

**NGATI TAMA**  
**and**  
**HER MAJESTY THE QUEEN**  
**in right of New Zealand**

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**DEED OF SETTLEMENT OF**  
**THE HISTORICAL CLAIMS OF NGATI TAMA**

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**20 DECEMBER 2001**

**DEED OF SETTLEMENT**

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**DEED OF SETTLEMENT**

**THIS DEED** is made

**BETWEEN**

**NGATI TAMA**

**AND**

**HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations.

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### KARAKIA

Ka houpu te koonohi o Parininihi ki te moana	When Parininihi becomes exposed to the ocean
Ka rangona te puu o Poutama	the tribe from Poutama will be heard,
Kaatahi ka kori nga moorehu i raro i te maunga	rousing its descendants from around the mountain, into action.

### Tokomaru

#### Tamaariki

#### Whata

**Ka heke**

**Ka puta**

**Ka heke**

### Ka puta ko Ngati Tama

Mai Te Titoki ki Pukehinau

No Pukehinau ki Puau

No Puau ki Wairarawa

No Wairarawa ki Pukekuri

No Pukekuri ki Mokino

No Mokino ki Tapuitautu

No Tapuitautu ki Mangatitoko

No Mangatitoki ki Waitara

No Waitara ki Makarakia

No Makarakia ki Te Ahu

No Te Ahu ki Rereua

No Rereua ki Potaka

No Potaka ki Kahikatoa a Tute

No Kahikatoa a Tute ki Tieketingiroa

No Tieketingiroa ki Te Pou Atakirau

No Te Pou Atakirau ki Haumapu Kahu ki te Whakarua

No Haumapu ki Takoraparoa

No Takoraparoa ki Pou Arohutu

No Pou Arohutu ki Nehunui

No Nehunui ki Tepora

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No Te pora ki Te Pou Whakairo

No Te Pou Wakairoa ki Tiritirimatangi

No Tiritirimatangi ki Kaihapuku

No Kaihapuku ki Matukumaitua

No Matukumaitai ki Panirau a Kahu Whaka te Ngutu o Mokau

No Panirau ki Pukeruru a Tawariki

No Tawariki ki Te Totara

No Totara ki Tauwhare

No Tauwhare ki Haumapu

No Haumapu ki Te Ranginga

No Te Ranginga ki Oturi

Konei te rohe o Ngati Tama

## **BACKGROUND TO THIS DEED**

### **TARANAKI MAORI MAKE SUBMISSIONS TO WAITANGI TRIBUNAL**

Taranaki Maori have longstanding claims against the Crown. Those claims have been expressed through petitions and protests made by Taranaki Maori, including Ngati Tama. Those petitions and protests contributed to the establishment, in the nineteenth and twentieth centuries, of various commissions of inquiry into lands confiscated from Taranaki Maori.

Section 6 of the Treaty of Waitangi Act enabled Maori (including Ngati Tama) to submit claims to the Waitangi Tribunal in respect of acts or omissions on or after the 6th of February 1840 by or on behalf of the Crown that were inconsistent with the principles of the Treaty of Waitangi.

The Waitangi Tribunal between 1990 and 1995 investigated 21 claims concerning Taranaki made to the Waitangi Tribunal under section 6 of the Treaty of Waitangi Act (the "Taranaki Claims"). The Taranaki Claims included claims of Ngati Tama. A considerable number of submissions and research reports were filed by Taranaki Maori (including Ngati Tama) with the Waitangi Tribunal in relation to the claims of Taranaki Maori (including Ngati Tama).

### **THE CROWN'S ACKNOWLEDGEMENTS TO THE WAITANGI TRIBUNAL**

The Crown acknowledged to the Waitangi Tribunal, in the Crown's interim response on 28 November 1995 to the Taranaki Claims, that:

- the Waitara purchase and the wars that followed constituted an injustice and were, therefore, in breach of the principles of the Treaty of Waitangi;
- the confiscation of land, as it occurred in Taranaki, also constituted an injustice and was, therefore, in breach of the principles of the Treaty of Waitangi;
- the confiscation had a severe impact upon the welfare, economy and development of the iwi of Taranaki;
- in general terms, the delays in setting aside reserves contributed to the adverse effects of the confiscation; and
- events relating to the implementation of the confiscation leading to the invasion of Parihaka in 1881, the invasion itself, and its aftermath constituted a breach of the principles of the Treaty of Waitangi.

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### BACKGROUND TO THIS DEED

#### THE INTERIM TARANAKI REPORT OF THE WAITANGI TRIBUNAL

The Waitangi Tribunal issued in June 1996 an interim report called the "Taranaki Report Kaupapa Tuatahi" (the "Interim Taranaki Report") giving its preliminary views on the Taranaki Claims.

The Waitangi Tribunal issued the Interim Taranaki Report:

- based on the Waitangi Tribunal's inquiry up to the date of the report (and noted that the Crown had yet to be heard on many matters raised); and
- in order to expedite negotiations for a settlement of the Taranaki Claims.

#### VIEWS OF THE WAITANGI TRIBUNAL IN THE INTERIM TARANAKI REPORT

The Waitangi Tribunal, in the Interim Taranaki Report, expressed some preliminary views concerning the Taranaki Claims including that:

- "They could be the largest in the country. There may be no others where as many Treaty breaches had equivalent force and effect over a comparable time" (*section 1.1*);
- "We see the claims as standing on two major foundations, land deprivation and disempowerment, with the latter being the main. By 'disempowerment', we mean the denigration and destruction of Maori autonomy or self-government" (*section 1.4*);
- "This report has introduced the historical claims of the Taranaki hapu. It has shown the need for a settlement ..." (*section 12.3.1*); and
- "Generous reparation policies are needed to remove the prejudice to Maori, to restore the honour of the Government, to ensure cultural survival, and to re-establish effective interaction between the Treaty partners" (*section 12.2*).

#### THE SETTLEMENT NEGOTIATIONS WITH NGATI TAMA

The Mandated Negotiators received in 1996 a mandate from Ngati Tama to negotiate the terms of a deed of settlement with the Crown. In November 1996, the Crown recognised this mandate of the Mandated Negotiators for Ngati Tama.

In 1997, the Crown reassessed and reaffirmed its recognition of the mandate of the Mandated Negotiators for Ngati Tama following a challenge to that mandate.

The Mandated Negotiators and the Crown entered into:

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### BACKGROUND TO THIS DEED

- terms of negotiation dated the 18<sup>th</sup> of August 1997 (the “Terms of Negotiation”) specifying the scope, objectives and general procedures for the negotiations; and
- a heads of agreement dated the 24<sup>th</sup> of September 1999 (the “Heads of Agreement”) recording that Ngati Tama and the Crown were, in principle, willing to enter into a deed of settlement on the basis of the Crown’s settlement proposal set out in that Heads of Agreement.

### BACKGROUND TO THE NGĀTI MANIAPOTO/NGĀTI TAMA SETTLEMENT CROSS-CLAIMS REPORT OF THE WAITANGI TRIBUNAL

The Heads of Agreement (among other things):

- proposed the cultural redress to be provided to Ngati Tama (including the vesting of cultural redress properties); and
- provided that the Crown’s settlement proposal was subject to the Crown being satisfied (amongst other matters) that all cross-claims in relation to certain of those cultural redress properties (the “Cross-Claimed Properties”) were resolved.

The Crown, after the Heads of Agreement, commissioned research by an independent historian into the nature of any association of both Ngati Tama and Ngati Maniapoto with the Cross-Claimed Properties.

The Mandated Negotiators for Ngati Tama and the Crown agreed to revise the cultural redress to be provided to Ngati Tama in light of the report received from the independent historian.

The following claims (the “Ngati Maniapoto Claims”) were made to the Waitangi Tribunal:

- a claim on 15 July 1999 (Wai 788) from members of Ngati Maniapoto claiming interest in the area covered by the negotiations between the Crown and Ngati Tama and requesting the Tribunal to recommend a halt to the Ngati Tama settlement process until those cross-claims had been resolved; and
- a claim on 17 November 1999 (Wai 800) on behalf of Ngati Maniapoto concerning the alleged prejudicial effects on Ngati Maniapoto of the Crown’s settlement proposal with Ngati Tama.

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### BACKGROUND TO THIS DEED

#### VIEWS OF THE WAITANGI TRIBUNAL IN THE NGĀTI MANIAPOTO/NGATI TĀMA SETTLEMENT CROSS-CLAIMS REPORT

The Ngati Maniapoto Claims were heard at an urgent hearing of the Waitangi Tribunal after mediation between Ngati Maniapoto, Ngati Tama and the Crown failed to reach a settlement of the issues.

The Waitangi Tribunal found in its report dated the 29<sup>th</sup> of March 2001 that:

- “While we believe that it would not be appropriate to delay the provision of redress to Ngāti Tama, the Crown has a responsibility to exercise caution in cases of overlapping claims. In our view, the Crown has done so in this case” (*section 4.5*); and
- “... the Crown would not breach the principles of the Treaty of Waitangi by concluding a settlement of Ngāti Tama’s Treaty claims on the basis of the revised settlement package, the relevant terms of which are set out in appendix 1” (*section 4.8*).

#### THIS DEED OF SETTLEMENT

This Deed of Settlement includes Cultural Redress that is based on the revised settlement package set out in appendix 1 of the Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report of the Waitangi Tribunal.

This Deed of Settlement has been:

- negotiated by the Mandated Negotiators with the Crown; and
- ratified by Ngati Tama.

The Mandated Signatories have a mandate from Ngati Tama to sign this Deed of Settlement on behalf of Ngati Tama.

ACCORDINGLY, Ngati Tama and the Crown wish, in a spirit of co-operation and compromise, to enter, in good faith, into this Deed providing for the settlement of the Historical Claims.

## 1: NGATI TAMA AND THE HISTORICAL CLAIMS

### INTRODUCTION

- 1.1 This Deed records the mutual agreement of Ngati Tama and the Crown to settle the Historical Claims.
- 1.2 This Part sets out definitions of Ngati Tama, the Historical Claims, and certain related terms. Those definitions apply in this Deed unless this Deed or the context requires otherwise.
- 1.3 Definitions of other terms used in this Deed are set out in:
- 1.3.1 clause 9.8.1;
  - 1.3.2 clause 10.18; and
  - 1.3.3 Part 14.

### NGATI TAMA

- 1.4 **Ngati Tama:**
- 1.4.1 means the iwi, or collective group, composed of individuals descended from a Ngati Tama Ancestor or Ancestors;
  - 1.4.2 means:
    - (a) every individual who is descended from a Ngati Tama Ancestor or Ancestors; and
    - (b) every individual who is recognised as Ngati Tama by customary adoption in accordance with Ngati Tama tikanga; and
  - 1.4.3 includes any family, whanau, or group of individuals, composed of individuals referred to in clause 1.4.2.
- 1.5 **Ngati Tama Ancestor or Ancestors** means an individual or individuals who, at any time after the 1<sup>st</sup> of January 1800 (being a date after which Ngati Tama began to migrate from the Area of Interest in significant numbers), exercised Customary Rights within the Area of Interest by virtue of his or her being descended from Whata, Rakaeiora or Tamaariki (who were on board the Tokomaru waka that arrived in Aotearoa).
- 1.6 **Representative Entity** means:
- 1.6.1 the Governance Entity;

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### 1: NGATI TAMA AND THE HISTORICAL CLAIMS

1.6.2 any person or persons appointed as agent for Ngati Tama under clause 3.4; and

1.6.3 any person (including any trust or trustees) acting for or on behalf of:

- (a) the iwi, or collective group, referred to in clause 1.4.1; and/or
- (b) any one or more of the individuals referred to in clause 1.4.2; and/or
- (c) any one or more of the families, whanau or groups of individuals referred to in clause 1.4.3.

1.7 **Member of Ngati Tama** means every individual referred to in clause 1.4.2.

1.8 **Customary Rights** means rights arising under customary law, including the following rights:

1.8.1 rights to occupy land; and

1.8.2 rights in relation to the use of:

- (a) land; and/or
- (b) natural or physical resources.

### THE HISTORICAL CLAIMS

1.9 **Historical Claims** :

1.9.1 (subject to clause 1.10) means every Claim that Ngati Tama (or any Representative Entity) had at, or at any time before, the Settlement Date, or may have at any time after the Settlement Date, that:

- (a) is, or is founded on, a right:
  - (i) arising from the Treaty of Waitangi or the principles of the Treaty of Waitangi;
  - (ii) arising under Legislation or at common law (including in relation to aboriginal title or customary law);
  - (iii) arising from a breach of fiduciary duty; or
  - (iv) otherwise arising; and
- (b) arises from or relates to acts or omissions before 21 September 1992:

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### 1: NGATI TAMA AND THE HISTORICAL CLAIMS

- (i) by or on behalf of the Crown; or
- (ii) by or under Legislation;

(whether or not the Claim has arisen or been considered, researched, registered, notified, or made on or before the Settlement Date); and

1.9.2 accordingly includes (without limiting clause 1.9.1):

- (a) Wai 135 – Ngati Tama Land Claim (Stephen Taitoko White) being a claim that specifically relates to Ngati Tama (or a Representative Entity); and
- (b) the following claims to the Waitangi Tribunal in so far as they relate to Ngati Tama (or a Representative Entity):
  - (i) Wai 54 – Nga Iwi O Taranaki Claim (Makere Rangiatea Love and another);
  - (ii) Wai 126 – Motunui Plant and Petrocorp Claim (John Hanita Paki and others);
  - (iii) Wai 131 – Taranaki Maori Trust Board Claim (Hamiora Raumati and others);
  - (iv) Wai 143 – Taranaki Claims (Taranaki Consolidated claims);
  - (v) Wai 529 – Mokau Mohakatino Block Claim (Paraone W Lake and another); and
  - (vi) Wai 577 – Poutama Land Blocks Claim (Poutama Lewis Te Rata and another).

1.10 The term **Historical Claims** does not include the following Claims:

- 1.10.1 any Claim that an individual referred to in clause 1.4.2, or a family, whanau, or group referred to in clause 1.4.3, may have as a result of being descended from an ancestor who is not a Ngati Tama Ancestor;
- 1.10.2 any Claim that Ngati Tama may have as a result of any loss of interest in land, or natural or physical resources, in the Land Area outside Taranaki; and
- 1.10.3 any Claim that a Representative Entity may have to the extent that Claim is, or is based on, a Claim referred to:
  - (a) in clause 1.10.1; or
  - (b) in clause 1.10.2.

## **2: THE SETTLEMENT**

### **THE HISTORICAL CLAIMS ARE SETTLED**

- 2.1 Ngati Tama and the Crown agree that this Deed settles the Historical Claims from the Settlement Date.
- 2.2 Ngati Tama releases and discharges the Crown, from the Settlement Date, from all obligations and liabilities in respect of the Historical Claims.

### **THE CROWN IS TO PROVIDE REDRESS**

- 2.3 The Crown must provide the Redress set out in:
  - 2.3.1 Part 7: Acknowledgements and Apology by the Crown;
  - 2.3.2 Part 8: Financial and Commercial Redress; and
  - 2.3.3 Part 9: Cultural Redress.
- 2.4 Part 5 summarises the Redress.

### **REDRESS IS TO BE PROVIDED TO THE GOVERNANCE ENTITY**

- 2.5 The Crown must pay, transfer or grant any Redress to be provided on or after the Settlement Date by the Crown under Parts 8 and 9 to the Governance Entity to be established by Ngati Tama under clause 3.3 (unless this Deed provides otherwise).

### **APOLOGY AND CULTURAL REDRESS IN RELATION TO MOUNT TARANAKI IS TO BE DEVELOPED**

- 2.6 Ngati Tama and the Crown acknowledge that Mount Taranaki is of great traditional, cultural, historical and spiritual importance to Iwi of Taranaki.
- 2.7 This Deed does not provide for an apology, or any cultural redress, by the Crown in relation to any of the Historical Claims that relate to Mount Taranaki as that is yet to be developed in conjunction with Ngati Tama and other Iwi of Taranaki.
- 2.8 Ngati Tama and the Crown agree that:
  - 2.8.1 the Governance Entity and the Crown will, as soon as practicable, work together with the mandated representatives of other Iwi of Taranaki to develop an apology,

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### 2: THE SETTLEMENT

and cultural redress, for Ngati Tama and other Iwi of Taranaki in relation to the Historical Claims, and the historical claims of other Iwi of Taranaki, that relate to Mount Taranaki; and

- 2.8.2 the apology and cultural redress for Ngati Tama in relation to the Historical Claims that relate to Mount Taranaki will not include any financial or commercial redress.

### THE SETTLEMENT DOES NOT AFFECT CERTAIN RIGHTS OR DECISIONS

2.9 Nothing in this Deed:

2.9.1 extinguishes any aboriginal title, or customary rights, that Ngati Tama may have;

2.9.2 is, or implies, an acknowledgement by the Crown that aboriginal title, or any customary right, exists ;

2.9.3 (except as expressly provided in or under this Deed) affects any right that Ngati Tama, or the Crown, may have including any right arising:

(a) from the Treaty of Waitangi or the principles of the Treaty of Waitangi;

(b) under Legislation, or at common law (including in relation to aboriginal title or customary law);

(c) from a breach of fiduciary duty; or

(d) otherwise; or

2.9.4 is intended to affect any decision, proposal or report of the Treaty of Waitangi Fisheries Commission:

(a) under the Maori Fisheries Act; or

(b) in respect of:

(i) the Deed of Settlement between Maori and the Crown dated 23 September 1992; or

(ii) the Treaty of Waitangi (Fisheries Claims) Settlement Act.

2.10 Clause 2.9 does not limit clauses 2.1 or 2.2.

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### 2: THE SETTLEMENT

#### **ACKNOWLEDGEMENTS BY NGATI TAMA AND THE CROWN CONCERNING THE SETTLEMENT**

2.11 Ngati Tama and the Crown acknowledge that:

2.11.1 the Settlement represents the result of extended negotiations conducted in good faith and in a spirit of co-operation and compromise;

2.11.2 it is difficult to assess redress for the loss and prejudice suffered by Ngati Tama as a result of the events on which the Historical Claims are or could be based;

2.11.3 it is not possible to fully compensate Ngati Tama for all loss and prejudice so suffered; and

2.11.4 the foregoing of compensation is intended by Ngati Tama to contribute to the development of New Zealand;

and that, taking all matters into consideration (some of which are specified in this clause), the Settlement is fair in the circumstances.

#### **ACKNOWLEDGEMENTS BY NGATI TAMA CONCERNING THE SETTLEMENT**

2.12 Ngati Tama acknowledges that:

2.12.1 the Crown has acted honourably and reasonably in relation to the Settlement;

2.12.2 it is intended that the Settlement:

(a) is for the benefit of Ngati Tama; and

(b) may be for the benefit of particular individuals or any particular family, whanau, or group of individuals if the Governance Entity so determines in accordance with its procedures;

2.12.3 the Settlement is binding on Ngati Tama and any Representative Entity;

2.12.4 the Settlement is final;

2.12.5 the Crown is, on the Settlement Date, released and discharged from all obligations and liabilities in respect of the Historical Claims;

2.12.6 the Settlement Legislation will:

(a) provide for the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other judicial body or tribunal in respect of:

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### 2: THE SETTLEMENT

- (i) this Deed;
- (ii) the Settlement Legislation;
- (iii) the Historical Claims; and
- (iv) the Redress;

(but not for the removal of that jurisdiction in respect of the interpretation and enforcement of this Deed or the Settlement Legislation);

- (b) provide that the following legislation (the “Land Claims Statutory Protection”) does not apply to land in the RFR Area, namely:
  - (i) sections 8A to 8HJ of the Treaty of Waitangi Act;
  - (ii) sections 27A to 27C of the State-Owned Enterprises Act;
  - (iii) sections 211 to 213 of the Education Act;
  - (iv) Part III of the Crown Forest Assets Act;
  - (v) Part III of the New Zealand Railways Corporation Restructuring Act; and
- (c) provide a mechanism for removing all Memorials from land in the RFR Area; and
- (d) include all other matters required by this Deed to be included in the Settlement Legislation.

