

**THE TRUSTEES OF NGĀTI MĀKINO IWI AUTHORITY**  
**and**  
**THE CROWN**

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**DEED AMENDING THE NGĀTI  
MĀKINO DEED OF SETTLEMENT**

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**DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT**

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**DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT**

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**DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT**

**THIS DEED** is made between

**THE TRUSTEES OF NGĀTI MĀKINO IWI AUTHORITY**

and

**THE CROWN**

## DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

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### BACKGROUND

- A. Ngāti Mākino, the trustees of Ngāti Mākino Iwi Authority, and the Crown are parties to a deed of settlement settling the historical claims of Ngāti Mākino dated 2 April 2011.
- B. The deed of settlement is conditional upon settlement legislation being enacted.
- C. The settlement legislation has not been enacted.
- D. If the deed of settlement becomes unconditional, the Crown must, in addition to providing other redress, pay \$3,100,000 to the trustees under clause 6.1.2 of the deed of settlement.
- E. The amount payable under clause 6.1.2 of the deed of settlement is a payment in recognition of the delay in settling the historical claims of Ngāti Mākino.
- F. The trustees have requested a partial payment in advance of the amount payable under clause 6.1.2 of the deed of settlement.
- G. The Crown has agreed -
  - (i) to pay \$1,500,000 to the trustees, in accordance with that request; and
  - (ii) the tax indemnities in the deed of settlement are to apply to the advance payment.
- H. The deed of settlement must be amended, by written agreement entered into by the trustees and the Crown, to provide for -
  - (i) the advance payment; and
  - (ii) the application of the tax indemnities to that payment.
- I. This deed provides for the amendments referred to in this background and, for clarity, an altered definition of Crown redress.
- J. The Crown has agreed, at the request of the trustees, to confirm expressly in this deed of amendment that certain rights and obligations are not to be affected by the deed of settlement or the settlement legislation.
- K. This deed also notes that the Ngāti Mākino Iwi Authority trust deed -
  - (i) is included in the attachments to the deed of settlement for informational purposes only; and
  - (ii) is not part of the operative provisions of the deed of settlement; and
  - (iii) may be amended in accordance with its provisions without the Crown's consent.

## **DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT**

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- L. The trustees have resolved, in accordance with the Ngāti Mākino Iwi Authority trust deed, to enter into this deed.

## DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

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The parties, therefore, agree as follows.

### 1. ADVANCE PAYMENT

- 1.1 The Crown must pay the trustees \$1,500,000 within 5 business days of the date of this agreement.
- 1.2 The advance payment is a partial payment in advance of the amount (\$3,100,000) payable under clause 6.1.2 of the deed of settlement, if the deed of settlement becomes unconditional.
- 1.3 If the deed of settlement does not become unconditional, or is terminated, the advance payment –
  - 1.3.1 is not repayable; but
  - 1.3.2 must be taken into account in a future settlement of the historical claims of Ngāti Mākino.

### 2. CONSEQUENTIAL AND OTHER AMENDMENTS

- 2.1 The changes in clauses 2.1 to 2.4 of this deed of amendment are made to the deed of settlement to take account of the advance payment.
- 2.2 The amount payable by the Crown to the trustees under clause 6.1.2 of the deed of settlement is reduced from \$3,100,000 to \$1,600,000.
- 2.3 The tax indemnities in part 3 of the general matters schedule to the deed of settlement (the **tax indemnities**) are to apply to the advance payment.
- 2.4 To give effect to clause 2.3, -
  - 2.4.1 the advance payment is to be Crown redress for the purposes of the tax indemnities; and
  - 2.4.2 the tax indemnities are to apply in relation to the advance payment from the date the payment is made (and not from the settlement date as is the case for other Crown redress); and
  - 2.4.3 therefore, the references to the settlement date in paragraphs 3.6.1 and 3.8.1 of the tax indemnities are to be read, in relation to the advance payment, as references to the date the advance payment is made.
- 2.5 In addition, to provide greater clarity, the definition of Crown redress is deleted from part 7 of the general matters schedule and the following definition substituted:

**"Crown redress -**

(a) means -

## **DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT**

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- (i) redress provided by the Crown to the trustees; and
  - (ii) redress vested by the settlement legislation in the trustees that was, immediately prior to the vesting, owned by or vested in the Crown; and
- (b) includes the right of the trustees under the settlement documentation -
- (i) to acquire the deferred selection property; and
  - (ii) of first refusal in relation to RFR land; and
- (c) includes any part of the Crown redress; and
- (d) does not include -
- (i) an obligation of the Crown under the settlement documentation to transfer the deferred selection property or RFR land; or
  - (ii) the deferred selection property or RFR land; or
  - (iii) the marae endowment or the social endowment; or
  - (iv) the Moutoroi Pā site; and”

### **3. PURPOSE OF INCLUDING TRUST DEED IN ATTACHMENTS**

- 3.1 The Crown and the trustees acknowledge, to avoid doubt, that the Ngāti Mākinō Iwi Authority trust deed -
- 3.1.1 is included in the attachments to the deed of settlement for informational purposes only; and
  - 3.1.2 is not part of the operative provisions of the deed of settlement; and
  - 3.1.3 in particular, may be amended in accordance with its provisions without the Crown’s consent.

