

NGĀI TAI KI TĀMAKI
and
THE TRUSTEES OF THE NGĀI TAI KI TĀMAKI TRUST
and
THE CROWN

DEED OF SETTLEMENT SCHEDULE:
DOCUMENTS

TABLE OF CONTENTS

1	STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)	1
2	DEED OF RECOGNITION	19
3	PROTOCOLS	26
4	CONSERVATION RELATIONSHIP AGREEMENT	48
5	LETTER OF INTRODUCTION	57
6	MUSEUM/LIBRARY LETTER	59
7	STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)	61
8	EASEMENTS IN RELATION TO HUKUNUI	73
9	EASEMENT IN RELATION TO TE TAUROA	98
10	LEASE IN RELATION TO TE WAIAROHIA PĀ	107
11	EASEMENT IN RELATION TO MAUNGAREI A	122
12	LEASEBACK: SCHOOL SITES	132
13	LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)	155
14	LEASEBACK: PAPAKURA PROPERTY	179
15	LEASEBACK: TORPEDO BAY PROPERTY	200

1 STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)

The statements of association of Ngāi Tai ki Tāmaki are set out in this part. These are statements of the particular cultural, spiritual, historical, and traditional association of Ngāi Tai ki Tāmaki with the identified areas.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Coastal Marine Area (as shown on deed plan **OTS-403-128**)

Ngāi Tai Ki Tāmaki are a maritime people without boundaries and have been voyagers since ancient times. Ngāi Tai ki Tāmaki are acknowledged as being amongst the original inhabitants of Aotearoa. It is inevitable that some of the most significant sites of arrival, ritual, landmark and subsequent habitation, both seasonal and permanent, are now shared with others, others with whom we share close links through whakapapa and shared histories, others who through the passage of time and history hold ahi kaa in different places. Ngāi Tai hold fast to the knowledge of our associations to the places and the people as taonga tuku iho. From Te Arai out to Hauturu out to Aotea and throughout Hauraki and Tāmaki Makarau and all the islands within, Ngāi Tai have significant multiple, and many layered associations.

Te Arai

Ngāi Tai ki Tāmaki have had long association to the Mahurangi district as far north as Te Arai. This stems from our deep ancestral links from the Turehu and Patupaiarehe who intermarried with the later voyagers into this area including Maruiwi, Ruatamore and Tāmaki.

Te Arai gained its name from the arrival of Manaia and his son Tahuhu nui a rangi who made landfall at Te Arai in command of the Moekaraka waka. Tahuhu there set up a temporary shelter (arai) for a stone altar (tūāhu). Ceremonial offerings were made to ensure the safety of his followers. Ngāi Tai know the tūāhu as Te Toka tu whenua.

Tahuhu travelled south and established his people at the place now known as Otahuhu near the site of the famous waka portage from the Tāmaki river through to the Manukau Harbour. Upon his passing Tahuhu was returned to Te Arai and interred there.

At the time of the arrival of the Tanui waka, Te Keteanataua who married Hinematapaua (a descendant of Maruiwi and Ruatamore) and his son Taihaua, key ancestors of Ngāi Tai ki Tāmaki strengthened links with Ngāi Tahuhu whose known interests at the time extended from Te Arai southward to Otahuhu.

In April 1841 Ngāi Tai ki Tāmaki leaders Te Tara, Nuku, and Te Haua participated alongside others in the original transaction for the Mahurangi and Omaha Block ,which boundaries extended from Takapuna to Te Arai reinforcing the knowledge that Ngāi Tai ki Tāmaki share joint interests over lands and waters as far north as Te Arai.

Te Hauturu-o-Toi

Ngāi Tai ki Tāmaki acknowledge our descent from the Patupaiarehe who occupied our domains from long before the arrival of Toi Te Huatahi. It was a branch of these people that occupied Hauturu when Toi, having just crossed Te Moananui a Kiwa in his waka Te Paepae ki Rarotonga, arrived in the Hauraki Gulf / Tīkapa Moana. The Patupaiarehe enshrouded the island with mist in order to be concealed from the arriving waka. As a result of summoning the winds that shredded the concealing mists the island became known as Te Hauturu o Toi (the source of the winds of Toi). The people who occupied Hauturu subsequent to these events include some of those from whom Ngāi Tai and others descend thus weaving our mutual associations down to the present day. The Hauturu Rehearing in 1886 recorded Ngāi Tai as one of those iwi with traditional association to Hauturu.

Aotea: Owana Pā (Awana Pā)

Owana Pā is a wāhi tapu area situated on the eastern side of Aotea island. Owana Pā is a prominent headland connected by an isthmus to the mainland and surrounded by a sheltered inlet, estuary and open sea. The pā was named after Te Wana who descended from Ngāti Tai and was

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

a notable chief who lived there until the 17th century. The southern side of the pa was defended by three deep ditches with earthen banks, on which palisades, two to three meters high were built. The rocky cliffs to the north were sufficiently steep to protect the pa without additional defences. Below on the flat lay extensive gardens and a papakainga. There is evidence of midden, papa kainga, an urupa and burials. During the later musket wars, Owana Pa was less defensible due to the lack of access to fresh water during times of siege.

In the late 17th century, a rangatira and his son, journeyed with a group to Aotea where they stayed as manuhiri with Ngāti Te Hauwhenua, a north western hapu of Ngāti Tai. The union of the rangatiras' daughter to a Te Hauwhenua rangatira soon followed but to the rangatiras' dismay, was subsequently killed in a family dispute. Deeply hurt and angered, the rangatira sought utu calling upon his whanaunga to lead a taua (war party) to Aotea.

After a series of battles, Ngāti Te Hauwhenua was defeated and peace was made with Ngāti Taimanawa, a central and south eastern hapu of Ngāti Tai through marriages with rangatira of the other iwi .

A period of peace prevailed over Aotea, until such time that hostility arose once again. For whatever reason, some say that it was because Ngāti Tai still resented the other iwi, which consequently resulted in the death of the rangatira from the other iwi. His death was avenged by a series of battles, one of which took place at Owana Pā, reportedly driving Ngāti Tai from Aotea. However Ngāti Tai continued to occupy the southern area of Rangitawhiri and dispute any conclusive defeats in that area.

Hauraki Gulf / Tikapa Moana

From Repanga south to Ahuahu and Whakau to Ruamahua and Tuhua. These motu were important to Ngāti Tai/ Ngāi Tai as not only did they provide shelter and a stopover during voyaging, but they were also navigation points as our ancestors sailed and traded across the seas. We journey past Tuhua to Te Ranga a Taikehu where Ngāti Tai and Ngā Marama had a settlement near Katikati and Te Punga o Tainui, the site of the Tainui anchorage. Along the eastern coast of Hauraki to Whangamata where Ngā Marama had a pā to Oputere where Te hekenga o nga toru from Torere travelled meeting up with their Ngāti Tai relatives there before moving onto Waikawau Bay and thence to Moehau to join their whanaunga.

Ngāi Tai / Ngāti Tai acknowledge our shared interests in the greater Moehau area as Poihakena, Te Huripupu and Tukituki Bay were significant sites of battle for Ngāi Tai. Motuiwi, Oruapopou, Motukawao and the Coromandel Island group are of ancestral significance to Ngāi Tai as descendants of Manukaihongi. These areas with subsequent relationships provided access to shared fisheries that continue today.

Papa-aroha is very significant for Ngāi Tai as this is the place where Te Whatatau met and subsequently married Te Raukohekohe. The sheltered bay of Kikowhakarere is also very significant for Ngāi Tai as this is where Te Whatatau put aside his wife Te Kaweau for her refusal to share hua-manu with his whanunga from Torere.

Waiau was the home of Te Rakau and his two Ngāti Tai/ Patutatahi wives. Peace was made in this area when Ngāi Tai and another Iwi were joined in marriage. These descendants conjointly occupied lands at Waiau and across Hauraki Gulf / Tikapa Moana on motu and lands between present day Howick and Beachlands.

Te Puru is one of several sites in the Thames – Ohinemuri area associated with the re-settlement of a branch of Ngāi Tai from Torere with the people of Tuterangianini.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Pukorokoro ki Tawhitikino ki Kawakawa Bay ki Waitawa ki Mataitai

According to Ngāi Tai korero there are old Ngāi Tai sites along this coastline from Pukorokoro (Miranda) near the site of one of the Tainui anchorage points. The Tawhitikino river of Orere is one of the boundary markers of Ngāi Tai that indicate the area in which shared interests to the south overlap with other iwi. These ancient links predate the emergence of Te Uri o Pou and the later expansion of another Iwi of Hauraki.

Papanui is the prominent headland north of Tawhitikino and Puhirua stream which is a Pa site of ancient times. Tokawhero refers to the rocks along the west facing shore of Raukura Point and is also the name of a prominent Ngāi Tai / Te Uri o Pou rangatira connected to significant events in the area. Raukura was formerly occupied by Ngāi Tai, Ngāti Kohua and Te Uri o Pou who then lived as one people. Whilst subsequent events and later occupations brought other influences into play, members of Ngāi Tai and related hapu have maintained connections into the area to the present time.

Te Whatu o Maru Pā marks the eastern boundary of lands that were gifted by Maruwhenua and Hikapouri (Ngāti Kohua) to another Hapu following the death of Te Mahia. Although damaged by quarrying, the remainder of the Pā still contains many important cultural and archaeological features. Te Whatu o Maru is also the name of Ngāi Tai taonga still held by our people today.

Te Karaka is the name of a stream and the kainga in the Kawakawa Bay area situated near the mouth of Te Karaka. Mere Mahu Horohinu of Ngāi Tai and Ngāti Kohua was a prominent leader of Te Karaka community during the mid-late 1800s. Pawharangi is the foreshore area between Te Karaka and Taupo-Rautawa stream containing numerous intertidal urupa. These urupā are predominantly associated with ancestors of another iwi but there are important shared histories and traditions with Ngāi Tai.

Taupo is the traditional name for the eastern extent of Kawakawa Bay between Te Iwiraiahai and Te Whatu o Maru. It is also the name of the main stream emerging into the bay. The whole of Taupo is considered a wāhi tapu by Ngāi Tai and others. There are urupā within the foreshores from end to end and also further inland. Taupo was the site where Te Mahia was killed, subsequent to the death and interment of Te Mahia's son Te Haupa in the same place. The whenua was declared eternally tapu and reserved as urupā. Taupo was also affected by the Musket wars of the 1820s and around 200 local people were killed and buried here in a mass grave. Ngāi Tai have shared ancestral interests here.

Pawhetau was a Pa constructed by Ngāi Tai during the 1500s possibly 1600s and was occupied by Ngāi Tai and others until the 1820s. There are urupā dating to approximately AD 1600 on the seaward terraces. The Pā was one of the main strongholds of Ngāi Tai during the 1700s. Ngāi Tai maintained their interests in this and other important wāhi tapu such as Te Kohekohe a small coastal gully, situated inside the south edge of Pawhetau Point, and a broader name for the surrounding area. Te Kohekohe was sacked in the late 1700s to avenge the death of Ngatara. Following the death of Te Karamu a tapu was put in place reaffirming the tapu associated to earlier bloodshed of Ngāi Tai and others in the area. Waitawa Bay takes its name from a stream near Pawhetau and was originally a settlement area of Ngāi Tai and subsequently others. Waipatukahu is a stream and also a wahi tapu site on the flats and foreshore of Waitawa Bay. This area, as well as Orakau, were battle sites involving Ngāi Tai and others.

Motukaramuramu has traditionally been an area of shared interests for Ngāi Tai as this island is known for the Karamuramu shrub which had traditional uses as medicine and in rituals carried out by Ngāi Tai Tohunga.

Mataitai is the overarching name for a vast tract of land extending from Te Urungahauhau inside the mouth of the Wairoa Rivers east bank and outward as far as Waitawa at the north-western

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

edge of Kawakawa bay. The takiwā of Mataitai is the ancestral heartland of Ngāti Kohua of Ngāi Tai. Within that tribal heartland, Mataitai Pā and its adjoining kainga of Kaihuru, Tupoki, Te Kauri, Rotopiro, Whakatiri, Potaekete and Opakau are of high cultural significance. Ngāi Tai shared interests in a flourmill that was established at Rotopiro in 1852 and Whakatiri was set aside as an education reserve in 1929.

Koherurahi is a major headland pa of Ngāi Tai and Ngāti Kohua located west of Te Aroaro boundary and has been contiguously occupied by Ngāi Tai and Ngāti Kohua. This Pā overlooked the prolific fishing waters close to Kauri Bay and the Wairoa River hence the name Koherurahi referring to the abundance of the Koheru, a type of mackerel.

Whakakaiwhara ki Umupuia ki Maraetai ki Okokino

Is the name of the peninsula and headland Pā that provided the shelter for the Tainui Waka from te hau marangai (easterly gale). It was here that a number of the crew went ashore and made a feast from the fruit of the Kiekie vine known as “whara”. Therefore they called this place Te Whaka-kai-whara from the act of feasting on this delicious and plentiful fruit. This peninsula was the permanent home to many Ngāi Tai as part of an extensive complex of Kainga and Pā in this vicinity.

Te Huna a Tane and Tokamai was where Tanewhakatia came ashore from the Tainui and planted the kopi that became the sacred karaka grove that is known to this day as Te Huna a Tane. Tanewhakatia was left here as Kaitiaki when Tainui moved on to explore the coastline to the North. The long bay on the north coast of Whakakaiwhara came also to be known as Te Huna a Tane. Tokamai is the name of the rocky headland between Te Huna a Tane and Te Whanake a large bay close to the Umupuia reserve, a site of ancient occupation used up to the 1800s.

Wainui Bay In early Land Court maps is now known as Umupuia Beach. The stream at the eastern end of the Beach is known as Te Kuti or Te Kuiti. It was in proximity to Te Kuti that a hangi was laid down, an underground spring was activated by the heat, the resulting explosive result caused the name Umu- puia (earth oven of erupting steam) to be applied to the place. Umupuia has long been a centre of Ngāti Tai and Ngāi Tai gatherings and occupation and is the site of the current Ngāi Tai marae.

Te Waiomaru is a stream between the headlands of Papawhiti Pa and Te Aute. The name derives from the Ngāi Tai ancestor Maruwhenua. Te Waiomaru was among the lands gifted to Te Raukohekohe’s followers by her husband Te Whatatau and his people around the late 1600s. Waiomaru as a name has over time become Waiomanu to many people.

Papawhiti – the place of gathered forces – is a small headland Pā commonly referred to as Maraetai Pā and Waiomanu Pā. This pā supported a population of around 200 people from the 16th century onwards. Ohinerangi is the large sacred stone on the beach at Maraetai between Pohaturoa and Papawhiti Pā. Named for the Turehu ancestress of Ngāi Tai known as Hinerangi or Hinemairangi. The stone is said to be Hinerangi herself turned to stone as the result of Te Pakurangarahihi (battle of the sun’s rays), and she acts as a Mauri and Kaitiaki of the Maraetai foreshores, protecting Ngāi Tai from the effects of seismic and volcanic activity.

Pohaturoa (also Powhaturoa) refers to the coastal settlements of Ngāi Tai extending between the boundary marker of Waipara Stream and the Ohinerangi stone. Pohaturoa is also identified among the lands gifted by Te Uri o Te Ao of Ngāti Tai to the descendants of Te Whatatau and Te Raukohekohe. The Principal chiefs of Pohaturoa between the 18th and 19th centuries descended from the two younger sons of Te Wana named Te Hangaiti and Te Whatata.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Waipara is the stream that emerges at Maraetai beach at the western end and marks the northwestern boundary of the Pohaturoa block with the kowahatu Ohinerangi being another marker. Para is the Ngāi Tai name for the giant Kokopu and hence the name Waipara.

Maraetai was the name given to the sea offshore of the Umupuia and Pohaturoa coast and inside Te Arai-roa (Waiheke Island). In later times the headland now known as Te Pene Point around to Omana became generally known as Maraetai. In describing the takiwā of “The land of Te Wana” Anaru Makiwhara named the area between Omanawatare and Waipara as Maraetai. This became the site of The Fairburn Mission Station and school, the first in the district.

Te Tahua is the name of a rocky outcrop just offshore from Omanawatare Pā and had significance as a marker and kaimoana reef.

Omanawatare was named after Manawatare the Ngāi Tai ancestor who arrived in this area shortly before the Tainui waka who left his mark, (Te Tuhi a Manawatare) on a large Pohutukawa tree as an indicator for those following to know this was a good safe place to settle. Manawatare came by way of Hauraki leaving his mark in various places. It was here at the place now known as Omana and at Tuwakamana Pa that Manawatare is best remembered for leaving his mark known as “Te Tuhi a Manawatare”. There is a large pohutukawa at Tuwakamana (Cockle Bay) that bears a plaque in commemoration of this important event in the history of the Howick and Maraetai district. The fortified Pā and other wāhi tapu features are thought to date from the early 1600s. Eroding coastline has revealed a number of Pohutukawa burials in the cliff faces and foreshore that have been analysed and provide Radio carbon dating to that period. The significance of the Pohutukawa as a marker for events including burials is highlighted by these Ngāi Tai histories.

Te Rua Tauiroha means “the cave that contracts and expands”. Consistent with the tradition of intertidal burials and the significance of the Pohutukawa, this cave situated between Te Puru and Omana opened and closed with the tides, and was associated with rituals of arrivals and departures both physical and spiritual. These areas and the large Pohutukawa presiding over them were sacred sites to Ngāi Tai and are considered wāhi tapu to this day.

Te Puru was for centuries a burial ground of Ngāi Tai of Omanawatare and those residing between Mangemangeroa and Te Puru. Te Puru is now a sports field. While developing the fields, against Ngāi Tai wishes, a number of centuries old burial sites were disturbed. These kōiwi were reinterred and a section of the grounds were reshaped to form a burial mound that is marked by a carved Pou.

Te Kawau is the prominent headland lying between Sunkist Bay and the west end of Shelly Bay at Beachlands. This was a headland Pā overlooking mara kai (gardens) nestled in the bay and the outlook over the bay allowed observation of the waka passages to Tuwakamana and the important Pā Te Naupata and the Mangemangeroa and Turanga estuaries. The Shelly Bay Reserves east of the point contain surface midden and other evidence of long established kainga and occupation over many centuries.

Te Paritu situated at the eastern end of Sunkist Bay, Te Pari Tu (the upstanding cliff face) is the small islet adjacent to the headland of Te Kawau. The small bay sheltered inside Te Paritu was another pre-European agricultural area. Paritu is also the name of an important Ngāi Tai ancestor, he was the son of Potaka younger brother of Te Kuraiawhetu and the father of Tāmaki Te Ao.

The name Kahawairahi indicates the plentiful waters of the Beachlands, Whitford embayment. The site of the present day Pine Harbour Marina, these protected waters and coastlines were occupation sites of longstanding, containing extensive modified gardening soils with the highest concentrations of midden, pits and terraces situated between the now Pine Harbour marina and the Waikopua Creek mouth. The rich nature of the area and the immediate proximity to the famed kumara gardens of Motukaraka attracted attention over the centuries and the region was subject to

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

a number of devastating raids between the 17th and early 19th centuries. Ngāi Tai have regard for many Wāhi Tapu in this area.

Kauriwhakiwhaki was an important access point to Motukaraka and is the area now known as Beachland. Kainga and gardens were extensive in this area.

Te Awakarihi is a major Pā standing inland and upstream of Waikopua. These were fishing settlements renowned for extensive drying racks and food storage areas. Kumara gardens adorned the gentle north facing slopes which were also suitable for Taro and Hue.

Tuwakamana is the abbreviated form of Te Tauranga Waka a Manawatere (the landing place of Manawatere). Both the headland Pā and the beach below carry the name Tuwakamana. The Pā and its associated cultivations were settled by Manawatere's Ngāi Tai followers, upon their arrival in the area soon after him aboard the Tainui Waka. Over time later generations constructed the fortifications of the Pā around the 1600s. Tuwakamana was one of the many Pā Ngāi Tai retreated from in the face of the Musket raids of the 1820s, becoming wāhi tapu because of the many deaths caused by these new weapons.

Paparoa Pā was situated on the high ground above the coast that forms the present day Howick. The coastal landscapes between Turanga and Te Naupata were intensively occupied and cultivated and the villages and people were afforded protection by the likes of Paparoa Pā. However the abundance attracted hostilities in the 17th century and the Pā was pillaged at that time. Although the Pā itself was not reoccupied and became wāhi tapu the wider area continued to be occupied and cultivated by Ngāi Tai.

Te Rae o Hinerangi is named for the "brow of Hinerangi" the Turehu ancestress. This place name applies to the volcanic structures extending into the sea from the foreshores of Paparoa to Ngataierua. There are many archaeological features including ancient and unique modified gardens and soils extending from here to Te Naupata along Te Okokino (Eastern Beachlands).

Te Wai o Taikehu ki Waitematā

Te Wai o Taikehu (Tāmaki River), also called Otaiki and Te Waimokoia. The name Te Wai o Taiki was given by the Ngāi Tai ancestor Taiki and refers specifically to the mouth of the Tāmaki River. The name Te Waimokoia is the proper name for the whole of the Tāmaki Estuary, and was named after the guardian Taniwha of Ngāi Tai and Tainui called Mokoiahikuwaru. According to Anaru Makiwhara it was Taikehu who named the awa Te Waimokoia, and therefore another name is Te Wai o Taikehu, another korero suggests that Taiki is another name for Taikehu. This awa was a main thoroughfare for waka wanting to portage through to the west coast and as such was a main trading route providing passage past many Pa and trading centres of Ngāi Tai and their related tribes.

Waiorohe (Karaka Bay) was a mooring site of Tainui waka inside the west heads of the Tāmaki. From here Horoiwi left the waka and settled with the Tangata whenua at Te Pane o Horoiwi. Te Keteanataua and Taihaua disembarked and made their way to Taurere, whilst Taikehu and others of Ngāti Tai/ Ngāi Tai went on by foot to explore the upper reaches of the river and the shores of the Manukau Harbour. The Karaka trees of the bay descend from the sacred Karaka grove Te Uru-Karaka a Parehuia of Taurere Pa. Te Waiorohe was the site of a great battle at which some important ancestors of Ngāi Tai were killed. Te Waiorohe was also the scene of the first of Aucklands two Treaty of Waitangi signings on 4th March 1840. Although this signing largely involved another Iwi it is said that some Ngāi Tai rangatira were present and signed with others.

Te Pane o Horoiwi headland was known by an earlier name, Te Upokotamarimari. When Horoiwi arrived on the Tainui he sighted this headland giving it the ancient Ngāi Tai and Ngā Oho name Te Pane o Horoiwi. Horoiwi went ashore there, marrying Whakamuhu, chieftainess of the Tangata

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Whenua. In due course the people of Whakamuhu and Horoiwi became simply known as Horoiwi and merged over time with Ngāi Tai and later Waiohua, consequently the history of Te Pane o Horoiwi and origins of the name are sometimes also associated with Te Naupata peninsula on the eastern head of the Tāmaki River. With the escalation of warfare between Northland peoples and the Tāmaki, Hauraki and Waikato districts of Tainui, Te Pane o Horoiwi became a frequent landing site for invading ope taua during the late 18th and 19th centuries. Ngāi Tai became embroiled in some of these conflicts in support of their Hauraki relations and continued to share occupation well into the 1800s.

The headland Pā Whakamuhu and associated kainga were situated west of Te Pane o Horoiwi with some sources saying that the name of the Pā was not after the ancestress Whakamuhu herself but after the ambush (Whakamuhu) of her father who had been killed there. His daughter had been given the name Whakamuhu in memorial of his death, before she married Horoiwi.

Te Whanganui (St Heliers Bay) was known because of its importance as a landing site for Waka arriving at the Tāmaki Heads from Te Waitemata or further north.,

Te Matarae a Mana “The eyebrow of Mana“ is the headland named after the (Ngāi Tai /Te Kawerau) ancestor Manaoterangi who built his Pā here in the mid 1700s. Ngāi Tai share interests at Te Matarae a Mana and also in the associated shark fishing grounds.

Te Onewa Pā is situated at the end of Northcote Point and protected kumara gardens and fishing grounds. The name refers to the ditch separating the fortified point from the mainland and is also the name of a type of stone used in digging trenches of that type. Held by Ngāti Tai / Ngāi Tai from the time of Tainui settlement, Te Onewa was attacked repeatedly throughout the 17th and 18th centuries. The fluctuating tides of fortune saw Ngāi Tai and their allies come and go but continue their occupation up until the time of the Musket Raids when they were forced to vacate until about the 1830s at which time they reoccupied the Pa and remained in occupation during Heteraka Takapuna’s time.

Te Haukapua ki Takapuna

A celebrated landing site of important waka, Kupe is said to have landed here briefly en route to the far north from Hauraki and named it Te Haukapua. Toi Te Huatahi also visited here and a section of his people Te Tini o Toi led by his grandson Uika settled in the vicinity at Maungauika. Te Haukapua was also a landing site of the Tainui from whence Ngāti Tai/ Ngāi Tai ancestors disembarked after being welcomed by the Tangata Whenua. Most notably the sand bank at Te Haukapua was accorded several names all associated with the arrival of Tainui waka and the ancestor Taikehu, they are; Te Ranga o Taikehu , Te Kauanga o Taikehu, and Te Tahuna o Taikehu. All of these names relate to the incident when Tainui waka came fast on a sandbank and then Taikehu swam ashore to meet the local inhabitants, also ancestors of Ngāi Tai. In the traditions of Ngāi Tai there have been foreshore burials noted and other archaeological evidence consistent with Ngāi Tai practices some of which date back to the early 1100s, supporting the Ngāi Tai korero of ancient occupation.

The knoll (taka) from whence the Ngāi Tai ancestor Taikehu drank of the sacred wellspring (puna) for which Takapuna is named. The drinking from these freshwater springs by Taikehu and their becoming a wāhi tapu is a prominent feature of Ngāi Tai’s earliest claims to whenua between Takapuna and the Tāmaki River. This name Takapuna also commemorated an earlier wellspring in Hawaiki , known to Taikehu and his people. Takapuna of North Head flowed from a small cave in the volcanic rock of Maungauika above Te Haukapua and continued to do so until circa 1900 when the Pākehā dug a drainage channel beneath Maungauika thus destroying the ancient spring. Following settlement with the people of Maungauika, Taikehu’s Ngāti Tai/ Ngāi Tai people and the hapu of Ngāti Taihaua extended mana whenua throughout Takapuna and Waitemata. The mana of Ngāi Tai was further strengthened over Takapuna and surrounding districts under Taimaio and

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

later Taihua. The 19th century Ngāi Tai rangatira Heteraka Takapuna also known as Heteraka Te Hehewa (grandson of Te Hehewa) was named Takapuna in recognition of Ngāi Tai's ancestral connections to Takapuna and the North Shore.

Tiritirimatangi ki Te Kawau Tu Maro o Toi ki Mahurangi

Through Ngāti Taihaua ancestry shared with other close relations there emerged the later descent groups of Ngāti Kahu and Ngāti Poataniwha through whom Ngāi Tai ki Tāmaki established shared occupation of the North Shore and Upper Waitemata Harbour, going on to extend mutual interests along the Mahurangi coastline as far north as Orewa and Te Arai Point. Through Ngāti Taihaua, Ngāti Kahu and Ngāti Poataniwha ancestry, Ngāi Tai Ki Tāmaki and others hold shared interests in the adjacent islands of Rangitoto, Tiritirimatangi and Te Kawau Tu Maro o Toi.

It is a Ngāi Tai Tradition that through the relationships of Taihua with subsequent aggressors Ngāi Tai enjoyed ongoing occupation of those places. During hearings into land transactions that were ongoing post 1840 Ngāi Tai Rangatira continued to assert their whakapapa and claims to this entire area and to these motu.

Nga Poitu o te Kupenga a Taramainuku

The chain of islands within the Hauraki Gulf / Tīkapa Moana became collectively known as Nga Poitu o Te Kupenga a Taramainuku (The Floats of the net of Taramainuku). Taramainuku was a descendant of Toi. Through ancient whakapapa and ongoing use and occupation, Ngāi Tai maintained their associations to all of these islands not already mentioned, including but not limited to; Motuhurakina (Rakino Island), Motuhoropapa and Otata (Noises Group), Oruapuke, Waiheke, Te Pounui a Peretu (Ponui island) and Pakihi. Pakihi hosted pa sites and observation platforms that observed and marked the passage of waka as they approached the heartland of Ngāi Tai. The passage between Pounui island and Pakihi island, Pauhenehene, was marked by a great pou which signified an ancient marker point on the waka route into the Maraetai Moana. Te Rangi-i-totongia ai te ihu a Tamatekapua and Motutapu have always been significant motu for Ngāi Tai.

Motukōrea

Ngāi Tai tradition says that Tainui waka called at the island during the exploration of Tāmaki. There are four recorded Pa sites on the island, stone field gardens, and other stone structures, numerous kainga and archaeological features including midden dating to the archaic period (pre 1200) indicating that the Toi/ Maruiwi ancestors of Ngāi Tai probably lived here prior to the arrival of the Tainui waka. Motukōrea and Motutapu were among the most intensely settled of all the Hauraki Gulf / Tīkapa Moana islands, due to the fertile volcanic soils. In addition to gardening and fishing activities, the people of Motukōrea were engaged in stone working and ancient artefacts found on the island include worked moa bone, fishhooks and worked stone from as far afield as Aotea and the Coromandel Peninsula. The strategic position of the island coupled with Te Waiarohia enabled Ngāi Tai ease of waka access to the Tāmaki River when approaching from Te Maraetai. Later Ngāi Tai and Tara Te Irirangi were instrumental in allowing and assisting a prominent settler to arrive and live on the island.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Kiripaka Wildlife Scenic Reserve (as shown on deed plan **OTS-403-129**)

Mataitai Forest Conservation Area (as shown on deed plan **OTS-403-115**)

Mātaimitai Scenic Reserve (as shown on deed plan **OTS-403-115**)

Papa Turoa Scenic Reserve (as shown on deed plan **OTS-403-119**)

Te Morehu Scenic Reserve (as shown on deed plan **OTS-403-126**)

Wairoa Gorge Scenic Reserve (as shown on deed plan **OTS-403-118**)

Whakatiri Scenic Reserve (as shown on deed plan **OTS-403-115**)

All of the above lie within the core territory of Ngāi Tai, including within the Hūnua Ranges or adjacent to the Wairoa River. The ranges themselves are known to Ngāi Tai as Te Ngāherehere ō Kohukohunui. The Wairoa River originates in the ranges, including the falls known to Ngāi Tai as Hihītorapa.

Te Waiaroaro (Ness Valley) is on the northern face of the Hūnua Ranges and from there Ngāi Tai accessed Kiripaka, Mātaimitai and Turoa, via Moumoukai. Te Waiaroaro also provided access to the Hūnua Ranges from Ngāi Tai's main settlement sites along the Wairoa River and the Umupuia/Maraetai coast.

This Ngāi Tai bush hinterland, with its bird catching grounds, rat runs, waterways full of fat tuna and kōura, provided food, rongoa Maori and timber resources.

The forest also served as a wāhi tapu, with trees containing the bones of ancestors, burial caves, and sacred teaching sites marked by 70 Pou Whenua; it was also the home of an ancient hāhi (spiritual belief) known as Tāhere Manu, focused on bird-lore that was particularly associated with Ngāi Tai.

1: STATEMENTS OF ASSOCIATION

Motutapu Island Recreation Reserve (as shown on deed plan **OTS-403-130**)

Ngāi Tai ki Tāmaki's association with Motutapu goes back to the time of the tupuna Taikehu, who named the island Motutapu, "after a Peninsula called Motutapu at the north end of Rangiatea", the island from which the *Tainui* had begun its voyage to Aotearoa. To Taikehu's descendants in the area, the island became known as "Te Motu tapu a Taikehu", or "The Sacred Island of Taikehu".¹ Taikehu's people on Motutapu were all but destroyed in the eruption of Rangitoto that occurred c.1400 AD, with only a small remnant escaping by waka to rejoin their Ngāti Taihaua kinsfolk on the mainland. Thus, Te Motu Tapu a Taikehu is a highly significant wāhi tapu of Ngāi Tai. Archaeological evidence for this event exists in the form of ash footprints preserved at the Sunde Site, near Pūharakeke (West Point/Northwest Bay) on the northwestern coast of the island.² Naturally, the 'Sunde Site' of Pūharakeke is a site of tremendous significance to Ngāi Tai ki Tāmaki today. Nearby is an important coastal kāinga and stone-working site, containing evidence of both extensive adze manufacture, and multiple layers of occupation.

The first rangatira to re-occupy Motutapu after the eruption (sometime around the mid-late 1600s) was Kūpapa, who was leader of the Ngāi Tai hapū known as Ngāti Tai Horokōwhatu. From his Pā at Motutapu, Kūpapa also controlled the islands of Motukōrea, Motuihe, Motuhurakina (Rakino), Ōtata, Motuhoropapa, Ōruapuke &c. Kūpapa died and was buried at Motutapu, and was succeeded by Tāmaki Te Ao of Ngāti Tai/Te Uri o Te Ao, whose main pā was Te Tauroa on the nearby island of Te Motu a Ihenga (Motuihe). Like Kūpapa before him, from Te Tauroa Pā, Tāmaki Te Ao also held dominion over Motutapu and neighbouring islands.

The historic traditions indicate that Ngāi Tai ki Tāmaki maintained tangata whenua status on Motutapu consistently from the time of Kūpapa in the mid-1600s until the signing of Te Tiriti o Waitangi.

Some sites on the island have connections to Ngāi Tai that are even more ancient than the arrival of the *Tainui* waka. For example, Te Pēhi o Manawatere (Home Bay) is so named because it is where the body of the ancient tupuna Manawatere was washed ashore after he was drowned at Ōrāwaho. Manawatere is significant to Ngāi Tai ki Tāmaki because he first made landfall in the Mangemangeroa-Maraetai area, bestowing names on landmarks and leaving his tuhi (mark) on a pōhutukawa tree as a guide for his Ngāi Tai relatives.

The ancient wahi tapu of Te Warowaro, Mōruru, Hukunui, Ōrāwaho and Te Wairere are all situated toward the southern end of the motu. Although the precise locations of three sites named by Te Tara are unclear, it seems that Te Toki and Pēhimatawhā are situated near Mōrurunga on the southeastern coast of the island, while Ngāraparapa is evidently near the opposite coastline of the Ōrāwaho channel, a short distance south of Hukunui.

Significant sites on Motutapu include:

1. Pūharakeke "The Sunde Site" (West Point/Northwest Beach) (N38/24)
2. Te Pēhi o Manawatere (Home Bay) – Te Mokonui a Hei Pā.
3. Te Manawa Pā (Emu Point)

¹ Murdoch, Graeme, "He Korero Tawhito mo Rangitoto", 1991, p. 8; citing: Kelly, *Tainui*, 1949, p. 2.

