NGĀTI KUIA

and

TE RUNANGA O NGĀTI KUIA TRUST

and

THE CROWN

TE WHAKATAU / DEED OF SETTLEMENT SCHEDULE: PROPERTY REDRESS

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1. CULTURAL

1. INSPECTION

1.1 The settling group and the governance entity acknowledge that they have had the opportunity to inspect, and form their own opinion of:

1.1.1 the cultural redress properties; and

1.1.2 the disclosure information.

2. SAME MANAGEMENT REGIME AND CONDITION

2.1 Until the settlement date, the Crown must:

2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and

2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed.

2.2 Paragraph 2.1 above does not:

2.2.1 apply to a cultural redress property that is not managed and administered by the Crown; or

2.2.2 require the Crown to restore or repair a cultural redress property damaged by events beyond the Crown's control.

3. WARRANTY

3.1 The Crown warrants that the disclosure information contains all the material information about the cultural redress properties that the Crown had, at the date of disclosure, in its records as owner.

4. LIMITS

4.1 Other than under paragraph 3.1 above, no representation or warranty (whether express or implied) is given in relation to:

4.1.1 the cultural redress properties, including in relation to:

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

(b) their compliance with:

(i) legislation, including bylaws; or

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

4.1.2 the disclosure information about the cultural redress properties, including in relation to its completeness or accuracy.

4.2 The Crown has no liability in relation to the state or condition of a cultural redress property, except for any liability arising as a result of a breach of paragraph 2.1 above.

5. ACCESS

5.1 The Crown is not required to enable access to a cultural redress property for the governance entity or members of the settling group.

6. REQUIRED DOCUMENTATION

6.1 On or before the settlement date, the governance entity must sign and return to the Crown any documentation, including any encumbrances, required in relation to the vesting of a cultural redress property.

7. SURVEY

7.1 The Crown must arrange, and pay for, the preparation, approval, and where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a computer freehold register for the property.

8. REGISTRATION

8.1 The Crown will pay any registration costs of any documents required to support the vesting of the cultural redress properties in the governance entity.

2. COMMERCIAL

2.1 COMMERCIAL - TERMS OF TRANSFER

TERMS OF TRANSFER

(Clause 6.7)

1. COMMERCIAL REDRESS PROPERTIES TO BE SUBJECT TO THESE TERMS OF TRANSFER

1.1 If the transfer value of the cleared current surplus land:

1.1.1 is agreed at least 20 business days prior to settlement date; and

1.1.2 does not exceed the available quantum amount,

then the terms of transfer contained in this part 2.1 shall apply to the cleared current surplus land and references to:

1.1.3 a commercial redress property shall be read to include the cleared current surplus land; and

1.1.4 the governance entity shall be a reference to the purchasing governance entity or entities.

1.2 If the transfer value of the cleared non-operational land:

1.2.1 is agreed at least 20 business days prior to settlement date; and

1.2.2 does not exceed the available quantum amount,

then the terms of transfer contained in this part 2.1 shall apply to the cleared non-operational land and references to:

1.2.3 a commercial redress property shall be read to include the cleared non-operational land; and

1.2.4 the governance entity shall be a reference to the purchasing governance entity or entities.

1.3 If the transfer value of the leaseback land or a single lease area:

1.3.1 is agreed at least 20 business days prior to settlement date; and

1.3.2 does not exceed the available quantum amount,

then the terms of transfer contained in this part 2.1 shall apply to the leaseback land or single lease area and references to:

1.3.3 a commercial redress property shall be read to include the leaseback land or single lease area; and

1.3.4 the governance entity shall be a reference to the purchasing governance entity or entities.

2. TRANSFER SUBJECT TO RELEVANT ENCUMBRANCES AND AS REDRESS

2.1 The Crown must transfer the fee simple estate in a commercial redress property to the governance entity on the terms set out in clause 6 of Te Whakatau / deed of settlement, and in this part 2.1, subject to and, where applicable, with the benefit of:

2.1.1 the disclosed encumbrances affecting or benefiting that property (as those disclosed encumbrances may be varied under paragraph 2.2 below); and

2.1.2 if the property is the leaseback land or single lease area, the lease referred to in paragraph 5 of part 6.1 of the schedule.

2.2 The Crown and the governance entity may agree in writing to vary or add to the disclosed encumbrances affecting a commercial redress property.

2.3 The governance entity must not unreasonably withhold or delay its consent to varying a disclosed encumbrance or granting a new encumbrance affecting a commercial redress property. In particular, in relation to the leaseback land or a single lease area, the governance entity acknowledges and agrees that it may be necessary for any lessee to have registered on the computer freehold or interest register for the leaseback land or single lease area, encumbrances to protect any new or existing infrastructure.

2.4 A commercial redress property will be transferred as redress and, except as provided for in paragraph 4.6 of this part, without charge to, or consideration to be provided or paid by, the governance entity or any other person.

2.5 The Crown will pay any survey and registration costs required to transfer the fee simple estate in a commercial redress property to the governance entity.

3. OBLIGATIONS PRIOR TO SETTLEMENT DATE

3.1 The Crown must maintain a commercial redress property, or ensure its maintenance, until the settlement date in substantially the same condition as it is in at the date of this deed, fair wear and tear excepted.

3.2 Between the date of this deed and the settlement date the Crown must consult with, and obtain the prior written consent of, the governance entity (which will not be unreasonably withheld or delayed) before:

3.2.1 agreeing to any material variation in the terms of a disclosed encumbrance affecting or benefiting a commercial redress property; or

3.2.2 procuring any consent, or providing any waiver, under the Resource Management Act 1991, or other legislation, that materially affects a commercial redress property.

3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on a commercial redress property, between the date of this deed and the settlement date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act 2004 in respect of such works.

3.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of a 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 Subject to the terms of any disclosed encumbrance affecting a commercial redress property, the Crown must use reasonable endeavours to obtain permission for the governance entity (or a person authorised by the governance entity), upon reasonable notice, to enter a commercial redress property on one occasion before the settlement date to examine it.

4. POSSESSION AND SETTLEMENT

4.1 On the settlement date:

4.1.1 possession must be given and taken of a commercial redress property subject to the disclosed encumbrances (as they may be varied under paragraph 2.2 of this part); and

4.1.2 vacant possession must be given and taken of a commercial redress property if it is not:

(a) a leaseback property, the leaseback land or single lease area; or

(b) subject to any disclosed encumbrance (as they may be varied under paragraph 2.2 of this part) that prevent vacant possession being given and taken.

4.2 Subject to paragraphs 4.3 and 10.1.2, the Crown must provide the governance entity with the following in relation to a commercial redress property on the settlement date:

4.2.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the property; and

4.2.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the settlement date.

4.3 If the fee simple estate in the commercial redress property may be transferred to the governance entity electronically under the relevant legislation:

4.3.1 paragraph 4.2.1 does not apply;

4.3.2 the Crown must ensure its solicitor:

(a) a reasonable time before the settlement date for the property:

(i) creates a Landonline workspace for the transfer to the governance entity of the fee simple estate in the property; and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments,

necessary, to effect the transfer electronically (the "**electronic transfer instruments**"); and

(b) on the settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation;

4.3.3 the governance entity must ensure its solicitor, a reasonable time before the settlement date, certifies and signs the transfer instrument for the property prepared in the Landonline workspace under paragraph 4.3.2(a)(ii); and

4.3.4 paragraphs 4.3.2 and 4.3.3 are subject to paragraph 10.1.2.

4.4 The **relevant legislation** for the purposes of paragraph 4.3 is:

4.4.1 the Land Transfer Act 1952; and

4.4.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

4.5 All outgoings and incomings (including rates, excluding insurance premiums) must be apportioned at the settlement date.

4.6 The Crown must supply a statement of apportionments to the governance entity before the settlement date. On the settlement date:

4.6.1 the governance entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for a commercial redress property pre-paid by the Crown in respect of a period after the settlement date exceed the incomings received by the Crown for that period; or

4.6.2 the Crown must pay to the governance entity the amount by which the incomings received by the Crown in respect of a period after the settlement date exceed the outgoings (except for insurance premiums) for a commercial redress property pre-paid by the Crown for that period.

4.7 With the exception of the leaseback land or any single lease areas, the Crown must make available to the governance entity on the settlement date any keys to gates, exterior doors, and electronic door openers (if any) and/or security codes to alarms (if any) for a commercial redress property that are in the possession of the Crown at the settlement date provided that the Crown shall not have any obligation under this paragraph where in the Crown's reasonable opinion, due to the nature of the commercial redress property, it would be inappropriate to make such items available.

4.8 A commercial redress property must be transferred inclusive of all fixtures and fittings that are owned by the land holding agency and are situated on the commercial redress property at the date of this deed, except in the case of leaseback land or single lease areas, in which case ownership of all lessee's improvements that are required for operational purposes as specified by the land holding agency remain with the lessee. For the avoidance of doubt, the fittings and fixtures transferred in the case of leaseback land will not include any fittings or fixtures on the land owned by a party that is not the land holding agency. In the case of a leaseback property, the ownership of all lessee's improvements remain with that land holding agency.

4.9 Fixtures and fittings transferred under paragraph 4.8 above are to be free of any mortgage or charge.

4.10 No chattels situated on a commercial redress property will be included in its transfer.

4.11 In respect of a leaseback property, the leaseback land or the single lease areas, paragraphs 4.5-4.10 of this part apply only to the extent they are consistent with the lease.

5. RISK AND INSURANCE

5.1 A 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.

5.2 In the event that, prior to the settlement date, a 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 apply:

5.2.1 the governance entity must complete the transfer of the commercial redress property at its transfer value on the condition that the Crown pay to the governance entity an amount equal to the amount (if any) by which the transfer value for the commercial redress property is more than the value of the commercial redress property as at the settlement date as a result of the destruction or damage; and

5.2.2 either party may give the other party notice in writing requiring that any dispute as to the application of this paragraph 5.2 be determined by an arbitrator to be appointed by the president of the New Zealand Law Society 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.

5.3 If a dispute relating to a claim by the governance entity for a diminution in value of a commercial redress property under paragraph 5.2.2 is not determined by the settlement date, then:

5.3.1 settlement shall take place on the settlement date in accordance with this part 2.1 as if there had been no destruction or damage; and

5.3.2 upon the determination of the dispute the Crown shall pay to the governance entity within 7 business days from such determination a sum equal to the diminution in value of the commercial redress property and interest from settlement date to the date of that payment at the rate set out in clause 6.4.2 of Te Whakatau / deed of settlement.

5.4 The governance entity will not be required to take over from the Crown any insurance policies in relation to a commercial redress property.

6. TRANSFER VALUE

6.1 To avoid doubt, the parties acknowledge that the transfer value of a commercial redress property will not be affected by:

6.1.1 any addition or variation to the disclosed encumbrances agreed in writing by the Crown and the governance entity under paragraph 2.2 of this part; or

6.1.2 any variation to a disclosed encumbrance agreed by the Crown and the governance entity under paragraph 3.2.1 of this part.

7. BOUNDARIES, TITLE, ETC

7.1 The Crown will not be bound to point out the boundaries of a commercial redress property.

7.2 If a commercial redress property is subject only to disclosed encumbrances (as they may be varied under paragraph 2.2 of this part), the governance entity:

7.2.1 will be treated as having accepted the Crown's title to the commercial redress property as at the date of this deed; and

7.2.2 may not make any objections to, or requisitions on, it.

7.3 Except as otherwise expressly set out in this part 2.1 no error, omission or misdescription of a commercial redress property or its title shall annul the transfer of the commercial redress property.

7.4 Unless otherwise agreed in writing, the Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between a commercial redress property and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence), and:

7.4.1 this paragraph will not continue for the benefit of any subsequent purchaser of the contiguous land; and

7.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the commercial redress property.

8. OBLIGATIONS AFTER SETTLEMENT

8.1 If the Crown receives any notice or demand in relation to a commercial redress property from the Crown, any territorial authority or any tenant after the settlement date, the Crown will, if not paying or complying with such notice or demand, promptly 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.

8.2 Immediately after the settlement date, the Crown will give notice of the transfer of a commercial redress property to the territorial authority having jurisdiction in respect of that property.

9. DISCLOSURE INFORMATION

9.1 The Crown warrants to the governance entity that the disclosure information in relation to a commercial redress property is all the material information about the property that the land holding agency is aware of at the date of providing that information having inspected its records but not having undertaken a physical inspection of the commercial redress property or made enquiries beyond its records.

9.2 Except as provided in paragraph 9.1 above, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

9.2.1 a commercial redress property including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

9.2.2 the completeness or accuracy of the disclosure information in relation to a commercial redress property.

9.3 The governance entity acknowledges that although the Crown is not giving any representation or warranty in relation to any commercial redress property except as provided in paragraph 9.1 above the governance entity had the opportunity prior to the date of this deed (in addition to being able to examine the disclosure information) to:

9.3.1 inspect the commercial redress property; and

9.3.2 determine its state and condition.

10. DELAYED TRANSFER OF LEGAL TITLE

10.1 The Crown covenants for the benefit of the governance entity that it will:

10.1.1 arrange for the creation of a computer freehold register for the land of a commercial redress property that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

10.1.2 transfer the fee simple estate in a commercial redress property to which paragraph 10.1.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the settlement date (or, in the case of cleared current surplus land, leaseback land and cleared non-operational land where this part 2.1 applies, no later than 12 months after the settlement date (unless otherwise agreed in writing between the parties)).

10.2 The covenant given by the Crown under paragraph 10.1 above shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

10.3 If paragraph 10.1 above 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:

10.3.1 the governance entity will be the beneficial owner of that property; and

10.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the governance entity on the settlement date.

11. MISCELLANEOUS

Further assurances

11.1 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 of Te Whakatau / deed of settlement and this part 2.1.

Non-merger

11.2 On transfer of a commercial redress property to the governance entity, the provisions of this part 2.1 will not merge and, to the extent any provision has not been fulfilled, will remain in force.

2.2 SCHEDULE OF COMMERCIAL REDRESS PROPERTIES

2.2: SCHEDULE OF COMMERCIAL REDRESS PROPERTIES

NGĀTI KUIA COMMERCIAL REDRESS PROPERTIES

Land Holding Agency	Office of Treaty Settlements			
Property	**Legal Description**	**Encumbrances**	**Agreed Value**	**Leaseback**
4 Nicholson St, Havelock	0.0709 hectares, more or less, being Lot 3 DP 9427, Marlborough Land District. All Computer Freehold Register MB5C/472.	Subject to an Easement in Gross to Drain Sewage created by 180780.6 and is subject to section 243(a) Resource Management Act 1991	$120,000	No

3. ALL DEFERRED SELECTION PROPERTIES

3.1 ALL DEFERRED SELECTION PROPERTIES - RIGHT TO ACQUIRE

3.1: ALL DEFERRED SELECTION PROPERTIES - RIGHT TO ACQUIRE

RIGHT OF DEFERRED SELECTION

1. NOTICE OF INTEREST

1.1 At any time during the 3 year period that commences on the settlement date:

1.1.1 the governance entity may give notice to the relevant land holding agency that it is interested in purchasing a deferred selection property; and/or

1.1.2 with the written approval of Rangitāne o Wairau Settlement Trust and the Ngāti Apa ki te Rā Tō Trust and provided the Rangitāne o Wairau Settlement Trust or the Ngāti Apa ki te Rā Tō Trust have not already given notice under the equivalent paragraph 1.1 of its schedule, the governance entity may give notice to the relevant land holding agency that it is interested in purchasing a LINZ/NZTA deferred selection property.

1.2 If the governance entity gives notice in accordance with paragraph 1.1 above that it is interested in purchasing a deferred selection property and/or a LINZ/NZTA deferred selection property, then that governance entity must:

1.2.1 within 10 business days of giving such notice, agree with the Crown whether the valuation process to be used to determine the transfer value of the property, and if it is a leaseback property to a department other than the Ministry of Education, its commencement rent, is the process set out in:

(a) part 3.3 of the schedule - Valuation Process for Independently Valued Assets; or

(b) part 3.4 of the schedule - Valuation Process for Jointly Valued Assets; and

1.2.2 within 12 months of the notice given under paragraph 1.1 the transfer value of the property, and if it is a leaseback property to a department other than the Ministry of Education, its commencement rent, must be determined or agreed in accordance with the valuation process.

1.3 In the event the parties fail to agree the valuation process in accordance with paragraph 1.2.1 then the parties shall use the process set out in part 3.3 of the schedule - Valuation Process for Independently Valued Assets.

1.4 If the governance entity gives the notice to the Crown under paragraph 1.1 it must within 15 business days of all the transfer values (and where relevant, the commencement rents if it is a leaseback property to a department other than the Ministry of Education) for the properties included in the relevant notice given under paragraph 1.1 above being determined or agreed in accordance with the valuation process:

1.4.1 in relation to a deferred selection property, notify the land holding agency whether or not it elects to purchase the deferred selection property; or

1.4.2 in relation to a LINZ/NZTA deferred selection property:

(a) notify the land holding agency whether or not it or either the Rangitāne o Wairau Settlement Trust or the Ngāti Apa ki te Rā Tō Trust elect to purchase the LINZ/NZTA deferred selection property; and

(b) provide to the Crown written certification from the Rangitāne o Wairau Settlement Trust and the Ngāti Apa ki te Rā Tō Trust that each are in agreement with the details confirmed in paragraph 1.4.2(a).

