

THE PUKAAHU CLAIMANTS

and

HER MAJESTY THE QUEEN

in right of New Zealand

**DEED OF SETTLEMENT TO
SETTLE PUKAAHU HISTORICAL
CLAIMS**

15 September 2004

Handwritten signatures in the bottom right corner, including a large signature and two smaller ones below it.

CONTENTS

BACKGROUND.....2

SECTION 1: SCOPE AND NATURE OF SETTLEMENT6

1.1 THIS DEED SETTLES THE PUKAAHU HISTORICAL CLAIMS.....6

1.2 RELATIONSHIP TO NGĀTI AWA SETTLEMENT6

1.3 MEANING OF PUKAAHU CLAIMANTS.....6

1.4 MEANING OF PUKAAHU HISTORICAL CLAIMS.....7

1.5 RELATIONSHIP TO CERTAIN RIGHTS AND DECISIONS.....7

1.6 ABORIGINAL TITLE AND CUSTOMARY RIGHTS NOT AFFECTED
BY SETTLEMENT8

1.7 ACKNOWLEDGMENTS BY THE PUKAAHU CLAIMANTS
CONCERNING THE SETTLEMENT8

SECTION 2: GOVERNANCE AND REPRESENTATION10

2.1 THE GOVERNANCE ENTITY10

2.2 RATIFICATION OF SETTLEMENT AND MANDATE TO SIGN DEED10

2.3 APPOINTMENT OF AGENT.....11

SECTION 3: FINANCIAL REDRESS.....12

3.1 REDRESS AMOUNT AND INITIAL PAYMENTS.....12

3.2 PAYMENT BY THE CROWN OF THE CASH SETTLEMENT AMOUNT ...12

SECTION 4: PUKAAHU.....13

4.1 VESTING OF PUKAAHU.....13

4.2 TITLE TO PUKAAHU.....14

4.3 SETTLEMENT LEGISLATION.....15

4.4 DISCLOSURE INFORMATION15

4.5 ACCESS16

SECTION 5: CONDITIONS AND SETTLEMENT LEGISLATION.....17

5.1 CONDITIONAL DEED17

5.2 TERMINATION IF DEED REMAINS CONDITIONAL.....17

5.3 INCLUSION OF SETTLEMENT LEGISLATION IN BILL.....20

SECTION 6: TAX20

6.1 DEFINITIONS AND INTERPRETATION20

6.2 TAX PRINCIPLES AND INDEMNITY20

SECTION 7 : MISCELLANEOUS MATTERS.....23

7.1 NO ASSIGNMENT23

7.2 AMENDMENT23

7.3 ENTIRE AGREEMENT.....23

7.4 NO WAIVER.....23

7.5 NOTICES.....23

SECTION 8: DEFINITIONS AND INTERPRETATION25

8.1 DEFINITIONS.....25

8.2 INTERPRETATION.....27

SCHEDULE 1: DEED OF COVENANT29

Handwritten initials/signatures:
2011
CP
M

THIS DEED is made on the 15th day of September 2004

BETWEEN

(1) **THE PUKAAHU CLAIMANTS**

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

BACKGROUND

1. The Pukaahu hot springs on Rangitaiki 12 were of great significance to local Māori. They were used for various purposes including bathing, washing clothes and cooking kai. The hot springs and the surrounding lands have also been used as a papa kainga and for farming, cultivation and urupā by several generations of the whānau associated with the land.

The Ngāti Awa Raupatu 1866

2. The hot springs and surrounding lands were within the approximately 448,000 acres of land confiscated by the Crown, under the New Zealand Settlements Act 1863, in the Eastern Bay of Plenty in 1866.

Crown Grant

3. On 20 January 1879 the Crown granted Rangitaiki 12, comprising some 300 acres, to Wiremu Te Whatapapa and Ihipera Maunu of Taiwhakaea and Te Patutatahi. The grant was issued under the New Zealand Settlements Act 1863 and the New Zealand Settlements Amendment and Continuance Act 1865 and antevested to January 1870.

Succession to the Land

4. Wiremu Te Whatapapa died in November 1881 and Kereua Te Whatapapa succeeded to his interest in Rangitaiki 12.
5. In July 1893 Ihipera Maunu died and Rooha Petera succeeded to her interest in the block.
6. The Native Land Court reconfirmed these successions in 1919 and ordered that the owners held equal shares in Rangitaiki 12.



