

THE TRUSTEES OF TE KOROWAI O NGARUAHINE TRUST

and

THE CROWN

**DEED TO AMEND
NGARUAHINE
DEED OF SETTLEMENT**

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DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

THIS DEED is made

BETWEEN

THE TRUSTEES OF TE KOROWAI O NGARUAHINE TRUST

AND

THE CROWN

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1. BACKGROUND

- A. Ngaruahine, the trustees of Te Korowai o Ngaruahine Trust and the Crown are parties to a Deed of Settlement executed 9 August 2014 (the "**Deed of Settlement**");
- B. The parties wish to enter this deed to formally record certain amendments to the Deed of Settlement, in accordance with clause 5.1 of the General Matters Schedule to the Deed of Settlement.

IT IS AGREED as follows:

EFFECTIVE DATE OF THIS DEED

- 1.1 This deed takes effect when it is properly executed by the parties.

AMENDMENTS TO THE DEED OF SETTLEMENT

- 1.2 The Deed of Settlement:
 - 1.2.1 is amended by making the amendments set out in Schedules 1 to 3 to this deed; but
 - 1.2.2 remains unchanged except to the extent provided by this deed.

DEFINITIONS AND INTERPRETATION

- 1.3 Unless the context otherwise requires:
 - 1.3.1 terms or expressions defined in the Deed of Settlement have the same meanings in this deed; and
 - 1.3.2 the rules of interpretation in the Deed of Settlement apply (with all appropriate changes) to this deed.

COUNTERPARTS

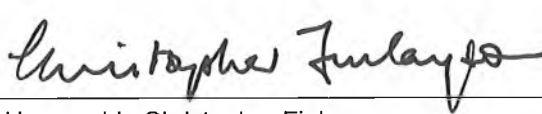
- 1.4 This deed may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that the parties are not signatories to the original or same counterpart.

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DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SIGNED as a deed on the 6 day of NOVEMBER 2014

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

)
)
) 
Honourable Christopher Finlayson


Signature of Witness

PATRICK SOUTHEY

Witness Name

PRIVATE SECRETARY (TREATY)

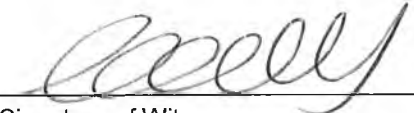
Occupation

3/35 EDWARD ST, WELLINGTON

Address

SIGNED by the trustees of the
TE KOROWAI O NGARUAHINE TRUST
in the presence of:

)
)
) 
Peter Moeahu, Chairperson


Signature of Witness

P. CASSANURA
T. P. Cassanura
Witness Name

Witness Name


GENERAL MANAGER

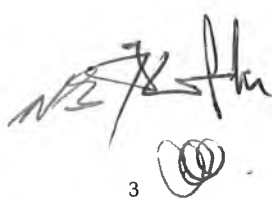
Occupation

4 HEPARA ST, WELLINGTON

Address


Trustee


Trustee



SCHEDULE 1

AMENDMENTS TO THE DEED OF SETTLEMENT
(Deed of Settlement, General Matters Schedule and Documents Schedule)

Deed of Settlement

Current reference	Amendment
Cover page	Replace "1 August 2014" with "9 August 2014".
Execution clause, page 85	Replace "1 August 2014" with "9 August 2014".
Part 5, clause 5.8.2(b)	Replace all of clause 5.8.2(b) with the following: "Te Ngutu o te Manu site A (as shown on deed plan OTS-023-04), subject to the trustees of Te Korowai o Ngaruahine Trust providing a registrable easement in gross in favour of the Minister for Arts, Culture and Heritage in relation to that site in the form set out in part 7.2 of the documents schedule."
Part 5, clause 5.17	Replace "settlement date" with "payment date".
Part 6, clause 6.1	Replace "settlement date" with "payment date".

General Matters Schedule

Current reference	Amendment
Part 2, paragraph 2.1	Replace "settlement date" with "payment date".
Part 2, paragraph 2.3.2	Replace "settlement date" with "payment date".
Part 3, paragraph 3.6.1	Replace "settlement date" with "payment date".
Part 3, paragraph 3.8.1	Replace "settlement date" with payment date".

4

 N/B.

DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 1:
AMENDMENTS TO THE DEED OF SETTLEMENT

Current reference	Amendment
Part 6, paragraph 6.1	After the definition of " deed plan ", insert a new definition of "deed to amend" as follows: " deed to amend means the deed to amend the Ngaruahine deed of settlement entered into between the trustees of Te Korowai o Ngaruahine Trust and the Crown in or around November 2014; and".
Part 6, paragraph 6.1	Amend the definition of " eligible member of Ngaruahine " by replacing "1 August 2014" with "18 July 2014".
Part 6, paragraph 6.1	After the definition of " party ", insert a new definition of "payment date" as follows: " payment date means the date that is 10 business days after the deed to amend is properly executed by the trustees of Te Korowai o Ngaruahine Trust and the Crown; and".

Documents Schedule

Current reference	Amendment
Part 1.4, paragraph 3.5	Replace "Hawaiki-nui Tawhiti-nui, Hawaiki-rua Tawhiti-rua, Hawaiki-pamamao Tawhiti-pamamao" with "Tawhitinui Tawhitiroa Tawhitipamamao, Hawaikinui Hawaikiroa, Hawaikipamamao."
Part 1.4, paragraph 3.6	Replace "Hawaiki-nui Tawhiti-nui, Hawaiki-roa Tawhiti-roa, Hawaiki-pamamao Tawhiti-pamamao" with "Tawhitinui Tawhitiroa Tawhitipamamao, Hawaikinui Hawaikiroa, Hawaikipamamao."
Part 2, Okahu-Inuawai	Replace "Tawhiti-nui, Hawaiki-nui, Tawhiti-roa, Hawaiki-roa, Tawhiti-pamamao, Hawaiki-pamamao" with "Tawhitinui Tawhitiroa Tawhitipamamao, Hawaikinui Hawaikiroa, Hawaikipamamao."
Part 2, Ngāti Haua	Replace "Tawhiti-nui, Hawaiki-nui, Tawhiti-roa, Hawaiki-roa, Tawhiti-pamamao, Hawaiki-pamamao" with "Tawhitinui Tawhitiroa Tawhitipamamao, Hawaikinui Hawaikiroa, Hawaikipamamao."
Part 4.1, paragraph 1.2	Replace the beginning of paragraph 1.2 with the following: "Under the Deed of Settlement dated 9 August 2014 between Ngaruahine, the trustees of the Te Korowai o Ngaruahine Trust (the " Governance Entity ") and the Crown (the " Deed of Settlement "), the Crown agreed that the Minister would issue a Fisheries Protocol (the " Protocol ") setting out how the Ministry will interact with the Governance Entity in relation to matters specified in the Protocol. These matters are:".
Part 4.2	Replace the Taonga Tuturu Protocol with a new Taonga Tuturu Protocol as set out in Schedule 2 of this deed.
Part 4.3,	Replace "1 August 2014 between the trustees of Te Korowai o Ngaruahine

5
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DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 1:
AMENDMENTS TO THE DEED OF SETTLEMENT

paragraph 1.1	Trust (the " Governance Entity ") and the Crown (the " Deed of Settlement ")" with: "9 August 2014 between Ngaruahine, the trustees of Te Korowai o Ngaruahine (the " Governance Entity ") and the Crown (the " Deed of Settlement ")".
Part 5.2, paragraph 1.1	Replace the definition of " Deed of Settlement " with the following: " Deed of Settlement ' means the Deed of Settlement dated 9 August 2014 between Ngaruahine, the Trustees of Te Korowai o Ngaruahine Trust and the Crown;".
Part 7.2	Replace "Form of easement to be confirmed" with the easement set out in Schedule 3 of this deed.

6
J. P. P.
NB

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

SCHEDULE 2
TAONGA TUTURU PROTOCOL

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS,
CULTURE AND HERITAGE REGARDING INTERACTION WITH NGARUAHINE ON
SPECIFIED ISSUES

1. INTRODUCTION

- 1.1 Under the Deed of Settlement dated 9 August 2014 between Ngaruahine, the trustees of Te Korowai o Ngaruahine Trust (the "**governance entity**") and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "**Minister**") would issue a protocol (the "**Protocol**") setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the "**Chief Executive**") will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Relationship Principles - Part 2;
 - 1.1.2 Protocol Area - Part 3;
 - 1.1.3 Terms of issue - Part 4;
 - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 - Part 5;
 - 1.1.5 The role of the Minister under the Protected Objects Act 1975 - Part 6;
 - 1.1.6 Implementation and Communication - Part 7;
 - 1.1.7 Registration as a collector of Nga Taonga Tuturu - Part 8;
 - 1.1.8 Access and Repatriation - Part 9;
 - 1.1.9 Provision of advice - Part 10;
 - 1.1.10 Relationships - Part 11;
 - 1.1.11 Board Appointments - Part 12;
 - 1.1.12 National Monuments, War Graves and Historical Graves - Part 13;
 - 1.1.13 History publications relating to Ngaruahine - Part 14;
 - 1.1.14 Information exchange - Part 15;
 - 1.1.15 Cultural and/or Spiritual Practices and Tendering - Part 16;
 - 1.1.16 Consultation - Part 17;
 - 1.1.17 Review and amendment - Part 18;
 - 1.1.18 Dispute resolution - Part 19;
 - 1.1.19 Changes to policy and legislation affecting this Protocol - Part 20; and
 - 1.1.20 Definitions - Part 21.

