

Hon Kelvin Davis

MP for Te Tai Tokerau

Minister for Māori Crown Relations: Te Arawhiti

Minister for Children

Minister of Corrections

Associate Minister of Education (Māori Education)



4 October 2023

Rewa Billy Brown
Chair
Ngāi Tai ki Tāmaki Trust

Tori Ngataki
Chair
Ngāti Tamaoho Settlement Trust

By email: billy@ngaitaitamaki.iwi.nz

By email: tori@tamaoho.maori.nz

E ngā pou whakarae, e ngā pou arataki, koutou e whakaū nei i ngā kōmaingotanga o te Papakura o Wharekawa, tēnā koutou.

I roto i te whakaiti, ko tā te karauna he whakakehokeho, he whakarenarena i a tātou e ora ai te ekenga tahitanga o tātou ki te whai ao, ki te ao mārama.

Tēnā, ka haumī e, ka hui e, ka tāiki e.

Letter of agreement relating to Papakura property

Introduction

- 1 I refer to our hui with you on 27 July 2023. At that hui, the Minister of Defence proposed that he would convey to New Zealand Defence Force (NZDF) officials the below suggested way forward in relation to the Papakura property:
 - (a) the trustees of the Ngāi Tai ki Tāmaki Trust (*NTkT Trust*), the trustees of the Ngāti Tamaoho Settlement Trust (*NTS Trust*) and NZDF will, together, agree on one valuer to value the property known as the “Papakura property” in the deeds of settlement of historical claims for Ngāi Tai ki Tāmaki and Ngāti Tamaoho;
 - (b) all three parties will agree on the valuer’s instructions for the joint valuation; and
 - (c) the valuation date for the Papakura property will be amended to a new date.
- 2 This approach was confirmed at a hui on 31 August 2023, by representatives of NZDF, NTkT Trust, NTS Trust, supported by Te Arawhiti. This letter now records those amendments to the valuation process as detailed in principle above.
- 3 Accordingly, this letter of agreement (*agreement*) sets out the basis upon which the NTkT Trust, the NTS Trust and NZDF agree to accept, on behalf of Ngāi Tai ki Tāmaki, Ngāti Tamaoho and the Crown, that the provisions in the Ngāi Tai ki Tāmaki Deed of Settlement, dated 7 November 2015 (including all subsequent deeds to amend and other agreed variations to the deed) (*NTkT deed*) and the Ngāti Tamaoho Deed of Settlement, dated 30 April 2017 (*NT deed*), relating to the Papakura property will be amended

Background

- 4 The NTkT deed and the NT deed (*deeds of settlement*) provided the NTkT Trust and the NTS Trust (*Trusts*) with a conditional joint right to purchase the Papakura property, on the terms set out in those deeds. The substantive provisions relating to the conditional right to purchase were set out in the NTkT deed.
- 5 The parties agree that the right to purchase the Papakura property became unconditional on 3 June 2021 when the Crown provided a confirmation notice to the Trusts in accordance with the deeds of settlement.
- 6 The Crown also advised iwi on 3 June 2021 that it did not require a leaseback of the Papakura property.
- 7 In accordance with paragraph 7.6.1 of the property redress schedule of the NTkT deed (*NTkT PRS*), the Trusts gave a joint notice of interest to NZDF in relation to the Papakura property on 11 May 2022.
- 8 Following the joint notice of interest being provided, NZDF gave the Trusts all the material information, that to the best of NZDF's knowledge, was in NZDF's records about the Papakura property.
- 9 The Trusts provided an effective valuation confirmation notice under paragraphs 7.9 and 7.10 of the NTkT PRS on 21 June 2022, confirming that iwi wished for the Papakura property to be valued, in accordance with the NTkT PRS.
- 10 Since that time, the parties have been in discussions about agreeing or determining the market value that should apply to the Papakura property.
- 11 The Trusts and NZDF agreed to their differences in relation to the market value of the Papakura property being referred to the valuation arbitrator, appointed by the parties under the deeds of settlement, and the parties have proceeded to prepare for arbitration.
- 12 However, as a result of the parties' hui on 31 August 2023, the Trusts and NZDF have agreed, on the terms set out in this agreement, that the valuation process for the Papakura property, set out in the NTkT deed, will be amended.
- 13 Consequently, the valuation arbitration has been suspended until 30 November 2023 (or such later date as is agreed between the parties).
- 14 Despite paragraph 13, if this agreement is counter-signed by both Trusts then, from the date that both parties have counter-signed:
 - (a) the amendments to the valuation process set out in this agreement will apply;
 - (b) the valuation arbitration referred to in paragraphs 11 and 13 will be at an end; and
 - (c) neither party will have any claim against the other in relation to the valuation dispute between the parties referred to in paragraphs 10 and 11 above.