Loss of the Land

7. In 1891 an area of 6 acres 2 roods 2 perches was surveyed out of Rangitaiki 12 for a road, pursuant to a clause in the Crown grant. All subsequent public works takings from the block were effected through Proclamations published in the New Zealand Gazette.
8. In 1914 an acre was taken under the Public Works Act 1908 for a pumice quarry. In 1984, 3 roods and 27.8 perches of this land was returned to descendants of its former owners.
9. On 27 July 1918 the Crown acquired 10 acres 3 roods 38 perches of land, which included the hot springs, for thermal purposes. The land was taken pursuant to the Public Works Act 1908, the Scenery Preservation Act 1908 and the Scenery Preservation Amendment Act 1910 and became a reserve. In 1933 this land was set apart as the Pukaahu Hot Springs Domain under the Public Reserves, Domains and National Parks Act 1928.
10. On 25 June 1921 the Crown, under the Public Works Act 1908, took a further 4 acres 3 roods and 28.5 perches from Rangitaiki 12 for road alignment. This road provided access to the hot springs area until 1947.
11. In 1932 Rangitaiki 12 was partitioned into Rangitaiki 12A and Rangitaiki 12B.
12. On 4 September 1939, pursuant to the Public Works Act 1928, the Crown acquired 25 acres 3 roods 23 perches from Rangitaiki 12A for the purposes of a recreation ground. This area was added to the Pukaahu Hot Springs Domain in 1941.
13. On 5 September 1949, pursuant to the Public Works Act 1928, the Crown took 4 acres 3 roods 10 perches from Rangitaiki 12B for a quarry. This taking was revoked in 1958.
14. On 9 June 1955 part of the road through Rangitaiki 12A was closed and added to the Pukaahu Hot Springs Domain, by proclamations under the Public Works Amendment Act 1948.
15. On 14 July 1958 an area of 2 roods 33.5 perches was acquired from Rangitaiki 12A under the Public Works Act 1928 for road realignment.
16. An intention to take 47.4544 hectares from Rangitaiki 12B was notified in the New Zealand Gazette on 4 May 1978. After negotiation this area became subject to an 80 year lease to the Whakatane District Council.
17. On 30 April 1981 an area of 4123m² was acquired from Rangitaiki 12A for roading purposes pursuant to the Public Works Act 1928. A portion of the

DL
EL
R

existing road (269m²) was closed and revested in the owners of Rangitaiki 12A.

18. On 3 June 1981, pursuant to the Public Works Act 1928, a road within Rangitaiki 12B was declared to be a Government road and stopped. This affected two areas of 1.0544 hectares and 509m² respectively. These areas were later revested in the owners of Rangitaiki 12B. The Crown took further land, totalling 5663m² from Rangitaiki 12B on 28 October 1982, under the Public Works Act 1981, for roading purposes.
19. In total the Crown took 57 acres 1 rood 37.8perches of land from Rangitaiki 12 between 1891 and 1982. The Crown revested a total of 8 acres 1 rood and 35.4 perches of this land in its former owners or their descendants between 1959 and 1984.

Claim under the Treaty of Waitangi Act 1975

20. In 1988 Stanley Newton submitted a claim (Wai 79) to the Waitangi Tribunal on behalf of the trustees of Rangitaiki 12A. The trustees sought compensation for grievances arising from the Crown's acquisition of, and other actions relating to, that land under the Public Works Acts.

Negotiations between the Pukaahu Claimants and the Crown

21. The Crown and the Pukaahu Claimants entered into negotiations in November 1997 to achieve a final settlement of the Wai 79 historical claim and to remove the sense of grievance felt by the Pukaahu Claimants.
22. The Heads of Agreement dated 21 December 1998 signed between the Crown and Te Rūnanga o Ngāti Awa stated that the Crown would negotiate a settlement of the Wai 79 claim concerning the Awakeri Springs and the Pukaahu Domain alongside, but separate from, the settlement of historical claims of Ngāti Awa.

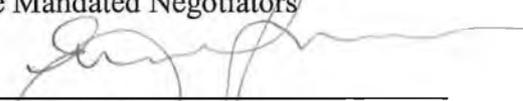
Settlement of Claim

23. The Crown now wishes to enter into a deed of settlement recording the matters required to give effect to a final settlement of the Pukaahu Historical Claims and the Pukaahu Claimants also wish to enter into such a deed of settlement.



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

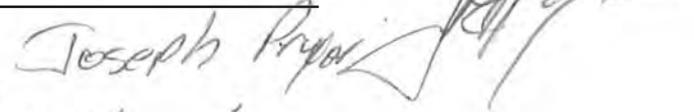
SIGNED for and on behalf of
THE PUKAAHU CLAIMANTS by
the Mandated Negotiators



Enid Leighton

in the presence of:



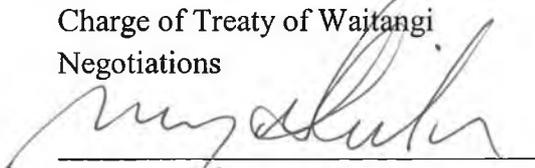
Name: Joseph Pryor
Occupation: 
Address: Millbank
PO Box 8 Te Teko
Parehuia Aratema

in the presence of:



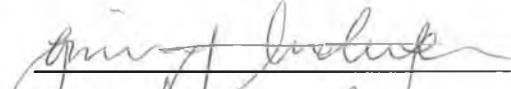
Name: Bernadette Walker
Occupation: T.S.O ROTORUA AIRPORT
Address: P.O. Box 768 Rotorua.

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



Honourable Margaret Wilson

in the presence of:



Name: Virginia Andersen
Occupation: Private Secretary
Address: Wellington



SECTION 1: SCOPE AND NATURE OF SETTLEMENT**1.1 THIS DEED SETTLES THE PUKAAHU HISTORICAL CLAIMS****1.1.1 Acknowledgement by the Crown**

The Crown agreed to settle three ancillary claims alongside, but separate from, the Ngāti Awa Historical Claims, and this Deed settles the Pukaahu Historical Claims.

