

**THE TRUSTEES OF
TE TĀWHARAU O NGĀTI PŪKENGA TRUST**

and

THE CROWN

**DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to the
NGĀTI PŪKENGA DEED OF SETTLEMENT**

1 BACKGROUND

- 1.1 Ngāti Pūkenga, and the trustees of Te Tāwharau o Ngāti Pūkenga Trust, signed a deed of settlement with the Crown on 7 April 2013.
- 1.2 That deed of settlement was amended by a deed, dated 16 October 2013, signed by the trustees of Te Tāwharau o Ngāti Pūkenga Trust and the Crown.
- 1.3 The parties acknowledge and agree:
 - 1.3.1 the Ngāti Pūkenga historical claims are settled by the deed of settlement; and
 - 1.3.2 the deed of settlement is conditional upon settlement legislation being enacted, which has not yet been enacted; and
 - 1.3.3 that, since signing the deed of settlement, the parties have agreed that the Crown will pay Ngāti Pūkenga a further \$2,000,000, being the financial redress to be paid by the Crown to Ngāti Pūkenga in respect of its claims in relation to Hauraki (the **Hauraki financial redress payment**); and
 - 1.3.4 the Crown and Ngāti Pūkenga will shortly enter into a deed to amend the deed of settlement to provide for the Hauraki financial redress payment (the **further amending deed**); and
 - 1.3.5 the Crown has agreed –
 - (a) to make a payment of \$800,000 to the trustees of Te Tāwharau o Ngāti Pūkenga Trust on account of the Hauraki financial redress payment; and
 - (b) a further payment of \$100,000 may be made available to the trustees of Te Tāwharau o Ngāti Pūkenga on account of the Hauraki financial redress payment; and
 - 1.3.6 the payment of the \$800,000, and any payment of the \$100,000, referred to in the previous paragraph is to be on the terms and conditions of this deed.

2 ON-ACCOUNT ARRANGEMENTS

ON-ACCOUNT PAYMENT

- 2.1 Within ten business days of the date of this deed, the Crown will pay to the trustees of Te Tāwharau o Ngāti Pūkenga Trust \$800,000, being the **on-account payment**.

ADDITIONAL ON-ACCOUNT PAYMENT AVAILABLE – MANAIA

- 2.2 The Crown has agreed that a further \$100,000 is available to the trustees of Te Tāwharau o Ngāti Pūkenga Trust to contribute to the marae revitalisation project at Manaia.
- 2.3 If the trustees of Te Tāwharau o Ngāti Pūkenga Trust seek payment of the amount referred to in clause 2.2, they must make a written request to the Crown, signed by two trustees.
- 2.4 Within ten business days of receiving a request for the amount referred to in clause 2.2 in accordance with clauses 2.2 to 2.4, the Crown will pay to the trustees of Te Tāwharau o Ngāti Pūkenga Trust \$100,000, being the **additional on-account payment**.

TERMS OF ON-ACCOUNT PAYMENTS

- 2.5 The trustees of Te Tāwharau o Ngāti Pūkenga Trust acknowledge and agree that -
- 2.5.1 the on-account payment and, if paid, the additional on-account payment, -
- (a) form part of the Hauraki financial redress payment; and
 - (b) will be deducted from the Hauraki financial redress payment to be paid by the Crown to the trustees of Te Tāwharau o Ngāti Pūkenaga Trust under the further amending deed; and
- 2.5.2 \$300,000 of the on-account payment, and, if paid, all of the \$100,000 additional on-account payment, is intended to be used to contribute to marae revitalisation at Manaia.