Agreement about Papakura property valuation

- 15 In consideration for the parties agreeing to comply with their respective amended obligations in relation to the Papakura property under the deeds of settlement and this agreement, the parties agree that, from the date that both of the Trusts counter-sign this agreement, the deeds of settlement are amended, as set out below.
- 16 The parties agree that:
- (a) the Papakura property will be valued by a registered valuer to be appointed jointly by the Trusts and NZDF (*joint valuation*);
 - (b) the valuation date for the joint valuation for the purposes of paragraph 7.15.1 of the NTkT PRS is 27 July 2023 and the NTkT PRS will be amended accordingly;
 - (c) the following principles will guide the parties in entering into, and during, the joint valuation process:
 - (i) open dialogue;
 - (ii) frankness;
 - (iii) identifying problems and working to resolve them;
 - (iv) having constructive conversations;
 - (v) establishing an escalation pathway between the parties for dealing with points of disagreement;
 - (d) the parties will jointly establish, a technical working group for a period of the joint valuation process, and the group will meet on a fortnightly basis from 13 September 2023;
 - (e) the valuer will value the property in accordance with the valuation instructions (*valuation instructions*), to be agreed between the parties and the valuer and jointly issued to the valuer, but that will be based on the draft valuation instructions attached as appendix B to this agreement, and any separate instructions jointly issued by the parties in relation to the GST treatment of the valuation of the property (*GST instructions*);
 - (f) the Trusts and NZDF will jointly agree with the valuer, the timeframes that will apply to the valuation process in the valuation instructions;
 - (g) the valuer will determine the market value of the Papakura property and will follow the requirements in the valuation instructions, or the GST instructions, with regard to GST treatment. The GST treatment of the market value of the property is to be agreed between the parties and included in either the valuation instructions or the GST instructions. The parties agree to make any consequential changes that need to be made to the deeds of settlement and the draft valuation instructions following agreement being reached in relation to the GST treatment of the valuation of the property.
 - (h) despite paragraph 8 above, NZDF will provide updated material information for the Papakura property to the Trusts under paragraph 7.8.1(a) by 11 October

2023, but the Trusts will not be required to provide a further valuation confirmation notice under paragraphs 7.9 and 7.10 of the NTkT PRS;

- (i) the parties will jointly agree and prepare a bundle of information for the valuer (*bundle*) that will include the material information referred to in paragraph 16(h) above and expert opinions, procured separately by each party, on technical matters. Prior to providing the bundle, the parties will procure their respective experts to work together to endeavour to reach a consensus on their opinions in relation to their expert opinions to be given to the valuer. However, the parties acknowledge that the experts may not have reached a consensus when the bundle is provided to the valuer.
- (j) Lynette Penrose of Ngāi Tai ki Tāmaki replaces James Brown as the authorised representative for the purposes of the NTkT PRS, as if she had been specified in the effective valuation confirmation notice of 21 June 2022;
- (k) any arbitration under the deeds of settlement that was proposed prior to this agreement is terminated;
- (l) any joint valuation determined by the joint valuer will be binding on the parties and will not be subject to review or to any dispute resolution process.

Amendments to NTkT PRS

17 Consequently, the parties agree that the NTkT PRS is amended as follows:

- (a) the valuation date is changed to 27 July 2023;
- (b) paragraphs 7.13.2(c) and 7.15 to 7.30 are deleted and replaced with paragraphs 7.13.2(c) and 7.15 to 7.24 in the amended part 7 of the NTkT PRS, attached as appendix A to this agreement;
- (c) the draft valuation instructions in the appendix to part 7 of the NTkT PRS are deleted and replaced with the draft valuation instructions, attached as appendix B to this agreement;
- (d) all references in parts 7 and 10 of the NTkT PRS to a “valuation arbitrator”, or to “arbitration”, in relation to the Papakura property, in any respect, are deleted and the amendments to part 7 of the NTkT PRS are shown in appendix A;
- (e) subparagraph (b) of the definition of **notification date** in part 10 is deleted and replaced with the following:

“the deferred selection property described in subpart C of part 4, the valuation date for that property; and”
- (f) subparagraph (b) of the definition of **valuation date** in part 10 is amended by deleting the words “the date that is 20 business days after the valuation confirmation date” and replacing them with “27 July 2023”; and
- (g) certain other ancillary amendments are made to part 7 of the NTkT PRS, as shown in appendix A.

NT deed

- 18 To the extent required, the NT deed is amended to take into account the amendments to the NTkT PRS in paragraphs 16 and 17 above.

General

- 19 On the basis that the right to purchase the Papakura property is joint redress under the deeds of settlement, this agreement will only take effect if the trustees of both the NTkT Trust and the NTS Trust counter-sign this agreement.
- 20 No amendment or variation of this agreement will be effective unless it is in writing and signed by the parties.
- 21 The Crown will pay for the legal costs of preparing this agreement, and each party will pay its own costs of reviewing, negotiating and signing this agreement.
- 22 The NTkT Trust and the NTS Trust may counter-sign this agreement by signing a copy of this agreement and sending it to the Crown and to the other Trust by email. Where the Trusts counter-sign separate copies of this agreement, each separate counter-signed copy will collectively represent the agreement reached between the Crown and each of the Trusts.
- 23 This agreement constitutes the entire agreement understanding and arrangement (express and implied) between the Crown and the Trusts relating to the amendments to the valuation process for the Papakura property.
- 24 I look forward to hearing from you.

Whakapūmautia ko te whanaungatanga hei arataki i a tātou,

He aroha whakatō, he aroha puta mai.

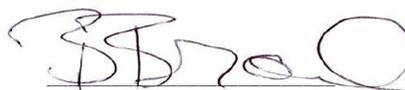
Nāku noa, nā



Hon Kelvin Davis
Minister for Māori Crown Relations:
Te Arawhiti

Signed for and on behalf of the trustees of
the
Ngāi Tai ki Tāmaki Trust by:

Rewa Billy Brown



Signature

Lawrence John Beamish



Signature

Signed for and on behalf of the trustees of
the
Ngāti Tamaoho Settlement Trust by:

Barry John Bublitz



Signature

Tori Ngataki



Signature

Lynette Ann Tamara Taka



Signature

Raemon Matene



Signature

7 JOINT DEFERRED PURCHASE OF PAKAKURA PROPERTY

DEFINITIONS

7.1 In this deed, –

7.1.1 **approving Ngāti Tamaoho deed** means a Ngāti Tamaoho on-account deed, or a Ngāti Tamaoho deed of settlement, that –