1.1.2 Settlement

The Pukaahu Claimants and the Crown agree that this Deed settles the Pukaahu Historical Claims.

1.1.3 Release

The Pukaahu Claimants release and discharge the Crown from any obligations, liabilities and duties in respect of the Pukaahu Historical Claims.

1.2 RELATIONSHIP TO NGĀTI AWA SETTLEMENT**1.2.1 Acknowledgment by Pukaahu Claimants**

The Pukaahu Claimants acknowledge that the Ngāti Awa Historical Claims are not settled by this Deed but will be settled by the Ngāti Awa Deed if it becomes unconditional.

1.3 MEANING OF PUKAAHU CLAIMANTS**1.3.1 Definition of Pukaahu Claimants**

Pukaahu Claimants means any of the following:

- (a) The descendants of Wiremu Te Whatapapa or Rōha Petera;
 - (b) The collective group composed of the individuals referred to in (a) above;
- and

includes any whānau, hapū or group to the extent that that whānau, hapū or group includes persons referred to in (a) above.

1.3.2 Related Definition

In this *clause 1.3*, a person is *descended* from another person if the first person is descended from the other person by:



SECTION 1: SCOPE AND NATURE OF SETTLEMENT

- (a) Birth; or
- (b) Legal adoption; or
- (c) Māori customary adoption in accordance with the tikanga of the Pukaahu Claimants.

1.4 MEANING OF PUKAAHU HISTORICAL CLAIMS

Pukaahu Historical Claims means:

Claims by Pukaahu Claimants (or any Representative Entity) whether made on, before or after Settlement Date relating to acts or omissions of the Crown before 21 September 1992 in relation to the takings, and subsequent administration, of Rangitaiki 12, and any parcel subsequently derived from Rangitaiki 12 since 20 January 1879, and includes Wai 79 (Awakeri Springs) received by the Waitangi Tribunal on 19 February 1988.

1.5 RELATIONSHIP TO CERTAIN RIGHTS AND DECISIONS

1.5.1 Deed does not derogate from, or affect, certain matters

Nothing in this Deed:

- (a) Except as expressly provided in or under this Deed, derogates from any rights or powers that the Pukaahu Claimants or the Crown might have arising:
 - (i) From Te Tiriti o Waitangi/the Treaty of Waitangi, or the principles of Te Tiriti o Waitangi/the Treaty of Waitangi;
 - (ii) Under legislation, or at common law (including in relation to customary law and aboriginal title);
 - (iii) From a fiduciary duty; or
 - (iv) Otherwise;
- (b) Including agreements on the part of the Pukaahu Claimants, is intended to affect any decision, proposal or report of the Treaty of Waitangi Fisheries Commission:
 - (i) Under the Maori Fisheries Act 1989; or



SECTION 1: SCOPE AND NATURE OF SETTLEMENT

- (ii) In respect of the Deed of Settlement between Maori and the Crown dated 23 September 1992 or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

1.5.2 Clause 1.5.1 does not affect Settlement

Clause 1.5.1 does not limit clauses 1.1.2 and 1.1.3.

1.6 ABORIGINAL TITLE AND CUSTOMARY RIGHTS NOT AFFECTED BY SETTLEMENT

The Pukaahu Claimants and the Crown acknowledge that:

- (a) Nothing in this Deed extinguishes or limits any aboriginal title or customary rights that the Pukaahu Claimants may have, or constitutes or implies any acknowledgment or acceptance by the Crown that such title or rights exist either generally or in any particular case, but this clause does not limit *clauses 1.1.2 and 1.1.3*; and
- (b) The Settlement:
- (i) Is not intended:
- (aa) To prevent any of the Pukaahu Claimants or any Representative Entity from pursuing Claims against the Crown (including Claims based on aboriginal title or customary rights) if such Claims do not come within the definition of Pukaahu Historical Claims; or
- (bb) To prevent the Crown from disputing the Claims described in (aa) above or the existence of aboriginal title or customary rights; but
- (ii) Is intended to prevent any of the Pukaahu Claimants or any Representative Entity from pursuing Claims against the Crown (including Claims based on aboriginal title or customary rights) if such Claims come within the definition of Pukaahu Historical Claims, such Claims having been settled in accordance with *clauses 1.1.2 and 1.1.3*.

1.7 ACKNOWLEDGMENTS BY THE PUKAAHU CLAIMANTS CONCERNING THE SETTLEMENT

The Pukaahu Claimants acknowledge that:



SECTION 1: SCOPE AND NATURE OF SETTLEMENT

- (a) The Crown has acted honourably and reasonably in negotiating the Settlement, which, taking all matters into account, is fair in the circumstances;
- (b) The Settlement will be final;
- (c) The Settlement, and the rights and obligations on the part of the Pukaahu Claimants under this Deed, will be binding upon the Pukaahu Claimants and any Representative Entity;
- (d) It is intended that the Settlement and the rights of the Pukaahu Claimants and the Governance Entity under this Deed:
 - (i) Will be for the benefit of the Pukaahu Claimants; and
 - (ii) May be for the benefit of particular Pukaahu Claimants, including any particular group of individuals, family, whānau, or marae, if the Governance Entity so determines in accordance with its relevant governance procedures; and
- (e) The Settlement Legislation will provide that the Courts, the Waitangi Tribunal, and any other judicial body or tribunal will not have jurisdiction (including, without limitation, the jurisdiction to inquire, or further inquire into, or to make any finding or recommendation) in respect of:
 - (i) The Pukaahu Historical Claims;
 - (ii) This Deed;
 - (iii) The redress provided to the Pukaahu Claimants or to the Governance Entity under this Deed; and
 - (iv) The Settlement Legislation;(but not for the removal of that jurisdiction in respect of the implementation or interpretation of this Deed or the Settlement Legislation).



