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**HEADS OF AGREEMENT**

**FOR A PROPOSED SETTLEMENT  
OF THE NGATI MUTUNGA HISTORICAL CLAIMS  
AGAINST THE CROWN**

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24 Sept 1999

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**HEADS OF AGREEMENT**

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This **HEADS OF AGREEMENT** is made

**BETWEEN**

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

**AND**

**NGATI MUTUNGA IWI AUTHORITY INC.** (the "**Mandated Representatives of Ngati Mutunga**").

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# 1. BACKGROUND

## HISTORICAL BACKGROUND

- 1.1 The arrival of Pakeha people had a significant effect upon Ngati Mutunga.
- 1.2 The Crown has acknowledged to the Waitangi Tribunal that:
  - 1.2.1 the Waitara purchase and the wars that followed constituted an injustice and were, therefore, in breach of the principles of the Treaty of Waitangi;
  - 1.2.2 the confiscation of land, as it occurred in Taranaki, also constituted an injustice and was, therefore, in breach of the principles of the Treaty of Waitangi;
  - 1.2.3 confiscation had a severe impact upon the welfare, economy and development of the iwi of Taranaki;
  - 1.2.4 in general terms, the delays in setting aside reserves contributed to the adverse effects of the confiscation; and
  - 1.2.5 events relating to the implementation of the confiscation leading to the invasion of Parihaka in 1881, the invasion itself, and its aftermath constituted a breach of the principles of the Treaty of Waitangi.
- 1.3 An outline of the historical account that gave rise to those breaches is set out in **Part 3: Proposed Apology.**

## THE TARANAKI REPORT OF THE WAITANGI TRIBUNAL

- 1.4 The Waitangi Tribunal issued in June 1996 an interim report called the "Taranaki Report: Kaupapa Tuatahi" (the "**Taranaki Report**") giving its preliminary views on 21 claims concerning Taranaki made under section 6 of the Treaty of Waitangi Act 1975 (the "**Taranaki Claims**").
- 1.5 The Waitangi Tribunal issued the Taranaki Report with its preliminary views on the Taranaki Claims:
  - 1.5.1 based on the Tribunal's inquiry up to the date of the Report (and noted, in particular, that the Crown was yet to be heard on many matters raised); and
  - 1.5.2 in order to expedite intended negotiations for a settlement in relation to the Taranaki Claims.

## 1. BACKGROUND

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1.6 The Waitangi Tribunal expressed the following preliminary views (amongst others) in the Taranaki Report relating to the Taranaki Claims:

1.6.1 "They could be the largest in the country. There may be no others where as many Treaty breaches had equivalent force and effect over a comparable time" (paragraph 1.1 of the Taranaki Report);

1.6.2 "We see the claims as standing on two major foundations, land deprivation and disempowerment, with the latter being the main. By "disempowerment", we mean the denigration and destruction of Maori autonomy and self government" (paragraph 1.4 of the Taranaki Report).

### NEGOTIATIONS TO DATE

1.7 The Crown recognised in November 1996 the mandate of Ngati Mutunga Iwi Authority Inc. to represent Ngati Mutunga in negotiations with the Crown.

1.8 The Parties had discussions relating to negotiations prior to formal negotiations commencing.

1.9 The Parties entered into Terms of Negotiation dated 1 July 1997 (the "**Terms of Negotiation**") which specify the scope, objectives and general procedures for negotiations.

1.10 Negotiations have now reached a stage where the Parties wish to enter into this Heads of Agreement recording that the Crown and Ngati Mutunga are, in principle, willing to settle the Ngati Mutunga Historical Claims that are referred to in **clause 2.1** by entering into a Deed of Settlement on the basis of the Crown's Settlement Proposal set out in this Heads of Agreement.

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## 2. CROWN'S SETTLEMENT PROPOSAL AND PROPOSED SETTLEMENT PROCESS

### DESIRE TO SETTLE THE NGATI MUTUNGA HISTORICAL CLAIMS

2.1 The Crown and Ngati Mutunga wish to settle the following claims of Ngati Mutunga set out in **clause 2.2** (the "**Ngati Mutunga Historical Claims**").

2.2 "**Ngati Mutunga Historical Claims**" means:

2.2.1 all claims made at any time (whether or not the claims have been researched, registered or notified) by any Ngati Mutunga Claimant and:

- (a) founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), fiduciary duty, or otherwise; and
- (b) arising out of or relating to acts or omissions before 21 September 1992 by or on behalf of the Crown or by or under legislation; and

2.2.2 the following claims to the Waitangi Tribunal (so far as they relate to Ngati Mutunga):

- (a) Wai 54 – Nga Iwi O Taranaki Claim (Makere Rangiatea Love and another);
- (b) Wai 126 – Motunui Plant and Petrocorp Claim (John Hanita Paki and others);
- (c) Wai 131 – Taranaki Maori Trust Board Claim (Hamiora Raumati and others); and
- (d) Wai 143 – Taranaki Claims (Taranaki Consolidated Claims).

2.3 Despite the provisions of **clause 2.2** the Ngati Mutunga Historical Claims do not include claims arising out of or relating to any loss of interest in land, or natural or physical resources, in the land area outside Taranaki.

### RECOGNITION OF GRIEVANCE OF NGATI MUTUNGA OVERDUE

2.4 The Crown acknowledges that recognition by the Crown of the grievance of Ngati Mutunga in relation to the Ngati Mutunga Historical Claims is overdue.

## 2. CROWN'S SETTLEMENT PROPOSAL AND PROPOSED SETTLEMENT PROCESS

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### NATURE OF CROWN'S SETTLEMENT PROPOSAL

2.5 The Crown proposes to settle the Ngati Mutunga Historical Claims by providing in a Deed of Settlement for the following Settlement Redress:

2.5.1 an apology to Ngati Mutunga;

2.5.2 cultural redress to Ngati Mutunga; and

2.5.3 financial and commercial redress to Ngati Mutunga.

2.6 **Parts 3, 4, 5 and 7** respectively of this Heads of Agreement set out the scope and nature, in principle, of:

2.6.1 the apology (subject to **clause 2.7**);

2.6.2 the cultural redress (subject to **clause 2.7**);

2.6.3 the financial and commercial redress; and

2.6.4 the conditions for that Settlement Redress; -

that the Crown proposes to include in a Deed of Settlement with Ngati Mutunga (the "**Crown's Settlement Proposal**").

### **APOLOGY AND CULTURAL REDRESS IN RELATION TO MOUNT TARANAKI NOT INCLUDED**

2.7 This Heads of Agreement:

2.7.1 does not set out the scope and nature, in principle, of the apology the Crown proposes to offer Ngati Mutunga in relation to Mount Taranaki (the "**Apology in relation to Mount Taranaki**") as that is yet to be developed in conjunction with other iwi of Taranaki to whom an apology is to be offered; and

2.7.2 does not set out the scope and nature, in principle, of the cultural redress the Crown proposes to offer Ngati Mutunga in relation to Mount Taranaki (the "**Mount Taranaki Cultural Redress**") as that is yet to be developed in conjunction with other iwi of Taranaki to whom such redress is to be offered; but

2.7.3 does include the scope and nature, in principle, of:

## **2. CROWN'S SETTLEMENT PROPOSAL AND PROPOSED SETTLEMENT PROCESS**

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- (a) all Settlement Redress the Crown proposes to offer Ngati Mutunga to settle the Ngati Mutunga Historical Claims except for:
  - (i) the Apology in relation to Mount Taranaki; and
  - (ii) the Mount Taranaki Cultural Redress; and
- (b) in particular, all financial and commercial redress the Crown proposes to offer Ngati Mutunga.

### **CONDITIONS**

- 2.8 The Crown's Settlement Proposal, and the Deed of Settlement, will be subject to conditions. The scope and nature, in principle, of those conditions are set out in **Part 7: Proposed Conditions**.

### **PROPOSED SETTLEMENT PROCESS**

- 2.9 The Crown proposes that, after the signing of this Heads of Agreement, the Parties work together in good faith to develop, as soon as reasonably practicable (and whether or not the Crown is negotiating, or settling, the historical claims of other iwi of Taranaki) a Deed of Settlement that:
- 2.9.1 incorporates the Crown's Settlement Proposal (including all matters of detail and implementation);
  - 2.9.2 will, with effect from the Settlement Date, enable the Crown and Ngati Mutunga to settle the Ngati Mutunga Historical Claims; and
  - 2.9.3 provides for a process that will involve Ngati Mutunga and other iwi of Taranaki in developing:
    - (a) the Apology in relation to Mount Taranaki; and
    - (b) the Mount Taranaki Cultural Redress for Ngati Mutunga (and those other iwi).



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### 3. PROPOSED APOLOGY

#### NATURE OF APOLOGY

- 3.1 The Crown proposes that a Deed of Settlement and Settlement Legislation will provide for an apology to Ngati Mutunga that incorporates:
- 3.1.1 a recital based on the historical account in **clauses 3.3 to 3.77** (including certain additional matters (as agreed between the Parties) that relate to the matters referred to in the historical account but are particular to Ngati Mutunga);
  - 3.1.2 acknowledgements by the Crown of breaches of the Treaty of Waitangi and its principles; and
  - 3.1.3 an apology by the Crown, in a form to be agreed between the Parties.

#### HISTORICAL ACCOUNT

- 3.2 The Crown proposes that the apology to Ngati Mutunga be based on the following historical account.

#### EARLY PURCHASES

- 3.3 During 1839-1840, at a time when many Maori were absent from Taranaki, several alleged purchases affecting Taranaki were made by the New Zealand Company. Taranaki Maori were unfamiliar with the process and effects of land purchases according to English land law. Soon afterwards, a British settlement was established within the area claimed by the Company between New Plymouth and the Waitara.
- 3.4 After the proclamation of British Sovereignty in May 1840, the Crown made provision for the investigation of prior purchases of land. The New Zealand Company's claims in Taranaki were investigated by Lands Commissioner Spain, who in 1844 recommended a sizeable award of land to the Company. In light of opposition from Te Atiawa to an award which included their entire coastal lands, and from Crown officials, Governor Fitzroy rejected the recommendation later that year. However, he then proceeded to secure a block encompassing the town of New Plymouth by making payments to those Te Atiawa with rights there. Crown agents made it clear that it was necessary for land to be provided to accommodate settlers.
- 3.5 Subsequently the Crown persevered in attempting to secure the balance of the Spain award area. In 1847-8, the Crown entered into three further land transactions for this purpose. Two of these purchases were negotiated by New Zealand Company agent, F.D. Bell. The New Zealand Company was permitted to negotiate for purchases with the permission and supervision of the Crown.

### 3. PROPOSED APOLOGY

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- 3.6 In 1848 nearly 600 people, led by Wiremu Kingi, returned home to Taranaki from the South. The Crown sought to prevent this return with Governor Grey threatening to destroy their canoes. The Governor also sought to concentrate Te Atiawa settlement on the north bank of the Waitara River, although the rohe of many hapu extended south of the river.
- 3.7 With the Bell Block negotiations and Kingi's return there was a marked increase in tension within Te Atiawa regarding further land sales.
- 3.8 From the late 1840s, British settlers put increasing pressure on the Crown to purchase additional land. As pressures on Te Atiawa to accommodate the settlers mounted, Maori opposition to sales both north and south of New Plymouth became more evident. Despite this opposition, the Crown deferred to settler insistence and persisted with efforts to purchase land. During this period, agreements were reached among Maori from various Taranaki iwi with a view to collective protection of their lands from purchase. This was seen by the Crown as a challenge to its authority.
- 3.9 From 1852 onwards the alienation of large areas of Te Atiawa land by three further Crown purchases was significantly flawed. The Crown did not fully recognise customary tenure in these circumstances in that it failed to obtain the general agreements of the Rangatira and hapu concerned. Also, strongly expressed opposition by some hapu members to the sales was ignored by the Crown, and there was uneven provision of reserves for the present and future needs of Maori. Secret payments were made during negotiations for the Waiwhakaiho purchase. Tension resulting from continued Crown attempts to purchase land led to armed conflict between, and loss of life of, iwi members with differing views on sale.
- 3.10 The land reserved or otherwise provided for Te Atiawa from the pre-1860 purchases was placed under individualised titles, meaning that customary title was extinguished not only over the lands that Te Atiawa sold, but also over those that they wished to retain. The reserves amounted to only 6.6% of the land acquired. In addition, in the Hua Block, the Crown adopted a policy that encouraged those selling to repurchase sections at fixed rates to hold under individual Crown grants. Land was taken up under this scheme, which Crown officials hoped would encourage further sales in Taranaki. By the end of over a century of control by Crown officials, 90 percent of the reserved land from the pre-1860 purchases had been alienated.
- 3.11 Legislation passed between 1841 and 1856 effectively prohibited Maori from leasing their lands directly to settlers. This denied Maori control over their lands and restricted their ability to receive an economic return from them.
- 3.12 The cumulative effect of the Crown purchases carried out during the 1840s and 1850s created a situation that ultimately led to the outbreak of war. The Crown's attempt in 1859 – 1860 to purchase the land on the south bank of the Waitara River, which settlers were anxious to acquire, touched off the war.

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#### WAITARA AND THE WARS

- 3.13 On 8 March 1859, Governor Gore Browne announced in Taranaki that "he would never consent to buy land without an undisputed title" and "would buy no man's land without his consent". At the same time he said he would not permit anyone to interfere in the sale of land "unless he owned part of it".
- 3.14 Te Teira Manuka offered to sell land at Waitara to the Governor, outlining the boundaries of the Pekapeka block. It is doubtful that he intended to offer the whole block.
- 3.15 Wiremu Kingi te Rangitake was widely acknowledged as the principal Rangatira of Waitara, and a leader of high status and reputation among Te Atiawa. Kingi objected to Te Teira's offer on the grounds that it was Kingi's responsibility as Rangatira to protect the collective interest at Waitara, namely the retention of land occupied by a large community, and the autonomy of his people. He told the Governor, speaking on behalf of his people, that "I will not permit the sale of Waitara to the Pakeha. Waitara is in my hands, I will not give it up...".
- 3.16 Despite this objection, the Governor ordered his officials to identify each person's part in the Pekapeka block, and to negotiate terms of sale with those identified. Wiremu Kingi and many others from the Waitara community refused to undermine the collective interest by making an individual claim to any part of the block.
- 3.17 In the context of this purchase, the Crown did not gain general agreement with the Rangatira and hapu of Waitara before proceeding to detailed negotiations for a purchase. At no time did the Crown secure such agreement with respect to the Pekapeka block. Governor Gore Browne received poor advice from Crown officials concerning the nature of Te Atiawa rights at Waitara, and the situation there.
- 3.18 Partial payment was made to Te Teira in November 1859. After the Crown's attempts to survey the block in February 1860 were prevented by an unarmed party of Kingi's people, mainly women, the Crown proclaimed martial law throughout Taranaki.
- 3.19 The English text of the Proclamation, published on 22 February 1860, stated that "active military operations are about to be undertaken by the Queen's forces against Natives in the Province of Taranaki in arms against her Majesty's sovereign authority". The text as it was translated into Maori was read as a declaration of war as it proclaimed "the law of fighting [is] now introduced to Taranaki". The Crown did not officially correct Taranaki Maori understandings of it, and it was left to individual colonists to explain the meaning of martial law to individual Maori.
- 3.20 After martial law was proclaimed, the Crown executed a deed of purchase with Te Teira and some of his whanau and announced that the title to Pekapeka was

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not disputed by anyone. During this period, Kingi continued to dispute Te Teira's right to sell and indicated his determination that Te Atiawa retain the land. The Crown took military possession of the Pekapeka block early in March 1860. After the survey of the block began on 13 March, Kingi's supporters built a fortified pa on the block, which was attacked by troops on 17 March, after the occupants refused a demand to surrender.

- 3.21 The Crown had expected a quick military victory, but after unexpected Maori resistance, and support received by Te Atiawa from within and outside of Taranaki, fighting between Crown forces and Maori continued for a year.
- 3.22 A peace agreement was reached in April 1861 with the involvement of Kingitanga representatives. It provided that the Waitara purchase would be investigated. The Pekapeka block remained under the control of the Crown, and the former Crown blocks of Omata and Tataraimaka under the control of the iwi of south Taranaki. In March of 1863, before an inquiry into Pekapeka had been completed, the Crown's forces re-occupied Omata and Tataraimaka. Governor Grey decided to renounce the purchase of the Pekapeka block in April of 1863 but his government did not announce this until 11 May 1863, after fighting had already broken out at Oakura. The Crown's actions seriously undermined any prospect of establishing a permanent peace in Taranaki. The war continued in Taranaki until 1869, but there was little fighting in North Taranaki.
- 3.23 Many redoubts were built on land not owned by the Crown to secure military occupation of the land and provide security for military settlements that would be established later on confiscated land. Some redoubts were built on waahi tapu.

#### CONFISCATION

- 3.24 The confiscations, that were to have such long term and damaging impact on Nga Iwi o Taranaki, were effected by the New Zealand Settlements Act 1863. The Preamble stated the North Island had been subject to "insurrections amongst the evil-disposed persons of the Native race". There was no mention of the Crown's role in initiating the wars.
- 3.25 The stated purposes of the Act were to provide for: "the permanent protection and security of the well-disposed Inhabitants of both races"; the "prevention of future insurrection or rebellion"; and "the establishment and maintenance of Her Majesty's authority and of Law and Order". The stated means of achieving these ends was to place military and civilian settlers on the land.
- 3.26 The Act provided for the confiscation by the Crown of lands of Maori who were assessed to have been in "rebellion" against the authority of the Queen since 1 January 1863.
- 3.27 The Act provided for Maori land to be confiscated in accordance with the following process: where the Governor in Council was satisfied that a tribe or a "considerable number" of a tribe had since 1 January 1863 been engaged in

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rebellion, he could declare the District within which land of that tribe was situated to be a district for the purposes of the Act; "Eligible Sites for settlements for colonisation" could then be set apart within such districts; and land reserved for the purpose of such settlements, whereupon such land was deemed to be Crown land.

- 3.28 The Act did not provide a definition of "rebel". It did provide that no compensation would be granted to: those who had been "engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand"; those who had aided, assisted, or comforted such persons; those who counselled any other person to make or levy war; or those who declined to deliver up arms when so required by proclamation.
- 3.29 On 30 January 1865 the Governor declared "Middle Taranaki" to be a confiscation district, and set aside blocks at Oakura and Waitara South as "eligible Sites for settlements for colonisation." On 2 September 1865, the Governor declared two further confiscation districts: "Ngatiawa" and "Ngatiruanui". The Governor also designated "Ngatiawa Coast" and "Ngatiruanui Coast" as eligible sites for settlement.
- 3.30 These eligible sites took in all of the land still owned by Maori in the rohe of Te Atiawa, including the Pekapeka block, all of the land in the rohe of Ngati Mutunga, and a substantial part of the land in the rohe of Ngati Tama with the confiscation line cutting across the rohe of Ngati Tama. At this time, fighting had not reached most areas where land was confiscated.
- 3.31 All the land that could be confiscated within the declared confiscation districts was confiscated, despite the declaration in the confiscation proclamation of 2 September 1865 that the land of "loyal inhabitants" would be taken only where "absolutely necessary for the security of the country". The confiscations were also indiscriminate in that the lands taken greatly exceeded the minimum necessary for achieving the purposes of the New Zealand Settlements Act, and included the whole of the lands of the eligible sites, rather than just the lands required for the purpose of specific settlements.
- 3.32 Consequently, as a result of these confiscations all of the land of Ngati Mutunga was confiscated.
- 3.33 The New Zealand Settlements Act does not mention punishment, but was punitive in nature. This is clear from contemporary government statements and from the Proclamation of 17 December 1864 that declared that the Governor would punish those "guilty of further violence" and take possession of and retain "such land belonging to the rebels as he may think fit".
- 3.34 The Act also punished "loyal" Maori by enabling the Crown to deprive them of ownership of their lands. The Act provided for "loyals" to be compensated for confiscation as had been indicated by the Proclamation of Peace on 2 September 1865. This proclamation promised to restore land immediately to

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those who were prepared to submit to the Crown's authority, but the promise was not fulfilled.

- 3.35 The British Colonial Office had misgivings about the scope and application of the Act, considering it "capable of great abuse" but allowed the legislation to proceed because final authority for any confiscation remained with the Governor. The Colonial Secretary instructed the Governor to withhold his consent to any confiscation, which was not "just and moderate".
- 3.36 The Crown subsequently passed the New Zealand Settlements Acts Amendment Act 1866 which declared the validity of all orders, proclamations and grants done under the authority of the Settlements Act.
- 3.37 Extensive supplementary and subordinate legislation was passed by the Crown following the 1863 Act which added to the impact of the confiscations by extending the Crown's control over the rights and property of Maori in Taranaki.