- (a) unconditionally approves the rights of the trustees of the Ngāti Tamaoho Settlement Trust under this part (and clause 6.22), as redress on account the settlement of, or as redress settling, the historical claims of Ngāti Tamaoho; and
- (b) provides that the terms and conditions of that redress under this deed are to apply as if the trustees of the Ngāti Tamaoho Settlement Trust had signed this deed agreeing to that redress on those terms and conditions; and

7.1.2 **authorised representative** means –

- (a) the individual specified in an effective valuation confirmation notice under paragraph 7.10.4(a) as the person who may take on behalf of both governance entities all action required under this deed in relation to agreeing or determining the transfer value of the Papakura property; or
- (b) if both governance entities give the Crown a notice in writing signed by each of them advising that another individual is to replace the individual appointed under paragraph 7.10.4(a) or this subparagraph (b), the individual specified in that notice; and

7.1.3 **confirmation notice** means a notice confirming, as at the date of that notice, –

- (a) either –
 - (i) that the Crown will require a lease back to the Crown of the Papakura property under this part (and the trustees have rights under this part (and clause 6.22) in relation to an acquisition of the Papakura property; or
 - (ii) the conditions in paragraph 7.3 have been satisfied (and the trustees have rights under this part (and clause 6.22) in relation to an acquisition of the Papakura property); and

- (b) whether the trustees of the Ngāti Tamaoho Settlement Trust also have rights under this part in relation to an acquisition of the Papakura property (and clause 6.22); or
- (c) the conditions in paragraph 7.3 have not been satisfied (and this part (and clause 6.22) will not give rise to rights in relation to an acquisition of the Papakura property) and identifying the condition in paragraph 7.3 that has not been satisfied; and

7.1.4 **deferred purchase period** means the period of 12 months after the date on which the Crown gives under paragraph 7.4.1(a) or 7.4.2 a confirmation notice confirming that the trustees (and, if relevant, the trustees of the Ngāti Tamaoho Settlement Trust) have rights in relation to an acquisition of the Papakura property; and

7.1.5 **effective Papakura property notice of interest** means a notice of interest in the Papakura property given under paragraph 7.6 that complies with paragraph 7.7; and

7.1.6 **effective Papakura property purchase notice** means a notice electing to purchase the Papakura property given under paragraph 7.11 that complies with paragraph 7.12; and

7.1.7 **effective valuation confirmation notice** means a valuation confirmation notice that complies with paragraph 7.10; and

7.1.8 **governance entity** means each of, and **governance entities** means both of, the following:

- (a) the trustees;
- (b) the trustees of the Ngāti Tamaoho Settlement Trust; and

7.1.9 **notifying party/authorised representative** means –

- (a) if one governance entity has given an effective valuation confirmation notice, that governance entity; and
- (b) if both governance entities have given an effective valuation confirmation notice, the authorised representative; and

7.1.10 **operative date** means, if –

- (a) an approving Ngāti Tamaoho deed is entered into before 30 June 2018, and the settlement date under both the Ngāti Tamaoho deed of settlement and the settlement date under this deed occur before 30 June 2018, the later of those two settlement dates; or
- (b) an approving Ngāti Tamaoho deed is entered into before 30 June 2018, but both or either of the settlement date under the Ngāti Tamaoho deed

of settlement, and/or the settlement date under this deed, do/does not occur before 30 June 2018, 30 June 2018; or

- (c) an approving Ngāti Tamaoho deed is not entered into before 30 June 2018 (in which case only the trustees have rights under this part), 30 June 2018; and

7.1.11 **progress report** means a notice advising –

- (a) whether the Crown has determined that it does not require a lease back of the Papakura property; and
- (b) if it has so determined, which of the conditions in paragraph 7.3 still require investigation to enable the Crown to give a confirmation notice; and

7.1.12 **valuation confirmation date** means the date on which the valuation confirmation notice is given to the Crown; and

7.1.13 **valuation confirmation notice** means a notice given to the Crown under paragraph 7.9.

CONDITIONS

7.2 The rights of the trustees of the Ngāti Tamaoho Settlement Trust under this part (and clause 6.22) in relation to an acquisition of the Papakura property are conditional upon an approving Ngāti Tamaoho deed being entered into on or before 30 June 2018.

7.3 If the Crown has determined that it does not require a leaseback of the Papakura property under this part, the rights of the trustees, and, if the condition in paragraph 7.2 is satisfied, the rights of the trustees of the Ngāti Tamaoho Settlement Trust, under this part (and clause 6.22) in relation to an acquisition of the Papakura property are conditional upon –

7.3.1 the Crown being satisfied that the Papakura property is not required –

- (a) for the purpose of a public work that is different to the defence purposes for which it is held at the date of this deed
- (b) for an exchange under section 105 of the Public Works Act 1981; and

7.3.2 the Crown having no obligation to transfer the fee simple estate in the Papakura property under –

- (a) a legislative obligation, including under sections 40(2) or 41 of the Public Works Act 1981 or those sections as applied by other legislation; or
- (b) the requirements of a rule of law; or

- (c) a legal (including an equitable) obligation that –
 - (i) was unconditional before the date of this deed; or
 - (ii) was conditional before the date of this deed, but became unconditional after the date of this deed; or
 - (iii) arose after the exercise, whether before or after the date of this deed, of an option existing before the date of this deed; or
- (d) a requirement existing before the date of this deed of a gift, endowment, or trust relating to the Papakura property.

NOTICE AS TO SATISFACTION OF THE CONDITIONS

7.4 The Crown must give to each governance entity, –

7.4.1 as soon as reasonably practicable after the operative date, either –

- (a) a confirmation notice; or
- (b) a progress report; and

7.4.2 if the Crown gives a progress report under paragraph 7.4.1(b), a confirmation notice as soon as it is reasonably able to do so after giving the progress report.

