NGARUAHINE

and

THE TRUSTEES OF TE KOROWAI O NGARUAHINE TRUST

and

THE CROWN

# DEED OF SETTLEMENT SCHEDULE: PROPERTY REDRESS

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# 1 DISCLOSURE INFORMATION AND WARRANTY

## DISCLOSURE INFORMATION

1.1 The Crown:

1.1.1 has provided information to the trustees of Te Korowai o Ngaruahine Trust about the cultural redress properties between 2 October 2013 and March 2014; and

1.1.1 must under paragraph 4.2.1 provide information to the trustees of Te Korowai o Ngaruahine Trust about a deferred selection property if the trustees have, in accordance with part 4, given the Crown notice of interest in purchasing the property.

## WARRANTY

1.2 In this deed, unless the context otherwise requires:

1.2.1 **acquired property** means:

(a) each cultural redress property; and

(b) each purchased deferred selection property; and

1.2.2 **disclosure information**, in relation to an acquired property, means the information given by the Crown about the property referred to in paragraph 1.1.

1.3 The Crown warrants to the trustees of Te Korowai o Ngaruahine Trust that the Crown has given to the trustees of Te Korowai o Ngaruahine Trust in its disclosure information about an acquired property all material information that, to the best of the land holding agency's knowledge, is in the agency's records about the property (including its encumbrances), at the date of providing that information:

1.3.1 having inspected the agency's records; but

1.3.2 not having made enquiries beyond the agency's records; and

1.3.3 in particular, not having undertaken a physical inspection of the property.

## WARRANTY LIMITS

1.4 Other than under paragraph 1.3, the Crown does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to:

1.4.1 an acquired property, including in relation to:

(a) its state, condition, fitness for use, occupation or management; or

(b) its compliance with:

(i) legislation, including bylaws; or

(ii) any enforcement or other notice, requisition or proceedings; or

1.4.2 the disclosure information about an acquired property, including in relation to its completeness or accuracy.

1.5 The Crown has no liability in relation to the state or condition of an acquired property, except for any liability arising as a result of a breach of paragraph 1.3.

**INSPECTION**

1.6 In paragraph 1.7, **relevant date** means, in relation to an acquired property that is:

1.6.1 a cultural redress property, the date of this deed; and

1.6.2 a purchased deferred selection property, the day on which the trustees of Te Korowai o Ngaruahine Trust give an election notice electing to purchase the property.

1.7 Although the Crown is not giving any representation or warranty in relation to an acquired property, other than under paragraph 1.3, the trustees of Te Korowai o Ngaruahine Trust acknowledge that they could, before the relevant date:

1.7.1 inspect the property and determine its state and condition; and

1.7.2 consider the disclosure information in relation to it.

# 2 VESTING OF CULTURAL REDRESS PROPERTIES

## SAME MANAGEMENT REGIME AND CONDITION

2.1 Until the settlement date, the Crown must:

2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and

2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed.

2.2 Paragraph 2.1 does not:

2.2.1 apply to a cultural redress property that is not managed and administered by the Crown; or

2.2.2 require the Crown to restore or repair a cultural redress property damaged by an event beyond the Crown's control.

## ACCESS

2.3 The Crown is not required to enable access to a cultural redress property for the trustees of Te Korowai o Ngaruahine Trust or members of Ngaruahine, except under paragraph 1.7.

## COMPLETION OF REQUIRED DOCUMENTATION

2.4 Any documentation, required by the settlement documentation to be signed by the trustees of Te Korowai o Ngaruahine Trust in relation to the vesting of a cultural redress property, must, on or before the settlement date, be:

2.4.1 provided by the Crown to the trustees of Te Korowai o Ngaruahine Trust; and

2.4.2 duly signed and returned by the trustees of Te Korowai o Ngaruahine Trust.

## SURVEY AND REGISTRATION

2.5 The Crown must arrange, and pay for:

2.5.1 the preparation, approval, and where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a computer freehold register for the property; and

2.5.2 the registration of any document required in relation to the vesting under the settlement legislation of a cultural redress property in the trustees of Te Korowai o Ngaruahine Trust.