² The site was first discovered by archaeologist Rudi Sunde in 1958 when he noted a collection of artifacts that were eroding onto the beach. The area has been called the Sunde site ever since.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

4. Raupōiti (Administration Bay)
5. Hukunui (Pa Paddock)
6. O-Roropupu Pā (Station Bay Pa Site)
7. Te Wairere (Orawaho Passage – Gardiners Gap)

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Motuihe Island Recreation Reserve (as shown on deed plan **OTS-403-125**)

Motuihe along with Motutapu and Rangitoto have been the subject of Treaty Grievance claims for redress for Ngāi Tai since the 1800s. Motuihe is one of the chain of islands forming the northern boundary of 'Te Maraetai' (the 'Enclosed Sea'), part of the core maritime territory of Ngāi Tai ki Tāmaki.

Around the late 1600s, the Ngāi Tai ki Tāmaki chief Tāmaki Te Ao (sometimes called 'Takataka') had his principal Pā at Te Tauroa on Motuihe. Today Tāmaki Te Ao is represented in whakairo as one of the Amo (entrance pillars) of the Tupuna Whare at the Ancestral Marae of Ngāi Tai at Umupuia. The Amo on the other side of the house is Te Whatatau the Tupuna on whom we base our current Claims Mandate. Thus highlighting the importance of the man and the Island of Motu a Ihenga to Ngāi Tai.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Mutukaroa / Hamlin Hill (as shown on deed plan OTS-403-124)

Mutukaroa has been described as the largest undefended prehistoric village site in the Auckland area. It is situated amongst the volcanic soils of the Tāmaki isthmus as these were very fertile and free draining grounds. It was one of the hills that were surrounded by higher volcanic cones allowing for house sites to be built in relative safety from enemies.

There were many houses and storage pits on Mutukaroa as it was cultivated with large gardens down the slopes of the hill. Food was abundant and Mutukaroa was a strategic storage site for the trading route from Tāmaki to Manukau and thence to Waikato.

It is an area where Taihaua lived (a very early link to Ngāi Tai) and his descendant Te Rangikaketu fought alongside his whanaunga Kiwi Tāmaki against Te Taou. However Te Rangikakaetu had previously warned Te Taou that they should arm themselves with patu whilst delivering food to Kiwi. This warning was remembered and he and at least some of his people were not attacked when, in subsequent battles Kiwi was killed and many of his Pa in Tāmaki were taken. Te Rangikaketu was able to continue to occupy his ancestral pa sites and along with his son Te Hehewa maintained Ngāi Tai rangatiratanga. They had not one but many sites in Tāmaki with Mangere, Otahuhu, Rarotonga and Mutukaroa amongst them.

Evidence that early Ngāi Tai ancestors occupied Mutukaroa can be drawn from the transfer of Ōtāhuhu lands, inclusive of Mutukaroa, to a CMS missionary in 1838, as the signatories included chiefs with particular affiliations to Ngāti Te Rau hapū of Ngāi Tai, such as Herua Te Kahukoti and Wakaturia. Hōri Te Whētuki was also a participant, and Hetaraka Takapuna was later presented with three priceless mere pounamu from the original vendors in recognition of his interests in both Ōtāhuhu and adjoining Te Tauoma lands near Panmure.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Stony Batter Historic Reserve (as shown on deed plan **OTS-403-120**)

Te Matuku Bay Scenic Reserve (as shown on deed plan **OTS-403-121**)

The Ngāi Tai name for present-day Waiheke Island is Te Motu Ārai-roa (“The Isle of Long Shelter” or “Long Sheltering Island”), describing an important relationship between the island itself, and the adjoining ocean passageway of Te Maraetai (Tāmaki Strait). The primary Ngāi Tai interests at Waiheke fall within the south-eastern and central portions of the motu, particularly at Te Huruhe (Man o’ War Bay), Te Matuku, Te Awaawaroa, Whakanewha, Kauakarau, Te Pūtiki o Kāhu, and Rangihoua.

At the southeastern end of Waiheke, the lands between Waitī, Te Huruhe, Te Matuku and Te Awaawaroa represent an area of shared interest between Ngāi Tai and a hapu of another Iwi.

On the Maraetai-facing southern coastline of Waiheke, between Te Matuku, Te Awaawaroa, Whakanewha and Kauakarau, two other Iwi bore witnesses before the Native Land Courts consistently stating that their interests in these areas devolved from their common Ngāi Tai ancestress, Parekaiangaanga. These areas encompass the greater part of the current DOC lands at Waiheke.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Turanga Creek Conservation Area (as shown on deed plan **OTS-403-123**)

Ngāi Tai oral tradition states that while exploring this bay, *Tainui* entered the mouth of the Tūranga Estuary, where the waka was tethered to a large volcanic rock 'in the shape of a man', giving both the name and Mauri to the Awa and its surrounds hence the name of that area, Tūranga, meaning Anchorage or Standing Place. The Tūranga estuary is among the many important landing sites of *Tainui* waka in Ngāi Tai tradition as it marks the departure site from *Tainui* for those Ngāi Tai ancestors who originally settled the valleys of Te Waipaparoa.

While their names are not remembered today, tradition records that these people were the relatives and followers of Manawatere, and were closely connected with the Ngāi Tai and Ngāti Tai people of Taikehu, Horoiwi, Tāiki, Te Keteanatāua and Taihauā.

The significance of the Tūranga Estuary in particular, however, is as the major waka entrance and landing site providing access into the wider Waipaparoa settlement areas.

Ngāi Tai descendants still point out a large volcanic stone in the Tūranga estuary as the anchor stone of *Tainui*.

Tūranga was also the name given to a hill overlooking the river's west bank, and the Pā/kāinga settlements centred on Tūranga Maunga. The chief Tanumeha (Meha) Te Moananui in particular is the best known Ngāi Tai identity of the early European period, and is said to have been buried at Tūranga Maunga in the late 1870s.

DOCUMENTS

1: STATEMENTS OF ASSOCIATION

Wairoa River and tributaries (as shown on deed plan **OTS-403-127**)

Papepape Marginal Strip (as shown on deed plan **OTS-403-122**)

The Wairoa River is central to the identity, heritage, mauri and mana of the Ngāi Tai people, as exemplified by the Ngāi Tai pēpehā “Ko Te Wairoa Te Awa”. Te Wairoa is continually referred to by Ngāi Tai elders as being the life-source, and life-blood of the people.

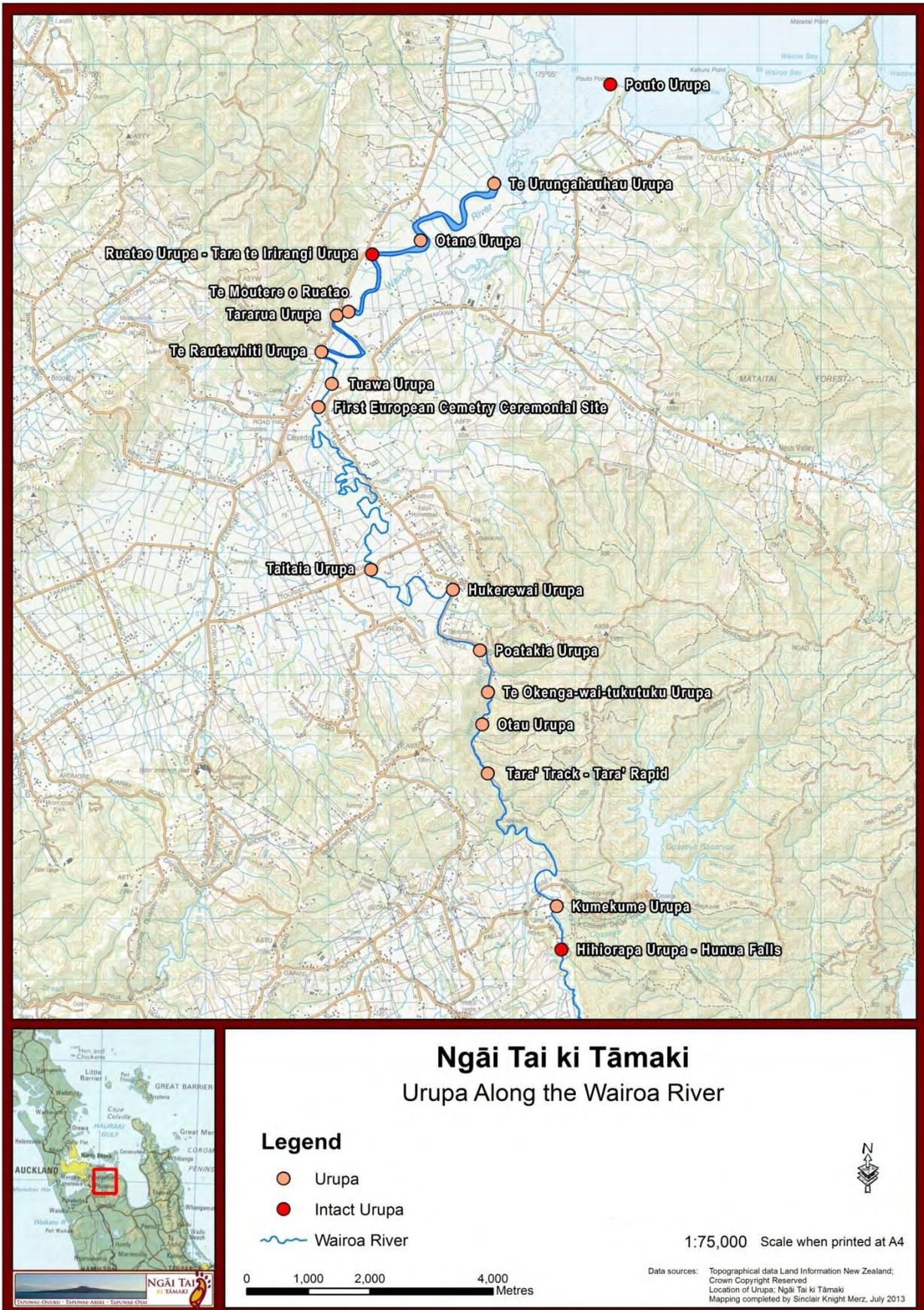
Ngāi Tai occupation of the Wairoa River has been continuous and unbroken from the time of the arrival of Tainui waka to the present day. Ngāi Tai’s earliest association with the Wairoa stems from Tainui’s anchorage inside the Whakakaiwhara Peninsula, where crew members went ashore and established Ngāti Tai manawhenua. Ngāi Tai of the Wairoa Valley were also part of the wider grouping known as Ngā Iwi, later confederated as Te Wai o Hua. Ngāi Tai and Ngā Iwi established many pā, kāinga, and other sites of significance along the river, illustrated by the map on the next page.

By the mid–late 17th Century, Te Wairoa was controlled by Te Uri o Te Ao; a hapū of Ngāi Tai and Te Wai o Hua. Ngāi Tai/Te Uri o Te Ao rangatira of Te Wairoa from this period included Tāmaki Te Ao and his son Te Whataatau. The principal homes of the Uri o Te Ao leadership were at Whakakaiwhara and Te Oue Pā near the river’s mouth. They also controlled the inland territories between Papakura and Manukau, the Maraetai coastline, and its outlying islands.

At the time of Te Hekenga Tokotoru (late 1600s–early 1700s) the Ngāi Tai people of Te Raukohekohe and her sisters from Tōrere were gifted lands up the river and along the Maraetai coastline, due to the marriage of Te Whataatau to Te Raukohekohe and her sister Te Mōtū ki Tāwhiti. The Ngāi Tai hapū, Ngāti Te Rau evolved from this union and settled along the Wairoa River and Maraetai districts.

By the early 1800s, the Wairoa River, Valley and Embayment remained the core territory of Ngāi Tai (particularly Ngāti Te Rau and Te Uri o Te Ao). Along the west bank, Te Irirangi built new pā at Te Tōtara and Te Nīkau prior to the 1820s. Heavy loss of life occurred at Te Tōtara Pā and other locations along the river’s west bank during the Musket War invasions. Despite these depredations, Ngāi Tai continued to occupy the upper reaches of the river and the forested high country of the surrounding valley throughout this period. By the 1830s, if not before, they had resettled the lower reaches of the Wairoa and adjacent coastline of Umupuia under the chiefs Tara Te Irirangi, Nuku, Te Waru and Wī Te Haua.

1: STATEMENTS OF ASSOCIATION



2 DEED OF RECOGNITION

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

1 INTRODUCTION

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with –
- 1.1.1 Ngāi Tai ki Tāmaki (the **settling group**); and
 - 1.1.2 the trustees of the Ngāi Tai ki Tāmaki Trust (the **governance entity**).
- 1.2 In the deed of settlement, the settling group made statements of the settling group’s particular cultural, spiritual, historical, and traditional association with the following areas (the statutory areas):
- 1.2.1 Mātaitai Forest Conservation Area (as shown on deed plan OTS-403-115):
 - 1.2.2 Mātaitai Scenic Reserve (as shown on deed plan OTS-403-115):
 - 1.2.3 Papa Turoa Scenic Reserve (as shown on deed plan OTS-403-119):
 - 1.2.4 Stony Batter Historic Reserve (as shown on deed plan OTS-403-120):
 - 1.2.5 Whakatiri Scenic Reserve (as shown on deed plan OTS-403-115).
- 1.3 Those statements of association are –
- 1.3.1 in part 1 of the documents schedule to the deed of settlement; and
 - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statements of association in the Ngāi Tai ki Tāmaki Claims Settlement Act [**year**], being the settlement legislation that gives effect to the deed of settlement.

2 CONSULTATION

- 2.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning the settling group’s association with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to each of the following activities (the **identified activities**):
- 2.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977:

DOCUMENTS

2: DEED OF RECOGNITION

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

3 LIMITS

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

4 TERMINATION

- 4.1 This deed terminates in respect of a statutory area, or part of it, if -
 - 4.1.1 the governance entity, the Minister of Conservation, and the Director-General of Conservation agree in writing; or
 - 4.1.2 the relevant area is disposed of by the Crown; or
 - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister and/or Crown official.

DOCUMENTS

2: DEED OF RECOGNITION

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

5 NOTICES

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

Partnerships Manager
Department of Conservation
Ground Floor – Building 2
Carlaw Park Commercial
12-16 Nicholls Lane
Parnell,
Auckland 1010
Private Bag 68908
Newton
Auckland 1145
Fax +64 9 377 2919.

6 AMENDMENT

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

7 NO ASSIGNMENT

- 7.1 The governance entity may not assign its rights under this deed.

8 DEFINITIONS

- 8.1 In this deed -

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

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

deed of settlement means the deed of settlement dated [**date**] between the settling group, the governance entity, and the Crown; and

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

Governance Entity means the trustees of the Ngāi Tai ki Tāmaki Trust, as defined in the deed of settlement; and

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

DOCUMENTS

2: DEED OF RECOGNITION

Minister means the Minister of Conservation; and

settling group and **Ngāi Tai ki Tāmaki** have the meaning given to them by the deed of settlement; and

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

statement of association means each statement of association in part 1 of the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

statutory area means an area referred to in clause 1.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

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

9 INTERPRETATION

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

9.2 Headings do not affect the interpretation.

9.3 A term defined by –

9.3.1 this deed has that meaning; and

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

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

9.5 The singular includes the plural and vice versa.

9.6 One gender includes the other genders.

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

9.8 A reference to –

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

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

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

DOCUMENTS

2: DEED OF RECOGNITION

SIGNED as a deed on *[date]*

SIGNED for and on behalf of
THE CROWN by –

The Minister of Conservation in the
presence of -

WITNESS

Name:

Occupation:

Address:

The Director-General of Conservation
in the presence of –

WITNESS

Name:

Occupation:

Address:

DOCUMENTS

2: DEED OF RECOGNITION

Schedule

Copies of Statements of Association

Mataitai Forest Conservation Area (as shown on deed plan **OTS-403-115**)

Mātaimitai Scenic Reserve (as shown on deed plan **OTS-403-115**)

Papa Turoa Scenic Reserve (as shown on deed plan **OTS-403-119**)

Whakatiri Scenic Reserve (as shown on deed plan **OTS-403-115**)

All of the above lie within the core territory of Ngāi Tai, including within the Hūnua Ranges or adjacent to the Wairoa River. The ranges themselves are known to Ngāi Tai as Te Ngāherehere ō Kohukohunui. The Wairoa River originates in the ranges, including the falls known to Ngāi Tai as Hihītorapa.

Te Waiaroaro (Ness Valley) is on the northern face of the Hūnua Ranges and from there Ngāi Tai accessed Kiripaka, Mātaimitai and Turoa, via Moumoukai. Te Waiaroaro also provided access to the Hūnua Ranges from Ngāi Tai's main settlement sites along the Wairoa River and the Umupuia/Maraetai coast.

This Ngāi Tai bush hinterland, with its bird catching grounds, rat runs, waterways full of fat tuna and kōura, provided food, rongoa Maori and timber resources.

The forest also served as a wāhi tapu, with trees containing the bones of ancestors, burial caves, and sacred teaching sites marked by 70 Pou Whenua; it was also the home of an ancient hāhi (spiritual belief) known as Tāhere Manu, focused on bird-lore that was particularly associated with Ngāi Tai.

DOCUMENTS

2: DEED OF RECOGNITION

Stony Batter Historic Reserve (as shown on deed plan **OTS-403-120**)

The Ngāi Tai name for present-day Waiheke Island is Te Motu Ārai-roa (“The Isle of Long Shelter” or “Long Sheltering Island”), describing an important relationship between the island itself, and the adjoining ocean passageway of Te Maraetai (Tāmaki Strait). The primary Ngāi Tai interests at Waiheke fall within the south-eastern and central portions of the motu, particularly at Te Huruhē (Man o’ War Bay), Te Matuku, Te Awaawaroa, Whakanewha, Kauakarau, Te Pūtiki o Kāhu, and Rangihoua.

At the southeastern end of Waiheke, the lands between Waitī, Te Huruhē, Te Matuku and Te Awaawaroa represent an area of shared interest between Ngāi Tai and a hapu of another Iwi.

On the Maraetai-facing southern coastline of Waiheke, between Te Matuku, Te Awaawaroa, Whakanewha and Kauakarau, two other Iwi bore witnesses before the Native Land Courts consistently stating that their interests in these areas devolved from their common Ngāi Tai ancestress, Parekaiangaanga. These areas encompass the greater part of the current DOC lands at Waiheke.

3 PROTOCOLS



THE PRIMARY INDUSTRIES PROTOCOL WITH NGĀI TAI KI TĀMAKI

**Issued by
the Minister for Primary Industries**

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

PART ONE - RELATIONSHIP

PURPOSE

1. The purpose of this Primary Industries Protocol (the “**Protocol**”) is to set out how Ngāi Tai ki Tāmaki, the Minister for Primary Industries (the “**Minister**”) and the Director-General of the Ministry for Primary Industries (the “**Director-General**”) will establish and maintain a positive, co-operative and enduring relationship.

CONTEXT

2. The Protocol should be read in a manner that best furthers the purpose of the Ngāi Tai ki Tāmaki Deed of Settlement (the “**Deed of Settlement**”).
3. The Protocol is a living document that should be updated to take account of the relationship between the parties, future developments and additional relationship opportunities.

PRINCIPLES UNDERLYING THE PROTOCOL

4. The Ministry and Ngāi Tai ki Tāmaki are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to the Protocol. The relationship created by the Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
5. The parties recognise that to successfully implement the Protocol, the parties will need to work in partnership and in the spirit of collaboration.
6. The parties also acknowledge the below relationship and their importance to successfully achieve the purpose of the Protocol. These relationship principles provide that the Ministry and Ngāi Tai ki Tāmaki will:
 - a. work in a spirit of co-operation;
 - b. ensure early engagement on issues of known mutual interest;
 - c. operate on a ‘no surprises’ approach;
 - d. acknowledge that the relationship is evolving, not prescribed;
 - e. respect the independence of the parties and their individual mandates, roles and responsibilities; and
 - f. recognise and acknowledge that both parties benefit from working together by sharing their vision, knowledge and expertise.
7. The Minister and the Director-General have certain functions, powers and duties in terms of legislation that they are responsible for administering. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāi Tai ki Tāmaki and the Ministry. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

8. The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngāi Tai ki Tāmaki or with another iwi or hapū with interests inside the Protocol Area on matters that could affect the interests of Ngāi Tai ki Tāmaki.

PART TWO - SCOPE AND INTERPRETATION

SCOPE

9. The Protocol applies to agriculture (agriculture includes animal welfare and horticulture), forestry, fisheries, biosecurity and food safety portfolios administered by the Ministry for Primary Industries (the “**Ministry**”).
10. The Protocol does not cover processes regarding the allocation of aquaculture space, or the Treaty settlement processes established for assets held by the Ministry’s Crown Forestry unit.
11. The Ministry is required to provide for the utilisation of fisheries resources while ensuring sustainability, to meet Te Tiriti o Waitangi/the Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.
12. The Protocol applies to the Protocol Area as noted and described in the attached map (“**Appendix A**”).

DEFINITIONS AND INTERPRETATION

13. In the Protocol:
 - a. “**Protocol**” means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;
 - b. “**Protocol Area**” means the land area as noted in the attached map at Appendix A;
 - c. “**Crown**” means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by, the terms of the Deed of Settlement to participate in any aspect of the redress under the Deed of Settlement;
 - d. “**Fisheries Legislation**” means the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1983 and the Fisheries Act 1996, and any regulations made under the Fisheries Act 1983 and the Fisheries Act 1996;
 - e. “**Governance Entity**” and the “**trustees**” means the trustees of the Ngāi Tai ki Tāmaki Trust; and
 - f. “**iwi of Hauraki**” means the iwi referred to in clause 24 of this Protocol; and
 - g. the “**parties**” means the trustees of the Ngāi Tai ki Tāmaki Trust, the Minister for Primary Industries (acting on behalf of the Crown), and the Director-General of the Ministry of Primary Industries (acting on behalf of the Ministry for Primary Industries).

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

TERMS OF ISSUE

14. The Protocol is issued pursuant to section [insert number] of the [Ngāi Tai ki Tāmaki Claims Settlement Act][*date*] (the “**Settlement Legislation**”) and clause 5.12 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

PART THREE - FISHERIES

15. The Minister and the Director-General of the Ministry have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāi Tai ki Tāmaki and the Ministry.
16. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.
17. This Protocol must be read subject to the summary of the terms of issue set out in Appendix B.

INPUT INTO AND PARTICIPATION INTO THE MINISTRY’S NATIONAL FISHERIES PLANS

18. The Ministry’s national fisheries plans will reflect the high level goals and outcomes for fisheries. The plans will guide annual identification of the measures (which may include catch limits, research, planning and compliance services) required to meet these goals and outcomes.
19. There are five National Fisheries Plans, which relate to:
 - a. inshore fisheries;
 - b. shellfish;
 - c. freshwater fisheries;
 - d. highly migratory fisheries; and
 - e. deepwater fisheries.
20. The National Fisheries Plans are implemented through an Annual Review Report and Annual Operational Plan.
21. The Annual Review Report presents information on:
 - a. the current status of fisheries relative to the performance measures recorded in the National Fisheries Plans; and
 - b. the extent of the delivery of previous and existing services and management actions.
22. The Annual Review Report is developed through engagement with tāngata whenua about what future services are required to meet agreed objectives, address gaps in performance and meet tāngata whenua interests, including research, compliance and special permits. The Ministry will engage with the parties to produce the Annual Review Report.

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

23. The Annual Operational Plan will record the future services agreed through the Annual Review Report process to be delivered to fisheries for the next financial year (1 July-30 June). The demand for services is often greater than can be provided by the Ministry. The Ministry undertakes a prioritisation of proposed services to address competing interests.
24. The Ministry will provide for the input and participation of the twelve iwi of Hauraki, Ngāi Tai ki Tāmaki, Ngāti Hei, Hako, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Tara Tokanui, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngaati Whanaunga and, Te Patukirikiri which includes Ngāi Tai ki Tāmaki, into national fisheries plans through iwi forum fisheries plans. Iwi forum fisheries plans allow the Ministry to engage and involve iwi in fisheries management activities and national fisheries planning.

IWI FORUM FISHERIES PLANS

25. The twelve iwi of Hauraki collectively will have input into the relevant forum fisheries plan. The plan must incorporate:
 - a. the objectives of the iwi of Hauraki for the management of their customary, commercial, recreational, and environmental interests;
 - b. views of the iwi of Hauraki on what constitutes the exercise of kaitiakitanga within the Protocol Area;
 - c. how the iwi of Hauraki will participate in fisheries planning and management; and
 - d. how the customary, commercial, and recreational fishing interests of forum members will be managed in an integrated way.
26. The iwi of Hauraki, which includes Ngāi Tai ki Tāmaki, will have the opportunity to jointly develop an iwi fisheries plan that will inform the content of the relevant forum fisheries plan.
27. Any person exercising functions, powers and duties under sections 12 to 14 of the Fisheries Act 1996 will have particular regard to forum plans interpretation of kaitiakitanga (see section 12(1) (b) of the Fisheries Act 1996).

MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

28. The Ministry, with available resources, undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:
 - a. discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Protocol Area; and
 - b. making available existing information relating to the sustainability, biology, fishing activity and fisheries management within the Protocol Area.

RĀHUI

29. The Ministry recognises that rāhui is a traditional use and management practice of Ngāi Tai ki Tāmaki and supports their rights to place traditional rāhui over their customary fisheries.

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

30. The Ministry and the Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. The Governance Entity undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngāi Tai ki Tāmaki over their customary fisheries, and also the reasons for the rāhui.
31. The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngāi Tai ki Tāmaki over their customary fisheries, in a manner consistent with the understandings outlined in clause 29 of this Protocol.
32. As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngāi Tai ki Tāmaki over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

PROVISION OF FISHERIES SERVICES AND RESEARCH

33. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
34. Ngāi Tai ki Tāmaki input and participation into Ministry fisheries services and research will occur through Ngāi Tai ki Tāmaki input and participation into the Ministry's national fisheries plans.

PART FOUR – STRATEGIC PARTNERSHIPS

INFORMATION SHARING AND COLLABORATION

35. The Governance Entity and the Ministry will use reasonable endeavours to exchange and share information relevant of mutual benefit, subject to the provisions of the Settlement Legislation, any other enactment, and the general law.
36. For the purpose of carrying out its function, the Governance Entity may make a request of the Ministry to:
 - a. provide information or advice to the Governance Entity requested by the Governance Entity, but only on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity; and/or
 - b. provide a Ministry representative to attend a meeting with the Governance Entity.
37. In respect of the above requests for information or advice:
 - a. where reasonably practicable, the Ministry will provide the information or advice; and
 - b. in deciding whether it is reasonably practicable to provide the information or advice, the Ministry will have regard to any relevant consideration, including:
 - i. whether, where a request has been made under the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, there are permitted reasons for withholding the information;

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

- ii. whether making the information available would contravene the provisions of an enactment;
 - iii. the time and cost involved in researching, collating and providing the information or advice; and
 - iv. whether making the information available would put at risk any of the Ministry's wider stakeholder relationships.
38. In respect of requests for the Ministry to attend a meeting with the Governance Entity:
- a. only where reasonably practicable, the Ministry will comply with the request;
 - b. the Ministry will determine the appropriate representative to attend any meeting; and
 - c. in deciding whether it is reasonably practicable to comply with the request, the Ministry may have regard to any relevant consideration, including:
 - i. the number and frequency of such requests the management agency has received from the Governance Entity;
 - ii. the time and place of the meeting and the adequacy of notice given; and
 - iii. the time and cost involved in complying with the request.

JOINT WORK PROGRAMMES

39. If agreed to by both parties, the Ministry and the Governance Entity, will work together to develop and implement joint work programmes on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity.
40. The work programme/s must be beneficial to both parties, must align with the parties objectives and priorities relating to the primary sector, and be based on agreed-to terms of delivery.

PROVISION OF SERVICE AND RESEARCH RELATING TO AGRICULTURE, FORESTRY, FOOD SAFETY AND BIOSECURITY

41. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
42. Where the Ministry undertakes or contracts for services or research relating to agriculture (agriculture includes animal welfare and horticulture), forestry, food safety or biosecurity, and where the Ministry considers it to have a direct impact on the Protocol Area, the Ministry will:
- a. notify the the Governance Entity of its intention to do so and provide the Governance Entity with an opportunity to be involved in the planning for services or research, as appropriate;
 - b. where applicable, invite the Governance Entity to provide a representative to be a member of the tender evaluation panel, subject to the Ministry's conflict of interest policy;
 - c. advise the Governance Entity of the provider it has chosen;

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

- d. require any research provider to engage with the Governance Entity; and
- e. provide the Governance Entity with the results of that research, as appropriate.

CONSULTATION

43. Where the Ministry is required to consult in relation to the Protocol, the principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- a. ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - b. providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - c. ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - d. ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and
 - e. where the Ministry has consulted with the Governance Entity in relation to this Protocol, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

PART FIVE – IMPLEMENTATION

MAINTAINING THE RELATIONSHIP

44. Each party will identify a senior representative to oversee the implementation of the Protocol. The senior representatives will be the key point of contact for any matters relating to the Protocol, and will be responsible for ensuring the outcomes and deliverables of the Protocol are monitored, and achieved.
45. Where elements of the Protocol may not be achievable, the parties will communicate this as soon as possible and work towards a common understanding of the issues and a positive way forward for both parties to achieve the outcomes of the Protocol.
46. Representatives of the parties will meet as required, and as agreed to by both parties.

ESCALATION OF MATTERS

47. If one party considers that there has been a breach of the Protocol then that party may give notice to the other that they are in dispute.
48. As soon as possible, upon receipt of the notice referred to in clause 47, the Ministry and the Governance Entity's representative(s) will meet to work in good faith to resolve the issue.
49. If the dispute has not been resolved within 45 working days despite the process outlined in clauses 47 and 48 having been followed, the Ministry and the Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

REVIEW AND AMENDMENT

50. The parties agree that this Protocol is a living document which should be updated and adapted to take account of any future developments and relationship opportunities.
51. The parties may vary or terminate this Protocol only in writing.

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Primary Industries

WITNESS

Name:

Occupation:

Address:

DOCUMENTS

3: PRIMARY INDUSTRIES PROTOCOL

APPENDIX A: PROTOCOL AREA



3: PRIMARY INDUSTRIES PROTOCOL

APPENDIX B: SUMMARY OF TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1. **Amendment and cancellation**

1.1 The Minister may amend or cancel this Protocol, but only after consulting with the Governance Entity and having particular regard to their views (*section [number]*).

2. **Noting**

2.1 A summary of the terms of this Protocol must be noted in the fisheries plans affecting the Protocol Area, but the noting:

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the fisheries plans for the purposes of the Fisheries Act 1996 (*section [number]*).

3. **Limits**

3.1 This Protocol does not:

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

(a) introducing legislation; or

(b) changing government policy; or

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

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of **[iwi name to be inserted]** (*section [number]*); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, assets or property rights (including in relation to fish, aquatic life, or seaweed) under:

(a) the Fisheries Act 1996; or

(b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(c) the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(d) the Maori Fisheries Act 2004 (*section [number]*).

4. **Breach**

4.1 Subject to the Crown Proceedings Act 1950, the Governance Entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section [number]*).

4.2 A breach of this Protocol is not a breach of the Deed of Settlement (*clause [number]*).

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀI TAI KI TĀMAKI ON SPECIFIED ISSUES

1 INTRODUCTION

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

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.

- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in Clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in Clause 1.1, as set out in clauses 5 to 11 of this Protocol.

2 PROTOCOL AREA

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

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section xx of the Ngāi Tai ki Tāmaki Claims Settlement Act [xxx] (“the Settlement Legislation”) that implements the Ngāi Tai ki Tāmaki Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.

- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the governance entity by:
 - 4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
 - 4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
 - 4.1.4 meeting with the governance entity to review the implementation of this Protocol if requested by either party;
 - 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Chief Executive under it;
 - 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
 - 4.1.7 including a copy of the Protocol with the governance entity on the Ministry’s website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

General

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

- 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand;
- 5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
- 5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

Ownership of Taonga Tūturu found in Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found elsewhere in New Zealand

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

Custody of Taonga Tūturu found in Protocol Area or identified as being of Ngāi Tai ki Tāmaki origin found elsewhere in New Zealand

- 5.5 If the governance entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of x origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
 - 5.5.1 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

5.5.2 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

Export Applications

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

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

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

7. EFFECTS ON NGĀI TAI KI TĀMAKI INTERESTS IN THE PROTOCOL AREA

- 7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngāi Tai ki Tāmaki interests in the Protocol Area.
- 7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngāi Tai ki Tāmaki interests in the Protocol Area.
- 7.3 Notwithstanding paragraphs 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngāi Tai ki Tāmaki interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

8. REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

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

9. BOARD APPOINTMENTS

- 9.1 The Chief Executive shall:

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

- 9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
- 9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
- 9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

10. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 10.1 The Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ngāi Tai ki Tāmaki interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning.
- 10.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

11. HISTORY PUBLICATIONS

- 11.1 The Chief Executive shall:
 - 11.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāi Tai ki Tāmaki; and
 - 11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngāi Tai ki Tāmaki:
 - (a) from an early stage;
 - (b) throughout the process of undertaking the work; and
 - (c) before making the final decision on the material of a publication.
- 11.2 It is accepted that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the governance entity, is entitled to make the final decision on the material of the historical publication.

12. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 12.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāi Tai ki Tāmaki within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

- 12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 12.3 The procurement by the Chief Executive of any such services set out in Clauses 12.1 and 12.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

13. CONSULTATION

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

14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

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

15. DEFINITIONS

- 15.1 In this Protocol:

Chief Executive means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

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

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

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

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

governance entity means the trustees of the Ngāi Tai ki Tāmaki Trust.

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

Ngāi Tai ki Tāmaki has the meaning set out in clause 10.5 of the Deed of Settlement.

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

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

an object that—

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

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

ISSUED on

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

WITNESS

Name:

Occupation:

Address:

DOCUMENTS

3: TAONGA TŪTURU PROTOCOL

ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

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

2. Limits

2.1 This Protocol does not -

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

- (a) introducing legislation; or
- (b) changing government policy; or
- (c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapu, marae, whanau, or representative of tangata whenua (section []); or

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

2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tuturu.