7


DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 2: TAONGA TUTURU PROTOCOL

- 1.2 For the purposes of this Protocol the governance entity is the body representative of the whanau, hapu and iwi of Ngaruahine who have an interest in the matters covered under this Protocol.
- 1.3 The Chief Executive recognises that Ngaruahine have a significant interest in relation to the preservation, protection and management of Taonga Tuturu through their tino rangatiratanga and kaitiakitanga. This derives from the status of Ngaruahine as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Chief Executive and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provides the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 1.5 The purpose of the Protected Objects Act 1975 (the "Act") is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tuturu, and by establishing and recording the ownership of Nga Taonga Tuturu found after the commencement of the Act, namely 1 April 1976.
- 1.6 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in clause 1.1, as set out in clauses 5 to 21 of this Protocol.

2. RELATIONSHIP PRINCIPLES

- 2.1 Ngaruahine, the Minister, and the Chief Executive agree to abide by the following relationship principles, when implementing this Protocol and exercising their various roles and functions under this Protocol:
 - 2.1.1 Working together to preserve, promote, protect and enhance Taonga Tuturu;
 - 2.1.2 Working in a spirit of co-operation;
 - 2.1.3 Ensuring early engagement on matters relating to this Protocol;
 - 2.1.4 Operating a 'no-surprises' approach;
 - 2.1.5 Acknowledging that the relationship is evolving, not prescribed;
 - 2.1.6 Respecting the independence of the parties and their individual mandates, roles and responsibilities within the Protocol Area;
 - 2.1.7 Acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise; and
 - 2.1.8 Acknowledging the need to safeguard traditional knowledge and cultural expressions associated with Ngaruahine Taonga Tuturu.

3. PROTOCOL AREA

- 3.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "**Protocol Area**").

8


SCHEDULE 2:
TAONGA TUTURU PROTOCOL

4. **TERMS OF ISSUE**

- 4.1 This Protocol is issued pursuant to section [] of the [settlement legislation] [year] ("the **Settlement Legislation**") that implements the Ngaruahine Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

5. **THE ROLE OF THE CHIEF EXECUTIVE UNDER THE PROTECTED OBJECTS ACT 1975**

General

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify the governance entity in writing of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand;
- 5.1.2 provide for the examination, care, recording and custody of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand;
- 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand;
- 5.1.4 notify the governance entity in writing of its right to apply directly to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tuturu; and
- 5.1.5 notify the governance entity in writing of any application to the Maori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tuturu.

Applications for Ownership

- 5.2 If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Maori Land Court for an order confirming ownership of the Taonga Tuturu.
- 5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Maori Land Court for an order confirming ownership of the Taonga Tuturu.

**SCHEDULE 2:
TAONGA TUTURU PROTOCOL**

- 5.4 If the competing claims for ownership of any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Maori Land Court for determination of ownership of the Taonga Tuturu.

Applications for Custody

- 5.5 If no ownership application is made to the Maori Land Court for any Taonga Tuturu found within the Protocol Area or identified as being of Ngaruahine origin found elsewhere in New Zealand by the governance entity or any other person, the Chief Executive will:
- 5.5.1 consult the governance entity where there is any request from any other person for the custody of the Taonga Tuturu;
 - 5.5.2 consult the governance entity before a decision is made on who may have custody of the Taonga Tuturu; and
 - 5.5.3 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tuturu.

Export Applications

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tuturu of Ngaruahine origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tuturu of Ngaruahine origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application and notify the governance entity in writing of the Chief Executive's decision.

6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga Tuturu or Nga Taonga Tuturu from New Zealand; or
 - 6.1.2 impose conditions on the approval to export any Taonga Tuturu, or Nga Taonga Tuturu, from New Zealand.
- 6.2 The Chief Executive will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tuturu where the governance entity was consulted as an Expert Examiner.