2.13 Ngati Tama acknowledges and agrees that:

- (a) the Settlement Legislation will provide that neither Ngati Tama, nor any Representative Entity, have, from the Settlement Date, the benefit of the Land Claims Statutory Protection in relation to land in Taranaki outside the RFR Area; and accordingly
- (b) neither Ngati Tama, nor any Representative Entity, will object to the removal by Legislation of that Land Claims Statutory Protection in relation to, and of Memorials from, land in Taranaki outside the RFR Area.

### **THE SETTLEMENT TO ENHANCE THE ONGOING RELATIONSHIP BETWEEN NGATI TAMA AND THE CROWN**

2.14 The Settlement is intended to enhance the ongoing relationship between Ngati Tama and the Crown (both in terms of the Treaty of Waitangi and otherwise).

### **3: RATIFICATION OF THE SETTLEMENT AND THE GOVERNANCE ENTITY**

#### **DEED HAS BEEN RATIFIED**

- 3.1 Ngati Tama confirm that:
- 3.1.1 this Deed was ratified by Ngati Tama by virtue of a majority of 98% of the votes in a postal ballot of the Eligible Registered Members of Ngati Tama; and
  - 3.1.2 the Mandated Signatories have a mandate from Ngati Tama to sign this Deed on behalf of Ngati Tama by virtue of a majority of 98% of the votes in a postal ballot of the Eligible Registered Members of Ngati Tama.
- 3.2 The Crown confirms that it is satisfied with:
- 3.2.1 the ratification of this Deed by Ngati Tama; and
  - 3.2.2 the mandate of the Mandated Signatories from Ngati Tama to sign this Deed on behalf of Ngati Tama.

#### **GOVERNANCE ENTITY TO BE ESTABLISHED AND RATIFIED**

- 3.3 Ngati Tama must establish an Entity (the “Governance Entity”), to receive Redress to be provided by the Crown to the Governance Entity on or after the Settlement Date under Parts 8 and 9, which the Crown has Notified Ngati Tama that the Crown is satisfied:
- 3.3.1 will:
    - (a) be an appropriate Entity to receive Redress under this Deed; and
    - (b) have a structure that provides for:
      - (i) representation of Ngati Tama;
      - (ii) transparent decision-making, and dispute resolution, processes; and
      - (iii) full accountability to Ngati Tama; and
  - 3.3.2 has been ratified by Ngati Tama (by a ratification process agreed in writing by Ngati Tama and the Crown) as an appropriate Entity to receive the Redress under this Deed.

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### **3: RATIFICATION OF THE SETTLEMENT AND THE GOVERNANCE ENTITY**

#### **APPOINTMENT OF AGENT FOR NGATI TAMA**

- 3.4 Ngati Tama appoint the Mandated Signatories as the agent for Ngati Tama to:
- 3.4.1 agree with the Crown a process for the establishment and ratification of a Governance Entity which is satisfactory to the Crown under clause 3.3; and
  - 3.4.2 take any of the following actions on behalf of Ngati Tama under this Deed:
    - (a) give and receive any Notice or other communication;
    - (b) exercise any right or power;
    - (c) waive any provision; and
    - (d) agree to any amendment.

#### **GOVERNANCE ENTITY TO SIGN DEED OF COVENANT**

- 3.5 Ngati Tama must, once the Governance Entity has been established in accordance with clause 3.3, ensure that the Governance Entity signs a deed of covenant in the form set out in Schedule 3 under which the Governance Entity agrees (among other matters) to comply with all the obligations of the Governance Entity under this Deed.

#### **TIME LIMITS**

- 3.6 Ngati Tama must ensure that, by no later than 6 months after the Date of this Deed, the Governance Entity:
- 3.6.1 is established in accordance with clause 3.3; and
  - 3.6.2 has signed the Deed of Covenant.

#### **GOVERNANCE ENTITY TO REPLACE AGENT**

- 3.7 Once the Governance Entity signs the Deed of Covenant:
- 3.7.1 the appointment of any agent for Ngati Tama under clause 3.4 terminates; and
  - 3.7.2 the actions under clause 3.4.2 may be taken by the Governance Entity on behalf of Ngati Tama.

## **4: SETTLEMENT LEGISLATION**

### **INTRODUCTION OF SETTLEMENT LEGISLATION**

- 4.1 The Crown must (subject to clause 4.2.1(a)) propose Settlement Legislation for introduction within six months after:
- 4.1.1 the Crown has Notified Ngati Tama that it is satisfied that the Governance Entity has been:
- (a) established in accordance with the requirements of clause 3.3.1; and
  - (b) ratified by Ngati Tama in accordance with clause 3.3.2; and
- 4.1.2 the Governance Entity has signed the Deed of Covenant.

### **CONTENT OF THE SETTLEMENT LEGISLATION**

- 4.2 The Settlement Legislation proposed by the Crown for introduction must:
- 4.2.1 be in a form that:
- (a) the Governance Entity has advised the Crown in writing is satisfactory to Ngati Tama; and
  - (b) is satisfactory to the Crown;
- 4.2.2 (without limitation) with effect from the Settlement Date:
- (a) declare that, without limiting any of the acknowledgements in, or any of the provisions of, this Deed:
    - (i) the Settlement is final; and
    - (ii) the Crown is released and discharged from all obligations and liabilities in respect of the Historical Claims;
  - (b) provide for the removal of the jurisdiction of the Courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of:
    - (i) this Deed;
    - (ii) the Settlement Legislation;
    - (iii) the Historical Claims; and

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### 4: SETTLEMENT LEGISLATION

- (iv) the Redress;  
  
(but not for the removal of that jurisdiction in respect of the interpretation and enforcement of this Deed or the Settlement Legislation);
  - (c) provide that the Land Claims Statutory Protection does not apply to land in the RFR Area; and
  - (d) provide a mechanism for removing all Memorials from land in the RFR Area;
- 4.2.3 provide that the rule against perpetuities, and any relevant provisions of the Perpetuities Act, will not prescribe or restrict the period:
- (a) for which the rights conferred by the RFR Deed, or the Shellfish RFR Deed, may exist; or
  - (b) for which any document entered into to give effect to this Deed is effective; and
- 4.2.4 include all other matters required by this Deed to be included in the Settlement Legislation.

### NGATI TAMA TO SUPPORT SETTLEMENT LEGISLATION

- 4.3 Ngati Tama and the Governance Entity must support the passing of the Settlement Legislation (and any legislation introduced under clause 12.2.2 to terminate proceedings in relation to an Historical Claim).

## **5: SUMMARY OF THE REDRESS**

- 5.1 This Part sets out a summary of the Redress to be provided by the Crown, if this Deed becomes unconditional, under:
- 5.1.1 Part 7: Acknowledgement and Apology by the Crown;
  - 5.1.2 Part 8: Financial and Commercial Redress; and
  - 5.1.3 Part 9: Cultural Redress.
- 5.2 This Part:
- 5.2.1 sets out only a summary of the Redress to be provided under Parts 7, 8 and 9;
  - 5.2.2 is not an operative part of this Deed; and
  - 5.2.3 does not affect the interpretation of any other provisions of this Deed.
- 5.3 The Redress includes:

### **ACKNOWLEDGEMENTS AND APOLOGY**

- 5.3.1 acknowledgements and an apology by the Crown;

### **FINANCIAL REDRESS**

- 5.3.2 Financial Redress of \$14.5 million comprising:
- (a) \$450,000 that has been paid to the Mandated Negotiators on behalf of Ngati Tama as an advance of part of the Financial Redress; and
  - (b) payment to the Governance Entity of the balance of \$14.05 million;

### **COMMERCIAL REDRESS**

- 5.3.3 Commercial Redress comprising a right of first refusal to the Governance Entity over:
- (a) the RFR Properties; and

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### 5: SUMMARY OF THE REDRESS

- (b) the Tongaporutu RFR Site if that property ceases to be classified as a reserve under the Reserves Act 1977; and

#### CULTURAL REDRESS

5.3.4 Cultural Redress, including provision for:

##### **Protocols with Ministers**

- (a) issuing protocols to the Governance Entity by each of the following Ministers:

- (i) the Minister of Conservation;
- (ii) the Minister of Fisheries;
- (iii) the Minister of Energy;
- (iv) the Minister for Arts, Culture and Heritage; and
- (v) the Minister for Land Information;

setting out how the Crown will, in relation to the matters specified in the protocol:

- (vi) interact with Ngati Tama; and
- (vii) enable Ngati Tama to have input into the Crown's decision-making;

##### **Advisory Committees to Ministers**

- (b) appointing the Governance Entity as an advisory committee to provide advice to:
  - (i) the Minister of Conservation concerning the management and conservation within the DOC Protocol Area by the Department of Conservation of indigenous fish and other aquatic life managed by that Department; and
  - (ii) the Minister of Fisheries on all matters concerning the utilisation, while ensuring the sustainability, of fish, aquatic life and seaweed administered by the Ministry of Fisheries under the Fisheries Legislation within the Fisheries Protocol Area;

## DEED OF SETTLEMENT

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### 5: SUMMARY OF THE REDRESS

#### **Input to Minister for the Environment**

- (c) enabling the Governance Entity to give the views of Ngati Tama to the Ministry for the Environment on how certain provisions of the Resource Management Act are being implemented in the Area of Interest;

#### **Cultural Redress Properties**

- (d) vesting in the Governance Entity the Cultural Redress Properties comprising:
  - (i) the Pukearuhe Site;
  - (ii) the Tongaporutu Site;
  - (iii) the Whitecliffs Site;
  - (iv) the Additional Whitecliffs Sites;
  - (v) the Uruti Site; and
  - (vi) the Mount Messenger Site;

#### **Control and management of a reserve**

- (e) vesting in the Governance Entity, and appointing the Governance Entity to hold and administer, under the Reserves Act the Umukaha Point Recreation Reserve as a recreation reserve;

#### **Joint Advisory Committee**

- (f) for representatives of the Governance Entity to form part of a joint advisory committee:
  - (i) advising the Minister of Conservation on conservation matters affecting the Whitecliffs Conservation Area;
  - (ii) preparing management plans in relation to the Whitecliffs, Uruti and Mount Messenger Sites (to be complied with by the Governance Entity in managing those sites); and
  - (iii) approving conservation management plans in relation to any marine reserve at Parininihi;

## DEED OF SETTLEMENT

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### 5: SUMMARY OF THE REDRESS

#### **Statutory Acknowledgements and Deeds of Recognition in relation to certain areas**

- (g) making Statutory Acknowledgements of the association of Ngati Tama with, and granting Deeds of Recognition to the Governance Entity in relation to, the following areas:
  - (i) part of the Mimi-Pukearuhe Coast marginal strip;
  - (ii) part of the Mount Messenger Conservation Area in the Area of Interest;
  - (iii) the Moki Conservation Area;
  - (iv) the Tongaporutu Conservation Area;
  - (v) the Mohakatino Swamp Conservation Area;
  - (vi) the Pou Tehia Historic Reserve;
  - (vii) the Mohakatino River; and
  - (viii) the Tongaporutu River;

#### **Statutory Acknowledgements in relation to certain areas**

- (h) making Statutory Acknowledgements of the association of Ngati Tama with the following areas:
  - (i) Mohakatino River marginal strips numbers 1 and 2;
  - (ii) the Mohakatino Coastal marginal strip; and
  - (iii) the Coastal Marine Area adjoining the Area of Interest;

#### **New Zealand Geographic Board**

- (i) acknowledging that the Minister for Land Information and the Minister of Maori Affairs have written to the Mandated Negotiators as representatives of Ngati Tama advising (amongst other matters) that the New Zealand Geographic Board:
  - (i) has developed a protocol for Maori place names; and
  - (ii) has resolved that the Governance Entity will be consulted in accordance with that protocol;

## DEED OF SETTLEMENT

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### 5: SUMMARY OF THE REDRESS

#### **Acknowledgement of customary interest in Paua Fishery**

- (j) acknowledging the customary non-commercial interest of Ngati Tama in the Paua Fishery in the Fisheries Protocol Area;

#### **Prohibition on taking of certain species**

- (k) prohibiting the taking of the following species as a target species for commercial purposes within the Fisheries Protocol Area:
  - (i) cats eye (pupu);
  - (ii) freshwater mussel (kakahī);
  - (iii) sea anemone (kotoretore);
  - (iv) sea lettuce (karengo);
  - (v) sea urchin (kina); and
  - (vi) freshwater crayfish (waikoura);
- (l) the Minister of Fisheries, if it is demonstrated to his or her satisfaction that there are sufficient quantities of any of the species referred to in the previous paragraph to provide for a commercial catch of that species, to:
  - (i) consult with the advisory committee referred to in paragraph (b)(ii) of this clause concerning any proposal to authorise the commercial taking of that species; and
  - (ii) ensure in considering that proposal, that the customary non-commercial fishing interests of Ngati Tama in the species concerned are recognised and provided for;

#### **Proposal from Ngati Tama to be included in regulatory review**

- (m) including in the first regular review of fisheries regulatory measures after the Settlement Date, a proposal from the Governance Entity to prohibit commercial fishing using trawl or set nets within the Fisheries Protocol Area;

#### **Tuna (eel)**

- (n) consultation and consideration by the Crown of certain proposals from the Governance Entity in relation to tuna (eel);

## DEED OF SETTLEMENT

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### 5: SUMMARY OF THE REDRESS

#### **RFR over Quota for shellfish**

- (o) granting to the Governance Entity a right of first refusal to purchase a specified percentage of Quota that is allocated to the Crown under the Fisheries Legislation in relation to the Shellfish RFR Area for any of the following shellfish species (if made subject to the Quota Management System):
  - (i) sea urchin (kina); and
  - (ii) surf-clam (purimu); and

#### **Coastal tendering**

- (p) granting to the Governance Entity a preferential right to purchase a specified percentage of any Authorisations under Part VII of the Resource Management Act for any part of the Specified Coastal Area.

## 6: HISTORICAL ACCOUNT

### INTRODUCTION

- 6.1 This Part sets out an historical account of the events upon which the Crown's acknowledgement and apology in Part 7 are based.
- 6.2 The cumulative effect of the Crown purchases in Taranaki carried out during the 1840s and 1850s created a situation that ultimately led to the outbreak of war. The Crown's attempt in 1859 – 1860 to purchase the Pekapeka block on the south bank of the Waitara River, which settlers were anxious to acquire, touched off the war.
- 6.3 On 8 March 1859, Governor Gore Browne announced in Taranaki that "he would never consent to buy land without an undisputed title" and "would buy no man's land without his consent". At the same time he said he would not permit anyone to interfere in the sale of land "unless he owned part of it".
- 6.4 Governor Gore Browne received poor advice from Crown officials concerning the nature of Te Atiawa rights at Waitara, and the situation there.
- 6.5 Martial law was proclaimed in Taranaki on 22 February 1860. The English text of the Proclamation stated that "active military operations are about to be undertaken by the Queen's forces against Natives in the Province of Taranaki in arms against her Majesty's sovereign authority". The text as it was translated into Maori was read as a declaration of war as it proclaimed "the law of fighting [*is*] now introduced to Taranaki". The Crown did not officially correct Taranaki Maori understandings of it, and it was left to individual colonists to explain the meaning of martial law to individual Maori.
- 6.6 Despite the continued dispute over the Pekapeka block, the Crown executed a deed of purchase for this area, and took military possession of the block early in March 1860. After the survey began on 13 March, opponents of the sale built a fortified pa on the block. The occupants subsequently refused a demand to surrender, and on 17 March the pa was attacked by Crown troops.
- 6.7 Due to the support received by Te Atiawa from within and outside of Taranaki, fighting between Crown forces and Maori continued for a year.
- 6.8 A peace agreement was reached in April 1861 with the involvement of Kingitanga representatives. The agreement provided that the Waitara purchase would be investigated. Governor Grey renounced the Crown's claim to the block in May 1863, but by that time war had broken out between the Crown and iwi at Oakura. The Crown then continued armed campaigns in Taranaki until 1869, but there was little fighting in North Taranaki.
- 6.9 During the course of these campaigns, the Crown built redoubts at Pukearuhe and Waititi to secure military occupation of the land and provide security for military settlements that would be established later on confiscated land. Both redoubts were built on waahi tapu.

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### 6: HISTORICAL ACCOUNT

#### CONFISCATION

- 6.10 The confiscations, that were to have such long term and damaging impact on Ngati Tama, were effected by the New Zealand Settlements Act 1863. The Preamble stated that the North Island had been subject to “insurrections amongst the evil-disposed persons of the Native race”. There was no mention of the Crown’s role in initiating the wars.
- 6.11 The stated purposes of the Act were to provide for “the permanent protection and security of the well-disposed Inhabitants of both races”; the “prevention of future insurrection or rebellion”; and “the establishment and maintenance of Her Majesty’s authority and of Law and Order”. The stated means of achieving these ends was to place military and civilian settlers on the land.
- 6.12 The Act provided for the confiscation by the Crown of lands of Maori who were assessed to have been in “rebellion” against the authority of the Queen since 1 January 1863.
- 6.13 The Act provided for Maori land to be confiscated in accordance with the following process: where the Governor in Council was satisfied that a tribe or a “considerable number” of a tribe had, since 1 January 1863, been engaged in rebellion, he could declare the District within which land of that tribe was situated to be a district for the purposes of the Act; “Eligible Sites for settlements for colonisation” could then be set apart within such districts; and land reserved for the purpose of such settlements, whereupon such land was deemed to be Crown land.
- 6.14 The Act did not provide a definition of “rebel”. It did provide that no compensation would be granted to those who had been “engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty’s Forces in New Zealand”; had aided, assisted, or comforted such persons; counselled any other person to make or levy war; declined to deliver up arms when so required by proclamation.
- 6.15 On 30 January 1865 the Governor declared “Middle Taranaki” to be a confiscation district, and set aside blocks at Oakura and Waitara South as “eligible Sites for settlements for colonisation.” On 2 September 1865, the Governor declared two further confiscation districts: “Ngatiawa” and “Ngatiruanui”. The Governor also designated “Ngatiawa Coast” and “Ngatiruanui Coast” as eligible sites for settlement.
- 6.16 These eligible sites took in a substantial part of the land in the rohe of Ngati Tama, with the confiscation line cutting across the rohe of Ngati Tama. At this time, fighting had not reached most areas where land was confiscated.
- 6.17 All the Ngati Tama land that could be confiscated within the declared confiscation districts was confiscated, despite the declaration in the confiscation proclamation of 2 September 1865 that the land of “loyal inhabitants” would be taken only where “absolutely necessary for the security of the country”. The confiscations were also indiscriminate in that the lands taken greatly exceeded the minimum necessary for achieving the purposes of the New Zealand Settlements Act, and included the whole of the lands of the eligible sites, rather than just the lands required for the purpose of specific settlements.

