

DATED 1 September 2010

MEMORANDUM OF UNDERSTANDING

between

THE NGĀTI RĀRUA-ĀTIAWA IWI TRUST BOARD

and

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND

KJ JP

This Memorandum of Understanding is DATED the 1st day of *September* 2010.

PARTIES

1. **THE NGĀTI RĀRUA-ĀTIAWA IWI TRUST BOARD (“NRAIT”); and**
2. **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (THE “Crown”) acting by and through her Minister of Māori Affairs, the Honourable Pita Sharples.**

BACKGROUND

- A. The Crown is entering into this Memorandum of Understanding (MOU) recognising the similarities between the settlement reached by it with the then Organisation of Māori Authorities in 2002 in respect of Schedule 5 of the Māori Reserved Land Amendment Act 1997, and the situation NRAIT face in respect of the Whakarewa Lands located in the Nelson and Motueka Districts, and originally granted to the Anglican Church by way of Crown grant in 1853.
- B. The Whakarewa Lands were administered by the Whakarewa School Board on a similar or identical leasing regime to the adjacent Māori reserves that were subject to the Māori Reserved Land Act 1955 and its predecessors. Over time the operation of these perpetual leases meant that Māori beneficial owners received less than fair market rents for their lands. In the case of the Whakarewa Land, the lands themselves (and associated income) were not returned on trust for the benefit of the descendants of the original owners until 1993. In the circumstances the Crown will as a matter of fairness make an ex gratia payment to NRAIT that approximates the ex gratia payment NRAIT may have received had it been included in settlement of the commitment made in Schedule 5 of the Māori Reserved Land Amendment Act 1997.
- C. The Crown recognises the benefit to NRAIT and its trust beneficiaries in signing this MOU and the economic benefits that will accrue to it, them, the wider community and New Zealand as a whole in facilitating their financial ability to better manage and develop the Whakarewa land.

K J

IT IS STATED:

1. DEFINITIONS AND INTERPRETATION:

1.1. In this MOU, including in the Background, unless the context otherwise requires:

“**Board**” means the Ngāti Rārua-Ātiawa Iwi Trust Board established in accordance with clause 10 of the Deed of Trust establishing the Ngāti Rārua-Ātiawa Iwi Trust dated 7 May 1993;

“**Ex Gratia Payment**” means the ex gratia payment to be made by the Crown to NRAIT in accordance with the terms of this MOU;

“**MOU**” means this Memorandum of Understanding;

“**MRLA**” means the Māori Reserved Lands Act 1955;

“**MRLAA**” means the Māori Reserved Lands Amendment Act 1997;

“**NRAIT**” means The Ngāti Rārua-Ātiawa Iwi Trust Board;

“**Parties**” means The Ngāti Rārua-Ātiawa Iwi Trust Board and the Crown;

“**Past Rental Losses**” means losses NRAIT and its beneficiaries have suffered as a result of not receiving fair market rents for the perpetually leased Whakarewa Lands for the period between 1 January 1977 and 1 January 1998;

“**The 2002 OMA Settlement**” means the Settlement reached between the Crown and the Owners of Maori Reserved Land documented in the Deed of Settlement signed in 2002 between those parties relating to ex gratia payments to be made to the Owners of Maori Reserved Land;

“**Whakarewa Lands**” means the land listed in the Schedule 1 of the Ngāti Rārua-Ātiawa Iwi Trust Empowering Act 1993;

“**Dollars**” or “**\$**” is a reference to New Zealand currency; and

“**Including**” and similar words do not imply any limitation.

1.2. Headings are inserted for convenience only and do not affect the interpretation of this MOU.

1.3. The singular includes the plural and vice versa.

2. EX-GRATIA PAYMENT FOR NRAIT

2.1. Subject to the remaining provisions of this clause 2, the Crown will make a one-off ex gratia payment of \$5,000,000 (five million dollars) (GST exclusive) to NRAIT.

2.2. The Crown will make payment of this amount to NRAIT on a date, which will be a business day in Wellington on or before the 14th day of September 2010 having received no less than five (5) business days' notice of NRAIT's bank account details and provided that the Conditions set out in Clause 3.1(a) and (b) below have been met to the reasonable satisfaction of both parties.

