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*Parties*

TE RUNANGA O NGATI AWA

*and*

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND ACTING BY  
THE MINISTER  
IN CHARGE OF TREATY OF WAITANGI NEGOTIATIONS

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DEED OF SETTLEMENT  
CONCERNING THE WHARENUI  
MATAATUA

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CERTIFIED AS A TRUE COPY OF A DEED DATED 30 AUGUST 1986:

DATE:

30<sup>th</sup> August 1986



S. M. Mead

# DEED OF SETTLEMENT CONCERNING THE WHARENUI MATAATUA

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Date: 30 AUGUST 1996

## PARTIES

- (1) **TE RUNANGA O NGATI AWA**, a Maori Trust Board established under Te Runanga o Ngati Awa Act 1988 ("the Runanga")
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (the "Crown")

## BACKGROUND

- A In the early 1870s the people of Ngati Awa undertook the construction at Whakatane of a carved meeting house, Mataatua.
- B The initiative to build the meeting house came from Hohaia Matatehokia, a chief of Ngati Pukeko. He consulted with the other leaders of Ngati Awa and it was agreed between them that a house be built at Whakatane and called Mataatua. Wepiha Apanui of Ngati Hokopu and Ngati Wharepaia was the architect, builder and principal designer of Mataatua.
- C Construction commenced in 1872 and was completed in the beginning of 1875. Wepiha Apanui employed carvers from Ngati Awa and other Mataatua iwi. All sections of Ngati Awa assisted in the construction of the meeting house and all contributed to it financially. The ancestors portrayed in the house include ancestors from all the tribes of Mataatua, but are predominantly those of Ngati Awa.
- D Mataatua was opened on 8 March 1875 by the Native Minister, Sir Donald McLean, in the presence of some 700 people from the tribes of Mataatua. On the day of the official opening, among the chiefs present were Apanui Te Hamaiwaho and his son Wepiha Apanui of Ngati Awa and Ngati Hokopu, Te Keepa Toihau and Hori Kawakura of Ngati Hokopu; Tiopira Hukiki and Te Rangitukehu of Te Pahipoto; Manuera of Warahoe; Te Meihana Koata and Te Manohoaka of Ngati Pukeko; Hira Te Popo, Tiwai, Awanui and Te Hata of Whakatohea; Hori Tupaea, Hamiora Tu, Enoka, Hori Ngatai, Hohepa, Tareha, Hone Makarauri, Te Kuka and Wi Parera of Ngai Te Rangi; Ranapia of Te Patuwai and Te Whenuanui, Kereru, Te Ahikaiata, Te Makarini, Tamaikowha, Hapurona Kohi and Heteraka Te Waru of Tuhoe.

- E Mataatua was built in an attempt to restore the mana of Ngati Awa and to begin repairing the damage suffered by Ngati Awa as a result of the battles of 1864 and 1865 and the confiscations of 1866. The meeting house was also to be a symbol of unity for the hapu of Ngati Awa and collectively for the iwi of Mataatua.
- F In 1879 the Government Agent in Opotiki, George Preece, was instructed to obtain a carved meeting house for the Sydney Inter Colonial Exhibition. Ngati Awa was requested to make Mataatua available for display at the exhibition. The issue was debated among the hapu of Ngati Awa and eventually, a decision was made to accede to the request of the Crown.
- G In 1879 Mataatua was sent by the Crown for exhibition at the Inter Colonial Exhibition in Sydney, Australia. The meeting house was exhibited in Sydney from 17 September 1879 until 20 April 1880. After the Sydney exhibition the meeting house was transferred to Melbourne for the Melbourne International Exhibition.
- H From Melbourne the meeting house was sent, in 1881, to the South Kensington Museum in London. It was later dismantled and stored at the Victoria and Albert Museum until 1924, when it was re-erected for the British Empire Exhibition at Wembley in London.
- I Mataatua returned to New Zealand in 1924 and was exhibited at the South Seas Exhibition in Dunedin in 1925. Following the exhibition the Crown agreed to allow the University Museum in Otago to exhibit the meeting house on permanent loan, conditional on the Museum authorities agreeing to repair all carvings, clean all woodwork, renovate paintwork, and take over administration of the meeting house. Some of the original back wall carvings (epa) and other original features did not return. The Otago Museum arranged to undertake restoration and repair work and additional carvings, tukutuku panels and other features were added to the house to form a complete exhibition. The meeting house has remained in Dunedin since 1925.
- J The Otago University Museum, (succeeded by the Otago Museum Trust Board) from that time asserted an ownership interest in Mataatua.
- K Ngati Awa has always maintained that it did not transfer title to Mataatua and that it has never lost title to Mataatua; Ngati Awa maintains that the meeting house was lent to the Crown for the purposes of the Sydney Inter Colonial Exhibition and ought to have been returned to Ngati Awa following that exhibition.



- L Ngati Awa has also maintained that the failure by the Crown to ensure the return of the meeting house to Ngati Awa constituted a breach of the principles of the Treaty of Waitangi.
- M For many years Ngati Awa has sought the return of the meeting house to Whakatane. In presenting its claims to the Waitangi Tribunal in 1994 and 1995, (under claim number WAI46) the Runanga, on behalf of its constituent hapu, included a claim concerning Mataatua and sought recommendations for the return of the meeting house to Ngati Awa. More recently, negotiations with the Crown have been conducted on behalf of Ngati Awa by the Runanga, in relation to the settlement of Ngati Awa's claims in relation to Mataatua, and have been conducted in advance of the negotiation of claim WAI46 and other claims.
- N Although the Crown has previously assumed that Mataatua was gifted to it, the Crown concedes that there is little evidence that such a gift, if it occurred, was absolute.
- O The Crown, in recognition of its duties under the principles of the Treaty of Waitangi and to settle the claims of Ngati Awa relating to and including ownership and possession of Mataatua, agreed that certain Taonga of Mataatua should be restored to Ngati Awa. The Crown, in order to facilitate the return of the Taonga to Ngati Awa and the Board, as a mark of the respect it has for Ngati Awa, agreed that the Taonga of Mataatua should be restored to Ngati Awa pursuant to an Agreement concerning Ownership and Possession of Certain Taonga dated 29 June 1996 (the "Otago Museum Agreement").
- P Pursuant to the Otago Museum Agreement, the Crown agreed to pay to the Board the sum of \$2,750,000 and the Board agreed to waive all proprietary interest or right to possession (or claim to title) it might have had or considered itself to have to the Taonga of Mataatua, and to transfer possession of, and recognise the ownership by Ngati Awa of, the Taonga of Mataatua, on execution of the Otago Museum Agreement.
- Q On the 27th and 28th of June 1996 the Runanga agreed orally to accept possession, ownership and risk for the Taonga of Mataatua with effect from the date of the Otago Museum Agreement, and came to arrangements to accept delivery of the Taonga of Mataatua and agreed to accept responsibility for the Taonga of Mataatua, on a basis consistent with the provisions of the Otago Museum Agreement.
- R The Crown and the Runanga wish to record formally their obligations to each other arising out of the Otago Museum Agreement.



- S The Crown has resolved to provide the redress, including the acknowledgements, confirmation of ownership, and apology contained in this Deed, and payment of the Settlement Sum to the Runanga, in settlement of the claim by Ngati Awa concerning the breach of the principles of the Treaty of Waitangi in relation to Mataatua.

**IT IS AGREED** by the Parties:

## **TERMS AND CONDITIONS**

### **1 DEFINITIONS AND CONSTRUCTION**

#### **1.1 Defined Terms**

In this Deed, unless the context requires otherwise:

*Act* means the Te Runanga o Ngati Awa Act 1988, as it may be amended from time to time;

*Board* has the meaning ascribed to it in the Otago Museum Agreement;

*Business Day* means any day other than Saturday, Sunday and statutory holidays;

*Covenant* means the covenant described in *clause 4*;

*Crown* means Her Majesty the Queen acting in right of New Zealand by the Minister in Charge of Treaty of Waitangi Negotiations;

*Deed* means this deed, including the Background, Schedules and Appendices attached to it;

*GST* means goods and services tax in terms of the GST Act or any similar tax levied in substitution;

*GST Act* means the Goods and Services Tax Act 1985 as it may be amended from time to time;

*Mataatua* means the meeting house described in the Background to this Deed, except that:

- (a) for the purpose of *clause 2.2 Mataatua* shall mean only the original meeting house described in paragraphs A to F of the Background; and



- (b) where used in the second line of *clause 3.1.4 Mataatua* shall mean the Taonga of Mataatua as defined in this *clause 1.1*;

*Ngati Awa* means Nga uri o nga hapu o Ngati Awa, the descendants of the hapu of Ngati Awa, who are the beneficiaries of the Runanga under the Act;

*Negotiations Protocol* means the mandate for the Negotiators of Ngati Awa dated 23 March 1996, between the Runanga and the Hapu of Ngati Awa;

*Otago Museum* means the Otago Museum in Dunedin;

*Otago Museum Agreement* means the Agreement Concerning Ownership and Possession of Certain Taonga dated 29 June 1996, between the Crown and the Board, a copy of which is annexed to this Agreement as Appendix C;

*Redress* means together the acknowledgements, confirmations, apologies and certificates given and the *Covenant* signed pursuant to this Deed, the entry into and performance of the Otago Museum Agreement by the Crown, and the payment to the Runanga of the Settlement Sum under this Deed;

*Settlement Sum* means the payment to be made to the Runanga by the Crown pursuant to *clause 7* of this Deed;

*Taonga of Mataatua* means all original parts of Mataatua created by the iwi of Ngati Awa and transferred or deemed to have been transferred by the Board to Ngati Awa under the Otago Museum Agreement, and

- (i) which are listed and described in Appendix A to this Deed; or
- (ii) which are deemed to be included in the First Schedule to the Otago Museum Agreement by virtue of clause 7.3 of the Otago Museum Agreement;

but does not include the items listed and described in Appendix B;

*the Runanga* means Te Runanga o Ngati Awa, a Maori Trust Board established under Te Runanga o Ngati Awa Act 1988;

*Waitangi Tribunal* means the tribunal established under the Treaty of Waitangi Act 1975.

## 1.2 Construction

In the construction of this Deed, unless the context requires otherwise:

*Background, Clauses and Schedules:* references to Background, Clauses, Schedules and Appendices are to background, clauses, schedules and appendices of this Deed. Appendix D is attached to the Deed for the purpose of recording the matters which the Parties have agreed will be set out in the Covenant, and is not included in and does not form part of this Deed for the purposes of *clause 20.6*;

*Business Days:* anything required by this Deed to be done on a day which is not a Business Day shall be done and be effective if done on the next Business Day;

*Currency:* references to monetary amounts are to New Zealand currency;

*Headings:* the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;

*Parties:* references to any Party include the successors of that Party;

*Person:* includes any company or other entity;

*Singular, Plural and Gender:* the singular includes the plural and vice versa, and words importing any gender include the other genders;

*Statutes and Regulations:* references to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to the statute, regulations, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;

*Terms:* terms defined in the Otago Museum Agreement shall bear the same meaning in this Deed unless expressly defined in this Deed or inconsistent with the context of this Deed.

## PART I - REDRESS

### 2 ACKNOWLEDGEMENTS BY CROWN

The Crown acknowledges that:

2.1 Mataatua is a taonga of great historical, cultural and spiritual significance to Ngati Awa; and



- 2.2 The acts and omissions of the Crown in failing to ensure the return of Mataatua to Ngati Awa after the Sydney Inter Colonial Exhibition, constituted a breach of the principles of the Treaty of Waitangi; and
- 2.3 Ngati Awa has, for some time, sought the return of Mataatua; and
- 2.4 Ngati Awa's claims for the return of Mataatua to Ngati Awa are and have always been well-founded.

### 3 APOLOGY

#### 3.1 Apology

The Crown:

- 3.1.1 Recognises the historical, cultural and spiritual significance of Mataatua to Ngati Awa and recognises that Ngati Awa has sought the return of Mataatua for many years.
- 3.1.2 Acknowledges and profoundly regrets that it has caused offence to the mana of Ngati Awa by acting in breach of the principles of the Treaty of Waitangi in failing to ensure the return of Mataatua to Ngati Awa after the Sydney InterColonial Exhibition.
- 3.1.3 Therefore apologises unreservedly for any sense of loss or distress that the people of Ngati Awa have suffered through the absence of Mataatua from Whakatane.
- 3.1.4 Accordingly, seeks on behalf of all New Zealanders to atone for the matters set out in *clauses 3.1.1 to 3.1.3* by having arranged for the return of Mataatua to Ngati Awa and by the provision of the Redress to the Runanga pursuant to this Deed in settlement of the Ngati Awa claims concerning Mataatua.

#### 3.2 Public apology

The Crown will apologise publicly to Ngati Awa at a time and place and in a form to be mutually agreed by the Crown and the Runanga, for the matters set out in *clause 3.1*.

### 4 COVENANT

Immediately following the execution of this Deed or as soon thereafter as is practicable the Crown and the Runanga will sign a Covenant in the form set out in Appendix D, in both the English and the Maori languages.



## 5 OWNERSHIP AND POSSESSION

### 5.1 Confirmation by the Crown

The Crown acknowledges and confirms that:

5.1.1 As of June 29, 1996 the Crown has no further proprietary interest of any kind (whether ownership, possession or otherwise) in the Taonga of Mataatua and the Crown accordingly waives in favour of the Runanga, on behalf of Ngati Awa, any proprietary interest or right to possession (or claim to title) which the Crown may have or consider itself to have to the Taonga of Mataatua; and

5.1.2 Upon execution of this Deed the Crown will provide a certificate to the Runanga in the form set out in the *First Schedule* recording the matters set out in *clause 5.1.1*.

### 5.2 Acceptance by Ngati Awa

The Runanga acknowledges and confirms that, with effect from the date of the Otago Museum Agreement:

5.2.1 the Board and the Crown agreed that the Runanga, on behalf of Ngati Awa, is the absolute owner of the Taonga of Mataatua and, subject to the terms of the Otago Museum Agreement, is entitled to absolute possession of the Taonga of Mataatua free from any mortgage, charge, lien, pledge, security interest or other encumbrance; and

5.2.2 the Board waived any proprietary interest or right to possession (or claim to title) it may have or consider itself to have to the Taonga of Mataatua; and

5.2.3 the Runanga previously agreed to accept the possession and ownership and (subject to the terms of the Otago Museum Agreement) the risk in respect of the Taonga of Mataatua.

## 6 ACKNOWLEDGEMENTS BY THE RUNANGA

The Runanga:

6.1 Acknowledges and records its appreciation of the Crown's assistance in obtaining from the Board possession of the Taonga of Mataatua and an acknowledgement by the Board of Ngati Awa's absolute ownership and entitlement to possession of the Taonga of Mataatua;



6.2 Acknowledges and confirms that, without limiting *clause 8*, by providing the Redress the Crown will have honoured its obligations to the Runanga and Ngati Awa under the principles of the Treaty of Waitangi in relation to Mataatua.

## 7 PAYMENT OF SETTLEMENT SUM

In consideration of the covenants and agreements of the Runanga contained in this Deed and subject to *clauses 8 and 18.2*, the Crown agrees that on the date of this Deed it will pay to the Runanga the Settlement Sum set out in the *Third Schedule* as part of the redress to be provided by the Crown to Ngati Awa in respect of the claims of Ngati Awa related to Mataatua and described in *Recital S*. The Runanga has advised that this sum will be utilised for the costs of transporting the Taonga of Mataatua to Whakatane, reconstructing Mataatua (including the Taonga of Mataatua) and re-establishing Mataatua as a functioning marae.

## PART II - NATURE OF SETTLEMENT

### 8 FINAL SETTLEMENT OF MATAATUA CLAIMS

#### 8.1 Final Settlement and Discharge of Crown Liability

The Parties acknowledge and agree that the provision of the Redress by the Crown is in full and final settlement of all or any claims that the Runanga, Ngati Awa or any other person claiming through them may have or consider themselves to have in respect of all or any matters, or rights, or title, or interest in or relating to Mataatua and the Taonga of Mataatua, whether arising at law, under the principles of the Treaty of Waitangi or otherwise, whether now or in the future or any time and whether notified to the Crown or not. Nothing in this clause shall be construed to limit the Crown's liability (if any) under *clauses 10, 17.2 and 18.3* of this Deed.

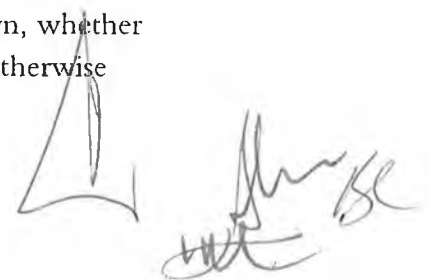
#### 8.2 Waitangi Tribunal Claim

Immediately following execution of this Deed, a joint memorandum from the Crown and the Runanga, in the form set out in the *Second Schedule*, shall be executed by the Parties and filed by the Crown with the Waitangi Tribunal.