# 3 DEFERRED SELECTION PROPERTIES

## 3: DEFERRED SELECTION PROPERTIES

| Name/Address | Description | Encumbrances | Determining market value | Land holding agency |
|---|---|---|---|---|
| Former Awatuna School site<br>PF 337 | 4.0421 hectares, more or less, being Part Section 32 Block IX Kaupokonui Survey District. All computer freehold register TNK3/2. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Kaipi Street Conservation Area | 2.3189 hectares, more or less, being Sections 96 and 134 Block VII Waimate Survey District. Part Proclamation 1075. | | Separately valued | Department of Conservation |
| Former Kapuni School site<br>PF 1606 | 4.0266 hectares, more or less, being Part Section 15 Block XV Kaupokonui Survey District. All computer freehold register 293371. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Former Mahoe School site<br>PF 1616 | 1.0117 hectares, more or less, being Lot 1 DP 5642. All computer freehold register 284678.<br>0.8094 hectares, more or less, being Section 37 Block VIII Kaupokonui Survey District. All computer freehold register 284679. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Former Okaiawa School site<br>PF 1781 | 1.1129 hectares, more or less, being Subdivision 2 Section 102 Village of Okaiawa and Defined on Deposited Plan 778. All computer freehold register TN30/78.<br>1.1913 hectares, more or less, | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |

## 3: DEFERRED SELECTION PROPERTIES

| Name/Address | Description | Encumbrances | Determining market value | Land holding agency |
|---|---|---|---|---|
| | being Section 103 Block IV Waimate Survey District.<br>All computer freehold register TN133/299. | | | |
| Former Otakeho School site<br>PF 1541 | 2.8328 hectares, more or less, being Section 13 Block V Waimate Survey District.<br>All computer freehold register 242907. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Former Pihama School site<br>PF 1529 | 0.4047 hectares, more or less, being Section 22 Block I Oeo Survey District.<br>All computer freehold register 238536.<br>0.3012 hectares, more or less, being Part Section 36 Block I Oeo Survey District.<br>All computer freehold register 238537.<br>0.1032 hectares, more or less, being Part Section 36 Block I Oeo Survey District.<br>All computer freehold register 238538<br>1.2451 hectares, more or less, being Part Section 52 Block I Oeo Survey District.<br>All computer freehold register 255958. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Former Te Kiri School site | 1.6188 hectares, more or less, being Sections 21, 22, 27 and 28 Block XI Opunake Survey District. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |

## 3: DEFERRED SELECTION PROPERTIES

| Name/Address | Description | Encumbrances | Determining market value | Land holding agency |
|---|---|---|---|---|
| PF 1527 | All computer freehold register 281310.<br>1.2102 hectares, more or less, being Part Section 42 Block XI Opunake Survey District. All computer freehold register 281312. | | | |
| Te Rua o te Moko Block<br>PF 724 | 49.3211 hectares, more or less, being Lot 1 DP 8143 and Te Rua o te Moko 2A1. All transfer 439665.2. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |
| Former Tokaora School site<br>PF 1539 | 0.8094 hectares, more or less, being Part Subdivision 2 Deposited Plan 2173 and defined on DP 2680. All computer freehold register 294496.<br>0.8094 hectares, more or less, being Part Allotment 2 Deposited Plan 2173 and Defined on Deposited Plan 3984. All computer freehold register 294497. | | Separately valued | Ministry of Justice (Office of Treaty Settlements) |

# 4 DEFERRED PURCHASE

## A RIGHT OF PURCHASE

### NOTICE OF INTEREST

4.1 The trustees of Te Korowai o Ngaruahine Trust may, for two years after the settlement date, give the Crown a written notice of interest in purchasing a deferred selection property.

### EFFECT OF NOTICE OF INTEREST

4.2 If the trustees of Te Korowai o Ngaruahine Trust give, in accordance with this part, a notice of interest in a deferred selection property:

4.2.1 the Crown must, not later than 10 business days after the notification date, give the trustees of Te Korowai o Ngaruahine Trust all material information that, to the best of its knowledge, is in its records about the property, including its encumbrances; and

4.2.2 the property's transfer value must be determined or agreed in accordance with subpart B, being a separate valuation property.

### ELECTION TO PURCHASE

4.3 If the trustees of Te Korowai o Ngaruahine Trust give a notice of interest in a deferred selection property in accordance with this part, it must give the Crown written notice of whether or not it elects to purchase the property, by not later than 15 business days after its transfer value being determined or agreed in accordance with this part.

### EFFECT OF ELECTION TO PURCHASE

4.4 If the trustees of Te Korowai o Ngaruahine Trust give an election notice electing to purchase a deferred selection property in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with this part, plus GST if any, on the terms in part 5 and under which on the DSP settlement date:

4.4.1 the Crown must transfer the property to the trustees of Te Korowai o Ngaruahine Trust; and

4.4.2 the trustees of Te Korowai o Ngaruahine Trust must pay to the Crown an amount equal to the transfer value of the property determined or agreed in accordance with this part, plus GST if any, by:

(a) bank cheque drawn on a registered bank and payable to the Crown; or

(b) another payment method agreed by the parties.

## B DETERMINING THE TRANSFER VALUE OF A SEPARATE VALUATION PROPERTY

### APPLICATION OF THIS SUBPART

4.5 This subpart provides how the transfer value is to be determined after the trustees of Te Korowai o Ngaruahine Trust have given, in accordance with this part, a notice of interest in a deferred selection property that is a separate valuation property.