1.5 The governance entity and the Crown must use reasonable endeavours:

1.5.1 to ensure the valuation process operates in the manner, and within the timeframes, specified in parts 3.3 and 3.4 of the schedule; and

1.5.2 if the valuation process is delayed, to minimise the delay.

2. AGREEMENT FOR SALE AND PURCHASE

2.1 If the governance entity gives notice in accordance with paragraph 1.4 above that it or, in relation to a LINZ/NZTA deferred selection property, the governance entity or the Rangitāne o Wairau Settlement Trust or the Ngāti Apa ki te Rā Tō Trust, elects to purchase:

2.1.1 a selected non-leaseback property (which includes the LINZ/NZTA deferred selection properties), the purchasing governance entity confirmed in accordance with paragraph 1.4 and the Crown shall be deemed to have entered into an agreement for the sale and purchase of the property:

(a) at the transfer value determined or agreed in accordance with the valuation process; and

(b) on the terms set out in part 3.5 of the schedule; or

2.1.2 a selected leaseback property, the governance entity and the Crown shall be deemed to have entered into an agreement for the sale and purchase of the property (being the land but not the lessee's improvements, which do not transfer to the governance entity but remain owned by the land holding agency):

(a) at the transfer value determined or agreed in accordance with the valuation process;

(b) at the commencement rent determined or agreed in accordance with the valuation process for a leaseback property to a department other than the Ministry of Education, or in the case of a leaseback to the Ministry of Education, at an initial annual rent determined by multiplying the market value of the property determined under this part by the percentage specified in clause 3.1 of the leaseback to the Ministry of Education (plus GST, if any, on the amount so determined); and

(c) on the terms set out in part 3.5 of the schedule.

3. TERMINATION OF OBLIGATIONS

3.1 All obligations of the Crown to the governance entity under this deed in relation to a deferred selection property immediately cease if:

3.1.1 the governance entity does not give notice in accordance with paragraph 1.1 above that it is interested in purchasing that deferred selection property;

3.1.2 after giving notice in accordance with paragraph 1.1 above that it is interested in purchasing the deferred selection property, the governance entity:

(a) does not notify the land holding agency in accordance with paragraph 1.4 above whether or not it elects to purchase the deferred selection property; or

(b) notifies the land holding agency under paragraph 1.4 above that it does not elect to purchase the deferred selection property; or

3.1.3 at any time before an agreement for sale and purchase of that deferred selection property is constituted under paragraph 2.1 above, the governance entity notifies the land holding agency that it is not interested in purchasing the deferred selection property.

3.2 All obligations of the Crown to the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust under the deeds of settlement in relation to a LINZ/NZTA deferred selection property immediately cease if:

3.2.1 neither the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust give notice in accordance with paragraph 1.1 above that any one of them are interested in purchasing the LINZ/NZTA deferred selection property;

3.2.2 after giving notice in accordance with paragraph 1.1 that one of them is interested in purchasing the LINZ/NZTA deferred selection property, the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust (as the case may be):

(a) does not notify the Crown whether or not it or any one of them elect to purchase the LINZ/NZTA deferred selection property in accordance with the provisions of paragraph 1.4 of the relevant governance entity's schedule; or

(b) notifies the Crown under paragraph 1.4 of the relevant governance entity's schedule that none of them elect to purchase the LINZ/NZTA deferred selection property; or

3.2.3 at any time before an agreement for sale and purchase of a LINZ/NZTA deferred selection property is constituted under paragraph 2.1 above, the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust notifies the Crown that none of them are interested in purchasing the LINZ/NZTA deferred selection property; or

3.2.4 the beneficial ownership of that land has transferred to either the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust in accordance with the equivalent provision of its deed of settlement.

4. TIME LIMITS

4.1 Time is of the essence for the time limits imposed on the Crown and the governance entity under part 3-3.5 of the schedule and under clause 6 of Te Whakatau / deed of settlement.

5. LEASING BACK THE LEASEBACK PROPERTIES

5.1 If the governance entity elects to purchase a leaseback property, the governance entity must lease to the land holding agency the leaseback property after its transfer to the governance entity.

5.2 In respect of a deferred selection property that is to be leased back, the governance entity and the land holding agency must, by or on the actual deferred selection settlement date, sign a lease instrument substantially in the form set out in part 5.5 of the documents schedule for that leaseback property and providing that the commencement date for that lease is the actual deferred selection settlement date.

6. DEFINITIONS

6.1 Unless the context otherwise requires, the definitions in part 3.2 apply to:

6.1.1 clause 6 of Te Whakatau / deed of settlement; and

6.1.2 part 3 of the schedule.

3.2 ALL DEFERRED SELECTION PROPERTIES - INTERPRETATION PROVISIONS FOR VALUATION PROCESS AND TERMS OF TRANSFER

INTERPRETATION PROVISIONS

(Clause 6.8)

INTERPRETATION AND NOTICE

1. DEFINITIONS

1.1 In clause 6 of Te Whakatau / deed of settlement and in parts 3.3-3.7 of this schedule unless the context otherwise requires:

actual deferred selection settlement date means the date on which settlement of the property takes place;

arbitration commencement date means the date the Crown makes the referral to arbitration referred to in paragraph 8.1 of part 3.3;

arbitrator means a person appointed under paragraphs 4.2 or 4.3 of part 3.3;

commencement rent, in relation to a deferred selection property, means the commencement rent for that property determined or agreed under the valuation process, or in the case of a leaseback to the Ministry of Education determined in accordance with the leaseback document;

Crown's valuation report means the valuation report prepared by the Crown's valuer in accordance with part 3.3;

Crown's valuer means a registered valuer appointed by the Crown to take part in the valuation process;

deferred selection property means a property listed in part 3.6;

deferred selection settlement date means the date that is 20 business days after the Crown receives a notice from the governance entity under paragraph 1.4 of part 3.1 electing to purchase the property;

disclosed encumbrance is an encumbrance disclosed under paragraph 2.2 of part 3.3 or paragraph 2.2 of part 3.4;

disclosure information, in relation to a deferred selection property or a LINZ/NZTA deferred selection property, means the information given by the Crown about the property referred to in paragraph 2.1 of part 3.3 or paragraph 2.1 of part 3.4;

governance entity's valuation report means the valuation report prepared by the governance entity's valuer in accordance with part 3.3;

governance entity's valuer means a registered valuer appointed by the governance entity to take part in the valuation process;

lease means, in respect of a leaseback property, the lease to be entered into under paragraph 5 of part 3.1;

LINZ/NZTA deferred selection property means a property listed in part 3.7;

3.2 ALL DEFERRED SELECTION PROPERTIES
INTERPRETATION AND TERMS OF TRANSFER

market rental is the amount, plus GST (if any) and expressed as annual payment, at which a leaseback property would lease subject to specific lease terms and conditions, between a willing lessor and a willing lessee, in an arm's length transaction, after proper marketing, if the parties to the transaction had each acted knowledgeably, prudently, and without compulsion. In applying this definition to the deferred selection property, the following matters (in addition to all other relevant factors) must be taken into account:

(a) the terms of transfer; and

(b) the disclosed encumbrances affecting or benefiting that property;

market value is the amount, plus GST (if any), for which the deferred selection property or the LINZ/NZTA deferred selection property might be expected to exchange on the valuation date, between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing, if the parties to the transaction had each acted knowledgeably, prudently and without compulsion. In applying this definition to the deferred selection property or the LINZ/NZTA deferred selection property, the following matters (in addition to all other relevant factors) must be taken into account:

(a) the terms of transfer; and

(b) the disclosed encumbrances affecting or benefiting that property;

notification date, in relation to a deferred selection property or a LINZ/NZTA deferred selection property, is the date the governance entity gives the Crown notice under paragraph 1.2 of part 3.1 that it is interested in purchasing that property;

registered valuer means a valuer registered with the Valuers' Registration Board of New Zealand and with experience in the valuation of properties similar to the deferred selection property;

terms of transfer means the terms of transfer set out in part 3.5;

transfer value has the meaning given to it in part 3.3 and part 3.4 as the case may be;

valuation date, in relation to:

(a) an independently valued asset means the valuation date as provided under paragraph 3.1 of part 3.3; and

(b) a jointly valued asset means the valuation date as provided under paragraph 3.1 of part 3.4;

valuation exchange date has the meaning set out in paragraph 5.3 of part 3.3; and

valuation process, in relation to a deferred selection property or a LINZ/NZTA deferred selection property, means the process to determine or agree the transfer value of that property in accordance with paragraph 1.2.1 of part 3.1 and parts 3.3 and 3.4, and references to parts are to parts of this schedule.

2. NOTICE

2.1 Until any other address or facsimile number of a land holding agency is given by notice to the governance entities, the addresses of the land holding agencies are as follows:

Ministry of Education:
45-47 Pipitea Street
PO Box 1666
Thorndon
Wellington

Office of Treaty Settlements:
Level 3, Vogel Centre
19 Aitken Street
DX SX 10111
Wellington

Land Information New Zealand:
Lambton House
160 Lambton Quay
PO Box 5501
Wellington

New Zealand Transport Agency:
Victoria Arcade
44 Victoria Street
Private Bag 1995
Wellington

3.3 ALL DEFERRED SELECTION PROPERTIES - VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS

VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS

(Paragraph 1.2.1(a) of part 3.1)

1. APPLICATION OF THIS PART

1.1 This part 3.3 applies to an independently valued asset if the transfer value of that property is to be determined or agreed under this part pursuant to paragraph 1.2.1.

2. DISCLOSURE

2.1 The land holding agency will, within 10 business days of being given notice by the governance entity under paragraph 1.1 of part 3.1 (or paragraph 1.2 of parts 4.1, 5.1 or 6.1 as the case may be) that the governance entity is interested in purchasing an independently valued asset, give the governance entity all material information that relates to the independently valued asset of which the land holding agency is aware. The date the governance entity gives the land holding agency such notice is the "**notification date**".

2.2 The information that the land holding agency gives under paragraph 2.1 above will include all encumbrances of which the land holding agency is aware that affect or benefit the independently valued asset.

3. VALUATION DATE

3.1 The **valuation date**, in relation to an independently valued asset, will be as at the notification date.

4. APPOINTMENT OF VALUERS AND ARBITRATOR

4.1 No later than 5 business days after the notification date, the governance entity and the land holding agency must each:

4.1.1 appoint a registered valuer;

4.1.2 instruct the registered valuer to assess the market vaiue of the independently valued asset and its market rental if an independently valued asset is a leaseback property to a department other than the Ministry of Education, on the terms of the agreed instructions to valuer attached as the appendix to this part 3.3 and in accordance with this part 3.3; and

4.1.3 notify each other of the identity of the registered valuer.

4.2 The Crown and the governance entity must ensure that the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

4.3 The Crown and the governance entity must endeavour to agree on and appoint a person who is suitably qualified and experienced in determining disputes about the value and rental of assets similar to the independently valued asset no later than 10 business days after the notification date.

4.4 If no appointment has been made under paragraph 4.3 above by that date, the Crown must request that the President of the New Zealand Institute of Valuers make the appointment.

4.5 An appointment of an arbitrator is made once the appointee has confirmed that he or she will conduct an arbitration, if requested by the Crown, in accordance with this part.

5. VALUATION REPORTS

5.1 Either the Crown or the governance entity may carry out an inspection of the independently valued asset. The registered valuer of the Crown or the governance entity intending to carry out an inspection must give at least 5 business days' notice of the date and time of the inspection to the other registered valuer appointed under this part and give that valuer an opportunity to attend the inspection.

5.2 The Crown's valuer and the governance entity's valuer must each prepare a valuation report that includes their respective assessments of the market value of the independently valued asset and the market rental if the independently valued asset is a leaseback property to a department other than the Ministry of Education, on the valuation date.

5.3 The land holding agency and the governance entity must each deliver a copy of its valuation report to the other by no later than 50 business days after the notification date (the "**valuation exchange date**").

5.4 Both valuation reports must:

5.4.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this part 3.3;

5.4.2 include an executive summary containing:

(a) a summary of the valuation along with key valuation parameters; and

(b) a summary of any key issues affecting the value; and

5.4.3 attach appendices setting out:

(a) a statement of valuation policies; and

(b) relevant market and sales and leasing information.

6. SINGLE VALUATION REPORT MAY DETERMINE TRANSFER VALUE

6.1 If only one valuation report is delivered by a party by the valuation exchange date, then the assessment of:

6.1.1 market value in that report will be the transfer value; and

6.1.2 market rental in that report will be the commencement rent for a leaseback property to a department other than the Ministry of Education.

7. NEGOTIATIONS TO AGREE MARKET VALUE

7.1 If each party has provided a valuation report, the Crown and the governance entity must endeavour to agree on, and record in writing, the market value and market rental if the independently valued asset is a leaseback property to a department other than the Ministry of Education. The amount agreed as the market value is the transfer value, and the amount agreed as the market rental is the commencement rent.

7.2 Where transfer value or commencement rent is not determined or agreed within 20 business days after the valuation exchange date, the determination of the transfer value and the commencement rent must be referred to an arbitrator in accordance with paragraph 8 below.

8. DETERMINATION OF MARKET VALUE

8.1 Within 5 business days of paragraph 7.2 above applying, the Crown must refer the dispute to the arbitrator (the "**arbitration commencement date**").

8.2 The arbitrator must promptly give notice of a meeting to be attended by the Crown and the governance entity and their registered valuers, at a venue and time to be decided by the arbitrator after consultation with the parties but not later than 30 business days after the arbitration commencement date.

8.3 The Crown and the governance entity must by no later than 5.00pm on the day which is 5 business days prior to the date of the meeting give to the arbitrator and to each other their valuation reports, sales and rental evidence and any submission or expert evidence based on that information that the Crown or the governance entity intend to present at the meeting.

8.4 At the meeting, the arbitrator must:

8.4.1 establish a procedure and give each party the right to examine, cross-examine and re-examine the registered valuers and other experts appointed by the other parties in relation to the information provided to the arbitrator; and

8.4.2 have regard to the requirements of natural justice in the conduct of the meeting.

8.5 The arbitrator shall hold the meeting and give his or her determination of the market value and market rental no later than 50 business days after the arbitration commencement date.

8.6 The transfer value will be the arbitrator's determination of the market value and the commencement rent will be the arbitrator's determination of the market rent for a leaseback property to a department other than the Ministry of Education. That determination must be no higher than the higher, and no lower than the lower, of the assessment of market value and market rent contained in the Crown's valuation report and in the governance entity's valuation report.

8.7 The determination of the arbitrator is final and binding on the Crown and the governance entity.

9. GENERAL PROVISIONS

9.1 The Crown and the governance entity must each bear their own costs in connection with the valuation process.

9.2 The costs of the arbitrator and the costs of the hire of a venue for the meeting referred to in paragraph 8.2 must be borne by the Crown and the governance entity equally.

9.3 Despite paragraphs 9.1 and 9.2 above, the arbitrator may award costs against the Crown or the governance entity where the arbitrator considers that it would be just to do so on account of unreasonable conduct.

3.3 ALL DEFERRED SELECTION PROPERTIES
VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS

APPENDIX - VALUATION INSTRUCTIONS TO THE GOVERNANCE ENTITY'S OR THE CROWN'S VALUER FOR AN INDEPENDENTLY VALUED ASSET

[Note: These instructions may be modified to apply to more than one independently valued asset. The references to the determination of market rental must be deleted if the property is not a leaseback property or it is a leaseback property to the Ministry of Education.]

INTRODUCTION

The (insert name of Collective / Iwi) deed of settlement dated [ ] (the deed) gives the governance entity the right to purchase properties from the Crown.

This right is given by part [ ] of the [ ] schedule to the deed (part [ ]).

The governance entity has given the Crown (the land holding agency) a notice of interest in the following property:

[*describe the property including its legal description*]

DEED ENCLOSED

A copy of the deed is enclosed.

Your attention is drawn to part [ ]. All references to parts or paragraphs in this letter are to parts or paragraphs of part [ ].

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

The property is an independently valued asset for the purposes of part [ ]. [Part] [ ]] applies to the valuation of jointly valued assets.

VALUATION REQUIRED

You are required to undertake a valuation to assess the market value of the property as at the date the land holding agency received the notice of interest from the governance entity.

The market value of the property is to be the market value of its land only. In relation to improvements:

(a) those to be retained by the Crown and defined as "Lessee's Improvements" in the lease (including those specified improvements made directly to or beneath the surface of the land), shall be excluded from such market value assessment; and

(b) those not retained by the Crown shall be included in such market value assessment.

[As the property is a leaseback property and the Crown leaseback is to a department other than the Ministry of Education, you must also assess the market rental of the property as at the valuation date.]

That date was [*date*] (valuation date). [You are also required to assess the market rental of the property as at the valuation date.]