#### 8.3 Other Ngati Awa Claims

Subject to *clause 8.4*, the Parties further acknowledge and agree that:

8.3.1 the payment of the Settlement Sum is a payment comprising part of the redress for and settlement of Ngati Awa's claims against the Crown, whether arising at law, under the principles of the Treaty of Waitangi or otherwise



relating to the ownership and possession of Mataatua and the Taonga of Mataatua or to all or any matters, or rights, or title or interests in or relating to, Mataatua and the Taonga of Mataatua;

8.3.2 the payment of the Settlement Sum being, together with the balance of the Redress, in full and final settlement of the Crown's liability as described in *clause 8.1* it is the policy of the Crown to treat the amount of the Settlement Sum (subject to *clause 8.3.3*) as being added to the final value of the settlement of Ngati Awa's other claims under the Treaty of Waitangi;

8.3.3 Other than as provided in *clauses 8.3.1* and *8.3.2*, the settlement of Ngati Awa's claim in respect of the Taonga of Mataatua and Mataatua under this Deed will not be taken into account in, or otherwise impact whether adversely or not on the final value of the settlement of any other claim or claims of Ngati Awa (not relating to or including Mataatua) arising under the Treaty of Waitangi;

8.3.4 Ngati Awa shall not claim or seek to claim any further compensation or redress or any kind in respect of Mataatua and the Taonga of Mataatua.

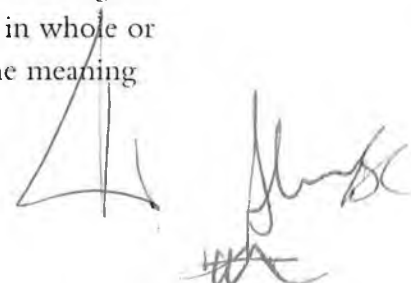
8.4 Notwithstanding *clause 8.3*, the Parties agree and acknowledge that:

8.4.1 the obligations of the Crown under this Deed are not contingent on the Parties reaching agreement on a comprehensive settlement of Ngati Awa's claims under the Treaty of Waitangi; and

8.4.2 the Parties' entry into this Deed and the terms of this Deed are not intended to and shall not bind the Parties in respect of any matters not expressly dealt with in this Deed, including the definition of the scope of any settlement of Ngati Awa's other claims, the acceptance by the Runanga of the application of the policy described in *clause 8.3.2* to any such settlement, or the definition of the claims settled by any such settlement.

## 9 NATURE OF SETTLEMENT SUM FOR TAX PURPOSES AND TAX INDEMNITY

The Parties acknowledge and agree that the Settlement Sum is a payment comprising part of the settlement of Ngati Awa's claims against the Crown, whether arising at law, under the principles of the Treaty of Waitangi or otherwise, relating to the ownership and possession of Mataatua and the Taonga of Mataatua and that accordingly the Settlement Sum does not represent, in whole or in part, the consideration for any supply of goods or services, within the meaning



of the GST Act 1985, by the Runanga or Ngati Awa to the Crown or any other party.

## 10 SETTLEMENT SUM AS A NET AMOUNT

### 10.1 Indemnity for GST

The Crown and the Runanga acknowledge and agree that the Settlement Sum is to be a net amount and that if, despite the provisions of *clause 9* of this Deed, the Runanga is assessed for GST in respect of the receipt by it of the Settlement Sum, or any part of it, the Crown will, within 10 Business Days of being notified by the Runanga of that assessment, pay an additional sum to the Runanga to ensure that the Runanga receives, after payment of any GST so assessed, a net sum equal to the Settlement Sum.

### 10.2 No claims for input tax

If the Runanga is assessed for GST in respect of the receipt by it of the Settlement Sum and the Crown pays to the Runanga the additional sum required under *clause 10.1*, then the Runanga acknowledges and confirms that it will refund to the Crown any amounts received by it in respect of deductions of input tax in respect of any supplies acquired by the Runanga with any part of the Settlement Sum on which GST was assessed and the additional sum required under *clause 10.1*.

### 10.3 Evidence of claims

Upon reasonable request by the Crown the Runanga will provide to the Crown evidence of claims made for input tax in respect of supplies of goods and services acquired with the Settlement Sum and the additional sum required under *clause 10.1*, including copies of GST returns and tax invoices relating to such supplies.

## PART III - OTAGO MUSEUM AGREEMENT

## 11 IDENTIFICATION OF TAONGA OF MATAATUA

The Runanga has acknowledged and confirmed that:

11.1 the Taonga of Mataatua being returned to Ngati Awa consist of those Taonga of Mataatua defined and described in the First Schedule to the Otago Museum Agreement together with those items (if any) to which *clause 7.3* of the Otago Museum Agreement applies; and

11.2 those Taonga of Mataatua defined and described in the First Schedule to the Otago Museum Agreement were identified for inclusion in that Schedule by authorised representatives of the Runanga; and

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11.3 subject to clause 7.3 of the Otago Museum Agreement the Runanga is satisfied that the Otago Museum Agreement accurately records and describes all of the Taonga of Mataatua.

## 12 OTAGO MUSEUM AGREEMENT

The Runanga confirms that it and its representatives and members will observe and carry out the obligations and responsibilities of Ngati Awa set out in the Otago Museum Agreement and will otherwise observe in all respects all of the provisions of the Otago Museum Agreement which are within its powers to observe. The Runanga shall not do, or omit to do anything, which is inconsistent with the provisions of the Otago Museum Agreement. Without limitation to the foregoing the Runanga shall not do or allow any act or omission on its part or the part of any member of Ngati Awa, which might expose the Crown to being in breach of its obligations to or its liability to the Board under the Otago Museum Agreement.

## 13 DELIVERY OF TAONGA

Without limiting *clause 12*, the Runanga covenants and agrees that subject to the Board's compliance with its obligations under the Otago Museum Agreement, it will take possession of the Taonga of Mataatua on the Delivery Date, or where clause 7.3 of the Otago Museum Agreement applies, on or before such extended Delivery Date as may be agreed pursuant to that clause.

## 14 NGATI AWA CONTACT PERSON

The Runanga has selected two persons to be available to the Board at all reasonable times as a contact between Ngati Awa and the Board on matters relating to the Taonga of Mataatua. The Runanga will immediately (if it has not already done so) provide to the Board the contact details of those persons.

## 15 THE RUNANGA AS OWNER OF TAONGA OF MATAATUA

15.1 As owner of the Taonga of Mataatua the Runanga has acknowledged and agreed that, subject to the compliance by the Board with its obligations under the Otago Museum Agreement, the Runanga is and has been, since 29 June 1996, completely responsible for:

15.1.1 the care and safety of the Taonga of Mataatua;

15.1.2 making arrangements for storage, packing and transportation of the Taonga of Mataatua from the Otago Museum and delivery to Whakatane;



- 15.1.3 the restoration of Mataatua and its ongoing use;
- 15.1.4 all costs (including insurance) related to the matters described in *clauses 15.1.1 to 15.1.3*;
- 15.1.5 without limiting *clause 16*, from and including the Delivery Date, the insurance of the Taonga of Mataatua; and
- 15.1.6 the acts and omissions of its representatives, if any, involved in the inspection, dismantling and conservation of the Taonga of Mataatua.

15.2 The acceptance by the Runanga of its responsibilities under *clause 15.1* shall not:

- 15.2.1 impose upon the Runanga any additional responsibility or obligation to the Crown in respect of the Otago Museum Agreement other than the obligations and responsibilities contained in *clauses 11 to 14, 16 and 18.1* of this Deed; or
- 15.2.2 limit or operate as a release of the Crown's obligations under *clauses 17.2 or 18.3*.

## 16 INSURANCE

Without limiting the obligations of the Runanga under this Deed, the Runanga covenants and agrees that:

- 16.1 up to and including the Delivery Date (or such later date or extended Delivery Date upon which the Runanga takes delivery of the Taonga of Mataatua) it will continue to observe its obligations in respect of the insurance of the Taonga of Mataatua on the basis set out in *clause 4.3* of the Otago Museum Agreement; and/or;
- 16.2 in the event that the insurance cover described in *clause 4.3* of the Otago Museum Agreement expires or lapses or is terminated for any reason prior to the Delivery Date the Runanga will use its best endeavours to replace such insurance cover immediately with equivalent or identical cover; and
- 16.3 at any time if, whether before or after the Delivery Date, the Taonga of Mataatua is not fully insured then, subject to its obligations to enforce the Otago Museum Agreement set out in *clause 17*, the Crown shall not be responsible in any way for any loss incurred by the Runanga resulting from the lack of such cover.



## 17 CROWN'S RESPONSIBILITIES

### 17.1 Ownership of Taonga.

The Runanga acknowledges and agrees that (subject to the payment by the Crown of the amount specified in *clause 7*) the Crown has no responsibility or obligations, under this Deed or otherwise, for the matters described in *clauses 15.1 or 16*, other than the Crown's obligations in respect of the Otago Museum Agreement described in *clause 17.2*.

### 17.2 Compliance with Otago Museum Agreement.

The Crown shall:

- 17.2.1 use all reasonable endeavours to procure that the Board complies with the obligations of the Board set out in the Otago Museum Agreement; and
- 17.2.2 without limiting *clause 17.2.1*, if in the Crown's reasonable opinion (after consultation with the Runanga) it is necessary and desirable to do so, take all reasonable steps to enforce the Otago Museum Agreement (including the commencement of proceedings against the Board for specific performance or injunction relief); and
- 17.2.3 not exercise any rights of cancellation or rescission of the Otago Museum Agreement without, in its reasonable opinion, having first exhausted all other reasonable remedies available to the Crown under the Otago Museum Agreement, and without having first obtained the Runanga's written approval to the exercise of those rights (which approval shall not be unreasonably withheld); and
- 17.2.4 observe and perform all of the obligations on the part of the Crown set out in the Otago Museum Agreement, and will otherwise observe and perform in all respects all of the provisions of the Otago Museum Agreement which are within the power of the Crown to observe.

## PART IV - MISCELLANEOUS

## 18 WARRANTY AND INDEMNITIES

### 18.1 Warranty by the Runanga

The Runanga warrants and represents that, to the best of its knowledge and belief:

- 18.1.1 it is the rightful owner of Mataatua and the Taonga of Mataatua;



- 18.1.2 no other person is entitled to claim ownership or possession of Mataatua and the Taonga of Mataatua whether at law, under the principles of the Treaty of Waitangi or otherwise.

Without limitation, the above warranty shall be deemed to be breached by the Runanga if any other person shall succeed in establishing ownership or possession of Mataatua or the Taonga of Mataatua or any part thereof at law, under the principles of the Treaty of Waitangi or otherwise.

### 18.2 Indemnity by the Runanga

Without limiting the Crown's other remedies at law or otherwise, the Runanga shall indemnify the Crown on demand against all losses, costs, damages, expenses, and claims arising directly or indirectly as a result of the Runanga or Ngati Awa failing to observe or perform all or any of their obligations arising under this Deed, including without limitation the Warranties contained in *clause 18.1*.

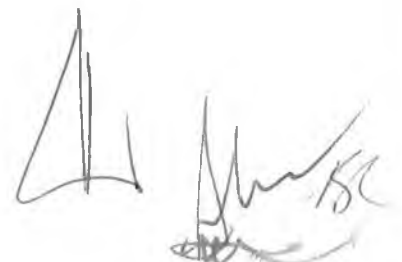
### 18.3 Indemnity by Crown

Without limiting the Runanga's remedies at law or otherwise, the Crown shall indemnify the Runanga on demand against all losses, costs, damages, expenses and claims arising directly or indirectly as a result of the Crown failing to observe or perform all or any of its obligations arising under the Otago Museum Agreement or this Deed.

## 19 MANDATE

By its execution of this Deed, the Runanga warrants and represents that:

- 19.1 the Runanga is acting as the representative of Ngati Awa in negotiating, agreeing to the terms of and entering into this Deed; and
- 19.2 it has complied in all respects with the provisions of the Negotiations Protocol; and





19.3 on July 11 1996, a hui of Nga Hapu o Ngati Awa duly authorised the entry by the Runanga into an agreement with the Crown covering the matters set out in this Deed.

## 20 GENERAL CLAUSES

### 20.1 Confidentiality/Public Announcements

- 20.1.1 The Parties acknowledge and agree that, subject to *clauses 20.1.2 to 20.1.4* inclusive, each of them may in their own discretion make public announcements from time to time concerning any part of the subject matter of this Deed.
- 20.1.2 The Parties covenant and agree that the content of any such public announcements will be accurate and will not be misleading or incorrect in any respect.
- 20.1.3 Notwithstanding *clause 20.1.1*, the Runanga shall keep confidential and shall not disclose, without the prior written consent of the Crown, the provisions of the Otago Museum Agreement, whether as a separate agreement or as appended to this Deed.
- 20.1.4 The Parties acknowledge and agree that either Party may disclose a copy of this Deed if required to do so by law or by any Court or Tribunal considering any claim relating to Mataatua or in which the subject of Mataatua is raised.

### 20.2 Further Assurances

Each of the Parties agrees to execute and deliver any documents, and to do all things as may reasonably be required by the other Party to obtain the full benefit of this Deed according to its true intent.

### 20.3 No Waiver

No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Deed shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Deed.

### 20.4 Costs

Except as otherwise provided in this Deed, the Parties will meet their own costs relating to the negotiation, preparation and implementation of this Deed.

### 20.5 Entire Apology

The apology contained in *clause 3.1* constitutes all of the matters for which the Crown is required to or should apologise in relation to Mataatua and the Taonghi



of Mataatua, and the Runanga acknowledges that there are no other matters which should be included in *clause 3.1*.

## 20.6 Deed as legal document

The Parties agree that:

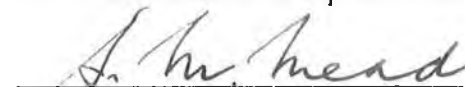
20.6.1 subject to *clause 20.6.2*, this Deed constitutes the entire legal agreement between the Parties with respect to the subject matter contained in this Deed; and

20.6.2 it is not intended that the Covenant impose any additional or separate legal obligations on the Parties, and the form of and the title for the Covenant shall not imply any further obligations at law or otherwise upon either of the Parties beyond those expressed in this Deed; and

20.6.3 without limiting *clause 20.6.2*, the provisions of this Deed shall prevail in all circumstances.

**EXECUTED** as a Deed on the date shown on the top of page one.

The COMMON SEAL of )  
TE RUNANGA O NGATI AWA )  
was hereto affixed in the presence of )



**HIRINI MOKO MEAD**  
Chairman



**KEI MERITO**  
Deputy Chairman



SIGNED for and on behalf of HER )  
MAJESTY THE QUEEN in right of )  
New Zealand by the Minister in Charge )  
of Treaty of Waitangi Negotiations, )  
DOUGLAS ARTHUR )  
MONTROSE GRAHAM )  
in the presence of



\_\_\_\_\_  
D A M Graham

B CLARKE

Witness

B Clarke

Signature

Director

Occupation

Office of Treaty Settlements

Address

**FIRST SCHEDULE**  
**CERTIFICATE ACKNOWLEDGING OWNERSHIP INTEREST**

*(Clause 5.1.2)*

To: Te Runanga o Ngati Awa

From: Her Majesty the Queen in Right of New Zealand acting by the  
Minister in Charge of Treaty of Waitangi negotiations.

Date:

**CERTIFICATE**

Her Majesty the Queen in right of New Zealand, acting by the Minister in Charge of Treaty of Waitangi negotiations (the "Crown") certifies, in accordance with the provisions of a Deed of Settlement Concerning the Taonga of Mataatua Wharenui dated [ ] 1996 (the "Deed"), that the Crown acknowledges and confirms, with effect from 29 June 1996 that the Crown has no proprietary interest of any kind (whether ownership, possession or otherwise) in the Taonga which is the subject of the Deed and the Crown accordingly waives in favour of Te Runanga o Ngati Awa on behalf of Ngati Awa, any proprietary interest or right to possession (or claim to title) which the Crown may have or consider itself to have to that Taonga.

**SIGNED** for and on behalf of **HER** )  
**MAJESTY THE QUEEN** in right of )  
New Zealand by the Minister in Charge )  
of Treaty of Waitangi Negotiations, )  
**DOUGLAS ARTHUR** )  
**MONTROSE GRAHAM** )  
in the presence of

\_\_\_\_\_  
D A M Graham

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

## SECOND SCHEDULE

## JOINT MEMORANDUM

*(Clause 8.2)*

## THE WAITANGI TRIBUNAL

WAI46 and Others

IN THE MATTER of the Treaty of  
Waitangi Act 1975

AND

IN THE MATTER of a Claim by **HIRINI  
MOKO MEAD** and  
others for Ngati Awa  
and relating to Ngati  
AwaJOINT MEMORANDUM OF COUNSEL  
CONCERNING  
MATAATUA WHARENUI

- 1 Counsel refer to the "Memorandum Concerning Mataatua Wharenuui" dated 3 July 1996 filed jointly with the Waitangi Tribunal by Crown Counsel, Counsel for Ngati Awa and the solicitor for the Otago Museum Trust Board ("the Board"). The Memorandum recorded that, pursuant to an Agreement Concerning Ownership and Possession of Certain Taonga between the Crown and the Board dated 29 June 1996, the Board acknowledged that Te Runanga o Ngati Awa is the absolute owner of that Taonga of Mataatua originally carved by Ngati Awa, and transferred absolute possession of that Taonga to Te Runanga o Ngati Awa.
- 2 Agreement has now been reached between the Crown and Te Runanga o Ngati Awa in relation to the cost of returning the Taonga to Ngati Awa, the re-establishment of Mataatua Wharenuui and related issues. Those agreements are recorded in a Deed of Settlement Concerning the Wharenuui Mataatua dated [ ] 1996 (the "Deed").
- 3 Pursuant to its obligations under the Deed Ngati Awa now confirms that, subject to compliance by the parties with their obligations under the Deed, all claims



made to the Waitangi Tribunal by Te Runanga o Ngati Awa, Ngati Awa or any persons claiming through Ngati Awa concerning Mataatua Wharenuui or the Taonga of Mataatua Wharenuui or any related matters, whether now or in the future or any time and whether notified to the Crown or not, have been settled and discharged by the execution of the Deed by the Crown and accordingly are withdrawn and discontinued.