SECTION 2: GOVERNANCE AND REPRESENTATION**2.1 THE GOVERNANCE ENTITY****2.1.1 Establishment of the Governance Entity**

- (a) The Pukaahu Claimants have applied to the Maori Land Court under Part XII of Te Ture Whenua Maori Act 1993 to constitute the Wiremu Te Whatapapa and Rooha Petera Whanau Trust as a whānau trust (the “**Governance Entity**”) which the Crown has advised the Pukaahu Claimants in writing that the Crown is satisfied:
- (i) Will be an appropriate body to which the Crown will provide the redress under this Deed;
 - (ii) Will have a structure that provides for:
 - (aa) Representation of all Pukaahu Claimants;
 - (bb) Transparent decision-making and dispute resolution processes; and
 - (cc) Accountability to the Pukaahu Claimants; and
 - (iii) Has been ratified by the Pukaahu Claimants at the same time as this Deed (by a ratification process agreed in writing by the Pukaahu Claimants and the Crown) as an appropriate body to receive the redress under this Deed; and
- (b) The Pukaahu Claimants agree, as soon as reasonably practicable after the date of this Deed, and in any event within 2 months after the date of this Deed (or such longer period as the Pukaahu Claimants and the Crown may agree), to procure the execution by the Governance Entity of a Deed of Covenant in the form set out in *Schedule 1*.

2.1.2 Redress to be provided to the Governance Entity

The Pukaahu Claimants agree that the Crown will provide the redress under this Deed to the Governance Entity on the terms set out in this Deed.

2.2 RATIFICATION OF SETTLEMENT AND MANDATE TO SIGN DEED**2.2.1 Pukaahu Claimants’ confirmation**

The Pukaahu Claimants confirm that:



SECTION 2: GOVERNANCE AND REPRESENTATION

- (a) This Deed was ratified by the Pukaahu Claimants by virtue of a majority of 82.7% of the valid votes cast in a postal ballot of the eligible Pukaahu Claimants; and
- (b) Each Mandated Negotiator has been given a mandate from the Pukaahu Claimants to sign this Deed on their behalf by virtue of a majority of 82.7% of the valid votes cast in a postal ballot of the eligible Pukaahu Claimants.

2.2.2 Crown's confirmation

The Crown confirms that it is satisfied with:

- (a) The ratification of this Deed by the Pukaahu Claimants; and
- (b) The mandate to the Mandated Negotiators from the Pukaahu Claimants to sign this Deed on their behalf.

2.3 APPOINTMENT OF AGENT**2.3.1 Pukaahu Claimants' agent**

The Pukaahu Claimants appoint Enid Leighton and Parehuia Aratema, grandchildren of Moerangi and Awanuiarangi Ratahi, to act jointly as the Pukaahu Claimants' agent, to give and receive any notice or other communication, to exercise any election or other right under this Deed, to waive any provision of this Deed or to agree to any amendment of this Deed on behalf of the Pukaahu Claimants. In the event of the death or incapacity of either Enid Leighton or Parehuia Aratema, the person who is unaffected may act as the Pukaahu Claimants' agent alone.

2.3.2 The Governance Entity

Upon execution by the Governance Entity of the Deed of Covenant under *clause 2.1.1*, the appointment under *clause 2.3.1* will automatically terminate and all powers of the agent named in *clause 2.3.1* shall vest in the Governance Entity.

2.3.3 Termination of the Governance Entity

The Settlement Legislation shall provide that, in the event that the Governance Entity is ever terminated, section 241(2)(b) of Te Ture Whenua Maori Act 1993 shall not apply.



SECTION 3: FINANCIAL REDRESS

SECTION 3: FINANCIAL REDRESS**3.1 REDRESS AMOUNT AND INITIAL PAYMENTS****3.1.1 The Redress Amount**

The Parties agree that the Redress Amount is \$300,000, being the sum of:

- (a) The portion of the Redress Amount attributable to Pukaahu, being \$200,000;
and
- (b) The Cash Settlement Amount of \$100,000.

3.1.2 Other Payments

The Parties record that the Pukaahu Claimants have also received \$35,000, paid in instalments from 20 August 1997 to the date of this Deed, as a contribution towards the Pukaahu Claimants' negotiating costs, but that those amounts are not part of the Redress Amount.

3.2 PAYMENT BY THE CROWN OF THE CASH SETTLEMENT AMOUNT

- 3.2.1 The Crown must pay the Governance Entity the Cash Settlement Amount on the Settlement Date.