3.3 ALL DEFERRED SELECTION PROPERTIES
VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS

Another registered valuer will be required by [the land holding agency][the governance entity][*delete one*] to assess the market value of the property [,and its market rental,] at the valuation date.

The two valuations are to enable the market value of the property [, and its market rental,] to be determined either:

(a) by agreement between the land holding agency and the governance entity; or

(b) by arbitration.

You are to:

(a) before inspecting the property, agree with the other valuer:

  (i) the valuation method or methods applicable to the property; and

  (ii) the comparable sales [,and market rentals,] to be used in determining the value of the property; and

(b) inspect the property together with the other valuer; and

(c) attempt to resolve any matters arising from your inspections by the following day; and

(d) within 50 business days of the notification date, deliver a copy of your valuation report to us, the other valuer, and the [land holding agency][the governance entity][*delete one*]; and

(e) within 55 business days of the notification date:

  (i) prepare an independent analysis of both valuation reports to assist the governance entity and the land holding agency to agree a market value for the property; and

  (ii) give your analysis to us and the other valuer; and

(f) participate in any arbitration process required under [part [ ]] to determine the market value [, and the market rental,] of the property.

REQUIREMENTS FOR YOUR VALUATION

Our requirements for your valuation are as follows:

1 You are to assume that:

  (a) the property is a current asset and was available for immediate sale as at the valuation date; and

  (b) all statutory and regulatory processes imposed on the Crown to dispose of the property have been met.

2 The effective date of your valuation is the valuation date.

3.3 ALL DEFERRED SELECTION PROPERTIES
VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS

3 The valuation is to:

(a) assess market value on the basis of market value as defined in the current edition of Property Institute of New Zealand Professional Practice; and

(b) assess market rental as the amount, (exclusive of GST), and expressed as an annual payment, at which the land only of the property would lease (as the lessee's improvements are not transferring to the governance entity) subject to specific lease terms and conditions, between a willing lessor and a willing lessee, in an arm's length transaction, if the parties to the transaction had each acted knowledgeably, prudently, and without compulsion; and

(c) take into account:

(i) any encumbrances, interest, or other matter affecting or benefiting the property as are noted on its title on the valuation date; and

(ii) the attached disclosure information (which is the information given to the governance entity by the land holding agency about the property under paragraph 2.1 of part 3.3, including the disclosed encumbrance information) but not a claim by, or on behalf of, (insert name of Collective / Iwi) in relation to the property; and

(iii) the terms of transfer set out in part 3.5 (which will apply to a purchase of the property by the governance entity)[; and

(iv) if the property is a leaseback property, the lease terms for the ground lease of the property (as the lessee's improvements are not transferring to the governance entity)].

REQUIREMENTS FOR THE VALUATION REPORT

A full valuation report in accordance with the current edition of Property Institute of New Zealand Professional Practice is required, including:

- an executive summary containing:
  - a summary of the valuation along with key valuation parameters;
  - a summary of key issues affecting value;
- an assessment of the current market value (plus GST, if any) of the property [, and its market rental (exclusive of GST),] as at the valuation date;
- compliance with the minimum requirements as set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation and other relevant standards, insofar as they are consistent with [part];
- a clear definition of the distinction between the land value and the value of improvements (unless the property is a leaseback property, in which case the value of the Crown's improvements is not required);

- a clear statement as to the impact (if any) of the disclosed encumbrance information;
- details of your assessment of the highest and best use of the property;
- comment on the rationale of likely purchasers [,and tenants,] of the property;
- full details of the approaches to value and a clear identification of the key variables which in your opinion have a material impact on the valuation;
- a detailed description of improvements;
- attaching appendices setting out:
    - a statement of valuation methodology and policies; and
    - relevant market and sales information.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you acknowledge that you will prepare and deliver the valuation report by no later than 50 business days after the valuation date.

OPEN AND TRANSPARENT VALUATION

The governance entity and the land holding agency intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must copy any questions you have or receive with regard to the property, together with the responses, to the governance entity and the land holding agency.

3.4 ALL DEFERRED SELECTION PROPERTIES - VALUATION PROCESS FOR JOINTLY VALUED ASSETS

VALUATION PROCESS FOR JOINTLY VALUED ASSETS

(Paragraph 1.2.1(b) of part 3.1)

1. APPLICATION OF THIS PART

1.1 This part 3.4 applies to a jointly valued asset if the transfer value of that property is to be determined or agreed under this part pursuant to paragraph 1.2.1

2. DISCLOSURE

2.1 The land holding agency will, within 10 business days of being given notice by the governance entity under paragraph 1.1 of part 3.1 (or paragraph 1.2 of parts 4.1, 5.1 or 6.1 as the case may be) that the governance entity is interested in purchasing a jointly valued asset, give the governance entity all material information that relates to the jointly valued asset of which the land holding agency is aware. The date the governance entity gives the land holding agency such notice is the **notification date**.

2.2 The information that the land holding agency gives under paragraph 2.1 will include all encumbrances of which the land holding agency is aware that affect or benefit the jointly valued asset.

3. VALUATION DATE

3.1 The **valuation date**, in relation to a jointly valued asset, will be as at the notification date.

4. APPOINTMENT OF VALUER

4.1 The Crown and the governance entity must endeavour to agree on and appoint a registered valuer no later than 5 business days after the notification date to determine the market value of a jointly valued asset, and its market rental if a jointly valued asset is a leaseback property, in accordance with this part 3.4.

4.2 If no appointment has been made under paragraph 4.1 by that date, the Crown must request that the President of the New Zealand Institute of Valuers make the appointment.

4.3 An appointment of a registered valuer is made once the appointee has confirmed that he or she will produce a valuation report in accordance with this part on receipt of the joint instructions to be given under paragraph 4.4.

4.4 No later than 5 business days after the appointment under paragraphs 4.1-4.3, the governance entity and the land holding agency must jointly instruct the registered valuer to assess the market value of the jointly valued asset, and its market rental if a jointly valued asset is a leaseback property, on the terms of the agreed instructions to valuer attached as the appendix to this part 3.4 and in accordance with this part 3.4.

5. VALUATION REPORT

5.1 The registered valuer must prepare a valuation report that includes his or her assessment of the market value of the jointly valued asset, and its market rental if the

jointly valued asset is a leaseback property to a department other than the Ministry of Education, as at the valuation date.

5.2 The registered valuer must deliver a copy of valuation report to the parties by no later than 50 business days after the notification date.

5.3 The valuation report must:

5.3.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this part 3.4;

5.3.2 include an executive summary containing:

(a) a summary of the valuation along with key valuation parameters; and

(b) a summary of any key issues affecting the value; and

5.3.3 attach appendices setting out:

(a) a statement of valuation policies; and

(b) relevant market and sales and leasing information.

6. VALUATION REPORT DETERMINES TRANSFER VALUE AND COMMENCEMENT RENT

6.1 The assessment in the valuation report of:

6.1.1 market value in the valuation report will be the transfer value; and

6.1.2 market rental of a leaseback property to a department other than the Ministry of Education in the valuation report will be the commencement rent.

6.2 The effect of paragraph 6.1 is final and binding on the Crown and the governance entity.

7. GENERAL PROVISIONS

7.1 The costs of the registered valuer must be borne by the Crown and the governance entity equally.

3.4 ALL DEFERRED SELECTION PROPERTIES
VALUATION PROCESS FOR JOINTLY VALUED ASSETS

APPENDIX - VALUATION INSTRUCTIONS FOR A JOINTLY VALUED ASSET

[Note: These instructions may be modified to apply to more than one jointly valued asset. The references to the determination of market rental must be deleted if the property is not a leaseback property or is being leased back to the Ministry of Education]

INTRODUCTION

The (insert name of Collective / Iwi) deed of settlement dated [ ] (the deed) gives the governance entity the right to purchase properties from the Crown.

This right is given by part [ ] of the [ ] schedule to the deed (part [ ]).

The governance entity has given the Crown (the land holding agency) a notice of interest in the following property:

[*describe the property including its legal description*]

DEED ENCLOSED

A copy of the deed is enclosed.

Your attention is drawn to part [ ]. All references to parts or paragraphs in this letter are to parts or paragraphs of part [ ].

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

The property is a jointly valued asset for the purposes of part [ ]. [Part] [ ] applies to the valuation of independently valued assets.

Valuation required

The governance entity and the land holding agency require you to undertake a valuation to assess the market value of the property as at the date the land holding agency received the notice of interest from the governance entity. That date was [*date*] (the valuation date). You are also required to assess the market rental of the property as at the valuation date.]

The market value of the property is to be the market value of its land only. In relation to improvements:

(a) those to be retained by the Crown and defined as "Lessee's Improvements" in the lease (including those specified improvements made directly to or beneath the surface of the land), shall be excluded from such market value assessment; and

(b) those not retained by the Crown shall be included in such market value assessment.

[As the property is a leaseback property and the Crown leaseback is to a department other than the Ministry of Education, you must also assess the market rental of the property as at the valuation date.]

3.4 ALL DEFERRED SELECTION PROPERTIES
VALUATION PROCESS FOR JOINTLY VALUED ASSETS

The market value of the property assessed by you (plus GST if any) will be the market value at which the governance entity may elect to purchase the property under part [ ]. [The market rental assessed by you (exclusive of GST) will be the commencement rent under a lease of the property by the governance entity to the land holding agency.]

You may obtain relevant specialist advice such as engineering or planning advice.

REQUIREMENTS FOR THE VALUATION

Our requirements for your valuation are as follows:

(1) You are to assume that:

(a) the property is a current asset and was available for immediate sale as at the valuation date; and

(b) all statutory and regulatory processes imposed on the Crown to dispose of the property have been met.

(2) The effective date of your valuation is the valuation date.

(3) Your valuation is to:

(a) be on the basis of market value as defined in the Valuation Standards contained in the current edition of Property Institute of New Zealand Professional Practice; and

(b) take into account:

(i) any encumbrances, interest, or other matters affecting or benefiting the property as are noted on its title on the valuation date; and

(ii) the attached disclosure information (which is the information given to the governance entity by the land holding agency about the property under paragraph 2.1 of part 3.4, including the disclosed encumbrance information) but not a claim by, or on behalf of, (insert name of Collective / Iwi) in relation to the property; and

(iii) the terms of transfer set out in part 3.5 (which will apply to a purchase of the property by the governance entity)[; and

(iii) the lease terms for the ground lease of the property (as the lessee's improvements are not transferring to the governance entity)].

REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the current edition of Property Institute of New Zealand Professional Practice, including:

- an executive summary containing:
    - a summary of the valuation along with key valuation parameters;

- a summary of key issues affecting value;

- an assessment of the market value (plus GST if any) of the property[, and its market rental (exclusive of GST),] as at the valuation date;

- compliance with the minimum requirements as set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation, and other relevant standards, insofar as they are consistent with [part [ ]];

- a clear definition of the distinction between the land value and the value of improvements (unless the property is a leaseback property, in which case the value of the Crown's improvements is not required);

- a clear statement as to the impact (if any) of the disclosed encumbrance information;

- details of your assessment of the highest and best use of the property;

- comment on the rationale of likely purchasers[, and tenants,] of the property;

- full details of the approaches to value and a clear identification of the key variables which in your opinion have a material impact on the valuation;

- a detailed description of improvements;

- attaching appendices setting out:

  - a statement of valuation methodology and policies; and

  - relevant market and sales information.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you acknowledge that you will prepare and provide a valuation report to the governance entity and the land holding agency no later than 50 business days after the valuation date.

OPEN AND TRANSPARENT VALUATION

The governance entity and the land holding agency intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must copy any questions you have or receive with regard to the property, together with the responses, to the governance entity and the land holding agency.

3.5 ALL DEFERRED SELECTION PROPERTIES - TERMS OF TRANSFER

TERMS OF TRANSFER

(Clause 6.8)

1. LINZ/NZTA DEFERRED SELECTION PROPERTIES TO BE SUBJECT TO THESE TERMS OF TRANSFER

1.1 The terms of transfer contained in this part 3.5 shall also apply to the LINZ/NZTA deferred selection properties and references to:

1.1.1 a deferred selection property shall be a reference to a LINZ/NZTA deferred selection property; and

1.1.2 the governance entity shall be a reference to the purchasing governance entity.

2. APPLICATION OF THIS PART

2.1 This part 3.5 applies if the Crown and the governance entity are deemed under paragraph 2.1 of part 3.1 to have entered into an agreement for the sale and purchase of a deferred selection property.

3. TRANSFER OF THE DEFERRED SELECTION PROPERTY

3.1 The Crown must transfer the fee simple estate in the deferred selection property to the governance entity on the terms set out in clause 6 of Te Whakatau / deed of settlement, and in this part 3.5, subject to and, where applicable, with the benefit of:

3.1.1 the disclosed encumbrances affecting or benefiting that property (as those disclosed encumbrances may be varied under paragraph 3.2); and

3.1.2 if the property is a leaseback property, the lease to the land holding agency referred to in clause 6.9 of Te Whakatau / deed of settlement.

3.2 The Crown and the governance entity may agree in writing to vary or add to the disclosed encumbrances affecting the deferred selection property.

3.3 The governance entity must not unreasonably withhold or delay its consent to varying a disclosed encumbrance or granting a new encumbrance affecting the deferred selection property.

3.4 The Crown will pay any survey and registration costs required to transfer the fee simple estate in the deferred selection property to the governance entity.

4. OBLIGATIONS PRIOR TO DEFERRED SELECTION SETTLEMENT DATE

4.1 The Crown must maintain a deferred selection property, or ensure its maintenance, until the actual deferred selection settlement date in substantially the same condition as it was in at the notification date, fair wear and tear excepted.

4.2 Between the notification date and the actual deferred selection settlement date the Crown must consult with, and obtain the prior written consent of, the governance entity (which will not be unreasonably withheld or delayed) before:

4.2.1 agreeing to any material variation in the terms of a disclosed encumbrance affecting or benefiting a deferred selection property; or

4.2.2 procuring any consent, or providing any waiver, under the Resource Management Act 1991, or other legislation, that materially affects the deferred selection property.

4.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on a deferred selection property, between the notification date and the actual deferred selection settlement date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act 2004 in respect of such works.

4.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of a deferred selection property until the actual deferred selection settlement date except where those charges are payable by any tenant or occupant directly to the relevant supplier.

4.5 Subject to the terms of any disclosed encumbrance affecting the deferred selection property, the Crown must use reasonable endeavours to obtain permission for the governance entity (or a person authorised by the governance entity), upon reasonable notice, to enter a deferred selection property on one occasion before the deferred selection settlement date to examine it.

5. POSSESSION AND SETTLEMENT

5.1 On the deferred selection settlement date:

5.1.1 the governance entity shall pay to the Crown an amount equai to the transfer value (plus GST if any) either by way of bank cheque drawn on a New Zealand registered bank and made payable to the land holding agency or by electronic transfer;

5.1.2 possession must be given and taken of the deferred selection property subject to the disclosed encumbrances (as they may be varied under paragraph 3.2 of this part); and

5.1.3 vacant possession must be given and taken of the deferred selection property if it is not:

(a) a leaseback property; or

(b) subject to any disclosed encumbrance (as they may be varied under paragraph 3.2 of this part) that prevent vacant possession being given and taken.

3.5 ALL DEFERRED SELECTION PROPERTIES TERMS OF TRANSFER

5.2 Subject to paragraphs 5.3 and 11.1.2, the Crown must provide the governance entity with the following in relation to a deferred selection property on the deferred selection settlement date:

5.2.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the property; and

5.2.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the deferred selection settlement date.

5.3 If the fee simple estate in the deferred selection property may be transferred to the governance entity electronically under the relevant legislation:

5.3.1 paragraph 5.2.1 does not apply;

5.3.2 the Crown must ensure its solicitor:

(a) a reasonable time before the deferred selection settlement date for the property:

(i) creates a Landonline workspace for the transfer to the governance entity of the fee simple estate in the property; and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments, necessary, to effect the transfer electronically (the "**electronic transfer instruments**"); and

(b) on the deferred selection settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation;

5.3.3 the governance entity must ensure its solicitor, a reasonable time before the deferred selection settlement date, certifies and signs the transfer instrument for the property prepared in the Landonline workspace under paragraph 5.3.2(a)(ii); and

5.3.4 paragraphs 5.3.2 and 5.3.3 are subject to paragraph 11.1.2.

5.4 The **relevant legislation** for the purposes of paragraph 5.3 is:

5.4.1 the Land Transfer Act 1952; and

5.4.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

5.5 All outgoings and incomings (including rates, excluding insurance premiums) must be apportioned at the actual deferred selection settlement date.

5.6 The Crown must supply a statement of apportionments to the governance entity before the actual deferred selection settlement date. On the actual deferred selection settlement date:

5.6.1 the governance entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the deferred selection properties pre-paid by the Crown in respect of a period after the actual deferred selection settlement date exceed the incomings received by the Crown for that period; or

5.6.2 the Crown must pay to the governance entity the amount by which the incomings received by the Crown in respect of a period after the actual deferred selection settlement date exceed the outgoings (except for insurance premiums) for the deferred selection property pre-paid by the Crown for that period.