- 4 The Waitangi Tribunal is respectfully requested by the Crown Counsel and Counsel for Ngati Awa to issue a direction accordingly.

DATED the [ ] day of [ ] 1996

\_\_\_\_\_  
A K Mobberley  
Crown Counsel

\_\_\_\_\_  
A Macdonald  
Counsel for Te Runanga o Ngati Awa



**THIRD SCHEDULE****SETTLEMENT SUM**

*(Clause 7)*

The Settlement Sum to be paid by the Crown to the Runanga pursuant to *clause 7* of this Deed and subject to and in accordance with the provisions of this Deed, is the sum of \$2,000,000.

Handwritten signature and initials, possibly "A. Shup" or similar, written in black ink.





APPENDIX A

TAONGA OF MATAATUA

*(Clause 1.1)*

Interpretation of Photographs Referred to in Appendices A and B and Annexed to this Deed

Listed below are those original parts of Mataatua created by the iwi of Ngati Awa and transferred or deemed to have been transferred by the Otago Museum Trust Board to Ngati Awa under the Otago Museum Agreement.

All of the Taonga are cross referenced to the copies of photographs included in Appendix C or to attached photocopies of individual Museum registration cards in Appendix C.

- 1 The photographs are photocopies of laser copies of photographic records of Mataatua held by the Board. Some of the originals were mounted on cardboard that had been annotated with words and numerals. ("the Originals")
- 2 Any such notations and numerals marked in pencil on the Originals which have been reproduced in the photographs are not to be taken into account in the interpretation of the photographs.
- 3 The letters marked in bold pen on the photographs, which cross reference to the entries on Appendices A and B, are those to be relied on for the interpretation of the photographs.
- 4 The booklet titled "The Great Carved House Mataatua of Whakatane" by W J Phillips and the late Dr J C Wadmore, printed for the Polynesian Society (Inc), Druid's Building, Woodward Street, Wellington, Valley Printing Company Ltd, Petone (Document C14 on the Waitangi Tribunal's Record of Documents for the claim by Te Runanga o Ngati Awa - Wai 46) - has been relied on as the authoritative guide for the identification of the Taonga shown in the photographs.

LIST OF TAONGA

- a) 26 Internal poupou (refer to photographs)

Handwritten signatures and initials in the bottom right corner of the page.

*Left side (when facing back wall)*

Tu Whakairiora (marked A on photograph 1)  
Tawhaki (Tutonga) [Rotowha] (marked B on photograph 1)  
Tahu (marakihau) (marked C on photograph 1)  
Iratumoana [Koteuaha] wearing heitiki (marked D on photograph 1)  
Te Whetenui wearing heitiki (marked E on photograph 1)  
Hikapehiwai wearing heitiki (marked F on photograph 1)  
Tuteao (Tangata Iti) (marked G on photograph 1)  
Rangitumai (marked H on photograph 1)  
Tamaruarangi [Mahupahua] holding mere (marked I on photograph 1)  
Paraheka (marked J on photograph 1)  
Umutahi (marked K on photograph 1)  
Tikitu (marked L on photograph 2)  
Marakihau (marked M on photograph 2)

*Right side (when facing back wall)*

Marakihau (marked A on photograph 3)  
Ramaapakura holding mere (marked B on photograph 3)  
Tamawhero holding mere (marked C on photograph 3)  
Apanuiwaipapa holding mere (marked D on photograph 3)  
Matekitatahi holding mere and wearing heitiki (marked E on photograph 3)  
Rangikawehea holding mere (marked F on photograph 3)  
Hikareia holding kotiate (marked G on photograph 3)  
Te Rangihouhiri (marked H on photograph 3)  
Ikapuku holding wahaika (marked I on photograph 3)  
Imuwahakapuru wearing heitiki (marked J on photograph 3)  
Haraawaka wearing heitiki (marked K on photograph 3)  
Kakahutararo (Te Whakahoki) (marked L on photograph 4)  
Tapuikakahu (marked A on photograph 4)

b) 6 Poupou in porch

*Left side (when facing exterior wall)*

Kohi holding mere (marked A on photograph 5a)  
Kahuki wearing heitiki and holding mere (marked B on photograph 5a)  
Te Kiore (marked C on photograph 5a)

The block contains a hand-drawn sketch of a triangle with a vertical line inside it, and two handwritten signatures to its right.

*Right side (when facing exterior wall)*

Tai o Ruamano wearing heitiki (marked A on photograph 6)  
Pirauwhenua, carries child (marked B on photograph 6)  
Tamakitera, holding mere (marked C on photograph 6)

- c) 5 Vertical epa on front interior wall (marked A, B, C, D, H on photograph 7)
- d) 7 Vertical epa back interior wall (marked A, B, D, E, G, H, I on photograph 8)
- e) All 26 painted rafters inside the house
- f) All 6 painted rafters in the porch
- g) Korupe (door lintel) above the door in the front wall (marked L on photograph 1)
- h) 2 Waewae on the side of the door (marked M and N on photograph 1)
- i) Carved internal window lining
- j) Carved external window lining (marked O on photograph 1)
- k) 1 Pane (marked Q on photograph 1)
- l) 2 Amo (the sets of twins marked D and E on photograph 6)
- m) 2 Maihi with raparapa (carved external barge poles marked A and B on photograph 5)
- n) 1 Koruru (marked C on photograph 5)
- o) 1 Paepaekaiawha (marked D on photograph 5)
- p) 1 Poutokomanawa (as depicted on cover of Phillipps and Wadmore)
- q) 1 Poumua (marked E on photograph 5)



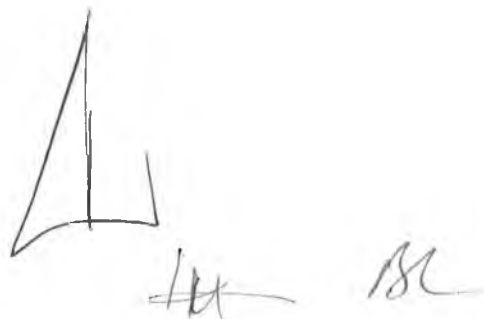
- r) 2 Carved barge boards on the Tuaronga interior back wall (marked J and K on photograph 8)
- s) 2 Carved barge boards on the interior front wall (marked I and J on photograph 7)
- t) 2 Carved barge boards in the porch (marked P on photograph 1)
- u) 2 Whakawae (skirting boards) along the front wall in the porch (marked R on photograph 1)
- v) 1 Internal ridge pole currently 3 sections (partially depicted in figures 13 and 14 on pp. 18-19 of Phillipps and Wadmore)

#### **Taonga in Storage or in Display**

- a) 1 Poupou on display in the "Maori Hall" of the Museum registered as D88.49 (marked photograph 9)
- b) 1 Fragment of Poutahu in storage (marked photograph 10)
- c) 1 Carving registered as D76.22 (marked photograph 11)
- d) 1 Carving registered as D76.30 (marked photograph 12)
- e) 1 Carving registered as D76.24 (marked photograph 13)
- f) 1 Carving registered as D76.39 (marked photograph 14)
- g) 1 Epa registered as D76.38 (marked appendix 1)
- h) 1 Epa registered as D88.348 (marked appendix 2)
- i) 1 Epa registered as D76.25 (marked appendix 3)
- j) 1 Carved rectangular piece registered as D76.29 (marked appendix 4)
- k) 1 Carved section registered as D78.118 (marked appendix 5)
- l) 1 Epa registered as D76.26 (marked appendix 6)

The image shows two handwritten signatures in black ink. The signature on the left is a stylized, somewhat abstract mark, possibly representing the initials 'AA'. The signature on the right is more cursive and appears to be a full name, though it is difficult to decipher. Both signatures are written in a fluid, personal style.

- m) 1 Epa registered as D88.347 (marked appendix 7)
- n) 1 Epa section registered as D76.37 (marked appendix 8)
- o) 1 Carved piece registered as D76.33 (marked appendix 9)
- p) 1 Carved piece registered as D76.23 (marked appendix 10)
- q) 1 Carved piece registered as D76.31 (marked appendix 11)
- r) 1 Carved piece registered as D76.36 (marked appendix 12)
- s) 1 Carving in 2 pieces registered as D76.27 (marked appendix 13)

Handwritten signature and initials. The signature is a stylized 'H' or 'A' shape. To its right are the initials 'BC'.



**APPENDIX B**

*(Clause 1.1)*

**ITEMS NOT TRANSFERRED TO NGATI AWA**

- a) 3 Epa on interior front wall carved for Tumoana Kotere (marked E, F, G on photograph 7, Appendix C)
- b) 2 Epa on interior back wall carved for Tumoana Kotere (marked C and F on photograph 8, Appendix C)
- c) All thatching and cladding, including the roof lining, outside of house and back of porch
- d) All lateral painted cross beams on the roof (partially depicted in photographs 7 and 8, Appendix C)
- e) All tukutuku panels and associated foot boards and painted taniko motif panels
- f) 2 Undecorated internal poles (as depicted on cover of Phillipps and Wadmore)
- g) 1 Undecorated porch pole

Handwritten signatures and a sketch of a triangular structure, possibly a roof or a pole, with a vertical line and a horizontal line extending from the base.





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Date

27 June 1996

Parties

OTAGO MUSEUM TRUST BOARD

and

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND ACTING BY

THE MINISTER

IN CHARGE OF TREATY OF WAITANGI NEGOTIATIONS

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AGREEMENT CONCERNING  
OWNERSHIP AND POSSESSION OF  
CERTAIN TAONGA

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 Chapman Tripp Sheffield Young  
Barristers & Solicitors NEW ZEALAND



# AGREEMENT CONCERNING OWNERSHIP AND POSSESSION OF CERTAIN TAONGA

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Date *29 June*

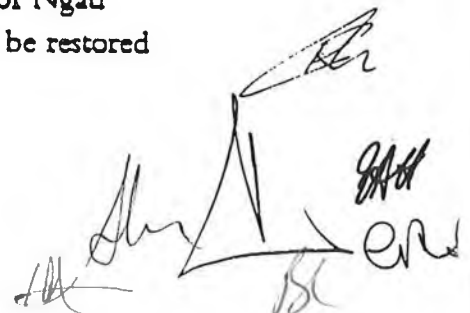
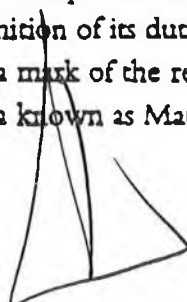
1996

## PARTIES

- (1) OTAGO MUSEUM TRUST BOARD, a Board of Trustees established under the Otago Museum Trust Board Act 1955 (the "Board")
- (2) HER MAJESTY THE QUEEN in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (the "Crown")

## BACKGROUND

- A Between 1872 and 1875, Wepiha Apanui of the iwi of Ngati Awa, with the assistance of others, carved a meeting house known as Mataatua.
- B Ngati Awa maintain that they lent Mataatua to the Crown for the purposes of an exhibition in Sydney in 1877 and that it was to be returned to them following the completion of that exhibition.
- C The Crown acknowledges that it was provided with Mataatua for the purposes of the Sydney exhibition. It further acknowledges that Mataatua has since been used for other purposes, including an exhibition in the [South Kensington Museum] in 1881, that it was returned to the New Zealand Government in 1924 and exhibited at the New Zealand and South Seas Exhibition in Dunedin in 1925-1926. It has remained in the physical possession of Otago Museum since then.
- D Ngati Awa maintain that they did not transfer title to Mataatua, that they have never lost title to Mataatua, and that it ought to have been returned to them.
- E Although the Crown has previously assumed that Mataatua was gifted to it, the Crown concedes that there is little evidence that such a gift, if it occurred, was absolute.
- F The Board came into possession of Mataatua with the consent of the Crown in 1925 and from that time asserted an ownership interest in Mataatua.
- G It is acknowledged that none of the parties can prove title to Mataatua definitively. That being the case, the Crown, in recognition of its duties under the principles of the Treaty of Waitangi and the Board, as a mark of the respect it has for Ngati Awa have both agreed that certain Taonga known as Mataatua should be restored to Ngati Awa.



IT IS AGREED by the Parties:

## TERMS AND CONDITIONS

### 1 DEFINITIONS AND CONSTRUCTION

#### 1.1 Defined Terms

In this Agreement, unless the context requires otherwise:

*Agreement* means this agreement, including the Background and the Schedules attached to it;

*Board* means the Otago Museum Trust Board, a Board of Trustees established under the Otago Museum Trust Board Act 1955;

*Business Day* means any day other than Saturday, Sunday and statutory holidays;

*Crown* means Her Majesty the Queen acting in right of New Zealand by the Minister in Charge of Treaty of Waitangi Negotiations;

*Default Rate* means a rate of 2% per annum above the average buying rate for 30 day bank bills published on Reuter's page BKBM or a reasonable analogue of it, fixed as at the Delivery Date;

*Delivery Date* means the date on which the dismantling of all the Taonga is completed to the reasonable satisfaction of Ngati Awa;

*Encumbrance* includes a mortgage, lien, charge, pledge, security interest, or other encumbrance;

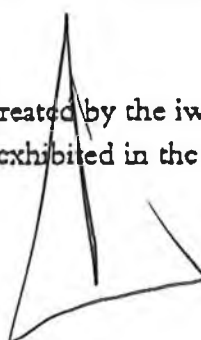
*Interim Period* means the period from and including the date of this Agreement to and including the Delivery Date;

*Mataatua* means Mataatua Wharenui as described in Recital A in the Background;

*Museum* means the Otago Museum in Dunedin;

*Ngati Awa* means Te Runanga o Ngati Awa, a Maori Trust Board established under Te Runanga o Ngati Awa Act 1988;

*Taonga* means all original parts of Mataatua created by the iwi of Ngati Awa and held by the Board, including parts stored or exhibited in the Museum and



Handwritten signatures and initials, including a large signature and the letters 'BC' and 'OR'.

including any parts which have been repaired or renovated from time to time (regardless of the extent of such repair or renovation) all of which are listed and identified in the First Schedule.

## 1.2 Construction

In the construction of this Agreement, unless the context requires otherwise:

*Background, Clauses and Schedules:* references to Background, Clauses and Schedules are to background, clauses and schedules of this Agreement;

*Business Days:* anything required by this Agreement to be done on a day which is not a Business Day shall be done and be effective if done on the next Business Day;

*Currency:* references to monetary amounts are to New Zealand currency;

*Headings:* the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Agreement;

*Parties:* references to any Party include the successors of that Party;

*Singular, Plural and Gender:* the singular includes the plural and vice versa, and words importing any gender include the other genders;

*Statutes and Regulations:* references to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to the statute, regulations, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

## 2 TRANSFER OF TAONGA

### 2.1 Transfer of Taonga

From and including the date of this Agreement:

2.1.1 The Parties agree that the possession of the Taonga shall be transferred to Ngati Awa free of any Encumbrances; and

2.1.2 The Board acknowledges that it has no further interest of any kind (whether ownership or otherwise) in the Taonga, and accordingly waives any proprietary interest or right to possession (or claim to title) it may have or consider itself to have to the Taonga; and

2.1.3 The Board transfers absolute possession of the Taonga to Ngati Awa. From the date of the execution of the Agreement Ngati Awa are the absolute owners of the Taonga;

2.1.4 The Board shall provide a certificate to the Crown on behalf of Ngati Awa in the form set out in the Second Schedule confirming that ownership and title to the Taonga has been recognised in favour of Ngati Awa and possession is to be transferred to Ngati Awa pursuant to the terms of this Agreement.

## 2.2 Payment

In consideration of the unconditional waiver and transfer of possession referred to in clauses 2.1.1 to 2.1.3, the Crown will pay to the Board the sum of \$2,750,000 in cleared funds, by 5.00 pm on the first Business Day after the date of this Agreement, or so soon thereafter as is possible in the normal course of business.

## 2.3 Delivery

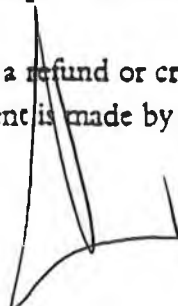
The Board shall deliver physical possession of the Taonga to Ngati Awa on or before the Delivery Date in accordance with clause 5, and pending such delivery shall hold the Taonga in trust in all things for Ngati Awa and at the direction of Ngati Awa.