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

7. IMPLEMENTATION AND COMMUNICATION

7.1 The Chief Executive will meet with the governance entity to develop and agree a strategy to implement this Protocol as soon as practicable after this Protocol is issued. This strategy will be an operational document and may include but is not limited to:

7.1.1 outlining specific actions and milestones the Chief Executive and governance entity may carry out pursuant to the Protocol;

7.1.2 reporting processes in relation to the specific actions and milestones;

7.1.3 developing a communications protocol relating to how the Ministry and the governance entity will communicate;

7.2 The implementation strategy described in clause 7.1 of this Protocol will have effect from the date agreed by both parties and specified in the strategy.

7.3 The Chief Executive will also:

7.3.1 discuss with the governance entity any policy and legislative development which specifically affects Ngaruahine interests in the Protocol Area;

7.3.2 discuss with the governance entity any of the Ministry's operational activities, which specifically affect Ngaruahine interests in the Protocol Area;

7.3.3 meet with the governance entity to review the implementation of this Protocol at least once a year, if requested by either party;

7.3.4 as far as reasonably practicable train relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Minister and Chief Executive under it;

7.3.5 maintain information provided by the governance entity on the office holders of the governance entity, their addresses, and contact details;

7.3.6 as far as reasonably practicable, provide opportunities for the governance entity to meet with relevant Ministry managers and staff;

7.3.7 as far as reasonably practicable, inform other organisations with whom it works, central government agencies, and stakeholders about this Protocol and provide ongoing information;

7.3.8 as soon as reasonably practical notify the governance entity of any Ngaruahine Taonga Tuturu held overseas, either in private or public collections, should the Chief Executive become aware of such collections; and

7.3.9 include a copy of the Protocol on the Ministry's website.

8. REGISTRATION AS A COLLECTOR OF NGA TAONGA TUTURU

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tuturu.

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

9. **ACCESS AND REPATRIATION**

9.1 The Chief Executive will invite organisations relevant to this Protocol to establish a relationship with the governance entity for the purposes of:

9.1.1 allowing Ngaruahine to have access to their Taonga Tuturu;

9.1.2 repatriating Ngaruahine Taonga Tuturu to Ngaruahine; and

9.1.3 any other matters of importance to Ngaruahine.

10. **PROVISION OF ADVICE**

10.1 The governance entity may, from time to time, seek practical advice from the Chief Executive on Ngaruahine historical or commemorative initiatives where the Ministry may have some expertise. The Chief Executive will provide such general practical advice, not involving any financial commitment, where possible.

10.2 In addition to 9.1, the Chief Executive will make best endeavours to notify Ngaruahine of any awards and funds, to which applications can be made which are administered by the Chief Executive, and provide details of the application process and deadlines.

11. **RELATIONSHIPS**

11.1 Ngaruahine has a strategic vision for its cultural identity that includes the preservation, development and transmission of its cultural heritage, traditions and arts. The governance entity wishes to explore the mutual benefits of a relationship with:

11.1.1 Arts Council of New Zealand Toi Aotearoa (Creative New Zealand);

11.1.2 Heritage New Zealand Pouhere Taonga; and

11.1.3 Regional and international museums selected by the governance entity.

11.2 The Chief Executive will invite the above organisations to initiate discussions with the governance entity.

12. **BOARD APPOINTMENTS**

12.1 The Chief Executive shall:

12.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

12.1.2 add the governance entity's nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, to which the Minister for Arts, Culture and Heritage appoints; and

12.1.3 notify the governance entity of any ministerial appointments to Boards to which the Minister for Arts, Culture and Heritage appoints, where these are publicly notified.

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

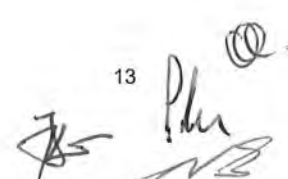
13. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

General matters

- 13.1 Subject to clauses 13.3 to 13.9 with respect to the Monument, the Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ngaruahine's interests in the Protocol Area.
- 13.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

