

W&C

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

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**DEED OF SETTLEMENT SCHEDULE:**  
**DOCUMENTS**

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DOCUMENTS SCHEDULE

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# 1 TE WHAKAIRINGA KÖRERO

*I heke iho i te rangi  
 te whakairinga o ngā kōrero me ngā taonga  
 heke iho i ngā heke  
 ki ngā poupou  
 kia pouhia ki te whenua  
 kia kore ai e taka ki te taha ki te he*

*(All knowledge and understanding are the treasures that descended from the heavens and were established within the tāhuhu (main beam) of the meeting house. It is from there that these treasures descend again to the heke (beams connecting the roof to the walls). From the heke they descend again to the poupou (mainstays of the meeting house) where they were firmly implanted at the base, to the land.)*

Te Whakairinga Kōrero descends from the heavens and reflects the higher processes that guide Waitaha. Te Whakairinga Kōrero is consistent with the tikanga of Waitaha and with the whakatauki and provides Waitaha with guidance at the practical level while giving Waitaha something to aspire to, grab hold of and hold on to.

Te Whakairinga Kōrero is not focused solely on the land, but is a reflection of the relationship of Waitaha with the wider environment. Waitaha is the environment and the environment is Waitaha.

All understanding and kōrero descends from the heavens. These treasures suspend from the tāhuhu before it is translated into wise utterances and conversations.

The Crown acknowledges that, in its dealings with the Crown, Waitaha are guided by the values in the above statement; and seek outcomes that enable Waitaha to be Waitaha.

## Ngā Tikanga o Waitaha

Waitaha state that -

- i. Waitaha are an ancient tribe who descend from Hei and his son Waitaha who arrived on the waka Te Arawa and whose traditional rohe extended from Hikurangi in Katikati to Ōtūmatawhero along the Pāpāmoa coast; and
- ii. Waitaha have 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 i.e. 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;

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- 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 Whānaungatanga – 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.

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1: TE WHAKAIRINGA KÖRERO

ŌTAWA

A. Description of the Area

20 hectares (as shown on deed plan OTS-075-01), being Part Section 1 Block VIII Ōtanewainuku Survey District, Part Section 28 Block V Maketu Survey District and Part Otawa 2.

B. Preamble

The Crown acknowledges the statements made by Waitaha of their cultural, spiritual, historic and traditional values, set out below, relating to Ōtawa (within Otawa Scenic Reserve). The Crown acknowledges that, in its dealings with the Crown, Waitaha are guided by these values and that Waitaha seek outcomes that enable Waitaha to be Waitaha.

The Crown acknowledges that Ōtawa is an integral part of the ecological corridor from the Waimapu to the Waiari, and Te Whakairinga Kōrero unites the values of Ōtawa to Waitaha with the responsibilities of the Crown to manage Ōtawa as part of Otawa Scenic Reserve.

C. Statement of Values

Statement of cultural association of Waitaha with Ōtawa

*“Ka pouhia a Ōtawa ki te rangi te upoko o Hei. I heke iho i te rangi ki te whenua. Ka heke iho i ngā paritu o Ōtawa ki te mimi o ngā tupuna a Hineui me Hinenui ki runga i ngā Kirikiri. Ko te Kuharua, ko te aroaro o te wahine kei raro ko Te Puata o te Rangi kei runga. Ko Ōtawa te maunga. Ko Hei te tupuna. Ko Takakōpiri te tangata. Ko te pūtaratara o te tuanui. Tahuhu whakairinga korero. Ka tū te ihiihi.*

*Ka tū te wanawana. Tai tū te wehi o te moana o Punga ee e mauri. Ko Waitaha te iwi. Te Arawa te waka”.*

Ōtawa is a principal maunga of Waitaha.

The maunga was first claimed by Hei. Waitaha tradition is that while Hei was still on board the waka Te Arawa he claimed Ōtawa for his son Waitaha. Ōtawa was the name of one of the poutiriao that was used to separate Ranginui and Papatūānuku by Tanenui-a-Rangi. From this derives the Waitaha whakataukī:

*Ko Ōtawa te maunga  
Ko Raparapa-ā-Hoe te awa  
Ko Hei te tūpuna  
Ko Takakōpiri te tangata  
Ko te pūtaratara tāhuhu whakairinga korero  
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*

No matter where you are from Tauranga to Katikati, Ōtawa is always visible. Ōtawa is the maunga of Takakōpiri and he is buried in a cave in these hills.

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1: TE WHAKAIRINGA KÖRERO

Ōtawa represents the mana and mauri of the tribe Waitaha. Ōtawa has its own spiritual energy and identity. Respect for te mauri o Ōtawa is at the heart of the relationship between Waitaha and our ancestral mountain. Waitaha regard our maunga with reverence and love. It is the spiritual symbol of our tribal identity. "Nō mai anō" Waitaha have adhered to the tikanga (values) embodied in our profound respect for our maunga tapu Ōtawa.

Ōtawa sustains the people physically and spiritually. It brings our people peace in times of stress, relief from illness and pain, and cleanses and purifies our bodies and souls from the many problems that surround us.

When someone asked "Kei hea a Ōtawa?", the old people would wave their arms and say "ara" signifying that Ōtawa is much more extensive than a mountain peak but part of the greater Pāpāmoa range. They would say:

*"E hoki ki nga maunga kia puhipuhia a koe e ngā hau o Tawhirimatea".*

(Return to your mountain to be cleansed spiritually and physically by the winds of Tawhirimatea)

Ōtawa was the most significant pā of Waitaha and in time, Waiokehu occupied this pā, then he conferred the pā to his son Takakōpiri. The Pāpāmoa Ranges in ancient times was referred to as Te Uku o Takakōpiri. Te Uku o Takakōpiri begins at Te Rae o Pāpāmoa and continues up towards Ōtanewainuku. Ōtawa is a significant ancestral and important wāhi to Waitaha. Ōtawa was lost when the confiscation line was extended in 1868.

Te Awarua is the track that was used by our Waitaha tūpuna to cross over to Ōtawa from Te Puke to Paepae Kohatu and other pā and kāinga located in Tauranga. Today it is known to Waitaha as the Saddle. It was also used by our whānau who were living on the Tauranga side of Te Uku o Takakōpiri to crossover to Te Puke and the other pā and nohoanga kāinga in the district. This track was used by the Patupaiarehe.

**D. Protection Principles**

The Waitaha Protection Principles are directed at the Minister of Conservation to assist the Crown to recognise and respect Waitaha aspirations for a sustainable future and in avoiding harm to, or the diminishing of the values of Waitaha and Ngā Tikanga o Waitaha in relation to Ōtawa:

1. Protection of wāhi tapu, indigenous flora and fauna, and the wider environment on Ōtawa;
2. Protection and recognition of the mauri of Ōtawa;
3. Recognition of the mana, traditions and tikanga of Waitaha on Ōtawa;
4. Respect for the mana, traditions and tikanga of Waitaha on Ōtawa;
5. Encouragement of the respect for the association of Waitaha with Ōtawa;
6. Accurate portrayal of the association of Waitaha with Ōtawa;

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1: TE WHAKAIRINGA KÖRERO

7. Recognition of the relationship of Waitaha with the Waitaha wāhi tapu and wāhi whakahirahira of Ōtawa.

**E. Actions by the Director-General of Conservation in relation to specific principles**

Pursuant to clause 5.1.5 of the deed of settlement, the Director-General has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles.

1. Protection of landscape, archaeological and historic sites and the indigenous flora and fauna of Ōtawa will be part of the future management through regular monitoring and by advocating sound and sustainable environmental planning principles and processes;
2. Department of Conservation staff, contractors, conservation board members, concessionaires and the public will be provided with information about Waitaha values and Ngā Tikanga o Waitaha in relation to Ōtawa and the existence of the Te Whakairinga Kōrero over Ōtawa and will be encouraged to respect the association of Waitaha with Ōtawa, and the mauri of Ōtawa, within Ōtawa Scenic Reserve;
3. The Department of Conservation will work with the trustees on the design and location of all new signs to discourage inappropriate behaviour, including fossicking, the modification of wāhi tapu sites and disturbance of other taonga on Ōtawa;
4. The public will be informed that the removal of all rubbish and wastes from Ōtawa is required;
5. The Waitaha association with Ōtawa will be accurately portrayed in all new Department of Conservation information and educational material;
6. The trustees will be consulted regarding the provision of all new Department of Conservation public information or educational material regarding Ōtawa, and the Department of Conservation will only use Waitaha cultural information about Ōtawa with the consent of the trustees;
7. Significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible on Ōtawa;
8. Where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, the trustees will be consulted and particular regard will be had to their views, including those relating to kōiwi (human remains) and archaeological sites; and
9. Any kōiwi or other taonga found or uncovered by the Department of Conservation will be left untouched and the trustees informed as soon as possible to enable Waitaha to deal with the kōiwi or taonga in accordance with their tikanga, subject to any procedures required by law.

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1: TE WHAKAIRINGA KŌRERO

TE ARA A HEI

**A. Description of the Area**

115 hectares (as shown on deed plan OTS-075-02) being Part Waitaha I Block and Part Te Puke Block.

**B. Preamble**

The Crown acknowledges the statements made by Waitaha of their cultural, spiritual, historic and traditional values, set out below, relating to Te Ara a Hei. The Crown acknowledges that, in its dealings with the Crown, Waitaha are guided by these values and that Waitaha seek outcomes that enable Waitaha to be Waitaha.

The Crown acknowledges that Te Ara a Hei is an integral part of Ōtanewainuku Forest and Te Whakairinga Kōrero unites the values of Te Ara a Hei to Waitaha with the responsibilities of the Crown to manage Te Ara a Hei as part of Ōtanewainuku Forest.

**C. Statement of Values**

**Statement of cultural association of Waitaha with Te Ara a Hei**

Hei and his son Waitaha were aboard the waka Te Arawa on its journey from Hawaiki. Hei stood and made a claim to the mana of the land for Waitaha "te takapū o tāku tama, Waitahanui a Hei". Waitaha settled on the land claimed by Hei.

Ōtanewainuku is an area that provided Waitaha with sustenance and shelter. Te Ara a Hei covers several significant waterways, nohoanga kāinga and mahinga kai areas. Te Ara a Hei is of further significance to Waitaha as one of the landmarks reminding everyone of the loss of land in the 19<sup>th</sup> century.

**Tunatarawa**

This is a significant hill of Waitaha. It is situated along Te Ara a Hei. This was a sentry outpost, a pūhara. It's name Tunatarawa refers to a battle formation involving wave upon wave advancing in attack or defence; with the battle lines never breaking. It is likened to the waves of the moana, wave upon wave but never breaking up. This is the defensive formation along the ridge where the outer formation is te pūhara or outpost "lookout". Tunatarawa was a strategic and defensive position from attack either from Ōtanewainuku or from Takarangi, Ohui or Maungaruahine.

**Whataroa**

Hakoko Creek runs into the Whataroa Stream which in turn runs into Te Raparapa-ā-hoe. These water sources along the ridge areas are significant for Waitaha. The Whataroa Pā was a nohoanga kāinga used by Waitaha to gather and preserve birds such as kererū, tuna, fish and plants from the forest. Species would include harore and pikopiko which flourished at certain times of the year. This pā was used as a retreat during times of hostilities on the coastal boundaries of Waitaha.

**Te Patu o Tupahau**

The significance to Waitaha of this location is about the utu that took place when Tuparahaki sought revenge for the killing of her husband Tutehe. Tupahau is the mokopuna of Tuparahaki and



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1: TE WHAKAIRINGA KŌRERO

Kaihamu. This pā was used by Waitaha as a base for mahinga kai and in times when Waitaha sought refuge.

**Kōkōmuka Creek**

Kōkōmuka Creek is a significant waterway in this area. There were many nohoanga kāinga which depended on this creek for mahinga kai. This creek provided water for Waitaha passing through this area going to Tauranga and the Waikato and their relations coming from Waikato to visit them.

**Taringakoko Pā**

This pā was of significance to Waitaha as one of the many bases for mahinga kai. It was also a place where Waitaha used nearby tracks when they travelled between Te Puke and Tauranga and further afield to the Kaimai.

**Te Kopuaroa Stream**

Te Kopuaroa (sometimes known as Te Kopuroa) goes through Te Kopuaroa repo, then west to Hikutawatawa. It is significant to Waitaha because it links the area from Te Kopua where the Kaituna turns down the coast, to the lowlands of the Pāpāmoa Hills. This was one of the main waterways of Waitaha and was used to navigate to and from different pā. It was also a rich food source for Waitaha with clear waters and many koura and eels. Today its waters are dirty with mud from industrial activity. Waitaha looks forward to the quality and wairua of this important waterway being restored.

**Waimihia Kāinga**

Waimihia was a nohoanga kāinga used during the food gathering season. It was used for preserving hua manu such as kererū and other food gathered from the forests. It is located on the Waimihia Stream, one of the many awa of Waitaha. From Waimihia, we follow the Waimihia Creek to Te Patu o Tupahau and Paraiti, to Hakoko, to Manaroa Pā, then following Te Raparapa-ā-hoe we come to Maungaruahine Pā, a defensive pā linked to these sites.

**Waimihia Creek**

Waimihia Creek is located in Te Ara a Hei and flows from Te Raparapa-ā-Hoe. This creek is mainly associated with Waimihia Kāinga, and was a source of water for that kāinga. Its waters were used to support mahinga kai and also when Waitaha preserved food gathered from the forests.

**D. Protection Principles**

The Waitaha Protection Principles are directed at the Minister of Conservation to assist the Crown to recognise and respect Waitaha aspirations for a sustainable future and in avoiding harm to, or the diminishing of the values of Waitaha and Ngā Tikanga o Waitaha in relation to Te Ara a Hei.

1. Protection of wāhi tapu, indigenous flora and fauna, and the wider environment of Te Ara a Hei.
2. Protection and recognition of the mauri of Te Ara a Hei
3. Recognition of the mana, traditions and tikanga of Waitaha Te Ara a Hei
4. Respect for the mana, traditions and tikanga of Waitaha on Te Ara a Hei

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### 1: TE WHAKAIRINGA KÖRERO

5. Encouragement of the respect for the association of Waitaha with Te Ara a Hei
6. Accurate portrayal of the association of Waitaha with Te Ara a Hei
7. Recognition of the relationship of Waitaha with the Waitaha wāhi tapu and wāhi whakahirahira of Te Ara a Hei

#### **E. Actions by the Director-General of Conservation in relation to specific principles**

Pursuant to clause 5.1.5 of the Deed of Settlement, the Director-General has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles.

1. Protection of landscape, archaeological and historic sites and the indigenous flora and fauna of Te Ara a Hei will be part of the future management through regular monitoring and by advocating sound and sustainable environmental planning principles and processes.
2. Department of Conservation staff, contractors, conservation board members, concessionaires and the public will be provided with information about Waitaha values and ngā tikanga o Waitaha in relation to Te Ara a Hei and the existence of the Te Whakairinga Kōrero over Te Ara a Hei and will be encouraged to respect the association of Waitaha with, and the mauri of, Te Ara a Hei
3. The Department of Conservation will work with Waitaha on the design and location of all new signs to discourage inappropriate behaviour, including fossicking, the modification of wāhi tapu sites and disturbance of other taonga in Te Ara a Hei ;
4. The public will be informed that the removal of all rubbish and wastes from Te Ara a Hei is required;
5. The Waitaha association with Te Ara a Hei will be accurately portrayed in all new Department of Conservation information and educational material;
6. The trustees will be consulted regarding the provision of all new Department of Conservation public information or educational material regarding Te Ara a Hei, and the Department of Conservation will only use Waitaha cultural information about Te Ara a Hei with the consent of the trustees;
7. Significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible on Te Ara a Hei;
8. Where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, the trustees will be consulted and particular regard will be had to their views, including those relating to kōiwi (human remains) and archaeological sites; and
9. Any kōiwi (human remains) or other taonga found or uncovered by the Department of Conservation will be left untouched and the trustees informed as soon as possible to enable

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**1: TE WHAKAIRINGA KÖRERO**

Waitaha to deal with the kōiwi or taonga in accordance with their tikanga, subject to any procedures required by law.

## 2 STATEMENTS OF ASSOCIATION

The statements of association Waitaha have for these sites are set out below. These are statements of the particular cultural, spiritual, historical, and traditional association of Waitaha with identified areas.

### The peak of Ōtanewainuku (as shown on deed plan OTS-075-03)

Ōtanewainuku is a maunga whakahirahira for Waitaha. The pūrākau of Mauao is significant to Waitaha because of the strong associations of Waitaha to the maunga Mauao, Pūwhenua and Ōtanewainuku.

In ancient times, there were three maunga that were located in the Hautere Forest. The mountains are Ōtanewainuku, Pūwhenua and the last one which was subordinate to Ōtanewainuku was nameless. The nameless one fell in love with the beautiful maiden Pūwhenua. However, Pūwhenua rejected the love of the nameless one because she was in love with Ōtanewainuku. In despair, the nameless one asked the Patupaiarehe to drag him out to the ocean so that he could drown himself. The name of the river Waimapu refers to how the tears from the sobbing of the nameless one while he was being dragged out to the ocean formed the river. The Patupaiarehe were a people of the night. As they dragged the nameless one out to the ocean, the sun rose and they had to return home, leaving this maunga where he now stands. He then became known as "Mauao" (caught by the light of the dawn).

During times of conflict, our tūpuna would withdraw from the coastal areas and move to pā on Ōtanewainuku; they would move to and from this area to other locations including Maungaruahine, Takarangi, Ohui and Otaumaru. These formed a strategic defence line for Waitaha. When conflict was resolved, they would move back toward the coast. Ōtanewainuku maunga is part of a complex of mountains and ridges linking Pūwhenua, Mauao, Ōtanewainuku, Ōtara, Ōtawa, Maungaruahine, Takarangi and Te Tapuae across to Te Puke.

With many waterways as a source of fresh water, Waitaha had many cultivation areas, māra kai, and had fish and birds to sustain them. A lot of our native fish stocks were managed in this area as many species would migrate up to the higher altitude for spawning. During the correct seasons, our people would gather and preserve fish and birds in this area.

### Okotare

Ōtanewainuku is a maunga whakahirahira for Waitaha. A large number of Waitaha pā sites are situated on and around the maunga, including Okotare Pā which is located at the tihi of Ōtanewainuku.

Te Rerenga is a significant source of water for Okotare Pā. Te Rerenga Stream originates in the fissures in the rocks at Ōtanewainuku, and then flows on both sides of Ōtanewainuku marking the boundary of the rohe o Waitaha. To the east, Te Rerenga flows into the Waiari and to the west into the Waimapu.

