

NGĀTI TUWHARETOA (BAY OF PLENTY)

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT OF THE
HISTORICAL CLAIMS OF NGĀTI
TUWHARETOA (BAY OF PLENTY):
SCHEDULES

6 June 2003

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THESE SCHEDULES form part of, and are to be read with, the Deed of Settlement of the Historical Claims of Ngāti Tuwharetoa (Bay of Plenty) entered into between Ngāti Tuwharetoa (Bay of Plenty) and the Crown on 6 June 2003.

SIGNED for and on behalf of NGĀTI TUWHARETOA (BAY OF PLENTY) by the Mandated Signatories

Rae Beverley Adlam
Rae Beverley Adlam

M. Tokini
M. Tokini

The Reverend Canon Robert David Schuster
The Reverend Canon Robert David Schuster

Makarena Te Rangi
Makarena Te Rangi

Tai Tukiwaho Te Riini
Tai Tukiwaho Te Riini

G. K. [Signature]

Ani Te Waikaretu Wickliffe
Ani Te Waikaretu Wickliffe

J. H. [Signature]
J. H. [Signature]

In the presence of:

W. Dunton
W. Dunton
J. P. L. Hudson
J. P. L. Hudson

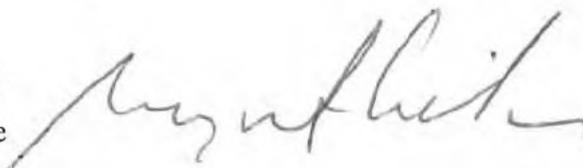
M. Tokini
Name: M. Tokini
Occupation: M.P.
Address: Tamuanga

L. H. [Signature]
L. H. [Signature]
S. H. [Signature]
S. H. [Signature]

Mereteia Raerino Cresswell
Mereteia Raerino Cresswell

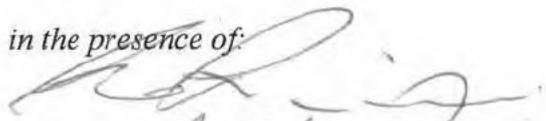
Julie Hurianga Rae Rino Clarke
Julie Hurianga Rae Rino Clarke

SIGNED for and on behalf of **HER
MAJESTY THE QUEEN** in Right of
New Zealand by the Minister in Charge
of Treaty of Waitangi Negotiations



Honourable Margaret Wilson

in the presence of:



Name:

Mita Kereini

Occupation:

M.P.

Address:

Tawanga

SCHEDULE 2.1
DEED OF COVENANT
(Clause 2.1.1)

Date:

PARTIES

- (1) **THE** *[insert name]* *(the Governance Entity)*
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand *(the Crown)*

BACKGROUND

- A Under a Deed of Settlement dated 6 June 2003 between Ngāti Tuwharetoa (Bay of Plenty) and the Crown, the Crown agreed to provide certain redress to the Governance Entity which was to be established by Ngāti Tuwharetoa, subject to certain terms and conditions specified in the Deed of Settlement.
- B The Governance Entity was established on [date] as the entity to be established by Ngāti Tuwharetoa under *clause 2.1.1* of the Deed of Settlement and to receive the redress to be provided by the Crown under the Deed of Settlement.
- C As required by *clause 2.1.1* of the Deed of Settlement, the Governance Entity established by Ngāti Tuwharetoa covenants with the Crown as set out in this Deed.

NOW THE GOVERNANCE ENTITY AGREES with the Crown as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context otherwise requires, *Deed of Settlement* means the deed referred to in Background A.
- 1.2 Terms defined in the Deed of Settlement have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in *clause 11.2* of the Deed of Settlement apply in the interpretation of this Deed.

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2 GOVERNANCE ENTITY'S COVENANT

- 2.1 The Governance Entity confirms that it has been ratified by Ngāti Tuwharetoa as an appropriate body to which the Crown will provide the redress under the Deed of Settlement and to administer the redress for the benefit of Ngāti Tuwharetoa.
- 2.2 The Governance Entity covenants with the Crown that from the date of this deed the Governance Entity:
- (a) is a party to the Deed of Settlement as if it has been named as a party to the Deed of Settlement and had executed it;
 - (b) will observe and perform all the obligations of the Governance Entity, under the Deed of Settlement; and
 - (c) is bound by the terms of the Deed of Settlement.
- 2.3 The Governance Entity hereby ratifies and confirms all acknowledgements and agreements made in the Deed of Settlement and all elections made by, all waivers given by, and all other actions taken in relation to the Deed of Settlement, by Ngāti Tuwharetoa and by the agent or agents appointed on behalf of Ngāti Tuwharetoa under *clause 2.3.1* of the Deed of Settlement and agrees to be bound by them.

3 NOTICES

Any Notice to the Governance Entity may be given in the same manner as is specified in *clause 10.6* in the Deed of Settlement. The Governance Entity's address for notice is: *[Details to be inserted]*

EXECUTED as a deed on the date first written above.

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SCHEDULE 4.1
DISCLOSURE INFORMATION
(Clause 4.12)

Date of Letter	Disclosure Provided
6 August 2002	Disclosure information for Otitapu Lookout, Te Kauahiwi o Tirotirowhetu, Whakapaukorero, Te Wahieroa, Te Atua Reretahi
26 August 2002	Updated disclosure information for Te Atua Reretahi and Otitapu Lookout
16 October 2002	Additional disclosure information for Te Kauahiwi o Tirotirowhetu
30 May 2003	Updated disclosure information for Otitapu Lookout, Te Atua Reretahi, Whakapaukorero, Te Wahieroa, Te Kauahiwi o Tirotirowhetu

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SCHEDULE 4.2
TE ATUA RERETAHI CONSERVATION COVENANT
(Clause 4.2.4)

(Section 77, Reserves Act 1977)

TE ATUA RERETAHI CONSERVATION COVENANT

BETWEEN **NGĀTI TUWHARETOA GOVERNANCE ENTITY** [insert description of the Ngāti Tuwharetoa Governance Entity] (“the Governance Entity”)

AND **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** by and through the Minister of Conservation (“the Minister”)

BACKGROUND

- A. Ngāti Tuwharetoa (Bay of Plenty) and the Crown are parties to a Deed of Settlement dated 6 June 2003.
- B. Under that Deed, the Crown agreed to transfer to the Governance Entity the Land (as defined in *clause 1.1* of this Covenant), and the Governance Entity agreed to enter into a Conservation Covenant with the Minister, to provide for the continued preservation and protection of the conservation values associated with the Land that both parties accept are present.
- C. Under section/s [] of the [*the name of the Settlement Legislation*] (*the “Settlement Legislation”*), this Covenant is deemed to have been entered into by the Minister under section 77 of the Reserves Act 1977, and therefore binds future owners of the Land.

NOW THEREFORE the parties, in accordance with section 77 of the Reserves Act 1977, **MUTUALLY AGREE** as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Act” means the Reserves Act 1977;

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“Conservation Values” means the cultural and archaeological values, and the values associated with the indigenous flora and fauna, ecological association and the natural environment in relation to the Land;

“Covenant” means this Conservation Covenant duly executed by the parties;

“Crown” means Her Majesty the Queen in right of New Zealand;

“Deed” means the Deed of Settlement referred to in Background A of this Covenant;

“Governance Entity” means [insert name of Ngāti Tuwharetoa Governance Entity and description of Ngāti Tuwharetoa Governance Entity’s legal empowerment/status]; together with its successors, assigns, servants and agents;

“Land” means [insert legal description once survey is completed. Currently described as all that land situated in South Auckland Land District, Whakatane District comprising 10.0 hectares, approximately, being Part Allotment 889 Matata Parish . Part New Zealand Gazette 1920 page 2107. Subject to survey;]

“Minister” means the Minister of Conservation and includes any officer or duly authorised agent of the Minister.

1.2 In the interpretation of this Covenant, unless the context otherwise requires:

- (a) Headings appear as a matter of convenience and are not to affect the interpretation of this Covenant;
- (b) Singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) A reference to an enactment or any Regulations is a reference to that enactment or those Regulations as amended or to any enactment or Regulation substituted for that enactment or those Regulations;
- (d) A reference to a party to this Covenant or any other document of this Covenant includes the party’s successors, heirs and assigns in perpetuity, and in the case of the Governance Entity means its successor in law; and
- (e) A reference to the Governance Entity includes any receiver, liquidator, statutory manager or assignee in bankruptcy of the Governance Entity or any lessee or mortgagee in possession of the Land or any part of it.

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2 PROTECTION OF CONSERVATION VALUES

- 2.1 In order to protect the Conservation Values, the Governance Entity agrees with the Minister that the Governance Entity will not carry out, or allow to be carried out, without the prior consent of the Minister any of the following:
- (a) Felling, removal or damage of native plants, shrubs or trees;
 - (b) Burning, chemical spraying, top-dressing or the sowing of exotic seed;
 - (c) Significant cultivation, earthworks or other soil disturbance;
 - (d) Planting of plants, shrubs or trees which are not indigenous; or
 - (e) Grazing of livestock.
- 2.2 In order to protect the Conservation Values, the Governance Entity further agrees with the Minister that the Governance Entity will, as far as reasonably practicable, keep the Land free from:
- (a) Gorse, broom, old man's beard, nodding thistle and other plant pests;
 - (b) Rabbits, possums, goats and other animal pests; and
 - (c) Rubbish or other unsightly or offensive material.
- 2.3 The Governance Entity agrees that it will not undertake any activity associated with the Land which would prejudice the administration and/or Conservation Values associated with the Rotoma Forest Conservation Area adjacent to and/or surrounding the Land.

3 REGISTRATION OF COVENANT

The parties acknowledge that this Covenant will be registered against the certificate or certificates of title or computer freehold register or registers to the Land in accordance with the provisions of the Deed. The provisions of section 77 and sections 93-105 of the Reserves Act 1977 will apply accordingly.

4 ACCESS FOR MINISTER

- 4.1 The Governance Entity grants to the Minister a right of access onto and through the Land for the purpose of integrating the management of the Rotoma Forest

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Conservation Area with that of the Land so that the ecological integrity of the combined area can be maintained. This may include:

- (a) Examining, monitoring and recording the condition of the Land and Conservation Values;
- (b) Carrying out work for the protection, preservation and/or enhancement of the Conservation Values, including planting of indigenous species where appropriate; or
- (c) Erecting, at the cost of the Minister, any fencing necessary for the protection, preservation and/or enhancement of the Conservation Values.

4.2 Before exercising the right provided in *clause 4.1*, the Minister shall consult with the Governance Entity and shall take all reasonable steps to minimise disruption to the Governance Entity's kaitiakitanga or any third party rights granted by the Governance Entity in respect of the Land. Nothing in this clause requires the Minister to carry out any such work.

5 DURATION OF COVENANT

This Covenant shall bind the parties in perpetuity to the rights and obligations contained within it.

6 NOTICES

6.1 Any notice required to be given to the Governance Entity, under this Covenant, will be sufficiently given if in writing and:

- (a) Served as provided in section 152 of the Property Law Act 1952; or
- (b) Sent by post or delivered to the registered office of the Governance Entity or the Governance Entity's nominated solicitor.

6.2 Any consent, authorisation, approval or notice required to be given by the Minister shall be sufficiently given if signed by the Bay of Plenty Conservator, Department of Conservation, Rotorua. Any notice required to be given to the Minister, will be sufficiently given if made in writing and sent by post or delivered to the office for the time being of the Bay of Plenty Conservator, Department of Conservation, Rotorua.

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6.3 The Governance Entity must on execution of this Covenant, advise the Minister of the details of its registered office and must also advise the Minister immediately of any change of registered office.

7 DISPUTE RESOLUTION

7.1 Any dispute which arises between the Governance Entity and the Minister in any way relating to the interpretation, terms, obligations and/or breach of this Covenant, may be resolved by referring the dispute to an agreed third party for decision or by arbitration under the provisions of the Arbitration Act 1996. The parties further agree that the outcome of arbitration under the Arbitration Act 1996 shall be binding on the parties.

IN WITNESS WHEREOF this Covenant has been executed this _____ day of 200[]

[Insert appropriate attestation for the Governance Entity.]

SIGNED by [_____])
the Minister of Conservation)
on behalf of **HER MAJESTY THE QUEEN**)
in Right of New Zealand)
in the presence of:)

Witness: _____

Occupation: _____

Address: _____

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SCHEDULE 4.3
OTITAPU LOOKOUT PROTECTED PRIVATE LAND AGREEMENT
(Clause 4.4.4)

(Section 76, Reserves Act 1977)

OTITAPU LOOKOUT

THIS DEED made the day of 200[]

BETWEEN **NGĀTI TUWHARETOA GOVERNANCE ENTITY** [insert description of the Ngāti Tuwharetoa Governance Entity] (“the Governance Entity”)

AND **THE MINISTER OF CONSERVATION** (“the Minister”)

BACKGROUND

- A. The Crown was registered as proprietor of the Land which formed part of the Lake Rotoma Scenic Reserve.
- B. Ngāti Tuwharetoa (Bay of Plenty) and the Crown are parties to a Deed of Settlement dated 6 June 2003 (the “Deed of Settlement”).
- C. Under the Deed of Settlement, the Crown agreed to transfer to the Governance Entity the Land, and the Governance Entity agreed to enter into this Protected Private Land Agreement.

NOW THEREFORE the parties, in accordance with section 76 of the Reserves Act 1977, **MUTUALLY AGREE** as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed unless the context otherwise requires:

“Act” means the Reserves Act 1977;

“Crown” means Her Majesty the Queen in right of New Zealand;

“Deed” means this Protected Private Land Agreement duly executed by the parties; and

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“Governance Entity” means [insert name of Ngāti Tuwharetoa Governance Entity and description of Ngāti Tuwharetoa Governance Entity’s legal empowerment/status]; together with its successors, assigns, servants and agents;

“Land” means [insert legal description once survey is completed. Currently described as all that land situated in South Auckland Land District, Whakatane District, comprising 6.0 hectares, approximately, being Part Section 11 Block XI Rotoma Survey District . Part New Zealand Gazette 1939 page 311. Subject to survey];

“Minister” means the Minister of Conservation and includes any officer or duly authorised agent of the Minister.

1.2 In the interpretation of this Deed, unless the context otherwise requires:

- (a) Headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) Singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) A reference to an enactment or any Regulations is a reference to that enactment or those Regulations as amended or to any enactment or Regulation substituted for that enactment or those Regulations;
- (d) A reference to a party to this Deed or any other document of this Deed includes the party’s successors, heirs and assigns in perpetuity; and in the case of the Governance Entity means its successor in law; and
- (e) A reference to the Governance Entity includes any receiver, liquidator, statutory manager or assignee in bankruptcy of the Governance Entity or any lessee or mortgagee in possession of the Land or any part of it.

2 PURPOSES OF PROTECTION

The Governance Entity and the Minister agree that the Land has the following conservation values, which are to be protected:

- (a) cultural, traditional and historic values, including wāhi tapu;
- (b) ecological associations and natural environment;
- (c) indigenous flora and fauna; and

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- (d) scenic and landscape qualities.

3 RESTRICTION ON USE OF THE LAND

The Governance Entity agrees, to achieve the purposes of protection set out in *clause 2.1* of this Deed, that the Governance Entity will not, without the consent of the Minister:

- (a) remove or damage any indigenous vegetation, disturb the soil or undertake earthworks (unless for the purpose of retrieving or reburying koiwi (human remains));
- (b) construct any tracks on the Land;
- (c) erect any buildings or structures on the Land; or
- (d) carry out any planting of exotic species on the Land.

4 MANAGEMENT OBLIGATIONS

4.1 The Governance Entity agrees that it will not undertake any activity associated with the Land which would prejudice the administration and/or conservation values associated with the Lake Rotoma Scenic Reserve.

4.2 The Governance Entity grants to the Minister a right of access onto and through the Land for the purpose of integrating the management of the Lake Rotoma Scenic Reserve with that of the Land so that the ecological integrity of the combined area can be maintained. This may include:

- (a) examining, monitoring and recording the condition of the Land and conservation values;
- (b) carrying out work for the protection, preservation and/or enhancement of the conservation values, including planting of indigenous species where appropriate;
- (c) erecting at the cost of the Minister, any fencing necessary for the protection, preservation and/or enhancement of the conservation values; or
- (d) carrying out weed control and pest destruction.

4.3 Before exercising the right provided in *clause 4.2*, the Minister shall consult with the Governance Entity and have particular regard to its views, and shall take all

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reasonable steps to minimise disruption to the Governance Entity's kaitiakitanga or any third party rights granted by the Governance Entity in respect of the Land.

5 ENFORCEMENT AGAINST THIRD PARTIES

The Governance Entity agrees that subject to the terms of this Deed, the provisions of section 93 to 105 of the Act shall apply to the Land as if it were a scenic reserve.

6 MUTUAL OBLIGATIONS

- 6.1 Each of the parties hereby undertakes, when called upon, to do forthwith all such acts, matters and things and to endeavour promptly to obtain all necessary consents and to execute all such documents necessary in relation to the obligations contained in this Deed.
- 6.2 Where any consent, permission or other authorisation is required by statute or otherwise to carry out any obligation in this Deed, the party responsible for that obligation shall obtain at its own expense such consent, permission or other authorisation. In the case of consent, permission or other authorisation as between the parties, such consent, permission or other authorisation may not be unreasonably withheld.

7 NOTICES

- 7.1 Any notice required to be given to the Governance Entity under this Deed will be sufficiently given if made in writing and:
- (a) served as provided in section 152 of the Property Law Act 1952; or
 - (b) sent by post or delivered to the registered office of the Governance Entity or the Governance Entity's nominated solicitor.
- 7.2 Any consent, authorisation, approval or notice required to be given by the Minister shall be sufficiently given if it is signed by the Bay of Plenty Conservator, Department of Conservation, Rotorua. Any notice required to be given to the Minister will be sufficiently given if made in writing and sent by post or delivered to the office for the time being of the Bay of Plenty Conservator, Department of Conservation, Rotorua.
- 7.3 The Governance Entity must on execution of this Deed, advise the Minister of the details of its registered office and must also advise the Minister immediately of any change of registered office.

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8 DISPUTE RESOLUTION

- 8.1 Any dispute which arises between the Governance Entity and the Minister in any way relating to the interpretation, terms, obligations and/or breach of this Deed, may be resolved by referring the dispute to expert determination.
- 8.2 The expert shall be a person agreed on by the parties, but if the parties cannot agree within 14 days of the decision to go to expert determination, then the expert shall be appointed by the President for the time being of the Wellington District Law Society.
- 8.3 The parties further agree that the decision of the expert is final and binding on the parties.

9 TERMINATION RIGHTS

- 9.1 This Deed may be terminated only by mutual agreement between the parties.
- 9.2 This Deed may be varied by mutual agreement between the parties.
- 9.3 In the case of termination of this Deed, all rights and obligations shall cease; but termination of this Deed shall not prejudice either Party's rights in law for breach by either Party of the obligations contained herein.

10 MISCELLANEOUS MATTERS

- 10.1 The Minister shall not assign or otherwise dispose of the rights and obligations contained in this Deed.
- 10.2 Nothing in this Deed in any way diminishes or affects the rights of the Governance Entity to exercise rights as landowner under the Trespass Act 1908, any other statute or generally at law or otherwise in relation to the Land.
- 10.3 Subject to *clause 1.2(e)* the Parties acknowledge the agreements contained in this Deed are between the Governance Entity and the Minister and are not intended to be a promise conferring benefits on any third party which support or sustain any right of enforcement by any third party under the terms of section 4 of the Contracts (Privity) Act 1982.

IN WITNESS WHEREOF these presents have been executed this day of
200[].

[Insert appropriate attestation for the Governance Entity.]

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SCHEDULE 5.1
FORM OF DEPARTMENT OF CONSERVATION PROTOCOL
(Clause 5.1.2)

A PROTOCOL issued by the CROWN through the MINISTER OF CONSERVATION regarding DEPARTMENT OF CONSERVATION / TE PAPA ATAWHAI INTERACTION with NGĀTI TUWHARETOA ON SPECIFIED ISSUES

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 6 June 2003 between Ngāti Tuwharetoa (Bay of Plenty) and the Crown (the "*Deed of Settlement*"), the Crown, through the Minister of Conservation (the "*Minister*") agreed to issue a Protocol (the "*Ngāti Tuwharetoa DOC Protocol*") setting out how the Department of Conservation (the "*Department*") will interact with the Governance Entity on the matters specified in the Ngāti Tuwharetoa DOC Protocol.
- 1.2 Both the Department and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Ngāti Tuwharetoa DOC Protocol that achieves over time the conservation policies, actions and outcomes sought by both the Governance Entity and the Department, as set out in this Protocol.
- 1.3 Ngāti Tuwharetoa accept a responsibility to preserve, protect, and manage natural and historic resources through its tino rangatiratanga and kaitiakitanga.
- 1.4 The purpose of the Conservation Act 1987 (the "*Act*") is to manage natural and historic resources under the Act and the statutes listed in the First Schedule to the Act. The Minister and Director-General are required to exercise particular functions, powers and duties under that legislation.

2 PURPOSE OF THE PROTOCOL

- 2.1 The purpose of this Protocol is to assist the Department and the Governance Entity to exercise their respective responsibilities with the utmost co-operation to achieve over time the conservation policies, actions and outcomes sought by both.

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- 2.2 This Protocol sets out a framework that enables the Department and Ngāti Tuwharetoa to establish a healthy and constructive working relationship that is consistent with section 4 of the Act. It provides for Ngāti Tuwharetoa to have meaningful input into certain decision-making processes and management of conservation lands within the Ngāti Tuwharetoa DOC Protocol Area.

3 PROTOCOL AREA

This Protocol applies across the Ngāti Tuwharetoa DOC Protocol Area which means the area identified in the map included in *Attachment A* of this Protocol together with the adjacent waters.

4 TERMS OF ISSUE

This Protocol is issued pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) and *clause 5.1.1(a)* of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in *Attachment B* of the Protocol.

5 IMPLEMENTATION AND COMMUNICATION

- 5.1 The Department will seek to establish and maintain communication with Ngāti Tuwharetoa on a continuing basis by:
- (a) Maintaining information on the Governance Entity's office holders, and their addresses and contact details;
 - (b) Providing a primary departmental contact for the Governance Entity being the Whakatane Field Centre Supervisor (or equivalent) who will act as a liaison person with other departmental staff;
 - (c) Providing reasonable opportunities for the Governance Entity to meet with Department managers and staff;
 - (d) Holding alternate meetings at the area office and a Ngāti Tuwharetoa marae or other venue chosen by the Governance Entity to review implementation of this Protocol every six months, unless otherwise agreed. Ngāti Tuwharetoa may, when such meetings are held at a Ngāti Tuwharetoa marae or other venue chosen by the Governance Entity, arrange for an annual report back to the Ngāti Tuwharetoa people at such meetings; and

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- (e) Training relevant staff on the content of this Protocol and briefing Conservation Board members on the content of this Protocol.

5.2 Within the first year of this Protocol being issued, and on a continuing basis, the Department and the Governance Entity will discuss practical ways in which:

- (a) Ngāti Tuwharetoa can exercise *kaitiakitanga* over ancestral lands, natural and historic resources and other *taonga* managed by the Department;
- (b) The Department can manage *wāhi tapu*, and *taonga tapu* and other places of historic or cultural significance to Ngāti Tuwharetoa in a manner which respects Ngāti Tuwharetoa *tikanga* and values; and
- (c) Ngāti Tuwharetoa can actively participate in conservation management and activities.

6 INPUT INTO BUSINESS PLANNING AT THE AREA OFFICE LEVEL

6.1 This Protocol provides for ongoing implementation of a range of matters as well as special projects identified by the Governance Entity, and implementation will be over time. Some of the projects identified will need specific resourcing set aside through the Department's business planning process.

6.2 The process for the involvement of the Governance Entity in the Department's business planning process will be as follows:

- (a) The Department and the Governance Entity will on an annual basis identify projects that require specific resourcing;
- (b) The identified projects will be taken into the Department's business planning process at the conservancy and regional levels and considered along with other priorities;
- (c) The decision on whether any of these projects will be funded in any business year will be made by the Conservator and the Regional General Manager; and
- (d) If the Department decides to proceed with a specific project that has been identified under this *clause 6.2*, the Governance Entity (or designate) and the Department will meet again, if required, to finalise a work plan and timetable for implementation of the specified projects in that business year, in accordance with the resources which have been allocated in the business plan.

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7 CULTURAL MATERIALS

- 7.1 Cultural materials for the purpose of the Protocol are plants, plant materials, materials derived from animals, or birds for which the Department is responsible in the Ngāti Tuwharetoa DOC Protocol Area. Some of these materials are of importance to Ngāti Tuwharetoa in maintaining its culture, including medicinal practices and gathering of mahinga kai in accordance with Ngāti Tuwharetoa tikanga.
- 7.2 Current legislation means that generally some form of concession or permit is required for any gathering and possession of cultural materials.
- 7.3 The Department will:
- (a) Consider requests from the Governance Entity for access to and use of cultural materials when required for cultural purposes, in accordance with the relevant legislation;
 - (b) Consult the Governance Entity in circumstances where there are competing requests between Ngāti Tuwharetoa and non-Ngāti Tuwharetoa persons or entities for the use of cultural materials, for example for scientific research purposes, to see if the cultural and scientific or other needs can be reconciled before the Department makes a decision in respect of those requests;
 - (c) Agree, where appropriate and including considering interests of other iwi, for the Governance Entity to have access to cultural materials which become available as a result of departmental operations such as track maintenance or clearance, or culling of species, or where materials become available as a result of road kill; and
 - (d) Consult the Governance Entity on draft procedures for monitoring sustainable levels and methods of use of cultural materials.