SECTION 4: PUKAAHU

SECTION 4: PUKAAHU

4.1 VESTING OF PUKAAHU

4.1.1 Definitions

In this *clause 4.1*, *Lease* means the registered lease H170889 to Awakeri Hot Springs (2002) Limited. Computer Interest Register SA23B/721 (lease) South Auckland Land Registry.

4.1.2 Vesting of Pukaahu

The Settlement Legislation will provide:

- (a) For the cancellation of the vesting of Pukaahu in the Whakatane District Council;
- (b) For the revocation of the reservation of Pukaahu as a recreation reserve subject to section 17 of the Reserves Act 1977;
- (c) That when the reservation of Pukaahu as a recreation reserve is revoked, it will vest in the Crown as Crown land and be subject to section 82 of the Reserves Act 1977;
- (d) That, following the vesting described in *clause 4.1.2(c)*:
 - (i) the fee simple estate in Pukaahu will be vested in the Governance Entity subject to the Lease;
 - (ii) the Governance Entity will be deemed to have been constituted in respect of Pukaahu pursuant to section 214(1) of Te Ture Whenua Maori Act 1993, in addition to any other land in respect of which the Governance Entity was originally constituted; and
 - (iii) Pukaahu will be deemed to have the status of Maori freehold land under that Act;
- (e) That, despite *clauses 4.1.2(d)(ii) and (iii)*, the Lease will continue to be enforceable in accordance with its terms.
- (f) That any reference in the Lease to the "Minister" or the "Council" will be taken to be a reference to the Lessor from time to time under the Lease; and
- (g) The steps outlined in *clauses 4.1.2(a) to (f)* will take place on, and with effect from, the Settlement Date.



SECTION 4: PUKAAHU

4.2 TITLE TO PUKAAHU

- (a) The Settlement Legislation will provide that the Registrar-General of Land must, on written application by any person authorised by the Director-General of Conservation:
- (i) Register the Governance Entity as the proprietor of the fee simple estate in Pukaahu as if:
 - (aa) the trustees of the Governance Entity have given a direction, in compliance with sections 220A(2)(a) and 220A(4) of Te Ture Whenua Maori Act 1993, that Pukaahu be registered in the name of the Governance Entity as the trust applying to that land; and
 - (bb) the Registrar-General of Land has received, in compliance with section 220A(3) of Te Ture Whenua Maori Act 1993, a copy of that direction from the Registrar of the Maori Land Court and a certificate of the Registrar of the Maori Land Court confirming that direction; and
 - (ii) Register Pukaahu as Maori freehold land under Te Ture Whenua Maori Act 1993, in accordance with sections 140 and 123 of that Act, as if:
 - (aa) Pukaahu is General land under that Act, and the Maori Land Court has made a status order declaring that Pukaahu shall cease to be General land and shall become Maori freehold land, in compliance with sections 133(1) and 133(3) of that Act; and
 - (bb) the Registrar-General of Land has received that status order from the Registrar of the Maori Land Court, in compliance with section 123(2) of that Act; and
 - (iii) Make such entries in the register, and generally do all things, as may be necessary to give effect to this *Section 4*.
- (b) For the avoidance of doubt, immediately following registration in accordance with *clause 4.2(a)(i)*, sections 220A(7), (9) and (10) of Te Ture Whenua Maori Act 1993 will apply to Pukaahu and the trustees of the Governance Entity as appropriate.



SECTION 4: PUKAAHU

4.3 SETTLEMENT LEGISLATION

The Settlement Legislation will provide that:

- (a) Sections 24 and 25 of the Reserves Act 1977 will not apply to the revocation of the reserve status of Pukaahu;
- (b) Neither section 11 nor Part X of the Resource Management Act 1991 will apply to the vesting of the fee simple estate in Pukaahu in the Governance Entity, or anything incidental to, or required for the purposes of, any such vesting;
- (c) The vesting of Pukaahu under this *Section 4* does not:
 - (i) limit sections 10 and 11 of the Crown Minerals Act 1991; or
 - (ii) affect other rights to subsurface minerals; and
- (d) The vesting of the fee simple estate to give effect to this *Section 4* is a disposition for the purposes of Part IVA of the Conservation Act 1987, but sections 24(2A), 24A and 24AA of that Act do not apply to the disposition,

and will contain such other provisions as are necessary or desirable to give effect to this *Section 4*.

4.4 DISCLOSURE INFORMATION**4.4.1 Warranty**

The Crown warrants to the Governance Entity that the Disclosure Information contains all the material information that relates to Pukaahu contained in the records of the Department of Conservation. This warranty does not extend to information that may be apparent from a physical inspection of Pukaahu or an enquiry beyond the records of the Department of Conservation.

4.4.2 Acknowledgment by the Pukaahu Claimants

The Pukaahu Claimants acknowledge and agree that, other than that set out in *clause 4.4.1*, no representation or warranty is given, whether express or implied, nor is any responsibility accepted by the Crown with respect to:

- (a) The completeness or accuracy of the Disclosure Information;
- (b) The physical condition of Pukaahu;



SECTION 4: PUKAAHU

- (c) The compliance or otherwise of Pukaahu with any legislation, regulations, by-laws or any powers, rights and obligations under them, including any outstanding enforcement or other notice, requisition or proceeding issued under any code by any relevant authority, relating to or affecting Pukaahu; or
- (d) Any other matter relating to the ownership, occupation, use or management of Pukaahu.