4.6 The transfer value is to be determined as at the notification date.

### APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

4.7 The parties, in relation to a separate valuation property, not later than 10 business days after the notification date:

4.7.1 must each:

(a) instruct a valuer using the form of instructions in appendix 1; and

(b) give written notice to the other of the valuer instructed; and

4.7.2 may agree and jointly appoint a person to act as the valuation arbitrator in respect of the separate valuation property.

4.8 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within 15 business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.

4.9 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

### QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

4.10 Each valuer must be a registered valuer.

4.11 The valuation arbitrator:

4.11.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties; and

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

### VALUATION REPORTS FOR A PROPERTY

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

4.12.1 50 business days after the notification date, provide a copy of its final valuation report to the other party; and

4.12.2 60 business days after the notification date, provide its valuer's written analysis report to the other party.

4.13 Valuation reports must comply with the International Valuation Standards [2012], or explain where they are at variance with those standards.

## EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR A PROPERTY

4.14 If only one valuation report for a separate valuation property is delivered by the required date, the transfer value of the property is the market value as assessed in the report.

## NEGOTIATIONS TO AGREE A TRANSFER VALUE FOR A SEPARATE VALUATION PROPERTY

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

4.15.1 the parties must endeavour to agree in writing the transfer value of the separate valuation property; and

4.15.2 either party may, if the transfer value of the separate valuation property is not agreed in writing within 70 business days after the notification date and if a valuation arbitrator has been appointed under paragraph 4.7.2 or paragraph 4.8, refer that matter to the determination of the valuation arbitrator; or

4.15.3 if that agreement has not been reached within the 70 business day period but the valuation arbitrator has not been appointed under paragraph 4.7.2 or paragraph 4.8, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further 5 business days; and

4.15.4 if paragraph 4.15.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further 5 business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and

4.15.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

## VALUATION ARBITRATION

4.16 The valuation arbitrator must, not later than 10 business days after the arbitration commencement date:

4.16.1 give notice to the parties of the arbitration meeting, which must be held:

(a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but

(b) not later than 30 business days after the arbitration commencement date; and

4.16.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable:

(a) each valuer; and

(b) any other person giving evidence.

4.17 Each party must:

4.17.1 not later than 5pm on the day that is 5 business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer:

(a) its valuation report; and

(b) its submission; and

(c) any sales, rental, or expert evidence that it will present at the meeting; and

4.17.2 attend the arbitration meeting with its valuer.

4.18 The valuation arbitrator must:

4.18.1 have regard to the requirements of natural justice at the arbitration meeting; and

4.18.2 no later than 50 business days after the arbitration commencement date, give his or her determination:

(a) of the market value of the separate valuation property; and

(b) being no higher than the higher, and no lower than the lower, assessment of market value contained in the parties' valuation reports.

4.19 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

**TRANSFER VALUE FOR ALL PROPERTIES**

4.20 The transfer value of the separate valuation property for the purposes of paragraph 4.4.2 is:

4.20.1 determined under paragraph 4.14; or

4.20.2 agreed under paragraph 4.15.1; or

4.20.3 the market value determined by the valuation arbitrator under paragraph 4.18.2.

4: DEFERRED PURCHASE

## C GENERAL PROVISIONS

### TIME LIMITS

4.21 Time is of the essence for the time limits in paragraphs 4.1 and 4.3.

4.22 In relation to the time limits in this part, other than those referred to in paragraph 4.21, each party must use reasonable endeavours to ensure:

4.22.1 those time limits are met and delays are minimised; and

4.22.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

### DETERMINATION FINAL AND BINDING

4.23 The valuation arbitrator's determination under subpart B is final and binding.

### COSTS

4.24 In relation to the determination of the transfer value of a separate valuation property, each party must pay:

4.24.1 its costs; and

4.24.2 half the costs of a valuation arbitration; or

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

### ENDING OF OBLIGATIONS

4.25 The Crown's obligations under this deed in relation to a deferred selection property immediately cease if:

4.25.1 the trustees of Te Korowai o Ngaruahine Trust:

(a) do not give notice of interest in relation to the property in accordance with paragraph 4.1; or

(b) give notice of interest in relation to the property in accordance with paragraph 4.1 but the trustees of Te Korowai o Ngaruahine Trust:

(i) give an election notice under which they elect not to purchase the property; or

(ii) do not give an election notice in accordance with paragraph 4.3 electing to purchase the property; or

(c) give the Crown written notice that they are not interested in purchasing the property at any time before an agreement for the sale and purchase of the property is constituted under paragraph 4.4; or

(d) do not comply with any obligation in relation to the property under subpart B; or

4.25.2 an agreement for the sale and purchase of the property is constituted under paragraph 4.4 and the agreement is cancelled in accordance with the terms of transfer in part 5.

