

NGĀTI RĀHIRI TUMUTUMU

and

THE TRUSTEES OF THE NGĀTI TUMUTUMU TRUST

and

THE CROWN

DEED RECORDING ON-ACCOUNT ARRANGEMENTS
in relation to
NGĀTI RĀHIRI TUMUTUMU HISTORICAL CLAIMS

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

NGĀTI RĀHIRI TUMUTUMU

and

THE TRUSTEES OF THE NGĀTI TUMUTUMU TRUST

and

THE CROWN

1 BACKGROUND

- 1.1 Ngāti Rāhiri Tumutumu gave the Ngāti Tumutumu Ngāti Rāhiri Settlements Committee a mandate to negotiate a deed of settlement with the Crown by hui-a-iwi at Auckland and Te Aroha in March 2011.
- 1.2 The Crown recognised the mandate on 27 June 2011.
- 1.3 The mandated negotiators and the Crown:
 - 1.3.1 entered into an agreement in principle dated 22 July 2011; and
 - 1.3.2 since the agreement in principle, have:
 - (a) had extensive negotiations conducted in good faith; and
 - (b) negotiated and initialled a deed of settlement on 13 July 2017.
- 1.4 The parties acknowledge and agree:
 - 1.4.1 Ngāti Rāhiri Tumutumu established the Ngāti Tumutumu Trust by deed dated 22 August 2018;
 - 1.4.2 the trustees of the Ngāti Tumutumu Trust will be the governance entity for the Ngāti Rāhiri Tumutumu settlement; and
 - 1.4.3 the Crown will:
 - (a) provide the governance entity with the cultural redress on-account payment;
 - (b) provide the governance entity with the cash on-account payment; and
 - (c) transfer the early transfer property to the governance entity,on account of the settlement of the Ngāti Rāhiri Tumutumu historical claims according to the terms and conditions of this deed.

2 ON-ACCOUNT ARRANGEMENTS

ON-ACCOUNT REDRESS

- 2.1 Within 10 business days of the date of this deed, the Crown will pay to the governance entity:
- 2.1.1 the amount of \$400,000, being the **cultural redress on-account payment**; and
 - 2.1.2 the amount of \$500,000, being the **cash on-account payment**
- (together, the **on-account payments**).
- 2.2 As soon as reasonably practicable after the date of this deed, the Crown will transfer the early transfer property to the governance entity, in accordance with the early transfer terms.
- 2.3 The governance entity acknowledges and agrees that:
- 2.3.1 the cash on-account payment and the early transfer property form part of the financial and commercial redress to be provided by the Crown in the settlement of Ngāti Rāhiri Tumutumu historical claims;
 - 2.3.2 the cultural redress on-account payment forms part of the cultural redress to be provided by the Crown in the settlement of the Ngāti Rāhiri Tumutumu historical claims;
 - 2.3.3 the following will be deducted from the financial and commercial redress amount offered by the Crown in the Ngāti Rāhiri Tumutumu settlement:
 - (a) the amount of the cash on-account payment; and
 - (b) the amount of \$277,000 (being the transfer value of the early transfer property);
 - 2.3.4 the on-account payments and the early transfer property (together, the **on-account redress**) are provided with the intention that:
 - (a) the cash on-account payment will allow Ngāti Rāhiri Tumutumu to resource the governance entity for full operation and prepare for settlement;
 - (b) the governance entity may, at the governance entity's discretion, apply some or all of the cultural redress on-account payment towards the cultural revitalisation of Ngāti Rāhiri Tumutumu; and
 - (c) the early transfer property will provide the governance entity with a non-cash resource; and
 - 2.3.5 any interest payable under the Ngāti Rāhiri Tumutumu deed of settlement, by the Crown to the governance entity on the cash on-account payment, will only be payable for the period:

- (a) beginning on 17 May 2013, being the date the Iwi of Hauraki and the Crown agreed on the amount to be paid to the Iwi of Hauraki collectively for settlement of claims in the Pare Hauraki redress area (as defined in the Pare Hauraki Collective Redress Deed); and
 - (b) ending on the day before the payment date; and
- 2.3.6 any interest payable under the Ngāti Rāhiri Tumutumu deed of settlement, by the Crown to the governance entity, on the amount referred to in clause 2.3.3(b), will only be payable for the period:
 - (a) beginning on 17 May 2013, being the date the Iwi of Hauraki and the Crown agreed on the amount to be paid to the Iwi of Hauraki collectively for settlement of claims in the Pare Hauraki redress area (as defined in the Pare Hauraki Collective Redress Deed); and
 - (b) ending on the day before the transfer date.
- 2.4 This deed:
 - 2.4.1 records on-account arrangements in relation to the Ngāti Rāhiri Tumutumu historical claims;
 - 2.4.2 subject to clause 2.3, does not settle or otherwise affect those claims; but
 - 2.4.3 may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to the governance entity on-account of the settlement of Ngāti Rāhiri Tumutumu historical claims.

