

DEED OF AGREEMENT

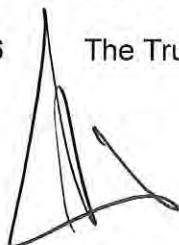
THIS DEED IS MADE THIS 20th DAY OF December 1995

BETWEEN HER MAJESTY THE QUEEN ("the Crown") acting by the Minister in Charge of Treaty of Waitangi Negotiations.

AND THE WAIMAKUKU WHANAU TRUST BOARD INCORPORATED (THE TRUST) On Behalf Of All Beneficiaries Thereof

RECITALS

- 1 In 1990 the Trust filed a claim (Wai 147) with the Waitangi Tribunal claiming that the Crown had unjustly overturned its title to Tarawera 5A (the land described in the schedule) in 1929. The Trust sought compensation for loss of title, loss of farm improvements and development, loss of native timber resources, land requisitions under the Public Work Act 1928, general losses, and stress and legal costs.
- 2 While the title was eventually fully restored to the Trust in 1970, no compensation was paid for the loss of land or improvements, or for the costs of pursuing the grievance.
- 3 The Crown acknowledges, and expresses regret, that it breached the principles of the Treaty of Waitangi in allowing the overturning of the Trust's title to Tarawera 5A in 1929 and that this breach caused the Trust losses.
- 4 The claimants have been in discussion with the Crown since September 1992 when they requested direct negotiation of their claim.
- 5 On 15 May 1995 Cabinet agreed to place the Wai 147 claim on the Negotiations Work Programme and authorised the Minister in Charge of Treaty of Waitangi Negotiations to negotiate a settlement with the Trust.
- 6 The Trust also has an interest in Wai 491, a claim to Tataraka Block (No 2).



Housing Corporation Mortgage

- 7 In 1992 the Trust purchased (pursuant to the offer back provisions of the Public Works Act 1981) a former Works Department depot on the Napier-Taupo road, and took out a loan from the Iwi Transition Agency. The Housing Corporation of New Zealand (HCNZ) took over the loan in 1993.
- 8 Because of arrears in mortgage repayments incurred by the Trust HCNZ wishes to call up the mortgage and to have this amount deducted from the settlement.
- 9 The Trust has advised the Crown's negotiators that there is a dispute regarding the quantum to be paid to HCNZ.
- 10 The Trust has stated that a condition of settlement is that the settlement of their claim is kept separate from their dispute with HCNZ and the Crown agrees to this condition.

Agreements Reached

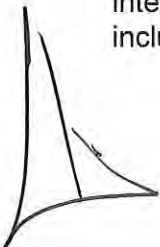
- 11 As a result of negotiations an agreement was reached by the parties on the following three points:
 - i the Crown will offer an apology and make an ex gratia payment in compensation for the breach of the principles of the Treaty of Waitangi;
 - ii the settlement will be separate from any issues relating to a HCNZ loan to the Trust, and no deductions from the ex gratia sum will be made;
 - iii if any GST, income tax or gift duty liabilities should arise in respect of the receipt of the \$375,000 by the Trust, being payment of capital, the Crown will meet these liabilities.

Representation

- 12 The Trust confirms that it is the legitimate representative of the descendants of Thomas Baker (whose three children, Robert, Mary and William Baker inherited interests in the land from their step mother, Rihi Nene) and that it has the mandate from those people it represents to agree to this settlement on their behalf and enters into this Deed with their full authority, knowledge and blessing.

OPERATIVE PART

- 1 This Deed constitutes the entire agreement between the parties and will form the full and final settlement between the Crown and the Trust of all the Trust's Treaty of Waitangi claims, however arising, including settlement of Wai 147 and of the Trust's interests in Wai 491. The claimants agree that this settles all aspects of their claims including costs, legal or otherwise.



- 2 Notwithstanding that the Trust maintains that its actual losses may exceed the quantum of their settlement, the Crown and the Trust acknowledge that the settlement is fair, final and durable in the circumstances.
- 3 The Crown formally apologises for allowing the overturning of the Trust's freehold title to Tarawera 5A in 1929.
- 4 The Crown will make an ex gratia payment of \$375,000 to the Trust to be held and applied by the Trust for the benefit of all of the descendants of Thomas Baker such sum being inclusive of \$25,000 which the Crown has already advanced to the Trust. This ex gratia payment does not and is not intended to constitute admission of any legal liability but is a payment in acknowledgement of the breach of the principles of the Treaty.
- 5 Payment of the \$350,000 balance to the Trust will be upon the execution of this Deed.
- 6 This Deed is intended to create legal relations between the parties and will become operative upon the date of execution.
- 7 In the unlikely event of any GST, income tax or gift duty liabilities arising in respect of the receipt of the \$375,000 by the Trust, being a payment of capital, the Crown will meet those liabilities.
- 8 Issues relating to the Trust's HCNZ loan are not part of this settlement and no deductions to HCNZ will be made.
- 9 The Crown may publicise this settlement, but before doing so the Crown will consult with the Trust's negotiators.
- 10 Within two months of the signing of this agreement representatives of the Trust and counsel for the Crown will file with the Waitangi Tribunal a joint memorandum informing the Tribunal that settlement has been reached in Wai 147 and of the Trust's interests in Wai 491 and will also file with the memorandum a copy of the signed agreement as evidence of the settlement.

A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a horizontal stroke extending to the right.

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SIGNED BY:

Signed by Honourable Douglas Arthur Montrose Graham
Minister in Charge of Treaty of Waitangi Negotiations

)
)
) *D. A. M. Graham*

in the presence of:

)
) *B R Clark*

(Witness)

Name *B R CLARK*
Address *WELLINGTON*
Occupation *PUBLIC SERVANT*

The Common Seal of the Waimakuku Whanau Trust Board Incorporated was hereto affixed pursuant to a resolution of the Trustees of the Waimakuku Whanau Trust Board Incorporated by Susan Henrietta Baker and Albert Thomas Charles Baker.



as claimants acting on behalf of themselves
and the other trustees of the Waimakuku
Whanau Trust Incorporated in the presence of:

)
)
) *S H Baker Trustee.*
Albert Baker trustee

Name
Address
Occupation

D. P. E.
Hastings
Solicitor

(Witness)