Te Ngutu o te Manu site A

- 13.3 The Chief Executive acknowledges that Te Ngutu o te Manu site A (the "site") is of significant historical, cultural and spiritual importance to Ngaruahine and Ngaruahine's view:
- 13.3.1 that the wording on the Monument acknowledges the Crown's officers who died on August 20th, August 21st and September 7th 1868 but does not acknowledge the loss suffered by Ngaruahine or the Ngaruahine warriors who perished as a result of those engagements; and
- 13.3.2 the blood of Ngaruahine warriors, who perished in the engagements with the Crown, was spilt on the site and that the site is therefore tapu.
- 13.4 The site is to be returned to Ngaruahine to be owned by the governance entity in fee simple as a historical reserve subject to the governance entity granting to the Crown a registrable easement in gross in favour of the Minister for Arts, Culture and Heritage in relation to the site and agreeing to the form of the easement prior to the settlement date.
- 13.5 The Chief Executive acknowledges:
- 13.5.1 that Ngaruahine intends to further develop the site in order to reflect Ngaruahine's history and traditions; and
- 13.5.2 the rights and obligations under the Easement must be exercised in a manner consistent with this clause 13 of this Protocol.
- 13.6 The Chief Executive shall cooperate in good faith with Ngaruahine in relation to the rights and obligations contained in the Easement and the ongoing maintenance of the Monument given that Ngaruahine has plans for the ongoing cultural development of the site.
- 13.7 In the event that the governance entity notifies the Chief Executive of its desire to relocate the Monument, the Chief Executive shall work cooperatively with the governance entity to meet Ngaruahine's cultural and community aspirations for the site.



SCHEDULE 2:
TAONGA TUTURU PROTOCOL

- 13.8 The Chief Executive shall undertake an assessment of the condition of the Monument at least once every two years and, as a result of that assessment, carry out, in accordance with the provisions of the Easement, any works required to keep the Monument in good condition.
- 13.9 The Chief Executive shall inform the governance entity if the Ministry for Culture and Heritage is required to undertake any additional work to maintain the Monument outside of the two year maintenance cycle referred to in paragraph 13.8 and the governance entity will inform the Chief Executive if it becomes aware of deterioration of, or damage to, the monument so it can be assessed by the Ministry for Culture and Heritage.
- 14. HISTORY PUBLICATIONS RELATING TO NGARUAHINE**
- 14.1 The Chief Executive shall:
- 14.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relate substantially to Ngaruahine; and
- 14.1.2 consult the governance entity on any work the Ministry undertakes that relates substantially to Ngaruahine:
- (a) from an early stage;
- (b) throughout the process of undertaking the work; and
- (c) before making the final decision on the material of a publication.
- 14.2 Where the Ministry makes reasonable efforts to contact the governance entity for the purposes of the consultation in accordance with clause 14.1, and no response is received within a reasonable timeframe, the Ministry shall not be in breach of clause 14.1.
- 14.3 The governance entity accepts that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by, the governance entity, is entitled to make the final decision on the material of the historical publication.
- 15. INFORMATION EXCHANGE**
- 15.1 Ngaruahine and the Ministry recognise the benefit of mutual information exchange. To this end the Ministry and Ngaruahine will as far as possible exchange any information that is relevant to Ngaruahine Taonga Tuturu and any intellectual property associated with Ngaruahine Taonga Tuturu, that is held by the Ministry, to the best of its knowledge acting reasonably.
- 15.2 The Ministry will make available to Ngaruahine all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Ngaruahine for the purposes of assisting them to exercise their rights under this Protocol.
- 15.3 The obligations in clause 15.1 and 15.2 do not apply to information that the Minister is legally prevented from providing (for example, information that is the subject of an

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

obligation of confidentiality or non-disclosure) or to information that the Minister or Chief Executive may withhold under the Official Information Act 1982.

16. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 16.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngaruahine within the Protocol Area, the Chief Executive will invite the governance entity to provide such services. Where the Chief Executive has invited the governance entity to provide such services, the Chief Executive will make a contribution, which the Chief Executive considers is reasonable in the circumstances, the amount of which will be discussed with the governance entity at the time of the invitation.
- 16.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 16.3 The procurement by the Chief Executive of any such services set out in clauses 16.1 and 16.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

17. CONSULTATION

- 17.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 17.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable where the Chief Executive has identified a proposal or issues to be the subject of the consultation;
- 17.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- 17.1.3 ensuring that sufficient time is given for the effective participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
- 17.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
- 17.1.5 report back to the governance entity in writing or in person, within a reasonable time period, in regard to any decisions made that relate to that consultation.

18. REVIEW AND AMENDMENT

- 18.1 The Minister and the Chief Executive and Ngaruahine agree that this Protocol is a living document which should be updated and adapted to take account of future developments.

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

- 18.2 A review of this Protocol may take place, at the request of either party, at five-yearly intervals from the commencement date of this Protocol, or the date of completion of the previous review, unless either party advises that it wishes to review the Protocol three years from the commencement date or three years of the date of completion of the previous review.
- 18.3 Where the parties cannot reach agreement on any review or amendment proposal they will use the dispute resolution processes contained in clause 19 of the Protocol.
- 18.4 Ngāruahine and the Crown may only vary this Protocol by agreement in writing.