5.7 The Crown must make available to the governance entity on the actual deferred selection settlement date any keys to gates, exterior doors and electronic door openers (if any) and/or security codes to alarms (if any) for the deferred selection property that are in the possession of the Crown at the actual deferred selection settlement date provided that the Crown shall not have any obligation under this paragraph where in the Crown's reasonable opinion, due to the nature of the deferred selection property, it would be inappropriate to make such items available.

5.8 The deferred selection property must be transferred inclusive of all fixtures and fittings that are owned by the Crown and are situated on the deferred selection property at the notification date, except in the case of a leaseback property, in which case ownership of all lessee's improvements remain with the land holding agency.

5.9 Fixtures and fittings transferred under paragraph 5.8 above are to be free of any mortgage or charge.

5.10 No chattels situated on the deferred selection property will be included in its transfer.

5.11 In respect of a leaseback property, paragraphs 5.5-5.10 above apply only to the extent they are consistent with the lease.

6. RISK AND INSURANCE

6.1 The deferred selection property will remain at the sole risk of the Crown until the actual deferred selection settlement date and, from the actual deferred selection settlement date, it will remain at the sole risk of the governance entity.

6.2 In the event that, prior to the actual deferred selection settlement date, the deferred selection property is destroyed or damaged and such destruction or damage has not been made good by the actual deferred selection settlement date, then the following provisions apply:

6.2.1 the governance entity must complete the transfer of the deferred selection property at its transfer value on the condition that the Crown pay to the governance entity an amount equal to the amount (if any) by which the transfer

value for the deferred selection property is more than the value of the deferred selection property as at the actual deferred selection settlement date as a result of the destruction or damage; and

6.2.2 either party may give the other party notice in writing requiring that any dispute as to the application of this paragraph 6.2 be determined by an arbitrator to be appointed by the president of the New Zealand Law Society 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.

6.3 If a dispute relating to a claim by the governance entity for a diminution in value of the deferred selection property under paragraph 6.2.2 is not determined by the actual deferred selection settlement date, then:

6.3.1 settlement shall take place on the actual deferred selection settlement date in accordance with this part 3.5 as if there had been no destruction or damage; and

6.3.2 upon the determination of the dispute the Crown shall pay to the governance entity within 7 business days from such determination a sum equal to the diminution in value of the deferred selection property and interest from settlement date to the date of that payment at the rate set out in clause 6.4.2 of Te Whakatau / deed of settlement.

6.4 The governance entity will not be required to take over from the Crown any insurance policies in relation to the deferred selection property.

7. TRANSFER VALUE

7.1 To avoid doubt, the parties acknowledge that the transfer value of the deferred selection property will not be affected by:

7.1.1 any addition or variation to the disclosed encumbrances agreed in writing by the Crown and the governance entity under paragraph 3.2 of this part; or

7.1.2 any variation to a disclosed encumbrance agreed by the Crown and the governance entity under paragraph 4.2.1 of this part.

8. BOUNDARIES, TITLE, ETC

8.1 The Crown will not be bound to point out the boundaries of a deferred selection property.

8.2 If the deferred selection property is subject only to disclosed encumbrances (as they may be varied under paragraph 3.2 of this part), the governance entity:

8.2.1 will be treated as having accepted the Crown's title to the deferred selection property as at the actual deferred selection settlement date; and

8.2.2 may not make any objections to, or requisitions on, it.

8.3 Except as otherwise expressly set out in this part 3.5 no error, omission or misdescription of the deferred selection property or its title shall annul the transfer of the deferred selection property.

8.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the deferred selection property and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence), and:

8.4.1 this paragraph will not continue for the benefit of any subsequent purchaser of the contiguous land; and

8.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the deferred selection property.

9. OBLIGATIONS AFTER SETTLEMENT

9.1 If the Crown receives any notice or demand in relation to the deferred selection property from the Crown, any territorial authority or any tenant after the actual deferred selection settlement date, the Crown will, if not paying or complying with such notice or demand, promptly 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.

9.2 Immediately after the actual deferred selection settlement date, the Crown will give notice of the transfer of the deferred selection property to the territorial authority having jurisdiction in respect of that property.

10. DISCLOSURE INFORMATION

10.1 The Crown warrants to the governance entity that the disclosure information in relation to the deferred selection property is all the material information about the property that the land holding agency is aware of at the date of providing that information having inspected its records but not having undertaken a physical inspection of the deferred selection property or made enquiries beyond its records.

10.2 Except as provided in paragraph 10.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

10.2.1 the deferred selection property including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

10.2.2 the completeness or accuracy of the disclosure information in relation to the deferred selection property.

10.3 The governance entity acknowledges that (although the Crown is not giving any representation or warranty in relation to the deferred selection property except as provided in paragraph 10.1 of this part) the governance entity had the opportunity prior to the deferred selection settlement date (in addition to being able to examine the disclosure information) to:

10.3.1 inspect the deferred selection property; and

10.3.2 determine its state and condition.

11. DELAYED TRANSFER OF LEGAL TITLE

11.1 The Crown covenants for the benefit of the governance entity that it will:

11.1.1 arrange for the creation of a computer freehold register for the land of a deferred selection property that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

11.1.2 transfer the fee simple estate in a deferred selection property to which paragraph 11.1.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the deferred selection settlement date.

11.2 The covenant given by the Crown under paragraph 11.1 shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

11.3 If paragraph 11.1 applies then, for the period from the actual deferred selection settlement date until the date that the Crown transfers the title to that deferred selection property to the governance entity:

11.3.1 the governance entity will be the beneficial owner of that property; and

11.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the governance entity on the actual deferred selection settlement date.

12. DELAY IN SETTLEMENT PROVISIONS

12.1 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 deferred selection settlement 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 deferred selection settlement date to the actual deferred selection settlement date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.

12.2 If, without the written agreement of the parties, settlement is not effected on the deferred selection settlement date then without prejudice to the rights of the party not in default the following provisions shall apply:

12.2.1 either the Crown or the governance entity may at any time after the deferred selection settlement 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 or transfer of legal title as contemplated by paragraph 11;

12.2.2 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; and

12.2.3 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 paragraph 2.1 of part 3.1 by written notice.

13. MISCELLANEOUS

Further assurances

13.1 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 of Te Whakatau / deed of settlement and this part 3.5.

Non-merger

13.2 On transfer of a deferred selection property to the governance entity, the provisions of this part 3.5 will not merge and, to the extent any provision has not been fulfilled, will remain in force.

3.6 SCHEDULE OF DEFERRED SELECTION PROPERTIES

3.6 SCHEDULE OF DEFERRED SELECTION PROPERTIES

NGĀTI KUIA DEFERRED SELECTION PROPERTIES

Land Holding Agency	**Ministry of Education**		
Property Name	**Address**	**Legal Description**	**Leaseback**
Marlborough Girls' College / Bohally Intermediate	21 McLauchlan Street Blenheim	13.2248 hectares, approximately, being Part Section 52 Omaka District, Marlborough Land District. Balance Proclamation 30734. Subject to survey.	Yes
Blenheim School	42 Alfred Street Blenheim	0.9695 hectares, more or less, being Lot 74 and Part Lots 75, 76, 77, 78, 79 and 80 Deeds Plan 15. All Computer Freehold Register MB4C/765. 0.0563 hectares, more or less, being Part Lots 75 and 76 Deeds Plan 15. Balance Computer Freehold Register MB1B/977. 0.0436 hectares, more or less, being Part Lot 80 Deeds Plan 15. All Computer Freehold Register MB4C/766. All Marlborough Land District	Yes
Whitney Street School	Whitney Street Blenheim	1.1410 hectares, approximately, being Lots 5, 6, 7 and Part Lot 10 DP 4, Lot 2 DP 794 and Part Section 4 Omaka District. Balance Proclamation 893. Subject to survey. 1.0472 hectares, approximately, being Part Lots 2 and 5 DP 1236. All *Gazette* 1955 page 1000. Subject to survey All Marlborough Land District	Yes
Witherlea School	Upper Weld Street Blenheim	0.5243 hectares, approximately, being Part Section 18 Block IV Taylor Pass Survey District. All Declaration 49630. Subject to survey 1.7250 hectares, approximately, being Part Section 19 Block IV Taylor Pass Survey District. All GN. 43752. Subject to survey All Marlborough Land District	Yes
Hira School	Main Road, Hira	0.2771 hectares, more or less, being Section 113 Suburban North District. All GN. 260460.1. 0.6600 hectares, approximately, being Lot 1 DP 6009 and Parts Section 27A Suburban North District. Balance GN. 260460.2. Subject to survey. All Nelson Land District	Yes
Mapua School	4 Stafford Drive Nelson	1.5112 hectares, more or less, being Lot 11 and 14 DP 336741 and Part Section 4 Moutere Hills District. All Computer Freehold Register 150290. 0.7140 hectares, approximately, being Part Lot 1 DP 2260. All Proclamation 61560. Subject to survey All Nelson Land District	Yes

3.6 SCHEDULE OF DEFERRED SELECTION PROPERTIES

Land Holding Agency	**Ministry of Education**		
Property Name	**Address**	**Legal Description**	**Leaseback**
Linkwater School	1357 Queen Charlotte Drive Picton	1.4619 hectares, more or less, being Section 2 of Section 15 Mahakipawa District, Marlborough Land District. All Computer Freehold Register MB1C/248.	Yes
Nayland Primary School	225 Nayland Road Nelson	2.3763 hectares, approximately, being Part Lots 3 and 4 DP 2073, Nelson Land District. Balance GN. 76238. Subject to survey.	Yes
Nelson Central School	Nile Street	0.8094 hectares, more or less, being Sections 504 and 506 City of Nelson. All Computer Freehold Register NL57/33. 1.0225 hectares, approximately, being Sections 503 and 505 and Part Section 499 City of Nelson. All GN. 270082.1. Subject to survey. 0.0094 hectares, more or less, being Section 1201 City of Nelson. All *Gazette* 1987 page 2022. All Nelson Land District	Yes
Wakefield School	Edward Street Nelson	0.6703 hectares, more or less, being Part Section 85 Waimea South District. All Computer Freehold Register NL71/119. Limited as to parcels. 0.0529 hectares, more or less, being Lot 2 DP 7008. All GN. 124333. 0.8385 hectares, more or less, being Lot 1 DP 6556. All GN. 170049.1. 0.4515 hectares, approximately, subject to survey, being Part Section 85 Waimea South District. All Proclamation 1634. 0.4047 hectares, approximately, being Part Section 85 Waimea South District. All DI8/419. Subject to survey. All Nelson Land District	Yes

3.6 SCHEDULE OF DEFERRED SELECTION PROPERTIES

Land Holding Agency	Office of Treaty Settlements		
Property	**Address**	**Legal Description**	**Leaseback**
Office of Treaty Settlements PF 831	Pine Valley Marlborough	0.4935 hectares, approximately, being Part Section 22, Block XVIII, Pine Valley Survey District, Marlborough Land District. All *Gazettes* 1995 page 4263 and 1997 page 419. Subject to survey	No
Office of Treaty Settlements PF 884	Opawa Street Blenheim	0.0481 hectares, more or less, being Lot 10 Deeds Plan 9. All Computer Freehold Register MB6A/1132. 0.1806 hectares, more or less, being Lot 2 DP 1363. All Computer Freehold Register MB39/236. 0.3345 hectares, more or less, being Lot 4 DP 8883. All Computer Freehold Register MB5B/965. All Marlborough Land District	No
Office of Treaty Settlements PF 992	21 Opawa Street Blenheim	0.1215 hectares, more or less, being Lot 1 DP 1363, Marlborough Land District. All Computer Freehold Register MB39/237.	No
Office of Treaty Settlements PF 993	Opawa/Kinross Streets Blenheim	0.4454 hectares, more or less, being Lot 3 DP 8883, Marlborough Land District. All Computer Freehold Register MB5B/964.	No
Office of Treaty Settlements PF 1126	58 Waikawa Road Picton	0.1879 hectares, approximately, being Part Sections 182 and 183 Town of Picton, Marlborough Land District. Balance Transfer 206232.2. Subject to survey.	No
Office of Treaty Settlements PF 1256	Canterbury St (Cambridge Tce) Picton	0.3113 hectares, more or less, being Lot 1 DP 11792, Marlborough Land District. All Computer Freehold Register MB6B/1077.	No
Office of Treaty Settlements PF 1297	70 Abraham Heights Nelson	0.0570 hectares, more or less, being Lot 55 DP 9669, Nelson Land District. All Computer Freehold Register NL13B/960.	No
Office of Treaty Settlements PF 1298	72 Abraham Heights Nelson	0.0532 hectares, more or less, being Lot 56 DP 9669, Nelson Land District. All Computer Freehold Register NL13B/961.	No
Office of Treaty Settlements PF 1396	104 Nayland Road Nelson	0.3506 hectares, more or less, being Section 6 SO 15682, Nelson Land District. All Computer Freehold Register 37112.	No
Office of Treaty Settlements PF 1531	Dillons Point Road Blenheim	0.1545 hectares, more or less, being Section 22 SO 7431, Marlborough Land District. All Computer Freehold Register 195359.	No

3.6 SCHEDULE OF DEFERRED SELECTION PROPERTIES

Land Holding Agency	**Department of Conservation**		
Property	**Address**	**Legal Description**	**Leaseback**
Department of Conservation	Anakoha/Outer Sounds	1.2141 hectares, more or less, being Section 1 Block VIII Gore Survey District, Marlborough Land District. As shown on OTS-099-80.	No
Department of Conservation	Manaroa	1.2 hectares, more or less, being Section 8 Block V Orieri Survey District, Marlborough Land District. As shown on OTS-099-88.	No

3.7 SCHEDULE OF LINZ/NZTA DEFERRED SELECTION PROPERTIES

3.7 SCHEDULE OF LINZ/NZTA DEFERRED SELECTION PROPERTIES

LINZ/NZTA DEFERRED SELECTION PROPERTIES

Land Holding Agency	NZ Transport Agency			
Property	**Address**	**Legal Description**	**Conditions**	**Leaseback**
Gravel Pit	State Highway 1 Tuamarina	0.4300 hectares, approximately, being Part Section 47 Waitohi Valley District, Marlborough Land District. All *Gazette* 1953 page 1754. Subject to survey to exclude a 10 metre wide strip for future road re-alignment.	Subject to it being formally declared surplus and obtaining necessary statutory clearances.	No
Gravel Pit	State Highway 1 Tuamarina	0.4299 hectares, approximately, being Crown Land SO 3848, Marlborough Land District. Part *Gazette* 1950 page 1561. Subject to survey.	Subject to it being formally declared surplus and obtaining necessary statutory clearances.	No

Land Holding Agency	Land Information New Zealand		
Property	**Address**	**Legal Description**	**Leaseback**
LIPS 12867	State Highway 1 Tuamarina	1.8079 hectares, approximately, being Part Section 47 Waitohi Valley District, Marlborough Land District. Subject to survey.	No
LIPS 15391	Ferry Road Spring Creek	0.0305 hectares, approximately being Part Section 98 Deeds 12, Marlborough Land District. Part Deeds Register C4/334 (SO 7292). Subject to survey.	No
LIPS 17204	Off Hall-Jones Street & McGowan Street Pūponga	0.3600 hectares, approximately, being Crown Land Residence Site Licence 12893 Block II Onetaua Survey District, Nelson Land District. Crown land, no registration. Subject to survey.	No

4. CLEARED CURRENT SURPLUS LAND

4.1 CLEARED CURRENT SURPLUS LAND - RIGHT TO ACQUIRE

RIGHT OF SELECTION OVER CLEARED CURRENT SURPLUS LAND

1. NOTICE OF INTEREST

1.1 The New Zealand Defence Force ("**NZDF**") declared approximately 6.5 hectares of land ("**current surplus land**") surplus to requirements on 1 March 2010. By 31 December 2010 ("**review date**") the Crown will advise the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust of the current surplus land. The notice given by the Crown under this paragraph 1.1 shall be in writing and given by personal delivery by way of tracked courier to the recipients' street addresses.

1.2 The governance entity may at any time within 40 business days from and after the offer date give notice to the Crown that the governance entity is interested in acquiring all or part of the cleared current surplus land.

1.3 Upon expiry of the time period in paragraph 1.2, the Crown will immediately notify all the governance entities of which governance entities, if any, are interested in acquiring all or part of the cleared current surplus land ("**interest notice**"). If the Crown has not received notice from a governance entity within the time period set out in paragraph 1.2, the Crown will be entitled to treat that lack of a response as notice that the governance entity is not interested in acquiring all or part of the cleared current surplus land.

1.4 If the Crown gives an interest notice that the governance entity, or the governance entity and any one or more of the other governance entities, is or are interested in acquiring any or all of the cleared current surplus land, then the governance entity or entities that are identified in the interest notice will, within 60 business days of receipt of the interest notice, decide on matters relating to the transfer of all or part of the cleared current surplus land ("**proposed transfers**"), including:

1.4.1 whether the cleared current surplus land (or part thereof) is proposed to be transferred to the acquiring governance entities as tenants in common and, if so, in what shares; or

1.4.2 whether the cleared current surplus land (or part thereof) is proposed to be transferred to the governance entity and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust as separate freehold computer registers.