#### COMPENSATION COURT

- 3.38 A Compensation Court was set up under the New Zealand Settlements Act 1863 to compensate some of those whose lands were confiscated by the Crown. The compensation process and its outcomes added to the uncertainty, distress, and confusion among the people of Ngati Mutunga as to where they were to live and whether they had security of title.
- 3.39 Those considered to be "rebels" could not make claims. In many cases the Court relied on the evidence of very few witnesses, rather than fully investigating the circumstances of each person affected. The Court itself excluded others, such as those who did not appear at hearings, and many absentee iwi members. Hearings began in wartime, making it difficult for some claimants to attend.
- 3.40 All of the Compensation Court awards in northern Taranaki were based on out-of-Court settlements. By the time these were made most of the readily useable land in the north had already been disposed of by the Crown. These settlements were not properly investigated by the Compensation Court.
- 3.41 All but one of the awards made by the Court on the basis of these settlements were made to individuals, rather than to hapu. Often awards did not include traditional whanau and hapu land. The awards did not reflect customary forms of land tenure.
- 3.42 The lands assigned by the Compensation Court on the basis of these awards were meagre in size and often of poor quality. These entitlements were often located in barren areas, including remote hills and bush. They did not include pa sites and urupa. Even for those judged entitled to an award, title was not issued until all the interests in the area were determined, the precise location settled, the areas surveyed by Crown agents, and the shares sealed by the Court.

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Meanwhile, expanding European settlement further reduced the amount and quality of the Crown lands available for allocation to Maori claimants.

- 3.43 Very few of the awards were properly implemented. By 1880 title had been issued for less than 5 percent of the land awarded to Taranaki Maori. Some claimants were informally aware of the location of their awards and believed that they had a right to occupy the land, only to find later than it was classed as Crown land.
- 3.44 Although the Court had the ability to award cash compensation instead of land, if land was unavailable, it did not do so.
- 3.45 In 1867 the Crown promised awards of land to the absentee owners from each iwi. By 1880, these awards were still undefined on the ground.
- 3.46 A proclamation of November 1867 (which was repeated in 1870 and 1871) declared that, before any further sales of Crown land could be made, 5 percent of the value of every rural and suburban block to be sold in each confiscation district was to be reserved for such tribes as the Governor might appoint. By 1880, when the West Coast Commission began its investigations, this proclamation had still not been implemented.

#### LATE PURCHASES

- 3.47 Between 1872 and 1881, the Crown purchased substantial areas of land in the rohe of Te Atiawa (the Moa-Whakangerengere and Manganui purchases) and Ngati Mutunga (the Waitara-Taramouku and Onaero-Urenui-Taramouku purchases). These purchases were carried out through Deeds of Cession and were part of a government programme to purchase substantial quantities of Maori land in the interior of Taranaki.
- 3.48 These purchases took place in an extremely confused situation. All of the land involved had originally been confiscated, but by 1871, confiscation had not been enforced on the ground. This gave rise to doubt amongst Maori as to whether the confiscation was still in force or had been abandoned. Moreover, some of this land had been awarded to claimants by the Compensation Court, but due to slow government and Court processes, Crown titles had not yet been issued. The legal ownership of the land was therefore very uncertain. In these circumstances, Maori had lost any sense of security as to land ownership, since they could not be confident that they would retain the land if they refused to sell it. Although the Crown proceeded to purchase the land and so treated it as if it was still Maori property, it did not investigate the customary title. Even the normal Native Land Court processes for title investigation were not followed.
- 3.49 The execution of these purchases was further flawed in a number of ways. The negotiations were not conducted openly, and advances were made to individuals. There was minimal consideration paid to vendors. Further, they were left with inadequate lands for their present and future needs, since the purchase included

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all their Compensation Court entitlements, and the reserves made were few and insignificant in size.

#### WEST COAST COMMISSIONS

- 3.50 The first West Coast Commission was appointed in January 1880 to inquire into promises made by the Crown to Maori in Taranaki regarding land confiscated by the Government. Iwi were not given the option of settling matters by negotiation.
- 3.51 The Maori Member of Parliament appointed to the first Commission resigned, claiming that his fellow Commissioners were not impartial. The other Commissioners had previously been Ministers responsible for Native affairs, and had supported confiscation.
- 3.52 The functions of the first Commission were narrowly focused on the Compensation Court awards and specific Crown promises and did not empower the Commission to inquire into the question of fairness of the confiscations and compensation process. The first Commission refused to hear counsel who wished to question the validity of the confiscation and told Maori that it was not there to discuss such questions with them. These factors combined to minimise the amount of land considered eligible for return to Maori and maximised the amount available for settler use and occupation. The Commission focused most of its analysis on central Taranaki.
- 3.53 The first Commission concluded that many Crown promises were not kept. It noted several related problems including the shortage of land available for compensation awards, the inability to recover Ngati Rahiri lands which had been taken for military settlement and the lack of available land for Ngati Mutunga and Ngati Mutunga returnees, but offered no solutions.
- 3.54 The second Commission was appointed in December 1880 to implement the recommendations of the first Commission. It arranged for the return of more than 200,000 acres to Maori. Less than one fifth was located in northern Taranaki, and much of this was allotted in small sections and consisted of rough and inaccessible bushland. The second Commission did not make allowance for the quality of land returned when making its allocations. Most of the productive land confiscated in northern Taranaki was retained by the Crown for Crown and settler purposes. Maori were left with insufficient agricultural land for their present and future needs.
- 3.55 The ownership of the blocks to be returned was determined by the second Commission without right of appeal by claimants. Of the land returned, virtually all was under individualised title. Many of the reserves were protected against permanent alienation when granted, but these restrictions were later removed and much of this land was sold.



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- 3.56 The second Commission recommended a system of management, which was subsequently adopted, that placed the reserves under the control of the Public Trustee rather than the owners.

#### **SIM COMMISSION**

- 3.57 The Sim Commission of 1926-27 was set up to investigate confiscations under the New Zealand Settlements Act 1863 and subsequent legislation, but its terms of reference were limited. It did not consider compensation for imprisonment or economic loss suffered. The Commission could only investigate whether confiscations exceeded what was "fair and just", and was not permitted to consider any claim that Maori "who denied the Sovereignty of Her Majesty and repudiated Her authority could claim the benefit of the provisions of the Treaty of Waitangi", nor whether the New Zealand Parliament had the power to pass the confiscation laws.

- 3.58 The Commission had limited time and resources for its purpose and therefore did not fully investigate the return of land, wahi tapu and other taonga.

- 3.59 The investigations of the Sim Commission, despite its limitations, meant that Taranaki Maori received serious consideration of their grievances for the first time. The Sim Commission found that:

3.59.1 "Teira was not entitled to sell the Waitara block without the consent of Wiremu Kingi and his people";

3.59.2 "When martial law was proclaimed in Taranaki, and the Natives informed that military operations were about to be undertaken against them, Wiremu Kingi and his people were not in rebellion against the Queen's sovereignty; and when they were driven from their land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime";

3.59.3 "The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence";

3.59.4 "If the abandonment of the Waitara purchase had taken place before the occupation of Tataraimaka, it seems possible that the second Taranaki war would have been avoided";

3.59.5 "The armed occupation of Tataraimaka was, in the circumstances, a declaration of war against the Natives";

3.59.6 "Both of the Taranaki wars ought to be treated ... as having arisen out of the Waitara purchase";

### 3. PROPOSED APOLOGY

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3.59.7 "The Government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under ... [the Waitara] purchase"; and

3.59.8 "Although the Natives who took part in the second Taranaki war were engaged in rebellion within the meaning of the New Zealand Settlements Act 1863, we think that, in the circumstances, they ought not to have been punished by the confiscation of any of their lands."

While these findings have been either developed or modified over time, modern scholarship confirms the general thrust of these findings.

- 3.60 The Sim Commission's recommendations for an annuity of £5,000 for all the Taranaki confiscations and a single payment of £300 for the loss of property at Parihaka were not discussed with the iwi concerned by the government of the day and were never accepted as adequate. The timing of the payment of the annuity was uncertain, and the sums due in the early 1930s were not fully paid.
- 3.61 The Taranaki Maori Claims Settlement Act 1944 states that Maori agreed to accept the sums in full settlement of claims relating to the confiscations and Parihaka. There is no evidence that Ngati Mutunga or other iwi agreed to this. Neither these nor the previous annuities were inflation indexed, which subsequently became an issue.

### RESERVES

#### *Early Purchase Reserves*

- 3.62 Most of the reserves provided for Te Atiawa in the early purchases were eventually placed under the Native Reserves Act 1856 and its amendments. Under these Acts, reserves were administered by government officials, often with the power to sell or lease the lands. Between 1900 and 1905 title to all remaining pre-war reserves were eventually placed under the Public Trustee and brought under the operation of the West Coast Settlement Reserve legislation. Although these reserves were intended to provide for the future requirements of the former owners, the Crown subsequently permitted the permanent alienation of this land. Today less than 10% of the original reserve area remains.
- 3.63 The Crown has acquired Ngati Mutunga land under Public Works legislation. Land taken includes wahi tapu of particular significance to Ngati Mutunga.

### 3. PROPOSED APOLOGY

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#### *West Coast Reserves*

- 3.64 The reserves made by the West Coast Commission did not revert to Maori to do with as they pleased. Rather, they were placed under the Public Trustee to administer under the West Coast Settlement Reserves Act 1881 with the owners losing control of their lands. The Public Trustee had full power to sell or lease the alienable reserves and lease the inalienable ones under terms imposed by statute.
- 3.65 In managing those reserves the Trustee was required to promote two goals, one being "the benefit of the Natives" and the other "the promotion of settlement". The Act provided for leases of up to 21 years for agricultural purposes and 42 years for building purposes, with rents being based on "the best improved rent obtainable at the time".
- 3.66 Much of the land under the Public Trustee's administration was leased without the consent of the owners. While Europeans were granted long term leases on the reserves against which they could borrow, Maori were granted only short term leases and occupation licences.
- 3.67 The West Coast Settlement Reserves Act 1892 vested all West Coast Reserves in the Public Trustee in trust for the Maori owners with Maori thereby losing their legal ownership. The Act provided for perpetually renewable leases with rent based on the unimproved value of the land. In effect, these leases created permanent European settlements on the reserves. Leases previously granted by the Public Trustee which conflicted with the terms of the Crown grants were validated, as were earlier reductions in rent. Charges were made against rents including charges for surveying, constructing fences, drainage and roads.
- 3.68 The operation of the Maori reserved land perpetual lease regime was criticised in a number of inquiries from 1890 onwards. The 1912 Commission, for example, found that two facts stood out in respect of the legislation: "The first is that every legislative measure has been in favour of the lessees and the second, that on no occasion has the Native owner been consulted in reference to any fresh legislation".
- 3.69 In 1934 after the arbitration system for settling rentals resulted in a reduction of rents, Maori successfully pursued the matter of low rents in the Supreme Court. In response the Government introduced legislation to amend the definition of improvements. In effect this nullified the court decision and led to a reduction in rents Maori would otherwise have received.
- 3.70 The Maori Reserved Land Act 1955 continued the system of perpetual leases, empowering the Maori Trustee to convert any outstanding fixed term leases to leases in perpetuity and to purchase land for on sale to lessees.
- 3.71 Maori were further disassociated from their ancestral land in 1963 when titles were amalgamated. Owners no longer had a specific interest in their customary

### 3. PROPOSED APOLOGY

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land but only a proportional interest in reserves throughout Taranaki. A 1967 amendment to the Maori Reserved Land Act 1955 facilitated sales. The Maori Trustee could sell lands to lessees, provided a proportion of the aggregated owners agreed, even if the owners with ancestral links to those blocks were opposed to selling.

- 3.72 By 1974 63.5% of reserved land originally vested in the Public Trustee had been sold and a further 26% was under perpetual lease.
- 3.73 The Paraninihi ki Waitotara Incorporation, in which all owners were shareholders, was formed in 1976 to administer perpetually leased lands transferred from the Maori Trustee. Owners no longer had any direct interest in their ancestral land.
- 3.74 Despite restrictions on alienation imposed by the Crown on Maori reserves in the nineteenth century in order to protect ownership, today less than 5% of the reserved land in Taranaki is owned by Maori people as Maori freehold land. Succession fragments interests, so that over time the returns to individuals have generally diminished.

#### NATURAL RESOURCES

- 3.75 Iwi access to rivers, lakes, forests, swamps and foreshore has been affected by land loss. Land adjacent to rivers has been enclosed preventing Iwi from accessing their traditional fisheries and fishing places.

#### PARIHAKA

- 3.76 The Crown has already acknowledged that events relating to the implementation of the confiscation leading to the invasion of Parihaka in 1881, the invasion itself, and its aftermath, constituted a breach of the principles of the Treaty of Waitangi.
- 3.77 The Crown will also acknowledge the significance of Parihaka to the Iwi that were involved, and will apologise for the effects of its actions on those Iwi. The Crown and Ngati Mutunga will develop agreed text which will reflect the particular circumstances of Ngati Mutunga.

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## 4. PROPOSED CULTURAL REDRESS

### PROMOTION OF A GOOD WORKING RELATIONSHIP BETWEEN THE CROWN AND NGATI MUTUNGA IN RELATION TO CULTURAL MATTERS

#### PROTOCOL BETWEEN THE DEPARTMENT OF CONSERVATION AND NGATI MUTUNGA

4.1 The Crown proposes that, in order to foster a good working relationship between Ngati Mutunga and the Department of Conservation (the "**Department**"), the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Minister of Conservation to issue on the Settlement Date a protocol to Ngati Mutunga (the "**Department of Conservation Protocol**");

4.1.1 relating to the matters that **clause 4.2** requires be included in that Protocol (the "**Department of Conservation Protocol Subjects**");

4.1.2 that sets out how the Department will interact with Ngati Mutunga in relation to the Department of Conservation Protocol Subjects, in a way that will enable Ngati Mutunga to provide input into the processes undertaken by the Department;

4.1.3 that (together with a summary of the Protocol's terms of issue) must be noted (for the purpose of public notice only) in conservation management strategies, conservation management plans and national park management plans affecting the rohe of Ngati Mutunga; and

4.1.4 that is in accordance with **Part 1** of the **Cultural Redress Schedule**.

4.2 The Department of Conservation Protocol will specify how the Department of Conservation will interact with Ngati Mutunga in relation to the following matters within the rohe of Ngati Mutunga:

#### ***Species management***

4.2.1 the management by the Department of any of the species (the "**Taonga Species**") described in **Part 9** of the **Cultural Redress Schedule**;

#### ***Pest control***

4.2.2 consultation with Ngati Mutunga on animal pest control by the Department;

#### 4. PROPOSED CULTURAL REDRESS

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##### ***Marine mammals***

- 4.2.3 the management of marine mammals that have been stranded on the Coastal Marine Area within the rohe of Ngati Mutunga;

##### ***Freshwater fisheries***

- 4.2.4 the performance of the Department's functions in relation to freshwater fisheries and, in particular, in relation to the conservation and management of, and research concerning, customary freshwater fisheries and freshwater fish habitats;

##### ***Native plants***

- 4.2.5 the declaration of any of the plant Taonga Species to be a "protected native plant" under the Native Plants Protection Act 1934;

##### ***Cultural materials***

- 4.2.6 access to, or the use of, cultural materials which:
- (a) are derived from plants, plant materials, animals, marine mammals or birds for which the Department is responsible in the rohe of Ngati Mutunga; and
  - (b) are of importance to Ngati Mutunga in maintaining the culture of Ngati Mutunga;

##### ***Historic resources***

- 4.2.7 the management of historic resources (including wahi tapu and wahi taonga of, and places of historic significance to, Ngati Mutunga) if, and to the extent that, the Department is responsible for those historic resources;

##### ***Resource Management Act 1991***

- 4.2.8 the Department:
- (a) exchanging information with Ngati Mutunga;
  - (b) working with Ngati Mutunga to identify their priorities and issues of mutual concern; and

#### 4. PROPOSED CULTURAL REDRESS

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- (c) having regard to those priorities and issues of mutual concern in making decisions; -

in relation to the Department's advocacy under the Resource Management Act 1991;

##### ***Visitor and public information***

- 4.2.9 the provision of information and facilities for visitors on the land the Department manages within the rohe of Ngati Mutunga in a way that recognises the importance to Ngati Mutunga of the cultural, spiritual, traditional and historic values of Ngati Mutunga; and

##### ***New Plymouth Area Office's business plan***

- 4.2.10 the annual business plan and proposed policy development of the Department's New Plymouth Area Office and, in particular, when the priorities for work by that Office are being determined for the next year.

#### **PROTOCOL BETWEEN THE MINISTRY OF FISHERIES AND NGATI MUTUNGA**

- 4.3 The Crown proposes that, in order to foster a good working relationship between Ngati Mutunga and the Ministry of Fisheries (the "**Ministry**"), the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Minister for Food, Fibre, Biosecurity and Border Control to issue on the Settlement Date a protocol to Ngati Mutunga (the "**Ministry of Fisheries Protocol**");

- 4.3.1 relating to the various matters that **clause 4.4** requires be included in that Protocol (the "**Ministry of Fisheries Protocol Subjects**");

- 4.3.2 that sets out how the Ministry of Fisheries will interact with Ngati Mutunga in relation to the Ministry of Fisheries Protocol Subjects in a way that will enable Ngati Mutunga to provide input into the processes of the Ministry; and

- 4.3.3 that is in accordance with **Part 1** of the **Cultural Redress Schedule**.

- 4.4 The Ministry of Fisheries Protocol will specify how the Ministry of Fisheries will interact with Ngati Mutunga in relation to the following matters within the rohe of Ngati Mutunga:

##### ***Species of fish, aquatic life or seaweed***

- 4.4.1 recognition of the customary interests of Ngati Mutunga in, and the special relationship of Ngati Mutunga with, all species of fish, aquatic life

#### 4. PROPOSED CULTURAL REDRESS

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or seaweed found within the rohe of Ngati Mutunga and managed by the Ministry of Fisheries under the Fisheries Act 1996;

##### ***Tuna (eel)***

4.4.2 recognition of:

- (a) the particular importance of the tuna (eel) fishery to Ngati Mutunga; and
- (b) the interests of Ngati Mutunga in:
  - (i) enhancing the tuna (eel) fishery; and
  - (ii) investigating the possibility of farming tuna (eel);

##### ***Paua and kina fishery***

4.4.3 recognition of the particular customary interest of Ngati Mutunga in the paua fishery and the kina fishery;

##### ***Piharau/lamprey***

4.4.4 recognition of the particular importance to Ngati Mutunga of the piharau/lamprey fishery;

##### ***Prohibition of commercial harvest***

4.4.5 the prohibition on the commercial harvest of certain species within the rohe of Ngati Mutunga unless specially authorised; and

##### ***Additional interaction with the Ministry***

4.4.6 the performance of the functions of the Ministry in relation to the rohe of Ngati Mutunga, including provision for:

- (a) Ngati Mutunga to have input into, and participate in:
  - (i) the setting of sustainability measures for fisheries;
  - (ii) the development of regulations affecting fisheries;
  - (iii) the development of plans affecting fisheries; and



#### 4. PROPOSED CULTURAL REDRESS

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- (iv) research planning processes of the Ministry;
- (b) information and assistance to be supplied to Ngati Mutunga to assist in the management of the customary fisheries of Ngati Mutunga and the implementation of customary fishing regulations;
- (c) Ngati Mutunga to be consulted on:
  - (i) the required services of the Ministry; and
  - (ii) the cost of recovery of fisheries services;
- (d) Ngati Mutunga to have the opportunity for input into the process if the Ministry is considering contracting services that relate to the customary fisheries of Ngati Mutunga; and
- (e) input and participation by Ngati Mutunga in certain aspects of the employment process if a particular vacancy directly affects the customary fisheries of Ngati Mutunga.

#### PROTOCOL BETWEEN THE MINISTRY OF COMMERCE AND NGATI MUTUNGA

4.5 The Crown proposes that the Deed of Settlement will provide for, and Settlement Legislation will enable, the Minister of Energy to issue on the Settlement Date a protocol to Ngati Mutunga (the "**Ministry of Commerce Protocol**") in relation to consultation with Ngati Mutunga concerning the Crown's administration of petroleum resources in the rohe of Ngati Mutunga. That Protocol will be consistent with legislation, policy and practice with respect to petroleum and will cover consultation over the following matters in relation to the rohe of Ngati Mutunga:

- 4.5.1 the preparation by the Minister of Energy of new minerals programmes in respect of petroleum in accordance with the Crown Minerals Act 1991;
- 4.5.2 the planning by the Ministry of Commerce in respect of any petroleum exploration permit block offer (being a method of allocating available acreage for petroleum exploration by public tender under section 24 of the Crown Minerals Act 1991);
- 4.5.3 applications for petroleum exploration permits allocated under the Crown Minerals Act 1991 ("**Petroleum Exploration Permits**") except where consultation has already taken place under **clause 4.5.2**; and
- 4.5.4 applications for amendments to Petroleum Exploration Permits to extend the land or minerals to which the Permits relate.

