

NGĀ MANA WHENUA O TĀMAKI MAKĀURAU

and

THE CROWN

**NGĀ MANA WHENUA O TĀMAKI MAKĀURAU
COLLECTIVE REDRESS DEED
SCHEDULE: GENERAL MATTERS**

GENERAL MATTERS

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GENERAL MATTERS

1: EFFECT OF DEED

1 EFFECT OF DEED

ON SIGNING

- 1.1 This deed –
- 1.1.1 is “without prejudice” until it becomes unconditional; and
 - 1.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal.
- 1.2 Paragraph 1.1 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.
- 1.3 Despite this deed being conditional upon the Tāmaki Makaurau collective legislation coming into force, the following provisions are binding upon signing:
- 1.3.1 clauses 8.1 to 8.6; and
 - 1.3.2 paragraphs 1.1 and 1.2 of this schedule; and
 - 1.3.3 parts 3 to 6 of this schedule.

ON TERMINATION

- 1.4 If this deed is terminated in accordance with its provisions, it –
- 1.4.1 is at an end; and
 - 1.4.2 does not give rise to any rights or obligations; but
 - 1.4.3 remains “without prejudice”.

GENERAL MATTERS

2: TAX

2 TAX

INDEMNITY

- 2.1 The provision of Crown redress, or an indemnity payment, to the collective governance entity is not intended to be –
- 2.1.1 a taxable supply for GST purposes; or
 - 2.1.2 assessable income for income tax purposes.
- 2.2 The Crown must, therefore, indemnify each collective governance entity for –
- 2.2.1 any GST payable by the collective governance entity in respect of the provision of Crown redress or an indemnity payment; and
 - 2.2.2 any income tax payable by the collective governance entity as a result of any Crown redress, or an indemnity payment, being treated as assessable income of the collective governance entity; and
 - 2.2.3 any reasonable cost or liability incurred by the collective governance entity in taking, at the Crown's direction, action –
 - (a) relating to an indemnity demand; or
 - (b) under paragraph 2.13 or paragraph 2.14.1(b).

LIMITS

- 2.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):
- 2.3.1 the transfer of a former deferred selection property or RFR land under this deed or the Tāmaki Makaurau collective legislation:
 - 2.3.2 the collective governance entity's –
 - (a) use of Crown redress or an indemnity payment; or
 - (b) payment of costs, or any other amounts, in relation to Crown redress.

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2: TAX

ACKNOWLEDGEMENTS

- 2.4 To avoid doubt, the parties acknowledge –
- 2.4.1 the Crown redress is provided with no other consideration being provided; and
- 2.4.2 in particular, the following are not consideration for the Crown redress:
- (a) an agreement under this deed to –
 - (i) enter into an encumbrance, or other obligation, in relation to Crown redress; or
 - (ii) pay costs (such as rates, or other outgoings, or maintenance costs) in relation to Crown redress:
 - (b) the performance of that agreement; and
- 2.4.3 nothing in this part is intended to imply that the provision of Crown redress, or an indemnity payment, is –
- (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes.
- 2.4.4 the transfer of a former deferred selection property or RFR land under this deed or the Tāmaki Makaurau collective legislation is a taxable supply for GST purposes; and
- 2.4.5 the trustee is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

CONSISTENT ACTIONS

- 2.5 Neither collective governance entity, nor a person associated with either of them, nor the Crown will act in a manner that is inconsistent with this part 2.
- 2.6 In particular, each collective governance entity agrees that –
- 2.6.1 from the effective date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and
- 2.6.2 neither it, nor any person associated with it, will claim with respect to the provision of Crown redress, or an indemnity payment, –

GENERAL MATTERS

2: TAX

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

INDEMNITY DEMANDS

- 2.7 Each collective governance entity and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the collective governance entity may be entitled to an indemnity payment.
- 2.8 An indemnity demand –
- 2.8.1 may be made at any time after the effective date; but
 - 2.8.2 must not be made more than 20 working days before the due date for payment of the tax, whether that date is –
 - (a) specified in an assessment; or
 - (b) a date for the payment of provisional tax; or
 - (c) otherwise determined; and
 - 2.8.3 must be accompanied by –
 - (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and
 - (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