3. Breach

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

3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause [])

4 CONSERVATION RELATIONSHIP AGREEMENT

PURPOSE

This Relationship Agreement represents a partnership between the Minister and Department of Conservation and Ngāi Tai ki Tāmaki and signifies the shared commitment to build a strong, lasting and meaningful partnership:

- a) to promote and enhance the conservation of natural, physical, historical and cultural heritage within the Tamaki Makaurau area of the rohe of Ngāi Tai ki Tāmaki and for which the Department of Conservation (“Department”) has statutory responsibilities; and
- b) to complement cultural redress provided for in the Ngāi Tai ki Tāmaki Claims Settlement Act [xx]; and
- c) to give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi, as required by section 4 of the Conservation Act 1987.

This agreement will enable a positive, collaborative and enduring relationship between Ngāi Tai ki Tāmaki and the Department of Conservation.

This agreement is entered into in accordance with clauses 5.25 to 5.28 of the Ngāi Tai ki Tāmaki Deed of Settlement dated [xx].

1. ROLES

NGĀI TAI KI TĀMAKI

- 1.1 Ngāi Tai ki Tāmaki recognise that an enduring partnership with the Department is fundamental to achieving enhanced conservation of natural resources and historical and cultural heritage. It is also fundamental for the successful implementation of the Deed of Settlement between the Crown and Ngāi Tai ki Tāmaki.
- 1.2 The aspirations of Ngāi Tai ki Tāmaki are to have a meaningful role in influencing policies in a way that is consistent with their mana whenua status and the partnership relationship with the Crown under Te Tiriti o Waitangi/ Treaty of Waitangi. The objective of this relationship agreement is to give effect to Ngāi Tai ki Tāmaki aspirations to share in managing natural resources and historical and cultural heritage in a way that supports kaitiakitanga and mana motuhake by:
 - 1.2.1 the development of a partnership that supports Ngāi Tai ki Tāmaki to establish an ‘Iwi Conservancy’ over whenua and taonga species within the rohe of Ngāi Tai ki Tāmaki;
 - 1.2.2 maintaining, enhancing and restoring natural resources;

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

- 1.2.3 managing taonga species and pest control;
- 1.2.4 conservation advocacy;
- 1.2.5 provision of visitor information; and
- 1.2.6 protection of wāhi tapu within DOC managed whenua.

DEPARTMENT OF CONSERVATION

- 1.3 The Department administers 24 Acts and has functions under a number of other Acts. Its functions include managing “for conservation purposes, all land, and all other natural and historic resources” under the Conservation Legislation. In administering the Conservation Legislation the Department must give effect to the principles of the Te Tiriti o Waitangi/the Treaty of Waitangi, in accordance with section 4 of the Conservation Act 1987.
- 1.4 The Department will continue to maintain and enhance its relationship with Ngāi Tai ki Tāmaki pursuant to the Department’s obligations under section 4 of the Conservation Act, commitments made through this agreement and subject to obligations arising from other treaty settlements.

2. STRUCTURE OF AGREEMENT

- 2.1 This document is the Relationship Agreement referred to in clauses 5.25 to 5.28 of the Ngāi Tai ki Tāmaki Deed of Settlement dated [xx], that is required to be entered into by the Minister of Conservation and the Director-General of Conservation and the trustees of the Ngāi Tai ki Tāmaki Trust, and forms part of the redress in settlement of the historic Treaty of Waitangi claims of Ngāi Tai ki Tāmaki.
- 2.2 This agreement sets out the relationship between Ngāi Tai ki Tāmaki and the Department on matters relating to places and resources that are of spiritual, ancestral, cultural, customary and historical significance to Ngāi Tai ki Tāmaki and is to be read in conjunction with the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement, relevant clauses from which are referred to throughout the document.

3. MOTUTAPU ISLAND

- 3.1 Te Motutapu ā Taikehu is important to Ngāi Tai ki Tāmaki because:
 - 3.1.1 the name Te Motutapu ā Taikehu is ancestral to Ngāi Tai ki Tāmaki in that Ngāi Tai ki Tāmaki claim Taikehu as one of their own;
 - 3.1.2 Te Motutapu ā Taikehu was once the heartland domain of Ngāi Tai ki Tāmaki in ancient and historic years;

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

- 3.1.3 Ngāi Tai ki Tāmaki claim their ancestor Te Omanawatare who first settled Motutapu (before the arrival of Taikehu and Tainui waka) and is buried at the west end of the Island overlooking the Hauraki Gulf; and
 - 3.1.4 Ngāi Tai ki Tāmaki have a number of ancient and historic Pā sites on the island and continue to be Kaitiaki of such taonga.
- 3.2 Ngāi Tai ki Tāmaki have negotiated exclusive cultural settlement redress on Motutapu Island with the Crown. As such Ngāi Tai ki Tāmaki:
- 3.2.1 desire to welcome and host all visitors to Motutapu as part of any cultural guiding concession that Ngāi Tai ki Tāmaki acquires for Motutapu; and
 - 3.2.2 desire to be involved in the pastoral management of Motutapu and will focus on opportunities to acquire concessions for that as well as on other iconic Island and landscapes that have pastoral management.
- 3.3 Ngāi Tai ki Tāmaki may wish to develop the Hukunui and Te Tauroa sites on Motutapu, possibly including a marae or lodge type accommodation, and interpretation or recreation of ancient papakainga features, to provide:
- 3.3.1 a unique cultural experience for visitors; and
 - 3.3.2 a place for Ngāi Tai ki Tāmaki for cultural activities such as waananga.

Strategic Collaboration

- 3.4 On an annual basis, the Department will discuss with Ngāi Tai ki Tāmaki its proposed activities on Motutapu that relate to the implementation of the Tāmaki Makaurau Motu Plan.
- 3.5 Ngāi Tai ki Tāmaki and the Department will work closely together to assist Ngāi Tai ki Tāmaki realise the potential of Hukunui and Te Tauroa to provide a unique experience for visitors to Motutapu, including consideration of infrastructure requirements such as water supply and power networks, by way of easements if required.
- 3.6 The Department will consult as early as practicable with Ngāi Tai ki Tāmaki when pasture management arrangements for Motutapu are to be reviewed acknowledging both the strength of cultural connection with all of Motutapu and the desire of Ngāi Tai ki Tāmaki to be directly involved in the management of the motu.
- 3.7 The Department will explore opportunities with Ngāi Tai ki Tāmaki and conservation stakeholders on Motutapu (such as the Motutapu Restoration Trust and Motutapu Outdoor Education Centre) to develop shared strategic conservation outcomes for the motu.

4. BUSINESS PLANNING

- 4.1 Ngāi Tai ki Tāmaki will meet with the Director Conservation Partnerships (Auckland), relevant Conservation Services Managers and Pou Tairangahau as part of the Department's business

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

planning cycle consistent with clauses 4.3 – 4.5 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement (at which the following will be agenda items:

- 4.1.1 Motutapu – Tamaki Makaurau Motu Plan implementation and planned pest control;
- 4.1.2 cross-organisational opportunities;
- 4.1.3 planned national species programme update; and
- 4.1.4 visitor information/interpretation opportunities.

5. CULTURAL MATERIALS

- 5.1 Ngāi Tai ki Tāmaki have a desire to harvest native taonga, flora and fauna species, such as birds, plants and timber for various cultural purposes. This includes where such material has become available due to accidental death, natural causes or incidental to Departmental activities on public conservation land.
- 5.2 Ngāi Tai ki Tāmaki and the Department will explore ways to meet Ngāi Tai ki Tāmaki interests consistent with conservation legislation and within any streamlined processes developed in the Tamaki region as per clause 9 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.

6. TAONGA SPECIES AND HABITAT PROTECTION

- 6.1 Ngāi Tai ki Tāmaki and the Department will continue to explore opportunities to be involved in taonga species work, including involvement in translocations of species such as Kiwi, Koura, Takahe, Tuatara, and Tieke, to and from places such as Tiritiri Matangi, Hauturu, Motutapu, Rangitoto and Motuihenga.
- 6.2 Ngāi Tai ki Tāmaki have concerns about the use of poisons for pest animal and plant control and wish for alternative organic and or non chemical methods to be explored.
- 6.3 The Department will co-ordinate its pest control activities with Ngāi Tai ki Tāmaki on Motutapu and Motuihenga in acknowledgement of the sites on those motu that are owned and administered by Ngāi Tai ki Tāmaki, including the maintenance of traps and monitoring sites.
- 6.4 Ngāi Tai ki Tāmaki and the Department will look for further opportunities for enhancing Ngāi Tai ki Tāmaki longstanding involvement in ecosystem restoration, particularly at places such as Motutapu, Motuihenga, Rangitoto and Tiritiri Matangi, including working with and enhancing relationships with other groups such as existing restoration trusts.
- 6.5 If required the Department may provide technical advice on restoration proposals for Ngāi Tai ki Tāmaki owned sites such as Waikopua and Motukaraka.
- 6.6 Ngāi Tai ki Tāmaki and the Department share aspirations of protecting ecosystems and indigenous flora and fauna within their rohe as per clause 10 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.

4: CONSERVATION RELATIONSHIP AGREEMENT

7. STATUTORY AUTHORISATIONS

- 7.1 The Department will carry out consultation with Ngāi Tai ki Tāmaki, through its Kaitiakitanga Roopu, concerning applications for statutory authorisations within their area of interest consistent with the process set out in clause 11 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.
- 7.2 Ngāi Tai ki Tāmaki has strong interests in exploring the following types of opportunities for concessions that involve public conservation land:
- 7.2.1 Hikoi o Te Motu/ Guided walking tours on Rangitoto, Motutapu, Motuihenga, Motukorea, Waiheke, public conservation land in the southern Hunua and Maungauika (while under the Department’s administration);
 - 7.2.2 Hikoi o Te Moana/Guided kayak or waka tours on the Gulf (including marine mammal and native coastal bird watching permits);
 - 7.2.3 glamping or hosted camping on Hauraki motu;
 - 7.2.4 hosting of sporting events; and
 - 7.2.5 hosting of cultural events eg Matariki.

8. STATUTORY LAND MANAGEMENT

- 8.1 Ngāi Tai ki Tāmaki has an ongoing interest in the range of statutory land management activities that are occurring within the Tāmaki Makaurau Region as per clause 12 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.

9. CONSERVATION ADVOCACY

- 9.1 Ngāi Tai ki Tāmaki will maintain a Kaitiakitanga Roopu that will engage with the Department on issues of mutual interest or concern under legislation such as the Resource Management Act 1991 and the Marine and Coastal Area (Takutai Moana) Act 2011. (Refer to clause 13 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement).

10. CROSS-ORGANISATIONAL OPPORTUNITIES

- 10.1 Ngāi Tai ki Tāmaki and the Department will, as per clause 13 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement, explore opportunities (such as waananga) to support Ngāi Tai ki Tāmaki desire to invest in research and development to:
- 10.1.1 Mātauranga Maori – develop cultural knowledge capacity to better sustain the environment; and
 - 10.1.2 Mātauranga - develop academic and scientific capacity to better sustain the environment.

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

10.2 Ngāi Tai ki Tāmaki are interested in providing professional services, such as the cultural and environmental monitoring of concessions, particularly on the motu.

11. TIKAPA MOANA /WAITEMATĀ/MANUKAU AND MARINE ISSUES

11.1 Ngāi Tai ki Tāmaki and the Department share aspirations for conservation of Tikapa Moana / the Hauraki Gulf, the Waitematā and Manukau Harbours and other marine areas in their rohe and will look for opportunities to promote those aspirations including through the process identified in clause 8.4 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.

11.2 Ngāi Tai ki Tāmaki consider all species of marine mammal within their rohe are taonga tuku iho of Ngāi Tai ki Tāmaki.

11.3 Ngāi Tai ki Tāmaki wishes to revitalise the Hauraki Gulf Whale Kaitiaki Recovery Unit to deal with locating, towing, burial and recovery of cultural materials from whales, and have strong interests in the management of the tohora urupa at Calypso Bay, Motuihenga.

11.4 The Department will, consistent with clause 16 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement, advise the relevant Ngāi Tai ki Tāmaki contact person of marine mammal fatalities, as well as strandings, and engage where practicable before making decisions on the future of the stranded, dead or fatally injured marine mammal.

12. AREAS OF SIGNIFICANCE

12.1 Both parties recognise that there are wāhi tapu and areas of significance to Ngāi Tai ki Tāmaki which will be dealt with consistent with clause 18 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement, and which include:

12.1.1 Mataitai Forest Conservation Area, Mātaitai Scenic Reserve, Papa Turoa Scenic Reserve, Stony Batter Historic Reserve, Whakatiri Scenic Reserve, Papepape Marginal Strip, Te Matuku Bay Scenic Reserve, Turanga Creek Conservation Area and Wairoa Gorge Scenic Reserve;

12.1.2 Sundae Bay (Motutapu); and

12.1.3 all Ngāi Tai ki Tāmaki wāhi tapu and other significant sites including; pā sites, urupa sites, historical sites, accommodation sites, archaeological sites, ecological sites and customary harvesting sites of cultural significance within public conservation lands.

13. VISITOR AND PUBLIC INFORMATION

13.1 Ngāi Tai ki Tāmaki and the Department will discuss opportunities to, where appropriate, share knowledge about natural and historic heritage within the Tāmaki Makaurau Region with visitors and the general public, as per clause 19 of the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

- 13.2 Ngāi Tai ki Tāmaki have a concern that all visitors to public conservation land are aware of the cultural history and significance of those landscapes, including visitors undertaking activities led by concessionaires.
- 13.3 Ngāi Tai ki Tāmaki are particularly interested in enhancing visitor information for or at the following places:
- 13.3.1 downtown Auckland – Ferry Terminal
 - 13.3.2 Rangitoto;
 - 13.3.3 Motutapu;
 - 13.3.4 Motuihenga;
 - 13.3.5 conservation land on Waiheke Island;
 - 13.3.6 Maungauika – North Head (while DOC administers);
 - 13.3.7 Tiritiri Matangi;
 - 13.3.8 conservation land on Kawau Island;
 - 13.3.9 Te Hauturu-o-Toi / Little Barrier Island;
 - 13.3.10 conservation land on Aotea – Great Barrier Island (Aotea Island);
 - 13.3.11 conservation land adjoining Te Wairoa River; and
 - 13.3.12 conservation land adjoining Tamaki River.

14. INTERPRETATION

- 14.1 This agreement is to be read in conjunction with the Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement.
- 14.2 In this agreement:

Glamping means a glamorous style of camping.

Hukunui means the cultural redress site on Motutapu Island that transfers to Ngāi Tai ki Tāmaki under section [28] of the Ngāi Tai ki Tāmaki Claims Settlement Act [xx];

Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement means the relationship agreement required to be entered into by the Crown and Ngā Mana Whenua o Tāmaki Makaurau by clause 4.1 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed.

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

Ngāi Tai ki Tāmaki has the meaning set out in the Ngāi Tai ki Tāmaki Deed of Settlement of Historical Claims and Ngāi Tai ki Tāmaki Claims Settlement Act [xx], and unless the context requires otherwise will be represented by the Ngāi Tai ki Tāmaki Trust.

Tāmaki Makaurau area of the rohe of Ngāi Tai ki Tāmaki means that area falling within the Department's Auckland Partnership Region.

Tāmaki Makaurau Motu Plan means the conservation management plan required to be developed by clauses 4.2 and 4.3 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed and Subpart 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Te Motutapu ā Taiehu is a traditional name for Motutapu Island.

Te Tauroa means the cultural redress site on Motutapu Island that transfers to Ngāi Tai ki Tāmaki under section [47] of the Ngāi Tai ki Tāmaki Claims Settlement Act [xx];

DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

SIGNED on [DATE]

SIGNED by the)
Minister of Conservation)
in the presence of)

Honourable Maggie Barry ONZM

Signature of Witness

Witness Name

Occupation

Address

SIGNED by the)
Director-General of Conservation)
in the presence of)

Lou Sanson

Signature of Witness

Witness Name

Occupation

Address

5 LETTER OF INTRODUCTION

5: LETTER OF INTRODUCTION

[Addressee]

Ngāi Tai ki Tāmaki – Letter of Introduction

On **[date]** the Crown signed a Deed of Settlement with Ngāi Tai ki Tāmaki to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On **[date]** the Ngāi Tai ki Tāmaki Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngāi Tai ki Tāmaki have suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngāi Tai ki Tāmaki expressed interest in enhancing their relationships with entities that **[reason for relationship]**, including **[agency/organisation]**. The essence of the request relates to **[relationship objective]**.

In the Deed of Settlement, the Crown agreed to write a letter encouraging a co-operative ongoing relationship between Ngāi Tai ki Tāmaki and **[agency/organisation]** in their core area of interest (see the **attached** map, being the map of the area of interest in part 1 of the attachments to the Deed of Settlement). Accordingly, I am writing to introduce you to the trustees of the Ngāi Tai ki Tāmaki Trust as the governance entity of Ngāi Tai ki Tāmaki and to suggest that your **[agency/organisation]** makes contact with Ngāi Tai ki Tāmaki to foster a co-operative relationship and to discuss matters of common interest.

Ngāi Tai ki Tāmaki background

Ngāi Tai ki Tāmaki is a member of the Hauraki Collective and the Tāmaki Collective. The Hauraki Collective deed was signed on **[date]**. The Tāmaki Collective deed was signed on 8 September 2012. These documents, and the Ngāi Tai ki Tāmaki deed of settlement, can be viewed on the Office of Treaty Settlements website: www.ots.govt.nz.

The contact details for the trustees of the Ngāi Tai ki Tāmaki Trust are:

[contact details]; and

[contact details].

If you have any further questions please contact **[contact person]** at the Office of Treaty Settlements at **[email address]** or 04 **[number]**.

Nāku noa, nā

[Kevin Kelly]

Deputy Secretary Treaty and Director, Office of Treaty Settlements

6 MUSEUM/LIBRARY LETTER

[Addressee]

Tēnā koe

Ngāi Tai ki Tāmaki – Letter of Introduction

On **[date]** the Crown signed a Deed of Settlement with Ngāi Tai ki Tāmaki to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On **[date]** the Ngāi Tai ki Tāmaki Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngāi Tai ki Tāmaki have suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the Deed of Settlement, the Crown agreed to write a letter encouraging a co-operative ongoing relationship between Ngāi Tai ki Tāmaki and **[museum/library]**. Accordingly, I am writing to introduce you to the trustees of Ngāi Tai ki Tāmaki Trust as the governance entity of Ngāi Tai ki Tāmaki and to suggest that your **[museum/library]** makes contact with Ngāi Tai ki Tāmaki to foster a co-operative relationship and to discuss Ngāi Tai ki Tāmaki taonga held by your **[museum/library]**.

In the course of negotiations with the Crown, Ngāi Tai ki Tāmaki sought the opportunity to have greater management and control over their tāonga. Ngāi Tai ki Tāmaki specifically expressed an interest in enhancing their relationship with **[museum/library]** to engage with you regarding this tāonga. The essence of the request relates to **[relationship objective]**.

Ngāi Tai ki Tāmaki background

Ngāi Tai ki Tāmaki is a member of the Hauraki Collective and the Tāmaki Collective. The Hauraki Collective deed was signed on **[date]**. The Tāmaki Collective deed was signed on 8 September 2012. These documents, and the Ngāi Tai ki Tāmaki deed of settlement, can be viewed on the Office of Treaty Settlements website: www.ots.govt.nz.

I invite **[entity name]** to contact the Ngāi Tai ki Tāmaki Chairperson directly in relation to the matters raised in this letter. Their contact details are:

[contact details]; and

[contact details].

If you have any further questions please contact **[contact person]** at the Office of Treaty Settlements at **[email address]** or 04 **[number]**.

Nāku noa, nā

[Hon Christopher Finlayson]

Minister for Treaty of Waitangi Negotiations

7 STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

NGA TANIWHA O MOTUTAPU

This statement of association acknowledges the ancient origins of the Tapu and sacred nature of Motutapu that is inherent in the very name itself. There are Tuahu and places of great spiritual significance from ancient times within the landscape of Motutapu. Ngāi Tai has associations to many ancient Waka and as the first peoples of this place, hosted many who came to perform ancient spiritual and traditional rituals.

In traditional lore, the lizards referred to by Ngāi Tai are the Taniwha Kaitiaki known as Te Moko Nui o Hei and Te Moko Nui o Kahumatamoemoe.

These ancient kaitiaki of Ngāi Tai are slumberous, deep within the whenua of Motutapu, the sacred isle of our Tupuna. They keep vigil over the sacred springs on Motutapu that flow to the four seas that surround the island. These springs ensure the fertility of nga tamariki o Tangaroa and all other life in the surrounding seas of Hinemoana. This continues to the present day with the waters around the island still abundant with life.

Nga Taniwha o Motutapu have ever been and will continue to be the kaitiaki of Motutapu and its many sacred sites.

MAUNGA AND MOTU OF TĀMAKI MAKĀURAU

Ngāi Tai ki Tāmaki make the following statements concerning our associations with maunga and motu of Tāmaki Makaurau.

MAUNGA

Maungakiekie / One Tree Hill

1. Ngāi Tai ki Tāmaki do not claim an exclusive interest in Maungakiekie, but assert a significant shared interest in the maunga.
2. Kiwi Tāmaki and Te Rangikaketū were firm allies, and both men jointly exercised mana and rangatiratanga over the maunga. It is further noted that, on an earlier familial visit from Iwi of Kaipara, Te Rangikaketū had warned these manuhiri for their own protection not to steal food from Maungakiekie. This act of manaakitanga to his relatives was later reciprocated.
3. Kiwi Tāmaki's famed patū pounamu at Maungakiekie was named Whakarewatahuna. It was then already an ancient taonga of the Tāmaki people. Following Kiwi's death, Te Rangikaketū was in possession of Whakarewatahuna, which in turn passed to his son Te Hehewa, who lived on into the early nineteenth century. Te Teke of Te Wai o Hua was one of Te Hehewa's two wives, and she in turn held possession of the patū, which she concealed in the wāhi tapu known as Ngā Anapekarau, where it remains hidden to this day.
4. Ngāi Tai ki Tāmaki have a shared kaitiaki responsibility concerning Maungakiekie embodied by this ancient taonga, on behalf of our Te Wai o Hua relatives.
5. It is unreservedly acknowledged that from the eighteenth century onward other iwi established their own distinct association with Maungakiekie through customary processes including *take raupatu*, *take tupuna* and *take ahi kā*.
6. Ngāi Tai ki Tāmaki's association with Maungakiekie remains strong to this day.

Maungarei / Mount Wellington

1. Ngāi Tai ki Tāmaki's association with Maungarei arises from the direct descent from Ngāti Taihaua, Ngāti Taimanawaiti and Te Uri o Te Ao hapū.
2. Founding tūpuna of Ngāti Tai occupied this significant wāhi tapu from the time of Tiki-te-auwhatu (alias Te Kete-ana-taua) of the *Tainui* waka settling the lands west of the Tāmaki River known as Taurere and Te Tauoma, where he married Hinematapāua of the tāngata whenua.
3. The Ngāti Tai and Wai o Hua descendants of their son Taihaua held occupation of Maungarei until another iwi stormed the pā in the very late 1700s or early 1800s. In some written accounts of this battle, the blanket identifier of "Wai o Hua" has often been applied to all of Taihaua's Ngāti Tai descendants at Maungarei at this time.
4. We also understand that, above and beyond ancestral ties to Te Wai o Hua in general terms, another iwi represent the direct descendants of specific Wai o Hua ancestors who also died in the battle when invaders stormed Maungarei but did not occupy. The other iwi were subsequently interred alongside tūpuna of Ngāti Tai at Te Rua-o-Pōtaka.

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

5. The attacking iwi did not follow this defeat with occupation, but the extent of bloodshed at Maungarei rendered the site highly tapu, and it was subsequently not reoccupied. It remains a highly tapu site for Ngāi Tai to this day.

Maungawhau / Mount Eden

1. Ngāi Tai ki Tāmaki state that we have a very strong association with Maungawhau, whilst also recognising the shared ancestral associations of others.
2. We note the special shared relationships of Ngāti Tai and Te Wai o Hua to a number of significant wāhi tapu on Maungawhau and in the immediate vicinity, including but not limited to Te Ipu-a-Mataaho (Te Kōpua-kai-o-Mataaho), the sacred altars of Te Pou Hawāiki and Te Tūahu-a-Hua-o-Kaiwaka, the wāhi tapu caves known as Ngā Anapekarau, Te Ipu-pākore wellspring and the underground water caverns of Ngā Anawai, and the adjoining settlement site of Ōwhatihue via Te Ara-takihaere.
3. Ngāi Tai ki Tāmaki's associations with Maungawhau are traced back at least to the Ngāti Tai ancestor Tainui II of Ngāti Parekākā hapū, who lived at Maungawhau from the mid-late 1600s. He later left Tāmaki in coalition with his relative Taihua of Ngāti Taimanawaiti from Takapuna, establishing Ngāti Tai and Te Patutātahi hapū.
4. Taihua's younger brother Uemakerewhatu succeeded to their relative Tainui II as rangatira of Maungawhau from about the late 1600s to early 1700s.
5. It is acknowledged that in or around the mid-late 1600s, the people of Maungawhau were attacked and defeated during other iwi's extensive campaigns against Ngāti Tai and Te Wai o Hua but those iwi did not subsequently occupy Maungawhau, and meanwhile peace was concluded.
6. Uemakerewhatu's son Te Rangikaketū in turn built the eighteenth century pā on Maungawhau, which he and his son Te Hehewa occupied before, during and after the war between another iwi and Te Wai o Hua.
7. We note that Te Rangikaketū, his son Te Hehewa, and Te Hehewa's second wife Kuiatara of the Ngāi Tai/Wai-o-Hua hapū known as Ngāti Kōhua all died and were buried at Maungawhau with many other ancestors of Ngāi Tai ki Tāmaki. We acknowledge that Te Hehewa was subsequently re-interred elsewhere by relatives of another iwi, because he was partly of another iwi's descent.
8. It is also acknowledged that throughout this period (1600s-1800s), the Wai o Hua/Te Akitai ancestors Hua-o-Kaiwaka, his son Te Ikamaupoho, Te Ika's son Kiwi Tāmaki, and Kiwi's son Rangimātoru each in their turn shared occupation of Maungawhau on a seasonal basis with their Ngāti Tai relatives, visiting during planting season as they traversed the wider tribal domains of Te Wai o Hua and Ngā Iwi.
9. Te Hehewa's son Te Pūrehurehu Tūtapu, and his son Hetaraka Takapuna also occupied Maungawhau on a seasonal basis during the 1800s, cultivating root crops during winter and returning to coastal settlements in the summer months. This customary pattern of ahi kā continued both before and after the turbulent period known as the Musket Wars. Indeed,

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

another name for the Ngāti Tai chief Takapuna was Maungawhau; both names given in recognition of his whakapapa to the mountains of his ancestral lands.

10. Maungawhau was never conquered during the wars against Te Wai o Hua. We acknowledge some relatives of other iwi having shared occupation.

Mount Albert (Te Wai o Raka/Te Puke o Ruarangi)

1. Ngāi Tai ki Tāmaki acknowledge shared ancestral associations with several iwi in Te Wai o Raka (The Waters of Rakatāura) a.k.a. Te Puke o Ruarangi (Ōruarangi) through relationship to the ancestors Rakatāura, and Ruarangi.
2. Ngāi Tai ki Tāmaki and other Tainui authorities believe the name Ōwairaka is derived from Te Wai o Raka and Te Ahi-kā a Raka, referring to the pā and tūahu of Rakatāura.
3. Rakatāura was a powerful tohunga of the *Tainui* canoe, and is an important founding ancestor of the earliest Tainui peoples to settle the Tāmaki district.
4. The maunga is known by several names. The south side of the maunga is also the site of the volcanic cave known as Te Ara-tomo o Ruarangi, and the maunga has important metaphysical links to other landmarks of Tāmaki including Te Ara-whakapekapeka a Ruarangi a.k.a. Te Tokaroa of Te Waitematā, and the awa Ōruarangi of the Manukau Harbour.
5. Through shared ancestry from the earliest of Tainui peoples to occupy Tāmaki Makaurau, Ngāi Tai ki Tāmaki acknowledges that certain other hapū and iwi may also claim relationships with the area.

Mount Roskill (Pukewīwī/Puketāpapa)

Ngāi Tai ki Tāmaki state a general, shared ancestral association with Pukewīwī as members of Wai o Hua.

Mount St John (Te Kopuke/Tikikopuke)

Ngāi Tai ki Tāmaki state a general, shared ancestral association with Te Kopuke as members of Wai o Hua.

Ōhinerau / Mount Hobson

1. Ngāi Tai ki Tāmaki have an association with Ōhinerau. Other iwi, cousins of Ngāi Tai ki Tāmaki, occupied Ōhinerau from the time of Te Rangikaketū until musket raids from the north in the 1820s.
2. We understand the maunga to be named after a Hauraki ancestress Hinerau who was killed at Remuwera, which area was also formerly known as Ōhinerau. The later name of Remuwera (Remuera) comes from the circumstances surrounding her death, which was one of Rautao's *take* for his raids against the Wai o Hua and Ngāti Tai people.
3. We therefore recognise that other iwi may claim an ancestral association through Hinerau.

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

Ōhūiarangi / Pigeon Mountain

1. Ngāi Tai ki Tāmaki claim a strong cultural and historic association with Ōhūiarangi.
2. The maunga is named for the ancient pre-*Tainui* ancestress Hūiarangi of Te Tini o Maruiwi and Ngāti Ruatāmore, from whom Ngāi Tai ki Tāmaki trace descent by the marriage of the founding Ngāti Tai ancestors Hinematapāua of Ngāti Ruatāmore and Tiki-te-auwhatu (Te Kete-ana-taua) of *Tainui waka*; parents of the eponymous ancestor Taihaua.
3. In the pūrakau or legends of Ngāi Tai ki Tāmaki, Ōhūiarangi is also associated with the even more ancient ancestors known as Tūrehu; those who “arose from beneath the earth” led by our ancestor Koiwiriki of Te Iwi Hūnua, and fought a cataclysmic battle at this site known as Te Pakuranga-rāhīhī (“The Battle of the Sun’s Rays”). This poetic description of the volcanic birth of Ōhūiarangi maunga also gives the name to present-day Pakuranga, but more importantly, these Tūrehu associations express Ngāi Tai ki Tāmaki’s whakapapa links to the Atua Ruaūmoko and the realm of Rarohenga.
4. The maunga is thus a highly significant wāhi tapu to Ngāi Tai, representing cultural, spiritual and genealogical links between this world and the next. Ōhūiarangi is the site of ancient volcanic burial caves, many (but not all) of which were severely damaged along with two thirds of the entire maunga as a result of Pākehā capitalism.
5. Ōhūiarangi was also an important place of ritual and the site of a sacred tūāhu (stone altar), which was also destroyed as a consequence of Pākehā industry.
6. The pā of Ōhūiarangi was occupied by our ancestors, and is particularly associated with the Ngāi Tai ki Tāmaki chiefs Te Whataataua, Te Wana and Te Rangitāwhia of Te Uri o Te Ao, Ngāti Te Raukohekohe and Ngāti Rangitāwhia hapū of Ngāi Tai. These two pā represented the principal strongholds of Ngāi Tai ki Tāmaki in the East Tāmaki/Howick/Pakuranga region at this time.
7. Te Naupata and Ōhūiarangi were evacuated during the Musket War period, following which, Ngāi Tai ki Tāmaki ancestors placed a tapu over the wider Waipaparoa/Ōwairoa (Howick) and Pakuranga areas. The tapu applied particularly to the sites of Te Naupata and Ōhūiarangi.
8. Ngāi Tai burials continued on the maunga subsequent to the introduction of Christianity during the 1830s. These urupā have also been destroyed by twentieth century “development” activities.
9. Ngāi Tai ki Tāmaki’s association with Ōhūiarangi remains strong to this day.

Ōtāhuhu / Mount Richmond (Maungatorohe)

1. Ngāi Tai ki Tāmaki do not claim exclusive interests in Ōtāhuhu maunga, but assert an association together with other iwi.
2. Ngāi Tai ki Tāmaki associations with the pā and maunga, anciently known as Maungatorohe, trace to the period of Te Keteanaataua (Tiki-te-auwhatu), his sister Mārama, the tohunga Rakatāura and other *Tainui waka* ancestors of Ngāti Tai/Ngāi Tai having been welcomed here by the earlier tāngata whenua, after hauling the waka *Tainui* ashore at the nearby Tōwaka

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

(canoe portage). The marriages of Te Keteanataua and Mārama's people with these earlier tāngata whenua are the origins of Ngāti Tai.

3. Members of Ngāti Tai occupied Maungatorohe conjointly with another iwi until the death of the latter's founding ancestor. The maunga was then renamed Ōtāhuhu, and the other iwi returned with the remains of their founding ancestor to their original home.
4. Ngāi Tai ki Tāmaki acknowledge the ancestral interests of another iwi at Ōtāhuhu.
5. The association with central Tāmaki lands such as Ōtāhuhu derived principally from Ngāti Tai.
6. We acknowledge that between the late eighteenth and early nineteenth centuries another iwi had also gained rights and interests in the Tauoma lands by virtue of Ngāti Tai ancestry and tuku whenua made by members of Ngāti Taimanawaiti and Te Uri o Te Ao.

Te Tātua-a-Riukiuta

1. Ngāi Tai ki Tāmaki maintain a significant shared interest in Te Tātua Pā with other iwi.
2. Ngāi Tai ki Tāmaki claim this interest as the direct descendants and living representatives of both Taimaro of Ngāti Tai, and of Te Moumou of the Ngāti Rauiti hapū of Ngāti Huarere and Ngā Riukiuta.
3. Te Whaoroa here erected the stone tūahu known as Te Toka-tū-whenua at Te Onekiri of Te Tātua Pā, whence it became known as Te Toka-tū-a-Whaoroa. Taimaro of Ngāti Tai, whose younger sister Kahuwaero was the elder wife of Hua-o-Kaiwaka, had formerly brought this sacred stone to Tāmaki following his defeat of another iwi at Te Ārai. The tūahu had first been erected at Te Ārai by Tāhuhu-nui-a-rangi following the landfall of *Moekākara waka*.
4. Also becoming known as Te Toka-i-tāwhio ('The Stone that has traveled all around'), Whaoroa's relative Kiwi Tāmaki later performed highly tapu propitiatory rites at this altar during the wars with another iwi.
5. Mid-nineteenth century vandals later dislodged the sacred stone from Te Onekiri at Te Tātua. Finally, a settler placed the tūahu at Cornwall Park, Maungakiekie in 1900. As descendants of Taimaro, Ngāi Tai ki Tāmaki thus claim association with both the wāhi tapu site of ritual at Te Tātua, and the current site of the sacred tūahu at Maungakiekie.