It was from here that the story of Ōtanewainuku, Pūwhenua and Mauao emanated. The story of these three maunga is well known pakiwaitara of Te Moana o Tauranga. Okotare is a significant ancestral pā to Waitaha.

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### 2: STATEMENTS OF ASSOCIATION

#### **Maungapiripiri**

Ōtanewainuku is a maunga whakahirahira for Waitaha. A large number of Waitaha pā sites are situated on and around the maunga, including Maungapiripiri Pā which is located at the top of Ōtanewainuku.

Te Rerenga Stream is a significant source of water for Maungapiripiri Pā. Te Rerenga Stream originates in the fissures in the rocks at Ōtanewainuku, and then flows on both sides of Ōtanewainuku marking the boundary of te rohe o Waitaha. To the east, Te Rerenga flows into the Waiari and to the west into the Waimapu. There were ancient tracks recorded by our Waitaha tūpuna through the Ōtanewainuku forest, one of them being Te Papa o Tao.

The area known as Maungapiripiri is a significant ancestral wāhi tapu to Waitaha.

## 2: STATEMENTS OF ASSOCIATION

**Four wāhi tapu sites within Ōtanewainuku Forsest****Hakoko Creek (as shown on deed plan OTS-075-04)**

He awa, he mahinga kai, he nohoanga kāinga mō Waitaha. He kāinga hoki hei whakata mo te hunga ka hikoi mai i uta ki Tauranga mai Tauranga ki uta. Ahakoa tona iti ka rere, heke atu te awa. Ka hono ki te awa o Te Raparapa-ā-Hoe. Although this is a relatively small stream it contributes to the larger catchment of Te Raparapa-ā-Hoe. All our rivers are pātaka kai. Hakoko is located above Maungaruahine and flows into Te Raparapa-ā-Hoe.

**Paraiti Creek (as shown on deed plan OTS-075-04)**

Tēnei awa ahua rahi atu i te Hakoko. He awa, he pātaka kai. He nohoanga kāinga tēnei hoki mō o matou whānaunga e haere ana ki Tauranga a ka hoki atu ki Rotorua. This area was strategically placed and was a safe place for overnight stays. It was a place that the Waitaha chiefs asserted and exercised their rights although there were strong contests between some of the Waitaha hapū. Our tupuna Hakaraia stood firm for the consolidation of Waitaha. Paraiti is located above Maungaruahine; and is another stream that flows into Te Raparapa-ā-Hoe.

**Popaki Creek (as shown on deed plan OTS-075-04)**

Popaki joins the other streams in this area as an important wai Māori resource. Strategic in location and located close "ki ngā pā", it also, like the other creeks, serves as a nohoanga kāinga and a resting place for whānau and hapū travelling between Rotorua and Tauranga. Hakoko, Paraiti and Popaki were occupied because of their strategic location. They were able to provide sustained protection and sustenance for travelers. Land was always available for "mahinga kai" and whānau were encouraged to share in the growing, harvesting and storage. Preserving kai from the sea, bushland and river was a continuous occupation. Popaki Creek is located above Paraiti and flows into Te Raparapa-ā-Hoe.

**Kaokaonui Kāinga (as shown on deed plan OTS-075-04)**

He pā, he maunga, he rahi ōna tahataha. It is situated below the Mangatoi Stream. Flowing alongside the pā is Kaokaonui Creek which runs into the Mangatoi. This is a pā occupied by Waitaha because of its proximity to the bush food resources. Kaokaonui Pā like the pā situated along the ridge of Ōtanewainuku formed a tangible link to the defensive network of Waitaha pā.

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2: STATEMENTS OF ASSOCIATION

**Te Raparapa-ā-Hoe (labelled as Raparapahoe on the map used for deed plans OTS-075-05 and OTS-075-09)**

Te Raparapa-ā-Hoe is an awa sacred to Waitaha. The name relates to the many waterfalls and rock formations along its course. It could only be navigated by waka to a certain point and then the rapids made it impossible to continue rowing. Te Raparapa-ā-Hoe has its origins in fissures fed by many underground waterways. For Waitaha, Te Raparapa-ā-Hoe links the iwi with the maunga Ōtawa, the land on Ōtara that belongs to Waitaha (Te Ūpoko o Taranui), Otaua and Tahipukuhu.

Te Raparapa-ā-Hoe flows two ways, both above and below the ground. From the Kaituna River, we go through the Atuaroa Stream to Te Hiapo, then we go to Te Waiwhero, then up to Motungarara Pā, then to Tuahu o Te Makawe, then to Takapara, through Waikokowai repo, through Te Ara o Kahureremoa, past Hei Marae, Te Taumata Urupā, Haraki Marae, further up is Oteao, Ngahune, Hapaitataura Pā (Te Moemiti), past Te Puata. It meets with Te Kirikiri Stream, to Te Puata Pā, then to the Waikokoi Stream and Te Waikokoi Pā. We go up to Wairapukao Creek, then to the Hungahungatoroa creek, then to Rawaru. To the east we go to Maungaruahine Pā, to Te Manaroa Pā then to Hakoko Creek and Paraiti Creek and Te Patu o Tupahau, then to Waimihia Creek and Waimihia Pā.

From the Kaituna we also go through the Atuaroa Swamp to Te Kopuaroa, then west toward the Pāpāmoa Hills. In this direction are sites including: Te Waikokowai repo, Te Korikori, Te Awarua (the Saddle), Te Whare o Te Tarakeho Pā, and then further up is Omarama repo.

Te Raparapa-ā-Hoe is the lifeblood of Waitaha. It flows past and connects many sites of significance to Waitaha including Onuku Rangitekapua, Puke Poto, Te Manaroa, Te Kopuru, Mangamatai, Hapaitataura and Motungarara. Hei Marae is the only Waitaha marae. It is located on Te Raparapa-ā-Hoe which was used for transport, to irrigate cultivations and to provide food and resources for the pā. Motungarara refers to the red kūmara bug. During different parts of the seasons, our whānau would go there and use the waters from Te Raparapa-ā-Hoe to rid our cultivations of the kūmara bug.

Te Taumata is an urupā near Hei Marae on the banks of Te Raparapa-ā-Hoe. It is the place where tūpāpaku were interred so they could be taken back to Rangiwewehi at a later time.

Te Atuaroa River forms where Te Raparapa-ā-Hoe is joined by the Kirikiri, but it is still called Te Raparapa-ā-Hoe. At the confluence of these waterways is the pā, Te Puata. Te Puata was the pā of Haraki, the first wife of Te Iwikoroke. Haraki is also descended from Waitaha and this alliance strengthened the Waitaha lines. Te Ahipuaki is the pā of Te Iwikoroke and is located near the maunga Ōtawa. The name of this pā refers to the rays of the sun because it is an area where you get the sun very early in the day. Te Puata and Te Ahipuaki are located very closely together, hence the whakataukī, "*ka titiro atu a te Iwikoroke; ka titiro mai a Haraki* (Te Iwikoroke looked, and Haraki looked back)".

Waikokoi was a Waitaha pā and it had mahinga kai. It lay at the junction of Te Raparapa-ā-Hoe and Waikokoi streams. The main tracks coming down from Ōtawa crossed through here to Te Tapuae and Te Puke the original Te Puke, not the town now known as Te Puke. It is in this area of Te Raparapa-ā-Hoe that fishermen came across giant tuna with holes in their tails. These tuna had been left there to feed the tuna that were trapped in the crevices in these rocks. Anyone taking these tuna is advised to throw them back straight away as they are kaitiaki and were kept for that purpose. The names of these tuna referred to by our tūpuna for these eels are "Koroua" and the tuna that they feed on are called "Tūpuna".

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**2: STATEMENTS OF ASSOCIATION**

The Wairapukao Stream flows into Te Raparapa-ā-Hoe and is located near Muirs Reef. The area above Muirs Reef was known by Waitaha as Rawaru. Hungahungateroa Creek flows into Te Raparapa-ā-Hoe and is also located near Muirs Reef.

Hakoko and Paraiti are in the same area and are located above Maungaruahine. They both flow into Te Raparapa-ā-Hoe. Popaki is another stream that flows into Te Raparapa-ā-Hoe. It is above Paraiti.

Waimihia was a nohoanga kāinga used during the food gathering season. It was used for preserving kererū and other food gathered from the forests. It is located on the Waimihia Stream which also flows into Te Raparapa-ā-Hoe.



## 2: STATEMENTS OF ASSOCIATION

**Waimapu River (as shown on deed plan OTS-075-06)**

From Ōtanewainuku, Te Rerenga Stream flows east into the Waiari and west into the Waimapu River. From the source of the Waimapu near Ōtanewainuku to where it flows into the Waimapu estuary and then across Te Awanui to Waikorire, numerous Waitaha pā are sited on the river. The Waimapu provided sustenance for the people who lived in the pā. It supported the hapū mahinga kai. It was a navigational waterway, and many traditional ceremonies took place on and in the river. It was considered the life-blood of the hapū and also a valuable resource for the people who traversed from one place to another.

Near Ōtanewainuku is Opakapaka. We follow the Waimapu to Waikahikatea, then to Kokomuka Creek, to Te Pā o Ruarangi and through Te Rii o Hakaraia, to Oropi and then to the Toropoko Stream; nearby are Te Ketekete o Ōtawa, Waoku and Maungatutu (Mount Misery). We go to Waimapu Pā, then to Tongaparoa and Te Auhi and on to the Waimapu Estuary where we go to Hairini, and across the Estuary to the west we see Pukehinahina then to the east is Maungatapu, and the pā Te Ouwe, Te Puru, Pā o Te Ariki and Opopoti. Motuopuhi (Rat Island) is located in the Estuary, then from Maungatapu you cross the causeway to Matapihi, Waikari to Te Ngaeo, and then out to Waikorire at Mauao.

In ancient times, there were three maunga that were located in the Hautere Forest. The mountains are Ōtanewainuku, Pūwhenua and the last one, which was subordinate to Ōtanewainuku, was nameless. The nameless one fell in love with the beautiful maiden Pūwhenua. However, Pūwhenua rejected the love of the nameless one, because she was in love with Ōtanewainuku. In despair, the nameless one asked the Patupaiarehe to drag him out to the ocean so that he could drown himself. The name of the river Waimapu refers to how the tears from the sobbing of the nameless one while he was being dragged out to the ocean formed the river. The Patupaiarehe were a people of the night. As they dragged the nameless one out to the ocean, the sun rose and they had to return home, leaving this maunga where he now stands. He then became known as "Mauao" (caught by the light of the dawn).

An agreement was made by Naia and Ranginui I and the boundary was confirmed. The Waimapu River became the natural boundary between Waitaha and Ngāti Ranginui.

The Waitaha tupuna, Hakaraia, established an aukati known as Te Rii o Hakaraia over a significant area, under the mana of Kīngi Tawhaio. This aukati started from Ōtanewainuku and extended to the beginning of the Waimapu River mouth (Te Awanui o Waimapu). Maenene, Te Akeake, Te Taumata, Oropi, Te Ranga and Pukehinahina are significant sites included in this area.

Te Taumata was a pā associated with Waitaha. It contained mahinga kai.

Motuopuhi (Rat Island) was a nohoanga o Ngā Puhi o Waitaha. This island, which is located in the Waimapu River was where the puhi (high ranking young women) of Waitaha lived. It was referred to as Rat Island because of all the young warriors ("rats") who would try and sneak over to the island to obtain the favours of the puhi.

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2: STATEMENTS OF ASSOCIATION

**Part of the Kaituna River (as shown on deed plan OTS-075-07)**

After the arrival of the waka Te Arawa, the name of the river that ran from Ōkere to the coast was Te Awa Tii a Maru, but later on it was renamed Kaituna. Kaituna literally means an abundance of eels. Te Awa o Ngāatoro-i-rangi which is the entrance of the river was named when the waka Te Arawa was still at sea. This area is more commonly known as the Maketū Estuary. Te Tuahu o Ngāatoro-i-rangi at Maketū was built when the waka Te Arawa landed.

This river is described as “he pātaka kai” which refers to the storage of kai. The Kaituna was significant as it was a breeding ground for the eels coming from the lakes, streams and rivers on their migration to the sea. It was also the breeding area for mullet and other salt water fish species. Fish and eels were so abundant that they could be seen covering the pipi beds at these times. The Kaituna is also well known as a source of whitebait and, until recently, there was always a plentiful supply.

The waters of the Kaituna have provided food, important sustenance for the people of Waitaha, for many generations. There was an abundance of freshwater fish and eel, rongoa, edible plants and other plants such as flax which Waitaha used for domestic and ceremonial purposes. There were many settlements along the river where Waitaha traditionally lived, cultivated and based them to gather fish, eel and other kai. In later years, Waitaha also looked after livestock along with their cultivation areas. The minerals found in the rich soils of the wetland areas were highly beneficial for livestock and gardens.

Flax and other plants treasured by Waitaha also grew in abundance. With European occupation, much of the flax was harvested and milled near where it grew. It was during this period that Waitaha learnt the economic value of the wetlands. Today most of the wetland areas around our rivers are drained and much of the natural habitat has now disappeared.

Paroa Pā was the pā of Hinepiri, the eldest sister of Te Iwikoroke. Hinepiri and Te Puku o Hākoma chose the leadership of their elder brother Te Iwikoroke, while the others came under Kumaramaoa. Te Kopua and Te Karaka were also pā located in the same area and are pā which Waitaha have always associated with the Kaituna.

At the confluence of the Kaituna and the Waiari was an island on which stood Te Ngaeo Pā which was a pā associated with Waitaha. This island was destroyed by the Kaituna flood protection scheme during the 1970's.

## 2: STATEMENTS OF ASSOCIATION

**Waiari Stream (as shown on deed plan OTS-075-08)**

For Waitaha, Waiari means the "*soft, soothing sounds of the flowing water, where the voices of the tūpuna are heard*". The Waiari marks the boundary for Waitaha.

The Waiari was the scene for inter-tribal warfare in former times and was used as a strategic location. Within the Waiari catchment area are numerous pā sites, wāhi tapu and other sites of significance to Waitaha. These include places where Waitaha tūpuna were born and died, and also where Waitaha performed tribal baptisms. Some burials took place in secret and these sites are not revealed to others.

Harakeke was found in profusion along the banks of the Waiari. Harakeke was gathered for medicinal purposes; and to make weirs and hīnaki to catch eels. Eels were found in abundance along the Waiari and often they were so plentiful and the water so clear, that you could spear them from the banks rather than trapping them in weirs or using a hīnaki.

There were many Waitaha pā sites running along the western side of the river bank that were named by Hakaraia. However, most of these were destroyed by the flood protection schemes of the twentieth century.

The Waiari flows into the Kaituna at the area where the Pā Te Ngaeo formerly was; from there we go to Te Pohue, Te Arapaiaka, to Te Aore, to Kahikitea, Otaraninia, Patete, Horouauahi, which were all tangibly linked to hei puke puke maunga Te Puke Taweare, then go to Puta-a-Ruru, Otaumarū, the Oturuturu Creek, then to Waiwiri, then to the Mangatōi River to Te Rerenga and then to Te Tihi o Ōtanewainuku.

Te Pohue situated on a headland jutting out into the wetlands of the Waiari. The area where the Te Puke township now is was known to Waitaha as Te Pohue. Te Pohue was the name of the pā that was situated on the block and which has now been destroyed through urban development. The Waiari provided access to the pā through the repo.

Although it was not a substantial settlement, Kahikatia was a nohoanga kāinga of Waitaha. There were several settlements located nearby. Otaraninia was a Waitaha pā. "*Ka tanuhia ki ngā Parapara o Waitaha*". The urupā for Waitaha is there now. If anyone is buried at Otaraninia they cannot be disinterred. Patete was a pā site near Otaraninia. Horouauahi was a Waitaha pā and it contained mahinga kai. It was also occupied by Hakaraia Tipene in his time. Access to these areas was provided through the repo.

Put-a-Ruru was a nohoanga kāinga along the banks of the Waiari. It was a place where Waitaha travelers would rest on their way to Rotorua. This kāinga also contained mahinga kai. It is sometimes known as Putaruru.

Ngāti Rereamanu under Hineata were based at Otaumarū on the upper reaches of the Waiari Stream where they prepared hināu, planted rīwai, kūmara and dug fern root and cultivated forest foods such as fern root, hināu, pikopiko, harore, ure and tawhara. Many of our Waitaha tūpuna were buried within this area as well.

The Oturuturu Creek also runs into the upper reaches of the Waiari Stream. This is a place where Waitaha rested when they were travelling to Rotorua. Cultivations of potatoes, kūmara were planted here as well as the harvesting of forest food.

Waiwiri was a Waitaha pā on a rocky precipice, so named because when Hinehou was at this location; her knees were trembling as she took cover in the hills as a battle raged. This pā is located near to the confluence of the Whatonga Creek and Te Rerenga Stream. Tarawhiti and

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**2: STATEMENTS OF ASSOCIATION**

Ruahanga were concerned that their pononga (captives) might try to escape, so ordered them to head for the hills and build a pā there. Waiwiri is also known as Wiriwiri.

2: STATEMENTS OF ASSOCIATION

**Ohineangaanga Stream (as shown on deed plan OTS-075-10)**

Ohineangaanga Stream is one of the sacred waterways of Waitaha. Ohineangaanga had many pā on its river banks including Rotopoutaka, Takapou, Takarangi, Tapuae and Te Arataukawiti. This stream follows a course from where it flows into the Kaituna River at the area known the Atuaroa repo. Then you go up to Te Tarere, Te Atuaroa, Te Mania, Te Tautara, Te Rii o Hakaraia (Tipene Kura), then from there up to Otaitaka Pā and then to Takarangi. Ohineangaanga then meets up with the Ohui Stream (Ngā Hineangaanga) which straddles Takarangi, to Te Ohui Pā.

There were many Waitaha pā sites along the Ohineangaanga which were demolished by the development of the flood protection scheme in the 1970's.

Ohineangaanga was a nohoanga kāinga of Waitaha which contained mahinga kai and was situated next to the Ohineangaanga stream. It is also next to Te Mania, another nohoanga kāinga. Atuaroa was an area within the Te Puke block which contained the three nohoanga kāinga Atuaroa, Te Tarere and Te Mania.

Tahipukahu was a nohoanga kāinga of Waitaha and it had mahinga kai. It was situated between Te Raparapa-ā-Hoe and Ohineangaanga streams.

Te Tapuaeroa (Te Tapuae) was one of the main pā used by Waitaha because it was centrally located on the banks of the Ohineangaanga Stream. The Ohineangaanga Stream linked Te Tapuae with many pā in the area. It was also a pā of Hakaraia and contained mahinga kai. The Tapuae Track leads to Te Puke crossing from Ohineangaanga Stream to the Waiari Stream and enabled Waitaha to use both the streams and the defensive structures of ridges and gullies on the land between the streams, to provide for strategic withdrawal in times of war.