## 3 GOODS AND SERVICES TAX

The amount payable by the Crown to the Board under clause 2.2 is intended by the Parties to be received by the Board without any obligation for the Board to account to the Inland Revenue Department for any Goods and Services Tax ("GST"). If a GST liability exists or arises, it is intended by the Parties that no net detriment or benefit should result to the Board, or the Crown. To this end the Parties agree the following and agree that the payment to the Board under clause 2.2 will be subject to the following:

3.1 if the supply by the Board of the Taonga (or the receipt of any indemnity payment made under this clause) results in the Board being required to account for output tax as provided by the Goods and Services Tax 1985, the Crown will indemnify the Board against that GST liability and, on the day on which the Board accounts to the Inland Revenue Department for such output tax, the Crown must (subject to clause 2.2) pay to the Board the amount of such GST liability and any GST paid on that payment;

3.2 if, for whatever reason, the Board obtains a refund or credit in respect of any output tax for which an indemnity payment is made by the Crown to the



Board under *clause 3.1*, then, on the day following the day on which the refund or credit arises, the Board must pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on that refund or credit.

**4 HANDLING OF TAONGA DURING INTERIM PERIOD**

**4.1 Dismantling of Mataatua and Storage of Taonga**

The Board shall be responsible, at its own cost, and prior to the Delivery Date, to:

4.1.1 dismantle Mataatua keeping separate and distinct items which are Taonga and items which are not Taonga;

4.1.2 apply any conservation measures necessary to enable the dismantling of Mataatua and storage (or exhibition, if applicable) of the Taonga and to preserve the Taonga without damage or further disrepair until the Delivery Date; and

4.1.3 continue to store the Taonga safely during the Interim Period.

**4.2 Standard of Care**

In displaying, dismantling, applying conservation measures and storing the Taonga pursuant to *clause 4.1* the Board shall ensure that it and its employees and agents use their best efforts to achieve the highest reasonable standard of care and security possible to protect the Taonga in the condition which they are in at the date of this Agreement.

**4.3 Insurance**

During the Interim Period the Board shall maintain its existing insurance cover for the Taonga in accordance with its customary practice. A policy in the name of Te Runanga o Ngati Awa, owner, as a separate comprehensive cover, has been arranged as at the date of this Agreement, but under the same policy as the Board, to the value of \$2,750,000. Any insurance proceeds received or receivable by the Board will be payable to Ngati Awa. Ngati Awa shall pay the premiums for such insurance on a basis and at times agreed between the Board and Ngati Awa. The Board shall not do or allow any act or omission which might render such insurance void or voidable and shall take all reasonable steps to minimise the premium payable for such insurance and to assist Ngati Awa in obtaining continuing insurance cover after the Delivery Date.

**4.4 Dealing with Taonga and Indemnity**

The Board shall:

Handwritten signatures and initials are present at the bottom right of the page. There are two large, stylized signatures that appear to be 'A' and 'B'. To their right are several smaller signatures and initials, including 'Shu', 'RKH', and 'CRK'.

4.4.1 not deal with the Taonga during the Interim Period in any manner inconsistent with the terms of this Agreement. Without limiting the foregoing, it will not remove the Taonga from its premises or allow any Encumbrance to be created over the Taonga;

4.4.2 without limiting the Crown's remedies under clauses 5 and 6, indemnify the Crown on demand against all losses, costs, damages, expenses and claims by Ngati Awa or other parties brought against the Crown or incurred by the Crown:

- (a) as a result of a breach by the Board of the terms of this Agreement; or
- (b) resulting from the loss, destruction, damage or theft of the Taonga from whatever cause during the Interim Period, provided that the amount of the indemnity payable by the Crown under this clause shall be reduced by the amount of any proceeds of insurance of the Taonga to which Ngati Awa is entitled pursuant to clause 4.3.

#### 4.5 Access During Interim Period

The Board shall permit the Crown and representatives of Ngati Awa approved by the Crown access at all reasonable times on giving reasonable notice during the Interim Period for the purpose of inspection of the Taonga and to observe (and assist if agreed) the dismantling, conservation measures and storage thereof. Such representatives shall however accept that the Taonga is stored in a museum and shall observe usual standards of conduct and procedure appropriate for a museum and abide by any Museum Regulations and have regard at all times to its security.

#### 5 DELIVERY OF POSSESSION

##### 5.1 Delivery Date

The Parties agree that the Delivery Date shall be no later than 28 February 1997 unless the Board and Ngati Awa determine otherwise. The Board will provide an indicative planning schedule to the Crown on behalf of Ngati Awa within a reasonable time of the execution of this agreement.

##### 5.2 Passing of Risk

At the time of physical delivery of the Taonga to Ngati Awa on the Delivery Date the obligations of the Board pursuant to clause 4 shall thereafter cease but without affecting its liability and obligations during the Interim Period and its ongoing obligations under this Agreement otherwise than under clause 4.

**5.3 Packaging and Transportation**

Ngati Awa shall be responsible at its cost for the packaging and removal of the Taonga from the Museum. The Board acknowledges and agrees that the removal of the Taonga by Ngati Awa may take place in stages provided that all of the Taonga is removed on or before the Delivery Date. The provisions of *clause 5.2* shall be deemed to apply in respect of those items of Taonga removed before the Delivery Date under this clause from the time at which access is given to that item under *clause 5.4*. Ngati Awa recognise that the Museum is undergoing development and that it may at times be difficult to gain access to the Taonga both before and after the Delivery Date, but access will not be unreasonably refused.

**5.4 Access for Packaging and Removal**

The Board shall permit representatives of Ngati Awa access to the Taonga, in co-operation with Museum staff, at all reasonable times with notice, during the Interim Period and after the Delivery Date, for the purposes of packaging and removing the Taonga from the Museum acknowledging however the security provisions of the Museum and its other exhibits at all times. Such cooperation shall not be unreasonably withheld by Ngati Awa or the Board.

**5.5 Assistance with Transportation**

The Board will at its own expense, consult with, advise and provide reasonable assistance to Ngati Awa as to the best means of packaging and transportation of the Taonga and suitable transportation agencies. Subject to *clause 5.3*, the Board will cooperate in permitting access to the transportation agent selected by Ngati Awa for the purposes of removing the Taonga.

**6 BOARD'S DEFAULT ON DELIVERY DATE**

**6.1 Failure to Deliver**

If the Board (for any reasons, including without limitation loss, damage, destruction or theft of the Taonga, and other than the default of the Crown) fails or refuses to deliver any of the Taonga on the Delivery Date in accordance with this Agreement, then (provided that any such delay is not caused by the acts or omissions of Ngati Awa) and subject to *clause 6.2*, the Crown, by notice in writing, may require the Board to deliver the Taonga within 10 Business Days of receipt of the notice. The notice will be effective only if Ngati Awa is at the time of service in all material respects ready, able and willing (apart from the default of the Board) to proceed to take delivery of the Taonga in accordance with the notice.



AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA

8

**6.2 Remedies**

If the Board fails to comply with the terms of the Crown's notice (time being of the essence) then without further notice and without prejudice to any other rights or remedies available to the Crown at law or in equity, the Crown may:

*under clause 6.*

6.2.1 sue the Board for specific performance; or

6.2.2 cancel this Agreement and require the Board to repay immediately to the Crown and Ngati Awa respectively any money paid by either of them to the Board under this Agreement, together with repayment to the Crown of any other sums owing by the Board to the Crown under this Agreement, with interest on such sum(s) at the Default Rate calculated on a daily basis from the date or dates of payment by the Crown (or Ngati Awa, as the case may be) until repayment.

**7 MISCELLANEOUS CLAUSES**

**7.1 Acknowledgement of Purpose of Agreement**

The Board recognises and acknowledges that the purpose of this Agreement is to transfer possession of the Taonga to Ngati Awa and that from the date of the execution of this Agreement Ngati Awa are absolute owners of the Taonga. Subject to the Crown fulfilling its obligations under this Agreement the Board shall do nothing in carrying out its obligations under this Agreement, either by way of act or omission, which is inconsistent with that purpose.

**7.2 Identification of Taonga**

Subject to *clause 7.3*, the Parties acknowledge that representatives of Ngati Awa have identified and approved the list of Taonga in the First Schedule.

**7.3 Warranty**

The Board warrants and covenants that it has accurately disclosed the existence and location of all the Taonga, and that all such Taonga under the control of the Board and Museum will be made available for removal by Ngati Awa, including any Taonga which the Board subsequently discovers to exist after the Delivery Date. The Board will as soon as possible disclose the existence of such Taonga to Ngati Awa. The provisions of this Agreement shall continue to apply to such Taonga, (which shall be deemed to have been added to the First Schedule) except that the Parties shall agree to an extended Delivery Date in respect of such items only.

#### 7.4 Provision of Information

The Board covenants that it will also, at its own cost, use its best endeavours to reasonably cooperate in providing information requested by Ngati Awa on parts of Mataatua which are not currently held or controlled by the Board.

#### 7.5 Notices

7.5.1 Any notice produced under this Agreement shall be in writing addressed to the Party to whom it is to be sent at the address or facsimile number from time to time designated by that Party in writing to the other Party. Until any other designation is given the address and facsimile number of each Party is as set out in Schedule Two.

7.5.2 Delivery may be effected by hand, by fastpost or airmail with postage prepaid, or by facsimile;

7.5.3 Any notice given under this Agreement shall be deemed to have been received:

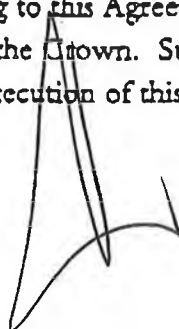
- (a) at the time of delivery, if delivered by hand;
- (b) on the 2nd Business Day after the date of mailing, if sent by fastpost or airmail with postage prepaid;
- (c) on the day on which the transmission is sent, if sent by facsimile. However, if the date of transmission is not a Business Day or the transmission is sent after 4pm on a Business Day then the notice will be deemed to have been given on the next Business Day after the date of transmission. If there is any dispute or difference between the Parties over the fact of transmission in any particular case, production by the sender of a confirmation of clear transmission shall be conclusive evidence of transmission and shall bind the Parties accordingly.

#### 7.6 Items of Mataatua which are not Taonga

The Parties agree that the parts of Mataatua listed in the Fourth Schedule are not included in the Taonga (as defined in this Agreement).

#### 7.7 Confidentiality/Public Announcements

Subject to the Official Information Act 1982, the date of release of the subject of this Agreement to the public (excluding Ngati Awa, to whom the Crown in its discretion may disclose any information relating to this Agreement) shall be determined by the Board in consultation with the Crown. Such release shall be within the shortest reasonable time from the execution of this Agreement and in



any event no later than 10 Business Days from the date of this Agreement. The Crown shall at the Board's request and provided there is no cost to the Crown provide to the Board for its use explanatory letters and press releases in a form satisfactory to the Crown and the Board working in concert. If the Board has not made a release by the 10th Business Day as aforesaid then the Crown in its own discretion may issue a release forthwith.

**7.8 Further Assurances**

Each of the Parties agrees to execute and deliver any documents, and to do all things as may reasonably be required by the other Party or Parties to obtain the full benefit of this Agreement according to its true intent.

**7.9 No Waiver**

No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.

**7.10 Counterparts and Facsimile Execution**

This agreement may be executed in two or more counterparts and each Party hereto may execute this agreement by executing one or more such counterparts. Any director of a Party which signs this agreement on behalf of that Party may sign a different counterpart from that signed by another such director. All counterparts, when read together, shall constitute one and the same instrument. A facsimile copy of an executed counterpart which is delivered by one Party to another Party shall have the same legal effect as the original copy of that executed counterpart.

**7.11 Costs**

Except as otherwise provided in this Agreement, the Parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.

Handwritten signatures and initials at the bottom of the page. On the left is a large, stylized signature. On the right, there are several smaller signatures and initials, including 'Shu', 'JAH', 'ERL', and 'BC'.

AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA

11

**FIRST SCHEDULE**

**TAONGA**

*(Clause 1.1)*

Interpretation of Photographs Referred to in Schedules 1 and 4 and Annexed to this Agreement

Listed below are those original Taonga of Mataatua created by the iwi of Ngati Awa and held by the Board, including parts stored or exhibited in the Museum and including parts which have been repaired or renovated from time to time (regardless of the extent of such repair or renovation).

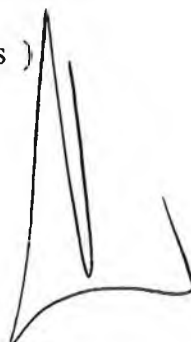
All of the Taonga are cross referenced to the attached photographs or to attached photocopies of individual Museum registration cards.

- 1 The photographs are laser copies of photographic records of Mataatua held by the Board. Some of the originals were mounted on cardboard that had been annotated with words and numerals. ("the Originals")
- 2 Any such notations and numerals marked in pencil on the Originals which have been reproduced in the photographs are not be taken into account in the interpretation of the photographs.
- 3 The letters marked in bold pen on the photographs, which cross reference to the entries on Schedules 1 and 4, are those to be relied on for the interpretation of the photographs.
- 4 The booklet titled "The Great Carved House Mataatua of Whakatane" by W.J. Phillipps and the late Dr J.C. Wadmore, printed for the Polynesian Society (Inc), Druid's Building, Woodward Street, Wellington, Valley Printing Company Ltd, Petone (Document C14 on the Waitangi Tribunal's Record of Documents for the claim by Te Runanga o Ngati Awa - Wai 46 - has been relied on as the authoritative guide for the identification of the Taonga shown in the photographs.

**LIST OF TAONGA**

- a) 26 Internal poupou (refer to photographs )

*Left side (when facing back wall)*



AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA

116

Tu Whakairiora (marked A on photograph 1)  
Tawhaki (Tutonga) [Rotowha] (marked B on photograph 1)  
Tahu (marakihau) (marked C on photograph 1)  
Iratumoana [Koteuaha] wearing heitiki (marked D on photograph 1)  
Te Whetenui wearing heitiki (marked E on photograph 1)  
Hikapewhau wearing heitiki (marked F on photograph 1)  
Tuteao (Tangata Iti) (marked G on photograph 1)  
Rangitumai (marked H on photograph 1)  
Tamaruarangi [Mahupahua] holding mere (marked I on photograph 1)  
Paraheka (marked J on photograph 1)  
Umutahi (marked K on photograph 1)  
Tikitu (marked L on photograph 2)  
Marakihau (marked M on photograph 2)

*Right side (when facing back wall)*

Marakihau (marked A on photograph 3)  
Ramaapakura holding mere (marked B on photograph 3)  
Tamawhero holding mere (marked C on photograph 3)  
Apanuiwaipapa holding mere (marked D on photograph 3)  
Matekitatahi holding mere & wearing heitiki (marked E on photograph 3)  
Rangikawehea holding mere (marked F on photograph 3)  
Hikareia holding kotiate (marked G on photograph 3)  
Te Rangihouhiri (marked H on photograph 3)  
Ikapuku holding wahaika (marked I on photograph 3)  
Imuwahakapuru wearing heitiki (marked J on photograph 3)  
Haraawaka wearing heitiki (marked K on photograph 3)  
Kakahutararo (Te Whakahoki) (marked L on photograph 4)  
Tapuikakahu (marked A photograph 4)

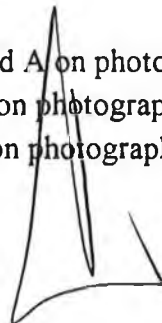
b) 6 Poupou in porch

*Left side (when facing exterior wall)*

Kohi holding mere (marked A on photograph 5a)  
Kahuki wearing heitiki and holding mere (marked B on photograph 5a)  
Te Kiore (marked C on photograph 5a)

*Right side (when facing exterior wall)*

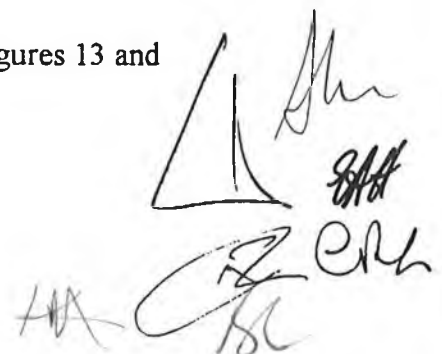
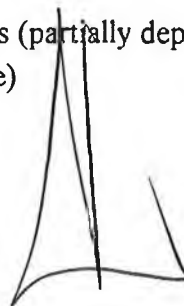
Tai o Ruamano wearing heitiki (marked A on photograph 6)  
Pirauwhenua, carries child (marked B on photograph 6)  
Tamakitera, holding mere (marked C on photograph 6)



AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA

11 c

- c) 5 Vertical epa on front interior wall (marked A, B, C, D, H on photograph 7)
- d) 7 Vertical epa back interior wall (marked A, B, D, E, G, H, I on photograph 8)
- e) All 26 painted rafters inside the house
- f) All 6 painted rafters in the porch
- g) Korupe (door lintel) above the door in the front wall (marked L on photograph 1)
- h) 2 Waewae on the side of the door (marked M and N on photograph 1)
- i) Carved internal window lining
- j) Carved external window lining (marked O on photograph 1)
- k) 1 Pane (marked Q on photograph 1)
- l) 2 Amo (the sets of twins marked D and E on photograph 6)
- m) 2 Maihi with raparapa (carved external barge poles marked A and B on photograph 5)
- n) 1 Koruru (marked C on photograph 5)
- o) 1 Paepaekaiawha (marked D on photograph 5)
- p) 1 Poutokomanawa (as depicted on cover of Phillipps and Wadmore)
- q) 1 Poumua (marked E on photograph 5)
- r) 2 Carved barge boards on the Tuaronga interior back wall (marked J and K on photograph 8)
- s) 2 Carved barge boards on the interior front wall (marked I and J on photograph 7)
- t) 2 Carved barge boards in the porch (marked P on photograph 1)
- u) 2 Whakawae (skirting boards) along the front wall in the porch (marked R on photograph 1)
- v) 1 Internal ridge pole currently in 3 sections (partially depicted in figures 13 and 14 on pp. 18-19 of Phillipps and Wadmore)



AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA

11 d

**Taonga in Storage or on Display**

- a) 1 Poupou on display in the "Maori Hall" of the Museum registered as D88.49 (marked photograph 9)
- b) 1 Fragment of Poutahu in storage (marked photograph 10)
- c) 1 Carving registered as D76.22 (marked photograph 11)
- d) 1 Carving registered as D76.30 (marked photograph 12)
- e) 1 Carving registered as D76.24 (marked photograph 13)
- f) 1 Carving registered as D76.39 (marked photograph 14)
- g) 1 Epa registered D76.38 (marked appendix 1)
- h) 1 Epa registered as D88.348 (marked appendix 2)
- i) 1 Epa registered as D76.25 (marked appendix 3)
- j) 1 Carved rectangular piece registered as D76.29 (marked appendix 4)
- k) 1 Carved section registered as D78.118 (marked appendix 5)
- l) 1 Epa registered as D76.26 (marked appendix 6)
- m) 1 Epa registered as D88.347 (marked appendix 7)
- n) 1 Epa section registered as D76.37 (marked appendix 8)
- o) 1 Carved piece registered as D76.33 (marked appendix 9)
- p) 1 Carved piece registered as D76.23 (marked appendix 10)
- q) 1 Carved piece registered as D76.31 (marked appendix 11)
- r) 1 Carved piece registered as D76.36 (marked appendix 12)
- s) 1 Carving in 2 pieces registered as D76.27 (marked appendix 13)




SECOND SCHEDULE

CERTIFICATE OF BOARD

(Clause 2.1.4)


TO: TE RUNANGA O NGATI AWA  
FROM: OTAGO MUSEUM TRUST BOARD  
DATE: 28 June 1996

CERTIFICATE OF  
OTAGO MUSEUM TRUST BOARD

The Otago Museum Trust Board ("the Board") certifies that in accordance with the provisions of an Agreement Concerning Ownership and Possession of Certain Taonga dated [28] June 1996 the Board, that Te Runanga O Ngati Awa are the absolute owners and have a right to absolute possession of certain Taonga being all original parts of Mataatua created by the iwi of Ngati Awa and held by the Board, including parts stored or exhibited in the Museum and including any parts which have been repaired or renovated from time to time (regardless of the extent of such repair or renovation) all of which are listed and identified in the First Schedule of the said Agreement, and acknowledges that it has no further interest of any kind (whether ownership or otherwise) in the Taonga.

EXECUTED on behalf of  
OTAGO MUSEUM TRUST  
BOARD

UNDER COMMON SEAL  
in the presence of:

)  
)  
)  
)  
)  
)  
  
Chairperson

Member of the Board





THIRD SCHEDULE

DETAILS OF THE PARTIES

(Clause 7.5)


CROWN: The Minister in Charge of Treaty of Waitangi Negotiations  
C/- Mawae Morton/Shona Macaskill  
Office of Treaty Settlements  
PO Box 919  
WELLINGTON

Telephone: (04) 494 9800  
Facsimile: (04) 494 9801

BOARD: Director  
Otago Museum Trust Board  
PO Box 6202  
DUNEDIN

Telephone: (03) 477 2372  
Facsimile: (03) 477 5993



  
TOTAL F.002

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**FOURTH SCHEDULE***(Clause 7.6)***PARTS OF MATAATUA TO BE RETAINED BY THE OTAGO MUSEUM  
TRUST BOARD**

- a) 3 Epa on interior front wall carved by Tumoana Kotere (marked E, F, G on photograph 7)
- b) 2 Epa on interior back wall carved by Tumoana Kotere (marked C and F on photograph 8)
- c) All thatching and cladding, including the roof lining, outside of house and back of porch
- d) All lateral painted cross beams on the roof (partially depicted in photographs 7 and 8)
- e) All tukutuku panels and associated foot boards and painted taniko motif panels
- f) 2 Undecorated internal poles (as depicted on cover of Phillipps and Wadmore)
- g) 1 Undecorated porch pole

H. B.  
G. H.  
O. R.

THIS AGREEMENT takes effect as at the Date shown on the top of page one.

SIGNED for and on behalf of HER )  
MAJESTY THE QUEEN in right of )  
New Zealand by the Minister in Charge )  
of Treaty of Waitangi Negotiations, )  
DOUGLAS ARTHUR )  
MONTROSE GRAHAM, in the )  
presence of : )  
)



\_\_\_\_\_  
D A M Graham

WITNESS:

*[Handwritten Signature]*

Signature

*Fiduciary Servant*

Occupation

*Karori, Wellington*

Address

EXECUTED on behalf of )  
OTAGO MUSEUM TRUST )  
BOARD )  
)



UNDER COMMON SEAL )  
in the presence of )  
)

*[Handwritten Signature]* : Chairperson

*[Handwritten Signature]* Member of the Board

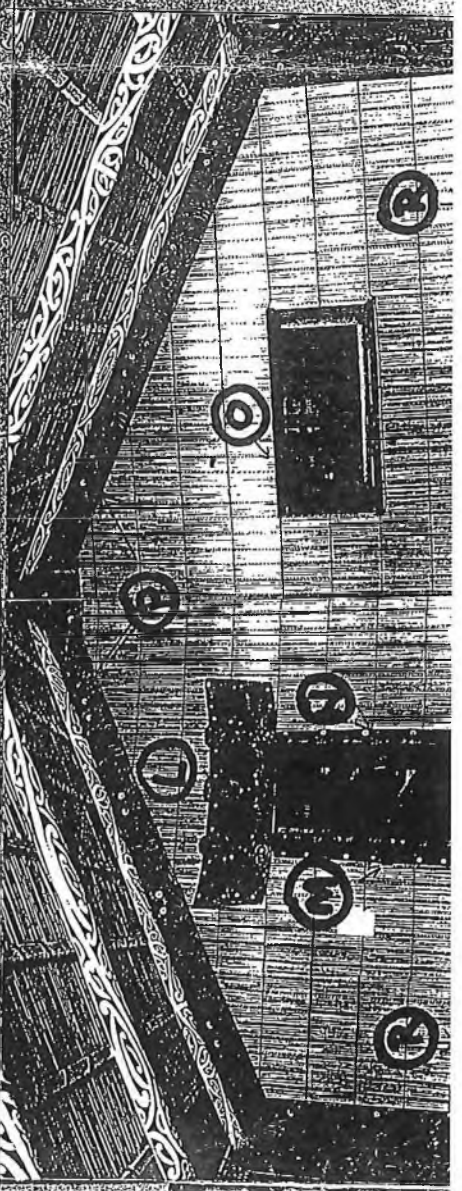
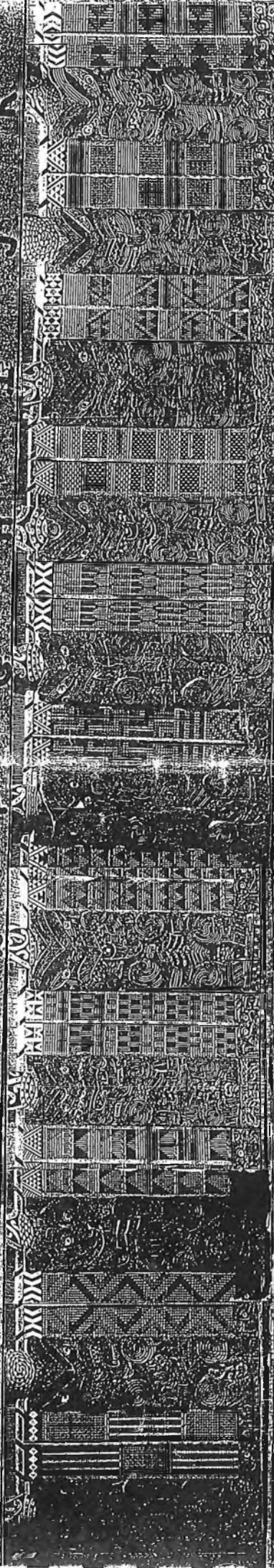
  
TOTAL P.017



Photograph

Q

A B C D E F G H I J K

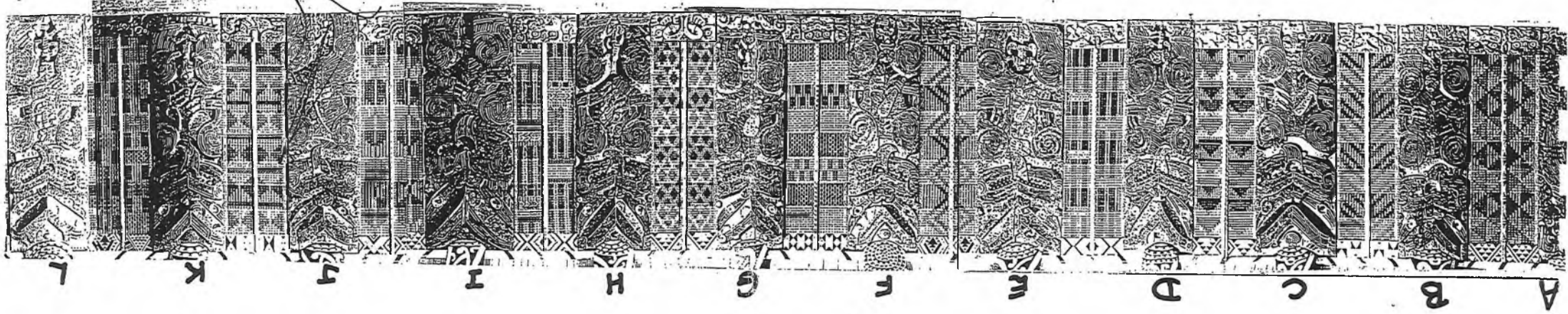


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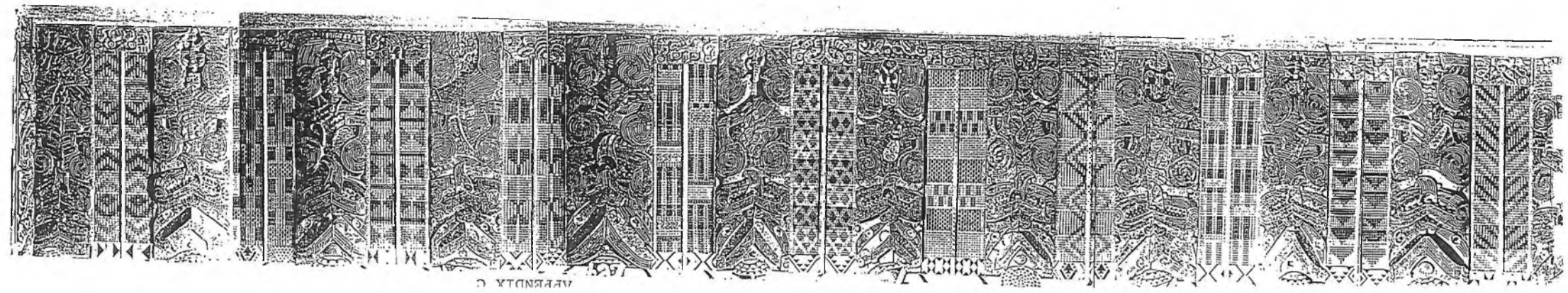




Handwritten marks at the top left, including the number '74' and some illegible scribbles.



APPENDIX C  
Photograph 3  
Handwritten notes and a large checkmark-like symbol.



APPENDIX C

Photograph 44



11/11

A



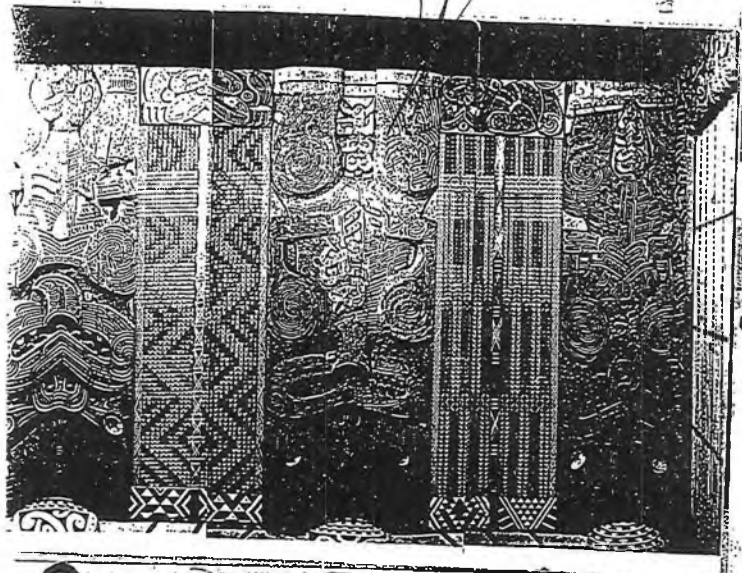
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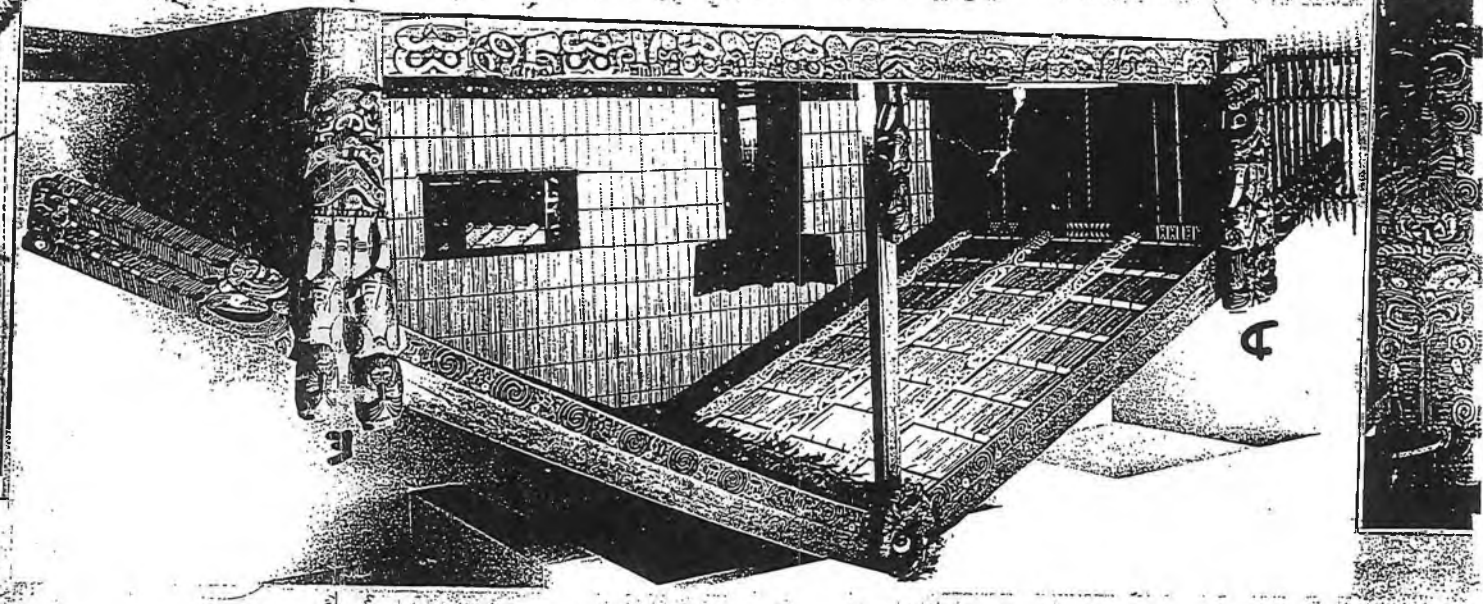




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B  
Prou collection  
C  
Tanna-Kisau  
D  
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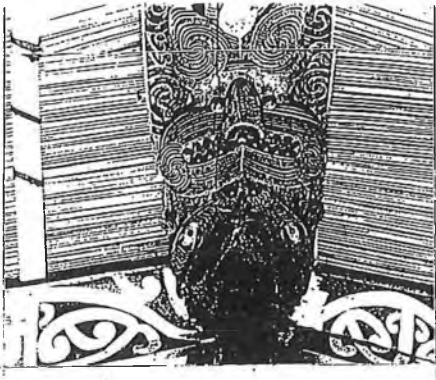