1.5 If requested by the governance entity or entities, the Crown shall participate in the process to assist the governance entity or entities decide on the matters set out in paragraph 1.4. Throughout the process set out in paragraph 1.4, the Crown will, subject to any obligations of confidentiality that it may have, respond to reasonable requests from the governance entities for information relating to the cleared current surplus land and the transfer process.

1.6 On or before the expiry of the time period in paragraph 1.4, the governance entity must notify the Crown in writing (with the written approval of any other governance entities that are indentified in the interest notice) of the matters decided upon in paragraph 1.4 above (the "**transfer notice**").

1.7 Within 20 business days of receiving the transfer notice the Crown, acting reasonably, may accept, or suggest amendments to the transfer notice.

1.8 The Crown will not accept and will suggest amendments to the transfer notice where only part of the cleared current surplus land is being transferred, and the part of the cleared current surplus land not being transferred (the "**remaining land**") is of a size, shape or

location that would prevent the Crown from otherwise disposing of the remaining land on the open market.

1.9 In deciding whether to accept or suggest amendments to the transfer notice under paragraph 1.7 the Crown will take into account the following matters:

1.9.1 whether the proposed transfers are consistent with good commercial practice; and

1.9.2 whether the proposed transfers are consistent with the Crown's normal Treaty settlement policies in respect of the creation of computer freehold registers.

1.10 If the Crown suggests any amendments in writing to the transfer notice pursuant to paragraph 1.6, 1.7 or 1.8, then the governance entity will have 20 business days to re-issue its transfer notice (with the written approval of any other governance entities that are identified in the interest notice) (the "**amended transfer notice**").

1.11 Within 10 business days of receiving an amended transfer notice the Crown, acting reasonably, may accept or decline to accept the amended transfer notice issued under paragraph 1.10 and may have regard to the matters outlined in paragraph 1.8 and 1.9 in making its decision.

1.12 If the transfer notice or the amended transfer notice is not accepted by the Crown, then the Crown or the governance entity may give the other party notice in writing requiring that any dispute as to whether the proposed transfers in the amended transfer notice addresses the Crown's requirements and concerns in paragraph 1.8 and 1.9, be determined by an arbitrator. The arbitrator is to have relevant commercial experience and is to be appointed by the president of the New Zealand Law Society 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.

1.13 If the Crown accepts a transfer notice or any amended transfer notice or the matter is determined pursuant to the dispute resolution process in paragraph 1.12 ("**Crown acceptance**") then within 25 business days of the Crown acceptance the Crown and the governance entities identified in the interest notice will:

1.13.1 agree whether the valuation process to be used to determine the transfer value of the cleared current surplus land is the process set out in:

(a) part 3.3 of the schedule - Valuation Process for Independently Valued Assets (for the avoidance of doubt there shall be only one valuer appointed for the governance entities. Where there is more than one governance entity identified in the interest notice, and the governance entities cannot agree on a valuer then the governance entities will request that the President of the New Zealand Institute of Valuers makes the appointment); or

(b) part 3.4 of the schedule - Valuation Process for Jointly Valued Assets; and

1.13.2 within 16 months of the offer date (unless otherwise agreed) determine the transfer value for the cleared current surplus land.

1.14 In the event the parties fail to agree the valuation process in accordance with paragraph 1.13 then the parties shall use the process set out in part 3.3 of the schedule - Valuation Process for Independently Valued Assets.

1.15 If the governance entity is a party identified in the interest notice, it must, within 40 business days of the transfer value for the cleared current surplus land being determined or agreed in accordance with the valuation process:

1.15.1 notify the Crown in writing whether or not it and/or any other governance entities identified in the interest notice elect to acquire all or part of the cleared current surplus land on the terms of the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12 (as the case may be);

1.15.2 notify the Crown in writing what shares in the cleared current surplus land each governance entity shall hold if all or part of the cleared current surplus land is to be transferred to more than one governance entity as tenants in common and the share is different to the shares described in the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12; and

1.15.3 provide to the Crown written certification from the governance entities identified in the interest notice that each is in agreement with the details confirmed in paragraphs 1.15.1 and 1.15.2.

1.16 The governance entity and the Crown must use reasonable endeavours:

1.16.1 to ensure the valuation process operates in the manner and within the timeframes agreed; and

1.16.2 if the valuation process is delayed, to minimise the delay.

2. AGREEMENT FOR SALE AND PURCHASE

2.1 If:

2.1.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all or part of the cleared current surplus land; and

2.1.2 the transfer value of the cleared current surplus land to which that notice relates:

(a) is determined or agreed but not earlier than 20 business days prior to the settlement date; and/or

(b) exceeds the available quantum amount,

then the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 and the Crown shall be deemed to have entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with the valuation process and in accordance with the terms set out in part 4.3 of the schedule.

2.2 If:

2.2.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all or part of the cleared current surplus land; and

2.2.2 the transfer value of the cleared current surplus land to which the notice relates:

(a) is determined or agreed at least 20 business days prior to settlement date; and

(b) does not exceed the available quantum amount,

then the Crown shall transfer the property as redress to the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 on the terms set out in part 2.1 of the schedule.

3. TERMINATION OF OBLIGATIONS

3.1 All obligations of the Crown to the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust under the deeds of settlement in relation to all or part of the cleared current surplus land immediately cease if:

3.1.1 neither the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust give notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all or part of the cleared current surplus land; or

3.1.2 after giving notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all or part of the cleared current surplus land, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be):

(a) do not notify the Crown whether or not it and/or any of them elect to acquire all or part of the cleared current surplus land in accordance with the provisions of paragraph 1.15 of the relevant governance entity's schedule; or

(b) notifies the Crown under paragraph 1.15 of the relevant governance entity's schedule that none of them elect to acquire all or part of the cleared current surplus land; or

3.1.3 at any time before an agreement for sale and purchase of all or part of the cleared current surplus land is constituted under paragraph 2.1 above, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be) notifies the Crown that none of them are interested in purchasing all or part of the cleared current surplus land; or

3.1.4 the beneficial ownership of that land has transferred to either the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust in accordance with the equivalent provision of its deed of settlement.

4. TIME LIMITS

4.1 Time is of the essence for the time limits imposed on the Crown and the governance entity under clause 6 of Te Whakatau / deed of settlement and parts 4-4.3 of the schedule.

5. DEFINITIONS

5.1 Unless the context otherwise requires, the definitions in part 4.2 of the schedule apply to:

5.1.1 clause 6 of Te Whakatau / deed of settlement; and

5.1.2 part 4 of the schedule.

5.2 To avoid doubt, unless specifically provided otherwise or unless the context otherwise requires, the definitions in part 3.2 of the schedule apply under this part 4.

4.2 CLEARED CURRENT SURPLUS LAND - INTERPRETATION PROVISIONS FOR TERMS OF TRANSFER

INTERPRETATION PROVISIONS

(Clause 6.13)

INTERPRETATION AND NOTICE

1. DEFINITIONS

1.1 In clause 6 of Te Whakatau / deed of settlement and in part 4.3 of this schedule, unless the context otherwise requires:

actual cleared current surplus land settlement date means the date on which settlement of the cleared current surplus land takes place;

cleared current surplus land settlement date means the date that is 20 business days after the Crown receives a notice from the governance entity or the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust under paragraph 1.15 of part 4.1 of any of the deeds of settlement electing to acquire the cleared current surplus land;

disclosed encumbrance is an encumbrance disclosed under paragraph 2.2 of part 3.3 or paragraph 2.2 of part 3.4;

disclosure information, in relation to the cleared current surplus land, means the information given by the Crown about the property referred to in paragraph 2.1 of part 3.3 or paragraph 2.1 of part 3.4;

notification date, in relation to the cleared current surplus land, is the date the governance entity or Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust gives the Crown notice under paragraph 1.2 of part 4.1 of any of the deeds of settlement that it is interested in acquiring the cleared current surplus land;

terms of transfer means the terms of transfer set out in part 4.3;

transfer value has the meaning given to it in part 3.3 or part 3.4 as the case may be;

valuation process, in relation to the cleared current surplus land, means the process to determine or agree the transfer value of that land in accordance with paragraphs 1.13 or 1.14 of part 4.1.

2. NOTICE

2.1 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of the relevant land holding agency is as follows:

New Zealand Defence Force
Defence House
2-12 Aitken St
Wellington

4.3 CLEARED CURRENT SURPLUS LAND - TERMS OF TRANSFER

TERMS OF TRANSFER

(Clause 6.14.2)

1. APPLICATION OF THIS PART

1.1 This part 4.3 applies if the Crown and the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (together, **"the relevant governance entity"**) are deemed under paragraph 2.1 of part 4.1 of any of the deeds of settlement to have entered into an agreement for the sale and purchase of the cleared current surplus land.

2. TRANSFER OF THE CLEARED CURRENT SURPLUS LAND

2.1 The Crown must transfer the fee simple estate in the cleared current surplus land to the relevant governance entity on the terms set out in clause 6 of Te Whakatau / deed of settlement, and in this part 4.3, subject to and, where applicable, with the benefit of the disclosed encumbrances affecting or benefiting that property (as those disclosed encumbrances may be varied under paragraph 2.2 below).

2.2 The Crown and the relevant governance entity may agree in writing to vary or add to the disclosed encumbrances affecting the cleared current surplus land.

2.3 The relevant governance entity must not unreasonably withhold or delay its consent to varying a disclosed encumbrance or granting a new encumbrance affecting the cleared current surplus land.

2.4 The Crown will pay any survey and registration costs required to transfer the fee simple estate in the cleared current surplus land to the relevant governance entity.

3. OBLIGATIONS PRIOR TO CLEARED CURRENT SURPLUS LAND SETTLEMENT DATE

3.1 The Crown must maintain the cleared current surplus land, or ensure its maintenance, until the actual cleared current surplus land settlement date in substantially the same condition as it was in at the notification date, fair wear and tear excepted.

3.2 Between the notification date and the actual cleared current surplus land settlement date the Crown must consult with, and obtain the prior written consent of, the relevant governance entity (which will not be unreasonably withheld or delayed) before:

3.2.1 agreeing to any material variation in the terms of a disclosed encumbrance affecting or benefiting the cleared current surplus land; or

3.2.2 procuring any consent, or providing any waiver, under the Resource Management Act 1991, or other legislation, that materially affects the cleared current surplus land.

3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on the cleared current surplus land, between the notification date and the actual cleared current surplus land settlement date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act 2004 in respect of such works.

3.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of the cleared current surplus land until the actual cleared current surplus land settlement date except where those charges are payable by any tenant or occupant directly to the relevant supplier.

3.5 Subject to the terms of any disclosed encumbrance affecting the cleared current surplus land, the Crown must use reasonable endeavours to obtain permission for the relevant governance entity (or a person authorised by the relevant governance entities), upon reasonable notice, to enter the cleared current surplus land on one occasion before the cleared current surplus land settlement date to examine it.

4. POSSESSION AND SETTLEMENT

4.1 On the cleared current surplus land settlement date:

4.1.1 the relevant governance entity shall pay to the Crown an amount equal to the transfer value (plus GST if any) either by way of bank cheque drawn on a New Zealand registered bank and made payable to the land holding agency or by electronic transfer;

4.1.2 possession must be given and taken of the cleared current surplus land subject to the disclosed encumbrances (as they may be varied under paragraph 2.2 of this part); and

4.1.3 vacant possession must be given and taken of the cleared current surplus land if it is not subject to any disclosed encumbrance (as they may be varied under paragraph 2.2 of this part) that prevent vacant possession being given and taken.

4.2 Subject to paragraphs 4.3 and 10.1.2, the Crown must provide the relevant governance entity with the following in relation to the cleared current surplus land on the cleared current surplus land settlement date:

4.2.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the property; and

4.2.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the cleared current surplus land settlement date.

4.3 If the fee simple estate in the cleared current surplus land may be transferred to the relevant governance entity electronically under the relevant legislation:

4.3.1 paragraph 4.2.1 does not apply;

4.3.2 the Crown must ensure its solicitor:

(a) a reasonable time before the cleared current surplus land settlement date for the cleared current surplus land:

(i) creates a Landonline workspace for the transfer to the relevant governance entity of the fee simple estate in the cleared current surplus land; and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments, necessary, to effect the transfer electronically (the "**electronic transfer instruments**"); and

(b) on the cleared current surplus land settlement date, releases the electronic transfer instruments so that the relevant governance entity's solicitor may submit them for registration under the relevant legislation;

4.3.3 the relevant governance entity must ensure its solicitor, a reasonable time before the cleared current surplus settlement date, certifies and signs the transfer instrument for the cleared current surplus land prepared in the Landonline workspace under paragraph 4.3.2(a)(ii); and

4.3.4 paragraphs 4.3.2 and 4.3.3 are subject to paragraph 10.1.2.

4.4 The **relevant legislation** for the purposes of paragraph 4.3 is:

4.4.1 the Land Transfer Act 1952; and

4.4.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

4.5 All outgoings and incomings (including rates, excluding insurance premiums) must be apportioned at the actual cleared current surplus land settlement date.

4.6 The Crown must supply a statement of apportionments to the relevant governance entity before the actual cleared current surplus land settlement date. On the actual cleared current surplus land settlement date:

4.6.1 the relevant governance entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the cleared current surplus land pre-paid by the Crown in respect of a period after the actual cleared current surplus land settlement date exceed the incomings received by the Crown for that period; or

4.6.2 the Crown must pay to the relevant governance entity the amount by which the incomings received by the Crown in respect of a period after the actual cleared current surplus land settlement date exceed the outgoings (except for insurance premiums) for the cleared current surplus land pre-paid by the Crown for that period.

4.7 The Crown must make available to the relevant governance entity on the actual cleared current surplus land settlement date any keys to gates, exterior doors, and electronic door openers (if any) and/or security codes to alarms (if any) for the cleared current surplus land property that are in the possession of the Crown at the actual cleared current surplus land settlement date provided that the Crown shall not have any obligation under this paragraph

where in the Crown's reasonable opinion, due to the nature of the cleared current surplus land, it would be inappropriate to make such items available.

4.8 The cleared current surplus land must be transferred inclusive of all fixtures and fittings that are owned by the Crown and are situated on the cleared current surplus land at the notification date.

4.9 Fixtures and fittings transferred under paragraph 4.8 above are to be free of any mortgage or charge.

4.10 No chattels situated on the cleared current surplus land will be included in its transfer.

5. RISK AND INSURANCE

5.1 The cleared current surplus land will remain at the sole risk of the Crown until the actual cleared current surplus land settlement date and, from the actual cleared current surplus land settlement date, it will remain at the sole risk of the relevant governance entity.

5.2 In the event that, prior to the actual cleared current surplus land settlement date, the cleared current surplus land is destroyed or damaged and such destruction or damage has not been made good by the actual cleared current surplus land settlement date, then the following provisions apply:

5.2.1 the relevant governance entity must complete the transfer of the cleared current surplus land at its transfer value on the condition that the Crown pay to the relevant governance entity an amount equal to the amount (if any) by which the transfer value for the cleared current surplus land property is more than the value of the cleared current surplus land as at the actual cleared current surplus land settlement date as a result of the destruction or damage; and

5.2.2 either party may give the other party notice in writing requiring that any dispute as to the application of this paragraph 5.2 be determined by an arbitrator to be appointed by the president of the New Zealand Law Society 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.

5.3 If a dispute relating to a claim by the relevant governance entity for a diminution in value of the cleared current surplus land under paragraph 5.2.2 is not determined by the actual cleared current surplus land settlement date, then:

5.3.1 settlement shall take place on the actual cleared current surplus land settlement date in accordance with this part 4.3 as if there had been no destruction or damage; and

5.3.2 upon the determination of the dispute the Crown shall pay to the relevant governance entity within 7 business days from such determination a sum equal to the diminution in value of the cleared current surplus land and interest from settlement date to the date of that payment at the rate set out in clause 6.4.2 of Te Whakatau / deed of settlement.

5.4 The relevant governance entity will not be required to take over from the Crown any insurance policies in relation to the cleared current surplus land.

6. TRANSFER VALUE

6.1 To avoid doubt, the parties acknowledge that the transfer value of the cleared current surplus land will not be affected by:

6.1.1 any addition or variation to the disclosed encumbrances agreed in writing by the Crown and the relevant governance entity under paragraph 2.2 of this part; or

6.1.2 any variation to a disclosed encumbrance agreed by the Crown and the relevant governance entity under paragraph 3.2.1.

7. BOUNDARIES, TITLE, ETC

7.1 The Crown will not be bound to point out the boundaries of the cleared current surplus land.

7.2 If the cleared current surplus land is subject only to disclosed encumbrances (as they may be varied under paragraph 2.2 of this part), the relevant governance entity:

7.2.1 will be treated as having accepted the Crown's title to the cleared current surplus land as at the actual cleared current surplus land settlement date; and

7.2.2 may not make any objections to, or requisitions on, it.