## APPENDIX 1

***[Note: These instructions may be modified to apply to more than one separate valuation property.]***

[***Valuer's name***]

[***Address***]

### Valuation instructions

**INTRODUCTION**

The trustees of Te Korowai o Ngaruahine Trust (the **governance entity**) have the right under a deed of settlement to purchase properties from [***name***] (the **land holding agency**).

This right is given by:

(a) clause 6.3 of the deed of settlement; and

(b) part 4 of the property redress schedule to the deed of settlement (**part 4**).

**PROPERTY TO BE VALUED**

The governance entity has given the land holding agency a notice of interest in purchasing:

[*describe the property including its legal description*]

**DEED OF SETTLEMENT**

A copy of the deed of settlement is enclosed.

Your attention is drawn to part 4.

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

A term defined in the deed of settlement has the same meaning when used in these instructions.

The property is a separate valuation property for the purposes of part 4. Subpart B of part 4 applies to the valuation of separate valuation properties.

**ASSESSMENT OF MARKET VALUE REQUIRED**

You are required to undertake a valuation to assess the market value of the property as at [***date***] (the **valuation date**), being the date the land holding agency received the notice of interest in the property from the governance entity.

The [land holding agency][governance entity][**delete one**] will require another registered valuer to assess the market value of the property as at the valuation date.

The two valuations are to enable the market value of the property, to be determined either:

(a) by agreement between the parties; or

(b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which the governance entity may elect to purchase the property under part 4, plus GST (if any).

## VALUATION OF PROPERTY

You must, in relation to a property:

(a) before inspecting the property, determine with the other valuer:

(i) the valuation method or methods applicable to the property; and

(ii) the comparable sales to be used in determining the market value of the property; and

(b) inspect the property, where practical, together with the valuer appointed by the other party; and

(c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and

(d) by not later than [30] business days after the valuation date, prepare, and deliver to us, a draft valuation report; and

(e) by not later than [45] business days after the valuation date:

(i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and

(ii) deliver a copy of your final valuation report to us; and

(f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property; and

(g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value; and

(h) if a consensus on market value is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and

(i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property; and

(j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and

(k) participate in any arbitration process required under subpart B to determine the market value of the property.

**REQUIREMENTS OF YOUR VALUATION**

Our requirements for your valuation are as follows.

You are to assume that:

(a) the property is a current asset and was available for immediate sale as at the valuation date; and

(b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is:

(a) to assess market value on the basis of market value as defined in the current edition of the Australia and New Zealand Valuation and Property Standards [2009] and International Valuation Standards [2012]; and

(b) to take into account:

  (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and

  (ii) the attached disclosure information about the property that has been given by the land holding agency to the governance entity, including the disclosed encumbrances; and

  (iii) the terms of transfer in part 5 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property by the governance entity); but

(c) not to take into account a claim in relation to the property by or on behalf of the settling group.

**REQUIREMENTS FOR YOUR VALUATION REPORT**

We require a full valuation report in accordance with the current edition of the Australia and New Zealand Valuation and Property Standards [2009] and International Valuation Standards [2012], including:

(a) an executive summary, containing a summary of:

  (i) the valuation; and

  (ii) the key valuation parameters; and

  (iii) the key variables affecting value; and

(b) a detailed description, and a clear statement, of the land value; and

(c) a clear statement as to any impact of the disclosed encumbrances; and

(d) details of your assessment of the highest and best use of the property; and

(e) comment on the rationale of likely purchasers of the property; and

(f) a clear identification of the key variables which have a material impact on the valuation; and

(g) full details of the valuation method or methods; and

(h) appendices setting out:

(i) a statement of the valuation methodology and policies; and

(ii) relevant market and sales information.

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

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

## ACCEPTANCE OF THESE INSTRUCTIONS

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

(a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and

(b) [45] business days after the valuation date, to:

(i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and

(ii) deliver a copy of your final valuation report to us; and

(c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and

(d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

## ACCESS

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

## OPEN AND TRANSPARENT VALUATION

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

In particular, you must:

(a) copy any questions you have or receive with regard to the valuation, together with the responses, to the governance entity, the landholding agency, and the other valuer; and

(b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final report to us.

Yours faithfully

[***Name of signatory***]
[***Position***]
[***Governance entity/Land holding agency***][***delete one***]

# 5 TERMS OF TRANSFER FOR PURCHASED DEFERRED SELECTION PROPERTIES

## APPLICATION OF THIS PART

5.1 This part applies to the transfer by the Crown to the trustees of Te Korowai o Ngaruahine Trust of each purchased deferred selection property, under paragraph 4.4 (a **transfer property**).