Maungaruahine, Ohui and Takarangi are significant pā for Waitaha. They were used as pātaka kai, for transport, for times of celebration and as an important place of safety for women and children in times of war.

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**DOCUMENTS SCHEDULE****2: STATEMENTS OF ASSOCIATION****Te Rerenga (shown as Te Rerenga Stream on deed plan OTS-075-11)**

Te Rerenga is a part of the boundary between Waitaha and Tapuika and is also associated with Ōtanewainuku. In the summertime, the water dries out and it is a creek, but in the winter time it becomes full with water and the increased water volume makes it into a river. This stream originates in the fissures in the rocks at Ōtanewainuku. There are many springs in the area. During the winter, water soaks into the ground, building up the water table, so it fills up and overflows into the stream; there is also flooding around this area.

On one side of Ōtanewainuku, Te Rerenga flows into the Mangatōi then to the Waiari; on the other side it flows into the Waimapu. Te Rerenga is also significant to Waitaha as a source of water for the pā sites on Ōtanewainuku - Okotare and Maungapiripiri.

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2: STATEMENTS OF ASSOCIATION

**Te Kopuaroa Stream (as shown on deed plan OTS-075-12)**

Te Kopuaroa (sometimes known as Te Kopuroa) goes through Te Kopuaroa repo, then west to Hikutawatawa. It is significant to Waitaha because it links the area from Te Kopua where the Kaituna turns down the coast, to the lowlands of the Pāpāmoa Hills. This was one of the main waterways of Waitaha and was used to navigate to and from different pā. It was also a rich food source for Waitaha with clear waters and many kōura and eels. Today its waters are dirty with mud from industrial activity.

Waitaha looks forward to the quality and wairua of this important waterway being restored.

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2: STATEMENTS OF ASSOCIATION

**Kaiate River (as shown on deed plan OTS-075-13)**

The Kaiate River has its beginnings at Te Rere Kawau "*te horoi kiri o Takakōpiri rāua ko Kahureremoa*". Te Rere Kawau is located below Ōtawa Maunga on the western side, and was the area that Takakōpiri and Kahureremoa used for bathing and washing. It is referred to today as the Kaiate Falls.

Te Taoonga Kai is at the confluence of the Kaiate River and the Waitoa River and is one of the areas where Waitaha used the water from the rivers for preserving their food from the forests and foods gathered from the moana.

Pukemiro is the name of the cultivations of Takakōpiri and Kahureremoa. It was this cultivation that also supplied the Ōtawa Pā and other pā within its vicinity. This was a large cultivation situated on the western side of Ōtawa within close proximity to Te Rere Kawau. (Kaiate Falls).



2: STATEMENTS OF ASSOCIATION

**Wairākei Stream (as shown on deed plan OTS-075-14)**

The whole Wairākei area used to fill with water when the tide came in. The Wairākei Stream was navigable, and our people used it to travel by waka up to their pā and papakāinga in the Pāpāmoa hills. Now it is all dried up. The Wairākei River was partially filled by the overflow of water from the Kaituna River into the lagoon area on the coastline and also from waters from the Parapara repo. Horoipia repo is an area along the coast that also connects to the Wairākei.

This was a significant waterway for Waitaha to navigate to and from different pā and nohoanga kāinga. Subsequent development by local/regional councils saw the disappearance of the river. This was also a significant mahinga kai for Waitaha. This area also marks the eastern end of the Tauranga Lands Act confiscation boundary.

2: STATEMENTS OF ASSOCIATION

**Coastal area from Maketu to Mauao (as shown on deed plan OTS-075-15)**

From Maketu we go to the Kaituna River, then to Otūmatawhero, Wairākei, Te Houhou ki Repehunga, Waitahanui, Maikukutea, Otira, Te Manu Whakahoro and then to Mauao, to Waikorire where the Waimapu River flows out to the ocean.

The plains between Maketu and Mauao contained a complex navigational system. There were many waterways and tracks linking coastal and inland sites to each other. The main routes across the Pāpāmoa Hills and coastal plains between Tauranga, Maketū and Rotorua have been formed along these working tracks. The Tapuae Track is one of these routes.

Otūmatawhero is located on the coast about midway between Wairākei and Te Tumu in an area that was known to Waitaha as Te Oku. Te Oku was the name of the porpoise that followed the waka Te Arawa into Maketū. Otūmatawhero was also on the ancient highway system, with a major track heading east following the Wairākei Stream then crossing the Horoipia repo, toward the Kaituna.

There is also a strong relationship between Otūmatawhero and Te Tumu which was a significant coastal site as it was a strategic location linking Pāpāmoa to Maketu. Whoever held Te Tumu Pā had military advantage for that area. In the 1830's Te Tumu and Maketu were fiercely contested.

Wairākei is located mid-way between Maketu and Mauao. Individual pā and other significant sites were physically linked as stepping-stones across the vast wetlands and dune plains. Streams originating in the hills around Ōtawa crossed the plain, emptying into the wetlands, then finding their courses into Te Awa o Wairākei or the Kaituna River. This included Te Kopuaroa and Te Raparapa-ā-Hoe. The former lagoon at Wairākei was fringed with raupō and manuka and had an abundance of fish which could be seen by a person standing on the banks because the water was as clear as glass. The lagoon became a casualty of drainage and flood protection works and urban development.

The first Waitaha occupation of Wairākei began when the waka Te Arawa followed a porpoise up the Wairākei River. It is historically known as Te Okuroa o Wairākei. The first settler in that area was Rongomaitane, a son of Waitaha. His son was Te Haehae and the son of Te Haehae was Whitikiore who is associated with the Pā Te Kio.

This is the Waitaha whakataukī relating to Wairākei

*"He pou tou*

*He awatea tera*

*He pukana mutunga i te awatea*

*I te rā e whiti ana"*

The deed of thy ancestor was one of darkness! (treachery)

The other (death of Hikareia) was done in the daylight

After warfare, under the shining sun according to tikanga!

All tracks led to Wairākei and to Te Houhou area. Te Houhou is situated within the Horoipia swamp adjacent to Wairākei. The track that ran from the Pāpāmoa Hills to Wairākei intersected with the track from Tauranga to Te Houhou. The main roadways today were built to follow these old tracks.

Tamangarangi of Waitaha was married to Haua. Haua also assisted Waitaha during the occupation of Maketu by another iwi. Their descendant Te Waharoa, set an aukati along Pāpāmoa beach during the battles with Te Arawa to enable free passage for those travelling to and from

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### 2: STATEMENTS OF ASSOCIATION

Maketu and Tauranga and for those gathering food. Te Waharoa also stated that nobody was to stay there permanently and no battles were to be fought in that area. This area is known as Te Rii o Waharoa.

Te Houhou was the main papakāinga along the Pāpāmoa coast and is near Wairākei. It provides a tangible link to Te Rae o Pāpāmoa, Te Kio, Kiore Te Kopua and other associated pā in this area. It is considered to be the most significant remnant of archaeological landscape that once covered hundreds of hectares between Mauao and the Kaituna River.

Te Houhou area is of very ancient occupation, dating back to the arrival of the waka Te Arawa. Tamatekapua was the captain of Te Arawa. His mokopuna Taramainuku was also on board the waka. Taramainuku stayed in this area with his Waitaha whānau on his way to Moehau in the Coromandel. There is a place in the Te Houhou area named Te Tohihi a Taramainuku. Te Tohihi is the end on the kamokamo plant. The name refers to the place where Taramainuku had his mahinga kai (food garden). Te Kio was a pā and kāinga at the time of Taramainuku.

Te Kio, Kiore and Paraoa were defensive pā. The area looks quite different now because the swamp has been drained, but back in those times the pā were located on the high ground rising above the swamp. The swamp was a natural defensive area, because war parties would have to cross through the swamp to reach the pā.

Te Kio was a pā and a papakāinga at the time of Taramainuku, who arrived on the waka Te Arawa, so it is a very ancient pā. Due to urban development, it is no longer visible.

Te Kio was occupied by Whitikiore, the son of Haehae, who was the son of Rongomaitane, who was the son of Waitaha. During the time of Whitikiore there was a volcanic eruption in the middle of the North Island, and ash was blown over to the coast. After that, Whitikiore moved to Tuhua Island where he settled. Other hapū subsequently made claims to the Waitaha tupuna Whitikiore and became known as Ngāti Whitikiore; they remained there for some time. In later times, Te Kio was a nohoanga papakāinga used in times of food gathering.

Kiore was a swamp pā near Te Kio. The pā was named after Whitikiore. Whitikiore later moved to Tuhua (Mayor Island). Kiore and Paraoa have been recorded as the oldest swamp pā in the Bay of Plenty.

Paraoa was a Waitaha pā protruding out of the swamp which is how it got its name. When Waitaha tūpuna first explored this site, they found the remains of the whale Paraoa, hence the name of the pā. This pā is located near Te Kio and is further along the ridge from Kiore. Part of Paraoa is still visible today. Paraoa is also the name of a son of Takakōpiri, who was nine generations down from Hei.

Te Repehunga was a nohoanga kāinga of Waitaha, but it was demolished by sand quarrying. It marks the boundary between Te Iwikoroke and Kumaramaoa. This was an important nohoanga kāinga and mahinga kai and it provided a thoroughfare between the Pāpāmoa Hills, Te Houhou, Maungamana and Kopukairua.

Maikukutea was named after a battle between Ngātoro-i-rangi and his brother-in-law Manaia. Manaia wanted utu for an insult made by Ngātoro-i-rangi. The taua of Manaia anchored off the island Motiti and his pā Matarehua where he then challenged Ngātoro-i-rangi to a fight. However, being late in the afternoon Ngātoro-i-rangi stated that they would fight the next day. During that evening Ngātoro-i-rangi offered up his prayers to his atua and they sent a storm that annihilated the taua of Manaia. The next morning all that remained of the forces of Manaia were their washed up bodies buried under the sand and their finger nails protruding through the sand at Te Akau.

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**2: STATEMENTS OF ASSOCIATION**

Waitahanui is an ancient urupā of Waitaha on the coast and is located at Otira. Te Manu Whakahoro is an important area for Waitaha.

Mauao is significant to Waitaha as Tutauaroa, the son of Waitaha, first occupied Mauao. When Tutauaroa left for Ōtamarākau, his son Taiwhanake and mokopuna Kinonui and their descendants continued to occupy Mauao. The well known pakiwaitara of Pūwhenua, Mauao and Ōtanewainuku explains how the Waimapu River was formed and how Mauao got its name.

### 3 DEED OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Minister of Conservation and the Director-General of Conservation

#### 1 INTRODUCTION

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with -
- 1.1.1 Waitaha; and
  - 1.1.2 the trustees of Te Kapua o Waitaha (the **trustees**).
- 1.2 In the deed of settlement, Waitaha made statements of the particular cultural, spiritual, historical, and traditional association of Waitaha with the following areas (the **statutory areas**):
- 1.2.1 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):
  - 1.2.2 Te Raparapa-ā-Hoe (as shown on deed plan OTS-075-05).
- 1.3 Those statements of association are -
- 1.3.1 in part 5 of the documents schedule to the deed of settlement; and
  - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statements of association in the [*name*] Act [*year*], being the settlement legislation that gives effect to the deed of settlement.

#### 2 CONSULTATION

- 2.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the trustees concerning the association of Waitaha with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to each of the following activities (the **identified activities**):

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**3: DEED OF RECOGNITION**

- 2.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977:
  - 2.2.2 preparing a national park management plan under the National Parks Act 1980:
  - 2.2.3 preparing a non-statutory plan, strategy, programme, or survey in relation to a statutory area that is not a river for any of the following purposes:
    - (a) to identify and protect wildlife or indigenous plants:
    - (b) to eradicate pests, weeds, or introduced species:
    - (c) to assess current and future visitor activities:
    - (d) to identify the appropriate number and type of concessions:
  - 2.2.4 preparing a non-statutory plan, strategy, or programme to protect and manage a statutory area that is a river:
  - 2.2.5 locating or constructing structures, signs, or tracks.
- 2.3 The Minister and the Director-General of Conservation must, when consulting the trustees under clause 2.1, provide the trustees with sufficient information to make informed decisions.

**3 LIMITS**

- 3.1 This deed -
  - 3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and
  - 3.1.2 does not require the Crown to undertake, increase, or resume any identified activity; and
  - 3.1.3 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
  - 3.1.4 is subject to the settlement legislation.

**4 TERMINATION**

- 4.1 This deed terminates in respect of a statutory area, or part of it, if -
  - 4.1.1 the trustees, the Minister of Conservation, and the Director-General of Conservation agree in writing; or
  - 4.1.2 the relevant area is disposed of by the Crown; or

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3: DEED OF RECOGNITION

4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister and/or Crown official.

4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the trustees continue to have input into any identified activities in relation to the area with the new Minister and/or Crown official responsible for that activity.

5 NOTICES

5.1 Notices to the trustees and the Crown are to be given under this deed in accordance with part 4 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is -

Area Manager,  
Department of Conservation,  
[address].

6 AMENDMENT

6.1 This deed may be amended only by written agreement signed by the trustees and the Minister of Conservation and the Director-General of Conservation.

7 NO ASSIGNMENT

7.1 The trustees may not assign their rights under this deed.

8 DEFINITIONS

8.1 In this deed -

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

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated [date] between Waitaha, the trustees, and the Crown; and

**Director-General of Conservation** has the same meaning as Director-General in section 2(1) of the Conservation Act 1987; and

**identified activity** means each of the activities specified in clause 2.2; and

**Minister** means the Minister of Conservation; and

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

DOCUMENTS SCHEDULE

3: DEED OF RECOGNITION

**settling group** and **Waitaha** have the meaning given to them by the deed of settlement; and

**settlement legislation** means the Act referred to in clause 1.4; and

**statement of association** means each statement of association in part 2 of the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 1.2.1 or 1.2.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

**writing** means representation in a visible form on a tangible medium (such as print on paper).

9 INTERPRETATION

9.1 The provisions of this clause apply to this deed's interpretation, unless the context requires a different interpretation.

9.2 Headings do not affect the interpretation.

9.3 A term defined by -

9.3.1 this deed has that meaning; and

9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, has that meanings where used in this deed.

9.4 All parts of speech and grammatical forms of a defined term have corresponding meanings.

9.5 The singular includes the plural and vice versa.

9.6 One gender includes the other genders.

9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.

9.8 A reference to -

9.8.1 this deed or any other document means this deed or that document as amended, novated, or replaced; and

9.8.2 legislation means that legislation as amended, consolidated, or substituted.

9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.



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DOCUMENTS SCHEDULE

3: DEED OF RECOGNITION

**SIGNED** as a deed on *[date]*

**SIGNED** for and on behalf of  
**THE CROWN** by -

The Minister of Conservation in the  
presence of -

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

Name:  
Occupation:  
Address:

The Director-General of Conservation  
in the presence of -

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

Name:  
Occupation:  
Address:

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DOCUMENTS SCHEDULE

3: DEED OF RECOGNITION

Schedule

Copies of Statements of Association

Four wāhi tapu sites within Ōtanewainuku Forest -

**Hakoko Creek (as shown on deed plan OTS-075-04)**

He awa, he mahinga kai, he nohoanga kāinga mō Waitaha. He kāinga hoki hei whakata mo te hunga ka hikoi mai i uta ki Tauranga mai Tauranga ki uta. Ahakoa tona iti ka rere, heke atu te awa. Ka hono ki te awa o Te Raparapa-ā-Hoe. Although this is a relatively small stream it contributes to the larger catchment of Te Raparapa-ā-Hoe. All our rivers are pātaka kai. Hakoko is located above Maungaruahine and flows into Te Raparapa-ā-Hoe.

**Paraiti Creek (as shown on deed plan OTS-075-04)**

Tēnei awa ahua rahi atu i te Hakoko. He awa, he pātaka kai. He nohoanga kāinga tēnei hoki mō o matou whanaunga e haere ana ki Tauranga a ka hoki atu ki Rotorua. This area was strategically placed and was a safe place for overnight stays. It was a place that the Waitaha chiefs asserted and exercised their rights although there were strong contests between some of the Waitaha hapū. Our tupuna Hakaraia stood firm for the consolidation of Waitaha. Paraiti is located above Maungaruahine; and is another stream that flows into Te Raparapa-ā-Hoe.

**Popaki Creek (as shown on deed plan OTS-075-04)**

Popaki joins the other streams in this area as an important wai Māori resource. Strategic in location and located close "ki ngā pā", it also, like the other creeks, serves as a nohoanga kāinga and a resting place for whānau and hapū travelling between Rotorua and Tauranga. Hakoko, Paraiti and Popaki were occupied because of their strategic location. They were able to provide sustained protection and sustenance for travelers. Land was always available for "mahinga kai" and whānau were encouraged to share in the growing, harvesting and storage. Preserving kai from the sea, bushland and river was a continuous occupation. Popaki Creek is located above Paraiti and flows into Te Raparapa-ā-Hoe.

**Kaokaonui Kāinga (as shown on deed plan OTS-075-04)**

He pā, he maunga, he rahi ōna tahataha. It is situated below the Mangatoi Stream. Flowing alongside the pā is Kaokaonui Creek which runs into the Mangatoi. This is a pā occupied by Waitaha because of its proximity to the bush food resources. Kaokaonui Pā like the pā situated along the ridge of Ōtanewainuku formed a tangible link to the defensive network of Waitaha pā.

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DOCUMENTS SCHEDULE

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3: DEED OF RECOGNITION

**Te Raparapa-ā-Hoe (labelled Raparapahoe on the map used for deed plan OTS-075-05)**

Te Raparapa-ā-Hoe is an awa sacred to Waitaha. The name relates to the many waterfalls and rock formations along its course. It could only be navigated by waka to a certain point and then the rapids made it impossible to continue rowing. Te Raparapa-ā-Hoe has its origins in fissures fed by many underground waterways. For Waitaha, Te Raparapa-ā-Hoe links the iwi with the maunga Ōtawa, the land on Ōtara that belongs to Waitaha (Te Ūpoko o Taranui), Otatau and Tahipukuhu.