INTEREST

- 2.6 Any interest payable, under the further amending deed, by the Crown to the trustees of Te Tāwharau o Ngāti Pūkenga Trust in relation to the on-account payment, or, if paid, the additional on-account payment, will be payable only for the period:
- (a) beginning on 17 May 2013, being the date the Crown and Ngāti Pukenga agreed the amount of the Hauraki financial redress payment; and
 - (b) ending on the day before the payment date for the on-account payment, or, if paid, the additional on-account payment, as the case may be.
- 2.7 This deed:
- 2.7.1 records on-account arrangements in relation to the Hauraki financial redress payment; and

2.7.2 subject to clause 2.2, does not settle or otherwise affect the claims of Ngāti Pūkenga in relation to Hauraki; but

2.7.3 may be used by the Crown in any proceedings whatsoever as evidence of redress provided by the Crown to the trustees of Te Tāwharau o Ngāti Pūkenga Trust on-account of the Hauraki financial redress payment.

SETTLEMENT

2.8 Except as provided in this deed, the parties' rights and obligations remain unaffected.

3 MISCELLANEOUS

NOTICES

- 3.1 Unless otherwise provided in this deed the following provisions apply to any notice given under this deed:

Notices to be signed

- 3.1.1 the person giving the notice must sign it but, where the person is a trustee, a minimum of two of the trustees must sign it;

Notices to be in writing

- 3.1.2 the notice must be in writing addressed to the recipient at its address or facsimile number or electronic email address;

Addresses and facsimile numbers of the Te Tawharau o Ngāti Pūkenga Trust and the Crown

- 3.1.3 the address and facsimile number and electronic email address of the Te Tawharau o Ngāti Pūkenga Trust is:

Te Tawharau o Ngāti Pūkenga Trust
81 The Strand
PO Box 13610
Tauranga 3141
New Zealand
Email address: reception@teaumaaro.co.nz

- 3.1.4 the address, facsimile number and electronic email address of the Crown is:

C/- The Solicitor-General
Crown Law Office
Level 3
Justice Centre
19 Aitken Street
PO Box 2858
Wellington, 6011
New Zealand
Fax: 64 4 473 3482
Email address: library@crownlaw.govt.nz;

Change of address or facsimile number

- 3.1.5 the address or facsimile of a party may be changed by notice of one party to the other;

Delivery

- 3.1.6 delivery of a notice may be made:

(a) by hand to the recipient's address;

- (b) by posting an envelope with pre-paid postage addressed to the recipient's address;
- (c) by facsimile to the facsimile number of the recipient; or
- (d) by sending it by electronic mail to the recipient's electronic email address;

Timing of delivery

3.1.7 a notice delivered:

- (a) by hand will be treated as having been received at the time of delivery; or
- (b) by pre-paid post will be treated as having been received on the second day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; or
- (d) by electronic mail will be treated as having been received on the day of successful delivery of the mail; and

Deemed date of delivery

3.1.8 if a notice is treated as having been received on a day that is not a business day, or after 5pm on a business day, that notice is (despite clause 3.1.7) to be treated as having been received the next business day.

AMENDMENT

3.2 This deed may be amended only by a written amendment signed by the parties.

ENTIRE AGREEMENT

3.3 This deed:

- 3.3.1 constitutes the entire agreement in relation to the matters in it; and
- 3.3.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

NO WAIVER OR ASSIGNMENT

3.4 Except as provided in this deed:

- 3.4.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and
- 3.4.2 a single, or partial, exercise of a right or power under this deed, does not preclude:
 - (a) a further exercise of that right or power; or
 - (b) the exercise of another right or power; and
- 3.4.3 a person may not transfer or assign a right or obligation under this deed.

