

Deed concerning Central North Island Forests Land

WHANGANUI
and
THE CROWN

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THIS DEED is made on the 11th day of June 2015

BETWEEN

WHANGANUI (represented by the trustees of Taurewa Forest Settlement Trust)

AND

THE CROWN

BACKGROUND

Whanganui

E rere kau mai te awa nui

Mai te Kahui Maunga ki Tangaroa

Ko au te awa,

ko te awa ko au

Whanganui Historical Claims

- A. Whanganui prosecuted claims before the Waitangi Tribunal concerning alleged breaches of Te Tiriti o Waitangi and its principles by the Crown in relation to the undermining of the tino rangatiratanga of Whanganui and the tenure reform and alienation of the lands comprising the Taurewa Forest.
- B. In December 2012, the Waitangi Tribunal issued its report on the claims in the National Park inquiry district including those claims by Whanganui in relation to the Taurewa Forest. The Waitangi Tribunal concluded:

"In respect of the Taurewa forest, the Tribunal finds that nga iwi o te kahui maunga retain beneficial interests in the forest and recommend the return of the proportionate Crown share of the asset to those groups not already covered by the CNI forestry settlement"

CNI Forests Settlement

- C. On 25 June 2008 CNI Forests Iwi Collective (*Collective*) entered into a deed of settlement (*Deed of Settlement*) with the Crown relating to their claims over Central North Island Forests Land (*CNI Forests Land*). The iwi comprising the Collective are the iwi parties to the Deed of Settlement.
- D. The settlement was effected by the enactment of the Central North Island Forests Land Collective Settlement Act 2008 (*Act*) and the transfer of the CNI Forests Land to CNI Iwi Holdings Limited (*Trustee*) to be held by the Trustee for the benefit of the Collective and the Crown on the terms and conditions set out in the Trust Deed and Shareholders' Agreement (*Trust Deed and Shareholders' Agreement*) entered into by the Collective, the Crown and the Trustee on 30 June 2009 which establishes the CNI Iwi Holdings Trust (*Trust*).
- E. The Crown retained, through its 10% beneficial interest as a beneficiary under the Trust, an entitlement to 10% of the CNI Forests Land and associated Accumulated

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Rentals and NZUs (*Crown Agreed Proportion*) to enable it to meet obligations to other iwi or hapū having claims to part of the CNI Forests Land, one of which is Whanganui, and to provide cultural redress in comprehensive settlements with the CNI Collective Iwi.

- F. A provision for iwi that are not part of the Collective and seeking the return of CNI Forests Land is set out in Part 2, subpart 4 of the Act. Whanganui, the Crown and the Collective have agreed to an arrangement for dealing with the Specific CNI Forests Land Claims of Whanganui.
- G. The Collective has proposed to the Crown and Whanganui that, instead of Whanganui being allocated any CNI Forests Land, Accumulated Rentals and other property representing its share of the Crown Agreed Proportion, the Crown will accept the addition of Whanganui as a Beneficiary of the Trust, with a beneficial entitlement to the CNI Forests Land only, in substitution for the Crown in respect of a share of the Crown Agreed Proportion but on the basis that the redemption of the share of the Crown Agreed Proportion applicable to Whanganui's claim will be effected by way of the Trustee paying a cash sum of \$1.8 million into a trust account, in the name of the Crown and for the ultimate benefit of Whanganui, in consideration for Whanganui relinquishing its rights as a Beneficiary of the Trust and its Specific CNI Forests Land Claims.
- H. Whanganui consider that in the spirit of whanaungatanga, and in recognition of the unique arrangements in relation to the Crown Agreed Proportion under the CNI Collective deed, dated 25 June 2008, Whanganui agreed to accept the Collective's offer in exchange for relinquishing its Specific CNI Forests Land Claims on the terms and conditions set out in a deed dated the same date as this Deed and entered into between the Collective, the Trustee and Whanganui (*Whanganui Claimant Deed*).
- I. The Whanganui Claimant Agreement was conditional on Whanganui and the Crown entering into this Deed on the terms summarised in clause 4.1 of the Whanganui Claimant Agreement.
- J. Whanganui and the Crown enter into this Deed to give effect to Whanganui's relinquishment of its Specific CNI Forests Land Claims in consideration for the payment to be made under clauses 2 and 3 of the Whanganui Claimant Agreement.
- K. Nothing in this agreement:
 - a. extinguishes or limits any aboriginal title, or customary rights, that Whanganui Iwi may have in relation to Taurewa Forest; and
 - b. is, or implies, an acknowledgement by the Crown that any aboriginal title, or any customary right, exists.

OPERATIVE PART

1. Defined terms

1.1 In this Deed, unless the context otherwise requires:

Accumulated Rentals means accumulated rental:

- (a) relating to the CNI Forests Land held under the terms of the forestry rental trust referred to in section 34 of the Crown Forest Assets Act 1989; and



- (b) to which CNI Iwi Holdings Limited becomes entitled pursuant to the Deed of Settlement

Act means the Central North Island Forests Land Collective Settlement Act 2008

CNI Forests Land has the same meaning as in the Act

Whanganui Claimant Deed means the Deed entered into between the Whanganui Trustees, the CNI Forests Iwi Collective and CNI Iwi Holdings Limited contemporaneously with this Deed *Crown* means Her Majesty the Queen in right of New Zealand

Effective Date means the date on which the solicitor receives payment made under clause 3.1 of the Whanganui Claimant Deed

Specific CNI Forests Land Claims means, in respect of Whanganui (or of any representatives or members of Whanganui) any right or claim to or interest in:

- (a) the transfer of CNI Forests Land; or
- (b) an order from the Waitangi Tribunal for resumption of CNI Forests Lands; or
- (c) any other aspect of the CNI Forests Land or the Crown Agreed Proportion, whether under the Act or otherwise and whether current, prospective or future,

whether or not such right, claim or interest has arisen or been considered, researched, registered, notified or made by or on the Effective Date.