Matukutūruru (Wiri Mountain)

1. Ngāi Tai ki Tāmaki recognise another iwi as traditionally sharing a joint association with Ngāi Tai ki Tāmaki over the site of Matukutūruru.
2. We assert that the customary interest-holding hapū of Ngāi Tai ki Tāmaki in this area are Ngāti Taihaua, Ngāti Te Rau, Ngāti Parekākā and Te Uri o Te Ao, and that another iwi are intimately connected with all of these hapū through which whakapapa they may rightfully assert an association as an iwi in their own right.
3. We acknowledge that another iwi have special ancestral associations with the area, due to the birth of an ancestor at Ngā Matukuru.

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

4. We acknowledge that an ancestor of another iwi is also associated in tradition with both occupation and conquest of the broader Manurewa and Ngā Matukurua area.

Takarunga / Mount Victoria

1. Ngāi Tai ki Tāmaki state that we hold a non-exclusive association with Takarunga. We acknowledge other iwi as holding significant shared interests in the area by relationship to Ngāi Tai ki Tāmaki ancestors.
2. Ngāi Tai ki Tāmaki's traditional rights to the area are traced from our ancestor Taikehu of the waka Tainui having been welcomed ashore at Te Haukapua (Torpedo Bay) by the earliest tāngata whenua of Maungaūika, Takarunga, Takararo, Takamaiwaho, Takapuna and Te Kurae a Tura. Numerous well-known sites, names and traditions commemorate the acts of Taikehu establishing the customary rights of Ngāti Tai in this area.
3. The ancient predecessors of Ngāi Tai with whom Taikehu and his followers settled were the descendants of Toi-te-huatahi, and the even more ancient people of Peretū already in occupation of the North Shore/Takapuna lands on Toi's arrival.
4. Takarunga (The Upper Knoll) together with Maungauika was one of the principal Ngāi Tai volcanic cone Pā of Takapuna and Te Haukapua from before the time of Tainui's arrival and remained one of the two principal papakainga of Ngāti Tai and others until their departure under Heteraka Takapuna in 1863. Taihua was the Ngāi Tai chief living at Takarunga when another hapū arrived in the district. Ngāti Tai under Rangikaketu also hosted Kiwi Tāmaki's people whenever Waiohua visited the area to collect birds' eggs and other kai.

Maungauika

1. Te Maungauika was the Pā of the ancestor Uika, a grandson of Toi Te Huatahi whose section of people were settled and resident here over a thousand years ago. Te Maungauika is significant in Ngāi Tai history as a place where some of the founding ancestors of Ngāi Tai (Taikehu, Te Keteanataua, Taihaua and others) were received by the Tangata whenua with whom they settled, intermarried and first established themselves as Ngāti Tai and Ngāi Tai in the Takapuna and Waiteamatā districts as well as further afield.
2. It was here Taikehu observed the passage of seabirds between the Waitematā and the Manukau Harbour and thus discerning the ability to cross to the West Coast via the Portages through Te Waimokoia to Ōtāhuhu and thence to the Manukau Harbour which determined the eventual voyage down the west coast to Kawhia.

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

MOTU

Rangitoto Island (Te Rangi-i-totonga ai Te Ihu a Tamatekapua)

1. According to one Ngāi Tai traditon it was the day when Hoturoa of Tainui and Tamatekapua of Te Arawa met in a battle at Orawaho on Rangitoto Island that the island takes its name. Hoturoa prevailed and caused the blood to flow from the nose of Tamatekapua hence the name.
2. Rangitoto had been in existence for many generations by then and the name has origins relating to the original eruptions which affected early Ngāi Tai inhabitants of Motutapu Island. It is however from “the day that the blood of Tamatekapua was shed“ that the Ngāi Tai iwi acknowledge that the current name is carried forward into modern times.

Ngā Pona Toru a Peretu/Ngā Tuaitara o Taikahu (summit of Rangitoto)

1. Both names relate to early Tupuna of Ngāi Tai and both names are correct from a Ngāi Tai perspective.
2. Ngā Pona Toru a Peretu (the three knuckles of Peretu) refer to the ancestor Peretu who had a kaka rahui (parrot Reserve) on the island and also gave his name to a number of geographic features in the Hauraki Gulf / Tīkapa Moana.
3. Ngā Tuaitara o Taikahu was the name used after Taikahu climbed to the summit of the island having first placated the ngarara of Kahumatamomoe with karakia.

SITES OF SIGNIFICANCE TO NGĀI TAI KI TĀMAKI WITHIN THE HAURAKI ROHE

Ngāi Tai ki Tāmaki make the following statements concerning sites of significance to the iwi within the Hauraki rohe.

1. For Ngāi Tai important and significant associations to Sites throughout Hauraki and Tāmaki resulted from the initial arrivals of the Arawa and Tainui waka. From Te Arawa the initial settling of the ancestor Huarere amongst the pre waka ancestors of Ngāi Tai was the genesis of Whakapapa and site associations that remain hugely significant in the histories of Ngāi Tai to this day. Similarly the voyaging of Tainui has left us a legacy of Whakapapa and site associations that are of the utmost significance and that are fundamental to the identity and history of Ngāi Tai from then to now.
2. From the Tainui waka arrival and the subsequent disembarkment of Torerenui-a-rua then the actions of Taiehu at Katikati, and the following settling of Ngāi Tai ancestors at various locations from there to Tāmaki, there have been many important events throughout the centuries that have recemented the significance of the sites and whakapapa connections throughout the Hauraki region, many of which are listed below.
3. Oral tradition, still recounted, maintains that Ngāi Tai ki Tāmaki are "a maritime people without boundaries" whose customary interests extend throughout the width and breadth of Tīikapa Moana o Hauraki. The ancestor Heteraka Takapuna gave evidence in the Native Land Court that supports this tradition as exemplified by the following statements:

"N'Tai was the name before Waiohua. N'Tai came out of Tainui. There were no ancient boundaries." He was then asked how far south beyond Cape Colville these land interests extended. Heteraka responded by describing a vast area encompassing TeAroha, Tauranga, Waikato and beyond.

Listed here are some sites of great significance to Ngāi Tai within the Hauraki rohe, a brief statement of association is included with each.

More details of association to the places and the people thereof are contained in a report titled "Ngāi Tai ki Tāmaki Hauraki Interests Report" commissioned by Ngāi Tai and CFRT.

Commencing from the south:

- **Katikati, Te Ranga a Taiehu and Te Punga o Tainui**

Te Ranga a Taiehu refers to a shoal near Katikati associated with the doings of the Ngāi Tai ancestor Taiehu, and is the name also given to a nearby settlement of Ngati Tai and Nga Marama who were indivisibly linked at that time.

Te Punga o Tainui is the site of the Tainui anchorage at Katikati at the time of Ngati Tai/ Nga Marama settlement. Their place in tradition illustrates the importance of these places to both Ngati Tai and Nga Marama.

- **Otahu**

Otahu is the site of a Nga Marama paa at Whangamata invaded by other iwi during the same period as Matai paa in the Hikutaia district. Related groups including Ngati Tai were also among the people whose blood was spilt in these battles.

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

- **Opoutere and Ohuinga o Ngāi Tai (Ohui)**

Opoutere and Ohuinga o Ngāi Tai are areas associated with the shared Nga Marama and Ngati Tai occupation of the wider Whangamata district, and the later migration of Ngāi Tai members from Torere who joined with branches of Nga Marama and Ngati Tai in this area before journeying northward into the Moehau district.
- **Tuhua (Mayor Island) and Waiharakeke**

The island of Tuhua is associated with Te Patutatahi hapu of Ngati Tai led by the important ancestor Te Mana and his daughters during their exile from Aotea commencing around 1821 as a result of musket raids.
According to Te Mana's grandson Hamiora Mangakahia , Waiharakeke near Whanagamata was the site of a battle with another iwi where Te Mana was killed (circa 1827-1828).
- **Ruamahua (The Aldermen Islands)**

An island group significant during voyaging as a sheltering stopover sitting between Tuhua, Repanga and Aotea. Utilised by Ngati Tai/ Ngāi Tai over centuries as voyaging continued between Torere, Aotea and Tāmaki.
- **Ahuahau and Whakau**

As above significant stopover points and navigation landmarks.
The white cliffs on the eastern side of Ahuahu reflect the rising sun back over the horizon effectively a navigation beacon to our ancient navigators. Ahuahu was also renowned as a frost free sanctuary from which early kumara crops were propagated and distributed. A place of importance to early Ngati Tai /Ngāi Tai traders and navigators.
- **Repanga (Cuvier) Island**

A place of first call for Te Arawa Waka where important rituals were conducted and an important Mauri was placed. This Mauri was significant to Ngati Tai and Huarere then and to this day for Ngāi Tai and other iwi.
Another island important to Ngāi Tai as shelter and a stopover during voyaging.
- **Waikawau Bay (North) and Te Kawau Paa**

An important site relative to “ Te Hekenga o Nga Tuatoro “ a pivotal Ngāi Tai history when the granddaughters of Tamatea Tokinui ; Te Raukohekohe, Te Motu-ki-Tawhiti and Te Kaweinga led a large roopu of their Ngāi Tai people from Torere overland via Tauranga and Katikati to join their relatives at Moehau.
- **Tangiaronui**

Ngāi Tai ki Tāmaki descendants of Mahanga and Te Akatawhia have an ancestral interest in this area that were mutually in Native Land Claims during the 1860s and 70s.
- **Te Moenga-hau a Tamatekapua/Nga Pona a Tamatekapua**

Moehau maunga is the sacred resting place of Tamatekapua and other important ancestors of Ngati Huarere, from whom Ngāi Tai ki Tāmaki also trace descent. The

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

wider Moehau area is associated with the shared histories of Ngāi Tai and many other related iwi.

Nga Pona a Tamatekapua is a name recorded by Anaru Makiwhara of Ngāi Tai ki Tāmaki.

- **Moehau no. 11 and Otautu 3B Land Blocks**

Rapata Makiwhara was an owner in these blocks at the time of his death in 1914. Turoa and Royal list the site of Otautu Bay and paa as falling within the "tribal area" of Ngāi Tai.

Ngāi Tai interests devolve from the ancestors Manukaihongi (Ngāi Tai) and his wife Puku.

- **Poihakena (Port Jackson)**

Poihakena was the site of a Ngāi Tai battle with another iwi to avenge the deaths of Te Patutatahi (Ngati Tai) and another Whanaunga of Ngāi Tai.

- **Te Huripupu and Tukituki**

Te Huripupu was the site of a settlement at Tukituki Bay where Ngāi Tai ancestors led by Manukaihongi fought a battle against Ngati Huarere. Tukituki was the paa erected by Manukaihongi subsequently.

- **Motui, Oruapopou and the Motukawao and Coromandel Island group**

These are in an area of ancestral significance to Ngāi Tai ki Tāmaki as descendants of Manukaihongi. Subsequent relationships provided access to shared fisheries in the area.

- **Papa-aroha**

Papa-aroha is a place associated with a number of important marriages between Ngāi Tai/ Ngati Tai and other closely related iwi.

It was here that Te Whatatau (Ngati Tai) met and later married Te Raukohekohe (Ngāi Tai), thus Papa-aroha is a place of ancestral importance to their descendants who now go by the name of Ngāi Tai ki Tāmaki.

- **Kikowhakarere**

This sheltered bay is significant in the history of Ngati Tai/ Ngāi Tai and relates to the incident where Te Whatatau put aside his wife Te Kaweau , hence the name Kikowhakarere (flesh abandoned).

This was after Te Kaweau had embarrassed her husband by refusing to share Hua-manu with the women of Torere.

The resultant proverb "Me mahara ki te he o Kaweau " (remember the error of Kaweau) said to persons who decline important requests unreasonably.

- **Waiau (Coromandel Harbour) and Harongatai**

Waiau was a home of Te Rakau and his two Ngati Tai/ Patutatahi wives. Harongatai is the name of a battle fought near Waiau where Ngati Tai and others killed Te Hihi to avenge the massacre at Matai paa. The subsequent marriage of Te Hihi's grandson Te Tahiwai to Te Kura of Ngati Tai secured peace between their respective peoples. Their

DOCUMENTS

7: STATEMENTS OF ASSOCIATION (CLAUSES 5.43 TO 5.46)

descendants conjointly occupied lands both at Waiau and across Hauraki Gulf / Tīkapa Moana on islands and lands between present day Howick and Beachlands.

- **Manaia**
Shared occupation at some time (Ngati Tai/ Wai o Hua).
- **Te Rua o Mahanga**
A wahi tapu associated with the death of Mahanga (a Mataatua ancestor of Ngāi Tai).
- **Te Puru**
One of several sites in the Thames – Ohinemuri area associated with the resettlement of a branch of Ngāi Tai from Torere with the people of Tuterangianini.
- **Te Anaputa a Tainui**
Another landing and anchorage site of the waka associated with early Ngati Tai / Nga Marama uruuruwhenua rituals.
- **Wai-o-Tahe and Tutukaka paa**
Battle sites near present day Thames where Mahanga was killed.
- **Te Totara (Thames)**
Another site associated with Ngāi Tai exiles from Torere under Tuterangianini. Ngāi Tai were amongst those killed in the invasion of the paa by another iwi in 1821.
- **Matai Paa (Hikutaia)**
Matai paa near Hikutaia is associated with Ngati Tai, Nga Marama, Ngati Huarere and another iwi, and was the scene of significant bloodshed during an invasion by other iwi, which was later avenged by Ngati Tai ki Aotea and Te Kawerau allies.
- **Opakura/Ohinemuri**
Opakura paa is associated with Ngāi Tai from Torere settling with the people of Tuterangianini. By the early 20th century was the main home of those whanau descended from Ngāi Tai ki Torere and another iwi.
- **Te Aroha and Waitoki**
Hetaraka Takapuna identified Te Aroha within the shared territories of Ngāti Tai, Te Wai o Hua, Ngāti Huarere and related peoples from a time when there were “no boundaries” between the tāngata whenua of Tāmaki and Hauraki. Ngāi Tai’s interests in these areas appear to derive largely from their longstanding connections to Ngā Mārama of the eastern area extending southward of Whangamatā, whilst both groups in turn became interconnected to a Hauraki iwi to the west, southward of present-day Thames.

8 EASEMENTS IN RELATION TO HUKUNUI

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

SUBPART A: RIGHT TO CONVEY WATER EASEMENT FROM THE MINISTER OF CONSERVATION

EASEMENT INSTRUMENT to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

North Auckland

Grantor

Surname must be underlined

Her Majesty the Queen acting by and through the Minister of Conservation

Grantee

Surname must be underlined

The Trustees of Ngāi Tai ki Tāmaki Trust

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee in perpetuity the easement set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this day of 20

ATTESTATION:

Signed on behalf of Her Majesty the Queen Council by

acting under a delegation from the Minister of Conservation

Signature of Grantor

Signed in my presence by the Grantor:

Signature of Witness

Witness Name:

Occupation:

Address:

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

<hr/> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <hr/> <p><i>Signature of Witness</i></p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
--	--

Certified correct for the purposes of the Land Transfer Act 1952

--

Solicitor for the Grantee

<p>All signing parties and either their witnesses or solicitors must sign or initial in this box.</p>

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT)
Right to convey water	The area marked black. Subject to survey. As shown on OTS-403-104.	Part Section 10 Block V Rangitoto Survey District. Subject to survey. The Grantor's Land	All that piece of land containing 50.9 hectares, approximately, being Part Section 10 Block V Rangitoto Survey District. Part <i>Gazette</i> notice A209876. Subject to survey. As shown on OTS-403-104. The Grantee's Land
	The Easement Area		

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE B

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

RIGHTS AND POWERS

1 Right to convey water

1.1 The right to convey water includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights to take, store and convey water in free and unimpeded flow from the source of supply or point of entry through the Easement Facility and over the Grantor's Land to the Grantee's Land.

1.2. The right to take, store and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the Easement Facility.

1.3. The Easement Facility referred to in 1.1 is the Easement Facility placed, laid or to be placed, laid within the Easement Area and as defined in clause 7.

1.4. The Grantor must not do and must not allow to be done anything on the Grantor's Land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

2 General rights

2.1 The Grantee has the right to use:

- (a) any Easement Facility already situated on Easement Area for the purpose of the Easement granted; and
- (b) if no suitable Easement Facility exists or if it does exist it needs replacement, the right to lay, install and construct the Easement Facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction).

2.2 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement Area

2.3 Except as provided in this easement the Grantee must not do and must not allow to be done on either the Grantor's Land or the Grantee's land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Facility.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

3 Repair, maintenance, and costs

- 3.1 If the Grantee has exclusive use of the Easement Facility then the Grantee is responsible for arranging the repair and maintenance of the Easement Facility on the Easement Area and for the associated costs, so as to keep the Facility in good order and to prevent it from becoming a danger or nuisance.
- 3.2 If the Grantee (or grantees if more than one) and the Grantor share the use of the Easement Facility, each of them is responsible equally for the repair and maintenance of the Easement Facility and for the associated costs set out in 3.1 excluding any pump, energy equipment and energy charges. In relation to the repair, maintenance or replacement of any pump or energy equipment the parties will discuss the extent of the work to be carried out and the costs to be paid by each party. The costs of any such work and the energy charges will be assessed on the degree of use by the parties.
- 3.3 The Grantee (or grantees if more than one) must (equally if more than one) meet any associated requirements of the relevant local authority.
- 3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this Easement.
- 3.4 The Grantor will repair at its cost all damage caused to the Easement Facility through its negligence or improper actions.

4 Rights of entry

- 4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
 - 4.1.1 enter upon the Grantor’s Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
 - 4.1.2 remain on the Grantor’s Land for a reasonable time for the sole purpose of completing the necessary work; and
 - 4.1.3 leave any vehicles or equipment on the Grantor’s Land for a reasonable time if work is proceeding.
- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor’s Land or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

5 Default

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the Grantor's Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

6 Disputes

If a dispute in relation to this easement arises between the Grantor and Grantee—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

7 Interpretation

In this Easement, unless the context requires otherwise-

Easement Facility means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or below ground) and anything in replacement or substitution.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

SUBPART B: WALKWAY EASEMENT FROM THE TRUSTEES
Landonline e-dealing Form B (Easement Instrument)

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

THE TRUSTEES OF THE NGĀI TAI KI TĀMAKI TRUST

Grantee

NEW ZEALAND WALKING ACCESS COMMISSION

Grant of Easement or *Profit à prendre* or Creation of Covenant

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

Schedule A

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown reference (plan)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Walkway under the Walking Access Act 2008	The area marked yellow. Subject to survey. As shown on OTS-403-104.	All that piece of land containing 50.9 hectares, approximately, being Part Section 10 Block V Rangitoto Survey District, Part <i>Gazette</i> notice A209876. Subject to survey. As shown on OTS-403-104.	In gross

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Form B - continued

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

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

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

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

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

the provisions set out in Annexure Schedule 1

Covenant provisions

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

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

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule _____]~~

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Landonline e-dealing Form L (Annexure Schedule)

Annexure Schedule 1

Page 3 of 3 Pages

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

It is hereby agreed and declared that

Subject to the grant created by this instrument the grantors and his or her heirs or assigns may continue to exercise all of the rights of a registered proprietor over the land subject to the right.

Rights, Powers and Remedies

Walkway

1. The Right of Way easement in gross created by this instrument expresses a Grant to the New Zealand Walking Access Commission for use as a walkway under the Walking Access Act 2008 of a right of way in gross on foot only to permit any member of the public to pass and repass and perform any activity that is reasonably incidental to that of passing and repassing over the land subject to the right.
2. The rights powers and remedies which apply to the above grant are specified in the Walking Access Act 2008 and prevail if, and to the extent that, they are inconsistent with the covenants implied by s90D of the Land Transfer Act 1952.
3. "Grantee" shall mean the Walking Access Commission, and includes any Controlling Authority of this easement appointed by the Commission for the purposes of the Walking Access Act 2008 and the agents, employees, contractors, tenants, licensees, and other invitees of either the Commission or the Controlling Authority respectively"
4. Clause 12 of Schedule 4 to the Land Transfer Regulations 2002 must be read subject to the above definition of "grantee" so that liability for damage arising from entering and doing work on the walkway or other land specified in that clause falls on either the Commission or the Controlling Authority as may be appropriate.

Agreement

This instrument is the entire agreement of the grantors and grantee.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

SUBPART C: RIGHT TO CONVEY WATER EASEMENT FROM THE TRUSTEES
E A S E M E N T I N S T R U M E N T
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

North Auckland

Grantor

Surname must be underlined

The Trustees of Ngāi Tai ki Tāmaki Trust

Grantee

Surname must be underlined

Her Majesty the Queen acting by and through the Minister of Conservation

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** in perpetuity the easement **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

<p>-----</p> <p>Signature of Grantor</p>	<p>Signed in my presence by the Grantor:</p> <p>_____</p> <p><i>Signature of Witness</i></p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
--	---

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

<p>Signed on behalf of Her Majesty the Queen Council by</p> <p>acting under a delegation from the Minister of Conservation</p> <p>_____</p> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <p>_____</p> <p><i>Signature of Witness</i></p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
---	---

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Grantee

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT)
Right to convey water	The area marked light blue. Subject to survey. As shown on OTS-403-104.	All that piece of land containing 50.9 hectares, approximately, being Part Section 10 Block V Rangitoto Survey District. Part <i>Gazette</i> notice A209876. Subject to survey. As shown on OTS-403-104. The Grantor's Land	Part Section 10 Block V Rangitoto Survey District. Subject to survey. The Grantee's Land

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE B

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

RIGHTS AND POWERS

1 Right to convey water

1.1 The right to convey water includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights to take, store and convey water in free and unimpeded flow from the source of supply or point of entry through the Easement Facility and over the Grantor's Land to the Grantee's Land.

1.2. The right to take, store and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the Easement Facility.

1.3. The Easement Facility referred to in 1.1 is the Easement Facility placed, laid or to be placed, laid within the Easement Area and as defined in clause 7.

1.4. The Grantor must not do and must not allow to be done anything on the Grantor's Land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

2 General rights

2.1 The Grantee has the right to use:

- (a) any Easement Facility already situated on Easement Area for the purpose of the Easement granted; and
- (b) if no suitable Easement Facility exists or if it does exist it needs replacement, the right to lay, install and construct the Easement Facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction).

2.2 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement Area

2.3 Except as provided in this easement the Grantee must not do and must not allow to be done on either the Grantor's Land or the Grantee's land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Facility.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

3 Repair, maintenance, and costs

- 3.1 If the Grantee has exclusive use of the Easement Facility then the Grantee is responsible for arranging the repair and maintenance of the Easement Facility on the Easement Area and for the associated costs, so as to keep the Facility in good order and to prevent it from becoming a danger or nuisance.
- 3.2 If the Grantee (or grantees if more than one) and the Grantor share the use of the Easement Facility, each of them is responsible equally for the repair and maintenance of the Easement Facility and for the associated costs set out in 3.1 excluding any pump, energy equipment and energy charges. In relation to the repair, maintenance or replacement of any pump or energy equipment the parties will discuss the extent of the work to be carried out and the costs to be paid by each party. The costs of any such work and the energy charges will be assessed on the degree of use by the parties.
- 3.3 The Grantee (or grantees if more than one) must (equally if more than one) meet any associated requirements of the relevant local authority.
- 3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this Easement.
- 3.4 The Grantor will repair at its cost all damage caused to the Easement Facility through its negligence or improper actions.

4 Rights of entry

- 4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
 - 4.1.1 enter upon the Grantor’s Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
 - 4.1.2 remain on the Grantor’s Land for a reasonable time for the sole purpose of completing the necessary work; and
 - 4.1.3 leave any vehicles or equipment on the Grantor’s Land for a reasonable time if work is proceeding.
- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor’s Land or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

5 Default

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the Grantor's Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

6 Disputes

If a dispute in relation to this easement arises between the Grantor and Grantee—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

7 Interpretation

In this Easement, unless the context requires otherwise-

Easement Facility means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or below ground) and anything in replacement or substitution.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

<p>Signed on behalf of Her Majesty the Queen by</p> <p>acting under a delegation from the Minister of Conservation</p> <p>_____</p> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <p>_____</p> <p><i>Signature of Witness</i></p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
---	---

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Grantee

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way	The 10m strip marked red. Subject to survey. As shown on OTS-403-104. The Easement Area	All that piece of land containing 50.9 hectares, approximately, being Part Section 10 Block V Rangitoto Survey District. Part <i>Gazette</i> notice A209876. Subject to survey. As shown on OTS-403-104. The Grantor's Land	In gross

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

ANNEXURE SCHEDULE B

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

RIGHTS AND POWERS

1 Rights of way

- 1.1 The right of way includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Area.
- 1.2 The right of way includes the right for the Grantee, its employees, contractors but excluding the general public to proceed along the Easement Area by foot or by vehicle or any other means of transport and with all necessary tools, vehicles, equipment (including firearms) farm animals and dogs to carry out the work.
- 1.3 The right to move farm animals over and along the Easement Area is conditional upon the farm animals being kept under proper control to ensure they:
 - 1.3.1 are moved quickly;
 - 1.3.2 do not stop and graze the Easement Area;
 - 1.3.3 are only moved during daylight hours;
 - 1.3.4 are prevented from straying off the Easement Area
- 1.4 The right of way includes—
 - 1.4.1 the right to repair and maintain the existing access track (“the track”) on the Easement Area, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
 - 1.4.2 the right to have the Easement Area kept clear at all times of obstructions, deposit of materials, or unreasonable impediment to the use and enjoyment of the track.
 - 1.4.3 the right for the Grantee to improve the Easement Area in any way it considers expedient but consistent with its purposes of access, including the installation of track markers, stiles but without at any time causing damage to or interfering with the Grantor’s use and management of the Grantor’s Land.
 - 1.4.4 the right for the Grantee to erect and display notices on the Easement Area and with the Grantor’s consent, which must not be unreasonably withheld, on the Grantor’s Land.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

2 General rights

- 2.1 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this easement or of any other party or interfere with the efficient operation of the Easement Area.
- 2.2 Except as provided in this easement the Grantee must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.
- 2.3 The Grantee may transfer or otherwise assign this easement.

3 Repair, maintenance, and costs

- 3.1 The Grantee is responsible for arranging the repair and maintenance of the track on the Easement Area and for the associated costs, so as to keep the track to a standard suitable for its use.
- 3.2 If the Grantee (or grantees if more than one) and the Grantor share the use of the track then each of them is responsible for arranging the repair and maintenance of the track on the Easement Area and for the associated costs, so as to keep the track to a standard suitable for their use. Prior to any repair or maintenance being carried out the parties will discuss the extent of the repair or maintenance to be carried out and the proportion of costs to be paid by each party. The costs will be assessed on the standard of the track required by each party and their degree and nature of use.
- 3.3 The Grantee (or grantees if more than one must (equally if more than one) meet any associated requirements of the relevant local authority.
- 3.4 The Grantee must repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this easement.
- 3.5 The Grantor must repair at its cost all damage caused to the track through its negligence or improper actions.

4 Rights of entry

- 4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
- 4.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
- 4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and
- 4.1.3 leave any vehicles or equipment on the Grantor's Land for a reasonable time if work is proceeding.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor's Land or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.
- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

5 Default

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the Grantor's Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

All signing parties and either their witnesses or solicitors must sign or initial in this box.
--

DOCUMENTS

8: EASEMENTS IN RELATION TO HUKUNUI

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

6 Disputes

If a dispute in relation to this easement arises between the Grantor and Grantee—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society

All signing parties and either their witnesses or solicitors must sign or initial in this box.

9 EASEMENT IN RELATION TO TE TAUROA

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

EASEMENT INSTRUMENT

to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

North Auckland

Grantor

Surname must be underlined

The Trustees of Ngāi Tai ki Tāmaki Trust

Grantee

Surname must be underlined

Her Majesty the Queen acting by and through the Minister of Conservation

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** in perpetuity the easement **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

	<p><u>Signed</u> in my presence by the Grantor:</p> <p>_____ <i>Signature of Witness</i></p> <p>Witness Name:</p>
--	--

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

<p>-----</p> <p>Signature of Grantor</p>	<p>Occupation:</p> <p>Address:</p>
---	--

<p>All signing parties and either their witnesses or solicitors must sign or initial in this box.</p>
--

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

<p>Signed on behalf of Her Majesty the Queen Council by</p> <p>acting under a delegation from the Minister of Conservation</p> <p>_____</p> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <p>_____</p> <p><i>Signature of Witness</i></p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
---	---

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Grantee

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT)
Right to convey water	The area marked light blue. Subject to survey. As shown on OTS-403-104.	All that piece of land containing 1 hectare, approximately, being Part Section 10 Block V Rangitoto Survey District. Part <i>Gazette</i> notice A209876. Subject to survey. As shown on OTS-403-104. The Grantor's Land	Part Section 10 Block V Rangitoto Survey District. Subject to survey. The Grantee's Land

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

ANNEXURE SCHEDULE B

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

RIGHTS AND POWERS

1 Right to convey water

1.1 The right to convey water includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights to take, store and convey water in free and unimpeded flow from the source of supply or point of entry through the Easement Facility and over the Grantor's Land to the Grantee's Land.

1.2. The right to take, store and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the Easement Facility.

1.3. The Easement Facility referred to in 1.1 is the Easement Facility placed, laid or to be placed, laid within the Easement Area and as defined in clause 7.

1.4. The Grantor must not do and must not allow to be done anything on the Grantor's Land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

2 General rights

2.1 The Grantee has the right to use:

(a) any Easement Facility already situated on Easement Area for the purpose of the Easement granted; and

(b) if no suitable Easement Facility exists or if it does exist it needs replacement, the right to lay, install and construct the Easement Facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction).

2.2 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement Area

2.3 Except as provided in this easement the Grantee must not do and must not allow to be done on either the Grantor's Land or the Grantee's land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Facility.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

3 Repair, maintenance, and costs

- 3.1 If the Grantee has exclusive use of the Easement Facility then the Grantee is responsible for arranging the repair and maintenance of the Easement Facility on the Easement Area and for the associated costs, so as to keep the Facility in good order and to prevent it from becoming a danger or nuisance.
- 3.2 If the Grantee (or grantees if more than one) and the Grantor share the use of the Easement Facility, each of them is responsible equally for the repair and maintenance of the Easement Facility and for the associated costs set out in 3.1 excluding any pump, energy equipment and energy charges. In relation to the repair, maintenance or replacement of any pump or energy equipment the parties will discuss the extent of the work to be carried out and the costs to be paid by each party. The costs of any such work and the energy charges will be assessed on the degree of use by the parties.
- 3.3 The Grantee (or grantees if more than one) must (equally if more than one) meet any associated requirements of the relevant local authority.
- 3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this Easement.
- 3.4 The Grantor will repair at its cost all damage caused to the Easement Facility through its negligence or improper actions.

4 Rights of entry

- 4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
 - 4.1.1 enter upon the Grantor’s Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
 - 4.1.2 remain on the Grantor’s Land for a reasonable time for the sole purpose of completing the necessary work; and
 - 4.1.3 leave any vehicles or equipment on the Grantor’s Land for a reasonable time if work is proceeding.
- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor’s Land or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

5 Default

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the Grantor's Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

6 Disputes

If a dispute in relation to this easement arises between the Grantor and Grantee—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and

All signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

9: EASEMENT IN RELATION TO TE TAUROA

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

7 Interpretation

In this Easement, unless the context requires otherwise-

Easement Facility means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or below ground) and anything in replacement or substitution.

All signing parties and either their witnesses or solicitors must sign or initial in this box.

10 LEASE IN RELATION TO TE WAIAROHIA PĀ

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

L 9990077.1 Lease

Copy - 01/02, Pgs - 015, 11/03/15, 08:06



DocID: 919492390

Dated 3 MARCH 2015

Between

Her Majesty The Queen

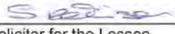
Lessor

And

Her Majesty The Queen

Lessee

Correct for the purposes of the
Land Transfer Act 1952


Solicitor for the Lessee

3 MARCH 2015

Memorandum of Lease

Table of Contents

Schedule of Land

1. Definitions
2. Concurrent Lease
3. Term and Right of Renewal
4. Rent
5. Rent Reviews
6. Use of the Land and Improvements
7. Maori Fortifications
8. Payment of Rates and Impositions
9. Public Access
10. Default
11. Right of Way
12. Goods and Services Tax
13. Charges
14. Statutory Requirements
15. Condition of the Land and Improvements
16. Insurance
17. No Warranty
18. Additions and Alterations
19. Remedial Destruction
20. Lessee's Acknowledgement of Risk
21. Prior Representations
22. Property Law Act 2007
23. Subdivision
24. Quiet Enjoyment
25. Registration
26. Notices
27. Disputes, Resolutions and Arbitration
28. Costs
29. Interest on overdue moneys
30. Implied Relationships
31. Partial Invalidity
32. Governing Law

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

Memorandum of Lease

Parties

1. **Her Majesty The Queen** acting by and through the Commissioner of Crown Lands ("the Lessor")
2. **Her Majesty The Queen** acting by and through the Commissioner of Crown Lands ("the Lessee")

Schedule of Land

Estate - Fee Simple			
North Auckland Land Registration District			
C.T.	Area	Legal	Description
NA107B/758	3.9240 hectares more or less	Lot 2	Deposited Plan 158600
Encumbrances, Liens & Interests:			
(a)	Subject to Section 27B State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation).		
(b)	D072335.2 - Consent Notice pursuant to Section 221(1) Resource Management Act 1991.		
(c)	D072335.5 - Resolution pursuant to Section 321(3)(c) Local Government Act 1974.		
(d)	Right of way specified in Easement Certificate D072335.9.		
(e)	D133015.3 - Lease to Spark New Zealand Limited for a term of 33 years commencing from and including 29.10.1993 and terminating on 28.10.2026 (renewal clause).		

The Lessor does hereby lease to the Lessee the Land pursuant to Section 67(2) of the Land Act 1948 and **the Lessee does hereby accept this Lease** to be held by it as lessee and subject to the conditions, restrictions and covenants herein set forth.

In witness whereof these presents have been executed this 30 day of March 2015

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

Signed for and on behalf of)
Her Majesty The Queen) *Bullen*
acting by and through the Commissioner of)
Crown Lands as Lessor)

Witnessed by:
Ginny Leggett *Leggett* (signature and name)
Public Servant (occupation)
155 The Terrace, Wellington (address)

Signed for and on behalf of)
Her Majesty The Queen) *Bullen*
acting by and through the Commissioner of)
Crown Lands as Lessee)

Witnessed by:
Ginny Leggett *Leggett* (signature and name)
Public Servant (occupation)
155 The Terrace, Wellington (address)

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

Definitions and Interpretation

1. Definitions

1.1 For the purpose of the interpretation or construction of this lease, unless the context provides otherwise:

"**Adjoining Land**" means the land currently comprised in Lot 1 on Deposited Plan 158600 and contained in Computer Freehold Register NA107B/757 (North Auckland Registry).