#### 4. PROPOSED CULTURAL REDRESS

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- 4.6 The Ministry of Commerce Protocol will:
- 4.6.1 recognise the Crown's obligations under the Crown Minerals Act 1991 (as provided for in the minerals programme for petroleum) to consult with parties whose interests may be affected by petroleum exploration;
  - 4.6.2 confirm that, if petroleum exploration in the rohe of Ngati Mutunga may affect the interests of Ngati Mutunga, the Ministry of Commerce will consult with Ngati Mutunga;
  - 4.6.3 not restrict the ability of the Ministry of Commerce to consult with other entities in addition to Ngati Mutunga under the Crown Minerals Act 1991 (as provided for in the minerals programme for petroleum); and
  - 4.6.4 be in accordance with **Part 1** of the **Cultural Redress Schedule**.

#### **PROTOCOL BETWEEN THE CROWN AND NGATI MUTUNGA CONCERNING ANTIQUITIES**

- 4.7 The Crown proposes that the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Crown through the appropriate Minister to issue a protocol to Ngati Mutunga that:
- 4.7.1 concerns antiquities in the rohe of Ngati Mutunga that are newly found taonga (as that term is defined under the Antiquities Act 1975); and
  - 4.7.2 is in accordance with **Part 1** of the **Cultural Redress Schedule**.

#### **PROTOCOL BETWEEN LAND INFORMATION NEW ZEALAND AND NGATI MUTUNGA**

- 4.8 The Crown proposes that the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Minister for Food, Fibre, Biosecurity and Border Control to issue a protocol to Ngati Mutunga that:
- 4.8.1 provides that Ngati Mutunga must be consulted before Land Information New Zealand resumes ownership of unformed roads from local bodies under section 323 of the Local Government Act 1974; and
  - 4.8.2 is in accordance with **Part 1** of the **Cultural Redress Schedule**.

#### **MONITORING BY MINISTRY FOR THE ENVIRONMENT**

- 4.9 The Crown proposes that the Crown will agree in the Deed of Settlement to:

#### 4. PROPOSED CULTURAL REDRESS

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- 4.9.1 provide an opportunity for Ngati Mutunga to express to the Ministry for the Environment the views of Ngati Mutunga on how the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act 1991 are being addressed in the rohe of Ngati Mutunga; and
  
- 4.9.2 the Ministry for the Environment monitoring (in accordance with the functions of that Ministry under section 24 of the Resource Management Act 1991) the performance of local government in implementing the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act 1991 in the rohe of Ngati Mutunga.

## CULTURAL REDRESS RELATING TO SPECIFIC SITES

### LAND TO BE VESTED IN NGATI MUTUNGA

- 4.10 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide for:

#### *Onaero Recreation Reserve*

- 4.10.1 the revocation of the reserve status of the Onaero Recreation Reserve described in **Part 5** of the **Cultural Redress Schedule**;
- 4.10.2 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Onaero Recreation Reserve;

#### *Pukemiro Historic Reserve*

- 4.10.3 the revocation of the reserve status of the Pukemiro Historic Reserve described in **Part 5** of the **Cultural Redress Schedule**;
- 4.10.4 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Pukemiro Historic Reserve subject to a registrable covenant to protect the natural values of the site;

#### *Te Rau o Te Huia Pa Historic Reserve*

- 4.10.5 the revocation of the reserve status of the Te Rau o Te Huia Pa Historic Reserve described in **Part 5** of the **Cultural Redress Schedule**;
- 4.10.6 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Te Rau o Te Huia Pa Historic Reserve;

#### *Ngapapa Local Purpose Reserve (Roadmans Cottage)*

- 4.10.7 the revocation of the reserve status of the Ngapapa Local Purpose Reserve described in **Part 5** of the **Cultural Redress Schedule**;
- 4.10.8 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Ngapapa Local Purpose Reserve;

#### 4. PROPOSED CULTURAL REDRESS

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##### ***Urenui Conservation Area***

- 4.10.9 the revocation of the conservation area status of the Urenui Conservation Area described in **Part 5** of the **Cultural Redress Schedule**;
- 4.10.10 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Urenui Conservation Area subject to a registrable covenant to protect the natural values of the site and public access;

##### ***Mataro Road Conservation Area***

- 4.10.11 the revocation of the conservation area status of the Mataro Road Conservation Area described in **Part 5** of the **Cultural Redress Schedule**; and
- 4.10.12 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the Mataro Road Conservation Area for the purpose of nohoanga.

#### **RESERVES TO BE VESTED IN NGATI MUTUNGA AS AN ADMINISTERING BODY**

- 4.11 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide for:
  - 4.11.1 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the fee simple estate in the following reserves on the Settlement Date:
    - (a) the Te Urinui Pa Historic Reserve described in **Part 6** of the **Cultural Redress Schedule**; and
    - (b) the Okoki Pa Historic Reserve described in **Part 6** of the **Cultural Redress Schedule**; and
  - 4.11.2 the reserve status of those reserves to be retained following that vesting;
  - 4.11.3 Ngati Mutunga to be an "administering body" for the purposes of the Reserves Act 1977 in relation to those reserves; and
  - 4.11.4 technical assistance (on a basis to be agreed between the Department of Conservation and Ngati Mutunga) to be provided to Ngati Mutunga in administering the sites referred to in **Part 6** of the **Cultural Redress Schedule** (except those comprising the combined reserve referred to in **clause 4.12.3**) by the Department under section 39 of the Reserves Act 1977).

**RE-CLASSIFICATION AND VESTING**

4.12 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide, in relation to the Urenui Local Purpose Reserve (Riverbank Reserve) and the Urenui River Local Purpose Reserve (Esplanade Reserve) described in **Part 6** of the **Cultural Redress Schedule** (together, the "**Reserves**"), for:

4.12.1 the combining of the Reserves;

4.12.2 the changing of the status of the combined reserve to an historic reserve;  
and

4.12.3 the vesting in Ngati Mutunga, without charge to Ngati Mutunga, of the combined reserve (as if vested under section 26 of the Reserves Act 1977).

**NOHOANGA ENTITLEMENT FOR NGATI MUTUNGA**

4.13 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide:

4.13.1 for the granting by the Crown to Ngati Mutunga of a renewable entitlement to the use of land of approximately 1 hectare and suitable for temporary occupation (a "**Nohoanga Entitlement**") in relation to the Uruti Domain Scenic Reserve described in **Part 7** of the **Cultural Redress Schedule**;

4.13.2 for the Nohoanga Entitlement to be:

- (a) for a renewable term of 10 years;
- (b) created only for the purpose of permitting members of Ngati Mutunga to occupy temporarily land close to a waterway on a non-commercial basis:
  - (i) for lawful fishing and gathering of natural resources from nearby waterways; and
  - (ii) for up to 210 days in any calendar year (except for the period from 1 May to 15 August in any calendar year);-

to the exclusion of other persons (except for agents of the Crown, and persons permitted by legislation, who are undertaking their normal functions in relation to the land); and

#### 4. PROPOSED CULTURAL REDRESS

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4.13.3 that the Nohoanga Entitlement is in accordance with the applicable requirements set out in **Part 4** of the **Cultural Redress Schedule**.

4.14 The granting of the Nohoanga Entitlement is subject to a site inspection by the Crown and Ngati Mutunga to identify, and agree upon, a suitable 1 hectare site.

#### CHANGE OF CLASSIFICATION

4.15 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide for the changing of the status of that part of the Mimi-Pukearuhe Coast Marginal Strip described in **Part 8** of the **Cultural Redress Schedule** to an historic reserve.

#### STATUTORY ACKNOWLEDGEMENTS IN RELATION TO IDENTIFIED AREAS

4.16 The Crown proposes that the Deed of Settlement and Settlement Legislation will:

4.16.1 make a statutory acknowledgement ("**Statutory Acknowledgement**") in respect of each of the areas (the "**Identified Areas**") described in **Table 1** of **Part 8** of the **Cultural Redress Schedule**;

4.16.2 include a statement by Ngati Mutunga of the particular cultural, spiritual, historic and/or traditional association of Ngati Mutunga with each of those Identified Areas;

4.16.3 provide for an acknowledgement by the Crown of that statement of association by Ngati Mutunga;

4.16.4 enable regulations to be made that require the consent authorities that consider resource consents under the Resource Management Act 1991 to forward to Ngati Mutunga summaries of applications for resource consents where those applications relate to activities within, adjacent to, or impacting directly on any or all of those Identified Areas;

4.16.5 require the consent authorities and the Environment Court to have regard to the Statutory Acknowledgements in relation to the Identified Areas in deciding whether Ngati Mutunga should be heard under sections 93, 94 or 274 of the Resource Management Act 1991 (without derogating from their obligations under Part II of that Act);

4.16.6 require the Historic Places Trust and the Environment Court to have regard to the Statutory Acknowledgements in deciding whether Ngati Mutunga is a person "directly affected" under sections 14 and 20(1) of the Historic Places Trust Act 1983;

#### 4. PROPOSED CULTURAL REDRESS

- 4.16.7 enable Ngati Mutunga, or any member of Ngati Mutunga, to cite the Statutory Acknowledgements as evidence (but not binding as a deemed fact) of the association of Ngati Mutunga with the Identified Areas in submissions to proceedings before a consent authority, the Environment Court or the Historic Places Trust concerning activities within, adjacent to or impacting directly upon any or all of the Identified Areas; and
- 4.16.8 provide that Statutory Acknowledgements in relation to the Identified Areas are in accordance with the applicable requirements set out in **Part 2** of the **Cultural Redress Schedule**.

#### DEEDS OF RECOGNITION IN RELATION TO IDENTIFIED AREAS

- 4.17 The Crown proposes that the Deed of Settlement and Settlement Legislation will:
- 4.17.1 with respect to any Identified Area identified in **Table 2** of **Part 8** of the **Cultural Redress Schedule** as an Identified Area in relation to which a deed of recognition is to be given, enable the Crown to enter into a deed of recognition (a "**Deed of Recognition**") that will provide that Ngati Mutunga must be consulted, and that regard must be had to the views of Ngati Mutunga, in respect of the association described in the Statutory Acknowledgement to which the Deed of Recognition relates, concerning the management or administration of the Identified Area by the responsible Minister or the Commissioner of Crown Lands;
- 4.17.2 provide:
- (a) for a recognition that the Crown may undertake only limited management or administrative functions in relation to an Identified Area to which a Deed of Recognition is to be given; and
  - (b) that entry into a Deed of Recognition does not require the Crown to:
    - (i) increase its management or administrative functions; or
    - (ii) resume any management or administrative function;
  - (c) that, if there is a change of management or administration of an Identified Area, the Crown will take reasonable steps to facilitate the negotiation of a new or amended Deed of Recognition; and
  - (d) that, if the land to which a Deed of Recognition applies is disposed of by the Crown, the Deed of Recognition will terminate.



**STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION IN  
RELATION TO RIVERS**

- 4.18 The Crown proposes that, if a Statutory Acknowledgement and/or a Deed of Recognition is to be given in relation to a river, that river does not include:
- 4.18.1 any part of the bed of the river that is not owned or controlled by the Crown;
  - 4.18.2 any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
  - 4.18.3 any artificial water course; or
  - 4.18.4 any tributary flowing into the river.

## CULTURAL REDRESS RELATING TO FISHERIES

### NGATI MUTUNGA TO FORM ADVISORY COMMITTEE TO MINISTERS

4.19 The Crown proposes that the Deed of Settlement will provide that the Minister of Conservation will:

4.19.1 appoint Ngati Mutunga, as from the Settlement Date, as an advisory committee under section 56 of the Conservation Act 1987, to provide advice to the Minister of Conservation on all matters concerning the management and conservation by the Department of Conservation of the taonga fish species described in **Table A of Part 10 of the Cultural Redress Schedule**, (the "**Taonga Fish Species (Department of Conservation)**") within the rohe of Ngati Mutunga; and

4.19.2 consult with, and have regard to the advice of, the advisory committee referred to in **clause 4.19.1** on all matters concerning the management and conservation by the Department of Conservation of the Taonga Fish Species (Department of Conservation) within the rohe of Ngati Mutunga (without limiting the Minister's obligations under section 4 of the Conservation Act 1987).

4.20 The Crown proposes that the Deed of Settlement will provide that the Minister for Food, Fibre, Biosecurity and Border Control will:

4.20.1 appoint Ngati Mutunga, as from the Settlement Date, as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995, to provide advice to the Minister on all matters concerning the management and conservation of fisheries within the rohe of Ngati Mutunga under the Fisheries Act 1983 and the Fisheries Act 1996;

4.20.2 consider the advice of the advisory committee; and

4.20.3 recognise and provide for the interests of Ngati Mutunga in respect of all matters concerning the management and conservation of fisheries within the rohe of Ngati Mutunga.

### ACKNOWLEDGEMENT OF ASSOCIATION WITH TAONGA FISH SPECIES (DEPARTMENT OF CONSERVATION)

4.21 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide an acknowledgement by the Crown:

#### 4. PROPOSED CULTURAL REDRESS

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4.21.1 of the cultural, spiritual, historic and/or traditional association of Ngati Mutunga with the Taonga Fish Species (Department of Conservation); and

4.21.2 that is in accordance with the requirements of **Part 3** of the **Cultural Redress Schedule**.

#### **ACKNOWLEDGEMENT OF CUSTOMARY INTEREST IN PAUA**

4.22 The Crown proposes that the Deed of Settlement will provide for:

4.22.1 the Crown to acknowledge that:

- (a) Ngati Mutunga have a customary interest in the paua fishery in the rohe of Ngati Mutunga; and
- (b) the paua fishery in the rohe of Ngati Mutunga is not currently fished commercially due to the lack of paua that have attained the minimum legal size required for commercial harvest (125 mm); and

4.22.2 the Minister for Food, Fibre, Biosecurity and Border Control to consult with the advisory committee referred to in **clause 4.20.1** in relation to any proposal (a "**Commercial Proposal**") to the Minister affecting the paua fishery in the rohe of Ngati Mutunga;

4.22.3 the Crown to confirm that the Minister will, in considering a Commercial Proposal, ensure that the customary non-commercial fishing interests of Ngati Mutunga in paua, in the rohe of Ngati Mutunga, are recognised and provided for in accordance with the provisions of:

- (a) section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
- (b) section 21 of the Fisheries Act 1996; and

4.22.4 paua to be defined as *haliotis iris*.

#### **COMMERCIAL FISHING FOR WAIKOURA TO CEASE**

4.23 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that waikoura/freshwater crayfish (*paranephrops planifrons*) is a totally prohibited target species for commercial purposes, under Part B of regulation 14A(5) of the Fisheries (Central Area Commercial Fishing) Regulations 1986 (the "**Fisheries Regulations**").

#### 4. PROPOSED CULTURAL REDRESS

##### PROHIBITION ON THE TAKING OF CERTAIN SPECIES FOR COMMERCIAL PURPOSES UNLESS SPECIALLY AUTHORISED

4.24 The Crown proposes that the Deed of Settlement will acknowledge that the taking of the following species as target species for commercial purposes is, or will be, as from the Settlement Date, prohibited within the rohe of Ngati Mutunga, unless that taking is specially authorised:

- 4.24.1 cats eye/korama (*trubo smargdus*);
- 4.24.2 freshwater mussel/kakahi (*hydridella menziesi*);
- 4.24.3 sea anemone/kotoretore;
- 4.24.4 sea lettuce/karengo;
- 4.24.5 lamprey/piharau; and
- 4.24.6 kina.

4.25 The Crown proposes that the Deed of Settlement will provide that, if it is demonstrated after the Settlement Date that there are sufficient quantities of any of the species referred to in clauses 4.23 and 4.24 to provide for a commercial catch of that species, the Minister for Food, Fibre, Biosecurity and Border Control will:

4.25.1 consult with the advisory committee appointed by that Minister and referred to in clause 4.20.1 in respect of any proposal to authorise the commercial taking of that species (a "**Commercial Catch Proposal**") in accordance with:

- (a) section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
- (b) sections 12 and 13(2) of the Fisheries Act 1996; and

4.25.2 in considering a Commercial Catch Proposal, ensure that the customary non-commercial fishing interests of Ngati Mutunga in that species are recognised and provided for in accordance with:

- (a) section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
- (b) section 21 of the Fisheries Act 1996.

#### 4. PROPOSED CULTURAL REDRESS

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4.26 The provisions of the Deed of Settlement and Settlement Legislation referred to in **clauses 4.23 and 4.24** will not affect:

4.26.1 the issue of special permits under the Fisheries Act 1983 or the Fisheries Act 1996 to take waikoura/freshwater crayfish for aquacultural purposes;  
or

4.26.2 the taking of any species referred to in those clauses as an inevitable by-catch of lawful commercial fishing operations.

#### RIGHT OF FIRST REFUSAL OVER SHELLFISH SPECIES

4.27 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that if any of the shellfish species described in **Table B** of **Part 10** of the **Cultural Redress Schedule** (the "**RFR Shellfish Species**") are to be made subject to the quota management system under the Fisheries Act 1996, then the Crown will, subject to **clause 4.28**, grant Ngati Mutunga a right of first refusal (the "**Shellfish RFR**") to purchase from the Crown (on terms and conditions (including price) determined by the Crown) the lesser of the following:

4.27.1 40% of the total allowable commercial catch for the RFR Shellfish Species in respect of any quota management area within the rohe of Ngati Mutunga; or

4.27.2 the quantity of quota allocated to the Crown under section 49(3) of the Fisheries Act 1996 in respect of the RFR Shellfish Species in any quota management area within the rohe of Ngati Mutunga.

4.28 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that:

4.28.1 if only part of a quota management area referred to in **clause 4.27** is within the rohe of Ngati Mutunga, the proportion of the total allowable commercial catch for the purposes of the Shellfish RFR will be the lesser of the following:

(a) 40% of the total allowable commercial catch for the RFR Shellfish Species that relates to that part of the quota management area within the rohe of Ngati Mutunga; and

(b) the quantity of quota allocated to the Crown under section 49(3) of the Fisheries Act 1996 in respect of the RFR Shellfish Species in that part of the quota management area within the rohe of Ngati Mutunga;

4.28.2 the Shellfish RFR will not apply in respect of:

#### 4. PROPOSED CULTURAL REDRESS

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- (a) any provisional individual transferable quota allocated to the Crown under section 49 of the Fisheries Act 1996; or
- (b) any individual transferable quota acquired by any means by the Crown after the initial allocation of individual transferable quota;

4.28.3 the Shellfish RFR will not require the Crown to purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996, prior to the allocation of individual transferable quota; and

4.28.4 to the extent that, as a result of exercising the Shellfish RFR, Ngati Mutunga holds a percentage of quota that exceeds any limit on holding quota under section 59 of the Fisheries Act 1996, Ngati Mutunga will be deemed to have received, under section 60 of the Fisheries Act 1996, the consent of the relevant Minister to hold the percentage of quota in excess of that limit.

4.29 The Crown and Ngati Mutunga will acknowledge in the Deed of Settlement that although the Shellfish RFR will be provided under the Deed of Settlement and Settlement Legislation:

4.29.1 the Crown will not be required to introduce any of the RFR Shellfish Species into the quota management system; and

4.29.2 any introduction of an RFR Shellfish Species into the quota management system may not result in any, or any significant, holdings by the Crown of quota for that RFR Shellfish Species.