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### 6: HISTORICAL ACCOUNT

- 6.18 The New Zealand Settlements Act does not mention punishment, but was punitive in nature. This is clear from contemporary government statements and from the Proclamation of 17 December 1864 that declared that the Governor would punish those “guilty of further violence” and take possession of and retain “such land belonging to the rebels as he may think fit”.
- 6.19 The Act also punished “loyal” Maori by enabling the Crown to deprive them of ownership of their lands. The Act provided for “loyals” to be compensated for confiscation as had been indicated by the Proclamation of Peace on 2 September 1865. This proclamation promised to restore land immediately to those who were prepared to submit to the Crown’s authority, but the promise was not fulfilled.
- 6.20 The British Colonial Office had misgivings about the scope and application of the Act, considering it “capable of great abuse” but allowed the legislation to proceed because final authority for any confiscation remained with the Governor. The Colonial Secretary instructed the Governor to withhold his consent to any confiscation, which was not “just and moderate”.
- 6.21 The Crown subsequently passed the New Zealand Settlements Acts Amendment Act 1866. This Act declared that all instruments and proceedings under the authority of the Settlements Act were “absolutely valid”, and that none of them were to be called into question “by reason of any omission or defect ... in any of the forms or things” provided for in the Settlement Acts.
- 6.22 Extensive supplementary and subordinate legislation was passed by the Crown following the 1863 Act which added to the impact of the confiscations by extending the Crown’s control over the rights and property of Ngati Tama in Taranaki.

### COMPENSATION COURT

- 6.23 A Compensation Court was set up under the New Zealand Settlements Act 1863 to compensate some of those whose lands were confiscated by the Crown. The compensation process and its outcomes added to the uncertainty, distress, and confusion among the people of Ngati Tama as to where they were to live and whether they had security of title.
- 6.24 Those considered to be “rebels” could not make claims. In many cases the Compensation Court relied on the evidence of very few witnesses, rather than fully investigating the circumstances of each person affected. The Compensation Court itself excluded others, such as those who did not appear at hearings, and many absentee iwi members. Hearings began in wartime, making it difficult for some claimants to attend.
- 6.25 All of the Compensation Court awards within the rohe of Ngati Tama were based on out-of-court settlements. By the time these were made most of the readily useable land in the north had already been disposed of by the Crown. These settlements were not properly investigated by the Compensation Court.
- 6.26 All of the awards made by the Compensation Court on the basis of these settlements were made to individuals, rather than to hapu. Often awards did not include traditional whanau and hapu land. The awards did not reflect customary forms of land tenure.

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### 6: HISTORICAL ACCOUNT

- 6.27 The lands assigned by the Compensation Court on the basis of these awards were meagre in size and often of poor quality. These entitlements were often located in barren areas, including remote hills and bush. They did not include pa sites and urupa. Even for those judged entitled to an award, title was not issued until all the interests in the area were determined, the precise location settled, the areas surveyed by Crown agents, and the shares sealed by the Compensation Court. Meanwhile, expanding European settlement further reduced the amount and quality of the Crown lands available for allocation to Maori claimants.
- 6.28 Out of some 74,000 acres confiscated from Ngati Tama, 3,458 acres were awarded to Ngati Tama individuals. By 1880, title had not been issued to any of this land. Some claimants were informally aware of the location of their awards and believed that they had a right to occupy the land, only to find later that it was classed as Crown land.
- 6.29 Although the Compensation Court had the ability to award cash compensation instead of land if land was unavailable, it did not do so.
- 6.30 In 1867 the Crown promised awards of land to the absentee owners from each iwi. By 1880, these awards were still undefined on the ground.
- 6.31 A proclamation of November 1867 (which was repeated in 1870 and 1871) declared that, before any further sales of Crown land could be made, 5 percent of the value of every rural and suburban block to be sold in each confiscation district was to be reserved for such tribes as the Governor might appoint. By 1880, when the West Coast Commission began its investigations, this proclamation had still not been implemented.

### PARIHAKA

- 6.32 The prophets Te Whiti o Rongomai and Tohu Kakahi introduced a policy of passive resistance to the surveyors and the European settlers who followed. Prior to the Crown's attack on Parihaka, this policy was supported by people of Ngati Tama and other iwi. Such resistance in 1879-1880 led to more than 420 "ploughmen" and 216 "fencers" being arrested and imprisoned. Most were denied a trial and many prisoners were held in the South Island.
- 6.33 Prison conditions were harsh and included hard labour. The detrimental impact of these conditions was compounded by ill-health and the effects of exile.
- 6.34 A series of special laws was passed in 1879 and 1880 to deal with these prisoners. These laws included provisions for imprisonment without trial, retrospective legalisation of detentions which had already taken place, arrests without warrants, and indefinite detention.
- 6.35 On 5 November 1881, more than 1500 Crown troops invaded and occupied Parihaka in order to dismantle the community. No resistance was offered. Over the following days some 1600 Maori were forcibly expelled from Parihaka and made to return to their own settlements. Houses and crops were systematically destroyed and stock was driven away or killed. Looting also occurred during the occupation. Taranaki Maori assert that women were raped and otherwise molested by soldiers.

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### 6: HISTORICAL ACCOUNT

- 6.36 Six men were arrested. Titokowaru was tried and imprisoned. Te Whiti and Tohu were held until 1883.
- 6.37 The West Coast Preservation Act 1882 allowed for the indefinite imprisonment of Te Whiti and Tohu without trial, and provided for meetings of more than fifty Maori to be disbanded. Restrictions on Maori gatherings were continued into 1883. Throughout this period, restrictions were also placed on Maori movement; entry into Parihaka was regulated by a pass system.
- 6.38 Some 5,000 acres of the promised reserve at Parihaka were taken by the Crown as compensation for the costs of “suppressing the ... Parihaka sedition”.
- 6.39 In 1878 the Crown began to survey the confiscated lands of central Taranaki without having established the reserves promised to iwi in the area. The first West Coast Commission subsequently recommended that surveys and sales should not proceed unless “sufficient reserves” were made, but the second Commission bowed to pressure from the Native Minister and did not lay out the Parihaka reserve.
- 6.40 The Sim Commission concluded in 1927 that the Crown was directly responsible for the destruction of houses and crops, and “morally if not legally” responsible for “the acts of the soldiers who were brought to Parihaka”. It recommended the payment of £300 as an “acknowledgment, at least, of the wrong that was done to the Natives of Parihaka”.

### WEST COAST COMMISSIONS

- 6.41 The first West Coast Commission was appointed in January 1880 to inquire into promises made by the Crown to Maori in Taranaki regarding land confiscated by the Government. Iwi were not given the option of settling matters by negotiation.
- 6.42 The Maori Member of Parliament appointed to the first Commission resigned, claiming that his fellow Commissioners were not impartial. The other Commissioners had previously been Ministers responsible for Native affairs, and had supported confiscation.
- 6.43 The functions of the first Commission were narrowly focused on the Compensation Court awards and specific Crown promises and did not empower the Commission to inquire into the question of fairness of the confiscations and compensation process. The first Commission refused to hear counsel who wished to question the validity of the confiscation and told Maori that it was not there to discuss such questions with them. These factors combined to minimise the amount of land considered eligible for return to Maori and maximised the amount available for settler use and occupation. The Commission focused most of its analysis on central Taranaki.
- 6.44 The first Commission concluded that many Crown promises were not kept. It noted several related problems including the shortage of land available for compensation awards and the lack of available land for Ngati Tama returnees, but offered no solutions.
- 6.45 The second Commission was appointed in December 1880 to implement the recommendations of the first Commission. It arranged for the return of title to Ngati Tama of approximately 4000 – 5000 acres. The second Commission did not make allowance for

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### 6: HISTORICAL ACCOUNT

the quality of land returned when making its allocations. Almost all of the productive land confiscated in the rohe of Ngati Tama had already been provided to military settlers. Ngati Tama were left with insufficient agricultural land for their present and future needs.

- 6.46 The ownership of the blocks to be returned was determined by the second Commission without right of appeal by claimants. Of the land returned to Ngati Tama, all was under individualised title. Many of the reserves were protected against sale when granted, but these restrictions were later removed and much of this land was permanently alienated.
- 6.47 The second Commission recommended a system of management, which was subsequently adopted, that placed the reserves under the control of the Public Trustee rather than the owners.
- 6.48 The West Coast Commission was critical of the Native Land Court process, reporting that if Ngati Tama “had been allowed a rehearing, for which they applied, they would have most probably have succeeded in establishing their right to the land between Tongaporutu and the Confiscated Block, but the Chief Judge positively refused a rehearing.” The first West Coast Commission recommended an increase in the amount of land to be awarded to Ngati Tama, but the total remained small, and most of the land was of poor quality and included only a negligible amount of coastal land.

#### WEST COAST RESERVES

- 6.49 The reserves made by the West Coast Commission did not revert to Maori to do with as they pleased. Rather, they were placed under the Public Trustee to administer under the West Coast Settlement Reserves Act 1881 with the owners losing control of their lands. The Public Trustee had full power to sell or lease the alienable reserves and lease the inalienable ones under terms imposed by statute.
- 6.50 In managing those reserves the Trustee was required to promote two goals, one being “the benefit of the Natives” and the other “the promotion of settlement”. The Act provided for leases of up to 21 years for agricultural purposes and 42 years for building purposes, with rents being based on “the best improved rent obtainable at the time”.
- 6.51 Much of the land under the Public Trustee’s administration was leased without the consent of the owners. While Europeans were granted long term leases on the reserves against which they could borrow, Maori were granted only short term leases and occupation licences.
- 6.52 The West Coast Settlement Reserves Act 1892 vested all West Coast Reserves in the Public Trustee in trust for the Maori owners with Maori thereby losing their legal ownership. The Act provided for perpetually renewable leases with rent based on the unimproved value of the land. In effect, these leases created permanent European settlements on the reserves. Leases previously granted by the Public Trustee which conflicted with the terms of the Crown grants were validated, as were earlier reductions in rent. Charges were made against rents including charges for surveying, constructing fences, drainage and roads.
- 6.53 The operation of the Maori reserved land perpetual lease regime was criticised in a number of inquiries from 1890 onwards. The 1912 Commission, for example, found that two facts

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### 6: HISTORICAL ACCOUNT

stood out in respect of the legislation: “The first is that every legislative measure has been in favour of the lessees and the second, that on no occasion has the Native owner been consulted in reference to any fresh legislation”.

- 6.54 In 1934, after the arbitration system for settling rentals resulted in a reduction of rents, Maori successfully pursued the matter of low rents in the Supreme Court. In response the Government introduced legislation to amend the definition of improvements. In effect this nullified the court decision and led to a reduction in rents Maori would otherwise have received.
- 6.55 The Maori Reserved Land Act continued the system of perpetual leases, empowering the Maori Trustee to convert any outstanding fixed term leases to leases in perpetuity and to purchase land for on-sale to lessees.
- 6.56 Maori were further disassociated from their ancestral land in 1963 when titles were amalgamated. The beneficial owners no longer had a specific interest in their customary land but only a proportional interest in reserves throughout Taranaki. A 1967 amendment to the Maori Reserved Land Act facilitated sales. The Maori Trustee could sell lands to lessees, provided a proportion of the aggregated owners agreed, even if the owners with ancestral links to those blocks were opposed to selling.
- 6.57 By 1974 63.5% of reserved land originally vested in the Public Trustee had been sold and a further 26% was under perpetual lease.
- 6.58 The Paraninihi ki Waitotara Incorporation, in which all owners were shareholders, was formed in 1976 to administer perpetually leased lands transferred from the Maori Trustee. Owners no longer had any direct interest in their ancestral land.
- 6.59 Despite restrictions on alienation imposed by the Crown on Maori reserves in the nineteenth century in order to protect ownership, today less than 5% of the reserved land in Taranaki is owned by Maori people as Maori freehold land. Succession fragments interests, so that over time the returns to individuals have generally diminished.

### NGATI TAMA LANDS

- 6.60 The southern portion of Ngati Tama’s ancestral lands was included in the Taranaki confiscations of September 1865 as part of the “Ngatiawa Coast” eligible site in the “Ngatiawa” confiscation district. Prior to the formal confiscation, the military established a redoubt and settlement at Pukearuhe Pa to guard against a possible Waikato invasion. The fighting in Taranaki had not extended to Ngati Tama lands.
- 6.61 The Compensation Court awarded only a small portion of this land to 12 Ngati Tama individuals as entitlements. No Crown titles had been granted by 1880 when the first West Coast Commission began its investigations into unfulfilled Crown promises.
- 6.62 In 1882 the titles to two large blocks totalling more than 120,000 acres on the northern side of the confiscation line (Mohakatino-Parininihi and Mokau-Mohakatino) were investigated by the Native Land Court. Although the area was part of Ngati Tama’s ancestral lands Chief Judge Fenton awarded full ownership of both blocks to Ngati Maniapoto claimants, citing

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### 6: HISTORICAL ACCOUNT

conquest and possession, although admitting that occupation prior to 1840 was “sparse”. The Judge subsequently refused to hear an appeal by Ngati Tama.

- 6.63 This outcome magnified the impact of any adverse consequences of decisions by the Compensation Court regarding Ngati Tama lands, and meant that in the future the Crown did not recognise Ngati Tama as being able to speak for these blocks. It also meant that Ngati Tama considered it futile to make further claims to land in this area through the Native Land Court.
- 6.64 The Crown has acquired Ngati Tama land under Public Works legislation. Land taken includes wahi tapu of particular significance to Ngati Tama.
- 6.65 As a result of these actions by the Crown, and the decisions of the Compensation and Native Land Courts, Ngati Tama in Taranaki were left with very little land and none in tribal ownership.

### SIM COMMISSION

- 6.66 The Sim Commission of 1926-27 was set up to investigate confiscations under the New Zealand Settlements Act 1863 and subsequent legislation, but its terms of reference were limited. It did not consider compensation for imprisonment or economic loss suffered. The Commission could only investigate whether confiscations exceeded what was “fair and just”, and was not permitted to consider any claim that Maori “who denied the Sovereignty of Her Majesty and repudiated Her authority could claim the benefit of the provisions of the Treaty of Waitangi”, nor whether the New Zealand Parliament had the power to pass the confiscation laws.
- 6.67 The Sim Commission had limited time and resources for its purpose and therefore did not fully investigate the return of land, wahi tapu and other taonga.
- 6.68 Despite the limitations placed on the Sim Commission, Ngati Tama and other iwi of Taranaki received serious consideration of their grievances for the first time. The Sim Commission found that:

“Teira was not entitled to sell the Waitara block without the consent of Wiremu Kingi and his people”;

“When martial law was proclaimed in Taranaki, and the Natives informed that military operations were about to be undertaken against them, Wiremu Kingi and his people were not in rebellion against the Queen’s sovereignty; and when they were driven from their land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime”;

“The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence”;

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### 6: HISTORICAL ACCOUNT

“If the abandonment of the Waitara purchase had taken place before the occupation of Tataraimaka, it seems possible that the second Taranaki war would have been avoided”;

“The armed occupation of Tataraimaka was, in the circumstances, a declaration of war against the Natives”;

“Both of the Taranaki wars ought to be treated ... as having arisen out of the Waitara purchase”;

“The Government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under ... *[the Waitara]* purchase”; and

“Although the Natives who took part in the second Taranaki war were engaged in rebellion within the meaning of the New Zealand Settlements Act 1863, we think that, in the circumstances, they ought not to have been punished by the confiscation of any of their lands.”

While these findings have been either developed or modified over time, modern scholarship confirms the general thrust of these findings.

- 6.69 The Sim Commission’s recommendations for an annuity of £5,000 for all the Taranaki confiscations and a single payment of £300 for the loss of property at Parihaka were not discussed with the iwi concerned by the government of the day and were never accepted as adequate. The timing of the payment of the annuity was uncertain, and the sums due in the early 1930s were not fully paid.
- 6.70 The Taranaki Maori Claims Settlement Act states that Maori agreed to accept the sums in full settlement of claims relating to the confiscations and Parihaka. There is no evidence that Ngati Tama or other iwi agreed to this. Neither these nor the previous annuities were inflation indexed, which subsequently became an issue.

### NATURAL RESOURCES

- 6.71 Iwi access to rivers, lakes, forests, swamps and foreshore has been affected by land loss. Land adjacent to rivers has been enclosed preventing iwi from accessing their traditional fisheries and fishing places.

## **7: ACKNOWLEDGEMENTS AND APOLOGY BY THE CROWN**

### **ACKNOWLEDGEMENTS**

- 7.1 The Crown acknowledges that the wars in Taranaki constituted an injustice and were in breach of the Treaty of Waitangi and the principles of the Treaty of Waitangi.
- 7.2 The Crown acknowledges that:
- 7.2.1 the confiscations were indiscriminate in extent and application and had a devastating effect on the welfare, economy and development of Ngati Tama;
  - 7.2.2 the division of the ancestral land of Ngati Tama by the arbitrary placement of the northern confiscation boundary has resulted in iwi rights in these areas being assessed under two different systems;
  - 7.2.3 the prejudicial effects of the confiscations were compounded by the inadequacies in the Compensation Court process that included long delays in the promised return of land to Ngati Tama individuals;
  - 7.2.4 the confiscations of 1865 deprived Ngati Tama of access to their traditional sources of food and other resources associated with that confiscated land; and
  - 7.2.5 the confiscations were wrongful and in breach of the Treaty of Waitangi and the principles of the Treaty of Waitangi.
- 7.3 The Crown recognises that the lands and other resources confiscated from Ngati Tama have made a significant contribution to the wealth and development of New Zealand.
- 7.4 The Crown acknowledges:
- 7.4.1 the serious damage it inflicted on the prosperous Maori village of Parihaka and the people residing there, its forcible dispersal of many of the inhabitants, and its assault on the human rights of the people;
  - 7.4.2 that these actions caused great distress and were a complete denial of the Maori right to develop and sustain autonomous communities in a peaceful manner; and
  - 7.4.3 that its treatment of the Ngati Tama people at Parihaka was unconscionable and unjust and that these actions constituted a breach of the Treaty of Waitangi and the principles of the Treaty of Waitangi.
- 7.5 The Crown acknowledges that:
- 7.5.1 the West Coast Commissions were inadequate in their scope and therefore did not fully address the injustices perpetrated by the confiscations;
  - 7.5.2 the reserves created by the Commissions in the 1880s were not sufficient for the present and future needs of Ngati Tama; and

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### 7: ACKNOWLEDGEMENTS AND APOLOGY BY THE CROWN

7.5.3 the Crown's actions with respect to the West Coast Settlement Reserves, considered cumulatively, (including the imposition of a regime of perpetually renewable leases and the sale of large quantities of land by the Public and Maori Trustee):

- (a) ultimately deprived Ngati Tama of the control and ownership of the lands reserved for them in Taranaki; and
- (b) were in breach of the Treaty of Waitangi and the principles of the Treaty of Waitangi.

7.6 The Crown acknowledges that despite previous efforts made in the twentieth century, including those of the Sim Commission, it has failed to deal in an appropriate way with the grievances of Ngati Tama. In particular, the payments made under the Taranaki Maori Claims Settlement Act did not sufficiently address the grievances of Ngati Tama.

7.7 The Crown recognises the efforts and struggles of Ngati Tama in pursuit of their claims for redress and compensation against the Crown for over 130 years.

### APOLOGY

7.8 The Crown makes this apology to Ngati Tama, to their ancestors and to their descendants.

The Crown profoundly regrets and unreservedly apologises to Ngati Tama for its actions which have resulted in the virtual landlessness of Ngati Tama in Taranaki, and which have caused suffering and hardship to Ngati Tama over the generations to the present day.

The Crown profoundly regrets and unreservedly apologises for:

- the destructive and demoralising effects of its unconscionable actions on Ngati Tama which have undermined the basis of their society and autonomy;
- its actions at Parihaka; and
- its failure to acknowledge the mana and rangatiratanga of Ngati Tama.

The Crown apologises to Ngati Tama for all the breaches of the Treaty of Waitangi and its principles acknowledged by the Crown in this Part.