4.4.3 Acknowledgment by the Pukaahu Claimants and the Crown

The Pukaahu Claimants and the Crown acknowledge and record that prior to the date of this Deed, the Pukaahu Claimants had the opportunity to inspect Pukaahu and satisfy themselves as to the state and condition of Pukaahu.

4.4.4 Definition

In this *clause 4.4*, **Disclosure Information** means the information provided by, or on behalf of, the Crown to the Pukaahu Claimants in respect of Pukaahu by letter of 21 March 2002 and 8 August 2003 from the Office of Treaty Settlements to the Mandated Negotiators.

4.5 ACCESS

The Pukaahu Claimants acknowledge that no arrangements for access by the Pukaahu Claimants to Pukaahu following vesting of Pukaahu in the Governance Entity are required to be made by the Crown or under the Settlement Legislation.



SECTION 5: CONDITIONS AND SETTLEMENT LEGISLATION**5.1 CONDITIONAL DEED****5.1.1 This Deed and the Settlement are conditional**

This Deed and the Settlement are conditional on:

- (a) The establishment by order of the Maori Land Court of the Governance Entity as described by *clause 2.1.1(a)*;
- (b) The execution of a Deed of Covenant in accordance with *clause 2.1.1(b)*; and
- (c) The passing and coming into force of the bill to give effect to the Ngāti Awa Deed, which will include the Settlement Legislation referred to in this Deed, within the timeframe specified in the Ngāti Awa Deed.

5.1.2 Some provisions not conditional

Although this Deed and the Settlement are conditional on the matters specified in *clause 5.1.1*, the following provisions shall not be conditional and shall be immediately binding upon the Pukaahu Claimants and the Crown, subject to termination of the relevant clause under *clause 5.2.3*:

- (a) *Clause 2.1.1*; and
- (b) *Clauses 5.3.1 and 5.3.3*.

5.2 TERMINATION IF DEED REMAINS CONDITIONAL**5.2.1 Termination by notice**

If the conditions referred to in *clause 5.1.1* have not been satisfied by the dates for satisfaction of those conditions (or such later dates as the Pukaahu Claimants and the Crown may agree in writing), then either the Pukaahu Claimants or the Crown may, by notice in writing to the other, terminate this Deed.

5.2.2 Without prejudice basis

The Pukaahu Claimants and the Crown agree that this Deed will be treated as having been entered into on a “without prejudice” basis and that, in particular, this Deed may not be used as evidence in any proceedings before, or presented to, any Court, the Waitangi Tribunal, or any other judicial body or tribunal (except for proceedings concerning the implementation or interpretation of this Deed or the Settlement Legislation), until it becomes unconditional.



5.2.3 Effect of notice of termination

- (a) If this Deed is terminated under *clause 5.2.1* this Deed will be at an end and, except as provided in *clause 5.2.3(b)*, the Pukaahu Claimants will not have any rights or obligations under it.
- (b) *Clause 5.2.2* continues to apply if this Deed is terminated.

5.3 INCLUSION OF SETTLEMENT LEGISLATION IN BILL

5.3.1 Crown to include Settlement Legislation in bill

The Crown agrees that it will, after the date of this Deed, include the Settlement Legislation within the bill to give effect to the Ngāti Awa Deed.

5.3.2 Content of Settlement Legislation

The proposed Settlement Legislation will:

- (a) Provide for the settlement of the Pukaahu Historical Claims;
- (b) Provide for those matters specifically required by this Deed to be provided for in the Settlement Legislation;
- (c) Include such provisions as are required to give effect to the Crown's obligations under this Deed; and
- (d) Include any other provisions required to achieve certainty, finality and durability of the Settlement and to give effect to this Deed.

5.3.3 Pukaahu Claimants' agreement

The Pukaahu Claimants agree to support the passing of the Settlement Legislation referred to in *clause 5.3.1* and any other legislation required to:

- (a) Give effect to this Deed;
- (b) Achieve certainty in respect of the obligations undertaken by each party to the Settlement; and
- (c) Achieve a final and durable Settlement.

5.3.4 Waitangi Tribunal

The Pukaahu Claimants agree that the Crown:



SECTION 5: CONDITIONS AND SETTLEMENT LEGISLATION

- (a) Will, at any time after the Settlement Date, advise the Waitangi Tribunal by written memorandum of the Settlement, and the terms on which the Settlement has been reached; and
- (b) May, at any time after the Settlement Date, request that the Waitangi Tribunal amend its register, and adapt its procedures, to reflect the effect of the Settlement on the Pukaahu Historical Claims.

Handwritten signatures in the bottom right corner of the page. There are three distinct signatures: one at the top right, one at the bottom left, and one at the bottom right.

SECTION 6: TAX

SECTION 6: TAX

6.1 DEFINITIONS AND INTERPRETATION

For the purposes of this Section, unless the context requires otherwise:

Indemnified Redress means:

- (a) The Cash Settlement Amount; and
- (b) The redress relating to Pukaahu.