INDEMNITY PAYMENTS

- 2.9 If either collective governance entity is entitled to an indemnity payment, the Crown may make the payment to –
- 2.9.1 the collective governance entity; or
 - 2.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the collective governance entity.
- 2.10 The collective governance entity must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of –
- 2.10.1 the due date for payment of the tax; or

GENERAL MATTERS

2: TAX

2.10.2 the next working day after receiving the indemnity payment.

REPAYMENT

2.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, each collective governance entity must promptly repay to the Crown any amount that –

2.11.1 the Commissioner of Inland Revenue refunds or credits to the collective governance entity; or

2.11.2 the collective governance entity has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

2.12 Neither collective governance entity has a right of set-off or counterclaim in relation to an amount payable by it under paragraph 2.11.

RULINGS

2.13 Each collective governance entity must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of Crown redress.

CONTROL OF DISPUTES

2.14 If either collective governance entity is entitled to an indemnity payment, the Crown may –

2.14.1 by notice to the collective governance entity, require it to –

(a) exercise a right to defer the payment of tax; and/or

(b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest, –

(i) a tax assessment; and/or

(ii) a notice in relation to the tax, including a notice of proposed adjustment; or

2.14.2 nominate and instruct counsel on behalf of the collective governance entity whenever it exercises its rights under paragraph 2.14.1; and

GENERAL MATTERS

2: TAX

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

DEFINITIONS

2.15 In this part, unless the context requires otherwise, –

encumbrance has the meaning given to **Interest** in part 5; and

provision, in relation to redress, includes its payment, credit, transfer, vesting, making available, creation, or grant; and

use, in relation to redress or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

GENERAL MATTERS

3: NOTICE

3 NOTICE

APPLICATION

- 3.1 Unless otherwise provided in this deed, this part applies to notices under this deed.

REQUIREMENTS

- 3.2 A notice must be –

3.2.1 in writing; and

3.2.2 signed by the person giving it ; and

3.2.3 addressed to the recipient at its address or facsimile number as provided –

(a) in paragraph 3.5; or

(b) if the recipient has given notice of a new address or facsimile number, in the most recent notice of a change of address or facsimile number; and

3.2.4 given by –

(a) personal delivery (including by courier) to the recipient's street address; or

(b) sending it by pre-paid post addressed to the recipient's postal address; or

(c) by faxing it to the recipient's facsimile number; or

(d) by sending it by electronic mail to the recipient's electronic email address.

TIMING

- 3.3 A notice is to be treated as having been received:

3.3.1 at the time of delivery, if personally delivered; or

3.3.2 on the second day after posting, if posted; or

GENERAL MATTERS

3: NOTICE

- 3.3.3 on the day of transmission, if faxed; or
- 3.3.4 on the day of successful delivery of the mail, if sent by electronic mail.
- 3.4 However, if a notice is treated under paragraph 3.3 as having been received after 5pm on a working day, or on a non-working day, it is to be treated as having been received on the next working day.

ADDRESSES

- 3.5 The address of –

- 3.5.1 Ngā Mana Whenua o Tāmaki Makaurau and the governance entities is –

C/- Paul F Majurey
Level 19
48 Emily Place
PO Box 1585
Shortland Street
AUCKLAND 1140

Facsimile No: 09 309 1821

Email address: paul.majurey@ahjmlaw.com

- 3.5.2 the Crown is –

C/- The Solicitor-General
Crown Law Office
Level 10
Unisys House
56 The Terrace
PO Box 2858
WELLINGTON 6140

Facsimile No. 04 473 3482

Email address: library@crownlaw.govt.nz

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4: MISCELLANEOUS

4 MISCELLANEOUS

AMENDMENTS

- 4.1 This deed may be amended only by written agreement signed by the governance entities and the Crown.