8 HISTORIC RESOURCES / WĀHI TAPU

- 8.1 Ngāti Tuwharetoa consider their wāhi tapu, including urupā and other places of historic significance are taonga (priceless treasures). The Department will respect the great significance of these taonga by fulfilling the obligations contained in this section of this Protocol.

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- 8.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to Ngāti Tuwharetoa in association with them and having regard to Ngāti Tuwharetoa tikanga.
- 8.3 The Department accepts that non-disclosure of locations of places known to Ngāti Tuwharetoa may be an option that the Governance Entity chooses to take to preserve the wāhi tapu nature of places. There may be situations where the Governance Entity will ask the Department to treat information it provides on wāhi tapu sites in a confidential way. The Department will consult the Governance Entity on draft processes for dealing with information on wāhi tapu sites in a way that both recognises the management challenges that confidentiality can present and respects the views of Ngāti Tuwharetoa.
- 8.4 The responsibility for identifying and assessing Ngāti Tuwharetoa heritage values largely rests with Ngāti Tuwharetoa. To assist in this process, the Governance Entity will notify the Field Centre Supervisor in the first instance of any concerns with the Department's management of wāhi tapu areas and the Department will take reasonable steps to address the concerns.
- 8.5 The Department, at the area office level, will:
- (a) Manage sites of historic significance to Ngāti Tuwharetoa according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning, as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993;
 - (b) Ensure, as far as possible, when issuing concessions that give authority for other parties to carry out activities on land administered by the Department, that the terms of the concessions provide for the concessionaire to:
 - (i) Manage the land according to the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993; and
 - (ii) Consult the Governance Entity before the utilisation of information relating to Ngāti Tuwharetoa;
 - (c) Consult the Governance Entity on protection and conservation of wāhi tapu and other sites of significance to Ngāti Tuwharetoa;
 - (d) Inform the Governance Entity if koiwi are found; and

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- (e) When requested by the Governance Entity, discuss the recording and protecting of wāhi tapu and other places of cultural significance to Ngāti Tuwharetoa.

9 VISITOR AND PUBLIC INFORMATION

- 9.1 The Department has a role to share knowledge about natural and historic heritage with visitors, to satisfy their requirements for information, increase their enjoyment and understanding of this heritage, and develop an awareness of the need for its conservation.
- 9.2 In providing public information and interpretation services and facilities for visitors on the land it manages, the Department acknowledges the importance to Ngāti Tuwharetoa of its tikanga, spiritual and historic values.
- 9.3 The Department, at the area office level, will seek to encourage respect for Ngāti Tuwharetoa values by:
 - (a) Seeking to raise public awareness of positive conservation partnerships developed between the Governance Entity, the Department and other stakeholders, for example, by way of publications, presentations and seminars;
 - (b) Consulting the Governance Entity on how Ngāti Tuwharetoa's tikanga, spiritual and historic values are respected in the provision of visitor facilities, public information and Department publications;
 - (c) Seeking to ensure that accurate information is provided about Ngāti Tuwharetoa in the Department's publications by:
 - (i) Obtaining, so far as possible, the consent of the Governance Entity prior to disclosure of information obtained in confidence from Ngāti Tuwharetoa; and
 - (ii) Consulting the Governance Entity before the Department's utilisation of information relating to Ngāti Tuwharetoa in new panels, signs and visitor publications; and
 - (d) Seeking to encourage Ngāti Tuwharetoa's participation in the Department's volunteer and conservation events programmes by informing the Governance Entity of these programmes.

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10 CONSULTATION

Where the Department is required to consult under *clauses 7.3(b), 7.3(d), 8.3, 8.5(c), 9.3(b) and 9.3(c)(ii)* of this Protocol, the basic principles that will be followed by the Department in consulting the Governance Entity in each case are:

- (a) Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;
- (b) Providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) Ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
- (d) Ensuring that the Department will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

ISSUED on [insert Settlement Date]

SIGNED for and on behalf of **HER MAJESTY
THE QUEEN** in right of New Zealand by the
Minister of Conservation

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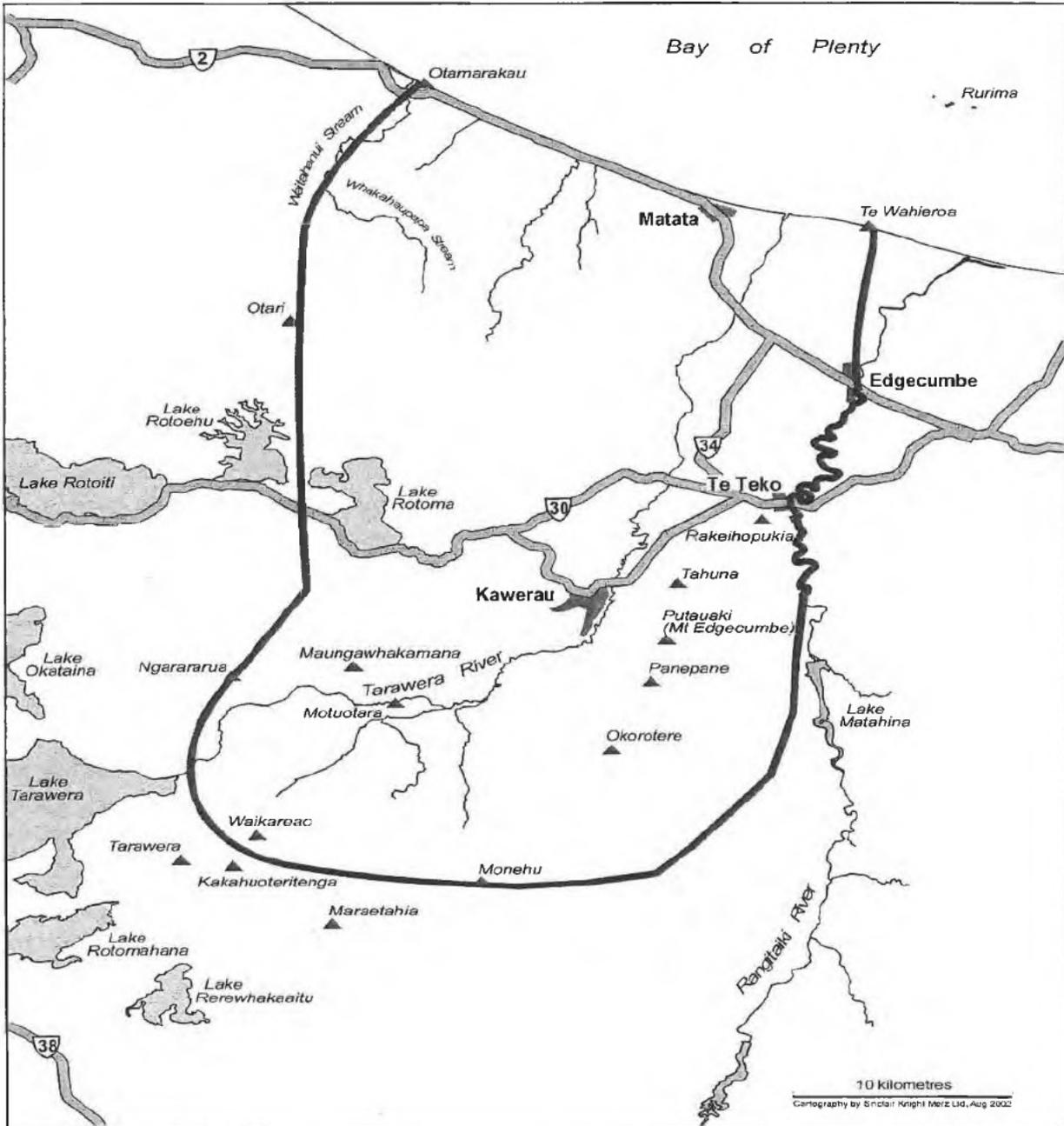
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ATTACHMENT A
NGĀTI TUWHARETOA DOC PROTOCOL AREA



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ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

Crown means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Governance Entity means [insert name and description once entity established in accordance with the Deed];

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

Ngāti Tuwharetoa has the meaning set out in *clause 1.2* of the Deed of Settlement;

Ngāti Tuwharetoa Antiquities Protocol means the Protocol issued under *clause 5.1.1(c)* of the Deed of Settlement;

Ngāti Tuwharetoa Fisheries Protocol means the Protocol issued under *clause 5.1.1(b)* of the Deed of Settlement;

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage (as the case may be), to the Governance Entity under the Settlement Legislation and *clause 5.1.1* of the Deed of Settlement and includes this Protocol.

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2 Authority to issue, amend or cancel Protocols

Section/s [] of the Settlement Legislation provides that:

- (a) Subject to clause 2(c), each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section/s [] of the Settlement Legislation at the initiative of either the Minister or the Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that the Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) the obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) the Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Ngāti Tuwharetoa DOC Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol; and
- (b) That such noting of the Ngāti Tuwharetoa DOC Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 17I of the Conservation Act 1987 or section 46 of the National Parks Act 1980;

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- (c) That the existence of the Ngāti Tuwharetoa Fisheries Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) That such noting of the Ngāti Tuwharetoa Fisheries Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as the Protocol remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section/s [] of the Settlement Legislation, the Governance Entity may not recover damages, or any form of monetary compensation (other than costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with a Protocol; and
- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol shall not constitute a breach of the Deed of Settlement.

7 Limitation of rights

- (a) The Settlement Legislation provides that the Ngāti Tuwharetoa DOC Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.
- (b) The Settlement Legislation provides that the Ngāti Tuwharetoa Fisheries Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to,

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any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

- (c) The Settlement Legislation provides that the Ngāti Tuwharetoa Antiquities Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

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SCHEDULE 5.2
FORM OF MINISTRY OF FISHERIES PROTOCOL
(Clause 5.1.3)

A PROTOCOL issued by the CROWN through the MINISTER OF FISHERIES regarding INTERACTION with NGĀTI TUWHARETOA on FISHERIES ISSUES

1 INTRODUCTION

1.1 Under the Deed of Settlement dated 6 June 2003 between Ngāti Tuwharetoa (Bay of Plenty) and the Crown (the "*Deed of Settlement*"), the Crown through the Minister of Fisheries (the "*Minister*") agreed to issue a Protocol (the "*Ngāti Tuwharetoa Fisheries Protocol*") setting out how the Ministry of Fisheries will interact with the Governance Entity on the following matters:

- (a) Recognition of the interests of Ngāti Tuwharetoa in all species of fish, aquatic life or seaweed that exist within the Ngāti Tuwharetoa Fisheries Protocol Area;
- (b) Development of sustainability measures, fisheries regulations and fisheries plans;
- (c) Management of customary non-commercial fisheries;
- (d) Research planning;
- (e) Consultation on the Ministry of Fisheries annual business plan;
- (f) Contracting for services; and
- (g) Employment of staff with non-commercial customary fisheries responsibilities.

1.2 For the purpose of the Ngāti Tuwharetoa Fisheries Protocol, the Governance Entity is the body representative of the whānau, hapū and iwi of Ngāti Tuwharetoa who have an interest in all species of fish, aquatic life and seaweed that exist within the Ngāti Tuwharetoa Fisheries Protocol Area.

1.3 The obligations of the Ministry of Fisheries/Te Tautiaki i ngā tini a Tangaroa (*the "Ministry"*) in respect of fisheries are to ensure ecological sustainability, to meet obligations under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

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and the principles of the Treaty of Waitangi, to meet international obligations, to enable efficient resource use, and to ensure the integrity of fisheries management systems.

- 1.4 The Ministry and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Ngāti Tuwharetoa Fisheries Protocol, as set out in this Protocol.
- 1.5 The Minister and the Chief Executive have certain functions, powers and duties in terms of the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. In exercising such functions, powers and duties the Minister and Chief Executive will provide the Governance Entity with the opportunity for input, consistent with the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, into the policy, planning and decision-making processes as set out in this Protocol.

2 PROTOCOL AREA

This Ngāti Tuwharetoa Fisheries Protocol applies across the Ngāti Tuwharetoa Fisheries Protocol Area which means the area identified in the map included as *Attachment A* of this Protocol together with the adjacent waters.

3 TERMS OF ISSUE

This Protocol is issued pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) and *clause 5.1.1(b)* of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in *Attachment B* of this Protocol.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will seek to establish and maintain effective and continuing communication with the Governance Entity by:
 - (a) Maintaining at national and regional levels information provided by the Governance Entity on the Governance Entity office holders, and their addresses and contact details; and
 - (b) Providing reasonable opportunities for representatives of the Governance Entity to meet with Ministry managers and staff.

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4.2 The Chief Executive agrees that the appropriate Ministry staff will:

- (a) Meet with the Governance Entity to review implementation of this Protocol at least once a year, unless otherwise agreed, at a Ngāti Tuwharetoa marae or any other venue chosen by the Governance Entity that is appropriate;
- (b) Train relevant staff on the content of the Protocol and provide ongoing training as required; and
- (c) Inform relevant fisheries stakeholders about this Protocol and the Settlement, and provide ongoing information as required.

5 SPECIES OF FISH, AQUATIC LIFE AND SEAWEED

Taonga Fish Species

5.1 The Crown, through the Minister and Chief Executive, recognises that Ngāti Tuwharetoa have a customary non-commercial interest in and a special relationship with all species of fish, aquatic life and seaweed found within the Ngāti Tuwharetoa Fisheries Protocol Area and managed by the Ministry under the Fisheries Legislation.

Tuna (Eel)

5.2 Without limiting *clause 5.1*, the Ministry recognises that Ngāti Tuwharetoa have a customary non-commercial interest in the tuna (eel) fishery within the Ngāti Tuwharetoa Fisheries Protocol Area and, in particular, that Ngāti Tuwharetoa have an interest in the possibility of the enhancement of the tuna (eel) fishery within the Ngāti Tuwharetoa Fisheries Protocol Area through the transfer of elvers.

5.3 The Ministry undertakes to meet with the Governance Entity within the first year of the Settlement Date at a mutually acceptable venue to:

- (a) Report to Ngāti Tuwharetoa on current management of the tuna (eel) fishery within the Ngāti Tuwharetoa Fisheries Protocol Area; and
- (b) Discuss any matters raised by Ngāti Tuwharetoa in respect of ongoing management of the tuna (eel) fishery within the Ngāti Tuwharetoa Fisheries Protocol Area, including the possibility of enhancing the tuna (eel) fishery in the Ngāti Tuwharetoa Fisheries Protocol Area through the transfer of elvers.

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6 DEVELOPMENT OF SUSTAINABILITY MEASURES, FISHERIES REGULATIONS AND FISHERIES PLANS

6.1 If the Ministry is exercising powers or functions, under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlements Act 1992, relating to the setting of sustainability measures, or the making of fisheries regulations, or the development/implementation of a fisheries plan, made under section 11A of the Fisheries Act 1996 (a "*Fisheries Plan*"), for any species of fish, aquatic life or seaweed within the Ngāti Tuwharetoa Fisheries Protocol Area, the Ministry must:

- (a) Provide the Governance Entity with all reasonably available background information in relation to the setting of sustainability measures, the making of fisheries regulations, and the development/implementation of Fisheries Plans;
- (b) Inform the Governance Entity, in writing, of any proposed changes in relation to:
 - (i) the setting of sustainability measures;
 - (ii) the making of fisheries regulations; and
 - (iii) the development/implementation of Fisheries Plans,as soon as reasonably practicable to enable Ngāti Tuwharetoa to respond in an informed way;
- (c) Provide the Governance Entity at least 30 working days from receipt of the written information described in *clause 6.1(b)* in which to respond, verbally or in writing, to any such proposed changes;
- (d) As far as reasonably practicable, meet the Governance Entity to discuss any proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, if requested by the Governance Entity to do so;
- (e) Incorporate the views of the Governance Entity into any advice given to the Minister or other stakeholders on proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, that affect Ngāti Tuwharetoa's interests and provide a copy of that advice to the Governance Entity; and

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- (f) Report back to the Governance Entity within 20 working days of any final decision in relation to sustainability measures, fisheries regulations, or Fisheries Plans.

7 MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

7.1 The Ministry undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include:

- (a) Discussions with the Ministry on the implementation of the regulations within the Ngāti Tuwharetoa Fisheries Protocol Area; and
- (b) Provision of existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Ngāti Tuwharetoa Fisheries Protocol Area.

8 RESEARCH PLANNING PROCESS

8.1 The Ministry will provide the Governance Entity with all reasonably available background information (including information on processes, timelines and Ministry objectives) so that the Governance Entity may have input into and participate in the research planning process of the Ministry.

8.2 The Ministry will consult the Governance Entity on all research proposals for fisheries within the Ngāti Tuwharetoa Fisheries Protocol Area.

8.3 The Ministry will provide the Governance Entity, within 30 working days of the execution of the Protocol, with information on the requirements for becoming an 'Approved Research Provider'. Should the requirements for becoming and remaining an 'Approved Research Provider' change over time, the Ministry will inform the Governance Entity about those changes.

9 CONSULTATION ON MINISTRY OF FISHERIES ANNUAL BUSINESS PLAN

9.1 The Ministry will each year consult the Governance Entity on the Ministry of Fisheries annual business plan.

9.2 The Ministry will provide the Governance Entity with the opportunity to put forward proposals for the provision of services that they deem necessary for the

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management of fisheries within the Ngāti Tuwharetoa Fisheries Protocol Area and wider surrounding area.

10 CONTRACTING FOR SERVICES

10.1 The Ministry will consult the Governance Entity in respect of any contract for the provision of services that may impact on the management of customary fisheries within the Ngāti Tuwharetoa Fisheries Protocol Area, if the Ministry is proposing to enter into such a contract.

11 EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

11.1 The Ministry will:

- (a) Directly notify the Governance Entity of Ministry of Fisheries vacancies which directly affect the customary fisheries interests of Ngāti Tuwharetoa within the Ngāti Tuwharetoa Fisheries Protocol Area (including the relevant job description); and
- (b) Consult the Governance Entity on the work programme for any such positions, once filled.

12 CONSULTATION

Where the Ministry is required to consult under *clauses 8.2, 9.1, 10 and 11.1(b)* of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

- (a) Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
- (b) Providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) Ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and

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- (d) Ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

ISSUED on [*insert Settlement Date*]

SIGNED for and on behalf of **HER MAJESTY
THE QUEEN** in right of New Zealand by the
Minister of Fisheries

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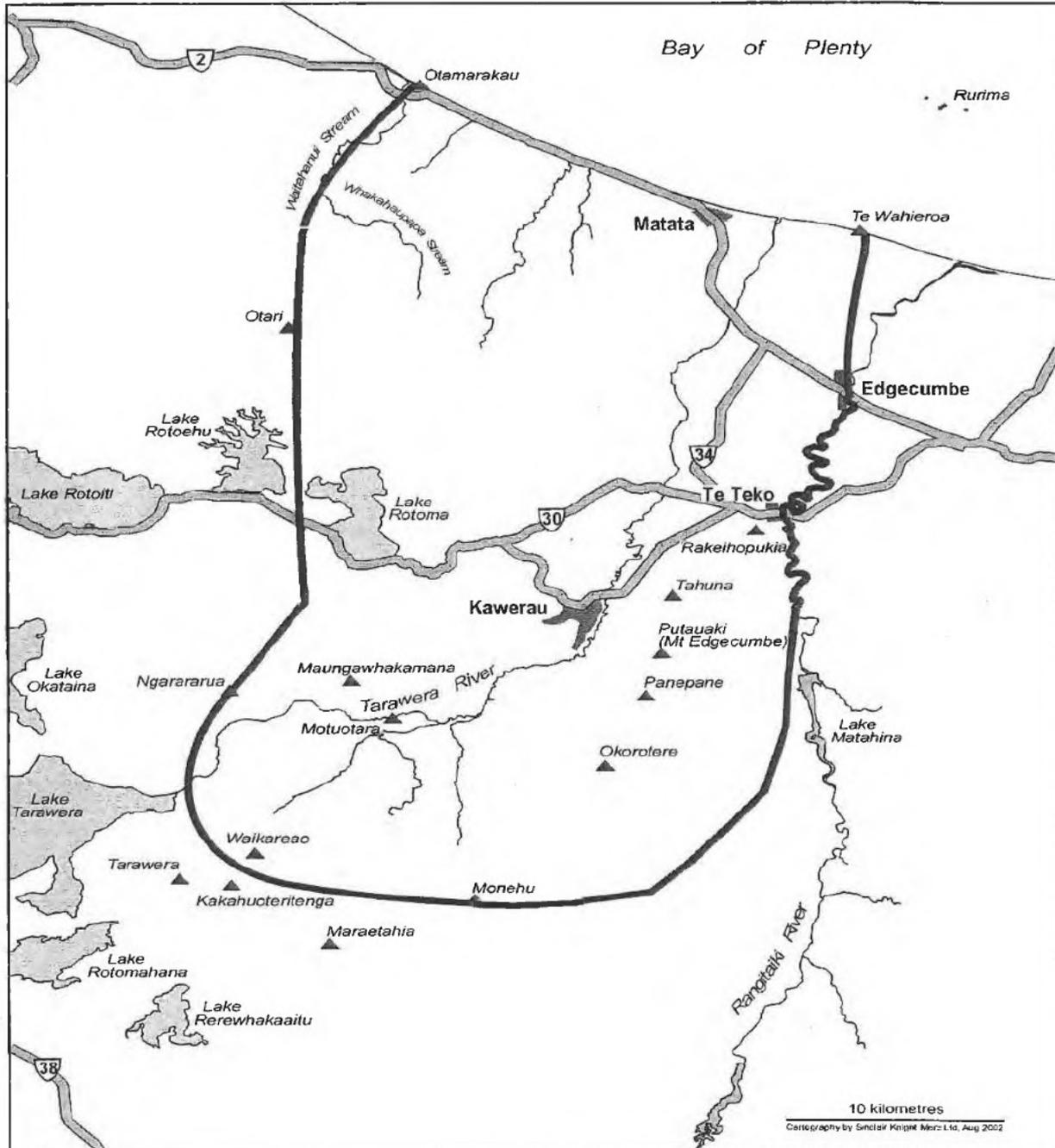
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ATTACHMENT A

NGĀTI TUWHARETOA FISHERIES PROTOCOL AREA



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ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

Crown means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

Ngāti Tuwharetoa has the meaning set out in *clause 1.2* of the Deed of Settlement;

Ngāti Tuwharetoa Antiquities Protocol means the Protocol issued under *clause 5.1.1(c)* of the Deed of Settlement;

Ngāti Tuwharetoa DOC Protocol means the Protocol issued under *clause 5.1.1(a)* of the Deed of Settlement;

Governance Entity means [*insert name and description once entity established in accordance with the Deed*];

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage (as the case may be), to the Governance Entity under the Settlement Legislation and *clause 5.1.1* of the Deed of Settlement and includes this Protocol.

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2 Authority to issue, amend or cancel Protocols

Section [] of the Settlement Legislation provides that:

- (a) Subject to clause 2(c), each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section/s [] of the Settlement Legislation at the initiative of either the Minister or the Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that the Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) the obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) the Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Ngāti Tuwharetoa DOC Protocol, once issued and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol; and
- (b) That such noting of the Ngāti Tuwharetoa DOC Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980;

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- (c) That the existence of the Ngāti Tuwharetoa Fisheries Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) That such noting of the Ngāti Tuwharetoa Fisheries Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as the Protocol remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section/s [] of the Settlement Legislation, the Governance Entity may not recover damages, or any form of monetary compensation (other than costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with a Protocol; and
- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol shall not constitute a breach of the Deed of Settlement.

7 Limitation of rights

- (a) The Settlement Legislation provides that the Ngāti Tuwharetoa DOC Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.
- (b) The Settlement Legislation provides that the Ngāti Tuwharetoa Fisheries Protocol will not have the effect of granting, creating or providing evidence

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of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

- (c) The Settlement Legislation provides that the Ngāti Tuwharetoa Antiquities Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

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SCHEDULE 5.3
FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL
(Clause 5.1.4)

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE
MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING
INTERACTION WITH NGĀTI TUWHARETOA ON ANTIQUITIES
ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 6 June 2003 between Ngāti Tuwharetoa (Bay of Plenty) and the Crown (the "*Deed of Settlement*"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "*Minister*") would issue a protocol (the "*Ngāti Tuwharetoa Antiquities Protocol*") setting out how the Minister and the Ministry for Culture and Heritage (the "*Ministry*") will interact with the Governance Entity on matters specified in the Ngāti Tuwharetoa Antiquities Protocol. These matters are:
- (a) newly found Artifacts;
 - (b) the export of Artifacts; and
 - (c) the Antiquities Act 1975 and any amendment or substitution thereof (the "*Act*").
- 1.2 The Minister and Chief Executive of the Ministry (the "*Chief Executive*"), or other such persons acting in those capacities, and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Ngāti Tuwharetoa Antiquities Protocol, as set out in this Protocol.
- 1.3 Ngāti Tuwharetoa has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngāti Tuwharetoa's status as tangata whenua in the Ngāti Tuwharetoa Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister

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and Chief Executive will provide the Governance Entity with the opportunity for input, in the policy and decision making processes as set out in this Protocol.

2 PROTOCOL AREA

- 2.1 This Protocol applies across the Ngāti Tuwharetoa Antiquities Protocol Area, which means the area identified in the map included in *Attachment A* together with the adjacent waters.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) and *clause 5.1.1(c)* of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in *Attachment B*.

