

**THE TRUSTEES OF THE NGĀI TAI KI TĀMAKI TRUST**

**NGAI TAI KI TAMAKI TRIBAL TRUST**

and

**THE CROWN**

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**DEED RECORDING ON-ACCOUNT ARRANGEMENTS**

in relation to

**NGĀI TAI KI TĀMAKI HISTORICAL CLAIMS**

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## **DEED RECORDING ON-ACCOUNT ARRANGEMENTS**

**THIS DEED** is made between

**The trustees of the NGĀI TAI KI TĀMAKI TRUST**

**The NGAI TAI KI TAMAKI TRIBAL TRUST**

and

**THE CROWN**

## 1 BACKGROUND

- 1.1 Ngāi Tai ki Tāmaki gave the Ngai Tai ki Tamaki Tribal Trust a mandate to negotiate a deed of settlement with the Crown by resolution at hui held on 1 November 2009.
- 1.2 The Crown recognised the mandate on 26 February 2010 and Ngāi Tai ki Tāmaki, the Ngai Tai ki Tamaki Tribal Trust and the Crown have entered into an agreement in principle.
- 1.3 Ngāi Tai ki Tāmaki and the Crown are now in negotiations to settle the Ngāi Tai ki Tāmaki historical claims.
- 1.4 The parties acknowledge and agree:
  - 1.4.1 Ngāi Tai ki Tāmaki established the Ngāi Tai ki Tāmaki Trust by deed dated 2 May 2013;
  - 1.4.2 The trustees of the Ngāi Tai ki Tāmaki Trust will be the post settlement governance entity to receive and manage all redress under the Ngāi Tai ki Tāmaki settlement; and
  - 1.4.3 the Crown will provide the trustees of the Ngāi Tai ki Tāmaki Trust with a payment on-account of the settlement of the Ngāi Tai ki Tāmaki historical claims according to the terms and conditions of this deed.

## 2 ON-ACCOUNT ARRANGEMENTS

### ON-ACCOUNT PAYMENT

- 2.1 Within ten business days of the date of this deed, the Crown will pay to the trustees of the Ngāi Tai ki Tāmaki Trust \$500,000 (plus GST if any), being the **on-account payment**.
- 2.2 The trustees of the Ngāi Tai ki Tāmaki Trust acknowledge and agree that:
- 2.2.1 the on-account payment forms part of the financial and commercial redress to be provided by the Crown in the settlement of Ngāi Tai ki Tāmaki historical claims;
  - 2.2.2 the on-account payment will be deducted from the financial and commercial redress amount offered by the Crown in the Ngāi Tai ki Tāmaki settlement;
  - 2.2.3 the on-account payment is made with the intention it be applied towards the purchase of:
    - (a) properties offered under the Tāmaki Collective right of first refusal; or
    - (b) Office of Treaty Settlement landbank properties available for purchase prior to the commencement of the right of first refusal (subject to resolution of overlapping claims).
  - 2.2.4 any interest payable by the Crown to the trustees of the Ngāi Tai ki Tāmaki Trust on the on-account payment will only be payable for the period:
    - (a) beginning on the date of the agreement in principle; 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 Ngāi Tai ki Tāmaki 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 trustees of the Ngāi Tai ki Tāmaki Trust on-account of the settlement of Ngāi Tai ki Tāmaki 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 payment, or an indemnity payment, to the trustees of the Ngāi Tai ki Tāmaki Trust 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 trustees of the Ngāi Tai ki Tāmaki Trust for:
- 4.2.1 any GST payable by the trustees of the Ngāi Tai ki Tāmaki Trust in respect of the provision of the on-account payment or an indemnity payment;
  - 4.2.2 any income tax payable by the trustees of the Ngāi Tai ki Tāmaki Trust as a result of the on-account payment, or an indemnity payment, being treated as assessable income of the trustees of the Ngāi Tai ki Tāmaki Trust; and
  - 4.2.3 any reasonable cost or liability incurred by the trustees of the Ngāi Tai ki Tāmaki Trust 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 trustees of the Ngāi Tai ki Tāmaki Trust's:
- (a) use of the on-account payment or an indemnity payment;
  - (b) payment of costs, or any other amounts, in relation to the on-account payment; or
  - (c) receipt of any income from the on-account payment or an indemnity payment.

### ACKNOWLEDGEMENTS

- 4.4 To avoid doubt, the parties acknowledge:
- 4.4.1 the on-account payment is provided:
- (a) on-account of the future settlement redress of Ngāi Tai ki Tāmaki 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 payment, 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 trustees of the Ngāi Tai ki Tāmaki Trust 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 Neither the trustees of the Ngāi Tai ki Tāmaki Trust, 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 trustees of the Ngāi Tai ki Tāmaki Trust agree 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 payment, or an indemnity payment:

(a) an input credit for GST purposes; or

(b) a deduction for income tax purposes.

### **INDEMNITY DEMANDS**

4.7 the trustees of the Ngāi Tai ki Tāmaki Trust and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the trustees of the Ngāi Tai ki Tāmaki Trust 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 trustees of the Ngāi Tai ki Tāmaki Trust are entitled to an indemnity payment, the Crown may make the payment to:
  - 4.9.1 the trustees of the Ngāi Tai ki Tāmaki Trust; or
  - 4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the trustees of the Ngāi Tai ki Tāmaki Trust.
- 4.10 The trustees of the Ngāi Tai ki Tāmaki Trust 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 trustees of the Ngāi Tai ki Tāmaki Trust must promptly repay to the Crown any amount that:
  - 4.11.1 the Commissioner of Inland Revenue refunds or credits to the trustees of the Ngāi Tai ki Tāmaki Trust; or
  - 4.11.2 the trustees of the Ngāi Tai ki Tāmaki Trust have received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.
- 4.12 The trustees of the Ngāi Tai ki Tāmaki Trust have no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

### **RULINGS**

- 4.13 The trustees of the Ngāi Tai ki Tāmaki Trust 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 payment.