7.3 Except as otherwise expressly set out in this part 4.3 no error, omission or misdescription of the cleared current surplus land or its title shall annul the transfer of the cleared current surplus land.

7.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the cleared current surplus land and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence), and:

7.4.1 this paragraph will not continue for the benefit of any subsequent purchaser of the contiguous land; and

7.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the cleared current surplus land.

8. OBLIGATIONS AFTER SETTLEMENT

8.1 If the Crown receives any notice or demand in relation to the cleared current surplus land from the Crown, any territorial authority or any tenant after the actual cleared current surplus land settlement date, the Crown will, if not paying or complying with such notice or demand, promptly deliver it to the relevant governance entity or their solicitor and, if the Crown fails to do so, the Crown will be liable for any penalty incurred.

8.2 Immediately after the actual cleared current surplus land settlement date, the Crown will give notice of the transfer of the cleared current surplus land to the territorial authority having jurisdiction in respect of that land.

9. DISCLOSURE INFORMATION

9.1 The Crown warrants to the relevant governance entity that the disclosure information in relation to the cleared current surplus land is all the material information about the cleared current surplus land that the land holding agency is aware of at the date of providing the information, having inspected its records but not having undertaken a physical inspection of the cleared current surplus land or made enquiries beyond its records.

9.2 Except as provided in paragraph 9.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

9.2.1 the cleared current surplus land including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

9.2.2 the completeness or accuracy of the disclosure information in relation to the cleared current surplus land.

9.3 The relevant governance entity acknowledge that (although the Crown is not giving any representation or warranty in relation to the cleared current surplus land except as provided in paragraph 9.1 of this part) the relevant governance entity had the opportunity prior to the cleared current surplus land settlement date (in addition to being able to examine the disclosure information) to:

9.3.1 inspect the cleared current surplus land; and

9.3.2 determine its state and condition.

10. DELAYED TRANSFER OF LEGAL TITLE

10.1 The Crown covenants for the benefit of the relevant governance entity that it will:

10.1.1 arrange for the creation of computer freehold register(s) for the cleared current surplus land that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

10.1.2 transfer the fee simple estate in the cleared current surplus land to which paragraph 10.1.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than 12 months after the cleared current surplus land settlement date (unless otherwise agreed in writing between the parties).

10.2 The covenant given by the Crown under paragraph 10.1 shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

10.3 If paragraph 10.1 applies then, for the period from the cleared current surplus land settlement date until the date that the Crown transfers the title to that the cleared current surplus land to the relevant governance entity:

10.3.1 the relevant governance entity will be the beneficial owner of that land; and

10.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the relevant governance entity on the actual cleared current surplus land settlement date.

11. DELAY IN SETTLEMENT PROVISIONS

11.1 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 relevant governance entity to the Crown is not paid on the cleared current surplus land settlement date, the Crown shall not be obliged to give possession to the relevant governance entity, and the relevant 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 cleared current surplus land settlement date to the actual cleared current surplus land settlement date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.

11.2 If, without the written agreement of the parties, settlement is not effected on the cleared current surplus land settlement date then without prejudice to the rights of the party not in default the following provisions shall apply:

11.2.1 either the Crown or the relevant governance entity may at any time after the cleared current surplus land settlement 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 relevant governance entity acknowledge that it may not serve a settlement notice where there is a delay or transfer of legal title as contemplated by paragraph 10;

11.2.2 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; and

11.2.3 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 paragraph 2.1 of part 4.1 by written notice.

12. MISCELLANEOUS

Further assurances

12.1 The Crown and the relevant 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 of Te Whakatau / deed of settlement and this part 4.3.

Non-merger

12.2 On transfer of the cleared current surplus land to the relevant governance entity, the provisions of this part 4.3 will not merge and, to the extent any provision has not been fulfilled, will remain in force.

5. CLEARED NON-OPERATIONAL LAND

5.1 CLEARED NON-OPERATIONAL LAND - RIGHT TO ACQUIRE

RIGHT OF SELECTION OVER CLEARED NON-OPERATIONAL LAND

1. NOTICE OF INTEREST

1.1 By 31 December 2010 ("**review date**") the Crown will advise the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust of the Airbase land that is not required for NZDF operational purposes and is not required for any other public work in accordance with the provisions of the Public Works Act 1981 ("**non-operational land**"). The notice given by the Crown under paragraph 1.1 shall be in writing and given by personal delivery by way of tracked courier to the recipients' street addresses.

1.2 The governance entity may at any time within 40 business days from and after the offer date give notice to the Crown that the governance entity is interested in acquiring all or part of the cleared non-operational land.

1.3 Upon expiry of the time period in paragraph 1.2, the Crown will immediately notify all the governance entities of which governance entities, if any, are interested in acquiring all or part of the cleared non-operational land ("**interest notice**"). If the Crown has not received notice from a governance entity within the time period set out in paragraph 1.2, the Crown will be entitled to treat that lack of a response as notice that the governance entity is not interested in acquiring all or part of the cleared non-operational land.

1.4 If the Crown gives an interest notice that the governance entity, or the governance entity and any one or more of the other governance entities, is or are interested in acquiring any or all of the cleared non-operational land, then the governance entity or entities that are identified in the interest notice will, within 60 business days of receipt of the interest notice, decide on matters relating to the transfer of all or part of the cleared non-operational land ("**proposed transfers**"), including:

1.4.1 whether the cleared non-operational land (or part thereof) is proposed to be transferred to the acquiring governance entities as tenants in common, and if so, in what shares; or

1.4.2 whether the cleared non-operational land (or part thereof) is proposed to be transferred to the governance entity and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust as separate freehold computer registers.

1.5 If requested by the governance entity or entities, the Crown shall participate in the process to assist the governance entity or entities to decide on the matters set out in paragraph 1.4. Throughout the process set out in paragraph 1.4, the Crown will, subject to any obligations of confidentiality that it may have, respond to reasonable requests from the governance entities for information relating to the cleared non-operational land and the transfer process.

1.6 On or before the expiry of the time period in paragraph 1.4, the governance entity must notify the Crown in writing (with the written approval of any other governance entities that are indentified in the interest notice) of the matters decided upon in paragraph 1.4 above (the "**transfer notice**").

1.7 Within 20 business days of receiving the transfer notice the Crown, acting reasonably, may accept, or suggest amendments to the transfer notice.

1.8 The Crown will not accept and will suggest amendments to the transfer notice where only part of the cleared non-operational land is being transferred, and the part of the cleared non-

operational land not being transferred ("**remaining land**") is of a size, shape or location that would prevent the Crown from otherwise disposing of the remaining land on the open market.

1.9 In deciding whether to accept or suggest amendments to the transfer notice under paragraph 1.7 the Crown will take into account the following matters:

1.9.1 whether the proposed transfers are consistent with good commercial practice; and

1.9.2 whether the proposed transfers are consistent with the Crown's normal Treaty settlement policies in respect of the creation of computer freehold registers.

1.10 If the Crown suggests any amendments in writing to the transfer notice pursuant to paragraph 1.6, 1.7 or 1.8, then the governance entity will have 20 business days to re-issue its transfer notice (with the written approval of any other governance entities that are identified in the interest notice) ("**amended transfer notice**").

1.11 Within 10 business days of receiving an amended transfer notice the Crown, acting reasonably, may accept or decline to accept the amended transfer notice issued under paragraph 1.10 and may have regard to the matters outlined in paragraph 1.8 and 1.9 in making its decision.

1.12 If the transfer notice or the amended transfer notice is not accepted by the Crown, then the Crown or the governance entity may give the other party notice in writing requiring that any dispute as to whether the proposed transfers in the amended transfer notice addresses the Crown's requirements and concerns in paragraph 1.8 and 1.9, be determined by an arbitrator. The arbitrator is to have relevant commercial experience and is to be appointed by the president of the New Zealand Law Society 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.

1.13 If the Crown accepts a transfer notice or any amended transfer notice or the matter is determined pursuant to the dispute resolution process in paragraph 1.12 ("**Crown acceptance**") then within 25 business days of the Crown acceptance the Crown and the governance entities identified in the interest notice will:

1.13.1 agree whether the valuation process to be used to determine the transfer value of the cleared non-operational land is the process set out in:

(a) part 3.3 of the schedule - Valuation Process for Independently Valued Assets (for the avoidance of doubt there shall be only one valuer appointed for the governance entities. Where there is more than one governance entity identified in the interest notice, and the governance entities cannot agree on a valuer then the governance entities will request that the President of the New Zealand Institute of Valuers makes the appointment); or

(b) part 3.4 of the schedule - Valuation Process for Jointly Valued Assets; and

1.13.2 within 16 months of the offer date (unless otherwise agreed) determine the transfer value for the cleared non-operational land.

1.14 In the event the parties fail to agree the valuation process in accordance with paragraph 1.13 then the parties shall use the process set out in part 3.3 of the schedule - Valuation Process for Independently Valued Assets.

1.15 If the governance entity is a party identified in the interest notice, it must, within 40 business days of the transfer value for the cleared non-operational land being determined or agreed in accordance with the valuation process:

1.15.1 notify the Crown in writing whether or not it and/or any other governance entities identified in the interest notice elect to acquire all or part of the cleared non-operational land on the terms of the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12 (as the case may be);

1.15.2 notify the Crown in writing what shares in the cleared non-operational land each governance entity shall hold if all or part of the cleared non-operational land is to be transferred to more than one governance entity as tenants in common and the share is different to the shares described in the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12; and

1.15.3 provide to the Crown written certification from the governance entities identified in the interest notice that each is in agreement with the details confirmed in paragraphs 1.15.1 and 1.15.2.

1.16 The governance entity and the Crown must use reasonable endeavours:

1.16.1 to ensure the valuation process operates in the manner and within the timeframes agreed; and

1.16.2 if the valuation process is delayed, to minimise the delay.

2. AGREEMENT FOR SALE AND PURCHASE

2.1 If:

2.1.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all or part of the cleared non-operational land; and

2.1.2 the transfer value of the cleared non-operational land to which that notice relates:

(a) is determined or agreed but not earlier than 20 business days prior to the settlement date; and/or

(b) exceeds the available quantum amount,

then the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 and the Crown shall be deemed to have entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with the valuation process and in accordance with the terms set out in part 5.3 of the schedule.

2.2 If:

2.2.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all or part of the cleared non-operational land; and

2.2.2 the transfer value of the cleared non-operational land to which that notice relates

(a) is determined or agreed at least 20 business days prior to settlement date; and

(b) does not exceed the available quantum amount,

then the Crown shall transfer the property as redress to the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 on the terms set out in part 2.1 of the schedule.

3. TERMINATION OF OBLIGATIONS

3.1 All obligations of the Crown to the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust under the deeds of settlement in relation to the cleared non-operational land immediately cease if:

3.1.1 neither the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust give notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all or part of the cleared non-operational land; or

3.1.2 after giving notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all or part of the cleared non-operational land, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be):

(a) do not notify the Crown whether or not it and/or any of them elect to acquire all or part of the cleared non-operational land in accordance with the provisions of paragraph 1.15 of the relevant governance entity's schedule; or

(b) notifies the Crown under paragraph 1.15 of the relevant governance entity's schedule that none of them elect to acquire all or part of the cleared non-operational land; or

3.1.3 at any time before an agreement for sale and purchase of all or part of the cleared non-operational land is constituted under paragraph 2.1 above, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be) notifies the Crown that none of them are interested in purchasing all or part of the cleared non-operational land; or

3.1.4 the beneficial ownership of that land has transferred to either the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust in accordance with the equivalent provision of its deed of settlement.

4. TIME LIMITS

4.1 Time is of the essence for the time limits imposed on the Crown and the governance entity under clause 6 of Te Whakatau / deed of settlement and parts 5.1-5.3 of the schedule.

5. DEFINITIONS

5.1 Unless the context otherwise requires, the definitions in part 5.2 of the schedule apply in:

5.1.1 clause 6 of Te Whakatau / deed of settlement; and

5.1.2 part 5 of the schedule.

5.1 CLEARED NON-OPERATIONAL LAND - RIGHT TO ACQUIRE

5.2 To avoid doubt, unless specifically provided otherwise or unless the context otherwise requires, the definitions in part 3.2 of the schedule apply under this part 5.

5.2 CLEARED NON-OPERATIONAL LAND - INTERPRETATION PROVISIONS FOR TERMS OF TRANSFER

INTERPRETATION PROVISIONS

(Clause 6.22)

INTERPRETATION AND NOTICE

1. DEFINITIONS

1.1 In clause 6 of Te Whakatau / deed of settlement and in part 5.3 of this schedule, unless the context otherwise requires:

actual cleared non-operational land settlement date means the date on which settlement of the cleared non-operational land takes place;

cleared non-operational land settlement date means the date that is 20 business days after the Crown receives a notice from the governance entity or the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust under paragraph 1.15 of part 5.1 of any of the deeds of settlement electing to acquire the cleared non-operational land;

disclosed encumbrance is an encumbrance disclosed under paragraph 2.2 of part 3.3 or paragraph 2.2 of part 3.4;

disclosure information, in relation to the cleared non-operational land, means the information given by the Crown about the property referred to in paragraph 2.1 of part 3.3 or paragraph 2.1 or part 3.4;

notification date, in relation to the cleared non-operational land, is the date the governance entity or the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust gives the Crown notice under paragraph 1.2 of part 5.1 that any one or more of them is interested in acquiring the cleared non-operational land;

terms of transfer means the terms of transfer set out in part 5.3;

transfer value has the meaning given to it in part 3.3 or part 3.4 as the case may be;

valuation process, in relation to the cleared non-operational land, means the process to determine or agree the transfer value of that land in accordance with paragraphs 1.13 or 1.14 of part 5.1.

2. NOTICE

2.1 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of the relevant land holding agency is as follows:

New Zealand Defence Force
Defence House
2-12 Aitken St
Wellington

5.3 CLEARED NON-OPERATIONAL LAND - TERMS OF TRANSFER

TERMS OF TRANSFER

(Clause **6.23.2**)

1. APPLICATION OF THIS PART

1.1 This part 5.3 applies if the Crown and the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (together, "**the relevant governance entity**") are deemed under paragraph 2.1 of part 5.1 of any of the deeds of settlement to have entered into an agreement for the sale and purchase of the cleared non-operational land.

2. TRANSFER OF THE CLEARED NON-OPERATIONAL LAND

2.1 The Crown must transfer the fee simple estate in the cleared non-operational land to the relevant governance entity on the terms set out in clause 6 of Te Whakatau / deed of settlement, and in this part 5.3, subject to and, where applicable, with the benefit of the disclosed encumbrances affecting or benefiting that property (as those disclosed encumbrances may be varied under paragraph 2.2 below).

2.2 The Crown and the relevant governance entity may agree in writing to vary or add to the disclosed encumbrances affecting the cleared non-operational land.

2.3 The relevant governance entity must not unreasonably withhold or delay its consent to varying a disclosed encumbrance or granting a new encumbrance affecting the cleared non-operational land.

2.4 The Crown will pay any survey and registration costs required to transfer the fee simple estate in the cleared non-operational land to the relevant governance entity.

3. OBLIGATIONS PRIOR TO CLEARED NON-OPERATIONAL LAND SETTLEMENT DATE

3.1 The Crown must maintain the cleared non-operational land, or ensure its maintenance, until the actual cleared non-operational land settlement date in substantially the same condition as it was in at the notification date, fair wear and tear excepted.

3.2 Between the notification date and the actual cleared non-operational land settlement date the Crown must consult with, and obtain the prior written consent of, the relevant governance entity (which will not be unreasonably withheld or delayed) before:

3.2.1 agreeing to any material variation in the terms of a disclosed encumbrance affecting or benefiting the cleared non-operational land; or

3.2.2 procuring any consent, or providing any waiver, under the Resource Management Act 1991, or other legislation, that materially affects the cleared non-operational land.

3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on the cleared non-operational land, between the notification date and the actual cleared non-operational land settlement date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act 2004 in respect of such works.

3.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of the cleared non-operational land until the actual cleared non-operational land settlement date except where those charges are payable by any tenant or occupant directly to the relevant supplier.

3.5 Subject to the terms of any disclosed encumbrance affecting the cleared non-operational land, the Crown must use reasonable endeavours to obtain permission for the relevant governance entity (or a person authorised by the relevant governance entity), upon reasonable notice, to enter the cleared non-operational land on one occasion before the cleared non-operational land settlement date to examine it.

4. POSSESSION AND SETTLEMENT

4.1 On the cleared non-operational land settlement date:

4.1.1 the relevant governance entity shall pay to the Crown an amount equal to the transfer value (plus GST if any) either by way of bank cheque drawn on a New Zealand registered bank and made payable to the land holding agency or by electronic transfer;

4.1.2 possession must be given and taken of the cleared non-operational land subject to the disclosed encumbrances (as they may be varied under paragraph 2.2 of this part); and

4.1.3 vacant possession must be given and taken of the cleared non-operational land if it is not subject to any disclosed encumbrance (as they may be varied under paragraph 2.2 of this part) that prevent vacant possession being given and taken.