4 DEFINITIONS

- 4.1 Other terms are defined in *Attachment C*.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Chief Executive will:
- (a) provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngāti Tuwharetoa origin, including items found within the Ngāti Tuwharetoa Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;
 - (b) notify the Governance Entity in writing of any registered Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area and of any registered Artifacts identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand from the date of signing of this Protocol;
 - (c) notify the Governance Entity of its right to apply to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or

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identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;

- (d) notify the Governance Entity of any application to the Māori Land Court from other persons for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
- (e) if no application is made to the Māori Land Court by the Governance Entity or any other persons:
 - (i) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
 - (ii) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where the Governance Entity has been consulted;
 - (iii) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Ngāti Tuwharetoa Antiquities Protocol Area or identified as being of Ngāti Tuwharetoa origin found anywhere else in New Zealand;
- (f) seek from the Governance Entity an expert opinion on any Artifacts of Ngāti Tuwharetoa origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and
- (g) notify the Governance Entity in writing of the decision made by the Chief Executive on an application to export an Artifact where the expert opinion was sought from the Governance Entity.

5.2 The Chief Executive will also:

- (a) review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and
- (b) as far as reasonably practicable, ensure relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol.

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6 THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

6.1 The Minister has functions, powers and duties under the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Minister will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:

- (a) refuse permission to remove any Artifact, or Artifacts from New Zealand; or
- (b) impose conditions on an approval to export any Artifact, or Artifacts from New Zealand;

in the circumstances where the Governance Entity was originally asked for an expert opinion by the Chief Executive.

7 CONSULTATION

7.1 Where the Ministry is required to consult under *clauses 5.1(e)(i) and (iii)* and *6.1* of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

- (a) ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
- (b) providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
- (d) ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

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8 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

8.1 If the Ministry consults with Māori generally on policy development or any proposed legislative amendment to the Act which impacts upon this Protocol the Ministry shall:

- (a) Notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted; and
- (b) Make available to the Governance Entity the information provided to Māori as part of the consultation process referred to in this clause.

ISSUED on [insert Settlement Date]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister for Arts, Culture and Heritage

WITNESS

Name:

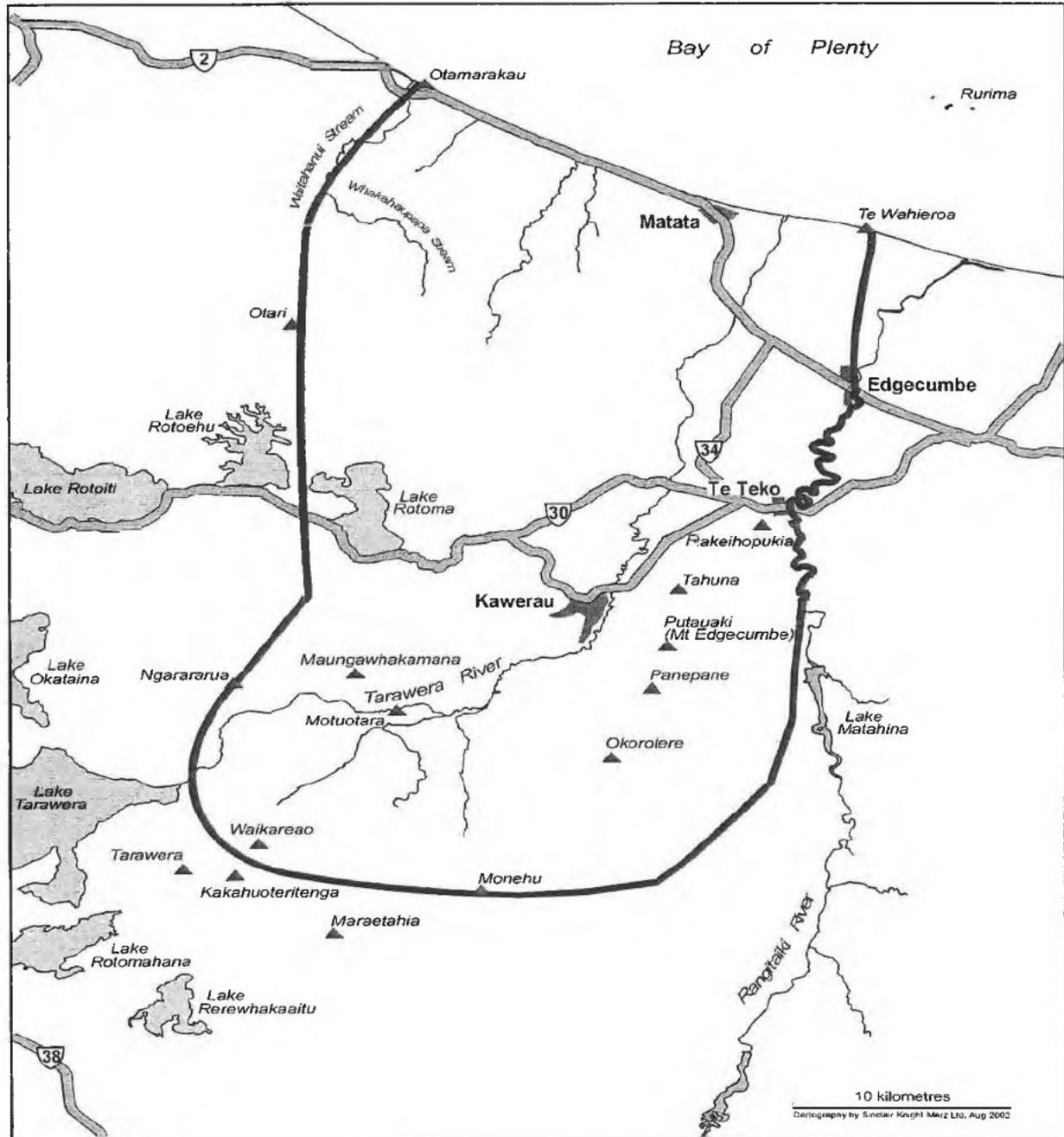
Occupation:

Address:

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ATTACHMENT A

NGĀTI TUWHARETOA ANTIQUITIES PROTOCOL AREA



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ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

Crown means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Governance Entity means [insert name and description once entity established in accordance with the Deed];

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

Ngāti Tuwharetoa has the meaning set out in *clause 1.2* of the Deed of Settlement;

Ngāti Tuwharetoa DOC Protocol means the Protocol issued under *clause 5.1.1(a)* of the Deed of Settlement;

Ngāti Tuwharetoa Fisheries Protocol means the Protocol issued under *clause 5.1.1(b)* of the Deed of Settlement;

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage (as the case may be), to the Governance Entity under the Settlement Legislation and *clause 5.1.1* of the Deed of Settlement and includes this Protocol.

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2 Authority to issue, amend or cancel Protocols

Section [] of the Settlement Legislation provides that:

- (a) Subject to clause 2(c), each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section/s [] of the Settlement Legislation at the initiative of either the Minister or the Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that the Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) the obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) the Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Ngāti Tuwharetoa DOC Protocol, once issued and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol; and
- (b) That such noting of the Ngāti Tuwharetoa DOC Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 17I of the Conservation Act 1987 or section 46 of the National Parks Act 1980;

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- (c) That the existence of the Ngāti Tuwharetoa Fisheries Protocol, once issued, and as amended from time to time, and including a definition of the Protocol as set out in *clause 11.1* of the Deed of Settlement and a summary of the terms of issue of the Protocol, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) That such noting of the Ngāti Tuwharetoa Fisheries Protocol shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 **Enforceability of Protocols**

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as the Protocol remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section/s [] of the Settlement Legislation, the Governance Entity may not recover damages, or any form of monetary compensation (other than costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with a Protocol; and
- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 **Not breach of Deed**

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol shall not constitute a breach of the Deed of Settlement.

7 **Limitation of rights**

- (a) The Settlement Legislation provides that the Ngāti Tuwharetoa DOC Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.
- (b) The Settlement Legislation provides that the Ngāti Tuwharetoa Fisheries Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to,

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any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

- (c) The Settlement Legislation provides that the Ngāti Tuwharetoa Antiquities Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

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ATTACHMENT C

DEFINITIONS

In this Protocol:

“Antiquity” has the same meaning as in section 2 of the Antiquities Act 1975 being:

- (a) Any chattel of any kind whatsoever, not being a chattel to which any of paragraphs (b) to (h) of this definition applies which:
 - (i) is of national, historical, scientific, or artistic importance; and
 - (ii) relate to the European discovery, settlement, or development of New Zealand; and
 - (iii) is, or appears to be, more than 60 years old;
- (b) Any Artifact;
- (c) Any book, diary, letter, document, paper, record, or other written matter (whether in manuscript or printed form), photographic negative or print, film, printed reproduction of any picture, or sound recording:
 - (i) which relates to New Zealand and is of national, historical, scientific, artistic, or literary importance; and
 - (ii) which is more than 60 years old; and
 - (iii) of which, in the case of a book first printed and published in New Zealand, no copy is in the custody of the National Library of New Zealand;
- (d) Any work of art which relates to New Zealand, is more than 60 years old, and is of national, historical, or artistic value or importance;
- (e) Any type specimen of any animal, plant, or mineral existing or formally existing in New Zealand;
- (f) Any meteorite or part of a meteorite recovered in New Zealand;

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- (g) Any bones, feathers, or other parts or the eggs of the Mōa or other species of animals, birds, reptiles, or amphibians native to New Zealand which are generally believed to be extinct; and
- (h) Any ship, boat, or aircraft, or any part of any ship, boat or aircraft, equipment, cargo, or article belonging to any ship, boat, or aircraft in any case where that ship, boat, or aircraft has been, or appears to have been, a wreck in New Zealand, or within the territorial waters of New Zealand, for more than 60 years and that ship, boat, aircraft, equipment, cargo, or article, as the case may be, is of national, historical, scientific, or artistic value or importance.”.

“*Artifact*” has the same meaning as in section 2 of the Antiquities Act 1975, being:

“Any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Māori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor by any such inhabitant, or used by any such inhabitant, prior to 1902.”

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SCHEDULE 5.4
STATUTORY ACKNOWLEDGEMENT
FOR ROTOMA FOREST CONSERVATION AREA
(Clause 5.2.2)

1 Statutory Area

The area to which this statutory acknowledgement applies is the area known as the Rotoma Forest Conservation Area, as shown on SO 61717, South Auckland Land District.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) (*clause 5.2.2 of the Deed of Settlement*), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Rotoma Forest Conservation Area as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Statutory Area

- 3.1 For Ngāti Tuwharetoa whaanui, Te Atua Reretahi, which is within the Rotoma Forest Conservation Area, is a very sacred urupā (burial place). This is because our eponymous ancestor Tuwharetoa is buried there. The caves that extend beyond Te Atua Reretahi into the adjacent Apurangi and Tautara basins are also the resting places of many of Tuwharetoa's descendants.
- 3.2 Te Ngako o Te Rangi (a descendent of Tuwharetoa) prepared a special cave at Te Atua Reretahi as the burial place for Tuwharetoa. Other ancestors were also taken there. It is for this reason that Ngāti Tuwharetoa - whānau, hapū and iwi - acknowledge the whakatauki:

*NEKE NEKE ATU
KO TE WAHA O TE PĀRATA
AUE KO TE ATUA RERETAHI
KO MAWAKE TAUPO
KO HINE TEARIKI
KO HĀHURU
KO NGĀ KĀHUI ARIKI
MOE MAI I TE MOENGA ROA EE EE*

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- 3.3 It is particularly significant to Tuwharetoa people as visiting the urupā is a special occasion for us. Our Tupuna have resided over our tribal area since time immemorial.
- 3.4 The spiritual and cultural values of the resting place of our Tupuna have been passed down to us, helping our people endure the events of the last one hundred and fifty years. For the uri (descendants) of Tuwharetoa, Te Atua Reretahi is a place of healing. It is a place that binds all the people from the mountain to the sea.
- 3.5 The resting place of our Tupuna is as old as the maunga and as young as the fresh morning dew. It is ageless as time itself, it passes us by every day but will never pass on. Tuwharetoa cannot be separated from Te Atua Reretahi as it is in our hearts, our bodies and it is the very essence of our soul. We are Tuwharetoa Te Atua Reretahi. Let us remember those who died in the struggle and there have been many.
- 3.6 This area of land was once a stronghold of Ngāti Mawake, ancestors of Tuwharetoa. They were descendants of Ngatoroirangi, the high priest on the Te Arawa waka, and lived from Apurangi to Haehaenga.
- 3.7 In the area of the Rotoma Forest Conservation Area, Ngāti Tuwharetoa people traditionally hunted birds such as the kereru (native wood pigeon), weka, tui, kahu and kiwi and, after their introduction, animals such as possums, deer and pigs.
- 3.8 The area supplied Ngāti Tuwharetoa people with many other sources of food. The berries of tutu, hinau, tawa and miro all grew within the area and could be eaten in various forms. The fleshy white leaf of the tawhara was considered a prized delicacy, and the kiekie plant was a key resource. The ti kauka (cabbage tree) and mingi mingi (tumingi) shrub provided food for Tuwharetoa people. The young uncurled shoots of the piko piko fern were collected for greens. Small berries of several other trees, such as rimu, kahikatea and matai, were eaten.
- 3.9 Other significant food sources in this area were the makaika (a species of Māori potato) and the mamaku (giant tree fern). Selected trees, such as rata, totara and kahikatea, were used for the building of canoes, weapons and houses and to make tools. The kapinga tree fern was valuable for many different applications: the leaves were used for shelter, the bark for medicine and the shape for art.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section/s [] of the Settlement Legislation (*clause 5.2.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.2.7* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Rotoma Forest Conservation Area, as provided in section/s [] of the Settlement Legislation (*clauses 5.2.3* to *5.2.5* of the Deed of Settlement); and
 - (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this statutory acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Rotoma Forest Conservation Area as provided in section/s [] of the Settlement Legislation (*clause 5.2.9* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.4.1* of the Deed of Settlement):
- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
 - (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Rotoma Forest Conservation Area than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.
- 5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

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5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Rotoma Forest Conservation Area.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Rotoma Forest Conservation Area to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

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SCHEDULE 5.5
STATUTORY ACKNOWLEDGEMENT
FOR LAKE TAMURENUI WILDLIFE MANAGEMENT RESERVE
(Clause 5.2.2)

1 Statutory Area

The area to which this statutory acknowledgement applies is the area known as the Lake Tamarenuui Wildlife Management Reserve, as shown on SO 61727, South Auckland Land District. The area includes the bed and waters of Lake Tamarenuui.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) (*clause 5.2.2 of the Deed of Settlement*), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Lake Tamarenuui Wildlife Management Reserve as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Statutory Area

- 3.1 Tamarenuui means large snapper. The Lake Tamarenuui Wildlife Management Reserve was once part of the large marshlands of the area.
- 3.2 Ngāti Tuwharetoa believe that a kaitiaki (guardian) called Te Whakakau Ariki lives in Lake Tamarenuui and looks after the Lake. The kaitiaki holds the history of the Tuwharetoa people.
- 3.3 It is told by the elders that when a death occurred at Kawerau of a person of rank, Te Whakakau Ariki would dive beneath Lake Tamarenuui, journey through the mythical waters of Papatuanuku to re-appear in Lake Taupo. If a leading person of rank dies at Taupo, Te Whakakau Ariki would journey back and appear again at Lake Tamarenuui. Te Whakakau Ariki was last seen by one of the elders in 1950, while he was setting a hinaki (eel trap).
- 3.4 Ngāti Tuwharetoa people, who lived at ancient pa sites nearby, used the area for eeling, hunting pukeko and gathering kakahi (freshwater mussels). The area also provided resources such as morihana (carp) and raupo. Ngāti Tuwharetoa people used raupo for many different purposes, including making poi and for food. Pollen was collected and made into porridge or paraoa (bread) and the peeled roots were

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also eaten. Although pukeko was eaten, it was particularly prized for its plumage to be made into korowai (cloak) decorations.

- 3.5 Morihana was traditionally caught at Lake Tamurenui from the beginning of the rainy season until late spring. Kaiherehere and Matamoe eels were caught at the outlet of the Lake every year. The eels were diverted into hinaki traps with a pa tuna, a wing-type funnel made from wood and bags. The best time to catch the eels was at the beginning of autumn, when the eels begin their migratory journey to sea.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section/s [] of the Settlement Legislation (*clause 5.2.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.2.7* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Lake Tamurenui Wildlife Management Reserve, as provided in section/s [] of the Settlement Legislation (*clauses 5.2.3* to *5.2.5* of the Deed of Settlement); and
 - (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this statutory acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Lake Tamurenui Wildlife Management Reserve as provided in section/s [] of the Settlement Legislation (*clause 5.2.9* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.4.1* of the Deed of Settlement):
- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and


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(b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Lake Tamarenuī Wildlife Management Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Lake Tamarenuī Wildlife Management Reserve.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Lake Tamarenuī Wildlife Management Reserve to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

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SCHEDULE 5.6
STATUTORY ACKNOWLEDGEMENT
FOR LAKE ROTOMA SCENIC RESERVE

(Clause 5.2.2)

1 Statutory Area

The area to which this statutory acknowledgement applies is the area known as the Lake Rotoma Scenic Reserve, as shown on SO 61726, South Auckland Land District. The area includes the bed and waters of the lagoon near Otumarokura Point.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) (*clause 5.2.2 of the Deed of Settlement*), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Lake Rotoma Scenic Reserve as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Statutory Area

- 3.1 Ngāti Tuwharetoa has always been associated with the area of the Lake Rotoma Scenic Reserve through Rakeimarama, Tuwharetoa's first-born (matamua) son. Rakeimarama was a highly respected tohunga, because of his powerful incantations and sorcery. He could venture anywhere unchallenged. He lived on an island in Lake Rotoma with his iwi; they respected his command and were careful not to threaten the sanctuary of the island.
- 3.2 One fateful day, returning from visiting whanaunga (kindred) in another area, Rakeimarama arrived on the shore of Rotoma at his pa called Ngohiorangi. Feeling hungry after his journey he called to the people of the island to fetch him by canoe, as was the custom. Not receiving any response, he became very angry. Rakeimarama removed some clothing, tied flax around his waist and ventured into the water. There he began to recite his incantations and summoned considerable powers. The tempest summoned by the karakia lashed the shores of Lake Rotoma with heavy rain and strong winds. The pa and the island slowly disappeared. If one ventures out on Lake Rotoma, sometimes the island can be seen just below the surface of the water.


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- 3.3 Ngāti Tuwharetoa were also associated with the area which is now the Lake Rotoma Scenic Reserve through the hapū Ngāti Tiki, Ngāti Rahikora and Ngāti Hinewai.
- 3.4 The boundary trees Tau-rangi and Te Wera-a-Tapahi, which were in the area of the Lake Rotoma Scenic Reserve, were significant boundary markers between the neighbouring western tribes and Tuwharetoa (through the hapū of Ngāti Umutahi) on the eastern shore of Lake Rotoma.
- 3.5 Traditionally, Ngāti Tuwharetoa people who lived at a kainga called Taraki, fished at a fishing ground called Purehurehu, and gathered inanga (whitebait) and koura (fresh water crayfish) in the area of what is now the Scenic Reserve.

PIKI ATU KEI RARO KO TE TUWATAWATA
HAERE TIKA ANA KI MAUNGAWHAKAMANA
TITAHANA ANA KI OTITAPU
KO NGĀ TIROHANGA
O NGĀ TĪPUNA EEE

- 3.6 Otitapu was a lookout post, built high on the Tihetihe range within the Lake Rotoma Scenic Reserve. It served the several pa sites surrounding it, including Okoroiti and Okake to the south and Opeke and Waituhi to the east. It also served the Haupanapana track to the south and joined the Tararaika and the Tuwharetoa trails, which were used by Tuwharetoa people to travel to and from the coast.
- 3.7 There are burial caves around Otitapu which are sacred to Tuwharetoa people. Lake Rotoma Scenic Reserve was also the scene of a famous battle, called Rarapahore, in which Tuwharetoa people fought.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section/s [] of the Settlement Legislation (*clause 5.2.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
 - (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.2.7* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Lake Rotoma Scenic

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Reserve, as provided in section/s [] of the Settlement Legislation (*clauses 5.2.3 to 5.2.5 of the Deed of Settlement*); and

- (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this statutory acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Lake Rotoma Scenic Reserve as provided in section/s [] of the Settlement Legislation (*clause 5.2.9 of the Deed of Settlement*).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.4.1 of the Deed of Settlement*):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Lake Rotoma Scenic Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Lake Rotoma Scenic Reserve.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Lake Rotoma Scenic Reserve to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.


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SCHEDULE 5.7
STATUTORY ACKNOWLEDGEMENT FOR THE RANGITAIKI RIVER
(Clause 5.2.2)

1 Statutory Area

The area to which this statutory acknowledgement applies is the area known as the Rangitaiki River, as shown on SO 61728, South Auckland Land District.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.2.2* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Rangitaiki River as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Statutory Area

3.1 A great river, like a full tide.

3.2 The Rangitaiki River was the traditional eastern boundary of Ngāti Tuwharetoa. The river has changed course a number of times. At one time it flowed through the great swamps that formerly existed in the area. Vegetation along the river was raupo, flax and rushes with manuka and ti kauka (cabbage trees) on the higher ground.

3.3 Ngāti Tuwharetoa people relied on the Rangitaiki River for food, in particular eels, fish and birds. The higher ground along the river banks provided places for cultivating kumara (sweet potato) and riwai (potato). They also gathered many resources from the river. Raupo, which was plentiful, was gathered for the thatching of houses. Flax was used for weaving and making ropes. There was also a specific area on the riverbank that was set aside for the dyeing of flax. Ti whanake (cabbage tree) leaves were used for cooking baskets as they did not deteriorate in the boiling water pools that the people used for cooking.

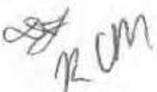
3.4 Along the river, Ngāti Tuwharetoa people made use of the geothermal resources. Sulphur was burned for long periods in sleeping houses to control mites and bugs. A small amount combined with wild honey was taken as rongoa (medicine). It was also rubbed into hakihaki (sores). Children with hakihaki were made to sit or lie covered in warm mud for half an hour or more as a cure. Hot pools along the river were used for bathing and general hygiene.

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- 3.5 When Matariki (the Pleiades constellation) was first seen, usually before sunrise in the middle of winter, the people would set kumara in beds in the warm earth and for two to three weeks tubers would sprout. This was the nursery from which the main crops would be planted.
- 3.6 These were the resources that provided sustenance for the many hapū who lived up and down the banks of the Rangitaiki River.
- 3.7 The people travelled along the river by canoe, often to visit relatives, to the upper reaches and downstream to the sea where mullet, herring and whitebait were caught. Specially made canoes were used for reclamation work.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section/s [] of the Settlement Legislation (*clause 5.2.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.2.7* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Rangitaiki River, as provided in section/s [] of the Settlement Legislation (*clauses 5.2.3* to *5.2.5* of the Deed of Settlement); and
 - (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this statutory acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Rangitaiki River as provided in section/s [] of the Settlement Legislation (*clause 5.2.9* of the Deed of Settlement).
- 4.2 In this Statutory Acknowledgement “River”:
- (a) means:
 - (i) a continuously or intermittently flowing body of fresh water including a stream and modified water course; and
 - (ii) the bed of the river; but

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- (b) does not include:
- (i) any artificial watercourse;
 - (ii) any part of the bed of the river which is not owned by the Crown;
 - (iii) any land which the waters of the river do not cover at its fullest flow without overlapping its banks; or
 - (iv) any tributary flowing into the river.

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.4.1* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Rangitaiki River than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Rangitaiki River.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Rangitaiki River to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

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SCHEDULE 5.8
STATUTORY ACKNOWLEDGEMENT FOR THE TARAWERA
RIVER
(Clause 5.2.2)

1 Statutory Area

The area to which this statutory acknowledgement applies is the River known as the Tarawera River, as shown on SO 61729, South Auckland Land District.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.2.2 of the Deed of Settlement*), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Tarawera River as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Statutory Area

*KO PŪTAUAKI TE MAUNGA
KO TE TAKANGA I Ō APA TE AWA
KO TE AOTAHI TE TANGATA
KO NGĀTI TUWHARETOA TE IWI.*

- 3.1 Before the 1886 Mount Tarawera eruption the Tarawera River flowed down the valley through what is now Kawerau. The area was once marshlands; a number of streams flowed through the swamps to join the Tarawera River. After the eruption, the Tarawera River changed course several times. This occurred as a result of flooding and through the efforts of settlers to prevent the river encroaching on surrounding land. Near the coast the Tarawera River merged with other rivers and flowed into the sea at Te Awa a te Atua.
- 3.2 Ngāti Tuwharetoa's traditional name for the Tarawera River was Takanga-i-O-Apa, which means 'the falling of Apa'. Apa was an original inhabitant of the area who lived south of Putauaki. Once he encountered a moa - a pet of the local Tuwharetoa people. The bird was resting on one leg with its mouth open facing the southern wind. Upon seeing the bird, Apa crept slowly towards the resting bird and struck at the exposed leg. Immediately the bird struck out with the leg that was drawn up and knocked Apa over the cliff. The injury Apa received was a broken leg and subsequently he became known as Apa-Koke (which means 'Apa limping').