"**Authority**" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and/or the Improvements.

"**Commencement Date**" means [3 March 2015].

"**Default Interest Rate**" means an amount equal to the rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis.

"**District Plan**" shall have the same meaning as in section 2 of the Resource Management Act 1991, and includes a plan which replaces or serves substantially the same purpose.

"**Improvements**" means any building, piles, structure or other improvements including drains, concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, fixtures and fittings existing on the Land at the Commencement Date and from time to time installed by or on behalf of the Lessee on the Land during the term of this Lease but excludes the property of the Lessee and/or other lawful occupiers of the Land or Improvements and any Maori fortifications on the Land.

"**the Land**" means that land described in the Schedule of Land forming part of this Lease.

"**Spark Lease**" means the lease between the Lessee (as lessor) and Spark New Zealand Limited (as lessee) registered at Land Information New Zealand under Memorandum of Lease D133015.3.

"**Spark Lessee**" means the lessee from time to time under the Spark Lease, which, as at the date of this Lease, is Spark New Zealand Limited.

"**Term**" means the period commencing on the Commencement Date and ending on 28 October 2026 (subject to the Lessee exercising its right(s) of renewal pursuant to clause 3.2).

Interpretation

1.2 For the purposes of the interpretation or construction of this lease, unless the context provides otherwise:

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

- (a) Words importing any gender shall include all other genders.
- (b) Words importing the singular shall include the plural and vice versa.
- (c) Payments shall be made in the lawful currency of New Zealand.
- (d) Headings shall be ignored.
- (e) References to clauses are references to clauses in this Lease and references to parties are references to the parties to this Lease unless expressly stated otherwise.
- (f) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
- (g) A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, the Crown or agency of the Crown, in each case whether or not having separate legal personality.
- (h) Writing shall include words visibly represented or reproduced.
- (i) Where approvals or consents are required in this Lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
- (j) The expression "Lessor" and the "Lessee" includes their respective successors and assigns and where the context permits the Lessor's or the Lessee's respective tenants and other lawful occupiers of the Land and their respective contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessor or the Lessee, as the case may be).

The Lessee hereby Covenants with the Lessor:

2. Concurrent Lease

- 2.1 This Lease is a concurrent lease and has been granted by the Lessor to the Lessee subject to all existing leases in respect of the Land, including the Spark Lease.
- 2.2 For so long as this Lease is a concurrent lease:
 - (a) The Lessee shall be responsible for collecting, and shall be entitled to keep, the rent payable by the Spark Lessee;

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

- (b) The Lessee shall for all purposes be treated as the lessor under the Spark Lease, both in terms of the lessor's obligations and liabilities, and the benefits of the Spark Lessee's covenants; and
- (c) The Lessee may agree with the Spark Lessee to vary the terms of the Spark Lease, but may not renew or extend that lease or grant further rights of renewal or extension so as to allow that lease to expire after the expiry of the final term of this Lease.

3. Term and Right of Renewal

- 3.1 In consideration of the rent hereinafter reserved and of the covenants, conditions, and agreements on the part of the Lessee herein expressed or implied to be paid, performed, observed and fulfilled the Lessor does hereby lease to the Lessee all the Land and Improvements for the Term from and including the Commencement Date subject to the covenants, conditions and restrictions set out below and concurrent with any existing leases, including the Spark Lease.
- 3.2 The Lessee has a right of renewal for one (1) further term of thirty-three (33) years commencing on 29 October 2026 ("Renewal Date"), subject to clauses 3.3 and 3.4. The covenants during the renewed term shall be the same as in this Lease, excepting this present covenant for renewal. It is agreed that the final expiry date of this Lease (if all rights of renewal are exercised) is 28 October 2059.
- 3.3 The right of renewal shall be exercised in connection with the renewal of the Spark Lease for the same renewal period.
- 3.4 Notwithstanding anything to the contrary, in no circumstances shall this Lease enure beyond the expiry or sooner determination of the Spark Lease. This Lease is coterminous with the Spark Lease, such that the expiry or sooner determination of the Spark Lease shall automatically bring to a simultaneous end the term of this Lease.
- 3.5 If this Lease comes to an end (other than by effluxion of time) the parties will promptly take such steps as may be necessary to effect a discharge of this Lease from the computer freehold register for the Land.

4. Rent

- 4.1 The Lessee shall pay a rental of \$1.00 plus goods and services tax for each term of this Lease. The Lessor acknowledges receipt of the rental in respect of the Term and the first renewed term of this Lease.

5. Rent Reviews

- 5.1 [not used]
- 5.2 [not used]

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

5.3 **[not used]**

6. **Use of the Land and Improvements**

6.1 The Lessee will not without the consent of the Lessor use or permit or allow the Land or the Improvements (or any part thereof) to be used otherwise than for communication purposes.

7. **Maori Fortifications**

7.1 Notwithstanding any other provision contained in this Lease, the Lessee will not permit or allow anyone to disturb the Maori fortifications on the Land and will take reasonable steps to ensure the fortifications are fully protected for the duration of this Lease (including during any renewed term).

8. **Payment of Rates and Impositions**

8.1 The Lessee will, in addition to the specific tax required for payment under clause 12, pay all rates, assessments and taxes (but not tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land) in respect of the Land.

9. **Public Access**

9.1 The Lessee will permit reasonable public access on foot upon the Land at all reasonable times, provided that the Lessee's security requirements (or the security requirements of the Spark Lessee) are not compromised. Notwithstanding this clause 9.1, the Lessee shall not be required to permit access to those parts of the Land comprising improvements owned by the Spark Lessee or the transmission areas used by the Spark Lessee.

10. **Default**

10.1 In the event that the Lessee defaults under the terms of this Lease and such default in the reasonable opinion of the Lessor is a serious and material default, then the Lessor shall be entitled to give written notice to the Lessee specifying the default and giving the Lessee a reasonable time in which to remedy such default depending on the nature and impact of the default.

10.2 Should any default remain unremedied within the time specified by the Lessor following the receipt of notice under clause 10.1, then the Lessor shall be entitled on a without prejudice basis to seek whatever remedies are available to the Lessor under this Lease and otherwise at law or in equity, provided that notwithstanding any other provision of this Lease, or otherwise at law or in equity the Lessor shall have no rights of cancellation or re-entry available to it in respect of this Lease.

10.3 The Lessor's failure to take advantage of any default, breach, non-observance or non-performance of any covenant, term or condition on the part of the Lessee to be observed and performed hereunder shall not be construed as a waiver, nor shall any

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

custom or practice which may have grown up between the parties in the course of administering this Lease be construed to waive or to lessen any rights, powers or privileges at law or in equity of the Lessor, to insist upon the due and punctual performance of this Lease, or to prevent the exercise by the Lessor of any rights which the Lessor is lawfully entitled to exercise by reason of any such default.

11. Right of Way

- 11.1 The Lessee and the Lessor acknowledge that a right of way easement is currently registered over that part of the Adjoining Land shown "A" on Deposited Plan 158600 in favour of the Land and specified in Easement Certificate D072335.9 ("Right of Way").
- 11.2 Notwithstanding the provisions contained in Easement Certificate D072335.9, the Lessor and Lessee further acknowledge that the Spark Lessee has certain rights and obligations pertaining to the repairs and maintenance of the Right of Way pursuant to clause 2.03 of the Spark Lease.
- 11.3 The Lessee shall procure compliance of the Spark Lessee's repair and maintenance obligations in respect of the Right of Way under clause 2.03 of the Spark Lease and shall do all things reasonably necessary to enforce any breach or default of such obligations by the Spark Lessee during the term of the Spark Lease (including during any renewed term).
- 11.4 The Lessee shall not vary or agree to vary the terms of clause 2.03 of the Spark Lease without the prior written consent of the Lessor.
- 11.5 During the term of the Spark Lease (including during any renewed term) the Lessor, in its capacity as the registered proprietor of both the Land and the Adjoining Land, may use the Right of Way with vehicles with a gross combination weight not exceeding 3,500 kilograms. If the Lessor proposes to use or permit use of the Right of Way by a vehicle with a gross combination weight exceeding 3,500 kilograms, then the consent of the Lessee in writing must be obtained and the Lessee may impose such conditions concerning protection of the Right of Way against damage as it thinks fit. This clause 11.5 shall not apply to any vehicle needing to use the Right of Way for emergency purposes.
- 11.6 If the Lessor sells, transfers or otherwise parts with possession of the Adjoining Land (or any part of it) then the Lessor shall obtain and deliver to the Lessee a signed covenant from the new transferee (in such form approved by the Lessee) agreeing to be bound by the provisions contained in clause 11.5 and this 11.6.
- 11.7 The Lessor shall not vary or surrender the Right of Way during the term of the Spark Lease (including during any renewed term) without the prior written consent of the Lessee.

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

12. Goods and Services Tax

- 12.1 The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor, whether pursuant to the provisions of the Goods and Services Tax Act 1985 (being the tax thereby imposed or any similar tax levied in substitution therefor, including all amendments and any enactments in substitution therefore or in addition thereto or otherwise) in respect of any payments paid or payable by the Lessee under this Lease.

13. Charges

- 13.1 The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements.

14. Statutory Requirements

- 14.1 The Lessee shall if required by any Authority comply with all statutes, the District Plan, bylaws and regulations which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority.

15. Condition of the Land and Improvements

- 15.1 The Lessee will at all times during the term of this Lease keep and maintain the Land and Improvements in a clean and tidy condition.

16. Insurance

- 16.1 The Lessee will insure and keep insured all the Improvements situated on or under the Land for their full replacement value. Such insurance shall provide cover against destruction or damage by fire and earthquake and fire following upon earthquake. The obligation under this clause will be satisfied where the Improvements are insured in accordance with the terms of the Spark Lease.
- 16.2 If the Lessee believes on reasonable grounds that it is unable to obtain or it is uneconomic to maintain a replacement cover, then the Lessee may insure all the Improvements for indemnity to full insurable value.

17. No Warranty

- 17.1 The Lessor does not in any way warrant that the Land and/or Improvements are or will remain suitable or adequate for any of the purposes of the Lessee and to the full extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negated.
- 17.2 The Lessee shall be responsible for satisfying itself (by the carrying out of soil testing, underground investigation, foundation design or such other action or

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

research as may be necessary) as to the suitability of the Land and/or Improvements for any use.

- 17.3 The Lessor shall not be responsible for the repair of any damage caused by the acts, omissions or default of the Lessee or persons under the control of the Lessee.

18. Additions and Alterations

- 18.1 The Lessee may at its sole discretion make any additions or alterations to the Land and/or Improvements provided that the Lessee complies with all statutes, regulations, bylaws and Authority requirements in respect of all such additions and alterations.

19. Remedial Destruction

- 19.1 In the event that the Improvements or any part thereof are at any time during this Lease damaged, destroyed or partially destroyed but so that the same may be repaired and reinstated then provided the Lessee is not prevented by any statute then in force from so doing and, if approved by the Lessor in writing, the Lessee may (in its sole discretion) with all convenient speed, repair and reinstate the Improvements provided that the Lessee will not be required to expend more than the actual received proceeds of the insurance policy effected by the Lessee under clause 16.

- 19.2 If during the second renewed term of this Lease the rent payable under the Spark Lease abates pursuant clause 1.30 of the Spark Lease, then the rent payable under this Lease shall abate by the same amount.

20. Lessee's Acknowledgement of Risk

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

21. Prior Representations

- 21.1 The covenants, provisions, terms and agreements contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties to this Lease (notwithstanding any negotiations or discussions prior to the execution of this Lease or anything contained in any brochure, report or other document prepared by or on behalf of the Lessor or submission to potential lessees of the Land).
- 21.2 The parties expressly agree and declare that no further or other covenants, agreements, provisions or terms whether in respect of the Land or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

or made by any party to the other or others on or prior to the execution of this Lease and the existence of any such implication or collateral or other agreement is hereby expressly negated and the Lessee further acknowledges that the Lessee has not been induced to enter into this Lease by any representation, verbal or otherwise made by or on behalf of the Lessor which is not set out in this Lease.

22. Property Law Act 2007

- 22.1 The provisions contained in sections 218 and 219 of the Property Law Act 2007 shall not apply to this Lease. Sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this Lease.

23. Subdivision

- 23.1 The Lessor shall not subdivide the Land or any part of it during the Term of this Lease (or during any renewed term) including, without limitation, carrying out a unit title subdivision in respect of any of the Improvements pursuant to the Unit Titles Act 2010.

24. Quiet Enjoyment

- 24.1 Provided the Lessee performs and observes the covenants, provisions, conditions and agreements contained in this Lease, the Lessee shall peaceably hold and enjoy the Land and Improvements without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

25. Registration

- 25.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 1952.

26. Notices

- 26.1 Any notice or other document required to be given, delivered or served under this Lease (including requests, demands and other communications) may be given, delivered or served in accordance with the relevant provisions contained in the Property Law Act 2007. In the case of any notice or document required to be given, delivered or served by either the Lessor or the Lessee, the same may be signed on behalf of the Lessor or Lessee (as the case may be) by any attorney, officer, employee, servant or agent authorised by the relevant party from time to time.

27. Disputes, Resolutions and Arbitration

- 27.1 Any dispute or difference which may arise between the parties concerning the construction, meaning and effect of this Lease or relating to any clause or other matter contained or implied or the rights and liabilities of the parties arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

DOCUMENTS

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

-
- 27.2 If the parties cannot resolve a dispute or difference within 20 working days of any dispute or difference arising then, unless otherwise expressly provided in this Lease the matter shall be referred to arbitration of a single arbitrator if the parties can agree on one, and failing such agreement to the arbitration of two arbitrators, one to be appointed by each party and their umpire appointed before commencing the arbitration under the Arbitration Act 1996. The appointments pursuant to this clause 27.2 shall be made within 21 days after the date on which the party raising such matter gave notice of it to the other, and should either party fail to make such appointment within the 21 days then the person appointed by the other party shall be and become sole arbitrator of the dispute or difference.
- 27.3 Any such arbitration shall be conducted at Auckland in New Zealand or such other location in New Zealand as the parties may agree upon.
- 27.4 Any award of the arbitrator, arbitrators and their umpire as the case may be shall be final and binding on the parties and shall include a determination as to which party shall pay the costs of the arbitration or the respective share of costs to be paid by each party.
- 27.5 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the dispute or difference.
- 28. Costs**
- 28.1 The parties shall each pay their own solicitors costs for preparing, finalising and registering this Lease and for any variation or renewal of this Lease. The Lessee shall be responsible for payment of all government tax duty or imposts at any time payable on this Lease and shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease, and likewise the Lessor shall pay for all costs, charges and expenses for which the Lessee shall become liable in consequence of or in connection with any breach or default by the Lessor in the performance or observance of any of the terms, covenants and conditions of this Lease.
- 29. Interest on overdue moneys**
- 29.1 Without prejudice to the other rights, powers and remedies of the Lessor under this Lease, the Lessee shall pay to the Lessor interest on any moneys due but unpaid for seven (7) days at the Default Interest Rate.
- 29.2 Such interest shall:
- (a) accrue from day to day;

10: LEASE IN RELATION TO TE WAIAROHIA PĀ

- (b) be capitalised on the last day of each month;
- (c) be payable on the first day of each month where an amount arose in the preceding month or months;
- (d) be computed from the due date for payment of the moneys until payment of such moneys is made in full.

30. Implied Relationships

- 30.1 Nothing contained in this Lease shall be deemed or construed or constitute any party or parties' agent or representative or other party or be deemed to create any trust, commercial partnership or joint venture.

31. Partial Invalidity

- 31.1 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

32. Governing Law

- 32.1 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

11 EASEMENT IN RELATION TO MAUNGAREI A

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by Registrar-General of Land under No. 2007/6225

Easement instrument to grant easement or profit à prendre, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

North Auckland



BARCODE

Grantor

Surname(s) must be underlined or in CAPITALS

[The Grantor] [name of Grantor to be inserted, surnames in capitals]

Grantee

Surname(s) must be underlined or in CAPITALS

[The Trustees of the Ngāi Tai ki Tāmaki Trust] [names of trustees to be inserted, surnames in capitals]

Grant* of easement or profit à prendre or creation of covenant

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

Dated this day of 20

Attestation

Witness section for Grantor: See Annexure Schedule 2, Signed in my presence by the Grantor, Signature of witness, Witness to complete in BLOCK letters, Witness name, Occupation, Address, Signature [common seal] of Grantor

Witness section for Grantee: See Annexure Schedule 2, Signed in my presence by the Grantee, Signature of witness, Witness to complete in BLOCK letters, Witness name, Occupation, Address, Signature [common seal] of Grantee

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by Registrar-General of Land under No. 2007/6225
Annexure Schedule 1



Easement instrument Dated Page of pages

Schedule A (Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of way	[Marked [A] on SO []] [being part of the Easement Land shown A on deed plan OTS-403-100A]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]
Right of way and right to park vehicles	[Marked [B] on SO []] [being part of the Easement Land shown B on deed plan OTS-403-100A]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]
Pedestrian right of way	[Marked [C] on SO []] [being part of the Easement Land shown C on deed plan [OTS-403-100A]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]	[Part Lot 9 DP 97274, being part computer freehold register NA97B/869 (subject to survey)]

~~Delete phrases in [] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.~~

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

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

The implied rights and powers are ~~[varied] [negated] [added to] or [substituted]~~ by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]
[the provisions set out in Annexure Schedule 2].~~

~~**Covenant provisions**
Delete phrases in [] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.~~

~~The provisions applying to the specified covenants are those set out in:
[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]
[Annexure Schedule 2].~~

All signing parties and either their witnesses or solicitors must sign or initial in this box

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page

1

of

7

Pages

Continue in additional Annexure Schedule, if required.

1 DEFINITIONS AND INTERPRETATION

- 1.1 Dominant Land means the land described as the dominant tenement in Schedule A of this Easement.
1.2 Easement means this Easement Instrument.
1.3 Easement Area A means that part of the Easement Land [marked [A] on the Plan] [marked A on OTS-403-100A].
1.4 Easement Area B means that part of the Easement Land [marked [B] on the Plan] [marked B on OTS-403-100A].
1.5 Easement Area C means that part of the Easement Land [marked [C] on the Plan] [marked C on OTS-403-100A].
1.6 Easement Land means Easement Area A, Easement Area B and Easement Area C.
1.7 Grantee means the registered proprietor of the Dominant Land and includes their agents, employees, contractors, tenants, licensees, and other invitees of the Grantee.
1.8 Grantor means the registered proprietor of the Servient Land and includes their agents, employees, contractors, tenants, licensees, and other invitees of the Grantor.
1.9 pedestrian right of way means the pedestrian right of way easement over Easement Area C created by this Easement.
1.10 Plan means SO [].
1.11 right of way means the right of way easement over Easement Area A created by this Easement.
1.12 right of way and right to park vehicles means the right of way and right to park vehicles easement over Easement Area B created by this Easement.
1.13 Servient Land means the land described as the servient tenement in Schedule A of this Easement.
1.14 working day has the meaning given to it in the Interpretation Act 1999.

2 INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
(b) The singular includes the plural and the plural includes the singular.
(c) A gender includes all genders.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement Dated [] Page 2 of 7 Pages

Continue in additional Annexure Schedule, if required.

- (d) A person includes an individual and a corporation.
(e) A reference to any party to this Easement includes its successors and assigns.
(f) A reference to a right or obligation of any party comprising two or more people confers that right, or imposes that obligation, on each of them individually and both (or all) of them together.
(g) A reference to legislation includes an amendment of or substitution for it and a regulation or statutory instrument issued under it.
(h) Unless stated otherwise, one word or provision does not limit the effect of another.
(i) Reference to the whole includes part.
(j) All obligations are taken to be required to be performed properly and punctually.
(k) Anything to be done on a Saturday, Sunday or a public holiday may be done on the next working day.
(l) Every obligation by a party is taken to include an obligation by that party to ensure that each of its employees and others under its control comply with that obligation.

3 RIGHT OF WAY

- 3.1 The Grantor grants to the Grantee the right of way, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area A at all times on the terms set out in this Easement.
3.2 The right of way includes the right to go over and along Easement Area A on foot or with any kind of vehicle, machinery, or implement.
3.3 The right of way includes the following rights:
(a) to use any existing driveway or to establish a driveway on Easement Area A;
(b) to repair and maintain that driveway; and
(c) to have Easement Area A kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area A.

4 RIGHT OF WAY AND RIGHT TO PARK VEHICLES

- 4.1 The Grantor grants to the Grantee the right of way and right to park vehicles, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area B and to park vehicles on Easement Area B at all times on the terms set out in this Easement.
4.2 The right of way and right to park vehicles allows the Grantee to:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement Dated Page 3 of 7 Pages

Continue in additional Annexure Schedule, if required.

- (a) go over and along those parts of Easement Area B that are not to be used for parking vehicles on foot or with any kind of vehicle, machinery, or implement; and
(b) park vehicles on those parts of Easement Area B that are to be used for parking vehicles.
4.3 The right of way and the right to park vehicles includes the following rights:
(a) to use any existing car parking area or to establish a car parking area on Easement Area B;
(b) to repair and maintain that car parking area; and
(c) to have those parts of Easement Area B that are not to be used for parking vehicles kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area B.
5 PEDESTRIAN RIGHT OF WAY
5.1 The Grantor grants to the Grantee the pedestrian right of way, in common with the Grantor and other persons to whom the Grantor may grant similar rights, to go over and along Easement Area C at all times on foot on the terms set out in this Easement.
5.2 The pedestrian right of way includes the right to go over and along Easement Area C on foot or with any kind of [machinery or implement.
5.3 The Grantee must not bring onto Easement Area C any kind of vehicle or animal.
5.4 The pedestrian right of way includes the following rights:
(a) to use any existing track or to establish a track on Easement Area C;
(b) to repair and maintain that track; and
(c) to have Easement Area C kept clear at all times of obstructions (whether caused by deposit of materials, or unreasonable impediment) to the use and enjoyment of Easement Area C.
6 REPAIR, MAINTENANCE AND COSTS
6.1 The Grantor and the Grantee are responsible equally for the repair and maintenance of the Easement Land, and for the associated costs, for the purposes of:
(a) keeping the Easement Land in good order; and
(b) preventing the Easement Land from becoming a danger or nuisance.
6.2 The Grantor or Grantee must promptly carry out at that party's sole cost any repair and maintenance of the Easement Land that is attributable solely to any act or omission of that party.
6.3 However, if the repair and maintenance of the Easement Land is only partly attributable to an act or omission by the Grantor or the Grantee:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

LZS-107596-55-571-V4

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement Dated [] Page 4 of 7 Pages

Continue in additional Annexure Schedule, if required.

- (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
(b) the balance of those costs is payable in accordance with clause 6.1.
6.4 The party or parties responsible for the repair or maintenance of the Easement Land under this clause 6 must, at its or their own cost, meet any associated requirements of the relevant local authority.
7 GENERAL RIGHTS
7.1 The Grantor may, from time to time, at its cost, install on Easement Area B directional signs to allow adequate manoeuvring of vehicles over Easement Area B and unimpeded access over those parts of Easement Area B that are not to be used for parking vehicles and the Grantee must comply with any directional signs.
7.2 The Grantor may, from time to time, at its cost, install on Easement Area C directional signs to prescribe that Easement Area C is for pedestrian use only.
7.3 The Grantee will not park or stop on Easement Area A, Easement Area C, or on any part of Easement Area B not to be used for parking vehicles, at any time.
7.4 The Grantor may take whatever measures reasonably necessary for the safety of persons or property on the Easement Land, including without limitation, the right for the Grantor to erect signs and/or notices, at the Grantor's cost, warning of any danger or hazard and the Grantee must comply with these measures.
7.5 Despite clause 7.4, the Grantee acknowledges that the gradient of parts of the Easement Land is steep. The Grantee will exercise its rights under the Easement and in relation to the Easement Land at its own risk and will be solely responsible to ensure it takes all reasonable steps to use the Easement Land in a safe manner. The Grantee further acknowledges that the Grantor will not be responsible to the Grantee for any costs, loss or damages incurred by the Grantee as a result of the Grantee exercising its rights under this Easement.
7.6 The Grantee must not do and must not allow to be done on the Dominant Land or the Servient Land anything that may:
(a) interfere with or restrict the rights of the Grantor or any lawful user of the Easement Land; or
(b) interfere with the Grantor's enjoyment of the Servient Land.
7.7 The Grantor must not do and must not allow to be done on the Servient Land anything that may interfere with or restrict the rights of the Grantee.
8 RIGHTS OF ENTRY
8.1 For the purpose of performing any duty or in the exercise of any rights under this Easement, the Grantee may:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement Dated Page 5 of 7 Pages

Continue in additional Annexure Schedule, if required.

- (a) enter upon the Servient Land by a reasonable route... (b) remain on the Servient Land for a reasonable time... (c) leave any vehicle or equipment on the Servient Land... 8.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Servient Land or to the Grantor. 8.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner. 8.4 The Grantee must ensure that all work is completed promptly. 8.5 The Grantee must immediately make good any damage done to the Servient Land by restoring the surface of the land as nearly as possible to its former condition. 8.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Servient Land. 9 DEFAULT If any party (Defaulting Party) neglects or refuses to perform or join with the other party (Other Party) in performing any obligation under this Easement the following provisions will apply: (a) the Other Party may serve on the Defaulting Party a written notice (Default Notice) requiring the Defaulting Party to perform or join in performing such obligation and stating that, after the expiry of 10 working days from the service of the Default Notice the Other Party may perform such obligation; (b) if at the expiry of the Default Notice the Defaulting Party still neglects or refuses to perform or join in performing the obligation the Other Party may: (i) perform such obligation; and (ii) for that purpose enter the Servient Land and carry out work; (c) the Defaulting Party must pay the Other Party the costs of the Default Notice and the specified proportion of costs incurred in performing the obligation; and (d) the Other Party may recover from the Defaulting Party as a liquidated debt any money payable pursuant to this clause 9. 10 DISPUTES If a dispute in relation to this Easement arises between the parties: (a) the party initiating the dispute must provide full written particulars of the dispute to the other party;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement Dated [] Page 6 of 7 Pages

Continue in additional Annexure Schedule, if required.

- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties):
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

11 NOTICES

All notices and communications under this Easement will be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to the address that either party notifies to the other from time to time.

12 GENERAL

This Easement will continue forever unless surrendered by the Grantee. Accordingly, the Grantor has no power to terminate this Easement or any of the Grantee's rights under this Easement for any reason.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: EASEMENT IN RELATION TO MAUNGAREI A

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page 7 of 7

Pages

Continue in additional Annexure Schedule, if required.

ATTESTATIONS

SIGNED by [Grantor name to be inserted] as Grantor by:

[Full name of director]

[Full name of director]

[Signature]

[Signature]

[Note: attestation and method of execution to be confirmed when Grantor is confirmed]

SIGNED by the following signatories as Grantee in the presence of:

[Full name of signatory]

[Full name of signatory] etc

Witness signature

[Note: all trustees will need to be listed and sign this Easement]

Full name

Occupation

Address

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

12 LEASEBACK: SCHOOL SITES

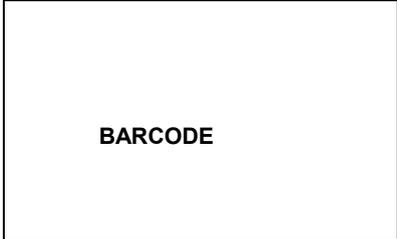
DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)



Land registration district

[]

Affected instrument Identifier and type (if applicable)

All/part

Area/Description of part or stratum

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
[]	[]	[]

Lessor

[]

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number " etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Attestation

Signature of the Lessor	Signed in my presence by the Lessor
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address: _____
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address: _____
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address: _____
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address: _____
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

<p>_____</p> <p>[]</p> <p>_____</p> <p>[]</p> <p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>Signature of the Lessee</p> <p>_____</p> <p>Signed for and on behalf of HER MAJESTY THE QUEEN as Lessee by</p> <p>[]</p> <p>(acting pursuant to a written delegation given to him/her by the Secretary for Education) in the presence of:</p>	<p>Signed in my presence by the Lessee</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Lessee

* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

BACKGROUND

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

SCHEDULE A

ITEM 1 THE LAND

[*insert full legal description - note that improvements are excluded*].

ITEM 2 START DATE

[*insert start date*].

ITEM 3 ANNUAL RENT

[\$*insert agreed rent*] plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

ITEM 4 TERM OF LEASE

21 Years.

ITEM 5 LESSEE OUTGOINGS

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

5.4 Maintenance of car parking areas.

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

ITEM 6 PERMITTED USE

The Permitted Use referred to in clause 9.

ITEM 7 RIGHT OF RENEWAL

Perpetual rights of renewal of 21 years each with the first renewal date being the 21st anniversary of the Start Date, and then each subsequent renewal date being each 21st anniversary after that date.

ITEM 8 RENT REVIEW DATES

The 7th anniversary of the Start Date and each subsequent 7th anniversary after that date.

ITEM 8A UNDERLYING ZONING

[Insert underlying zoning applied to the Land in the Draft Auckland Unitary Plan publicly notified 15 March 2013]

ITEM 9 LESSEE’S IMPROVEMENTS

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

[]

The above information is taken from the Lessee’s records as at [] A site inspection was not undertaken to compile this information.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Annexure Schedule

Page x of 20 Pages

Insert instrument type

Lease Instrument

ITEM 10 CLAUSE 16.5 NOTICE

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

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

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

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

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

SCHEDULE

[]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Annexure Schedule

Page x of 20 Pages

Insert instrument type

Lease Instrument

ITEM 11 CLAUSE 16.6 NOTICE

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

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

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

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

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

SCHEDULE

[]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

SCHEDULE B

1 Definitions

1.1 The term “Lessor” includes and binds:

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

1.2 The term “Lessee” includes and binds:

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

1.3 “Business Day” means a day that is not:

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

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

1.5 “Crown Body” means:

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

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

- (i) the Crown;
 - (ii) a Crown entity;
 - (iii) a State enterprise; and
 - (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.
- 2 Payment of Annual Rent**
- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

3 Rent Review

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

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:
 - (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
 - (b) the Nominal Value being:
 - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
 - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.3A If, in the relevant district or unitary plan, the zoning for the Land is Specialised (as defined in clause 3.3B), the zoning for the Land for the purposes of clause 3.3 will be deemed to be the Alternative Zoning (as defined in clause 3.3B).
- 3.3B For the purposes of clauses 3.3B and 3.3C:
 - (a) "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).
 - (b) "Alternative Zoning" means the most probable zoning which provides for the highest and best use of the Land as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):
 - (i) the underlying zoning for the Land (if any);
 - (ii) the zoning for the Land immediately prior to its Specialised zoning;
 - (iii) the zoning of land adjacent to or in the immediate vicinity of the Land (or both) if there is a uniform neighbouring zone;

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Annexure Schedule

Page x of 20 Pages

Insert instrument type

Lease Instrument

- (iv) if the Land is within the Auckland Council area, the underlying zoning applied to the Land in the Draft Auckland Unitary Plan publicly notified 15 March 2013, as set out in Item 8A of Schedule A; and
 - (v) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the Land.
- 3.3C If, during the rent review process, the registered valuers do not agree on the Alternative Zoning, the process set out in clause 3.5 will apply (with necessary modifications) to the determination of the Alternative Zoning, where applicable, at the same time that the Annual Rent is determined under clause 3.5.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
 - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
 - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
 - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Annexure Schedule

Page x of **20** Pages

Insert instrument type

Lease Instrument

- (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
 - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
 - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

4 Payment of Lessee Outgoings

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

5 Valuation Roll

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

6 Utility Charges

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

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

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

7 Goods and Services Tax

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

8 Interest

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

9 Permitted Use of Land

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

10 Designation

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

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

11 Compliance with Law

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

12 Hazards

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

13 Damage or Destruction

13.1 Total Destruction

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

13.2 Partial Destruction

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.

(b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:

- (i) the repair and reinstatement of the Land have been completed; and
- (ii) the Lessee can lawfully occupy the Land.

(c) If:

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

(i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or

(ii) any necessary council consents shall not be obtainable,

then the term will terminate with effect from the date that either such fact is established.

13.3 Natural Disaster or Civil Defence Emergency

(a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:

(i) such inability ceases; or

(ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.

(b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:

(i) the relevant clause has applied for a period of 6 months or more; or

(ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

(a) assert that this lease has terminated; or

(b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

14 Contamination

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

15 Easements

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

16 Lessee's Improvements

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

- 16.4 If any Lessee’s Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee’s property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee’s Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee’s Improvements from the Land without the Lessor’s consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee’s Improvements or other Lessee’s property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.
- 17 Rubbish Removal**
- The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.
- 18 Signs**
- The Lessee may display any signs which relate to the Permitted Use without the Lessor’s consent. The Lessee must remove all signs at the end of the Lease.
- 19 Insurance**
- 19.1 The Lessee is responsible for insuring or self insuring any Lessee’s Improvements on the Land.
- 19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

20 Fencing

- 20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.
- 20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

21 Quiet Enjoyment

- 21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

22 Assignment

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
 - (a) any Department or Crown Body; or
 - (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).
- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

23 Subletting

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

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

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

24 Occupancy by School Board of Trustees

- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.
- 24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

25 Lessee Break Option

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

26 Breach

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

27 Notice of Breach

- 27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:
 - (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
 - (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
 - (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

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

28 Renewal

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

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

29 Right of First Refusal for Lessor's Interest

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

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

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

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

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

30 Exclusion of Implied Provisions

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

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

(a) Clause 11 – Power to inspect premises.

