

WAITAHA
and
THE TRUSTEES OF TE KAPU O WAITAHA
and
THE CROWN

**DEED OF SETTLEMENT OF
HISTORICAL CLAIMS**

20 September 2011

DEED OF SETTLEMENT

PURPOSE OF THIS DEED

The purpose of this deed is -

- to recognise, provide redress for, and settle past wrongs of the Crown in relation to Waitaha; and
- thereby, to provide the basis for enhancing the future relationship between Waitaha and the Crown.

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OUTLINE OF THIS DEED

This deed -

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Waitaha and breached the Treaty of Waitangi and its principles; and
- provides an acknowledgment by the Crown of the Treaty breaches and an apology; and
- settles the historical claims of Waitaha; and
- specifies the cultural redress, and the financial and commercial redress, that has been or is to be provided in settlement, including the redress that is to be provided to the trustees of Te Kapu o Waitaha, who have been approved by Waitaha to receive the redress; and
- includes definitions of -
 - the historical claims; and
 - Waitaha; and
- provides for other relevant matters; and
- is conditional upon settlement legislation coming into force.

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DEED OF SETTLEMENT

THIS DEED is made between

WAITAHA

and

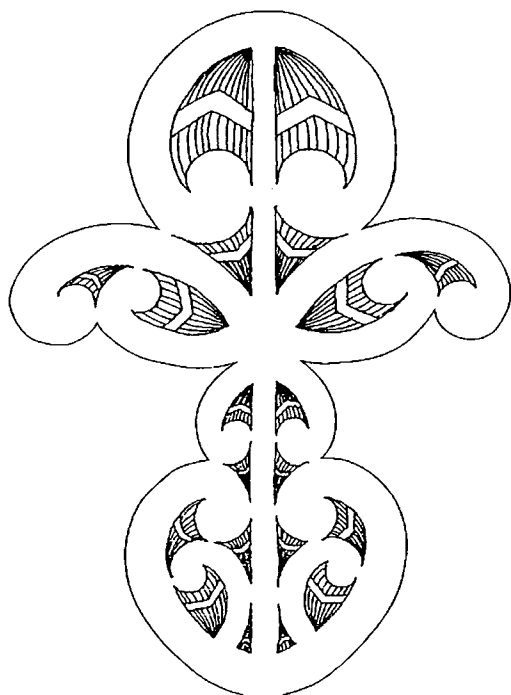
THE TRUSTEES OF TE KAPU O WAITAHA

and

THE CROWN

DEED OF SETTLEMENT

HEI



WAITAHA

Ko Ōtawa te maunga
Ko Te Raparapa-ā-Hoe te awa
Ko Hei te tupuna
Ko Takakōpiri te tangata
Ko te pūtaratara o te tuanui
Tāhūhu whakairinga kōrero
Ka tū te ihiihi
Ka tū te wanawana
Tai tū te wehi o te moana o Punga ee e mauri
Waitaha te iwi
Te Arawa te waka

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WAITAHA**NGĀ KŌRERO A WAITAHA**

Waitaha are an ancient iwi who descend from Hei and his son Waitaha who arrived on the waka Te Arawa. *Ka huri mai a Te Arawa i te Rae o Papamoa*, Hei stood and claimed the land for his son Waitaha "*ka tohuhia mai e Hei, te takapū o tāku tama, Waitahanui a Hei*". In time, some of the sons of Waitaha settled along the coast extending from Katikati to Ōtamarākau and the island of Tuhua. Ever since the landing of Te Arawa, Waitaha have been associated with *te ākau, ngā awa, te whenua me ngā maunga o te rohe o Waitaha*, which traditionally extended from Hikurangi in Katikati to Ōtūmatawhero along the Pāpāmoa coast.

Within this landscape, Wairākei, Te Houhou, Ōtawa, Ōtara and Ōtanewainuku are ingrained with deep meaning; *ka mau tonu te mauri ki a Waitaha*. These are places of sustenance, refuge and ceremony. The Tauranga *raupatu* placed an additional, traumatic layer of meaning on these sites. As markers of the boundary of the confiscation district, they have for Waitaha become entwined with their memories of war, dispossession, and marginalisation.

Waitaha wishes the redress in this settlement as it relates to this landscape, and in particular to Te Houhou, Ōtawa, Ōtara and Ōtanewainuku, to be a lasting reminder to others of the significance of these places to Waitaha and of the existence of the confiscation line.

Ngā maunga whaka hī, maunga pepeha, maunga poroporoakī – ngā maunga tohu rangatira o Waitaha.

Ka pouhia a Ōtawa ki te rangi te ūpoko o Hei. I heke iho i te rangi ki te whenua.

Ka heke iho i ngā paritu o Ōtawa ki te mimi o ngā tūpuna a Hineui me Hinenui ki runga i ngā Kirikiri. Ko te Kuhārua, ko te aroaro o te wahine kei raro ko Te Puata o te rangi kei runga.

*Ko Ōtawa te maunga
Ko Te Raparapa-ā-Hoe te awa
Ko Hei te tupuna
Ko Takakōpiri te tangata
Ko te pūtaratara o te tuanui
Tāhūhu whakairinga kōrero
Ka tū te ihiihi
Ka tū te wanawana
Tai tū te wehi o te moana o Punga ee e mauri
Waitaha te iwi
Te Arawa te waka*

Mai i te Rae o Pāpāmoa, ki Te Ōkere o Mua, te Ōkere o Tua, ki te wehenga whakamutunga o Tamatekapua, ki Ōtawa ki te rangi te Ūpoko o Hei, ki Te Kirikiri te Ūpokonui, Te Ūpoko o Taranui, whakawhiti atu i Te Ara a Hei, ki Ōtanewainuku, te maunga o ngā patupaiarehe, he maunga tipua. Ka mihi ki a Pūwhenua. Ka mihi ki a Mauao.

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*I riro whenua atu
Me hoki whenua mai
I riro mana atu
Me hoki mana mai
Ka ora a Waitaha*

NGĀ TIKANGA O WAITAHA

Waitaha have always held steadfast to the tikanga that constitutes being Waitaha, including:

- *He Mauri* – recognises the life force of all things;
- *Te Mauriora* – symbolises the life principles, the superiority of the wellbeing of humans;
- *Te Mauritapu* – symbolises and acknowledges the principles and disciplines of emotions and the expression of behaviours;
- *Te Whakakaha* – strengthening;
- *Te Whakanui* – to elevate;
- *Manaaki/āwhina* – to care, to nurture, to support;
- *Te Tihi* – the pinnacle of all things;
- *Ngā Tetekura* – descendants; as one tree falls another rises;
- *Te Wairua* – spiritual wellbeing;
- *Te Reo me ōna āhuatanga katoa o Waitaha* – the language of Waitaha, and the disciplines;
- *Te Whakapapa* – genealogy;
- *Te Whanaungatanga* – relationships; kinship/blood ties;
- *Te Whakapapa ki te whenua* – relationships to the land;
- *Te Kaitiaki* – stewardship/guardianship;
- *Te Waiora* – health;
- *Te Hauoranga* – holistic wellbeing;
- *Te Mātauranga* – knowledge and understanding; and
- *Ngā mea tapu katoa* – all things sacred.

HAKARAIA

Waitaha brought their Treaty claims to tell their story. The fate of their tupuna Hakaraia is central to that story.

Hakaraia Mahika was a poropiti and rangatira of Waitaha. Hakaraia followed the kaupapa of the Kīngitanga and Te Kooti, and led his people in fighting against the

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Crown at the battles of Gate Pā and Te Ranga. Hakaraia also played a leading role in resisting the Tauranga raupatu. For defending his land against Crown forces, Hakaraia was labelled a "rebel" and Waitaha were punished through the loss of land. Hakaraia was killed by the Crown forces in the Waioeka Gorge in 1870.

Waitaha regard this settlement as a tribute to Hakaraia and his efforts to prevent the alienation of Waitaha land. In the journey followed through the Waitangi Tribunal inquiry process and this settlement with the Crown, the mana and reputation of Hakaraia has been restored. The burden that has been carried by the whānau of Hakaraia, and all of Waitaha, has been lifted.

Waitaha welcome the following redress that has been agreed in recognition of Hakaraia:

- the apology to Hakaraia (paragraph 3.19):
- the vesting of the Ohineangaanga site (paragraph 5.8.1(b)):
- the funding for commissioning the writing of a history of Waitaha and Hakaraia, to be told by Waitaha for the benefit o ngā uri o Waitaha (paragraph 5.20):
- the funding for the restoration of Hei Marae (paragraph 5.21.1); and
- the Hakaraia educational endowment fund (paragraphs 5.22 to 5.27).

Āhakoā he iti, he whakaaro

*Kua tau te rangīmarie
Ki te whare o Hakaraia
Āke, āke, āke*

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1 BACKGROUND

CLAIMS BEFORE THE WAITANGI TRIBUNAL

- 1.1 Treaty of Waitangi claims brought by Waitaha were heard by the Waitangi Tribunal in the following inquiries:
 - 1.1.1 The Tauranga Moana Inquiry, Stage One, which was reported in *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (2004):
 - 1.1.2 The Foreshore and Seabed Inquiry, which was reported in *Report on the Crown's Foreshore and Seabed Policy* (2004):
 - 1.1.3 The Central North Island Inquiry, Stage One, which was reported in *He Maunga Rongo: The Report on the Central North Island Claims, Stage One* (2008):
 - 1.1.4 The Tauranga Moana Inquiry, Stage Two, which was reported in *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims* (2010).

TERMS OF NEGOTIATION

- 1.2 The Crown entered into joint terms of negotiation with Waitaha, and with Ngāti Māhino, on 21 February 2008.
- 1.3 The joint terms of negotiation agreed the scope, objective, and general procedures for negotiating deeds of settlement.

WAITAHA RAUPATU TRUST'S MANDATE

- 1.4 In respect of Waitaha, the joint terms of negotiation were subject to the Waitaha Raupatu Trust, an incorporated charitable trust, satisfying the Crown that it had a mandate to negotiate a deed of settlement.
- 1.5 Waitaha gave the Waitaha Raupatu Trust a mandate to negotiate a deed of settlement by a deed of mandate, submitted to the Crown on 25 March 2008.
- 1.6 The Crown recognised the mandate on 7 April 2008.

AGREEMENT IN PRINCIPLE

- 1.7 Waitaha and the Crown, by agreement dated 16 October 2008, agreed, in principle, that they were willing to enter into a deed of settlement on the basis set out in the agreement.
- 1.8 The terms of the agreement in principle were negotiated by the Waitaha Raupatu Trust and the Crown.
- 1.9 The Waitaha Raupatu Trust and the Crown have, since the agreement in principle, -

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1: BACKGROUND

- 1.9.1 had extensive negotiations conducted in good faith; and
- 1.9.2 negotiated and initialled a deed of settlement.

RATIFICATION AND APPROVALS

- 1.10 Waitaha have, since the initialling of the deed of settlement, by a majority of -
 - 1.10.1 99%, ratified this deed and approved its signing on their behalf by the trustees of the Te Kapu o Waitaha (the **trustees**); and
 - 1.10.2 86%, approved the trustees receiving the redress.
- 1.11 Each majority referred to in clause 1.10 is of valid votes cast in a ballot by eligible members of Waitaha.
- 1.12 The trustees approved entering into, and complying with, this deed by a resolution of trustees on 20 September 2011, made before the signing of this deed.
- 1.13 The Crown is satisfied -
 - 1.13.1 with the ratification and approvals of Waitaha referred to in clause 1.10; and
 - 1.13.2 with the trustees' approval referred to in clause 1.12; and
 - 1.13.3 the trustees are appropriate to receive the redress.