19. **DISPUTE RESOLUTION**

- 19.1 If one party considers that there has been a breach of this Protocol then that party may give written notice to the other party that they are in dispute. The following process shall be undertaken once notice is received by the other party to this Protocol:

19.1.1 Within 15 working days of being given written notice, the relevant contact person from the Ministry and the governance entity will meet to work in good faith to resolve the issue.

19.1.2 If the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 19.1, the Chief Executive and governance entity will meet to work in good faith to resolve the issue.

19.1.3 If the dispute has not been resolved within 30 working days of receipt of the notice referred to in clause 19.1 and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and the parties agree, the Minister and the governance entity will meet to work in good faith to resolve this issue. The parties recognise that this clause is subject to this Protocol's Terms of Issue.

20. **CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL**

- 20.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:

20.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

20.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and

20.1.3 report back to the governance entity on the outcome of any such consultation.

21. **DEFINITIONS**

- 21.1 In this Protocol:

Chief Executive means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive;

DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

Crown means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Easement means the easement dated **[insert]** entered into by the governance entity and the Minister for Arts, Culture and Heritage for the maintenance of the Monument;

Expert Examiner has the same meaning as in section 2 of the Act and means a body corporate or an association of persons;

found has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tuturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tuturu and which suggest that the Taonga Tuturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings;

governance entity means the trustees of the trust known as Te Korowai o Ngaruahine Trust established by trust deed dated 20 June 2013;

Monument means the war monument located at the northern end of the cleared section of Te Ngutu o te Manu site A as at 9 August 2014;

Ngaruahine has the meaning set out in clause 8.6 of the Deed of Settlement;

Nga Taonga Tuturu has the same meaning as in section 2 of the Act and means two or more Taonga Tuturu;

Protocol means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

Taonga Tuturu has the same meaning as in section 2 of the Act and means:

an object that:

- (a) relates to Maori culture, history or society; and
- (b) was, or appears to have been:
 - (i) manufactured or modified in New Zealand by Maori; or
 - (ii) brought into New Zealand by Maori; or
 - (iii) used by Maori; and
- (c) is more than 50 years old; and

Te Ngutu o te Manu site A means the Part Section 40 Block XVI Kaupokonui Survey District, Part computer freehold register TNK4/210 as shown on the deed plan (OTS-023-04).

DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

ATTACHMENT A
THE MINISTRY FOR CULTURE AND HERITAGE PROTOCOL AREA



19

SCHEDULE 2:
TAONGA TUTURU PROTOCOL

ATTACHMENT B
TERMS OF ISSUE

This Protocol is issued subject to the provisions of the deed of settlement and the settlement legislation. These provisions are set out below.

1. **Provisions of the Deed of Settlement relating to this Protocol**

1.1 The Deed of Settlement provides that [].

2. **Authority to issue, amend or cancel Protocols**

2.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses [] of the Deed of Settlement]

3. **Protocols subject to rights and obligations**

3.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses [] of the Deed of Settlement]

3.2 The Deed of Settlement provides that the Protocol does not restrict the ability of the Crown to interact or consult with any person or persons the Crown considers appropriate including, without limitation, any other iwi, hapu, marae, whanau or other representatives of tangata whenua.

4. **Noting of Protocols**

4.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses [] of the Deed of Settlement]

5. **Enforceability of Protocols**

5.1 Section [] of the Settlement Legislation provides that:

[Quote the section of the Settlement Legislation included in accordance with clauses [] of the Deed of Settlement]

5.2 The provisions included in the Settlement Legislation under clauses [] and [] of the Deed of Settlement will not apply to any guidelines developed in relation to a Protocol.

6. **Limitation of rights**

6.1 Section [] of the Settlement Legislation provides that: *[Quote the section of the Settlement Legislation included in accordance with clauses [] of the Deed of Settlement]*

SCHEDULE 3

TE NGUTU O TE MANU SITE A EASEMENT

Easement instrument to grant easement or *profit à prendre*, or create land covenant
(Sections 90A and 90F Land Transfer Act 1952)

Land registration district

Taranaki

Grantor

[INSERT DETAILS OF TRUSTEES OF TE KOROWAI O NGARUAHINE TRUST]

Grantee

HER MAJESTY THE QUEEN in Right of New Zealand acting by and through the Minister for Arts,
Culture and Heritage