#### COASTAL TENDERING

4.30 The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that if the Minister of Conservation offers by public tender, in accordance with Part VII of the Resource Management Act 1991, authorisations for any part of the Coastal Marine Area within the rohe of Ngati Mutunga, Ngati Mutunga will have a preferential right to purchase such of those authorisations that meet the following criteria:

4.30.1 the area of the Coastal Marine Area to which those preferential authorisations relate, together with the area for all other authorisations previously granted to Ngati Mutunga, must not exceed 10% (in terms of area) of all authorisations granted or which will be granted in that tender round in respect of the Coastal Marine Area within the rohe of Ngati Mutunga (except that this limitation may be exceeded to the extent that the size and shape of the particular portion of Coastal Marine Area for the authorisations to which that tender relates make it impractical to comply with that limitation); and

#### 4. PROPOSED CULTURAL REDRESS

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- 4.30.2 the quality of the proportions of the Coastal Marine Area to which the authorisations relate must be of not less than fair average quality relative to the quality of those portions for all authorisations which are the subject of that tender.
- 4.31 The Crown proposes that the Deed of Settlement and Settlement Legislation will:
- 4.31.1 set out in detail the procedure in accordance with which the right of Ngati Mutunga to purchase authorisations must be exercised;
- 4.31.2 in particular, provide that:
- (a) where Ngati Mutunga has a preferential right to purchase authorisations, it will be deemed to have lodged a valid tender for those authorisations; and
  - (b) if, in response to an offer by tender, the Minister of Conservation receives no tenders or considers that he or she would reject every tender received, the tender that Ngati Mutunga is deemed to have lodged will be deemed to be the tender most preferred by the Minister; and
- 4.31.3 provide that nothing in the Settlement Legislation shall, except as expressly provided in that legislation, limit or affect the rights of Ngati Mutunga to acquire authorisations or otherwise exercise any statutory right, power or privilege.
- 4.32 The Crown and Ngati Mutunga will acknowledge in the Deed of Settlement that, despite any provision in the Deed of Settlement or Settlement Legislation in respect of coastal tendering, the Crown currently has no intention of utilising the coastal tendering mechanism in respect of the Coastal Marine Area within the rohe of Ngati Mutunga.

#### PROHIBITION OF CERTAIN FISHING METHODS

- 4.33 The Crown proposes that the Deed of Settlement will provide for:
- 4.33.1 the Crown to ensure that the Ministry of Fisheries will:
- (a) provide to Ngati Mutunga prior written notice of the date of commencement of the first regular review of regulatory measures in relation to fisheries resources (the "**Regulatory Review**") after the Settlement Date;

#### 4. PROPOSED CULTURAL REDRESS

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- (b) provide to Ngati Mutunga notice of the date by which proposals requesting regulatory change are to be submitted to the Ministry of Fisheries for inclusion in the Regulatory Review;
- (c) include in the consultation process (which forms part of the Regulatory Review) any written proposal from Ngati Mutunga proposing that a prohibition on commercial fishermen using trawl nets and set nets (the "**Proposal**") be applied to that part of the rohe of Ngati Mutunga specified in the Proposal; and
- (d) provide advice to the Minister for Food, Fibre, Biosecurity and Border Control (the "**Minister**") on the Proposal;

4.33.2 Ngati Mutunga to provide the Proposal to the Ministry of Fisheries before the date specified for receipt of proposals for the Regulatory Review;

4.33.3 the Parties to acknowledge that the only obligation of the Minister is to consider the Proposal and, in particular, there is no obligation or expectation that:

- (a) the Minister will agree with all or any part of that Proposal; or
- (b) the Fisheries Regulations or any other legislation will be amended in accordance with the Proposal; and

4.33.4 the Crown to ensure that the Minister will advise Ngati Mutunga in writing of the outcome of his or her consideration of the Proposal.

#### TUNA (EEL)

4.34 The Crown proposes that the Deed of Settlement will provide for:

4.34.1 consultation by officials of the Ministry of Fisheries with Ngati Mutunga, in each of the 3 years following the Settlement Date, concerning:

- (a) the maximum quantity of undersized tuna (eel) that is likely to be permitted to be taken under section 63 of the Fisheries Act 1983 (the "**Permitted Catch**") from each of not more than 3 sites within that part of the rohe of Ngati Mutunga specified by Ngati Mutunga to the Ministry of Fisheries in writing; and
- (b) the likely conditions of any Permitted Catch under section 63 of the Fisheries Act 1983 in relation to each of those specified sites, including the likely conditions in relation to the relocation of any of that Permitted Catch in:



#### 4. PROPOSED CULTURAL REDRESS

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- (i) waterways in the rohe of Ngati Mutunga; and
- (ii) aquacultural farms;

4.34.2 in recognition of the particular importance of the tuna (eel) fishery to Ngati Mutunga, the Ministry of Fisheries to consider, in accordance with the relevant legislation and operational processes, any application from Ngati Mutunga for a special permit to take undersized tuna (elvers or glass eels) from waterways within the rohe of Ngati Mutunga as part of any enhancement or aquaculture project;

4.34.3 the Minister of Conservation to consider, in accordance with the relevant legislation and operational processes, any application from Ngati Mutunga for a special permit to transfer undersized tuna (elvers or glass eels) to waterways within the rohe of Ngati Mutunga, or between tribal rohe where the appropriate agreement exists, as part of any enhancement or aquaculture project;

4.34.4 tuna (eel) to be defined as:

- (a) *anguilla dieffenbachii* (longfinned eel);
- (b) *anguilla australis* (shortfinned eel); and
- (c) *anguilla rheinhartii*; and

4.34.5 undersized tuna (eel) to be defined as tuna (eel) with a weight of less than 220g.

## CULTURAL REDRESS RELATING TO OTHER FLORA AND FAUNA

### ACKNOWLEDGEMENT OF ASSOCIATION WITH TAONGA SPECIES

- 4.35 The Crown proposes that the *Deed of Settlement* and the *Settlement Legislation* will provide:
- 4.35.1 an acknowledgement by the Crown of the cultural, spiritual, historic and/or traditional association of Ngati Mutunga with the Taonga Species found within the rohe of Ngati Mutunga;
  - 4.35.2 for the obligations upon the Crown arising out of that acknowledgement to be included in the Department of Conservation Protocol referred to in **clause 4.1**; and
  - 4.35.3 an acknowledgement by the Crown that is in accordance with the requirements of **Part 3** of the **Cultural Redress Schedule**.

### POSSESSION OF REMAINS OF PROTECTED WILDLIFE

- 4.36 The Crown proposes that, if the *Wildlife Act 1953* is not amended or substituted before the introduction of *Settlement Legislation* in a way that enables members of Ngati Mutunga to have in their possession the remains of any species of wildlife protected under section 3 or section 5 of that Act, the Crown will include a section equivalent to section 296 of the *Ngai Tahu Claims Settlement Act 1998* in the *Settlement Legislation* introduced by the Crown.

## OTHER CULTURAL REDRESS

### PROMOTION OF RELATIONSHIPS BETWEEN NGATI MUTUNGA AND OTHER LOCAL ORGANISATIONS

- 4.37 The Crown proposes that the Deed of Settlement will require that, as soon as practicable after the Settlement Date:

#### *Regional and district councils*

4.37.1 the Minister in Charge of Treaty of Waitangi Negotiations and the Minister for the Environment write to the Taranaki Regional Council and the New Plymouth District Council encouraging each council to enter into a protocol (or a similar document) in relation to the interaction between the council and Ngati Mutunga concerning the performance of the council's functions and obligations, and the exercise of its powers, within the rohe of Ngati Mutunga, including interaction in relation to:

- (a) the development of regional policy statements, regional plans and district plans by the relevant council;
- (b) the processes for considering applications for resource consents under the Resource Management Act 1991 by the relevant council;
- (c) the management by the relevant council of sites of significance to Ngati Mutunga;
- (d) the processes in relation to the naming of streets and/or areas that the relevant council has jurisdiction to undertake; and
- (e) in the case of the New Plymouth District Council, the disposal of property;

#### *Taranaki/ Wanganui Conservation Board*

4.37.2 the Minister of Conservation write to the Taranaki/Wanganui Conservation Board encouraging that Board to enter into a protocol (or a similar document) concerning information exchange between the Board and Ngati Mutunga;

#### 4. PROPOSED CULTURAL REDRESS

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##### *Taranaki Fish and Game Council*

- 4.37.3 the Minister of Conservation write to the Taranaki Fish and Game Council encouraging the Council to enter into a protocol (or a similar document) with Ngati Mutunga on matters of common interest (such as habitat management);

##### *Landcare Research*

- 4.37.4 the Minister for Crown Research Institutes write to Landcare Research encouraging Landcare Research to enter into a protocol (or similar document) with Ngati Mutunga in relation to matters of common interest; and

##### *National Institute of Water and Atmospheric Research Limited*

- 4.37.5 the Minister for Crown Research Institutes write to the National Institute of Water & Atmospheric Research Limited ("NIWA") encouraging NIWA to enter into a protocol (or similar document) with Ngati Mutunga in relation to matters of common interest.

#### PLACE NAMES

- 4.38 The Deed of Settlement and Settlement Legislation will provide for the appropriate amendment or creation of the place names provided in **Part 11** of the **Cultural Redress Schedule**.
- 4.39 The Deed of Settlement will include provision for the progressive amending of place names on official signs and publications as those signs and publications become due in the ordinary course for replacement and reprinting.

#### NEW ZEALAND GEOGRAPHIC BOARD

- 4.40 The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide (unless earlier legislation has already provided for the following) that:
- 4.40.1 the Crown will appoint the Chief Executive Officer of Te Puni Kokiri (the "**Chief Executive**") as a member of the New Zealand Geographic Board ("**NZGB**") from the Settlement Date;
- 4.40.2 the Chief Executive, or his or her nominee, will be responsible for seeking the advice of Ngati Mutunga about place name proposals which affect places within the rohe of Ngati Mutunga prior to the initial consideration of those proposals by the NZGB;

#### 4. PROPOSED CULTURAL REDRESS

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- 4.40.3 the Secretary of the NZGB will give Ngati Mutunga at least 4 weeks prior written notice of the advertisement of an intention to assign a place name to a place within the rohe of Ngati Mutunga;
- 4.40.4 Ngati Mutunga may comment further on, and object to, any notice of intention to assign a place name to a place within the rohe of Ngati Mutunga during the period of 3 months after the public notice is given by the NZGB; and
- 4.40.5 at all stages the NZGB will give full consideration to any advice or objections received from Ngati Mutunga.

**OTHER MATTERS CONCERNING PROPOSED CULTURAL REDRESS**

**REGIONAL IWI BODY**

4.41 The Crown:

4.41.1 acknowledges that Ngati Mutunga wish, with the agreement of the other iwi of Taranaki, to form a joint body to represent the iwi of Taranaki on resource management issues in Taranaki; and

4.41.2 supports, in principle, the concept of the iwi of Taranaki forming such a joint body.

**BODY TO RECEIVE CULTURAL REDRESS**

4.42 The Crown proposes that, unless expressly agreed otherwise by the Parties, all of the cultural redress under this **Part 4: Proposed Cultural Redress** will be provided to the Ngati Mutunga Governance Entity referred to in **clause 7.1.5**.

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## 5. PROPOSED FINANCIAL AND COMMERCIAL REDRESS

### FINANCIAL REDRESS

- 5.1 The Crown proposes to pay \$14.5 million (the "**Financial Redress**") to Ngati Mutunga on the Settlement Date.
- 5.2 The Crown will on the Settlement Date deduct from the Financial Redress the following amounts:
- 5.2.1 any amount or amounts advanced by the Crown to Ngati Mutunga, or the Mandated Representatives of Ngati Mutunga, as a part payment of the Financial Redress; and
- 5.2.2 any amount payable by Ngati Mutunga on the Settlement Date to purchase Land Bank or Leaseback Properties under **clause 5.6**.

### LAND BANK PROPERTY

- 5.3 The Crown is proposing to transfer on the Settlement Date title to the property specified in **Part 1** of the **Commercial Redress Schedule** (the "**Land Bank Property**") if the Mandated Representatives of Ngati Mutunga notify the Crown in writing:
- 5.3.1 as soon as reasonably practicable after this Heads of Agreement is signed, that they wish that Land Bank Property to be valued in accordance with **Part 3** of the **Commercial Redress Schedule**; and
- 5.3.2 once valued, that they wish the Crown to transfer it to Ngati Mutunga on the Settlement Date.

### POTENTIAL LEASEBACK PROPERTIES

- 5.4 The Crown will discuss with the Mandated Representatives of Ngati Mutunga in good faith, as soon as reasonably practicable after this Heads of Agreement is signed:
- 5.4.1 transferring title to Ngati Mutunga on the Settlement Date;
- 5.4.2 the leasing back from Ngati Mutunga from the Settlement Date; and
- 5.4.3 the terms and conditions of any leases (which in the case of leases of education land will be ground leases only);-

of some or all of the properties specified in **Part 2** of the **Commercial Redress Schedule** (the "**Leaseback Properties**").

## 5. PROPOSED FINANCIAL AND COMMERCIAL REDRESS

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5.5 If the Parties agree on the Leaseback Properties and the terms and conditions of the leases, the Mandated Representatives will notify the Crown in writing which of those agreed Leaseback Properties:

5.5.1 they wish to have valued in accordance with **Part 3** of the **Commercial Redress Schedule**; and

5.5.2 once valued, they wish the Crown to transfer to Ngati Mutunga on, and to leaseback from Ngati Mutunga on lease terms agreed under **clause 5.4** from, the Settlement Date.

### **PURCHASE PRICE FOR, AND OTHER TERMS OF TRANSFER OF, LAND BANK OR LEASEBACK PROPERTIES**

5.6 The purchase price for all Land Bank Properties and Leaseback Properties to be transferred by the Crown to Ngati Mutunga on the Settlement Date:

5.6.1 is to be determined by the valuation process set out in **Part 3** of the **Commercial Redress Schedule**; and

5.6.2 will be deducted by the Crown on the Settlement Date from the Financial Redress.

5.7 The Land Bank Property and the Leaseback Properties selected by the Mandated Representatives of Ngati Mutunga will be valued as at the date being 30 Business Days before the date anticipated by the Parties to be the Deed Date (the "**Valuation Date**").

5.8 All transfers of the Land Bank Property or the Leaseback Properties by the Crown to Ngati Mutunga on the Settlement Date will:

5.8.1 be subject to:

(a) all encumbrances and interests affecting the relevant property which:

(i) are as at the Valuation Date registered against the relevant certificate of title; or

(ii) the Crown advises the Mandated Representatives of Ngati Mutunga will be registered against the relevant certificate of title before the Settlement Date;-

(except any encumbrances that secure indebtedness of the Crown); and



## 5. PROPOSED FINANCIAL AND COMMERCIAL REDRESS

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- (b) all unregistered encumbrances and interests notified to Ngati Mutunga (except any encumbrances securing indebtedness of the Crown);

5.8.2 be on the basis of all outgoings and incomings (except for insurance premiums) being apportioned on the Settlement Date; and

5.8.3 be otherwise on the terms and conditions agreed between the Parties.

### RIGHT OF FIRST REFUSAL

5.9 The Crown proposes that it will, in the Deed of Settlement, give Ngati Mutunga a right of first refusal over any Crown Property:

5.9.1 that is at the Deed Date in the Exclusive Claim Area (on the terms and conditions set out in **Part 4** of the **Commercial Redress Schedule**); and

5.9.2 that is at the Deed Date in the Cross Claim Area (on the terms and conditions set out in **Part 4** of the **Commercial Redress Schedule**) if the cross claims for that Crown Property have been resolved to the satisfaction of the Crown.

5.10 The Crown proposes that the Settlement Legislation will provide for the relevant District Land Registrar to note, without charge to Ngati Mutunga, any right of first refusal given over a Crown Property by the Deed of Settlement on any relevant certificate of title.

5.11 The Crown proposes that it will, in the Deed of Settlement, give Ngati Mutunga an opportunity to participate in the sale process of any Crown Property that is in the Cross Claim Area at the Deed Date:

5.11.1 if Ngati Mutunga would have a right of first refusal to the disposal of that Crown Property, except that the cross claims to that Property have not been resolved to the satisfaction of the Crown; and

5.11.2 on a basis that takes appropriate account of:

- (a) the interests of those other iwi that have cross claims to that Property; and
- (b) the interests of the Crown in disposing of that Property in a timely way.

## 5. PROPOSED FINANCIAL AND COMMERCIAL REDRESS

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### BODY TO RECEIVE FINANCIAL AND COMMERCIAL REDRESS

- 5.12 The Crown proposes that all of the financial and commercial redress under this **Part 5: Proposed Financial and Commercial Redress** will be provided to the Ngati Mutunga Governance Entity referred to in **clause 7.1.5**.

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## 6. OTHER MATTERS

### SETTLEMENT INTEREST

- 6.1 The Crown will pay interest ("**Settlement Interest**") on the Financial Redress (less any amounts deductible under **clause 5.2.1**) from the date the Deed of Settlement is signed by the Parties (the "**Deed Date**") until the Settlement Date.
- 6.2 Settlement Interest will:
- 6.2.1 be at a rate equal to the weighted average of the successful yield for 1 year Treasury Bills resulting from the Treasury Bill tender process that takes place during the week prior to Deed Date, as set out on Telerate page 39974, and, if that source is not then available, any replacement page or source;
  - 6.2.2 not compound;
  - 6.2.3 be payable for the period from the Deed Date to the Settlement Date;
  - 6.2.4 be paid on the Settlement Date; and
  - 6.2.5 be subject to Income Tax and any other taxes payable under taxation legislation.

### INCOME TAX AND GST IN RELATION TO SETTLEMENT REDRESS

- 6.3 The Parties intend that all Settlement Redress will be received by Ngati Mutunga without any obligation on Ngati Mutunga to pay Income Tax or GST in relation to the receipt of that Settlement Redress, and the Parties agree to negotiate in good faith with a view to giving effect to this intent in the Deed of Settlement.
- 6.4 The Parties acknowledge that Ngati Mutunga will have to pay Income Tax and GST in accordance with taxation legislation except only as provided in **clause 6.3**.

### POSSIBLE FURTHER EXCEPTIONS TO RIGHT OF FIRST REFUSAL

- 6.5 The Parties agree that they will explore, as soon as practicable after this Heads of Agreement is signed, the possibility of making provision in the Deed of Settlement for the right of first refusal over Crown Properties referred to in **clause 5.9** not to apply where a Crown Property is disposed of in any of the following circumstances:
- 6.5.1 to a third party for the purposes of continuing to use that property for a public purpose;

## 6. OTHER MATTERS

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6.5.2 where a rule of law requires the property to be transferred to a third party;

6.5.3 where the proper use of a discretion by the Crown will result in disposal of that property to a third party.

### GOVERNANCE STRUCTURE

6.6 The Parties agree that the Deed of Settlement will provide that:

6.6.1 the Crown will, if requested by Ngati Mutunga, propose legislation for introduction to Parliament that provides for the establishment of the Ngati Mutunga Governance Entity referred to in **clause 7.1.5** with a governance structure in accordance with **clause 7.1.5(b)**; and

6.6.2 enactment of that legislation is not a condition of Settlement.

### HANGI STONES

6.7 The Crown acknowledges that the Mandated Representatives of Ngati Mutunga wish to:

6.7.1 provide in the Deed of Settlement for the historical and cultural association of Ngati Mutunga with hangi stones; and

6.7.2 further discuss and, if agreed by the Parties, provide in the Deed of Settlement for the potential use rights of hangi stones at specific Crown-owned sites (in a manner consistent with existing legislation).

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## 7. PROPOSED CONDITIONS

7.1 The Crown's Settlement Proposal, and the Settlement, are subject to the following conditions:

7.1.1 Ngati Mutunga acknowledging and agreeing in the Deed of Settlement, and the Settlement Legislation providing, with effect from the Settlement Date, that:

- (a) all the Ngati Mutunga Historical Claims are settled;
- (b) the Crown is released and discharged in respect of them and that the Settlement is fair in the circumstances and final; and
- (c) the rights and obligations of Ngati Mutunga in the Deed of Settlement are for the benefit of, and binding upon, the members of Ngati Mutunga ;

7.1.2 Ngati Mutunga acknowledging and agreeing in the Deed of Settlement to, and the Settlement Legislation providing for, the removal with effect from the Settlement Date of the jurisdiction of the courts, the Waitangi Tribunal and any other judicial body or tribunal in respect of:

- (a) the Ngati Mutunga Historical Claims;
- (b) the validity of the Deed of Settlement;
- (c) the adequacy of the Settlement; and
- (d) the Settlement Legislation; -

except for the implementation and interpretation of the Deed of Settlement and the Settlement Legislation;

7.1.3 any proceedings in relation to the Ngati Mutunga Historical Claims being discontinued;

7.1.4 Ngati Mutunga supporting the passage of Settlement Legislation;

7.1.5 the establishment of an entity for the Settlement Assets to be transferred to (the "**Ngati Mutunga Governance Entity**") that the Crown is satisfied:

- (a) has been ratified by the members of Ngati Mutunga (by a process agreed between the Mandated Representatives of Ngati Mutunga and the Crown) as an appropriate body for the Crown to transfer the Settlement Assets to; and

## 7. PROPOSED CONDITIONS

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- (b) has a governance structure that:
  - (i) represents all members of Ngati Mutunga;
  - (ii) has transparent decision-making and dispute resolution processes; and
  - (iii) is fully accountable to all members of Ngati Mutunga;

7.1.6 Ngati Mutunga acknowledging and agreeing in the Deed of Settlement that Settlement Redress will be administered by the Ngati Mutunga Governance Entity for the benefit of the present and future members of Ngati Mutunga;

7.1.7 the Land Bank ceasing in relation to Ngati Mutunga;

7.1.8 Ngati Mutunga acknowledging and agreeing in the Deed of Settlement that, so far as Ngati Mutunga is concerned, as from the Settlement Date:

- (a) the Memorials may be removed from any land in:
  - (i) the Exclusive Claim Area; or
  - (ii) the Cross Claim Area, provided that Memorials affecting other iwi of Taranaki in that Cross Claim Area are not removed without the consent of those iwi; and
- (b) nothing in the following statutory provisions:
  - (i) sections 8A to 8H of the Treaty of Waitangi Act 1975;
  - (ii) sections 27A to 27C of the State-Owned Enterprises Act 1986;
  - (iii) part III of the New Zealand Railways Corporation Restructuring Act 1990; and
  - (iv) sections 211 to 213 of the Education Act 1989;

will apply to any land in Taranaki;

7.1.9 the Crown confirming that it is satisfied that all cross claims, and issues relating to cross claims, in relation to Settlement Assets within the Cross Claim Area, have been resolved;

## 7. PROPOSED CONDITIONS

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7.1.10 Ngati Mutunga acknowledging and agreeing in the Deed of Settlement that the Crown has acted honourably and reasonably in relation to the Settlement; and

7.1.11 The Mandated Representatives obtaining, before the Deed of Settlement is signed, a mandate from the members of Ngati Mutunga (through a process agreed between the Mandated Representatives of Ngati Mutunga and the Crown) authorising them to:

(a) enter into that Deed of Settlement on behalf of the members of Ngati Mutunga; and

(b) in particular, settle the Ngati Mutunga Historical Claims on the terms provided in that Deed of Settlement.