4 TAX

INDEMNITY

- 4.1 The provision of the on-account payments, or an indemnity payment, to the trustees of Te Tāwharau o Ngāti Pūkenga Trust is not intended to be:
- 4.1.1 a taxable supply for GST purposes; or
 - 4.1.2 assessable income for income tax purposes.
- 4.2 The Crown must, therefore, indemnify the trustees of Te Tāwharau o Ngāti Pūkenga Trust for:
- 4.2.1 any GST payable by the trustees of Te Tāwharau o Ngāti Pūkenga Trust in respect of the provision of the on-account payments or an indemnity payment; and
 - 4.2.2 any income tax payable by the trustees of Te Tāwharau o Ngāti Pūkenga Trust as a result of the on-account payments, or an indemnity payment, being treated as assessable income of the trustees of Te Tāwharau o Ngāti Pūkenga Trust; and
 - 4.2.3 any reasonable cost or liability incurred by the trustees of Te Tāwharau o Ngāti Pūkenga Trust in taking, at the Crown's direction, action:
 - (a) relating to an indemnity demand; or
 - (b) under clause 4.13 or clause 4.14.1(b).

LIMITS

- 4.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment) in relation to the trustees of Te Tāwharau o Ngāti Pūkenga Trust:
- 4.3.1 use of the on-account payments or an indemnity payment;
 - 4.3.2 payment of costs, or any other amounts, in relation to the on-account payments; or
 - 4.3.3 receipt of any income from the on-account payments or an indemnity payment.

ACKNOWLEDGEMENTS

- 4.4 To avoid doubt, the parties acknowledge:
- 4.4.1 the on-account payments is provided:
 - (a) on-account of the Hauraki financial redress payment; and
 - (b) with no other consideration being provided;

4.4.2 nothing in this part is intended to imply that the provision of the on-account payments, or an indemnity payment, is:

- (a) a taxable supply for GST purposes; or
- (b) assessable income for income tax purposes; and

4.4.3 the trustees of Te Tāwharau o Ngāti Pūkenga Trust are the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

CONSISTENT ACTIONS

4.5 Neither the trustees of Te Tāwharau o Ngāti Pūkenga Trust, a person associated with them, or the Crown will act in a manner that is inconsistent with this part 4.

4.6 In particular, the trustees of Te Tāwharau o Ngāti Pūkenga Trust agree that:

4.6.1 from the payment date, they will be a registered person for GST purposes, unless they are not carrying on a taxable activity; and

4.6.2 neither they, nor any person associated with them, will claim with respect to the provision of the on-account payments, or an indemnity payment:

- (a) an input credit for GST purposes; or
- (b) a deduction for income tax purposes.

INDEMNITY DEMANDS

4.7 The trustees of Te Tāwharau o Ngāti Pūkenga Trust and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the trustees of Te Tāwharau o Ngāti Pūkenga Trust may be entitled to an indemnity payment.

4.8 An indemnity demand:

4.8.1 may be made at any time after the payment date; but

4.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:

- (a) specified in an assessment; or
- (b) a date for the payment of provisional tax; or
- (c) otherwise determined; and

4.8.3 must be accompanied by:

- (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and

- (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

INDEMNITY PAYMENTS

- 4.9 If the trustees of Te Tāwharau o Ngāti Pūkenga Trust are entitled to an indemnity payment, the Crown may make the payment to:
- 4.9.1 the trustees of Te Tāwharau o Ngāti Pūkenga Trust; or
 - 4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the trustees of Te Tāwharau o Ngāti Pūkenga Trust.
- 4.10 The trustees of Te Tāwharau o Ngāti Pūkenga Trust must pay an indemnity payment received by them to the Commissioner of Inland Revenue, by the later of:
- 4.10.1 the due date for payment of the tax; or
 - 4.10.2 the next business day after receiving the indemnity payment.

REPAYMENT

- 4.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the trustees of Te Tāwharau o Ngāti Pūkenga Trust must promptly repay to the Crown any amount that:
- 4.11.1 the Commissioner of Inland Revenue refunds or credits to the trustees of Te Tāwharau o Ngāti Pūkenga Trust; or
 - 4.11.2 the trustees of Te Tāwharau o Ngāti Pūkenga Trust have received but have not paid, and are not required to pay, to the Commissioner of Inland Revenue.
- 4.12 The trustees of Te Tāwharau o Ngāti Pūkenga Trust have no right of set-off or counterclaim in relation to an amount payable by them under clause 4.11.