## TRANSFER

5.2 The Crown must transfer the fee simple estate in a transfer property to the trustees of Te Korowai o Ngaruahine Trust subject to, and where applicable with the benefit of:

5.2.1 the disclosed encumbrances affecting or benefiting the property (as they may be varied by a non-material variation, or a material variation entered into under paragraph 5.17.4(a)); and

5.2.2 any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 5.17.4(b).

5.3 The Crown must pay any survey and registration costs required to transfer the fee simple estate in a transfer property to the trustees of Te Korowai o Ngaruahine Trust.

## POSSESSION

5.4 Possession of a transfer property must, on the TSP settlement date for the property:

5.4.1 be given by the Crown; and

5.4.2 taken by the trustees of Te Korowai o Ngaruahine Trust; and

5.4.3 be vacant possession subject only to any encumbrances referred to in paragraph 5.2.1 that prevent vacant possession being given and taken.

## SETTLEMENT

5.5 Subject to paragraphs 5.6 and 5.37.2, the Crown must provide the trustees of Te Korowai o Ngaruahine Trust with the following in relation to a transfer property on the TSP settlement date for that property:

5.5.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the property:

5.5.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the TSP settlement date.

5.6 If the fee simple estate in the transfer property may be transferred to the trustees of Te Korowai o Ngaruahine Trust electronically under the relevant legislation:

5.6.1 paragraph 5.5.1 does not apply; and

5.6.2 the Crown must ensure its solicitor:

(a) a reasonable time before the TSP settlement date for the property:

(i) creates a Landonline workspace for the transfer to the trustees of Te Korowai o Ngaruahine Trust of the fee simple estate in the property and for any other registrable instruments required by the deed in relation to the property (the **electronic instruments**); and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the electronic instruments; and

(b) on the TSP settlement date, releases the electronic instruments so that the trustees of Te Korowai o Ngaruahine Trust's solicitor may submit them for registration under the relevant legislation; and

5.6.3 the trustees of Te Korowai o Ngaruahine Trust must ensure their solicitor, a reasonable time before the TSP settlement date, certifies and signs the electronic instruments for the property prepared in the Landonline workspace under paragraph 5.6.2(a)(ii); and

5.6.4 paragraphs 5.6.2 and 5.6.3 are subject to paragraph 5.37.2.

5.7 The **relevant legislation** for the purposes of paragraph 5.6 is:

5.7.1 the Land Transfer Act 1952; and

5.7.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

5.8 The Crown must, on the actual TSP settlement date for a transfer property, provide the trustees of Te Korowai o Ngaruahine Trust with any key or electronic opener to a gate or door on, and any security code to an alarm for, the property that are held by the Crown.

5.9 The transfer value of, or the amount payable by the trustees of Te Korowai o Ngaruahine Trust for, a transfer property is not affected by:

5.9.1 a non-material variation, or a material variation entered into under paragraph 5.17.4(a), of a disclosed encumbrance affecting or benefiting the property; or

5.9.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 5.17.4(b).

**APPORTIONMENT OF OUTGOINGS AND INCOMINGS**

5.10 If, as at the actual TSP settlement date for a transfer property:

5.10.1 the outgoings for the property pre-paid by the Crown for any period after that date exceed the incomings received by the Crown for any period after that

date, the trustees of Te Korowai o Ngaruahine Trust must pay the amount of the excess to the Crown; or

5.10.2 the incomings for the property received by the Crown for any period after that date exceed the outgoings for the property pre-paid by the Crown for any period after that date, the Crown must pay the amount of the excess to the trustees of Te Korowai o Ngaruahine Trust.

5.11 The outgoings for a transfer property for the purposes of paragraph 5.10 do not include insurance premiums and the trustees of Te Korowai o Ngaruahine Trust are not required to take over from the Crown any contract of insurance in relation to the property.

5.12 An amount payable under paragraph 5.10 in relation to a transfer property must be paid on the actual TSP settlement date for the property.

5.13 The Crown must, before the actual TSP settlement date for a transfer property, provide the governance entity with a written statement calculating the amount payable by the trustees of Te Korowai o Ngaruahine Trust or the Crown under paragraph 5.10.

**FIXTURES, FITTINGS AND CHATTELS**

5.14 The transfer of a transfer property includes all fixtures and fittings that were owned by the Crown, and located on the property, on the first date of the transfer period for that property.