AGREEMENT

- 1.14 Therefore, the parties -
 - 1.14.1 in a spirit of co-operation and compromise, wish to enter, in good faith, into this deed settling the historical claims; and
 - 1.14.2 agree and acknowledge as provided in this deed.

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2 HISTORICAL ACCOUNT

2.1 The Crown's acknowledgement and apology to the settling group are based on this historical account.

WAITAHA

2.2 Waitaha are an ancient tribe who descend from Hei and his son Waitaha who arrived on the waka Te Arawa. According to Waitaha tradition, ka huri mai a Te Arawa i te Rae o Papamoa, Hei stood and claimed the land for his son Waitaha, te takapū o tāku tama, Waitahanui a Hei. In time, some of the sons of Waitaha settled along the coast extending from Katikati to Ōtamarākau and the island of Tuhua. Waitaha had close whakapapa links with other iwi of Tauranga, Waikato, Ngāi Tahu, Ngāti Porou, Kahungungu and Te Arawa. By the 1840s, Waitaha primarily occupied the land between Tauranga harbour in the west, and the Waiari River in the east, as well as staying inland. Waitaha also stayed for periods of time with their Te Arawa kin.

2.3 Waitaha never agreed to cede their mana to the Crown. Most Waitaha rangatira did not sign the Treaty of Waitangi. Only Te Kou o Rehua of Ngāti Te Puku o Hakoma signed the Treaty when it was brought to Tauranga. In October 1840 the Crown asserted sovereignty over the whole of New Zealand. In the period prior to 1864, the Crown's presence in the Tauranga district was limited, and tikanga Māori (customary law) largely prevailed.

HAKARAIA

2.4 Waitaha adopted Christianity as a result of the influence of their rangatira Hakaraia (Hakaraia Mahika, or Tipene Kura), who had converted during a period in Northland. On his return, Hakaraia stayed at the Church Missionary Society station at Te Ngae (near Rotorua) before establishing a Christian community of Waitaha and others at Kenana (Canaan) near Tauranga. Hakaraia became influential as a poropiti or prophet. The poropiti leaders tried to adapt to the new world order by incorporating Christian principles into their tikanga. During the 1840s and 1850s, Hakaraia preached peaceful engagement with Pākehā.

KĪNGITANGA

2.5 The King movement or Kīngitanga was founded in 1858 to create a Māori political authority that could engage with the Crown and respond to the growing tension caused by land sales. Hakaraia supported the kaupapa of the Kīngitanga to halt the sale of land. The New Zealand Government perceived the Kīngitanga as a challenge to the Queen's sovereignty.

2.6 In July 1863, Crown forces attacked Kīngitanga territory in the Waikato. Waitaha had whakapapa connections to those iwi, and Hakaraia decided to support the King. By September 1863, Hakaraia was actively involved in co-ordinating the movement of Kīngitanga reinforcements through Arawa territory.

2.7 Waitaha were divided in their response to the Waikato war. While a number of Waitaha fought for the Kīngitanga, others did not become involved. Some Waitaha joined the Māori forces who fought for the Crown. In August 1863, some Waitaha attended a

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2: HISTORICAL ACCOUNT

meeting of 400 Te Arawa at Tarawera held to consider their response to the war in the Waikato. The hui decided to oppose the Kīngitanga, and resolved to close the Arawa districts to Kīngitanga supporters and send the name of any man joining the King to the Governor.

- 2.8 This split in political allegiances within Waitaha created enmity amongst their people and also with neighbouring iwi. By April 1864, kawanatanga Arawa disowned those who supported the King, including Waitaha, stating that they cast their names out of the tribes of the Arawa, and that they should have no claim to Arawa land thereafter.

TAURANGA WAR

- 2.9 In January 1864, the Crown deployed troops to Tauranga to halt the flow of supplies and reinforcements to Kīngitanga forces on the Waikato front. Some Tauranga Māori felt that the presence of troops was a continuation of the Waikato war and a threat to their land. They endeavoured to provoke the Crown to attack.
- 2.10 In March 1864, Hakaraia was leading a party of Kīngitanga reinforcements through Arawa territory to the Waikato, when some Te Arawa sought to block their path at Lake Rotoiti. The Kīngitanga force was defeated, but Hakaraia escaped unharmed from the battle.
- 2.11 The last battle in the Waikato occurred on 2 April 1864. On 29 April 1864, Crown troops attacked Pukehinahina (Gate Pā). The Crown forces, numbering some 1,700 troops, hoped to achieve a decisive victory but were routed by a defending force of around 200 Māori warriors. Hori Ngatai, of Ngāi Te Rangi, later recounted that Hakaraia fought at Gate Pā, and was regarded as a spiritual leader of the defending forces. Waitaha kōrero is that some Waitaha warriors fought with him.
- 2.12 The severity of the defeat led the Crown to reconsider its approach to the war. Governor Grey arrived in Tauranga in May 1864 to meet certain Tauranga chiefs who were favourably disposed to negotiating peace. However many Kīngitanga Māori in Tauranga continued to distrust the Government, and a peace agreement was not concluded.
- 2.13 Waitaha were not involved in the negotiations. Hakaraia rallied for new recruits from other Te Arawa iwi who had close whakapapa ties to Waitaha. Hakaraia prophesied that the next battle with the British would be decisive in determining the future of Tauranga, and that peace would follow.
- 2.14 On 21 June 1864, a reconnaissance force of around 600 Crown troops surprised a group of some 500 Kīngitanga Māori constructing a new pā at Te Ranga. The Crown troops attacked immediately. The Māori forces were ill prepared to engage in battle but Waitaha state that they fought the Crown troops so as to allow the women and children a chance to escape. The Māori defenders suffered a resounding defeat with heavy loss of life, including many of those that had come at the behest of Hakaraia. At least two Waitaha men, Rota Te Mimiti and Hopa Tamakuri, were killed. Hakaraia, however, survived.

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2: HISTORICAL ACCOUNT

NEW ZEALAND SETTLEMENTS ACT 1863

- 2.15 In 1863, the Crown enacted legislation, the New Zealand Settlements Act, which provided for the confiscation of land from Māori the Crown assessed to have been engaged in rebellion against the authority of the Queen. The preamble stated that the North Island had been subject to "insurrections amongst the evil-disposed persons of the Native race". There was no mention of the Crown's role in initiating the wars. Where the Governor in Council was satisfied that an iwi or a "considerable number" of an iwi had, since 1 January 1863, been engaged in rebellion, described in the preamble as taking up arms "with the object of attempting the extermination or expulsion of the European settlers", he could declare the district available for confiscation.
- 2.16 The Act did not provide a definition of "rebel". It did provide that no compensation would be given to those who had been "engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand", or those who had "aided assisted or comforted such persons", or those who refused to surrender. The New Zealand Settlements Act 1863 did not mention punishment, but was punitive in nature.
- 2.17 The British Colonial Office had "very grave objections" about the scope and application of the Act, considering it "capable of great abuse" but allowed the legislation to proceed because the final authority for any confiscation remained with the Governor. The Colonial Office instructed the New Zealand Government that the "appropriation of land" from "rebel" Māori could only take place once Māori had surrendered and agreed to cede their land. The Governor was directed to withhold his consent to any confiscation that was not "just and moderate".

CONFISCATION

- 2.18 The Crown regarded those Tauranga Māori that fought in the battles of Gate Pā and Te Ranga as having been in "rebellion". In May 1864, Governor Grey, in accordance with the British Colonial Office's instructions, conducted negotiations with "rebel" Māori in Tauranga to secure peace and attempt to reach agreement on a cession of land. Grey's Ministers, however, favoured the large-scale confiscation of land.
- 2.19 Throughout June and July 1864, Crown officials conducted negotiations with certain Tauranga chiefs over the terms of peace. The "rebels" were given to understand that if they surrendered, the Crown would control the disposal of their lands, but in doing so, would be generous with them and would require little, if any, land to be forfeited.
- 2.20 On 25 July 1864, a large hui was held at Te Papa at which most of the Tauranga Māori still in arms surrendered to the Crown. Four unarmed Waitaha surrendered, including a boy. Six more did so in late August. Hakaraia and some of those who had supported him did not surrender.
- 2.21 On 5 and 6 August 1864, Governor George Grey held a "Pacification Hui" with Tauranga Māori. Many Tauranga Māori agreed to surrender the mana of the land to the Crown, on the understanding that the Crown would extend generous treatment to them. Governor Grey promised that:

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2: HISTORICAL ACCOUNT

"...to mark our sense of the honourable manner in which you conducted hostilities, neither robbing nor murdering, but respecting the wounded, I promise you that in the ultimate settlement of your lands the amount taken shall not exceed one-fourth part of the whole lands."

- 2.22 It is possible that Tauranga Māori understood Grey's promise to mean that only one-fourth of the lands of the "rebels" would be taken. The Crown believed that all the lands of the "rebels" based in Tauranga had been placed at the disposal of the Governor, but it had not identified those lands, or which iwi and hapū had interests in them.
- 2.23 It is not known whether any Waitaha attended the Pacification Hui. Hakaraia was not a party to any agreement reached.
- 2.24 Over subsequent months, there was debate within the Government over whether to pursue a cession or confiscation of land. The Crown decided to use the New Zealand Settlements Act to confiscate the land. In May 1865, the Crown issued an Order in Council declaring that the entire Tauranga district, covering an area of 214,000 acres and described as "all the lands of the tribe 'Ngaiterangi'", would become a district and be set apart "for settlements and colonization". Three-fourths of that land would be set apart "for such persons of the tribe Ngaiterangi as shall be determined by the Governor". The order did not provide for a Compensation Court, as was contemplated by the Settlements Act, to determine who land would be returned to.
- 2.25 Doubts were raised by the Chief Judge of the Native Land Court over whether the Order in Council, as it intended, extinguished Māori papatupu (customary) title in the entire district. The Tauranga District Lands Act 1867 was passed to validate retrospectively the Order in Council. The Act provided that the whole district was "duly and effectually set apart reserved and taken under the New Zealand Settlements Act 1863 as sites for settlements for colonization". The Tauranga District Lands Act 1867 ensured that papatupu title was extinguished in all 214,000 acres of the district, including the lands east of Tauranga Harbour extending to Wairakei in which Waitaha had customary interests.