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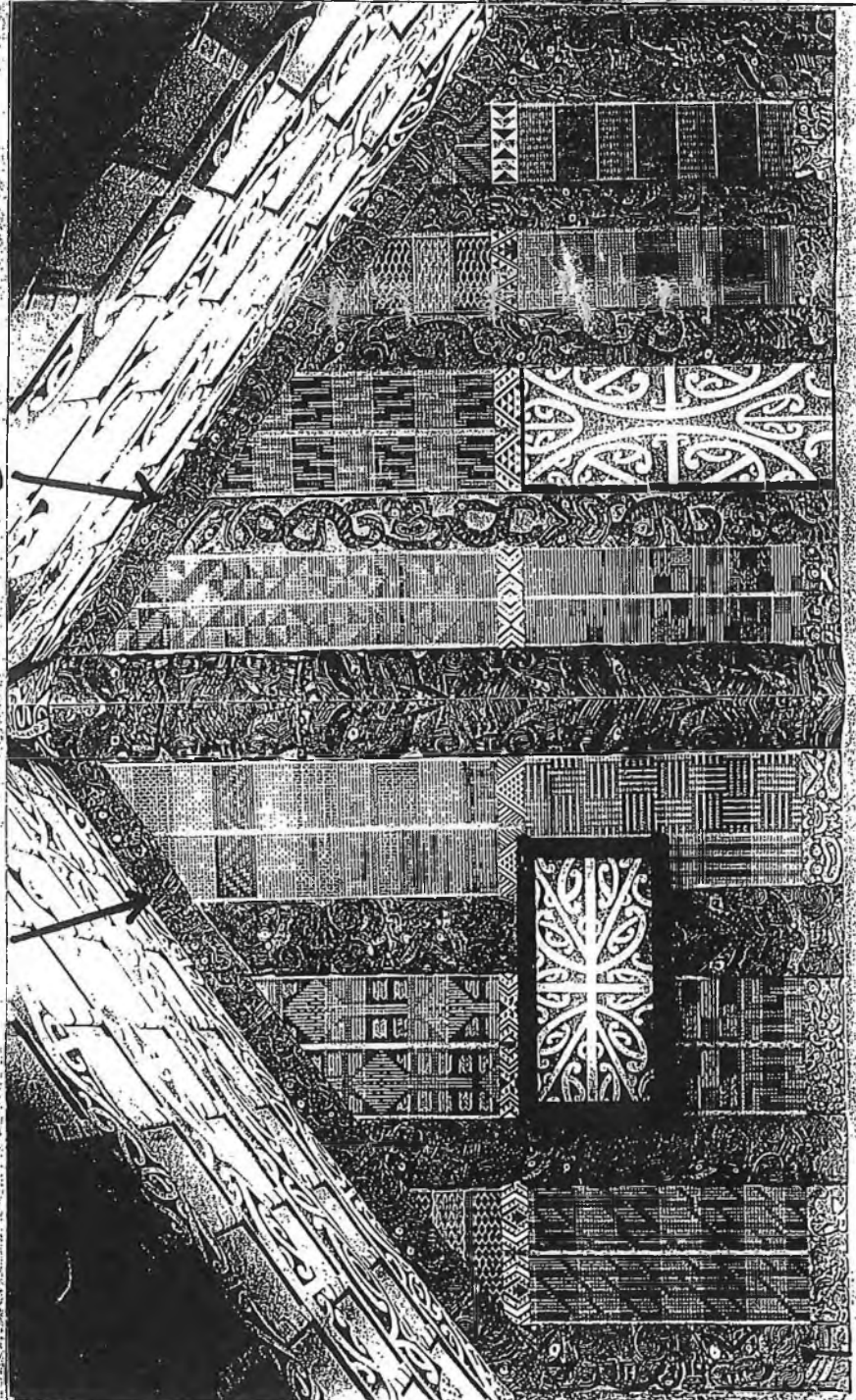
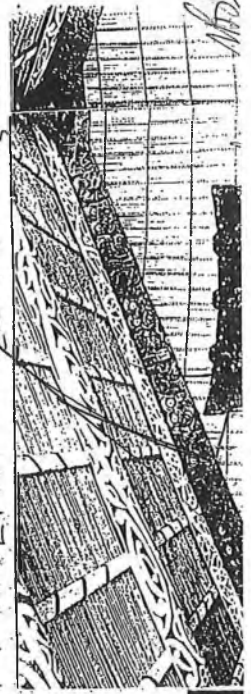
114  
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Photograph 6

Handwritten notes and scribbles at the top left of the page.



Handwritten labels for the top-left image: "Tawha", "Patihi", "Hahaione", "Kotahia", "Tawha #", "Patihi #", "Hahaione #", "Kotahia #".



Handwritten labels for the central image: "KIHATI", "KO TE WHI", "RONGOWHITI", "KOROKI", "KOHUNGA", "KOHUNGA", "KO RONGOWHITI".

Handwritten label "Patihi" with an arrow pointing to a specific panel in the central image.

Handwritten label "I" with an arrow pointing to a specific panel in the central image.

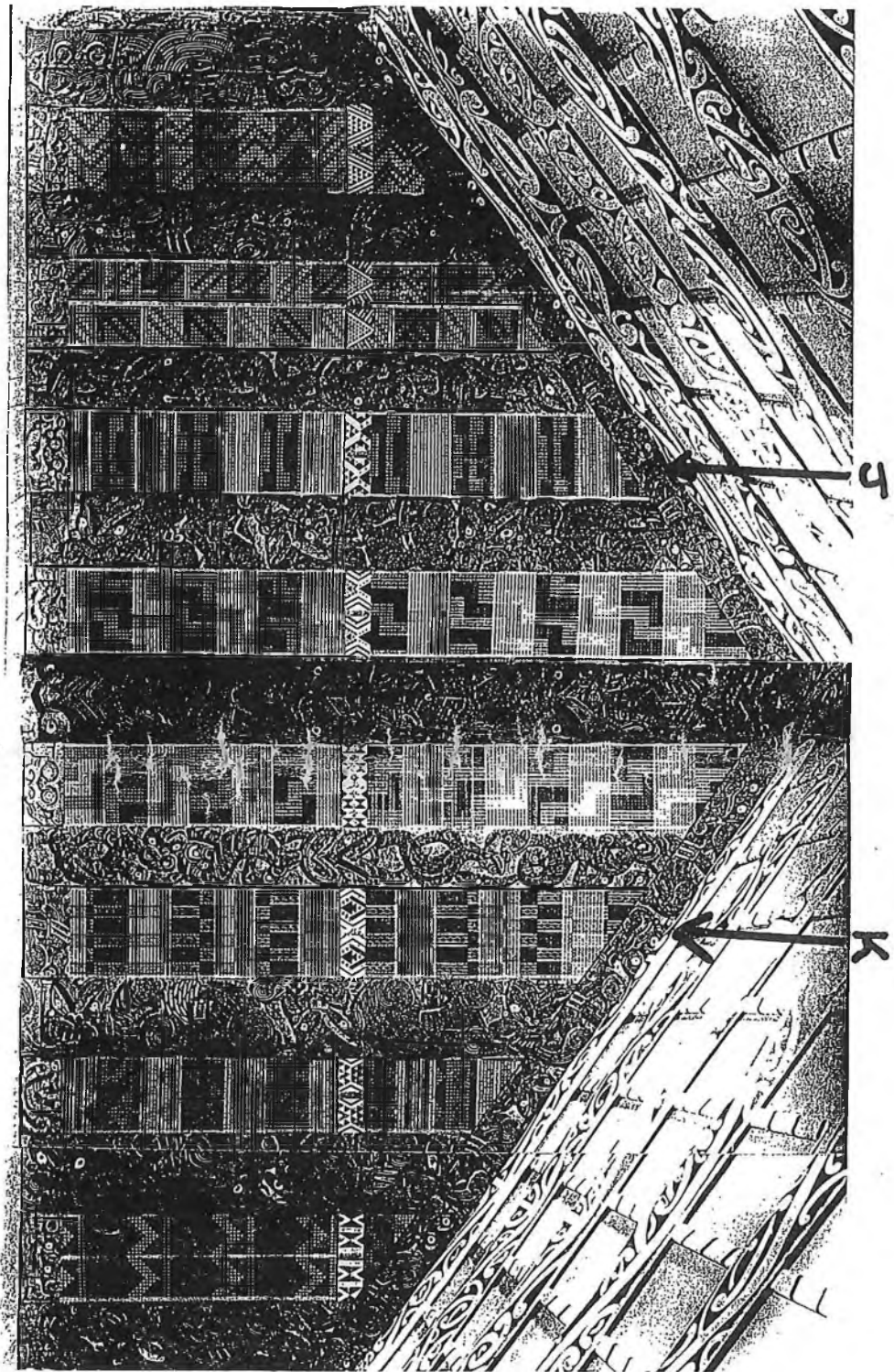
Large vertical letters A through H, serving as a grid reference for the central image. A horizontal line is drawn across the letters G and H.

Handwritten notes at the bottom right: "TONGA", "KOHUNGA", "KO RONGOWHITI".

Handwritten note "Aha" at the bottom right of the page.



Handwritten notes and a large checkmark symbol.

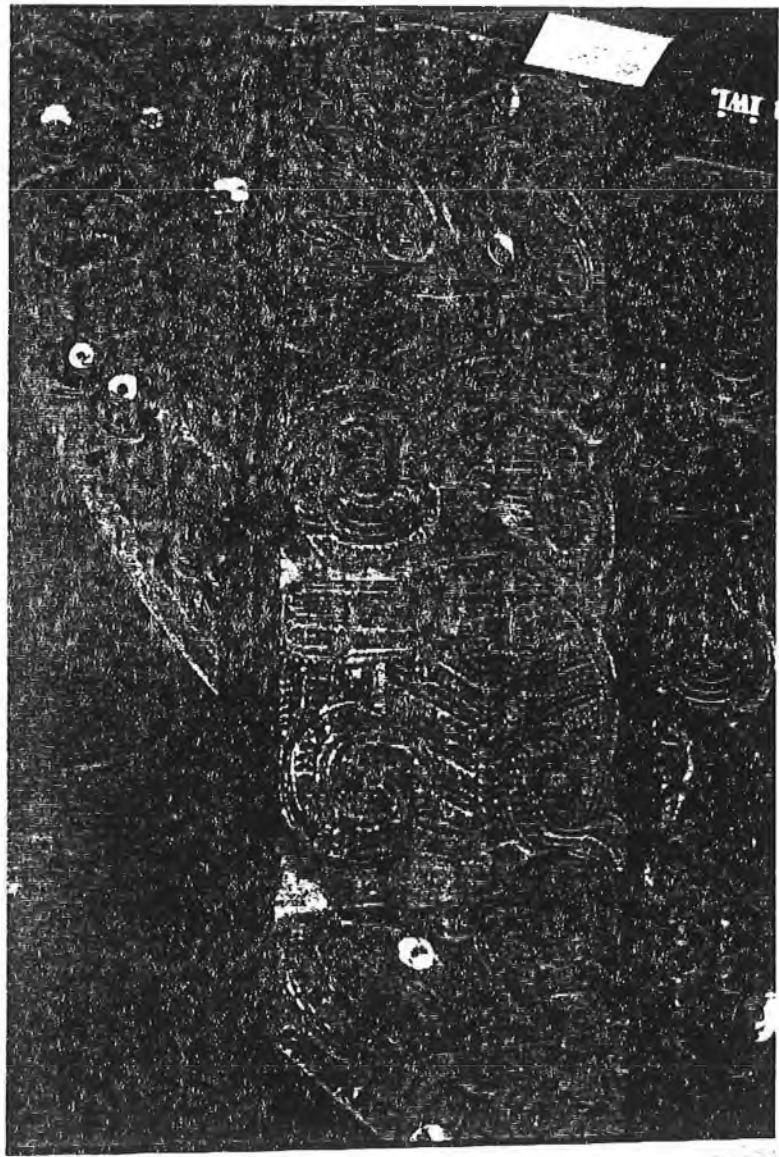


A B C D E F G H I



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Handwritten scribbles and marks at the top left of the page.



Handwritten scribbles and marks at the bottom left of the page.

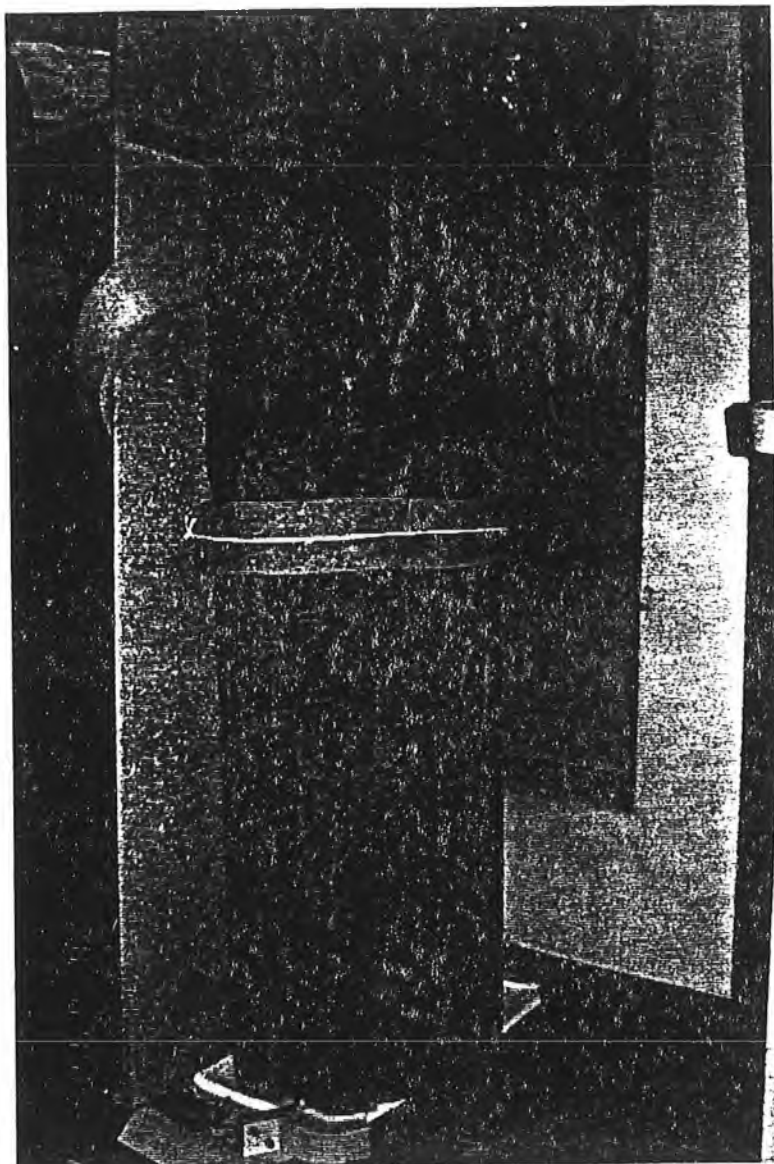


Photograph 9.

APPENDIX C

Photograph 10

Li. 322  
GAAH



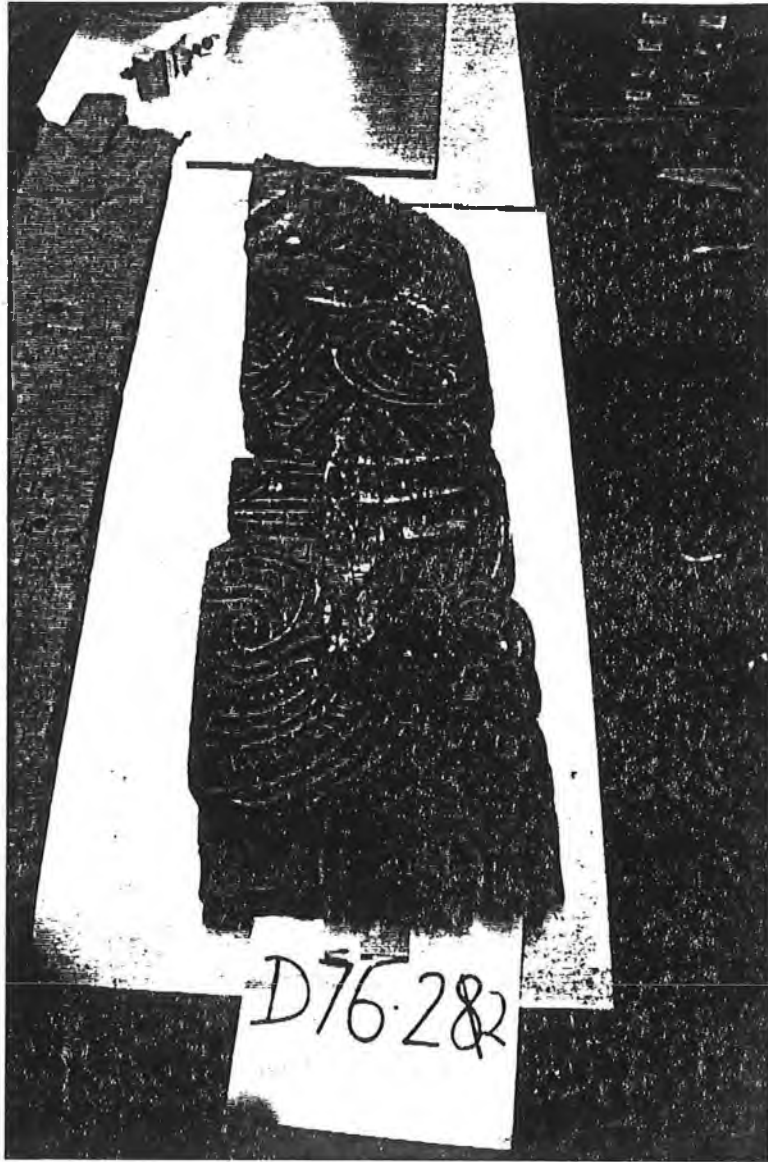
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Photograph 11.