31 Entire Agreement

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

32 Disputes

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

33 Service of Notices

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

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

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

[insert contact details]

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

34 Registration of Lease

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

35 Costs

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

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

12: LEASEBACK: SCHOOL SITES

Annexure Schedule

Page x of **20** Pages

Insert instrument type

Lease Instrument

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

13 LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

[LEASING ENTITY]

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

MEMORANDUM OF LEASE

THE REFERENCE SCHEDULE

ITEM 1: LESSOR PARTICULARS:

Name: [ENTITY]

Address:

Fax:

Telephone:

Contact person:

ITEM 2: LESSEE PARTICULARS:

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

Address:

Fax:

Telephone:

Contact person:

ITEM 3: LAND:

ITEM 4: TERM:

Twenty (20) years

ITEM 5: DATE OF COMMENCEMENT:

ITEM 6: FURTHER TERMS:

Perpetual rights of renewal, each of ten (10) years

ITEM 7: RENEWAL DATES:

[20XX] and every tenth (10th) anniversary date thereafter

ITEM 8: ANNUAL RENT:

\$ plus GST

ITEM 9: REVIEW DATES:

Every 5 years from date of commencement.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

ITEM 10: PERMITTED USE:

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

THE SCHEDULE OF TERMS

1. INTERPRETATION

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

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- (xiii) This Lease shall be construed and take effect in accordance with the laws of New Zealand.
- (xiv) Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- (xv) Any reference in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly.
- (xvi) "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Improvements.
- (xvii) "Business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday.
- (xviii) "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- (xix) "Improvements" means all Improvements excluding Lessor's Improvements whether constructed or installed on the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, signage, fixtures and fittings.
- (xx) "The Land" means that land described in the Schedule of Land excluding the Improvements.
- (xxi) The expression "Lessor" and "Lessee" includes their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) and where the context permits the Lessee includes the Lessee's Sublessees and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee).
- (xxii) "Lessor's Improvements" means work done or material used on or for the benefit of the Land (whether before or during the term of this Lease including any renewal or variation extending the term of this Lease) in:
 - (a) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
 - (b) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
 - (c) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
 - (d) the alteration of soil fertility or of the structure of the soil; or
 - (e) the arresting or elimination of erosion or flooding.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- (xxiii) "Reference Schedule" means the schedule preceding this Schedule of Terms described as such and forming part of this Lease.
- (xxiv) "Regional Plan" and "District Plan" shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and "Regional and District Plans" shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (xxv) "Schedule of Land" means the schedule described as such and forming part of this Lease.
- (xxvi) "Schedule of Terms" means this schedule described as such and forming part of this Lease.

2. TERM

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

3. RIGHT OF RENEWAL OF LEASE

- 3.1. If the Lessee has not been in any material breach of this Lease and has given to the Lessor written notice to renew this Lease at least six (6) calendar months before the end of each term then the Lessee shall have the right to obtain in accordance with the provisions hereinafter contained a renewed lease of the Land for the term of years specified in Item 6 of the Reference Schedule computed from the relevant date specified in Item 7 of the Reference Schedule and subject to the same covenants and provisions expressed and implied in this Lease.
- 3.2. If the Lessee fails within the time aforesaid to give any notice under Clause 3.1 as to whether it desires a renewed lease and the Lessor at any time after such expired time has given one month's written notice to the Lessee advising the Lessee that it has one further month from the date of such letter to exercise its right of renewal, and the Lessee still fails to advise the Lessor of its desire to renew, then the Lessee shall be deemed to have given notice that a renewed lease is not required. If the Lessee gives notice in writing that it does not desire a renewed lease or there is a deemed notice that a renewal is not required then its right for a renewed lease shall cease on expiry of the one month notice period aforesaid or on the date at which notice is received by the Lessor (as the case may be).
- 3.3. Any notice by the Lessee under clause 3.1 or clause 3.2 of its desire to accept a renewed lease shall be deemed to constitute a contract between the Lessor and the Lessee for the granting and acceptance of a renewed lease at the rent to be determined under Clause 5 for the term and subject to the covenants and provisions referred to in Clause 3.1.
- 3.4. The term of any renewed lease shall run from the day immediately after the expiry of the prior lease, and the rent thereunder shall accrue from that date instead of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date. Clause 5.11 shall otherwise apply.
- 3.5. The Lessor shall prepare each memorandum of renewal of this Lease and the Lessee will forthwith enter into and execute such memorandum of renewal of lease.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

3.A. RIGHT OF EARLY TERMINATION

- 3.6. Notwithstanding clauses 2 and 3, it is agreed that the Lessee may at any time at its sole discretion terminate this Lease by providing to the Lessor not less than 24 months notice in writing to that effect, provided that no such notice may be given during the initial term of this Lease. The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

4. RENT

- 4.1. The Lessee shall pay the annual rent specified in Item 8 of the Reference Schedule from the Date of Commencement until the rent is varied under Clause 5 at which time the Lessee will pay rent at the varied rate.
- 4.2. Rent shall be paid by two instalments on 1st July and 1st January each year with broken period payments due on a proportionate basis for any broken period at the Date of Commencement and on expiry of the Lease term.
- 4.3. All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.

5. RENT REVIEW PROVISIONS

- 5.1. In this clause "Initiating Party" means the party that gives the Notice defined in Clause 5.2 and "Recipient" means the party that receives that Notice.
- 5.2. The annual rent may be reviewed by the Lessor or by the Lessee on the dates specified in Item 9 of the Reference Schedule. At any time not earlier than three (3) months prior to the relevant date specified in Item 9 of the Reference Schedule (each of such dates being called the "review date") either party may give notice in writing to the other ("the Notice") of that party's assessment of the annual rent of the Land to apply from that particular review date.
- 5.3. The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:
- (i) Disregard:
 - (a) any deleterious condition of the Land if such condition results from any breach of this lease by the Lessee;
 - (b) the value of any goodwill attributable to the Lessee's business; and
 - (c) all Improvements made to the Land.
 - (ii) Have regard to:
 - (a) the Lessor's Improvements; and
 - (b) the permitted use under this Lease; and
 - (c) Regional and District Plans.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

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

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

Institute to appoint an umpire (also qualified in the manner aforesaid) and obtain the umpire's acceptance in writing of his or her appointment and who as a condition of his or her acceptance undertakes to hand down his or her determination of the annual rent in the same manner as if he or she had been appointed pursuant to Clause 5.7(i).

- (v) Subject to Clauses 5.7(ii), 5.7(iii) and 5.7(iv) the valuers so nominated shall within one (1) month of the date of appointment jointly determine the annual rent as at that particular review date.
- (vi) In the event that either valuer fails to provide to the other valuer his or her written assessment of the annual rent within one month of the date of appointment, then the annual rent shall be determined by the other valuer and his or her determination shall be final and binding on both parties.
- (vii) If the said valuers are unable to agree upon a determination within one month of their appointment or within such extended time as the Lessor and Lessee may agree, then the annual rent shall be determined by the umpire whose determination shall be final and binding on the parties. The umpire shall without limiting his or her enquiries and conduct of any hearing:
 - (a) arrange for a hearing to be conducted without delay;
 - (b) call for evidence in chief to be presented on behalf of each party to be circulated prior to a hearing;
 - (c) allow representation of each party and cross-examination of evidence and any re-examination of evidence at the hearing;
 - (d) have due regard to any evidence submitted by the valuers as to their assessment of the annual rent;
 - (e) take into account any expert witness evidence considered relevant to the hearing;
 - (f) have regard to the legal rules of evidence and the interests of natural justice in the conduct of any hearing as between the parties;
 - (g) give in his or her determination the reasons therefor in writing.
- (viii) The costs incurred in the determination pursuant to Clause 5.7 of the annual rent shall be borne by the parties in the following manner:
 - (a) subject to Clause 5.7(viii)(b) each party shall be responsible for the cost of its own appointed valuer;
 - (b) where the determination is made by a single valuer pursuant to Clause 5.7(ii) the cost of his or her determination shall be apportioned equally as between the Lessor and Lessee;
 - (c) the parties shall share equally the costs of the umpire unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this Clause 5.7 in which case the umpire may determine the manner in which such costs shall

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

be apportioned between the parties PROVIDED THAT in all cases if the annual rent to apply from the review date is:

- (1) equal to or exceeding the annual rent nominated in the notice given by the Lessor (whether the Notice or the Counter Notice) then all costs of the valuers and the umpire (where applicable) shall be borne by the Lessee alone, or
 - (2) equal to or less than the annual rent nominated in the notice given by the Lessee (whether the Notice or the Counter Notice) then all costs of valuers and the umpire (where applicable) will be borne by the Lessor alone;
 - (3) other than the foregoing then all costs of valuers and the umpire (where applicable) will be borne equally by the Lessor and the Lessee.
- 5.8. The valuers or umpire shall be deemed to be acting as experts and not as arbitrators.
- 5.9. Any variation in the annual rent resulting from such determination shall take effect on and from that particular review date.
- 5.10. Where a review pursuant to this Clause 5 of the annual rent reserved by this Lease is completed after the review date, then:
- (i) Pending completion of the review, annual rent shall be paid at the rate prevailing immediately prior to the relevant review date;
 - (ii) On completion of the review, any increased annual rent payable as from the review date shall be paid by the Lessee to the Lessor no later than the date on which the next instalment of annual rent is payable hereunder;
 - (iii) On completion of the review, any overpayment of annual rent paid as from the review date shall be held by the Lessor to the Lessee's credit on account of annual rent next falling due for payment unless the Lessee requests the Lessor in writing to refund such payment in which case the Lessor will comply with that request.
- 5.11. If any moratorium or other law Act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at the review date then if and whenever such moratorium is lifted or the law, Act or regulation is repealed or amended so as to permit the annual rent to be reviewed then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, Act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed review date but any subsequent rent review shall take place on the next following review date fixed in accordance with Clause 5.
- 5.12. Immediately upon the parties agreeing to pay a revised annual rent or on determination under Clause 5.7 the Lessee shall enter into an appropriate registrable Memorandum of Variation of Lease recording such revised annual rent prepared by the Lessor.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

6. CHARGES

- 6.1. The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.
- 6.2. The Lessor will pay for all costs of service, installation, maintenance and connection to the nearest approved local authority connection points.

7. PAYMENT OF RATES AND IMPOSITIONS AND OTHER OUTGOINGS

- 7.1. The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.
- 7.2. In addition to the charges and costs referred to in clause 6, and in clause 7.1, the Lessee shall pay all costs associated with the repair and maintenance of the Land including without limitation the maintenance of grounds and gardens, and the repair, maintenance or replacement of any fencing on or about the Land.

8. GOODS AND SERVICES TAX

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

9. INTEREST ON OVERDUE RENT OR OTHER MONEYS

Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such unpaid moneys shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such moneys at a rate equal to the bank overdraft rate of the Lessor's bank at the time of any default, plus a margin of 4%, and the said interest shall be recoverable in the same manner as rent in arrears.

10. USE OF THE LAND AND IMPROVEMENTS

- 10.1. The Lessee shall be permitted the right to carry on the business specified in Item 10 of the Reference Schedule.
- 10.2. Should any of the uses of the Land and any Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.

- 10.3. Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority such as required under section 348 of the Local Government Act 1974, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.
- 10.4. Despite any other provision in this Lease, if at any time during the term of this Lease, the Land cannot be, or can no longer be lawfully used for Police purposes, the Lessee may terminate this Lease on giving reasonable notice to the Lessor. This clause will only apply while Her Majesty the Queen acting by and through the Minister of Police is the Lessee under this Lease.

11. NO FENCING

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

12. STATUTORY REQUIREMENTS

- 12.1. The Lessee must comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:
- (i) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;
 - (ii) comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
 - (iii) ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992.
- 12.2. The Lessee shall not, during the term of this Lease:
- (i) Make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
 - (ii) Suffer insolvency, bankruptcy or liquidation;

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- (iii) Suffer distress or allow execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court in a sum in excess of twenty five thousand dollars (\$25,000.00) provided however that this subclause 12.2(iii) shall have no application or effect whilst Her Majesty the Queen Acting By and Through the Minister of Police is the Lessee hereunder.

13. ASSIGNMENT OR SUBLETTING

- 13.1. The Lessee will not without the previous consent in writing of the Lessor assign or transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee or transferee or sublessee. Notwithstanding this Clause where the Crown (as that term is defined in section 2 of the Public Finance Act 1989) remains as the Lessee under this Lease and in occupation from the Lessor the consent of the Lessor shall not be required when another Crown entity assumes occupation of all or any part of the Land except that on each occasion that a different Crown entity (as defined in section 7(1) of the Crown Entities Act 2004) or other Crown body or state owned enterprise assumes the role and obligations of the Lessee under this Lease the Lessee shall notify the Lessor in writing of that change.
- 13.2. In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the directors and/or the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form reasonably acceptable to the Lessor.
- 13.3. Clause 13 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- 13.4. For the purposes of Clause 13.1 any proposed change in the shareholding of the Lessee or any amalgamation under Section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in Clause 13.5.
- 13.5. For the purposes of Clause 13.1 any proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control in the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this Clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- 13.6. Where any assignment or transfer of this Lease is consented to by the Lessor, (including any assignment or transfer to a Crown entity or a State Owned Enterprise) the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessor's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.

- 13.7. Notwithstanding any Rule of Law or anything herein expressed or implied to the contrary where Her Majesty the Queen Acting By and Through the Minister of Police in New Zealand as Lessee assigns this Lease under the provisions of this clause 13, all the liabilities of the Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other moneys or the future observants or performance of any of the Covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of the Assignment thereof, but without releasing the Lessee from liability for any antecedent breach thereof.

14. LESSEE'S ACKNOWLEDGEMENT OF RISK

The Lessee agrees to occupy and use the Land and any Improvements at the Lessee's risk and release to the full extent permitted by law the Lessor its employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Improvements thereon except where the Lessor or any person under the control of the Lessor is at fault or negligent through their own acts or omissions.

15. QUIET ENJOYMENT/REPUDIATION

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

16. REGISTRATION

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

17. IMPROVEMENTS DURING LEASE

- 17.1. Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless the Lessor and the Lessee otherwise agree in writing.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- 17.2. Throughout the term of this Lease and on any renewal the Lessee shall have the right to remove, alter, construct and demolish any Improvements on the Land without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Improvements on the Land are satisfied.

18. IMPROVEMENTS ON TERMINATION OF LEASE

- 18.1. No later than twelve (12) months prior to the expiry of any ten (10) year term of Lease the Lessee may give notice ("the Lessee's Transfer Notice") to the Lessor specifying any Improvements which the Lessee wishes to transfer to the Lessor following expiry of the Lease or renewal. The Lessee's Transfer Notice shall contain details of those Improvements, their current market value and the proposed terms of transfer of the Improvements.
- 18.2. The Lessor agrees to consult with the Lessee regarding the Improvements specified in the Lessee's Transfer Notice, and to consider any proposal to transfer such Improvements. Nevertheless, the Lessee acknowledges that nothing in this clause or in the Lessee's Transfer Notice shall oblige the Lessor to take a transfer of, or to pay any compensation or consideration for, such Improvements.
- 18.3. If no agreement is reached regarding the transfer of Improvements pursuant to this clause (before six months prior to the expiry of the Lease, or before the earlier termination of the Lease), the following provisions of this Clause 18 shall apply.
- 18.4. On termination of this Lease (whether by expiry of time or otherwise) except where the Lessee has exercised any rights of renewal, the Lessee may, but shall not be required by the Lessor to, remove any Improvements specified in a written notice ("the Lessee's Removal Notice") given to the Lessor in accordance with Clause 18.5.
- 18.5. The Lessee shall be under no obligation to give a Lessee's Removal Notice, but any such Notice to be effective shall be given no later than three (3) months prior to the expiry of the term (time being of the essence) or one (1) month after any sooner termination.
- 18.6. The Lessee must remove all Improvements specified in the Lessee's Removal Notice within six (6) months from the date of termination (time being of the essence) and must ensure within that time that all services to any Improvements are properly and lawfully disconnected, the Land under any Improvements is adequately filled with soil so that the surface of the Land is stable and restored to the Lessor's reasonable satisfaction and such Land is otherwise grassed and left in a neat and tidy condition.
- 18.7. If the Lessee fails to remove any Improvements specified in the Lessee's Removal Notice in accordance with Clause 18.6 then the Lessor may remove them and all costs and expenses incurred directly and indirectly shall be recoverable against the Lessee.
- 18.8. Any Improvements remaining on the Land after the period referred to in Clause 18.6 not specified in the Lessee's Renewal Notice shall become the property of the Lessor without any compensation or other payment whatsoever to the Lessee.
- 18.9. The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease until it has met its obligations under Clause 18.6.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

18.10. Whenever resource consent is required to remove or demolish any Improvements the Lessee shall use all reasonable endeavours to obtain all necessary consents and shall continue to be obliged to pay rent and outgoings under this Lease until such time that the Lessor is satisfied on reasonable grounds that the Lessee has used all reasonable endeavours to obtain all necessary consents and produced to the Lessor evidence satisfactory to the Lessor to satisfy this requirement.

19. DESTRUCTION AND REDEVELOPMENT

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

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

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

19.2. In the event that the Lessee is prevented or unable to reinstate or rebuild in the event of total or partial destruction it may terminate this Lease on giving three month's notice in writing to the Lessor, provided that the Lessee demolishes the Improvements and clears and restores the Land all in accordance with the requirements of Clause 18.6.

20. NOTICES

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

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

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

- (i) in the case of personal delivery, when received by the addressee at the address detailed in clause 20.3; and

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- (ii) in the case of posting by registered mail, on the third working day following the date of posting to the addressee at the address detailed in clause 20.3; and
- (iii) in the case of facsimile transmission, on the working day following the date of sending to the addressee's facsimile number designated in clause 20.3 provided that the sender produces a confirmation notice that the facsimile has been sent on that day.

20.3. Details for Notices:

[Entity]

The District Commander

[address]

Fax:

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

21. DEFAULT BY LESSEE

- 21.1. The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the land at the time or any time thereafter:
- (i) If the rent shall be in arrear twenty (20) working days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
 - (ii) In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with Section 246 of the Property Law Act 2007;

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

22. DISPUTE RESOLUTION

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

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- 22.2. If the parties cannot resolve a dispute or difference within fifteen (15) business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).
- 22.3. If the parties cannot agree on any dispute resolution technique within a further fifteen (15) business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 22.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.
- 22.4. The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

23. COSTS

- 23.1. The parties shall each pay their own solicitors' costs of preparing, negotiating, and finalising this Lease, or any renewal or variation of this Lease.
- 23.2. The Lessee shall be responsible for payment of all registration fees including agency charges imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.
- 23.3. The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.

24. LESSOR'S RIGHTS TO INSPECT AND DISPLAY SIGNS

- 24.1. The Lessor will have the right to inspect the Land no more than twice each year during the term or any renewal of this Lease with valuers or other experts and consultants provided such inspections are carried out at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. Any such inspections should be carried out in accordance with the Lessee's security and health and safety requirements and the Lessee shall have the right to change any suggested time to a mutually convenient time.
- 24.2. Notwithstanding anything else herein, the parties agree that the Lessee may require any person wishing to enter the Land for inspection purposes to first provide their details to the Lease for a security check. If the results of such check are not acceptable to the Lessee for any reason then such person may be refused entry to the Land.

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- 24.3. If the Lessor desires to, or is required to, undertake any works on the Land, including any repair or maintenance works, that involves the use of contractors or other third parties, the Lessor must procure any contractor or other third party who will have access to the Land to undertake such works to:
- (i) Complete a security check on terms reasonably acceptable to the Lessee;
 - (ii) Provide the Lessee with a copy of the contractor's Health and Safety Plan which shall be subject to the Lessee's reasonable approval prior to any work commencing; and
 - (iii) Familiarise themselves with and commit to complying with the Lessee's own Health and Safety Plan in all material respects.
- 24.4. The Lessor will not provide or allow the provision of any information relating to the structure, or access to, the buildings on the Land in any way to any person without first obtaining the written permission of the Lessee.
- 24.5. The Lessee will during the period of three (3) months prior to the termination date of this Lease permit the Lessor to exhibit the Land to prospective lessees or purchasers and allow the Lessor to affix to the Land appropriate sale or reletting notices.

25. DISPOSAL OF LESSOR'S INTEREST

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

then the Lessee shall within five (5) working days of receiving the Lessor's advice pursuant to clause 25.1(ii)(a) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

DOCUMENTS

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

- (c) If the Lessor does not receive written notice from the Lessee pursuant to clause 25.1(ii) 2(1) or (2) above together with grounds to substantiate its reasonable apprehension within five (5) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (d) If the Lessee objects to the proposed Assignee in accordance with clause 25.1(ii) 2(1) or (2) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (e) If the Lessor fails to advise the Lessee in writing of the disposal of its interest in the Land and the Lessee has objections to the proposed Assignee based on those reasons set out in clauses 25.1(ii)(3)(c) above, then the Lessee shall be entitled at any time thereafter to terminate this Lease on seven (7) days written notice and the Lessee's obligations under this Lease shall cease from the expiration of such notice.

26. RIGHT OF FIRST REFUSAL FOR LESSOR IF LESSEE TO ASSIGN

- (f) 26.1 (a) The following subclauses of this clause 26 will only apply in the event that the Lessee proposes to assign the Lessee's interests in this Lease to a party which is not a Crown entity or a State Owned Enterprise.
- (b) If at any time before the expiration or earlier termination of the term or any renewed or extended term the Lessee wishes to assign the Lessee's interest in this Lease (including any assignment by way of sale of the Improvements) the Lessee must immediately give written notice ('Lessee's Notice') to the Lessor setting out the terms on which the Lessee wishes to assign its interest in the Lease and sell the Improvements (together 'the Lessee's Interest').
- (c) The Lessor will have 30 Working Days following the date of receipt of the Lessee's Notice (time being of the essence) in which to exercise the Lessor's right to purchase the Lessee's Interest, by serving written notice on the Lessee ('Lessor's Notice') accepting the offer contained in the Lessee's Notice.
- (d) If the Lessor does not serve the Lessor's Notice on the Lessee in accordance with subclause (c) then the Lessee may assign the Lessee's Interest to any other person on no more favourable terms than those previously offered to the Lessor. The provisions of clause 13 of this Lease will apply to any such assignment.
- (e) If the Lessee wishes to offer more favourable terms for assignment of the Lessee's Interest than the terms contained in the Lessee's Notice, the Lessee must first re-offer its interest therein to the Lessor on those terms by written notice to the Lessor and clauses 26(b), (c), and (d) (inclusive) shall apply. If the re-offer is made within 6 months of the initial Lessee's Notice, the 30 Working Day period for acceptance shall be reduced to 15 Working Days.

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

26. HOLDING OVER

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

27. EXCLUSION OF IMPLIED PROVISIONS

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

- a) Clause 10 – Premises unable to be used for particular purpose;
- b) Clause 11 – Power to inspect premises;
- c) Clause 13(2) and (3) – Lessee to keep and yield up premises in existing condition.

13: LEASEBACK: GLEN INNES POLICE STATION (LAND ONLY)

SCHEDULE OF LAND

0.1966 hectares, more or less, being Lots 160 and 161 DP 43833. All computer freehold register NA102D/977.

LEASE OF FREEHOLD

Correct for the purposes of the Land Transfer Act 1952

[ENTITY]

Lessor

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

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

District Land Registrar Assistant of
the Wellington Land Registry

14 LEASEBACK: PAPAKURA PROPERTY

Deed of Lease – Papakura property

[The trustees of Ngāi Tai ki Tāmaki Trust/Ngāti Tamaoho
PSGE]

Her Majesty the Queen in right of her Government in
New Zealand acting by and through the Chief of Defence Force

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

TABLE OF CONTENTS

PARTIES

BACKGROUND

OPERATIVE PROVISIONS

- 1 GRANT OF LEASE**
- 2 CONCURRENT LEASE**
- 3 TERM AND RENEWED TERM**
- 4 RENT AND RENT REVIEW**
- 5 GST**
- 6 OUTGOINGS**
- 7 MANAGEMENT AND MAINTENANCE**
- 8 USE OF THE LAND AND IMPROVEMENTS**
- 9 REMOVAL OF LESSEE'S FIXTURES, FITTINGS AND CHATTELS**
- 10 LESSOR'S ACCESS**
- 11 INTEREST FOR LATE PAYMENT**
- 12 STATUTORY REQUIREMENTS**
- 13 ASSIGNMENT**
- 14 LESSEE'S ACKNOWLEDGEMENT OF RISK AND SUITABILITY**
- 15 REIMBURSEMENT BY LESSEE**
- 16 INSURANCE AND DESTRUCTION**
- 17 LESSEE'S REPAIR WORKS**
- 18 QUIET ENJOYMENT**
- 19 NOTICES**
- 20 MEDIATION**
- 21 ARBITRATION**
- 22 COSTS**
- 23 NO INDEMNITY**
- 24 LESSOR'S REMEDIES FOR BREACH**
- 25 DEFINITIONS AND INTERPRETATION**

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

14: LEASEBACK: PAPAURA PROPERTY

Parties

[The trustees of Ngāi Tai ki Tāmaki Trust/Ngāti Tamaoho PSGE] (Lessor)

Her Majesty the Queen in right of her Government in New Zealand acting by and through the Chief of Defence Force (Lessee)

Background

- A The Lessor is the registered proprietor of an estate in fee simple in all of the Land including all of the Dwellings and Infrastructure.
- B The Lessor has agreed to lease the Land, Dwellings and Infrastructure to the Lessee and the Lessee has agreed to take a lease of the Land, Dwellings and Infrastructure, pursuant to the Deed of Settlement.
- C The parties acknowledge that parts of the Land are as at the Commencement Date, subject to residential and other tenancy agreements and that the Lessee takes this Lease of the Land subject to those existing residential and other tenancy agreements (being the Existing Tenancies), to the intent that this Lease is, in respect of those parts of the Land subject to those Existing Tenancies, a concurrent lease.
- D The Lessor and the Lessee have entered into this deed to record the terms of the Lease.

Operative provisions

1 Grant of Lease

- 1.1 The Lessor leases to the Lessee and the Lessee takes the Land, Dwellings and Infrastructure on lease, for the term beginning on the Commencement Date on the terms set out in this Lease.

2 Concurrent Lease

- 2.1 The parties acknowledge that parts of the Land are subject to the Existing Tenancies at the Commencement Date, and agree that:

- 2.1.1 the Lessee takes this Lease subject to any Existing Tenancies;

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

- 2.1.2 the Lessee has the right to receive rent and other payments due from the lessees, licensees and occupiers under the Existing Tenancies;
- 2.1.3 the Lessee has the right to enforce the covenants under the Existing Tenancies (but without having any obligation to do so);
- 2.1.4 the Lessor must not do or omit to do anything, or require the Lessee to do or to omit to do anything that will cause the Lessee to be in breach of the Lessee's obligations under any Existing Tenancies; and
- 2.1.5 the Lessee may in all respects deal with the Existing Tenancies without reference to the Lessor, including surrendering, extending or cancelling any Existing Tenancies but will ensure that the Existing Tenancies are not varied to result in a fixed term which will expire later than the Final Expiry Date.

3 Term and Renewed Term

- 3.1 The Term of this Lease shall commence on the Commencement Date and shall be for the period specified in Item 4 of the Reference Schedule.
- 3.2 The Lessor will grant a new lease for a further term from the Renewal Date as follows:
 - 3.2.1 the annual rental at the commencement date of the new lease shall be determined in accordance with clause 4.2; and
 - 3.2.2 subject to the provisions of the preceding subclause, the renewed term of the Lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease except that the term of this Lease plus all further terms shall expire on or before the Final Expiry Date.
- 3.3 If the Lessor permits the Lessee to remain in occupation of the Land or any part of the Land, after the end or earlier termination of the Term, the Lessee will occupy the Land (or any part of the Land) under a periodic tenancy that may be terminated on 20 working days written notice from either party to the other. The terms of this Lease and other matters implied by law will continue to apply between the parties, to the extent they are applicable to periodic tenancies.
- 3.4 The Lessee shall deliver vacant possession of the Land to the Lessor on expiry of the term or the date of earlier termination, subject only to the Existing Tenancies.

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

4 Rent and rent review

- 4.1 The Rent for the Term of this Lease is the rent set out in Item 10 of the Reference Schedule. The Lessee shall pay the Rent by equal monthly payments in advance on the Rent Payment Dates set out in Item 11 of the Reference Schedule. The first monthly payment (together with rent calculated on a daily basis for any period from the Commencement Date to the first Rent Payment Date) shall be payable on the first Rent Payment Date. All rent shall be payable by direct payment to the Lessor or as the Lessor may direct.
- 4.2 The Rent payable from each Rent Review Date shall be the Rent payable by the Lessee immediately prior to that Rent Review Date adjusted by the same percentage as the cumulative percentage increase in the CPI during the period which corresponds as nearly as possible to the period from the last rent review date (or if there is no previous rent review date, the commencement date of this Lease) to the relevant rent review date.
- 4.3 **CPI** means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any other successor organisation) on a quarterly basis. If that index ceases to be published on a quarterly basis or if the basis of calculation of the index is fundamentally changed then CPI will mean the nearest equivalent index on which the parties agree or failing agreement as may be determined by an independent expert with the appropriate qualifications and expertise appointed by the President for the time being (or his or her nominee) of the New Zealand Institute of Chartered Accountants (or any successor organisation).

5 GST

- 5.1 The Lessee warrants that the Land is to be used for the principal purpose of accommodation in dwellings (as defined in the GST Act) on the Land and so the supply made by the Lessor under this Lease is an exempt supply for the purposes of the GST Act.

6 Outgoings

- 6.1 The Lessee will pay all Outgoings properly and reasonably incurred in respect of the Land including the Dwellings and the Infrastructure, as from the Commencement Date until the Expiry Date or date of earlier termination.
- 6.2 If a separate invoice is not rendered for a particular Outgoing then the Lessee shall pay a fair proportion, based on actual use or consumption, as assessed by the Lessor acting reasonably.

DOCUMENTS

14: LEASEBACK: PAPA KURA PROPERTY

7 Management and Maintenance

Lessee's management and maintenance

- 7.1 The Lessee will manage and maintain the Dwellings and the Infrastructure to such standard as the Lessee requires having regard to the Lessee's needs during the Term of this Lease, subject however to clause 7.3.
- 7.2 The Lessee will procure that its sublessees or licensees will keep any grounds and surfaced areas on the Land associated with individual Dwellings in a tidy condition and maintain any garden, lawn or landscaped areas in a tidy and cared for condition.
- 7.3 At the end or earlier termination of the Term, the Lessee will yield up the Dwellings and Infrastructure located on the Land in such order, repair and condition which is not of a lower standard than that as at the Commencement Date, but excluding however any liability for the following;
- 7.3.1 deterioration from fair wear and tear;
 - 7.3.2 damage caused by fire, flood, earthquake, earth subsidence, storm, tempest, volcano, other catastrophic event beyond the Lessee's control, act of God or inevitable accident.

The premises condition report (attached at Schedule 3 if completed) shall be evidence of the condition of the Dwellings and Infrastructure as at the Commencement Date.

- 7.4 The Lessee's obligations in clauses 7.1 to 7.3 shall be subject to its reserved rights in clause 17 of this Lease.

Lessor's maintenance

- 7.5 For clarity, the parties record that the Lessor shall not have any maintenance obligations or any other obligation to repair or replace in respect of the Land including the Dwellings or Infrastructure provided however the Lessor will be responsible for remedying any damage, which either the Lessor or any person under its control creates or causes.

8 Use of the land and improvements

- 8.1 The Lessee shall not use nor permit any other person to use the Land and any Dwellings on the Land for any purpose other than that specified in Item 12 of the Reference Schedule.
- 8.2 Should the use of the Land and any Dwellings be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment, the Lessor shall obtain such consent or licence at its sole cost and expense, and the Lessee

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

shall at all times comply with any conditions of such consent, order or authority obtained.

8.3 The Lessor does not warrant:

8.3.1 that the Land is or will remain suitable or adequate for any of the purposes of the Lessee; or

8.3.2 that the relevant Regional or District Plans allow the Land and/or the Dwellings to be used for the Permitted Use.

8.4 It is acknowledged by the Lessor and the Lessee that the Residential Tenancies Act 1986 is not intended to apply to this Lease. The Lessor and the Lessee also hereby expressly provide and acknowledge that the Lessee will not occupy the Dwellings but will sublet to third parties for residential purposes and the Lessor hereby consents to that subletting. This Lease is granted and taken genuinely for that purpose and not for the purpose of evading all or any of the provisions of the Act.

9 Removal of Lessee's Fixtures, Fittings and Chattels

9.1 The Lessee may at any time before the end or earlier termination of the Term, remove all fixtures, fittings and chattels owned by the Lessee from the Dwellings and the Land and make good at the Lessee's own expense all resulting damage. This shall however specifically exclude all chattels, fixtures and fittings which the Lessor acquired along with the Land and Dwellings pursuant to the [Deed of Settlement, a list of which is attached as Schedule 2.]

9.2 If the Lessee has not so removed all its chattels, fixtures and fittings, then ownership of such fixtures, fittings and chattels will pass to the Lessor with the exception of any items which have security status according to the Lessee (if any) or items which are owned by any sublessee or licensee. The Lessee shall use best endeavours to have such items within that status removed as soon as reasonably possible before the end or earlier termination of the Term.

9.3 The reasonable cost of making good resulting damage where the Lessee elects to remove any items pursuant to clause 9.1, shall be recoverable from the Lessee and the Lessor shall not be liable to pay any compensation nor be liable for any loss suffered by the Lessee.

10 Lessor's access

10.1 The Lessor may, with all necessary materials and equipment at all reasonable times pre-arranged with the Lessee and any sublessee or licensee affected, and on reasonable notice as advised (but at any time without notice in the case of an emergency), subject to and in accordance with any security requirements advised by the Lessee from time to time, enter the Land to:

10.1.1 inspect the condition and state of repair of the Land; or

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

- 10.1.2 carry out any works to comply with any statutes, regulations, by laws, ordinances, orders, proclamations, requirements of or notices by any Authority which have not been effected by the Lessee.
- 10.2 The right of access pursuant to clause 10.1 is a right for the Lessor to enter onto the Land only. The Lessor shall:
- 10.2.1 not enter any Dwelling on the Land, unless in compliance with clause 10.3;
- 10.2.1 only remain on the Land for such period as is reasonable in the circumstances;
- 10.2.3 take all reasonable precautions to ensure that any sublessee's ability to use the Land is not unreasonably affected and that any other reasonable requirements of either the Lessee or its sublessees are complied with;
- 10.2.4 take all reasonable precautions to ensure the Lessee's obligations to its sublessees in terms of quiet enjoyment are not breached;
- 10.2.5 enter the Land for the purposes of such access, entirely at its own risk;
- 10.2.6 reimburse the Lessee for any reasonable costs, losses, damage or other claims associated with any such act or omission on the part of the

Lessor or persons under its control for any damage caused by it or them in the course of the Lessor exercising such right of access.
- 10.3 Should access to a Dwelling be required, the Lessor will provide at least two (2) weeks prior written notice to the Lessee of the desired time, date and duration of such visit, including identification of the contractor engaged by the Lessor who will be entering the Dwelling and the purpose for such visit. The parties will agree a time and date for such visit. Access arrangements will be at the Lessee's sole discretion. Such consent will not be unreasonably or arbitrarily withheld but the Lessee is entitled to impose conditions of consent including for example limiting the frequency of access and requiring escort and allowing access at such time as is suitable to and convenient for the occupier of the Dwelling affected.
- 11 Interest for late payment**
- 11.1 Either party may charge interest on any payment due but unpaid by the other party at 10% per annum from the due date for payment until the date of payment.
- 12 Statutory requirements**
- 12.1 The Lessee will comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and the Dwellings or which relate to the Lessee's use of the Land and the Dwellings and with all conditions or requirements which may be given or required by any person having any lawful authority and will in particular but without limitation:

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

- 12.1.1 ensure that the Dwellings comply with all statutes, bylaws and regulations relating to the provision of residential accommodation (including, to the extent relevant, the Building Act 2004, Housing Improvement Regulations 1947 and Residential Tenancies Act 1986);
 - 12.1.2 comply with all statutes, bylaws and regulations in relation to the provision of residential accommodation and the Permitted Use; and
 - 12.1.3 ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992.
- 12.2 If the Lessee breaches the provisions of clause 12.1 as a result of any act or omission of the Lessor or any person under the Lessor's control then the Lessor shall meet the cost of rectifying such breach. The Lessor will also meet the costs of any breach in statutory requirements arising from actions or omissions of the Lessor.
- 13 Assignment**
- 13.1 The Lessee may assign this Lease, or sublet or otherwise part with possession of the Land, Dwellings or Infrastructure or any part with the written consent of the Lessor which the Lessor must give if the following conditions are fulfilled:
- 13.1.1 the Lessee proves to the reasonable satisfaction of the Lessor that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable, responsible and has the financial resources to meet the Lessee's commitments under this Lease;
 - 13.1.2 all rent and other moneys payable have been paid and there is not any subsisting breach of any of the Lessee's covenants;
 - 13.1.3 in the case of an assignment, a deed of covenant in customary form approved or prepared by the Lessor is duly executed and delivered to the Lessor;
 - 13.1.4 in the case of an assignment to a company (other than a company listed on the main board of a public stock exchange), a deed of guarantee in customary form approved or prepared by the Lessor is duly executed by the principal shareholders of that company and delivered to the Lessor; and
 - 13.1.5 the Lessee pays the Lessor's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Lessor concerning any proposed assignee, subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.

