

**NGĀTI PAOA**  
**and**  
**THE TRUSTEES OF THE NGĀTI PAOA IWI TRUST**  
**and**  
**THE CROWN**

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**DEED OF SETTLEMENT SCHEDULE:**  
**PROPERTY REDRESS**

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# 1 DISCLOSURE INFORMATION AND WARRANTY

## DISCLOSURE INFORMATION

### 1.1 The Crown –

1.1.1 has provided information to both the governance entity and the mandated negotiators about the commercial properties and the cultural redress properties, except for the council-administered cultural redress properties (as defined in paragraph 1.2.2), –

- (a) in relation to Hine-nui-o-te-paua and of part Omaru, by the Ministry of Housing and Urban Development to the governance entity; and
- (b) in relation to the other properties, by the Office of Treaty Settlements (now the Office for Māori Crown Relations - Te Arawhiti) to the mandated negotiators between August 2015 and February 2017; and

1.1.2 must under paragraph 6.2 provide information to the governance entity about a deferred selection property.

## WARRANTY IN RELATION TO ACQUIRED CROWN PROPERTIES

### 1.2 In this deed, unless the context otherwise requires, –

1.2.1 **acquired Crown property** means –

- (a) each cultural redress property, except for the council-administered cultural redress properties; and
- (b) each purchased commercial property and each purchased deferred selection property; and

1.2.2 **council-administered cultural redress property** means each of the following properties:

- (a) Māwhitipana:
- (b) Paoa Whanake:
- (c) Part Omaru:
- (d) Tauwhare Koiora site A:
- (e) Tauwhare Koiora site B:
- (f) Te Iwi Rahirahi:

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### 1: DISCLOSURE INFORMATION AND WARRANTY

(g) Te Waero Awe Houkura; and

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

1.3 The Crown warrants to the governance entity that the Crown has given to the governance entity in its disclosure information about an acquired Crown property all material information that, to the best of the land holding agency's knowledge, is in the agency's records about the property (including its encumbrances), at the date of providing that information, –

1.3.1 having inspected the agency's records; but

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

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

#### **WARRANTY LIMITS**

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

1.4.1 an acquired Crown property, including in relation to –

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

(b) its compliance with –

(i) legislation, including bylaws; or

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

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

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

#### **NO WARRANTY IN RELATION TO COUNCIL-ADMINISTERED CULTURAL REDRESS PROPERTIES**

1.6 The Crown –

1.6.1 does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to a council-administered cultural redress property, including in relation to –

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### 1: DISCLOSURE INFORMATION AND WARRANTY

- (a) its state, condition, fitness for use, occupation, or management; or
  - (b) its compliance with –
    - (i) legislation, including bylaws; or
    - (ii) any enforcement or other notice, requisition, or proceedings; and
- 1.6.2 has given no disclosure information, and has no liability, in relation to any information received by the governance entity or Ngāti Paoa, in relation to a council-administered cultural redress property; and
- 1.6.3 has no liability in relation to the state or condition of a council-administered cultural redress property.

### INSPECTION

- 1.7 In paragraph 1.8, **relevant date** means, in relation to –
- 1.7.1 an acquired Crown property that is –
    - (a) a cultural redress property, the date of this deed; and
    - (b) a purchased commercial property, the day on which the governance entity gives a notice electing to purchase the property under clause 6.4; and
    - (c) a purchased deferred selection property, the day on which the Crown gives a validation notice in respect of the property; and
  - 1.7.2 a council-administered cultural redress property, the date of this deed.
- 1.8 Although the Crown is not giving any representation or warranty in relation to an acquired Crown property, other than under paragraph 1.3, or any representation or warranty in relation to a council-administered cultural redress property, the governance entity acknowledges that it could, before the relevant date, –
- 1.8.1 inspect an acquired Crown property, or a council-administered cultural redress property, and determine its state and condition; and
  - 1.8.2 in the case of an acquired Crown property, consider the disclosure information in relation to it.

## 2 VESTING OF CULTURAL REDRESS PROPERTIES

### SAME MANAGEMENT REGIME AND CONDITION

- 2.1 Until the settlement date, the Crown must –
  - 2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and
  - 2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed.
- 2.2 Paragraph 2.1 does not –
  - 2.2.1 apply to a cultural redress property that is not managed and administered by the Crown, including any council-administered cultural redress property; or
  - 2.2.2 to the cultural redress property that is the Kaiaua School property; or
  - 2.2.3 require the Crown to restore or repair a cultural redress property damaged by an event beyond the Crown's control.

### ACCESS

- 2.3 The Crown is not required to enable access to a cultural redress property for the governance entity or members of Ngāti Paoa.

### COMPLETION OF REQUIRED DOCUMENTATION

- 2.4 Any documentation, required by the settlement documentation to be signed by the governance entity in relation to the vesting of a cultural redress property, must, on or before the settlement date, be –
  - 2.4.1 provided by the Crown to the governance entity; and
  - 2.4.2 duly signed and returned by the governance entity.

### SURVEY AND REGISTRATION

- 2.5 The Crown must arrange, and pay for, –
  - 2.5.1 the preparation, approval, and where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a record of title for a fee simple estate in the property; and
  - 2.5.2 the registration of any document required in relation to the vesting under the settlement legislation of a cultural redress property in the governance entity.

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**3 COMMERCIAL PROPERTIES**

<b>Address</b>	<b>Description</b>	<b>Encumbrances</b>	<b>Transfer value</b>	<b>Land holding agency</b>
71 Grafton Road, Grafton	0.1336 hectares, more or less, being Sections 2, 3, 4, 5, 6, 7 and 8 SO 371572 and Sections 2 and 3 SO 378109. All record of title 451430 for the fee simple estate.	Subject to an unregistered licence to Nidas Properties Limited	\$3,940,000	LINZ (Treaty Settlements Landbank)
136 Dominion Road, Mount Eden	0.1990 hectares, more or less, being Section 1 SO 488816. All Transfer 5692041.1	Subject to an unregistered residential tenancy with Olga Darkadaki	\$2,700,000	LINZ (Treaty Settlements Landbank)