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- 3.3 The Tarawera River was a key resource for Ngāti Tuwharetoa. The iwi living along the banks of the Tarawera River were spiritually and emotionally bound to and physically sustained by its waters. Healing ceremonies were held by and in the river. All the families grew up around the river and played together in and along the river. Along the riverbanks hot springs and baths were dug and used communally. It was a very special way of life.
- 3.4 Canoes were the only mode of transport used on the river, because it flowed through a huge swamp area. Many hapū had secret canals linked to the river where they could quickly escape from invading tribes. The people used large canoes for reclamation work to supply building materials and shifting dirt. The reclamation work was done to enlarge islands for smaller canoes for every day use. Ngāti Tuwharetoa people used the river for travelling long distances to tangi and other events; sometimes journeys could last well into the night as the travellers negotiated the many well-known waterways.
- 3.5 The Tarawera River was a very important source of food and raw materials for the Ngāti Tuwharetoa people who lived along its banks. The river provided the people with plentiful supplies of fish, watercress, koura (freshwater crayfish) and kakahi (freshwater mussels), which were considered a delicacy. Eels were caught in the river, particularly Matamoe (a black migratory eel) and Rino (an eel with a silver belly). The great Paewai eel also lived in the river. It is said that if one catches this type of eel it is a bad omen. Along the river banks the people gathered toetoe and ti whanake (cabbage tree) leaves (for use in cooking baskets), harakeke (flax - for food, medicine and weaving) and raupo (for thatching of houses).
- 3.6 The Tarawera River ran like a thread through every family living along its banks.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section/s [] of the Settlement Legislation (*clause 5.2.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.2.7* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard

to this statutory acknowledgement in relation to the Tarawera River, as provided in section/s [] of the Settlement Legislation (*clauses 5.2.3 to 5.2.5 of the Deed of Settlement*); and

- (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this statutory acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Tarawera River as provided in section/s [] of the Settlement Legislation (*clause 5.2.9 of the Deed of Settlement*).

4.2 In this Statutory Acknowledgement “River”:

- (a) means:

- (i) A continuously or intermittently flowing body of fresh water including a stream and modified water course; and
- (ii) the bed of the river; but

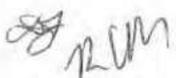
- (b) does not include:

- (i) any artificial watercourse;
- (ii) any part of the bed of the river which is not owned by the Crown;
- (iii) any land which the waters of the river do not cover at its fullest flow without overlapping its banks; or
- (iv) any tributary flowing into the river.

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.4.1 of the Deed of Settlement*):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Tarawera River than that



person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

- 5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Tarawera River.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Tarawera River to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

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SCHEDULE 5.9
DEED OF RECOGNITION
FOR ROTOMA FOREST CONSERVATION AREA
(Clause 5.3.3)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

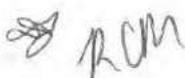
ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Rotoma Forest Conservation Area

The area which is the subject of this Deed is the area known as the Rotoma Forest Conservation Area (*the Statutory Area*) as shown on SO 61717, South Auckland Land District. The Statutory Area is administered by the Department of Conservation.

2 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Rotoma Forest Conservation Area as set out below ("*Statement of Association*"):

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For Ngāti Tuwharetoa whaanui, Te Atua Reretahi, which is within the Rotoma Forest Conservation Area, is a very sacred urupā (burial place). This is because our eponymous ancestor Tuwharetoa is buried there. The caves that extend beyond Te Atua Reretahi into the adjacent Apurangi and Tautara basins are also the resting places of many of Tuwharetoa's descendants.

Te Ngako o Te Rangi (a descendant of Tuwharetoa) prepared a special cave at Te Atua Reretahi as the burial place for Tuwharetoa. Other ancestors were also taken there. It is for this reason that Ngāti Tuwharetoa – whānau, hapū and iwi – acknowledge the whakatauki:

*NEKE NEKE ATU
KO TE WAHA O TE PĀRATA
AUE KO TE ATUA RERETAHI
KO MAWAKE TAUPO
KO HINE TEARIKI
KO HĀHURU
KO NGĀ KĀHUI ARIKI
MOE MAI I TE MOENGA ROA EE EE*

It is particularly significant to Tuwharetoa people as visiting the urupā is a special occasion for us. Our Tupuna have resided over our tribal area since time immemorial.

The spiritual and cultural values of the resting place of our Tupuna have been passed down to us, helping our people endure the events of the last one hundred and fifty years. For the uri (descendants of Tuwharetoa), Te Atua Reretahi is a place of healing. It is a place that binds all the people from the mountain to the sea.

The resting place of our Tupuna is as old as the maunga and as young as the fresh morning dew. It is ageless as time itself, it passes us by every day but will never pass on. Tuwharetoa cannot be separated from Te Atua Reretahi as it is in our hearts, our bodies and it is the very essence of our soul. We are Tuwharetoa Te Atua Reretahi. Let us remember those who died in the struggle and there have been many.

This area of land was once a stronghold of Ngāti Mawake, ancestors of Tuwharetoa. They were descendants of Ngatoroirangi, the high priest on the Te Arawa waka, and lived from Apurangi to Haehaenga.

In the area of the Rotoma Forest Conservation Area Ngāti Tuwharetoa people traditionally hunted birds such as the kereru (native wood pigeon), weka, tui, kahu and kiwi and, after their introduction, animals such as possums, deer and pigs.

The area supplied Ngāti Tuwharetoa people with many other sources of food. The berries of tutu, hinau, tawa and miro all grew within the area and could be eaten in

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various forms. The fleshy white leaf of the tawhara was considered a prized delicacy, and the kiekie plant was a key resource. The ti kauka (cabbage tree) and mingi mingi (tumingi) shrub provided food for Tuwharetoa people. The young uncurled shoots of the piko piko fern were collected for greens. Small berries of several other trees, such as rimu, kahikatea and matai, were eaten.

Other significant food sources in this area were the makaika (a species of Maori potato) and the mamaku (giant tree fern). Selected trees, such as rata, totara and kahikatea, were used for the building of canoes, weapons and houses and to make tools. The kaponga tree fern was valuable for many different applications: the leaves were used for shelter, the bark for medicine and the shape for art.

3 Role of Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:
- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Statutory Area;
 - (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Statutory Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species; or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
 - (c) the location, construction and relocation of any structures, huts, signs and tracks.

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- 3.2 In order to enable the Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.
- 3.3 The Crown will inform the Governance Entity of all concession applications to the Statutory Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1 to 5.4.3* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
- (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

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5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.3.5* of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*"), if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 Continued input

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible officer, as the case may be.

8 No assignment

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

9.1 Terms defined in the Deed of Settlement and [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

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SCHEDULE 5.10
DEED OF RECOGNITION FOR LAKE TAMURENUI WILDLIFE
MANAGEMENT RESERVE
(Clause 5.3.3)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Lake Tamarenuui Wildlife Management Reserve

The area which is the subject of this Deed is the area known as the Lake Tamarenuui Wildlife Management Reserve (*the Statutory Area*) as shown on SO 61727, South Auckland Land District. The Statutory Area is administered by the Department of Conservation. The Statutory Area includes the bed and waters of Lake Tamarenuui.

2 Cultural, spiritual, historic and traditional associations of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*the Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Lake Tamarenuui Wildlife Management Reserve as set out below ("*Statement of Association*"):

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Tamurenuī means large snapper. The Lake Tamurenuī Wildlife Management Reserve was once part of the large marshlands of the Statutory Area.

Ngāti Tuwharetoa believe that a kaitiaki (guardian) called Te Whakakau Ariki lives in Lake Tamurenuī and looks after the Lake. The kaitiaki holds the history of the Tuwharetoa people.

It is told by the elders that when a death occurred at Kawerau of a person of rank, Te Whakakau Ariki would dive beneath Lake Tamurenuī, journey through the mythical waters of Papatuanuku to re-appear in Lake Taupo. If a leading person of rank dies at Taupo, Te Whakakau Ariki would journey back and appear again at Lake Tamurenuī. Te Whakakau Ariki was last seen by one of the elders in 1950, while he was setting a hinaki (eel trap).

Ngāti Tuwharetoa people, who lived at ancient pa sites nearby, used the area for eeling, hunting pukeko and gathering kakahi (freshwater mussels). The area also provided resources such as morihana (carp) and raupo. Ngāti Tuwharetoa people used raupo for many different purposes, including making poi and food. Pollen was collected and made into porridge or paraoa (bread) and the peeled roots were also eaten. Although pukeko was eaten, it was particularly prized for its plumage to be made into korowai (cloak) decorations.

Morihana was traditionally caught at Lake Tamurenuī from the beginning of the rainy season until late spring. Kaiherehere and Matamoe eels were caught at the outlet of the Lake every year. The eels were diverted into hinaki traps with a pa tuna, a wing-type funnel made from wood and bags. The best time to catch the eels was at the beginning of autumn, when the eels begin their migratory journey to sea.

3 Role of Governance Entity

3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:

- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Statutory Area;
- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Statutory Area in relation to the following:

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- (i) any programme to identify and protect indigenous plants;
- (ii) any survey to assess current and future visitor activities;
- (iii) any programme to identify and protect wildlife;
- (iv) any programme to eradicate pests and weeds or other introduced species;
or
- (v) any survey to identify the number and type of concessions which may be appropriate; and

(c) the location, construction and relocation of any structures, huts, signs and tracks.

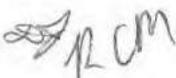
3.2 In order to enable the Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Governance Entity of all concession applications to the Statutory Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1(a) to 5.4.3* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

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- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area; and
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

5 **No limitation on Crown**

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 **Termination**

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (clause 5.3.5 of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*"), if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 **Continued input**

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible officer, as the case may be.

8 **No assignment**

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

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SCHEDULE 5.11
DEED OF RECOGNITION FOR LAKE ROTOMA SCENIC RESERVE
(Clause 5.3.3)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Lake Rotoma Scenic Reserve

The area which is the subject of this Deed is the area known as the Lake Rotoma Scenic Reserve (*the Statutory Area*) as shown on SO 61726, South Auckland Land District. The Statutory Area is administered by the Department of Conservation. The Statutory Area includes the bed and waters of the lagoon near Otumarokura Point.

2 Cultural, spiritual, historic and traditional associations of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Lake Rotoma Scenic Reserve as set out below ("Statement of Association"):

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Ngāti Tuwharetoa has always been associated with the area of the Lake Rotoma Scenic Reserve through Rakeimarama, Tuwharetoa's first-born (matamua) son. Rakeimarama was a highly respected tohunga, because of his powerful incantations and sorcery. He could venture anywhere unchallenged. He lived on an island in Lake Rotoma with his iwi; they respected his command and were careful not to threaten the sanctuary of the island.

One fateful day, returning from visiting whanaunga (kindred) in another area, Rakeimarama arrived on the shore of Rotoma at his pa called Ngohiorangi. Feeling hungry after his journey he called to the people of the island to fetch him by canoe, as was the custom. Not receiving any response, he became very angry. Rakeimarama removed some clothing, tied flax around his waist and ventured into the water. There he began to recite his incantations and summoned considerable powers. The tempest summoned by the karakia lashed the shores of Lake Rotoma with heavy rain and strong winds. The pa and the island slowly disappeared. If one ventures out on Lake Rotoma, sometimes the island can be seen just below the surface of the water.

Ngāti Tuwharetoa were also associated with the area which is now the Lake Rotoma Scenic Reserve through the hapū Ngāti Tiki, Ngāti Rahikora and Ngāti Hinewai.

The boundary trees Tau-rangi and Te Wera-a-Tapahi, which were in the area of the Lake Rotoma Scenic Reserve, were significant boundary markers between the neighbouring western tribes and Tuwharetoa (through the hapū of Ngāti Umutahi) on the eastern shore of Lake Rotoma.

Traditionally, Ngāti Tuwharetoa people who lived at a kainga called Taraki, fished at a fishing ground called Purehurehu, and gathered inanga (whitebait) and koura (fresh water crayfish) in the area of what is now the Scenic Reserve.

PIKI ATU KEI RARO KO TE TUWATAWATA
HAERE TIKA ANA KI MAUNGA WHAKAMANA
TITAHANA ANA KI OTITAPU
KO NGĀ TIROHANGA
O NGĀ TĪPUNA EEE

Otitapu was a lookout post, built high on the Tihetihe range within the Lake Rotoma Scenic Reserve. It served the several pa sites surrounding it, including Okoroiti and Okaka to the south and Opeke and Waituhi to the east. It also served the Haupanapana track to the south and joined the Tararaika and the Tuwharetoa trails, which were used by Tuwharetoa people to travel to and from the coast.

There are burial caves around Otitapu which are sacred to Tuwharetoa people, Lake Rotoma Scenic Reserve was also the scene of a famous battle, called Rarapahore, in which Tuwharetoa people fought.

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3 Role of Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:
- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Statutory Area;
 - (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Statutory Area in relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species;
or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
 - (c) the location, construction and relocation of any structures, huts, signs and tracks.
- 3.2 In order to enable the Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.
- 3.3 The Crown will inform the Governance Entity of all concession applications to the Statutory Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1 to 5.4.3* of the Deed of Settlement):

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- (a) except as expressly provided in this Deed of Recognition:
- (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area; and
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

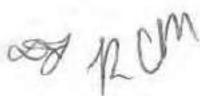
5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.3.5* of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*"), if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or

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- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 Continued input

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible officer, as the case may be.

8 No assignment

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

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SCHEDULE 5.12
DEED OF RECOGNITION FOR THE RANGITAIKI RIVER
(Clause 5.3.3)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Rangitaiki River

The area which is the subject of this Deed is the bed of the river known as the Rangitaiki River (*the Statutory Area*) as shown on SO 61728, South Auckland Land District.

2 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Rangitaiki River as set out below ("*Statement of Association*"):

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A great river, like a full tide.

The Rangitaiki River was the traditional eastern boundary of Ngāti Tuwharetoa. The river has changed course a number of times. At one time it flowed through the great swamps that formerly existed in the area. Vegetation along the river was raupo, flax and rushes with manuka and ti kauka (cabbage trees) on the higher ground.

Ngāti Tuwharetoa people relied on the Rangitaiki River for food, in particular eels, fish and birds. The higher ground along the river banks provided places for cultivating kumara (sweet potato) and riwai (potato). They also gathered many resources from the river. Raupo, which was plentiful, was gathered for the thatching of houses. Flax was used for weaving and making ropes. There was also a specific area on the riverbank that was set aside for the dyeing of flax. Ti whanake (cabbage tree) leaves were used for cooking baskets as they did not deteriorate in the boiling water pools that the people used for cooking.

Along the river, Ngāti Tuwharetoa people made use of the geothermal resources. Sulphur was burned for long periods in sleeping houses to control mites and bugs. A small amount combined with wild honey was taken as rongoa (medicine). It was also rubbed into hakihaki (sores). Children with hakihaki were made to sit or lie covered in warm mud for half an hour or more as a cure. Hot pools along the river were used for bathing and general hygiene.

When Matariki (the Pleiades constellation) was first seen, usually before sunrise in the middle of winter, the people would set kumara in beds in the warm earth and for two to three weeks tubers would sprout. This was the nursery from which the main crops would be planted.

These were the resources that provided sustenance for the many hapū who lived up and down the banks of the Rangitaiki River.

The people travelled along the river by canoe, often to visit relatives, to the upper reaches and downstream to the sea where mullet, herring and whitebait were caught. Specially-made canoes were used for reclamation work.

3 Role of Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:

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- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Statutory Area;
- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Statutory Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species;
or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
- (c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Governance Entity of all concession applications to the Statutory Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

4.1 Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1 to 5.4.3* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute,

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[Signature]

regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;

- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area; and
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function ; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned or managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the “*Settlement Legislation*”) (*clause 5.3.5* of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the “*Identified Area*”), if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or

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- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 Continued input

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible officer, as the case may be.

8 No assignment

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

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SCHEDULE 5.13
DEED OF RECOGNITION FOR THE RANGITAIKI RIVER
(*Clause 5.3.3*)

(*Commissioner of Crown Lands*)

THIS DEED is made on [*insert date*]

PARTIES

- (1) [**Name of Ngāti Tuwharetoa Governance Entity**] (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Commissioner of Crown Lands (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Rangitaiki River

The area which is the subject of this Deed is the bed of the river known as the Rangitaiki River (*the Statutory Area*) as shown on SO 61728, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Tuwharetoa

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association to the Rangitaiki River as set out below ("*Statement of Association*"):

A great river, like a full tide.

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The Rangitaiki River was the traditional eastern boundary of Ngāti Tuwharetoa. The river has changed course a number of times. At one time it flowed through the great swamps that formerly existed in the area. Vegetation along the river was raupo, flax and rushes with manuka and kouka (cabbage trees) on the higher ground.

Ngāti Tuwharetoa people relied on the Rangitaiki River for food, in particular eels, fish and birds. The higher ground along the river banks provided places for cultivating kumara (sweet potato) and riwai (potato). They also gathered many resources from the river. Raupo, which was plentiful, was gathered for the thatching of houses. Flax was used for weaving and making ropes. There was also a specific area on the riverbank that was set aside for the dyeing of flax. Ti whanake (cabbage tree) leaves were used for cooking baskets as they did not deteriorate in the boiling water pools that the people used for cooking.

Along the river, Ngāti Tuwharetoa people made use of the geothermal resources. Sulphur was burned for long periods in sleeping houses to control mites and bugs. A small amount combined with wild honey was taken as rongoa (medicine). It was also rubbed into hakihaki (sores). Children with hakihaki were made to sit or lie covered in warm mud for half an hour or more as a cure. Hot pools along the river were used for bathing and general hygiene.

When Matariki (the Pleiades constellation) was first seen, usually before sunrise in the middle of winter, the people would set kumara in beds in the warm earth and for two to three weeks tubers would sprout. This was the nursery from which the main crops would be planted.

These were the resources that provided sustenance for the many hapū who lived up and down the banks of the Rangitaiki River.

The people travelled along the river by canoe, often to visit relatives, to the upper reaches and downstream to the sea where mullet, herring and whitebait were caught. Specially-made canoes were used for reclamation work.

3 Role of Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard must be had to its views relating to the association described in the Statement of Association concerning the consideration by the Crown from time to time of any application to the Crown for any rights for use or occupation (including any renewals), in relation to those parts of the riverbed within the Statutory Area that are administered by the Commissioner of Crown Lands, including the terms and conditions of any rights of use or occupation.

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- 3.2 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:
- 3.2.1 the preparation of any plans, strategies or programmes for the protection and management of the Statutory Area (including the involvement of the Governance Entity in such plans, strategies, or programmes);
 - 3.2.2 any survey to identify the number and type of uses which are appropriate in relation to the Statutory Area; and
 - 3.2.3 any programme to eradicate noxious flora or fauna from the Statutory Area.
- 3.3 In order to enable the Governance Entity to fulfil its role under *clauses 3.1* and *3.2*, the Crown will:
- 3.3.1 inform the Governance Entity of any applications to the Crown for rights for use or occupation (including any renewals) in relation to the Statutory Area (but retains the right to withhold commercially sensitive information); and
 - 3.3.2 provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its views to the Crown on any matter on which it is consulted.

4 Other provisions

- 4.1 Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b)* and *(c)* and *5.4.1 to 5.4.3* of the Deed of Settlement):
- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;

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- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned or managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (clause 5.3.5 of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*") if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

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SCHEDULE 5.14
DEED OF RECOGNITION FOR THE TARAWERA RIVER
(Clause 5.3.3)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Tarawera River

The area which is the subject of this Deed is the bed of the river known as the Tarawera River (*the Statutory Area*) as shown on SO 61729, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association of Ngāti Tuwharetoa with the Tarawera River as set out below ("*Statement of Association*"):

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*KO PŪTAUAKI TE MAUNGA
KO TE TAKANGA I Ō APA TE AWA
KO TE AOTAHI TE TANGATA
KO NGĀTI TUWHARETOA TE IWI.*

Before the 1886 Mount Tarawera eruption the Tarawera River flowed down the valley through what is now Kawerau. The area was once marshlands; a number of streams flowed through the swamps to join the Tarawera River. After the eruption, the Tarawera River changed course several times. This occurred as a result of flooding and through the efforts of settlers to prevent the river encroaching on surrounding land. Near the coast the Tarawera River merged with other rivers and flowed into the sea at Te Awa a te Atua.

Ngāti Tuwharetoa's traditional name for the Tarawera River was Takanga-i-O-Apa, which means 'the falling of Apa'. Apa was an original inhabitant of the area who lived south of Putauaki. Once he encountered a moa - a pet of the local Tuwharetoa people. The bird was resting on one leg with its mouth open facing the southern wind. Upon seeing the bird, Apa crept slowly towards the resting bird and struck at the exposed leg. Immediately the bird struck out with the leg that was drawn up and knocked Apa over the cliff. The injury Apa received was a broken leg and subsequently he became known as Apa-Koke (which means 'Apa limping').

The Tarawera River was a key resource for Ngāti Tuwharetoa. The iwi living along the banks of the Tarawera River were spiritually and emotionally bound to and physically sustained by its waters. Healing ceremonies were held by and in the river. All the families grew up around the river and played together in and along the river. Along the riverbanks hot springs and baths were dug and used communally. It was a very special way of life.

Canoes were the only mode of transport used on the river, because it flowed through a huge swamp area. Many hapū had secret canals linked to the river where they could quickly escape from invading tribes. The people used large canoes for reclamation work to supply building materials and shifting dirt. The reclamation work was done to enlarge islands for smaller canoes for every day use. Ngāti Tuwharetoa people used the river for travelling long distances to tangi and other events; sometimes journeys could last well into the night as the travellers negotiated the many well-known waterways.

The Tarawera River was a very important source of food and raw materials for the Ngāti Tuwharetoa people who lived along its banks. The river provided the people with plentiful supplies of fish, watercress, koura (freshwater crayfish) and kakahi (freshwater mussels), which were considered a delicacy. Eels were caught in the river, particularly Matamoe (a black migratory eel) and Rino (an eel with a silver belly). The great Paewai eel also lived in the river. It is said that if one catches this type of eel it is a bad omen. Along the river banks the people gathered toetoe and ti whanake (cabbage tree)

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leaves (for use in cooking baskets), harakeke (flax – for food, medicine and weaving) and raupo (for thatching of houses).

The Tarawera River ran like a thread through every family living along its banks.

3 Role of Governance Entity

3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:

- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Statutory Area:
- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Statutory Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species; or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
- (c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Governance Entity of all concession applications to the Statutory Area (but retains the discretion to withhold commercially sensitive material).


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4 Other provisions

4.1 Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1 to 5.4.3* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area; and
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function ; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned or managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

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5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (clause 5.3.5 of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*"), if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 Continued input

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible officer, as the case may be.

8 No assignment

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

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SCHEDULE 5.15
DEED OF RECOGNITION FOR THE TARAWERA RIVER

(Clause 5.3.3)

(Commissioner of Crown Lands)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Tuwharetoa Governance Entity]** (*Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Commissioner of Crown Lands (*the Crown*)

BACKGROUND

- A On 6 June 2003 Ngāti Tuwharetoa (Bay of Plenty) and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Tuwharetoa.
- B Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.3.3* of the Deed of Settlement), the Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Tuwharetoa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Tarawera River

The area which is the subject of this Deed is the bed of the river known as the Tarawera River (*the Statutory Area*) as shown on SO 61729, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Tuwharetoa

Under section/s [] of the *[the name of the Settlement Legislation]* (the "*Settlement Legislation*") (*clause 5.2.2(c)* of the Deed of Settlement), the Crown acknowledges the statement of cultural, spiritual, historic, and traditional association to the Tarawera River as set out below ("*Statement of Association*"):

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*KO PŪTAUAKI TE MAUNGA
KO TE TAKANGA I Ō APA TE AWA
KO TE AOTAHI TE TANGATA
KO NGĀTI TUWHARETOA TE IWI.*

Before the 1886 Mount Tarawera eruption the Tarawera River flowed down the valley through what is now Kawerau. The area was once marshlands; a number of streams flowed through the swamps to join the Tarawera River. After the eruption, the Tarawera River changed course several times. This occurred as a result of flooding and through the efforts of settlers to prevent the river encroaching on surrounding land. Near the coast the Tarawera River merged with other rivers and flowed into the sea at Te Awa a te Atua.

Ngāti Tuwharetoa's traditional name for the Tarawera River was Takanga-i-O-Apa, which means 'the falling of Apa'. Apa was an original inhabitant of the area who lived south of Putauaki. Once he encountered a moa - a pet of the local Tuwharetoa people. The bird was resting on one leg with its mouth open facing the southern wind. Upon seeing the bird, Apa crept slowly towards the resting bird and struck at the exposed leg. Immediately the bird struck out with the leg that was drawn up and knocked Apa over the cliff. The injury Apa received was a broken leg and subsequently he became known as Apa-Koke (which means 'Apa limping').

The Tarawera River was a key resource for Ngāti Tuwharetoa. The iwi living along the banks of the Tarawera River were spiritually and emotionally bound to and physically sustained by its waters. Healing ceremonies were held by and in the river. All the families grew up around the river and played together in and along the river. Along the riverbanks hot springs and baths were dug and used communally. It was a very special way of life.

Canoes were the only mode of transport used on the river, because it flowed through a huge swamp area. Many hapū had secret canals linked to the river where they could quickly escape from invading tribes. The people used large canoes for reclamation work to supply building materials and shifting dirt. The reclamation work was done to enlarge islands for smaller canoes for every day use. Ngāti Tuwharetoa people used the river for travelling long distances to tangi and other events; sometimes journeys could last well into the night as the travellers negotiated the many well-known waterways.

The Tarawera River was a very important source of food and raw materials for the Ngāti Tuwharetoa people who lived along its banks. The river provided the people with plentiful supplies of fish, watercress, koura (freshwater crayfish) and kakahi (freshwater mussels), which were considered a delicacy. Eels were caught in the river, particularly Matamoe (a black migratory eel) and Rino (an eel with a silver belly). The great Paewai eel also lived in the river. It is said that if one catches this type of eel it is a bad omen. Along the river banks the people gathered toetoe and ti whanake (cabbage tree)

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leaves (for use in cooking baskets), harakeke (flax – for food, medicine and weaving) and raupo (for thatching of houses).