BUSH CAMPAIGN

- 2.26 After the war, many Tauranga Māori were dispirited and converted to the Pai Mārire or Hauhau religion. The Hauhau movement was founded by Te Ua Haumene in 1862. Based on the Christian bible, it promised the achievement of Māori autonomy and the protection of their land through divine intervention. In Tauranga, the Hauhau and Kīngitanga movements were closely connected. Adherents of the Hauhau faith were active in opposing the confiscation.
- 2.27 Hakaraia rose to prominence as a leader of the Māori resistance to the confiscation in Tauranga. Although Hakaraia was not an adherent to the Hauhau religion he sought support from the Hauhau. Some Waitaha hapū such as Ngāti Te Moemiti and Ngāti Te Puku o Hākoma did not support either the Hauhau movement or Hakaraia. Ihaka Te Hiwi, a chief of the hapū Ngāti Te Puku o Hākoma, left to join the native militia that fought for the Crown.
- 2.28 The land to be retained by the Crown from the Tauranga Confiscation District was defined in March 1866. Between July and September 1866, Government surveying of

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2: HISTORICAL ACCOUNT

- this 50,000-acre block increased tension in the district. Tensions escalated when Hauhau converts threatened to kill the surveyors, and the Government protected them with soldiers.
- 2.29 Waitaha were staying at Te Puke at this time. Although Hakaraia had given no indication of any aggressive intent, the Crown had identified Hakaraia as a potential source of danger to the peace. The Crown suspected Hakaraia of gathering a Kīngitanga force at Te Puke and closely observed his movements.
- 2.30 Hakaraia resisted calls to take up arms until December 1866, when King Tawhiao wrote to him stating that "This sick man has recovered, he will soon move his feet, the sword is unsheathed". Hakaraia became the leader of a party of 150 people resisting surveys. In January 1867, Hakaraia declared an aukati (a customary prohibitive measure) placing the Waimapu River area under the mana of King Tawhiao. As a result of the increased tension, the surveys were discontinued until an armed force could accompany the surveyors.
- 2.31 The confiscation and Hakaraia's decision to take up arms to oppose its implementation caused further fragmentation within Waitaha as the tribe became split between support of Hakaraia and the Kīngitanga, the Crown and neutrality. Those who supported Hakaraia largely dispersed from their lands. This was either to support him or out of fear of attack by the government. Others joined the Crown effort to capture Hakaraia because they opposed his stance.
- 2.32 Hostilities in the "Bush Campaign" started in January 1867 when a government patrol crossed the Wairoa River and was fired upon by the Māori defenders of Te Irihanga pā. On 30 January 1867, Government forces and their allies assaulted the settlements of Waitaha at Te Puke, Te Pōhue, and Ohineangaanga, destroying houses, crops and livestock. Defence Minister Haultain reported that: "I directed his place to be destroyed as a special punishment to [Hakaraia]". The government feared that Hakaraia was "resolved to drive the Pākehā into the sea". The Crown's official accounts stated that there were no people present when the assault took place, but Waitaha kōrero is that both the Crown and Waitaha suffered fatalities in a battle at Ohineangaanga. Hakaraia and his supporters, however, had withdrawn. Some of the Te Arawa troops ordered to take part in the assault objected to the order to arrest Hakaraia, and refused to participate. The Arawa hapū that took a leading role in the assault continued to occupy Te Puke under military orders for some years.
- 2.33 The Crown troops pursued Hakaraia and his party in the bush-covered hills behind Tauranga. The Crown's aim was to apprehend those who had disrupted surveys and threatened surveyors of the confiscated block. They attacked settlements at Akeake, Maenene, Taumata, Oropi and Paengaroa during February 1867 burning the houses and destroying cultivations and livestock. The Crown pursued a policy of "scorched earth" to reduce the ability of those who opposed the confiscation to resist.
- 2.34 Hakaraia and most of his people evaded capture, and made a retaliatory raid against kawanatanga Arawa in March 1867. They then dispersed into the bush and retired to the Kaimai ranges.

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2: HISTORICAL ACCOUNT

1868 EXTENSION OF CONFISCATION BOUNDARY

- 2.35 The Tauranga District Lands Act 1868 extended the boundary of the confiscation district south and eastwards, increasing the amount of land confiscated by 75,000 acres. The Crown said that Ngāi Te Rangi had requested the confiscation district be extended to fully encompass the whole of their lands. Patoromu of Waitaha stated in 1897 that he believed that the Crown extended the boundary line to punish Waitaha for their participation in the Bush Campaign.
- 2.36 The extension of the confiscation district included much land claimed by Waitaha, including their sacred maunga Otawa. The new boundary sliced in half their maunga Otara and Ōtanewainuku. Waitaha were not consulted about the extension.

DEATH OF HAKARAIA

- 2.37 Hakaraia protested the confiscation for the rest of his life. In July 1869, he formed an association with Te Kooti Arikirangi Te Turuki. Hakaraia was impressed by Te Kooti's political and religious beliefs, and he led many raids in aid of Te Kooti's cause. Crown forces attacked their settlement at Tapapa on 24 January 1870. After the attack on Tapapa, Hakaraia sent some Waitaha people home under his son Hakaraia Tipene in 1870 while he continued his fight against the Crown.
- 2.38 Hakaraia continued to fight until he was killed by Crown troops at Waipuna pā in the Waioeka Gorge on 23 March 1870. On his body was found the Kīngitanga flag that was given to him by King Tawhiao and which had flown at Gate Pā.

RETURN OF TAURANGA CONFISCATION LANDS

- 2.39 Although the confiscation of the Tauranga district took place in 1865, the process of returning land to Māori did not commence until 1873, and was not completed until 1883. The Crown retained outright a block of 50,000 acres between the Waimapu and Wairoa Rivers. The remainder of the 289,000-acre confiscation district was awarded to Tauranga Māori.
- 2.40 Under the Tauranga District Lands Act 1867, Commissioners were appointed to award lands to Māori. The Act contained no guidelines governing the basis on which land was to be awarded, and no detailed rules were formulated to guide the Commissioners. Hapū of Waitaha made claims to the "Commissioner's Court" at Tauranga for the Ōtawa, Waoku and Oropi lands. These claims were for the land between the Waimapu River and the eastern confiscation boundary at Wairakei.
- 2.41 The Commissioner accepted the ancestral claims of Waitaha to the Ōtawa lands, comprising approximately 25,000 acres. However, the Crown, through the New Zealand Settlements Act 1863, had determined that land should not be returned to unsundered rebels. In making his judgement of 4 March 1878 on the Ōtawa lands the Commissioner decided not to return all of the ancestral land of Waitaha. He stated:

"It has been clearly established that Hakaraia was a rebel and fought against the Crown it is also right [that a] portion of the land of his hapū should be taken in payment for his sin..."

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

- 2.42 The Commissioner acknowledged that some Waitaha had not taken part in the rebellion and were entitled to compensation. The Commissioner awarded the 4,947-acre Otawa Waitaha 1 block to “those persons of the hapū who fought for the Government during the wars”. Waitaha were also awarded shares in the 1656-acre Waoku 2 block, which secured to them the western slopes of their sacred mountain, Ōtanewainuku, but the claims of Waitaha hapū to Oropi were denied.
- 2.43 All land returned to Waitaha was returned as individualised title. This overrode customary forms of land tenure and provided no protection against future alienation. Tauranga Māori did not consent to the individualisation of title in the Tauranga confiscation district.
- 2.44 The confiscation of land affected all of Waitaha – whether “rebel” or “loyal”. The share of the Ōtawa lands returned to Waitaha was significantly reduced on account of those Waitaha who had taken up arms against the Crown. This also had a prejudicial effect on those members of Waitaha who had not fought against the Crown. Waitaha petitioners to the Sim Commission in 1923 estimated that this represented a loss to Waitaha of about 20,000 acres.

INTRODUCTION OF NATIVE LAND LAWS

- 2.45 Concern about perceived failures in the existing system of dealing with Māori land prompted the Crown to introduce a new land tenure system in the early 1860s. The Crown established the Native Land Court, to provide Māori with titles derived from the Crown. The Crown’s pre-emptive right to purchase land was set aside, giving individual Māori the same rights as Pākehā to lease and sell their lands to private parties and the Crown.
- 2.46 The Crown aimed to provide a means by which disputes over the ownership of lands could be settled and to facilitate the opening up of Māori customary lands to colonisation. It was expected that land title reform would eventually lead Māori to abandon the tribal and communal structures of traditional land holdings. Converting customary lands into land held under the British title system would also give Māori landowners the right to vote.
- 2.47 The native land laws provided for the Native Land Court to determine the owners of Māori land “according to native custom”. However, the native land laws introduced a significant change to the traditional Māori land tenure system. Customary tenure was able to accommodate multiple and overlapping interests to the same land, but effective participation in the post 1840 economy required clear land boundaries and certainty of ownership. The Native Land Court was not designed to accommodate the complex and fluid customary land usages of Māori within its processes because it assigned permanent ownership. In addition, land rights under customary tenure were generally communal but the new land laws gave rights to individuals. The Crown had generally canvassed views on land issues at the 1860 Kohimarama Conference. Waitaha were not present at the conference and were not consulted on the native land legislation prior to its enactment.

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DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

LOSS OF TE PUKE BLOCK

- 2.48 Some Waitaha returned to Te Puke between 1869 and 1871 under Hakaraia Tipene. However, the tribe remained scattered in the early 1870s. In the aftermath of the war a number of Waitaha were reluctant to identify themselves as Waitaha. A census taken in 1874 recorded only 24 Waitaha living at Te Puke. Many more Waitaha were identified in the Hokianga region where a large contingent went to dig gum.
- 2.49 During the late 1860s some Waitaha and other iwi accepted deposits from private parties for the sale or lease of Te Puke block but these transactions were voidable as the ownership of the block had not been determined by the Native Land Court. Several applications were made to the Court in the late 1860s from Waitaha claimants and other iwi to determine the title of Te Puke. Native Land Court cases in Maketu were bitterly contested and in 1871 the Government closed the Court because it feared that contestation over other blocks would lead to armed conflict. The title investigation for Te Puke was delayed as a result.
- 2.50 In 1873 the Crown commenced a programme of large-scale land purchasing in the Bay of Plenty. It opened negotiations with Waitaha for Te Puke before the Native Land Court had determined the block's ownership. Unlike private dealings, Crown agreements to acquire customary land were not voidable, but could not be completed until the Court had determined the legal owners.
- 2.51 Initially Waitaha did not wish to sell or lease Te Puke to the Government. However, in September 1873, competing claims over the land motivated Waitaha chief Hakaraia Tipene to approach the Crown land purchase agents to ask that Te Puke be placed "under the management of the Government". Waitaha wanted to sell part of the block, lease another portion, and retain the remainder for their own use.
- 2.52 The Crown's policy was to purchase as much land as it could. The Crown exploited competing claims to Te Puke to pressure Waitaha into selling the block. In 1874 another claimant to Te Puke agreed to a Government proposal to charge a £400 survey lien, owed to a surveyor for survey costs on lands at Rotorua, against a number of blocks, including Te Puke. The Crown's land purchase agents told Waitaha that the block would be mortgaged to the Government if they did not agree to sell. Waitaha hapū Ngāti Rereamanu stated in 1877 that they agreed to sell Te Puke out of fear of indebtedness:
- "That land is gone from us through deceit. We were frightened by this word that Te Puke was going to be taken away and mortgaged. Therefore we were frightened and we consented."*
- 2.53 By June 1874 a number of Waitaha had agreed to sell. The Government's agents endeavoured to purchase the block as cheaply as possible. They were authorised to spend up to £5,000 but persuaded Waitaha to sell for £4,000. Some £1,000 of the purchase money was to be used to pay costs incurred for the survey of the Te Puke block. The Government's agents began paying some of this money in advance of the Native Land Court's title determination and the final conclusion of the agreement.
- 2.54 In 1874 other groups who claimed land in the Maketu district complained to the Government about its agents' land purchase negotiations, including those with Waitaha for Te Puke. The merits of the rival claims for the block could not be quickly resolved as

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DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

the operation of the Native Land Court in the Bay of Plenty was suspended between 1873 and 1877. The dispute became extremely bitter. In March 1875, Native Minister Donald McLean came to Maketu to attend a hui with the various claimants to discuss the relative merits of the claims to land in that district, including Te Puke.