4.2 Subject to paragraphs 4.3 and 10.1.2, the Crown must provide the relevant governance entity with the following in relation to the cleared non-operational land on the cleared non-operational land settlement date:

4.2.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the cleared non-operational land; and

4.2.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the cleared non-operational land settlement date.

4.3 If the fee simple estate in the cleared non-operational land may be transferred to the relevant governance entity electronically under the relevant legislation:

4.3.1 paragraph 4.2.1 does not apply;

4.3.2 the Crown must ensure its solicitor:

(a) a reasonable time before the cleared non-operational land settlement date for the cleared non-operational land:

(i) creates a Landonline workspace for the transfer to the relevant governance entity of the fee simple estate in the cleared non-operational land; and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments, necessary, to effect the transfer electronically (the "**electronic transfer instruments**"); and

(b) on the cleared non-operational land settlement date, releases the electronic transfer instruments so that the relevant governance entity's solicitor may submit them for registration under the relevant legislation;

4.3.3 the relevant governance entity must ensure its solicitor, a reasonable time before the cleared non-operational land settlement date, certifies and signs the transfer instrument for the cleared non-operational land prepared in the Landonline workspace under paragraph 4.3.2(a)(ii); and

4.3.4 paragraphs 4.3.2 and 4.3.3 are subject to paragraph 10.1.2.

4.4 The **relevant legislation** for the purposes of paragraph 4.3 is:

4.4.1 the Land Transfer Act 1952; and

4.4.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

4.5 All outgoings and incomings (including rates, excluding insurance premiums) must be apportioned at the actual cleared non-operational land settlement date.

4.6 The Crown must supply a statement of apportionments to the relevant governance entity before the actual cleared non-operational land settlement date. On the actual cleared non-operational land settlement date:

4.6.1 the relevant governance entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the cleared non-operational land pre-paid by the Crown in respect of a period after the actual cleared non-operational land settlement date exceed the incomings received by the Crown for that period; or

4.6.2 the Crown must pay to the relevant governance entity the amount by which the incomings received by the Crown in respect of a period after the actual cleared non-operational land settlement date exceed the outgoings (except for insurance premiums) for the cleared non-operational land pre-paid by the Crown for that period.

4.7 The Crown must make available to the relevant governance entity on the actual cleared non-operational land settlement date any keys to gates, exterior doors, and electronic door openers (if any) and/or security codes to alarms (if any) for the cleared non-operational land property that are in the possession of the Crown at the actual cleared non-operational land settlement date provided that the Crown shall not have any obligation under this paragraph

where in the Crown's reasonable opinion, due to the nature of the cleared non-operational land, it would be inappropriate to make such items available.

4.8 The cleared non-operational land must be transferred inclusive of all fixtures and fittings that are owned by the Crown and are situated on the cleared non-operational land at the notification date.

4.9 Fixtures and fittings transferred under paragraph 4.8 above are to be free of any mortgage or charge.

4.10 No chattels situated on the cleared non-operational land will be included in its transfer.

5. RISK AND INSURANCE

5.1 The cleared non-operational land will remain at the sole risk of the Crown until the actual cleared non-operational land settlement date and, from the actual cleared non-operational land settlement date, it will remain at the sole risk of the relevant governance entity.

5.2 In the event that, prior to the actual cleared non-operational land settlement date, the cleared non-operational land is destroyed or damaged and such destruction or damage has not been made good by the actual cleared non-operational land settlement date, then the following provisions apply:

5.2.1 the relevant governance entity must complete the transfer of the cleared non-operational land at its transfer value on the condition that the Crown pay to the relevant governance entity an amount equal to the amount (if any) by which the transfer value for the cleared non-operational land property is more than the value of the cleared non-operational land as at the actual cleared non-operational land settlement date as a result of the destruction or damage; and

5.2.2 either party may give the other party notice in writing requiring that any dispute as to the application of this paragraph 5.2 be determined by an arbitrator to be appointed by the president of the New Zealand Law Society 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.

5.3 If a dispute relating to a claim by the relevant governance entity for a diminution in value of the cleared non-operational land under paragraph 5.2.2 is not determined by the actual cleared non-operational land settlement date, then:

5.3.1 settlement shall take place on the actual cleared non-operational land settlement date in accordance with this part 5.3 as if there had been no destruction or damage; and

5.3.2 upon the determination of the dispute the Crown shall pay to the relevant governance entity within 7 business days from such determination a sum equal to the diminution in value of the cleared non-operational land and interest from settlement date to the date of that payment at the rate set out in clause 6.4.2 of Te Whakatau / deed of settlement.

5.4 The relevant governance entity will not be required to take over from the Crown any insurance policies in relation to the cleared non-operational land.

6. TRANSFER VALUE

6.1 To avoid doubt, the parties acknowledge that the transfer value of the cleared non-operational land will not be affected by:

6.1.1 any addition or variation to the disclosed encumbrances agreed in writing by the Crown and the relevant governance entity under paragraph 2.2 of this part; or

6.1.2 any variation to a disclosed encumbrance agreed by the Crown and the relevant governance entity under paragraph 3.2.1.

7. BOUNDARIES, TITLE, ETC

7.1 The Crown will not be bound to point out the boundaries of the cleared non-operational land.

7.2 If the cleared non-operational land is subject only to disclosed encumbrances (as they may be varied under paragraph 2.2 of this part), the relevant governance entity:

7.2.1 will be treated as having accepted the Crown's title to the cleared non-operational land as at the actual cleared non-operational land settlement date; and

7.2.2 may not make any objections to, or requisitions on, it.

7.3 Except as otherwise expressly set out in this part 5.3 no error, omission or misdescription of the cleared non-operational land or its title shall annul the transfer of the cleared non-operational land.

7.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the cleared non-operational land and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence), and:

7.4.1 this paragraph will not continue for the benefit of any subsequent purchaser of the contiguous land; and

7.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the cleared non-operational land.

8. OBLIGATIONS AFTER SETTLEMENT

8.1 If the Crown receives any notice or demand in relation to the cleared non-operational land from the Crown, any territorial authority or any tenant after the actual cleared non-operational land settlement date, the Crown will, if not paying or complying with such notice or demand, promptly deliver it to the relevant governance entity or their solicitor and, if the Crown fails to do so, the Crown will be liable for any penalty incurred.

8.2 Immediately after the actual cleared non-operational land settlement date, the Crown will give notice of the transfer of the cleared non-operational land to the territorial authority having jurisdiction in respect of that land.

9. DISCLOSURE INFORMATION

9.1 The Crown warrants to the relevant governance entity that the disclosure information in relation to the cleared non-operational land is all the material information about the cleared non-operational land that the land holding agency is aware of at the date of providing the information, having inspected its records but not having undertaken a physical inspection of the cleared non-operational land or made enquiries beyond its records.

9.2 Except as provided in paragraph 9.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

9.2.1 the cleared non-operational land including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

9.2.2 the completeness or accuracy of the disclosure information in relation to the cleared non-operational land.

9.3 The relevant governance entity acknowledge that (although the Crown is not giving any representation or warranty in relation to the cleared non-operational land except as provided in paragraph 9.1 of this part) the relevant governance entity had the opportunity prior to the cleared non-operational land settlement date (in addition to being able to examine the disclosure information) to:

9.3.1 inspect the cleared non-operational land; and

9.3.2 determine its state and condition.

10. DELAYED TRANSFER OF LEGAL TITLE

10.1 The Crown covenants for the benefit of the relevant governance entity that it will:

10.1.1 arrange for the creation of computer freehold register(s) for the cleared non-operational land that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

10.1.2 transfer the fee simple estate in the cleared non-operational land to which paragraph 10.1.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than 12 months after the cleared non-operational land settlement date (unless otherwise agreed in writing between the parties).

10.2 The covenant given by the Crown under paragraph 10.1 shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

10.3 If paragraph 11.1 applies then, for the period from the actual cleared non-operational land settlement date until the date that the Crown transfers the title to that the cleared non-operational land to the relevant governance entity:

10.3.1 the relevant governance entity will be the beneficial owner of that land; and

10.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the relevant governance entity on the actual cleared non-operational land settlement date.

11. DELAY IN SETTLEMENT PROVISIONS

11.1 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 relevant governance entity to the Crown is not paid on the cleared non-operational land settlement date, the Crown shall not be obliged to give possession to the relevant governance entity, and the relevant 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 cleared non-operational land settlement date to the actual cleared non-operational land settlement date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.

11.2 If, without the written agreement of the parties, settlement is not effected on the cleared non-operational land settlement date then without prejudice to the rights of the party not in default the following provisions shall apply:

11.2.1 either the Crown or the relevant governance entity may at any time after the cleared non-operational land settlement 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 relevant governance entity acknowledge that it may not serve a settlement notice where there is a delay or transfer of legal title as contemplated by paragraph 10;

11.2.2 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; and

11.2.3 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 paragraph 2.1 of part 5.1 by written notice.

12. MISCELLANEOUS

Further assurances

12.1 The Crown and the relevant 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 of Te Whakatau / deed of settlement and this part 5.3.

Non-merger

12.2 On transfer of the cleared non-operational land to the relevant governance entity, the provisions of this part 5.3 will not merge and, to the extent any provision has not been fulfilled, will remain in force.

6. LEASEBACK LAND

6.1 LEASEBACK LAND - RIGHT TO ACQUIRE

RIGHT OF SELECTION OVER LEASEBACK LAND

1. NOTICE OF INTEREST

1.1 By 31 December 2010 ("**review date**") the Crown will advise the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust of the Airbase land that is required for NZDF operational purposes and the Airbase land that is required for any other public work ("**leaseback land**"). The notice given by the Crown under this paragraph 1.1 shall be in writing and given by personal delivery by way of tracked courier to the recipients' street addresses.

1.2 The governance entity may at any time within 40 business days from and after the offer date give notice to the Crown that the governance entity is interested in acquiring:

1.2.1 all the leaseback land; or

1.2.2 all of any area of the leaseback land that will be subject to a single lease for a public work ("**single lease area**").

1.3 Upon expiry of the time period in paragraph 1.2, the Crown will immediately notify all the governance entities of which governance entities, if any, are interested in acquiring all of the leaseback land or any one or more single lease area ("**interest notice**"). If the Crown has not received notice from a governance entity within the time period set out in paragraph 1.2, the Crown will be entitled to treat that lack of a response as notice that the governance entity is not interested in acquiring all of the leaseback land or any single lease area.

1.4 If the Crown gives an interest notice that the governance entity, or the governance entity and any one or more of the other governance entities, is or are interested in acquiring all of the leaseback land or one or more single lease areas, then the governance entity or entities that are identified in the interest notice will, within 60 business days of receipt of the interest notice, decide on matters relating to the transfer of all of the leaseback land or one or more single lease areas ("**proposed transfers and leases**"), including:

1.4.1 whether the leaseback land or single lease areas are proposed to be transferred to the acquiring governance entities as tenants in common, and if so, in what shares;

1.4.2 whether the leaseback land or single lease areas are proposed to be transferred to the governance entity and/or Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust as separate freehold computer registers; and

1.4.3 if the leaseback land or single lease areas are proposed to be leased by more than one governance entity, how the lessee/lessor relationship will be managed.

1.5 If requested by the governance entity or entities, the Crown shall participate in the process to assist the governance entity or entities to decide on the matters set out in paragraph 1.4. Throughout the process set out in paragraph 1.4, the Crown will, subject to any obligations of confidentiality that it may have, respond to reasonable requests from the governance entity or entities for information relating to the leaseback land, the single lease areas and/or the transfer process.

1.6 On or before the expiry of the time period in paragraph 1.4, the governance entity must notify the Crown in writing (with the written approval of any other governance entities that are indentified in the interest notice) of the matters decided upon in paragraph 1.4 above ("**transfer notice**").

1.7 Within 20 business days of receiving the transfer notice the Crown, acting reasonably, may accept, or suggest amendments to the transfer notice.

1.8 The Crown will not accept and will suggest amendments to the transfer notice where the proposed transfer does not transfer either all of the leaseback land or all of any area of the leaseback land that will be subject to a single lease for a public work.

1.9 In deciding whether to accept or suggest amendments to the transfer notice pursuant to paragraph 1.7 the Crown will take into account the following matters:

1.9.1 whether the proposed transfers and leases are consistent with good commercial practice;

1.9.2 whether the proposed transfers and leases will unreasonably interfere, or make it impracticable for any lessee to conduct any identified public work on the leaseback land or single lease area;

1.9.3 whether the proposed transfers and leases will have a materially adverse effect on:

(a) the operations currently being conducted on the leaseback land or single lease area (including managed infrastructure, buildings, services and utilities); and/or

(b) the permitted use or future operations (including infrastructure, buildings, services and utilities) that will be conducted under any lease of the leaseback land or lease of a single lease area;

to the intent that the proposed transfers and leases should not have any material adverse effect on any operations on the leaseback land or any single lease area before and after the actual leaseback land settlement date;

1.9.4 whether the proposed transfers and leases are consistent with the Crown's normal Treaty settlement policies in respect of the creation of computer registers.

1.10 If the Crown suggests any amendments in writing to the transfer notice pursuant to paragraph 1.7, 1.8 or 1.9, then the governance entity will have 20 business days to re-issue its transfer notice (with the written approval of any other governance entities that are identified in the interest notice) ("**amended transfer notice**").

1.11 Within 10 business days of receiving an amended transfer notice the Crown, acting reasonably, may accept or decline to accept the amended transfer notice issued under paragraph 1.10 and may have regard to the matters outlined in paragraph 1.8 and 1.9 in making its decision.

1.12 If the transfer notice or the amended transfer notice is not accepted by the Crown, then the Crown or the governance entity may give the other party notice in writing requiring that any dispute as to whether the proposed transfers and leases in the amended transfer notice addresses the Crown's requirements and concerns in paragraph 1.8 and 1.9 be determined by an arbitrator. The arbitrator is to have relevant commercial experience and is to be appointed by the president of the New Zealand Law Society 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.

1.13 If the Crown accepts a transfer notice or any amended transfer notice or the matter is determined pursuant to the dispute resolution process in paragraph 1.12 ("**Crown**

acceptance") then within 25 business days of the Crown acceptance the Crown and the governance entities identified in the interest notice will:

1.13.1 agree whether the valuation process to be used to determine the transfer value of the leaseback land or each single lease area is the process set out in:

(a) part 3.3 of the schedule - Valuation Process for Independently Valued Assets (for the avoidance of doubt there shall be only one valuer appointed for the governance entities. Where there is more than one governance entity identified in the interest notice, and the governance entities cannot agree on a valuer then the governance entities will request that the President of the New Zealand Institute of Valuers makes the appointment); or

(b) part 3.4 of the schedule - Valuation Process for Jointly Valued Assets; and

1.13.2 within 9 months of the offer date (unless otherwise agreed), determine the lease terms and conditions upon which the leaseback land or each single lease areas will be leased for a public work; and

1.13.3 within 16 months of the offer date (unless otherwise agreed) determine the transfer value and the commencement rent for the leaseback land or each single lease area.

1.14 In the event the parties fail to agree the valuation process in accordance with paragraph 1.13 then the parties shall use the process set out in part 3.3 of the schedule - Valuation Process for Independently Valued Assets.

1.15 If the governance entity is a party identified in the interest notice, it must, within 40 business days of the transfer value for the leaseback land or each of the single lease areas being determined or agreed in accordance with the valuation process:

1.15.1 notify the Crown in writing whether or not it and/or any other governance entities identified in the interest notice elect to acquire all of the leaseback land or one or more of any single lease area on the terms of the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12 (as the case may be);

1.15.2 notify the Crown in writing what shares in the leaseback land or any single lease area each governance entity shall hold if all of the leaseback land or any single lease area is to be transferred to more than one governance entity as tenants in common and the share is different to the shares described in the transfer notice or the amended transfer notice or as determined pursuant to paragraph 1.12; and

1.15.3 provide to the Crown written certification from the governance entities identified in the interest notice that each is in agreement with the details confirmed in paragraphs 1.15.1 and 1.15.2.

1.16 The governance entity and the Crown must use reasonable endeavours:

1.16.1 to ensure the valuation process operates in the manner and within the timeframes agreed; and

1.16.2 if the valuation process is delayed, to minimise the delay.

2. AGREEMENT FOR SALE AND PURCHASE

2.1 If:

2.1.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all of the leaseback land or one or more of any single lease area; and

2.1.2 the transfer value of the leaseback land or single lease area to which that notice relates:

(a) is determined or agreed but not earlier than 20 business days prior to the settlement date; and/or

(b) exceeds the available quantum amount,

then the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 and the Crown shall be deemed to have entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with the valuation process and in accordance with the terms set out in part 6.3 of the schedule.

2.2 If:

2.2.1 the governance entity gives notice in accordance with paragraph 1.15 above that it and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all of the leaseback land or any one or more of the single lease areas; and

2.2.2 the transfer value of the leaseback land or single lease area to which that notice relates:

(a) is determined or agreed at least 20 business days prior to settlement date; and

(b) does not exceed the available quantum amount,

2.2.3 then the Crown shall transfer the property as redress to the purchasing governance entity or entities confirmed in accordance with paragraph 1.15 on the terms set out in part 2.1 of the schedule.