5.15 Fixtures and fittings transferred under paragraph 5.14 must not be mortgaged or charged.

5.16 The transfer of a transfer property does not include chattels.

**OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD**

5.17 The Crown must, during the transfer period for a transfer property:

5.17.1 ensure the property is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and

5.17.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the property, except where those charges are payable by a tenant or occupier to the supplier; and

5.17.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the property during the period:

(a) by the Crown; or

(b) with the Crown's written authority; and

5.17.4 obtain the prior written consent of the trustees of Te Korowai o Ngaruahine Trust before:

(a) materially varying a disclosed encumbrance affecting or benefiting the property; or

(b) entering into an encumbrance affecting or benefiting the property; or

(c) procuring a consent, providing a waiver, or giving an approval, that materially affects the property, under the Resource Management Act 1991 or any other legislation; and

5.17.5 use reasonable endeavours to obtain permission for the trustees of Te Korowai o Ngaruahine Trust to enter and inspect the property under paragraph 5.18.2 if the trustees of Te Korowai o Ngaruahine Trust are prevented from doing so by the terms of an encumbrance referred to in paragraph 5.2.

5.18 The trustees of Te Korowai o Ngaruahine Trust, during the transfer period in relation to a transfer property:

5.18.1 must not unreasonably withhold or delay any consent sought under paragraph 5.17.4 in relation to the property; and

5.18.2 may enter and inspect the property on one occasion:

(a) after giving reasonable notice; and

(b) subject to the terms of the encumbrances referred to in paragraph 5.2; and

5.18.3 must comply with all reasonable conditions imposed by the Crown in relation to entering and inspecting the property.

**OBLIGATIONS AFTER SETTLEMENT**

5.19 The Crown must:

5.19.1 give the relevant territorial authority notice of the transfer of a transfer property immediately after the actual TSP settlement date for the property; and

5.19.2 if it receives a written notice in relation to a transfer property from the Crown, a territorial authority, or a tenant after the actual TSP settlement date for the property:

(a) comply with it; or

(b) provide it promptly to the trustees of Te Korowai o Ngaruahine Trust or their solicitor; or

5.19.3 pay any penalty incurred by the trustees of Te Korowai o Ngaruahine Trust to the person providing the written notice as a result of the Crown not complying with paragraph 5.19.2.

**RISK AND INSURANCE**

5.20 A transfer property is at the sole risk of:

5.20.1 the Crown, until the actual TSP settlement date for the property; and

5.20.2 the trustees of Te Korowai o Ngaruahine Trust, from the actual TSP settlement date for the property.

## DAMAGE AND DESTRUCTION

5.21 Paragraphs 5.22 to 5.30 apply if, before the actual TSP settlement date for a transfer property:

5.21.1 the property is destroyed or damaged; and

5.21.2 the destruction or damage has not been made good.

5.22 Paragraph 5.23 applies if the transfer property is:

5.22.1 a deferred selection property; and

5.22.2 as a result of the destruction or damage, the property is not tenantable.

5.23 Where this paragraph applies the trustees of Te Korowai o Ngaruahine Trust may cancel their transfer by written notice to the Crown.

5.24 Notice under paragraph 5.23 must be given before the actual TSP settlement date.

5.25 Paragraph 5.26 applies if the property is a deferred selection property, that:

5.25.1 despite the destruction or damage, is tenantable; or

5.25.2 as a result of the damage or destruction, is not tenantable, but its transfer is not cancelled under paragraph 5.23 before the actual TSP settlement date.

5.26 Where this paragraph applies:

5.26.1 the trustees of Te Korowai o Ngaruahine Trust must complete the transfer of the property in accordance with this deed; and

5.26.2 the Crown must pay the trustees of Te Korowai o Ngaruahine Trust:

(a) the amount by which the value of the property has diminished, as at the actual TSP settlement date for the property, as a result of the destruction or damage;

(b) plus GST if any.

5.27 The value of the property for the purposes of paragraph 5.26.2 is to be in the case of a deferred selection property, its transfer value as determined or agreed in accordance with part 4.

5.28 An amount paid by the Crown under paragraph 5.26.2 is a partial refund of the purchase price if it relates to the destruction or damage of a deferred selection property.

5.29 Each party may give the other notice:

5.29.1 requiring a dispute as to the application of paragraphs 5.23 to 5.28 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and

5.29.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.

5.30 If a dispute as to the application of paragraphs 5.23 to 5.28 is not determined by the TSP settlement date, the date the parties must comply with their obligations on transfer of the property is to be:

5.30.1 the fifth business day following the determination of the dispute; or

5.30.2 if an arbitrator appointed under paragraph 5.29 so determines, another date including the original TSP settlement date.

**BOUNDARIES AND TITLE**

5.31 The Crown is not required to point out the boundaries of a transfer property.

5.32 If a transfer property is subject only to the encumbrances referred to in paragraph 5.2, the trustees of Te Korowai o Ngaruahine Trust:

5.32.1 are to be treated as having accepted the Crown's title to the property as at the actual TSP settlement date; and

5.32.2 may not make any objections to, or requisitions on, it.

5.33 An error or omission in the description of a transfer property or its title does not annul its transfer.

**FENCING**

5.34 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between a transfer property and any contiguous land of the Crown, unless the Crown requires the fence, in which case the provisions of the Fencing Act 1978 will prevail.