### **4. CERTAIN RIGHTS AND OBLIGATIONS UNAFFECTED BY SETTLEMENT**

- 4.1 Clause 4.4 of the deed of settlement provides that, except as provided in the deed of settlement or the settlement legislation, the parties’ rights and obligations remain unaffected.
- 4.2 The parties agree that, without limiting clause 4.4 of the deed of settlement, nothing in the deed of settlement or the settlement legislation will -

## DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

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- 4.2.1 extinguish or limit any aboriginal title or customary right that Ngāti Mākino may have; or
- 4.2.2 constitute, or imply, an acknowledgement by the Crown that any aboriginal title or customary right exists; or
- 4.2.3 except as provided in the deed of settlement or the settlement legislation, affect a right that Ngāti Mākino may have arising -
- (a) from the Treaty of Waitangi or its principles; or
  - (b) under legislation; or
  - (c) at common law; or
  - (d) from a fiduciary duty; or
  - (e) otherwise.
- 4.3 Clause 4.2 of this deed to amend does not limit clause 4.3 of the deed of settlement.

### 5. OTHER MATTERS

- 5.1 The deed of settlement remains unchanged, except to the extent provided by this deed.
- 5.2 In particular, the tax indemnities in relation to Crown redress that is not the advance payment remain unchanged.
- 5.3 This deed takes effect when it is signed by the parties.

### 6. DEFINITIONS AND INTERPRETATION

- 6.1 In this deed, unless the context otherwise requires, -

**advance payment** means the payment to be made by the Crown to the trustees under clause 1.1; and

**deed of settlement** means the deed referred to in clause A of the Background; and

**party** means each of –

(a) the trustees of Ngāti Mākino Iwi Authority; and

(b) the Crown; and

**tax indemnities** has the meaning it is given in clause 2.3.



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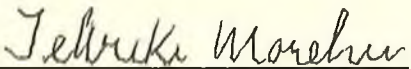
- 6.2 Unless the context requires otherwise -
- 6.2.1 the terms or expressions defined in the deed of settlement have the same meanings in this deed; and
  - 6.2.2 the rules of interpretation in the deed of settlement apply (with all appropriate changes) to this deed.

DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT


SIGNED as a deed on [date]


SIGNED by  
the trustees of  
NGĀTI MĀKINO IWI AUTHORITY  
in their capacity as trustees

in the presence of –


  
Te Ariki Morehu

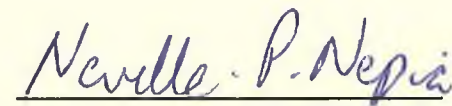
WITNESS

  
Name: Jemi McLean  
Occupation: MANAGER  
Address: 12 TIKITA ST  
ROTORUA


  
Awhi Awhimate

WITNESS

  
Name: Jemi McLean  
Occupation: MANAGER  
Address: 12 TIKITA ST  
ROTORUA

  
Neville Nepia

WITNESS

  
Name: Jemi McLean  
Occupation: MANAGER  
Address: 12 TIKITA ST  
ROTORUA

DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

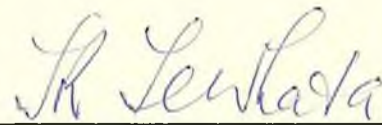
Hilda Sykes

WITNESS

Name:

Occupation:

Address:



Tohu Ripeka Te Whata

WITNESS

Name:

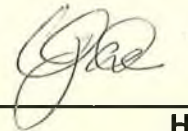
Limi McLEAN

Occupation:

MANAGER

Address:

12 TIKITA ST  
ROTUNA



Henare Ngātai

(Henare Ngatai)

WITNESS

Name:

Limi McLEAN

Occupation:

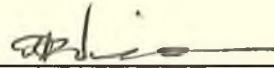
MANAGER

Address:

12 TIKITA ST  
ROTUNA


DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

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Hare Wiremu

WITNESS



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Name:

Jimi McLean

Occupation:

MANAGER


Address:

12 TIRITA ST  
ROTORUA



Laurence Tamati

WITNESS



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Name:

Jimi McLean

Occupation:

MANAGER

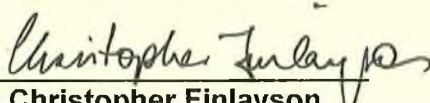
Address:

12 TIRITA ST  
ROTORUA


DEED AMENDING THE NGĀTI MĀKINO DEED OF SETTLEMENT

SIGNED for and on behalf of  
THE CROWN

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

  
Hon Christopher Finlayson


WITNESS

  
Name: James Chittum

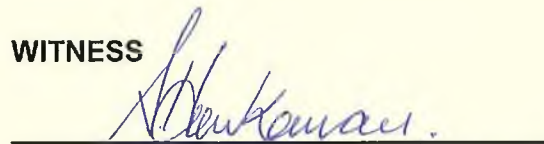
Occupation: Ministerial Advisor

Address: Parliament Buildings  
Wellington.

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

  
Hon Simon William English

WITNESS

  
Name: Amohaere Haukamaui

Occupation: Ministerial Advisor

Address: Wellington