SETTLEMENT

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

3 MISCELLANEOUS

AMENDMENT

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

ENTIRE AGREEMENT

- 3.2 This deed:
- 3.2.1 constitutes the entire agreement in relation to the matters in it; and
 - 3.2.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

NO WAIVER OR ASSIGNMENT

- 3.3 Except as provided in this deed:
- 3.3.1 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
 - 3.3.2 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
 - 3.3.3 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 redress, or an indemnity payment,³ to the governance entity 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 governance entity for:
- 4.2.1 any GST payable by the governance entity in respect of the provision of the on-account redress or an indemnity payment; and
 - 4.2.2 any income tax payable by the governance entity as a result of the on-account redress, or an indemnity payment, being treated as assessable income of the governance entity; and
 - 4.2.3 any reasonable cost or liability incurred by the governance entity 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):
- 4.3.1 the governance entity's:
 - (a) use of the on-account redress or an indemnity payment;
 - (b) payment of costs, or any other amounts, in relation to the on-account redress; or
 - (c) receipt of any income from the on-account redress or an indemnity payment.

ACKNOWLEDGEMENTS

- 4.4 To avoid doubt, the parties acknowledge:
- 4.4.1 the on-account redress is provided:
 - (a) on-account of the future settlement redress of Ngāti Rāhiri Tumutumu historical claims in relation to the Treaty of Waitangi; 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 redress, 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 governance entity is 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 None of the governance entity, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.

4.6 In particular, the governance entity agrees that:

4.6.1 from the payment date or the transfer date (as the case may be), it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and

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

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

INDEMNITY DEMANDS

4.7 The governance entity and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the governance entity 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 or transfer date (as the case may be); 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 governance entity is entitled to an indemnity payment, the Crown may make the payment to:
- 4.9.1 the governance entity; or
 - 4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the governance entity.
- 4.10 The governance entity must pay an indemnity payment received by it 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 governance entity must promptly repay to the Crown any amount that:
- 4.11.1 the Commissioner of Inland Revenue refunds or credits to the governance entity; or
 - 4.11.2 the governance entity has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.
- 4.12 The governance entity has no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

RULINGS

- 4.13 The governance entity 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 redress.

CONTROL OF DISPUTES

- 4.14 If the governance entity is entitled to an indemnity payment, the Crown may:
- 4.14.1 by notice to the governance entity, require it 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

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

- 4.14.2 nominate and instruct counsel on behalf of the governance entity 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:

agreement in principle means the agreement in principle equivalent dated 22 July 2011 entered into by the mandated negotiators and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Ngāti Rāhiri Tumutumu historical claims;

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

business day means a day that is not:

- (a) a Saturday or a Sunday; or
- (b) Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, or Waitangi Day; or
- (c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; 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:
 - (i) Wellington; or
 - (ii) Auckland;

cash on-account payment means the amount referred to in clause 2.1.2;

Commissioner of Inland Revenue includes, where applicable, the Inland Revenue Department;

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

cultural redress means the cultural redress provided by or under:

- (a) the relevant clauses of the Ngāti Rāhiri Tumutumu deed of settlement; or
- (b) the settlement legislation giving effect to any of those clauses;

cultural redress on-account payment means the amount referred to in clause 2.1.1;

date of this deed means the date this deed is signed by the parties;

deed means this deed recording on-account arrangements between Ngāti Rāhiri Tumutumu, the governance entity and the Crown, and that deed as amended from time to time;

early transfer property means the early transfer property described in schedule 1;

early transfer terms means the agreement for sale and purchase in relation to the early transfer property entered into by the governance entity and the Chief Executive of Land Information New Zealand;

financial and commercial redress means the financial and commercial redress provided by or under:

- (a) the relevant clauses of the Ngāti Rāhiri Tumutumu deed of settlement; or
- (b) the settlement legislation giving effect to any of those clauses;

financial and commercial redress amount means the financial and commercial redress amount payable by the Crown pursuant to the Ngāti Rāhiri Tumutumu deed of settlement;

governance entity means the trustees for the time being of the Ngāti Tumutumu Trust, in their capacity as trustees of the trust;

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;

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 governance entity to the Crown under part 4 for an indemnity payment;

indemnity payment means a payment made by the Crown to the governance entity under part 4;

mandated negotiators means Nicola Scott and Jill Taylor;

mandated signatories means Nicola Scott and Jill Taylor;

Ngāti Rāhiri Tumutumu deed of settlement means a deed of settlement of Ngāti Rāhiri Tumutumu historical claims, to be signed between the Crown, Ngāti Rāhiri Tumutumu, and the governance entity;

Ngāti Rāhiri Tumutumu historical claims means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date (as defined in the Ngāti Rāhiri Tumutumu deed of settlement) that Ngāti Rāhiri Tumutumu, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after that date, and that:

- (a) is, or is founded on, a right arising:
 - (i) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or

- (ii) under legislation; or
 - (iii) at common law, including aboriginal title or customary law; or
 - (iv) from fiduciary duty; or
 - (v) otherwise; and
- (b) arises from, or relates to, acts or omissions before 21 September 1992:
- (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation,

and otherwise as is defined in the Ngāti Rāhiri Tumutumu deed of settlement;