ACCORDINGLY, the Crown atones for these wrongs, and seeks to assist the process of healing, with this Settlement and looks forward to building a relationship of mutual trust and co-operation with Ngati Tama.

## **8: FINANCIAL AND COMMERCIAL REDRESS**

### **AMOUNT OF FINANCIAL REDRESS**

- 8.1 The Crown must provide Financial Redress of \$14.5 million of which:
- 8.1.1 \$450,000 has been paid by the Crown to the Mandated Negotiators on behalf of Ngati Tama as an advance of part of the Financial Redress; and
  - 8.1.2 the balance of \$14.05 million (the “Balance of the Financial Redress”) is to be paid to the Governance Entity on the Settlement Date by the Crown.

### **COMMERCIAL REDRESS**

#### **The Crown to provide an RFR Deed**

- 8.2 The Crown must, by or on the Settlement Date, provide the Governance Entity with a deed:
- 8.2.1 in the form set out in the Commercial Redress Schedule (the “RFR Deed”); and
  - 8.2.2 signed in duplicate by the Crown.

#### **Signing of RFR Deed by Governance Entity**

- 8.3 The Governance Entity must:
- 8.3.1 sign the RFR Deed in duplicate; and
  - 8.3.2 return one copy to the Crown by no later than 10 Business Days after the Settlement Date.

#### **Terms of RFR Deed**

- 8.4 The RFR Deed will:
- 8.4.1 relate to:
    - (a) the RFR Area (being the area of land contained in SO Plan 14863 shown for the purposes of identification only on the map set out in schedule 3 to the RFR Deed);
    - (b) the property described in clause 1.5 of the RFR Deed (the “Tongaporutu RFR Site”), if that property ceases to be classified as a reserve under the Reserves Act 1977;
  - 8.4.2 be in force for a period of 50 years from the Settlement Date (the “RFR Period”); and

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### 8: FINANCIAL AND COMMERCIAL REDRESS

8.4.3 have effect from the Settlement Date as if it had been validly signed by both the Crown and the Governance Entity on that date.

8.5 The Parties acknowledge that there is no expectation that the Tongaporutu RFR Site will cease to be classified as a reserve within the RFR Period.

#### **Settlement Legislation in relation to Tongaporutu Site**

8.6 The Settlement Legislation will provide that the Registrar-General of Land must, as soon as reasonably practicable after written application by any person authorised by the Chief Executive of Land Information New Zealand:

8.6.1 issue to the Crown a certificate of title under the Land Transfer Act:

(a) for the fee simple estate in the Tongaporutu RFR Site; and

(b) subject to, and with the benefit of, any encumbrances that are registrable or notifiable and are described in the written application;

8.6.2 register the Crown as the proprietor of the fee simple estate in the Tongaporutu RFR Site; and

8.6.3 make appropriate notification upon the register and the certificate of title that the Tongaporutu RFR Site may become subject to obligations under the RFR Deed during the RFR Period.

## 9: CULTURAL REDRESS

### PROTOCOLS AND INPUT TO GOVERNMENT

#### 9.1 ISSUING OF PROTOCOLS

##### Form of Protocols

9.1.1 The Crown must, by or on the Settlement Date, issue to the Governance Entity the protocols (the “Protocols”):

- (a) described in this clause 9.1; and
- (b) signed in each case by the relevant Minister.

##### DOC Protocol

9.1.2 The Minister of Conservation must issue to the Governance Entity, by or on the Settlement Date, a Protocol (the “DOC Protocol”) that:

- (a) sets out how the Department of Conservation will, on a continuing basis, interact with the Governance Entity on the matters specified in that Protocol;
- (b) provides for Ngati Tama’s input into certain Department of Conservation processes in relation to the matters specified in the DOC Protocol; and
- (c) is in the form set out in Part 1 of the Cultural Redress Schedule.

9.1.3 The Settlement Legislation will provide that:

- (a) the existence of the DOC Protocol (once issued and as amended from time to time), together with a summary of the terms of issue of the Protocol, must be noted in the conservation management strategies, conservation management plans and national park management plans affecting the DOC Protocol Area;
- (b) the noting of the DOC Protocol under the previous paragraph:
  - (i) is for the purpose of public notice only; and
  - (ii) is not an amendment to the relevant strategies or plans for the purposes of section 171 of the Conservation Act or section 46 of the National Parks Act; and
- (c) the DOC Protocol does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora or fauna managed or administered, under the Conservation Legislation.

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### 9: CULTURAL REDRESS

#### 9.1.4 The DOC Protocol:

- (a) is consistent with section 4 of the Conservation Act; and
- (b) does not override or diminish:
  - (i) the requirements of the Conservation Legislation;
  - (ii) the functions and powers of the Minister of Conservation, or the Department of Conservation, under that Legislation; or
  - (iii) the rights of Ngati Tama, or a Representative Entity, under that Legislation.

#### **Fisheries Protocol**

#### 9.1.5 The Minister of Fisheries must issue to the Governance Entity, by or on the Settlement Date, a Protocol (the "Fisheries Protocol") that:

- (a) sets out how the Ministry of Fisheries will interact with the Governance Entity in a way that will enable Ngati Tama to provide input into the processes of the Ministry in relation to the matters specified in the Protocol; and
- (b) is in the form set out in Part 1 of the Cultural Redress Schedule.

#### 9.1.6 The Settlement Legislation will provide that:

- (a) the existence of the Fisheries Protocol (once issued and as amended from time to time), together with a summary of the terms of issue of the Protocol, must be noted in fisheries plans (as provided for in section 11A of the Fisheries Act 1996) affecting the Fisheries Protocol Area;
- (b) the noting of the Protocol under the previous paragraph:
  - (i) is for the purposes of public notice only; and
  - (ii) is not an amendment to the relevant plans for the purposes of section 11A of the Fisheries Act 1996; and
- (c) the Fisheries Protocol does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or property rights held, managed or administered under the Fisheries Legislation and/or the Treaty of Waitangi (Fisheries Claims) Settlement Act (including fish, aquatic life and seaweed).

#### 9.1.7 The Fisheries Protocol does not override or diminish:

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### 9: CULTURAL REDRESS

- (a) the requirements of the Fisheries Legislation;
- (b) the functions and powers of the Minister of Fisheries, or the Ministry of Fisheries, under that Legislation; or
- (c) the rights of Ngati Tama, or a Representative Entity, under that Legislation.

#### **Ministry of Economic Development Protocol**

9.1.8 The Minister of Energy must issue to the Governance Entity, by or on the Settlement Date, a Protocol (the "MED Protocol") that:

- (a) sets out how the Ministry of Economic Development will interact with the Governance Entity in relation to the matters specified in the Protocol; and
- (b) is in the form set out in Part 1 of the Cultural Redress Schedule.

9.1.9 The Settlement Legislation will provide that:

- (a) the existence of the MED Protocol (once issued and as amended from time to time), together with a summary of the terms of issue of the MED Protocol, must be noted in the relevant minerals programmes (as defined in section 2(1) of the Crown Minerals Act) when amended from time to time;
- (b) the noting of the MED Protocol under the previous paragraph:
  - (i) is for the purpose of public notice only;
  - (ii) is not an amendment to the relevant minerals programme; and
- (c) the MED Protocol does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any Crown Owned Minerals held, managed or administered under the Crown Minerals Act or any other relevant legislation.

9.1.10 The MED Protocol:

- (a) is consistent with section 4 of the Crown Minerals Act; and
- (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 Ngati Tama, or a Representative Entity, under that Act.

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### 9: CULTURAL REDRESS

#### **Antiquities Protocol**

9.1.11 The Minister for Arts, Culture and Heritage must issue to the Governance Entity, by or on the Settlement Date, a Protocol (the “Antiquities Protocol”) that:

- (a) sets out how the Ministry for Culture and Heritage will interact with the Governance Entity on the following matters:
  - (i) newly found Artifacts;
  - (ii) the export of Artifacts; and
  - (iii) the Antiquities legislative framework; and
- (b) is in the form set out in Part 1 of the Cultural Redress Schedule.

9.1.12 The Settlement Legislation will provide that the Antiquities Protocol will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Antiquities or Artifacts managed or administered under the Antiquities Act.

9.1.13 The Antiquities Protocol does not override or diminish:

- (a) the requirements of the Antiquities Act;
- (b) the functions and powers of the Minister for Arts, Culture and Heritage, or the Ministry for Culture and Heritage, under that Act; or
- (c) the rights of Ngati Tama, or a Representative Entity, under that Act.

#### **LINZ Protocol**

9.1.14 The Minister for Land Information must issue to the Governance Entity, by or on the Settlement Date, a Protocol (the “LINZ Protocol”) that:

- (a) sets out how the Department for Land Information New Zealand will consult with the Governance Entity before the Minister for Land Information resumes ownership of unformed roads within the LINZ Protocol Area from local authorities under section 323 of the Local Government Act; and
- (b) is in the form set out in Part 1 of the Cultural Redress Schedule.

9.1.15 The Settlement Legislation will provide that the LINZ Protocol does not have the effect of granting, creating or providing evidence of any property right.

9.1.16 The LINZ Protocol does not override or diminish:

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### 9: CULTURAL REDRESS

- (a) the requirements of the Local Government Act;
- (b) the functions and powers of the Minister for Land Information, and Land Information New Zealand, under that Act; or
- (c) the rights of Ngati Tama, or a Representative Entity, under that Act.

#### 9.2 PROVISIONS RELATING TO PROTOCOLS GENERALLY

##### The Settlement Legislation in relation to Protocols

9.2.1 The Settlement Legislation will provide that:

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

- (a) subject to subclause (b)(ii) of this clause, the relevant Minister may issue a Protocol and may amend or cancel that Protocol;
- (b) a Protocol may be amended or cancelled at the initiative of:
  - (i) the Governance Entity; or
  - (ii) the relevant Minister only after consulting with, and having particular regard to the views of, the Governance Entity;

##### **Protocols subject to rights and obligations**

- (c) the Protocols will not:
  - (i) restrict the ability of the Crown to:
    - (aa) perform its functions and duties, and exercise its powers, in accordance with the law and government policy; and
    - (bb) introduce legislation (including amending legislation) and change government policy; or
  - (ii) detract from the responsibilities of the relevant Minister or Department; or
  - (iii) restrict the legal rights of Ngati Tama or a Representative Entity;

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### 9: CULTURAL REDRESS

#### **Enforcement of Protocols**

- (d) the Crown must comply with its obligations under a Protocol as long as the Protocol is in force; and
- (e) if the Crown fails, without good cause, to comply with its obligations under a Protocol, the Governance Entity may, subject to the Crown Proceedings Act, enforce the Protocol, but may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown.

9.2.2 The provisions included in the Settlement Legislation under subclauses (d) or (e) of clause 9.2.1 will not apply to any guidelines developed in relation to a Protocol.

#### **Breach of Protocols not breach of Deed**

9.2.3 A failure by the Crown to comply with its obligations under a Protocol is not a breach of this Deed.

#### **Protocols not restrict Crown's ability to interact and consult**

9.2.4 The Protocols will not restrict the ability of the Crown to interact or consult with any person or persons the Crown considers appropriate including, without limitation, any other iwi, hapu, marae, whanau or other representatives of tangata whenua.

### 9.3 ADVISORY COMMITTEES TO MINISTERS

#### **Appointment under the Conservation Act**

- 9.3.1 The Minister of Conservation must:
- (a) appoint the Governance Entity, from the Settlement Date, as an advisory committee under section 56 of the Conservation Act; and
  - (b) consult with, and have regard to the advice of, that advisory committee (the "Ngati Tama Conservation Advisory Committee") on matters concerning the management and conservation within the DOC Protocol Area by the Department of Conservation of indigenous fish and other aquatic life managed by the Department of Conservation.

#### **Appointment under the Ministry of Agriculture & Fisheries Restructuring Act**

- 9.3.2 The Minister of Fisheries must:
- (a) appoint the Governance Entity, from the Settlement Date, as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries

## DEED OF SETTLEMENT

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(Restructuring) Act to provide advice to the Minister of Fisheries on all matters concerning the utilisation, while ensuring the sustainability, of fish, aquatic life and seaweed administered by the Ministry of Fisheries under the Fisheries Legislation within the Fisheries Protocol Area;

- (b) consider the advice of that advisory committee (the “Ngati Tama Fisheries Advisory Committee”); and
- (c) in considering that advice, recognise and provide for the customary non-commercial interests of Ngati Tama in respect of all matters concerning the utilisation, while ensuring sustainability, of fish, aquatic life and seaweed within the Fisheries Protocol Area.

#### 9.4 MONITORING THE PROVISIONS OF THE RESOURCE MANAGEMENT ACT

9.4.1 The Crown must:

- (a) as soon as reasonably practicable after the Settlement Date, give the Governance Entity an opportunity to express to the Ministry for the Environment the views of Ngati Tama on how the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act are being implemented in the Area of Interest; and
- (b) after the Settlement Date, through the Ministry for the Environment, monitor (in accordance with the functions of that Ministry under section 24 of the Resource Management Act) the performance of local government in implementing the Treaty of Waitangi provisions, and other relevant provisions, of the Resource Management Act in the Area of Interest.

#### 9.5 PROTOCOLS WITH LOCAL GOVERNMENT AND OTHER AGENCIES

9.5.1 Ngati Tama acknowledges that:

##### **Regional and District Councils**

- (a) the Minister in Charge of Treaty of Waitangi Negotiations and the Minister for the Environment have written to the Taranaki Regional Council and the New Plymouth District Council encouraging each council to enter into a protocol (or a similar document) in relation to the interaction between the relevant council and Ngati Tama concerning the performance of the council’s functions and obligations, and the exercise of its powers, in the Area of Interest, including interaction in relation to:

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### 9: CULTURAL REDRESS

- (i) the development of regional policy statements, regional plans and district plans by the relevant council;
  - (ii) the processes for considering applications for resource consents under the Resource Management Act by the relevant council;
  - (iii) the management by the relevant council of sites of significance to Ngati Tama;
  - (iv) the processes in relation to the naming of streets and/or areas that the relevant council has jurisdiction to undertake; and
  - (v) in the case of the New Plymouth District Council, the disposal of property;
- (b) the Minister of Conservation has written to:

#### **Taranaki/Wanganui Conservation Board**

- (i) the Taranaki/Wanganui Conservation Board encouraging that board to enter into a protocol (or a similar document) with the Governance Entity concerning information exchange between that board and the Governance Entity; and

#### **Taranaki Fish and Game Council**

- (ii) the Taranaki Fish and Game Council encouraging that council to enter into a protocol (or a similar document) with the Governance Entity concerning matters of common interest (such as habitat management); and

#### **Landcare Research & NIWA**

- (c) the Minister of Crown Research Institutes has written to Landcare Research, and to the National Institute of Water & Atmospheric Research Limited, encouraging each to enter into a protocol with the Governance Entity in relation to matters of common interest.

## OWNERSHIP OF PROPERTIES

### 9.6 VESTING OF CULTURAL REDRESS PROPERTIES

- 9.6.1 Each Cultural Redress Property (being a property set out in Part 2 of the Cultural Redress Schedule) will vest in the Governance Entity:

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- (a) as redress and without charge to, or consideration to be provided by, the Governance Entity or any other person; and
- (b) subject to any encumbrances set out in Part 2 of the Cultural Redress Schedule in relation to that property.

#### **Settlement Date**

9.6.2 The Settlement Legislation will provide that the provisions that are included in the Settlement Legislation in accordance with clauses 9.6 and 9.7 will have effect from the Settlement Date.

#### **Pukearuhe Site**

9.6.3 The Settlement Legislation will provide that:

- (a) the reservation of Pukearuhe Historic Reserve described in Part 2 of the Cultural Redress Schedule (the “Pukearuhe Site”) as a historic reserve subject to section 18 of the Reserves Act is revoked; and
- (b) the fee simple estate in the Pukearuhe Site vests in the Governance Entity.

#### **Tongaporutu Site**

9.6.4 The Settlement Legislation will provide that:

- (a) that part of the Tongaporutu Conservation Area described in Part 2 of the Cultural Redress Schedule (the “Tongaporutu Site”) ceases to be a conservation area under the Conservation Act; and
- (b) the fee simple in the Tongaporutu Site vests in the Governance Entity.

#### **Whitecliffs Site**

9.6.5 The Settlement Legislation will provide that:

- (a) that part of the Whitecliffs Conservation Area described in Part 2 of the Cultural Redress Schedule next to the words “Whitecliffs Site” (the “Whitecliffs Site”) ceases to be a conservation area under the Conservation Act;
- (b) the fee simple estate in the Whitecliffs Site vests in the Governance Entity; and
- (c) the vesting of the Whitecliffs Site in the Governance Entity is subject to:

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- (i) survey of the existing walkway (including the lowtide alternative along the beach) (the “Existing Walkway”) in the Whitecliffs Site for the purposes of the New Zealand Walkways Act; and
- (ii) the Governance Entity entering into and providing to the Crown:
  - (aa) a registrable covenant to protect the conservation values and public access in relation to the Whitecliffs Site in the form set out in Part 3 of the Cultural Redress Schedule;
  - (bb) a registrable easement to protect public access to the Existing Walkway in the form set out in Part 3 of the Cultural Redress Schedule; and
  - (cc) registrable easements to protect the existing pipeline on the Whitecliffs Site in the form set out in Part 3 of the Cultural Redress Schedule.

9.6.6 The Parties acknowledge and agree that if the unformed legal road along the coastal boundary of the Whitecliffs Site:

- (a) (or any of it) has been eroded, a marginal strip will arise; or
- (b) has not been eroded, a marginal strip will not arise.

#### **Additional Whitecliffs Sites**

9.6.7 The Settlement Legislation will provide that:

- (a) those parts of the Whitecliffs Conservation Area described in Part 2 of the Cultural Redress Schedule next to the words “Additional Whitecliffs Sites” (the “Additional Whitecliffs Sites”) cease to be part of a conservation area under the Conservation Act; and
- (b) the fee simple estate in the Additional Whitecliffs Sites vests in the Governance Entity.

9.6.8 The Governance Entity will permit Ahititi School to continue to convey water over the Additional Whitecliffs Sites.

#### **Uruti Site**

9.6.9 The Settlement Legislation will provide that:

- (a) the Uruti Conservation Area described in Part 2 of the Cultural Redress Schedule (the “Uruti Site”) ceases to be a conservation area under the Conservation Act;

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### 9: CULTURAL REDRESS

- (b) the fee simple estate in the Uruti Site vests in the Governance Entity; and
- (c) the vesting of the Uruti Site in the Governance Entity is subject to the Governance Entity entering into, and providing to the Crown, a registrable covenant to protect conservation values and public access in relation to the Uruti Site in the form set out in Part 3 of the Cultural Redress Schedule.

#### **Mount Messenger Site**

9.6.10 The Settlement Legislation will provide that:

- (a) the reservation of the Mount Messenger Scenic Reserve described in Part 2 of the Cultural Redress Schedule as a scenic reserve subject to section 19 of the Reserves Act is revoked;
- (b) the part of the Mount Messenger Conservation Area described in Part 2 of the Cultural Redress Schedule ceases to be a conservation area under the Conservation Act;
- (c) the fee simple estate in the following areas (together the “Mount Messenger Site”) vests in the Governance Entity, namely:
  - (i) the Mount Messenger Scenic Reserve referred to in subclause (a) of this clause; and
  - (ii) the part of the Mount Messenger Conservation Area referred to in subclause (b) of this clause; and
- (d) the vesting of the Mount Messenger Site in the Governance Entity is subject to the Governance Entity entering into and providing to the Crown:
  - (i) a registrable covenant to protect conservation values and public access in relation to the Mount Messenger Site in the form set out in Part 3 of the Cultural Redress Schedule; and
  - (ii) a registrable easement to protect public access to the Existing Walkway in the form set out in Part 3 of the Cultural Redress Schedule.