7.5 If the Crown gives –

7.5.1 under paragraph 7.4.1(a) or 7.4.2 a confirmation notice confirming that the conditions in paragraph 7.3 have not been satisfied, this part (and clause 6.22) will not give rise to any rights in relation to an acquisition of the Papakura property; and

7.5.2 a confirmation notice or a progress report under paragraph 7.4.1 within 40 business days after the operative date, the Crown is to be treated as having complied with its obligations under paragraph 7.4.1 to give that notice or report as soon as reasonably practicable after the operative date.

NOTICE(S) OF INTEREST

7.6 If the Crown gives under paragraph 7.4.1(a) or 7.4.2 a confirmation notice confirming that the trustees (and, if relevant, the trustees of the Ngāti Tamaoho Settlement Trust) have rights in relation to an acquisition of the Papakura property, a notice or notices of interest in relation to the Papakura property may be given to the Crown in accordance with the following:

7.6.1 if an approving Ngāti Tamaoho deed is entered into on or before 30 June 2018, –

- (a) during the deferred purchase period, both governance entities may give a joint notice of interest; or
- (b) during the period of 10 business days ending on the last day of the deferred purchase period, each governance entity may give a separate notice of interest:

7.6.2 if an approving Ngāti Tamaoho deed is not entered into on or before 30 June 2018, during the deferred purchase period the trustees may give a notice of interest.

EFFECTIVE PAPA KURA PROPERTY NOTICE OF INTEREST

7.7 A notice of interest given under paragraph 7.6 is effective, if the notice –

7.7.1 confirms that it is a notice of interest given under one of the following paragraphs of part 7 of the property redress schedule to this deed of settlement in relation to the Papakura property:

- (a) paragraph 7.6.1(a);
- (b) paragraph 7.6.1(b);
- (c) paragraph 7.6.2; and

7.7.2 is given in accordance with –

- (a) paragraph 7.6.1(a), meets the requirements of that paragraph, including being signed by both governance entities; or
- (b) paragraph 7.6.1(b), meets the requirements of that paragraph, including being signed by a governance entity; or
- (c) paragraph 7.6.2, meets the requirements of that paragraph, including being signed by the trustees.

EFFECT OF EFFECTIVE PAPA KURA PROPERTY NOTICE(S) OF INTEREST

7.8 If an effective Papakura property notice of interest is given to the Crown, –

7.8.1 in accordance with paragraphs 7.6.1(a) or 7.6.2, the Crown must, –

- (a) not later than 20 business days after that notice is received by the Crown, give to the trustees, and (in the case of a notice given under paragraph 7.6.1(a)) to the trustees of the Ngāti Tamaoho Settlement Trust, all material information that, to the best of the land holding agency's knowledge, is in the agency's records at the date of providing that information, about the Papakura property, including its encumbrances; and

- (b) not later than 40 business days after that notice is received by the Crown, give to the trustees, and (in the case of a notice given under paragraph 7.6.1 (a)) to the trustees of the Ngāti Tamaoho Settlement Trust, if the confirmation notice given by the Crown has provided that the Crown will require a leaseback of the property under this part, notice of the term of the lease and any rights of renewal (to be included in items 4 and 7 of the reference schedule (schedule 1) in the form of lease provided in part 14 of the documents schedule); and

7.8.2 in accordance with paragraph 7.6.1(b), the Crown must, -

- (a) not later than 20 business days after the expiry of the deferred purchase period, give to the governance entity, or the governance entities, giving that notice under that paragraph, all material information that, to the best of the land holding agency's knowledge, is in the agency's records at the date of providing that information, about the Papakura property, including its encumbrances; and
- (b) not later than 40 business days after the expiry of the deferred purchase period, give to the governance entity, or the governance entities, giving that notice under that paragraph, if the confirmation notice given by the Crown has provided that the Crown will require a leaseback of the property under this part, notice of the term of the lease and any rights of renewal (to be included in items 4 and 7 of the reference schedule (schedule 1) in the form of lease provided in part 14 of the documents schedule); and

7.8.3 no further notice of interest in the Papakura property may be given under paragraph 7.6.

VALUATION CONFIRMATION NOTICE

7.9 A notice may be given to the Crown confirming that a valuation of the Papakura property is to be undertaken after the Crown has given both the information and notice required under paragraph 7.8.1 or paragraph 7.8.2 (as the case may be).

7.10 For a valuation confirmation notice to be effective, the notice must –

7.10.1 be given to the Crown by the date that is not later than 10 business days after the Crown has given both the information and any notice required under paragraph 7.8.1 or paragraph 7.8.2 (as the case may be); and

7.10.2 confirm that the valuation of the Papakura property is to be undertaken in accordance with part 7 of the property redress schedule to this deed; and

7.10.3 be signed, –

- (a) if only one governance entity has signed and given an effective Papakura property notice of interest, by that governance entity; or

- (b) if both governance entities have, or each governance entity has, signed and given an effective Papakura property notice of interest, by –
 - (i) both governance entities; or
 - (ii) one of the governance entities, if the other governance entity consents in a document attached to the valuation confirmation notice to the giving of that notice, and the exercise of all remaining rights under this part, by the other governance entity; and

7.10.4 if both governance entities sign the valuation confirmation notice, specify -

- (a) one individual who may take on behalf of both governance entities all action required under this deed in relation to agreeing or determining the transfer value of the Papakura property; and
- (b) one address (which must include a street, postal, and email address and may include a fax address) to which all notices, information and communications under this part to the governance entities, and to the authorised representative, may be sent.

NOTICE ELECTING TO PURCHASE

7.11 After the transfer value of the Papakura property is agreed or determined in accordance with paragraphs 7.15 to ~~7.297.23~~, one notice electing to purchase it may be given.