7.2 Settlement, and the Settlement Deed (except where it provides otherwise), will be conditional upon the passing of Settlement Legislation.

7.3 The transfer of any property that forms part of the Settlement Assets is subject to:

7.3.1 clearances under section 40 of the Public Works Act 1981 (or that section as applied by any other legislation), sections 23(1) or 24(4) of the New Zealand Railways Corporation Restructuring Act 1980, section 207(4) of the Education Act 1989 or any equivalent legislation and other statutory provisions which must be complied with before transfer; and

7.3.2 any rights, in respect of that property, existing at the Deed Date.

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## 8. ACCEPTANCE OF THE CROWN'S SETTLEMENT PROPOSAL

### GENERAL ACKNOWLEDGEMENTS

8.1 The Mandated Representatives of Ngati Mutunga acknowledge that:

8.1.1 the Crown's Settlement Proposal (including the conditions in **Part 7**) is, in principle, acceptable;

8.1.2 a Deed of Settlement and Settlement Legislation giving effect to the Crown's Settlement Proposal will:

(a) with effect from the Settlement Date, settle all Ngati Mutunga Historical Claims; and

(b) include acknowledgments from Ngati Mutunga, in particular, that:

(i) with effect from the Settlement Date;

(aa) all the Ngati Mutunga Historical Claims are settled; and

(bb) the Crown is released and discharged in respect of all Ngati Mutunga Historical Claims;

(ii) the Settlement is fair in the circumstances and final;

(iii) the Crown has acted honourably and reasonably in relation to the Settlement;

(iv) the rights and obligations of Ngati Mutunga in the Deed of Settlement are for the benefit of, and binding upon, the members of Ngati Mutunga ;

(v) with effect from the Settlement Date, the jurisdiction of the courts, the Waitangi Tribunal and any other judicial body or tribunal is removed in respect of the Ngati Mutunga Historical Claims, the validity of the Deed of Settlement, the adequacy of the Settlement, and the Settlement Legislation (except for the implementation and interpretation of the Deed of Settlement and the Settlement Legislation);

(vi) Settlement Redress will be administered by the Ngati Mutunga Governance Entity for the benefit of the present and future members of Ngati Mutunga and



## 8. ACCEPTANCE OF THE CROWN'S SETTLEMENT PROPOSAL

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- (vii) the Memorials may be removed from any land in:
  - (aa) the Exclusive Claim Area; or
  - (bb) any land in the Cross Claim Area, provided that the Memorials affecting other iwi of Taranaki in that Cross Claim Area are not removed without the consent of those iwi;

8.1.3 they must obtain, before the Deed of Settlement is signed, a mandate from the members of Ngati Mutunga (through a process agreed between the Mandated Representatives of Ngati Mutunga and the Crown) authorising them to:

- (a) enter into that Deed of Settlement on behalf of the members of Ngati Mutunga;
- (b) in particular, settle the Ngati Mutunga Historical Claims on the terms provided in that Deed of Settlement; and

8.1.4 the Settlement Assets are to be transferred to the Ngati Mutunga Governance Entity.

### ACKNOWLEDGEMENTS IN RELATION TO MOUNT TARANAKI

8.2 The Mandated Representatives of Ngati Mutunga acknowledge that:

8.2.1 the Apology in relation to Mount Taranaki or the Mount Taranaki Cultural Redress, or both, will, if necessary, be developed after the Settlement Date and the settlement of the Ngati Mutunga Historical Claims;

8.2.2 Mount Taranaki is of great traditional, cultural, historical and spiritual importance to all iwi of Taranaki; and

8.2.3 Mount Taranaki Cultural Redress will endeavour to recognise the traditional, cultural, historical and spiritual significance of Mount Taranaki to all iwi of Taranaki (while recognising the interests of the people of New Zealand generally in Mount Taranaki).

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## 9. ACKNOWLEDGEMENTS BY THE PARTIES

### ACKNOWLEDGEMENTS IN RELATION TO THE CROWN'S SETTLEMENT PROPOSAL

9.1 The Parties acknowledge:

- 9.1.1 that this Heads of Agreement represents, and the Deed of Settlement will represent, the results of extended negotiations conducted in good faith, and in a spirit of co-operation and compromise;
- 9.1.2 the difficulty in assessing redress for the loss and prejudice suffered by Ngati Mutunga;
- 9.1.3 that it is not possible to fully compensate Ngati Mutunga for all loss and prejudice suffered;
- 9.1.4 that this foregoing of compensation by Ngati Mutunga is intended to contribute to the development of New Zealand; and
- 9.1.5 that, taking all matters into consideration (some of which are specified in this clause), the Crown's Settlement Proposal is fair in the circumstances.

### ABORIGINAL TITLE AND CUSTOMARY AND OTHER RIGHTS

9.2 The Parties acknowledge that:

- 9.2.1 the provisions to be included in the Deed of Settlement relating to the removal of the jurisdiction of the courts, the Waitangi Tribunal and any other judicial body or tribunal as provided in **clause 7.1.2**:
  - (a) will not be intended to prevent:
    - (i) any Ngati Mutunga Claimant from pursuing claims against the Crown based on aboriginal title or customary rights which do not come within the definition of Ngati Mutunga Historical Claims; or
    - (ii) the Crown from disputing such claims or the existence of such title or rights; but
  - (b) will be intended to prevent any Ngati Mutunga Claimant from pursuing claims against the Crown (including claims based on aboriginal title or customary rights) if such claims come within the definition of Ngati Mutunga Historical Claims; and

## 9. ACKNOWLEDGEMENTS BY THE PARTIES

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9.2.2 nothing in the Deed of Settlement will:

- (a) diminish or in any way affect the Treaty of Waitangi or the ongoing relationship between the Crown and Ngati Mutunga in terms of the Treaty of Waitangi;
- (b) except as expressly provided in this Deed, be intended to derogate from any rights the Crown, Ngati Mutunga or any Ngati Mutunga Claimant might have at common law or under legislation or under the Treaty of Waitangi;
- (c) extinguish any aboriginal title or customary rights that any Ngati Mutunga Claimant may have;
- (d) constitute or imply any acknowledgement or acceptance by the Crown that such title or rights exist; or
- (e) extinguish any right any person has to redress under the Maori Reserved Land Amendment Act 1997.

### **DECISION OF WAITANGI FISHERIES COMMISSION**

9.3 The Parties acknowledge that nothing in this Heads of Agreement or in the Deed of Settlement or the Settlement Legislation will be intended to affect any decision of the Treaty of Waitangi Fisheries Commission either:

9.3.1 under the Maori Fisheries Act 1989; or

9.3.2 in respect of the Deed of Settlement between the Crown and Maori dated 23 September 1992.

### **PART PAYMENT OF FINANCIAL REDRESS**

9.4 The Parties acknowledge that:

9.4.1 the Crown will, within 1 Business Day after the date of this Heads of Agreement, pay to the Mandated Representatives of Ngati Mutunga \$400,000 as a part payment of the Financial Redress (provided appropriate documentation acknowledging that part payment is completed by the Mandated Representatives); and

9.4.2 the Crown will on the Settlement Date deduct that amount from the Financial Redress.

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## 10. CONTINUATION OF SETTLEMENT PROCESS

### CONTINUE TO WORK TOGETHER IN GOOD FAITH

10.1 The Parties agree to continue to work together in good faith to develop, as soon as reasonably practical (and whether or not the Crown is negotiating, or settling, the historical claims of other iwi of Taranaki), a Deed of Settlement that:

10.1.1 incorporates the Crown's Settlement Proposal (including all matters of detail and implementation);

10.1.2 will, with effect from the Settlement Date, enable the Crown to settle the Ngati Mutunga Historical Claims; and

10.1.3 provides for a process that will involve Ngati Mutunga and other iwi of Taranaki in developing:

(a) the Apology in relation to Mount Taranaki; and

(b) the Mount Taranaki Cultural Redress for Ngati Mutunga (and those iwi).

10.2 The Parties recognise and acknowledge that the Deed of Settlement may be signed and Settlement Legislation enacted before:

10.2.1 the Apology in relation to Mount Taranaki and the Mount Taranaki Cultural Redress is developed; and

10.2.2 settlement is reached with other iwi of Taranaki of their historical claims.

### DEVELOPMENT OF SETTLEMENT LEGISLATION

10.3 The Parties agree that the Deed of Settlement will specify that Settlement Legislation will provide that:

10.3.1 it will not come into force until an Order in Council brings it into force;

10.3.2 an Order in Council bringing it into force:

(a) will not be made unless Ngati Mutunga has provided a written statement to the Crown that the Settlement Legislation is acceptable to it; and

(b) will be made within 20 Business Days after Ngati Mutunga has provided that statement in writing to the Crown; and

## 10. CONTINUATION OF SETTLEMENT PROCESS

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10.3.3 it will be treated as having been repealed if the Order in Council has not been made within 6 months after its enactment.

10.4 The Crown agrees that, in view of the requirements of **clause 10.3**, the Deed of Settlement will:

10.4.1 acknowledge that it is important that the proposed Settlement Legislation is introduced in a form which is acceptable to Ngati Mutunga; and

10.4.2 ensure that Ngati Mutunga, and its advisers, will have appropriate participation in the drafting of the Settlement Legislation.

## CONTINUED APPLICATION OF TERMS OF NEGOTIATION

10.5 The Parties agree that:

10.5.1 the provisions of the Terms of Negotiation continue to apply in relation to their negotiations (except to the extent that they are changed by this Heads of Agreement); and

10.5.2 in particular, the Mandated Representatives of Ngati Mutunga must continue to maintain their mandate to negotiate the Ngati Mutunga Historical Claims with the Crown under the Terms of Negotiation. The Crown acknowledges that it is satisfied that the Mandated Representatives do maintain that mandate as at the date of this Heads of Agreement.

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## 11. MISCELLANEOUS

- 11.1 Except as expressly provided in this Deed, any notice or other communication given under this Heads of Agreement to a Party shall be in writing addressed to that Party at the address or facsimile number from time to time notified by that Party in writing to the other Party. Until any other address or facsimile number of a Party is notified, they will be as follows:

***The Crown***

C/- The Solicitor-General;  
Crown Law Office  
St Pauls Square  
45 Pipitea Street  
(PO Box 5012)  
**WELLINGTON**

Facsimile: 04 473 3482

***Ngati Mutunga Iwi Authority Inc.***

C/- Bell Gully Buddie Weir  
IBM Centre  
171 Featherston Street  
(PO Box 1291)  
**WELLINGTON**

Attention: David Tapsell  
Facsimile: 04 473 3845

- 11.2 Notices and other communications may be delivered by hand, by post with postage prepaid, or by facsimile.
- 11.3 A notice or other communication delivered by hand will be treated as having been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be treated as having been delivered on the next Business Day.
- 11.4 A notice or other communication delivered by pre-paid post will be treated as having been received on the second Business Day after posting.
- 11.5 A notice or other communication sent by facsimile will be treated as having been received on the day of transmission if a correct answerback is received by the transmitter. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be treated as having been given on the next Business Day after the date of transmission.

### **NO ASSIGNMENT**

- 11.6 Neither Party may transfer any rights or obligations under this Heads of Agreement.

### **AMENDMENT**

- 11.7 No amendment to this Heads of Agreement will be effective unless it is in writing and signed by both Parties.

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## **12. NATURE AND TERMINATION OF THIS HEADS OF AGREEMENT**

### **NATURE OF THIS HEADS OF AGREEMENT**

12.1 The Parties acknowledge that this Heads of Agreement:

12.1.1 represents an agreement in principle but the Crown's Settlement Proposal does include the scope and nature, in principle, of all redress the Crown is to offer Ngati Mutunga (except for the Apology in relation to Mount Taranaki and the Mount Taranaki Cultural Redress); and

12.1.2 is not intended to create legal relations.

### **MADE ON WITHOUT PREJUDICE BASIS**

12.2 The Parties acknowledge that:

12.2.1 this Heads of Agreement is entered into, and the Crown's Settlement Proposal is made, on a without prejudice basis; and

12.2.2 in particular, this Heads of Agreement may not be used as evidence in any proceedings before, or presented to, any court, the Waitangi Tribunal or any other judicial body or tribunal (except in proceedings concerning the implementation and interpretation of the Deed of Settlement and the Settlement Legislation).

### **TERMINATION OF THIS HEADS OF AGREEMENT**

12.3 The Parties acknowledge that:

12.3.1 the Crown may, at any time before a Deed of Settlement is entered into, terminate this Heads of Agreement by written notice to the Mandated Representatives if those Mandated Representatives do not maintain their mandate to negotiate the Ngati Mutunga Historical Claims with the Crown under the Terms of Negotiation;

12.3.2 either Party may terminate this Heads of Agreement by written notice to the other Party if the Crown and Ngati Mutunga do not enter into a Deed of Settlement within 12 months after the date of this Heads of Agreement; and

12.3.3 this Heads of Agreement will be superseded by the Deed of Settlement on the Deed Date.

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**CULTURAL REDRESS SCHEDULE**

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## PART 1

### REQUIREMENTS FOR DEPARTMENTAL PROTOCOLS

#### *Definitions*

- 1.1 In this Part "Departmental Protocol" means a protocol issued to Ngati Mutunga by the Minister of Conservation, the Minister for Food, Fibre, Biosecurity and Border Control, the Minister of Energy or any other Minister, and/or any official under:
- 1.1.1 the Deed of Settlement; and/or
  - 1.1.2 the Settlement Legislation.

#### *Amendment of Departmental Protocols*

- 1.2 A Departmental Protocol may be amended or cancelled at any time by the Crown through the relevant Minister at the initiative of:
- 1.2.1 Ngati Mutunga; or
  - 1.2.2 the Crown (after consultation with Ngati Mutunga and having particular regard to the views of Ngati Mutunga).

#### *Departmental Protocols subject to other obligations*

- 1.3 A Departmental Protocol will be subject to, and will not restrict:
- 1.3.1 the obligations of the Crown, any Minister, Government Department, or official to exercise their powers, or perform their functions or duties, in accordance with the law and government policy; or
  - 1.3.2 the Crown's powers to:
    - (a) amend policy; or
    - (b) introduce legislation (including amending legislation).

***Enforceability of Departmental Protocols***

- 1.4 Ngati Mutunga may (subject to the Crown Proceedings Act 1950) enforce any Departmental Protocol:
- 1.4.1 by way of public law action against the Crown where the relevant Minister fails unreasonably to comply with that Protocol; but
  - 1.4.2 damages are not available as a remedy.

***Not breach of Deed of Settlement***

- 1.5 A failure by a Minister to comply with a Departmental Protocol does not constitute a breach of the Deed of Settlement and/or the Settlement Legislation.

***Limitation of rights***

- 1.6 A Departmental Protocol does not of itself have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to:
- 1.6.1 land held, managed, or administered under the Conservation Act 1987 or the statutes listed in the First Schedule to that Act;
  - 1.6.2 flora and fauna managed according to the Conservation Act 1987 or the statutes listed in the First Schedule to that Act;
  - 1.6.3 fish, aquatic life and seaweed managed according to the Fisheries Act 1983 or the Fisheries Act 1996;
  - 1.6.4 minerals managed under the Crown Minerals Act 1991; or
  - 1.6.5 newly found taonga managed under the Antiquities Act 1975.

## PART 2

### REQUIREMENTS FOR STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION IN RELATION TO IDENTIFIED AREAS

#### *Purposes of Statutory Acknowledgments*

- 2.1 The only purposes of Statutory Acknowledgments in relation to Identified Areas are:
- 2.1.1 to require that consent authorities forward summaries of applications for resource consents to Ngati Mutunga;
  - 2.1.2 to require that consent authorities, the Historic Places Trust, or the Environment Court, as the case may be, have regard to the Statutory Acknowledgments in relation to the Identified Areas in certain cases;
  - 2.1.3 to enable the Minister responsible for management of the Identified Areas, or the Commissioner of Crown Lands, as the case may be, to enter into Deeds of Recognition; and
  - 2.1.4 to enable Ngati Mutunga to cite Statutory Acknowledgments as evidence of the association of Ngati Mutunga with the Identified Areas in certain cases.

#### *Purposes of Deeds of Recognition*

- 2.2 The only purposes of Deeds of Recognition are to require that Ngati Mutunga is consulted, and regard is had to its views, in certain cases in respect of the statement of association described in the Statutory Acknowledgement.

#### *Exercise of powers, duties, and functions*

- 2.3 Except as provided in **paragraphs 2.1 and 2.2:**
- 2.3.1 neither a Statutory Acknowledgement nor a Deed of Recognition affects, or may be taken into account in, the exercise of any power, or the performance of any duty or function, under any legislation; and
  - 2.3.2 no person, in considering any matter or making any decision or recommendation under any legislation, may give any greater or lesser weight to the association of Ngati Mutunga with an Identified Area (as described in the relevant Statutory Acknowledgement) than that person would have given under that legislation if:

- (a) that Statutory Acknowledgement had not been made; and
- (b) no Deed of Recognition existed in respect of that Identified Area.

***Rights not affected***

- 2.4 Neither a Statutory Acknowledgement nor a Deed of Recognition affects the lawful rights or interests of any person who is not a party to the Deed of Settlement.

***Limitation of rights***

- 2.5 Neither a Statutory Acknowledgement, nor a Deed of Recognition, has of itself the effect of granting, creating, or providing evidence of any estate or interest in, or any rights relating to, an Identified Area.

## PART 3

### REQUIREMENTS FOR STATUTORY ACKNOWLEDGEMENTS IN RELATION TO TAONGA SPECIES

#### *Exercise of powers, duties, and functions*

- 3.1 The acknowledgement of the association of Ngati Mutunga with the Taonga Species and the Taonga Fish Species (Department of Conservation) (the "**Acknowledged Taonga Species**") does not affect, and may not be taken into account in the exercise of any power, or the performance of any duty or function, under any legislation.
- 3.2 No person, in considering any matter or making any decision or recommendation under any legislation, may give any greater or lesser weight to the association of Ngati Mutunga with the Acknowledged Taonga Species than that person would have given under the relevant legislation if no acknowledgement had been made by the Crown of that association with the Acknowledged Taonga Species.

#### *Rights not affected*

- 3.3 The acknowledgement of the association of Ngati Mutunga with the Acknowledged Taonga Species will not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

#### *Limitation of rights*

- 3.4 The acknowledgement of the association of Ngati Mutunga with the Acknowledged Taonga Species will not, of itself, have the effect of granting, creating, or providing evidence of any interest in, or any rights of any kind relating to, any of the Acknowledged Taonga Species.