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## 4 POTENTIAL DEFERRED SELECTION PROPERTIES

School site	Description <small>(all North Auckland Land District-Auckland Council)</small>	Land holding agency	2018 book value
<b>Group A</b>			
Remuera Intermediate site (land only)	<p>3.3973 hectares, approximately, being Part Lots 1, 2, 9, and 10 DP 404, Part Lots 4, 5, and 6 DP 4904, Lot 2 DP 21440, Lot 1 DP 31277, and Lots 1, 2, 3, and 5 DP 35094, and Part Allotment 18 and Allotment 195 Section 12 Suburbs of Auckland. Balance Proclamation 19413. Subject to survey.</p> <p>0.0068 hectares, more or less, being Lot 4 DP 35094. All Proclamation 19482.</p> <p>0.0015 hectares, more or less, being Part Lot 2 DP 12786. All <i>Gazette</i> notice 19853.</p> <p>0.1442 hectares, more or less, being Part Allotment 18 Section 12 Suburbs of Auckland. All record of title NA762/220 for the fee simple estate.</p> <p>0.0658 hectares, more or less, being Part Allotment 18 Section 12 Suburbs of Auckland. All Proclamation 19120.</p>	Ministry of Education	<b>\$14,385,000</b>
<b>Group B</b>			
Takapuna Normal Intermediate site (land only)	0.1983 hectares, approximately, being Part Lot 3 DP 40092. Balance Proclamation 16975. Subject to survey.	Ministry of Education	<b>\$11,604,000</b>



**PROPERTY REDRESS**

**4: POTENTIAL DEFERRED SELECTION PROPERTIES**

	<p>0.2251 hectares, approximately, being Part Lot 2 DP 40092. Balance Proclamation 17026. Subject to survey.</p>		
	<p>1.3383 hectares, approximately, being Part Lots 21 and 47 DP 4553. Balance Proclamation 17903. Subject to survey.</p>		
	<p>0.1174 hectares, more or less, being Part Lot 1 DP 40092. All Proclamation 18327.</p>		
	<p>1.5145 hectares, approximately, being Part Lot 17 and Parts Lot 20 DP 4553 and Part Lots 1, 2, 4, and 5 DP 38460. Balance Proclamation 18883. Subject to survey.</p>		
	<p>0.1169 hectares, approximately, being Part Lot 2 DP 38406. Balance <i>Gazette</i> notice A447361. Subject to survey.</p>		
	<p>0.1224 hectares, more or less, being Part Lot 21 DP 4553. All <i>Gazette</i> notice A538860.</p>		
	<p>0.2056 hectares, approximately, being Part Lot 1 DP 40092 and Allotment 401 Parish of Takapuna. All <i>Gazette</i> notice 310150.1. Subject to survey.</p>		
	<p>0.1370 hectares, approximately, being Part Lot 20 DP 4553. All <i>Gazette</i> notice 318256.1. Subject to survey.</p>		
	<p>0.0825 hectares, more or less, being Part Lot 1 DP 31225. All <i>Gazette</i> notice</p>		

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**4: POTENTIAL DEFERRED SELECTION PROPERTIES**

	B319953.1.		
Takapuna School site (land only)	2.0836 hectares, approximately, being Parts Allotment 79 Parish of Takapuna. Balance <i>Gazette</i> notice 049013.1. Subject to survey.	Ministry of Education	<b>\$12,306,000</b>
<b>Group C</b>			
Ponsonby Intermediate site (land only)	<p>0.0149 hectares, more or less, being Parts Allotment 21 Section 8 Suburbs of Auckland. All Proclamation 13748.</p> <p>2.0606 hectares, more or less, being Lot 4 DP 208655. All record of title NA136D/577 for the fee simple estate.</p> <p>0.6243 hectares, approximately, being Part Lots 178, 179, 180, and 181 Allotment 21 and Lots 69, 70, 71, 72, 74, 77, 78, 79, and 80 and Parts Lots 73, 81, and 82 Allotment 22 Section 8 Suburbs of Auckland. Balance Proclamation 18317. Subject to survey.</p> <p>0.0837 hectares, approximately, being Lot 186 Deeds Plan P3 and Lot 2 DP 27497. Balance <i>Gazette</i> notice 152832.1. Subject to survey.</p> <p>0.0404 hectares, approximately, being Lot 185 Deeds Plan P3. All record of title NA128C/438 for the fee simple estate (limited as to parcels). Subject to survey.</p> <p>0.0227 hectares, more or less, being Closed Street (SO 50478). All <i>Gazette</i> notice 450181.1.</p>	Ministry of Education	<b>\$28,158,172</b>

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**4: POTENTIAL DEFERRED SELECTION PROPERTIES**

	<p>0.0425 hectares, approximately, being Lot 147 Allotment 21 Section 8 Suburbs of Auckland. All Proclamation 333070.1. Subject to survey.</p> <p>0.0460 hectares, approximately, being Part Allotment 22 Section 8 Suburbs of Auckland. All <i>Gazette</i> notice 227608. Subject to survey.</p> <p>0.0066 hectares, more or less, being Lot 1 DP 115223. All record of title NA65C/416 for the fee simple estate.</p>		
Bayswater School site (land only)	2.6995 hectares, more or less, being Lots 4, 5, 6, 7, 8, 9, 17, 18, and 19 and Part Lot 16 DP 290. All record of title NA975/15 for the fee simple estate.	Ministry of Education	<b>\$10,585,000</b>
Wairau Intermediate site (land only)	<p>5.6347 hectares, more or less, being Part Allotment 245 Parish of Takapuna. All <i>Gazette</i> notice A164601.</p> <p>0.1229 hectares, more or less, being Allotment 558 Parish of Takapuna. All <i>Gazette</i> notice A477976.</p>	Ministry of Education	<b>\$12,139,000</b>
Parnell School site (land only)	1.7189 hectares, more or less, being Part Allotment 9 Section 2 Suburbs of Auckland. Part Proclamation A557323. Subject to survey.	Ministry of Education	<b>\$15,921,000</b>

## 5 SELECTION OF POTENTIAL DEFERRED SELECTION PROPERTIES

### NOTICE OF AVAILABILITY – SECOND RIGHT TO SELECT TO PURCHASE

- 5.1 As soon as practicable after the expiry of the two-year period during which the Marutūāhu collective governance entity may select the potential deferred selection properties under the Marutūāhu Iwi Collective Redress Deed (or any earlier date agreed by the Marutūāhu collective governance entity and the Crown) (the Marutūāhu first right), the Crown must give the governance entity notice (**pre-selection notice**) describing which of the potential deferred selection properties listed in part 4 are available to be selected by the governance entity to become available deferred selection properties under this deed (the Ngāti Paoa second right).