EFFECTIVE NOTICE TO PURCHASE

7.12 For the notice electing to purchase the Papakura property under paragraph 7.11 to be effective, the notice must –

7.12.1 be given to the Crown by the date that is 15 business days after –

- (a) if it is not a leaseback property, its transfer value is ~~agreed or~~ determined in accordance with paragraphs 7.15 to ~~7.297.23~~; or
- (b) if it is a leaseback property, both its transfer value and its initial annual rental are agreed or determined in accordance with paragraphs 7.15 to ~~7.297.23~~; and

7.12.2 confirm that it is a notice electing to purchase the Papakura property given under part 7 of the property redress schedule to this deed; and

7.12.3 be signed, if –

- (a) one governance entity signed the valuation confirmation notice, by that governance entity; or

- (b) both governance entities signed the valuation confirmation notice, by –
 - (i) both governance entities (in which case the fee simple estate in the Papakura property is to be transferred to the governance entities as tenants in common in equal shares, unless the notice specifies another proportion); or
 - (ii) one of the governance entities, if the other governance entity consents in a document attached to the election notice to the giving of that election notice by the other governance entity.

EFFECT OF ELECTION TO PURCHASE

7.13 If an effective Papakura property purchase notice is given, –

7.13.1 the Crown is to be treated as having entered into an agreement for the sale and purchase of the Papakura property, with the governance entity, or the governance entities, that gave the notice; and

7.13.2 the agreement for sale and purchase is to be treated as –

(a) having been entered into on the date the notice was received by the Crown; and

(b) providing that the governance entity, or the governance entities, giving the notice must, on DSP settlement date, pay the Crown the transfer value of the Papakura property agreed or determined in accordance with paragraphs 7.15 to ~~7.297.23~~, plus GST if any; and

~~(c)~~ providing that the amount payable under subparagraph (b) is payable on the DSP settlement date ~~by; by bank cheque drawn on a registered bank payable to the Crown (or by another payment method agreed in writing by the Crown and the governance entity; or the governance entities, that gave the notice); and~~

~~(i)~~ the SCP system as defined in Guideline 7 of the New Zealand Law Society's Property Law Section's Property Transactions and E-Dealing Practice Guidelines (July 2020); or

~~(ii)~~ another payment method agreed in writing by the Crown and the governance entity, or the governance entities, that gave the notice; and

~~(e)~~(d) providing that if the Papakura property is a leaseback property, the Crown and the governance entity, or the governance entities, that gave the notice must, by or on the DSP settlement date, sign the Crown leaseback (being a registrable lease of the property) –

(i) commencing on the actual TSP settlement date; and

- (ii) at its initial annual rent determined or agreed in accordance with paragraphs 7.15 to ~~7.23~~ 7.23 (plus GST, if any, on the amount so determined or agreed); and
- (iii) for a term, and with the rights of renewal, provided in the notice given by the Crown under paragraph 7.8.1(b) or 7.8.2(b), as the case may be; and
- (iv) on the terms provided in part 14 of the documents schedule; and

~~(d)~~(e) providing that the terms in part 8 apply and, in particular, the Crown must (subject to paragraphs 8.46 and 8.47) transfer the fee simple estate in the Papakura property to -

- (i) the governance entity that gave the notice; or
- (ii) the governance entities that gave the notice, as tenants in common in equal shares or in another proportion specified in the notice; and

7.13.3 no further notice electing to purchase the Papakura property may be given under paragraph 7.11.

JOINT AND SEVERAL OBLIGATIONS

7.14 If both governance entities have an obligation under this deed in relation to the Papakura property, their obligation is joint and several.

SUMMARY OF ASSESSMENT REQUIRED

7.15 Paragraphs 7.16 to 7.23 are to enable a current market valuation of the Papakura property (including improvements which will transfer) to be determined as at the valuation date (being 27 July 2023).

APPOINTMENT OF VALUER

7.16 The Crown and the notifying party/authorised representative must, not later than 1 December 2023, agree upon and jointly appoint a valuer.

7.17 If the Crown and the notifying party/authorised representative do not jointly appoint a valuer in accordance with paragraph 7.16, either the Crown or the notifying party/authorised representative may request the President of the New Zealand Institute of Valuers to appoint a valuer as soon as practicable, provided that the party making the request must first give notice of this request to the other party.

7.18 The Crown and the notifying party/authorised representative must, not later than six months after date of the valuer's appointment, jointly instruct the valuer using an agreed form of instructions, based on the draft instructions in the appendix and, if the Crown and the notifying party/authorised representative do not jointly instruct the valuer in

accordance with this paragraph, either the Crown or the notifying party/authorised representative may instruct on behalf of both the Crown and the notifying party/authorised representative, provided that the party giving the instruction must first give notice of this to the other party.

VALUER'S QUALIFICATIONS

7.19 The valuer must be –

7.19.1 a registered valuer; and

7.19.2 independent; and

7.19.3 experienced in determining the market value of similar properties.

VALUATION REPORT

7.20 The valuer must, not later than the date specified in the valuation instructions as being the date the valuer must provide their final valuation report, –

7.20.1 prepare a valuation report in accordance with the valuation instructions, and any separate instructions jointly issued by the parties related to the treatment of GST (if any) to the property valuation; and

7.20.2 provide each of the Crown and the notifying party/authorised representative with a copy of the valuation report.

The valuation report must comply with the International Valuation Standards (effective 31 January 2022) together with the Guidance Papers for Valuers and Property Professionals (GPVPP) set out in the Australia and New Zealand Valuation and Property Standards.

TRANSFER VALUE

7.21 The transfer value of the joint valuation property for the purposes of paragraph 7.13.2(b) is as provided in the valuation report as the market value for the property.