5.35 Paragraph 5.34 does not continue for the benefit of a purchaser from the Crown of land contiguous to a transfer property.

5.36 The Crown may require a fencing covenant to the effect of paragraphs 5.34 and 5.35 to be registered against the title to a transfer property.

**DELAYED TRANSFER OF TITLE**

5.37 The Crown covenants for the benefit of the trustees of Te Korowai o Ngaruahine Trust that it will:

5.37.1 arrange for the creation of a computer freehold register for the land of a transfer property for land that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

5.37.2 transfer (in accordance with paragraph 5.5 or 5.6, whichever is applicable) the fee simple estate in a transfer property to which paragraph 5.37.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the settlement date.

5.38 If paragraph 5.37.2 applies to a transfer property, and paragraph 5.6 is applicable, the trustees of Te Korowai o Ngaruahine Trust must comply with their obligations under paragraph 5.6.3 by a date specified by written notice by the Crown.

5.39 The covenant given by the Crown under paragraph 5.37 has effect and is enforceable, despite:

5.39.1 being positive in effect; and

5.39.2 there being no dominant tenement.

5.40 If paragraph 5.37 applies then, for the period from the actual TSP settlement date until the date that the Crown transfers the fee simple estate in the transfer property to the trustees of Te Korowai o Ngaruahine Trust:

5.40.1 the trustees of Te Korowai o Ngaruahine Trust will be the beneficial owner of the property; and

5.40.2 all obligations and rights will be performed and arise as if the fee simple estate had been transferred to the trustees of Te Korowai o Ngaruahine Trust on the actual TSP settlement date; and

5.40.3 the trustees of Te Korowai o Ngaruahine Trust may not serve a settlement notice under paragraph 5.43.

**INTEREST**

5.41 If for any reason (other than the default of the Crown) all or any of the amount payable by the trustees of Te Korowai o Ngaruahine Trust to the Crown in relation to a purchased deferred selection property is not paid on the TSP settlement date:

5.41.1 the Crown is not required to give possession of the property to the trustees of Te Korowai o Ngaruahine Trust; and

5.41.2 the trustees of Te Korowai o Ngaruahine Trust must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST if any) for the period from the TSP settlement date to the actual TSP settlement date.

5.42 Paragraph 5.41 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

## SETTLEMENT NOTICE

5.43 If, without the written agreement of the parties, settlement of a purchased deferred selection property is not effected on the TSP settlement date:

5.43.1 either party may at any time after the TSP settlement date serve notice on the other (a **settlement notice**) requiring the other to effect settlement; but

5.43.2 the settlement notice is effective only if the party serving it is:

(a) ready, able and willing to effect settlement in accordance with the settlement notice; or

(b) not ready, able and willing to effect settlement only by reason of the default or omission of the other party; and

5.43.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and

5.43.4 time is of the essence under paragraph 5.43.3; and

5.43.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by paragraph 4.4.

5.44 Paragraph 5.43, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

## FURTHER ASSURANCES

5.45 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things that the other may reasonably require to give full force and effect to this part.

## NON-MERGER

5.46 On transfer of a transfer property to the trustees of Te Korowai o Ngaruahine Trust:

5.46.1 the provisions of this part will not merge; and

5.46.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

## GST

5.47 When the trustees of Te Korowai o Ngaruahine Trust gives a written notice of election to purchase under part 4, it must include in that notice the following information in relation to the factual situation that will exist at the DSP settlement date and warrants the correctness of that information:

5.47.1 whether or not the trustees of Te Korowai o Ngaruahine Trust are a registered person for GST purposes; and

5.47.2 the trustees of Te Korowai o Ngaruahine Trust's registration number (if any); and

5.47.3 whether or not the trustees of Te Korowai o Ngaruahine Trust intend to use the property for the purposes of making taxable supplies; and

5.47.4 whether or not the trustees of Te Korowai o Ngaruahine Trust intend to use the property as a principal place of residence of the trustees of Te Korowai o Ngaruahine Trust or a person associated with the trustees of Te Korowai o Ngaruahine Trust under section 2A(1)(c) of the Goods and Services Tax Act 1985.

5.48 If any of that information provided in the election to purchase notice alters before the DSP settlement date, the trustees of Te Korowai o Ngaruahine Trust must forthwith notify the Crown and warrants the correctness of that altered information.

5.49 If the information provided (subject to alteration, if any) indicates that, at the DSP settlement date, each of the following statements is correct and the supply of the property is a taxable supply by the Crown, the parties agree that GST will apply to the supply at the rate of zero percent:

5.49.1 the trustees of Te Korowai o Ngaruahine Trust are a registered person for GST purposes; and

5.49.2 the trustees of Te Korowai o Ngaruahine Trust intend to use the property for the purposes of making taxable supplies; and

5.49.3 the trustees of Te Korowai o Ngaruahine Trust do not intend to use the property as a principal place of residence of the trustees of Te Korowai o Ngaruahine Trust or a person associated with the trustees of Te Korowai o Ngaruahine Trust under section 2A(1)(c) of the Goods and Services Tax Act 1985.