Grant of Easement or Profit à prendre or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Dated this

day of

20

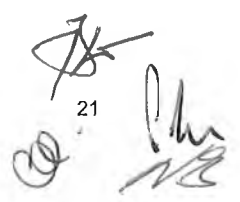
Attestation

See annexure schedule	Signed in my presence by the Grantor
_____	_____
Signature [common seal] of Grantor	<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

See annexure schedule	Signed in my presence by the Grantee
_____	_____
Signature [common seal] of Grantee	<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i> <i>Address</i>

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

21


DEED TO AMEND NGARUAHINE DEED OF SETTLEMENT

SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

ANNEXURE SCHEDULE 1

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to locate, access and maintain the existing monument	[INSERT DETAILS]	[Part Section 40 Block XVI Kaupokanui Survey District, subject to survey]	In gross

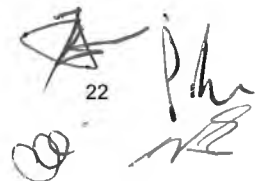
Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002.

The implied rights and powers **are varied** by the provisions set out in Annexure Schedule 2.

All signing parties and either their witnesses or solicitors must sign or initial in this box



 22

SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

ANNEXURE SCHEDULE 2

BACKGROUND

- A. The Grantor is pursuant to [INSERT LEGISLATIVE AUTHORITY] the registered proprietor of that land contained in computer freehold register [INSERT CFR DETAILS].
- B. The parties acknowledge that there is a monument located on the Servient Land which is owned and maintained by the Grantee.
- C. The Grantee wishes to enter upon and cross the Servient Land for the purpose of accessing and maintaining the monument located on the Servient Land and up keeping the land in the immediate vicinity.
- D. The Grantor has agreed to allow the Grantee to access the Servient Land for these purposes on the terms and conditions set out in this Easement.

EASEMENT TERMS AND CONDITIONS

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In this Easement, unless the context otherwise requires:

Grantee also includes the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

Grantor also includes the other registered proprietors from time to time of the Servient Land;

Monument means the war monument located at the northern end of the cleared section of the Servient Land at the time of entering into this Easement;

Servient Land means Te Ngutu o te Manu site A, being the land described in Background A and Schedule 1, and includes any part thereof; and

Taonga Tuturu Protocol means the protocol issued by the Minister for Arts, Culture and Heritage at Part 4.2 of the Documents Schedule of the Ngāruahine Deed of Settlement dated 9 August 2014.

1.2 Construction

In the construction of this Easement unless the context otherwise requires:

- (a) the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement;
- (b) references to clauses and the Schedule are to the clauses and the Schedule of this Easement;
- (c) references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and



SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

- (d) the singular includes the plural and vice versa, and words importing any gender include the other genders.

2. GRANT OF ACCESS RIGHTS / RIGHT TO LOCATE AND ACCESS THE MONUMENT

2.1 Together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement, and subject always to clause 3.5, the Grantor grants to the Grantee as an easement in gross in perpetuity the following rights:

- (a) the right to locate the Monument on the Servient Land;
- (b) the right to enter those parts of the Servient Land as are reasonable on foot or with or without vehicles, plant and equipment at any time, for the purposes of allowing the Grantee to exercise the rights granted under this Easement, including inspecting, maintaining, removing, repairing and replacing the Monument and associated fencing, and maintaining that part of the Servient Land immediately surrounding the Monument;
- (c) the right to remain on such parts of the Servient Land as are reasonable for the sole purpose of exercising the rights under this Easement as set out in clause 2.1(b);
- (d) with the prior written consent of the Grantor (which may not be unreasonably or arbitrarily withheld or delayed), the right to carry out earthworks; and
- (e) the right to cut down, pull out, dig up, use, remove or otherwise dispose of or trim any vegetation immediately surrounding the Monument which in the Grantee's reasonable opinion may impede or obstruct the Monument or cause any damage or danger to persons or property.

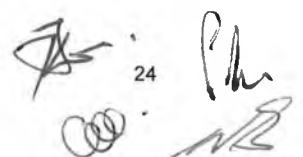
2.2 The Grantor may relocate the Monument within the Servient Land for the better use and enjoyment of the Servient Land with the prior written consent of the Grantee (which may not be unreasonably or arbitrarily withheld or delayed and such discretion to be exercised consistently with clause 13 of the Taonga Tuturu Protocol).