ENTIRE AGREEMENT

- 4.2 This deed, in relation to the matters in it, –
- 4.2.1 constitutes the entire agreement; and
 - 4.2.2 supersedes all earlier representations, understandings, and agreements.

NO ASSIGNMENT OR WAIVER

- 4.3 Paragraph 4.4 applies to rights and obligations under this deed.
- 4.4 Except as provided in this deed or an enabling document, a party –
- 4.4.1 may not transfer or assign its rights or obligations; and
 - 4.4.2 does not waive a right by –
 - (a) failing to exercise it; or
 - (b) delaying in exercising it; and
 - 4.4.3 is not precluded by a single or partial exercise of a right from exercising –
 - (a) that right again; or
 - (b) another right.

USE OF DEFINED TERM FOR SPECIFIED OFFICIAL OR RECORDED GEOGRAPHIC NAMES

- 4.5 Māngere Mountain, Maungauika, Motukorea and Waitematā Harbour are not the official geographic name for the geographic feature or Crown protected area to which they apply.

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4: MISCELLANEOUS

- 4.6 Neither of Matukutūruru and Ngā Pona-toru-a-Peretū is the official or recorded geographic name for the Crown protected area to which it applies, and after it has been vested under this deed that name will be discontinued.

GENERAL MATTERS

5: DEFINED TERMS

5 DEFINED TERMS

5.1 In this deed –

administering body has the meaning given to it by section 2(1) of the Reserves Act 1977; and

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

attachments means the attachments to this deed, being the RFR area and other RFR land, the deed plans, and the draft bill; and

collective deed and **deed** means the main body of the deed, the schedules, and the attachments; and

collective governance entities means, together, the trustee and the limited partnership, and **collective governance entity** means either of them; and

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

comprehensive settlement means a deed of settlement between the Crown and 1 or more iwi or hapū specified in clause 11.2.1(a) to (g) and (i) to (m); and

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

Crown-administered property has the meaning given to it in paragraph 1.1 of the property redress schedule; and

Crown redress –

(a) means redress –

(i) provided by the Crown to a collective governance entity; or

(ii) vested by the Tāmaki Makaurau collective legislation in a collective governance entity that was, immediately prior to the vesting, owned by or vested in the Crown; and

(b) includes the right of the limited partnership under the RFR and to acquire a former deferred selection property; and

GENERAL MATTERS

5: DEFINED TERMS

- (c) includes any part of the Crown redress; and
- (d) does not include –
 - (i) an obligation of the Crown under this deed or the Tāmaki Makaurau collective legislation to transfer a former deferred selection property or the RFR land; or
 - (ii) a former deferred selection property or the RFR land; and

cultural redress means the redress provided by or under –

- (a) parts 2 to 5 of the main body of this deed; or
- (b) the Tāmaki Makaurau collective legislation giving effect to any of those clauses; and

cultural redress property means each of the following:

- (a) each maunga; and
- (b) each of the properties referred to in clause 3.6; and

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

disclosure information means the information provided under paragraph 1.1 of the property redress schedule; and

documents schedule means the documents schedule to this deed; and

draft bill means the draft bill in the attachments; and

effective date means the date that is 20 working days after the date on which the Tāmaki Makaurau collective legislation comes into force; and

eligible member of Ngā Mana Whenua o Tāmaki Makaurau means a member of Ngā Mana Whenua o Tāmaki Makaurau who on 10 August 2012 was –

- (a) aged 18 years or over; and
- (b) registered on a register of members of an iwi and hapū of Ngā Mana Whenua o Tāmaki Makaurau kept by each iwi and hapū for the purpose of voting on –
 - (i) the ratification, and signing, of this deed; and

GENERAL MATTERS

5: DEFINED TERMS

(ii) approval of the governance entities to receive the redress; and

enabling document means a document entered into to give effect to this deed; and

former deferred selection property means each property that is –

- (a) situated in the RFR area; and
- (b) defined or specified as a deferred selection property in a comprehensive settlement; and

framework agreement means the framework agreement referred to in clause 1.3; and

general matters schedule means the general matters schedule to this deed; and

GST –

- (a) means goods and services tax chargeable under the Goods and Services Tax Act 1985; and
- (b) includes, for the purposes of part 2 of this schedule, any interest or penalty payable in respect of, or on account of, the late or non-payment of GST; and