Te Raparapa-ā-Hoe flows two ways, both above and below the ground. From the Kaituna River, we go through the Atuaroa Stream to Te Hiapo, then we go to Te Waiwhero, then up to Motungarara Pā, then to Tuahu o Te Makawe, then to Takapara, through Waikokowai repo, through Te Ara o Kahureremoa, past Hei Marae, Te Taumata Urupa, Haraki Marae, further up is Oteao, Ngahune, Hapaitataura Pā (Te Moemiti), past Te Puata. It meets with Te Kirikiri Stream, to Te Puata Pā, then to the Waikokoi Stream and Te Waikokoi Pā. We go up to Wairapukao Creek, then to the Hungahungatoroa Creek, then to Rawaru. To the east we go to Maungaruahine Pā, to Te Manaroa Pā then to Hakoko Creek and Paraiti Creek and Te Patu o Tupahau, then to Waimihia Creek and Waimihia Pā.

From the Kaituna we also go through the Atuaroa Swamp to Te Kopuaroa, then west toward the Pāpāmoa Hills. In this direction are sites including: Te Waikokowai repo, Te Korikori, Te Awarua (the Saddle), Te Whare o Te Tarakeho Pā, and then further up is Omarama repo.

Te Raparapa-ā-Hoe is the lifeblood of Waitaha. It flows past and connects many sites of significance to Waitaha including Onuku Rangitekapua, Puke Poto, Te Manaroa, Te Kopuru, Mangamatai, Hapaitataura and Motungarara. Hei Marae is the only Waitaha marae. It is located on Te Raparapa-ā-Hoe Stream which was used for transport, to irrigate cultivations and to provide food and resources for the pā. Motungarara refers to the red kūmara bug. During different parts of the seasons, our whānau would go there and use the waters from Te Raparapa-ā-Hoe to rid our cultivations of the kūmara bug.

Te Taumata is an urupā near Hei Marae on the banks of Te Raparapa-ā-Hoe. It is the place where tūpāpaku were interred so they could be taken back to Rangiwewehi at a later time.

Te Atuaroa River forms where Te Raparapa-ā-Hoe is joined by the Kirikiri, but it is still called Te Raparapa-ā-Hoe. At the confluence of these waterways is the pā, Te Puata. Te Puata was the pā of Haraki, the first wife of Te Iwikoroke. Haraki is also descended from Waitaha and this alliance strengthened the Waitaha lines. Te Ahipuaki is the pā of Te Iwikoroke and is located near the maunga Ōtawa. The name of this pā refers to the rays of the sun because it is an area where you get the sun very early in the day. Te Puata and Te Ahipuaki are located very closely together, hence the whakataukī, "*Ka titiro atu a te Iwikoroke; ka titiro mai a Haraki* (Te Iwikoroke looked, and Haraki looked back)".

Waikokoi was a Waitaha pā and it had mahinga kai. It lay at the junction of Te Raparapa-ā-Hoe and Waikokoi streams. The main tracks coming down from Ōtawa crossed through here to Te Tapuae and Te Puke the original Te Puke, not the town now known as Te Puke. It is in this area of Te Raparapa-ā-Hoe that fishermen came across giant tuna with holes in their tails. These tuna had been left there to feed the tuna that were trapped in the crevices in these rocks. Anyone taking these tuna is advised to throw them back straight away as they are kaitiaki and were kept for that purpose. The names of these tuna referred to by our tūpuna for these eels are "Koroua" and the tuna that they feed on are called "Tūpuna".

The Wairapukao Stream flows into Te Raparapa-ā-Hoe and is located near Muirs Reef. The area above Muirs Reef was known by Waitaha as Rawaru. Hungahungatoroa Creek flows into Te Raparapa-ā-Hoe and is also located near Muirs Reef.

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## DOCUMENTS SCHEDULE

### 3: DEED OF RECOGNITION

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Hakoko and Paraiti are in the same area and are located above Maungaruahine. They both flow into Te Raparapa-ā-Hoe. Popaki is another stream that flows into Te Raparapa-ā-Hoe. It is above Paraiti.

Waimihia was a nohoanga kāinga used during the food gathering season. It was used for preserving kererū and other food gathered from the forests. It is located on the Waimihia Stream which also flows into Te Raparapa-ā-Hoe.

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## 4 CONSERVATION PROTOCOL

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**MINISTER OF CONSERVATION**

**and**

**WAITAHA**

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**CONSERVATION PROTOCOL**

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4: CONSERVATION PROTOCOL

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF CONSERVATION  
REGARDING DEPARTMENT OF CONSERVATION/ TE PAPA ATAWAHI AND WAITAHA  
INTERACTION ON SPECIFIED ISSUES**

**1. INTRODUCTION**

- 1.1 Under the Deed of Settlement dated [ ] between [ ] and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister of Conservation (the "Minister") would issue a Protocol ("the Protocol") setting out how the Department of Conservation (the "Department") will interact with the Waitaha Governance Entity (the "Governance Entity") on matters specified in the Protocol. These matters are:
- 1.1.1 Purpose of the Protocol - Part 2
  - 1.1.2 Protocol Area - Part 3
  - 1.1.3 Terms of Issue - Part 4
  - 1.1.4 Implementation and Communication - Part 5
  - 1.1.5 Business Planning - Part 6
  - 1.1.6 Management Planning - Part 7
  - 1.1.7 Cultural Materials - Part 8
  - 1.1.8 Marine Mammals - Part 9
  - 1.1.9 Historic Resources Wāhi Tapu - Part 10
  - 1.1.10 Natural Heritage - Part 11
  - 1.1.11 Pest Control - Part 12
  - 1.1.12 Resource Management Act 1991 - Part 13
  - 1.1.13 Visitor and Public Information - Part 14
  - 1.1.14 Concession Applications - Part 15
  - 1.1.15 Consultation - Part 16
  - 1.1.16 Definitions - Part 17
  - 1.1.17 Provision of Information - Part 18
- 1.2 Both the Department and the Governance Entity are committed to establishing and maintaining a positive and collaborative relationship that gives effect to the principles of the Treaty of Waitangi as provided for in section 4 of the Conservation Act 1987. Those principles provide the basis for an ongoing relationship between the parties to the Protocol to achieve over time the conservation policies, actions and outcomes sought by both the Governance Entity and the Department, as set out in this Protocol.

**DOCUMENTS SCHEDULE**

**4: CONSERVATION PROTOCOL**

- 1.3 The purpose of the Conservation Act 1987 is to enable the Department "to manage for conservation purposes, all land, and all other natural and historic resources" under that Act and to administer the statutes in the First Schedule to the Act (together, the "Conservation Legislation"). The Minister and Director-General, or their delegates, are required to exercise particular functions, powers and duties under that legislation.
- 1.4 Waitaha descend from the tupuna Hei and his son Waitaha who were on Te Waka o Te Arawa. According to Waitaha tradition, Hei claimed the mana of the takapu o Waitaha before Te Arawa landed at Maketu, stating "ka huri mai a Te Arawa i Te Rae o Pāpāmoa ka tohuhia e Hei mi i waho o te moana te takapū o tāku tama a Waitahanui a Hei". The sons of Waitaha occupied various places along the coast from Katikati through to Ōtamarakau.
- 1.5 Eight generations on, Takakōpiri held the mana of the Tauranga area. He laid the mana of the land on his two grandsons Te Iwikoroke and Kumaramaoa. Te Iwikoroke held the mana on the western side of Te Uku o Takakōpiri (Pāpāmoa Hills); the boundaries of Te Iwikoroke were known as Te Korowai o Wai o Kehu ko Te Iwikoroke and the boundaries of Kumaramaoa were known as Te Aore o Kumaramaoa. The brothers then conferred land on their younger brother, Te Puku o Hākoma, stretching from Te Repehunga (Pāpāmoa Domain) to Wairākei and back to Ōtawa.
- 1.6 Over time, boundaries were agreed to between Waitaha and their relations in the Te Puke and Tauranga areas. Through the raupatu (land confiscations) following the Tauranga Land Wars and the sale of the Te Puke block, Waitaha became virtually landless by the end of the 19th century. Waitaha assert that they have continued to maintain their mana over the lands of their tūpuna.
- 1.7 Hei Marae is the only marae of Waitaha and is located at Motungarara (Manoeka Road), Te Puke. Many Waitaha people continue to live in the area. Waitaha are taking the opportunity to rebuild their tribal infrastructure, restore and revitalise their cultural practices and to build a sustainable relationships with other hapū and iwi, non-Māori stakeholders and with the Department of Conservation in their rohe.
- 1.8 Waitaha accept a responsibility as kaitiaki under tikanga Māori to preserve, protect, and manage natural and historic resources within their rohe.

**2. PURPOSE OF THE PROTOCOL**

- 2.1 The purpose of this Protocol is to assist the Department and the Governance Entity to exercise their respective responsibilities with the utmost cooperation to achieve over time the conservation policies, actions and outcomes sought by both.
- 2.2 This Protocol sets out a framework that enables the Department and Waitaha to establish a constructive working relationship that gives effect to section 4 of the Conservation Act. It provides for Waitaha to have meaningful input into relevant policy, planning and decision-making processes in the Department's management of conservation lands and fulfilment of statutory responsibilities within the Waitaha Protocol Area.

**3. PROTOCOL AREA**

- 3.1 The Protocol applies across the Waitaha Protocol Area which means the area identified in the map included in Attachment A of this Protocol.



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## DOCUMENTS SCHEDULE

### 4: CONSERVATION PROTOCOL

#### 4. TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section [ ] of the [ ] Act [ ] (The "Settlement Legislation") and clause [ ] of the Deed of Settlement. A summary of the terms on which this Protocol is issued are set out in Attachment B of the Protocol.

#### 5. IMPLEMENTATION AND COMMUNICATION

- 5.1 The Department will seek to establish and maintain effective and efficient communication with Waitaha on a continuing basis by:

5.1.1 Maintaining information on the Governance Entity's office holders, and their addresses and contact details;

5.1.2 Providing a primary departmental contact for the Governance Entity who will act as a liaison person with other departmental staff;

5.1.3 Providing reasonable opportunities for the Governance Entity to meet with departmental managers and staff;

5.1.4 Holding alternate meetings at the Tauranga Area Office and a Waitaha marae or other venue chosen by the Governance Entity to discuss issues that may have arisen every six months, unless otherwise agreed.

5.1.5 The parties may also:

(a) Annually review implementation of the Protocol; and

(b) Led by the Governance Entity, arrange for an annual report back to the affiliate iwi and hapū of the Governance Entity in relation to any matter associated with the implementation of this Protocol; and

5.1.6 Training relevant staff and briefing Conservation Board members on the content of the Protocol.

- 5.2 The Department will, where relevant, inform conservation stakeholders about this Protocol and the Waitaha settlement, and provide on-going information as required.

- 5.3 The Department will advise the Governance Entity of any departmental policy directions and the receipt of any research reports relating to matters of interest to Waitaha within the Protocol Area, and provide copies or the opportunity for the Governance Entity to study those reports (subject to clause 18.1).

#### 6. BUSINESS PLANNING

- 6.1 The Department's annual business planning process determines the Department's conservation work priorities.

- 6.2 The process for the Governance Entity to identify and/or develop specific projects for consideration by the Department is as follows:

6.2.1 The Department and the Governance Entity will on an annual basis identify priorities for undertaking specific projects requested by the Governance Entity. The identified priorities for the upcoming business year will be taken forward by the Department into its business planning process and considered along with other priorities.

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## DOCUMENTS SCHEDULE

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### 4: CONSERVATION PROTOCOL

- 6.2.2 The decision on whether any specific projects will be funded in any business year will be made by the Conservator and General Manager Operations, after following the co-operative processes set out above.
- 6.2.3 If the Department decides to proceed with a specific project request by the Governance Entity, the Governance Entity and the Department may meet again to finalise a work plan and a timetable before implementation of the specific project in that business year, in accordance with the resources which have been allocated in the business plan.
- 6.2.4 If the Department decides not to proceed with a specific project it will communicate to the Governance Entity the factors that were taken into account in reaching that decision.

6.3 The Department will consider inviting the Governance Entity to participate in specific projects, including the Department's volunteer and conservation events that may be of interest to Waitaha.

### 7. MANAGEMENT PLANNING

7.1 The Department will provide opportunities for the Governance Entity to input into any relevant Conservation Management Strategy reviews or Management Plans, if any, within the Protocol Area.

### 8. CULTURAL MATERIALS

8.1 For the purpose of this Protocol, cultural materials are plants, plant materials, and materials derived from animals, marine mammals or birds for which the Department is responsible within the Protocol Area and which are important to Waitaha in maintaining and expressing its cultural values and practices. Mai i te rangi ki te whenua me ngā mea katoa o waenganui ka noho kaitiaki a Waitaha mo ake tonu atu. Kaitiakitanga – kia mau, kia pupuri kia manaaki te mauri.

8.2 Current legislation means that generally some form of concession or permit is required for any gathering and possession of cultural materials.

8.3 In relation to cultural materials, the Minister and/or Director-General will:

8.3.1 Consider requests from the Governance Entity for access to and use of cultural materials within the Protocol Area when required for cultural purposes, in accordance to the relevant legislation;

8.3.2 Consult with the Governance Entity in circumstances where there are competing requests between the Governance Entity and non-Waitaha persons or entities for the use of cultural materials, for example for scientific research purposes;

8.3.3 Consider Governance Entity access to cultural materials, taking into consideration the interest of other representatives of tangata whenua, which become available as a result of departmental operations such as track maintenance or clearance, or species management, or where materials become available as a result of accidental death or otherwise through natural causes;

8.4 Where appropriate, the Department will consult with the Governance Entity on the development of procedures for monitoring levels of use of cultural materials in accordance with the relevant legislation.

4: CONSERVATION PROTOCOL

**9. MARINE MAMMALS**

**Background**

- 9.1 The Department administers the Marine Mammals Protection Act 1978 and the Marine Mammals Regulations 1992. These provide for the establishment of marine mammal sanctuaries, for permits in respect of marine mammals, the disposal of sick or dead specimens and the prevention of marine mammal harassment. All species of marine mammal occurring within New Zealand and New Zealand's fisheries waters are absolutely protected under the Marine Mammals Protection Act 1978. Under that Act the Department is responsible for the protection, conservation and management of all marine mammals, including their disposal and the health and safety of its staff and any volunteers under its control, and the public.
- 9.2 The Department's approach to strandings is also guided by the Marine Mammal Action Plan and, at a Conservancy level, Marine Mammal Stranding Contingency Plans.
- 9.3 The Protocol also aims at assisting the conservation of cetacean species by contribution to the collection of specimens and scientific data of national and international importance.

**Strandings**

- 9.4 The Department believes that there are opportunities to meet the cultural interests of Waitaha and to facilitate the gathering of scientific information. This Protocol is intended to meet both needs by way of a co-operative approach to the management of whale strandings and to provide general guidelines for the management of whale strandings in the DOC Protocol Area, and for the recovery by Waitaha of bone (including teeth and baleen) and other material for cultural purposes from dead marine mammals.
- 9.5 There may be circumstances during a stranding in which euthanasia is required, for example if the animal is obviously distressed. The decision to euthanase, which will be made in the best interests of marine mammals and public safety, is the responsibility of an officer or person authorised by the Minister of Conservation. The Department will make reasonable efforts to inform the Governance Entity before any decision to euthanase.
- 9.6 Both the Department and Waitaha acknowledge the scientific importance of information gathered at strandings. Decisions concerning the exact nature of the scientific samples required and the subsequent disposal of any dead animals, including their availability to Waitaha, will depend on the species.
- 9.7 The following species ("category 1 species") are known to strand most frequently on New Zealand shores. In principle these species should be available to the Governance Entity for the recovery of bone once scientific data and samples have been collected. If there are reasons why this principle should not be followed, they must be discussed between the parties to this Protocol. Category 1 species are:
  - 9.7.1 Common dolphins (*Delphinus delphis*)
  - 9.7.2 Long-finned pilot whales (*Globicephala melas*)
  - 9.7.3 Sperm whales (*Physeter macrocephalus*).
- 9.8 The following species ("category 2 species") are either not commonly encountered in New Zealand waters, or may frequently strand here but are rare elsewhere in the world. For these

DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

reasons their scientific value has first priority. In most instances, bone from category 2 species will be made available to the Governance Entity after autopsy if requested.

- 9.8.1 All baleen whales
- 9.8.2 Short-finned pilot whale (*Globicephala macrorhynchus*)
- 9.8.3 Beaked whales (all species, family Ziphiidae)
- 9.8.4 Pygmy sperm whale (*Kogia breviceps*)
- 9.8.5 Dwarf sperm whale (*Kogia simus*)
- 9.8.6 Bottlenose dolphin (*Tursiops truncatus*)
- 9.8.7 Maui's dolphin (*Cephalorhynchus hectori maui*) (North island)
- 9.8.8 Hector's dolphin (*Cephalorhynchus hectori hectori*) (South Island)
- 9.8.9 Dusky dolphin (*Lagenorhynchus obscurus*)
- 9.8.10 Risso's dolphin (*Grampus griseus*)
- 9.8.11 Spotted dolphin (*Stenella attenuata*)
- 9.8.12 Striped dolphin (*Stenella coeruleoalba*)
- 9.8.13 Rough-toothed dolphin (*Steno bredanensis*)
- 9.8.14 Southern right whale dolphin (*Lissodelphis peronii*)
- 9.8.15 Spectacled porpoise (*Australophocoena dioptrica*)
- 9.8.16 Melon-headed whale (*Peponocephala electra*)
- 9.8.17 Pygmy killer whale (*Feresa attenuata*)
- 9.8.18 False killer whale (*Pseudorca crassidens*)
- 9.8.19 Killer whale (*Orcinus orca*)
- 9.8.20 Any other species of cetacean previously unknown or rarely strand in New Zealand waters.

9.9 If Waitaha does not wish to recover the bone or otherwise participate the Governance Entity will notify the Department whereupon the Department will take responsibility for disposing of the carcass.

9.10 Because the in-situ recovery of bones involves issues relating to public safety, including the risk of infection from dead and decaying tissue, it needs to be attempted only by the informed and skilled. Waitaha bone recovery teams will also want to ensure that the appropriate cultural tikanga is understood and followed. However, both parties acknowledge that generally burial will be the most practical option.

9.11 Subject to the prior agreement of the Conservator, where disposal of a dead stranded marine mammal is carried out by the Governance Entity, the Department will meet the reasonable

**DOCUMENTS SCHEDULE**

**4: CONSERVATION PROTOCOL**

costs incurred up to the estimated costs which would otherwise have been incurred by the Department to carry out the disposal.

9.12 The Department will:

9.12.1 Reach agreement with the Governance Entity on authorised key contact people who will be available at short notice to make decisions on the desire of Waitaha to be involved when there is a marine mammal stranding;

9.12.2 Promptly notify the key contact people of all stranding events; and

9.12.3 Discuss, as part of the disposal process, burial sites and, where practical, agree sites in advance which are to be used for disposing of carcasses in order to meet all the health and safety requirements and to avoid the possible violation of Waitaha tikanga.