RULINGS

- 4.13 The trustees of Te Tāwharau o Ngāti Pūkenga Trust must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of the on-account payments.

CONTROL OF DISPUTES

- 4.14 If the trustees of the Te Tawharau o Ngāti Pūkenga Trust are entitled to an indemnity payment, the Crown may:
- 4.14.1 by notice to the trustees of the Te Tawharau o Ngāti Pūkenga Trust, require them to:
 - (a) exercise a right to defer the payment of tax; and/or
 - (b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:

- (i) a tax assessment; and/or
- (ii) a notice in relation to the tax, including a notice of proposed adjustment; or

4.14.2 nominate and instruct counsel on behalf of the trustees of Te Tāwharau o Ngāti Pūkenga Trust whenever it exercises its rights under clause 4.14.1; and

4.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

5 DEFINITIONS AND INTERPRETATION

DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

additional on-account payment has the meaning it is given by clause 2.5;

assessable income has the meaning given to it by section YA 1 of the Income Tax Act 2007;

business day means the period of 9am to 5pm on any day other than a day that is not:

- (a) a Saturday or a Sunday; or
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or
- (c) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour Day; or
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of Wellington or Auckland;

Crown has the meaning given to it in section 2(1) of the Public Finance Act 1989;

date of this deed means the date this deed is signed by the the Crown and the trustees of Te Tāwharau o Ngāti Pūkenga trust;

deed means this deed between the trustees of Te Tāwharau o Ngāti Pūkenga Trust and the Crown, as amended from time to time;

deed of settlement means the deed of settlement referred to in clause 1.1, as amended by the deed of amendment referred to in clause 1.2; and

further amending deed has the meaning given to it by clause 1.3.4; and

GST means:

- (a) goods and services tax chargeable under the Goods and Services Tax Act 1985; and
- (b) includes, for the purposes of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of GST;

Hauraki financial redress payment has the meaning given to it by clause 1.3.3; and

income tax means income tax imposed under the Income Tax Act 2007 and includes, for the purpose of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of income tax;

indemnity demand means a demand made by the trustees of Te Tāwharau o Ngāti Pūkenga Trust under part 4 for an indemnity payment;

indemnity payment means a payment made by the Crown to the trustees of the Te Tawharau o Ngāti Pūkenga Trust under part 4;

on-account payment has the meaning it is given by clause 2.1;

on-account payments means the on-account payment and, if paid, the additional on-account payment;

party means each of the following:

(a) the trustees of Te Tāwharau o Ngāti Pūkenga Trust:

(b) the Crown;

payment date means the date the on-account payment is paid to the trustees of Te Tāwharau o Ngāti Pūkenga Trust in accordance with clause 2.1;

provision, in relation to the on-account payment, or, if paid, the additional on-account payment, includes its allotting, payment, credit, transfer, vesting, making available, creation, or grant;

tax includes income tax and GST;

tax indemnity means an indemnity given by the Crown under part 4;

taxable activity has the meaning given to it by section 6 of the Goods and Services Tax Act 1985;

taxable supply has the meaning given to it by section 2 of the Goods and Services Tax Act 1985;

Te Tāwharau o Ngāti Pūkenga Trust means the trust of that name established by the Te Tāwharau o Ngāti Pūkenga Trust deed;

Te Tāwharau o Ngāti Pūkenga Trust deed means the deed of trust establishing Te Tāwharau o Ngāti Pūkenga Trust dated 24 March 2013 and signed by Rahera Aroha Ohia, Harry Haerengarangi Mikaere, Hori Parata, Regina Berghan, Rehua Smallman and includes the schedules and any amendments to that deed;

trustees of Te Tāwharau o Ngāti means the trustees of Te Tāwharau o Ngāti Pūkenga Trust, acting in their capacity as trustees of that trust; and

use, in relation to the on-account payment or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

