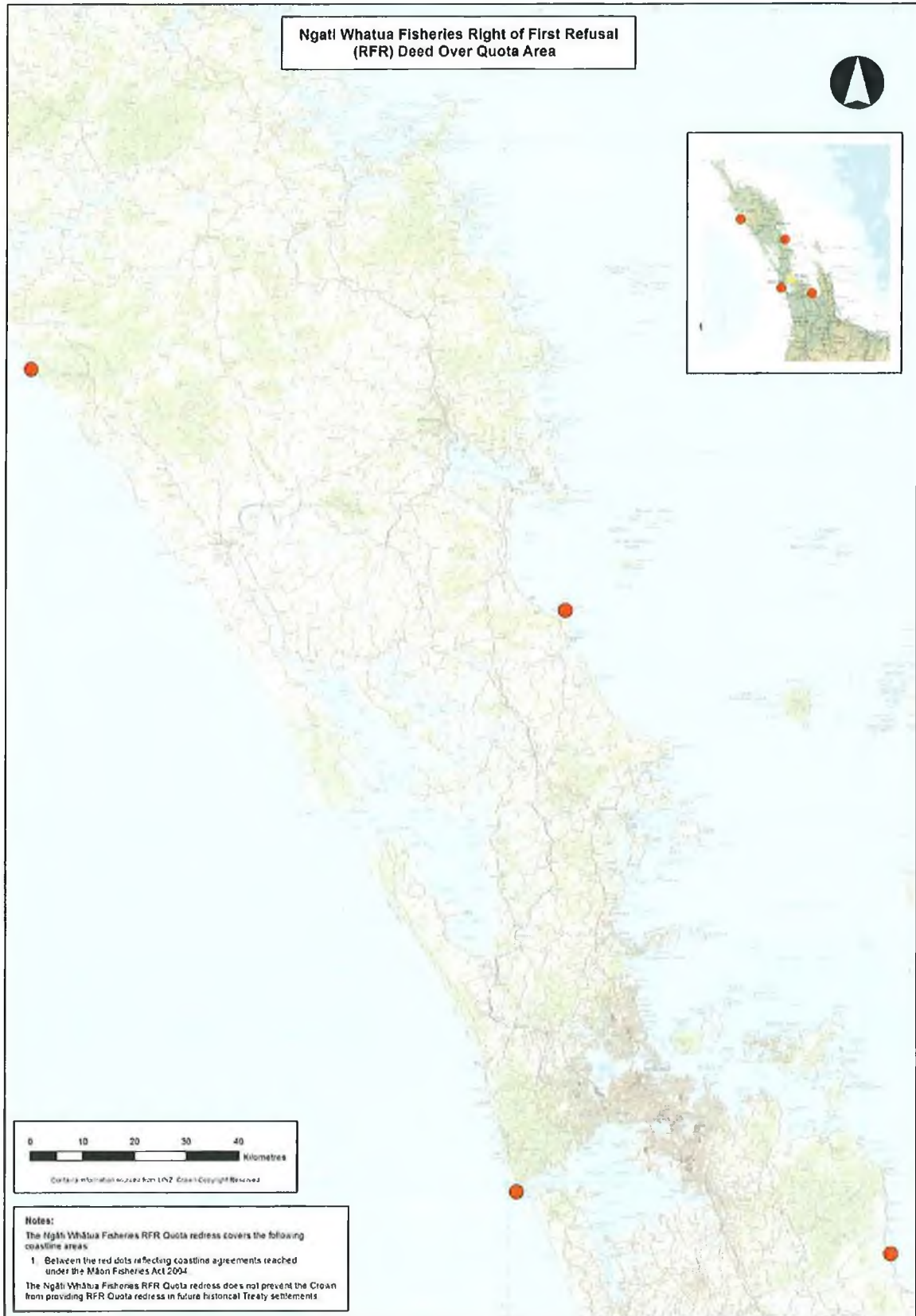
Occupation:

Address:

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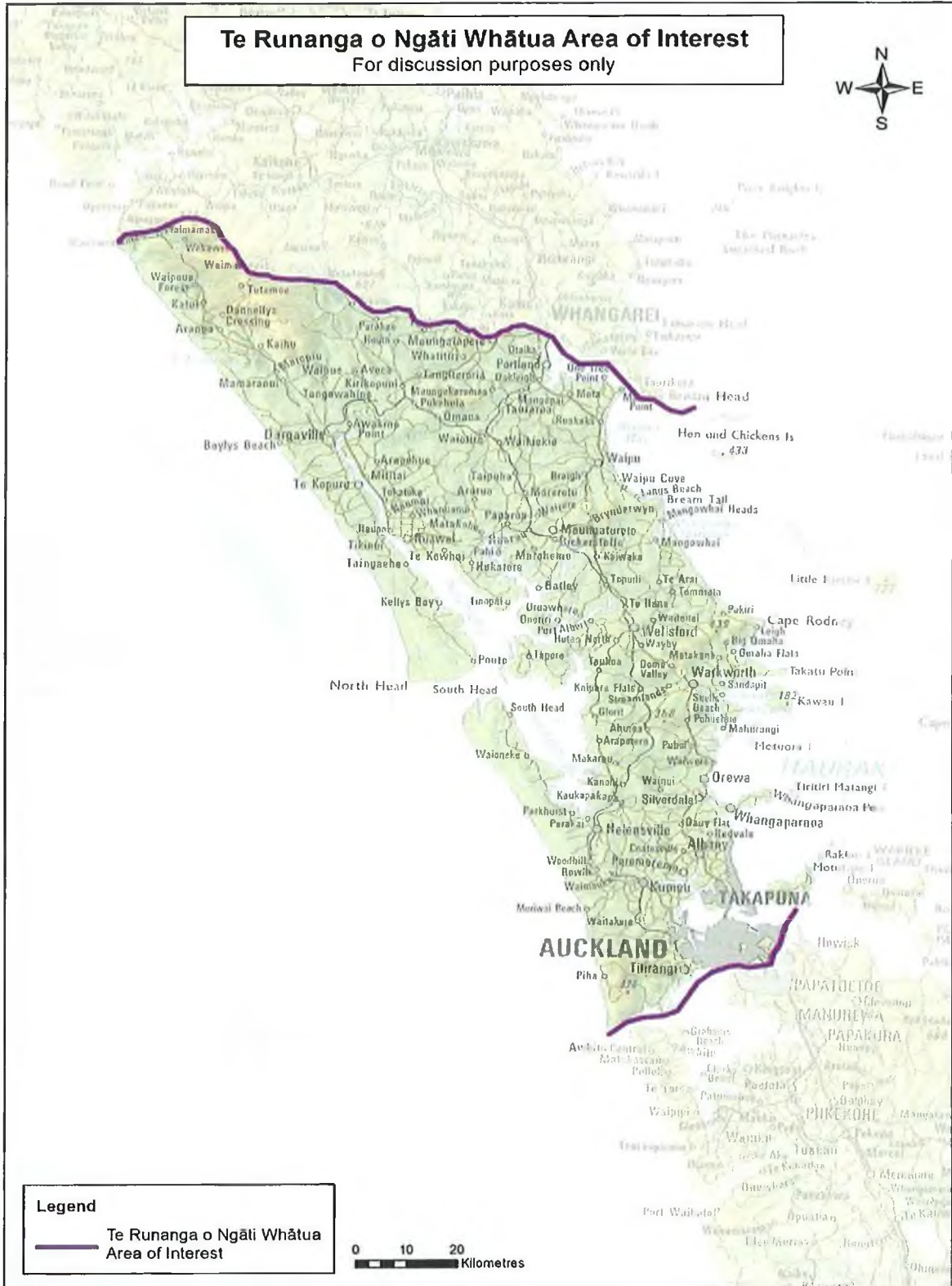
ATTACHMENT 1