## PART 4

### TERMS AND CONDITIONS OF NOHOANGA ENTITLEMENTS

- 4.1 The land for Nohoanga Entitlements must be land:
- 4.1.1 that is Crown-owned;
  - 4.1.2 that is not a national park, marginal strip, nature reserve, esplanade reserve, scientific reserve or any part of an unformed road within 20 metres of a waterway;
  - 4.1.3 that is situated sufficiently close to any relevant waterway to permit convenient access for fishing;
  - 4.1.4 to which lawful access is available; and
  - 4.1.5 where the existing practices and patterns of public use at the time the Nohoanga Entitlement is created will not be unreasonably impaired by the creation of that Nohoanga Entitlement.
- 4.2 Public access must not, as a result of a Nohoanga Entitlement, be:
- 4.2.1 unreasonably excluded to the waterway; or
  - 4.2.2 impeded along the waterway.
- 4.3 Occupiers under a Nohoanga Entitlement may erect camping shelters or temporary dwellings, but the occupier must:
- 4.3.1 remove those camping shelters or temporary dwellings while the right of occupation is not being exercised; and
  - 4.3.2 leave the land in substantially the same condition that it was in at the commencement of occupation, except for temporary effects normally associated with this type of occupation.
- 4.4 The occupier, and activities carried on by the occupier, under a Nohoanga Entitlement, are subject to all legislation and land and water management practices that relate to the relevant land.
- 4.5 Ngati Mutunga must pay rates, charges and fees in relation to a Nohoanga Entitlement under section 7 of the Rating Powers Act 1988 in proportion to the period of the Nohoanga Entitlement.

## CULTURAL REDRESS SCHEDULE

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- 4.6 The Crown may terminate a Nohoanga Entitlement (but must make reasonable endeavours to provide a replacement Nohoanga Entitlement) if:
- 4.6.1 the Crown disposes of the relevant land;
  - 4.6.2 the relevant land is destroyed, or permanently detrimentally affected, by a natural cause;
  - 4.6.3 the land becomes required for the specific purpose for which it was originally set apart as a reserve;
  - 4.6.4 the land becomes a formed road; or
  - 4.6.5 lawful access to the Nohoanga Entitlement no longer exists.
- 4.7 The Crown may terminate a Nohoanga Entitlement if Ngati Mutunga fails to comply with a condition of that Nohoanga Entitlement.
- 4.8 The Crown may dispose of land over which there is a Nohoanga Entitlement.
- 4.9 The existence of a Nohonga Entitlement does not affect the lawful rights and interests of any person who is not a party to the Deed of Settlement.
- 4.10 Except as expressly recognised in the Deed of Settlement and Settlement Legislation, the existence of a Nohoanga Entitlement does not, of itself, have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights relating to, the relevant land.

**PART 5**

**LAND TO BE VESTED IN NGATI MUTUNGA**

<i>Name of Site</i>	<i>Description</i>
Onaero Recreation Reserve	4370 square metres more or less, being Section 89, Urenui District. SO 11423. All Gazette 1985 page 598. Taranaki Land District.
Pukemiro Historic Reserve	2.2950 hectares more or less, being Section 22, Block III, Waitara Survey District. SO 11423. All Gazette 1985 page 598. Taranaki Land District.
Te Rau o Te Huia Pa Historic Reserve	1399 square metres more or less, being Section 11, Block III, Waitara Survey District. SO 538. All Gazette 1983 page 2401. Taranaki Land District.
Ngapapa Local Purpose Reserve (Roadmans Cottage)	1012 square metres more or less, being Section 101, Town of Urenui. SO 7717. Taranaki Land District.
Urenui Conservation Area	112.6366 hectares more or less, being Subdivision 2 of Section 12, Block VIII, Waitara Survey District. SO 7822. Taranaki Land District.
Mataro Road Conservation Area	2504 square metres more or less, being Section 120, Urenui District. SO 2393. Taranaki Land District.



**PART 6**

**ADMINISTRATION OF SITES**

<b>Name of Site</b>	<b>Description</b>
Te Urinui Pa Historic Reserve	2.8834 hectares more or less, being Urenui 2B1. ML 1230. All Gazette 1983 pages 2589 and 2750. Taranaki Land District.
Okoki Pa Historic Reserve	17.1991 hectares more or less, being Section 54, Block IV, Waitara Survey District. SO 3012. All Gazette 1983 page 3331. Taranaki Land District.
Urenui Local Purpose Reserve (Riverbank Reserve)	144 square metres more or less, being Lot 4 DP 7692. Part Gazette 1958 page 183. Taranaki Land District.
Urenui River Local Purpose Reserve (Esplanade Reserve)	4097 square metres more or less, being Lot 3 DP 7373. Part Gazette 1954 page 1374. Taranaki Land District.

**PART 7**

**NOHOANGA ENTITLEMENTS**

<i>Name of Site</i>	<i>Description</i>
Uruti Domain Scenic Reserve	1.0 hectare more or less (subject to survey) within the reserve being Section 37, Block II, Upper Waitara Survey District. SO 11993. Part Gazette 1983 page 2665. Taranaki Land District.

**PART 8**

**IDENTIFIED AREAS**

**Table I: – Areas in respect of which Statutory Acknowledgements are to be given**

<i>Name of Site</i>	<i>Description</i>
Part of Mimi – Pukearuhe Coast Marginal Strip	An area of Marginal Strip adjoining Part Sections 55, 56, 58 and 59 and Sections 60 and 62, Pukearuhe District, Part Lots 1, 2 and 3, DP 4748, Lots 1, 2 and 3, DP 5271, Lot 5, DP 13368, Lot 2, DP 16136 and Part Wairoa 61A and 61C. Taranaki Land District.
Waitoetoe Beach Recreation Reserve	4.5691 hectares more or less, being Lots 1, 2 and 3 DP 11602. All Gazette 1984 page 945. Taranaki Land District.
Mimi Scenic Reserve	9.0245 hectares more or less, being Lot 1 DP 10179 and Section 71, Pukearuhe District. SO 9691. Part Gazette 1979 page 523. Taranaki Land District.
Mimi Gorge Scientific Reserve	9462 square metres more or less, being Lots 1 and 2, DP 14249. All Gazette 1986 page 410. Taranaki Land District.
Mataro Scenic Reserve	12.4896 hectares more or less, being Section 133, Block VII, Waitara Survey District. SO 9711. Part Gazette 1979 page 3619. Taranaki Land District.
Mt Messenger Conservation Area within the rohe of Ngati Mutunga	<p>2223.3426 hectares more or less, being Sections 5 and 6, Block XII and Section 10, Block XIII, Mimi Survey District. SOs 1036 and 1037. Part Gazette 1900 page 160. Taranaki Land District.</p> <p>139.6165 hectares more or less, being Section 8, Block XII, Mimi Survey District. SO 1302. Part Gazette 1901 page 60. Taranaki Land District.</p> <p>182.0974 hectares more or less, being Part Section 18, Block VIII, Mimi Survey District. SO 1969. Part Gazette 1903 page 1870. Taranaki Land District.</p> <p>67.8910 hectares more or less, being Section 25, Block VIII and Section 12, Block XII, Mimi Survey District. SO 7978. All Gazette 1942 page 1325. Taranaki Land District.</p>

**CULTURAL REDRESS SCHEDULE**

<b>Name of Site</b>	<b>Description</b>
	<p>265.0106 hectares more or less, being Section 17, Block VIII, and Part Section 9, Block XII, Mimi Survey District. SOs 1037, 1038 and 1302. Taranaki Land District.</p> <p>An unknown area being the balance of Sections 11, 12 and 14, Block XIII, Mimi Survey District. SO 1304. Taranaki Land District.</p>
Taramoukou Conservation Area	<p>1457.5764 hectares more or less, being Sections 16 and 23 and Part Section 22, Block XV, Waitara Survey District. SOs 1010, 1034 and 1035. Part Gazette 1900 page 60. Taranaki Land District.</p> <p>195.3152 hectares more or less, being Sections 14 and 20 and Part Sections 13, 18 and 21, Block XV, Waitara Survey District. SOs 704, 800 and 13546. All Gazette 1996 page 4122. Taranaki Land District.</p>
Onaero River Scenic Reserve	9.4430 hectares more or less, being Sections 88 and 141 Urenui District. SO 11423. Part Gazette 1985 page 598. Taranaki Land District.
Onaero Coast Marginal Strip	2.6810 hectares more or less, being an area of Marginal Strip adjoining Section 80, Urenui District. Taranaki Land District.
Onaero River Marginal Strip	<p>481 square metres more or less, being Marginal Strip, adjoining Sections 53 and 87, Urenui District. SO 10244. Taranaki Land District.</p> <p>1189 square metres more or less, being Marginal Strip, adjoining Section 137 and Part Section 86, Block VII, Waitara Survey District. SO 10244. Taranaki Land District.</p> <p>1.5176 hectares more or less, being Marginal Strip, adjoining Sections 132 and 137 and Part Section 71, Block VII, Waitara Survey District. SO 9711. Taranaki Land District.</p> <p>2.5495 hectares more or less, being Marginal Strip, adjoining Sections 132 and 133 and Part Section 71, Block VII, Waitara Survey District and Lot 1 DP 19874. SO 9711. Taranaki Land District.</p>

**CULTURAL REDRESS SCHEDULE**

<b><i>Name of Site</i></b>	<b><i>Description</i></b>
Urenui River Marginal Strip	An area of Marginal Strip adjoining Section 17, Block XII, Waitara Survey District. SO 8512. Taranaki Land District.
Coastal Marine Area adjoining the rohe of Ngati Mutunga	That portion of the Coastal Marine Area between the northern most point on the eastern boundary of Lot 4 DP 12416 and the mouth of the Wai-iti Stream.
Waitara River	
Urenui River	

**CULTURAL REDRESS SCHEDULE**

**Table 2: – Areas in respect of which Deeds of Recognition are to be given**

<i>Name of Site</i>	<i>Description</i>
Part of Mimi-Pukearuhe Coast Marginal Strip	An area of Marginal Strip adjoining Part Sections 55, 56, 58 and 59 and Sections 60 and 62, Pukearuhe District, Part Lots 1, 2 and 3, DP 4748, Lots 1, 2 and 3, DP 5271, Lot 5, DP 13368, Lot 2, DP 16136 and Part Wairoa 61A and 61C. Taranaki Land District.
Waitoetoe Beach Recreation Reserve	4.5691 hectares more or less, being Lots 1, 2 and 3 DP 11602. All Gazette 1984 page 945. Taranaki Land District.
Mimi Scenic Reserve	9.0245 hectares more or less, being Lot 1 DP 10179 and Section 71, Pukearuhe District. SO 9691. Part Gazette 1979 page 523. Taranaki Land District.
Mimi Gorge Scientific Reserve	9462 square metres more or less, being Lots 1 and 2, DP 14249. All Gazette 1986 page 410. Taranaki Land District.
Mataro Scenic Reserve	12.4896 hectares more or less being Section 133, Block VII, Waitara Survey District. SO 9711. Part Gazette 1979 page 3619. Taranaki Land District
Mt Messenger Conservation Area within the rohe of Ngati Mutunga	<p>2223.3426 hectares more or less, being Sections 5 and 6, Block XII and Section 10, Block XIII, Mimi Survey District. SOs 1036 and 1037. Part Gazette 1900 page 160. Taranaki Land District.</p> <p>139.6165 hectares more or less, being Section 8, Block XII, Mimi Survey District. SO 1302. Part Gazette 1901 page 60. Taranaki Land District.</p> <p>182.0974 hectares more or less, Part Section 18, Block VIII, Mimi Survey District. SO 1969. Part Gazette 1903 page 1870. Taranaki Land District.</p> <p>67.8910 hectares more or less, being Section 25, Block VIII and Section 12, Block XII, Mimi Survey District. SO 7978. All Gazette 1942 page 1325. Taranaki Land District.</p> <p>265.0106 hectares more or less, being Section 17, Block VIII, and Part Section 9, Block XII, Mimi Survey District. Sos 1037, 1038 and 1302. Taranaki Land District.</p> <p>An unknown area being the balance of Sections 11, 12 and 14, Block XIII, Mimi Survey District. SO 1304. Taranaki Land District.</p>

**CULTURAL REDRESS SCHEDULE**

<b>Name of Site</b>	<b>Description</b>
Taramoukou Conservation Area	<p>1457.5764 hectares more or less, being Sections 16 and 23 and Part Section 22, Block XV, Waitara Survey District. SOs 1010, 1034 and 1035. Part Gazette 1900 page 160. Taranaki Land District.</p> <p>195.3152 hectares more or less, being Sections 14 and 20 and Part Sections 13, 18 and 21, Block XV, Waitara Survey District. SOs 704, 800 and 13546. All Gazette 1996 page 4122. Taranaki Land District.</p>
Onaero River Scenic Reserve	9.4430 hectares more or less, being Sections 88 and 141 Urenui District. SO 11423. Part Gazette 1985 page 598. Taranaki Land District.
Waitara River	
Urenui River	

## PART 9

## TAONGA SPECIES

## Plants

Maori Name	Common Name	Formal Name
Titoki	New Zealand ash	<i>Alectyron excelsus</i>
Karamu	Coprosma	<i>Coprosma lucinda</i> , <i>Coprosma propinqua</i> spp. <i>propinqua</i>
Ti Kouka	Cabbage tree	<i>Cordyline australis</i>
Tutu	Tutu	<i>Coriaria</i> spp.
Karaka	New Zealand laurel/karaka	<i>Corynocarpus laevigata</i>
Pua-o-te-reinga	Woodrose	<i>Dactylanthus taylori</i> ; <i>Dichondria</i> sp. Cf. <i>Brevifolia</i>
Pokaka	Pokaka	<i>Elaeocarpus hookerianus</i>
Kiekie	Kiekie	<i>Freycinetia banksii</i>
Kotukutuku	Tree fuschia	<i>Fuschia excorticata</i>
Koromiko	Koromiko	<i>Hebe stricta</i>
Kanuka	Kanuka	<i>Kunzea ericoides</i>
Manuka	Tea tree	<i>Leptospermum scoparium</i>
Patotara	Dwarf mingimingi	<i>Leucopogon fraseri</i>
Pohutukawa	Pohutukawa	<i>Metrosideros excelsa</i>
Rata (vine, Akatorotoro)	White rata	<i>Metrosideros perforata</i>
Maire	Maire	<i>Mida salicifolis</i>



**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Ngaio	Ngaio	<i>Myoporum laetum</i>
Mapou/Matipo	Maupo	<i>Myrsine australis</i>
Tawai/hutu	Beech	<i>Nothofagus truncata</i>
Kaikomako	Kaikomako	<i>Pennantia corymbosa</i>
Tarata	Lemonwood	<i>Pittosporum eugenioides</i>
Totara	Totara	<i>Podocarpus totara</i>
Tainui	Tainui	<i>Pomaderris apetala</i>
Horoeka	Lancewood	<i>Pseudopanax crassifolius</i>
Tawherowhero	Quintinia	<i>Quinetta serrata</i>
Nikau	New Zealand paim	<i>Rhopalostylis sapida</i>
Kowhai	Kowhai	<i>Sophora microphylla</i>
Kamaha	Kamaha	<i>Weinmannia racemosa</i>
Rimu	Rimu/Red pine	<i>Dacrydium cupressinum</i>
Kahikatea	Kahikatea/White pine	<i>Dacrycarpus dacrydioides</i>
Miro	Miro/Brown pine	<i>Prumnopitys ferruginea</i>
Matai	Matai/Black pine	<i>Prumnopitys taxifolia</i>
Whau	Cork tree/Whau	<i>Entelea arobrescens</i>
Mahoe	Whitey wood/Mahoe	<i>Melicytus ramiflorus</i>
Kawakawa	Kawakawa	<i>Macropiper excelsum</i>
Korokio	Koro wire-netting bush	<i>Corokia contoneaster</i>

**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Panako	Celery fern	<i>Botrychium australe and B. biforme</i>
Ponga	Silver tree fern	<i>Cyathea dealbata</i>
Mamaku	Tree fern	<i>Cyathea medullaris</i>
Katote	Soft tree fern	<i>Cyathea smithii</i>
Para	King fern	<i>Marrattia salicina</i>
Aruhe/Rarahu	Fernroot (bracken)	<i>Pteridium aquilinum var. esculentum</i>
Paratawhiti	Horse shoe fern/Prince of Wales fern	<i>Maritima salicina</i>
Pikopiko	Fern root	<i>Polystichum richardii</i>
Panapana	Bitter-cress	<i>Cardamine debillis</i>
Toetoe	Toetoe	<i>Cortaderia fulvida, c. splendens, c. toetoe</i>
Pingao	Pingao	<i>Desmoschoenus spiralis</i>
Wi	Silver tussock	<i>Poa cita</i>
Wiwi	Rushes	<i>Juncus all indigenous Juncus spp., J. maritimus</i>
Pate Patete	Five finger	<i>Scheffelerera digitata</i>
Atewhiki	Flax	<i>Phormium tenax, Phormium cookianum</i>
Atiraukawa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Atirawaka	Flax	<i>Phormium tenax, Phormium cookianum</i>
Huuriroa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Huruhuruhika	Flax	<i>Phormium tenax, Phormium cookianum</i>

**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Koorako	Flax	<i>Phormium tenax, Phormium cookianum</i>
Kuru	Flax	<i>Phormium tenax, Phormium cookianum</i>
Manunu	Flax	<i>Phormium tenax, Phormium cookianum</i>
Ngaro	Flax	<i>Phormium tenax, Phormium cookianum</i>
Ngaatotomawe	Flax	<i>Phormium tenax, Phormium cookianum</i>
Ngutunui	Flax	<i>Phormium tenax, Phormium cookianum</i>
Ngutupaarera	Flax	<i>Phormium tenax, Phormium cookianum</i>
Oue	Flax	<i>Phormium tenax, Phormium cookianum</i>
Paheke	Flax	<i>Phormium tenax, Phormium cookianum</i>
Pare koritawa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Pare taniwha	Flax	<i>Phormium tenax, Phormium cookianum</i>
Patoo	Flax	<i>Phormium tenax, Phormium cookianum</i>
Puhina	Flax	<i>Phormium tenax, Phormium cookianum</i>
Raataaroa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Raumoa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Taiore, Tiihore	Flax	<i>Phormium tenax, Phormium cookianum</i>
Takaiapu	Flax	<i>Phormium tenax, Phormium cookianum</i>
Takapu	Flax	<i>Phormium tenax, Phormium cookianum</i>
Tarariki	Flax	<i>Phormium tenax, Phormium cookianum</i>
Tiiheru	Flax	<i>Phormium tenax, Phormium cookianum</i>

**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Tiipuna	Flax	<i>Phormium tenax, Phormium cookianum</i>
Tito-o-moe-wai	Flax	<i>Phormium tenax, Phormium cookianum</i>
Weroa	Flax	<i>Phormium tenax, Phormium cookianum</i>
Kutakuta	Reed	<i>Scirpus lacustris</i>
Rangiora	Rangiora	<i>Brachyglottis repanda</i>
Marehou	Hook tree	<i>Phebaium nudum</i>
Puriri	Puriri	<i>Vitex Lucens</i>
Hinau	Hinau	<i>Elaeocarpus dentatus</i>
Manahi	Pond weed	<i>Potamogeton subolongus, P. cheesemanii</i>
Hanea	to be confirmed	<i>to be confirmed</i>
Raupo	Bullrush	<i>Typha angustifolla-orientalis</i>

**Reptiles**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Ngarara	Striped skink	<i>Oligosoma striatum</i>
Ngarara	Brown skink	<i>Leiolopisma zelandicum</i>
Ngarara	Forest skink	<i>Leiolopisma striatum</i>
Ngarara	Common skink	<i>Leiolopisma nigriplantare</i>
Ngarara	Copper skink	<i>Cyclodina aenea</i>
Ngarara	Ornate skink	<i>Cyclodina ornata</i>

**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Ngarara	Common gecko	<i>Hoplodactylus maculatus</i>
Ngarara	Pacific gecko	<i>Hoplodactylus pacificus</i>
Ngarara	Forest gecko	<i>Hoplodactylus granulatus</i>
Ngarara	Green gecko	<i>Naultinus elegans elegans</i>

**Mammals**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Hopuhopu/Upokehu	Hectors dolphin	<i>Cephalorhynchus hectori</i>
Kekeno	New Zealand fur seal	<i>Arctocephalus forsteri</i>
Kewa/tohora	Southern right whale	<i>Balaena australis</i>
Paikea	Humpback whale	<i>Megaptera novaeangliae</i>
Pakaka	Minke whale	<i>Balaenoptera acutorostrata</i>
Paraoa	Sperm whale	<i>Physeter macrocephalus</i>
Pekapeka	Short tailed bat	<i>Mystacina tuberculata tuberculata</i>
Pekapeka	Long tailed bat	<i>Chalinolobus tuberculatus</i>
Upokohue/Tukuperu	Pilot whale	<i>Globicephala spp.</i>