2.3 The Grantee may:

- (a) replace the Monument if necessary and construct a new monument of dimensions no larger than the Monument with the prior written consent of the Grantor (which may not be unreasonably or arbitrarily withheld or delayed); and
- (b) remove the Monument if necessary with the prior written consent of the Grantor (which may not be unreasonably or arbitrarily withheld or delayed).

2.3 For the avoidance of doubt, the rights granted to the Grantee by the Grantor do not extend to the construction, creation or relocation of any grave or monument or other structure that is not located on the Servient Land as at the date of the grant of this Easement onto the Servient Land.

2.4 Notwithstanding any provision in this Easement, the Grantee shall give the Grantor reasonable notice before entering the Servient Land or otherwise exercising any right or obligation under this Easement. The Grantee shall only enter the Servient Land at

 24

SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

reasonable times and shall use best endeavours to mitigate any inconvenience to the Grantor.

- 2.5 In consideration of the Grantor agreeing to enter into this Easement the Grantee shall duly observe the obligations imposed on it under this Easement.

3. OBLIGATIONS OF THE GRANTEE

- 3.1 The rights and powers conferred under clause 2 of this Easement are granted subject to the following conditions and obligations:

- 3.2 The Grantee shall when passing or repassing over the Servient Land:

- (a) cause as little damage or disturbance as possible to the Servient Land and will complete all works on the Servient Land promptly and in a proper workmanlike manner and shall at its cost restore the surface of the Servient Land and repair any damage caused by the Grantee to any buildings, erections or fences on the Servient Land as nearly as reasonably possible to the condition it was in prior to the Grantee's exercise of its rights under this Easement;
- (b) ensure that it does not obstruct or hamper the Grantor in its normal or reasonable use of the Servient Land;
- (c) wherever possible, remain on the roads and tracks constructed on the Servient Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
- (d) leave any gates on the Servient Land as they were found, and will, at the Grantor's request, issue keys and padlocks (to be inserted into the chains in a manner that allows the gates to be unlocked and relocked) for use by the Grantee; and
- (e) take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) on the Servient Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.2(e)):
 - (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
 - (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

- 3.3 The Grantee will:

- (a) ensure, at all times in the exercise of the rights set out in this Easement, that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Servient Land;
- (b) keep and maintain the Monument in good and tidy order, repair and condition, and will not allow the Monument to fall into disrepair;

25



SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

3.4 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Servient Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

3.5 The Grantee shall comply at all times with all statutes and regulations, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement, including without limitation [INSERT LEGISLATIVE AUTHORITY].

4. GRANTOR NOT TO INTERFERE WITH GRANTEE'S RIGHTS

4.1 The Grantor shall not at any time, do or permit or suffer to be done any act whereby the rights granted under this Easement may be interfered with.

4.2 The Grantor further acknowledges and agrees that ownership of the Monument located on the Servient Land shall at no time vest in the Grantor.

5. COSTS

The Grantee shall be liable to the Grantor for actual and reasonable costs and expenses, including reasonable legal costs, incurred by the Grantor arising from the enforcement of any provision in this Easement.

6. DELEGATION

All rights, benefits, and obligations of a party to this Easement arising under this Easement may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement.

7. NOTICES

7.1 Any notice to be given by one party under this Easement to the other shall be in writing and shall be forwarded by either delivering, posting or emailing it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

(a) the Grantor's address:

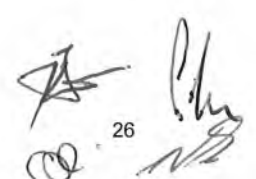
[INSERT DETAILS]

(b) the Grantee's address:

[INSERT DETAILS]

8. SEVERABILITY

If any part of this Easement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement which shall remain in full force.



SCHEDULE 3:
TE NGUTU O TE MANU SITE A EASEMENT

9. DISPUTES RESOLUTION

9.1 Should any dispute arise between the parties touching any matter relating to this Easement then:

- (a) any dispute will be defined by written notice by the party raising it to the other and will immediately be discussed (on a 'without prejudice' basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the New Zealand Law Society);
- (b) if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;
- (c) the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration; and
- (d) the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

10. ASSIGNMENT

10.1 The Grantee may, grant and/or assign the rights and obligations under this Easement subject to the assignee entering into a deed of covenant with the Grantor agreeing to be bound by the terms of this Easement. From the date of such assignment, the Grantee shall cease to have any liability whatsoever in respect of this Easement and the Grantor agrees to release the Grantee from all obligations under this Easement from that date. This release will not prejudice or affect the rights of the Grantor against the Grantee regarding any breach of the Grantee's obligations in this Easement occurring before the date of release.


27