### NOTICE OF SELECTION

- 5.2 The governance entity may, for 60 business days starting on the date the Crown gives the pre-selection notice (time being of the essence), give the Crown a single notice (**selection notice**) selecting one or more potential deferred selection properties listed in the pre-selection notice to become available as a deferred selection property or properties.
- 5.3 The selection notice is only valid if –
- 5.3.1 it is in the form set out in the appendix to this part; and
  - 5.3.2 the aggregate book value of each property specified in the notice is no more than \$41,000,000; and
  - 5.3.3 the notice specifies only one property from Group B;
  - 5.3.4 the number of properties specified in the notice is no more than three; and
  - 5.3.5 it is given to the land holding agency; and
  - 5.3.6 it specifies how, in the opinion of the governance entity, the notice is valid by reference to the three criteria set out in paragraphs 5.3.2 to 5.3.4; and
  - 5.3.7 it specifies a single point of contact for the purpose of part 6; and
  - 5.3.8 it is signed by the governance entity; and
  - 5.3.9 the land holding agency has notified the governance entity that it agrees that the notice is valid under paragraph 5.5.

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### 5: SELECTION OF POTENTIAL DEFERRED SELECTION PROPERTIES

- 5.4 For the purposes of paragraphs 5.3.2 to 5.3.4 –
- 5.4.1 the book value of a potential deferred selection property is the amount set out in the fourth column of the description of the property in part 4; and
  - 5.4.2 a property is in Group A, Group B or Group C if its description in part 4 is under the heading Group A or Group B or Group C in that part.
- 5.5 On receipt of the selection notice, the land holding agency must promptly give notice to the governance entity that either –
- 5.5.1 it agrees that the notice is valid (**validation notice**); or
  - 5.5.2 it considers that the notice is not valid and specifies which of paragraphs 5.3.1 to 5.3.8 invalidates the notice.
- 5.6 If a validation notice is given under paragraph 5.5.1 –
- 5.6.1 each potential deferred selection property specified in the selection notice in respect of which the validation notice was given becomes a deferred selection property on the date on which the validation notice was given; and
  - 5.6.2 part 6 of this schedule applies.

### ENDING OF OBLIGATION

- 5.7 In addition to the circumstances set out in paragraph 6.25, the Crown's obligations under this deed in respect of a potential deferred selection property cease if the governance entity does not give a notice that is valid in accordance with paragraph 5.3.

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**5: SELECTION OF POTENTIAL DEFERRED SELECTION PROPERTIES**

**Appendix**

**Form of selection notice**

In accordance with part 5 of the property redress schedule (**PRS**) to the deed of settlement of historical claims between Ngāti Paoa and the Crown, the governance entity gives notice of selecting one or more potential deferred selection properties to become available as a deferred selection property or as deferred selection properties. Terms defined in the deed or the PRS have the same meaning where used in this notice.

The property or properties selected are:

School site	Group	2018 book value

**[Note: For each property selected complete the above table by reference to part 4 of the PRS]**

This notice is valid under paragraph 5.3 of the PRS because –

- the aggregate book value for each property specified under this notice is \$[     ], being not more than \$41,000,000
- it specifies only one property from Group B
- it specifies not more than three properties.

[If a validation notice is served in respect of this notice the point of contact for the purposes of the deferred selection process for each school site specified in this notice is:

[Name]  
[Address]  
[Phone number]  
[Email]

The point of contact shall be the person to receive disclosure information. The point of contact shall have authority to bind the governance entity under part 6 of the PRS.

Signed for and on behalf of the governance entity:

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[Name]  
[Date]

## **6 PURCHASE OF DEFERRED SELECTION PROPERTIES**

### **A RIGHT OF PURCHASE**

#### **APPLICATION OF THIS PART**

- 6.1 This part applies to each potential deferred selection property in respect of which the Crown has given a validation notice under paragraph 5.5.

#### **EFFECT OF VALIDATION NOTICE**

- 6.2 In respect of each potential deferred selection property for which the Crown gives a validation notice under paragraph 5.5 and that has therefore become a deferred selection property –
- 6.2.1 the Crown must, not later than 15 business days after the notification date, give the governance entity all material information that, to the best of its knowledge, is in its records about the property, including its encumbrances; and
- 6.2.2 the property's transfer value must be determined or agreed in accordance with subpart B of this part.

#### **ELECTION TO PURCHASE**

- 6.3 In respect of each deferred selection property, the governance entity must give the Crown written notice of whether or not it elects to purchase the property, by not later than 15 business days after its transfer value being determined or agreed in accordance with this part.

#### **EFFECT OF ELECTION TO PURCHASE**

- 6.4 If an election notice electing to purchase a deferred selection property is given in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with this part, plus GST if any, on the terms in part 7 and under which –
- 6.4.1 on the DSP settlement date –
- (a) the Crown must transfer the property to the governance entity; and
  - (b) the governance entity must pay to the Crown an amount equal to the transfer value of the property determined or agreed in accordance with this part, plus GST if any, by –

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (i) the SCP system, as defined in Guideline 7 of the New Zealand Law Society's Property Law Section's Property Transactions and E-Dealing Practice Guidelines (July 2020); or
  - (ii) another payment method agreed by the parties; and
- 6.4.2 the parties must, by or on the TSP settlement date, sign the Crown leaseback (being a registrable lease of the property) –
- (a) commencing on the actual TSP settlement date; and
  - (b) at an initial annual rent determined by multiplying the transfer value of the property by the percentage specified in clause 2.2 of the Crown leaseback to the Ministry of Education (plus GST, if any, on the amount so determined); and
  - (c) on the terms provided in part 8 of the documents schedule for the leaseback.



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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

#### B DETERMINING THE TRANSFER VALUE

##### APPLICATION OF THIS SUBPART

- 6.5 This subpart provides how the transfer value of a deferred selection property is to be determined.
- 6.6 The transfer value is determined as at the notification date.

##### APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

- 6.7 The parties, in relation to a deferred selection property, not later than [10] business days after the notification date –
- 6.7.1 must each –
- (a) instruct a valuer using the form of instructions in the appendix to this part; and
  - (b) give written notice to the other of the valuer instructed; and
- 6.7.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the property.
- 6.8 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within [15] business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
- 6.9 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

##### QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

- 6.10 Each valuer must be a registered valuer.
- 6.11 The valuation arbitrator –
- 6.11.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties; and
- 6.11.2 is appointed when he or she confirms his or her willingness to act.

##### VALUATION REPORTS FOR A PROPERTY

- 6.12 Each party must, in relation to a deferred selection property, not later than –

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- 6.12.1 [50] business days after the notification date, provide a copy of its final valuation report to the other party; and
  - 6.12.2 [60] business days after the notification date, provide its valuer's written analysis report to the other party.
- 6.13 Valuation reports must comply with the latest International Valuation Standards that apply on the valuation date, or explain where they are at variance with those standards.

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

- 6.14 If only one valuation report for a deferred selection property is delivered by the required date, the transfer value of the property is the market value as assessed in the report (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

#### NEGOTIATIONS TO AGREE A TRANSFER VALUE FOR A DEFERRED SELECTION PROPERTY

- 6.15 If both valuation reports for a deferred selection property are delivered by the required date –
- 6.15.1 the parties must endeavour to agree in writing the transfer value of the deferred selection property (which is the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
  - 6.15.2 either party may, if the transfer value of the deferred selection property is not agreed in writing within [70] business days after the notification date and if a valuation arbitrator has been appointed under paragraph 6.7.2 or paragraph 6.8, refer that matter to the determination of the valuation arbitrator; or
  - 6.15.3 if that agreement has not been reached within the [70] business day period but the valuation arbitrator has not been appointed under paragraph 6.7.2 or paragraph 6.8, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further [5] business days; and
  - 6.15.4 if paragraph 6.15.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further [5] business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and
  - 6.15.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

#### VALUATION ARBITRATION

- 6.16 The valuation arbitrator must, not later than [10] business days after the arbitration commencement date, –
- 6.16.1 give notice to the parties of the arbitration meeting, which must be held –
- (a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but
  - (b) not later than [30] business days after the arbitration commencement date; and
- 6.16.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable, –
- (a) each valuer; and
  - (b) any other person giving evidence.
- 6.17 Each party must –
- 6.17.1 not later than 5pm on the day that is [5] business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer –
- (a) its valuation report; and
  - (b) its submission; and
  - (c) any sales, rental, or expert evidence that it will present at the meeting; and
- 6.17.2 attend the arbitration meeting with its valuer.
- 6.18 The valuation arbitrator must –
- 6.18.1 have regard to the requirements of natural justice at the arbitration meeting; and
- 6.18.2 no later than [50] business days after the arbitration commencement date, give his or her determination –
- (a) of the market value of the deferred selection property (which is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

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

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

### TRANSFER VALUE

6.20 The transfer value of the deferred selection property for the purposes of paragraph 6.4.1(b), is –

6.20.1 determined under paragraph 6.14; or

6.20.2 agreed under paragraph 6.15.1; or

6.20.3 if the property is a school site, the market value determined by the valuation arbitrator under paragraph 6.18.2 (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

#### C GENERAL PROVISIONS

##### TIME LIMITS

- 6.21 Time is of the essence for the time limit in paragraph 6.3.
- 6.22 In relation to the time limits in this part, other than that referred to in paragraph 6.21, each party must use reasonable endeavours to ensure –
- 6.22.1 those time limits are met and delays are minimised; and
  - 6.22.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

##### DETERMINATION FINAL AND BINDING

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

##### COSTS

- 6.24 In relation to the determination of the transfer value of a deferred selection property, each party must pay –
- 6.24.1 its costs; and
  - 6.24.2 half the costs of a valuation arbitration; or
  - 6.24.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

##### ENDING OF OBLIGATIONS

- 6.25 The Crown's obligations under this deed in relation to a deferred selection property immediately cease if –
- 6.25.1 the governance entity –
    - (a) receives a validation notice in respect of the property in accordance with paragraph 5.5 but –
      - (i) an election notice is given in accordance with paragraph 6.3 under which an election is made not to purchase the property; or
      - (ii) an election notice is not given in accordance with paragraph 6.3 electing to purchase the property; or

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (b) gives the Crown written notice that it is not interested in purchasing the property at any time before an agreement for the sale and purchase of the property is constituted under paragraph 6.4; or
- 6.25.2 an agreement for the sale and purchase of the property is constituted under paragraph 6.4 and the agreement is cancelled in accordance with the terms of transfer in part 8.

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

#### APPENDIX

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

**[Valuer's name]**

**[Address]**

#### Valuation instructions

##### INTRODUCTION

The trustees of the Ngāti Paoa Iwi Trust (the **governance entity**) have the right under a deed of settlement to purchase properties from the Ministry of Education (the **land holding agency**).

This right is given by:

- (a) clauses 6.8 to 6.16 of the deed of settlement; and
- (b) part 6 of the property redress schedule to the deed of settlement (**part 6**).

##### PROPERTY TO BE VALUED

The governance entity has received a validation notice in respect of:

*[describe the property including its legal description]*

##### PROPERTY TO BE LEASED BACK

If the governance entity purchases the property from the Crown, the governance entity will lease the property back to the Crown on the terms provided by the lease in part 8 of the documents schedule to the deed of settlement (the **agreed lease**).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the **lessee's improvements**), remains unaffected by the transfer.

##### DEED OF SETTLEMENT

A copy of the deed of settlement is enclosed.

Your attention is drawn to –

- (a) part 6; and
- (b) part 7; and
- (c) the agreed lease of the property in part 8 of the documents schedule to the deed.

All references in this letter to subparts or paragraphs are to subparts or paragraphs of part 6.

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

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

The property is a deferred selection property for the purposes of parts 6 and 7. Subpart B of part 6 applies to the valuation of the property.

#### ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property in accordance with the methodology below as at [**date**] (the **valuation date**), being the date of the validation notice in respect of the property.