2.3. The parties agree that:

The Crown is entering into this MOU and making the payment out of a sense of fairness in recognition of the fact that the NRAIT beneficiaries were not included in the 2002 OMA Settlement, and to achieve the economic and other benefits referred to in the Background. In doing so the Crown does not concede that it has any legal duty or liability to NRAIT or any of its beneficiaries to make this payment, or otherwise offer them compensation for the Past Rental Losses.

3. CONDITIONS

3.1. This MOU is conditional in all respects upon:

(a) NRAIT confirming that it has held a properly convened annual general meeting or special general meeting of its beneficiaries and that at such meeting, the beneficiaries supported the Board accepting the Ex Gratia Payment in respect of Past Rental Losses generally as contemplated by this MOU. This condition was met on 17 July 2010.

(b) The Crown confirming that final Cabinet approval has been obtained for the making of the Ex Gratia Payment and entry into this MOU by the Crown.

- 3.2 In the event that either of the conditions are not satisfied by the due date (or such extended date as the parties may agree upon), then either party may, by notice in writing to the other, withdraw from the terms of this MOU and shall be released from all obligations under this MOU ab initio.

4. ACKNOWLEDGEMENTS AND AGREEMENTS

4.1. NRAIT:

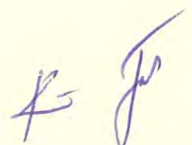
- (a) agrees that the amount of the Ex Gratia Payment is a fair and reasonable approximation of what it as legal owner may have received had it received an ex gratia payment in respect of Past Rental Losses for the Whakarewa Lands as part of the settlement of the Schedule 5 MRLAA commitment; and
- (b) acknowledges that the Ex Gratia Payment is accepted in resolution of the issues associated with the Past Rental Losses and NRAIT's omission from the 2002 OMA Settlement that are the subject matter of this MOU, and accordingly agrees that it will not bring any future claims against the Crown, before the Waitangi Tribunal or otherwise, in respect of the Past Rental Loss issues.

5. WARRANTIES

- 5.1. NRAIT acknowledges and warrants that it has full power and authority to enter into this MOU and all action required to be taken to enable it to validly enter into and execute this MOU has been taken.
- 5.2. The Crown acknowledges and warrants to NRAIT that it has full power to enter into this MOU.

6. GENERAL

- 6.1. NRAIT acknowledge that the information contained in this MOU is official information in terms of the Official Information Act 1982 and, in line with the policy of the Act, such information may be released to the public unless there is good reason, in terms of that Act to withhold the information. However, the Crown agrees to use its reasonable endeavours to inform NRAIT prior to any such release and acknowledges NRAIT's concern in respect of its possible commercial negotiations under clause 6.2 (a-c).



- 6.2. NRAIT acknowledges that, in accordance with the New Zealand Government's policy of improved transparency of information on government agreements and understandings, the Crown may disclose:
- (a) the existence of this MOU;
 - (b) the terms of this MOU; and
 - (c) the value of any amount paid by the Crown to NRAIT under this MOU.
- 6.3. Subject to clauses 6.1 and 6.2 (a-c) unless the parties mutually agree, no public statement or publicity of any kind will be released by either party in relation to this MOU or the subject matter contained in it, except that the Crown agrees that the fact of and contents of this MOU may be shared by NRAIT with its advisors and shareholders for the purpose of the meeting referred to in Clause 3.1(a). The Crown, however, may need to disclose the fact of the MOU in Tribunal hearings or Court proceedings.
- 6.4. The Parties will designate representatives as their respective points of contact for the administration of this MOU. The first such representatives are the Honourable Pita Sharples for the Crown and John Charleton for NRAIT. Either party may vary the identity or contact details of that party's representative by giving the other written notice. The parties acknowledge that this MOU and the resolution referred to in Clause 4.1(b) apply only to the Past Rental Losses. The Crown acknowledges that notwithstanding this MOU, NRAIT may if it so chooses continue to raise with the Crown the following matters:
- (a) the question of NRAIT's omission from the provisions of the MRLAA and/or its inability to receive payment under Sections 13, 23, 25 and 28 of the MRLAA;
 - (b) rental losses that may have been suffered by NRAIT and its beneficiaries for the period after 1 January 1998; and
 - (c) statutory reform of the terms and conditions of the perpetual leases of the Whakarewa Land.
- 6.5. The parties acknowledge that by entering into this MOU the Crown is not thereby accepting or conceding that it has any legal duty or liability to NRAIT in respect of any of the matters referred to in paragraph 6.4 (a-c) inclusive. In



particular the Crown does not concede any duty or liability for the period after 1 January 1998.