The Tarawera River ran like a thread through every family living along its banks.

3 Role of Governance Entity

3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard must be had to its views relating to the association described in the Statement of Association concerning the consideration by the Crown from time to time of any application to the Crown for any rights for use or occupation (including any renewals), in relation to those parts of the riverbed within the Statutory Area that are administered by the Commissioner of Crown Lands, including the terms and conditions of any rights of use or occupation.

3.2 By reason of the Crown's acknowledgement of the Statement of Association, the Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities within the Statutory Area if at any time the Crown, at its discretion, undertakes these activities:

3.2.1 the preparation of any plans, strategies or programmes for the protection and management of the Statutory Area (including the involvement of the Governance Entity in such plans, strategies, or programmes);

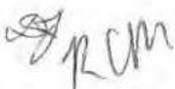
3.2.2 any survey to identify the number and type of uses which are appropriate in relation to the Statutory Area; and

3.2.3 any programme to eradicate noxious flora or fauna from the Statutory Area.

3.3 In order to enable the Governance Entity to fulfil its role under *clauses 3.1 and 3.2*, the Crown will:

3.3.1 inform the Governance Entity of any applications to the Crown for rights for use or occupation (including any renewals) in relation to the Statutory Area (but retains the right to withhold commercially sensitive information); and

3.3.2 provide the Governance Entity with relevant information to enable the Governance Entity to consider and advise its views to the Crown on any matter on which it is consulted.

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4 Other provisions

4.1 Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clauses 5.3.1(b) and (c) and 5.4.1 to 5.4.3* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa to the Statutory Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Statutory Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Statutory Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Statutory Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned or managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

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5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Statutory Area with a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

6 Termination

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (clause 5.3.5 of the Deed of Settlement), the Deed of Recognition will terminate in respect of the Statutory Area or part of it (the "*Identified Area*") if:

- (a) The Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown ; or
- (c) The responsibility for managing the Identified Area is transferred to a different Minister or Department.

7 Continued input

If the Deed of Recognition terminates in relation to an Identified Area, and responsibility for managing the Identified Area is transferred to a different Minister or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of the Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

The Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") will have the same meaning in this Deed.
- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

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SCHEDULE 5.16
GEOTHERMAL STATUTORY ACKNOWLEDGEMENT
(Clause 5.5)

1 Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System

This Geothermal Statutory Acknowledgement applies to the Geothermal Energy and Geothermal Water (each as defined in the Resource Management Act 1991) located in the Kawerau Geothermal System. The Kawerau Geothermal System has the boundary shown on SO 61730, South Auckland Land District.

2 Preamble

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.5.2* of the Deed of Settlement), the Crown acknowledges the statement by Ngāti Tuwharetoa of the cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System as set out in *clause 3* below.

3 Cultural, spiritual, historic and traditional association of Ngāti Tuwharetoa with the Geothermal Energy and Geothermal Water located in the Kawerau Geothermal System

- 3.1 The geothermal resource is a taonga for Ngāti Tuwharetoa. Ngāti Tuwharetoa attribute the origins of the Geothermal Energy and Geothermal Water in the Kawerau Geothermal System to their great ancestor Ngatoroirangi, high priest of the Arawa waka.
- 3.2 When Ngatoroirangi travelled inland and reached the summit of Tongariro, the intense cold began to weaken him. At once he called to his two sisters, Kuiwai and Hauhangaroa in Hawaiiki, to help him by sending fire. They heard his cry and sent the gods of fire, Pupu and Te Hoata, who journeyed under the sea and the land to assist him.
- 3.3 Throughout the journey they would surface and it was at these places that they left part of the fire – Whakaari (White Island), Moutohora (Whale Island), Ōkākāru (Parimahana), Tarawera, Orakei, Taupo and Turangi.
- 3.4 When the fire gods reached Tongariro, Ngatoroirangi immediately threw one of his sacred stones to the ground. Where it landed a volcano was created. He then grabbed and lifted his slave, Ngaruahoe, and threw him into the volcano as an offering to the fire gods.

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- 3.5 Tuwharetoa was a direct descendant of Ngatoroirangi. For Tuwharetoa people, the presence of the geothermal resource constantly reaffirmed the existence and authority of Kuiwai, Haungaroa and the gods of fire, Pupu and Te Hoata.
- 3.6 The people of Ngāti Tuwharetoa traditionally used the Geothermal Water and Geothermal Energy located in the Kawerau Geothermal System in many ways. Indeed, this resource was one of the prime reasons for Ngāti Tuwharetoa people settling in the Kawerau area. Prior to the industrial development in Kawerau, and the development of the geothermal field, Ngāti Tuwharetoa people were still extensively used the geothermal resource for many purposes.
- 3.7 The Geothermal Energy and Geothermal Water in the plentiful thermal lakes, rivers and hot springs were used extensively for bathing, cooking, raising of eels and fish, recuperation and healing, and the early generation of kumara and general horticulture.
- 3.8 The natural heating from the geothermal activity provided places suitable for growing kumara seedling, which thrived on dry warm land. The steam was also used for cooking (similar to a hangi) and for warmth. During the winter months the sulphur was used for medicine (rongoa) to heal people with open sores; a small amount absorbed in wild honey was taken internally as a rongoa. Children with hakihaki (sores) were made to sit or lie in warm mud for half an hour or more as a cure.
- 3.9 On cold nights the people would dig shallow holes and place manuka or aruhe (ferns) leaves down. With the steam filtering through the bedding they would lie down in the warmth.

4 Purposes of Geothermal Statutory Acknowledgement

- 4.1 Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") (*clause 5.5.1* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this Geothermal Statutory Acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Geothermal Resource Consent applications to the Governance Entity as provided in section/s [] of the Settlement Legislation (*clause 5.5.6* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities and the Environment Court, as the case may be, have regard to this Geothermal Statutory Acknowledgement as provided in section/s [] of the Settlement Legislation (*clauses 5.5.3* and *5.5.4* of the Deed of Settlement); and
 - (c) to enable the Governance Entity and any Member of Ngāti Tuwharetoa to cite this Geothermal Statutory Acknowledgement as evidence of the association of Ngāti Tuwharetoa with the Geothermal Water and the Geothermal Energy located in the

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Kawerau Geothermal System as provided in section/s [] of the Settlement Legislation (*clause 5.5.8* of the Deed of Settlement).

5 Limitations on effect of Geothermal Statutory Acknowledgement

5.1 Except as expressly provided in section/s [] of the Settlement Legislation (*clause 5.5.11* of the Deed of Settlement):

- (a) this Geothermal Statutory Acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw may give any greater or lesser weight to the association of Ngāti Tuwharetoa with the Geothermal Water and the Geothermal Energy located in the Kawerau Geothermal System than that person or entity would give under the relevant statute, regulation, or bylaw, if this Geothermal Statutory Acknowledgement had not been made.

5.2 Except as expressly provided in section/s [] of the Settlement Legislation, this Geothermal Statutory Acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in section/s [] of the Settlement Legislation, this Geothermal Statutory Acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Geothermal Water or the Geothermal Energy located in the Kawerau Geothermal System, or the Kawerau Geothermal System itself.

6 No limitation on Crown

The existence of this Geothermal Statutory Acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Geothermal Water or the Geothermal Energy located in the Kawerau Geothermal System to a person or persons other than Ngāti Tuwharetoa or a Representative Entity.

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SCHEDULE 5.17
NOHOANGA SITE
(Clause 5.6)

Waterway	Nohoanga Site	Legal Description	Special Requirements
Tarawera River	Te Awa a Te Atua	South Auckland Land District - Whakatane District. 1.0 hectare, approximately, being Part Section 6 Block VI Awaateatua Survey District. Part Gazette Notice S.594936. Subject to survey. As shown marked A on SO 61724.	No dogs No open fires

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SCHEDULE 5.18
FORM OF NOHOANGA ENTITLEMENT
(Clause 5.6.2)

THIS NOHOANGA ENTITLEMENT is granted on *[insert date]*

PARTIES

- (1) **[Name of the Governance Entity]** (*Governance Entity*).
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation *[and the Minister of Maori Affairs]* (*the Crown*).

BACKGROUND

- A. On 6 June 2003 the Crown and Ngāti Tuwharetoa (Bay of Plenty) entered into a deed of settlement (the “Deed of Settlement”) recording the matters required to give effect to a settlement of all the historical claims of Ngāti Tuwharetoa.
- B. Under the provisions of the Deed of Settlement, the *[the name of the Settlement Legislation]* (the “*Settlement Legislation*”) provides for the granting as redress of a Nohoanga Entitlement on the terms set out in the Deed of Settlement.

THE PARTIES agree as follows:

1 INTERPRETATION

1.1 Definitions from Act

Terms defined in the Deed of Settlement and the *[the name of the Settlement Legislation]* (the “*Settlement Legislation*”) will have the same meaning in this Nohoanga Entitlement.

1.2 Other definitions

[Insert other definitions as required by the specific Nohoanga Entitlement].

2 ENTITLEMENT LAND

The area which is the subject of this Nohoanga Entitlement is *[insert description of site as identified on the final survey plan and insert a copy of the plan]* (the “Entitlement Land”) being adjacent to *[insert name of lake/river]* (the “Waterway”).

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[Signature]

3 CREATION OF NOHOANGA ENTITLEMENT

The Crown hereby grants in favour of the Governance Entity a Nohoanga Entitlement for the sole purpose of permitting Members of Ngāti Tuwharetoa on a temporary and non-commercial basis, to occupy the Entitlement Land:

- (a) So as to have access to the Waterway for lawful fishing; and
- (b) For lawful gathering of other natural resources in the vicinity of the Entitlement Land,

on the terms and conditions set out in this Nohoanga Entitlement.

4 TERMS OF NOHOANGA ENTITLEMENT

4.1 Length of Nohoanga Entitlement

The initial term of this Nohoanga Entitlement shall be a period of ten years from the Settlement Date.

4.2 Nohoanga Entitlement shall be renewed

Unless terminated under *clause 5*, this Nohoanga Entitlement shall be renewed at the expiry of its term at the option of the Governance Entity for further terms of ten years each.

4.3 Nohoanga Entitlement period

4.3.1 Subject to *clauses 4.3.2* and *4.3.3*, the Governance Entity has the right to permit Members of Ngāti Tuwharetoa to occupy the Entitlement Land:

- (a) For the purpose set out in *clause 3*; and
- (b) To the exclusion of other persons during the period or periods that it exercises the right to occupy the Entitlement Land.

4.3.2 The Governance Entity may permit Members of Ngāti Tuwharetoa to occupy the Entitlement Land for such period or periods in a calendar year that do not exceed 210 days in total.

4.3.3 The Governance Entity must not permit Members of Ngāti Tuwharetoa to occupy the Entitlement Land in a calendar year during the period beginning on 1 May and ending on the close of 15 August.

4.3.4 *Clause 4.3.1* and the grant and exercise of this Nohoanga Entitlement does not prevent agents of the Crown, or persons exercising statutory powers, undertaking their functions in relation to the Entitlement Land.

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4.4 Temporary dwellings

The Governance Entity may permit Members of Ngāti Tuwharetoa to erect camping shelters or similar temporary dwellings on the Entitlement Land during the period or periods that the right to occupy the Entitlement Land under *clause 4.3* is being exercised, provided that the Governance Entity must ensure the removal of any camping shelters or similar temporary dwellings that are erected on the Entitlement Land under this Nohoanga Entitlement whenever the right to occupy the Entitlement Land is not being exercised.

4.5 Condition of Entitlement Land when ceasing to occupy it

The Governance Entity must ensure, whenever Members of Ngāti Tuwharetoa who have been permitted by the Governance Entity to occupy the Entitlement Land cease to exercise the right to occupy the Entitlement Land:

- (a) The removal of all rubbish and waste material (including human waste) from the Entitlement Land and any adjacent reserve; and
- (b) That the Entitlement Land is left in substantially the same condition as it was in at the beginning of the period of occupation being ceased, except for temporary effects normally associated with occupation of Entitlement Land under a Nohoanga Entitlement.

4.6 Activities on Entitlement Land

Subject to *clause 4.4*:

- (a) The Governance Entity may, with the consent of the Land Holding Agent, undertake such activities on the Entitlement Land that are reasonably necessary for the Entitlement Land to be used for the purpose set out in *clause 3*.
- (b) When applying for the Land Holding Agent's consent under *clause 4.6(a)*, the Governance Entity must provide to the Land Holding Agent details relating to the proposed activities, including (but not limited to):
 - (i) The effect of the activities on the Entitlement Land and, if the Entitlement Land is land held under the Conservation Act 1987 or any enactment in the First Schedule to that Act, on the surrounding land and any associated flora or fauna; and
 - (ii) Any measures that the Governance Entity proposes to take (if the Land Holding Agent's consent is given) to avoid, remedy, or mitigate any adverse effects.
- (c) In considering whether to give consent in relation to land held under the Conservation Act 1987 or any enactment in the First Schedule to that Act, the

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Land Holding Agent may require the Governance Entity to obtain, at the Governance Entity's expense, an environmental impact report about the proposed activities, and an audit of that report.

- (d) The giving of consent under *clause 4.6(a)* is at the complete discretion of the Land Holding Agent.
- (e) The Land Holding Agent may give consent under *clause 4.6(a)* subject to such conditions as he or she thinks fit to impose.
- (f) Without limiting *clause 4.6(e)*, in giving consent in relation to land held under the Conservation Act 1987 or any enactment in the First Schedule to that Act, the Land Holding Agent may impose reasonable conditions to avoid, remedy, or mitigate any adverse effects of the proposed activities on the Entitlement Land, the surrounding land, or associated flora or fauna.
- (g) If the Crown has complied with its obligations under this Nohoanga Entitlement, the Crown is not liable to compensate the Governance Entity (whether on termination of this Nohoanga Entitlement or at any other time) for any activities undertaken by the Governance Entity under this clause.

4.7 Crown's obligation to provide lawful access

4.7.1 If an event in *clause 4.7.2* occurs during the term of this Nohoanga Entitlement, the Crown will use best endeavours to ensure that the Governance Entity continues, for the rest of the term of the Nohoanga Entitlement, to have the same type of lawful access to the Entitlement Land as it had before the event occurred.

4.7.2 The events are:

- (a) The alienation by the Crown of land adjacent to the Entitlement Land; or
- (b) A change in classification or status of land adjacent to the Entitlement Land.

4.7.3 The Crown's obligation in *clause 4.7.1* is subject to compliance with any applicable provision, in or under any legislation.

4.8 Continuing public access along Waterway

The granting by the Crown, and exercise by the Governance Entity, of this Nohoanga Entitlement must not impede access by members of the public along the Waterway.

4.9 Compliance with laws

The Governance Entity (and Members of Ngāti Tuwharetoa permitted by the Governance Entity to occupy the Entitlement Land under *clause 4.3*), and the activities carried on by the Governance Entity on the Entitlement Land, (including any activities

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undertaken on the Entitlement Land under *clause 4.6*) are subject to all laws, bylaws, regulations, and land and water management practices that apply to the Entitlement Land including the need, as required, to apply for Resource Consent under the Resource Management Act 1991.

4.10 Notification of activities

The Land Holding Agent must, in carrying out land and water management practices relating to the Entitlement Land, have regard to the existence of this Nohoanga Entitlement and must:

- 4.10.1 Notify the Governance Entity of any activity which may adversely affect the Governance Entity's Nohoanga Entitlement Land; and
- 4.10.2 Avoid unreasonable disruption to the Governance Entity's Nohoanga Entitlement.

4.11 Nohoanga Entitlement non-assignable

The Governance Entity's rights under this Nohoanga Entitlement are not assignable.

4.12 Rights to alienate adjacent land

The grant and exercise of this Nohoanga Entitlement does not restrict the Crown's right to alienate the Entitlement Land, land adjacent to the Entitlement Land, or land adjacent to the Waterway next to which the Entitlement Land is situated.

4.13 Enforceability

During the term of this Nohoanga Entitlement and while Members of Ngāti Tuwharetoa (who have been permitted by the Governance Entity to occupy the Entitlement Land under *clause 4.3*) are exercising the right to occupy the Entitlement Land under the terms of this Nohoanga Entitlement, the Governance Entity may enforce its rights under this Nohoanga Entitlement against persons who are not parties to the Deed of Settlement as if the Governance Entity were the owner of the Entitlement Land.

4.14 Crown not obliged to enforce

The Crown is not obliged to enforce the rights of the Governance Entity under this Nohoanga Entitlement against persons who are not parties to the Deed of Settlement on behalf of the Governance Entity.

4.15 Suspension of Nohoanga Entitlement

- 4.15.1 The Land Holding Agent may suspend this Nohoanga Entitlement in accordance with this *clause 4.15*.

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4.15.2 The Land Holding Agent must not suspend the Nohoanga Entitlement unless he or she first:

- (a) Consults the Governance Entity; and
- (b) Has particular regard to the views of the Governance Entity.

4.15.3 The Land Holding Agent must not suspend this Nohoanga Entitlement unless he or she considers the suspension is necessary for the management of the land, having regard to the purposes for which the Entitlement Land is held.

4.15.4 If this Nohoanga Entitlement is suspended, the Governance Entity may, after the end of the suspension, permit Members of Ngāti Tuwharetoa to occupy the Entitlement Land for a period equal to that part of the period of suspension equal to the period that the Governance Entity would otherwise have been entitled to occupy the Entitlement Land.

4.15.5 The occupation of Entitlement Land under *clause 4.15.4* is not subject to the restrictions in *clause 4.3.3*.

4.16 Targeted Rates

The Settlement Legislation will provide that:

- (a) Section 9 of the Local Government (Rating) Act 2002 will apply to the Entitlement Land; and
- (b) The Governance Entity is liable to pay targeted rates payable under section 9 of the Local Government (Rating) Act 2002 in respect of the Entitlement Land only in proportion to the period for which the Governance Entity is entitled to occupy the Entitlement Land under *clause 4.3*.

5 TERMINATION

5.1 Breach of terms of Nohoanga Entitlement

5.1.1 If the Governance Entity defaults in performing any of its obligations under this Nohoanga Entitlement, and such default is capable of remedy, the Crown may give written notice to the Governance Entity specifying the default and the remedy that the Crown requires (which remedy must be reasonable in the circumstances).

5.1.2 Unless within 41 Business Days after the giving of notice under *clause 5.1.1* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given under *clause 5.1.1*, the Crown may immediately terminate this Nohoanga Entitlement by notice in writing to the Governance Entity.

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5.1.3 If the default is not one that is capable of remedy the Crown may immediately terminate this Nohoanga Entitlement by notice in writing to the Governance Entity.

5.1.4 On termination of this Nohoanga Entitlement under *clauses 5.1.2 or 5.1.3*, the Governance Entity may, after the expiry of two years from the date of termination of the Nohoanga Entitlement, apply to the Minister of Maori Affairs for the grant of a replacement Nohoanga Entitlement meeting the criteria set out in *clause 5.6.4* of the Deed of Settlement.

5.1.5 On receipt of an application under *clause 5.1.4*, the Crown may, in its discretion, take reasonable steps to grant a replacement Nohoanga Entitlement in the same form as this Nohoanga Entitlement (or as varied in accordance with *clause 6*) and over land that:

- (a) Meets the criteria set out in *clause 5.6.4* of the Deed of Settlement; and
- (b) Is identified by similar processes used by the Crown and Ngāti Tuwharetoa to identify the Nohoanga Site prior to entry into the Deed of Settlement.

5.1.6 *Clauses 5.1.4 and 5.1.5* shall survive the termination of this Nohoanga Entitlement.

5.2 Termination for other reasons

5.2.1 The Crown may terminate this Nohoanga Entitlement by giving written notice to the Governance Entity on one or more of the following grounds:

- (a) That the Crown has alienated the Entitlement Land; or
- (b) That the Entitlement Land has, by a natural cause, been destroyed or permanently and detrimentally affected; or
- (c) That the Entitlement Land is on reserve land which may be required for the specific purpose for which it is held as a reserve and the Entitlement Land becomes so required for that purpose; or
- (d) That the Entitlement Land is an unformed road that has become formed; or
- (e) That, notwithstanding the Crown's best endeavours, there is no lawful access to the Entitlement Land following the occurrence of an event described in *clause 4.7.2*.

5.2.2 The Governance Entity and the Crown may terminate this Nohoanga Entitlement by agreement in writing.

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5.2.3 On termination of a Nohoanga Entitlement under *clause 5.2.1* or *5.2.2*, the Crown must take reasonable steps to grant a replacement Nohoanga Entitlement to the Governance Entity.

5.2.4 *Clause 5.2.3* does not apply if the fee simple estate in the Entitlement Land is vested in the Governance Entity.

5.2.5 The grant of a replacement Nohoanga Entitlement under *clause 5.2.3* must be in the same form as this Nohoanga Entitlement (or as varied in accordance with *clause 6*) and be over land that:

- (a) Meets the criteria set out in *clause 5.6.4* of the Deed of Settlement; and
- (b) Is identified by similar processes used by the Crown and Ngāti Tuwharetoa to identify the Nohoanga Site prior to entry into the Deed of Settlement.

5.2.6 *Clauses 5.2.3, 5.2.4* and *5.2.5* shall survive the termination of this Nohoanga Entitlement.

6 VARIATION

6.1 The form of this Nohoanga Entitlement may be varied by:

- (a) The addition of terms reasonably required by the Crown to protect and preserve the Entitlement Land, the surrounding land, or any associated flora or fauna; or
- (b) Agreement between the Land Holding Agent and the Governance Entity.

6.2 Any additional terms and any variation of terms under *clause 6.1* must be in writing and not be inconsistent with *clause 5.6* of the Deed of Settlement.

7 OTHER MATTERS

7.1 Rights not affected

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") except as expressly provided in this Nohoanga Entitlement, the existence of this Nohoanga Entitlement will not affect the lawful rights or interests of any person that is not a party to the Deed of Settlement.

7.2 Limitation of rights

Under section/s [] of the [*the name of the Settlement Legislation*] (the "*Settlement Legislation*") except as expressly provided in this Nohoanga Entitlement, the existence of this Nohoanga Entitlement will not have the effect of granting, creating or providing

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evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Entitlement Land.

8 SPECIAL CONDITIONS

[Including special purpose specification as set out in [Schedule 5.17] of the Deed of Settlement]

[insert appropriate attestations for the Crown and the Governance Entity]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Conservation

WITNESS

Name:
Occupation:
Address:

[SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Maori Affairs

WITNESS

Name:
Occupation:
Address:]

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[Signature]

SCHEDULE 5.19
OWHAKATIHI AREA FOR THE PARIMAHANA SCENIC RESERVE
(Clause 5.7.1)

1. Description of Area

Currently described as South Auckland Land District – Kawerau District. 40.1500 hectares, approximately being Part Allotment 927 Matata Parish. Part Gazette Notice H.257899. As shown marked A on SO 61719, South Auckland Land District.

2. Preamble

Pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*) (*clause 5.7.2 of the Deed of Settlement*), the Crown acknowledges the statement of Ngāti Tuwharetoa of their cultural, spiritual, historic and/or traditional values relating to Parimahana Scenic Reserve, as set out below.

Ngāti Tuwharetoa Statement of Ngāti Tuwharetoa Values Relating to Parimahana Scenic Reserve.

Parimahana Scenic Reserve is the name of the Reserve which is situated west of the Ruruanga Stream that flows into the Tarawera River; the reserve also includes part of the slopes of the Tirotirowhetu Mountain.

Parimahana Scenic Reserve was named because of the spiritual significance it had in relation to the Ngawha (geothermal) resources that were placed and left there so many years ago by the Fire Gods Pupu and Hoata, who were sent to Aotearoa by Hauhangaroa and Kuiwai from Hawaiiiki, to assist their brother Ngatoroirangi who was overcome with extreme cold.

The Ariki status of the people who lived in the area was nurtured by the rich resources it provided.

HINE-TE-ARIKI

Grandmother of Tuwharetoa

Hine-te-Ariki was an ancestress and Puhi who lived in the area of the Parimahana Scenic Reserve. She built a Pa on Tirotirowhetu Mountain because it was part of her duties to the iwi to climb this mountain to check the position of the stars, so as to accurately gauge the correct time to plant the kumara which was a substantial crop in those times.

NGĀ KOHATU O HINE-TE-ARIKI

The stones of Hine-te-Ariki are significant to Ngāti Tuwharetoa and the Parimahana Scenic Reserve because these stones were placed for protection in the nearby Ruruanga Stream. They were placed by Hine-te-Ariki in such a way as to provide an inviting

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crossing for the unwary and a slippery wet end for the unfortunate thereby being an effective security system.

At the same time that Hine-te-Ariki travelled to different kainga (homes) within her tribal rohe, Waitaha-Ariki-Kore, her future husband, was preparing to come to Aotearoa from Hawaiki.

TOHIA-O-TE-RANGI

Tohia-o-te-Rangi was a leading chief of Ngāti Tuwharetoa who lived in the Parimahana area. His Pa was called Te Rewha which was situated on the southern ridge of Tirotirowhetu Mountain.

Tohia-o-te-Rangi often used explicit means to win battles and he is commemorated on one of the veranda poles of Oniao Marae at Te Awa-a-te-Atua, Matata, in one of these explicit positions.