CULTURAL REDRESS SCHEDULE

Birds

Maori Name	Common Name	Formal Name
Kahu	Australasian harrier	<i>Circus approximans</i>
Kaka	North Island kaka	<i>Nestor meridionalis septentrionalis</i>
Kakariki	New Zealand parakeet	<i>Cyanoramphus spp.</i>
Karaearea	New Zealand falcon	<i>Falco novaeseelandiae</i>
Karoro	Black backed gull	<i>Larus dominicanus</i>
Kereru	New Zealand pigeon	<i>Hemiphaga novaeseelandiae</i>
Kiwi	North Island brown kiwi	<i>Apteryx australis mantelli</i>
Koekoea	Long-tailed cuckoo	<i>Eudynamys taitensis</i>
Kokako	North Island kokako	<i>Callaeas cinera wilsoni</i>
Korara	Blue penguin	<i>Eudyptula minor</i>
Korimako	Bellbird	<i>Anthonis meianura melanura</i>
Kotare	New Zealand kingfisher	<i>Halcyon sancta</i>
Kotuku	White heron	<i>Egretta alba</i>
Kuaka	Eastern bar-tailed godwit	<i>Limosa lapponica</i>
Kuruwhengi	New Zealand shoveler	<i>Anas rhynchos</i>
Matata	North Island fernbird	<i>Bowdleria punctata vealeae</i>
Matuku-Kurepo	Brown bittern	<i>Botaurua stellaris poicilptitus</i>
Matuku moana	Reef heron	<i>Egretta sacra</i>
Miromiro	Tomtit	<i>Petroica macrocephala toitoi</i>

**CULTURAL REDRESS SCHEDULE**

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Oi	Grey faced petrel	<i>Pterodroma macroptera</i>
Parera	Grey duck	<i>Anas superciliosa</i>
Pihoihoi	New Zealand pipit	<i>Anthus novaeseelandiae</i>
Pipiwharauoa	Shining cuckoo	<i>Chrysococcyx lucidus</i>
Pirairaka	North Island fantail	<i>Rhipidura fuliginosa placabilis</i>
Poaka	Pied stilt	<i>Himantopus himantopus</i>
Putangitangi	Paradise shelduck	<i>Tadorna variegata</i>
Riroriro	Grey warbler	<i>Gerygone igata</i>
Ruru	Morepork	<i>Ninox novaeseelandiae</i>
Tara	White fronted tern	<i>Sterna striata</i>
Toroa	Royal albatross	<i>Diomedea epomophora</i>
Taranui	Caspian tern	<i>Sterna caspia</i>
Tete	Grey teal	<i>Anas gracilis</i>
Titi	Muttonbird/Sooty shearwater	<i>Puffinus griseus</i>
Titipounamu	North Island rifleman	<i>Acanthisitta chloesgranti</i>
Torea	Variable oyster catcher	<i>Haematopus unicolor</i>
Toutowai	North Island robin	<i>Petroica australis placabilis</i>
Tui	Tui	<i>Prothemadera novaeseelandiae</i>
Tuturiwhatu	Banded dotterel	<i>Charadrius bicinctus</i>
Whio	Blue duck	<i>Hymenolaimus malacorhynchos</i>

CULTURAL REDRESS SCHEDULE

**PART 10**

**TABLE A**

**TAONGA FISH SPECIES (DEPARTMENT OF CONSERVATION)**

Maori Name	Common Name	Formal Name
Kokopu	Banded kokopu	<i>Galaxias fasciatus</i>
Inanga	Minnow	<i>Galaxias maculatus</i>
Koaro	Mountain trout	<i>Galaxias brevipinnis</i>
Piharau	Lamprey	<i>Geotria australis</i>
Piripiripohatu	Torrentfish	<i>Cheimarrichthys fosteri</i>
Kokopu	Short-jawed kokopu	<i>Galaxias postvectis</i>
Taiwharu	Giant kokopu	<i>Galaxias argenteus</i>
Waikoura	Freshwater crayfish	<i>Paranephrops planifrons</i>
Ngaore	Common smelt	<i>Retropinna retropinna</i>

**TABLE B**

**RFR Shellfish Species**

Maori Name	Common Name	Formal Name
Kina	Kina	<i>Evechinus chloroticus</i>
Purimu	Surfclam	<i>Dosinia anus, Paphies donacina, Mactra discor, Mactra murchsoni, spisula aequilateralis, Basina yatei or Dosinia subrosa</i>



**PART 11**

**PLACE NAMES**

**Part I**

<i>Existing Place Name</i>	<i>Proposed Dual Maori and English Place Name</i>
Mt Messenger Scenic Reserve	Parininihi/Mt Messenger Scenic Reserve

**Part II**

<i>Existing Place Name</i>	<i>Amended Place Name</i>
Te Urinui Pa Historic Reserve	Te Urenui Pa Historic Reserve

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**COMMERCIAL REDRESS SCHEDULE**

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**PART 1**

**PROPERTY THAT MAY BE TRANSFERRED ON SETTLEMENT**

<b>Property Number</b>	<b>Street</b>	<b>City</b>	<b>Claimant No</b>	<b>Vendor</b>	<b>Land Area (hectares)</b>	<b>Legal Description</b>	<b>Title Ref</b>
329	19 Whakapaki Street	Urenui	2	DOC	0.1012	Section 1, SO 13422	New title to issue

**PART 2**

**PROPERTIES THAT MAY BE TRANSFERRED ON SETTLEMENT  
AND LEASED BACK**

Address	Suburb/Town/City	CT Ref	Area (hectares)	Lot No	Owner Name	Purpose
<b>Education</b>						
North Road	Urenui	181/33	2.8327		Education Board of the District of Taranaki	
		181/33	2.8327	0002	Education Board of the District of Taranaki	
		181/33	2.8327		Education Board of the District of Taranaki	Public School
Uruti Road	Uruti	184/92	2.2258	0024	Education Board of the District of Taranaki	Public School Uruti
		184/92	2.2258		Education Board of the District of Taranaki	
		184/92	2.2258		Education Board of the District of Taranaki	
Pukearuhe Road		184/91	2.2258	0013	Education Board of the District of Taranaki	Public School Mimi

## PART 3

### VALUATION PROCESS

#### *Definitions and interpretation*

3.1 In this Part 3 unless the context otherwise requires:

**"Arbitrator"** means a member of the panel established under **paragraph 3.12**;

**"Arbitrated Property"** has the meaning set out in **paragraph 3.10**;

**"Selected Properties"** means:

- (a) the Selected Land Bank Property (as defined in **paragraph 3.3.1**); and
- (b) the Selected Leaseback Properties (as defined in **paragraph 3.3.2**);

and **"Selected Property"** means any one of them;

**"Market Value"** means the estimated amount for which an asset should, if being transferred, be transferred on the Valuation Date from a willing seller to a willing buyer in an arm's length transaction, after proper marketing with each party to the transfer acting knowledgeably, prudently and without compulsion. In applying this definition to any Selected Property, the following matters shall be taken into account:

- (a) any encumbrances or interests or other matters affecting or benefitting the Selected Property as are noted on the certificate of title for that Selected Property on the Valuation Date or as are disclosed in writing by the Crown, provided that the Valuer shall not take into account any claim by, or on behalf of, Ngati Mutunga over that property;
- (b) the terms of transfer; and

the value is to be on a plus GST (if any) basis;

**"Valuer"** means, for each Party, the valuer/s appointed by it in accordance with **paragraph 3.5.1**;

**"Valuation Date"** means the date being 30 Business Days before the date anticipated by the Parties to be the Deed Date;

**"Valuation Report"** means the valuation report prepared by the Valuer appointed by the Mandated Representatives of Ngati Mutunga, or by the Crown, or by the Parties jointly, in each case in accordance with this **Part 3**.

- 3.2 In this **Part 3**, all references to paragraphs are to paragraphs of this Schedule and all references to clauses are to clauses of the Heads of Agreement, in each case unless the context otherwise requires.

***Selected Properties***

- 3.3 As soon as reasonably practicable after this Heads of Agreement is signed:

3.3.1 the Mandated Representatives of Ngati Mutunga will notify the Crown in writing if, under **clause 5.3**, they wish the Land Bank Property to be valued in accordance with this **Part 3** ("**Selected Land Bank Property**") and, once valued, the Mandated Representatives of Ngati Mutunga will notify the Crown in writing if they wish that Land Bank Property to be transferred to Ngati Mutunga on the Settlement Date; and

3.3.2 the Parties will in accordance with **clauses 5.4** and **5.5**, discuss in good faith and agree the terms and conditions of lease for, and which of, the Leaseback Properties that will be valued in accordance with this **Part 3** ("**Selected Leaseback Properties**") and, once valued, from which the Mandated Representatives of Ngati Mutunga will select the properties they wish the Crown to transfer to Ngati Mutunga on, and which Ngati Mutunga will leaseback to the Crown on the lease terms agreed under **clause 5.4** from, the Settlement Date.

- 3.4 Each of the Selected Properties will:

3.4.1 before being valued, be grouped by the Parties into the following categories:

- (a) Selected Properties which the Parties agree shall be valued by a Valuer jointly appointed by the Parties (but excluding properties with an estimated value of over \$300,000); and
- (b) Selected Properties which have an estimated value of over \$300,000, or which the Parties wish to be valued by each Party's Valuer, or which the Parties cannot agree on a joint valuation under **paragraph 3.4.1(a)**; and

3.4.2 once categorised, be valued as at the Valuation Date, on the basis set out in this **Part 3**.

***Appoint Valuers and Agree Valuation Methodology***

- 3.5 Each Party will, as soon as reasonably practicable after this Heads of Agreement is signed:
- 3.5.1 appoint a valuer or valuers who, in each case, is registered under the Valuers Act 1948 and holds a current annual practising certificate and who is active in the market for the relevant category of Selected Property to assess in accordance with this **Part 3** the Market Value of each Selected Property which the appointing Party requests it to value. The terms and conditions of such appointment shall be consistent with, and enable the appointing Party to comply with the process and obligations contemplated by, this **Part 3** and each Party will bear the costs of its Valuer (unless the Valuer is appointed jointly, in which case the Parties will share equally the Valuer's costs);
  - 3.5.2 notify the other Party of the identity of its Valuer and the Selected Properties in respect of which that Valuer is appointed.
- 3.6 The Parties will, as soon as reasonably practicable after the appointments under **paragraph 3.5**, agree prior to valuation, and in conjunction with their Valuers, the valuation methodologies that shall apply to the valuation (and in particular to assessing the Market Value) of the Selected Properties and, failing agreement, these shall be determined by arbitration under **paragraphs 3.10 to 3.16**.

***Valuation Report***

- 3.7 Each Valuation Report provided by a Valuer shall:
- 3.7.1 include an assessment of the Market Value of the Selected Property being valued as at the Valuation Date, which in the case of a Selected Leaseback Property shall include the terms of the lease;
  - 3.7.2 meet the minimum requirements set out in Section 5 of the "New Zealand Institute of Valuers Valuation Standard 1: Market Value Basis of Valuation" and any other relevant standards that are consistent with the requirements of this **Part 3**;
  - 3.7.3 include an executive summary containing:
    - (a) a summary of the valuation along with key valuation parameters;
    - (b) a summary of key issues affecting value, if any;
    - (c) the name of the Valuer and his or her firm; and
    - (d) the signature of the Valuer and lead valuer (if applicable);

3.7.4 include a property report based on the standard referred to in **paragraph 3.7.2**; and

3.7.5 attach appendices setting out:

- (a) a statement of valuation methodology and policies; and
- (b) relevant market and sales information.

***Valuation of Properties by Jointly Appointed Valuer***

3.8 For each Selected Property which, under **paragraph 3.4.1(a)**, the Parties agree is to be valued by a jointly appointed Valuer:

3.8.1 the Valuer shall inspect the property and prepare, and present to each Party no later than 10 Business Days after the Valuation Date, a Valuation Report that complies with **paragraph 3.7**; and

3.8.2 the Valuation Report, and in particular the Market Value assessed for the property, shall be final and binding on the Parties.

***Valuation of Properties by Each Party's Valuer***

3.9 For each Selected Property which, under **paragraph 3.4.1(b)**, is to be valued by each Party's Valuer:

3.9.1 the Valuer shall inspect the property, and prepare and present to each Party no later than 10 Business Days after the Valuation Date, a Valuation Report that complies with **paragraph 3.7**;

3.9.2 each Party will promptly review, and seek to negotiate and agree, a final valuation based on the Valuation Report provided by the other Party's Valuer;

3.9.3 if the Parties are satisfied with the Market Value assessed by these Valuation Reports (in other words, the Market Values are the same or, if not the same, the Parties can readily negotiate and agree in writing a Market Value (and any related valuation basis) satisfactory to both Parties), then the Valuation Report, and in particular the agreed Market Value, will be final and binding on both Parties; and

3.9.4 if the Parties are not satisfied with the Market Value assessed by these Valuation Reports (in other words, the Market Values are not the same and the Parties cannot readily agree a Market Value (and any related valuation basis) satisfactory to both Parties), then the arbitration provisions in **paragraphs 3.10 to 3.16** will apply to determine the Market Value of that property.



***Arbitration of Disputed Market Values***

- 3.10 If within 5 Business Days of the Valuers presenting the Valuation Reports for a Selected Property under **paragraph 3.9.1**, the Parties cannot agree a Market Value, then that property (the "**Arbitrated Property**") shall be:
- 3.10.1 allocated by the Parties to an Arbitrator; or
- 3.10.2 if the Parties cannot agree on an Arbitrator, to an Arbitrator selected by the President of the New Zealand Institute of Valuers; and
- valued by that Arbitrator in accordance with **paragraphs 3.11 to 3.16**.

***Principles applying to arbitration***

- 3.11 The following principles apply to any arbitration, and the allocating of Arbitrated Properties to an Arbitrator:
- 3.11.1 Arbitrated Properties which have similar characteristics, and/or are in reasonably close proximity and/or to which similar market conditions apply and/or which are owned by the same person should be allocated to one Arbitrator;
- 3.11.2 as few Arbitrators as possible are to be used;
- 3.11.3 the Market Value for all Arbitrated Properties must be determined as at the Valuation Date and the arbitration completed no later than 5 Business Days before the Deed Date;
- 3.11.4 neither Party will involve legal counsel in the conduct of arbitration (unless agreed otherwise); and
- 3.11.5 the Parties will share equally the Arbitrator's costs.

***Panel of Arbitrators***

- 3.12 As soon as reasonably practicable after the Heads of Agreement is signed, the Parties will:
- 3.12.1 establish a panel of 4 persons who are independent, who are considered to be experts in valuing the types of properties comprising the Land Bank Property and the Leaseback Properties, who are ready, willing and able to act as arbitrators, and who each confirm in writing to the Parties that he or she agrees to act on the terms and conditions set out in this **Part 3** for determining the Market Value for an Arbitrated Property; and
- 3.12.2 each nominate half of the Arbitrators on the panel.

***Notice of meeting***

3.13 The Arbitrator shall, for each Arbitrated Property allocated to him or her under **paragraph 3.10**:

3.13.1 promptly notify the Parties of a meeting to be held between the Parties and their respective Valuers at a venue determined by the Arbitrator; and

3.13.2 in that notice, require the Parties to provide to the Arbitrator all information in their possession relating to the Market Value of the Arbitrated Property (being the Valuation Report (in the case of a Leaseback Property including the terms and conditions of the lease agreed under **clause 5.4**), any sales evidence relating to the Arbitrated Property and any submission and/or expert evidence the Party wishes to provide) (and copied to the other Party) at least 5 Business Days before the meeting.

***Conduct of Meeting***

3.14 The Arbitrator shall hold the meeting on the specified date. At the meeting, the Arbitrator shall:

3.14.1 establish a procedure;

3.14.2 give each Party to the arbitration the right to examine, cross-examine and re-examine the Valuers and any other experts appointed by the other Party in relation to the information provided to the Arbitrator; and

3.14.3 in conducting the meeting, ensure that each Party's interests are fairly and equitably represented.

3.15 Within 5 Business Days of the meeting, the Arbitrator shall provide a written determination of the Market Value of each Arbitrated Property allocated to him or her and shall provide a copy to the Parties.

3.16 The Arbitrator's determination of the Market Value for each Arbitrated Property shall be:

3.16.1 final and binding on the Parties; and

3.16.2 no higher than the higher, and no lower than the lower, of the Market Value assessed by the Valuer for the Mandated Representatives of Ngati Mutunga and the Crown's Valuer for that property.

***Valuation and Transfer of Properties***

3.17 Each Selected Property will be valued, and its Market Value determined, as at the Valuation Date.

COMMERCIAL REDRESS SCHEDULE

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- 3.18 Once the Market Value for each Selected Property has been determined, the Mandated Representatives of Ngati Mutunga will select from, and notify the Crown:
- 3.18.1 whether it wishes the Crown to transfer the Selected Land Bank Property to Ngati Mutunga on the Settlement Date; and
  - 3.18.2 which Selected Leaseback Properties it wishes the Crown to transfer to Ngati Mutunga on, and which Ngati Mutunga will leaseback to the Crown on the terms agreed under **clause 5.4** from, the Settlement Date;-
- (together, the "**Final Selected Properties**").
- 3.19 Each Final Selected Property will be transferred on the Settlement Date at the Market Value determined in accordance with this **Part 3** provided that:
- 3.19.1 for those Selected Properties (if any) in respect of which the Parties agree it is not possible to complete the valuation process and determine a Market Value by the Deed Date (both Parties having used their best endeavours to achieve that):
    - (a) those Selected Properties will be valued as soon as possible after the Deed Date; and
    - (b) if selected by Ngati Mutunga in accordance with **paragraph 3.18**, those Selected Properties shall be transferred at the Market Value determined in accordance with this **Part 3** on the Settlement Date, or (if the Market Value is not determined until after the Settlement Date) as soon as reasonably practicable after the Market Value is determined and, in that case, the Crown shall be entitled to retain from the Financial Redress a sum equivalent to the higher of the Market Value assessed by the Valuer for Ngati Mutunga and by the Crown's Valuer and the Crown shall pay any adjustment to Ngati Mutunga on settlement of the transfer of the relevant Property (except to the extent that the Crown may retain or deduct any part of such sum under this Heads of Agreement or at law);
  - 3.19.2 if the Deed Date is more than six months after the date which, for the purpose of setting the Valuation Date, the Parties anticipated would be the Deed Date, then the Parties may agree adjustments to the Market Value of each Selected Property to reflect changes in the market for such property between the Valuation Date and the Deed Date. Failing agreement, any such adjustment shall be determined by arbitration under **paragraphs 3.11 to 3.16**; and
  - 3.19.3 the Market Value of a Final Selected Property may be adjusted in accordance with any adjustment provisions as may be agreed by the Parties in the terms of transfer relating to that property.

## PART 4

### TERMS AND CONDITIONS OF RIGHT OF FIRST REFUSAL

#### DEFINITIONS AND INTERPRETATION

- 4.1 In this **Part 4** of the **Commercial Redress Schedule** unless the context otherwise requires:

**"Control"**, for the purposes of **sub-paragraph (d)** of the definition of Crown Body in this Part, means:

- (a) in relation to a company, control of the composition of the board of directors of the company; and
- (b) in relation to any other body, control of the composition of the group that would be the board of directors if the body was a company;

**"Crown Body"** means:

- (a) the Crown (whether acting through a Minister or otherwise);
- (b) a Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (c) a State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (d) any company or body which is wholly-owned or controlled by the Crown, and/or a Crown entity or a State enterprise or a combination of the Crown, a Crown entity or Crown entities and/or a State enterprise or State enterprises, including any subsidiary or related company to any such company or body;

**"Dispose"** means:

- (a) to transfer an estate in fee simple; or
- (b) to grant a new Lease the term of which, including rights of renewal or of extension contained in the Lease or otherwise granted to the lessee is, or could be, for 50 years or longer;

**"Expiry Date of an RFR Notice"** and **"Expiry Date"** mean the date 1 month after an RFR Notice is received by Ngati Mutunga;

**"Lease"** includes any right which grants exclusive possession;

"RFR Notice" and "Notice" mean a notice under **paragraph 4.3**;

"RFR Property" and "Property" mean any property over which the Crown gives a right of first refusal on Settlement under **clause 5.9** and includes any improvements on the property owned by the Crown (except those improvements excluded in the relevant RFR Notice);

"RFR Settlement Date" means the date for settlement of the sale and purchase of any RFR Property under any contract constituted under **paragraph 4.5**, being (unless otherwise agreed in writing):

- (a) the settlement date nominated by the Crown in the Crown's RFR Notice (being a date not less than 20 Business Days after the Expiry Date of the Notice); or
- (b) if no such date is nominated, on the 20<sup>th</sup> Business Day after the date of acceptance by Ngati Mutunga of the offer set out in the relevant RFR Notice.