#### **Umukaha Point Recreation Reserve**

9.6.11 The Settlement Legislation will provide:

- (a) that the Umukaha Point Recreation Reserve described in Part 2 of the Cultural Redress Schedule (the “Umukaha Point Recreation Reserve”) vests in the Governance Entity to hold and administer as a recreation reserve under section 26 of the Reserves Act and subject to section 17 of that Act; and

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- (b) for the Governance Entity to be treated as an administering body for the purposes of the Reserves Act.

#### 9.7 PROVISIONS RELATING TO VESTING OF CULTURAL REDRESS PROPERTIES

##### **Crown to maintain in current state and condition**

9.7.1 The Crown must, between the Date of this Deed and the Settlement Date:

- (a) maintain and administer the Cultural Redress Properties (other than those which are not administered by the Crown) in substantially the same condition as those Cultural Redress Properties are in at the Date of the Deed (subject to events beyond the control of the Crown); and
- (b) administer those Cultural Redress Properties in accordance with the Crown's existing management and administration practices for those properties.

9.7.2 Subject to the Crown complying with clause 9.7.1, Ngati Tama will have no recourse or claim against the Crown in relation to the state and/or condition of any Cultural Redress Property.

##### **Warranty in relation to Disclosure Information**

9.7.3 The Crown warrants to the Governance Entity that the Disclosure Information in relation to the Cultural Redress Properties is all the material information that relates to the Cultural Redress Properties contained in the Crown's records as owner.

##### **No other warranties**

9.7.4 No representation or warranty by the Crown (whether express or implied), other than as provided in clause 9.7.3, is given with respect to:

- (a) the physical condition of the Cultural Redress Properties;
- (b) the completeness or accuracy of the Disclosure Information;
- (c) the compliance of the Cultural Redress Properties with:
  - (i) any Legislation including by-laws; or
  - (ii) any powers, rights and obligations under Legislation including by-laws (including any enforcement or other notice, requisition or proceeding issued under any code by any authority); or

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- (d) any other matter relating to the ownership, occupation, use or management of the Cultural Redress Properties.

#### **Ngati Tama's ability to inspect**

9.7.5 Ngati Tama acknowledge that (although the Crown is giving no warranty in relation to the Cultural Redress Properties other than as provided in clause 9.7.3) Ngati Tama had the opportunity prior to the Date of this Deed (in addition to being able to examine the Disclosure Information) to:

- (a) inspect the Cultural Redress Properties; and
- (b) determine the state and condition of the Cultural Redress Properties.

#### **Access**

9.7.6 The Crown will not make formal arrangements for access by Ngati Tama to the Cultural Redress Properties following their vesting in the Governance Entity.

#### **Survey**

9.7.7 Where the boundaries of any Cultural Redress Property have not been determined, the Crown will arrange for the relevant property to be surveyed and for a survey plan to be prepared and deposited.

#### **Costs**

9.7.8 The Crown will pay for all costs required in order to vest the Cultural Redress Properties in the Governance Entity.

#### **Settlement Legislation in relation to Cultural Redress Properties**

9.7.9 The Settlement Legislation will provide that:

##### **Encumbrances**

- (a) each Cultural Redress Property will vest in the Governance Entity subject to any encumbrances set out in Part 2 of the Cultural Redress Schedule in relation to that property;

##### **Reserves Act**

- (b) the following vest in the Crown as Crown land, and are subject to section 82 of the Reserves Act, when their reservation as a reserve is revoked under the Settlement Legislation, and before they are vested in the Governance Entity under that Settlement Legislation, namely:

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- (i) the Pukearuhe Site; and
- (ii) that part of the Mount Messenger Site specified in clause 9.6.10(a);
- (c) sections 24 and 25 of the Reserves Act do not apply to a revocation of the reservation of a Cultural Redress Property as a reserve under the Settlement Legislation;
- (d) the covenant to be given by the Governance Entity under clause 9.6.10(d) (to the extent that it relates to that part of the Mount Messenger Site specified in clause 9.6.10(a)) is to be treated as a conservation covenant for the purposes of section 77 of the Reserves Act;

#### **Resource Management Act**

- (e) section 11 and Part 10 of the Resource Management Act do not apply to:
  - (i) the vesting of the fee simple estate in a Cultural Redress Property in the Governance Entity under the Settlement Legislation; or
  - (ii) anything incidental to, or required for the purposes of, any such vesting;

#### **Crown Minerals Act**

- (f) sections 10 and 11 of the Crown Minerals Act are not limited by the vesting of a Cultural Redress Property;

#### **Conservation Act**

- (g) the vesting in the Governance Entity of a fee simple estate in a Cultural Redress Property is a disposition for the purposes of Part IVA (Marginal Strips) of the Conservation Act, but sections 24(2A), 24A and 24AA of that Act do not apply to that disposition;
- (h) the covenants to be given by the Governance Entity under clauses 9.6.5(c)(ii)(aa), 9.6.9(c) and 9.6.10(d) (to the extent that clause relates to that part of the Mount Messenger Site referred to in clause 9.6.10(b)) are to be treated as conservation covenants for the purposes of section 27 of the Conservation Act;

#### **Boundaries of Cultural Redress Property Not Determined**

- (i) where the boundaries of a Cultural Redress Property have not been determined, or its description in Part 2 of the Cultural Redress Schedule is subject to the survey of an area, the vesting of that Cultural Redress property in the Governance Entity will follow:

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### 9: CULTURAL REDRESS

- (i) a survey of the relevant area; and
- (ii) the relevant survey plan being prepared and deposited;

#### **Cultural Redress Property registered under the Land Transfer Act**

- (j) where the fee simple estate in a Cultural Redress Property is vested in the Governance Entity, and that Cultural Redress Property is land which is registered under the Land Transfer Act, the Registrar-General of Land must on written application by any person authorised by the Chief Executive of Land Information New Zealand:
  - (i) register the Governance Entity as the proprietor of the fee simple estate in that Cultural Redress Property; and
  - (ii) make such entries in the register and on any outstanding documents of title, and generally do all such things, as may be necessary to give effect to clauses 9.6 and 9.7;

#### **Cultural Redress Property not registered under the Land Transfer Act**

- (k) where the fee simple estate in a Cultural Redress Property is vested in the Governance Entity, and that Cultural Redress Property is not land registered under the Land Transfer Act, the Registrar-General of Land must, on written application by any person authorised by the Chief Executive of Land Information New Zealand:
  - (i) issue a certificate of title for the fee simple estate in that Cultural Redress Property under the Land Transfer Act to the Governance Entity (subject to, and with the benefit of, any encumbrances that are registrable or notifiable and are described in the written application);
  - (ii) issue that certificate of title as soon as reasonably practicable after:
    - (aa) the person authorised by the Chief Executive of Land Information New Zealand makes application;
    - (bb) completion of such survey as may be necessary; and
    - (cc) in any event, no later than 24 months after the vesting of the relevant Cultural Redress Property in the Governance Entity (or such later date as may be agreed in writing by the Governance Entity and the Crown);
  - (iii) register the Governance Entity as the proprietor of the fee simple estate in that Cultural Redress Property; and

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(iv) make such entries in the register, and on any documents of title, and generally do all such things as may be necessary to give effect to clauses 9.6 and 9.7; and

(l) the person authorised by the Chief Executive of Land Information New Zealand must make written application under subclause (j) or (k) of this clause as soon as reasonably practicable after the Settlement Date;

#### Successors bound

(m) where the fee simple estate in a Cultural Redress Property is vested in the Governance Entity, the terms on which that Cultural Redress Property is vested will bind any successor in title to that Cultural Redress Property unless the Crown and the Governance Entity agree otherwise;

(n) the Registrar-General of Land, upon the issue of a certificate of title of any Cultural Redress Property to, or upon noting the vesting of any Cultural Redress Property in, the Governance Entity, will make a notification upon it to record the provisions of subclause (m) of this clause; and

#### Other necessary provisions

(o) such other provisions as are necessary or desirable to the Parties to give effect to clauses 9.6 and 9.7.

## 9.8 JOINT ADVISORY COMMITTEE IN RESPECT OF WHITECLIFFS CONSERVATION AREA AND TRANSFERRED SITES

### Definitions

9.8.1 In this clause 9.8:

**conservation** has the meaning given to it by section 2 of the Conservation Act;

**Conservation Covenant** means the covenant signed by the Governance Entity and the Minister of Conservation under clauses 9.6.5(c)(ii)(aa), 9.6.9(c) and 9.6.10(d)(i) and in the form set out in Part 3 of the Cultural Redress Schedule;

**conservation management plan** has the meaning given to it by section 2 of the Conservation Act and includes a conservation management strategy as defined by section 2 of the Conservation Act;

**JAC Management Plan** has the meaning given to that term by clause 9.8.2(b);

**Joint Advisory Committee** means the committee appointed under section 56 of the Conservation Act in accordance with this clause and the Settlement Legislation;

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**Members** means Members of the Joint Advisory Committee;

**Minister** means the Minister of Conservation;

**Parininihi Marine Reserve** has the meaning given to that term by clause 9.8.4;

**Transferred Sites** means the following areas:

- (a) the Whitecliffs Site;
- (b) the Uruti Site;
- (c) the Mount Messenger Site; and

**Whitecliffs Conservation Area** means the following areas in the Taranaki Land District – New Plymouth District:

- (a) 47.0 hectares, approximately, being Part Section 13 Block VIII Mimi Survey District. Part New Zealand Gazette 1899 page 164. Subject to survey;
- (b) 125.1 hectares, approximately, being Part Sections 1A, 2A, 3A and 6 Block IV Mimi Survey District. Part New Zealand Gazette 1906 page 829. Subject to survey;
- (c) 75.8 hectares, approximately, being Part Sections 10 and 11 Block IV Mimi Survey District. Part New Zealand Gazette 1906 page 829. Subject to survey; and
- (d) 264.7175 hectares, more or less, being Sections 4A and 20 Block IV Mimi Survey District. Part New Zealand Gazette 1906 page 829.

#### **Appointment and functions of Joint Advisory Committee**

9.8.2 The Parties agree that the Settlement Legislation will provide for the appointment of an advisory committee under section 56 of the Conservation Act to:

- (a) advise the Minister on conservation matters affecting the Whitecliffs Conservation Area;
- (b) from time to time prepare a management plan in relation to the Transferred Sites in accordance with clause 4 of the Conservation Covenant (a “JAC Management Plan”);
- (c) undertake any other responsibilities required by the Conservation Covenant; and

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- (d) where clause 9.8.4 applies, approve conservation management plans, and any review or amendment of those plans, in relation to the Parininihi Marine Reserve.

#### **Advice on conservation matters**

9.8.3 The Settlement Legislation will provide that the Director-General must consult with, and have regard to, the advice of the Joint Advisory Committee in relation to:

- (a) the preparation of any conservation management plans relating to the Whitecliffs Conservation Area; and
- (b) annual planning (including annual conservation priorities) in relation to the Whitecliffs Conservation Area.

#### **Advice in relation to Parininihi Marine Reserve**

9.8.4 The Settlement Legislation will provide that, if a marine reserve is constituted under section 4 of the Marine Reserves Act at Parininihi (the "Parininihi Marine Reserve"):

- (a) the Taranaki/Wanganui Conservation Board must appoint the Joint Advisory Committee from time to time as a committee of the Taranaki/Wanganui Conservation Board under section 6N(2)(b) of the Conservation Act with power to approve under the Conservation Act and the Marine Reserves Act:
  - (i) all conservation management plans in relation to the Parininihi Marine Reserve; and
  - (ii) the review or amendment of any of those plans; and
- (b) the Minister of Conservation, the New Zealand Conservation Authority, the Director-General and the Taranaki/Wanganui Conservation Board must consult with and have regard to, the advice of the Joint Advisory Committee in relation to conservation matters affecting the Parininihi Marine Reserve.

#### **Membership of Joint Advisory Committee**

9.8.5 The Settlement Legislation will provide that:

- (a) the Minister must appoint as Members of the Joint Advisory Committee:
  - (i) three individuals from time to time nominated in writing by the Governance Entity to the Director-General;
  - (ii) two individuals from time to time nominated in writing by the Director-General; and

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- (iii) one individual from time to time nominated in writing by the Taranaki/Wanganui Conservation Board to the Director-General;
- (b) the initial nominations of Members are to be made within six months of the Settlement Date;
- (c) the Minister must appoint as the chairperson of the Joint Advisory Committee the person from time to time nominated in writing by the Governance Entity to the Director-General and its nomination must be of an individual who is a Member;
- (d) the Minister must publish appointments of Members in the *New Zealand Gazette*; and
- (e) Members may be appointed for a term of up to five years (and may be reappointed).

#### **Proceedings of Joint Advisory Committee**

9.8.6 The Settlement Legislation will provide that:

- (a) unless all Members of the Joint Advisory Committee agree otherwise:
  - (i) the chairperson has a casting vote; and
  - (ii) the Joint Advisory Committee must meet twice a year;
- (b) any failure by the Governance Entity, the Director-General or the Taranaki/Wanganui Conservation Board from time to time to nominate individuals under clause 9.8.5(a) as Members will not affect the validity of:
  - (i) the Joint Advisory Committee;
  - (ii) any advice given by it;
  - (iii) any JAC Management Plan prepared by it; or
  - (iv) any undertaking of its responsibilities or exercise of its rights or powers; and
- (c) subject to this clause, the Joint Advisory Committee may regulate its own procedure.

#### **Funding of Joint Advisory Committee**

9.8.7 The Settlement Legislation will provide that, despite sections 56(2) and (3) of the Conservation Act:

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- (a) the Crown will pay:
  - (i) the costs and expenses that the Members nominated by the Director-General incur in acting as Members; and
  - (ii) 33.3% of all other costs and expenses of the Joint Advisory Committee;
- (b) the Governance Entity will pay:
  - (i) the costs and expenses that the Members nominated by it incur in acting as Members; and
  - (ii) 50% of all other costs and expenses of the Joint Advisory Committee; and
- (c) the Taranaki/Wanganui Conservation Board will pay:
  - (i) the costs and expenses that the Member nominated by it incurs in acting as a Member of the Joint Advisory Committee; and
  - (ii) 16.7% of all other costs and expenses of the Joint Advisory Committee.

#### **Rights preserved**

- 9.8.8 The Settlement Legislation will provide that nothing in this Deed or the Settlement Legislation limits:
- (a) the Minister's discretion in relation to the Joint Advisory Committee under section 56(1) of the Conservation Act (and, in particular, to discharge and not re-appoint that committee); or
  - (b) the ability of the Minister and the Taranaki/Wanganui Conservation Board to appoint any person as an adviser, or take advice from or consult with any person.

## STATUTORY ACKNOWLEDGEMENTS AND DEED OF RECOGNITION

### 9.9 STATUTORY ACKNOWLEDGEMENTS

#### **Provision of Statutory Acknowledgements**

- 9.9.1 The Crown agrees that the Settlement Legislation will make Statutory Acknowledgements in relation to the Statutory Areas, which will comprise:

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- (a) the descriptions of the Statutory Areas set out in of Part 4 of the Cultural Redress Schedule;
- (b) the texts of the statements by Ngati Tama of the particular cultural, spiritual, historic, and traditional association of Ngati Tama with the Statutory Areas as set out in Part 5 of the Cultural Redress Schedule;
- (c) an acknowledgement by the Crown of Ngati Tama's statement of association with those Statutory Areas; and
- (d) the other matters required by this Deed (and, in particular, as required by Part 5 of the Cultural Redress Schedule).

#### **Purposes of a Statutory Acknowledgement**

9.9.2 The Settlement Legislation will provide that, without limiting clause 9.11.1, the only purposes of a Statutory Acknowledgement are:

- (a) to require that Consent Authorities, the Environment Court and the New Zealand Historic Places Trust, as the case may be, have regard to the Statutory Acknowledgement (as provided in clauses 9.9.3 and 9.9.4);
- (b) to require that relevant Consent Authorities forward summaries of Resource Consent Applications to the Governance Entity (as provided in clause 9.9.6); and
- (c) to enable the Governance Entity, and any Member of Ngati Tama, to cite the Statutory Acknowledgement as evidence of the association of Ngati Tama with the relevant Statutory Area (as provided in clause 9.9.8).

#### **Consent Authorities and Environment Court to have regard to a Statutory Acknowledgement under the Resource Management Act**

9.9.3 The Settlement Legislation will provide that, from the Effective Date, and without derogating from its obligations under Part II of the Resource Management Act:

- (a) a Consent Authority must have regard to the Statutory Acknowledgement relating to a Statutory Area:
  - (i) in forming an opinion under section 93(1)(e) of the Resource Management Act as to whether the Governance Entity is a person who is likely to be directly affected by an application for activities within, adjacent to, or impacting directly on the Statutory Area; and
  - (ii) in:
    - (aa) forming an opinion under sections 94(1)(c)(ii) and 94(3)(c) of the Resource Management Act; or

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(bb) satisfying itself under section 94(2)(b) of the Resource Management Act;

as to whether the Governance Entity is a person who may be adversely affected by the granting of a Resource Consent for activities within, adjacent to, or impacting directly on a Statutory Area; and

- (b) the Environment Court must have regard to the Statutory Acknowledgement relating to a Statutory Area in determining, for the purposes of section 274 of the Resource Management Act, whether the Governance Entity is a person having an interest in the proceedings greater than the public generally in respect of an application for a Resource Consent for activities within, adjacent to, or impacting directly on the Statutory Area.

#### **New Zealand Historic Places Trust and Environment Court to have regard to a Statutory Acknowledgement under the Historic Places Act**

9.9.4 The Settlement Legislation will provide that, from the Effective Date, the New Zealand Historic Places Trust or the Environment Court (as the case may be) must have regard to the Statutory Acknowledgement relating to a Statutory Area:

- (a) in forming an opinion under section 14(6)(a) of the Historic Places Act; and
- (b) for the purpose of section 20(1) of the Historic Places Act;

as to whether the Governance Entity is a person directly affected in relation to an archaeological site (as defined in section 2 of that Act) within the Statutory Area.

#### **Recording of Statutory Acknowledgements on Statutory Plans**

9.9.5 The Settlement Legislation will provide that, from the Effective Date:

- (a) Local Authorities in any area which includes a Statutory Area must attach to all Statutory Plans information recording all Statutory Acknowledgements affecting Statutory Areas covered wholly or partly by such Statutory Plans, either by way of reference to the relevant part of the Settlement Legislation or by setting out the Statutory Acknowledgements in full; and
- (b) the attachment of information to any Statutory Plan under this clause is for the purpose of public information only and the information is not:
- (i) part of the Statutory Plan (unless adopted by the relevant Local Authority); or
- (ii) subject to the provisions of the First Schedule of the Resource Management Act.

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#### **Regulations requiring Consent Authorities to forward summaries of Resource Consent Applications to the Governance Entity**

- 9.9.6 The Crown must, by no later than the Effective Date, ensure regulations (“Statutory Acknowledgement Regulations”) are made to provide as follows:
- (a) for a period of 20 years after the Effective Date, a relevant Consent Authority that receives an application for a Resource Consent for activities within, adjacent to, or impacting directly on a Statutory Area (a “Resource Consent Application”) must forward a summary of the Resource Consent Application to the Governance Entity:
    - (i) as soon as reasonably practicable after receiving that application; and
    - (ii) prior to making any determination under sections 93 or 94 of the Resource Management Act;
  - (b) the summary of the Resource Consent Application under this clause must contain:
    - (i) the same information which would be contained in a notice to persons who may be affected under section 93 of the Resource Management Act; or
    - (ii) any other information that is agreed between the Governance Entity and the relevant Consent Authority;
  - (c) the Governance Entity may waive its rights to receive summaries of Resource Consent Applications by notice in writing to the appropriate Consent Authority, either:
    - (i) generally; or
    - (ii) in respect of particular types of Resource Consent Applications, particular Consent Authorities, or for specified periods of time; and
  - (d) a relevant Consent Authority is the Minister of Conservation or any other Consent Authority whose region or district includes or is adjacent to the Statutory Area.
- 9.9.7 The Settlement Legislation will enable the Governor-General to make the Statutory Acknowledgement Regulations by Order in Council, on the recommendation of the Minister for the Environment.