- 2.55 Waitaha told McLean their claim to Te Puke was based on ancestry and continuous occupation and cultivation of the land. They also affirmed their desire to sell the land. A Waitaha rangatira, Ereatera, explained to McLean that because of the "trouble caused" by others taking deposits, and surveying and leasing the land:

"...I thought it the better plan to sell my land to the Govt. lest I be cheated out of it."

- 2.56 McLean also heard from other iwi and hapū, some with ancestral connections to Waitaha, who claimed land in the Maketu district on the basis of ancestry, occupation and "take toa", stemming from their leading military role in regaining Maketu in the 1830s. Waitaha were also involved in the retaking of Maketu. The "toa" claimants argued that during the 1860s wars they had defended their lands against the Kīngitanga and that those who had fought against the Crown, such as sections of Waitaha, had forfeited their rights to land in the Maketu district. They were angry the Government had opened negotiations for land in the region before the Native Land Court had determined its ownership. McLean insisted he would not make findings but expressed the opinion that the toa claims were valid over an area that included the coastal portion of the Te Puke block.
- 2.57 Following the meeting, McLean instructed the Crown's land purchasing agents to leave the Maketu district until the competing claims had been resolved. Nevertheless, the Crown's land purchase agents continued securing additional Waitaha signatures to the sale and paying advances. By June 1876 the Crown had advanced £1,251 in payment for the Te Puke block.
- 2.58 Crown land purchase operations in the Bay of Plenty were suspended in 1876 after attempts to survey Te Puke were obstructed by the toa claimants. The Government did not persuade them to cease obstructing the survey of Te Puke until January 1877. By this time its land purchase operations in the Bay of Plenty had officially recommenced. Nevertheless the Crown declined to pay further purchase money for Te Puke until after the Native Land Court had determined title.
- 2.59 The economic circumstances of Waitaha were deteriorating. In January 1877 a flood destroyed their crops. Short of food, and frustrated with the long delay in completing the deal, Waitaha wanted the Crown to pay the balance of the purchase money without waiting for the Court to determine title. When the Crown would not do this, Waitaha tried to withdraw from their sale to the Crown in order to sell to a private party for £10,000. The Crown would not relinquish its purchase and instead issued a proclamation under the Government Native Land Purchase Act 1877 barring private parties from attempting to acquire the land.
- 2.60 The Native Land Court finally held its title investigation of the Te Puke block in October 1878. It awarded title on the bases of ancestry and occupation to the Waitaha hapū, Waitaha Tuturu, Ngāti Te Puku o Hākoma, Ngāti Te Moemiti and Ngāti Rereamanu. On 7 November 1878 the Court approved a list of 171 owners.

DEED OF SETTLEMENT
2: HISTORICAL ACCOUNT

- 2.61 The Court's judgment allowed the Crown to complete its purchase. The Crown recognised that the delay in completing the purchase had disadvantaged Waitaha and increased the size of the reserves for Waitaha from 300 acres to 1,500 acres and raised the purchase price to £4,500. The Crown retained approximately £500 of the purchase price to pay for rations supplied to Waitaha during the Court hearings. Waitaha claimed that attending the Court hearings meant they had to neglect their cultivations resulting in a shortage of food.
- 2.62 In November 1878 the Court awarded the Te Puke block to the Crown, even though a number of the owners had not yet been paid. Considerable confusion arose over who should be paid, and the Crown ended up paying more than the £4,500 agreed. By June 1880 the Crown had paid a total of £5,474 purchase money for Te Puke, including to people not awarded an ownership interest by the Court. An 1880 report by the Resident Magistrate at Tauranga was critical of the Crown's handling of the purchase. It made recommendations for resolving the outstanding claims and disputes.
- 2.63 The surveying of the reserves also proved a fraught exercise. The Native Land Court did not specify who each reserve was for and some toa claimants had withdrawn their claims from the Court because the Native Minister had promised them they would be given reserves on Te Puke. There was some armed skirmishing when surveyors attempted to set off one of the Waitaha reserves. The surveying was completed with the assistance of Waitaha in 1879. It was not until 1883 that the Native Land Court determined the ownership of the Te Puke reserves.
- 2.64 By 1885 the Crown had purchased 24,391 acres of the Te Puke block. Waitaha retained only 1,500 acres in two reserves. The 1,000-acre reserve was located at Motungarara, a traditional ngaonga kāinga for Waitaha. Following the sale of the Te Puke block this area was more commonly known as Manoeka, being a translation of 'thousand acres'. According to Waitaha, pressure on the insufficient lands remaining to them forced some Waitaha to follow their other tribal affiliations. This had a detrimental impact on the identity of Waitaha as an iwi.

PURCHASE OF OTAWA-WAITAHA 1

- 2.65 The Crown opened negotiations to purchase the Ottawa-Waitaha 1 block immediately after the Commissioner's title investigation was completed in February 1878. The Crown initially agreed to pay £1,000 purchase money but this was increased to £1,250 in November 1879 in an effort to win over some owners who were resisting sale.
- 2.66 In 1880 irregularities were discovered in the accounts of the Crown agent negotiating the purchase. He was dismissed and prosecuted for fraud. An auditor found that many Māori, including some Waitaha, had never received the money the agent's accounts said had been paid to them. The signatures of some had been forged on vouchers allegedly acknowledging the receipt of purchase money.
- 2.67 The Under Secretary of the Native Department personally supervised the completion of the purchase of Ottawa Waitaha 1. Despite the auditor's condemnation of the dismissed Crown agent's methods, the Crown still counted his recorded payments towards the completion of the purchase. In addition, not all of the purchase money for the block had been paid out when the Native Land Court awarded the Crown 4,561 acres in April

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

1883. The payment of the outstanding purchase money the Crown agreed it owed continued into 1886.

LOSS OF REMAINING WAITAHA LAND

- 2.68 Waitaha took part in many Native Land Court hearings in the 1880s and early 1890s. Waitaha were awarded the Waipumuka 2 (Maketu) and Whakauma (Ōtanewainuku) blocks but were unsuccessful in proving claims to other blocks, particularly those south of Ōtanewainuku.
- 2.69 Most of the land Waitaha were awarded was sold in the 1880s and 1890s, mostly to the Crown. This was a time of economic difficulty for Waitaha. In 1885 Waitaha requested an advance from the Crown on Whakauma to finance their attendance at Native Land Court hearings. The Crown declined to pay this advance, but purchased the block between 1893 and 1895 after it had passed the Native Land Court.
- 2.70 Most of Waoku 2 was sold to private parties in 1885, despite the Commissioner's Court having restricted the alienation of the block. Some owners opposed the sale but the Crown removed the restriction in 1882. The Crown concluded the block was only used for pig hunting and was not required by Waitaha for their support. The Crown lifted the restriction on alienation despite the Native Minister instructing the Resident Magistrate at Tauranga that the owners had to be unanimous in their decision to sell.
- 2.71 Parts of the remaining Waitaha land were sold in the twentieth century to meet expenses or raise capital. Alienations were also made to pay expenses incurred on the land such as rates. The Crown compulsorily acquired about 41 acres of Waitaha 1B under Public Works legislation for water conservation in 1939.

PETITIONING THE CROWN

- 2.72 In the 1920s Waitaha petitioned the Government about the injustice of raupatu in the nineteenth century. The Sim Commission of 1926 and 1927 was appointed to investigate confiscations under the New Zealand Settlements Act 1863 and subsequent legislation, but its terms of reference were limited. It was not to have regard to contentions that the New Zealand Parliament did not have the power to pass the confiscation legislation and that Māori "who denied the Sovereignty of Her Majesty and repudiated her authority could claim the benefit of the provisions of the Treaty of Waitangi".
- 2.73 The Sim Commission was to consider, among other things, whether in all the circumstances the confiscations exceeded in quantity what was "fair and just". However, the Sim Commission rejected the claim of Waitaha, applying the doctrine of estoppel, stating that the silence of Waitaha "from 1865 to 1923 is in itself strong evidence that the claim now made is without any merit".

INSUFFICIENCY OF LANDS AND RESOURCES REMAINING TO WAITAHA

- 2.74 By the end of the nineteenth century Waitaha had insufficient land and resources to sustain the tribe. By 1900 Waitaha individuals held shares in only 2,342 acres. The Native Land Act 1873 had provided that 50 acres per person should be reserved for

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DEED OF SETTLEMENT
2: HISTORICAL ACCOUNT

Māori from an iwi's tribal estate. Waitaha received just 1,500 acres in reserves in the Te Puke block. No reserves were created in any other block.

- 2.75 Most Waitaha remaining on their ancestral lands lived on the Te Puke reserves. The remainder of their land was forested and not suitable for occupation. Today, the sole remaining marae and papakāinga of Waitaha are located at Manōeka the 1,000-acre reserve granted to them from the sale of their Te Puke block.
- 2.76 The Crown's land purchase and confiscation policies have left Waitaha virtually landless. Waitaha express this impact in the whakataukī "ko Waitaha te iwi, he tangata ngakaurua": Waitaha was once a powerful tribe, but because of the losses of land they became fragmented and have never been able to unite again.

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DEED OF SETTLEMENT

3 ACKNOWLEDGEMENTS AND APOLOGY**ACKNOWLEDGEMENTS**

- 3.1 The Crown acknowledges that Waitaha, an ancient iwi descending from Hei and Waitaha of the waka Te Arawa, has long sought acknowledgement and redress for its grievances. The Crown has failed to deal with these grievances in an appropriate way. The Crown hereby recognises the legitimacy of the historical grievances of Waitaha and makes the following acknowledgements.
- 3.2 The Crown acknowledges that the coming of war to the Bay of Plenty in the 1860s split Waitaha internally. Individuals and hapū were compelled to align themselves with different sides in the conflict and this caused discord and enmity within the iwi, and in the relationships Waitaha had with other iwi and with the Crown.
- 3.3 The Crown acknowledges that -
- 3.3.1 the Waitaha rangatira Hakaraia Mahika initially promoted peaceful engagement with Pākehā; and
 - 3.3.2 in his support for the Kīngitanga, Hakaraia sought to halt the sale of Māori land, and that he escalated his opposition only after Crown forces invaded the Waikato.
- 3.4 The Crown acknowledges that -
- 3.4.1 Waitaha warriors, including Hakaraia, took part in the battles at Pukehinahina and Te Ranga in April and June 1864; and
 - 3.4.2 members of Waitaha were killed by Crown troops at Te Ranga; and
 - 3.4.3 the Crown was ultimately responsible for the outbreak of war in Tauranga and the resulting loss of life, and that its actions were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.5 The Crown acknowledges that, taken together, the Tauranga confiscation/raupatu and the subsequent Tauranga District Lands Acts 1867 and 1868 -
- 3.5.1 affected all Waitaha including those who had not opposed the Crown; and
 - 3.5.2 included Otawa, a maunga sacred to all the descendants of Hei and Waitaha; and
 - 3.5.3 compulsorily extinguished customary title in the land within the extended confiscation/raupatu district.