9.13 The hapū/whānau authorised key contact person will promptly notify the Department's Area Office contact person of any stranding event.

**10. HISTORIC RESOURCES – WĀHI TAPU**

10.1 Waitaha consider that their wāhi tapu and other places of cultural heritage significance are taonga (priceless treasures), and the Department will respect the great significance of these taonga by fulfilling the obligations contained in this clause of the Protocol.

10.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to Waitaha in association with the Governance Entity and according to Waitaha tikanga.

10.3 The Department accepts that non-disclosure of locations of places known to Waitaha may be an option that the Governance Entity chooses to take to preserve the wāhi tapu nature of places. There may be situations where the Governance Entity will ask the Department to treat information it provides on wāhi tapu sites in accordance with the tikanga of Waitaha.

10.4 The Department and the Governance Entity will work together to establish processes for dealing with information on wāhi tapu sites in a way that recognises the management challenges that confidentiality can present and protects the mana of Waitaha whilst working with the Department.

10.5 The Department will work with the Governance Entity at the Area Office level to respect Waitaha values, tikanga and kaitiakitanga attached to identified wāhi tapu and other places of significance on lands administered by the Department by:

10.5.1 Discussing with the Governance Entity, by the end of the second year of this Protocol being issued and on a continuing basis, practical ways in which Waitaha can exercise kaitiakitanga over ancestral lands, natural and historic resources and other taonga managed by the Department within the Protocol Area;

10.5.2 Managing sites of historic significance to Waitaha according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning, as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993, and in co-operation with Waitaha; and

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**DOCUMENTS SCHEDULE**

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**4: CONSERVATION PROTOCOL**

10.5.3 Informing the Governance Entity if wheua tangata or kōiwi are found within the Protocol Area; and

10.5.4 Assisting in recording and protecting wāhi tapu and other places of cultural significance to Waitaha where appropriate, to seek to ensure that they are not desecrated or damaged.

**11. NATURAL HERITAGE**

11.1 The Department aims at conserving the full range of New Zealand's ecosystems, maintaining or restoring the ecological integrity of managed sites, and ensuring the survival of threatened species, in particular those most at risk of extinction.

11.2 In recognition of the cultural, historic and traditional association of Waitaha with indigenous flora and fauna found within the Protocol Area for which the Department has responsibility, the Department will inform the Governance Entity of the national sites and species programmes on which the Department will be actively working, and provide opportunities for the Governance Entity to participate in these programmes.

11.3 Species that Waitaha has an interest in are listed in Attachment C.

**12. PEST CONTROL**

12.1 A key objective and function of the Department is to prevent, manage and control threats to natural, historic and cultural heritage values from animal and weed pests. This is to be done in a way that maximises the value from limited resources available to do this work.

12.2 The Department will:

12.2.1 Seek and facilitate early consultation with the Governance Entity on pest control activities within the Protocol Area, particularly in relation to the use of poisons;

12.2.2 Provide the Governance Entity with opportunities to review and assess programmes and outcomes; and

12.2.3 Where appropriate, consider co-ordinating its pest control programmes with those of the Governance Entity when the Governance Entity is an adjoining landowner.

**13. RESOURCE MANAGEMENT ACT 1991**

13.1 Waitaha and the Department both have concerns with the effects of activities controlled and managed under the Resource Management Act 1991. Areas of common interest include:

13.1.1 Protection of coastal and marine areas

13.1.2 Protecting and maintaining wetland areas and reserves

13.1.3 Rivers, streams and water ways

13.1.4 The effect of activities on biodiversity

13.2 From time to time, the Governance Entity and the Department will seek to identify further issues of likely mutual interest for discussion. It is recognised that the Department and the Governance Entity will continue to make separate submissions in any Resource Management Act processes.



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## DOCUMENTS SCHEDULE

### 4: CONSERVATION PROTOCOL

- 13.3 In carrying out advocacy under the Resource Management Act 1991, the Department will:
- 13.3.1 Discuss with the Governance Entity the general approach that may be taken by Waitaha and the Department in respect of advocacy under the Resource Management Act, and seek to identify their respective priorities and issues of mutual concern;
  - 13.3.2 Have regard to the priorities and issues of mutual concern identified when the Department makes decisions in respect of advocacy under the Resource Management Act; and
  - 13.3.3 Make non-confidential resource information available to the Governance Entity to assist in improving their effectiveness in resource management advocacy work.

#### 14. VISITOR AND PUBLIC INFORMATION

- 14.1 The Department has a role to share knowledge about natural and historic heritage with visitors and the general public, to satisfy their requirements for information, increase their enjoyment and understanding of this heritage, and develop an awareness of the need for its conservation.
- 14.2 In providing public information, interpretation services and facilities for visitors on the land it manages, the Department acknowledges the importance to Waitaha of their cultural, traditional and historic values, the kaitiaki role of Waitaha and the association of Waitaha with the land the Department administers within the Protocol Area.
- 14.3 The Department will work with the Governance Entity at the Area Office level to encourage respect for Waitaha cultural heritage values by:
- 14.3.1 Seeking to raise public awareness of any positive conservation partnerships between the Governance Entity, the Department and other stakeholders, for example, by way of publications, presentations, and seminars;
  - 14.3.2 Ensuring that information contained in the Department's publications is accurate and appropriate by:
    - (a) Obtaining the consent of the Governance Entity for disclosure of information from it, and
    - (b) Consulting with the Governance Entity prior to the use of information about Waitaha values for new interpretation panels, signs and visitor publications.

#### 15. CONCESSION APPLICATIONS

- 15.1 By the end of the second year of this Protocol being issued and on a continuing basis, the Department will work with the Governance Entity to identify categories of concessions that may impact on the cultural, historic or historical values of Waitaha.
- 15.2 In relation to the concession applications within the categories identified by the Department and Governance Entity under clause 13.1, the Minister will:
- 15.2.1 Consult with the Governance Entity with regard to any applications or renewals of applications within the Protocol Area, and seek the input of the Governance Entity by:

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**DOCUMENTS SCHEDULE**

**4: CONSERVATION PROTOCOL**

- (a) Providing for the Governance Entity to indicate within ten working days whether applications have any impacts on the cultural, spiritual and historic values of Waitaha; and
  - (b) If the Governance Entity indicates that an application has any such impacts, allowing a reasonable specified timeframe (of at least a further fifteen working days) for comment;
- 15.2.2 When a concession is publicly notified, the Department will at the same time provide separate written notification to the Governance Entity;
- 15.2.3 Prior to issuing concessions to carry out activities on land managed by the Department within the Protocol Area, and following consultation with the Governance Entity, the Minister will advise the concessionaire of Waitaha tikanga, kaitiakitanga and values and encourage communication between the concessionaire and the Governance Entity if appropriate; and
- 15.2.4 Ensure when issuing and renewing concessions that give authority for other parties to manage land administered by the Department, that those parties:
- (a) Be required to manage the land according to the standards of conservation practice mentioned in clause 9.6.3; and
  - (b) Be encouraged to consult with the Governance Entity before using cultural information of Waitaha.

**16. CONSULTATION**

- 16.1 Where the Department is required to consult under this Protocol, the basic principles that will be followed by the Department in consulting with the Governance Entity in each case are:
- 16.1.1 Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;
  - 16.1.2 Providing the Governance Entity with sufficient information to make informed discussions and submissions in relation to any of the matters that are subject of the consultation;
  - 16.1.3 Ensuring that sufficient time is given for the effective participation of the Governance Entity, including the preparation of submissions by the Governance Entity, in relation to any of the matters that are the subject of the consultation;
  - 16.1.4 Ensuring that the Department will approach the consultation with an open mind and genuinely consider any views and/or concerns that the Governance Entity may have in relation to any of the matters that are subject to the consultation. Where the Department has consulted with the Governance Entity as specified in clause 16.1, the Department will report back to the Governance Entity on the decision made as a result of any such consultation.

**17. DEFINITIONS**

- 17.1 In this Protocol:



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## DOCUMENTS SCHEDULE

### 4: CONSERVATION PROTOCOL

**Conservation Management Strategy** has the same meaning as in the Conservation Act 1987;

**Conservation Legislation** means the Conservation Act 1987 and the statutes in the First Schedule of the Act;

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

**Department** means the Minister of Conservation, the Director-General and the Departmental managers to whom the Minister of Conservation's and the Director-General's decision-making powers can be delegated.

**Governance Entity** means the Waitaha Governance Entity;

**Ngā Tikanga o Waitaha** means:

- He Mauri — recognises the life force of all things
- Te Mauriora — symbolises the life principles ie 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;
- To Whakanui — to elevate;
- Te Manaaki/awhina — 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 ona ahuatanga katoa o Waitaha — the language of Waitaha, and the disciplines;
- To 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;
- To Matauranga — knowledge and understanding; and
- Ngā mea Tapu katoa — all things sacred.

**Kaitiaki** means environmental guardians;

**Protocol** means a statement in writing, issued by the Crown through the Minister of Conservation to the Waitaha Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

**Tikanga Māori** refers to Māori traditional customs.

**Waitaha** has the meaning set out in clause [ ] of the Deed of Settlement



DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

ATTACHMENT A  
DOC PROTOCOL AREA



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DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

ATTACHMENT B

SUMMARY OF TERMS OF ISSUE

This protocol is subject to the the deed of settlement and the settlement legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

1.1 The Minister may amend or cancel this protocol, but only after consulting with the governance entity and having particular regard to its views (section [number]).

2. Noting

2.1 A summary of the terms of this protocol may be noted in the conservation documents affecting the protocol area, but the noting-

2.1.1 is for the purpose of public notice; and

2.1.2 does not amend the conservation documents for the purposes of the Conservation Act 1987 or the National Parks Act 1980 (section [number]).

3. Limits

3.1 This protocol does not -

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including -

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tangata whenua (section [number]); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of the settling group (section [number]); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, land held, managed, or administered, under -

(a) the Conservation Act 1987; or

(b) the enactments listed in schedule 1 of that Act.

4. Non-compliance

4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this protocol if the Crown fails, without good cause, to comply with it, but damages or monetary compensation will not be awarded (section [number]).

4.2 A breach of this protocol is not a breach of the deed of settlement (clause [number]).

DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

**ATTACHMENT C**  
**SPECIES THAT WAITAHA HAVE AN INTEREST IN**

Waitaha have identified the following species which have been traditionally eaten, protected and/or conserved and are therefore of interest to Waitaha.

**Ngā momo manu/birds**

Name	Scientific name
Black swan	<i>Cygnus atratus</i>
Fantail	<i>Rhipidura fuliginosa</i>
Heron	<i>Ardea novaehollandiae?</i>
Kākā	<i>Nestor meridionalis</i>
Kākāriki	<i>Cyanoramphus auriceps</i>
Kawau – mallard duck	<i>Anas platyrhynchos</i>
Kawau – paradise duck	<i>Tadorna variegata</i>
Kawau – spoon duck	<i>Anas rhynchotis</i>
Kererū	<i>Hemiphaga novaeseelandiae</i>
Kiwi	<i>Apteryx mantelli</i>
Kōkako	<i>Callaeas cinerea</i>
Kōtuku	<i>Egretta alba</i>
Matuku – reef heron	<i>Egretta sacra</i>
Mute swan	<i>Cygnus olor</i>
Stilt	<i>Himantopus novaezealandiae</i>
Tui	<i>Prothemadera novaeseelandiae</i>

**Ngā Ika/fish**

Name	Scientific name
Conger eel	<i>Conger verreauxi</i>
Yellow moray eel	<i>Gymnothorax prasinus</i>

DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

Name	Scientific name
Grey moray eel	<i>Gymnothorax nubilus</i>
Speckled moray eel	<i>Gymnothorax obesus</i>
Mottled moray eel	<i>Gymnothorax prionodon</i>
Mosaic moray	<i>Enchelycore ramosus</i>
Uaua or Herring (yellow eyed mullet)	<i>Aldrichetta forsteri</i>
Kōaro*	<i>Galaxias brevipinnis</i>
Kōkopu (banded)*	<i>Galaxias fasciatus</i>
Kōkopu (giant)*	<i>Galaxias argenteus</i>
Smelt (common)*	<i>Retropinna retropinna</i>
Native trout *	<i>Galaxias maculatus</i>
Kahawai	<i>Arripis trutta</i>
Kopuroa (spotted star gazer)	<i>Genyagnus monopterygius</i>
Lamprey – blind eel	<i>Geotria australis</i>
Black mudfish	<i>Neochanna diversus</i>
Grey mullet	<i>Mugil cephalus</i>
Parore	<i>Girella tricuspidata</i>
Pātiki (Common sole)	<i>Peltorhamphus novaezeelandiae</i>
Tāmure (Snapper)	<i>Pagrus auratus</i>
Tawatawa (Blue mackerel)	<i>Scomber australasicus</i>
Tuna – long finned eel	<i>Anguilla dieffenbachii</i>
Tuna – short finned eel	<i>Anguilla australis</i>
Shark – rig (rig dogfish)	<i>Mustelus lenticulatus]</i>
Shark – pioke (Spiny dogfish)	<i>Squalus acanthias</i>

\* All known to Waitaha as inanga when in their juvenile stage

DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

Name	Scientific name
Shark – school	<i>Galeorhinus australis</i>
Trevally	<i>Caranx georgianus</i>
Piper (Garfish)	<i>Hyporhamphus ihi</i>
Pilchard	<i>Sardinops neopilchardus</i>
Gurnard	<i>Chelidonichthys kumu</i>
Mackerel	<i>Trachurus novaezelandiae</i>
Tarakihi	<i>Nemadactylus macropterus</i>
Kingfish	<i>Seriola lalandi</i>
Cod – rock	<i>Lotella rhacinus</i>
Cod – red	<i>Pseudophycis bachus</i>
Cod – blue	<i>Parapercis colias</i>
Butterfish	<i>Odax pullus</i>
John Dory	<i>Zeus faber</i>
Porae	<i>Nemadactylus Douglasi</i>
Alfonso (Big eye)	<i>Priacanthus tayenus</i>
Lobster	<i>Jasus edwardsii</i>
Freshwater kōura	<i>Paranephrops planifrons</i>

DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

Kai moana/shell fish, other

Name	Scientific name
Karengo	<i>Porphyra</i> species
Kina	<i>Evechinus chloroticus</i>
Freshwater kōura	<i>Paranephrops planifrons</i>
Kuakua	<i>Zygoclamys delicatula</i>
Kuku (Mussels)	<i>Perna</i> and <i>Mytilus</i> spp
Kukuroa (Horse mussels)	<i>Atrina zelandica</i>
Pāua	<i>Haliotis iris</i>
Pāua (yellow foot pāua)	<i>Haliotis australis</i>
Pūpū or periwinkle	<i>Buccinum undatum</i>
Tio (Pacific oyster)	<i>Crassostrea gigas</i>
Titiko (Mud snails)	<i>Amphibola crenata</i>
Toheroa	<i>Paphies ventricosa</i>
Tuangi (Cockles)	<i>Austrovenus stutchburyi</i>
Tuatua	<i>Amphidesma subtriangulatum</i>
Squid	<i>Nototodarus gouldii</i> and <i>Nototodarus sloanii</i>
Octopus	<i>Pinnoctopus cordiformis</i>
Kahitua (bi-valve mollusc)	<i>Paphies subtriangulatum</i>

Ngā tipu/plants

Name	Scientific name
Aruhe	<i>Pteridium esculentum</i>
Harakeke	<i>Phormium tenax</i>
Harore	<i>Pholiota adiposa</i>
Kahikatea	<i>Dacrycarpus dacrydioides</i>
Kānuka	<i>Kunzea ericoides</i>

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DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

Name	Scientific name
Karaka	<i>Corynocarpus leavigatus</i>
Karamuramu	<i>Coprosma lucida</i> and/or <i>Coprosma robusta</i> -
Kauri	<i>Agathis australis</i>
Kawakawa	<i>Macropiper excelsum</i>
Kiekie	<i>Freycinetia baueriana</i> subsp. <i>banksii</i>
Kōwhai	<i>Sophora microphylla</i>
Mamaku	<i>Cyathea medullaris</i>
Mānuka	<i>Leptospermum scoparium</i>
Mataī	<i>Prumnopitys taxifolia</i>
Miro	<i>Prumnopitys ferruginea</i>
Nīkau	<i>Rhopalostylis sapida</i>
Pikopiko	<i>Asplenium bulbiferum</i> subsp. <i>bulbiferum</i>
Pōhutukawa	<i>Metrosideros excelsa</i>
Ponga	<i>Cyathea dealbata</i>
Rewarewa	<i>Knightia excelsa</i>
Tawa	<i>Beilschmiedia tawa</i>
Tāwhara	<i>Freycinetia baueriana</i> subsp. <i>banksii</i>
Ti kōuka	<i>Cordyline australis</i>
Ure	<i>Freycinetia baueriana</i> subsp. <i>banksii</i>

Amphibians

Name	Scientific name
Hochstetters frog	<i>Leiopelma hochstetteri</i>
Whistling frog	<i>Litoria ewingii</i>
Common gecko	<i>Hoplodactylus maculatus</i>

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DOCUMENTS SCHEDULE

4: CONSERVATION PROTOCOL

Name	Scientific name
Forest gecko	<i>Hoplodactylus granulatus</i>
Green gecko	<i>Naultinus elegans</i> (two sub.species are found in the Bay of Plenty - <i>N. elegans elegans</i> and <i>N. elegans punctatus</i> )



**5 TAONGA TŪTURU PROTOCOL**

**MINISTER FOR ARTS, CULTURE AND HERITAGE**

**and**

**WAITAHA**

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**TAONGA TŪTURU PROTOCOL**

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5: TAONGA TŪTURU PROTOCOL

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH (WAITAHA POST-SETTLEMENT GOVERNANCE ENTITY (TBC)) ON SPECIFIED ISSUES**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated xx between the Waitaha Raupatu Trust and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "Minister") would issue a protocol (the "Protocol") setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the "Chief Executive") will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2;
  - 1.1.2 Terms of issue – Part 3
  - 1.1.3 Implementation and communication – Part 4
  - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5
  - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6
  - 1.1.6 Waitaha Ngā Taonga Tūturu held by Te Papa Tongarewa – Part 7
  - 1.1.7 Effects on the interest of Waitaha in the Protocol Area – Part 8
  - 1.1.8 Registration as a collector of Ngā Taonga Tūturu – Part 9
  - 1.1.9 Board Appointments – Part 10
  - 1.1.10 National Monuments, War Graves and Historical Graves – Part 11
  - 1.1.11 History publications relating to Waitaha – Part 12
  - 1.1.12 Cultural and/or Spiritual Practices and Tendering – Part 13
  - 1.1.13 Consultation – Part 14
  - 1.1.14 Changes to legislation affecting this Protocol –Part 15
  - 1.1.15 Definitions – Part 16
- 1.2 For the purposes of this Protocol the governance entity is the body representative of the whānau, hapū, and iwi of Waitaha who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 The Ministry and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provides the basis for the relationship between the parties to this Protocol, as set out in this Protocol.