To the people of Ngāti Tuwharetoa these names have the following meanings:

Parimahana	abundance of warmth
Hine-Te-Ariki	a high-ranking Puhī
TiroTiroWhetu	star gazing
Ngawha	geothermal sulphur
Tohia-o-te-Rangi	heavenly binding
Te Rewha	named after Tohia-o-te-Rangi's father who had very bad eyesight
Ruruanga	moving together in one direction.

3. Protection Principles Relating to Parimahana Scenic Reserve

The following protection principles relate to avoiding harm to, or the diminishing of, the Ngāti Tuwharetoa Values related to the Owhakatihi over the Parimahana Scenic Reserve:

- (a) Encouragement of respect for the association of Ngāti Tuwharetoa with the Parimahana Scenic Reserve;
- (b) Accurate portrayal of the association of Ngāti Tuwharetoa with the Parimahana Scenic Reserve; and
- (c) Recognition of the relationship of Ngāti Tuwharetoa with urupā, wāhi tapu and wāhi taonga, including archaeological sites.

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4. Actions by the Director-General of Conservation in Relation to the Protection Principles

Pursuant to *clause 5.7.9* of the Deed of Settlement, the Director-General of Conservation has determined that the following actions will be taken by the Department of Conservation in relation to the principles:

- (a) Staff, conservation board members, concessionaires and the public will be provided with information about the Ngāti Tuwharetoa Values and the existence of the Owhakatihi over the Parimahana Scenic Reserve;
- (b) As far as reasonably practicable, the association of Ngāti Tuwharetoa with the Parimahana Scenic Reserve will be accurately portrayed in all of the Department of Conservation's new public information and educational material;
- (c) The Governance Entity will be consulted in the provision of the Department of Conservation's new public information or educational material and, as far as reasonably practicable, the Department of Conservation will only use Ngāti Tuwharetoa's cultural information with the consent of the Governance Entity;
- (d) Significant earthworks and disturbances of soil and/or vegetation will be avoided; and
- (e) Any koiwi (human remains) or taonga found or uncovered will be left untouched and the Governance Entity informed as soon as practicable.

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SCHEDULE 6.1
REDRESS LAND
(Clause 11.1)

Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
South Auckland Land District – Kawerau District 868.5060 hectares, more or less, being Sections 1 and 3 SO 58814, Section 1 SO 58837, Section 1 SO 58838 and Sections 1, 2, 3 and 4 SO 58914. All Transfer B553524.1.	Mt Edgecumbe Station, Kawerau	\$2,725,000	Subject to: A forestry right granted under s.5A Forestry Rights Registration Act 1983 to Tasman Forest Industries Limited. Computer Interest Register SA69A/199; A forestry right granted under s.5A Forestry Rights Registration Act 1983 to Carter Holt Harvey Limited. Computer Interest Register SA69A/344; Replacement conservation	4 May 2001 Disclosure Updates on 14 August 2002, 24 September 2002, 27 September 2002, 30 September 2002, 2 October 2002, 30 May 2003	Bev Adlam c/- MFAT Wellington & c/- Te Runanga o Tuwharetoa ki Kawerau (cc. Moesa John) All sent to: David Tapsell/ Leanne Clarke, Bell Gully (cc. Bev Adlam)

Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
			<p>covenants to be granted (and registered) on identical terms to those originally registered as Documents B044926.3 - B044926.6;</p> <p>Gazette Notice B532273.1 that declared part of State Highway 34 to be a Limited Access Road;</p> <p>Right to Convey Water, Right to Convey Effluent, Right to Convey Energy, Right to Convey Signals and Information, Right to Convey Geothermal Water and Right of Way. Created by Transfer B544778.2;</p> <p>Right of Way in favour of KA 30 Bore pursuant to <i>clause 6.4.6</i> (affects Section 1</p>		

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Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
			SO 58814); Unregistered lease to Armer Farms (NI) Limited (affects Section 1 SO 58838, part of Section 2 SO 58914 and part of Section 1 SO 58837 of Mount Edgecumbe Station); Informal agreement for Kawerau Gun Club to use part of paddock 59 on the property (refer clause 5.2 of the lease to [REDACTED]).		
South Auckland Land District – Kawerau District 253.5800 hectares, more or less, being Lot 1 DPS 68332. All	Hilldale Farm, Kawerau	\$770,000	Subject to: Rights of Way and Right to Convey Water specified in Easement Certificate B.279340.1; Right to Convey Water in	4 May 2001 Disclosure Updates on 14 August 2002, 24 September 2002, 27 September 2002, 30 September 2002, 2 October 2002, 30 May	Bev Adlam c/- MFAT Wellington & c/- Te Runanga o Tuwharetoa ki Kawerau (cc. Moesa John) All sent to: David Tapsell/ Leanne Clarke, Bell Gully (cc. Bev Adlam)

Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
Transfer B652153.1			gross to the Kawerau District Council. Created by Transfer B.279340.3; Unregistered lease to Armer Farms (NI) Limited (forms part of the Mount Edgcumbe Station Lease)	2003	
South Auckland Land District – Kawerau District 885 square metres, more or less, being Lot 145 DPS 4716. All Computer Freehold Register SA9C/158. 782 square metres, more or less, being Lot 146 DPS 4716.	28-30 Islington Street and Corner Onslow Street, Kawerau	\$87,500	Subject to: Section 3 Petroleum Act 1937; Section 8 Atomic Energy Act 1945; Section 3 Geothermal Energy Act 1953; Sections 6 and 8 Mining Act 1971; Sections 5 and 261 Coal Mines	16 May 2001 14 August 2001 (Disclosure Update), 30 May 2003 (Disclosure Update)	Bev Adlam c/- MFAT Wellington & c/- Te Runanga o Tuwharetoa ki Kawerau (cc. Moesa John) David Tapsell/ Leanne Clarke, Bell Gully (cc. Bev Adlam)

Handwritten initials: SA, MCM

Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
All Computer Freehold Register SA9C/159			<p>Act 1979;</p> <p>Right of way over part marked B on Plan S35408. Created by Transfer H582821.2 (affects Lot 146);</p> <p>Right of way over part marked C on Plan S35408. Created by Transfer H582821.2 (affects Lot 145)</p> <p>Unregistered lease to Tuwharetoa Ki Kawerau Hauora Trust;</p> <p>Unregistered lease to Te Runanga o Tuwharetoa Ki Kawerau.</p>		
South Auckland Land District – Kawerau	Vacant land, Corner River Road and	\$16,000		16 May 2001	Bev Adlam c/- MFAT Wellington & c/- Te Runanga o Tuwharetoa ki

Legal description	Street Address	Redress Value	Encumbrances	Date of Cover letter	Sent to
District 1.5539 hectares, more or less, being Lot 2 DPS 54629. All Computer Freehold Register SA46B/246	Porritt Drive, Kawerau			30 May 2003 (Disclosure Update)	Kawerau (cc. Moesa John)

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SCHEDULE 6.2
REDRESS LICENSED LAND
(Clause 11.1)

PART OF THE ROTOEHU WEST LICENSED LAND

- 1 Approximately 844.47 hectares (subject to survey), being Lot 1 DPS 57550, Part Lot 1 DPS 57551 and Part Lot 1 DPS 57645 (all in the South Auckland Land District), illustrated on SO 306594 a copy of which is attached as Appendix I to this Schedule.
- 2 The parts of Lot 1 DPS 57551 and Lot 1 DPS 57645 are defined by the following boundaries:
 - (a) The northern boundary commences at the eastern boundary of Lot 1 DPS 57551 adjacent to the Whakahaupapa Stream , and runs west between compartments 66 and 65, then north between compartments 66 and 67 and between compartments 79 and 67, then west across the northern end of compartment 67 to meet Waho Road. Survey will need to establish the most practical boundary from Waho Road to Deadmans Road, across the north end of compartment 68. The boundary then runs northwards along Deadmans Road and then along the boundary between compartments 71 and 72, to Wairoa Valley Road;
 - (b) The western boundary of the land runs southwards along Wairoa Valley Road from the boundary of compartments 71 and 72 to the boundary of compartments 53 and 34, then along that compartment boundary to Eono Road and then along Eono Road (to the west of compartments 34 and 33) to the southern boundary of the forest on Pukehangī Road;
 - (c) The southern boundary follows the existing boundary of Lot 1 DPS 57551 from the intersection of Eono and Pukehangī Roads eastward to the Whakahaupapa stream, and then northwards to the boundary between compartments 66 and 65.
- 3 The survey of the Redress Licensed Land will:
 - (a) Include as part of the Redress Licensed Land, Martins Road from its intersection with Haast Road to the southern boundary of Lot 1 DPS 57551;

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- (b) Include, as part of the Redress Licensed Land, that part of Haast Road from Waho Road through compartments 67 and 65 to the southern boundary of compartment 66;
- (c) Include, as part of the Redress Licensed Land, Waho Road from the northern boundary of compartment 68 to the northern boundary of compartment 67;
- (d) Include, as part of the Redress Licensed Land, all of Deadmans Road;
- (e) Exclude that part of Wairoa Valley Road from Campbell Road to the boundary between compartments 53 and 34. In the event that survey shows all or part of Wairoa Valley Road to lie on Lot 1 DPS 53629, the boundary of the Redress Licensed Land will not extend beyond the boundary of Lot 1 DPS 57645;
- (f) Include, as part of the Redress Licensed Land, that part of Wairoa Valley Road from the boundary between compartments 53 and 34 to the southern boundary of Lot 1 DPS 57551;
- (g) Exclude the whole of Eono Road;
- (h) Include as part of the Redress Licensed Land, that part of Pukehangi Road from Eono Road to Wairoa Valley Road.

4 The Redress Licensed Land will be subject to and, where applicable, have the benefit of:

- (a) Part IVA Conservation Act 1987;
- (b) Section 11 Crown Minerals Act 1991;
- (c) Part Crown Forestry Licence SA58A/550;
- (d) Protective Covenant Certificate SA58A/600;
- (e) Public Access Easement Certificate SA58A/650;
- (f) A Right of Way easement in gross in favour of the Minister of Conservation pursuant to *clause 6.3.6(a)*;
- (g) Two appurtenant Rights of Way over conservation land pursuant to *clause 6.3.6(b)*;

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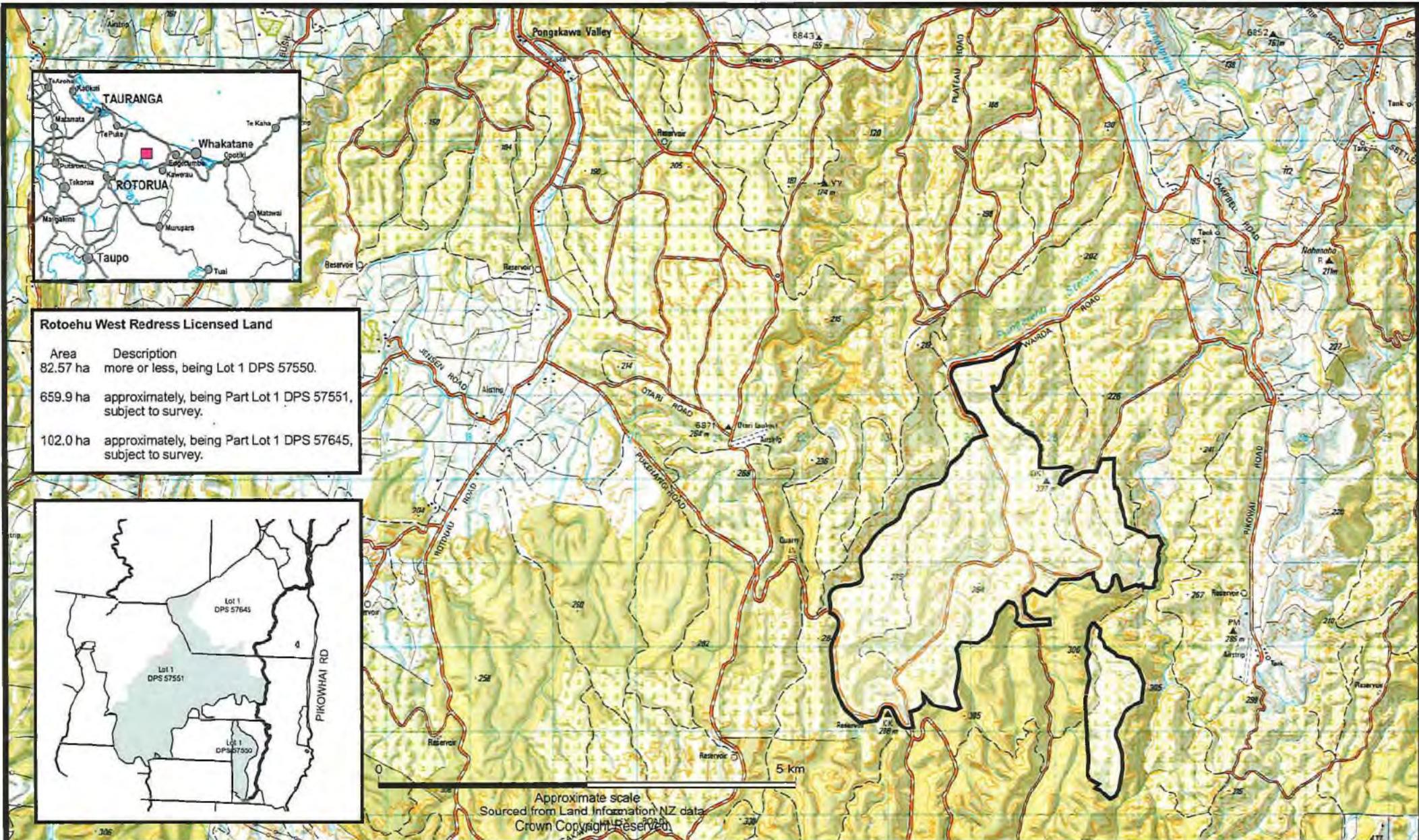
- (h) Access to Wahi Tapu sites pursuant to *clause 6.3.8*;
- (i) Any other encumbrances created under the process referred to in *clause 6.3.7*; and
- (j) Any other encumbrances required to give effect to a right referred to in the Disclosure Information or in the publicly available documents under which the land is currently held or to ensure titles are raised for the Redress Licensed Land.

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APPENDIX I

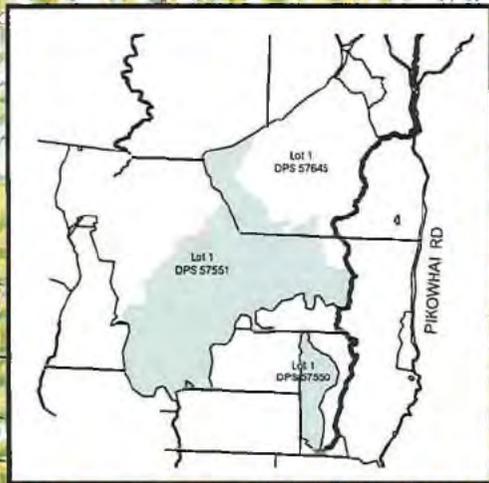
Illustrative Map of the Redress Licensed Land

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Rotoehu West Redress Licensed Land

Area	Description
82.57 ha	more or less, being Lot 1 DPS 57550.
659.9 ha	approximately, being Part Lot 1 DPS 57551, subject to survey.
102.0 ha	approximately, being Part Lot 1 DPS 57645, subject to survey.



Approximate scale
 Sourced from Land Information NZ data
 Crown Copyright Reserved



South Auckland Land District
 Territorial authority :
 Western Bay of Plenty District
 Boundaries are indicative only.

SINCLAIR KNIGHT MERZ

WR00424.0

Rotoehu West Redress Licensed Land

Areas referred to in the Deed of Settlement between Ngati Tuwharetoa (Bay of Plenty) and the Crown

Approved as to boundaries:
R. C. Mitchell 6.6.03
 for and on behalf of Ngati Tuwharetoa (Bay of Plenty)

D. M. P. ... 6.6.03
 for and on behalf of the Crown

SO 306594

SCHEDULE 6.3
TERMS OF TRANSFER
(Clauses 6.3.2 and 6.4.2)

1 OPERATIVE CLAUSES

1.1 The Crown must transfer the fee simple estate in each Commercial Redress Property on the terms set out in *clause 6.3* and this Schedule, subject to and, where applicable, with the benefit of:

1.1.1 All matters noted on the register of title to the Commercial Redress Property at the Date of this Deed; and

1.1.2 All other Encumbrances.

1.2 The Commercial Redress Property will be transferred as redress and without charge to, or consideration to be provided or paid by, the Governance Entity.

2 OBLIGATIONS PRIOR TO TRANSFER

2.1 The Crown must maintain any Commercial Redress Property that is not Redress Licensed Land until the Settlement Date to a standard no worse than that which it was in at the Date of this Deed, fair wear and tear excepted.

3 POSSESSION AND SETTLEMENT

3.1 On the Settlement Date, possession must be given and taken of the Commercial Redress Property subject to the matters and Encumbrances referred to in *paragraphs 1.1.1* and *1.1.2*.

3.2 Subject to *paragraph 9*, on the Settlement Date the Crown must hand to the Governance Entity:

3.2.1 A registrable memorandum of transfer of the Commercial Redress Property (to be prepared by the Crown and, if necessary, signed by the Governance Entity); and

3.2.2 All other instruments in registrable form which may be required for the purpose of registering the memorandum of transfer, together with all instruments of title and all contracts and other documents which create rights, interests and obligations affecting the registered proprietor's interest and which will continue following settlement other than proclamations, Gazette Notices and similar public notices.

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- 3.3 All outgoing and incoming, including rates but excluding insurance premiums, must be apportioned at the Settlement Date.
- 3.4 The Crown must pay all charges for electric power, gas, water, and other utilities due by it as owner of the Commercial Redress Property until the Settlement Date except where those charges are payable by any tenant or occupant directly to the relevant supplier.
- 3.5 The Crown must supply a separate statement of apportionments for each Commercial Redress Property to the Governance Entity before the Settlement Date. On the Settlement Date:
 - 3.5.1 The Governance Entity must pay to the Crown the amount by which the outgoing (except for insurance premiums) for the Commercial Redress Property prepaid by the Crown in respect of a period after the Settlement Date exceed the incoming received by the Crown for that period; or
 - 3.5.2 The Crown must pay to the Governance Entity the amount by which the incoming received by the Crown in respect of a period after the Settlement Date exceed the outgoing (except for insurance premiums) for the Commercial Redress Property prepaid by the Crown for that period.
- 3.6 Subject to the terms of any occupancy or tenancy of the Commercial Redress Property, the Crown must use reasonable endeavours to obtain permission for the Governance Entity (or any person authorised by the Governance Entity), upon reasonable notice, to enter the Commercial Redress Property on one occasion before the Settlement Date to examine the property.
- 3.7 The Crown must make available to the Governance Entity on the Settlement Date any keys to exterior doors to, and electronic door openers (if any) and/or security codes to alarms (if any) for, the Commercial Redress Property that are in the possession of the Crown at the Settlement Date.
- 3.8 The Commercial Redress Property must be transferred inclusive of all fixtures and fittings that are owned by the Crown and are situated on the Commercial Redress Property at the Date of this Deed and those fixtures and fittings will be free from any charge.
- 3.9 No chattels situated on or about the Commercial Redress Property are included in the transfer of the Commercial Redress Property. Any issue as to the ownership of, and liability for, any such chattels, and any fixtures or fittings

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owned or installed by any tenant or occupant of the Commercial Redress Property, must be resolved between the Governance Entity and the tenant or occupant (without reference to the Crown).

- 3.10 Any Commercial Redress Property which is not subject to any lease, tenancy, licence to occupy or other right is to be transferred with vacant possession.
- 3.11 The Crown may vary Encumbrances before the Settlement Date but only if the Crown first obtains Ngāti Tuwharetoa's consent, which shall not be unreasonably withheld.

4 RISK AND INSURANCE

- 4.1 The Commercial Redress Property will remain at the sole risk of the Crown until the Settlement Date and, from the Settlement Date, it will remain at the sole risk of the Governance Entity.
- 4.2 In the event that, prior to the giving and taking of possession, the Commercial Redress Property is destroyed or damaged and such destruction or damage has not been made good by the Settlement Date, then the following provisions will apply:
- 4.2.1 If the destruction or damage has been sufficient to render the Commercial Redress Property untenable, and it is untenable on the Settlement Date, the Governance Entity may:
- (a) Complete the transfer on condition that the Crown pay an amount as alternative redress to the Governance Entity equal to the amount of diminution in value of the Commercial Redress Property as at the Settlement Date; or
 - (b) Cancel the proposed transfer of the Commercial Redress Property by giving the Crown notice in writing, in which case the Crown will promptly pay as alternative redress to the Governance Entity the Redress Value in respect of the Commercial Redress Property; and
- 4.2.2 If the Commercial Redress Property is still tenable on the Settlement Date, the Governance Entity will complete the transfer on the condition that the Crown pay an amount as alternative redress to the Governance Entity equal to the amount of the diminution in value of the Commercial Redress Property as at the Settlement Date; and

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[Signature]

4.2.3 Either Party may give the other Party notice in writing requiring that any dispute as to the application of this *paragraph 4.2* be determined by an arbitrator to be appointed by the president or vice-president for the time being of the Law Society for the district where the Commercial Redress Property is situated, and the Party serving the notice may at any time after that refer the dispute to the arbitrator for determination under the Arbitration Act 1996. If the dispute is not determined by the Settlement Date then the Parties' obligations relating to transfer and possession will be deferred until the fifth Business Day following the date on which the dispute is determined. The arbitrator may determine that the possession date will not be deferred or will be deferred to another day or days.

4.3 The Governance entity will not be required to take over any insurance policies held by the Crown.

5 REDRESS VALUE

For the purposes of establishing:

5.1 a diminution in value of the Commercial Redress Property under *paragraphs 4.2.1(a), 4.2.2 or 10.5*; or

5.2 the amount of any damages arising out of a breach by the Crown of any of its obligations under this Schedule in respect of the Commercial Redress Property,

the Redress Value of the Commercial Redress Property or, in the case of the Redress Licensed Land, the Transfer Value, will be treated as the value of that property immediately before the relevant event or damage.

6 TITLE, BOUNDARIES, ETC

6.1 The Crown will not be bound to point out the boundaries of the Commercial Redress Property.

6.2 The Governance Entity:

6.2.1 Has accepted the Crown's title to the Commercial Redress Property as at the Date of this Deed; and

6.2.2 May not make any objections or requisitions on it.

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6.3 Except as otherwise expressly set out in this Schedule, no error, omission or misdescription of the Commercial Redress Property or its title shall annul the transfer of the Commercial Redress Property.

6.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the Commercial Redress Property and any contiguous land of the Crown and:

6.4.1 This clause will not continue for the benefit of any subsequent purchaser of the contiguous land; and

6.4.2 The Crown will be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the Commercial Redress Property.

7 FURTHER TRANSFER OBLIGATIONS

7.1 If the Crown receives any notice or demand in relation to the Commercial Redress Property from the Crown or any territorial authority or from any person after the Date of this Deed, the Crown will, if not paying or complying with such notice or demand, immediately deliver it to the Governance Entity or the Governance Entity's solicitor, and if the Crown fails to do so the Crown will be liable for any penalty incurred.

7.2 Immediately after the Settlement Date, the Crown will give notice of the transfer of the Commercial Redress Property to the territorial authority having jurisdiction in respect of that property.

8 DISCLOSURE INFORMATION

8.1 The Crown warrants to the Governance Entity that the Disclosure Information in relation to the Commercial Redress Property contains all the material information that relates to the Commercial Redress Property, of which the Transferor Agency is aware at the Date of this Deed, the Transferor Agency having inspected its records but not having undertaken a physical inspection of the Commercial Redress Property or made enquiries beyond its own records. This warranty does not extend to information which may be apparent from such a physical property inspection or enquiry.

8.2 In respect of the Redress Licensed Land, the Governance Entity accepts and acknowledges that:


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- 8.2.1 The Crown has provided no information in respect of any improvements on those properties; and
- 8.2.2 No representation or warranty is given by the Crown in relation to any such improvements.
- 8.3 The Governance Entity acknowledges and agrees that, other than the warranty set out in paragraph 8.1, no representation or warranty is given, whether express or implied, nor is any responsibility accepted, by the Crown with respect to:
- 8.3.1 The completeness or accuracy of the Disclosure Information in relation to the Commercial Redress Property;
- 8.3.2 The physical condition of the Commercial Redress Property;
- 8.3.3 The compliance or otherwise of the Commercial Redress Property with any statutes, regulations, bylaws or any powers, rights and obligations under them, including any outstanding enforcement or other notice, requisition or proceeding issued under any code by any relevant authority, relating to or affecting the Commercial Redress Property; or
- 8.3.4 Any other matter relating to the ownership, occupation, use or management of the Commercial Redress Property.
- 8.4 The Parties acknowledge and record that, prior to the Date of this Deed, Ngāti Tuwharetoa had the opportunity to inspect the Commercial Redress Property and satisfy itself as to the state and condition of the Commercial Redress Property.

9 DELAYED TRANSFER OF LEGAL TITLE

- 9.1 If a computer freehold register or registers for the Commercial Redress Property has or have not been created, then the Crown covenants for the benefit of the Governance Entity that it will arrange for the creation of computer freehold register or registers for the Commercial Redress Property and shall then transfer the property as soon as is reasonably practicable, but no later than five years after the Settlement Date.
- 9.2 The covenant given by the Crown under *paragraph 9.1* shall (whether registered or not) have effect and be enforceable, notwithstanding it is positive in effect and there may be no dominant tenement.