NGĀTI WHĀTUA FISHERIES RIGHT OF FIRST REFUSAL DEED OVER QUOTA AREA



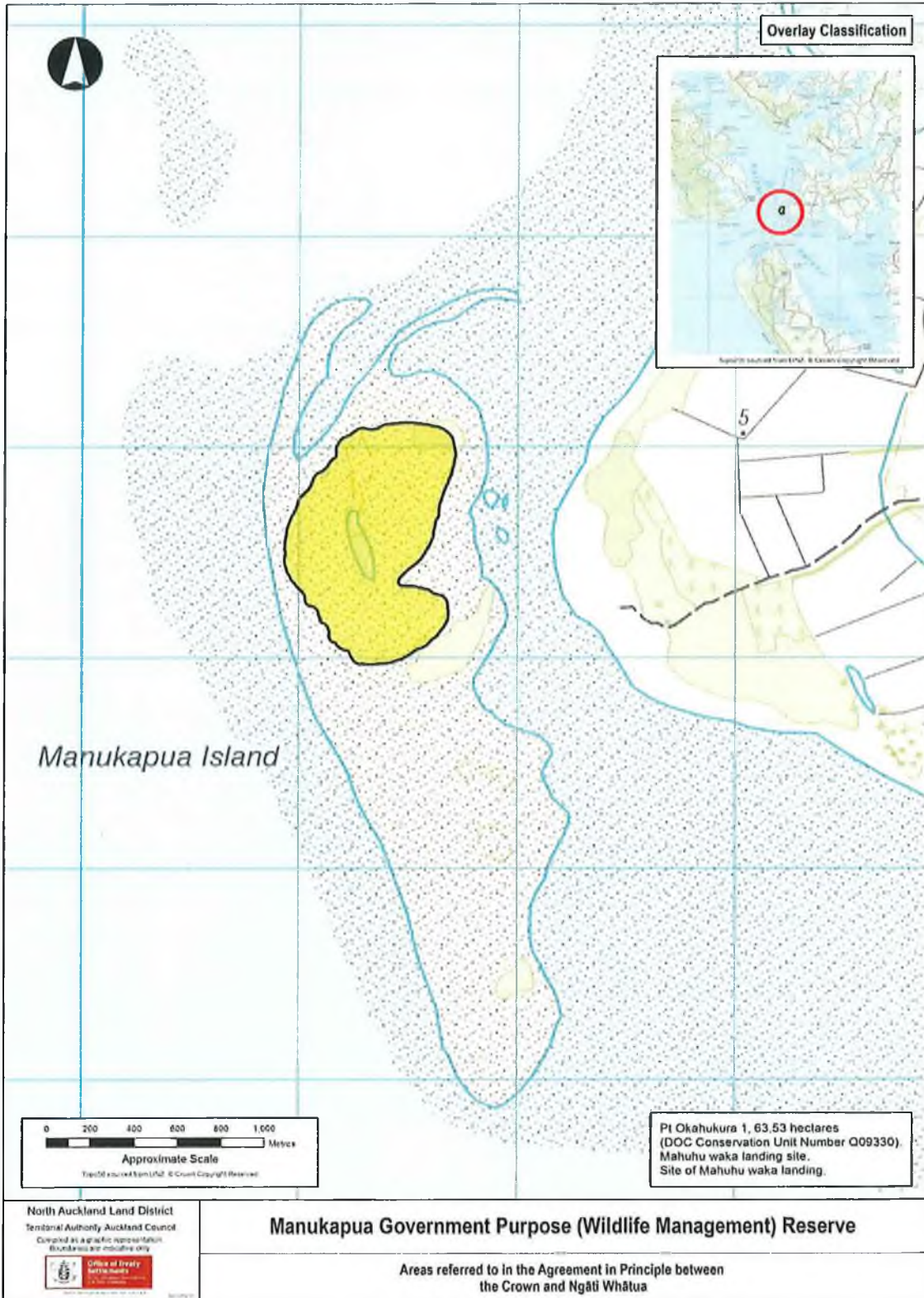
ATTACHMENTS

1 AREA OF INTEREST



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2 MANUKAPUA GOVERNMENT PURPOSE (WILDLIFE MANAGEMENT) RESERVE



3 CROWN AND NGĀTI WHĀTUA PROCESS FOR RESOLVING OVERLAPPING CLAIMS

The following groups have been identified as having interests in the Ngāti Whātua area of interest:

- Ngāpuhi
- Ngātiwai
- Ngāti Manuhiri
- Ngāti Rehua
- Ngāti Tamaoho
- Ngāti Te Ata
- Te Ākitai Waiohua
- Te Kawerau ā Maki
- Ngāi Tai ki Tāmaki
- Hako (AOI TBC)
- Ngāti Maru
- Ngāti Paoa
- Ngāti Tamaterā
- Ngaati Whanaunga
- Te Patukirikiri
- Waikato-Tainui

Table 6 - Process for resolving overlapping claims within the Ngāti Whātua area of interest

Process stage	Activities	Timeframe
Crown offer	Crown offer is subject to resolution of overlapping claims. Overlapping claims plan agreed between the Crown and the Rūnanga.	
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Post - agreement in principle	Send comprehensive Crown letter – on 18 August 2017 Content includes: <ul style="list-style-type: none"> ● Crown policy on overlapping claim resolution; ● Key timeframes; ● Proposed engagement going forward; ● Invitation to discuss; ● Proposed submission process going forward; ● Summary of site specific Crown offer redress offered within the Ngāti Whātua iwi area of interest; ● Further overlapping claims consultation will occur once commercial properties are included; ● Request for information on overlapping iwi interests; ● Provide Te Rūnanga o Ngāti Whātua's area of interest; and 	

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Process stage	Activities	Timeframe
	<ul style="list-style-type: none"> The Office of Treaty Settlements (OTS) contact details for overlapping claims work stream lead and where to send submissions. 	
DEED PHASE		
Response from groups	<ul style="list-style-type: none"> Groups respond to the agreement in principle; OTS assesses the responses and advises Te Rūnanga o Ngāti Whātua; OTS and the Rūnanga agree a process to try and resolve overlapping claims issues. This can include facilitating meetings, Crown to attend iwi meetings, and/or the Rūnanga meeting with groups; OTS reports to the Minister for Treaty of Waitangi Negotiations (MfTOWN) to provide an update on overlapping claims and, if there are matters where groups do not agree, advises of an agreed process to resolve them. 	
Engagement to resolve issues if required	<ul style="list-style-type: none"> Te Rūnanga o Ngāti Whātua and OTS engage with groups to resolve issues 	
If required, preliminary ministerial decision	<ul style="list-style-type: none"> OTS reports to MfTOWN summarising overlapping claims engagement and seeking a preliminary decision on outstanding matters where overlapping claims remain a concern; MfTOWN writes to groups to inform of the Crown's preliminary decision on outstanding overlapping claims matters and to advise of next steps; The Crown may amend or withdraw a redress offer if overlapping claims cannot be resolved to the Crown's satisfaction. 	
Further engagement to resolve issues	<ul style="list-style-type: none"> Four weeks minimum is provided for groups to respond to the preliminary decision to provide further information and engage further with the Crown and the Rūnanga; OTS considers the further information provided and undertakes own research. 	
Final Ministerial decision	<ul style="list-style-type: none"> OTS reports to MfTOWN seeking a final decision on outstanding overlapping claims matters; MfTOWN writes to groups to inform of the Crown's final redress decisions; The Crown may amend or withdraw a redress offer if objections are considered to merit it; Cabinet considers the proposed deed of settlement. 	
	CROWN AND THE RŪNANGA INITIAL THE DEED OF SETTLEMENT	