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## DOCUMENTS SCHEDULE

### 5: TAONGA TŪTURU PROTOCOL

1.4 The purpose of the Protected Objects Act 1975 is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.

1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in Clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in Clause 1.1.

#### 2 PROTOCOL AREA

2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Protocol Area").

#### 3 TERMS OF ISSUE

3.1 This Protocol is issued pursuant to section xx of the xxx ("the Settlement Legislation") that implements the xxx Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

3.2 A summary of the terms of issue is set out in Attachment B.

#### 4 IMPLEMENTATION AND COMMUNICATION

4.1 The Chief Executive will maintain effective communication with the governance entity by:

4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;

4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;

4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry Managers and staff;

4.1.4 meeting with the governance entity to review the implementation of this Protocol at least once a year, if requested by either party;

4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol;

4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and

4.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

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5: TAONGA TŪTURU PROTOCOL

**5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE PROTECTED OBJECTS ACT 1975**

**General**

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand;
  - 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand;
  - 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand;
  - 5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
  - 5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

**Applications for Ownership**

- 5.2. If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

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DOCUMENTS SCHEDULE

5: TAONGA TŪTURU PROTOCOL

**Applications for Custody**

- 5.5 If no ownership application is made to the Māori Land Court for any Taonga Tūturu found within the Protocol Area or identified as being of Waitaha origin found elsewhere in New Zealand by the governance entity or any other person, the Chief Executive will:
  - 5.5.1 consult the governance entity where there is any request from any other person for the custody of the Taonga Tūturu;
  - 5.5.2 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
  - 5.5.3 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

**Export Applications**

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Waitaha origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage’s Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Waitaha origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of his or her decision.

**6. THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975**

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:
  - 6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
  - 6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand;
- 6.2 The Ministry will notify the governance entity in writing of the Minister’s decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

**7. WAITAHA NGĀ TAONGA TŪTURU HELD BY TE PAPA TONGAREWA**

- 7.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with the governance entity, for the purposes of Te Papa Tongarewa compiling a full inventory of Taonga Tūturu held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to Waitaha; and
- 7.2 associated costs and/or additional resources required to complete the obligations under paragraph 7.1 will be funded by Te Papa Tongarewa, as resources allow.

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**DOCUMENTS SCHEDULE**

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**5: TAONGA TŪTURU PROTOCOL**

**8. EFFECTS ON THE INTERESTS OF WAITAHA IN THE PROTOCOL AREA**

- 8.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects the interests of Waitaha in the Protocol Area.
- 8.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect the interests of Waitaha in the Protocol Area.
- 8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and governance entity shall meet to discuss the interests of Waitaha in the Protocol Area as part of the meeting specified in clause 4.1.4.

**9. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU**

- 9.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

**10. BOARD APPOINTMENTS**

- 10.1 The Chief Executive shall:
- 10.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
- 10.1.2 add the governance entity's nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
- 10.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

**11. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES**

- 11.1 The Chief Executive shall seek and consider the views of the governance entity on any national monument, war grave, or historical grave, managed or administered by the Ministry, which specifically relates to the interests of Waitaha.

**12. HISTORY PUBLICATIONS RELATING TO WAITAHA**

- 12.1 The Chief Executive shall:
- 12.1.1 provide the governance entity with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Waitaha, and will supply these on request; and
- 12.1.2 discuss with the governance entity any work the Ministry undertakes that deals specifically or substantially with Waitaha.

**13. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES**

- 13.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Waitaha within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.



## DOCUMENTS SCHEDULE

### 5: TAONGA TŪTURU PROTOCOL

- 13.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services.
- 13.3 The procurement by the Chief Executive of any such services set out in Clauses 13.1 and 13.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

#### 14. CONSULTATION

- 14.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 14.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
- 14.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- 14.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
- 14.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
- 14.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

#### 15 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 15.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:
- 15.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
- 15.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and
- 15.1.3 report back to the governance entity on the outcome of any such consultation.

#### 16. DEFINITIONS

- 16.1 In this Protocol:

**Chief Executive** means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive



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DOCUMENTS SCHEDULE

5: TAONGA TŪTURU PROTOCOL

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

**Expert Examiner** has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

**Found** has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings

**governance entity** means xxx.

**Ngā Taonga Tūturu** has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

**Protocol** means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol

**Taonga Tūturu** has the same meaning as in section 2 of the Act and means:

an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
  - (i) manufactured or modified in New Zealand by Māori; or
  - (ii) brought into New Zealand by Māori; or
  - (iii) used by Māori; and
- (c) is more than 50 years old

xxx has the meaning set out in clause xx of the Deed of Settlement.

*Handwritten mark*

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DOCUMENTS SCHEDULE

5: TAONGA TŪTURU PROTOCOL

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**ISSUED** on

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

**WITNESS**

\_\_\_\_\_  
Name:

Occupation:

Address:

*[Handwritten signature]*

DOCUMENTS SCHEDULE

5: TAONGA TŪTURU PROTOCOL

ATTACHMENT A  
TAONGA TŪTURU PROTOCOL AREA



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DOCUMENTS SCHEDULE

5: TAONGA TŪTURU PROTOCOL

ATTACHMENT B  
SUMMARY OF TERMS OF ISSUE

This protocol is subject to the the deed of settlement and the settlement legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

1.1 The Minister may amend or cancel this protocol, but only after consulting with the governance entity and having particular regard to its views (section [number]).

2. Limits

2.1 This protocol does not -

2.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including -

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tangata whenua (section [number]); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of the settling group (section [number]); or

2.1.3 grant, create, or evidence an estate or interest in, or rights relating to taonga tūturu.

3. Non-compliance

3.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this protocol if the Crown fails, without good cause, to comply with it but damages or monetary compensation will not be awarded (section [number]).

3.2 A breach of this protocol is not a breach of the deed of settlement (clause [number]).

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DOCUMENTS SCHEDULE

6 CROWN MINERALS PROTOCOL

PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH WAITAHA BY THE MINISTRY OF ECONOMIC DEVELOPMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated [ ] between [ ] and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister of Energy and Resources (the "Minister") would issue a Protocol (the "Crown Minerals Protocol") setting out how the Ministry of Economic Development (the "Ministry") will consult with the [ ] Governance Entity (the "Governance Entity") on matters specified in the Crown Minerals Protocol.
1.2 Both the Ministry and Waitaha are seeking a healthy and constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
1.3 The purpose of the Crown Minerals Act 1991 (the "Act") is to restate and reform the law relating to the management of Crown owned minerals. Section 4 of the Act requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
1.4 The Minister is responsible under the Act for the preparation of mineral programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry administers the Act on behalf of the Minister.
1.5 This Crown Minerals Protocol will affect the Ministry's administration of Crown owned minerals under the Act in the Crown Minerals Protocol Area.

2 PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between Waitaha and the Ministry in relation to mineral resources administered in accordance with the Act in the Crown Minerals Protocol Area, this Crown Minerals Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Crown Minerals Protocol.
2.2 The Governance Entity will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Crown Minerals Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

3 PROTOCOL AREA

- 3.1 This Crown Minerals Protocol applies across the Crown Minerals Protocol Area which means the area identified in the map included in Attachment A of this Crown Minerals Protocol together with the adjacent waters.

4 TERMS OF ISSUE

- 4.1 This Crown Minerals Protocol is issued pursuant to section [ ] of [insert the name of the Settlement Legislation] (the "Settlement Legislation") that implements clause [ ] of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

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**DOCUMENTS SCHEDULE**

**6: CROWN MINERALS PROTOCOL**

4.2 This Crown Minerals Protocol must be read subject to the terms of issue set out in Attachment B.

**5 CONSULTATION**

5.1 The Minister will ensure that the Governance Entity is consulted by the Ministry:

**New minerals programmes**

5.1.1 on the preparation of new minerals programmes which relate, whether wholly or in part, to the Crown Minerals Protocol Area;

**Petroleum exploration permit block offers**

5.1.2 on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the Crown Minerals Protocol Area;

**Other petroleum exploration permit applications**

5.1.3 when any application for a petroleum exploration permit is received, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.2;

**Amendments to petroleum exploration permits**

5.1.4 when any application to amend a petroleum exploration permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Crown Minerals Protocol Area;

**Permit block offers for Crown owned minerals other than petroleum**

5.1.5 on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than Petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme) which relates, whether wholly or in part, to the Crown Minerals Protocol Area;

**Other permit applications for Crown owned minerals other than petroleum**

5.1.6 when any application for a permit in respect of Crown owned minerals other than petroleum is received, which relates, whether wholly or in part, to the Crown Minerals Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 5.1.5 or where the application relates to newly available acreage;

**Newly available acreage**

5.1.7 when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Crown Minerals Protocol Area; and

**Amendments to permits for Crown owned minerals other than petroleum**

5.1.8 when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is

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**DOCUMENTS SCHEDULE**

**6: CROWN MINERALS PROTOCOL**

received, where the application relates, wholly or in part, to the Crown Minerals Protocol Area.

- 5.2 Each decision on a proposal referred to in clause 5.1 will be made having regard to any matters raised as a result of consultation with the Governance Entity, and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.

**6 IMPLEMENTATION AND COMMUNICATION**

- 6.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in clause 5.1 of this Crown Minerals Protocol. The Ministry will consult with the Governance Entity in accordance with this Crown Minerals Protocol and in accordance with the relevant minerals programme if matters described in clause 5.1 of this Crown Minerals Protocol Area may affect the interests of Waitaha.

- 6.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

- 6.2.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under clause 5 of this Crown Minerals Protocol;

- 6.2.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol;

- 6.2.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the consideration by the Governance Entity of its submissions in relation to any of the matters described in clause 5 of this Crown Minerals Protocol; and

- 6.2.4 ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters described in clause 5 of this Crown Minerals Protocol.

- 6.3 Where the Ministry is required to consult the Governance Entity as specified in clause 6.1, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.

- 6.4 The Ministry will seek to fulfil its obligations under this Crown Minerals Protocol by:

- 6.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;

- 6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this Crown Minerals Protocol;

- 6.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol; and

- 6.4.4 providing the Governance Entity with the names of the relevant employees who will act as contacts with the Governance Entity in relation to issues concerning this Crown Minerals Protocol;



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DOCUMENTS SCHEDULE

6: CROWN MINERALS PROTOCOL

7 DEFINITIONS

7.1 In this Crown Minerals Protocol:

**Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;

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

**Crown owned minerals** means any mineral (as defined below) that is the property of the Crown in accordance with sections 10 and 11 of the Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

**Deed of Settlement** means the Deed of Settlement dated [ ] between the Crown and [ ];

**Governance Entity** means *[insert name and description]*;

**Mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water, and includes all metallic minerals, non-metallic minerals, fuel minerals (including coal and petroleum), precious stones, industrial rocks and building stones within the meaning of the Act and a prescribed substance within the meaning of the Atomic Energy Act 1945;

**Minister** means the Minister of Energy and Resources;

**Ministry** means the Ministry of Economic Development;

**Waitaha** has the meaning set out in clause [ ] of the Deed of Settlement;

**Newly available acreage** has the meaning provided in clause 3.5 of the Minerals Programme for Minerals (Excluding Petroleum) 2008;

**Petroleum** means:

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide;

and, except in sections 10 and 11 of the Act, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered, but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area;

**Protocol** means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Crown Minerals Protocol; and

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# DOCUMENTS SCHEDULE

## 6: CROWN MINERALS PROTOCOL

Secretary means the chief executive of the Ministry of Economic Development.

ISSUED ON [                          ]

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

**WITNESS**

\_\_\_\_\_

Name \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

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**DOCUMENTS SCHEDULE**

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**6: CROWN MINERALS PROTOCOL**

**ATTACHMENT A  
CROWN MINERALS PROTOCOL AREA**

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DOCUMENTS SCHEDULE

6: CROWN MINERALS PROTOCOL



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## DOCUMENTS SCHEDULE

### 6: CROWN MINERALS PROTOCOL

#### ATTACHMENT B

#### TERMS OF ISSUE

This Crown Minerals Protocol is issued subject to the provisions of the Deed of Settlement and the Settlement Legislation. These provisions are set out below.

#### 1 Provisions of the Deed of Settlement relating to this Protocol

1.1 The Deed of Settlement provides that:

1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (clause [ ]); and

1.1.2 this Crown Minerals Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or other representative of tangata whenua (clause [ ]); and

1.1.3 this Crown Minerals Protocol:

(a) is consistent with section 4 of the Crown Minerals Act 1991;

(b) does not override or diminish:

(i) the requirements of that Act;

(ii) the functions and powers of the Minister of Energy, or the Ministry of Economic Development, under that Act; or

(iii) the rights of [ ], or a Representative Entity, under that Act (clause [ ]).

1.2 Representative Entity has the same meaning in **clause 1.1.3** of these terms of issue as it has in clause [ ] of the Deed of Settlement.

#### 2 Authority to issue, amend or cancel Protocols

2.1 Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clauses [ - ] of the Deed of Settlement]*

#### 3 Protocols subject to rights and obligations

3.1 Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clause [ ] of the Deed of Settlement]*

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## DOCUMENTS SCHEDULE

### 6: CROWN MINERALS PROTOCOL

#### 4 Noting of Protocol

4.1 Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clauses [ ] of the Deed of Settlement]*

#### 5 Enforcement of Protocol

5.1 Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clauses [ ] of the Deed of Settlement]*

#### 6 Limitation of rights

6.1 Section [ ] of the Settlement Legislation provides that:

*[Quote the section of the Settlement Legislation included in accordance with clause [ ] of the Deed of Settlement]*



## 7 MINISTERIAL LETTERS TO LOCAL AUTHORITIES

### *[Letterhead of the Minister for Treaty of Waitangi Negotiations]*

**[A letter in this form is to be sent by the settlement date to each of the following:**

- *the Bay of Plenty Regional Council:*
- *the Tauranga City Council:*
- *the Western Bay of Plenty District Council.]*

Tēnā koe [ ]

I am writing to advise [the] **[name of authority] (the council/Environment Bay of Plenty)** of the [impending] Treaty settlement with Waitaha and to encourage [the council/Environment Bay of Plenty] to meet with the trustees of Te Kapu o Waitaha to discuss matters of common interest.

In doing so I hope that the council and Waitaha will form an effective relationship based on mutual trust, respect and co-operation for the benefit of those within the council's area of responsibility and the wider Te Arawa region.

#### *Waitaha*

Waitaha has a population of approximately 2000 members, based in and around Te Puke. Waitaha has suffered serious breaches of the Treaty, relating mainly to the New Zealand Wars (and in particular the treatment of their chief, Hakaraia), the Tauranga confiscation, the operation and impact of the native land laws, and the Crown's land purchasing techniques in the nineteenth century.

#### *Settlement of historical claims*

As you are aware, on 20 September 2011 the Crown signed a Deed of Settlement (**Deed**) with Waitaha for the settlement of all their historical claims under the Treaty of Waitangi.

The Deed is conditional on settlement legislation (due to be introduced into the House of Representatives shortly) which will give effect to aspects of the settlement.

#### *Post-Settlement governance*

Waitaha has established Te Kapu o Waitaha. The Waitaha claimant community ratified Te Kapu o Waitaha as its post-settlement governance entity and the Crown has approved it as a representative, accountable, and transparent entity to receive and manage the settlement redress.

#### *Relationships*

During the course of negotiations, the Waitaha negotiators sought the opportunity to develop an ongoing relationship with local authorities within the Waitaha area of interest, including [name of authority]. The essence of the request relates to the enhancement and maintenance of an effective and durable working relationship with these local authorities post-settlement.

I sincerely urge [the council/Environment Bay of Plenty] and the trustees of Te Kapu o Waitaha to develop an effective and durable working relationship that allows the parties to benefit from mutual cooperation.

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DOCUMENTS SCHEDULE

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7: MINISTERIAL LETTERS TO LOCAL AUTHORITIES

Nāku noa, nā

Hon Christopher Finlayson

**Minister for Treaty of Waitangi Negotiations**

*AR*



DOCUMENTS SCHEDULE

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**8 LEASES FOR SCHOOL LEASEBACK PROPERTIES**

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DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

WITHOUT PREJUDICE and SUBJECT TO APPROVAL BY MINISTER

Waitaha lease – 6 July 2011

MINISTRY OF EDUCATION  
TREATY SETTLEMENT LEASE

MEMORANDUM OF LEASE dated [ ]

LESSOR [POST-SETTLEMENT GOVERNANCE ENTITY]

LESSEE HER MAJESTY THE QUEEN acting by and through the Secretary for Education

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between [claimant group] and the Crown, under which the parties agreed to sell the Land to [POST-SETTLEMENT GOVERNANCE ENTITY] and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

[SIGNED on behalf of the Lessor by]

[SIGNED on behalf of the Lessee by]

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**DOCUMENTS SCHEDULE**

**8: LEASES FOR SCHOOL LEASEBACK PROPERTIES**

**SCHEDULE A**

**ITEM 1 THE LAND**

[Insert full legal description. Note that improvements are excluded].

**ITEM 2 START DATE**

[Insert start date].

**ITEM 3 ANNUAL RENT**

[\$ ] plus GST per annum payable monthly in advance on the first day of each month with a first payment due on the [Date] day of [Month & Year].

**ITEM 4 TERM OF LEASE**

21 Years.

**ITEM 5 LESSEE OUTGOINGS**

**5.1** Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.

**5.2** All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).

**5.3** The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

**5.4** Maintenance of car parking areas.

**5.5** All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each from [Date], and each 21<sup>st</sup> yearly anniversary after that date.

**ITEM 8 RENT REVIEW DATES**

[Date] and 7 yearly after that Date.

DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

ITEM 9 LESSEE'S IMPROVEMENTS

As defined in clause 1.9 and including the following existing improvements: [List all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].

ITEM 10 CLAUSE 16.5 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")

From: [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
- (ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
- (iii) It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and
- (iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[ ]

\_\_\_\_\_  
[Form of execution by Lender]

\_\_\_\_\_  
[Date]

DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

ITEM 11 CLAUSE 16.6 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")

From [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:

- (i) will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and
- (ii) acknowledges that any Lessee's Improvements remain the Lessee's property at all times.