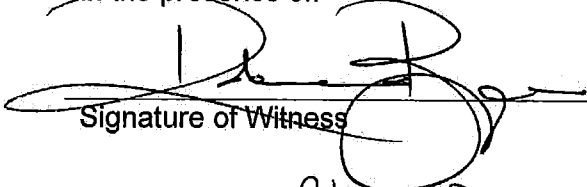
INTERPRETATION

- 5.2 In the interpretation of this deed, unless the context otherwise requires:
- 5.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;
 - 5.2.2 defined terms have the meanings given to them by this deed but if there are any inconsistencies between the definitions in this deed and the Ngāti Pūkenga deed of settlement, the definitions in the Ngāti Pūkenga deed of settlement shall prevail;
 - 5.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
 - 5.2.4 the singular includes the plural and vice versa;
 - 5.2.5 a word importing one gender includes the other genders;
 - 5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;
 - 5.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;
 - 5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally;
 - 5.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;
 - 5.2.10 a reference to a monetary amount is to New Zealand currency;
 - 5.2.11 a reference to written or in writing includes all modes of presenting or reproducing words, figures, and symbols in a tangible and permanently visible form;
 - 5.2.12 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
 - 5.2.13 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives, any legislation;
 - 5.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the working party and the Crown;
 - 5.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and
 - 5.2.16 a reference to time is to New Zealand time.

SIGNED as a deed on

SIGNED by the trustees of
TE TĀWHARAU O NGĀTI PŪKENGA
TRUST

in the presence of:


Signature of Witness

Witness Name: Rebecca Bayce

Occupation: Adminishtrator

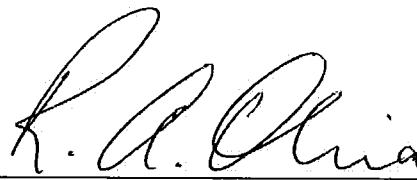
Address: Tauranga


Signature of Witness

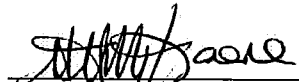
Witness Name: Areta Donna Gray

Occupation: Manager

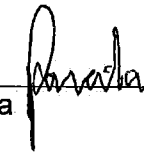
Address: Tauranga



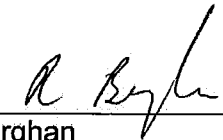
Rahera Ohia



Harry Haerengarangi Mikaere



Hori Parata

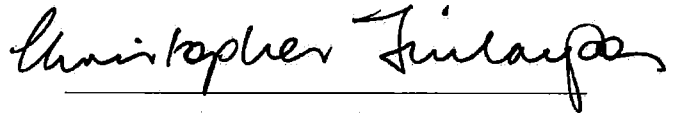


Regina Berghan



Rehua Smallman

SIGNED for and on behalf of **THE CROWN**
by the Minister for Treaty of Waitangi



Hon Christopher Finlayson

Negotiations in the presence of:

B. Consigned

Signature of Witness

Witness Name:

BERNADETTE CONSIGNÉ

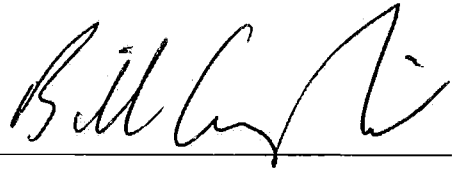
Occupation:

PRIVATE SECRETARY

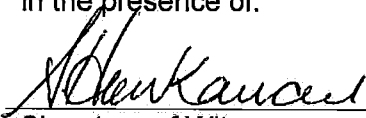
Address:

WELLINGTON

SIGNED for and on behalf of **THE CROWN**
by the Minister of Finance (only in relation to
the tax indemnities)
in the presence of:



Hon Simon William English



Signature of Witness

Witness Name:

Anchaere Haukama

Occupation:

Public Servant

Address:

Wellington.

Dated: 4 August 2014