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

indemnity payment means any indemnity payment made by the Crown under or for the purposes of part 2, and **indemnify**, **indemnification** and **indemnity** have a corresponding meaning; and

interest, in relation to a property, means a lease, tenancy, licence, easement, covenant, or other right or obligation affecting that property; and

land holding agency, in relation to a cultural redress property, means the Department of Conservation; and

limited partnership means the Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership to be registered under clause 8.5; and

mandated signatories means the individuals whose names appear in print as the signatories for each iwi and hapū of Ngā Mana Whenua o Tāmaki Makaurau at the end of the main body of this deed; and

Marutūāhu rōpū entity means the entity identified by that name under clause 8.6; and

GENERAL MATTERS

5: DEFINED TERMS

maunga means each maunga as separately described under its name in schedule 1 of the draft bill; and

member of Ngā Mana Whenua o Tāmaki Makaurau means an individual referred to in clause 11.2.1; and

Minister means a Minister of the Crown; and

month means a calendar month; and

motu, other than in clause 3.1, means each property referred to in clause 3.3.1; and

Ngā Mana Whenua o Tāmaki Makaurau has the meaning given to it by clause 11.2, and **iwi and hapū of Ngā Mana Whenua o Tāmaki Makaurau** means the iwi/hapū referred to in that clause; and

Ngāti Whātua rūpū entity means the entity identified by that name under clause 8.6; and

non-acquiring entity means, in respect of a former deferred selection property, the entity that was given the right to purchase the property in a comprehensive settlement; and

notice means a notice given under paragraphs 3.1 to 3.5 of this schedule and **notify** has a corresponding meaning; and

party means each of the following:

- (a) Ngā Mana Whenua o Tāmaki Makaurau;
- (b) each collective governance entity;
- (c) the Crown; and

payment includes the credit, transfer, or making available, of cash amounts as well as the transfer of non cash amounts (such as land); and

person includes an individual, a corporation sole, a body corporate, and an unincorporated body; and

property redress schedule means the property redress schedule to this deed; and

relevant comprehensive settlement means, in respect of a former deferred selection property, the comprehensive settlement in which the non-acquiring entity is given a right to purchase the property; and

GENERAL MATTERS

5: DEFINED TERMS

representative entity means –

- (a) each collective governance entity; and
- (b) a person (including any trustee or trustees) acting for or on behalf of:
 - (i) the collective group, referred to in clause 11.2.1; or
 - (ii) any one or more members of Ngā Mana Whenua o Tāmaki Makaurau; or
 - (iii) any one or more of the whānau, hāpu, or groups of individuals referred to in clause 11.2.2; and

RFR means the statutory right of first refusal referred to in clauses 6.1 and 6.2; and

RFR area means the area described in part 3 of the attachments under the heading “RFR area”; and

RFR land means –

- (a) the land in the RFR area that is vested in or the fee simple estate in it is held by, the Crown under any Act; and
- (b) land described in part 4 of the attachments; and

rōpū entity means the Marutūāhu rōpū entity, the Ngāti Whātua rōpū entity, and the Waiohua Tāmaki rōpū entity; and

schedules means the schedules to this collective deed, being the property redress schedule, documents schedule and the general matters schedule; and

Tāmaki Makaurau collective legislation or **collective legislation** means, if the bill proposed for introduction to the House of Representatives under clause 8.1 is passed, the resulting Act or Acts; and

tax includes income tax and GST; and

tax indemnity means any indemnity made by the Crown under part 2; and

tax legislation means legislation that imposes, or provides for the administration of, tax; and

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

GENERAL MATTERS

5: DEFINED TERMS

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

transfer includes recognising, creating, vesting, granting, licensing, leasing, or any other means by which the relevant properties, interests, rights or assets are disposed of or made available, or recognised as being available, to the collective governance entity; and