7.22 The market value of the property determined under this part is the transfer value of the property for the purposes of this deed, which will be paid by the governance entity, or the governance entities, that gave the effective Papakura property purchase notice, on the terms set out in paragraphs 7.13.2(b) and (c).

DETERMINATION FINAL AND BINDING

7.23 The valuer's determination under paragraphs 7.15 to 7.22 is final and binding.

COSTS

7.24 In relation to the determination of the market value:

7.24.1 the Crown must pay the valuer's reasonable costs; and

7.24.2 each of the Crown, and the governance entity or governance entities that have given an effective valuation confirmation notice, must each pay its own costs of any experts that it instructs or engages to provide expert evidence to itself or the valuer as part of the valuation process.

GENERAL PROVISIONS

~~7.15~~**7.25** The Crown, and any governance entity that gives an effective valuation confirmation notice, each acknowledge that they are required to use reasonable endeavours to ensure, and to require any authorised representative to use reasonable endeavours to ensure, the processes set out in the valuation process in paragraphs 7.15 to ~~7.29~~**7.23** operate in the manner, and within the timeframes, specified in those paragraphs.

~~7.16~~**7.26** If the processes set out in the valuation process in paragraphs 7.15 to ~~7.29~~**7.23** are delayed through any event (such as the death or incapacity or unwillingness or inability to act of ~~any the valuer or the arbitrator~~), –

~~7.16~~~~7.17~~**7.26.1** the Crown, and any governance entity giving an effective valuation confirmation notice, will use reasonable endeavours and co-operate with each other to minimise the delay; and

~~7.16~~~~7.17~~**7.26.2** if an authorised representative has been appointed, each of the governance entities will ensure that the authorised representative uses reasonable endeavours and co-operates with the Crown to minimise the delay.

ENDING OF OBLIGATIONS

~~7.17~~**7.27** The Crown's obligations under this deed in relation to the Papakura property immediately cease if –

~~7.17~~~~7.17~~**7.27.1** an effective Papakura property notice of interest is not given; or

~~7.17~~~~7.17~~**7.27.2** an effective Papakura property notice of interest is given but an effective valuation confirmation notice is not given; or

~~7.17~~~~7.17~~~~7.17~~**7.27.3** an effective valuation confirmation notice is given but an effective Papakura property notice to purchase is not given; or

~~7.17~~~~7.17~~~~7.17~~**7.27.4** the governance entity or the governance entities signing an effective valuation confirmation notice give the Crown notice that they are not interested in purchasing the property at any time after that notice has been

given and before an agreement for sale and purchase of the property is constituted under paragraph 7.13.1; or

~~7.17-57.27.5~~ an agreement for the sale and purchase of the property is constituted under paragraph 7.13.1 and the agreement is cancelled in accordance with the terms of transfer in part 8.

~~7.187.28~~ The Crown's obligations to the trustees of the Ngāti Tamaoho Settlement Trust under this deed in relation to the Papakura property immediately cease if an approving Ngāti Tamaoho deed is not entered into on or before 30 June 2018.

~~7.15 Paragraphs 7.16 to 7.29 are to enable—~~

~~7.15.1 a current market valuation of the Papakura property (including improvements which will transfer) to be agreed or determined as at the valuation date (being the date that is 20 business days after the effective valuation confirmation notice was received by the Crown); and~~

~~7.15.2 if the Papakura property is a leaseback property, its initial market rental to be agreed or determined as at the valuation date.~~

~~APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR~~

~~7.16 The Crown and the notifying party/authorised representative must, not later than 10 business days after the valuation confirmation date,—~~

~~7.16.1 each—~~

~~(a) instruct a valuer using the form of instructions in the appendix to enable the following to be determined, as at the valuation date (being the date that is 20 business days after the valuation confirmation date):~~

~~(i) the transfer value of the Papakura property;~~

~~(ii) if the Papakura property is a leaseback property, its initial annual rent; and~~

~~(b) give written notice to the other of the valuer instructed; and~~

~~7.16.2 agree upon and jointly appoint one person to act as the valuation arbitrator.~~

~~7.17 If the Crown and the notifying party/authorised representative do not jointly appoint a valuation arbitrator in accordance with paragraph 7.16.2, either the Crown or the notifying party/authorised representative may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.~~

~~QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR~~

~~7.18 Each valuer must be a registered valuer.~~

~~7.19 The valuation arbitrator—~~

~~7.19.1 must be suitably qualified and experienced in determining disputes about—~~

- ~~(a) the market value of properties similar to the Papakura property; and~~
- ~~(b) if the Papakura property is a leaseback property, the market rental of similar properties; and~~

~~7.19.2 is appointed when he or she confirms his or her willingness to act.~~

VALUATION REPORTS

~~7.20 Each valuer must, not later than 40 business days after the valuation confirmation date,—~~

~~7.20.1 prepare a valuation report in accordance with the valuation instructions; and~~

~~7.20.2 exchange a copy of his or her final valuation report with—~~

- ~~(a) the Crown and the notifying party/authorised representative; and~~
- ~~(b) the other valuer.~~

EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR PAPA KURA PROPERTY

~~7.21 If only one valuation report for the Papakura property is delivered by the required date, its transfer value, and if applicable its initial annual rent, is the market value and the market rental, as assessed in the report.~~

ASSESSMENTS

~~7.22 If, in respect of the Papakura property, both valuation reports are exchanged by the required date—~~

~~7.22.1 within five business days of the date the valuation reports are exchanged, the valuers will independently prepare a written report containing an analysis of the exchanged valuations, comparing and contrasting the reports, and identifying the significant issues, if any, affecting the outcome of the valuation, to enable the Crown and the notifying party/authorised representative to commence negotiation to agree—~~