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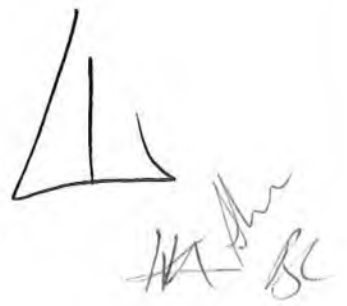
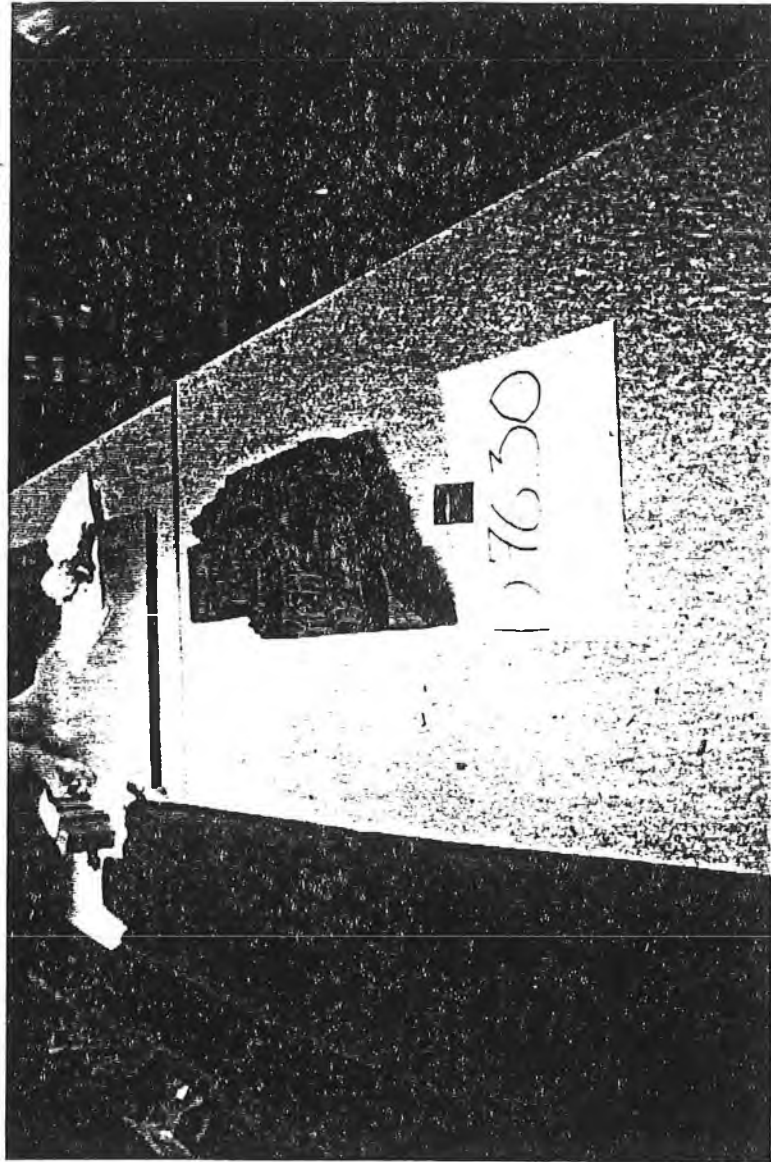


File  
JAH



JAH  
156

Photograph 12

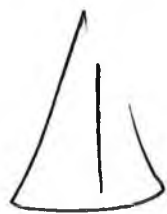
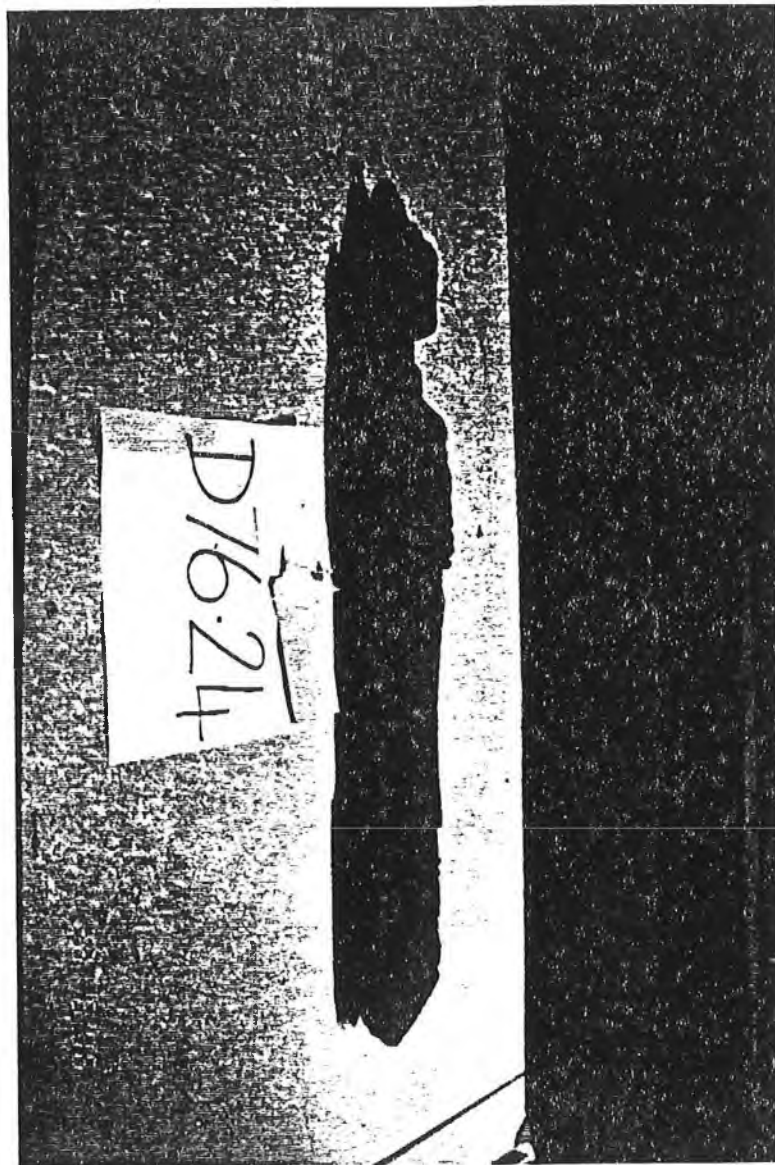




Photograph 13.



*Handwritten initials/signature*



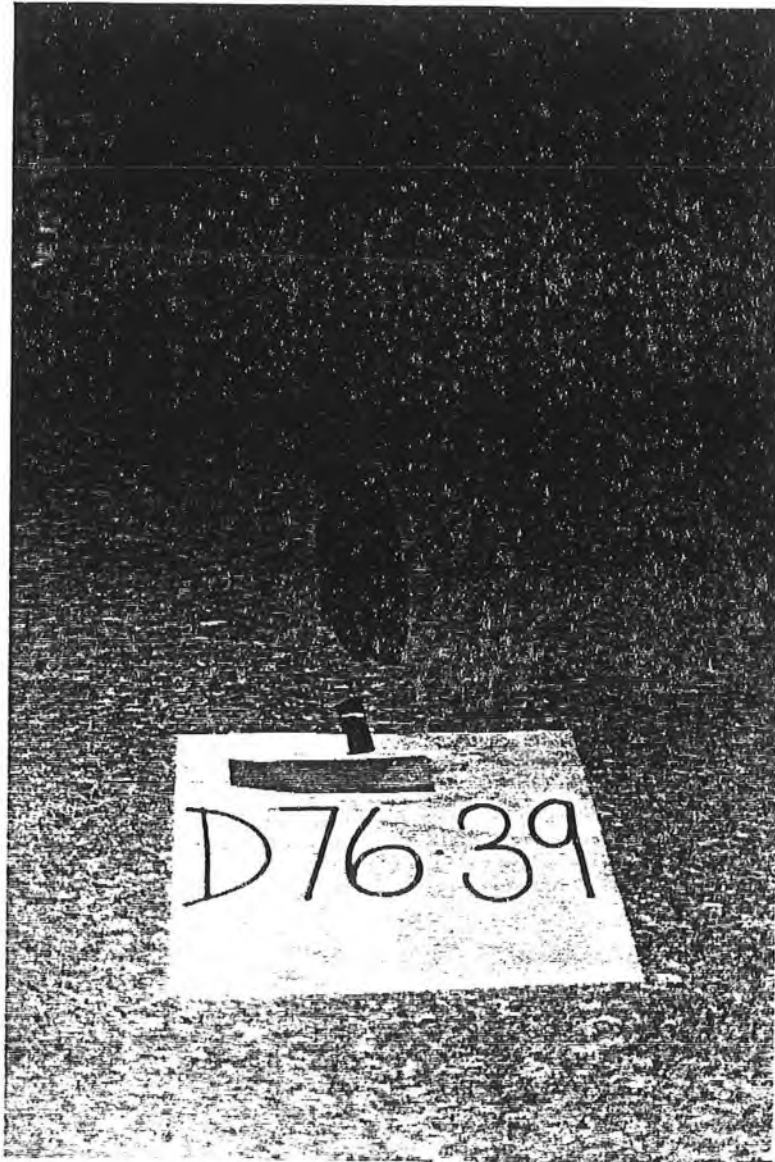
*Handwritten initials/signature*

Photograph 14.

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PAH



14-1  
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PAH

Epa/cut off

Mataatua

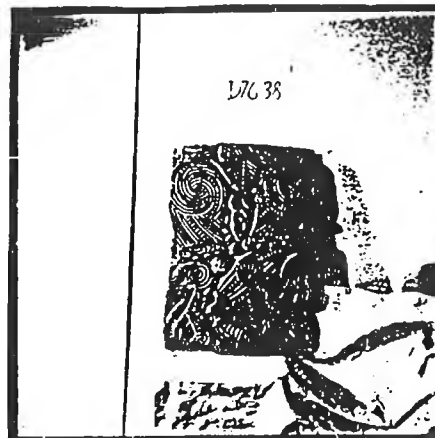
D76.38

Lower torso, belly, and hips. legs and four toed foot of a ?female, Between legs a manaia figure facing right. This stands on a large side-tilted head facing right; three fingers in mouth.

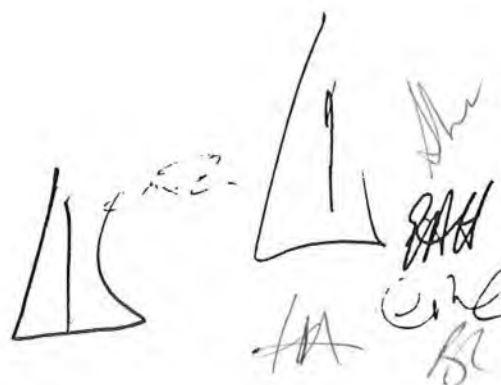
A portion of the head is missing at lower end of carving. Red paint.

74.0 50.0 cm

Old stock



NEG No 233



Epa

Mataatua

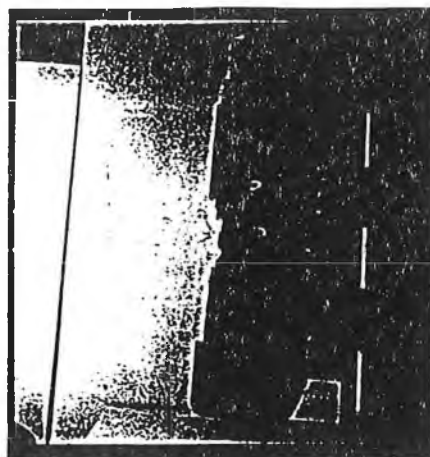
DE8.748

Roughly rectangular piece - top sawn. Polychrome. Two frontal figures standing, one above the other. Upper figure has been sawn off at the top of the shoulders. Right side of right shoulder is missing and there is a rectangle sawn from the left shoulder. Left arm presumably raised; right arm lowered and bent at elbow so that hand (three fingers and thumb) rests on body. Legs curve inward, each foot has five toes.

The lower figure has a sideways tilted head, facing left. Eyes have paua shell inset. A section of the right side of this figure is missing - from and incl, part of the head, to the hip. It appears the right arm would have been raised; the left arm is lowered and bent at the elbow so that the hand (three fingers and thumb) rests on the body. Base is slightly damaged. Right leg curves inward so foot rests on left ankle.

L - 186cm      W - 42cm

Neg No 283



Epa, broken

Mataatua

D76.25

Left side of full length figure. Head tilted sideways facing left. Of the head, only the mouth is present. Left hand raised - three undecorated fingers in mouth. The top edge of the carving is angled down to the left. Faintly polychrome. L- 128cm W - 21cm



Neg No 1370

Handwritten sketches and notes. On the left, a simple line drawing of a triangle with a vertical line extending downwards from its base. To the right, another sketch of a triangle with a vertical line extending downwards. Below these sketches are several handwritten initials and letters: 'EHA', 'CRK', 'HA', and 'B'.

Appendix 4

Mataatua

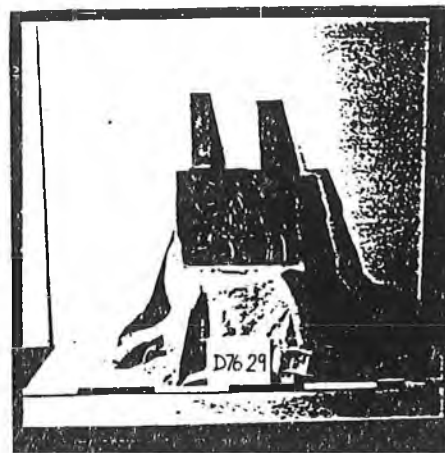
D76.29

Rectangular piece - sawn section showing upper part of torso.

Right arm lowered, bent at elbow with three fingered hand across chest

The beginning of a raised

L - 42cm W - 53cm



Neg No 283



Mataatua

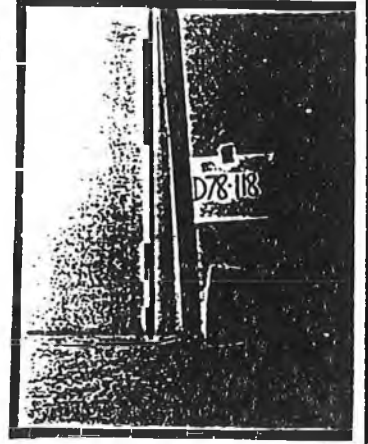
D78.118

Small section of carving - sawn at top and bottom; broken at sides. Painted in black and red. It appears to be part of a large spiral (cf scale of D76.23 - poupou). A short undecorated section abuts what would be the outer edge, in the manner of. for instance a neck meeting part of a left shoulder. Numbered in black on one of the sawn edges.

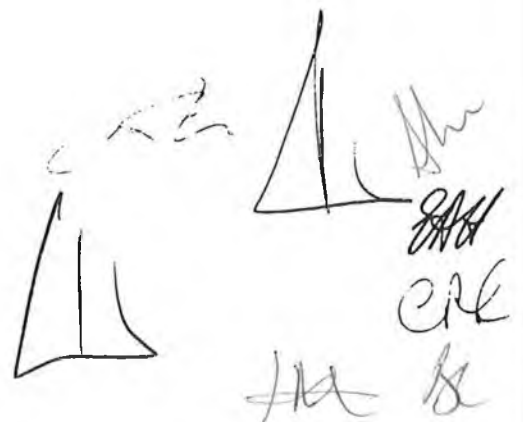
L - 24cm W - 10.5cm T - 7.5cm

Pres. Miss K.V. Fountain

In store



Nazj No 283



Epa

Mataatua

D76.26

Top slopes to right. Head and approx half of body present. Base sawn removing lower part of body. Sinuous figure ; head tilted sideways, facing left. Edge along right side of body is broken. Paua shell eye insets missing.

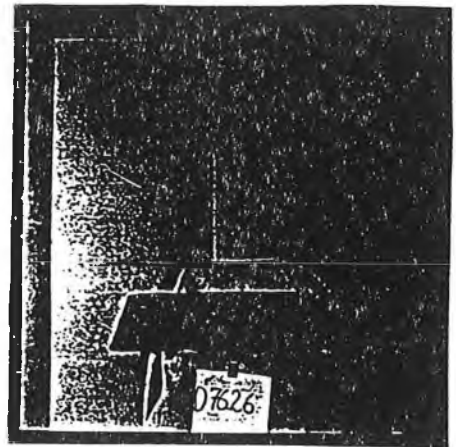
Left hand raised - three fingers in mouth. Right arm lowered, elbow bent so that hand rests on body. Fingers reach to edge of carving; thumb, two fingers and part of a third present.

Above the head of this figure are the remains of a second (and possibly also a third) much smaller figure. The body, a three fingered hand and a three toed foot are clear. There is no head. Whether it and parts of the third figure have been removed by levelling or were never fully formed is not clear. They are undecorated.

The paint had been largely removed at some stage but traces of green and a pinkish shade remain.

L - 98cm      W - 22cm

Neg No 283





Epa

?Mataatua

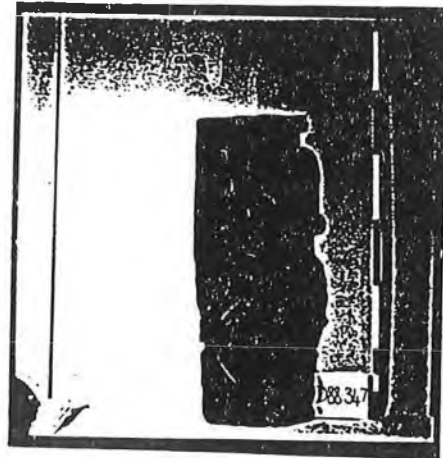
D88.347

Sawn section of full length figure with sideways tilted head facing right. This figure is standing above the head of another. Polychrome. Upper cut means only the left part of the face is present. The right arm is raised and three fingers can be seen. Left arm is lowered, bent at elbow; hand (three fingers and thumb) lies across the body. Right foot has four toes and is placed against the left ankle. Left foot has five toes and is considerably wider than the right.