As the lessee's improvements will not transfer, the market value of the property is to be the market value of its land (ie not including any lessee's improvements).

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

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

- (a) by agreement between the parties; or
- (b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which the governance entity may elect to purchase the property under part 7, plus GST (if any).

#### MARKET VALUE OF A SCHOOL SITE

For the purposes of these instructions the intention of the parties in respect of a property is to determine a transfer value to reflect the designation and use of the land for education purposes.

The market value of a property is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

If, in the relevant district or unitary plan, the zoning for the property is Specialised (as defined below), the zoning for the school site for the purposes of step 1(b) of the two-step process below will be deemed to be the Alternative Zoning (as defined below).

For the purposes of these instructions:

- **"Specialised"** means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).
- **"Alternative Zoning"** means the most probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):
  - (a) the underlying zoning for the school site (if any);
  - (b) the zoning for the school site immediately prior to its Specialised zoning;
  - (c) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;



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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (d) if the school site is within the Auckland Council area, the underlying zoning applied to the school site in the Auckland Unitary Plan that applies on the valuation date, namely [*insert the zoning from the Auckland Unitary Plan that applies on the valuation date*]; and
- (e) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the school site.]

A two step process is required:

- 1) firstly, the assessment of the unencumbered market value (based on highest and best use) by:
  - (a) disregarding the designation and the Crown leaseback; and
  - (b) considering the zoning in force at the valuation date; and
  - (c) excluding any improvements on the land; and
- 2) secondly, the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).]

### VALUATION OF PROPERTY

You must, in relation to a property:

- (a) before inspecting the property, determine with the other valuer:
  - (i) the valuation method or methods applicable to the property; and
  - (ii) the comparable sales to be used in determining the market value of the property; and
- (b) inspect the property, where practical, together with the valuer appointed by the other party; and
- (c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and
- (d) by not later than [30] business days after the valuation date, prepare, and deliver to us, a draft valuation report; and
- (e) by not later than [45] business days after the valuation date:
  - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property; and
- (g) meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value by not later than [65] business days after the valuation date; and
- (h) if a consensus on market value is reached, record it in writing signed by you and the other valuer and deliver it to both parties by not later than [65] business days after the valuation date; and
- (i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property; and
- (j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and
- (k) participate in any arbitration process required under subpart B to determine the market value of the property.

#### REQUIREMENTS FOR YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the property is a current asset and was available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

- (a) to assess market value on the basis of market value as defined in the latest editions of the Australia and the New Zealand Valuation Standards, and the International Valuation Standards that apply on the valuation date; and
- (b) to take into account –
  - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and
  - (ii) the terms of the agreed lease; and
  - (iii) the attached disclosure information about the property that has been given by the land holding agency to the governance entity, including the disclosed encumbrances; and
  - (iv) the terms of transfer in part 7 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property by the governance entity); but

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (c) not to take into account a historical claim in relation to the property by or on behalf of Ngāti Paoa.

#### REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the latest editions of the Australia and New Zealand Valuation Standards, and the International Valuation Standards that apply on the valuation date, including –

- (a) an executive summary, containing a summary of –
  - (i) the valuation; and
  - (ii) the key valuation parameters; and
  - (iii) the key variables affecting value; and
- (b) a detailed description, and a clear statement, of the land value; and
- (c) a clear statement as to any impact of –
  - (i) the disclosed encumbrances; and
  - (ii) the agreed lease; and
- (d) details of your assessment of the highest and best use of the property [including, where relevant, details of the deemed most probable zoning for the school site]; and
- (e) comment on the rationale of likely purchasers [and tenants] of the property; and
- (f) a clear identification of the key variables which have a material impact on the valuation; and
- (g) full details of the valuation method or methods; and
- (h) appendices setting out –
  - (i) a statement of the valuation methodology and policies; and
  - (ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in the latest International Valuation Standard, Market Value Basis of Valuation, and other relevant standards that apply on the valuation date.

Your report must contain a clear statement of the treatment of Goods and Services Tax (**GST**) (if any) to the property valuation.

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

#### ACCEPTANCE OF THESE INSTRUCTIONS

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

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### 6: PURCHASE OF DEFERRED SELECTION PROPERTIES

- (a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and
- (b) [45] business days after the valuation date, to:
  - (i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and
- (c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and
- (d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

### ACCESS

You should not enter on to [*insert name(s) of school site(s)*] without first arranging access through the Ministry of Education [*give contact details*] and should not contact the school(s) directly.

### OPEN AND TRANSPARENT VALUATION

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

In particular, you must:

- (a) copy any questions you have or receive that may impact on the valuation, together with the responses, to the governance entity, the land holding agency, and the other valuer; and
- (b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final report to us.

Yours faithfully

**[Name of signatory]**

**[Position]**

**[Governance entity/Land holding agency][delete one]**

## **7 TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES**

### **APPLICATION OF THIS PART**

- 7.1 This part applies to the transfer by the Crown to the governance entity of each purchased commercial property and each purchased deferred selection property (a **transfer property**).

### **TRANSFER**

- 7.2 The Crown must transfer the fee simple estate in a transfer property to the governance entity subject to, and where applicable with the benefit of, –
- 7.2.1 the disclosed encumbrances affecting or benefiting the property (as they may be varied by a non-material variation, or a material variation entered into under paragraph 7.16.4(a)); and
  - 7.2.2 any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 7.16.4(b); and
  - 7.2.3 in the case of a purchased deferred selection property, the Crown leaseback.
- 7.3 The Crown must pay any survey and registration costs required to transfer the fee simple estate in a transfer property to the governance entity.

### **POSSESSION**

- 7.4 On the TSP settlement date for the property, possession of a transfer property must –
- 7.4.1 be given by the Crown; and
  - 7.4.2 taken by the governance entity; and
  - 7.4.3 be vacant possession subject only to –
    - (a) any encumbrances referred to in paragraph 7.2 that prevent vacant possession being given and taken; and
    - (b) if the property is a purchased deferred selection property, the Crown leaseback.