Treaty of Waitangi / Te Tiriti o Waitangi means the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975; and

trigger notice means a notice given under paragraph 5.4, 5.9, or 5.15 of the property redress schedule; and.

trustee or **trustee of the Tūpuna Taonga o Tāmaki Makaurau Trust** means Tūpuna Taonga o Tāmaki Makaurau Trust Limited in its capacity as trustee of that trust; and

Tūpuna Maunga o Tāmaki Makaurau Authority or **Maunga Authority** means the body established under clause 2.27.1; and

Tūpuna Taonga o Tāmaki Makaurau Trust means the trust known by that name to be established under clause 8.5; and

Waitangi Tribunal has the meaning given to it by section 4 of the Treaty of Waitangi Act 1975; and

Waiohua Tāmaki rūpū entity means the entity identified by that name under clause 8.6; and

vesting, in relation to a cultural redress property, means its vesting under the Tāmaki Makaurau collective legislation; and

working day means a day of the week other than –

- (a) a Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period starting on 25 December in a year and ending on 15 January in the following year; and
- (d) the day observed as the anniversary of the province of –
 - (i) Wellington; or
 - (ii) Auckland.

GENERAL MATTERS

6: INTERPRETATION

6 INTERPRETATION

- 6.1 This part applies to this deed's interpretation, unless the context requires a different interpretation.
- 6.2 Headings do not affect the interpretation.
- 6.3 A term defined by –
 - 6.3.1 this deed has the meaning given to it by this deed; and
 - 6.3.2 the draft bill, but not by this deed, has the meaning given to it by that bill.
- 6.4 All parts of speech, and grammatical forms, of a defined term have corresponding meanings.
- 6.5 The singular includes the plural and vice versa.
- 6.6 One gender includes the other genders.
- 6.7 Any monetary amount is in New Zealand currency.
- 6.8 Time is New Zealand time.
- 6.9 Something, that must or may be done on a day that is not a working day, must or may be done on the next working day.
- 6.10 A period of time specified as –
 - 6.10.1 beginning on, at, or with a specified day, act, or event includes that day or the day of the act or event; or
 - 6.10.2 beginning from or after a specified day, act, or event does not include that day or the day of the act or event; or
 - 6.10.3 ending by, on, at, with, or not later than, a specified day, act, or event includes that day or the day of the act or event; or
 - 6.10.4 ending before a specified day, act or event does not include that day or the day of the act or event; or

GENERAL MATTERS

6: INTERPRETATION

- 6.10.5 continuing to or until a specified day, act, or event includes that day or the day of the act or event.
- 6.11 A reference to –
- 6.11.1 an agreement or document, including this deed, means that agreement, this deed or that document as amended, novated, or replaced; and
 - 6.11.2 legislation, including the Tāmaki Makaurau collective legislation , means that legislation as amended, consolidated, or substituted; and
 - 6.11.3 a party includes any permitted successor of that party; and
 - 6.11.4 a particular Minister includes any Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the relevant matter.
- 6.12 An agreement by two or more persons binds them jointly and severally.
- 6.13 If the Crown must endeavour to do something or achieve some result, the Crown –
- 6.13.1 must use reasonable endeavours to do that thing or achieve that result; but
 - 6.13.2 is not required to propose for introduction to the House of Representatives any legislation, unless expressly required by this deed.
- 6.14 Provisions in –
- 6.14.1 the main body of the deed are referred to as clauses; and
 - 6.14.2 the property redress and general matters schedules are referred to as paragraphs; and
 - 6.14.3 the draft bill are referred to as sections.
- 6.15 If there is a conflict between a provision that is in the main body of the deed and a provision in a schedule or an attachment, the provision in the main body of the deed prevails.
- 6.16 The deed plans in the attachments that show the cultural redress properties indicate the general locations of the relevant properties but are for information purposes only and do not show their precise boundaries. The legal descriptions for those properties are shown in schedule 1 of the draft bill.