Ngāti Rāhiri Tumutumu settlement means the settlement of Ngāti Rāhiri Tumutumu historical claims as agreed between the Crown and Ngāti Rāhiri Tumutumu;

Ngāti Tumutumu Trust means:

- (a) the trust known by that name, established by a trust deed dated 22 August 2018; and
- (b) includes the trustees from time to time of that trust; and

notice has, for the purposes of part 4, the meaning given to that term in the Ngāti Rāhiri Tumutumu deed of settlement;

on-account payments means the cash on-account payment and the cultural redress on-account payment;

payment date means the date the on-account payments are paid to the governance entity in accordance with clause 2.1;

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

representative entity has the meaning given to that term in the Ngāti Rāhiri Tumutumu deed of settlement;

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;

transfer date means the date the early transfer property is transferred in accordance with the early transfer terms;

transfer value of the early transfer property means the amount referred to in clause 2.3.3(b); and

use, in relation to the on-account redress 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, the early transfer terms and the Ngāti Tumutumu Trust deed of settlement, the definitions in the Ngāti Rāhiri Tumutumu 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 part, a schedule or a clause is a reference to a part, a schedule or a clause in this deed;
- 5.2.13 a provision in:
 - (a) the main body of this deed, is referred to as a clause; and
 - (b) the schedule, is referred to as a paragraph;
- 5.2.14 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
- 5.2.15 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;

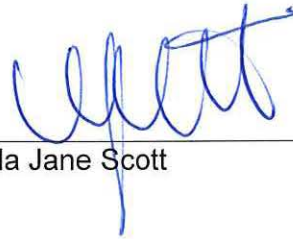
5.2.16 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the governance entity and the Crown;

5.2.17 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

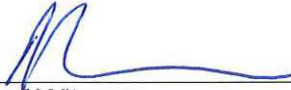
5.2.18 a reference to time is to New Zealand time.

SIGNED as a deed on 08 June 2021

SIGNED for and on behalf of
NGĀTI RĀHIRI TUMUTUMU by the mandated
signatories in the presence of:



Nicola Jane Scott



Signature of Witness

Witness Name: Nadne Sherrae Lya

Occupation: Administrator

Address: Tauranga



Jill Lisa Taylor



Signature of Witness

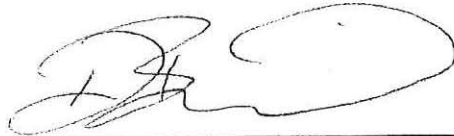
Witness Name: Dane Drummond

Occupation: CEC


Address: 101 Normanby Road, Paeroa

DEED RECORDING ON-ACCOUNT ARRANGEMENTS

SIGNED by the TRUSTEES OF
THE NGĀTI TUMUTUMU TRUST
in the presence of:



Daniel John Braid

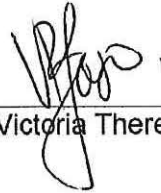


Signature of Witness


Witness Name: Aaron Taylor

Occupation: Police Officer

Address: Auckland



Victoria Theresa Grace Piaso

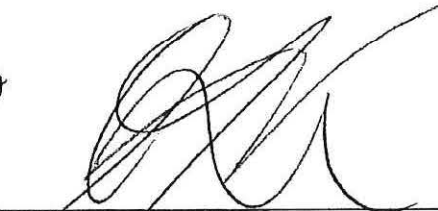


Signature of Witness


Witness Name: Benicha Tyndale

Occupation: Executive Legal Secretary

Address: 265 GT, 190 Elgin Ave
Grand Canyon KY 19001
Cayman Islands



Michael Francis Barker



Signature of Witness

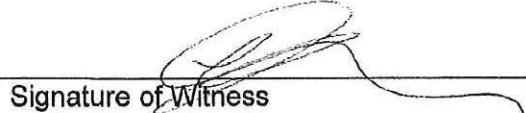
Witness Name: Marc Naudé

Occupation: Planner

Address: Te Aroha



Suzy Tuki



Signature of Witness

Witness Name: Aaron Taylor

Occupation: Police Officer

Address: Auckland


SIGNED for and on behalf of **THE CROWN**

by:

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



Andrew James Little




Signature of Witness

Witness Name: SEREANA PERRY

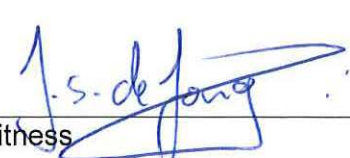
Occupation: PUBLIC SERVANT

Address: PARLIAMENT BUILDINGS,
WELLINGTON 6011

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



Grant Murray Robertson



Signature of Witness

Witness Name:

Occupation:

Address:

Jeff de Jong
Public Servant
Wellington

SCHEDULE 1 – DESCRIPTION OF EARLY TRANSFER PROPERTY

Address	Description
21 Wyatt Avenue, Te Aroha	0.0840 hectares, more or less, being Lot 2 DPS 2147. All record of title 742346 for the fee simple estate.