Whanganui Trustees mean the trustees of the Taurewa Forest Settlement Trust established on [9] June 2015.

Whanganui means:

- (a) the iwi or hapu of Whanganui, including Ngati Hāua and Uenuku, who have customary interests in the Taurewa Forest land.

1.2 In this Deed, unless the context otherwise requires, references to:

clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;

the singular includes the plural and vice versa;

parties to this Deed includes their successors and permitted assigns; and

the table of contents to and headings in this Deed are used for convenience only and do not affect its interpretation in any way.

2. Relinquishment of Specific CNI Forests Land Claims

2.1 In consideration for the sum of \$1.8 million to be paid by the Trustee to a solicitors' trust account, in the name of the Crown and for the ultimate benefit of Whanganui, Whanganui hereby relinquishes unconditionally, irrevocably and absolutely, with effect from the Effective Date:

- (a) its Specific CNI Forests Land Claims; and

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- (b) any interest, future, contingent or otherwise, in the Crown Agreed Proportion and the CNI Forests Land.
- 2.2 Therefore, from the Effective Date, Whanganui waives its right to make any claim in any court, tribunal, or other judicial body in relation to the Specific CNI Forests Land Claims and this Deed, including under sections 23 and 24 of the Act.
- 2.3 Whanganui acknowledges that legislation to give effect to any future comprehensive settlement of their historic Treaty claims may include provisions giving effect to clause 2.2 by excluding the jurisdiction of courts, tribunals and other judicial bodies.
- 2.4 The Whanganui Trustees confirm they enter into this Deed on behalf of Whanganui.
- 2.5 Nothing in this agreement:
 - (a) extinguishes or limits any aboriginal title, or customary rights, that Whanganui Iwi may have in relation to Taurewa Forest; and
 - (b) is, or implies, an acknowledgement by the Crown that any aboriginal title, or any customary right, exists.

3. Operation of Trust Account

- 3.1 The Crown will instruct Kensington Swan, Wellington, to hold on trust and apply the payment made under clause 3.1 Whanganui Claimant Deed on the terms set out in this clause 3.
- 3.2 The payment will be placed in an interest-bearing solicitors' trust account, in which interest will accrue subject to deduction of withholding tax, which withholding tax Kensington Swan, Wellington, will arrange to have deducted at the 33% rate (or such rate as may replace the 33% rate, in the event of a law change to the rate).
- 3.3 If the Whanganui Trustees provide to the Crown reasonable evidence that such amounts of interest are reasonably required for the purposes of funding the ratification and election process of Whanganui Trustees on or before June 2016 the Crown will instruct Kensington Swan, Wellington, to pay amounts of interest derived by the Crown on the trust account (net of any withholding taxes) to the Whanganui Trustees for the purpose of funding.
- 3.4 The Crown will instruct Kensington Swan, Wellington, to pay the balance in the trust account to the Whanganui Trustees once:
 - (a) the Crown is satisfied the Taurewa Forest Settlement Trust is appropriate to receive the payment, and in particular, provides for appropriate:
 - (i) representation of, and accountability to, members of Whanganui; and
 - (ii) decision-making, and dispute resolution processes; and

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(b) the Taurewa Forest Settlement Trust has been ratified by Whanganui to receive the payment.

3.5 The Crown will ensure that it obtains a tax file number for and files any tax returns required as a consequence of the trust created under the terms of the Whanganui Claimant Deed and this Deed, correctly recording any amounts of interest that the respective recipients referred to in clause 3.3 and 3.4 may receive as beneficiary income and any amounts of interest that remain trustee income and their associated credits for any RWT deducted upon payment to the Crown.

3.6 The Crown will instruct Kensington Swan, Wellington, to pay the balance in the trust account to the Trustee if the condition in clause 4.1 of this Deed is not satisfied and this Deed is terminated under clause 4.3.

4. Conditions

4.1 This Deed is conditional upon Whanganui ratifying the Whanganui Claimant Deed, together with this Deed.

4.2 The Whanganui Trustees will use their best endeavours to satisfy this condition expeditiously after the execution of this Deed.

4.3 If this condition has not been satisfied by 1 June 2016, or by such later date as may be agreed, this Deed will be terminated with effect from that date except that clause 3.6 will apply.

5. Counterparts

This Deed may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. A party may enter into this Deed by signing any counterpart.

6. Governing Law

This Deed is governed by the law of New Zealand.

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EXECUTION

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Minister for Treaty of
Waitangi Negotiations in the presence of: ✓

Christopher Finlayson

Honourable Christopher Finlayson

WITNESS

Jamie Manley

Name: *Jamie Manley*

Occupation: *Ministerial Secretary*

Address: *Private Bag 18041, Parliament Buildings
Wellington*

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Signed for and on behalf of the Trustees of
the Taurewa Forest Settlement Trust by
their authorised signatories in the presence
of:

Twa Pehi (Chairperson) Te Mataaawa Pehi
Authorised Signatory Authorised Signatory

WITNESS

TPHass. KLP
Name: Te Mata vengikopahi Leed Authorised Signatory

Occupation: Artist

Address: 57 Carroll Street National Park

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