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- 9.3 If *paragraph 9.1* applies then, for the period from the Settlement Date until the date that the Crown transfers the title to that Commercial Redress Property to the Governance Entity, the Governance Entity will be the beneficial owner of that property and all the other obligations and rights to be performed or arising on the Settlement Date will still be performed and arise as if full legal title had passed to the Governance Entity on the Settlement Date. In particular, the Crown shall permit the Governance Entity to enter into and take possession of and receive the income from the Redress Licensed Land (subject to the Crown Forestry Licence).

10 MISCELLANEOUS

Further Assurances

- 10.1 Each of the Crown and the Governance Entity 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 *clause 6.3* of the Deed and this Schedule.

Provision of Information

- 10.2 The Governance Entity shall provide to the Crown such information and advice as the Crown may reasonably require to assist the Crown to defend actions and claims relating to the management of the Commercial Redress Property before the Settlement Date, and the Crown will reimburse the Governance Entity for the reasonable costs and expenses incurred by the Governance Entity in doing so.
- 10.3 The Governance Entity shall permit the Crown and its employees and agents access at all reasonable times to all information held by the Governance Entity in any form that it has received from the Crown in relation to management of the Commercial Redress Property before the Settlement Date.

Non merger

- 10.4 On transfer of the Commercial Redress Property to the Governance Entity under this Deed, the provisions of this Schedule will not merge and, to the extent any provision has not been fulfilled, will remain in force.

Compensation

- 10.5 The Crown shall compensate the Governance Entity for any net diminution in value of the Redress Licensed Land arising out of the existence of encumbrances required to give effect to a right arising out of the creation of a computer freehold register or registers for the Redress Licensed Land which were not disclosed or referred to in the Disclosure Information and

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paragraph 5 of this Schedule applies to the calculation of the amount of such compensation.

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SCHEDULE 6.4
DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER KA 30
BORE
(Clause 6.4)

DATE: [*Settlement Date*]

BETWEEN:

- (1) [*insert name of the Governance Entity*] ("*the Governance Entity*")
- (2) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (*the Crown*)

BACKGROUND:

- A. Ngāti Tuwharetoa (Bay of Plenty) and the Crown are parties to a Deed of Settlement dated 6 June 2003.
- B. Under that Deed of Settlement, the Crown agreed with Ngāti Tuwharetoa that the Crown would on the Settlement Date enter into a deed granting the Governance Entity a right of first refusal over the RFR Property.
- C. This Deed is in satisfaction of the obligations of the Crown referred to in *clause B* of this Background.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

Business Day means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Auckland;

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Control for the purposes of subclause (d) of the definition of Crown Body means:

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

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

Crown Body means:

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

and includes any subsidiary of or related company to, any such company or body;

Dispose means:

- (a) to transfer an estate in fee simple; or
- (b) to grant a new lease the term of which, including rights of renewal or of extension is, or could be, for 35 years or longer;

Expiry Date means, in respect of an RFR Notice, the date one calendar month after the date the Governance Entity gave notice under *clause 3.1(b)*;

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Indication Date means the date specified in the RFR Notice by which the Governance Entity is required to respond to the RFR Notice under *clause 2.1*;

RFR Notice means a written notice to the Governance Entity which offers to Dispose of:

- (a) the RFR Property; and
- (b) all fixtures, fittings and plant and equipment situated on the RFR Property on the date on which the notice is given,

to the Governance Entity or its nominee at the price and on the terms and conditions set out in the notice; and

RFR Property means that parcel of land in the South Auckland Land District-Kawerau District, being 7883 square metres, more or less, being Section 1 SO57099. All Computer Freehold Register SA62D/51.

1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (c) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (d) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (e) a reference to a document includes an amendment or supplement to, or a replacement or novation of, that document;
- (f) references to monetary amounts are to New Zealand currency;
- (g) 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;

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- (h) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (i) a reference to a date on which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
- (j) where the day on or by which anything to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (k) a reference to time is to time in New Zealand.

2 NOTICE TO BE GIVEN BEFORE DISPOSING OF RFR PROPERTY

2.1 Crown must give RFR Notice

The Crown must, before Disposing of the RFR Property, give the Governance Entity an RFR Notice. The RFR Notice must set out the Indication Date, which shall be a date not less than 15 Business Days after the date on which the RFR Notice was given.

2.2 Crown may withdraw RFR notice

The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that notice under *clause 4*. If the Crown withdraws an RFR Notice, this Deed still applies to the RFR Property and, in particular, the Crown must give another RFR Notice before it Disposes of the RFR Property.

3 INDICATION OF WISH TO PURCHASE AND DUE DILIGENCE PROGRESS

3.1 Governance Entity's Response

The Governance Entity may, by the Indication Date, either:

- (a) Give notice to the Crown that it does not wish to purchase the RFR Property, in which case the Crown's offer will lapse at the time at which the Governance Entity gave notice under this *clause 3.1* and *clause 5* will apply accordingly as if the Indication Date were the Expiry Date; or
- (b) Give notice to the Crown that it may wish to purchase the RFR Property, in which case the Crown shall not Dispose of the RFR Property to any person other than the Governance Entity unless and until it has complied with the requirements of this Deed.

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3.2 No Response

If the Governance Entity gives no response to the RFR Notice by the Indication Date, it will be deemed to have given a Notice under *clause 3.1(a)* at 5.00 pm on the Indication Date.

3.3 Arrangements for Due Diligence

If the Governance Entity has given a notice under *clause 3.1(b)*, the Crown shall forthwith make arrangements to permit the Governance Entity to undertake a due diligence process relating to the RFR Property during the period between the date the Governance Entity gave notice under *clause 3.1(b)* and the Expiry Date.

3.4 Process for Due Diligence

Subject to *clause 3.5*, the due diligence process will provide for the Governance Entity to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the RFR Property for the purpose of formulating an offer to purchase the RFR Property.

3.5 Confidential Information

Nothing in *clauses 3.3* or *3.4* requires the Crown to disclose to the Governance Entity information which it is not legally entitled to disclose or which is not in the Crown's possession.

4 ACCEPTANCE BY THE GOVERNANCE ENTITY

If the Governance Entity accepts, by the Expiry Date, the offer set out in the RFR Notice by notice in writing to the Crown, a contract for the Disposal of the RFR Property is constituted between the Crown and the Governance Entity.

5 NON-ACCEPTANCE BY THE GOVERNANCE ENTITY

If:

- (a) the Crown gives the Governance Entity an RFR Notice; and
- (b) the Governance Entity does not accept the offer set out in the RFR Notice by notice in writing to the Crown by the Expiry Date; -

the Crown:

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- (i) may, at any time during the period of 2 years from the Expiry Date, Dispose of the RFR Property if the price, and other terms and conditions of the Disposal, are not more favourable to the purchaser or lessee than the price, and other terms and conditions, set out in the RFR Notice to the Governance Entity; but
- (ii) must, promptly after entering into an agreement to Dispose of the RFR Property to a purchaser or lessee give written notice to the Governance Entity of that fact and disclosing the terms of the agreement; and
- (iii) must not Dispose of the RFR Property after the end of that 2 year period after the Expiry Date without first giving an RFR Notice to the Governance Entity under *clause 2.1*.

6 RE-OFFER REQUIRED

If:

- (a) the Crown has given the Governance Entity an RFR Notice; and
- (b) the Governance Entity does not, by the Expiry Date, accept the offer set out in the RFR Notice by notice in writing to the Crown ; and
- (c) the Crown proposes to Dispose of the RFR Property again but at a price, or on other terms and conditions, more favourable to the purchaser or lessee than on the terms in the RFR Notice,

the Crown may do so only if it first offers the RFR Property for disposal on the same favourable terms and conditions to the Governance Entity in another RFR Notice under *clause 2.1*.

7 TERMS OF THIS DEED NOT TO AFFECT CERTAIN RIGHTS AND RESTRICTIONS

Nothing in this Deed affects, or derogates from, and the rights and obligations created by this Deed are subject to:

- (a) the terms of any gift, endowment, or trust relating to the RFR Property existing before 6 June 2003;
- (b) the rights of any holders of mortgages over, or of security interests in, the RFR Property;

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- (c) any requirement at common law or under legislation that must be complied with before the RFR Property is Disposed of to the Governance Entity, or that the Crown must Dispose of the RFR Property to any third party;
- (d) any feature of the title to, or any characteristic of, the RFR Property that prevents or limits the Crown's right to Dispose of the RFR Property to the Governance Entity; and
- (e) any legal requirement that:
 - (i) prevents or limits the Crown's ability to sell or otherwise Dispose of the RFR Property to the Governance Entity; and
 - (ii) the Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law).

8 THIS DEED DOES NOT APPLY IN CERTAIN CASES

8.1 Disposal to certain persons are exempt

Clause 2.1 does not apply if the Crown is Disposing of the RFR Property to:

- (a) the Governance Entity or its nominee;
- (b) a Crown Body, if that Crown Body takes the RFR Property subject to the terms of this Deed and enters into a deed (at the Crown's expense) in favour of the Governance Entity in the form set out in the *Schedule* to this Deed;
- (c) a person to whom the RFR Property is being Disposed of under sections 40 or 41 of the Public Works Act 1981;
- (d) a person who immediately before the Disposal, holds a legal right created on or before 6 June 2003 to purchase the RFR Property or to be granted a lease of it or be offered the opportunity to purchase the RFR Property or take a lease of it.

8.2 Effect of exempt Disposals to Crown Bodies

A Crown Body to whom an RFR Property is being Disposed of under *clause 7* or *clauses 8.1(c)* or *(d)* is not required to enter into a deed under *clause 8.1(b)*.

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8.3 Disposals for certain purposes are exempt

Clause 2.1 does not apply to the Disposal of an RFR Property to a local authority under section 50 of the Public Works Act 1981 if the local authority takes the RFR Property subject to the terms of this Deed and enters into a Deed (at the Crown's expense) in favour of the Governance Entity in the form set out in the *Schedule* to this Deed.

8.4 Effect of exempt Disposals

A local authority to whom an RFR Property is being Disposed of under *clause 7* or *clause 8.1(c)* or *(d)* is not required to enter into a deed under *clause 8.3*.

9 NOTICE OF CERTAIN DISPOSALS

Except where *clause 5(c)* applies, the Crown must advise the Governance Entity as soon as reasonably practicable after any Disposal of the RFR Property to a party other than the Governance Entity or its nominee.

10 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown and the Governance Entity under this Deed. The Crown and the Governance Entity may agree in writing to an extension of time limits.

11 ENDING OF RIGHT OF FIRST REFUSAL

11.1 RFR ends on Disposal which complies with this Deed

The obligations of the Crown set out in this Deed shall end on a transfer of the estate in fee simple of the RFR Property in accordance with *clauses 4, 5, 7* or *8*.

11.2 RFR ends after 50 years

The obligations of the Crown set out in this Deed end 50 years after [*insert Settlement Date*].

12 NOTICES

12.1 Notices in writing

Any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

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The Crown:
The Solicitor General
Crown Law Office
St Pauls Square
45 Pipitea Street
(PO Box 5012)
WELLINGTON

The Governance Entity:
[tba]

12.2 Methods of delivery

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

12.3 Hand delivery

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

12.4 Delivery by post

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

12.5 Delivery by facsimile

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

13 NO ASSIGNMENT

The Governance Entity's rights and obligations under this Deed of Grant of Right of First Refusal are not assignable.

14 RFR PROPERTY TO BE DISPOSED OF SEPARATELY

14.1 RFR Notice to relate only to RFR Property

An RFR Notice must relate only to the RFR Property and all fixtures, fittings and plant and equipment situated on the RFR Property on the date on which the notice is given.

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14.2 Subsequent disposal to relate only to RFR Property

A Disposal to a purchaser or lessee under *clause 5(b)* must be only of the assets described in the RFR Notice referred to in *clause 5(b)* and must not be associated with a disposal of or conditional upon the purchaser or lessee also acquiring, other assets of the Crown.

EXECUTED as a deed on the date first written above.

[Insert execution clauses]

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SCHEDULE

(Clause 8.1(b) and clause 8.3)

DEED OF COVENANT

Date: [date of disposal to Crown Body or Local Authority]

PARTIES

- (1) *[insert name of the Governance Entity] (“the Governance Entity”)*
- (2) *[THE CROWN BODY] or [LOCAL AUTHORITY] (New Owner)*
- (3) *[HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [The Crown Body] if this Deed relates to a second or subsequent intra-Crown disposal] (Current Owner)*

BACKGROUND

- A. The New Owner intends to take from the Current Owner a Disposal of the Property described in the schedule to this Deed (*Property*).
- B. The Property is subject to a deed of grant of right of first refusal dated *[settlement date]* between the Crown and the Governance Entity (*Principal Deed*).
- C. Under the Principal Deed, the Current Owner must, before Disposing of the Property to the New Owner, obtain a deed from the New Owner in favour of the Governance Entity ensuring that the New Owner takes the Property subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner’s obligation.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but are defined in the Principal Deed, have the meanings given to them by the Principal Deed;



Effective Date means the date on which the New Owner takes a Disposal of the Property;

Property has the meaning given to it in Background A;

Principal Deed has the meaning given to it in Background B;

Transfer means the transfer described in *clause 2*.

1.2 Interpretation

The rules of interpretation set out in *clause 1.2* of the Principal Deed also apply to the interpretation of this Deed.

2 TRANSFER BY CURRENT OWNER

The Current Owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Property.

3 ACCEPTANCE BY NEW OWNER

The New Owner, for the benefit of the Current Owner and the Governance Entity, accepts the Transfer and agrees to be bound by the Principal Deed in so far as it relates to the Property.

4 CONSENT AND RELEASE BY THE GOVERNANCE ENTITY

The Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed insofar as they relate to the Property.

EXECUTED as a deed on the date first written above

[Insert execution clauses for Current owner

New owner

The Governance Entity.]

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SCHEDULE 6.5
DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN
GEOTHERMAL ASSETS
(Clause 6.5.1)

THIS DEED is made

BETWEEN:

- (1) [insert name of the governance entity] (*the Governance Entity*)
- (2) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (*the Crown*)

BACKGROUND:

- A. Ngāti Tuwharetoa (Bay of Plenty) and the Crown are parties to a Deed of Settlement dated 6 June 2003.
- B. Under that Deed of Settlement, the Crown agreed with Ngāti Tuwharetoa that (if that Deed of Settlement became unconditional) the Crown would enter into a deed granting the Governance Entity a right in respect of certain geothermal assets owned by the Crown and associated with the supply of geothermal steam to Norske Skog Tasman Limited.
- C. This Deed is in satisfaction of the obligations of the Crown referred to in clause B of this Background.

IT IS AGREED as follows:

**1 NOTICE TO BE GIVEN BEFORE DISPOSING OF CROWN
GEOTHERMAL ASSETS**

1.1 Crown must give RFR Notice

The Crown must, before Disposing of the Crown Geothermal Assets, give an RFR Notice to the Governance Entity in respect of the Crown Geothermal Assets.

1.2 Content of RFR Notice

The RFR Notice will set out:

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1.2.1 The price and the terms and conditions upon which the Crown offers the Crown Geothermal Assets. It is acknowledged and agreed that, without limitation, the terms and conditions upon which the Crown offers the Crown Geothermal Assets may include a requirement that the Governance Entity:

- (a) Shall, upon the assignment or the novation (as the case may be) of the Tasman Contract, indemnify the Crown against any liability whatsoever incurred by the Crown under or in respect of the Tasman Contract relating to any act or omission of the Governance Entity; and
- (b) Shall acquire the Crown Geothermal Assets subject to all liabilities associated with the Crown Geothermal Assets; and

1.2.2 The Indication Date, which shall be a date not less than 15 Business Days after the date on which the RFR Notice was given.

1.3 **Crown may withdraw RFR Notice**

The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that notice under *clause 2*.

1.4 **Effect of the Crown withdrawing an RFR Notice**

If the Crown withdraws an RFR Notice, this Deed still applies to the Crown Geothermal Assets and, in particular, the Crown must give another RFR Notice before it Disposes of the Crown Geothermal Assets.

2 **INDICATION OF WISH TO PURCHASE AND DUE DILIGENCE PROCESS**

2.1 **Governance Entity's Response**

The Governance Entity may, by the Indication Date, either:

- (a) Give Notice to the Crown that it does not wish to purchase the Crown Geothermal Assets, in which case the Crown's offer will lapse at the time at which the Governance Entity gave Notice under this *clause 2.1* and *clause 4* will apply accordingly as if the Indication Date were the Expiry Date; or

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- (b) Give Notice to the Crown that it may wish to purchase the Crown Geothermal Assets, in which case the Crown shall not Dispose of the Crown Geothermal Assets to any person other than the Governance Entity unless and until it has complied with the requirements of this Deed.

2.2 No Response

If the Governance Entity gives no response to the RFR Notice by the Indication Date, it will be deemed to have given a Notice under *clause 2.1(a)* at 5.00 pm on the Indication Date.

2.3 Arrangements for Due Diligence

If the Governance Entity has given a Notice under *clause 2.1(b)*, the Crown shall forthwith make arrangements to permit the Governance Entity to undertake a due diligence process relating to the Crown Geothermal Assets during the period between the date the Governance Entity gave Notice under *clause 2.1(b)* and the Expiry Date.

2.4 Process for Due Diligence

Subject to *clause 2.5*, the due diligence process will provide for the Governance Entity to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Crown Geothermal Assets for the purpose of formulating an offer to purchase the Crown Geothermal Assets.

2.5 Confidential Information

Nothing in *clauses 2.3* or *2.4* requires the Crown to disclose to the Governance Entity information which it is not legally entitled to disclose or which is not in the Crown's possession.

3 ACCEPTANCE BY THE GOVERNANCE ENTITY

3.1 Acceptance

If the Governance Entity accepts, by the Expiry Date, the offer set out in the RFR Notice by Notice to the Crown, a contract for the Disposal of the Crown Geothermal Assets (a "Sale Contract") is constituted between the Crown and the Governance Entity at the price and on the terms and conditions set out in the RFR Notice.

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3.2 Transfer

3.2.1 If a Sale Contract is constituted between the Crown and the Governance Entity under *clause 3.1*, the Crown will transfer the Crown Geothermal Assets to:

- (a) The Governance Entity; or
- (b) Any person nominated by the Governance Entity (the "*Nominated Transferee*") by Notice to the Crown.

3.2.2 If the Governance Entity wishes to nominate a Nominated Transferee, the Governance Entity must:

- (a) Give Notice to the Crown under *clause 3.2.1(b)* at least 10 Business Days before settlement of the Sale Contract is due; and
- (b) Include in that Notice:
 - (i) the name of the Nominated Transferee; and
 - (ii) any other relevant details about the Nominated Transferee.

3.2.3 If the Governance Entity specifies a Nominated Transferee under *clause 3.2.1(b)*, the Governance Entity remains liable for all the Governance Entity's and the Nominated Transferee's obligations under the Sale Contract.

4 NON-ACCEPTANCE BY THE GOVERNANCE ENTITY

If:

4.1 The Crown gives the Governance Entity an RFR Notice; and

4.2 The Governance Entity does not accept, by the Expiry Date, the offer set out in the RFR Notice by Notice to the Crown; -

the Crown:

- (a) May, at any time during the period of 2 years from the Expiry Date, Dispose of the Crown Geothermal Assets if the price, and other terms

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and conditions of the Disposal are not more favourable to the purchaser than the price, and other terms and conditions, set out in the RFR Notice to the Governance Entity; but

- (b) Must, promptly after entering into an agreement to Dispose of the Crown Geothermal Assets to a purchaser:
 - (i) Give written notice to the Governance Entity of that fact; and
 - (ii) Disclose the terms of that agreement; and
- (c) Must not Dispose of the Crown Geothermal Assets after the end of that 2 year period after the Expiry Date without first giving another RFR Notice to the Governance Entity under *clause 1.1*.

5 RE-OFFER REQUIRED

If:

- 5.1 The Crown has given the Governance Entity an RFR Notice; and
- 5.2 The Governance Entity does not, by the Expiry Date, accept the offer set out in the RFR Notice by Notice to the Crown; and
- 5.3 The Crown proposes to Dispose of the Crown Geothermal Assets but at a price, or on other terms and conditions, more favourable to the purchaser or lessee than on the terms in the RFR Notice,

the Crown may do so only if it first offers the Crown Geothermal Assets for Disposal on those more favourable terms and conditions to the Governance Entity in another RFR Notice under *clause 1.1*.

6 TERMS OF THIS DEED NOT TO AFFECT CERTAIN RIGHTS AND RESTRICTIONS

Nothing in this Deed affects, or derogates from, and the rights and obligations created by this Deed are subject to:

- 6.1 The rights of any holders of mortgages over, or of security interests in, any Crown Geothermal Asset;
- 6.2 Any requirement at common law or under legislation:

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- (a) That must be complied with before any Crown Geothermal Asset is Disposed of to the Governance Entity; or
- (b) That the Crown must Dispose of any Crown Geothermal Asset to any third party;

6.3 Any feature of the title to any Crown Geothermal Asset that prevents or limits the Crown's right to Dispose of the Crown Geothermal Asset to the Governance Entity; and

6.4 Any legal requirement, including under the Tasman Contract, that:

- (a) Prevents or limits the Crown's ability to sell or otherwise Dispose of any Crown Geothermal Asset to the Governance Entity; and
- (b) The Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law).

7 THIS DEED DOES NOT APPLY IN CERTAIN CASES

7.1 Disposal to certain persons are exempt

Clause 1.1 does not apply if the Crown is Disposing of the Crown Geothermal Assets to:

- (a) The Governance Entity or its nominee;
- (b) A person to give effect to this Deed or to the Deed of Settlement;
- (c) A person who, immediately before the Disposal, holds a legal right created on or before 6 June 2003 to:
 - (i) Purchase the Crown Geothermal Assets; or
 - (ii) Be offered the first opportunity to purchase the Crown Geothermal Assets, including, but without limitation, any such legal rights held by Tasman under the Tasman Contract.

7.2 Disposals to Crown Bodies exempt

7.2.1 *Clause 1.1* does not apply to the Disposal of the Crown Geothermal Assets to a Crown Body, if that Crown Body takes

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the Crown Geothermal Assets subject to the terms of this Deed and enters into a deed (at the Crown's expense) in favour of the Governance Entity in the form set out in the *First Schedule*.

7.2.2 A Crown Body to whom the Crown Geothermal Assets are being Disposed of under *clause 6* or *clause 7.1* is not required to enter into a deed under *clause 7.2.1*.

7.3 Disposal of or to Crown Bodies

Nothing in this Deed:

7.3.1 Affects or derogates from the right of the Crown or a Crown Body to sell or Dispose of a Crown Body;

7.3.2 Requires any offer to the Governance Entity in respect of such sale or Disposal before that Crown Body is sold or Disposed of; or

7.3.3 Affects or derogates from the right of a Crown Body as transferee of the Crown Geothermal Assets to sell or Dispose of the Crown Geothermal Assets to any other Crown Body or Crown Bodies or back to the Crown, subject to the transferee entering into a deed (if applicable) in like terms as that referred to in *clause 7.2.1* (except where *clause 6* or *7.1* applies).

8 NOTICE OF CERTAIN DISPOSALS

Except where *clause 4.4* applies, the Crown will advise the Governance Entity as soon as reasonably practicable after any Disposal of the Crown Geothermal Assets to a party other than the Governance Entity (or Nominated Transferee).

9 TIME LIMITS

9.1 Time is of the essence for all time limits imposed on the Crown and the Governance Entity under this Deed.

9.2 The Crown and the Governance Entity may agree in writing to an extension of time limits.

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10 ENDING OF RIGHT OF FIRST REFUSAL

10.1 RFR ends on Disposal which complies with this Deed

The obligations of the Crown set out in this Deed shall end in respect of the Crown Geothermal Assets on a transfer of the ownership of the Crown Geothermal Assets in accordance with *clauses 2, 4, 6 or 7*.

10.2 RFR ends after 50 years

The obligations of the Crown set out in this Deed end 50 years after [*insert the date on which the Deed of Settlement became unconditional*].

11 CROWN NOT OBLIGED TO TRANSFER LESS THAN THE TOTAL CROWN GEOTHERMAL ASSETS

Nothing in this Deed shall require the Crown to offer or to transfer less than all of the assets comprising the Crown Geothermal Assets.

12 NOTICES

The provisions of this clause apply to Notices under this Deed:

12.1 Notices to be signed

The Party giving a Notice must sign it.

12.2 Notices in writing

Any Notice to a party must be in writing addressed to that party at that party's address or facsimile number.

12.3 Address for Notice

Until any other address or facsimile number of a party is given by Notice to the other party, they are as follows:

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The Crown

Governance Entity

The Solicitor-General
Crown Law Office
St Pauls Square
45 Pipitea Street
(P O Box 5012)
Wellington

[*To be completed at Settlement Date*]

Facsimile No: 04 473 3482

12.4 **Delivery**

Delivery of a Notice may be effected by hand, by post with prepaid postage, or by facsimile.

12.5 **Timing of delivery**

A Notice delivered:

12.5.1 By hand will be treated as having been received at the time of delivery;

12.5.2 By prepaid post will be treated as having been received on the third day after posting; or

12.5.3 Sent by facsimile will be treated as having been received on the day of transmission.

12.6 **Deemed date of Delivery**

If a Notice is treated as having been received on a day that is not a Business Day, or after 5.00 pm on a Business Day, that Notice will (despite *clause 12.5*) be treated as having been received the next Business Day.

13 **AMENDMENT**

This Deed may not be amended unless the amendment is in writing signed by, or on behalf of, the Governance Entity and the Crown.

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14 NO ASSIGNMENT

The Governance Entity's rights and obligations under this Deed are not assignable.