DEED OF SETTLEMENT

3: ACKNOWLEDGEMENTS AND APOLOGY

- 3.6 The Crown further acknowledges that it -
- 3.6.1 returned land to Waitaha in the form of individualised title rather than Māori customary title; and
 - 3.6.2 wrongfully retained land in order to punish Waitaha for the actions of Hakaraia, whom it deemed to be a rebel.
- 3.7 The Crown acknowledges that the confiscation/raupatu and the subsequent Tauranga District Lands Acts 1867 and 1868 -
- 3.7.1 had a detrimental effect on the welfare and economy of Waitaha and deprived the iwi of wāhi tapu, access to natural resources and opportunities for development; and
 - 3.7.2 prevented Waitaha from exercising mana and rangatiratanga over land and resources within the Tauranga confiscation district.
- 3.8 The Crown acknowledges that in its effects on Waitaha, the confiscation/raupatu and the subsequent Tauranga District Lands Acts 1867 and 1868 were unjust, indiscriminate and a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.9 The Crown acknowledges that -
- 3.9.1 it inflicted a scorched earth policy in its assaults on Waitaha settlements during the bush campaign; and
 - 3.9.2 the resulting destruction further devastated the welfare and economy of Waitaha; and
 - 3.9.3 Waitaha were forced to flee their settlements and were unable to return for many years.
- 3.10 The treatment that Waitaha received from the Crown during the bush campaign was unreasonable, inflicted considerable unnecessary harm on Waitaha, and was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.11 The Crown acknowledges that -
- 3.11.1 it did not consult with Waitaha on the Native Land Acts of 1862 and 1865; and
 - 3.11.2 the workings of the native land laws, in particular in the awarding of land to individuals rather than iwi or hapū and the enabling of individuals to deal with that land without reference to the iwi or hapū, made the lands of Waitaha more susceptible to alienation. As a result, the traditional social structures, mana and rangatiratanga of Waitaha were eroded. The Crown acknowledges it failed to take adequate steps to protect these structures, and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

DEED OF SETTLEMENT

3: ACKNOWLEDGEMENTS AND APOLOGY

- 3.12 The Crown acknowledges that it exploited inter-iwi competition over Te Puke block and used outstanding survey charges and the threat of mortgage to pressure Waitaha into selling the land. The Crown then used the Native Lands Act 1877 to prevent Waitaha from selling the land to private parties. The combined effect of these aggressive purchase techniques meant that the Crown failed actively to protect the interests of Waitaha in the land they wished to retain and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.13 The Crown acknowledges further land was lost to Waitaha during the nineteenth and twentieth centuries through purchases by private parties of land originally intended to be inalienable, additional Crown purchases and public works takings. These losses came at a time when Waitaha were already experiencing great economic hardship.
- 3.14 The Crown acknowledges that the cumulative effect of its actions have rendered Waitaha virtually landless. By 1900, members of the iwi held only a fraction – approximately 2.5 per cent – of their former rohe. While the land and resources alienated from Waitaha have benefited the nation as a whole, the reserves created for Waitaha from Te Puke block, including “Manoeka”, were insufficient to support or sustain the iwi’s members. This forced some Waitaha to follow their other tribal affiliations, weakening the identity of Waitaha as an iwi. The Crown’s failure to ensure that Waitaha was left with sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
- 3.15 The Crown acknowledges that the cumulative effect of its breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles undermined the physical, cultural, social, economic and spiritual well-being of Waitaha to the point where the iwi itself nearly vanished. The suffering and marginalisation caused to Waitaha over the generations has continued to the present day.

APOLOGY TO WAITAHA

- 3.16 The Crown makes the following apology to the descendants of Hei and Waitaha known as Waitaha.
- 3.17 The Crown is deeply sorry that it has failed to fulfil its obligations to Waitaha under Te Tiriti o Waitangi/the Treaty of Waitangi.
- 3.18 The Crown’s acts and omissions have severed you from almost all of your traditional lands and driven your ancient iwi to the point where it nearly ceased to exist. For these acts and omissions, and for the suffering they caused and continue to cause, the Crown apologises.
- 3.19 The Tauranga confiscation/raupatu was unjust and Hakaraia Mahika opposed it. For this, the Crown labelled him a rebel. In seeking to punish him, the Crown destroyed your houses, crops and livestock, and ultimately took his life. The Crown inflicted further punishment even after his death by unfairly withholding a large amount of land from you. For these misdeeds the Crown apologises to Waitaha and to Hakaraia.
- 3.20 The stigma of rebellion has diminished the mana of Waitaha and forced deep divisions among you, and between you and your neighbours. The Crown recognises that this

DEED OF SETTLEMENT**3: ACKNOWLEDGEMENTS AND APOLOGY**

burden has pressed most heavily on the descendants of Hakaraia, but has affected all of Waitaha. The Crown regrets that you have been forced to bear this stigma, and wishes the mana and reputation of Hakaraia and Waitaha to be restored. Accordingly, the Crown apologises for the part it played in placing this burden upon you.

- 3.21 The Crown wishes to restore its own tarnished honour too and hopes that this apology will mark the beginning of a stronger relationship with Waitaha, a relationship based on trust, co-operation, and respect for Te Tiriti o Waitangi/the Treaty of Waitangi. Accordingly, the Crown echoes the following Waitaha whakatauki:

*Kua tau te rangimārie
Ki te whare o Hakaraia
Āke, āke, āke.*

*The peace has been settled
In the house of Hakaraia
Now and forever more.*

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DEED OF SETTLEMENT

4 SETTLEMENT

ACKNOWLEDGEMENTS

- 4.1 The Crown and Waitaha acknowledge that -
 - 4.1.1 the settlement represents the result of intensive negotiations conducted in good faith and in the spirit of co-operation and compromise; and
 - 4.1.2 it is not possible to compensate Waitaha fully for all the loss and prejudice suffered; and
 - 4.1.3 this foregoing of full compensation is intended by Waitaha to contribute to the development of New Zealand, over and above the contribution already made by Waitaha through the use of land and resources in the area of interest; and
 - 4.1.4 this settlement is intended to enhance the future relationship between Waitaha and the Crown, in terms of the Treaty of Waitangi, its principles, and otherwise.
- 4.2 Waitaha acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

- 4.3 Therefore, on and from the settlement date, -
 - 4.3.1 the historical claims are settled; and
 - 4.3.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 4.3.3 the settlement is final.

PARTIES' OTHER RIGHTS AND OBLIGATIONS UNAFFECTED

- 4.4 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected and, in particular, nothing in this deed or the settlement legislation will -
 - 4.4.1 extinguish or limit any aboriginal title or customary right that Waitaha may have; or
 - 4.4.2 constitute, or imply, an acknowledgement by the Crown that any aboriginal title or customary right exists; or
 - 4.4.3 except as provided in this deed or the settlement legislation, affect a right that Waitaha may have arising -

DEED OF SETTLEMENT

4: SETTLEMENT

- (a) from the Treaty of Waitangi or its principles; or
- (b) under legislation; or
- (c) at common law; or
- (d) from a fiduciary duty; or
- (e) otherwise.

REDRESS

4.5 The redress, to be provided in settlement of the historical claims, -

4.5.1 is intended to benefit Waitaha collectively; but

4.5.2 may benefit particular members, or particular groups of members, of Waitaha if the trustees so determine in accordance with the procedures of Te Kapu o Waitaha.

SPECIFIC REDRESS IN RELATION TO HAKARAIA

4.6 The following redress is to be, or has been, provided in recognition of Hakaraia:

4.6.1 the apology to Hakaraia (paragraph 3.19):

4.6.2 the vesting of the Ohineangaanga site (paragraph 5.8.1(b)):

4.6.3 the funding for commissioning the writing of a history to document the story of Waitaha and Hakaraia (paragraph 5.20):

4.6.4 the funding for the restoration and revitalisation of Hei Marae (paragraph 5.21.1):

4.6.5 the Hakaraia educational endowment fund (paragraphs 5.22 to 5.27).

IMPLEMENTATION

4.7 The settlement legislation will, on the terms provided by parts 3 and 4 of the legislative matters schedule, -

4.7.1 settle the historical claims; and

4.7.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and

5: DEFINED TERMS

(c) the financial and commercial redress; and

redress property means -

(a) each cultural redress property; and

(b) each commercial redress property; and

(c) the kaumātua flats; and

registered bank has the meaning given to it by section 2(1) of the Reserve Bank of New Zealand Act 1989; and

registered valuer means a person registered as a valuer in accordance with the Valuers Act 1948; and

Registrar-General of Land and Registrar-General means the Registrar-General of Land appointed under section 4 of the Land Transfer Act 1952; and

relevant consent authority means a consent authority of a region or district that contains, or is adjacent to, a statutory area; and

representative entity means -

(a) the trustees; and

(b) a person (including any trustee or trustees) acting for or on behalf of:

(i) the collective group, referred to in clause 8.8.1; or

(ii) any one or more members of Waitaha; or

(iii) any one or more of the whānau, hāpu, or groups of individuals referred to in clause 8.8.3; and

reserve means a reserve under the Reserves Act 1977; and

reserve land has the meaning given to it by paragraph 10.3.1 of the legislative matters schedule; and

reserve site has the meaning given to it by paragraph 8.1.2 of the legislative matters schedule; and

resource consent has the meaning given to it by section 2 of the Resource Management Act 1991; and

responsible department means, in relation to -

DEED OF SETTLEMENT

4: SETTLEMENT

- 4.7.3 provide that the legislation referred to in paragraph 4.4.2 of the legislative matters schedule does not apply -
- (a) to -
 - (i) a redress property; or
 - (ii) a deferred purchase property, if that property is purchased, and settlement of it is effected, under this deed; or
 - (iii) a second right of purchase property, if that property is not a redress property, but is purchased, and settlement of it is effected, under this deed; and
 - (b) for the benefit of Waitaha or a representative entity; and
- 4.7.4 require any resumptive memorials to be removed from the certificates of title to, or the computer registers for all or any part of the following properties:
- (a) a redress property:
 - (b) a deferred purchase property, if that property is purchased, and settlement of it is effected, under this deed:
 - (c) a second right of purchase property, if that property is not a redress property, but is purchased, and settlement of it is effected, under this deed; and
- 4.7.5 provide that the rule against perpetuities, and the Perpetuities Act 1964, do not -
- (a) apply to a settlement document; or
 - (b) prescribe or restrict the period during which -
 - (i) the trustees of Te Kapu o Waitaha may hold or deal with property; and
 - (ii) Te Kapu o Waitaha may exist; and
- 4.7.6 require the Secretary for Justice to make copies of this deed publicly available.
- 4.8 Part 1 of the general matters schedule provides for other action in relation to the settlement.