SCHEDULE

[ ]

\_\_\_\_\_  
[Form of execution by Lender]

\_\_\_\_\_  
[Date]

DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

SCHEDULE B

1 Definitions

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "Business Day" means a day that is not:

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

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by one or more of the following:

AC

## DOCUMENTS SCHEDULE

### 8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

- (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise;
  - (iv) the New Zealand Railways Corporation; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

### 2 Payment of Annual Rent

- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

### 3 Rent Review

When a party initiates the rent review process as set out in clause 3.5:

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:

**DOCUMENTS SCHEDULE**

**8: LEASES FOR SCHOOL LEASEBACK PROPERTIES**

- (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
  - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.3.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
  - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
  - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
  - (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
  - (e) The parties must try to agree on a new Annual Rent.
  - (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
    - i. by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or



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DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

- ii. if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The rent review provisions may be varied by the parties by agreement and must be recorded in a variation of this Lease.

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**DOCUMENTS SCHEDULE****8: LEASES FOR SCHOOL LEASEBACK PROPERTIES****4 Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

**5 Valuation Roll**

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

**6 Utility Charges**

6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.

6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.

6.3 If required to do so by the Lessor or any territorial or local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

**7 Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

**9 Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

**10 Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

**11 Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

DOCUMENTS SCHEDULE

8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

12 Hazards

- 12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.
- 12.2 Subject to clause 13.1, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

13 Damage or Destruction

- 13.1 If as the result of a natural event the Land is destroyed, altered or damaged so significantly that it is no longer suitable for the Permitted Use, then the Term will immediately terminate, provided that any termination under this clause will be without prejudice to the rights of either party against the other.
- 13.2 If the Land is damaged or altered but not so significantly that it is no longer suitable for the Permitted Use the parties may renegotiate in good faith the Annual Rent payable under this Lease and may agree to suspend the parties' obligations under this Lease for an agreed period.

14 Contamination

- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

15 Easements

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

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## DOCUMENTS SCHEDULE

### 8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

#### 16 Lessee's Improvements

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the sale of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.

#### 17 Rubbish Removal

The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.

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8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

**18 Signs**

The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.

**19 Insurance**

19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.

19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

**20 Fencing**

20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.

20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

**21 Quiet Enjoyment**

21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.

21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

**22 Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 Nothing in clauses 22 or 23 prevents the Lessee from disposing of or transferring all or part of its interest in the Land under section 40, 41, 42, 50 or 52 of the Public Works Act 1981.

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**DOCUMENTS SCHEDULE**

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**8: LEASES FOR SCHOOL LEASEBACK PROPERTIES**

22.5 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

**24 Occupancy by School Board of Trustees**

24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.

24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

**25 Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

**26 Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

**27 Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or

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## DOCUMENTS SCHEDULE

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### 8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

(c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

#### **28 Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed in perpetuity every 21 years beginning with the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the current Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of renewal, provided that either party may initiate the rent review process in accordance with clause 3.

#### **29 Right of First Refusal for Lessor's Interest**

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice (Lessor's Notice) to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor (Lessee's Notice) accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

#### **30 Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

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**DOCUMENTS SCHEDULE**

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**8: LEASES FOR SCHOOL LEASEBACK PROPERTIES**

**31 Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

**32 Service of Notices**

32.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6011

32.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

[INSERT CONTACT DETAILS]

32.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

**33 Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

**34 Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.



DOCUMENTS SCHEDULE

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8: LEASES FOR SCHOOL LEASEBACK PROPERTIES

LESSOR:

LESSEE:

HER MAJESTY THE QUEEN  
acting by and through the Secretary for Education

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MEMORANDUM OF LEASE

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THE SECRETARY FOR EDUCATION  
MINISTRY OF EDUCATION  
NATIONAL OFFICE  
WELLINGTON

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**9 INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION**

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

Entity

**HER MAJESTY THE QUEEN**

acting by and through the  
**COMMISSIONER OF POLICE**

**MEMORANDUM OF LEASE**

**mortlock mccormack law**

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Level 1, 47 Cathedral Square • PO Box 13 474 • DX WP21036 - Christchurch 8031 • New Zealand

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

MEMORANDUM OF LEASE

DATE:

PARTIES:

(1) Entity (Lessor)

(2) HER MAJESTY THE QUEEN acting by and through the COMMISSIONER OF POLICE (Lessee)

THE LESSOR DOES HEREBY LEASE TO THE LESSEE and THE LESSEE DOES TAKE ON LEASE the Land for the term and at the rental set out in the Reference Schedule and subject to the covenants, conditions, agreements and restrictions set out in this Lease which comprises the Schedule of Terms, the Reference Schedule and the Schedule of Land.

IN WITNESS WHEREOF these presents have been executed this day of 20

Signed for and on behalf of )
Entity )
in the presence of: )

Handwritten signature

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DOCUMENTS SCHEDULE

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

Signed for and on behalf of )  
HER MAJESTY THE QUEEN )  
acting by and through the )  
COMMISSIONER OF POLICE by )  
)

authorised agent of the Commissioner )  
of New Zealand Police, on behalf of the )  
Commissioner of New Zealand Police )  
in the presence of )

*[Handwritten signature]*

DOCUMENTS SCHEDULE

9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

THE REFERENCE SCHEDULE

ITEM 1: LESSOR PARTICULARS:

Name: Entity

Address:

Fax:

Contact person: Secretary

ITEM 2: LESSEE PARTICULARS:

Name: Her Majesty the Queen acting by and through the Commissioner of Police

Address: New Zealand Police, National Property Office, P O Box 3017, Wellington

Fax: (04) 498 7415 Telephone: (04) 474 9473

Contact person: National Property Manager

ITEM 3: LAND:

ITEM 4: TERM:

Twenty Years

ITEM 5: DATE OF COMMENCEMENT:

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

[ ]

**ITEM 6: FURTHER TERMS:**

Perpetual rights of renewal of twenty (20) years each subject to clause 13.1(e)

**ITEM 7: RENEWAL DATES:**

[ ] and every twentieth (20<sup>th</sup>) anniversary date thereafter

**ITEM 8: ANNUAL RENT:**

[\$ ] plus GST

**ITEM 9: RENT COMMENCEMENT DATE:**

[ ]

**ITEM 10: REVIEW DATES:**

Five yearly from the Commencement Date of this Lease.

**ITEM 11: PERMITTED USE:**

For Police purposes and any permitted activity under the relevant Regional and District Plans or use permitted under any resource consent held in respect of the Land.

## THE SCHEDULE OF TERMS

### 1 INTERPRETATION

- 1.1 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:
- (a) Words importing any gender shall include all other genders.
  - (b) Words importing the singular shall include the plural and vice versa.
  - (c) Payments shall be made in the lawful currency of New Zealand.
  - (d) Headings are for ease of reference only and do not in any way limit or govern the construction of the terms of this Lease.
  - (e) References to schedules are references to schedules in this Lease and clauses are references to clauses in this Schedule of Terms and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) unless expressly stated otherwise.
  - (f) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
  - (g) A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise in each case whether or not having separate legal personality.
  - (h) "writing" shall include words visibly represented or reproduced.
  - (i) No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.
  - (j) Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
  - (k) The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
  - (l) The parties acknowledge and agree that certain covenants set out in this Lease (in particular provisions relating to the treatment of Improvements on termination or sooner determination of this Lease) shall continue



**9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION**

beyond determination of this Lease for the benefit of the parties notwithstanding such determination.

- (m) This Lease shall be construed and take effect in accordance with the laws of New Zealand.
- (n) Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- (o) Any reference in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly.
- (p) "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Improvements.
- (q) "Business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday.
- (r) "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- (s) "Government Agency" includes any department or instrument of the Executive Government of New Zealand; and, includes:
  - (i) a body corporate or corporation sole (whether called a corporation sole), commission, council, board, authority, or by any name) that has been established or constituted by a public Act of Parliament and that is named in that Act;
  - (ii) a body corporate or organisation that is controlled wholly by the Crown or by any such Department, instrument, corporate, corporation sole, or organisation;
  - (iii) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
  - (iv) a State enterprise within the meaning of the State-Owned Enterprises Act 1985;
- (t) "Improvements" means all Improvements excluding Lessor's Improvements whether constructed or installed on the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, signage, fixtures and fittings.
- (u) "The Land" means that land described in the Schedule of Land excluding the Improvements.
- (v) The expression "Lessor" and "Lessee" includes their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) and where the context permits the Lessee includes the Lessee's Sublessees and other lawful occupiers of the Land and the

**9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION**

Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee).

- (w) "Lessor's Improvements" means work done or material used on or for the benefit of the Land (whether before or during the term of this Lease including any renewal or variation extending the term of this Lease) in:
  - (i) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
  - (ii) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
  - (iii) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
  - (iv) the alteration of soil fertility or of the structure of the soil; or
  - (v) the arresting or elimination of erosion or flooding.
- (x) "Reference Schedule" means the schedule preceding this Schedule of Terms described as such and forming part of this Lease.
- (y) "Regional Plan" and "District Plan" shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and "Regional and District Plans" shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (z) "Rent Commencement Date" means the date specified in Item 9 of the Reference Schedule.
- (aa) "Schedule of Land" means the schedule described as such and forming part of this Lease.
- (bb) "Schedule of Terms" means this schedule described as such and forming part of this Lease.

**2 TERM**

- 2.1 The term of this Lease shall commence on the Date of Commencement and shall be for the period specified in Item 4 of the Reference Schedule.

**3 RIGHT OF RENEWAL OF LEASE**

- 3.1 The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in the Reference Schedule from the date of expiry of the initial term or any subsequent term as follows:

- (a) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 5 as though the commencement date of the renewed term were a Rent Review Date; and

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(b) the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.

3.2 The Lessee shall give to the Lessor notice of the Lessee's renewal of this Lease no later than 12 months prior to the expiry of the initial term or any subsequent term, time being of the essence.

**4 RENT**

4.1 The Lessee shall pay the annual rent specified in Item 8 of the Reference Schedule from the Rent Commencement Date until the rent is varied under Clause 5 at which time the Lessee will pay rent at the varied rate.

4.2 Rent shall be paid on the first day of each month by equal monthly payments in advance with broken period payments due on a proportionate basis for any broken period at the Rent Commencement Date and on expiry of the Lease term.

4.3 All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.

**5 RENT REVIEW PROVISIONS**

5.1 In this clause "Initiating Party" means the party that gives the Notice defined in Clause 5.2 and "Recipient" means the party that receives that Notice.

5.2 The annual rent may be reviewed by the Lessor or by the Lessee on the dates specified in Item 10 of the Reference Schedule. At any time not earlier than three (3) months prior to the relevant date specified in Item 10 of the Reference Schedule (each of such dates being called the "review date") either party may give notice in writing to the other ("the Notice") of that party's assessment of the annual rent of the Land to apply from that particular review date.

5.3 The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:

(a) Disregard:

- (i) any deleterious condition of the Land if such condition results from any breach of this lease by the Lessee;
- (ii) the value of any goodwill attributable to the Lessee's business; and
- (iii) all Improvements made to the Land.

(b) Have regard to:

- (i) the Lessor's Improvements; and
- (ii) the permitted use under this Lease; and
- (iii) Regional and District Plans.

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- 5.4 In the event that the Recipient does not agree with the Initiating Party's assessment of the annual rent of the Land to apply from the particular review date, the Recipient shall notify the Initiating Party in writing ("the Counter Notice") within twenty-one (21) days (in which respect time shall be of the essence) that the Recipient requires such rent to be determined in accordance with Clause 5.7 and the Recipient shall set out in the Counter Notice the amount which the Recipient considers to be the annual rent as at the particular review date.
- 5.5 Unless such notice is given by the Recipient within twenty-one (21) days, then the amount stated in the Notice shall become the annual rent of the Land reserved by this Lease as and from the particular review date in substitution of the previous amount payable.
- 5.6 Neither party shall by reason of its failure to give the Notice prior to any review date forfeit its right to have the annual rent reviewed as from that particular review date and the reviewed annual rent which should have been paid from that particular review date shall date back to and be payable from that particular review date and any payment of or receipt for the payment of ground rent due on or after a particular review date shall not prejudice either party's right to demand repayment or payment thereafter of any additional annual rent overpaid or payable pursuant to the provisions of Clause 5.11(b).
- 5.7 Where the Counter Notice is given, the Lessor and Lessee shall enter into negotiations to resolve the dispute. Should agreement not be reached within fourteen (14) days (or such longer period as the Lessor and Lessee shall agree upon in writing) after the date on which the Recipient gives the Counter Notice then:
- (a) the Lessor and Lessee shall, within twenty-one (21) days after the date on which the Recipient gives the Counter Notice, each appoint a valuer to jointly determine the ground rent of the Land. A valuer nominated by either party pursuant to this Clause shall be a full registered member of the New Zealand Institute of Valuers and shall be competent to practice as a valuer of ground leases and shall have at least five (5) years experience in valuing ground leases within the district in which the Land is situated and be active in the market at the time of his or her appointment.
  - (b) if either the Lessor or the Lessee fails to appoint a valuer within twenty-one (21) days as aforesaid, then the determination of the annual rent shall be made by the sole valuer as nominated by either the Lessor or Lessee as the case may be, within one (1) month of the expiry of the twenty-one (21) days as aforesaid and his or her determination shall be final and binding on both parties as if his or her appointment had been by consent.
  - (c) before proceeding with their determination, the said valuers shall agree upon and appoint an umpire (also qualified in the manner referred to in Clause 5.7(a)) and obtain the umpire's acceptance in writing of his or her appointment and who, as a condition of his or her acceptance, undertakes to hand down his or her determination of the annual rent within one month of being instructed to proceed or such other time period as the Lessor and Lessee may agree, whichever is the latest.

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- (d) if the said valuers within fourteen (14) days of the date of their appointment either fail to appoint an umpire or are unable to agree upon an umpire, then either the Lessor or the Lessee may request the President, for the time being, of the New Zealand Institute of Valuers or any successor to such Institute to appoint an umpire (also qualified in the manner aforesaid) and obtain the umpire's acceptance in writing of his or her appointment and who as a condition of his or her acceptance undertakes to hand down his or her determination of the annual rent in the same manner as if he or she had been appointed pursuant to Clause 5.7(a).
- (e) subject to Clauses 5.7(b), 5.7(c) and 5.7(d) the valuers so nominated shall within one (1) month of the date of appointment jointly determine the annual rent as at that particular review date.
- (f) in the event that either valuer fails to provide to the other valuer his or her written assessment of the annual rent within one month of the date of appointment, then the annual rent shall be determined by the other valuer and his or her determination shall be final and binding on both parties.
- (g) if the said valuers are unable to agree upon a determination within one month of their appointment or within such extended time as the Lessor and Lessee may agree, then the annual rent shall be determined by the umpire whose determination shall be final and binding on the parties. The umpire shall without limiting his or her enquiries and conduct of any hearing:
  - (i) arrange for a hearing to be conducted without delay;
  - (ii) call for evidence in chief to be presented on behalf of each party to be circulated prior to a hearing;
  - (iii) allow representation of each party and cross-examination of evidence and any re-examination of evidence at the hearing;
  - (iv) have due regard to any evidence submitted by the valuers as to their assessment of the annual rent;
  - (v) take into account any expert witness evidence considered relevant to the hearing;
  - (vi) have regard to the legal rules of evidence and the interests of natural justice in the conduct of any hearing as between the parties;
  - (vii) give in his or her determination the reasons therefor in writing.
- (h) the costs incurred in the determination pursuant to Clause 5.7 of the annual rent shall be borne by the parties in the following manner:
  - (i) subject to Clause 5.7(h)(ii) each party shall be responsible for the cost of its own appointed valuer;
  - (ii) where the determination is made by a single valuer pursuant to Clause 5.7(b) the cost of his or her determination shall be apportioned equally as between the Lessor and Lessee;

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- (iii) the parties shall share equally the costs of the umpire unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this Clause 5.7 in which case the umpire may determine the manner in which such costs shall be apportioned between the parties PROVIDED THAT in all cases if the annual rent to apply from the review date is:
  - (A) equal to or exceeding the annual rent nominated in the notice given by the Lessor (whether the Notice or the Counter Notice) then all costs of the valuers and the umpire (where applicable) shall be borne by the Lessee alone, or
  - (B) equal to or less than the annual rent nominated in the notice given by the Lessee (whether the Notice or the Counter Notice) then all costs of valuers and the umpire (where applicable) will be borne by the Lessor alone;
  - (C) other than the foregoing then all costs of valuers and the umpire (where applicable) will be borne equally by the Lessor and the Lessee.
  
- 5.8 The valuers or umpire shall be deemed to be acting as experts and not as arbitrators.
  
- 5.9 Any variation in the annual rent resulting from such determination shall take effect on and from that particular review date.
  
- 5.10 The annual rent so determined or accepted:
  - (a) shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payment at the commencement of such subsequent term; and
  - (b) shall be the Annual Rental from the Rent Review Date or the date of the initiated notice, if such notice is given later than 12 months after the Rent Review Date.
  
- 5.11 Pending the determination of the Annual Rent, the Lessee if it is the Crown or a Government Agency shall from the relevant review date on the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current market rent of the Land, pay an interim annual rent ("Interim Rent") equivalent to that immediately prior to the review date, however if the Lessee is not the Crown or a Government Agency it will pay the Interim Rent as follows:
  - (a) if both parties supply a registered valuer's certificate substantiating the current market rent of the Land proposed by each party, the Interim Rent shall be based on the average of the two rents proposed by the parties; or
  - (b) if only one party supplies a registered valuer's certificate substantiating the current market rent of the Land proposed, the Interim Rent shall be based on the current market rent of the Land substantiated in that certificate; or

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- (c) if no registered valuer's certificates are supplied, the Interim Rent payable shall be the rent payable immediately prior to the relevant Rent Review Date; and
- (d) on completion of the review, any increased annual rent payable as from the review date shall be paid by the Lessee to the Lessor no later than the date on which the next installment of annual rent is payable hereunder;
- (e) on completion of the review, any overpayment of annual rent paid as from the review date shall be held by the Lessor to the Lessee's credit on account of annual rent next falling due for payment unless the Lessee requests the Lessor in writing to refund such payment in which case the Lessor will comply with that request.

**6 CHARGES**

- 6.1 The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.

**7 PAYMENT OF RATES AND IMPOSITIONS**

- 7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.

**8 GOODS AND SERVICES TAX**

- 8.1 The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefor including all amendments and any enactments in substitution therefor or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease (including the payment of annual rent) or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**9 INTEREST ON OVERDUE RENT OR OTHER MONEYS**

- 9.1 Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment thereof (whether any formal or legal demand therefor shall have been made or not) such unpaid moneys shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such moneys at a rate being 1 % above the average 90 day bank bill buy rate

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(described as the BID rate) at 10.45am on the date the payment was due as shown on page BKBM (or its successor page) on the Reuters screen or at a rate based on any successor screen or if there is none at a rate equal to the bank overdraft rate of the Lessor's bank at the time of any default and the said interest shall be recoverable in the same manner as rent in arrears.