15 DEFINITIONS AND INTERPRETATION

15.1 Definitions

In this Deed, unless the context otherwise requires:

Business Day means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) A day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) The days observed as the anniversaries of the provinces of Wellington and Bay of Plenty;

Control, for the purposes of subclause (d) of the definition of Crown Body, means:

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

Crown:

- (a) Means Her Majesty the Queen in right of New Zealand; and
- (b) Includes all Ministers of the Crown and all Departments; but
- (c) Does not include:
 - (i) an Office of Parliament;

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- (ii) a Crown entity (as defined in section 2(1) of the Public Finance Act 1989);
 - (iii) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); or
 - (iv) any person which the Public Finance Act 1989 provides is not part of the Crown; and
- (d) For the avoidance of doubt, does not include the New Zealand Railways Corporation;

Crown Body means:

- (a) The Crown (whether acting through a Minister or otherwise);
- (b) A Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (c) A State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (d) Any company or body which is wholly-owned or controlled by:
 - (i) the Crown, a Crown entity or a State enterprise; or
 - (ii) a combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises;

and includes any subsidiary of, or related company to, any such company or body;

Crown Geothermal Assets means:

- (a) the physical assets (including wells, wellheads, geothermal pipelines and buildings) from time to time owned by the Crown; and
- (b) any easements granted in favour of the Crown in respect of any geothermal pipelines falling within the class of assets described in paragraph (a) above,

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associated with the supply of geothermal steam to Tasman under the terms of the Tasman Contract;

- (c) a novation or, in the absence of Tasman's consent, an assignment, to Ngāti Tuwharetoa of the Crown's right and obligations under the Tasman Contract; and
- (d) a novation or, in the absence of any other relevant party's consent, an assignment, to Ngāti Tuwharetoa of the Crown's rights and obligations under any other contract for the supply by the Crown of geothermal energy from the assets described in (a) and (b) above, in substitution for or in addition to the Tasman Contract,

held by the Crown at the date the Crown must give an RFR Notice to the Governance Entity under this Deed;

Deed means this Deed;

Deed of Settlement means the Deed of Settlement referred to in clause A of the Background;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

Expiry Date means, in respect of an RFR Notice, the date one calendar month after the date the Governance Entity gave Notice under clause 2.1(b);

Indication Date means the date specified in the RFR Notice by which the Governance Entity is required to respond to the RFR Notice under clause 2.1;

Nominated Transferee has the meaning set out in clause 3.2.1(b);

Notice means a notice or other communication given under this Deed;

RFR Notice means a written notice to the Governance Entity which offers to Dispose of the Crown Geothermal Assets to the Governance Entity at the price and on the terms and conditions set out in that notice;

Sale Contract has the meaning set out in clause 3.1;

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Tasman means Norske Skog Tasman Limited, including its permitted successors and assignees;

Tasman Contract means the Agreement for the Supply of Geothermal Energy dated 23 October 1998 between the Crown and Tasman (being the assignee of the rights under the agreement from Tasman Pulp and Paper Company Limited), as amended from time to time.

15.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) Headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) Words or phrases (other than proper names) appearing in this Deed with capitalised initial letter are defined terms and bear the meanings given to them by this Deed;
- (c) Where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (d) The singular includes the plural and vice versa, and words importing one gender include the other genders;
- (e) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (f) A reference to any document or agreement, including this Deed, includes reference to that document or agreement as amended, novated or replaced from time to time;
- (g) A reference to any monetary amounts is to New Zealand currency;
- (h) 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;
- (i) A reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

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- (j) A reference to a date on or by which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
- (k) Where the day on or by which anything to be done is not a Business Day, that thing must be done on or by the next Business Day after that day; and
- (l) A reference to time is to time in New Zealand.

EXECUTED as a deed on the date first written above.

[Insert execution clauses]

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FIRST SCHEDULE

(Clause 7.2)

DEED OF COVENANT

Date:

PARTIES

- (1) [insert name of the governance entity] (*the Governance Entity*)
- (2) [insert name of the local authority, Crown Body, trustee or trustees (as the case may be) taking a Disposal under clause 7.2] (*New Owner*)
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [[The Crown Body] if this Deed relates to a second or subsequent intra-Crown disposal] (*Current Owner*)

BACKGROUND

- A The New Owner intends to take from the Current Owner a Disposal of the Assets described in the Schedule to this Deed (*“the Assets”*).
- B The Assets are subject to a deed of grant of right of first refusal dated [] between the Crown and the Governance Entity (*“the Principal Deed”*).
- C Under the Principal Deed, the Current Owner must, before Disposal of the Assets to the New Owner, obtain a deed from the New Owner in favour of the Governance Entity ensuring that the New Owner takes the Assets subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner’s obligation.

IT IS AGREED as follows:

1 TRANSFER BY CURRENT OWNER

The Current Owner transfers to the New Owner (with effect from the Transfer Date) all its rights and obligations under the Principal Deed in so far as they relate to the Assets.

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2 ACCEPTANCE BY NEW OWNER

The New Owner, for the benefit of the Current Owner and the Governance Entity, accepts the Transfer and agrees with and for the benefit of the Governance Entity that it will at all times abide by and comply with the terms and conditions of the Principal Deed.

3 CONSENT AND RELEASE BY THE GOVERNANCE ENTITY

The Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Transfer Date) from all of its obligations under the Principal Deed in so far as they relate to the Assets

4 DEFINITIONS AND INTERPRETATION

4.1 Defined Terms in this Deed

In this Deed, unless the context requires otherwise:

Assets has the meaning set out in clause A of the Background;

Principal Deed has the meaning set out in clause B of the Background;

Transfer means the transfer described in *clause 1*; and

Transfer Date means the date on which the New Owner takes a Disposal of the Assets.

4.2 Defined Terms in Principal Deed

Terms or expressions that are not defined in this Deed, but are defined in the Principal Deed, have the meanings given to them by the Principal Deed.

4.3 Interpretation

The rules of interpretation set out in *clause 15.2* of the Principal Deed also apply to the interpretation of this Deed.

EXECUTED as a deed on the date first written above

[Insert execution clauses]

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SCHEDULE

THE ASSETS

[Describe the Assets]

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SCHEDULE 6.6
VALUATION PROCESS
(Clause 6.1.2(b), Valuation)

1 DEFINITIONS AND INTERPRETATION

In this Schedule, unless the context otherwise requires:

Arbitration Commencement Date means the date the Crown makes the referral referred to in *paragraph 5.1*;

Arbitrator means a person appointed under *paragraph 2.5*;

Valuation Reports means the valuation reports prepared for the Crown and Ngāti Tuwharetoa in accordance with this Schedule;

Crown's Valuer means any Registered Valuer appointed by the Crown under *paragraph 2.3* to take part in the process set out in this Schedule;

Market Value is the amount, exclusive of GST, for which the Redress Licensed Land might be expected to exchange on the Valuation Date, between a willing buyer and a willing seller, in an arms' length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion. In applying this definition to the Redress Licensed Land, the following matters (in addition to all other relevant factors) shall be taken into account:

- (a) the Terms of Transfer; and
- (b) any encumbrances or interests affecting or benefiting the Redress Licensed Land appearing or to appear on the title to the Redress Licensed Land or as disclosed in writing by the Crown;

Ngāti Tuwharetoa's Valuer means any Registered Valuer appointed by Ngāti Tuwharetoa under *paragraph 2.3* to take part in the process set out in this Schedule;

Registered Valuer means a valuer registered with the Valuers Registration Board of New Zealand and with experience in the valuation of commercial forest land in New Zealand;

Valuation Date means the Date of this Deed; and

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Valuation Exchange Date means the next Business Day after the date of expiration of the period of 50 Business Days commencing on the Valuation Date.

2 PRELIMINARY STEPS: DISCLOSURE, APPOINTMENT OF VALUERS AND ARBITRATOR

- 2.1 The Crown will within 10 Business Days of the Valuation Date give Ngāti Tuwharetoa all material information that relates to the Redress Licensed Land, of which Land Information New Zealand is aware, having inspected its records but not having undertaken a physical inspection of the Redress Licensed Land or made enquiries beyond Land Information New Zealand records.
- 2.2 The information that the Crown gives under *paragraph 2.1* shall be Disclosure Information in relation to the Redress Licensed Land for the purposes of *paragraph 8.1* of *Schedule 6.3*.
- 2.3 No later than the next Business Day after the date of expiration of the period of 15 Business Days commencing on the Valuation Date the Crown and Ngāti Tuwharetoa shall each:
- (a) appoint a Registered Valuer and instruct him or her to assess the Market Value of the Redress Licensed Land, in accordance with this Schedule; and
 - (b) give notice to the other of the identity of the Registered Valuer.
- 2.4 The Crown and Ngāti Tuwharetoa shall ensure that the terms of appointment of their respective Valuers require them to participate in the process set out in this Schedule in accordance with the terms of this Schedule .
- 2.5 The Crown and Ngāti Tuwharetoa shall attempt to agree and appoint a person who is suitably qualified and experienced in determining disputes about values of assets similar to the Redress Licensed Land no later than the next Business Day after the date of expiration of the period of 20 Business Days commencing on the Valuation Date. If no agreement and appointment has been made by that date, the Crown shall within 5 Business Days request that the President of the New Zealand Institute of Valuers make such an appointment.
- 2.6 An appointment under *paragraph 2.5* is made once the appointee has confirmed that he or she shall conduct an arbitration, if requested by the Crown, in accordance with this Schedule.

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3 EXCHANGE OF VALUATION REPORTS

- 3.1 Either party may carry out an inspection of the Redress Licensed Land in sufficient time to enable compliance with *paragraph 3.2* by the Valuation Exchange Date. The Registered Valuer of the Party intending to carry out the inspection shall give at least 5 Business Days' notice of the date and time of the inspection to the Registered Valuer of the other Party and give that valuer an opportunity to attend the inspection.
- 3.2 Both the Crown's Valuer and Ngāti Tuwharetoa's Valuer shall prepare a Valuation Report which includes their respective assessments of Market Value and each party shall deliver a copy of its Valuation Report to the other party no later than the Valuation Exchange Date.
- 3.3 The Valuation Reports shall:
- 3.3.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with the express provisions of this Deed and this Schedule;
- 3.3.2 include an executive summary containing:
- (a) a summary of the valuation along with key valuation parameters;
 - (b) a summary of the key issues affecting value, if any;
 - (c) the name of the valuer and his or her firm; and
 - (d) the signature of the valuer and lead valuer if applicable.
- 3.3.3 attach appendices setting out:
- (a) a statement of valuation policies; and
 - (b) relevant market and sales information.
- 3.4 If one party (*Defaulting Party*) fails to deliver its Valuation Report to the other party (who has provided a Valuation Report to the Defaulting Party within the prescribed time) by the Valuation Exchange Date, then the assessment of the Market Value contained in the Valuation Report provided by that other party will be the Transfer Value for the purposes of *clause 6.1.2*.

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4 NEGOTIATIONS TO AGREE MARKET VALUES

- 4.1 Following the Valuation Exchange Date the Crown and Ngāti Tuwharetoa shall attempt to agree to the Market Value. Where agreement is reached both Parties shall sign a statement identifying the amount which the parties have agreed is the Market Value.
- 4.2 The amount agreed as the Market Value shall be the Transfer Value for the Redress Licensed Land for the purposes of *clause 6.1.2*.
- 4.3 Where agreement is not reached under *paragraph 4.2* by the next Business Day after the date of expiration of the period of 20 Business Days commencing on the Valuation Exchange Date, the determination of the Transfer Value for the Redress Licensed Land shall be referred to the Arbitrator in accordance with *paragraph 5*.

5 DETERMINATION OF DISPUTED VALUES

- 5.1 Within 2 Business Days of *paragraph 4.3* applying, the Crown shall refer the dispute to the Arbitrator.
- 5.2 The Arbitrator shall promptly give notice of a meeting to be attended by the Crown and Ngāti Tuwharetoa and their respective Registered Valuers, at a venue and time to be decided by the Arbitrator after consultation with the parties and having regard to their obligation under *paragraph 5.3* but not later than the next Business Day after the date of expiration of the period of 30 Business Days commencing on the Arbitration Commencement Date.
- 5.3 The Crown and Ngāti Tuwharetoa shall by no later than 5.00 pm on the day which is 5 Business Days prior to the date of the meeting give to the Arbitrator (and to each other), the Crown's Valuation Report, Ngāti Tuwharetoa's Valuation Report and any submission or expert evidence based on that information which the Crown or the Ngāti Tuwharetoa intend to present at the meeting.
- 5.4 At the meeting, the Arbitrator shall establish a procedure and give each party to the arbitration the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the parties in relation to the information provided to the Arbitrator and otherwise have regard to the requirements of natural justice in the conduct of the meeting.
- 5.5 The Arbitrator shall hold the meeting and give his or her determination of the Market Value no later than the next Business Day after the date of expiration of

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the period of 45 Business Days commencing on the Arbitration Commencement Date. That determination shall be no higher than the higher, and no lower than the lower, of the assessment of Market Value contained in the Crown's Valuation Report and in Ngāti Tuwharetoa's Valuation Report.

- 5.6 The Transfer Value for the Redress Licensed Land for the purposes of *clause 6.1.2(b)* shall be the Arbitrator's determination of the Market Value.
- 5.7 The determination of the Arbitrator shall be final and binding on the Crown and Ngāti Tuwharetoa.

6 GENERAL PROVISIONS

- 6.1 The Crown and Ngāti Tuwharetoa shall each bear their own costs in connection with the processes set out in this Schedule. The costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in *paragraph 5.2* shall be borne by the Crown and Ngāti Tuwharetoa equally. However, in appropriate cases, the Arbitrator may award costs against the Crown or Ngāti Tuwharetoa where the Arbitrator considers that it would be just to do so on account of unreasonable conduct.
- 6.2 The Crown and Ngāti Tuwharetoa each acknowledge that they are required to use reasonable endeavours to ensure the processes set out in this Schedule operate in the manner, and within the timeframes, specified in this Schedule.

If the processes set out in this Schedule are delayed through any event (such as the death or incapacity or unwillingness or inability to act of any Registered Valuer or the Arbitrator), the Crown and Ngāti Tuwharetoa shall use reasonable endeavours and co-operate with each other to minimise the delay.

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SCHEDULE 6.7

SETTLEMENT PROVISIONS – REDRESS LICENSED LAND

(Clause 6.1.2)

- 1 On the Redress Licensed Land Possession Date:
 - 1.1 the Governance Entity shall pay to the Crown by way of bank cheque drawn on a New Zealand registered bank and made payable to Land Information New Zealand an amount equal to the Transfer Value (plus GST if any); and
 - 1.2 subject to *paragraph 9 of Schedule 6.3*, the Crown shall concurrently deliver to the Governance Entity all documents and instruments necessary to effect transfer of the Redress Licensed Land to the Governance Entity;
- 2 If from any cause whatever (save the default of the Crown) all or any part of the Transfer Value or any other moneys payable by the Governance Entity to the Crown is not paid on the Redress Licensed Land Possession Date, the Crown shall not be obliged to give possession to the Governance Entity, and the Governance Entity shall pay to the Crown default interest at the rate of 12% per annum on all or that part of the Transfer Value (plus GST if any) so unpaid for the period from the Redress Licensed Land Possession Date to the Redress Licensed Land Settlement Date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.
- 3 If, without the written agreement of the parties, settlement is not effected on the Redress Licensed Land Possession Date then without prejudice to the rights of the party not in default the following provisions shall apply:
 - 3.1 Either the Crown or the Governance Entity may at any time after the Redress Licensed Land Possession Date serve on the other of them notice in writing ("*Settlement Notice*") to effect settlement but the notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to effect settlement in accordance with the Settlement Notice or is not so ready able and willing to effect settlement only by reason of the default or omission of the other party. For the sake of clarity the Governance Entity acknowledges that it may not serve a Settlement Notice where there is a delay of transfer of legal title as contemplated by *paragraph 9 of Schedule 6.3*;

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- 3.2 Upon service of a Settlement Notice, the party on which the Settlement Notice is served shall effect settlement within 10 Business Days after the date of service of the Settlement Notice (excluding the date of service) and in respect of that period time shall be of the essence but without prejudice to any intermediate right of cancellation (if any) by the other party;
- 3.3 If the party in default does not comply with the terms of a Settlement Notice then without prejudice to any other rights or remedies available to the party serving the Settlement Notice at law or in equity that party may cancel the agreement constituted by *clause 6.1.2* by written notice.

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SCHEDULE 6.8
TERMS OF EASEMENT
(Clause 6.3.6(a))

1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions:

In this Memorandum of Transfer, unless the context otherwise requires:

[“**Crown Forestry Licence**” means a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989;

“**Crown Forestry Licensee**” means the Licensee under a Crown Forestry Licence over the Transferor’s Land and includes the successors and assigns of the Crown Forestry Licensee;]

[These definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

“HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Ministry of Conservation” includes the servants, tenants, agents, workmen, licensees and invitees of the Minister but does not include members of the general public.

1.2 Construction

In the construction of this Transfer unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Transfer;

1.2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Transfer;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any

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gender include the other genders.

2 GRANT OF ACCESS RIGHTS

- 2.1 The Transferor hereby grants to the Transferee a right of way in gross over that part of the Transferor's Land shown marked M on DPS 57551 together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Transfer.
- 2.2 In consideration of the Transferor agreeing to enter into this Transfer the Transferee shall duly observe the obligations imposed on it under this Transfer.

3 OBLIGATIONS OF THE TRANSFEE

The rights and powers conferred under Clause 2 are granted subject to the following conditions and obligations:

- 3.1 The Transferee shall when passing or repassing over the Transferor's Land:
- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Transferor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
 - 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Transferor;
 - 3.1.3 take all due care when taking any welding equipment over the Transferor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Transferor's Land without the prior written permission of the Transferor;
 - 3.1.4 immediately after passing through any gates on the Transferor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
 - 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Transferor's Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Transferor's Land, and in

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particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this Clause 3.1.5):

- (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Transferor or other lawful authority; and
- (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;

- 3.2 Subject to Clauses 3.7 and 3.8, the Transferee shall, at its cost, repair to the satisfaction of the Transferor, any of the Transferor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Transferee;
- 3.3 The Transferee shall annually pay to the Transferor a proportion of the cost of maintenance of any of the roads or tracks on the Transferor's Land commensurate with the use made by the Transferee of such roads or tracks **PROVIDED THAT** the Transferee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Transferor's negligent use of that track or road;
- 3.4 The Transferee shall not exhibit any notice or sign on the Transferor's Land without the prior written consent of the Transferor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this Clause 3.4 shall not prevent the Transferee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Transferee will ensure, at all times, in the exercise of the rights set out in this Transfer that its agents, employees or contractors will not obstruct or hamper the Transferor or its agents, employees and contractors, in its or their normal or reasonable use of the Transferor's Land;
- 3.6 Subject to Clauses 3.7 and 3.8, in the event that the Transferor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Transferee, then any necessary improvements and maintenance shall be at the sole cost of the Transferee;
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Transferee shall not:

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- a) widen the road; or
- b) alter the location of the road; or
- c) alter the way in which the run-off from the road is disposed of; or
- d) change the nature of the road surface; or
- e) park or store equipment or material on the Transferor's Land,

without the Transferor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.8 The Transferee shall not erect any structures on the Transferor's Land or make any additions or alterations to existing structures unless the Transferee has obtained the Transferor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.9 The Transferee shall not at any time, except with the prior written approval of the Transferor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Transferor's Land nor shall the Transferee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Transferor;

3.10 The Transferee shall not, without the prior written approval of the Transferor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Transferor's Land, nor shall the Transferee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Transferor;

3.11 The Transferee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Transferee to conduct the activities permitted by this Transfer.

4 TRANSFEROR'S RIGHTS

4.1 The Transferor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Transferor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Transferor shall furnish at the expense of the

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Transferee, keys to any locks fitted to any of the said gates.

- 4.2 The Transferor may relocate any part or all of the right of way defined in Clause 2.1 where such relocation is required to enable the Transferor to reasonably obtain the full benefit of the Transferor's Land provided that such relocation shall be no less convenient to the Transferee in enabling the full benefit of the Transferee's Land. The Transferee will sign all documents required to effect any relocation and the Transferor will bear all the costs of relocation and provide an alternative right of way to the same standard as the existing right of way.

5 COSTS

The Transferee shall be liable to the Transferor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Transferor arising from or incidental to the preparation, registration and enforcement of any provision in this Transfer.

- 6 **LICENCE** [*this clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted*]

The Transferor and the Transferee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Transferor's Land.

7 ASSIGNMENT

- 7.1 The Transferee may assign its rights and obligations under this Transfer to any one of the following who acquires land for an estate or interest in land from the Transferee and requires rights under this Transfer as the means of providing reasonable access to that land:

- (a) Any Crown entity as defined in section 2(1) of the Public Finance Act 1989;
- (b) Any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986;
- (c) Any person who holds the land in trust for the Transferee; or
- (d) Any other person with the prior consent of the Transferee, which shall not be unreasonably withheld.

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- 7.2 As from the date of assignment the Transferee shall cease to have any liability whatsoever in respect of this Transfer and the Transferor agrees to release the Transferee from all obligations under this Transfer from that date, but only if the assignee enters into a deed of covenant with the Transferor agreeing to be bound by the terms of this Transfer from the date of release of the Transferee.

8 DELEGATION

All rights, benefits, and obligations of a party to this Transfer arising under this Transfer may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Transfer.

9 NOTICES

- 9.1 Any notices to be given by one party under this Transfer to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

9.1.1 The Transferor's address as set out in paragraph 1 of the First Schedule;
and

9.1.2 The Transferee's address as set out in paragraph 2 of the First Schedule.

- 9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

10 SEVERABILITY

If any part of this Transfer is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Transfer which shall remain in full force.

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Continuation of "Attestation"

Signed for and on behalf of
[GOVERNANCE ENTITY] as
Transferor by:

In the presence of:

Name:
Occupation:
Address:

Signed for and on behalf of **HER
MAJESTY THE QUEEN** as
Transferee by

**Conservator for the Bay of Plenty
Conservancy** acting for the Minister of
Conservation under delegated authority
pursuant to sections 57 and 58 of the
Conservation Act 1987 and section 41
of the State Sector Act 1988

In the presence of:

Name:
Occupation:
Address:

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SCHEDULE

1 TRANSFEROR'S ADDRESS:

[Governance Entity]

[Enter Address]

2 TRANSFEREE'S ADDRESS:

Department of Conservation
Bay of Plenty Conservancy
PO Box 1446
ROTORUA

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SCHEDULE 6.9
EASEMENT
(Clauses 6.3.6(b)(i) and 6.3.6(b)(ii))

Deed Granting Easement of Right of Way

Date

PARTIES

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “*Grantor*”)
- (2) **[GOVERNANCE ENTITY]** (the “*Grantee*”)

BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

BY THIS DEED IT IS AGREED AND DECLARED as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions:

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

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“Grantee’s Land” means the land described in paragraph 3 of the Schedule;

“Grantor’s Land” means the land described in paragraph 1 of the Schedule and includes any part thereof.

[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

“Crown Forestry Licence” means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

“Crown Forestry Licensee” means the Licensee under a Crown Forestry Licence over the Grantee’s Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

1.2 Construction

- 1.2.1 In the construction of this Deed unless the context otherwise requires:
- 1.2.2 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.3 references to Clauses and the Schedule are to the clauses and the schedule of this Deed;
- 1.2.4 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.5 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2 GRANT OF ACCESS RIGHTS

- 2.1 Pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the “Settlement Legislation”*) the Grantor hereby grants to the Grantee a right of way over that part of the Grantor’s Land shown [*enter details*] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement

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shall be forever appurtenant to the Grantee's Land as set out in the Schedule.

- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under Clause 2 are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:

- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
- 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);
- 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
- 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
- 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this Clause 3.1.5):
- (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and

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- (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;
- 3.2 Subject to Clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee;
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road;
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land;
- 3.6 Subject to Clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
 - (a) widen the road; or
 - (b) alter the location of the road; or

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- (c) alter the way in which the run-off from the road is disposed of; or
- (d) change the nature of the road surface; or
- (e) park or store equipment or material on the Grantor's Land,

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor;
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section/s [] of the [*the name of the Settlement Legislation*] (*the "Settlement Legislation"*), this easement will be enforceable in accordance with its terms, notwithstanding Part IIIB of the Conservation Act 1987.

4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage
PROVIDED THAT the Grantor shall furnish at the expense of the Grantee,

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keys to any locks fitted to any of the said gates.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

6 Licence *[this clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land.

7 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or a Memorandum of Transfer Grant of Right of Way on substantially the same terms) is registered in the South Auckland Land Registry Office as soon as the Registrar-General of Land confirms that this Deed, or such a memorandum of transfer, can be registered against the Grantor's Land.

8 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

9 NOTICES

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the Schedule.

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9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

10 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** as Grantor
by

**Conservator for the Bay of Plenty
Conservancy** acting for the Minister
of Conservation under delegated
authority pursuant to sections 57 and
58 of the Conservation Act 1987 and
section 41 of the State Sector Act
1988

In the presence of:

Name:

Occupation:

Address:

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Signed for and on behalf of
[GOVERNANCE ENTITY] as
Grantee by:

In the presence of:

Name:

Occupation:

Address:

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SCHEDULE

1 GRANTOR'S LAND:

[Insert details.]

2 GRANTOR'S ADDRESS:

Department of Conservation
Bay of Plenty Conservancy
PO Box 1146
ROTORUA

3 GRANTEE'S LAND:

[Insert details.]

4 GRANTEE'S ADDRESS:

[Governance Entity]

[Enter address]

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