14 Lessee's acknowledgement of risk and suitability

14.1 The Lessee agrees to occupy and use the Land and the Dwellings at the Lessee's risk and releases to the full extent permitted by law the Lessor from all claims and demands of any kind and from all liability which may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Dwellings, except where the Lessor or any person under the control of the Lessor is at fault, through their own acts or omissions, and whether neglect or otherwise in which case the Lessor shall be liable to the Lessee.

14.2 No warranty or representation expressed or implied has been made or is made by the Lessor that the Dwellings are now suitable or will remain suitable or adequate for use by the Lessee or that any use by the Lessee will comply with the requirements of any Authority.

15 Reimbursement by lessee

15.1 The Lessee will be responsible for rectification of any damage arising from:

15.1.1 any breach by the Lessee of any of the provisions expressed in this Lease which are required to be observed and performed by the Lessee;

15.1.2 any act or omission in connection with the use of the Land or the Dwellings by the Lessee or by persons under its control including tenants under Existing Tenancies; and

15.1.3 contamination of the Land by the Lessee where such contamination has been caused by the Lessee and has occurred during the Term under this Lease.

15.2 The liability of the Lessee under clause 15.1 shall further extend to cover full recompense without deduction or set off to the Lessor for any fine, penalty, or expense imposed on the Lessor as a result of any failure by the Lessee or persons under its control to observe or perform the requirements of any statute, bylaw, regulation or Regional or District Plan arising out of any statute or regulation applicable to the Lessee's use of the Land during the Term of the Lease.

15.3 The provisions of this clause 15 shall subsist notwithstanding any determination of this Lease and shall be in addition to any other right or remedy the Lessor may have, but subject to clause 23.

DOCUMENTS

14: LEASEBACK: PAPA KURA PROPERTY

16 Insurance and destruction

- 16.1 While neither party shall have any obligation to insure the Dwellings or Infrastructure, either party may at its cost elect to insure the Dwellings and Infrastructure for such insurable value, and against such risks, as that party considers necessary or desirable.
- 16.2 If a significant event, beyond the control of either party, destroys a number of adjacent houses providing the opportunity for development of a contiguous area, the parties will negotiate in good faith to attempt to agree on a partial surrender of the area.
- 16.3 The Lessee acknowledges that the Lessor may not insure the Dwellings or the Infrastructure, and that there is no abatement in rent in the event of damage to, or destruction of, the Dwellings or the Infrastructure.

17 Lessee's repair works

- 17.1 If any one or more of the Dwelling(s) shall be damaged, then subject to clause 17.2, the Lessee will with all reasonable speed and at its sole cost repair such damage to the relevant Dwellings to a standard not less than as the previously existing Dwelling(s) prior to such damage.
- 17.2 Clause 17.1 is without prejudice to the Lessee's right, in the event of any material or significant damage (including but not limited to total destruction) to the relevant Dwelling(s), to elect not to repair the relevant Dwelling(s), in which case the Lessee shall at its sole cost, remove the remains of the relevant Dwelling(s) (if any) from
- the underlying lot(s) on which the relevant Dwelling(s) are located on the Land.
- 17.3 For the purposes of clause 17.2, 'any material or significant damage' shall be determined by the Lessee according to its sole discretion, but shall not include damage intentionally or maliciously caused by a person under the Lessee's control.
- 17.4 For clarity, 'removal of the remains of the relevant Dwelling(s)' for the purposes of clause 17.2 shall include:
- 17.4.1 removal of all debris directly related to the relevant Dwelling(s); and
- 17.4.2 clearance of the land on which the relevant Dwelling(s) stand on, down to ground level except that fences and garages may be left; and
- 17.4.3 the capping of any services to the relevant Dwelling(s).

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

18 Quiet enjoyment

- 18.1 The Lessee shall peaceably hold and enjoy the Land, Dwellings and Infrastructure without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease (except as permitted under this Lease).

19 Notices

- 19.1 All notices including requests, demands and other communications under this Lease, to be given by a party to any other party may be given by personal delivery or sent by an accepted means of electronic transmission to the other party. Any notices shall be deemed given when personally delivered or if sent by electronic transmission in the manner set out in clause 19.2 shall be deemed given on the first Working Day following the day of sending of the electronic transmission.
- 19.2 Any notice shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number from time to time designated by that party in writing to any other party. Until any other designation is given, the address and facsimile number of each party shall be those set out in the Reference Schedule.

20 Mediation

- 20.1 The Lessor and the Lessee will first try to resolve by mediation all disputes that arise between them concerning:
- 20.1.1 the meaning or application of any part of this Lease, or
- 20.1.2 anything in connection with or which might affect this Lease.
- 20.2 Either party may commence a mediation by giving the other notice in writing requiring the mediation. The parties will agree the rules for any mediation before they commence the mediation. Participation in a mediation will not affect any other right either party has.
- 20.3 Either party may have the dispute sent for resolution by arbitration under clause 21 if the dispute has not been resolved by mediation within one month of the mediation being requested. A person who has participated in an unsuccessful mediation cannot be the umpire in the arbitration.

21 Arbitration

- 21.1 A dispute that has not been resolved by mediation under clause 20 will be determined by arbitration under this clause 21, and the parties will refer the dispute to the arbitration of a single arbitrator.

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

- 21.2 The parties must try to agree on the arbitrator. If the parties cannot agree, the President for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.
- 21.3 The parties must go to arbitration under this clause 21 before they can begin any action at law (other than an application for injunctive relief).

22 Costs

- 22.1 Each party shall meet their own costs in preparing and finalising this Lease or any variation of this Lease.
- 22.2 The Lessor shall be responsible for payment of all duty payable on this Lease or any variation to this Lease.

23 No Indemnity

- 23.1 For clarity the Lessee does not provide any indemnity to the Lessor in regard to any matter under this Lease.

24 Lessor's Remedies for Breach

- 24.1 Should the Lessee for a period exceeding 10 working days, breach any covenant (express or implied) on the Lessee's part in this Lease then subject to the Lessor having served, in accordance with section 353 of the Property Law Act 2007 a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it will be lawful for the Lessor to re-enter the Land and/or terminate the Lease.

25 Definitions and interpretation

Definitions

- 25.1 In this Lease, where not inconsistent with the context:

Authority means any government authority whether national or territorial or any other government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land Dwellings or Infrastructure.

Commencement Date means the relevant date specified in Item 5 of the Reference Schedule.

Deed of Settlement means the Deed of Settlement entered into by Ngāi Tai ki Tāmaki Trust and Her Majesty the Queen in right of her Government in New Zealand, dated [date] [and approved, for the purposes of the transfer of the land and lease back to the Crown, by a deed entered into by Ngāti Tamaoho and Her Majesty the Queen in right of her Government in New Zealand, dated [date]].

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

Dwellings or Dwelling means as the case may be any building or buildings or other fixed structures including any fencing on the Land as the context requires.

Expiry Date means the relevant date specified in Item 6 of the Reference Schedule.

Existing Tenancies means all existing leases, licences and other occupancy agreements in respect of the Land, which are current as at the commencement date of this Lease.

Final Expiry Date means the date specified in Item 7 of the Reference Schedule.

GST means the tax levied under the GST Act and includes any tax levied in substitution for that tax.

GST Act means the Goods and Services Tax Act 1985.

Infrastructure means:

- all Infrastructure, plant, equipment and assets on or in the Land used to provide services to the Land; and
- any concrete, asphalt, paved or tiled roadway, path or surface, which exists on the Land.

Land means that land described in Item 3 of the Reference Schedule.

Lessee means Her Majesty the Queen for Defence Purposes and where the context permits includes the Lessee's tenants and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be deemed to be persons under the control of the Lessee).

Lessor means [the trustees of Ngāi Tai ki Tāmaki Trust/Ngāti Tamaoho PSGE] and includes its successors and assigns, and where the context permits includes the Lessor's contractors, agents and invitees.

Outgoings or Outgoing means any and all rates, costs or expenses properly or reasonably assessed or assessable, paid or payable, or otherwise incurred in respect of the Land (including the Dwelling and Infrastructure) and includes all charges and expenses in respect of all services, utilities and amenities supplied to or used by the Lessee or any person under the control or direction of the Lessee on or in relation to the Land (including the Dwellings and Infrastructure) but none of a capital nature.

Permitted Use means the permitted use specified in Item 12 of the Reference Schedule.

Reference Schedule means the reference schedule being Schedule 1 of this Lease.

DOCUMENTS

14: LEASEBACK: PAPA KURA PROPERTY

Regional Plan and **District Plan** shall have ascribed to them the definitions set out in Section 2 of the Resource Management Act 1991 and Regional and District Plans shall be constructed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.

Renewal Date means the relevant date specified in Item 8 of the Reference Schedule.

Rent means the rent specified in the Reference Schedule under Item 10 or the rent detailed under clause 4.2.

Rent Review Date means each anniversary of the Commencement Date and each Renewal Date.

Rent Payment Dates means the dates specified in Item 11 of the reference schedule.

Term means the term of this Lease specified in Item 4 of the Reference Schedule, and includes each relevant term under clause 3.2.

Working Day means any day other than a Saturday or Sunday or statutory holiday, or anniversary holiday in Wellington or Auckland.

Interpretation

- 25.2 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:
- 25.2.1 Words importing any gender shall include all other genders.
 - 25.2.2 Words importing the singular shall include the plural and vice versa.
 - 25.2.3 Payments shall be made in the lawful currency of New Zealand.
 - 25.2.4 Headings shall be ignored.
 - 25.2.5 References to schedules and clauses are references to schedules and clauses in this Lease and references to parties are references to the parties to this Lease and their respective successors and assigns unless expressly stated otherwise.
 - 25.2.6 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
 - 25.2.7 A **person** shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 2 of the Public Finance Act 1989 in each case whether or not having separate legal personality.

- 25.2.8 **Writing** shall include words visibly represented or reproduced.
- 25.2.9 Where approvals or consents are required in this Lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
- 25.2.10 No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.
- 25.2.11 No party to this Lease shall constitute or be deemed or construed to constitute a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
- 25.2.12 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
- 25.2.13 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

Execution and date

Executed as a deed.

Date:

[Execution for NTKT/Ngāti Tamaoho
PSGE]

**Her Majesty the Queen in Right of her
Government in New Zealand acting by and
through the Chief of Defence Force** pursuant to
section 25(5) of the Defence Act 1990:

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Name of authorised person (print)

.....
Occupation of witness

.....

DOCUMENTS

14: LEASEBACK: PAPAURA PROPERTY

Schedule 1

Reference Schedule

ITEM 1 Lessor particulars

Name: [The trustees of Ngāi Tai ki Tāmaki Trust/Ngāti Tamaoho PSGE]

Address:

Fax:

Telephone:

Contact person:

ITEM 2 Lessee particulars

Name: Her Majesty the Queen in Right of her Government in New Zealand acting by and through the Chief of Defence Force

Address: Freyberg House, Aitken Street, Wellington

Fax: (04) 496 0006

Telephone:

Contact person: Chief of Defence Force

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

ITEM 3

Land

Legal description

Area

Approx 4.2226ha

Section 1 SO 31679. All
computer freehold register
NA95C/951.

Lot 2 DP 198558 and Lots 1 and 2 DP

201101. All computer
freehold register
NA127B/904

ITEM 4

Term

[To be advised in accordance with the Deed of Settlement]

ITEM 5

Commencement Date

[].

ITEM 6

Expiry Date

[]

ITEM 7

Rights of Renewal

[To be advised in accordance with the Deed of Settlement]

DOCUMENTS

14: LEASEBACK: PAPAKURA PROPERTY

ITEM 8 Renewal Dates

[To be advised in accordance with the Deed of Settlement]

ITEM 9 Final Expiry Date

[To be advised in accordance with the Deed of Settlement]

ITEM 10 Rent

[], or as reviewed under the terms of this lease.

ITEM 11 Rent Payment Dates

The first day of each month commencing on the Commencement Date.

ITEM 12 Permitted Use

Residential accommodation and all ancillary purposes.

List of Lessor's Chattels, Fixtures and Fittings as at the Commencement Date

[To be attached]

Premises Condition Report

[To be attached]

15 LEASEBACK: TORPEDO BAY PROPERTY

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE A

ITEM 1 THE LAND

All the land specified and described in Schedule C.

ITEM 2 THE COMMENCEMENT DATE

The commencement date of this Lease shall be the day of 20[].

ITEM 3 ANNUAL RENTAL

The annual rental payable at the Commencement Date is \$157,000 plus GST payable by equal instalments in advance on the first day of each and every month commencing on the Commencement Date and monthly thereafter during the continuance of the Term.

ITEM 4 TERM OF LEASE

4.1 Initial Term

21 years from the Commencement Date.

4.2 Renewal Terms

The Lessee shall have six rights of renewal for further terms of 21 years each provided however the Lessee may during any Renewal Term terminate its interest under this Lease on the giving of 36 months' prior written notice to the Lessor at any time during the Renewal Term.

4.3 Expiry Date

[]

ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes and/or other charges levied against the Lessor in respect of its ownership and interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the Land, subject however to clause 2.10(a) of Schedule B.

ITEM 6 PERMITTED USE

For the general purposes of the New Zealand Defence Force or designation for defence purposes issued by the Minister of Defence applying to the Land, and/or for any other use of the Crown or Crown body in its discretion and for such other use or uses as are permitted under the Resource Management Act 1991 to be carried out on the Land.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

ITEM 7 RENT REVIEW DATES

7.1 CPI Rent Review Date

On the seventh and fourteenth anniversary of the Commencement Date, and on the seventh and fourteenth anniversary of the commencement date of each Renewal Term.

7.2 Market Rent Review Date

On the commencement date of each Renewal Term.

ITEM 8 LESSOR'S IMPROVEMENTS

Nil.

ITEM 9 LESSEE'S IMPROVEMENTS

Lessee's Improvements shall mean all improvements on the Land of any kind whatsoever as at the Commencement Date of this Lease and any time after that, including buildings, infrastructure in relation to services, sealed yards, paths, landscape structures, fences, roads and tunnels and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease. The Lessee's Improvements include in particular, as at the Commencement Date, those buildings listed in Schedule D attached.

ITEM 10 CLAUSE 3.06(b) CHARGEHOLDER'S NOTICE

To: [The Lessor]
(hereafter called "**the Lessor**")

And to: [The Lessee]
(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder]
(hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of this Lease including in particular clause 3.06(b) and (c) of the Lease of the Land and that in particular it agrees that despite any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (a) will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (b) will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease; and
- (c) agrees that this acknowledgement is irrevocable.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

ITEM 11 ADDRESS FOR SERVICE

Lessor: **[MARUTŪĀHU/ NGĀI TAI KI TĀMAKI]**

AUCKLAND

Attn: General Manager

Facsimile:

Lessee: **CHIEF OF DEFENCE FORCE**

New Zealand Defence Force

Defence House

2/12 Aitken Street

WELLINGTON

Facsimile: (04) 496-0006

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
 - (i) the persons executing this lease as Lessor; and
 - (ii) any Lessor for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.

- (b) The expression "**the Lessee**" shall include and bind:
 - (i) the person executing this lease as Lessee;
 - (ii) all the Lessees for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall where the context requires include the Lessee's agents, personnel, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 "**contaminated land**" has the same meaning given to that term under section 1 of the Resource Management Act.

1.03 "**CPI**" means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any other successor organisation) on a quarterly basis. If that index ceases to be published on a quarterly basis or if the basis of calculation of the index is fundamentally changed then CPI will mean the nearest equivalent index on which the parties agree or failing agreement as may be determined by an independent expert with the appropriate qualifications and expertise appointed by the President for the time being (or his or her nominee) of the New Zealand Institute of Chartered Accountants (or any successor organisation).

1.04 "**Crown Body**" means—

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004);
- (b) a State enterprise (as defined by section 2 of the State-Owned Enterprises Act 1986);
- (c) the New Zealand Railways Corporation;
- (d) a company or body that is wholly owned or controlled by 1 or more of the following:
 - (i) the Crown;
 - (ii) a Crown entity;
 - (iii) a State enterprise;
 - (iv) the New Zealand Railways Corporation; and
- (e) a subsidiary of, or company related to, a company or body referred to in paragraph (d).

- 1.05** "**Existing Tenancies**" means all existing leases, licences and other occupancy agreements in respect of the Land, which are current as at the commencement date of this Lease (if any) and which are described in Schedule G.
- 1.06** "**Goods and Services Tax**" or "**GST**" means tax levied in accordance with the Goods and Services Tax Act 1985 ("**GST Act**") or any tax in the nature of a Goods and Services Tax.
- 1.07** "**Government Work**" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown including any Crown entity as defined in the Crown Entities Act 2004 or any Minister of the Crown for any public purpose.
- 1.08** "**Initial Term**" means the initial term of the Lease which commences on the Commencement Date and expires 21 years from the Commencement Date.
- 1.09** "**Lease**" means, unless the context otherwise requires, this lease and any new lease or Renewal Term granted in renewal of it.
- 1.10** "**Lease Split**" has the meaning given in clause 3.04(b)(ii).
- 1.11** "**Lessee's Improvements**" means all improvements on the Land as are specified in Item 9 of Schedule A.
- 1.12** "**Lessee's Outgoings**" means all outgoings which the Lessee is obliged to pay specified in Item 5 of Schedule A.
- 1.13** "**Other Interests**" means [].

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- 1.14** "Remediate" means the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation or other treatment of contaminated land.
- 1.15** "Renewal Term" means each renewal term of 21 years each.
- 1.16** "Term" means the Initial Term and any Renewal Term.
- 1.17** "Working Day" means any day other than a Saturday or Sunday, or statutory holiday, or anniversary holiday in Wellington or Auckland.
- 1.18** The terms "Land", "Commencement Date", "Annual Rental", "Permitted Use", "CPI Rent Review Date" and "Market Rent Review Date" shall have the meanings ascribed to them in Schedule A.
- 1.19** The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.
- 1.20** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.21** A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.22** Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.
- 1.23** Any reference in this Schedule B to any clause of this document shall be a reference to that clause within Schedule B, unless the context otherwise states i.e. refers specifically to an item or clause referred to in Schedule A of this document.
- [**1.24** Where any clause in this Lease which will apply if the Crown ceases to be the Lessee in occupation under this Lease requires a modification to any item in Schedule A the provisions of the relevant clause shall take precedence and the item in Schedule A shall be modified accordingly.]

PART II - LESSEE'S COVENANTS

2.00 LESSEE'S COVENANTS

2.01 PAYMENT OF ANNUAL RENT

The Lessee shall pay the annual rent without deduction in the manner and at the times provided in Item 3 of Schedule A. All payments of rent during the Term shall be paid by direct bank payment or as the Lessor may direct.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee's Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the Term shall subsist until the end or earlier termination of this Lease.
- (c) If required by an Authority, the Lessee shall install and maintain at the Lessee's costs any meter or other measuring device necessary for the proper charging of the services, utilities or amenities supplied to or used by the Lessee on the Land.

2.03 USE OF LAND

The Lessee:

- (a) may use the Land for the Permitted Use described in Item 6 of Schedule A, subject to clause 2.04; and
- (b) acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor regarding use of the Land.

2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land (including any obligations imposed on the Lessor under any statute, regulation or bylaw in respect of activities or events occurring or not occurring on the Land and notwithstanding anything expressed or implied in this Lease) or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard, provided however any goods associated with defence purposes stored or used on the Land, shall not be regarded as being in breach of this clause;
- (b) promptly remedy any danger or hazard that may arise on the Land, provided however this shall not extend to any danger or hazard that has arisen through storms, adverse weather, seismic, volcanic, geothermal, or similar activity, or any other act of god;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (c) at all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with;
- (d) comply with any obligations imposed on the Lessee under this Lease or by statute, regulation, bylaw or other laws relating to the use or occupation of the Land; and
- (e) Remediate, as soon as possible but in any event no later than the expiry of this Lease in any manner considered appropriate by the Crown but to the standard required for recreational land use, any land that became contaminated land during the Term of this Lease.

2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS AND GROUNDS

The Lessee shall be responsible, at the Lessee's own expense, for maintaining the Lessee's Improvements on the Land in such order, condition and repair during the continuance of this Lease as the Lessee requires having regard to the Lessee's use of the Lessee's Improvements.

2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land unless the Lessor, or anyone under the Lessor's control, has caused any damage to the Lessee's Improvements in which case the Lessor shall remedy such damage.

2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

- (a) The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the reasonable satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.
- (b) The Lessee shall also take steps to keep the grounds comprised in the Land in reasonable order.

2.09 INSURANCE

The Lessee may elect at its own discretion as to whether it will insure any Lessee's Improvements on the Land, and if so against such risks as it also elects, to the intent that the Lessee may choose at its option to fully or partly self-insure, and whether to reinstate or not any damaged or destroyed Lessee's Improvements, subject to the Lessee's obligations contained in clause 2.15(c).

2.10 SUNDRY ACKNOWLEDGEMENTS

The Lessee and Lessor acknowledge:

- (a) that the Lessor shall not be liable to erect or maintain any dividing or boundary fence, however the Lessor will as the owner of an adjoining block (subject to the Lessor's rights under the Fencing Act 1978) contribute a one half share of costs towards the cost of the erection or replacement and maintenance of any dividing or boundary fence or portion thereof either now or in the future, between the Land including any separate block of land within the Land, and any adjoining land which is or becomes the property of the Lessor;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (b) that subject to clause 2.10(a), the Lessee may at its own cost and expense in all things fence any of the internal and/or external boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

2.11 GST

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST (if any) payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST (if any) in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment (if any) shall be payable on demand, upon the provision in each case of a valid GST invoice for such payment.

2.12 NO INDEMNITY

For clarity, the Lessee does not provide any indemnity to the Lessor in regard to any matter under this Lease.

2.13 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused or contributed to by the act or omission of the Lessor or persons acting under the control of the Lessor.

2.14 RATING ROLL

The name of the Lessee shall be entered into the rating information database and the district valuation roll as the ratepayer in respect of the Land unless there is/are (a) sublease(s) from the Lessee for a term (including renewals) of not less than 10 years imposing an equivalent obligation upon such registered sublessees as is provided for in section 11 of the Local Government (Rating) Act 2002. The Lessee shall duly and punctually pay all rates payable by the Lessee in respect of the Land at the time when the same become due and payable.

2.15 REPAIR, REINSTATEMENT, OR REBUILDING OF IMPROVEMENTS

- (a) In the event any of the Lessee's Improvements are destroyed or damaged, then the Lessee shall have an absolute discretion as to the extent to which and whether at all, and when it will or may repair, reinstate or rebuild (as the case may be) any of the Lessee's Improvements on the Land.
- (b) Should the Lessee elect to reinstate and/or rebuild then it shall obtain all formal consents required for that purpose, and carry out all associated work in compliance with the relevant consents.
- (c) If the Lessee elects not to repair, reinstate or rebuild (as the case may be) any of the Lessee's Improvements then the Lessee will prior to expiry of the Lease:
 - (i) remove from the Land any substantially damaged or destroyed part of the Lessee's Improvements;
 - (ii) remove from the surface of the Land all debris from any demolition; and

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (iii) cap services (where these have not been removed).

PART III - LESSOR'S COVENANTS

3.00 LESSOR'S COVENANTS

3.01 RENEWED TERM

- (a) The Lessee may, at any time at least 36 calendar months before the end of the term, give the Lessor written notice to renew the term of the Lease.
- (b) The Lessor will grant a Renewal Term for this Lease from the date following the expiry date of the term as follows:
 - (i) the annual rental for the initial rent review period shall be determined in accordance with clause 4.05(b) to (h);
 - (ii) subject to the provisions of the preceding subclause, the Renewal Term of the Lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease except that the term of this Lease plus any further terms shall expire on or before the Final Expiry Date;
 - (iii) the annual rent shall be subject to review during the Renewal Term of the Lease at intervals of seven years as from and including the commencement date of the Renewal Term as provided for in clause 4.05(a).
- (c) Time is not of the essence for the purposes of clause 3.01(a) unless –
 - (i) the Lessee does not give a notice by the date determined under clause 3.01(a); and
 - (ii) the Lessor gives written notice to the Lessee that the Lessee has three further calendar months to give a notice to renew the term,in which case, time becomes of the essence in relation to the giving of the notice within that three month period.
- (d) Nothing in clause 3.01(c) prevents the Lessee from applying to a court under section 261 of the Property Law Act 2007.

3.02 QUIET ENJOYMENT

The Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor (except as permitted under this Lease).

3.03 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS AND REDEVELOPMENT

The Lessee may construct further Lessee's Improvements, and/or make alterations or additions to Lessee's Improvements (including relocation of Lessee's Improvements) to the intent that the Lessee shall have an absolute discretion regarding any construction alterations or additions made to, and/or relocation of the Lessee's Improvements and shall not be required to obtain consent from the Lessor in respect of these matters provided such works are in furtherance of using the Land

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

for the Permitted Use. This clause shall only apply as long as the Crown or a Crown body remains the Lessee under this Lease. If neither the Crown nor a Crown body is the Lessee under this Lease then this clause shall be amended to provide that the Lessee may not construct further improvements or make any alterations or additions to the Lessee's Improvements without the consent of the Lessor first had and obtained on each occasion which consent is not be unreasonably or arbitrarily withheld.

3.04 REDEVELOPMENT

- (a) The Lessee may at its cost redevelop the Land at the time and in the manner it determines in its sole discretion ("**Redevelopment**"), provided that any Redevelopment:
 - (i) does not materially adversely affect the value of the Lessor's estate in the Land or results in a disposal or other alienation of the fee simple estate in the Land; and
 - (ii) does not include any works on the Land likely to cause any subsidence, sinkage or damage to the Land, or the land or property of another person, but "damage" does not include lawful excavation.
- (b) Subject to clause 3.04(a) a Redevelopment may include, but is not limited to:
 - (i) a subdivision of the Crown leasehold estate in the Land;
 - (ii) the grant or receipt of any easements in respect of the interest created by this Lease or any lease in substitution for this Lease;
 - (iii) the installation of infrastructure on the Land relating to the supply of services;
 - (iv) uplifting the designation referred to in clause 3.08;
 - (v) a request for a district plan change under the Resource Management Act 1991; and
 - (vi) ground works including excavation.
- (c) The Lessee will carry out any Redevelopment:
 - (i) in accordance with the requirements of the territorial authority or any other authority or corporation having jurisdiction;
 - (ii) strictly in compliance with the provisions of any resource consent, building consent and/or designation; and
 - (iii) to a good and workmanlike standard, and in accordance with sound construction and engineering practice.
- (d) The Lessor will:
 - (i) cooperate with the Lessee and provide assistance;
 - (ii) lend its name to any application or action as the registered proprietor of the fee simple estate of the Land;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (iii) sign any documentation; and
- (iv) do all other things,

if reasonably required by the Lessee to carry out a Redevelopment, and the Lessee will pay the Lessor's reasonable costs.

- (e) The Lessee will not pay any more rental than it would have otherwise paid under this Lease as if the Redevelopment had not been carried out, to the intent that the Lessor will not get the benefit of any increase in rental as a consequence of any Redevelopment. No account will be taken of any Redevelopment in assessing the market value of the Land under clause 4.05(b).
- (f) The provisions of this clause 3.04 will apply only where the Crown or a Crown body is the Lessee under this Lease.
- (g) For so long as the Lessor is an entity representing [Marutūāhu or Ngāi Tai ki Tāmaki], nothing in this clause 3.04 prevents the Lessor from participating in any statutory, regulatory or other process to determine whether or not a Redevelopment may proceed or proceed subject to certain conditions, if the participation relates to matters of cultural, historical and spiritual significance to [Marutūāhu Iwi/Ngāi Tai ki Tāmaki].

3.05 LESSOR'S IMPROVEMENTS

For clarity the parties record that there are no Lessor's improvements.

3.06 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
 - (i) despite any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease, and irrespective of how such Lessee's Improvements are annexed to the Land;
 - (ii) the Lessee has a discretion as to whether or not the Lessee's Improvements are to be insured by the Lessee in its own name; and
 - (iii) when any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee but subject in any event to the Lessee's obligations under clause 2.06 and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Lessor at any time during the Lease propose to grant any mortgage or charge over the Land then, prior to doing so, it shall first do the following:
 - (i) advise the Lessee in writing of its intention to mortgage or charge its interests in the Land as soon as it takes steps to arrange such mortgage or charge; and

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (ii) have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 10, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor,

provided that the Lessor shall not be required to comply with this clause 3.06(b) if the Lease has been registered.

- (c) The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee makes good any damage to the Land, which arises due to such demolition or removal.
- (d) The Lessee will, provided it has done the following, be regarded as having complied with its obligations under clause 3.06(c):
 - (i) removed from the surface of the Land all debris from any demolition;
 - (ii) capped services (where these have not been removed); and
 - (iii) cut off any Lessee Improvements which have been removed at the ground level.

3.07 GROUND WORKS

- (a) Clause 3.07(b) applies only where neither the Crown nor a Crown body is the Lessee under this Lease.
- (b) The Lessee shall not:
 - (i) make any excavation of the Land (other than in association with any maintenance of, alterations and additions to, the Lessee's Improvements under clause 3.03 of this Lease) where such excavation would require a resource consent without first obtaining the Lessor's written approval which shall not be unreasonably withheld;
 - (ii) knowingly conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
 - (iii) remove any boundary-fence on any external perimeter of any separate block of land comprised within the Land or retaining works except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference; or
 - (iv) make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of and/or consistent with the Permitted Use and the Lessor has first been given not less than twenty (20) working

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

days' notice in writing of the proposed installation, alteration or interference,

without, in each case, the Lessor's prior written approval, although this will not be required where the works are reasonably necessary or conducive to the conduct of and/or consistent with the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions. No notice or consent shall be required however where any such work of the type contemplated in this clause is required in the event of an emergency.

- (c) Neither the Crown nor a Crown body shall knowingly conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person, but "damage" does not include lawful excavation.

3.08 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for defence purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the Lessee giving any notice to terminate this Lease, should the Lessee elect to so terminate, then the following shall apply. The Lessee shall take all necessary steps to cause the

designation to be uplifted as soon as possible following the expiry of the Lease. The Lessor will provide the Lessee with all reasonably practical and commercially prudent assistance to cause the designation to be uplifted.

3.09 PROVISION OF CERTAIN NOTICES TO THE LESSEE

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

3.10 RECLASSIFICATION OF LAND

- (a) The Lessor shall not take any steps to reclassify the Land from General Land under the Te Ture Whenua Maori Act 1993 or any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori. The Lessor further warrants and undertakes that it will take all necessary steps to oppose any attempt by any other person to reclassify the Land from General Land under that Act or under any other legislation which could result in the Land being treated other than as ordinary freehold land not owned by Maori.
- (b) The Lessor shall indemnify and keep the Lessee indemnified from and against any action claim, demand, loss (including loss of profit or fall in value of the Lessee's leasehold interest in the Land under this lease) damage, cost, expense or liability whatsoever which the Lessee may suffer, incur, or

become liable for in the event that the Land is reclassified as anything other than General Land under the Te Ture Whenua Maori Act 1993 (or consequent upon such reclassification) or in the event that the security of tenure of the Lessee's leasehold interest in the Land granted at the

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

Commencement Date pursuant to this Lease is similarly undermined, impaired, prejudiced or otherwise affected during the Term.

3.11 BENEFITS TO LAND NOT TO BE RESTRICTED OR CANCELLED

- (a) The Lessor shall not cancel, surrender or modify any easements or other like rights or interests whether registered or not which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee which consent may not be arbitrarily or unreasonably withheld.
- (b) The Lessee may as of right however grant or receive the benefit of any easements or other like rights or interest whether registered or not against and/or in respect of the Lessee's leasehold interest in this Lease provided however the nature of the rights so granted do not materially adversely affect the value of the Lessor's estate in the Land.

3.12 REVERSE SENSITIVITY

- (a) The Lessor in its capacity as owner of the fee simple estate in the Land will not in any way inhibit the Lessee from carrying out any lawful works or activities on the Land pursuant to the current defence purposes designation or to any other designation, or pursuant to any rights under the Resource Management Act 1991 or otherwise.
- (b) The Lessor in its capacity as owner of the fee simple estate in the Land will not bring proceedings for nuisance arising from the carrying out of any lawful works or activities referred to in clause 3,12(a), and will make no complaint or submission or rejection relating to those works or activities or to the effects of the use of the Land.
- (c) The Lessor will not in its capacity as owner of the fee simple estate in the Land:
 - (i) make or lodge; nor
 - (ii) be party to; nor
 - (iii) finance nor contribute to the cost of,
any submission, application, proceeding (either under the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict continuation of the current or future lawful uses of the Land including without limitation any action to require the Lessee to modify the current or future uses carried out within the Land.
- (d) For so long as the Lessor is an entity representing [Marutūāhu or Ngāi Tai ki Tāmaki], nothing in clauses 3.12(a) to (c) prevents the Lessor from participating in any statutory, regulatory or other process in relation to the works or activities, if the participation relates to matters of cultural, historical and spiritual significance to [Marutūāhu or Ngāi Tai ki Tāmaki].
- (e) The covenants on the part of the Lessor under clause 3.12(a) to (c) are to continue to apply until such time as:

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (i) the Crown ceases to be the owner of the leasehold interest in the Land;
or
 - (ii) the Crown otherwise agrees to discharge the covenants.
- (f) If the Lessee surrenders or assigns its leasehold estate in any part of the Land ("**surrendered part**") but continues to hold a leasehold estate in the balance of it ("**retained part**") then the Lessor must do all things necessary, at the cost of the Lessee, to register a covenant against the fee simple estate in the surrendered part in favour of the leasehold estate in the retained part which has the effect of ensuring the covenants in clause 3.12(a) to (e) bind the owner from time to time of the fee simple estate in the surrendered part.