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

References to the payment, crediting or transferring of the Indemnified Redress (or any equivalent wording) include a reference to the payment, crediting, or transferring of any part (or the applicable part) of the Indemnified Redress;

The expression *GST* (where the context permits) also extends to and includes any interest or penalties payable in respect of, or on account of the late or non-payment of, any GST;

The expression *income tax* (where the context permits) also extends to and includes any interest or penalties payable in respect of, or on account of the late or non-payment of, any income tax;

The expression *tax* includes income tax and GST;

The word *payment* extends to the transferring or making available of cash amounts as well as to the transferring of non cash amounts (such as land); and

The word *transferring* includes recognising, creating, vesting, granting, licensing, leasing or any other means by which the relevant properties, interests, rights or assets are disposed of or made available or are recognised as being available to the Governance Entity and *transfer* and *transferred* have corresponding meanings.

6.2 TAX PRINCIPLES AND INDEMNITY

6.2.1 Principles and indemnity

The Pukaahu Claimants and the Crown agree that:



SECTION 6: TAX

- (a) It is a principle of this Deed that Indemnified Redress is to be provided (as redress) by the Crown to the Governance Entity without a tax cost or benefit; and
- (b) No Party will act, or permit acts, inconsistent with the principle in paragraph (a) that could or might (or in a way that could or might) prejudice any other Party; and
- (c) The Crown will indemnify the Governance Entity for any tax payable by the Governance Entity solely because of the payment, crediting or transferring (as redress) of Indemnified Redress by the Crown to the Governance Entity; and
- (d) (Unless the Crown agrees otherwise in any circumstance where paragraph (e) of this clause applies) neither the Governance Entity nor any associated person shall claim an input credit for GST purposes or a deduction for income tax purposes with respect to the payment, crediting or transferring (as redress) of Indemnified Redress; and
- (e) If the Governance Entity receives notice that it is or may be assessed with tax in respect of the payment, crediting or transferring (as redress) of any Indemnified Redress or any indemnity payment:
 - (i) It will notify the Crown immediately; and
 - (ii) It will allow the Crown to control all disputes and negotiations with the Inland Revenue Department; and
 - (iii) It will, if requested, provide the Crown with a GST invoice issued by the Governance Entity to the Crown with respect to any particular item of Indemnified Redress or any indemnity payment; and
 - (iv) It will pay to the Inland Revenue Department any indemnity payment it receives from the Crown on account of tax, on the latter of the "due date" for payment of that tax (as provided for by the applicable legislation) or the next Business Day following receipt of that indemnity payment from the Crown; and
 - (v) Where the amount of any indemnity payment received from the Crown on account of tax exceeds the amount of such tax that is determined to be payable, the Governance Entity will repay to the Crown the excess portion of that indemnity payment (without setoff or counterclaim); and

Handwritten signature and initials in the bottom right corner of the page.

SECTION 6: TAX

- (f) The Pukaahu Claimants and the Governance Entity will co-operate with the Crown regarding any approach the Crown may make to the Inland Revenue Department regarding the tax treatment of this Deed.

6.2.2 What indemnity does not cover

For the avoidance of doubt, the Pukaahu Claimants and the Crown acknowledge:

- (a) The tax indemnity given by the Crown in *clause 6.2.1(c)* and the principle in *clause 6.2.1(a)* apply only to the receipt by the Governance Entity of the Indemnified Redress or indemnity payments and do not apply to any subsequent dealings, distributions, payments, uses or applications by the Governance Entity with or of the Indemnified Redress or indemnity payments; and
- (b) Every other transaction, arrangement, payment or right where the Pukaahu Claimants (or any person on their behalf, including without limitation the Mandated Negotiators and the Governance Entity) acquire property or assets (including, without limitation, any interest, but excluding Indemnified Redress) under or by virtue of this Deed:
- (i) Is not indemnified by the Crown; and
- (ii) The recipient of such property or assets is liable to discharge the applicable tax liability (if any) with respect to such transaction, arrangement, payment or right.



SECTION 7: MISCELLANEOUS MATTERS

SECTION 7 : MISCELLANEOUS MATTERS**7.1 NO ASSIGNMENT**

Except as expressly provided in this Deed or any other document entered into under this Deed, neither the Crown nor any Pukaahu Claimant may transfer or assign any rights or obligations arising under or from this Deed.

7.2 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of the Pukaahu Claimants and the Crown.

7.3 ENTIRE AGREEMENT

This Deed constitutes the entire agreement between the parties in relation to the matters referred to in this Deed. This Deed supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between any Pukaahu Claimant and the Crown relating to such matters, but not the Mātaatua Agreement, the Ngāti Awa Deed or the Treaty of Waitangi itself.