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

#### SETTLEMENT

- 7.5 Subject to paragraphs 7.6 and 7.36.2, the Crown must provide the governance entity with the following in relation to a transfer property on the TSP settlement date for that property:
- 7.5.1 evidence of –
- (a) a registrable transfer instrument; and
  - (b) any other registrable instrument required by this deed in relation to the property:
- 7.5.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered owner's interest in the property after the TSP settlement date.
- 7.6 If the fee simple estate in the transfer property may be transferred to the governance entity electronically under the Land Transfer Act 2017, –
- 7.6.1 paragraph 7.5.1 does not apply; and
- 7.6.2 the Crown must ensure its solicitor, –
- (a) a reasonable time before the TSP settlement date for the property, –
    - (i) creates a Landonline workspace for the transfer to the governance entity of the fee simple estate in the property and for any other registrable instruments required by the deed in relation to the property (the **electronic transfer instruments**); and
    - (ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the electronic transfer instruments; and
  - (b) on the TSP settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation; and
- 7.6.3 the governance entity must ensure its solicitor, a reasonable time before the TSP settlement date, certifies and signs the electronic transfer instruments for the property prepared in the Landonline workspace under paragraph 7.6.2(a)(ii); and
- 7.6.4 paragraphs 7.6.2 and 7.6.3 are subject to paragraph 7.36.2.

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

- 7.7 The Crown must, on the actual TSP settlement date for a transfer property, provide the governance entity with any key or electronic opener to a gate or door on, and any security code to an alarm for, the property that are held by the Crown, unless –
- 7.7.1 the property is a purchased deferred selection property; and
  - 7.7.2 to provide it would be inconsistent with the Crown leaseback.
- 7.8 The transfer value of, or the amount payable by the governance entity for, a transfer property is not affected by –
- 7.8.1 a non-material variation, or a material variation entered into under paragraph 7.16.4(a), of a disclosed encumbrance affecting or benefiting the property; or
  - 7.8.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 7.16.4(b).

### APPORTIONMENT OF OUTGOINGS AND INCOMINGS

- 7.9 If, as at the actual TSP settlement date for a transfer property, –
- 7.9.1 the outgoings for the property pre-paid by the Crown for any period after that date exceed the incomings received by the Crown for any period after that date, the governance entity must pay the amount of the excess to the Crown; or
  - 7.9.2 the incomings for the property received by the Crown for any period after that date exceed the outgoings for the property pre-paid by the Crown for any period after that date, the Crown must pay the amount of the excess to the governance entity.
- 7.10 The outgoings for a transfer property for the purposes of paragraph 7.9 do not include insurance premiums and the governance entity is not required to take over from the Crown any contract of insurance in relation to the transfer property.
- 7.11 An amount payable under paragraph 7.9 in relation to a transfer property must be paid on the actual TSP settlement date for the transfer property.
- 7.12 The Crown must, before the actual TSP settlement date for a transfer property, provide the governance entity with a written statement calculating the amount payable by the governance entity or the Crown under paragraph 7.9.

### FIXTURES, FITTINGS, AND CHATTELS

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

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

property, but does not include lessee's improvements located on a purchased deferred selection property.

- 7.14 Fixtures and fittings must be transferred under paragraph 7.13 free of mortgage or charge.
- 7.15 The transfer of a transfer property does not include chattels.

#### OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD

- 7.16 During the transfer period for a transfer property, the Crown must-
- 7.16.1 ensure the property is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
  - 7.16.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the property, except where those charges are payable by a tenant or occupier to the supplier; and
  - 7.16.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the property during the period –
    - (a) by the Crown; or
    - (b) with the Crown's written authority; and
  - 7.16.4 obtain the prior written consent of the governance entity before –
    - (a) materially varying a disclosed encumbrance affecting or benefiting the property; or
    - (b) entering into an encumbrance affecting or benefiting the property; or
    - (c) procuring a consent, providing a waiver, or giving an approval, that materially affects the property, under the Resource Management Act 1991 or any other legislation; and
  - 7.16.5 use reasonable endeavours to obtain permission for the governance entity to enter and inspect the property under paragraph 7.17.2 if the governance entity is prevented from doing so by the terms of an encumbrance referred to in paragraph 7.2.
- 7.17 During the transfer period in relation to a transfer property, the governance entity –
- 7.17.1 must not unreasonably withhold or delay any consent sought under paragraph 7.16.4; and



## **PROPERTY REDRESS**

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### **7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES**

7.17.2 may enter and inspect the property on one occasion –

- (a) after giving reasonable notice; and
- (b) subject to the terms of the encumbrances referred to in paragraph 7.2; and
- (c) subject to complying with all reasonable conditions imposed by the Crown.

#### **OBLIGATIONS AFTER SETTLEMENT**

7.18 The Crown must –

7.18.1 give the relevant territorial authority notice of the transfer of a transfer property immediately after the actual TSP settlement date for the property, or as soon as reasonably practicable thereafter where the transfer property is subject to survey; and

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

- (a) comply with it; or
- (b) provide it promptly to the governance entity or its solicitor; or

7.18.3 pay any penalty incurred by the governance entity to the person providing the written notice as a result of the Crown not complying with paragraph 7.18.2.

#### **RISK AND INSURANCE**

7.19 A transfer property is at the sole risk of –

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

7.19.2 the governance entity, from and including the actual TSP settlement date for the property.

#### **DAMAGE AND DESTRUCTION**

7.20 Paragraphs 7.21 to 7.29 apply if, before the actual TSP settlement date for a transfer property, –

7.20.1 the property is destroyed or damaged; and

7.20.2 the destruction or damage has not been made good.

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

- 7.21 Paragraph 7.22 applies if the transfer property, as a result of the destruction or damage, is not tenable.
- 7.22 Where this paragraph applies, the governance entity and, in the case of a purchased deferred selection property, the Crown may cancel its transfer by written notice to the other party.
- 7.23 Notice under paragraph 7.22 must be given before the actual TSP settlement date.
- 7.24 Paragraph 7.25 applies if the transfer property,—
- 7.24.1 despite the destruction or damage, is tenable; or
  - 7.24.2 as a result of the damage or destruction, is not tenable, but its transfer is not cancelled under paragraph 7.22 before the actual TSP settlement date.
- 7.25 Where this paragraph applies –
- 7.25.1 the governance entity must complete the transfer of the property in accordance with this deed; and
  - 7.25.2 the Crown must pay the governance entity –
    - (a) the amount by which the value of the property has diminished, as at the actual TSP settlement date for the property, as a result of the destruction or damage;
    - (b) plus GST if any.
- 7.26 The value of the property for the purposes of paragraph 7.25.2 is to be its transfer value.
- 7.27 An amount paid by the Crown under paragraph 7.25.2 is a partial refund of the purchase price.
- 7.28 Each party may give the other notice –
- 7.28.1 requiring a dispute as to the application of paragraphs 7.22 to 7.27 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and
  - 7.28.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.
- 7.29 If a dispute as to the application of paragraphs 7.23 to 7.28 is not determined by the TSP settlement date, the date the parties must comply with their obligations on transfer of the property is to be –

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

- 7.29.1 the fifth business day following the determination of the dispute; or
- 7.29.2 if an arbitrator appointed under paragraph 7.28 so determines, another date including the original TSP settlement date.

