

NGAATI WHANAUNGA

and

**THE TRUSTEES OF THE NGAATI WHANAUNGA
RUUNANGA TRUST**

and

THE CROWN

**DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to
NGAATI WHANAUNGA HISTORICAL CLAIMS**

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

NGAATI WHANAUNGA

and

THE TRUSTEES OF THE NGAATI WHANAUNGA RUUNANGA TRUST

and

THE CROWN

1 BACKGROUND

- 1.1 Ngaati Whanaunga gave Ngati Whanaunga Incorporated and the mandated negotiators a mandate to negotiate a comprehensive settlement of historical Treaty claims of Ngaati Whanaunga with the Crown by four hui-a-iwi in Auckland, Hamilton, Thames and Coromandel held between 27 and 29 March 2011.
- 1.2 The Crown recognised the mandate on 29 June 2011.
- 1.3 The mandated negotiators and the Crown:
 - 1.3.1 entered into an agreement in principle dated 22 July 2011; and
 - 1.3.2 since the agreement in principle, have:
 - (a) had extensive negotiations conducted in good faith; and
 - (b) negotiated and initialled a deed of settlement on 25 August 2017.
- 1.4 The parties acknowledge and agree:
 - 1.4.1 Ngaati Whanaunga established the Ngaati Whanaunga Ruunanga Trust by deed dated 16 May 2019;
 - 1.4.2 the trustees of the Ngaati Whanaunga Ruunanga Trust will be the governance entity for the Ngaati Whanaunga settlement; and
 - 1.4.3 the Crown will provide the governance entity with:
 - (a) the cash on-account payment; and
 - (b) the Te Kouma on-account payment,on account of the settlement of the Ngaati Whanaunga historical claims according to the terms and conditions of this deed.

2 ON-ACCOUNT ARRANGEMENTS

ON-ACCOUNT PAYMENTS

- 2.1 Within ten business days of the date of this deed, the Crown will pay to the governance entity:
- 2.1.1 the amount of \$2,260,000, being the **Te Kouma on-account payment**; and
 - 2.1.2 the amount of \$500,000, being the **cash on-account payment**,
(together, the **on-account payments**).
- 2.2 The governance entity acknowledges and agrees that:
- 2.2.1 the on-account payments form part of the financial and commercial redress to be provided by the Crown in the settlement of Ngaati Whanaunga historical claims;
 - 2.2.2 the on-account payments will be deducted from the financial and commercial redress amount offered by the Crown in the Ngaati Whanaunga settlement;
 - 2.2.3 the on-account payments are made with the intention that:
 - (a) the cash on-account payment is to be used for commercial investment opportunities and the development of cultural initiatives; and
 - (b) the Te Kouma on-account payment is to be used to purchase the property known as Te Kouma station from Ngati Whanaunga Incorporated; and
 - 2.2.4 any interest payable by the Crown to the governance entity on the on-account payments will only be payable for the period:
 - (a) beginning on 17 May 2013, being the date:
 - (i) the Iwi of Hauraki and the Crown agreed on the amount to be paid to the Iwi of Hauraki collectively for settlement of claims in the Pare Hauraki redress area (as defined in the Pare Hauraki Collective Redress Deed); and
 - (ii) the Marutūāhu Iwi and the Crown agreed on the amount to be paid to the Marutūāhu Iwi collectively for settlement of their claims in Tāmaki Makaurau and Mahurangi; and
 - (b) ending on the day before the payment date.
- 2.3 This deed:
- 2.3.1 records on-account arrangements in relation to the Ngaati Whanaunga historical claims;
 - 2.3.2 subject to clause 2.2, does not settle or otherwise affect those claims; but

- 2.3.3 may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to the governance entity on-account of the settlement of Ngaati Whanaunga historical claims.

SETTLEMENT

- 2.4 Except as provided in this deed, the parties' rights and obligations remain unaffected.

3 MISCELLANEOUS

AMENDMENT

- 3.1 This deed may be amended only by a written amendment signed by the parties.

ENTIRE AGREEMENT

- 3.2 This deed:
- 3.2.1 constitutes the entire agreement in relation to the matters in it; and
 - 3.2.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

NO WAIVER OR ASSIGNMENT

- 3.3 Except as provided in this deed:
- 3.3.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and
 - 3.3.2 a single, or partial, exercise of a right or power under this deed, does not preclude:
 - (a) a further exercise of that right or power; or
 - (b) the exercise of another right or power; and
 - 3.3.3 a person may not transfer or assign a right or obligation under this deed.