- ~~(a) the transfer value of the Papakura property; and~~
- ~~(b) if the Papakura property is a leaseback property, its initial annual rent; and~~

~~7.22.2 within 10 business days of the date the valuation reports are exchanged, the valuers will meet to discuss the above analysis and provide a joint recommendation to the Crown and the notifying party/authorised representative; and~~

~~7.22.3 the Crown and the notifying party/authorised representative must endeavour to agree in writing—~~

~~(a) the transfer value of the Papakura property; and~~

~~(b) if the Papakura property is a leaseback property, its initial annual rent; and~~

~~7.22.4 either the Crown or the notifying party/authorised representative may, if the market value of the Papakura property and/or, if applicable, its initial annual rent is not agreed in writing by 70 business days after the valuation confirmation date, refer the unresolved matter or matters to the determination of the valuation arbitrator.~~

VALUATION ARBITRATION

~~7.23 The valuation arbitrator must, not later than 5 business days after the date the matter or matters is referred to the arbitrator's determination (the **arbitration commencement date**),—~~

~~7.23.1 give notice to the Crown and the notifying party/authorised representative of the arbitration hearing, which must be held—~~

~~(a) at a date, time and venue determined by the valuation arbitrator after consulting with the Crown and the notifying party/authorised representative; but~~

~~(b) not later than 20 business days after the arbitration commencement date; and~~

~~7.23.2 establish the procedure for the arbitration hearing, including providing each of the Crown and the notifying party/authorised representative with the right to examine and re-examine, or cross-examine, as applicable,—~~

~~(a) each valuer; and~~

~~(b) any other person giving evidence.~~

~~7.24 Each of the Crown and the notifying party/authorised representative must—~~

~~7.24.1 not later than 5 pm on the day that is five business days before the arbitration hearing, give to the valuation arbitrator, the other party, and the other party's valuer—~~

~~(a) its valuation report; and~~

- ~~(b) — its written report containing analysis of exchanged valuation; and~~
- ~~(c) — its submission; and~~
- ~~(d) — any sales, rental, or expert evidence that it will present at the hearing;
and~~

~~7.24.2 attend the arbitration meeting with its valuer.~~

~~7.25 The valuation arbitrator must —~~

- ~~7.25.1 have regard to the requirements of natural justice at the arbitration hearing;
and~~
- ~~7.25.2 no later than 20 business days after the arbitration hearing, give his or her determination of the market value of the Papakura property and, if applicable, its market rental.~~

~~7.26 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.~~

TRANSFER VALUE

~~7.27 The transfer value of the Papakura property for the purposes of paragraph 7.13.2(b), and if applicable its initial annual rent for the purposes of paragraph 7.13.2(d)(ii), is the market value and/or the initial market rental —~~

- ~~7.27.1 determined under paragraph 7.21; or~~
- ~~7.27.2 agreed under paragraph 7.22.3; or~~
- ~~7.27.3 determined by the valuation arbitrator under paragraph 7.25.2.~~

~~7.28 The market value of the property agreed or determined under this part is the transfer value of the property for the purposes of this deed, which will be paid by the governance entity, or the governance entities, that gave the effective Papakura property purchase notice on the terms set out in paragraphs 7.13.2(b) and (c).~~

DETERMINATION FINAL AND BINDING

~~7.29 The arbitrator's determination under paragraph 7.25.2 is final and binding.~~

COSTS

~~7.30 In relation to the determination of the market value each of the Crown, and the governance entity or governance entities that have given an effective valuation confirmation notice, must each pay —~~

- ~~7.30.1 its or their costs; and~~
- ~~7.30.2 half the costs of a valuation arbitration; or~~

~~7.30.37.14.1 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of unreasonable conduct~~

**APPENDIX B – Part 7 – Draft Joint Instructions to Valuer for
Papakura Property**

APPENDIX

Ngāi Tai ki Tāmaki
PO Box 141
Clevedon
Tāmaki Makaurau – Auckland 2248

Ngāti Tamaoho
PO Box 2721652
Papakura
Tāmaki Makaurau – Auckland 2244

New Zealand Defence Force
Private Bag 39997
Te Whanganui-a-Tara Wellington 6011

For discussion by technical group - without prejudice / subject to contract

{insert valuer name

& postal address}

By email: {insert email address}

Dear {insert}

INTRODUCTION

Ngāi Tai ki Tāmaki and the Crown and Ngāti Tamaoho and the Crown have entered deeds to settle historical claims dated 7 November 2015 and 30 April 2017 respectively (the deeds of settlement). Under the deeds of settlement, the market value of following property (including improvements) is to be determined –

| Address | Description (all North Auckland Land District) |
|----------------|---|
| Papakura | 0.3187 hectares, more or less, being Section 1 SO 31679 comprised in record of title NA95C/951. 3.9039 hectares, more or less, being Lot 2 DP 198558 and Lots 1 and 2 DP 201101 comprised in record of title NA127B/904. |

Copies of the deeds are included in a Dropbox containing disclosure information. You will be provided with access to this Dropbox.

Part 7 of the Property Redress Schedule in the Ngāi Tai ki Tāmaki settlement deed (deed of settlement) describes the process to be adopted by the parties in concluding the transfer of the identified land.

The valuation process specified in paragraphs 7.16-7.32 of the deed of settlement has reached the stage where the parties have been unable to agree market value and have jointly referred the matter to Peter Mahoney as the sole valuation arbitrator to determine this.

However, the procedural timetable for arbitration has been paused and Ngāi Tai ki Tāmaki, Ngāti Tamaoho and the Crown (New Zealand Defence Force) collectively being the instructing parties have elected to proceed with an alternative process to determine market value whereby you are to complete a valuation in accordance with these joint instructions.