DEED OF SETTLEMENT

5 CULTURAL REDRESS

TE WHAKAIRINGA KŌRERO

- 5.1 The settlement legislation will, on the terms provided for by part 5 of the legislative matters schedule, -
 - 5.1.1 declare each of the following sites (as described in schedule 1 of the legislative matters schedule) to be subject to Te Whakairinga Kōrero:
 - (a) Ōtawa (as shown on deed plan OTS-075-01):
 - (b) Te Ara a Hei (as shown on deed plan OTS-075-02); and
 - 5.1.2 provide the Crown's acknowledgement of the statement of Waitaha values in relation to each site, in the form set out in part 1 of the documents schedule at the settlement date; and
 - 5.1.3 require the New Zealand Conservation Authority, and a conservation board, -
 - (a) when considering a conservation management strategy, a conservation management plan, or a national park management plan, in relation to a site, to have particular regard to -
 - (i) the statement of Waitaha values for that site, in the form set out in part 1 of the documents schedule at the settlement date; and
 - (ii) the protection principles for that site, in the form set out in part 1 of the documents schedule (as they may be amended from time to time); and
 - (b) before approving a conservation management strategy, or a conservation management plan, or a national park management plan, in relation to a site, to -
 - (i) consult with the trustees; and
 - (ii) have particular regard to their views as to the effect of the document on the Waitaha values, and the protection principles, for that site; and
 - 5.1.4 if the trustees advise the New Zealand Conservation Authority they have significant concerns about a draft management strategy in relation to a site, require the New Zealand Conservation Authority to give the trustees an opportunity to make submissions to it; and
 - 5.1.5 require the Director-General of Conservation to take action in relation to the protection principles for a site, including the actions set out in paragraph E of part 1 of the documents schedule in relation to that site; and

DEED OF SETTLEMENT

5: CULTURAL REDRESS

- 5.1.6 enable the making of regulations and bylaws in relation to each site.
- 5.2 Part 1 of the documents schedule sets out in relation to each Whakairinga Kōrero site -
 - 5.2.1 the Waitaha values; and
 - 5.2.2 the protection principles; and
 - 5.2.3 the action to be taken by the Director-General of Conservation.

STATUTORY ACKNOWLEDGEMENT

- 5.3 The settlement legislation will, on the terms provided by part 6 of the legislative matters schedule, -
 - 5.3.1 provide the Crown’s acknowledgement of the statements by Waitaha of their particular cultural, spiritual, historical, and traditional association with the following areas (as identified in schedule 2 of the legislative matters schedule):
 - (a) the peak of Ōtanewainuku (as shown on deed plan OTS-075-03):
 - (b) four wāhi tapu sites within Ōtanewainuku Forest -
 - (i) Hakoko Creek (as shown on deed plan OTS-075-04); and
 - (ii) Paraiti Creek (as shown on deed plan OTS-075-04); and
 - (iii) Popaki Creek (as shown on deed plan OTS-075-04); and
 - (iv) Kaokaonui Kāinga (as shown on deed plan OTS-075-04):
 - (c) Waimapu River (as shown on deed plan OTS-075-06):
 - (d) part of Kaituna River (as shown on deed plan OTS-075-07):
 - (e) Waiari Stream (as shown on deed plan OTS-075-08):
 - (f) Te Raparapa-ā-Hoe (as shown on deed plan OTS-075-09 together with the marginal strips numbered 2, 3, and 4 on deed plan OTS-075-05):
 - (g) Ohineangaanga Stream (as shown on deed plan OTS-075-10):
 - (h) Te Rerenga Stream (as shown on deed plan OTS-075-11):
 - (i) Te Kopuaroa Stream (as shown on deed plan OTS-075-12):

DEED OF SETTLEMENT

5: CULTURAL REDRESS

- (j) Kaiate River (as shown on deed plan OTS-075-13);
- (k) Wairākei Stream (as shown on deed plan OTS-075-14);
- (l) coastal area from Maketu to Mauao (as shown on deed plan OTS-075-15); and

5.3.2 require -

- (a) relevant consent authorities, the Environment Court, and the New Zealand Historic Places Trust to have regard to the statutory acknowledgement; and
- (b) relevant consent authorities to forward to the trustees -
 - (i) summaries of resource consent applications affecting an area; and
 - (ii) a copy of a notice of a resource consent application served on the consent authority under section 145(10) of the Resource Management Act 1991; and

5.3.3 enable the trustees, and any member of Waitaha, to cite the statutory acknowledgement as evidence of the association of Waitaha with an area.

5.4 The statements of association are in part 2 of the documents schedule.

DEED OF RECOGNITION

5.5 The Crown must, by or on the settlement date, provide the trustees with a deed of recognition signed by the Minister of Conservation and the Director-General of Conservation in relation to -

5.5.1 four wāhi tapu sites within Ōtanewainuku Forest -

- (a) Hakoko Creek (as shown on deed plan OTS-075-04); and
- (b) Paraiti Creek (as shown on deed plan OTS-075-04); and
- (c) Popaki Creek (as shown on deed plan OTS-075-04); and
- (d) Kaokaonui Kāinga (as shown on deed plan OTS-075-04); and

5.5.2 Te Rararapa-ā-Hoe (as shown on deed plan OTS-075-05).

5.6 Each area that the deed of recognition relates to includes only those parts of the area owned and managed by the Crown.

DEED OF SETTLEMENT

5: CULTURAL REDRESS

5.7 The deed of recognition is to provide that the Minister of Conservation and the Director-General of Conservation must, if undertaking certain activities within an area that the deed relates to, -

5.7.1 consult the trustees; and

5.7.2 have regard to their views concerning the association of Waitaha with the area, as described in the statement of association set out in part 2 of the documents schedule at the settlement date.

CULTURAL REDRESS PROPERTIES

5.8 The settlement legislation will vest in the trustees on the settlement date -

In fee simple

5.8.1 the fee simple estate in the following sites:

(a) Hine Poto site:

(b) Ohineangaanga site:

(c) Whitikiore (together with a right of way easement in favour of the site granted by the Crown in the form set out in part 10 of the documents schedule):

(d) Te Haehae; and

As an historic reserve

5.8.2 the fee simple estate in the Maungaruahine Pā Historic Reserve (the official geographic name of which, at the date of this deed, is Maungaruahine Pa Historic Reserve), as an historic reserve, with the trustees as the administering body; and

As a scenic reserve

5.8.3 the fee simple estate in the Ōtara Scenic Reserve (which, at the date of this deed, is part of Otawa Scenic Reserve), as a scenic reserve, with the trustees as the administering body, and provide that the fee simple estate will not be transferred by the trustees, except as provided for by paragraph 10.4 of the legislative matters schedule.

5.9 The cultural redress properties will be -

5.9.1 vested on the terms provided by parts 8 to 10 of the legislative matters schedule; and

DEED OF SETTLEMENT

5: CULTURAL REDRESS

5.9.2 as described in schedule 3 of the legislative matters schedule.

5.10 Parts 4 and 5 of the property redress schedule apply in relation to the vesting of the cultural redress properties.

KAUMĀTUA FLATS

5.11 The settlement legislation must vest in the trustees on the settlement date any interest held by the Crown on that date in -

5.11.1 the kaumātua flats, being the improvements that are flats 1, 2, 3, and 4 at 155 Manoeka Road, Te Puke; and

5.11.2 fixtures and fittings in the kaumātua flats.

5.12 The kaumātua flats, and the fixtures and fittings referred to in clause 5.11.2, will be vested on the terms provided by paragraphs 12.1 and 12.2 of the legislative matters schedule and parts 4 and 5 of the property redress schedule apply to that vesting.

PROTOCOLS

5.13 Each of the following protocols must, by or on the settlement date, be signed and issued to the trustees by the responsible Minister:

5.13.1 the conservation protocol:

5.13.2 the taonga tūturu protocol:

5.13.3 the Crown minerals protocol.

5.14 Each protocol sets out how the Crown will interact with the trustees with regard to the matters specified in it.

FORM AND EFFECT OF DEED OF RECOGNITION AND PROTOCOLS

5.15 The deed of recognition, and each protocol, will be -

5.15.1 in the form in parts 3, 4, 5, or 6, as the case may be, of the documents schedule; and

5.15.2 issued under, and subject to, the terms of the settlement legislation provided by parts 6 or 7, as the case may be, of the legislative matters schedule.

5.16 A failure by the Crown to comply with the deed of recognition, or a protocol, is not a breach of this deed.

DEED OF SETTLEMENT

5: CULTURAL REDRESS

MARANGA WAITAHA

- 5.17 Waitaha -
- 5.17.1 has during the negotiations in relation to this deed developed a philosophy called Maranga Waitaha that expresses the desire of Waitaha to improve their social, cultural, and economic wellbeing; and
- 5.17.2 acknowledges that the Minister for Treaty of Waitangi Negotiations has written a letter to each of the Minister of Māori Affairs and the Minister of Social Development (copies of which are in the attachments) encouraging Te Puni Kōkiri, and the Ministry of Social Development, to assist Waitaha with the development and implementation of Maranga Waitaha.

PROMOTION OF RELATIONSHIPS WITH LOCAL AUTHORITIES

- 5.18 The Minister for Treaty of Waitangi Negotiations must by settlement date write a letter in the form set out in part 7 of the documents schedule to each of the following local authorities:
- 5.18.1 the Bay of Plenty Regional Council:
- 5.18.2 the Tauranga City Council:
- 5.18.3 the Western Bay of Plenty District Council.
- 5.19 Each letter encourages the local authority to enter into a formal relationship with Waitaha.

HISTORY ENDOWMENT

- 5.20 The parties acknowledge and agree that -
- 5.20.1 clause 28 of the agreement in principle provided that this deed would provide for the Crown to pay the trustees on settlement date \$300,000, which the trustees could, in their sole discretion, determine to apply to commission a history to document the story of Waitaha and Hakaraia; and
- 5.20.2 the Waitaha Raupatu Trust and the Crown, after entering into the agreement in principle, agreed that the funding referred to in clause 5.20.1 would be released to the Waitaha Raupatu Trust before settlement date; and
- 5.20.3 the Crown, therefore, on 3 July 2009, settled \$300,000 upon the Waitaha Raupatu Trust for the trust to commission a history to document fully the story of Waitaha and Hakaraia (the **history endowment**); and
- 5.20.4 the history endowment was made and accepted on the terms set out in the relevant deed of endowment between the Crown and the Waitaha Raupatu Trust, a copy of which is included in part 5 of the attachments.

DEED OF SETTLEMENT

5: CULTURAL REDRESS

MARAE AND SOCIAL ENDOWMENTS

- 5.21 The parties acknowledge and agree that -
- 5.21.1 on 19 December 2008, the Crown settled upon the Waitaha Raupatu Trust, under clause 30 of the agreement in principle, -
- (a) \$500,000 for the purpose of restoring and revitalising Hei Marae, for the benefit of all Waitaha (the **marae endowment**); and
 - (b) \$500,000 for the principal purpose of identifying and remedying the health, education, employment, housing, and socio-economic needs of Waitaha and for the ancillary purpose of advancing the culture of Waitaha through educational endeavours (the **social endowment**); and
- 5.21.2 the marae and social endowments were made and accepted on the terms set out in -
- (a) the agreement in principle; and
 - (b) the relevant deed of endowment between the Crown and the Waitaha Raupatu Trust, a copy of which is included in part 6 of the attachments schedule.

HAKARAIA EDUCATIONAL ENDOWMENT FUND

- 5.22 The Crown must pay the trustees on the settlement date \$3,000,000.
- 5.23 The money paid to the trustees under clause 5.22, and all interest on, or gains made with, that money after its payment to the trustees, is to be an educational endowment fund (the **Hakaraia Educational Endowment Fund**).
- 5.24 The trustees must -
- 5.24.1 apply the Harakaia Educational Endowment Fund in accordance with a policy from time to time approved by an annual general meeting of members of Waitaha for the use of the fund for the education of members of Waitaha; and
 - 5.24.2 invest the Harakaia Educational Endowment Fund in accordance with a policy from time to time approved by an annual general meeting of the members of Waitaha; but
 - 5.24.3 keep the Harakaia Educational Endowment Fund separate from the other moneys and property of the trustees.
- 5.25 The trustees must ensure that, at their first annual general meeting, resolutions are put to members of Waitaha in relation to approving policies for -

DEED OF SETTLEMENT

5: CULTURAL REDRESS

- 5.25.1 the use of the Harakaia Educational Endowment Fund for the education of members of Waitaha; and
- 5.25.2 the investment of the Harakaia Educational Fund.
- 5.26 Until policies are approved under clause 5.25, the trustees must keep the Harakaia Educational Endowment Fund in a bank account with a registered bank.