3. TERMINATION OF OBLIGATIONS

3.1 All obligations of the Crown to the governance entity, the Ngāti Apa ki te Rā Tō Trust and the Rangitāne o Wairau Settlement Trust under the deeds of settlement in relation to all of the leaseback land and any single lease area immediately cease if:

3.1.1 neither the governance entity, the Ngāti Apa ki te Rā Tō Trust or the Rangitāne o Wairau Settlement Trust give notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all of the leaseback land or any one or more of the single lease areas; or

3.1.2 after giving notice in accordance with paragraph 1.2 that any one or more of them is interested in acquiring all of the leaseback land or any single lease area, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be):

(a) do not notify the Crown whether or not it and/or any of them elect to acquire all of the leaseback land or any single lease area in accordance with the provisions of paragraph 1.15 of the relevant governance entity's schedule; or

(b) notify the Crown under paragraph 1.15 of the relevant governance entity's schedule that none of them elect to acquire all of the leaseback land or any single lease area; or

3.1.3 at any time before an agreement for sale and purchase of all of the leaseback land or any single lease area is constituted under paragraph 2.1 above, the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (as the case may be) notify the Crown that none of them are interested in purchasing all of the leaseback land or any single lease area; or

3.1.4 the beneficial ownership of that land has transferred to either the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust in accordance with the equivalent provision of its deed of settlement.

4. TIME LIMITS

4.1 Time is of the essence for the time limits imposed on the Crown and the governance entity under clause 6 of Te Whakatau / deed of settlement and parts 6.1-6.3 of the schedule.

5. LEASING BACK THE LEASEBACK LAND

5.1 If either the governance entity and/or the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust elect to acquire all of the leaseback land or any one or more of the single lease areas:

5.1.1 the relevant purchasing governance entity or entities must lease to the land holding agency, or any other entity that requires the land for any other public work ("**lessee**") all of the leaseback land or any one or more of the single lease areas (as the case may be) after its transfer to that governance entity or entities; and

5.1.2 the purchasing governance entity or entities and the lessee must, by or on the settlement date for the leaseback land or the relevant single lease area sign the lease instrument for the area, such lease instrument to include:

(a) initial rental for the lease will be the commencement rent;

(b) the commencement date for the lease will be the actual settlement date for the leaseback land or single lease area;

(c) a provision that if the governance entity or entities wish to subsequently dispose of its/their interest in the leaseback land or single lease areas, that the governance entity or entities will notify the lessee of such disposal, and give the lessee an opportunity to object in good faith to any disposal. The governance entity or entities must demonstrate to the lessee that the assignee is respectable, responsible and has the financial resources to meet the lessor's

commitments under the lease. The governance entity or entities also agree to procure that any assignee enters into a deed of covenant whereby the assignee undertakes and agrees that it will be bound by and comply with the like provisions of this paragraph 5.1.2(c) including the requirement to require any subsequent assignee to enter into a deed of covenant; and

(d) any other commercial terms agreed between the lessee and the purchasing governance entity or entities.

6. DEFINITIONS

6.1 Unless the context otherwise requires, the definitions in part 6.2 of the schedule apply in:

6.1.1 clause 6 of Te Whakatau / deed of settlement; and

6.1.2 part 6 of the schedule.

6.2 To avoid doubt, unless specifically provided otherwise or unless the context otherwise requires, the definitions in part 3.2 of the schedule apply under this part 6.

6.2 LEASEBACK LAND - INTERPRETATION PROVISIONS FOR TERMS OF TRANSFER

INTERPRETATION PROVISIONS

(Clause 6.16)

INTERPRETATION AND NOTICE

1. DEFINITIONS

1.1 In clause 6 of Te Whakatau / deed of settlement and in part 6.3 of this schedule, unless the context otherwise requires:

actual leaseback land settlement date means the date on which settlement of the leaseback land takes place;

commencement rent, in relation to the leaseback land, means the commencement rent for that property determined or agreed under the valuation process;

disclosed encumbrance is an encumbrance disclosed under paragraph 2.2 of part 3.3 or paragraph 2.2 of part 3.4;

disclosure information, in relation to the leaseback land, means the information given by the Crown about the property referred to in paragraph 2.1 of part 3.3 or paragraph 2.1 of part 3.4;

lease means, in respect of any leaseback land, the lease(s) to be entered into under paragraph 5 of part 6.1;

leaseback land settlement date means the date that is 20 business days after the Crown receives a notice from the governance entity under paragraph 1.15 of part 6.1 electing to purchase the leaseback land;

notification date, in relation to the leaseback land, is the date the governance entity gives the Crown notice under paragraph 1.2 of part 6.1 that it is interested in acquiring the leaseback land;

terms of transfer means the terms of transfer set out in part 6.3;

transfer value has the meaning given to it in part 3.3 or part 3.4 as the case may be;

valuation process, in relation to the leaseback land, means the process to determine or agree the transfer value (and commencement rent) of that land in accordance with paragraphs 1.13 or 1.14 of part 6.1.

2. NOTICE

2.1 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of the relevant land holding agency is as follows:

New Zealand Defence Force
Defence House
2-12 Aitken St
Wellington

6.3 LEASEBACK LAND - TERMS OF TRANSFER

TERMS OF TRANSFER

(Clause 6.17.2)

1. APPLICATION OF THIS PART

1.1 This part 6.3 applies if the Crown and the governance entity, the Ngāti Apa ki te Rā Tō Trust and/or the Rangitāne o Wairau Settlement Trust (together, the "**relevant governance entity**") are deemed under paragraph 2.1 of part 6.1 of any of the deeds of settlement to have entered into an agreement for the sale and purchase of any leaseback land (including any single lease area).

2. TRANSFER OF THE LEASEBACK LAND

2.1 The Crown must transfer the fee simple estate in the leaseback land to the relevant governance entity on the terms set out in clause 6 of Te Whakatau / deed of settlement, and in this part 6.3, subject to and, where applicable, with the benefit of:

2.1.1 the disclosed encumbrances affecting or benefiting that property (as those disclosed encumbrances may be varied under paragraph 2.2 below); and

2.1.2 the lease to the land holding agency referred to in clause 6.18 of Te Whakatau / deed of settlement.

2.2 The Crown and the relevant governance entity may agree in writing to vary or add to the disclosed encumbrances affecting the leaseback land.

2.3 The relevant governance entity must not unreasonably withhold or delay its consent to varying a disclosed encumbrance or granting a new encumbrance affecting the leaseback land. In particular, the relevant governance entity acknowledges and agrees that it may be necessary for the land holding agency to have registered on the computer freehold or interest registers for the leaseback land, encumbrances to protect any new or existing infrastructure.

2.4 The Crown will pay any survey and registration costs required to transfer the fee simple estate in the leaseback land to the relevant governance entity.

3. OBLIGATIONS PRIOR TO LEASEBACK LAND SETTLEMENT DATE

3.1 The Crown must maintain the leaseback land, or ensure its maintenance, until the actual leaseback land settlement date in substantially the same condition as it was in at the notification date, fair wear and tear excepted.

3.2 Between the notification date and the actual leaseback land settlement date the Crown must consult with, and obtain the prior written consent of, the relevant governance entity (which will not be unreasonably withheld or delayed) before:

3.2.1 agreeing to any material variation in the terms of a disclosed encumbrance affecting or benefiting the leaseback land; or

3.2.2 procuring any consent, or providing any waiver, under the Resource Management Act 1991, or other legislation, that materially affects the leaseback land.

3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on the leaseback land, between the notification date and the actual leaseback land settlement date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act 2004 in respect of such works.

3.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of the leaseback land until the actual leaseback land settlement date except where those charges are payable by any tenant or occupant directly to the relevant supplier.

3.5 Subject to the terms of any disclosed encumbrance affecting the leaseback land, the Crown must use reasonable endeavours to obtain permission for the relevant governance entity (or a person authorised by the relevant governance entity), upon reasonable notice, to enter the leaseback land on one occasion before the leaseback land settlement date to examine it.

4. POSSESSION AND SETTLEMENT

4.1 On the leaseback land settlement date:

4.1.1 the relevant governance entity shall pay to the Crown an amount equal to the transfer value (plus GST if any) either by way of bank cheque drawn on a New Zealand registered bank and made payable to the land holding agency or by electronic transfer; and

4.1.2 possession must be given and taken of the leaseback land subject to the disclosed encumbrances (as they may be varied under paragraph 2.2 of this part).

4.2 Subject to paragraphs 4.3 and 10.1.2, the Crown must provide the relevant governance entity with the following in relation to the leaseback land on the leaseback land settlement date:

4.2.1 evidence of:

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the leaseback land; and

4.2.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the leaseback land settlement date.

4.3 If the fee simple estate in the leaseback land is transferred to the relevant governance entity electronically under the relevant legislation:

4.3.1 paragraph 4.2.1 does not apply;

4.3.2 the Crown must ensure its solicitor:

(a) a reasonable time before the leaseback land settlement date for the leaseback land:

(i) creates a Landonline workspace for the transfer to the relevant governance entity of the fee simple estate in the leaseback land; and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments, necessary, to effect the transfer electronically (the "**electronic transfer instruments**"); and

(b) on the leaseback land settlement date, releases the electronic transfer instruments so that the relevant governance entity's solicitor may submit them for registration under the relevant legislation;

4.3.3 the relevant governance entity must ensure its solicitor, a reasonable time before the settlement date, certifies and signs the transfer instrument for the leaseback land prepared in the Landonline workspace under paragraph 4.3.2(a)(ii); and

4.3.4 paragraphs 4.3.2 and 4.3.3 are subject to paragraph 10.1.2.

4.4 The **relevant legislation** for the purposes of paragraph 4.3 is:

4.4.1 the Land Transfer Act 1952; and

4.4.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

4.5 All outgoings and incomings (including rates, excluding insurance premiums) must be apportioned at the actual leaseback land settlement date.

4.6 The Crown must supply a statement of apportionments to the relevant governance entity before the actual leaseback land settlement date. On the actual leaseback land settlement date:

4.6.1 the relevant governance entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the leaseback land pre-paid by the Crown in respect of a period after the actual leaseback land settlement date exceed the incomings received by the Crown for that period; or

4.6.2 the Crown must pay to the relevant governance entity the amount by which the incomings received by the Crown in respect of a period after the actual leaseback land settlement date exceed the outgoings (except for insurance premiums) for the leaseback land pre-paid by the Crown for that period.

4.7 The leaseback land must be transferred exclusive of all fixtures and fittings that are owned by the Crown and are situated on the leaseback land at the notification date and ownership of all lessee's improvements remain with the land holding agency.

4.8 No chattels situated on the leaseback land will be included in its transfer.

4.9 Paragraphs 4.5-4.8 above apply only to the extent they are consistent with the lease.

5. RISK AND INSURANCE

5.1 The leaseback land will remain at the sole risk of the Crown until the actual leaseback land settlement date and, from the actual leaseback land settlement date, it will remain at the sole risk of the relevant governance entity.

5.2 In the event that, prior to the actual leaseback land settlement date, the leaseback land is destroyed or damaged and such destruction or damage has not been made good by the actual leaseback land settlement date, then the following provisions apply:

5.2.1 the relevant governance entity must complete the transfer of the leaseback land at its transfer value on the condition that the Crown pay to the relevant governance entity an amount equal to the amount (if any) by which the transfer value for the leaseback land property is more than the value of the leaseback land as at the actual leaseback land settlement date as a result of the destruction or damage; and

5.2.2 either party may give the other party notice in writing requiring that any dispute as to the application of this paragraph 5.2 be determined by an arbitrator to be appointed by the president of the New Zealand Law Society 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.

5.3 If a dispute relating to a claim by the relevant governance entity for a diminution in value of the leaseback land under paragraph 5.2.2 is not determined by the actual leaseback land settlement date, then:

5.3.1 settlement shall take place on the actual leaseback land settlement date in accordance with this part 6.3 as if there had been no destruction or damage; and

5.3.2 upon the determination of the dispute the Crown shall pay to the relevant governance entity within 7 business days from such determination a sum equal to the diminution in value of the leaseback land and interest from settlement date to the date of that payment at the rate set out in clause 6.4.2 of Te Whakatau / deed of settlement.

5.4 The relevant governance entity will not be required to take over from the Crown any insurance policies in relation to the leaseback land.

6. TRANSFER VALUE

6.1 To avoid doubt, the parties acknowledge that the transfer value of the leaseback land will not be affected by:

6.1.1 any addition or variation to the disclosed encumbrances agreed in writing by the Crown and the relevant governance entity under paragraph 2.2 of this part; or

6.1.2 any variation to a disclosed encumbrance agreed by the Crown and the relevant governance entity under paragraph 3.2.1.

7. BOUNDARIES, TITLE, ETC

7.1 The Crown will not be bound to point out the boundaries of the leaseback land.

7.2 If the leaseback land is subject only to disclosed encumbrances (as they may be varied under paragraph 2.2 of this part), the relevant governance entity:

7.2.1 will be treated as having accepted the Crown's title to the leaseback land as at the actual leaseback land settlement date; and

7.2.2 may not make any objections to, or requisitions on, it.

7.3 Except as otherwise expressly set out in this part 6.3 no error, omission or misdescription of the leaseback land or its title shall annul the transfer of the leaseback land.

7.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the leaseback land and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence), and:

7.4.1 this paragraph will not continue for the benefit of any subsequent purchaser of the contiguous land; and

7.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the leaseback land.

8. OBLIGATIONS AFTER SETTLEMENT

8.1 If the Crown receives any notice or demand in relation to the leaseback land from the Crown, any territorial authority or any tenant after the actual leaseback land settlement date, the Crown will, if not paying or complying with such notice or demand, promptly deliver it to the relevant governance entity or its solicitor and, if the Crown fails to do so, the Crown will be liable for any penalty incurred.

8.2 Immediately after the actual leaseback land settlement date, the Crown will give notice of the transfer of the leaseback land to the territorial authority having jurisdiction in respect of that land.

9. DISCLOSURE INFORMATION

9.1 The Crown warrants to the relevant governance entity that the disclosure information in relation to the leaseback land is all the material information about the leaseback land that the land holding agency is aware of at the date of providing the information, having inspected its records but not having undertaken a physical inspection of the leaseback land or made enquiries beyond its records.

9.2 Except as provided in paragraph 9.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

9.2.1 the leaseback land including as to its ownership, management, occupation, physical condition, use or compliance with:

(a) any legislation including by-laws; or

(b) any enforcement or other notice, requisition or proceedings issued by any authority; or

9.2.2 the completeness or accuracy of the disclosure information in relation to the leaseback land.

9.3 The relevant governance entity acknowledges that (although the Crown is not giving any representation or warranty in relation to the leaseback land except as provided in paragraph 9.1 of this part) the relevant governance entity had the opportunity prior to the leaseback land settlement date (in addition to being able to examine the disclosure information) to:

9.3.1 inspect the leaseback land; and

9.3.2 determine its state and condition.

10. DELAYED TRANSFER OF LEGAL TITLE

10.1 The Crown covenants for the benefit of the relevant governance entity that it will:

10.1.1 arrange for the creation of a computer freehold register for the leaseback land that:

(a) is not contained in a computer freehold register; or

(b) is contained in a computer freehold register or registers but together with other land; and

10.1.2 transfer the fee simple estate in the leaseback land to which paragraph 10.1.1 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than 12 months after the leaseback land settlement date (unless otherwise agreed in writing between the parties).

10.2 The covenant given by the Crown under paragraph 10.1 shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

10.3 If paragraph 11.1 applies then, for the period from the actual leaseback land settlement date until the date that the Crown transfers the title to that the leaseback land to the relevant governance entity:

10.3.1 the relevant governance entity will be the beneficial owner of that land; and

10.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the relevant governance entity on the actual leaseback land settlement date.

11. DELAY IN SETTLEMENT PROVISIONS

11.1 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 relevant governance entity to the Crown is not paid on the leaseback land settlement date, the Crown shall not be obliged to give possession to the relevant governance entity, and the relevant 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 leaseback land settlement date to the actual leaseback land settlement date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.

11.2 If, without the written agreement of the parties, settlement is not effected on the leaseback land settlement date then without prejudice to the rights of the party not in default the following provisions shall apply:

11.2.1 either the Crown or the relevant governance entity may at any time after the leaseback land settlement 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 relevant governance entity acknowledges that it may not serve a settlement notice where there is a delay or transfer of legal title as contemplated by paragraph 10;

11.2.2 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; and

11.2.3 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 paragraph 2.1 of part 6.1 by written notice.

12. MISCELLANEOUS

Further assurances

12.1 The Crown and the relevant 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 of Te Whakatau / deed of settlement and this part 6.3.

Non-merger

12.2 On transfer of the leaseback land to the relevant governance entity, the provisions of this part 6.3 will not merge and, to the extent any provision has not been fulfilled, will remain in force.