The instructing parties have agreed that the market value in the jointly instructed valuation will be binding as to the transfer value, and recourse to arbitration will be removed *{once the deed of amendment process is signed by all parties}*

VALUATION REQUIRED

You are required to undertake a market valuation of the property as at 27 July 2023 (the valuation date) in accordance with the following timetable *{set with the valuer and instructing parties jointly}*:

- Agreed bundle of information to be provided by the Instructing Parties by *{insert}*
- Inspect the property with the managing agents Ray White 360 – contact Gabrielle Dally 021 982 903 as soon as possible after receiving the agreed bundle of information
- If required, separate instructions on treatment of GST for the valuation of the property to be jointly provided by the Instructing Parties by *{insert}*
- By *{insert}*, to prepare and deliver to us a draft market valuation report and
- By *{insert}*, to prepare and deliver to us your final market valuation report after taking into account any comments made by us.

The agreed bundle of information will include expert opinion procured separately by the instructing parties on technical matters such as TBC. Prior to providing the agreed bundle of information to you the parties will endeavour to procure the experts to work together to try and form consensus should significant differences in opinion arise. There may or may not be consensus between experts when the agreed bundle is provided to you.

The valuer may approach the experts who have provided the above opinions on technical matters and may directly question/meet the experts as reasonably required for valuation purposes. This may include a “hot tub” approach to asking the experts to work together to try and form consensus. Such written dialogue, meetings and “hot tub” approach shall be attended by the valuer and the experts only but the protocols for an open and transparent valuation set out below shall apply.

REQUIREMENTS FOR YOUR CURRENT MARKET VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the property is a current asset and was available for immediate sale as at the valuation date; and

- (b) all legislative processes that the Crown must meet before disposing of the property have been met; and
- (c) vacant possession will be given

Your valuation is –

- (a) to assess market value in accordance with the International Valuation Standards (effective 31 January 2022) together with the Guidance Papers for Valuers and Property Professionals (GPVPP) set out in the Australia and New Zealand Valuation and Property Standards. The definition of Market Value is taken from IVS 104 (Bases of Valuation) and
- (b) to take into account –
 - (i) the value of the improvements, if any; and
 - (ii) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and
 - (iii) the disclosure information about the property that has been given by the land holding agency to the notifying party/authorised representative via Dropbox; and
 - (iv) the terms of transfer in part 8 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property under the deed of settlement); and
 - (v) other information that we may provide including TBC and expert opinion that forms part of the agreed bundle of information. [***The GST treatment to apply to the valuation of the property will be agreed between the experts, and either included in these valuation instructions to the valuer, or provided by the Instructing Parties to the valuer as a separate instruction at a later date to be advised to the valuer, but before the valuer must provide the valuation report***]
- (c) not to take into account a claim in relation to the property by Ngāti Tai ki Tāmaki or Ngāti Tamaoho.

REQUIREMENTS FOR YOUR VALUATION REPORT

A full valuation report in accordance with the International Valuation Standards (effective 31 January 2022) together with the Guidance Papers for Valuers and Property Professionals (GPVPP) set out in the Australia and New Zealand Valuation and Property Standards.

Please include:

- an executive summary containing:

- a summary of the valuation along with key valuation parameters;
- a summary of key issues affecting value;
- your assessment of land value and the value of improvements, if any;
- details of your assessment of the highest and best use of the property;
- comment on the rationale of likely purchasers [and tenants] of the property;
- full details of the approaches to value and a clear identification of the key variables which in your opinion have a material impact on the valuation;
- a description of improvements to the extent you consider necessary to explain your approach to their value;
- relevant market, sales and rental information and comments on its specific relevance to the subject properties; and
- a statement of valuation methodology and policies.

Your report must contain a clear statement of the treatment of Goods and Services Tax (GST) (if any) to the valuation. ***[Instructions on tax treatment will be agreed between the experts, either before these instructions are issued, and any necessary amendments will be made to these instructions, or the Instructing Parties will jointly provide these instructions separately to the valuer at a later date to be advised to the valuer, but before the valuer must provide the valuation report***

OPEN AND TRANSPARENT VALUATION

The following set of principles will guide the parties and the valuer whilst the valuation is undertaken:

- Open dialogue
- Be frank
- Identify problems and work together to solve them
- Constructive conversations
- Coming together and working together

In particular, you must direct any questions you have to both representatives of the instructing parties and ensure they are also copied in on all correspondence with the experts (including your questions and their responses). Where these exchanges are verbal a file note shall be prepared and shared with the instructing parties.

CONFLICTS

If you are aware, or become aware, of a conflict in undertaking a valuation for the instructing parties you will advise the writer immediately.

FEES

The commercial terms of your engagement will be in accordance with your offer of service dated [insert]. NZDF will cover the reasonable cost of the valuation but for the avoidance of doubt the valuer has an obligation of duty to each instructing party.

PERSONNEL

[insert] is engaged on the basis that [insert] will be the principal valuer who is directly involved in the preparation of the valuation reports and will be available to assist with negotiations and/or formal determination of value if required.

COMMUNICATIONS

Your engagement will be direct with the instructing parties. However, all communication and correspondence with respect to the valuation is to be addressed to:

Lynette Penrose - Lynette@ngaitaitamaki.iwi.nz

Angela Bartoli - ANGELA.BARTOLI@nzdf.mil.nz

Similarly all instructions of the instructing parties will be issued by the above representatives unless otherwise advised.

Thank you for your assistance

Yours faithfully

Signed on behalf of the trustees of the Ngāi Tai ki Tāmaki Trust

Signed on behalf of the trustees of the Ngāti Tamaoho Settlement Trust

Signed on behalf of New Zealand Defence Force