6.6. This MOU shall be governed by and construed in accordance with New Zealand law.

7. TAX

7.1 All payments made or to be made by the Crown under this MoU are ex-gratia payments in the nature of a settlement and are made exclusive of all duties, levies or taxes, including income tax, gift duty or GST. Subject to the prior payment by the Crown of any amount due to NRAIT in accordance with the undertaking following and Clauses 7.2 & 7.3 (a-c) below, NRAIT agrees that it will pay the Commissioner of Inland Revenue any taxes or duty which might be payable on such monies. If NRAIT is to make any payment of duties, levies or taxes in relation to the Ex Gratia Payment (including any penalties or interest), the Crown will pay to NRAIT an equal amount of any such duties, levies or taxes (including any penalties or interest, provided any such penalties or interest are not incurred as a result of NRAIT not informing the Crown of any assessment by the Commissioner of the Inland Revenue in a timely manner).

7.2 If GST is payable by NRAIT on the Ex Gratia Payment, the Crown will pay NRAIT an amount equal to that GST upon receipt by the Crown of a valid tax invoice.

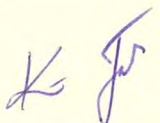
7.3 If this Ex Gratia Payment is determined to be taxable or dutiable (other than GST) in the hands of NRAIT so that NRAIT is assessed for taxes or duty (if any, other than GST) or any penalties or interest on it, the amount of it will be increased appropriately so that NRAIT receives and retains a net amount equal to the \$5,000,000 (five million dollars) which the Crown intended it to receive and retain. However:

(a) the Crown will be liable to make any payment under this clause 7.3 no earlier than 5 business days before NRAIT is liable to make payment of the tax or duty (or any penalties or interest) and, if the Crown elects, the Crown may pay such amount directly to the Commissioner of Inland Revenue;

(b) NRAIT agrees upon the written request of the Crown to take reasonable steps with the Commissioner of Inland Revenue to ensure that any such tax or duty is assessed at the minimum permissible level. If the Crown should

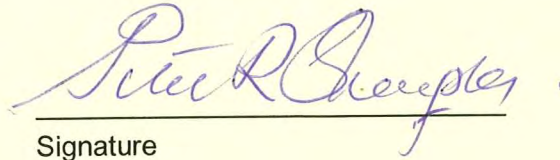
request NRAIT to appeal any such assessment, the Crown will pay any costs incurred by NRAIT associated with such appeal; and

- (c) NRAIT will promptly repay to the Crown any amount paid under this clause 7.3 if the tax or duty amount is subsequently refunded or credited by the Commissioner of Inland Revenue to NRAIT.

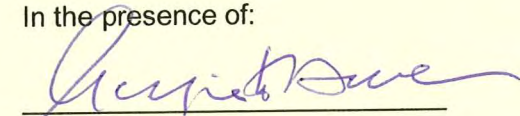


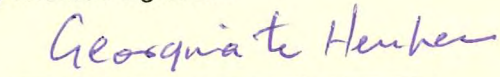
SIGNED BY THE PARTIES:

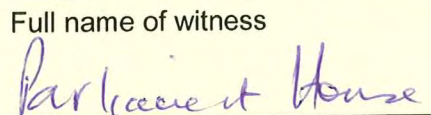
SIGNED for and on behalf of
HER MAJESTY THE QUEEN
IN RIGHT OF NEW ZEALAND
by the Honourable **PITA SHARPLES,**
MINISTER OF MĀORI AFFAIRS

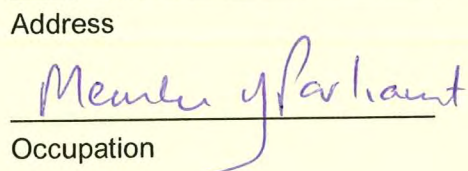

Signature

In the presence of:

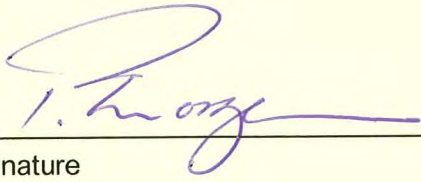

Witness signature


Full name of witness



Address


Occupation

SIGNED for and on behalf of
NRAIT
by **PAUL MORGAN**


Signature

In the presence of:

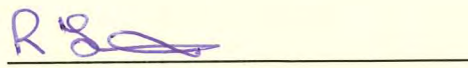

Witness signature

RUSSELL JAMES THOMAS
Full name of witness

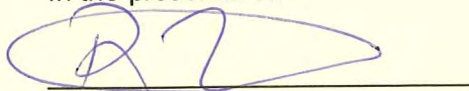
62 FERGUSON ST NW
Address

Twi Advisor
Occupation

SIGNED for and on behalf of
NRAIT
by **RUSSELL BARNEY THOMAS**


Signature

In the presence of:

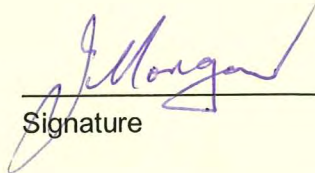

Witness signature

Lopata Taylor
Full name of witness

375 Whakarewa St, Motueka
Address

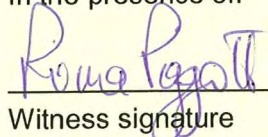
General Manager
Occupation

SIGNED for and on behalf of
NRAIT
by **JOHN MORGAN**

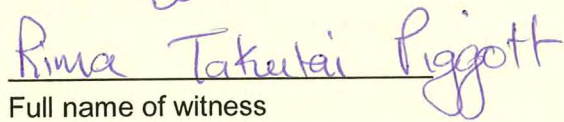


Signature

In the presence of:



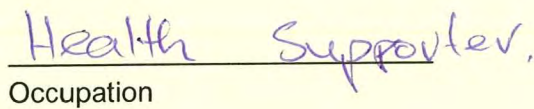
Witness signature



Full name of witness

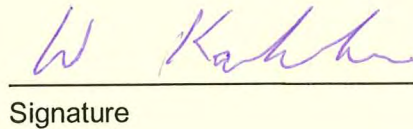


Address



Occupation

SIGNED for and on behalf of
NRAIT
by **WARREN KAHUKURA**

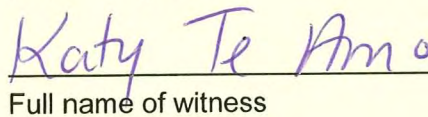


Signature

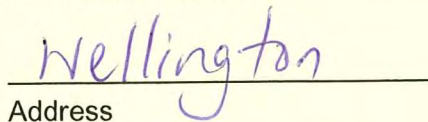
In the presence of:



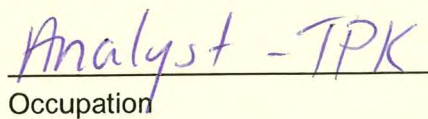
Witness signature



Full name of witness



Address



Occupation

SIGNED for and on behalf of
NRAIT
by **RIMA PIGGOT**

Rima Piggot
Signature

In the presence of:

W Kahukura
Witness signature

Warren Kahukura
Full name of witness

P.O Box 263 Motueka
Address

Kaitiaki
Occupation

SIGNED for and on behalf of
NRAIT
by **ROPATA TAYLOR**

Ropata Taylor
Signature

In the presence of:

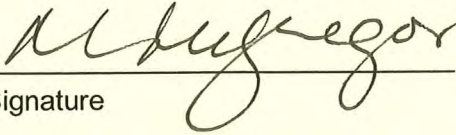
Jellong
Witness signature

Sam Te Koro Okawa Morgan
Full name of witness

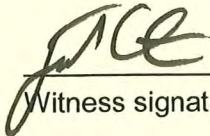
4 Bennett St Motueka
Address

Fisheries Manager
Occupation

SIGNED for and on behalf of
NRAIT
by **MELANIE HINEKOHU MCGREGOR**


Signature

In the presence of:

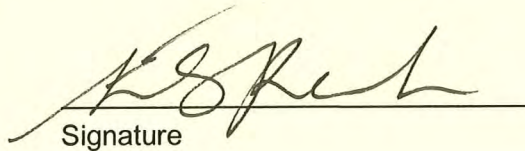

Witness signature

JOHN WILLIAM CHARLTON
Full name of witness

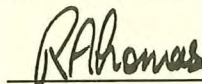
26 LAUREL HEIGHTS NELSON
Address

CHARTERED ACCOUNTANT
Occupation

SIGNED for and on behalf of
NRAIT
by **EMMA PARK**


Signature

In the presence of:


Witness signature

Renee Ailsa Thomas
Full name of witness

1/7 Newall Avenue Nelson
Address

Accountant
Occupation