PART IV – MUTUAL COVENANTS

4.00 MUTUAL COVENANTS

4.01 LESSOR TRANSFER

The Lessor shall be permitted to transfer its interests under this Lease at any time during the Initial Term or Renewal Term of this Lease subject, however, to the following. The Lessor covenants for the benefit of the Lessee that it will ensure that the Lessor's interests in the Land are transferred subject to this Lease, to the intent that any transferee shall be bound by this Lease.

4.02 ASSIGNMENT AND SUBLETTING

- (a) Subject to clause 4.20, the Lessee shall be permitted as of right to:
 - (i) assign its interest under the Lease to a Crown body; and
 - (ii) grant any sublease, licence or any other occupancy right in respect of any part or parts of the Land for such uses as the Lessee permits for a term, including any renewals, of no more than 35 years.
- (b) Subject to clause 4.20, the Lessee may assign its interest under this Lease to any other person with the prior written approval of the Lessor.

4.03 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Subject to clause 4.03(c), should the Lessee default in the observance or performance of any of the Lessee's obligations under this Lease, and should the Lessor have first served not less than twenty-one (21) Working Days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor acting reasonably, in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.03(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

- (c) The Lessor in entering upon the Land pursuant to its rights under clause 4.03(a) shall do so at its own risk and shall only enter upon the Land at such times as the Lessee has approved and subject to compliance with any reasonable conditions imposed by the Lessee, including in particular those in relation to security.

4.04 LESSEE'S IMPROVEMENTS

The parties acknowledge that:

- (a) The Lessee may, prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed prior to the expiration or sooner determination of the Lease or within such further time as the parties may agree, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee.
- (b) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land as a consequence of such removal as provided in clause 3.06(d) and 2.15.
- (c) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease despite any rule of law or equity to the contrary.
- (d) In any review (if any) of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental.
- (e) Despite the generality of the provisions of clause 4.04(a), the Lessee shall not upon expiry of the Lease, remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor.
- (f) For the avoidance of doubt, nothing in this Lease shall obligate the Lessee to remove the property referred to in this clause 4.04(e), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease.
- (g) All Lessee's Improvements remaining upon the Land after the termination date or such further period as the parties may agree, shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor, subject to any alternate agreement which the parties may have reached in relation to any particular Lessee's Improvement.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

4.05 RENT REVIEW

- (a) The annual rental payable from each CPI Rent Review Date shall be the greater of:
 - (i) the annual rental payable by the Lessee immediately prior to that CPI Rent Review Date; and
 - (ii) the annual rental payable by the Lessee immediately prior to that CPI Rent Review Date, adjusted by the same percentage as the cumulative percentage change in the CPI during the period which corresponds as nearly as possible to the period from the last CPI Rent Review Date (or if there is no previous CPI Rent Review Date, the commencement date of this Lease) to the relevant CPI Rent Review Date.
- (b) The annual rental shall be reviewed by the Lessor on the Market Rent Review Dates.
- (c) The annual rental shall on each review under clause 4.05(b) be calculated as such amount as is equivalent to 6.25% of the market value of the Land as at the relevant Market Rent Review Date, in each case.
- (d) The market value of the Land as at the relevant Market Rent Review Date shall be reviewed for the purposes of applying the percentage amount referred to in clause 4.05(c) to determine the revised annual rental as follows:
 - (i) the Lessor shall commence a review by not earlier than three (3) months prior to a Market Rent Review Date or at any time up to six months after any Market Rent review Date by giving written notice to the Lessee specifying the then current market value for the Land considered by the Lessor to be the current market value for the Land as at the relevant review date. That notice shall also state that the Lessee is required under the provisions of the Lease to respond in writing within 28 days of receipt of the Lessor's notice;
 - (ii) if, by written notice to the Lessor within twenty-eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the then current market value of the Land is as aforesaid, then the current market value of the Land shall be determined in accordance with the provisions of clause 4.05(d)(vii);
 - (iii) the current market value of the Land so determined or accepted shall be the current market value of the Land for the purposes of establishing the revised annual rental in accordance with

clause 4.05(c) from the Market Rent Review Date or the date of the Lessor's notice if such notice is given later than six (6) months after the review date;
 - (iv) pending the determination of the current market value of the Land and consequential revised annual rental having regard to the percentage referred to in clause 4.05(c), the Lessee shall pay a rental amount which is halfway between that specified in the Lessor's notice (provided that the rental is substantiated by a registered valuer's report, and the rental payable immediately prior to the relevant review date. Upon determination of the new rental, an appropriate adjustment shall be made;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (v) the rent review shall be recorded in a variation of this Lease, the cost of which shall be shared equally between the parties;
- (vi) in assessing the market value for the Land:
 - (aa) no account shall be taken of the Lessee's Improvements or this Lease to the intent that the Land is assumed to be vacant land without any improvements; and
 - (bb) no account shall be taken of the Permitted Use to the intent that the Land will be valued on the basis that it is available to be utilised for its highest and best use permitted under the District Plan, but disregarding any designation for defence use or other Crown or Crown body use;
- (vii) Immediately following receipt by the Lessor of the Lessee's notice,

the parties shall endeavour to agree upon the current market value of the Land (and consequential revised market rent having regard to clause 4.05(c)) but if agreement is not reached within twenty-eight (28) days then the current market value of the Land as at the relevant review date, may be determined by one party giving written notice to the other requiring the current market value for the Land to be determined by arbitration.
- (e) In the event of either party requiring determination by arbitration under clause 4.05(d)(vii), then the following shall apply:
 - (i) The parties must not later than five working days after the date of the recipient party having received the other party's written notice under the preceding clause agree upon and jointly upon one person to act as the valuation arbitrator for the purposes of the arbitration. If the parties do not jointly appoint a valuation arbitrator within this time, then either party may request that the Arbitrators and Mediators Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
 - (ii) The valuation arbitrator must be suitably qualified and experienced in determining disputes about the market value in rental of properties similar to the Land and is appointed when he or she confirms his or her willingness to act.
 - (iii) The valuation arbitrator must no later than [7] working days after the date the matter is referred to the valuation arbitrator's determination (the arbitration commencement date) do the following:
 - (aa) Give notice to the parties of the arbitration hearing, which must be held at a date, time and venue determined by the valuation arbitrator after consulting with the parties, but not in any event be any later than [30] working days after the arbitration commencement date; and
 - (bb) Establish the procedure for the arbitration hearing, including providing each party with the right to examine and re-examine or cross-examine as applicable, each party's valuer, and any other person giving evidence.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (iv) Each party must, not later than 5pm on that day that is 10 working days before the arbitration hearing, give to the valuation arbitrator, the other party and the other party's valuer, its valuation report, submission, and any sales or expert advice that it will present at the hearing. Each party must attend the arbitration hearing with its respective valuers, and may have its solicitors attend.
- (v) The valuation arbitrator must have regard to the requirements of natural justice at the arbitration hearing and provide his or her determination of the market value of the Land for the purposes of determining the rental in accordance with the formula under the Lease, no later than [20] working days after the arbitration hearing.
- (vi) An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.
- (f) The market value of the Land for the purposes of determining the relevant rental under the rent review provisions of the Lease, shall be that which is agreed under clause 4.05(d) above or determined by the valuation arbitrator under clause 4.05(e)(iii) as the case may be.
- (g) In relation to the determination of the market value of the Land, each party must pay its own costs and half the costs of a valuation arbitration, or in the case of the latter, meet such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator.
- (h) For the purposes of this clause 4.05, the market value of the Land will be assessed on a GST exclusive basis. For the avoidance of doubt, nothing in this subclause (h) limits the Lessor's ability to charge GST in addition to the rental, in accordance with clause 2.11 where applicable.
- (i) For the purposes of this clause 4.05, "**Land**" means the land described in Item 1 of Schedule A but reduced –
 - (a) as if a marginal strip of land 1140m² in area as shown on the plan attached as Schedule H had been reserved from the Land under section 24 of the Conservation Act 1987 on or before the Commencement Date; and
 - (b) by the area of the embankment areas of 405m² shown on that plan.

4.06 LESSOR'S REMEDIES FOR BREACH

- (a) Should the Lessee for a period exceeding 10 working days, breach any covenant, express or implied, on the Lessee's part in this Lease, then subject to the Lessor having served, in accordance with section 353 of the Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it will be lawful for the Lessor to re-enter the Land and/or terminate the Lease.
- (b) Clause 4.06(c) to (e) apply instead of clause 4.06(a) for so long as the Crown is the Lessee under this Lease.
- (c) Should the Lessee either default in the payment of any rental at any time during the Renewal Term for a period exceeding thirty days or more, or otherwise breach any covenant on the Lessee's part in this Lease expressed or implied, then the following shall apply:

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (i) before exercising any Lessor remedies (but expressly excluding re-entry or termination which shall not be permitted) the Lessor shall serve a notice (called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged; and
 - (ii) the Lessor's remedies shall specifically exclude re-entry and termination to the intent that this remedy not be available to the Lessor during the Term of this Lease.
- (d) The Default Notice despite anything to the contrary contained in clause 4.07(c) above shall specify that:
- (i) the Lessee must within 30 days of receipt of such notice take reasonable steps towards remedying the default specified; and
 - (ii) that should the Lessee not remedy the default specified within this time (insofar as it is reasonably possible to remedy such breach within that time), the Lessor shall then be at liberty to exercise its remedies for such default but subject to clause 4.07(c)(ii).
- (e) The Lessor acknowledges that it shall not exercise its remedies as provided for under this clause 4.07, unless and until the provisions of clause 4.07(c) and (d) have been satisfied in full and further that any such remedy exercised contrary to the provisions of clause 4.07(c) shall be null and void ab initio.

4.07 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the Lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

4.08 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clause 4.09 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(d)(ii).

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

4.09 SERVICE OF NOTICES

- (a) Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served, emailed or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 11 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.
- (b) If either party does not have a current address for service, then service in terms of this clause may be effected on that party:
 - (i) in any manner mentioned in part 7 of the Property Law Act 2007; or
 - (ii) by registered post addressed to the registered office or principal place of business of the party intended to be served;

and any notice or other document given or served by the method mentioned in paragraph (i) shall be deemed to have been given or served and received by the other party two days after the date of posting.

4.10 REGISTRATION OF LEASE

Either party may at any time during the Lease, require by giving written notice to the other party, that this Lease be registered. In such case the parties shall take all necessary steps to achieve and complete this and costs in respect of the same shall be met by the party requiring registration.

4.11 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's reasonable costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee or mandated by this Lease), or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper legal enforcement or proper attempted legal enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

4.12 INTEREST

If the Lessee during the term shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 10 working days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 10 working days from the date such demand (accompanied by a valid invoice) is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of [4%] per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount

is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

4.13 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

the covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Use of Land:***

compliance with the Permitted Use.

4.14 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

4.15 RENT MORATORIUM

If any moratorium or other law, act or regulation that (despite clause 4.05 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, then the following shall apply. The review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended, to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date with such reviewed rental becoming payable from the date the moratorium is listed or law, act or regulation is repealed

or amended. Any subsequent rent review shall take place on the next following review date as specified in Item 7 of Schedule A.

4.16 CONSENTS AND APPROVALS

Where the Lessee is required to obtain any consent or approval of the Lessor under this Lease then the following shall apply:

- (a) the Lessor will be entitled to grant or refuse its consent or approval in its absolute discretion (unless the consent or approval is sought in relation to assigning, subletting or changing the permitted use in which circumstances the Lessor will not unreasonably or arbitrarily withhold its consent or approval, or unless the Lease expressly provides otherwise); and
- (b) the Lessor will respond promptly to any request made by the Lessee for any such consent.

4.17 LESSEES SECURITY REQUIREMENTS

The Lessor will in exercising any right it has under this Lease, comply at all times with any security requirements of the Lessee as advised to the Lessor from time to time by the Lessee.

4.18 REDUCTION OF RENT IN EVENT OF SIGNIFICANT DAMAGE TO LAND

In the event of any catastrophic, or significant damage to the Land which arises at any time during the term, through any act of God which is incapable of being remedied by the Lessor and renders the Land (or any part of it) unusable by the Lessee then rental payable by the Lessee shall abate in proportion to the loss of use of the Land by the Lessee.

4.19 CONCURRENT LEASE AND OTHER INTERESTS

- (a) The parties acknowledge that parts of the Land may be subject to the Existing Tenancies and Other Interests at the Commencement Date, and agree that should that be the case, then:
 - (i) the Lessee takes this Lease subject to any Existing Tenancies and Other Interests;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (ii) the Lessee has the right to receive rent and other payments due from the lessees, licensees and occupiers under the Existing Tenancies and Other Interests;
- (iii) the Lessee has the right to enforce the covenants under the Existing Tenancies and Other Interests (but without having any obligation to do so);
- (iv) the Lessee will not be liable for any breach of this Lease that is caused by any act or default of any occupier of any part of the Land under the Existing Tenancies or Other Interests;
- (v) the Lessor must not do or omit to do anything, or require the Lessee to do or to omit to do anything that will cause the Lessee to be in breach of the Lessee's obligations under any Existing Tenancies or Other Interests;
- (vi) the Lessee will have no liability to the Lessor for any loss, damage or any other cost that arises from the act or omission of any occupier under any Existing Tenancies or Other Interests; and
- (vii) the Lessee may in all respects and despite any other provision in this Lease, deal with the Existing Tenancies and Other Interests without reference to the Lessor, including surrendering, extending or cancelling any Existing Tenancies or Other Interests.

4.20 PRE-EMPTIVE RIGHT

- (a) The following subclauses of this clause 4.20 will only apply in the event that the Lessee proposes to assign the Lessee's interest in this Lease or sublet all the Land for a period of 14 years or more. The Lessor shall have no pre-emptive right in the event of the Lessee wishing to transfer or assign or sublet its interest as Lessee under this Lease to a Crown Body.
- (b) If at any time before the expiration or earlier termination of the Term or any renewed or extended term the Lessee wishes to deal with the Lessee's interest in this Lease as provided in clause 4.20(a) (including any assignment by way of sale of the Lessee's Improvements) ("**Lessee's Interest**") the Lessee must immediately give written notice to the Lessor ("**Lessee's Notice**").
- (c) The Lessor may (but shall not be obliged to), for 30 days following the date of receipt of the Lessee's Notice (time being of the essence), give the Lessee a written notice of interest in the Lessee surrendering to the Lessor the residue of its term under the Lease ("**Surrender of Lease**").
- (d) If the Lessor gives a notice of interest under subclause (c), then the value of the Surrender of Lease must be agreed or determined in accordance with Schedule E.
- (e) If subclause (d) applies, then the Lessor may for 30 days after the value of the Surrender of Lease has been agreed or determined (time being of the essence) give the Lessee written notice that it requires the Surrender of Lease.
- (f) If the Lessor serves a notice in accordance with subclause (e), then the provisions in Schedule F will apply.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (g) If the Lessor does not serve a notice in accordance with subclauses (c) or (e) then (subject to clause 4.20(i) below) the Lessee may, within [two] years of the Lessee's Notice ("**Assignment Period**"), assign or otherwise deal with its interest as provided in clause 4.20(a) to any other person without triggering the pre-emptive right contained in this clause 4.20. The provisions of clause 4.02 of this Lease will apply to any such assignment.
- (h) If the Lessee wishes to assign or otherwise deal with the Lessee's Interest after the Assignment Period, then the Lessee must notify the Lessor and subclauses (b) to (g) will apply.
- (i) The Lessee may not during the Assignment Period offer to assign or otherwise deal with its interest under the Lease as described in clause 4.20(a) on terms which are more favourable than those under which the Lease or part of it might have been dealt with had the Lessor issued a notice in accordance with clause 4.20(e).

4.21 ARTEFACTS AND HERITAGE COVENANT

- (a) Artefacts of naval historical interest, and, all other articles of value or antiquity, structures and other remains of naval historical interest ("**Artefacts**") shall, as between the Lessor and Lessee, be deemed to be the property of the Lessee.
- (b) Clause 4.21(a), as it applies to taonga tuturu, is subject to part 2 of the Protected Objects Act 1975.
- (c) The Lessee may, without the consent of the Lessor, -
 - (i) apply for an authority under the Historic Places Act 1993 to destroy, damage, or modify any archaeological site on the Land;
 - (ii) destroy, damage or modify any archaeological site on the Land, or remove any Artefact from the Land, provided that the Lessee:
 - (aa) complies with:
 - (1) any authority granted under the Historic Places Act 1993;
 - (2) all other applicable statutes, ordinances, regulations, bylaws and codes; and
 - (3) the requirements of the territorial authority or any other authority or corporation having jurisdiction; and
 - (bb) makes good any damage to the Land caused by such removal, damage, destruction or modification.
- (d) The Lessee may negotiate and agree with Heritage New Zealand Pouhere Taonga for the execution of a heritage covenant under the Heritage New Zealand Pouhere Taonga Act 2014:

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (i) to provide for the protection, conservation, and maintenance of any historic place or historic area on the Land; and
 - (ii) on such terms and conditions as the Lessee thinks fit, including provision for public access.
- (e) The Lessor will:
 - (i) consent to any heritage covenant in the form proposed by the Lessee;
 - (ii) sign any documentation; and
 - (iii) do all other things reasonably required by the Lessee to enter into the heritage covenant.
- (f) For so long as the Lessor is an entity representing Marutūāhu Iwi or Ngāi Tai ki Tāmaki, nothing in this clause 4.21 prevents the Lessor from participating in any process under the Protected Objects Act 1973 or Heritage New Zealand Pouhere Taonga Act 2014 in relation to Artefacts or the entering into a heritage covenant if the participation relates to matters of cultural, historical or spiritual significance to [Marutūāhu Iwi/Ngāi Tai ki Tāmaki].

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE C

The Land

[0.5851 hectares, approximately, being the land comprised in SO 485026]

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE D

[List of buildings included in the Lessee's Improvements to be attached here]

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE E

VALUATION PROCESS FOR LESSEE'S INTEREST IN LEASE

1 LESSEE'S INTEREST IN LEASE

- 1.1 If the Lessor gives the Lessee a written notice of interest in the Lessee surrendering to the Lessor the residue of its term under the Lease under clause 4.20 (c), then the value of the Surrender of Lease will be determined in accordance with this valuation process.

2 APPOINTMENT OF VALUERS AND ARBITRATOR

- 2.1 No later than 10 Working Days after the date when the Lessor gives the Lessee Notice under clause 4.20(c), the Lessor and the Lessee must each:
- 2.1.1 appoint a Registered Valuer and instruct him or her to assess the Value of the [Lessee's interest in the Lease], in accordance with this valuation process and on the terms set out in the letter of instructions following this schedule; and
 - 2.1.2 Notify each other of the identity of the Registered Valuer.
- 2.2 The Lessor and the Lessee must endeavour to agree on and appoint a person who is suitably qualified and experienced in determining disputes about the value of assets similar to the Lessee's interest in the Lease no later than 15 Working Days after the date the Lessor gives the Lessee the Notice of Interest.
- 2.3 If no appointment has been made under paragraph 2.2 by that date, the Lessee must request that the President of the New Zealand Institute of Valuers make the appointment.
- 2.4 An appointment of an Arbitrator is made once the appointee has confirmed that he or she will conduct an arbitration, if requested by the Lessee, in accordance with this valuation process.

3 VALUATION REPORTS

- 3.1 Both the Lessor's Valuer and the Lessee's Valuer must prepare a Valuation Report that includes their respective assessments of the Value on the Valuation Date.
- 3.2 The Lessor and the Lessee must each deliver a copy of its Valuation Report to the other by no later than the Valuation Exchange Date.
- 3.3 Both Valuation Reports must:
- 3.3.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this valuation process;
 - 3.3.2 include an executive summary containing:
 - (a) a summary of the valuation along with key valuation assumptions and parameters;
 - (b) a summary of any key issues affecting the value; and

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

3.3.3 attach appendices setting out:

- (a) a statement of valuation policies; and
- (b) relevant market and sales and leasing information.

4 SINGLE VALUATION REPORT MAY DETERMINE SURRENDER OF LEASE VALUE

4.1 If only one Valuation Report is delivered by a Party by the Valuation Exchange Date then the assessment of Value in that report will be, the Surrender of Lease Value.

5 NEGOTIATIONS TO AGREE VALUE

5.1 If each Party has provided a Valuation Report to the other by no later than the Valuation Exchange Date, the Lessor and the Lessee must endeavour to agree on, and record in writing, the Value. The amount agreed as the Value is the Surrender of Lease Value.

5.2 Where the Value is not determined or agreed within 20 Working Days after the Valuation Exchange Date, the determination of the Surrender of Lease Value must be referred to an Arbitrator in accordance with paragraph 6.

6 DETERMINATION OF MARKET VALUE

6.1 Within 5 Working Days of paragraph 5.2 applying, the Lessee must refer the dispute to the Arbitrator (the "**Arbitration Commencement Date**").

6.2 The Arbitrator must promptly give notice of a meeting to be attended by the Lessor and the Lessee and their respective Registered Valuers, at a venue and time to be decided by the Arbitrator after consultation with the Parties and having regard to their obligations under paragraph 6.3 but not later than 30 Working Days after the Arbitration Commencement Date.

6.3 The Lessor and Lessee must by no later than 5.00pm on the day which is 5 Working Days prior to the date of the meeting give to the Arbitrator and to each other their Valuation Reports and any submission or expert evidence based on that information which the Lessor or Lessee intend to present at the meeting.

6.4 At the meeting, the Arbitrator must:

- 6.4.1 establish a procedure and give each Party the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the other Party in relation to the information provided to the Arbitrator; and
- 6.4.2 have regard to the requirements of natural justice in the conduct of the meeting.

6.5 The Arbitrator shall hold the meeting and give his or her determination of the Value no later than 50 Working Days after the Arbitration Commencement Date.

6.6 The determination of the Arbitrator is final and binding on the Lessor and the Lessee.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- 8.7 If a Notice is treated as having been received on a day that is not a Working Day, or after 5pm on a Working Day, that Notice will (despite paragraph 8.6) be treated as having been received the next Working Day.

9 DEFINITIONS

In this valuation process, unless the context otherwise requires:

Arbitration Commencement Date means the date the Lessee makes the referral to arbitration referred to in paragraph 6.1;

Arbitrator means a person appointed under paragraphs 2.2 or 2.3;

Lessee's Valuation Report means the valuation report prepared by the Lessee's Valuer in accordance with the valuation process;

Lessee's Valuer means a Registered Valuer appointed by the Lessee to take part in this valuation process;

Lessor's Valuation Report means the valuation report prepared by the Lessor's Valuer in accordance with this valuation process;

Lessor's Valuer means a Registered Valuer appointed by the Lessor to take part in this valuation process;

Notice means a notice in writing given under paragraph 8, and **Notifying** has a corresponding meaning;

Party means the Lessor and Lessee;

Registered Valuer means a valuer registered with the Valuers' Registration Board of New Zealand and with experience in the valuation of assets similar to the Lessee's interest in the Lease;

Surrender of Lease Value, means the Value for the Lessee's interest in the Lease determined or agreed under this valuation process;

Valuation Date means 20 Working Days after the Lessee's Notice;

Valuation Exchange Date means 40 Working Days after the date when the Lessor gives the Lessee notice under clause 4.20(c);

Valuation Reports means the valuation reports prepared for the Lessor and the Lessee in accordance with this valuation process;

Value is the amount, exclusive of GST, for which the Lessee's interest in the Lease, might be expected to realise on the Valuation Date between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing, if the parties to the transaction had each acted knowledgeably, prudently and without compulsion; and

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (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 Auckland.

LETTER OF INSTRUCTIONS

[*Valuer's name*]

[*Address*]

Valuation instructions

INTRODUCTION

Marutūāhu Iwi/Ngāi Tāi ki Tāmaki and the Crown have entered into a lease of Torpedo Bay dated [] (**Lease**).

A copy of the Lease is attached.

The Surrender of Lease Value (as defined in Schedule E to the Lease) is to be determined by establishing the market value of the Lessee's interest in the Land and improvements on the Land.

DEFINITIONS

Terms defined in the Lease (including Schedule E) are used in these instructions and have the same meaning.

VALUATION REQUIRED

You are required to undertake the above valuation as at [] (the **valuation date**).

[New Zealand Defence Force] [Marutūāhu Iwi/Ngāi Tāi ki Tāmaki] [~~delete one~~] will require another registered valuer to assess the market value of the property at the valuation date.

VALUATION PROCESS

You must –

- (a) before inspecting any of the properties, attempt to agree with the other valuer –
 - (i) the valuation methods applicable;
 - (ii) the comparable sales to be used in determining the value; and
 - (iii) joint instructions to a technical advisor e.g. procurement of planning, engineering and subdivision cost advice may be required. The technical advisor's engagement will be direct with the Crown and Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki but it will be up to the valuers to confirm scope and deliverables having regard to reasonable valuation requirements;
- (b) inspect the properties together with the other valuer within 10 business days of the date of the appointment;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (c) attempt to resolve by the following day any matters or issues arising from your inspections;
- (d) by not later than [] –
 - (i) prepare a draft valuation report; and
 - (ii) provide a copy of that report to us;
- (e) by not later than [] –
 - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) exchange a copy of your final valuation report to both parties and the valuer instructed by the other party; and
- (f) assist the parties to agree value and participate in the dispute resolution and arbitration process set out in Schedule E to the Lease.

You should proceed with (b)-(f) despite a failure to agree on any of the matters referred to in (a) above.

REQUIREMENTS FOR YOUR MARKET VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the Lessee's interest in the Land is a current asset and is available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of that interest have been met; and
- (c) the Lessee's interest in the Land shall be sold with vacant possession.

Your valuation is –

- (a) to assess market value of the Lessee's interest in the Land on the basis of market value as defined in the International Valuation Standards contained in the current edition of the Australia and New Zealand Valuation and Property Standards;
- (b) to take into account –
 - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date;
 - (ii) [any disclosure information]; and
 - (b) not to take into account a claim in relation to any of the properties by Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

REQUIREMENTS FOR YOUR VALUATION REPORT

A full valuation report in accordance with the relevant Australia and New Zealand Valuation and Property Standards is required.

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 the Surrender of Lease Value;
- details of your assessment of the highest and best use of the Land;
- comment on the rationale of likely purchasers of the Lessee's interest in the Land;
- 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 and an assessment of their value;
- relevant market, sales, rental and lease information and comments on its specific relevance to the subject properties; and
- a statement of valuation methodology and policies.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than –

- (a) [], to prepare and deliver to us a draft valuation report;
- (b) [], to review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us and exchange a copy of your final valuation report to both parties and the valuer instructed by the other party;
- (c) [], to –
 - (i) prepare a written report containing analysis of both valuers reports to assist the parties to agree a market value for the property; and
 - (ii) give your analysis to both parties and the valuer instructed by the other party;
- (d) [], to meet the other valuer to discuss the above analysis and provide a joint recommendation to the Crown and Marutūāhu Iwi/ Ngāi Tāi ki Tāmaki /.

OPEN AND TRANSPARENT VALUATION

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith. In particular, you must copy any questions you have (including to the current owner and the independent technical advisor

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

referred to above) or receive with regard to the valuation, together with the responses, to the settling group and the land holding agency.

CONFLICTS

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

FEES

The commercial terms of your engagement will be in accordance with your offer of service dated {insert}.

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 {insert}. However all communication and correspondence with respect to the valuation is to be addressed through (insert), and similarly all instructions of the {insert} will be issued by {insert} unless otherwise advised.

Thank you for your assistance. If further information is required please contact me.

Yours faithfully

[Name of signatory]

[Position]

[Settling group/Land holding agency][delete one]

SCHEDULE F

TERMS OF SURRENDER

1 DEFINITIONS

1.1 In this schedule, unless the context otherwise requires:

1.1.1 the definitions in Schedule A and clause 2 of Schedule B apply; and

1.1.2 the following definitions apply:

Election Date means the date the Lessee receives a notice from the Lessor requiring a surrender of the Lease in accordance with clause 4.18(e) of Schedule B;

Lessee's Interest has the meaning given to it in clause 4.18(b) of Schedule B;

Surrender Amount means the value of the surrender of the lease agreed or determined in accordance with clause 4.18(d) of Schedule B;

Surrender Date means the date that is 20 business days after the Election Date; and

Surrender Period means the period from the Election Date to the Surrender Date.

2 SURRENDER

2.1 In consideration of the Lessor paying the Surrender Amount to the Lessee on the Surrender Date the Lessee surrenders and assigns the Lessee's Interest to the Lessor as and from the Surrender Date, to the intent that the term created by the Lease will merge and be extinguished in the freehold of the Land on the Surrender Date.

2.2 The surrender of the Lessee's Interest will not prejudice:

2.2.1 the respective rights, powers and remedies of each of the parties to the Lease in respect of any breach or non-observance of any covenant, condition or agreement of the Lease occurring prior to the Surrender Date;

2.2.2 any encumbrances affecting or benefiting the Lessee's Interest provided the same have been disclosed to the Lessor prior to the Election Date (as varied under paragraph 6.1.4(a)); or

2.2.3 any additional encumbrances affecting or benefiting the Lessee's Interest entered into by the Lessee under paragraph 6.1.4(b).

3 POSSESSION

3.1 Subject to clause 8.1 of this Schedule, possession of the Land and the Lessee's Improvements must, on the Surrender Date:

3.1.1 be given by the Lessee; and

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- 3.1.2 taken by the Lessor; and
- 3.1.3 be vacant possession subject only to any encumbrances referred to in paragraphs 2.2.2 and 2.2.3 that prevent vacant possession being given and taken.

4 SETTLEMENT

- 4.1 The Lessee must provide the Lessor with the following in relation to the Lessee's Interest on the Surrender Date:
 - 4.1.1 evidence of a registrable surrender of lease instrument; and
 - 4.1.2 all contracts and other documents (but not public notices such as proclamations and Gazette notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the Lessee's Interest after the Surrender Date.
- 4.2 The Lessee must, on the Surrender Date, provide the Lessor with any key or electronic opener to a gate or door on, and any security code to an alarm for, the Land and Lessee's Improvements that are held by the Lessee unless to provide it would be inconsistent with the Encumbrances.

5 APPORTIONMENT OF OUTGOINGS AND INCOMINGS

- 5.1 If, as at the Surrender Date the Lessee has:
 - 5.1.1 pre-paid any Outgoings in respect of any period falling after the Surrender Date, the Lessor must pay the amount of the excess to the Lessee; or
 - 5.1.2 received any incomings (including by way of example any monies the Lessee has received under any Existing Obligations) the Lessee has received in respect of any period falling after the Surrender Date, the Lessee must pay the amount of the excess to the Lessor.
- 5.2 An amount payable under paragraph 5.1 in relation to the Lessee's Interest must be paid on the Surrender Date.
- 5.3 The Lessee must, before the Surrender Date, provide the Lessor with a written statement calculating the amount payable by the Lessee or the Lessor under paragraph 5.1.

6 OBLIGATIONS AND RIGHTS DURING THE SURRENDER PERIOD

- 6.1 The Lessee must, during the Surrender Period:
 - 6.1.1 ensure the Lessee's Interest is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
 - 6.1.2 pay the Outgoings as they fall due; and
 - 6.1.3 ensure the Lessee's obligations under the Building Act 2004 are complied with in respect of any works carried out on the Land during the period;

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

- (a) by the Lessee; or
 - (b) with the Lessee's written authority; and
- 6.1.4 obtain the prior written consent of the Lessor before:
- (a) materially varying a disclosed encumbrance affecting or benefiting the Lessee's Interest;
 - (b) entering into an encumbrance affecting or benefiting the Lessee's Interest; or
 - (c) procuring a consent, providing a waiver, or giving an approval, that materially affects the Lessee's Interest, under the Resource Management Act 1991 or any other legislation; and
- 6.1.5 use reasonable endeavours to obtain permission for the Lessor to enter and inspect the Land and the Lessee's Improvements under paragraph 6.2.2 if the Lessor is prevented from doing so by the terms of an encumbrance referred to in paragraphs 2.2.2 or 2.2.3.
- 6.2 The Lessor, during the Surrender Period:
- 6.2.1 must not unreasonably withhold or delay any consent sought under paragraph 6.1.4; and
- 6.2.2 may enter and inspect the Land and Lessee's Improvements on one occasion:
- (a) after giving reasonable notice; and
 - (b) subject to the terms of the encumbrances referred to in paragraphs 2.2.2 or 2.2.3; and
 - (c) must comply with all reasonable conditions imposed by the Lessee in relation to entering and inspecting the Land and the Lessee's Improvements.

7 DAMAGE AND DESTRUCTION

- 7.1 Paragraphs 7.2 to 7.4 apply if, before the Surrender Date:
- 7.1.1 the Lessee's Interest is destroyed or damaged; and
 - 7.1.2 the destruction or damage has not been made good.
- 7.2 Where this paragraph applies:
- 7.2.1 the parties must complete the surrender of the Lessee's Interest in accordance with this Schedule; and
 - 7.2.2 the Surrender Amount will be reduced by the amount by which the value of the Lessee's Interest has diminished, as at the Surrender Date, as a result of the destruction or damage.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

8 LESSEE'S IMPROVEMENTS

- 8.1 The Lessee must comply with clause 4.04 of Schedule B, and for the purposes of that clause the Surrender Date shall be deemed to be the expiry of this Lease and the Lessee shall be required to comply with its obligations in respect of any matters which are required to be complied with by the Expiry Date, by the Surrender Date.

9 FURTHER ASSURANCES

- 9.1 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things, that the other may reasonably require to give full force and effect to this Schedule.

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE G

EXISTING TENANCIES

[To be completed as at Commencement Date]

DOCUMENTS

15: LEASEBACK: TORPEDO BAY PROPERTY

SCHEDULE H

EXCLUDED AREAS FOR RENT REVIEW PURPOSES