4 TAX

INDEMNITY

- 4.1 The provision of the on-account payments, or an indemnity payment, to the governance entity is not intended to be:
 - 4.1.1 a taxable supply for GST purposes; or
 - 4.1.2 assessable income for income tax purposes.
- 4.2 The Crown must, therefore, indemnify the governance entity for:
 - 4.2.1 any GST payable by the governance entity in respect of the provision of the on-account payments or an indemnity payment; and
 - 4.2.2 any income tax payable by the governance entity as a result of the on-account payments, or an indemnity payment, being treated as assessable income of the governance entity; and
 - 4.2.3 any reasonable cost or liability incurred by the governance entity in taking, at the Crown's direction, action:
 - (a) relating to an indemnity demand; or
 - (b) under clause 4.13 or clause 4.14.1(b).

LIMITS

- 4.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):
 - 4.3.1 the governance entity's:
 - (a) use of the on-account payments or an indemnity payment;
 - (b) payment of costs, or any other amounts, in relation to the on-account payments; or
 - (c) receipt of any income from the on-account payments or an indemnity payment.

ACKNOWLEDGEMENTS

- 4.4 To avoid doubt, the parties acknowledge:
 - 4.4.1 the on-account payments are provided:
 - (a) on-account of the future settlement redress of Ngaati Whanaunga historical claims in relation to the Treaty of Waitangi; and

- (b) with no other consideration being provided;
- 4.4.2 nothing in this part is intended to imply that the provision of the on-account payments, or an indemnity payment, is:
 - (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes; and
- 4.4.3 the governance entity is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

CONSISTENT ACTIONS

- 4.5 None of the governance entity, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.
- 4.6 In particular, the governance entity agrees that:
 - 4.6.1 from the payment date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and
 - 4.6.2 neither it, nor any person associated with it, will claim with respect to the provision of the on-account payments, or an indemnity payment:
 - (a) an input credit for GST purposes; or
 - (b) a deduction for income tax purposes.

INDEMNITY DEMANDS

- 4.7 The governance entity and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the governance entity may be entitled to an indemnity payment.
- 4.8 An indemnity demand:
 - 4.8.1 may be made at any time after the payment date; but
 - 4.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:
 - (a) specified in an assessment; or
 - (b) a date for the payment of provisional tax; or
 - (c) otherwise determined; and
 - 4.8.3 must be accompanied by:
 - (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and

- (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

INDEMNITY PAYMENTS

- 4.9 If the governance entity is entitled to an indemnity payment, the Crown may make the payment to:
 - 4.9.1 the governance entity; or
 - 4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the governance entity.
- 4.10 The governance entity must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of:
 - 4.10.1 the due date for payment of the tax; or
 - 4.10.2 the next business day after receiving the indemnity payment.

REPAYMENT

- 4.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the governance entity must promptly repay to the Crown any amount that:
 - 4.11.1 the Commissioner of Inland Revenue refunds or credits to the governance entity; or
 - 4.11.2 the governance entity has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.
- 4.12 The governance entity has no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

RULINGS

- 4.13 The governance entity must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of the on-account payments.

CONTROL OF DISPUTES

- 4.14 If the governance entity is entitled to an indemnity payment, the Crown may:
 - 4.14.1 by notice to the governance entity, require it to:
 - (a) exercise a right to defer the payment of tax; and/or
 - (b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:
 - (i) a tax assessment; and/or
 - (ii) a notice in relation to the tax, including a notice of proposed adjustment; or

- 4.14.2 nominate and instruct counsel on behalf of the governance entity whenever it exercises its rights under clause 4.14.1; and
- 4.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

5 DEFINITIONS AND INTERPRETATION

DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

agreement in principle means the agreement in principle equivalent dated 22 July 2011 entered into by the mandated negotiators and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Ngaati Whanaunga historical claims;

assessable income has the meaning given to it by section YA 1 of the Income Tax Act 2007;

business day means a day that is not:

- (a) a Saturday or a Sunday; or
- (b) Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, or Waitangi 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;

cash on-account payment means the amount referred to in clause 2.1.2;

Commissioner of Inland Revenue includes, where applicable, the Inland Revenue Department;

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

date of this deed means the date this deed is signed by the parties;

deed means this deed recording on-account arrangements between Ngaati Whanaunga, the governance entity and the Crown, and that deed as amended from time to time;

financial and commercial redress means the financial and commercial redress provided by or under:

- (a) the relevant clauses of a deed of settlement for the settlement of Ngaati Whanaunga historical claims; or

- (b) the settlement legislation giving effect to any of those clauses;

financial and commercial redress amount means the financial and commercial redress amount payable by the Crown pursuant to a deed of settlement for the settlement of Ngaati Whanaunga historical claims;

governance entity means the trustees for the time being of the Ngaati Whanaunga Ruunanga Trust, in their capacity as trustees of the trust;

GST means:

- (a) goods and services tax chargeable under the Goods and Services Tax Act 1985; and
- (b) includes, for the purposes of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of GST;

income tax means income tax imposed under the Income Tax Act 2007 and includes, for the purpose of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of income tax;

indemnity demand means a demand made by the governance entity to the Crown under part 4 for an indemnity payment;

indemnity payment means a payment made by the Crown to the governance entity under part 4;

mandated negotiators means Tipa Shane Compain and Nathan Charles Kennedy;

mandated signatories means the mandated negotiators and representatives of Ngati Whanaunga Incorporated;

Ngaati Whanaunga deed of settlement means the Ngaati Whanaunga deed of settlement of historical claims to be signed between the Crown, Ngaati Whanaunga, the governance entity;

Ngaati Whanaunga historical claims means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date (as defined in the Ngaati Whanaunga deed of settlement) that Ngaati Whanaunga, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after that date, and that:

- (a) is, or is founded on, a right arising:
 - (i) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law, including aboriginal title or customary law; or
 - (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 otherwise as is defined in the Ngaati Whanaunga deed of settlement;

Ngaati Whanaunga settlement means the settlement of Ngaati Whanaunga historical claims as agreed between the Crown and Ngaati Whanaunga;

Ngaati Whanaunga Ruunanga Trust means:

(a) the trust known by that name, established by a trust deed dated 16 May 2019; and

(b) includes the trustees from time to time of that trust; and

Ngaati Whanaunga Incorporated means the incorporated society known by that name and incorporated on 20 March 1992;

notice has the meaning given to that term in the Ngaati Whanaunga deed of settlement;

on-account payments means the cash on-account payment and the Te Kouma on-account payment;

payment date means the date the on-account payments are paid to the governance entity in accordance with clause 2.1;

provision, in relation to the on-account payments, includes its allotting, payment, credit, transfer, vesting, making available, creation, or grant;

representative entity has the meaning given to that term in the Ngaati Whanaunga deed of settlement;

tax includes income tax and GST;

tax indemnity means an indemnity given by the Crown under part 4;

taxable activity has the meaning given to it by section 6 of the Goods and Services Tax Act 1985;

taxable supply has the meaning given to it by section 2 of the Goods and Services Tax Act 1985;

Te Kouma on-account payment means the amount referred to in clause 2.1.1; and

use, in relation to the on-account payments or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

INTERPRETATION


5.2 In the interpretation of this deed, unless the context otherwise requires:

5.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;

- 5.2.2 defined terms have the meanings given to them by this deed,
but if there are any inconsistencies between the definitions in this deed and the Ngaati Whanaunga deed of settlement, the definitions in the Ngaati Whanaunga deed of settlement shall prevail;
- 5.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- 5.2.4 the singular includes the plural and vice versa;
- 5.2.5 a word importing one gender includes the other genders;
- 5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;
- 5.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;
- 5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally;
- 5.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;
- 5.2.10 a reference to a monetary amount is to New Zealand currency;
- 5.2.11 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;
- 5.2.12 a reference to a part or a clause is a reference to a part or a clause in this deed;
- 5.2.13 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
- 5.2.14 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives, any legislation;
- 5.2.15 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the governance entity and the Crown;
- 5.2.16 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and
- 5.2.17 a reference to time is to New Zealand time.

SIGNED as a deed on 17/09/2020

SIGNED for and on behalf of
NGAATI WHANAUNGA by the mandated
signatories in the presence of:



Tipa Shane Compain



Nathan Charles Kennedy



MICHAEL BAKER



Pongorauhine Rerata



Signature of Witness

Witness Name: RALPH TATTERSALL

Occupation: Public servant

Address: Te Arawhiti, Wellington

17/09/2020

SIGNED by the TRUSTEES OF
NGAATI WHANAUNGA RUUNANGA
TRUST

in the presence of:

Neke Royal
Irene Kereama-Royal

Robert Tereha Weston
Robert Tereha Weston

Pongorua Renda
Pongorua Renda

R. Tattersall
Signature of Witness

Witness Name: RALPH TATTERSALL

Occupation: Public servant

Address: Te Arawhiti, Wellington

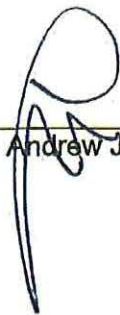
17/09/2020

DEED OF ON-ACCOUNT SETTLEMENT


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

by:

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



Andrew James Little




Signature of Witness

Witness Name: Anna Galvin

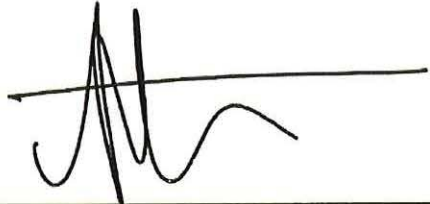
Occupation: Public servant

Address: Wellington

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



Grant Murray Robertson



Signature of Witness

Witness Name: Angus Hodgson

Occupation: Finance and State Owned Enterprises Advisor

Address: Wellington