VESTING OF ŌTARA SCENIC RESERVE

- 5.27 The parties acknowledge that, if settlement legislation settling the historical claims of Tapuika (the **Tapuika settlement legislation**) so provides, -
 - 5.27.1 the trustees may, if the trustees no longer wish to hold the fee simple estate in Ōtara Scenic Reserve, request the Minister authorised by the legislation to vest the fee simple estate in Ōtara Scenic Reserve in an entity approved by that legislation for that purpose; and
 - 5.27.2 if requested by the trustees, the authorised Minister may vest the fee simple estate in Ōtara Scenic Reserve in the approved entity in accordance with the Tapuika settlement legislation.

CULTURAL REDRESS GENERALLY NON-EXCLUSIVE

- 5.28 The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

DEED OF SETTLEMENT

6 FINANCIAL AND COMMERCIAL REDRESS**FINANCIAL REDRESS**

- 6.1 The Crown is to provide the financial and commercial redress amount of \$7,500,000, on the settlement date, by -

Transfer of commercial redress properties

- 6.1.1 transferring to the trustees the following properties (the **commercial redress properties**):

- (a) Te Houhou (transfer value: \$2,100,000):
- (b) Te Puke Intermediate School site (transfer value: \$713,000):
- (c) Te Puke Primary School site (transfer value: \$436,000):
- (d) Te Puke High School site (transfer value: \$527,000):
- (e) Te Puke High School secondary school site (Litt Park, next to Te Puke Intermediate School) (transfer value: \$580,000):
- (f) Fairhaven Primary School site (transfer value: \$529,000):
- (g) an available second right of purchase property (having a transfer value determined under paragraph 7.9.2, or paragraph 7.10.4, as the case may be, of the property redress schedule), if the trustees have -
 - (i) elected to purchase that property in accordance with part 7 of the property redress schedule; and
 - (ii) have required it, in accordance with paragraph 7.14.1 of the property redress schedule, to be a commercial redress property; and

Payment of any balance

- 6.1.2 paying to the trustees any balance remaining after deducting the following amounts from the financial and commercial redress amount:
- (a) \$4,885,000, being the total transfer values of the commercial redress properties referred to in clauses 6.1.1(a) to (f):
 - (b) the total transfer values of each purchased second right of purchase property that is a commercial redress property transferred under clause 6.1.1(g).

DEED OF SETTLEMENT

6: FINANCIAL AND COMMERCIAL REDRESS

COMMERCIAL REDRESS PROPERTIES

- 6.2 In this deed, **commercial redress property** -
- 6.2.1 means each property transferred under clause 6.1.1; and
- 6.2.2 to avoid doubt, includes each purchased second right of purchase property that is transferred under clause 6.1.1(g).
- 6.3 Each commercial redress property is to be transferred by the Crown to the trustees -
- 6.3.1 as part of the redress to settle the historical claims; and
- 6.3.2 without any other consideration to be paid or provided by the trustees or any other person; and
- 6.3.3 on the terms of transfer in part 9 of the property redress schedule.
- 6.4 Each commercial redress property (other than a purchased second right of purchase property that is a commercial redress property) is to -
- 6.4.1 be as described in part 1 of the property redress schedule; and
- 6.4.2 have the transfer value provided in part 1 of the property redress schedule.
- 6.5 If a purchased second right of purchase property is a commercial redress property, it is to -
- 6.5.1 be as described in part 3 of the property redress schedule or, if it is part of the second right of purchase Te Houhou property, the appropriate part of it as described in part 3 of the property redress schedule; and
- 6.5.2 have the transfer value agreed or determined in accordance with paragraph 7.9.2 or paragraph 7.10.4, as the case may be, of the property redress schedule.
- 6.6 The transfer of each commercial redress property will be subject to, and where applicable with the benefit of, the encumbrances provided for in paragraphs 9.2.2 and/or 9.2.3 of the property redress schedule in relation to that property.

SCHOOL LEASEBACK PROPERTIES

- 6.7 Each of the following commercial redress properties (a **school leaseback property**) is to be leased back to the Crown, immediately after its transfer to the trustees, on the terms and conditions provided by the lease for that property in part 8 of the documents schedule (being a registrable ground lease for the property):
- 6.7.1 Te Puke Intermediate School site:

DEED OF SETTLEMENT

6: FINANCIAL AND COMMERCIAL REDRESS

- 6.7.2 Te Puke Primary School site:
 - 6.7.3 Te Puke High School site:
 - 6.7.4 Te Puke High School secondary school site (Litt Park, next to Te Puke Intermediate School):
 - 6.7.5 Fairhaven Primary School site.
- 6.8 As the lease of each school leaseback property is a ground lease of the property, the trustees will be purchasing only the bare land, ownership of improvements remaining unaffected by the purchase.

RIGHT TO PURCHASE DEFERRED PURCHASE PROPERTIES

- 6.9 Part 6 of the property redress schedule provides the trustees with a right to purchase the deferred purchase properties (being the two properties described in part 2 of the property redress schedule) for six months from the settlement date.
- 6.10 The right of the trustees to purchase a deferred purchase property is on the terms and conditions specified by part 6 of the property redress schedule.

RIGHT TO PURCHASE SECOND RIGHT OF PURCHASE PROPERTIES

- 6.11 Part 7 of the property redress schedule provides the trustees with a right to purchase -
 - 6.11.1 a second right of purchase Te Puke property (being each property described in subpart A of part 3 of the property redress schedule) if -
 - (a) the Tapuika deed of settlement does not provide redress, or provide for redress under the Tapuika settlement legislation, in relation to that property; or
 - (b) all redress in relation to the property under the Tapuika deed of settlement, and the Tapuika settlement legislation, ends without the Crown having transferred the fee simple estate in that property, or the fee simple estate in that property being vested, under that redress; and
 - 6.11.2 the second right of purchase Te Houhou property (being the property described in subpart B of part 3 of the property redress schedule), or part of it, as the case may be, if -
 - (a) the Ngā Pōtiki deed of settlement does not provide redress, or provide for redress under the Ngā Pōtiki settlement legislation, in relation to that property, or part of it; or
 - (b) all redress in relation to the property under the Ngā Pōtiki deed of settlement, and the Ngā Pōtiki settlement legislation, ends without -

DEED OF SETTLEMENT

6: FINANCIAL AND COMMERCIAL REDRESS

- (i) the Crown having transferred the fee simple estate in that property, or part of it, under that redress; or
- (ii) the fee simple estate in that property, or part of it, being vested under that redress.

6.12 The right of the trustees to purchase an available second right of purchase property is on the terms and conditions specified by part 7 of the property redress schedule.

6.13 If the Te Puke Police Station is an available second right of purchase property, -

6.13.1 the Crown may, at its sole discretion, require it is to be leased back to the Crown immediately after its transfer to the trustees on the terms and conditions agreed for the lease of that property between the trustees and the Crown; and

6.13.2 the trustees' right to purchase that property is conditional upon the leaseback to the Crown being agreed within the time limit specified by paragraph 7.10.2 of the property redress schedule.

6.14 The leaseback of the Te Puke Police Station is to be a ground lease, ownership of improvements to remain unaffected by the transfer of the fee simple to the trustees.

SETTLEMENT LEGISLATION

6.15 The settlement legislation will, on the terms provided by part 11 of the legislative matters schedule, enable the transfer of -

6.15.1 the commercial redress properties; and

6.15.2 a purchased deferred purchase property; and

6.15.3 a purchased second right of purchase property, if it is not a commercial redress property.

DEED OF SETTLEMENT

7 SETTLEMENT LEGISLATION, CONDITIONS, AND TERMINATION

SETTLEMENT LEGISLATION

- 7.1 As soon as reasonably practicable after the date of this deed, the Crown must propose settlement legislation for introduction to the House of Representatives.
- 7.2 The bill proposed for introduction under clause 7.1 must -
 - 7.2.1 include all matters required -
 - (a) by this deed; and
 - (b) in particular, by the legislative matters schedule; and
 - 7.2.2 reflect, as appropriate, for the purposes of Parliament, the drafting conventions of Parliamentary Counsel Office; and
 - 7.2.3 be in a form that is satisfactory to the trustees and the Crown.
- 7.3 The bill proposed for introduction to the House of Representatives may include changes to the requirements of this deed agreed in writing by the trustees and the Crown.
- 7.4 Waitaha and the trustees must support the passage through the House of Representatives of the settlement legislation.

SETTLEMENT CONDITIONAL

- 7.5 This deed, and the settlement, are conditional on the settlement legislation coming into force.
- 7.6 However, the following provisions of this deed are binding on its signing:
 - 7.6.1 clauses 7.4 to 7.10:
 - 7.6.2 part 7 of the property redress schedule:
 - 7.6.3 paragraphs 1.1 and 1.3.1, and parts 3 to 7, of the general matters schedule.

EFFECT OF THIS DEED

- 7.7 This deed, until it becomes unconditional, -
 - 7.7.1 is "without prejudice"; and

DEED OF SETTLEMENT

7: SETTLEMENT LEGISLATION, CONDITIONS, AND TERMINATION

- 7.7.2 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.
- 7.8 Clause 7.7 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

- 7.9 The Crown or the trustees may terminate this deed, by notice to the other, if -
- 7.9.1 the settlement legislation has not come into force within 30 months after the date of this deed; and
- 7.9.2 the terminating party has given the other party at least 60 business days' notice of an intention to terminate.

EFFECT OF TERMINATION

- 7.10 If this deed is terminated in accordance with its provisions, it -
- 7.10.1 (and the settlement) are at an end; and
- 7.10.2 does not give rise to any rights or obligations; and
- 7.10.3 remains "without prejudice".

DEED OF SETTLEMENT

8 GENERAL, INTEREST, DEFINITIONS, AND INTERPRETATION

GENERAL

- 8.1 The general matters schedule includes provisions in relation to -
 - 8.1.1 the implementation of the settlement; and
 - 8.1.2 the taxation of redress, including the tax indemnities from the Crown; and
 - 8.1.3 the giving of notice under this deed or a settlement document; and
 - 8.1.4 amending this deed.

INTEREST

- 8.2 The Crown must pay interest on the financial and commercial redress amount of \$7,500,000 to the trustees on the settlement date.
- 8.3 The interest is payable -
 - 8.3.1 beginning on 16 October 2008, being the date of the agreement in principle, to the day before the settlement date; and
 - 8.3.2 at the rate from time to time set as the official cash rate, calculated on a daily basis but not compounding.
- 8.4 The interest is -
 - 8.4.1 subject to any tax payable in relation to it; and
 - 8.4.2 payable after withholding any tax required by legislation to be withheld.