#### **Settlement Legislation in relation to Statutory Acknowledgements**

- 9.9.8 The Settlement Legislation will provide that:

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#### **Discretion of Consent Authorities not affected**

- (a) to avoid doubt, nothing in the Statutory Acknowledgement Regulations will in any way affect the discretion of a Consent Authority as to whether or not:
  - (i) to notify any application under sections 93 and 94 of the Resource Management Act; or
  - (ii) the Governance Entity is an affected person under those sections;

#### **Use of Statutory Acknowledgement with submissions**

- (b) the Governance Entity, and any Member of Ngati Tama, may cite a Statutory Acknowledgement as evidence of the association of Ngati Tama with the relevant Statutory Area in submissions to, and proceedings before, a Consent Authority, the Environment Court, or the New Zealand Historic Places Trust concerning activities within, adjacent to, or impacting directly on a Statutory Area;

#### **Content not binding**

- (c) the content of the statement of association, as recorded in a Statutory Acknowledgement, is not by virtue of the Statutory Acknowledgement binding as deemed fact on Consent Authorities, the Environment Court, the New Zealand Historic Places Trust, parties to proceedings before those bodies, or any other person able to participate in those proceedings, but the Statutory Acknowledgement may be taken into account by them; and

#### **The Resource Management Act 1991**

- (d) schedule 11 of the Resource Management Act is amended by adding the short title of the Settlement Legislation to that Schedule.

#### **Other Association with the Statutory Area may be stated**

- 9.9.9 The Governance Entity, and any Member of Ngati Tama, may state that Ngati Tama has an association with the Statutory Area that is not described in the relevant Statutory Acknowledgement, and the content or existence of the Statutory Acknowledgement does not derogate from any such statement.

### 9.10 DEEDS OF RECOGNITION

#### **Obligation to enter into Deeds of Recognition**

- 9.10.1 The Crown must, by or on the Settlement Date, enter into the Deeds of Recognition with the Governance Entity set out in Part 6 of the Cultural Redress Schedule in

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respect of those parts of the Statutory Areas described in Part 4 of the Cultural Redress Schedule which are owned or managed by the Crown and which Part 4 of the Cultural Redress Schedule provides Deeds of Recognition will be given in relation to.

9.10.2 The Settlement Legislation will provide:

#### **Entry into a Deed of Recognition**

- (a) that the Minister responsible for the management or administration of the site to which a Deed of Recognition relates, or the Commissioner of Crown Lands, as the case may be, has the power to enter into with the Governance Entity:
  - (i) that Deed of Recognition; and
  - (ii) any deed amending that Deed of Recognition;

#### **Deed of Recognition requires consultation with Governance Entity**

- (b) that a Deed of Recognition will require that the Governance Entity must be consulted, and regard must be had to its views, relating to the association described in the Statutory Acknowledgement to which the Deed of Recognition relates, concerning the management or administration of the Statutory Area by the Crown on the matters specified in the Deed of Recognition;

#### **Purpose of Deeds of Recognition**

- (c) that, without limiting clause 9.11.1, the only purpose of a Deed of Recognition will be to require that the Governance Entity be consulted, and regard had to its views, as provided in the previous paragraph;

#### **Limited management**

- (d) a recognition that the Crown may undertake only limited management or administrative functions in relation to a Statutory Area in respect of which a Deed of Recognition is to be given;
- (e) that entry into a Deed of Recognition does not require the Crown to:
  - (i) increase its management or administrative functions; or
  - (ii) resume any management or administrative function; and

#### **Termination of Deeds of Recognition**

- (f) a Deed of Recognition will terminate in relation to a Statutory Area or part of it (the "Identified Area") if:

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- (i) the Governance Entity and the Crown agree in writing that the Deed of Recognition is no longer appropriate in respect of the Identified Area;
- (ii) the Identified Area is disposed of by the Crown; or
- (iii) the responsibility for managing the Identified Area is transferred to a different Minister, Ministerial portfolio or Department.

#### **Continued input in respect of Deeds of Recognition**

9.10.3 If a Deed of Recognition terminates in relation to an Identified Area or the responsibility for managing the Identified Area is transferred to a different Minister, Ministerial portfolio or Department, the Crown will take reasonable steps to ensure that the Governance Entity continues to have input into the management or administration of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

### 9.11 PROVISIONS OF THE SETTLEMENT LEGISLATION IN RELATION TO BOTH STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION

#### **Settlement Legislation in relation to both Statutory Acknowledgements and Deeds of Recognition**

9.11.1 The Settlement Legislation will provide that (except as expressly provided in this Deed):

#### **Limited effect of powers, duties, functions and rights**

- (a) a Statutory Acknowledgement, and a Deed of Recognition, will not:
  - (i) affect, and may not be taken into account in, the performance of any duty or function, or the exercise of any power, under any Legislation;
  - (ii) affect the lawful rights or interests of a person who is not a party to this Deed;
  - (iii) grant, create or evidence any estate or interest in, or any rights relating to, a Statutory Area; or
  - (iv) preclude the Crown from providing a statutory acknowledgement to, or entering into a deed of recognition with, a person or persons other than Ngati Tama with respect to the same area that the Statutory Acknowledgement or Deed of Recognition relates to; and

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- (b) without limiting paragraph (a) of this clause, a person, in considering any matter, or making any decision or recommendation, under any Legislation, must not give any greater or lesser weight to Ngati Tama's association with a Statutory Area (as described in the relevant Statutory Acknowledgement) than that person would have given, if:
  - (i) that Statutory Acknowledgement had not been made; and
  - (ii) a Deed of Recognition did not exist in respect of that Statutory Area.

#### **Statutory Acknowledgements and Deeds of Recognition in relation to rivers**

9.11.2 The Settlement Legislation will provide that, where a Statutory Acknowledgement and/or a Deed of Recognition is to be given in relation to a river, that river does not include:

- (a) any part of the bed of the river that is not owned or controlled by the Crown;
- (b) any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) any artificial watercourse; or
- (d) any tributary flowing into the river.

### 9.12 NEW ZEALAND GEOGRAPHIC BOARD

9.12.1 The Parties acknowledge that the Minister for Land Information and the Minister of Maori Affairs have written to the Mandated Negotiators as representatives of Ngati Tama advising that:

- (a) the New Zealand Geographic Board ("NZGB") has developed a protocol for Maori place names;
- (b) that protocol describes the principles and procedures the NZGB is applying to encourage the use of Maori place names and to ensure more effective consultation with use of such names;
- (c) the NZGB has resolved that the Governance Entity will be consulted in accordance with that protocol;
- (d) the Minister for Land Information intends to appoint the Chief Executive of Te Puni Kokiri as a member of the NZGB; and
- (e) it is envisaged this appointment will enhance the NZGB's capacity to consult with Ngati Tama and other Maori.

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#### 9.13 ACKNOWLEDGEMENT OF ASSOCIATION

##### **Customary interest in Paua Fishery**

9.13.1 The Crown acknowledges that:

- (a) Ngati Tama have a customary non-commercial interest in the Paua Fishery in the Fisheries Protocol Area ; and
- (b) the Paua Fishery in the Fisheries Protocol Area is not, at the Date of this Deed, fished commercially due to the lack of paua that have attained the minimum legal size required for commercial harvest.

##### **The Settlement Legislation in relation to the Acknowledgement of Association**

9.13.2 The Settlement Legislation will provide that:

##### **Limited Effect on powers, duties, functions and rights**

- (a) the acknowledgement given by the Crown under clause 9.13.1 will not:
  - (i) affect, and may not be taken into account in, the performance of any duty or function, or the exercise of any power, under any Legislation;
  - (ii) affect the lawful rights or interests of a person who is not a party to this Deed;
  - (iii) grant, create or evidence any estate or interest in, or any rights relating to, the Paua Fishery in the Fisheries Protocol Area; or
  - (iv) prevent the Crown from providing an acknowledgement to a person or persons other than Ngati Tama with respect to the Paua Fishery in the Fisheries Protocol Area; and

##### **Exercise of powers, duties and functions**

- (b) without limiting paragraph (a) of this clause, a person, in considering any matter, or making any decision or recommendation, under any Legislation, must not give any greater or lesser weight to the customary non-commercial interest of Ngati Tama in the Paua Fishery in the Fisheries Protocol Area than that person would have given if no acknowledgement had been made by the Crown of that customary non-commercial interest.

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#### 9.14 MANAGEMENT OF FISHERIES

##### **Prohibition on taking of certain species for commercial purposes**

9.14.1 The following species (the “Prohibited Target Species”) are, or will as from the Settlement Date be, prohibited within the Fisheries Protocol Area as Commercial Target Species, namely:

- (a) cats eye (pupu);
- (b) freshwater mussel (kakahī);
- (c) sea anemone (kotoretore);
- (d) sea lettuce (karengo);
- (e) sea urchin (kina); and
- (f) freshwater crayfish (waikoura).

9.14.2 The provisions of this Deed, and the Settlement Legislation, will not affect:

- (a) the issue of special permits under the Fisheries Legislation to take freshwater crayfish (waikoura) for aquacultural purposes; or
- (b) the taking of any Prohibited Target Species as an inevitable by-catch of lawful commercial fishing operations.

##### **Commercial Catch Proposals in relation to Prohibited Target Species and Paua**

9.14.3 The Minister of Fisheries will:

- (a) if, after the Settlement Date, it is demonstrated to the satisfaction of the Minister that there are sufficient quantities of any of the Prohibited Target Species in the Fisheries Protocol Area to provide for a commercial catch of that species, consult with the Ngati Tama Fisheries Advisory Committee in respect of any proposal to authorise the commercial taking of that species (a “Prohibited Target Species Commercial Catch Proposal”) in accordance with:
  - (i) section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act; and
  - (ii) section 12 of the Fisheries Act 1996;

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- (b) consult with the Ngati Tama Fisheries Advisory Committee in relation to any proposal for the commercial fishing of the Paua Fishery in the Fisheries Protocol Area (a “Paua Commercial Catch Proposal”); and
- (c) in considering a Prohibited Target Species Commercial Catch Proposal, or a Paua Commercial Catch Proposal, ensure that the customary non-commercial fishing interests of Ngati Tama in the species concerned are recognised and provided for in accordance with:
  - (i) section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act; and
  - (ii) where the Prohibited Target Species Commercial Catch Proposal, or the Paua Commercial Catch Proposal, relate to the setting or varying of the Total Allowable Commercial Catch, section 21 of the Fisheries Act 1996.

#### **Net Prohibition Proposal from Ngati Tama may be included in Fisheries Regulatory Review**

9.14.4 The Ministry of Fisheries will:

- (a) provide to the Governance Entity prior written notice of:
  - (i) the date the first regular review of regulatory measures in relation to fisheries resources (the “Fisheries Regulatory Review”) commences after the Settlement Date; and
  - (ii) the date by which proposals requesting regulatory change are to be submitted to the Ministry of Fisheries for inclusion in the Fisheries Regulatory Review;
- (b) include in the consultation process for the Fisheries Regulatory Review any written proposal from the Governance Entity proposing that a prohibition on commercial fishermen using trawl nets and set nets (a “Net Prohibition Proposal”) be applied to that part of the Fisheries Protocol Area specified in the Net Prohibition Proposal; and
- (c) provide advice to the Minister of Fisheries on the Net Prohibition Proposal.

9.14.5 The Governance Entity must provide any Net Prohibition Proposal to the Ministry of Fisheries before the date by which proposals for the Fisheries Regulatory Review are to be submitted.

9.14.6 The Parties acknowledge that:

- (a) the only obligation of the Minister of Fisheries is to consider the Net Prohibition Proposal; and

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- (b) in particular, there is no obligation or expectation that:
  - (i) the Minister will agree with all or any part of the Net Prohibition Proposal; or
  - (ii) the Fisheries (Central Area Commercial Fishing) Regulations or any other Legislation will be amended in accordance with the Net Prohibition Proposal.

9.14.7 The Minister of Fisheries will advise the Governance Entity in writing of the outcome of his or her consideration of the Net Prohibition Proposal.

#### **Consultation with Ministry of Fisheries concerning Tuna (eel)**

9.14.8 The Ministry of Fisheries will consult with the Governance Entity in each of the three years after the Settlement Date, on written request by the Governance Entity, concerning:

- (a) the maximum quantity of undersized tuna (eel) that the Governance Entity is likely to be permitted to be taken that year under section 64 of the Fisheries Act 1983 or section 97 of the Fisheries Act 1996 (the "Permitted Tuna (Eel) Catch") from each of not more than three sites within the Fisheries Protocol Area specified in writing by the Governance Entity to the Ministry of Fisheries; and
- (b) the likely conditions of any Permitted Tuna (Eel) Catch under section 64 of the Fisheries Act 1983, or section 97 of the Fisheries Act 1996, in relation to each of those specified sites, including the likely conditions in relation to the relocation of any of the tuna (eel) in:
  - (i) Waterways in the Fisheries Protocol Area; and
  - (ii) aquacultural farms.

9.14.9 The Ministry of Fisheries will consult under the previous clause with the Governance Entity concerning up to a maximum of nine sites during the three years after the Settlement Date.

9.14.10 The Ministry of Fisheries will consider, in accordance with the relevant legislative and operational processes, any application from the Governance Entity for a special permit to take undersized tuna (elvers or glass eels) from Waterways within the Fisheries Protocol Area as part of any enhancement or aquaculture project.

9.14.11 In this Deed:

- (a) tuna (eel) is:
  - (i) *anguilla dieffenbachii* (longfinned eel);

## DEED OF SETTLEMENT

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### 9: CULTURAL REDRESS

- (ii) *anguilla australis* (shortfinned eel); and
  - (iii) *anguilla rheinhartii*; and
- (b) undersized tuna is tuna (eel) with a weight of less than 220 grams.

#### 9.15 RIGHT OF FIRST REFUSAL OVER SHELLFISH QUOTA

##### **Delivery by the Crown of Shellfish RFR Deed**

- 9.15.1 The Crown must, by or on the Settlement Date, provide the Governance Entity with a deed:
- (a) in the form set out in Part 7 of the Cultural Redress Schedule (a “Shellfish RFR Deed”); and
  - (b) signed in duplicate by the Crown.

##### **Signing of Shellfish RFR Deed by the Governance Entity**

- 9.15.2 The Governance Entity must:
- (a) sign the Shellfish RFR Deed in duplicate; and
  - (b) return one copy of that deed to the Crown by no later than 10 Business Days after the Settlement Date.

##### **Terms of Shellfish RFR Deed**

- 9.15.3 The Shellfish RFR Deed will:
- (a) relate to the Shellfish RFR Area;
  - (b) be in force for a period of 50 years from the Settlement Date;
  - (c) have effect from the Settlement Date as if it had been validly signed by the Crown and the Governance Entity on that date.

##### **Crown has no obligation to sell or introduce Quota**

- 9.15.4 The Parties agree that:
- (a) nothing in this Deed, or the Shellfish RFR Deed, will require the Crown:

## DEED OF SETTLEMENT

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### 9: CULTURAL REDRESS

- (i) to offer for sale any Quota held by the Crown;
  - (ii) to introduce any of the Applicable Species (as defined in the Shellfish RFR Deed) into the Quota Management System; and
- (b) the introduction of any Applicable Species into the Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota (as defined in the Shellfish RFR Deed) for the Applicable Species.

#### **Settlement Legislation in relation to Shellfish RFR Deed**

9.15.5 The Settlement Legislation will provide that, to the extent that the aggregate of:

- (a) any Quota purchased by the Governance Entity under the Shellfish RFR Deed; and
- (b) any Quota received by the Governance Entity from the Treaty of Waitangi Fisheries Commission;

exceeds any limit on the holding of Quota under section 59 of the Fisheries Act 1996 (or section 28W of the Fisheries Act 1983, as the case may be), the Governance Entity will be treated as having received, under section 60 of the Fisheries Act 1996 (or section 28W(3) of the Fisheries Act 1983, as the case may be), the consent of the relevant Minister to hold the Quota held by the Governance Entity in excess of that limit.

### 9.16 COASTAL TENDERING

#### **Ngati Tama's right to purchase Authorisations**

9.16.1 The Crown agrees, and the Settlement Legislation will provide, that if the Minister of Conservation offers by public tender, in accordance with Part VII of the Resource Management Act, Authorisations in respect of any part of the Specified Coastal Area (the "Tendered Authorisations"):

- (a) the Governance Entity will have a preferential right to purchase a proportion of the Tendered Authorisations that:
  - (i) in area does not exceed 10% of all Tendered Authorisations in respect of the Specified Coastal Area (except that this limitation may be exceeded to the extent that the size and/or shape of that part of Specified Coastal Area to which the Tendered Authorisations relate make it impractical to comply with that limitation); and

## DEED OF SETTLEMENT

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### 9: CULTURAL REDRESS

(ii) are of not less than fair average quality relative to the quality of all other Tendered Authorisations;

(b) the Governance Entity will be treated as having lodged (for \$1 consideration ) a valid tender for the Authorisations that complies with section 158 of the Resource Management Act; and

(c) if, in response to the public tender, the Minister of Conservation receives no tenders or considers that he or she would reject every tender received, the tender that the Governance Entity is treated as having lodged will be treated as having been the tender most preferred by the Minister for the Authorisations concerned.

9.16.2 The procedure in accordance with which the right of the Governance Entity to purchase Authorisations must be exercised is set out in Part 8 of the Cultural Redress Schedule.

#### **Settlement Legislation in relation to coastal tendering**

9.16.3 The Settlement Legislation will provide that this Deed and the Settlement Legislation does not , except as expressly provided in the Settlement Legislation:

(a) affect, and may not be taken into account in, the performance of any duty or function, or the exercise of any power, of the Minister of Conservation under Part VII of the Resource Management Act;

(b) affect the lawful rights or interests of a person who is not a party to this Deed in relation to the Specified Coastal Area;

(c) grant, create or evidence any estate or interest in, or any rights relating to, the Specified Coastal Area; or

(d) limit or affect the rights of Ngati Tama, or a Representative Entity, to acquire Authorisations or otherwise exercise any right, power or privilege under any Legislation.

#### **Crown has no intention to utilise coastal tendering mechanism**

9.16.4 The Parties acknowledge that the Crown currently has no intention of utilising the coastal tendering provisions in Part VII of the Resource Management Act in respect of the Specified Coastal Area.

### 9.17 CONSISTENCY WITH LEGISLATION

9.17.1 The Parties acknowledge that some of the Cultural Redress is to assist the Governance Entity to provide meaningful input into the decision-making of the

## DEED OF SETTLEMENT

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### 9: CULTURAL REDRESS

Department of Conservation and the Ministry of Fisheries concerning the management and administration of certain areas of land and certain species.

9.17.2 The Cultural Redress does not override or diminish:

- (a) the requirements of:
  - (i) the Conservation Legislation; or
  - (ii) the Fisheries Legislation; or
- (b) the functions, duties and powers of:
  - (i) the Minister of Conservation or the Department of Conservation, under the Conservation Legislation; or
  - (ii) the Minister of Fisheries, or the Ministry of Fisheries, under the Fisheries Legislation; or
- (c) the rights of Ngati Tama, or a Representative Entity, under the Conservation Legislation and the Fisheries Legislation.