### **CONTROL OF DISPUTES**

- 4.14 If the trustees of the Ngāi Tai ki Tāmaki Trust are entitled to an indemnity payment, the Crown may:
  - 4.14.1 by notice to the trustees of the Ngāi Tai ki Tāmaki Trust, 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 trustees of the Ngāi Tai ki Tāmaki Trust 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 entered into and dated 5 November 2011 by Ngāi Tai ki Tāmaki, the Ngai Tai ki Tamaki Tribal Trust and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Ngāi Tai ki Tāmaki historical claims;

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

**business day** means the period of 9am to 5pm on any day other than:

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

**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 the trustees of the Ngāi Tai ki Tāmaki Trust, the Ngai Tai ki Tamaki Tribal Trust on behalf of Ngāi Tai ki Tāmaki and the Crown, and that deed as amended from time to time;

**financial and commercial redress** means the financial and commercial redress payable by the Crown pursuant to a deed of settlement for the settlement of Ngāi Tai ki Tāmaki historical claims;

**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 trustees of the Ngāi Tai ki Tāmaki Trust under part 4 for an indemnity payment;

**indemnity payment** means a payment made by the Crown to the trustees of the Ngāi Tai ki Tāmaki Trust under part 4;

**Ngāi Tai ki Tāmaki deed of settlement** means the Ngāi Tai ki Tāmaki deed of settlement of historical claims to be signed between the Crown, Ngāi Tai ki Tāmaki and the trustees of the Ngāi Tai ki Tāmaki Trust;

**Ngāi Tai ki Tāmaki 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 Ngāi Tai ki Tāmaki deed of settlement to be entered into between the Crown and Ngāi Tai ki Tāmaki) that Ngāi Tai ki Tāmaki had at, or at any time before, that 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;
  - (ii) under legislation;
  - (iii) at common law (including in relation to aboriginal title or customary law);
  - (iv) from a fiduciary duty or 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;

**Ngāi Tai ki Tāmaki settlement** means the settlement of the Ngāi Tai ki Tāmaki historical claims as agreed between the Crown and Ngāi Tai ki Tāmaki;

**Ngāi Tai ki Tamaki Tribal Trust** means the mandated entity representing the people of Ngāi Tai ki Tāmaki in negotiations with the Crown for the settlement of historical claims between the Crown and Ngāi Tai ki Tāmaki;

**on-account payment** means the sum referred to in clause 2.1;

**payment date** means the date the on-account payment is paid to the trustees of the Ngāi Tai ki Tāmaki Trust in accordance with clause 2.1;

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

**Ngāi Tai ki Tāmaki Trust** means the trust of that name established by the Ngāi Tai ki Tāmaki Trust deed acting by and through the trustees of that trust;

**Ngāi Tai ki Tāmaki Trust deed** means the deed of trust establishing the Ngāi Tai ki Tāmaki Trust dated 2 May 2013 and includes the schedules and any amendments to that deed;

**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; and

**use**, in relation to the on-account payment 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 Ngāi Tai ki Tāmaki deed of settlement, the definitions in the Ngāi Tai ki Tāmaki 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 person includes a corporation sole and a body of persons, whether corporate or unincorporate;

5.2.13 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;

- 5.2.14 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 working party and the Crown;
- 5.2.15 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
- 5.2.16 a reference to time is to New Zealand time.

SIGNED as a deed on

SIGNED by the trustees of  
NGĀI TAI KI TĀMAKI TRUST  
in the presence of:

19<sup>th</sup> December 2013

*JM Wilson*

*[Signature]*

Signature of Witness

Witness Name:

TRACEY MARSA WILSON

*C. Steel*

Occupation:

CENTRE ASSOCIATE

Address:

86 HUGHBROOK DRIVE  
EAST TAMAKI

SIGNED by the NGAI TAI KI TAMAKI  
TRIBAL TRUST by the negotiators

*[Signature]*

James Brown

in the presence of:

*JM Wilson*

*[Signature]*

Laurie Beamish

Signature of Witness

Witness Name:

TRACEY MARSA WILSON

*C. Steel*

Occupation:

CENTRE ASSOCIATE

Lucy Steel

Address:

86 HUGHBROOK DRIVE  
EAST TAMAKI

SIGNED for and on behalf of THE CROWN  
by the Minister for Treaty of Waitangi  
Negotiations in the presence of:

Hon Christopher Finlayson

Signature of Witness

Witness Name:

Occupation:

Address:

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

SIGNED as a deed on

SIGNED by the trustees of  
NGĀI TAI KI TĀMAKI TRUST  
in the presence of:

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

Witness Name:

Occupation:

Address:

SIGNED by the NGAI TAI KI TAMAKI  
TRIBAL TRUST by the negotiators

\_\_\_\_\_  
James Brown

in the presence of:

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

\_\_\_\_\_  
Laurie Beamish

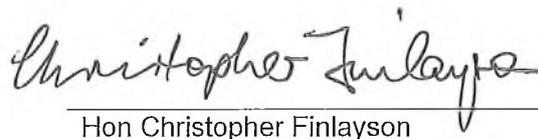
Witness Name:

Occupation:

\_\_\_\_\_  
Lucy Steel

Address:

SIGNED for and on behalf of THE CROWN  
by the Minister for Treaty of Waitangi  
Negotiations in the presence of:

  
\_\_\_\_\_  
Hon Christopher Finlayson

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

Witness Name: BERNADETTE CONSIDINE

Occupation: PRIVATE SECRETARY

Address: WELLINGTON