The head it stands above is tilted sideways, facing left. It has been cut so that some of the right side of the face is missing. The three fingers of the left hand are in the mouth. Paua shell inlay from eyes is missing.

L - 138cm      W - 45.5cm

Neg No 233



Epa/cut off

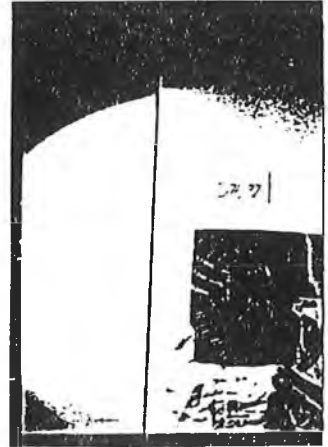
Mataatua  
Whakatane

D76.37

Torso of figure with curved body; facing right.  
Left arm downward, bent at elbow. Hand with three nailed  
fingers and thumb on chest. Bosses on finger articulation.  
Manaia under arm pit.  
Most of right hand, thigh spiral, and both legs are absent.  
Signs of figure or manaia between legs.  
Dark brown paint

62.0 44.0 cm

Old stock.



Neg No 283

Handwritten sketches and notes, including a large 'L' shape, a triangle, and various scribbles and initials.

Mataatua

D76.33

Long narrow piece showing extreme left of a human figure. Part of outside edge of head, left shoulder and straight lowered arm with three fingered hand coming to rest on what is probably the top of the left hip.

This piece has broken off from the main body of a carving

L - 77cm W - 12cm



Neg. NO283



Fragment of carving - constitutes most of torso  
of sinuous figure,

Red paint unevenly applied.

L - 82cm W - 23cm

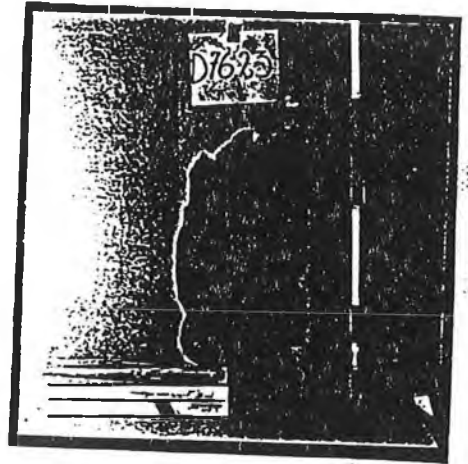
Right edge more or less intact but does not coincide with full extent of body. Other edges are broken.

Left arm raised, hand appears to reach mouth, but only a small vertical section of the head remains (approx 4 cm wide). Most of the right shoulder and hip are unrepresented. Right hand has three fingers and thumb and rests on body

The base is broken shortly below the hips.

In store.

Neg No 1370



?Mataatua

D76.31

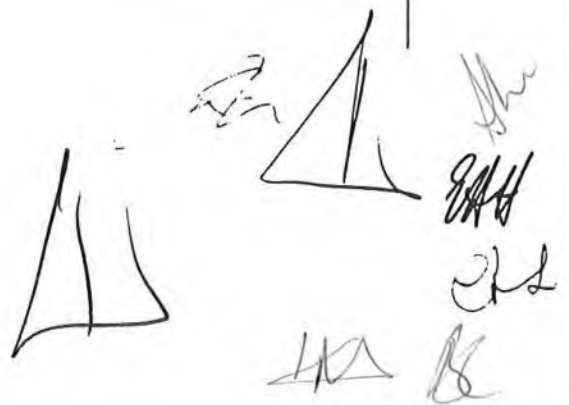
Rectangular shaped piece, sawn at top and bottom. Shows part of figure with sideways tilted head facing left.

L - 47cm W - 36cm

Present is the section showing the extreme right of the head and the top half of the body, however, part of the left side of the body is missing. The left arm is raised, thumb and part of index finger are present. The right arm would have been lowered so that the hand rested on the body - only the index finger and thumb are present.

Old stock  
In store

Way No 283

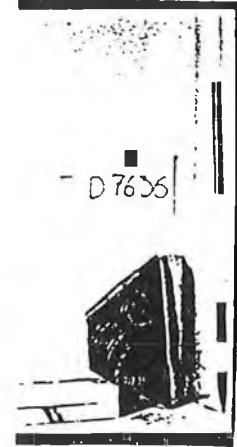


?Mataatua

D76.36

Trapezoid shape - three sawn sides  
Shows left shoulder with arm lowered and bent at  
elbow towards body. Only one finger is included.  
Red and black paint looks quite recent.

Outside edge - 45.5cm      W - 23.5cm



NEG NO 283



Broken in two pieces. Shows frontal figure from shoulders down. Top and base both sawn.  
 Left shoulder shows beginning of raised arm.  
 Right arm lowered, bent at elbow so hand (three fingers and thumb) rests on body. Small undecorated horizontal strip between the two shoulders.  
 Right leg curves down and across so that foot (4 toes) ends at the opposite side of the carving, under the left hip.  
 Left leg curves to the right and up so that the foot rests in the genital area.  
 Sideways tilted undecorated head (facing right) of another figure lies beneath the right thigh.

L - 29cm      W - 49.5cm

Neg No 293



AGREEMENT CONCERNING OWNERSHIP AND  
POSSESSION OF CERTAIN TAONGA**Taonga in Storage or on Display**

- a) 1 Poupou on display in the "Maori Hall" of the Museum registered as D88.49 (marked photograph 9)
- b) 1 Fragment of Poutahu in storage (marked photograph 10)
- c) 1 Carving registered as D76.22 (marked photograph 11)
- d) 1 Carving registered as D76.30 (marked photograph 12)
- e) 1 Carving registered as D76.24 (marked photograph 13)
- f) 1 Carving registered as D76.39 (marked photograph 14)
- g) 1 Epa registered D76.38 (marked appendix 1)
- h) 1 Epa registered as D88.34S (marked appendix 2)
- i) 1 Epa registered as D76.25 (marked appendix 3)
- j) 1 Carved rectangular piece registered as D76.29 (marked appendix 4)
- k) 1 Carved section registered as D78.118 (marked appendix 5)
- l) 1 Epa registered as D76.26 (marked appendix 6)
- m) 1 Epa registered as D88.347 (marked appendix 7)
- n) 1 Epa section registered as D76.37 (marked appendix 8)
- o) 1 Carved piece registered as D76.33 (marked appendix 9)
- p) 1 Carved piece registered as D76.23 (marked appendix 10)
- q) 1 Carved piece registered as D76.36 (marked appendix 12)
- r) 1 Carving in 2 pieces registered as D76.27 (marked appendix 13)







*Date*

TE RUNANGA O NGATI AWA

*and*

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND

REPRESENTED BY THE MINISTER

IN CHARGE OF TREATY OF WAITANGI NEGOTIATIONS

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**TE KAWENATA MO MATAATUA WHARENUI  
THE MATAATUA WHARENUI COVENANT**

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# TE KAWENATA MO MATAATUA WHARENUI THE WHARENUI MATAATUA COVENANT

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**TE RUNANGA O NGATI AWA**, a Maori Trust Board established under Te Runanga o Ngati Awa Act 1988 representing nga uri o nga hapu o Ngati Awa ("the Runanga")

**A N D**

**HER MAJESTY THE QUEEN** in right of New Zealand represented by the Minister in Charge of Treaty of Waitangi Negotiations ("the Crown")

**DESIRING TO RECOUNT ASPECTS OF THE HISTORY OF THE WHARENUI MATAATUA AND THE RESOLUTION OF MATTERS BETWEEN THE CROWN AND NGATI AWA RELATING TO THE WHARENUI MATAATUA HAVE SIGNED THIS COVENANT**

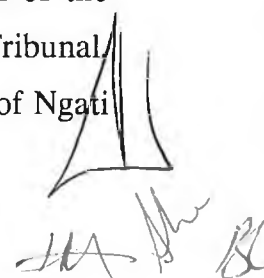
## PART I : HISTORICAL CONTEXT

- A In the early 1870s the people of Ngati Awa undertook the construction at Whakatane of a carved meeting house, Mataatua.
- B The initiative to build the meeting house came from Hohaia Matatehokia, a chief of Ngati Pukeko. He consulted with the other leaders of Ngati Awa and it was agreed between them that a house be built at Whakatane and called Mataatua. Wepiha Apanui of Ngati Hokopu and Ngati Wharepaia was the architect, builder and principal designer of Mataatua.
- C Construction commenced in 1872 and was completed in the beginning of 1875. Wepiha Apanui employed carvers from Ngati Awa and other Mataatua iwi. All sections of Ngati Awa assisted in the construction of the meeting house and all contributed to it financially. The ancestors portrayed in the house include ancestors from all tribes of Mataatua, but are predominantly those of Ngati Awa.

Handwritten signature and initials, possibly 'Wepiha Apanui' and 'BC', located at the bottom right of the page.

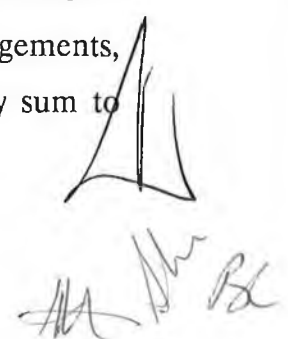
Albert Museum until 1924, when it was re-erected for the British Empire Exhibition at Wembley in London.

- I Mataatua returned to New Zealand in 1924 and was exhibited at the South Seas Exhibition in Dunedin in 1925. Following the exhibition the Crown agreed to allow the University Museum in Otago to exhibit the meeting house on permanent loan, conditional on the Museum authorities agreeing to repair all carvings, clean all woodwork, renovate paintwork and take over administration of the meeting house. Some of the original back wall carvings (epa) and other original features did not return. The Otago Museum arranged to undertake restoration and repair work and additional carvings, tukutuku panels and other features were added to the house to form a complete exhibition. The meeting house had remained in Dunedin since 1925.
- J The Otago University Museum (succeeded by the Otago Museum Trust Board) from that time asserted an ownership interest in Mataatua.
- K Ngati Awa always maintained that it did not transfer title to Mataatua and that it never lost title to Mataatua; Ngati Awa maintained that the meeting house was lent to the Crown for the purposes of the Sydney Inter Colonial Exhibition and ought to have been returned to Ngati Awa following that exhibition.
- L Ngati Awa also maintained that the failure by the Crown to ensure the return of the meeting house to Ngati Awa constituted a breach of the principles of the Treaty of Waitangi.
- M For many years Ngati Awa sought the return of Mataatua to Whakatane. In presenting its claims to the Waitangi Tribunal in 1994 and 1995, the Runanga, on behalf of its constituent hapu, sought recommendations for the return of the meeting house to Ngati Awa. Following the hearings of the Waitangi Tribunal there were discussions between the Crown and the Runanga on behalf of Ngati



Awa on the Ngati Awa claims including negotiations with the Crown for the return of Mataatua.

- N Although the Crown had previously assumed that Mataatua was gifted to it, the Crown conceded that there was little evidence that such a gift, if it occurred, was absolute.
- O The Crown, in recognition of its duties under the principles of the Treaty of Waitangi and to settle all the claims of Ngati Awa relating to and including ownership and possession of Mataatua, agreed that Mataatua should be restored to Ngati Awa. On the 27th and 28th of June 1996 the Runanga agreed to accept possession and ownership of Mataatua, being all of the original artwork held by the Otago Museum but excluding all parts which were added to the original meeting house at Dunedin.
- P On 29 June 1996, the Crown, in order to facilitate the return of Mataatua to Ngati Awa, and the Otago Museum Trust Board, as a mark of its respect for Ngati Awa, entered into an Agreement which enabled Mataatua to be restored to Ngati Awa and which required the Crown to provide compensation to the Otago Museum.
- Q Pursuant to that Agreement, the Otago Museum Trust Board agreed to waive all proprietary interest or right to possession or claim to title it might have had or considered itself to have to Mataatua, and to transfer possession of, and recognise the ownership by Ngati Awa of, Mataatua.
- R In settlement of the claim by Ngati Awa concerning Mataatua and in recognition of the Crown's duties under the principles of the Treaty of Waitangi, the Crown resolved to provide redress to Ngati Awa by way of certain acknowledgements, confirmations, apologies and certificates and by providing a monetary sum to Ngati Awa (all of which comprised the "Redress").

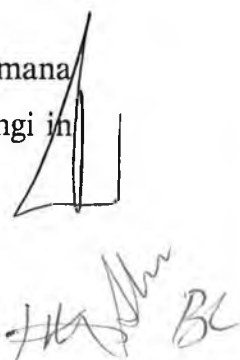
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- S Accordingly on 30 August 1996 the Crown and the Runanga entered into a Deed of Settlement, which is the document creating and containing the legal relationship and the formal terms of the agreement between the Crown and the Runanga for provision and acceptance of redress in full and final settlement of all of the claims by Ngati Awa in relation to Mataatua.
- T Pursuant to the Deed of Settlement, this Covenant is signed by the Crown and the Runanga to embrace the mana of the Deed of Settlement and, without imposing any additional or separate legal obligation on the Crown or Ngati Awa, records the spirit of their respective acknowledgements to each other.

## PART II : ACKNOWLEDGEMENTS BY CROWN

### BY THIS COVENANT IT IS RECORDED THAT THE CROWN:

- (i) Has acknowledged and recognised that Mataatua is a Taonga of great historical, cultural and spiritual significance to Ngati Awa; and
- (ii) Has recognised that Ngati Awa has sought the return of Mataatua for many years; and
- (iii) Has acknowledged that the acts and omissions of the Crown in failing to ensure the return of Mataatua to Ngati Awa after the Sydney Inter Colonial Exhibition constituted a breach of the Treaty of Waitangi; and
- (iv) Has recognised that Ngati Awa's claims for the return of Mataatua to Ngati Awa are and have always been well founded; and
- (v) Has acknowledged and profoundly regrets that it has caused offence to the mana of Ngati Awa by acting in breach of the principles of the Treaty of Waitangi in

A handwritten signature and initials are present in the bottom right corner of the page. The signature appears to be 'H. J. ...' and the initials are 'BC'.

failing to ensure the return of Mataatua to Ngati Awa after the Sydney Inter Colonial Exhibition; and

- (vi) Therefore apologises unreservedly for any sense of loss or distress that the people of Ngati Awa have suffered through the absence of Mataatua from Whakatane; and
- (vii) Accordingly has sought on behalf of all New Zealanders to atone for those matters, to settle Ngati Awa's claims and to restore the honour of the Crown by having arranged for the return of Mataatua to Ngati Awa; and
- (viii) Has confirmed that it has no further proprietary interest of any kind in Mataatua and accordingly has waived in favour of **TE RUNANGA O NGATI AWA** on behalf of Ngati Awa any proprietary interest, right to possession or claim to title which the Crown may have had or considered itself to have to Mataatua.

### **PART III : ACKNOWLEDGEMENTS BY NGATI AWA**

**BY THIS COVENANT IT IS RECORDED THAT THE RUNANGA, ON BEHALF OF NGATI AWA:**

- (i) Has recognised and appreciated the importance of having its claims in respect of Mataatua heard by the Waitangi Tribunal; and
- (ii) Has acknowledged and recorded its appreciation of the Crown's actions and efforts in arranging with the Otago Museum for the return of Mataatua to Ngati Awa; and
- (iii) Has accepted ownership and possession of Mataatua; and

Handwritten signature and initials, possibly 'AA' and 'BC', with a stylized mark above them.

- (iv) Has accepted without qualification the Crown's acknowledgements, apology and confirmations; and
- (v) Has confirmed that it has withdrawn its claims in respect of Mataatua from the Waitangi Tribunal; and
- (vi) Confirms that a good relationship between the Crown and Ngati Awa in respect of Mataatua has now been established.
- (vii) Acknowledges that the return of Mataatua to Ngati Awa, together with the provision of the Redress by the Crown are in full and final settlement of all claims which Ngati Awa has in respect of Mataatua.
- (viii) Confirms that by the good faith of the Crown and Ngati Awa all grievances of Ngati Awa in respect of Mataatua have been satisfied.

**SIGNED at Whakatane this  
30th day of August 1996 in both  
the English and Maori languages.**

The COMMON SEAL of )  
TE RUNANGA O NGATI AWA )  
was hereto affixed in the presence of )

WHOSE SIGNATURES WERE  
WITNESSED BY:

\_\_\_\_\_  
**HIRINI MOKO MEAD**  
Chairman

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
**KEI MERITO**  
Deputy Chairman

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address



**SIGNED** for and on behalf of **HER** )  
**MAJESTY THE QUEEN** in right of )  
New Zealand by the Minister in Charge )  
of Treaty of Waitangi Negotiations, )  
**DOUGLAS ARTHUR MONTROSE** )  
**GRAHAM** in the presence of )

\_\_\_\_\_

D A M Graham

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

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