# 6 NOTICE IN RELATION TO CULTURAL REDRESS PROPERTIES AND DEFERRED SELECTION PROPERTIES

6.1 If this schedule requires the trustees of Te Korowai o Ngaruahine Trust to give notice to the Crown in relation to or in connection with a cultural redress property, or a deferred selection property, the trustees of Te Korowai o Ngaruahine Trust must give the notice in accordance with part 4 of the general matters schedule, except the notice must be addressed to the land holding agency for the property at its address or facsimile number provided:

6.1.1 in paragraph 6.2; or

6.1.2 if the land holding agency has given notice to the trustees of Te Korowai o Ngaruahine Trust of a new address or facsimile number, in the most recent notice of a change of address or facsimile number.

6.2 Until any other address or facsimile number of a land holding agency is given by notice to the trustees of Te Korowai o Ngaruahine Trust, the address of each land holding agency is as follows for the purposes of giving notice to that agency in accordance with this part:

| **Land holding agency** | **Address and facsimile number** |
|---|---|
| Office of Treaty Settlements | Level 3, The Justice Centre<br>19 Aitken Street<br>DX SX 10111<br>Wellington<br>Fax: (04) 494 9801 |
| Department of Conservation | Conservation House - Whare Kaupapa Atawhai<br>18-32 Manners Street<br>PO Box 10420<br>Wellington<br>Fax: (04) 381 3057 |

# 7 DEFINITIONS

7.1 In this schedule, unless the context otherwise requires, **party** means each of Te Korowai o Ngaruahine Trust and the Crown.

7.2 In this deed, unless the context otherwise requires:

**acquired property** has the meaning given to it by paragraph 1.2.1; and

**actual TSP settlement date**, in relation to a transfer property, means the date on which settlement of the property takes place; and

**arbitration commencement date**, in relation to the determination of the market value of a separate valuation property means:

(a) in relation to a referral under paragraph 4.15.2 the date of that referral; and

(b) in relation to an appointment under paragraph 4.15.3 or 4.15.4, a date specified by the valuation arbitrator; and

**arbitration meeting**, in relation to the determination of the market value of a separate valuation property, means the meeting notified by the valuation arbitrator under paragraph 4.16.1; and

**deferred selection property** means each property described in part 3; and

**disclosed encumbrance**, in relation to a transfer property, means an encumbrance affecting or benefiting the property that is disclosed in the disclosure information about the property; and

**disclosure information** has the meaning given to it by paragraph 1.2.2; and

**DSP settlement date**, in relation to a purchased deferred selection property, means the date that is 20 business days after the Crown receives an election notice from the trustees of Te Korowai o Ngaruahine Trust electing to purchase the property; and

**election notice** means a written notice given by the trustees of Te Korowai o Ngaruahine Trust in accordance with paragraph 4.3 electing whether or not to purchase a deferred selection property; and

**market value**, in relation to a separate valuation property, has the meaning provided in the valuation instructions in appendix 1 to part 4; and

**notice of interest**, in relation to a deferred selection property, means a notice given by the trustees of Te Korowai o Ngaruahine Trust under paragraph 4.1 in relation to the property; and

**notification date**, in relation to a deferred selection property, means the date that the Crown receives a notice of interest in the property from the trustees of Te Korowai o Ngaruahine Trust; and

**registered bank** has the meaning given to it by section 2(1) of the Reserve Bank of New Zealand Act 1989; and

7: DEFINITIONS

**registered valuer** means a person registered as a valuer with the Valuers Act 1948; and

**separate valuation property** means each deferred selection property that part 3 provides is to be separately valued; and

**settlement notice** has the meaning given to it by paragraph 5.43.1; and

**terms of transfer** means the terms of transfer set out in part 5; and

**transfer property** has the meaning given to it by paragraph 5.1; and

**transfer period** means, in relation to a deferred selection property, the period from the notification date for that property to its actual TSP settlement date; and

**transfer value**, in relation to a deferred selection property, means the amount payable by the trustees of Te Korowai o Ngaruahine Trust for the transfer of the property determined or agreed in accordance with part 4; and

**TSP settlement date** means, in relation to a purchased deferred selection property, the DSP settlement date for the property; and

**valuation arbitrator**, in relation to a separate valuation property means the person appointed under paragraphs 4.7.2 or 4.8, in relation to the determination of its market value; and

**valuation date**, in relation to a deferred selection property, means the notification date in relation to the property.