**10: TAX**

**STATEMENT OF AGREED TAX PRINCIPLES**

10.1 The Parties agree that:

10.1.1 the payment, credit or transfer of Tangible Redress by the Crown to an Indemnified Party is made as redress to settle the Historical Claims and is not intended to be, or to give rise to:

(a) a taxable supply for GST purposes; nor

(b) gross income for income tax purposes;

10.1.2 no Indemnified Party, nor any other person associated with an Indemnified Party, will claim an input credit (for GST purposes) or a deduction (for income tax purposes) with reference to the payment, credit or transfer by the Crown of any Tangible Redress;

10.1.3 the transfer of the Other Properties/Rights by the Crown to the Governance Entity is not intended to be, or to give rise to, a dutiable gift;

10.1.4 the transfer of the Commercial Properties/Rights by the Crown under an exercise of the relevant right of first refusal, or right to purchase, is intended to be a taxable supply for GST purposes;

10.1.5 any interest paid by the Crown under any provision of this Deed is either gross income or exempt income, for income tax purposes, depending on the recipient's status for income tax purposes; and, furthermore, the receipt or payment of such interest is not subject to indemnification for Tax by the Crown under this Deed;

10.1.6 any indemnity payment by the Crown to an Indemnified Party is not intended to be, or to give rise to:

(a) a taxable supply for GST purposes; nor

(b) gross income for income tax purposes; and

10.1.7 the Governance Entity (at all applicable times) and each other Indemnified Party (at all applicable times from its incorporation or inception) is or will be a registered person for GST purposes (it being understood that there is no requirement for an Indemnified Party to GST register if it is not carrying on or intending to carry on a "taxable activity" (as that term is defined in the Goods and Services Tax Act)).

**ACKNOWLEDGEMENTS**

10.2 For the avoidance of doubt, the Parties acknowledge:

## DEED OF SETTLEMENT

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### 10: TAX

- 10.2.1 that the Tax indemnities given by the Crown in this Part, and the principles and acknowledgements in clauses 10.1 and 10.2 respectively:
- (a) apply only to the receipt by an Indemnified Party of Tangible Redress or indemnity payments; and
  - (b) do not apply to any subsequent dealings, distributions, payments, uses or applications by an Indemnified Party, or any other persons, with or of Tangible Redress or indemnity payments;
- 10.2.2 each obligation to be performed by the Crown in favour of an Indemnified Party under this Deed is performed as redress and without charge to, or consideration to be provided by, the Indemnified Party or any other person, provided that this clause 10.2.2 does not affect the obligation of the Governance Entity to pay the purchase price relating to:
- (a) an RFR Property under a contract for the Disposal of the RFR Property under an RFR Deed given under clause 8.2 (as those terms are defined in that Deed); or
  - (b) Applicable Quota under a contract for the Sale of Applicable Quota constituted under the Shellfish RFR Deed given under clause 9.15.1 (as those terms are defined in that Deed); or
  - (c) Authorisations under the coastal tendering provisions in clause 9.16;
- 10.2.3 without limiting clause 10.2.2, the agreement to enter into, the entering into and the performance by the Governance Entity of any or all of the easements and/or covenants set out in Part 3 of the Cultural Redress Schedule, and the granting of permission to convey water under clause 9.6.8, is not consideration, for GST or any other purpose, for the transfer of those properties by the Crown to the Governance Entity; and
- 10.2.4 without limiting clause 10.2.2, the payment of amounts, and the bearing of costs from time to time, by the Governance Entity (or any other Indemnified Party) in relation to the Other Properties/Rights (including, without limitation:
- (a) rates, charges and fees;
  - (b) the apportionment of outgoings and incomings; and
  - (c) maintenance, repair or upgrade costs and rubbish, pest and weed control costs);

is not intended to be consideration for the transfer of those properties for GST or any other purpose; and, furthermore (and without limiting clause 10.2.1), the payment of such amounts and the bearing of such costs is not subject to indemnification for Tax by the Crown under this Deed.

## DEED OF SETTLEMENT

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### 10: TAX

#### ACT CONSISTENT WITH PRINCIPLES

- 10.3 Neither an Indemnified Party (nor any person associated with an Indemnified Party) nor the Crown will act in a manner that is inconsistent with the principles or acknowledgements set out or reflected in clauses 10.1 and 10.2 respectively.

#### MATTERS NOT TO BE IMPLIED FROM PRINCIPLES

- 10.4 Nothing in clause 10.1 is intended to suggest or imply:
- 10.4.1 that the payment, credit or transfer of Tangible Redress, or an indemnity payment, by the Crown to an Indemnified Party is or will be chargeable with GST;
- 10.4.2 if an Indemnified Party is a charitable trust or other charitable entity, that:
- (a) payments, properties, interests, rights or assets the Indemnified Party receives or derives from the Crown under this Deed are received or derived other than exclusively for charitable purposes; or
  - (b) the Indemnified Party derives or receives amounts, for income tax purposes, other than as exempt income; or
- 10.4.3 that gift duty should or can be imposed on any payment to, or transaction with, an Indemnified Party under this Deed.

#### INDEMNITY FOR GST IN RESPECT OF TANGIBLE REDRESS AND INDEMNITY PAYMENTS

##### Tangible redress provided exclusive of GST

- 10.5 If and to the extent that:
- 10.5.1 the provision of redress through the payment, credit or transfer of Tangible Redress;  
or
- 10.5.2 an indemnity payment;
- by the Crown to an Indemnified Party is chargeable with GST, the Crown must, in addition to the payment, credit or transfer of Tangible Redress or the indemnity payment, pay the Indemnified Party the amount of GST payable in respect of the Tangible Redress or the indemnity payment.

## DEED OF SETTLEMENT

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### 10: TAX

#### **Indemnification**

10.6 If and to the extent that:

10.6.1 the provision of redress through the payment, credit or transfer of Tangible Redress;  
or

10.6.2 an indemnity payment;

by the Crown to an Indemnified Party is chargeable with GST and the Crown does not, for any reason, pay the Indemnified Party an additional amount equal to that GST at the time the Tangible Redress is paid, credited or transferred and/or the indemnity payment is made, the Crown will, on demand in writing, indemnify the Indemnified Party for any GST that is or may be payable by the Indemnified Party or for which the Indemnified Party is liable in respect of:

10.6.3 the making of the redress; and/or

10.6.4 the payment, credit or transfer of Tangible Redress; and/or

10.6.5 the indemnity payment.

#### **INDEMNITY FOR INCOME TAX IN RESPECT OF TANGIBLE REDRESS OR INDEMNITY PAYMENTS**

10.7 The Crown agrees to indemnify each Indemnified Party, on demand in writing, against any income tax that the Indemnified Party is liable to pay if and to the extent that receipt of:

10.7.1 the payment, credit or transfer of Tangible Redress; or

10.7.2 an indemnity payment;

from the Crown is treated as, or as giving rise to, gross income of the Indemnified Party for income tax purposes.

#### **INDEMNIFICATION FOR GIFT DUTY IN RESPECT OF OTHER PROPERTIES/RIGHTS**

10.8 The Crown agrees to pay, and to indemnify each Indemnified Party against any liability that the Indemnified Party has in respect of, any gift duty assessed as payable by the Commissioner of Inland Revenue in respect of a transfer of the Other Properties/Rights under this Deed.

## DEED OF SETTLEMENT

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### 10: TAX

#### DEMANDS FOR INDEMNIFICATION

##### Notification of indemnification event

10.9 Each of:

10.9.1 the Governance Entity; and

10.9.2 the Crown;

agrees to Notify the other as soon as reasonably possible after becoming aware of an event or occurrence in respect of which an Indemnified Party is or may be entitled to be indemnified by the Crown for or in respect of Tax under this Part.

##### How demands are made

10.10 Demands for indemnification for Tax by the Governance Entity in accordance with this Part must be made by the Governance Entity for itself (or for the applicable Indemnified Party) in accordance with the provisions of clause 13.3 and may be made at any time, and from time to time, after the Settlement Date.

##### When demands are to be made

10.11 Except:

10.11.1 with the written agreement of the Crown; or

10.11.2 if this Deed provides otherwise;

no demand for payment by way of indemnification for Tax under this Part may be made more than five Business Days before the due date for payment by the Indemnified Party of the applicable Tax (whether such date is specified in an assessment or is a date for the payment of provisional tax or otherwise).

##### Evidence to accompany demand

10.12 Without limiting clause 10.9, each demand for indemnification by the Governance Entity for itself (or for the applicable Indemnified Party) under this Part must be accompanied by:

10.12.1 appropriate evidence (which may be a notice, notice of proposed adjustment, assessment, a certificate issued by the Governance Entity and confirmed or certified by the Governance Entity's or the Indemnified Party's tax advisers or accountants for the time being, or any other evidence which is reasonably satisfactory to the Crown) setting out with reasonable detail the amount of the loss, cost, expense, liability or Tax that the Indemnified Party claims to have suffered or incurred or be liable to pay, and in respect of which indemnification is sought from the Crown under this Deed; and

## DEED OF SETTLEMENT

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### 10: TAX

10.12.2 where the demand is for indemnification for GST, if the Crown requires, an appropriate GST tax invoice.

#### **Repayment of amount on account of Tax**

10.13 If payment is made by the Crown on account of Tax to an Indemnified Party or the Commissioner of Inland Revenue (for the account of an Indemnified Party) and it is subsequently determined or held that no such Tax (or an amount of Tax that is less than the payment which the Crown made on account of Tax) is or was payable or properly assessed, to the extent that the relevant Indemnified Party (or any other Indemnified Party);

10.13.1 has retained the payment made by the Crown;

10.13.2 has been refunded the amount of that payment by the Inland Revenue Department; or

10.13.3 has had the amount of that payment credited or applied to its account with the Inland Revenue Department;

the Governance Entity and/or any other Indemnified Party must repay the applicable amount to the Crown free of any set-off or counterclaim.

#### **Payment of amount on account of Tax**

10.14 Each Indemnified Party must pay to the Inland Revenue Department any payment made by the Crown to the Indemnified Party on account of Tax, on the later of:

10.14.1 the "due date" for payment of that amount to the Inland Revenue Department under the applicable Tax Legislation; and

10.14.2 the next Business Day following receipt by the Indemnified Party of that payment from the Crown.

#### **Payment of costs**

10.15 The Crown will indemnify each Indemnified Party against any reasonable costs incurred by the Indemnified Party for actions undertaken by the Indemnified Party, at the Crown's direction, in connection with:

10.15.1 any demand for indemnification of the Indemnified Party under or for the purposes of this Part; and

10.15.2 any steps or actions taken by the Indemnified Party in accordance with the Crown's requirements under clause 10.17.

## DEED OF SETTLEMENT

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### 10: TAX

#### DIRECT PAYMENT OF TAX: CONTROL OF DISPUTES

10.16 Where any liability arises to the Crown under this Part, the following provisions shall also apply:

10.16.1 if the Crown so requires and notifies the Governance Entity in writing of that requirement, the Crown may, instead of paying the requisite amount on account of Tax, pay that amount to the Commissioner of Inland Revenue (such payment to be effected on behalf, and for the account, of the relevant Indemnified Party);

10.16.2 subject to the Indemnified Party being indemnified to its reasonable satisfaction against any reasonable cost, loss, expense or liability or any Tax which it may suffer, incur or be liable to pay, the Crown shall have the right, by notice in writing to the Governance Entity, to require the Indemnified Party to:

- (a) take into account any right permitted by any relevant law to defer the payment of any Tax; and/or
- (b) take all steps the Crown may specify to respond to and/or contest any notice, notice of proposed adjustment or assessment for Tax, where expert legal tax advice indicates that it is reasonable to do so; and

10.16.3 the Crown reserves the right:

- (a) to nominate and instruct counsel on behalf of the Indemnified Party whenever it exercises its rights under clause 10.16.2; and
- (b) to recover from the Commissioner of Inland Revenue the amount of any Tax paid and subsequently held to be refundable.

#### RULINGS, APPLICATIONS

10.17 If the Crown requires, each Indemnified Party will consult, and/or collaborate, with the Crown in the Crown's preparation (for the Crown, any one or more of the Indemnified Parties and/or any other person) of an application for a non-binding or binding ruling from the Commissioner of Inland Revenue with respect to any part of the arrangements relating to the payment, credit or transfer of Tangible Redress.

#### DEFINITIONS AND INTERPRETATION

10.18 In this Part, unless the context requires otherwise:

**gift duty** also extends to and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any gift duty;

## DEED OF SETTLEMENT

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### 10: TAX

**income tax** also extends to and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any income tax;

**indemnity payment** means any indemnity payment made by the Crown under or for the purposes of this Part;

**payment** extends to the transfer or making available of cash amounts as well as to the transfer of non cash amounts (such as land);

references to the **payment, credit, transfer** or **receipt** of the Tangible Redress (or any equivalent wording) include a reference to the payment, credit, transfer or receipt of any part (or the applicable part) of the Tangible Redress; and

**transfer** includes recognising, creating, vesting, granting, licensing, leasing, or any other means by which the relevant properties, interests, rights or assets are disposed of or made available, or recognised as being available, to an Indemnified Party.

- 10.19 For the purposes of this Part, Financial Redress and, therefore, Tangible Redress does not include the payment of \$450,000 by the Crown to the Mandated Negotiators referred to in clause 8.1.1.

## **11: CONDITIONS AND TERMINATION**

### **THIS DEED AND THE SETTLEMENT ARE CONDITIONAL**

11.1 This Deed, and the Settlement, are conditional on:

11.1.1 within six months after the Date of this Deed:

- (a) the Crown being satisfied that Ngati Tama have established the Governance Entity in accordance with clause 3.3; and
- (b) the Governance Entity signing the Deed of Covenant; and

11.1.2 the Settlement Legislation coming into force within 24 months after the Date of this Deed.

### **DEED WITHOUT PREJUDICE UNTIL UNCONDITIONAL**

11.2 This Deed, until it becomes unconditional:

11.2.1 is entered into on a “without prejudice” basis; and

11.2.2 in particular, may not be used as evidence in any proceedings before, or presented to, any Court, the Waitangi Tribunal, or any other judicial body or tribunal (except for proceedings concerning the interpretation and/or enforcement of this Deed or the Settlement Legislation).

### **SOME PROVISIONS NOT CONDITIONAL**

11.3 Clauses 3.3-3.5, 4.1-4.3, 9.7.1, 9.7.7, 9.7.8, 10.17, 11.2, 11.6, 13.3 and 13.4 of this Deed are (despite clause 11.1) binding from the date of this Deed.

### **TERMINATION OF THIS DEED**

11.4 Either Party may terminate this Deed, by notice in writing to the other Party, if:

11.4.1 clause 11.1.1 is not satisfied within six months after the Date of this Deed; or

11.4.2 clause 11.1.2 is not satisfied within 24 months after the Date of this Deed.

## **DEED OF SETTLEMENT**

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### **11: CONDITIONS AND TERMINATION**

#### **EFFECT OF NOTICE OF TERMINATION**

11.5 If this Deed is terminated:

11.5.1 this Deed, and the Settlement, will be at an end; and

11.5.2 neither Party will have any rights or obligations under this Deed (except under the clause specified in clause 11.6).

#### **SOME RIGHTS AND OBLIGATIONS CONTINUE AFTER TERMINATION**

11.6 The rights and obligations of the Parties under clause 11.2 continue if this Deed is terminated.

## **12: OTHER ACTIONS TO COMPLETE SETTLEMENT**

### **DISCONTINUANCE OF PROCEEDINGS**

- 12.1 The Governance Entity must, by the Settlement Date, deliver to the Crown notices of discontinuance:
- 12.1.1 of every proceeding in relation to an Historical Claim that has not already been discontinued; and
  - 12.1.2 signed by the applicant or plaintiff to those proceedings (or duly completed by the solicitor for the applicant or plaintiff).
- 12.2 If the Governance Entity does not deliver to the Crown by the Settlement Date all notices of discontinuance of proceedings required by clause 12.1:
- 12.2.1 the Governance Entity must continue to use its best endeavours to deliver those notices of discontinuance to the Crown; and
  - 12.2.2 the Crown may introduce legislation to terminate the relevant proceedings.

### **WAITANGI TRIBUNAL**

- 12.3 The Crown may, after the Settlement Date:
- 12.3.1 advise the Waitangi Tribunal in writing of the Settlement and its terms; and
  - 12.3.2 request that the Waitangi Tribunal amend its register, and adapt its procedures, to reflect the Settlement.

### **TERMINATION OF LAND BANK ARRANGEMENTS**

- 12.4 The Crown may cease to operate any land bank arrangement in relation to Ngati Tama (or any Representative Entity) after the Settlement Date, except to the extent necessary to give effect to:
- 12.4.1 this Deed; and
  - 12.4.2 any arrangements reached between the Parties between the Date of this Deed and the Settlement Date in relation to land within the land bank.

## **13: MISCELLANEOUS**

### **INTEREST**

- 13.1 The Crown will pay interest, from the Date of this Deed until the Settlement Date, on the Balance of the Financial Redress.
- 13.2 Interest under clause 13.1 will:
- 13.2.1 be calculated on each Calculation Date and will be at a rate, expressed as a percentage per annum, equal to the weighted average of the successful yield for 1 year treasury bills resulting from the treasury bill tender process that takes place during the week prior to each Calculation Date (or, if no such treasury bill rate is available, an equivalent rate);
  - 13.2.2 not compound;
  - 13.2.3 be payable for the period from the Date of this Deed until the Settlement Date;
  - 13.2.4 be paid to the Governance Entity on the Settlement Date; and
  - 13.2.5 be subject to any Tax payable under any Tax Legislation.

### **NOTICES**

- 13.3 The provisions of this clause apply to Notices under this Deed:

#### **Notices to be signed**

- 13.3.1 the Party giving a Notice must sign it;

#### **Notices to be in writing**

- 13.3.2 any Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

#### **Addresses for notice**

- 13.3.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they will be as follows:

## DEED OF SETTLEMENT

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### 13: MISCELLANEOUS

**Crown:**

C/- The Solicitor-General  
Crown Law Office  
St Pauls Square  
45 Pipitea Street  
(PO Box 5012)  
WELLINGTON

Facsimile No: 04 473-3482;

**Ngati Tama:**

C/- Govett Quilliam  
1 Dawson Street  
(Private Bag 2015)  
NEW PLYMOUTH

Facsimile No: 06 757-6200;

**Delivery**

13.3.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with prepaid postage; or
- (c) by facsimile;

**Timing of delivery**

13.3.5 a Notice delivered:

- (a) by hand will be treated as having been received at the time of delivery;
- (b) by pre-paid post will be treated as having been received on the second day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; and

**Deemed date of delivery**

13.3.6 if a Notice is treated as having been received on a day that is not a Business Day, or after 5:00pm on a Business Day, that Notice will (despite clause 13.3.5) be treated as having been received the next Business Day.

**AMENDMENT**

13.4 This Deed may not be amended unless the amendment is in writing and signed by, or on behalf of, Ngati Tama and the Crown.

## DEED OF SETTLEMENT

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### 13: MISCELLANEOUS

#### ENTIRE AGREEMENT

13.5 This Deed:

13.5.1 constitutes the entire agreement between the Parties in relation to the matters referred to in it; and

13.5.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between Ngati Tama, any Representative Entity and/or any Member of Ngati Tama and the Crown relating to such matters (including the Terms of Negotiation and the Heads of Agreement) but not the Treaty of Waitangi.