HISTORICAL CLAIMS

- 8.5 In this deed, **historical claims** -
 - 8.5.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Waitaha, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that -
 - (a) is, or is founded on, a right arising -
 - (i) from the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or

DEED OF SETTLEMENT

8: GENERAL, INTEREST, DEFINITIONS, AND INTERPRETATION

- (iii) at common law, including aboriginal title or customary law; or
- (iv) from fiduciary duty; or
- (v) otherwise; and

- (b) arises from, or relates to, acts or omissions before 21 September 1992 -
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and

8.5.2 includes every claim to the Waitangi Tribunal to which clause 8.5.1 applies that relates exclusively to Waitaha or a representative entity, including the following claims:

- (a) Wai 664 – Waitaha Tribal Estate claim;
- (b) Wai 702 – Waitaha Hapū Lands and Resources claim;
- (c) Wai 1178 – Ngāti Te Puku o Hākoma claim; and

8.5.3 includes every other claim to the Waitangi Tribunal to which clause 8.5.1 applies, so far as it relates to Waitaha or a representative entity.

8.6 However, **historical claims** does not include the following claims -

8.6.1 a claim that a member of Waitaha, or a whānau, hapū, or group referred to in clause 8.8.3 may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not a Waitaha tupuna referred to in clause 8.9.1:

8.6.2 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 8.6.1.

8.7 To avoid doubt, clause 8.5.1 is not limited by clauses 8.5.2 or 8.5.3.

WAITAHA

8.8 In this deed, **Waitaha** or the **settling group** means -

8.8.1 the collective group composed of individuals who descend from one or more Waitaha tupuna; and

8.8.2 every individual referred to in paragraph 8.8.1; and

8.8.3 every whānau, hapū, or group to the extent it is composed of individuals referred to in paragraph 8.8.1.

DEED OF SETTLEMENT

8: GENERAL, INTEREST, DEFINITIONS, AND INTERPRETATION

8.9 For the purposes of clause 8.8.1 -

8.9.1 **Waitaha tupuna** means an individual who -

- (a) exercised customary rights by virtue of being descended from-
 - (i) Hei; and
 - (ii) Waitaha; and
- (b) exercised the customary rights within the area of interest at any time after 6 February 1840; and

8.9.2 a person is **descended** from another person if the first person is descended from the other by -

- (a) birth; or
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with Waitaha tikanga; and

8.9.3 **customary rights** means rights according to Waitaha tikanga, including -

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources; and
- (c) rights to affiliate to marae; and
- (d) rights of burial.

AREA OF INTEREST

8.10 **Area of interest** means the area identified as the area of interest in part 1 of the attachments.

ADDITIONAL DEFINITIONS

8.11 The definitions in part 5 of the general matters schedule apply to this deed.

INTERPRETATION

8.12 The provisions in part 6 of the general matters schedule apply in the interpretation of this deed.

DEED OF SETTLEMENT

SIGNED as a deed on 20 September 2011

SIGNED by the trustees of
TE KAPU o WAITAHA -

- for and on behalf of WAITAHA; and

Frank Puroku Grant

- as trustees of
TE KAPU O WAITAHA
for and on behalf of that trust

Areta Donna Gray

Tonty Tapua Te Amo

Bernard Te Huaki Whareaorere

George Wehi Clarke

WITNESS

A Potaka

Name: SANDRA POTAKA

Occupation: MARANGA WAITAHA FACILITATOR

Address: 156 MANOEKA ROAD, TE PIKE

DEED OF SETTLEMENT

SIGNED for and on behalf of THE CROWN by

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

Christopher Finlayson
Hon Christopher Finlayson

WITNESS

[Signature]

Name: Petrucci Flavell
Occupation: Member of Parliament - Waikato
Address: 23 Ranginui St
Ngongotaha
ROTORUA

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

Simon English
Hon Simon William English

WITNESS

[Signature]

Name: Aronaere Houkamau
Occupation: Ministerial Advisor
Address: Wellington

DEED OF SETTLEMENT

WAITAHA WITNESSES

Levebankland.

J. G. G. G. G.

Makini

Hurwaka Nganduka Rewa

Quind.

Lame Rakau Muikapa

M. P. P.

J. G. G.

Matchishii (mchi) Khorp.

le. Whare.

Te kare ngahana ngahaechi.

J. N. A. H. H. H.

Sard Maniro

R. W. W.

Hinapouri Mata

Thune Mohona

Rereas Wilson - Tanotiu

Te hancakeke Bickis (nee Tuholcaluina)

4266 Manoaeka Road * Pihonai, Edward
+ Mc Kani - Rose.

Noah Kapu Kavaka - Senior

Robert Hauami Muma

DOROTHY RATA WATSON

Tanica Dinsdale

Rihari Whareaore. Toite

Maruki Dinsdale

Tellani Dinsdale

Raeyn Whareaore

Broughton Whareaore

Lewis Kapua

Era Kapua

Nikorina Kapua..

~~Langston~~

Ngarimu Clarke

Henare Hadfield

5/8

DEED OF SETTLEMENT

WAITAHA WITNESSES

Markie Watson Waitaha

Rita Watson

John Hancock Rangiwewehi

John Hancock Rangiwewehi

John Hancock Rangiwewehi
Basil Waitaha

Kinga Lee Mearns

Erna Rihara Nuku Ulu

Rawana Winita Mita-Ngata

Erna Rihara Nuku Ulu

Wairangi Mearns Karaka-Lilake

Raven Jellicoe

Barbara Helen Grant

A. H. Whareare

Deata Kokiri

Wharekarewa Whare

A. H. Whareare

Dobene Emsdale

Akiniki Te Iwi Poto O'Hauraki Wharearewa

TE WAATA TE PUKU TARANGI

Gioia Grant Tuhoi Ngatikahurangi

Isaac Grant Waitaha Tuturu

5
KOKIRI RONAKI
MARAĒA RONAKI
TE KOKIRI RONAKI
NAI-VIKOCA RONAKI
NGATOĀ RONAKI

~~X Rudi~~

Anivi Heyblom

Parekura Whareaoreere
Chevez WILLIAMS:

Nipori Tuana'u

Nga mihi
Rereanana Pihlaka

Carl Maui Dinsdale

Ashli Kanapa

Mikaeli Whareaoreere

Skye Whareaoreere

Ongel Whareaoreere

Jawira Poyal

Tekia Toia

Heremara Izaya Apunui Kauri

Kencariki Jayden Arape te Kauri

Caleb Clark

Damon Apunui Kauri

Melissa Kapene

Raymond Kapene

5 KATENE WICKLIFFE OCTOBER ~~After~~ October

Jane Jones 20-09-2011

Hayden October 20-09-2011

Junia October 20-09-2011

Quade October 20-09-2011

Ajaha Rose October 20-09-2011

Teriti Kapu Karaka
Ngarimu Venus Karaka

Jenni Lino 20/9/2011

VERONI CLARKE 20.9.11

UNIQUE CLARKE 20.9.11

TEHANI DINSDALE 20.9.11

KLUNI CLARKE W/TEMUHEXBIOM

JESSE REWITA

Linda Clarke

KIATAN REWITA

20.9.11

TUNITAUHI TETANO

Naomi Hangaia Kapere

ERE TETANO

Hinemanuhiri Kapere

Carliza Patuawa (Malcolm) 20.9.11

Allay Kapere

Alexander Patuawa 20.9.11

Summer Kapere

Le Pea Ronaki

Detroit Meleisea

WIKI NETANAHATHAN Patuawa

Caleb Tuanau

Tiri Rakura Kapere M. Kapere

Henare Tuanau

Oceana Kapere

Wipori Tuanau

Kiapani Kapere

Paul Tuanau

Paul Tranau

Henare Tranau

Caleb Tranau

Sienna Tranau

Ronan Whareavele

KiriKaiahiahi Kapene-Toia

Hangaia Kapene-Toia
Samuel Toia

DEED OF SETTLEMENT

NB

WAITAHA WITNESSES

Martha Skudder
Anisley Skudder
Hamish Skudder

Koroia Heyblom
~~John~~

Molly Payne
Molly Sweet
Ngahere Dunn
Aphorena Bidois
Amethyst Bidois
Wharepohue Karaka
Kawana Karaka
Jolene Maclellan

ARYAHN.

Trinity
Te Aute. x0

Wairaka Whare

Tamakaimoana Bernard Tuwaima Whareorero

Takakopiri Niheta Gracesun Whareorero

Hakarua Jeremiah Whareorero

Rangihuea Ngahere Whareorero

Sophie Le Moir

Toara Le Moir

Rangitoanhu Le Moir

Le Anokura Le Moir

Kapa Whare
Kere Whare

Keneeriki Kauri

Heremaia Kauri

MIRIA C Kapene

Correll Teira

Thipera J Kapene

Samuel Teira

Atamura Kapene

J. Kapene

Aryahn Clarke :)

9
Galahu yfhuini

P. Clarke 20/09/2011

J. Dinsdale 20/09/2011

(Mōhi Ngata Kanguwewehi)

Luchana Phipps (Wasteha)

P. Clarke 20.09.2011

Justice Clarke 20.09.2011

Ashley Zaad 20.09.2011

Jury Zaad 20.09.2011

Je Hines Zaad 20.09.2011

Edward Williams "

Hinehau Butcher "

Tynitia Butcher "

Ngarimu Clarke "

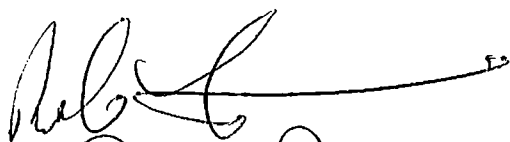
Te Rūti Clarke "

Caleb Clarke "

Petipeti Okotopa "

Hine Pepera "

Wairua Pepera, "



Raana Raneka, Joel, Tara & Kiriwahi Grant



DEED OF SETTLEMENT

WAITAHA WITNESSES

Jordan Whataurangi, Paivama
Joshua Kapene
Atamiva Kapene
Amokura Hyblom.

Nyomi Dinsdale, Levi Dinsdale, Shanae
Dinsdale Shoura Barrett,

~~Walter~~
Jamie Temoni Jamie Felloni
Ngakohu Falwasser ~~H. Falwasser~~
Toti Payner.
Ivornis Utepere
Ruger Falwasser.

Hapati Sabbath King
Naretta Tauwhara Amirana
Raha Dinsdale-Bel Ngati Marukukare.

Brian Phillips
Erina

TIATOMARAMA TEHAANA FAIRITALL
UENUKU FAIRITALL
AROHAI FAIRITALL

TE ARUTE KOKIRI
Jimmy Heemi KOKIRI

P. Clarke, Pearl Clarke

MR Bidais William Simpson
Jason Simpson

Caitlin Webber-Taufale

LISA TUNCI

Aneta Koojan CBE

Sasha Willis

Halle Simpson

Nancy Johnson

Andrea Rardell AJ Pura

Sharon Potaka

PP W. Clark

Philip Phillip

Nancy Rebecca Johnson

Selena Phillip-Edwards

C. Pottli

Manoah

Julia Clarke

Mahakana Nekesi

PP W. Clark

Sharon Teant (noia)

Wasser Clady
Julian Clady

Sharon Clarke

Makai Karaka

Wairana Pepere

Tynitia Butcher

Anehan Butcher

Sylvia Hemera
Mrs Walker
Willison

Anna

Okeloa Robinson

F. Lunge

Tenekamuku Jansen

im wihapi

NATHAN TUNCI

3 Putuloo Coventry.

"Amirra Wira Raovore"