#### BOUNDARIES AND TITLE

- 7.30 The Crown is not required to point out the boundaries of a transfer property.
- 7.31 If a transfer property is subject only to the encumbrances referred to in paragraph 7.2 or a Crown leaseback, the governance entity –
  - 7.31.1 is to be treated as having accepted the Crown's title to the property as at the actual TSP settlement date; and
  - 7.31.2 may not make any objections to, or requisitions on, it.
- 7.32 An error or omission in the description of a transfer property or its title does not annul its transfer.

#### FENCING

- 7.33 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between a transfer property and any contiguous land of the Crown, unless the Crown requires the fence, in which case the provisions of the Fencing Act 1978 will apply.
- 7.34 Paragraph 7.33 does not continue for the benefit of a purchaser from the Crown of land contiguous to a transfer property.
- 7.35 The Crown may require a fencing covenant to the effect of paragraphs 7.33 and 7.34 to be registered against the title to a transfer property.

#### DELAYED TRANSFER OF TITLE

- 7.36 The Crown covenants for the benefit of the governance entity that it will –
  - 7.36.1 arrange for the creation of a record of title for the fee simple estate for the land of a transfer property for land that –
    - (a) is not contained in a record of title for a fee simple estate; or
    - (b) is contained in a record or records of title for a fee simple estate but together with other land; and

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

- 7.36.2 transfer (in accordance with paragraph 7.5 or 7.6, whichever is applicable) the fee simple estate in a transfer property to which paragraph 7.36.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the actual TSP settlement date.
- 7.37 If paragraph 7.36.2 applies to a transfer property, and paragraph 7.6 is applicable, the governance entity must comply with its obligations under paragraph 7.6.3 by a date specified by written notice by the Crown.
- 7.38 The covenant given by the Crown under paragraph 7.36 has effect and is enforceable, despite –
- 7.38.1 being positive in effect; and
- 7.38.2 there being no benefited land.
- 7.39 If paragraph 7.36 applies then, for the period from the actual TSP settlement date until the date that the Crown transfers the fee simple estate in the transfer property to the governance entity –
- 7.39.1 the governance entity will be the beneficial owner of the property; and
- 7.39.2 all obligations and rights will be performed and arise as if the fee simple estate had been transferred to the governance entity on the actual TSP settlement date; and
- 7.39.3 the governance entity may not serve a settlement notice under paragraph 7.42.

#### INTEREST

- 7.40 If for any reason (other than the default of the Crown) all or any of the amount payable by the governance entity to the Crown in relation to a transfer property is not paid on the TSP settlement date –
- 7.40.1 the Crown is not required to give possession of the property to the governance entity; and
- 7.40.2 the governance entity must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST if any) for the period from the TSP settlement date to the actual TSP settlement date.
- 7.41 Paragraph 7.40 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

#### SETTLEMENT NOTICE

- 7.42 If, without the written agreement of the parties, settlement of a transfer property is not effected on the TSP settlement date –
- 7.42.1 either party may at any time after the TSP settlement date serve notice on the other (a **settlement notice**) requiring the other to effect settlement; but
  - 7.42.2 the settlement notice is effective only if the party serving it is –
    - (a) ready, able, and willing to effect settlement in accordance with the settlement notice; or
    - (b) not ready, able, and willing to effect settlement only by reason of the default or omission of the other party; and
  - 7.42.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and
  - 7.42.4 time is of the essence under paragraph 7.42.3; and
  - 7.42.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by clause 6.6 or paragraph 6.4.
- 7.43 Paragraph 7.42, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

#### FURTHER ASSURANCES

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

#### NON-MERGER

- 7.45 On transfer of a transfer property to the governance entity –
- 7.45.1 the provisions of this part will not merge; and
  - 7.45.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

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### 7: TERMS OF TRANSFER FOR PURCHASED COMMERCIAL PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTIES

#### GST

- 7.46 When the governance entity gives a notice electing to purchase under clause 6.4 or paragraph 6.3, it must include in that notice the following information in relation to the factual situation that will exist at the TSP settlement date and warrants the correctness of that information –
- 7.46.1 whether or not the governance entity is or will be at the TSP settlement date a registered person for GST purposes; and
  - 7.46.2 the governance entity's registration number (if any); and
  - 7.46.3 whether or not the governance entity intends to use the property for the purposes of making taxable supplies; and
  - 7.46.4 whether or not the governance entity intends to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.
- 7.47 If any of that information provided in the notice electing to purchase under paragraph 7.46 alters before the TSP settlement date, the governance entity must immediately notify the Crown and warrants that the altered information is correct as at the date of notification.
- 7.48 If the information provided (subject to alteration, if any) indicates that, at the TSP settlement date, each of the following statements is correct and the supply of the property is a taxable supply by the Crown, the parties agree that GST will apply to the supply at the rate of zero percent:
- 7.48.1 the governance entity is or will be at the TSP settlement date a registered person for GST purposes; and
  - 7.48.2 the governance entity intends to use the property for the purposes of making taxable supplies; and
  - 7.48.3 the governance entity does not intend to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.