#### NO WAIVER

13.6 A failure, delay or indulgence by any Party in exercising any power or right under or from this Deed shall not operate as a waiver of that power or right.

13.7 A single, or partial, exercise of any power or right under or from this Deed shall not preclude further exercises of that power or right or the exercise of any other power or right.

#### NO ASSIGNMENT

13.8 Except as expressly provided in this Deed or any other document entered into under this Deed, neither Party may transfer or assign any rights or obligations arising under or from this Deed.

## 14: DEFINITIONS AND INTERPRETATION

### DEFINITIONS

#### Terms defined in the this Deed

- 14.1 In this Deed, unless the context requires otherwise, the following terms have the meaning for that term given by the clause of this Deed set opposite that term below:

<b>Term</b>	<b>Defining clause</b>
<b>Additional Whitecliffs Sites</b>	9.6.7(a)
<b>Antiquities Protocol</b>	9.1.11
<b>Balance of the Financial Redress</b>	8.1.2
<b>Customary Rights</b>	1.8
<b>DOC Protocol</b>	9.1.2
<b>Existing Walkway</b>	9.6.5(c)
<b>Fisheries Protocol</b>	9.1.5
<b>Fisheries Regulatory Review</b>	9.14.4(a)
<b>Historical Claims</b>	1.9 and 1.10
<b>Identified Area</b>	9.10.2(f)
<b>JAC Management Plan</b>	9.8.2(b)
<b>Joint Advisory Committee</b>	9.8.1
<b>Land Claims Statutory Protection</b>	2.12.6(b)
<b>LINZ Protocol</b>	9.1.14
<b>MED Protocol</b>	9.1.8
<b>Member of Ngati Tama</b>	1.7
<b>Mount Messenger Site</b>	9.6.10(c)
<b>Net Prohibition Proposal</b>	9.14.4(b)
<b>Ngati Tama</b>	1.4
<b>Ngati Tama Ancestor</b>	1.5
<b>Ngati Tama Conservation Advisory Committee</b>	9.3.1(b)
<b>Ngati Tama Fisheries Advisory Committee</b>	9.3.2(b)
<b>NZGB</b>	9.12.1
<b>Parininihi Marine Reserve</b>	9.8.4
<b>Paua Commercial Catch Proposal</b>	9.14.3(b)
<b>Permitted Tuna (Eel) Catch</b>	9.14.8(a)
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<b>Pukearuhe Site</b>	9.6.3(a)
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<b>Resource Consent Application</b>	9.9.6(a)
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<b>RFR Period</b>	8.4.2
<b>Shellfish RFR Deed</b>	9.15.1
<b>Site Advisory Committee</b>	9.8.4(a)
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<b>Tongaporutu RFR Site</b>	8.4.1
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<b>Transferred DOC Sites</b>	9.8.3
<b>Umukaha Point Recreation Reserve</b>	9.6.11(a)

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### 14: DEFINITIONS AND INTERPRETATION

<b>Uruti Site</b>	9.6.9(a)
<b>Whitecliffs Site</b>	9.6.5(a)

#### Terms defined by legislation

14.2 In this Deed, unless the context requires otherwise, the following terms have the meaning for that term given by the section of the legislation set opposite it below:

<b>Term</b>	<b>Defining Clause</b>
<b>Consent Authority</b>	section 2(1) Resource Management Act
<b>Conservation Board</b>	section 2(1) Conservation Act
<b>Crown entity</b>	section 2(1) Public Finance Act
<b>Director-General</b>	section 2(1) Conservation Act
<b>Local Authority</b>	section 2(1) Resource Management Act
<b>New Zealand Conservation Authority</b>	section 2(1) Conservation Act
<b>New Zealand Historic Places Trust</b>	section 38 Historic Places Act
<b>Office of Parliament</b>	section 2(1) Public Finance Act
<b>Resource Consent</b>	section 87 Resource Management Act
<b>State enterprise</b>	section 2 State-Owned Enterprises Act

#### Defined terms

14.3 In this Deed, unless the context requires otherwise:

**Act** means an Act of the Parliament of New Zealand or of the General Assembly; and includes:

- (a) an Imperial Act that has or had effect as part of the laws of New Zealand;
- (b) an ordinance of the General Legislative Council of New Zealand;
- (c) an ordinance of the Provincial Legislative Council of New Munster; and
- (d) a Provincial Ordinance;

**Anniversary Date** means the first Business Day after the expiry of each period of 12 months commencing on the Date of this Deed or the previous Anniversary Date (as the case may be);

**Antiquities Protocol Area** means the area shown on the map attached to the Antiquities Protocol together with the adjacent waters;

**Antiquity** has the meaning set out in Attachment C to the Antiquities Protocol;

## DEED OF SETTLEMENT

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### 14: DEFINITIONS AND INTERPRETATION

**Area of Interest** means the area identified in Schedule 4 as the area which Ngati Tama identify as their area of interest;

**Artifact** has the meaning set out in Attachment C to the Antiquities Protocol;

**Authorisation** means an authorisation granted by the Minister of Conservation under section 161 of the Resource Management Act;

**Business Day** means the period of 9am to 5pm on any day of the week other than:

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

**Calculation Date** means:

- (a) the Date of this Deed, in respect of the period commencing on the Date of this Deed and expiring on the date before the first Anniversary Date; and
- (b) each Anniversary Date, in respect of the period commencing on the first Anniversary Date and expiring on the Settlement Date;

**Claim** includes the right to make a claim;

**Commercial Properties/Rights** means:

- (a) those properties, interests, rights or assets over which the Crown gives the Governance Entity a right of first refusal under the RFR Deed;
- (b) the total allowable catch or Quota over which the Crown gives the Governance Entity a right of first refusal under the Shellfish RFR Deed; and
- (c) the Authorisations the Crown gives the Governance Entity the right to purchase under clause 9.16 and the Settlement Legislation;

**Commercial Redress** means the Redress to be provided by the Crown under clauses 8.2 to 8.6;

**Commercial Redress Schedule** means Schedule 1;

**Commercial Target Species** means a target species for the purpose of commercial fishing operations;

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### 14: DEFINITIONS AND INTERPRETATION

**Conservation Legislation** means the Conservation Act and the Acts listed under the First Schedule to that Act;

**Court**, in relation to any matter, means a court having jurisdiction in relation to that matter in New Zealand;

**Cross-Claimed Properties** has the meaning set out in the Background to this Deed;

**Crown:**

- (a) means Her Majesty the Queen in right of New Zealand; and
- (b) includes all Ministers of the Crown and all Departments; but
- (c) does not include:
  - (i) an Office of Parliament;
  - (ii) a Crown entity; or
  - (iii) a State enterprise;

**Crown Agency** means:

- (a) a Crown entity and includes the New Zealand Railways Corporation;
- (b) a State enterprise; or
- (c) any company or body which is wholly-owned or controlled by:
  - (i) the Crown, a Crown entity or a State enterprise; or
  - (ii) a combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises;

and includes any subsidiary of, or related company to, any such company or body;

**Crown Owned Minerals** means any mineral (as that term is defined in section 2(1) of the Crown Minerals Act) that is the property of the Crown under sections 10 and 11 of the Crown Minerals Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act;

**Cultural Redress** means the Redress to be provided by the Crown in accordance with Part 9;

**Cultural Redress Properties** means the properties set out in Part 2 of the Cultural Redress Schedule;

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### 14: DEFINITIONS AND INTERPRETATION

**Cultural Redress Schedule** means Schedule 2;

**Date of this Deed** means the date this Deed is signed by the Parties;

**Deed** and **Deed of Settlement** means this Deed of Settlement, including the schedules to it;

**Deed of Covenant** means the deed of covenant referred to in clause 3.5 (the form of which is set out in Schedule 3);

**Deed of Recognition** means a deed of recognition entered into by the Crown under clause 9.10.1;

**Department** means a department or instrument of the Government, or a branch or division of the Government, but does not include a body corporate, or other legal entity that has the power to contract, or an Office of Parliament;

**Disclosure Information** means, in respect of each Cultural Redress Property, the information provided by, or on behalf of, the Crown to Ngati Tama as referred to in a letter from the Office of Treaty Settlements to the Mandated Negotiators dated 14 December 2001;

**DOC Protocol Area** means the area shown on the map attached to the DOC Protocol;

**Effective Date** means the date that is 6 months after the Settlement Date;

**Eligible Registered Member of Ngati Tama** means a Member of Ngati Tama registered on the register of members of Ngati Tama kept by the Ngati Tama Iwi Development Trust and aged 18 years or over on 8 December 2001;

**Entity** means a body corporate or an unincorporated body such as a trust;

**Environment Court** means the Court referred to in section 247 of the Resource Management Act;

**Financial Redress** means the Redress to be, or that has been, provided by the Crown under clause 8.1;

**Fisheries Legislation** means the Fisheries Act 1983 and the Fisheries Act 1996 and all Regulations made under either or both of those Acts;

**Fisheries Protocol Area** means the area shown on the map attached to the Fisheries Protocol together with the adjacent waters;

**Governance Entity** means the Entity established in accordance with clause 3.3;

## DEED OF SETTLEMENT

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### 14: DEFINITIONS AND INTERPRETATION

**GST** means goods and services tax chargeable under the Goods and Services Tax Act and extends to and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any GST;

**Heads of Agreement** has the meaning set out in the Background to this Deed;

**Imperial Act** means any Act of the Parliament of England, or of the Parliament of Great Britain, or of the Parliament of the United Kingdom;

**Indemnified Party** means the Governance Entity;

**Interim Taranaki Report** has the meaning set out in the Background to this Deed;

**Land Area outside Taranaki** means Land in New Zealand that is outside Taranaki;

**Land in New Zealand** means land within the baseline described in sections 5, 6 and 6A of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act (being the low-water mark along the coast of New Zealand, including all islands, except as otherwise provided in section 6 or section 6A of that Act);

**Legislation** means any Act or Regulation;

**LINZ Protocol Area** means the area shown on the map attached to the LINZ Protocol;

**Mandated Negotiators** means the Ngati Tama Iwi Development Trust;

**Mandated Signatories** means:

- (a) Stephen Taitoko White, Te Aramou Lake, Peter Te Maihengia White, Kenneth Crete Matuku, Nora Te Mate Horere Tahuna Tearanga Leatherby, Reece Baker and Davis Rawiri McClutchie; or
- (b) on the death or incapacity of any one or more of those individuals, the remaining individuals;

**MED Protocol Area** means the area shown on the map attached to the MED Protocol together with the adjacent waters;

**Memorials** means resumptive memorials imposed on land under the State-Owned Enterprises Act, the New Zealand Railways Corporation Restructuring Act or the Education Act;

**Minister** means a Minister of the Crown;

**Ngati Maniapoto Claims** has the meaning set out in the Background to this Deed;

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### 14: DEFINITIONS AND INTERPRETATION

**Notice** means a notice in writing given under clause 13.3 and **Notify** has a corresponding meaning;

**Other Properties/Rights** means those properties, interests, rights or assets which are to be transferred to the Governance Entity, the particulars of which are specified in:

- (a) clauses 8.2 to 8.6, to the extent those clauses relate to the grant of a right of first refusal to the Governance Entity;
- (b) Part 9 (other than clauses 9.15 and 9.16);
- (c) clause 9.15, to the extent that that clause relates to the grant of a right of first refusal to the Governance Entity; and
- (d) clause 9.16, to the extent that clause relates to granting the Governance Entity a right to purchase Authorisations;

**Parties** means Ngati Tama and the Crown;

**Paua Fishery in the Fisheries Protocol Area** means the fishery in the Fisheries Protocol Area of the species of paua named *haliotis iris*;

**Provincial Ordinance** means an Act or Ordinance passed by the Superintendent of any former province with the advice and consent of the relevant Provincial Council;

**Quota** means quota under the Fisheries Legislation;

**Quota Management Area** has the meaning set out in the Shellfish RFR Deed;

**Quota Management System** has the meaning set out in the Shellfish RFR Deed;

**Redress** means:

- (a) the acknowledgements and the apology given by the Crown under Part 7;
- (b) the Financial Redress under Part 8; and
- (c) the Commercial Redress under Part 8;
- (d) the Cultural Redress under Part 9;

**Regulation** means a regulation, rule, order, proclamation, notice, bylaw, warrant or other statutory instrument made, issued or given under an Act;

**RFR Area** means the area of land contained in SO Plan 14863 and shown for the purposes of identification only on the map set out in schedule 3 to the RFR Deed;

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### 14: DEFINITIONS AND INTERPRETATION

**RFR Property** has the meaning set out in the RFR Deed;

**Settlement** means the settlement of the Historical Claims under this Deed;

**Settlement Date** means the date which is 20 Business Days after this Deed becomes unconditional;

**Settlement Legislation** means the bill referred to in Part 4 and, where the bill has become law, means, if the context requires, the Act resulting from the passing of that bill;

**Shellfish RFR Area** has the meaning set out in the Shellfish RFR Deed;

**Specified Coastal Area** has the same meaning as the Shellfish RFR Area;

**Statutory Acknowledgement** means an acknowledgement made by the Settlement Legislation in relation to a Statutory Area on the terms set out in clause 9.9 of this Deed;

**Statutory Areas** means the areas, specified in Part 4 of the Cultural Redress Schedule, the general locations of which are indicated on the SO plans indicated in that Part, and **Statutory Area** means any one of them; references to SO plans are included in the relevant schedules for the purposes of indicating the general location of the Statutory Areas and are not intended to establish the precise boundaries of the Statutory Areas;

**Statutory Plans** means all regional policy statements, regional coastal plans, district plans, regional plans and proposed plans as defined in section 2(1) of the Resource Management Act;

**Tangible Redress** means:

- (a) the Financial Redress; and
- (b) the Other Properties/Rights;

**Taranaki** means that area of land encompassed within the outermost extent of the claimants' boundaries as set out in figure 4 of the Interim Taranaki Report;

**Taranaki Claims** means the claims made to the Waitangi Tribunal under section 6 of the Treaty of Waitangi Act and referred to in the Background to this Deed;

**Tax** includes income tax, GST and gift duty;

**Tax Legislation** means any Legislation that imposes or provides for the administration of Tax;

**Terms of Negotiation** means the terms of negotiation between the Crown and the Mandated Negotiators referred to in the Background;

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### 14: DEFINITIONS AND INTERPRETATION

**Total Allowable Commercial Catch** means the total allowable commercial catch set by the Minister of Fisheries under sections 20 and 21 of the Fisheries Act 1996 in respect of the Quota Management Area (or specified for a fishery under sections 28C(1), 28CA, 28OB or 28OC of the Fisheries Act 1993, as the case may be); and

**Waterway** means:

- (a) any lake, being a body of fresh water which is entirely or nearly surrounded by land, or a river, being a continually or intermittently flowing body of fresh water, and includes a stream and modified water course, does not include any artificial water course (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal); and
- (b) coastal waters, including harbours.

### REFERENCES TO LEGISLATION

- 14.4 In this Deed certain Legislation is referred to without including the year of that Legislation. The year of the Legislation referred to is set out below:

Antiquities Act 1975  
Arbitration Act 1996  
Conservation Act 1987  
Continental Shelf Act 1964  
Crown Forest Assets Act 1989  
Crown Minerals Act 1991  
Crown Proceedings Act 1950  
Education Act 1989  
Fisheries (Central Area Commercial Fishing) Regulations 1986  
Goods and Services Tax Act 1985  
Historic Places Act 1993  
Land Transfer Act 1952  
Local Government Act 1974  
Maori Fisheries Act 1989  
Maori Reserved Land Act 1955  
Maori Reserved Land Amendment Act 1997  
Ministry of Agriculture and Fisheries (Restructuring) Act 1995  
National Parks Act 1980  
New Zealand Railways Corporation Restructuring Act 1990  
New Zealand Walkways Act 1990  
Perpetuities Act 1964  
Public Finance Act 1989  
Reserves Act 1977  
Resource Management Act 1991  
State-Owned Enterprises Act 1986  
Taranaki Maori Claims Settlement Act 1944  
Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977  
Treaty of Waitangi Act 1975

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### 14: DEFINITIONS AND INTERPRETATION

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992  
Waitangi (Fisheries Claims) Settlement Act 1992  
Wildlife Act 1953.

#### INTERPRETATION

- 14.5 In the interpretation of this Deed, unless the context otherwise requires:
- 14.5.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
  - 14.5.2 defined terms appear in this Deed with capitalised initial letters and have the meanings given to them by this Deed;
  - 14.5.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - 14.5.4 the singular includes the plural and vice versa;
  - 14.5.5 words importing one gender include the other genders;
  - 14.5.6 a reference to a Part, clause, Schedule or attachment is to a Part, clause, Schedule or attachment of or to this Deed;
  - 14.5.7 a reference in a Schedule or attachment to a paragraph or an appendix means a paragraph in, or appendix to, that Schedule or attachment;
  - 14.5.8 a reference to any Legislation includes a reference to that Legislation as amended, consolidated or substituted;
  - 14.5.9 a reference to a Party in this Deed, or in any other document or agreement under this Deed, includes that Party's permitted successors;
  - 14.5.10 an agreement on the part of two or more persons binds each of them jointly and severally;
  - 14.5.11 a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced from time to time;
  - 14.5.12 a reference to any monetary amount is to New Zealand currency;
  - 14.5.13 a reference to time is to New Zealand time;

## DEED OF SETTLEMENT

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### 14: DEFINITIONS AND INTERPRETATION

- 14.5.14 a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- 14.5.15 a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 14.5.16 a reference to the Crown, or a Crown Agency, endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction any Legislation, except where this Deed requires the Crown to promote Settlement Legislation;
- 14.5.17 where a clause includes a preamble, that preamble is intended to set out the background to, and intention of, the clause, but is not to affect the interpretation of the clause;
- 14.5.18 in the event of a conflict between a provision in the main body of this Deed (namely, any part of this Deed except the schedules or attachments) and the schedules or attachments, then the provisions of the main body of this Deed prevail;
- 14.5.19 a reference to any document being in the form specified in a schedule or attachment includes that document with such amendments as may be agreed in writing between Ngati Tama and the Crown;
- 14.5.20 a reference to a date on or by which something must be done includes any other date which may be agreed in writing between Ngati Tama and the Crown;
- 14.5.21 where something is required to be done on a day which is not a Business Day, that thing must be done on the next Business Day after that day;
- 14.5.22 a reference to the Settlement Legislation including a provision set out in this Deed includes that provision with any amendment:
- (b) that is agreed in writing between Ngati Tama and the Crown; and
  - (c) that results in a provision that is similar to that provided in this Deed and does not have a material adverse effect on either of the Parties;
- 14.5.23 a reference to a particular Minister of the Crown includes any Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant Act or matter; and
- 14.5.24 where the name of a reserve or other place is amended under this Deed, either the existing name or new name is used to mean that same reserve or other place.

**DEED OF SETTLEMENT**

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**SIGNED** as a Deed on 20 December 2001

**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister in Charge of Treaty of Waitangi Negotiations

**WITNESS**

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

Occupation:

Address:

**SIGNED** by the Mandated Signatories of **NGATI TAMA**

\_\_\_\_\_  
Stephen Taitoko White

\_\_\_\_\_  
Te Aramou Lake

\_\_\_\_\_  
Peter Te Maihengia White

\_\_\_\_\_  
Kenneth Crete Matuku

\_\_\_\_\_  
Nora Te Mate Horere Tahuna Tearanga Leatherby

\_\_\_\_\_  
Reece Baker

\_\_\_\_\_  
Davis Rawiri McClutchie

**DEED OF SETTLEMENT**

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**WITNESS**

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

Occupation:

Address:

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