**10 USE OF THE LAND AND IMPROVEMENTS**

- 10.1 The Lessee shall be permitted the right to carry on the business specified in Item 11 of the Reference Schedule.
- 10.2 Should any of the uses of the Land and any Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.
- 10.3 Where the Lessee being the Crown or a Government Agency is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority such as required under section 348 of the Local Government Act 1974, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.
- 10.4 However where the Lessee is not the Crown or a Government Agency, the Lessor may raise such objections or requisitions as it deems necessary as landowner of the Land provided such objection or requisition is not unreasonable or unfair.

**11 NO FENCING**

- 11.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any land owned or occupied by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee of the Lessor of any adjoining land.

**12 STATUTORY REQUIREMENTS**

- 12.1 The Lessee must comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- (a) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;



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- (b) comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
- (c) ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992.

12.2 The Lessee shall not, during the term of this Lease:

- (a) make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (b) suffer insolvency, bankruptcy or liquidation;
- (c) suffer distress or allow execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court in a sum in excess of twenty five thousand dollars (\$25,000.00) provided however that this subclause 12.2(c) shall have no application or effect whilst Her Majesty the Queen Acting By and Through the Commissioner of Police is the Lessee hereunder.

**13 ASSIGNMENT OR SUBLETTING**

13.1 Subject to clauses 13.3 and 13.4, the Lessee must not assign, sublet or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:

- (a) The Lessee proves to the satisfaction of the Lessor that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under any lease.
- (b) All rent and other moneys payable under this Lease have been paid and there is no subsisting (in the case of a Government Agency a material, willful and deliberate) breach of any of the Lessee's covenants.
- (c) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed assignee.
- (d) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.
- (e) Where the assignee is a party which is not the Crown or a Government Agency, the Lessee will, at the Lessee's own expense, procure the execution by the assignee of a variation of this Lease whereby the

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Lease will cease to be perpetually renewable and the number of further terms will be reduced to five (of 20 years each) so that the Lease will have a final expiry date (if all rights of renewal are exercised) at the date of the expiration of a period of 100 years following this expiration of the term of the Lease during which the Assignment is effected.

- (f) Where the assignee is a company, the Lessor may require the deed of covenant referred to in paragraph (d) above to be executed by that company and also by such other directors and/or shareholders of that company as the Lessor reasonably requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.

13.2 For the purposes of clause 13.1 any change in the shareholding of the Lessee (where the Lessee not being a Government Agency is a company which is not listed on the main board of a public stock exchange) or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clauses 13.3 and 13.4.

13.3 If, by any statutory provision or regulation enacted during the Term of this Lease, the Lessee is obliged to transfer or assign management of the Land or any aspect of such management to a third party, the provisions of clause 13.1 will not apply to such a transfer or assignment and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of management of the Land, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.

13.4 PROVIDED ALWAYS, notwithstanding clause 13.1, the Lessee may at any time and from time to time:

- (a) transfer or assign its interest as Lessee under this Lease, or grant a sublease or licence of the whole or any part(s) of the Land, to any Government Agency; and/or
- (b) grant a sublease or licence of the whole or any part(s) of the Land to any other person,

in either case without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.

13.5 Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to any other person, the Lessee will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

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13.6 Notwithstanding any rule of law or anything expressed or implied in this Lease to the contrary, where a Government Agency is Lessee, assigns its interest in this Lease under the provisions of this clause 13, all the liabilities of the Government Agency as Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other money or the future observance or performance of any of the covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of assignment, but without releasing the Lessee from liability for any antecedent breach of this Lease.

**14 RIGHT OF FIRST REFUSAL FOR LESSOR IF LESSEE TO ASSIGN**

14.1 The following sub-clauses of this clause 14.1 will only apply in the event that the Lessee proposes to assign the Lessee's interests in this Lease to a party which is not the Crown or a Government Agency. The Lessor shall have no right of first refusal in the event of the Lessee wishing to transfer or assign its interest as Lessee under this Lease to the Crown or a Government Agency.

- (a) If at any time before the expiration or earlier termination of the term or any renewed or extended term the Lessee wishes to assign the Lessee's interest in this Lease (including any assignment by way of sale of the Lessee's Improvements) the Lessee must immediately give written notice ("Lessee's Notice") to the Lessor setting out the terms on which the Lessee wishes to assign its interest in the Lease and sell the Lessee's Improvements (together "the Lessee's Interest").
- (b) The Lessor will have 60 Working Days following the date of receipt of the Lessee's Notice (time being of the essence) in which to exercise the Lessor's right to purchase the Lessee's Interest, by serving written notice on the Lessee ("Lessor's Notice") accepting the offer contained in the Lessee's Notice.
- (c) If the Lessor does not serve the Lessor's Notice on the Lessee in accordance with subclause (b) then the Lessee may assign the Lessee's Interest to any other person on no more favourable terms than those previously offered to the Lessor. The provisions of clause 13.1 of this Lease will apply to any such assignment.
- (d) If the Lessee wishes to offer more favourable terms for assignment of the Lessee's Interest than the terms contained in the Lessee's Notice, the Lessee must first re-offer its interest therein to the Lessor on those terms by written notice to the Lessor and clauses 14.1(b), (c), and (d) (inclusive) shall apply. If the re-offer is made within 6 months of the initial Lessee's Notice, the 60 Working Day period for acceptance shall be reduced to 30 Working Days.

**15 LESSEE'S ACKNOWLEDGEMENT OF RISK**

15.1 The Lessee agrees to occupy and use the Land and any Improvements at the Lessee's risk and release to the full extent permitted by law the Lessor its employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in

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or about the Land and any Improvements thereon except where the Lessor or any person under the control of the Lessor is at fault or negligent through their own acts or omissions.

16 QUIET ENJOYMENT/REPUDIATION

- 16.1 Provided the Lessee performs and observes the covenants, provisos, conditions and agreements contained in this Lease the Lessee shall peaceably hold and enjoy the Land and Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease. For the avoidance of doubt, the phrase "person or persons claiming under the Lessor" does not include beneficiaries of any trust of which the Lessor is trustee.
- 16.2 The Lessor is to compensate the Lessee and the Lessee shall be entitled to recover any damages for any loss or damage suffered by reason of any acts or omissions of the Lessor constituting a repudiation of the Lease or the Lessor's obligations under the Lease. Such entitlement shall subsist notwithstanding any cancellation or early termination of the Lease and shall be in addition to any other right or remedy which the Lessee may have.
- 16.3 For the avoidance of doubt, in the event of a dispute regarding any aspect of this subclause, the provisions of clauses 23.1-23.4 of this Lease shall apply.

17 REGISTRATION

- 17.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 1952.
- 17.2 The Lessee will be responsible for survey and other costs incurred in obtaining registration of this Lease.

18 IMPROVEMENTS DURING LEASE

- 18.1 Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless the Lessor and the Lessee otherwise agree in writing.
- 18.2 Throughout the term of this Lease and on any renewal the Lessee shall have the right to alter, construct and demolish any Improvements on the Land without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Improvements on the Land are satisfied.

19 IMPROVEMENTS ON TERMINATION OF LEASE

- 19.1 The Lessee may at its option remove all or any of the Lessee's Improvements from the Land at any time during the continuance of this Lease, and also during the period of 3 months from the expiration or sooner determination of this Lease. It is acknowledged and agreed by the parties that property in all Lessee's Improvements remains with the Lessee until the expiration of the 3 month period in the absence of any agreement between the parties to the contrary. No prior written consent or any other consent of the Lessor shall be required in respect of any such removal effected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to

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have granted to the Lessee a Licence to enter the Land for a period of 3 months subsequent to the expiration of this Lease to remove Lessee's Improvements, and the Lessee shall give no less than 12 months notice as to whether it accepts the full 3 months licence period or such lesser period. This provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;

- 19.2 In the event that the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and will leave the Land in a neat, tidy and safe condition subsequent to any such removal;
- 19.3 The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the date of expiration or sooner determination of the Lease or within 3 months after such date, notwithstanding any rule of law or equity to the contrary;
- 19.4 The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the 3 month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- 19.5 The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall ensure for the benefit of the party entitled until completely performed;
- 19.6 Subject to subclause (19.7) the Lessee shall not be required by the Lessor to remove any Lessee's Improvements as at the expiration of the term of the Lease or at any time subsequent to such expiration, and all Lessee's Improvements remaining upon the Land at the option of the Lessee after the expiration of the three month period provided in subclause 19.1 shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor, and the Lessor shall have no claim upon the Lessee in respect of any such Lessee's Improvements.
- 19.7 If the Lessee is not a Government Agency as at the expiry of the term of this Lease, the Lessee will if required by the Lessor in writing demolish or remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land at the expiry of the term without being obliged to pay to the Lessor any compensation for their demolition or removal. Following such demolition or removal the Lessee shall make good any damage to the Land and will leave the Land in a neat, tidy and safe condition.

20 DESTRUCTION AND REDEVELOPMENT

- 20.1 The Lessee shall be entitled to carry out repairs, demolition, relocation, additions, reinstatement or redevelopment to any Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to demolish, relocate, redevelop, replace or add to any Improvements on the Land provided the following conditions are or will be satisfied

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- (a) any repair, demolition, relocation, addition, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
- (b) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;

and upon satisfaction of such conditions the Lessee shall repair, demolish, relocate, reinstate, rebuild or add to (as the case may be) any Improvements or such part of Improvements requiring such work in accordance with the conditions set out above.

**21 NOTICES**

21.1 All notices must be in writing and must be served by one of the following means:

- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
  - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - (ii) by personal delivery, or by posting by registered or ordinary mail, or by facsimile transmission.

21.2 All notices to be given to the Lessor or to the Lessee hereunder shall be deemed sufficiently served:

- (a) in the case of personal delivery, when received by the addressee at the address detailed in clause 21.3; and
- (b) in the case of posting by registered mail, on the third working day following the date of posting to the addressee at the address detailed in clause 21.3; and
- (c) in the case of facsimile transmission, on the working day following the date of sending to the addressee's facsimile number designated in clause 21.3 provided that the sender produces a confirmation notice that the facsimile has been sent on that day.

21.3 Details for Notices:

21.4 A notice shall be valid if given by the duly authorised representative of the party giving the notice. If a notice is not given by the Lessor, it is to be supported by satisfactorily written delegation from the Lessor confirming the appointment of the party giving the notice.

9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

22 DEFAULT BY LESSEE

22.1 The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the land at the time or any time thereafter:

(a) If the rent shall be in arrear ten (10) working days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;

(b) In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with Section 246 of the Property Law Act 2007;

and the term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

23 DISPUTE RESOLUTION

23.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

23.2 If the parties cannot resolve a dispute or difference within fifteen (15) business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).

23.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 23.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.

23.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

DOCUMENTS SCHEDULE

9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

24 COSTS

- 24.1 The parties shall each pay their own solicitors' costs on preparing and finalising this Lease or any renewal or variation of this Lease.
- 24.2 The Lessee shall be responsible for payment of all registration fees including agency charges imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.

25 LESSOR'S RIGHTS TO INSPECT AND DISPLAY SIGNS

- 25.1 The Lessor will have the right to inspect the Land no more than twice each year during the term or any renewal of this Lease with valuers or other experts and consultants provided such inspections are carried out at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. Any such inspections should be carried out in accordance with the Lessee's security and health and safety requirements and the Lessee shall have the right to change any suggested time to a mutually convenient time.
- 25.2 Notwithstanding anything else herein, the parties agree that the Lessee may require any person wishing to enter the Land for inspection purposes to first provide their details to the Lease for a security check. If the results of such check are not acceptable to the Lessee for any reason then such person may be refused entry to the Land.
- 25.3 If the Lessor desires to, or is required to, undertake any works on the Land, including any repair or maintenance works, that involves the use of contractors or other third parties, the Lessor must procure any contractor or other third party who will have access to the Land to undertake such works to:
  - (a) complete a security check on terms reasonably acceptable to the Lessee;
  - (b) provide the Lessee with a copy of the contractor's Health and Safety Plan which shall be subject to the Lessee's reasonable approval prior to any work commencing; and
  - (c) familiarise themselves with and commit to complying with the Lessee's own Health and Safety Plan in all material respects.
- 25.4 The Lessor will not provide or allow the provision of any information relating to the structure, or access to, the buildings on the Land in any way to any person without first obtaining the written permission of the Lessee.
- 25.5 The Lessee will during the period of twelve (12) months prior to the termination date of this Lease permit the Lessor to exhibit the Land to prospective lessees or purchasers and allow the Lessor to affix to the Land appropriate sale or letting notices.



**9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION**

**26 DISPOSAL OF LESSOR'S INTEREST**

26.1 Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided:

- (a) any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and
- (b) That while Her Majesty the Queen is the Lessee and occupies the Land the following further provisions shall apply:
  - (i) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
  - (ii) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
    - (A) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
    - (B) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within five (5) working days of receiving the Lessor's advice pursuant to clause 26.1(b)(i) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (c) If the Lessor does not receive written notice from the Lessee pursuant to clause 26.1(b)(i) or 26.1(b)(ii) above together with grounds to substantiate its reasonable apprehension within five (5) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (d) If the Lessee objects to the proposed Assignee in accordance with clause 26.1(b)(ii)(A) or 26.1(b)(ii)(B) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (e) If the Lessor fails to advise the Lessee in writing of the disposal of its interest in the Land and the Lessee has objections to the proposed Assignee based on those reasons set out in clauses 26.1(b)(ii)(A) or 26.1(b)(ii)(B) above, then the Lessee shall be entitled at any time thereafter to terminate this Lease on seven (7) days written notice and the Lessee's obligations under this Lease shall cease from the expiration of such notice.

**27 LESSEE'S RIGHT OF EARLY TERMINATION**

27.1 Notwithstanding anything to the contrary herein contained or implied it is agreed that the Lessee may at any time in its sole discretion and without being required to give any reason, terminate this Lease by providing to the Lessor not less than 5 years notice in writing to that effect PROVIDED THAT:

**9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION**

- (a) no such notice may be given during the initial 20 year term of this Lease; and
- (b) no such notice may be given within the first 5 years of any renewed term of this Lease.

27.2 The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

**28 HOLDING OVER**

28.1 If the Lessor permits the Lessee to remain in occupation of the Land after the expiration or sooner determination of this Lease, such occupation shall be a tenancy at will only terminable by twenty (20) working days written notice at the rent then payable per month for the Land and otherwise on the same covenants and agreements (so far as applicable to a tenancy at will) as herein expressed or implied.

**29 CONTAMINANTS**

29.1 If during the term of this Lease the Lessee through its use of the Land or of the Lessee's Improvements, causes, permits or allows Contamination of the Land or any other property, the Lessee shall forthwith, at its own cost, remediate the contaminated property to its condition prior to such Contamination occurring. Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.

29.2 In this provision "Contamination" shall mean any change to the physical, biological, or chemical condition of the Land or any other property by a Contaminant and "Contaminant" shall have the meaning set out in Section 2 of the Resource Management Act 1991.

**30 EXCLUSION OF IMPLIED PROVISIONS**

30.1 The following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 10 - Premises unable to be used for particular purpose;
- (b) Clause 11 - Power to inspect premises.

WE

DOCUMENTS SCHEDULE

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

SCHEDULE OF LAND

*[Handwritten signature]*

WE

DOCUMENTS SCHEDULE

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9: INDICATIVE LEASEBACK FOR TE PUKE POLICE STATION

**LEASE OF FREEHOLD**

Correct for the purposes of the Land Transfer Act  
1952

Lessor

**HER MAJESTY THE QUEEN**  
acting by and through the  
**COMMISSIONER OF POLICE**

Lessee

Particulars entered in the Register  
on the date and at the time recorded

*JA*

W

DOCUMENTS SCHEDULE

10 EASEMENT IN FAVOUR OF WHITIKIORE

Easement Instrument to grant easement or profit à prendre, or create land covenant  
(Sections 90A and 90F Land Transfer Act 1952)

2009/6229EP  
APPROVED  
Registrar-General of Land

**Grantor**  
HER MAJESTY THE QUEEN acting by and through the Minister for Land Information

**Grantee**  
[ to insert ]  
as trustees of the [Waitaha] Trust

**Grant of Easement or Profit à prendre or Creation of Covenant**  
The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A Purpose (Nature and extent) of easement, profit or covenant	Shown (plan reference)	Continue in additional Annexure Schedule, if required	
		Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	As labelled ROW on deed plan OTS-075-17 (subject to survey)	Part Lot 2 DPS 24026 (subject to survey)	Part Lot 2 DPS 24026 (subject to survey)

REF: 7203 - AUCKLAND DISTRICT LAW SOCIETY INC.

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DOCUMENTS SCHEDULE

10: EASEMENT IN FAVOUR OF WHITIKIORE

**Easements or profits à prendre rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007.

The implied rights and powers are hereby ~~varied~~ ~~(negated)~~ ~~(added to)~~ or ~~(substituted)~~ by:

~~{Memorandum number \_\_\_\_\_, registered under section 165A of the Land Transfer Act 1962}~~

~~{the provisions set out in Annexure Schedule \_\_\_\_\_}~~

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

~~{Memorandum number \_\_\_\_\_, registered under section 165A of the Land Transfer Act 1962}~~

~~{Annexure Schedule \_\_\_\_\_}~~

UC

DOCUMENTS SCHEDULE

10: EASEMENT IN FAVOUR OF WHITIKIORE

Annexure Schedule

Page 3 of 3 Pages

2009/5043EP  
APPROVED  
Registrar-General of Land

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

<p><b>SIGNED</b> for and on behalf of HER MAJESTY THE QUEEN acting by and through the MINISTER FOR LAND INFORMATION by [ ] as Grantor in the presence of:</p>	<p>Signed in my presence by the Grantor</p> <hr/> <p>Signature of witness</p> <p>Witness to complete in BLOCK letters (unless legibly printed)</p> <p>Witness name</p> <p>Occupation</p> <p>Address</p>
<p>Signature of Grantor</p>	
<p><b>SIGNED</b> by the trustees of the [WAITAHA] TRUST as Grantee in the presence of:</p> <hr/> <hr/> <hr/>	<p>Signed in my presence by the Grantee</p> <hr/> <p>Signature of witness</p> <p>Witness to complete in BLOCK letters (unless legibly printed)</p> <p>Witness name</p> <p>Occupation</p> <p>Address</p>
<p>Signature of Grantee</p>	

REF: 7226 - AUCKLAND DISTRICT LAW SOCIETY INC.

Ar