**PROPERTY REDRESS**

**8 EARLY RELEASE COMMERCIAL PROPERTIES**

<b>Property name</b>	<b>Legal description</b>	<b>Land holding agency</b>
15 McManus Place, Otahuhu	Lot 9 DP 46199. All record of title NA1895/4 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
1 Ashby Place, Greenhithe	Section 26 SO 408188. All record of title register 447929 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
51 Isobel Road, Greenhithe	Part Lot 2 DP 183137. Balance record of title NA114A/638 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
148 Albany Highway, Greenhithe	Section 35 SO 408188. All record of title 447931 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
156 Albany Highway, Greenhithe	Section 29 SO 408188. All record of title 447933 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
21 Chester Avenue, Greenhithe	Section 3 SO 406048. All record of title 510708 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
31 Chester Avenue, Greenhithe	Section 9 SO 395477. All record of title 510712 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
42 Upper Harbour Drive, Greenhithe	Section 17 SO 406030. All record of title 449466 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
10 Baltimore Place, Forest Hill	Lot 34 DP 85609 and Section 8 SO 409267. All record of title 559567 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
115 Waipuna Road East, Panmure	Section 8 SO 70377. Formerly record of title 47293 for the fee simple estate (now, together with 117 Waipuna Road East, comprised in record of title 930028 for the fee simple estate).	Ministry of Justice (Office of Treaty Settlements)
117 Waipuna Road East, Panmure	Section 9 SO 70377. Formerly record of title 51298 for the fee simple estate (now , together with 115 Waipuna Road East, comprised in record of title 930028 for the fee simple estate).	Ministry of Justice (Office of Treaty Settlements)
105 Kowhai Road, Orewa	Lot 1 DP 197353. All record of title NA125B/317 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)

**PROPERTY REDRESS**

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**8: EARLY RELEASE COMMERCIAL PROPERTIES**

<b>Property name</b>	<b>Legal description</b>	<b>Land holding agency</b>
115 Kowhai Road, Orewa	Lot 2 DP 197353. All record of title NA125B/319 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)
253 Hibiscus Coast Highway, Red Beach	Lot 1 DP 197802. All record of title NA125B/406 for the fee simple estate.	Ministry of Justice (Office of Treaty Settlements)



## 9 NOTICE IN RELATION TO CULTURAL REDRESS PROPERTIES, COMMERCIAL PROPERTIES AND POTENTIAL DEFERRED SELECTION PROPERTIES

9.1 If this schedule requires the governance entity to give notice to the Crown in relation to or in connection with a cultural redress property, a commercial property or a potential deferred selection property, or the governance entity gives a notice under clause 6.4, the governance entity must give the notice in accordance with part 4 of the general matters schedule, except the notice must be addressed to the land holding agency for the property at its address, or email address or facsimile number provided –

9.1.1 in paragraph 9.2; or

9.1.2 if the land holding agency has given notice to the governance entity of a new address or facsimile number, in the most recent notice of a change of address or facsimile number.

9.2 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of each land holding agency is as follows for the purposes of giving notice to that agency in accordance with this part.

Land holding agency	Contact details
Department of Conservation	Conservation House Whare Kaupapa Atawhai 18 Manners Street Wellington 6011 PO Box 10420 The Terrace Wellington 6143 Fax: +64 4 471 1117
Ministry of Education	National Office PO Box 1666 Thorndon Wellington 6140
LINZ (Treaty Settlements Landbank)	Wellington Office Level 7, Radio New Zealand House 155 The Terrace Wellington 6011 PO Box 5501 Wellington 6145 Fax: +64 4 472 2244 Email: <a href="mailto:treatysettlementslandbank@linz.govt.nz">treatysettlementslandbank@linz.govt.nz</a>

**PROPERTY REDRESS**

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**9: NOTICE IN RELATION TO CULTURAL REDRESS PROPERTIES, COMMERCIAL PROPERTIES AND POTENTIAL DEFERRED SELECTION PROPERTIES**

Office for Māori Crown Relations – Te Arawhiti	Level 3, The Justice Centre 19 Aitken Street SX 10111 Wellington 6011  Ph: 04 494 9800 Email: <a href="mailto:contactus@tearawhiti.govt.nz">contactus@tearawhiti.govt.nz</a>
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## 10 DEFINITIONS

10.1 In this schedule, unless the context otherwise requires, **party** means each of the governance entity and the Crown.

10.2 In this deed, unless the context otherwise requires, –

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

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

**arbitration commencement date**, in relation to the determination of the market value of a deferred selection property means –

(a) in relation to a referral under paragraph 6.15.2, the date of that referral; and

(b) in relation to an appointment under paragraph 6.15.3 or 6.15.4, a date specified by the valuation arbitrator; and

**arbitration meeting**, in relation to the determination of the market value of a deferred selection property, means the meeting notified by the valuation arbitrator under paragraph 6.16.1; and

**council-administered cultural redress property** has the meaning given to it by paragraph 1.2.2; and

**Crown leaseback** means, in relation to a deferred selection property, the lease to be entered into by the governance entity and the Crown under paragraph 6.4.2; and

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

**disclosure information** has the meaning given to it by paragraph 1.2.3; and

**DSP settlement date**, in relation to a purchased deferred selection property, means the date that is 40 business days after the Crown receives a notice from the governance entity electing to purchase the property; and

**election notice** means a written notice given in accordance with paragraph 6.3 electing whether or not to purchase a deferred selection property; and

**Lessee's improvements**, in relation to a deferred selection property has the meaning given to it in the Crown leaseback for the property; and

**notification date** means, in respect of a deferred selection payment, the date on which the governance entity received a validation notice in respect of the property; and

**pre-selection notice** has the meaning given to it in paragraph 5.1; and

## PROPERTY REDRESS

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### 10: DEFINITIONS

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

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

**relevant date** has the meaning given to it by paragraph 1.7; and

**settlement notice** has the meaning given to it by paragraph 7.42.1; and

**terms of transfer** means the terms of transfer set out in part 7; and

**transfer period** means, in relation to a transfer property, the period from the date of this deed to its actual TSP settlement date; and

**transfer property** has the meaning given to it by paragraph 7.1; and

**TSP settlement date** means –

- (a) in the case of a purchased commercial property, the settlement date (as defined in paragraph 6.1 of the general matters schedule); and
- (b) in the case of a purchased deferred selection property, the DSP settlement date for the property; and

**validation notice** has the meaning given to it by paragraph 5.5; and

**valuation arbitrator**, in relation to a deferred selection property, means the person appointed under paragraphs 6.7.2 or 6.8, in relation to the determination of its market value; and

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