4.2 In this **Part 4** all references to paragraphs are to paragraphs of this Schedule, and all references to clauses are to clauses of the Heads of Agreement, unless the context otherwise requires.

#### **NOTICE TO BE GIVEN BEFORE DISPOSING OF AN RFR PROPERTY**

4.3 The Crown must, before Disposing of an RFR Property, give a written notice to Ngati Mutunga which offers to Dispose of the RFR Property to Ngati Mutunga at the price and on the terms and conditions set out in the RFR Notice.

4.4 The Crown may withdraw any notice given to Ngati Mutunga under **paragraph 4.3** at any time before Ngati Mutunga accept the offer in that notice as provided in **paragraph 4.5**.

#### **AGREEMENT TO DISPOSE OF AN RFR PROPERTY**

4.5 If Ngati Mutunga within 1 month after receiving an RFR Notice accepts the offer set out in the RFR Notice by notice in writing to the Crown, a contract for the Disposal of the RFR Property is constituted between the Crown and Ngati Mutunga.

#### **NON-ACCEPTANCE BY NGATI MUTUNGA**

4.6 If:

4.6.1 the Crown gives Ngati Mutunga an RFR Notice; and

4.6.2 Ngati Mutunga does not accept the RFR Notice by notice in writing to the Crown by the Expiry Date of the Notice; -

the Crown:

- 4.6.3 may, at any time during the period of 2 years from that Expiry Date, Dispose of the Property if the price and other terms and conditions of the Disposal are not more favourable to the purchaser than the price and other terms and conditions set out in the RFR Notice to Ngati Mutunga; but
- 4.6.4 must, promptly after entering into an agreement to Dispose of the Property to a purchaser give written notice to Ngati Mutunga of that fact and disclosing the terms of the agreement; and
- 4.6.5 must not Dispose of the Property after the end of that 2 year period without first offering the Property for sale to Ngati Mutunga in an RFR Notice under **paragraph 4.3**.

**RE-OFFER REQUIRED**

4.7 If:

- 4.7.1 the Crown has given Ngati Mutunga an RFR Notice;
- 4.7.2 Ngati Mutunga does not accept the RFR Notice by notice in writing to the Crown by the Expiry Date of the Notice; and
- 4.7.3 the Crown proposes to offer that Property for Disposal again but at a price, or on other terms and conditions, more favourable to the purchaser or lessee than on the terms in the RFR Notice;

the Crown may do so only if it first offers the RFR Property for Disposal on more favourable terms to Ngati Mutunga in an RFR Notice under **paragraph 4.3**.

**PROVISIONS OF THIS PART THAT APPLY TO A RE-OFFER**

- 4.8 **Paragraphs 4.5, 4.6 and 4.7** apply to any RFR Notice given under **paragraphs 4.6.5 or 4.7**.

**TERMS OF THIS PART NOT TO AFFECT CERTAIN RIGHTS AND RESTRICTIONS**

- 4.9 Nothing in this Part affects, or derogates from, and the rights and obligations created by this Part are subject to:
  - 4.9.1 the terms of any gift, endowment, or trust relating to any RFR Property existing before the Deed of Settlement is signed;

## COMMERCIAL REDRESS SCHEDULE

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- 4.9.2 the rights of any holders of mortgages over, or of security interests in, any RFR Property;
- 4.9.3 any legislation or rule of law that must be complied with before any RFR Property is Disposed of to Ngati Mutunga;
- 4.9.4 any feature of the title to any RFR Property that prevents or limits the Crown's right to Dispose of the RFR Property to Ngati Mutunga;
- 4.9.5 any legal requirement that:
  - (a) limits the Crown's ability to sell or otherwise Dispose of an RFR Property to Ngati Mutunga; and
  - (b) the Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law);
- 4.9.6 any legal requirement under any legislation that the Crown must Dispose of an RFR Property to any third party.

### TERMS OF THIS PART DO NOT APPLY IN CERTAIN CASES

- 4.10 **Paragraph 4.3** does not apply if the Crown is Disposing of an RFR Property to:
  - 4.10.1 Ngati Mutunga or a person to give effect to the Settlement;
  - 4.10.2 a Crown Body, if that Crown Body takes the Property subject to the terms of this Part and enters into a deed (at the Crown's expense) in favour of Ngati Mutunga to that effect;
  - 4.10.3 a person who is entitled to receive an offer made under:
    - (a) sections 40 or 41 of the Public Works Act 1981 (or those sections as applied by any other legislation);
    - (b) sections 23(1) or 24(4) of the New Zealand Railways Corporation Restructuring Act 1990; or
    - (c) section 207(4) of the Education Act 1989;
  - 4.10.4 the existing tenant of a house on any Crown Property that is a Crown Property held on the Deed Date for education purposes by the Crown;
  - 4.10.5 a person who had on the Deed Date a legal right to be offered or to take a Disposal of any Crown Property;

## COMMERCIAL REDRESS SCHEDULE

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4.10.6 a person to whom the Crown Property is being Disposed of under any of the following enactments:

- (a) sections 16A or 24E of the Conservation Act 1987;
- (b) section 15 of the Reserves Act 1977;
- (c) sections 26 or 26A of the Reserves Act 1977;
- (d) under any other Act where a reserve is being vested if:
  - (i) the reserve is vested in another person to hold and administer as a reserve under the Reserves Act 1977; and
  - (ii) the reserve would revert to the Crown if its status as a reserve was subsequently revoked;
- (e) an Act of Parliament that:
  - (i) excludes the land from a national park within the meaning of the National Parks Act 1980; and
  - (ii) authorises the land to be disposed of in consideration or part consideration for other land to be held or administered under the Conservation Act 1987 or the National Parks Act 1980 or the Reserves Act 1977; or
- (f) section 93(4) of the Land Act 1948;

4.10.7 the lessee under a lease of a Crown Property granted, on or before the Deed Date, under:

- (a) section 66 of the Land Act 1948;
- (b) section 67 of the Land Act 1948;
- (c) section 43 of the Land Act 1948;
- (d) section 93(4) of the Land Act 1948; or
- (e) the Crown Pastoral Lands Act 1998;

4.10.8 the lessee under any lease of Crown Property if such Disposal is constituted by:



## COMMERCIAL REDRESS SCHEDULE

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- (a) any grant of a new lease to such lessee as required of the Crown under any right of renewal or option or other right of such lessee to take a further lease or renewal of lease under the provisions of such lease; or
  - (b) any Disposal arising from any legal requirement on the Crown to consent to assignment or subletting or other parting with possession of the relevant Crown Property (or any part) at the request of the lessee or otherwise;
- 4.10.9 the trustee or trustees of a community trust the object or principal object of which is to provide or arrange the provision of "services" within the meaning of the Health and Disability Services Act 1993;
- 4.10.10 a person to whom the land is being Disposed of under:
  - (a) section 117(3) of the Public Works Act 1981 (other than a person to whom the land is being Disposed of under the words "may be dealt with as Crown land under the Land Act 1948" in paragraph (b) of that section); or
  - (b) section 119(2) of the Public Works Act 1981;
- 4.10.11 a person to whom the Crown Property is being Disposed of by way of gift for charitable purposes;
- 4.10.12 a person who, immediately before the Disposal, holds a legal right created on or before the Settlement Date to purchase the RFR Property or be offered the first opportunity to purchase the RFR Property:
  - (a) under the terms of any gift, endowment, or trust relating to the RFR Property, or
  - (b) under any legislation or rule of law; or
- 4.10.13 a person to whom the Crown Property is being Disposed of under section 355(3) of the Resource Management Act 1991.
- 4.11 A Crown Body, or a person, to whom an RFR Property is being Disposed of under **paragraph 4.9** or **paragraphs 4.10.3 to 4.10.13** (inclusive) is not required to enter into a deed under **paragraph 4.10.2**.
- 4.12 The trustee or trustees for the time being of a trust of the kind referred to in **paragraph 4.10.9** shall be treated as a Crown Body for the purposes of this **Part 4** in relation to any Crown Property disposed of to the trustee or trustees under that paragraph.

4.13 Nothing in this Part 4:

4.13.1 affects or derogates from the right of the Crown or a Crown Body to sell or dispose of a Crown Body or requires any offer to Ngati Mutunga in respect of such sale or disposal before that Crown Body is sold or disposed of; or

4.13.2 affects or derogates from the right of a Crown Body as transferee of any RFR Property to sell or Dispose of that RFR Property to any other Crown Body or Crown Bodies or back to the Crown, subject to the transferee entering into a deed (if applicable) in like terms as that referred to in **paragraph 4.10.2** (except where **paragraph 4.11** applies).

**NOTICE OF CERTAIN DISPOSALS**

4.14 The Crown will advise Ngati Mutunga, at agreed times and in an agreed manner, of Disposals of RFR Properties under **paragraph 4.10**.

**TIME LIMITS**

4.15 Time is of the essence for all time limits imposed on the Crown and Ngati Mutunga under this Part. The Crown and Ngati Mutunga may agree in writing to an extension of time limits.

**ENDING OF RIGHT OF FIRST REFUSAL**

4.16 The obligations of the Crown set out in this Part shall end in respect of each RFR Property on a Disposal of that Property:

4.16.1 to Ngati Mutunga; or

4.16.2 in accordance with **paragraph 4.6**; or

4.16.3 in accordance with **paragraph 4.10**.

4.17 The obligations of the Crown set out in this Part end 50 years after the Deed Date.

**DISPOSAL OF MORE THAN ONE PROPERTY**

4.18 Any offer made under **paragraph 4.3** may be in respect of more than one RFR Property but this Part shall apply to that offer as if all the RFR Properties included in the offer were a single RFR Property.

**WRITTEN NOTICE**

- 4.19 Except as expressly provided in this Part, any notice or other communication given under this Part to a Party shall be in writing addressed to that Party at the address or facsimile number from time to time notified by that Party in writing to the other Party.

**DELIVERY**

- 4.20 Delivery of a notice may be effected by hand, by registered mail or by facsimile.

**DELIVERED NOTICE**

- 4.21 A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

**POSTED NOTICE**

- 4.22 A notice or other communication delivered by mail will be deemed to have been received on the second Business Day after posting.

**FACSIMILE NOTICE**

- 4.23 A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

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**INTERPRETATION SCHEDULE**

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**MEANING OF TERMS USED**

1.1 In this Heads of Agreement, unless the context otherwise requires:

**"Business Day"** means a day on which registered banks are open for business in Wellington;

**"Coastal Marine Area"** has the same meaning as in section 2 of the Resource Management Act 1991;

**"Commercial Redress Schedule"** means the Commercial Redress Schedule in this Heads of Agreement;

**"Cross Claim Area"** means an area identified in the claim area map of the Taranaki Report as under claim from Ngati Mutunga and Ngati Maru;

**"Crown"** has the same meaning as in section 2(1) of the Public Finance Act 1989 and, for the avoidance of doubt, does not include the New Zealand Railways Corporation;

**"Crown Property"** and **"Property"** means every parcel of land which:

- (a) on the Deed Date is vested in the Crown or held by the Crown under any Act (including every parcel of land vested in another person under sections 26 or 26A of the Reserves Act 1977) but does not include:
  - (i) any land included at the Deed Date within the Land Bank; or
  - (ii) any land or roads vested in the Crown by section 44 of the Transit New Zealand Act 1989;
  - (iii) any part of the rail corridor vested in the Crown;
- (b) is transferred to the Crown as consideration or part of the consideration for a Disposal under **paragraphs 4.10.6(a), (b), or (e), or paragraph 4.10.10 of Part 4 of the Commercial Redress Schedule;**

**"Cultural Redress Schedule"** means the Cultural Redress Schedule in this Heads of Agreement;

**"Deed of Settlement"** means a deed of settlement between the Crown and Ngati Mutunga settling the Ngati Mutunga Historical Claims;

**"Exclusive Claim Area"** means an area identified in the claim area map of the Taranaki Report as under claim only from Ngati Mutunga (and not under claim from Ngati Maru);

## INTERPRETATION SCHEDULE

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**"GST"** means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985;

**"Heads of Agreement"** means this Heads of Agreement including its Schedules;

**"Income Tax"** means income tax imposed under the Income Tax Act 1994;

**"Land Bank"** includes the Crown Settlement Portfolio and the Taranaki Regional Land Bank and the property described in **Part 1** of the **Commercial Redress Schedule**;

**"Mandated Representatives of Ngati Mutunga"** and **"Mandated Representatives"** mean the Ngati Mutunga Iwi Authority Inc;

**"Memorials"** means resumptive memorials imposed on land under the State-Owned Enterprises Act 1986, the Education Act 1989 and the New Zealand Railways Corporation Restructuring Act 1990;

**"Ngati Mutunga Claimant"** includes any of the following:

- (a) the Ngati Mutunga Governance Entity;
- (b) Ngati Mutunga;
- (c) one or more individuals, whanau, marae or hapu of Ngati Mutunga;
- (d) any person acting on behalf of any of the above;

**"Ngati Mutunga Governance Entity"** means the entity referred to in **clause 7.1.5**, with the governance structure set out in **clause 7.1.5(b)**;

**"Party"** means a party to this Heads of Agreement;

**"Settlement"** means the settlement to be effected under the Deed of Settlement;

**"Settlement Assets"** means:

- (a) land proposed to be vested in Ngati Mutunga as set out in **Part 6** of the **Cultural Redress Schedule**;
- (b) any properties in **Part 1** and **Part 2** of the **Commercial Redress Schedule**, as agreed between the Crown and Ngati Mutunga, to be vested in Ngati Mutunga on the Settlement Date;

**INTERPRETATION SCHEDULE**

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- (c) the Financial Redress, less any amounts to be deducted under **clause 5.2**, to be paid by the Crown to Ngati Mutunga on the Settlement Date; but
- (d) does not include any interest on the Financial Redress.

**"Settlement Date"** means the date the Crown provides the Financial Redress to Ngati Mutunga under the Deed of Settlement;

**"Settlement Legislation"** means the bill that the Crown will propose to introduce to Parliament to give effect to the Settlement Redress and, when the bill has become law, means, if the context requires, the Act resulting from the passing of that bill;

**"Settlement Redress"** means the settlement redress described in **clauses 2.5 and 2.6**;

**"Taranaki"** means that area of land encompassed within the outermost extent of the claim areas as set out in figure 4 of the Taranaki Report.

- 1.2 In this Heads of Agreement, except where inappropriate, the following terms have the meaning for that term given by the clause in the Heads of Agreement set opposite it below:

<b>Term</b>	<b>Defining Clause</b>
<b>"Acknowledged Taonga Species"</b>	3.1 (Cultural Redress Schedule)
<b>"Apology in relation to Mount Taranaki"</b>	2.7.1
<b>"Chief Executive"</b>	4.40.1
<b>"Commercial Proposal"</b>	4.22.2
<b>"Commercial Catch Proposal"</b>	4.25.1
<b>"Crown's Settlement Proposal"</b>	2.6
<b>"Deed Date"</b>	6.1
<b>"Deed of Recognition"</b>	4.17.1
<b>"Department"</b>	4.1
<b>"Department of Conservation Protocol"</b>	4.1
<b>"Department of Conservation Protocol Subjects"</b>	4.1.1
<b>"Financial Redress"</b>	5.1
<b>"Fisheries Regulations"</b>	4.23
<b>"Identified Areas"</b>	4.16.1
<b>"Land Bank Property"</b>	5.3
<b>"Leaseback Properties"</b>	5.4
<b>"Ministry of Commerce Protocol"</b>	4.5

## INTERPRETATION SCHEDULE

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"Ministry of Fisheries Protocol"	4.3
"Ministry of Fisheries Protocol Subjects"	4.3.1
"Mount Taranaki Cultural Redress"	2.7.2
"Ngati Mutunga Historical Claims"	2.2
"NIWA"	4.37.5
"Nohoanga Entitlement"	4.13.1
"NZGB"	4.40.1
"Permitted Catch"	4.34.1(a)
"Petroleum Exploration Permits"	4.5.3
"Proposal"	4.33.1(c)
"Regulatory Review"	4.33.1(a)
"RFR Shellfish Species"	4.27
"Settlement Interest"	6.1
"Shellfish RFR"	4.27
"Statutory Acknowledgement"	4.16.1
"Taonga Fish Species (Department of Conservation)"	4.19.1
"Taonga Species"	4.2.1
"Taranaki Claims"	1.4
"Taranaki Report"	1.4
"Terms of Negotiation"	1.9
"Valuation Date"	5.7

### **RULES FOR INTERPRETATION**

- 2.1 In the interpretation of this Heads of Agreement, unless the context otherwise requires:
- 2.1.1 headings appear as a matter of convenience and are not to affect the interpretation of this Heads of Agreement;
  - 2.1.2 words or phrases (other than proper names) appearing in this Heads of Agreement with capitalised initial letters are defined terms and all defined terms bear the meanings given to them in this Heads of Agreement or in the relevant Part, clause or paragraph of this Heads of Agreement;
  - 2.1.3 where a word or expression is defined in this Heads of Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - 2.1.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;



## INTERPRETATION SCHEDULE

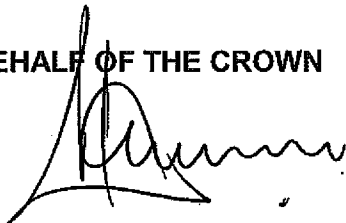
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- 2.1.5 references to Parts and clauses are to Parts and clauses of this Heads of Agreement;
- 2.1.6 references to paragraphs are to paragraphs of a schedule.
- 2.1.7 a reference to any legislation is a reference to that legislation as amended, or to any legislation substituted for it;
- 2.1.8 a reference to any document or agreement, including this Heads of Agreement, includes a reference to that document or agreement as amended, renewed or replaced from time to time in accordance with this Heads of Agreement;
- 2.1.9 references to written or in writing include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- 2.1.10 a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate.

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SIGNED this 24 day of September 1999

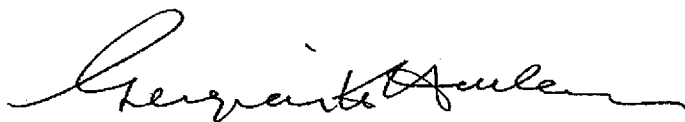
FOR AND ON BEHALF OF THE CROWN



---

Right Honourable Sir Douglas Arthur Montrose Graham  
Minister in Charge of Treaty of Waitangi Negotiations

WITNESS



---

Honourable Georgina Manunui te Heuheu, QSO  
Associate Minister in Charge of Treaty of Waitangi Negotiations

THE COMMON SEAL of  
NGATI MUTUNGA IWI AUTHORITY INC. is  
affixed in the presence of:



William Gordon Tuuta  
William Gordon Tuuta  
Chairperson

Stephen Kapinga McClutchie  
Stephen Kapinga McClutchie  
Member

Karen Marie Tuuta Papuni  
Karen Marie Tuuta Papuni  
Delegated Officer of the Ngati Mutunga Iwi Office

**WITNESSES**

Patricia Sharon Hurimoana Haami  
Patricia Sharon Hurimoana Haami  
Chief Negotiator

Theresa Janice Wallace  
Theresa Janice Wallace

Hamiora Raumati  
Hamiora Raumati

Jean Isabella Matuku  
Jean Isabella Matuku

Horina Tutaki Wharemate Te Moa  
Horina Tutaki Wharemate Te Moa

Te Uinga Josephine Mahutonga Herlihy  
Te Uinga Josephine Mahutonga Herlihy

Maria Takivivaru Komane E. Williams  
Michael Hughes J. Komane  
Zohere Tuitui  
Wesley Ruapouramu, Dwayne Dagne  
Melissa Henare Bertrand  
Tui Lake (see Bertrand)

Lynzy Gray  
M. Shannan  
Teahua Abraham

S. B. Gray  
John Bertrand  
Hansmann & White  
J. Shannan

Huia-Ngarangi Lambie  
M. Reilly  
Mariana Evans

Puripi Phillips  
Jannie Tuitui  
Breegan Marie Tuitui

Maataira Matthei  
Maehuirua Wimmer

Jason Tuitui

Raukura Linnich

Te Tuku Parai

Rex Mataira Baker

Andasa (Terese)  
Kiringatapu Royane Casey  
(Tr.)

M.P. Taitumu

Greghar Wallace

Santa TAMATI

Philip Evans

Wade P

Haimona Maruara

Dylan Cameron

Teuira Reed

R.J. Wallace

M. Tamati

Ig. Wierhann Wharemate Te Hoa Maxwell

Steve Abraham

Josephine Kapo

Tiana Phillips  
545

Amanda Shannan

Tina Marie Phillips  
Timara Jayne Phillips 2yrs

Aapi Rewi Janchenca

Aapi Waha Zoe SHANNAN