7.4 NO WAIVER

A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

7.5 NOTICES**7.5.1 Address for notices**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a Party (or to the agent appointed under *clause 2.3.1*) must be in writing addressed to that Party at the address or facsimile number from time to time notified by that Party in writing to the other Party. Until any other address or facsimile number of a Party is notified, they will be as follows:



SECTION 7: MISCELLANEOUS MATTERS

Crown:

C/- The Solicitor-General
Crown Law Office
Level 10, Unisys House
56 The Terrace
(PO Box 2858)
WELLINGTON

Facsimile: 04 473 3482

Pukaahu Claimants:

C/- Simpson Grierson
92-96 Albert Street
(Private Bag 92518
DX CX10092
Wellesley Street)
AUCKLAND

Facsimile: 09 307 0331

7.5.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

7.5.3 Delivered notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 p.m. on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

7.5.4 Posted notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

7.5.5 Facsimile notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 p.m. on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

[Handwritten signatures and initials]

SECTION 8: DEFINITIONS AND INTERPRETATION

SECTION 8: DEFINITIONS AND INTERPRETATION

8.1 DEFINITIONS

In this Deed, unless the context requires otherwise:

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (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;

Cash Settlement Amount means the amount specified in *clause 3.1.1* to be paid by the Crown to the Governance Entity under *clause 3.2*;

Claim includes the right to make a claim;

Crown has the meaning given to it in section 2 of the Public Finance Act 1989;

Deed means this Deed of Settlement, including the Schedule to it;

Governance Entity means the trust referred to in *clause 2.1.1*;

GST means goods and services tax chargeable under the Goods and Services Tax Act 1985;

Mandated Negotiators means Enid Leighton and Parehuia Aratema who jointly have the Pukaahu Claimants' authority to sign this Deed;

Ngāti Awa has the meaning set out in *clause 1.2* of the Ngāti Awa Deed;

Ngāti Awa Deed means the Deed of Settlement dated 27 March 2003 entered into between Ngāti Awa and the Crown and any amendments to that deed;

Ngāti Awa Historical Claims has the meaning set out in *clause 1.3* of the Ngāti Awa Deed;

Parties means the Pukaahu Claimants and the Crown;



SECTION 8: DEFINITIONS AND INTERPRETATION

Pukaahu means the land with the following legal description:

South Auckland Land District – Whakatane District

10.3035 hectares, more or less, being Part Allotment 171 and Allotment 172 Parish of Rangitaiki. Balance Computer Freehold Register SA1068/200;

4.4465 hectares, more or less, being Allotment 173 Parish of Rangitaiki. All Computer Freehold Register SA1068/199;

8436 square metres, more or less, being Part Allotment 174 Parish of Rangitaiki. Balance Computer Freehold Register SA1216/23

as shown on SO 61742.

Pukaahu Claimants has the meaning set out in *clause 1.3.1*;

Pukaahu Historical Claims has the meaning set out in *clause 1.4*;

Rangitaiki 12 means the land with the legal description of Lot 12 Parish of Rangitaiki;

Redress Amount has the meaning given to it in *clause 3.1.1*;

Representative Entity means:

- (a) the Governance Entity;
- (b) any person (including any trust or trustees) acting for or on behalf of:
 - (i) the collective group referred to in *clause 1.3.1(b)*; or
 - (ii) any one or more of the individuals referred to in *clause 1.3.1(a)*; or
 - (iii) any whānau, hapū or group to the extent that that whānau, hapū or group includes persons referred to in *clause 1.3.1(a)*;

Settlement means the settlement to be effected under this Deed;

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



SECTION 8: DEFINITIONS AND INTERPRETATION

Settlement Legislation means the clauses of the bill to give effect to the Settlement and, once those clauses are enacted, means, if the context requires, the sections of any Act resulting from the enactment of those clauses.

8.2 INTERPRETATION

In the interpretation of this Deed, unless the context otherwise requires:

- (a) Headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) Words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- (c) Where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (d) The singular includes the plural and vice versa, and words importing one gender include the other genders;
- (e) A reference to clauses or Schedule 1 are to the clauses of, or Schedule 1 to, this Deed respectively;
- (f) The Background is intended to set out the background to this Deed but is not to affect the interpretation of this Deed.
- (g) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (h) A reference to a Party to this Deed or any other document or agreement includes that Party's successors;
- (i) A reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced from time to time;
- (j) A reference to monetary amounts are to New Zealand currency;



SECTION 8: DEFINITIONS AND INTERPRETATION

- (k) A reference to written or in writing include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (l) A reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (m) A reference to a date on which something must be done includes any other date which may be agreed in writing between the Pukaahu Claimants and the Crown;
- (n) Where any payment is required to be made on a day which is not a Business Day, the payment must be made on the next Business Day after that day;
- (o) A reference to the Settlement Legislation including a provision set out in this Deed includes that provision with any amendment:
 - (i) Where the amendment results in a provision that is similar to that provided in this Deed and does not have a material adverse effect on either of the parties; or
 - (ii) As may be agreed in writing between the Pukaahu Claimants and the Crown;
- (p) A reference to a particular Minister of the Crown includes any Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant Act or matter.



SCHEDULE 1: DEED OF COVENANT

SCHEDULE 1: DEED OF COVENANT*(Clause 2.1.1(b))*

Date:

PARTIES

- (1) **[WIREMU TE WHATAPAPA AND ROOHA PETERA WHANAU TRUST]**
(Governance Entity)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand *(the Crown)*

BACKGROUND

- A Under a Deed of Settlement dated [] 2004 between the Pukaahu Claimants and the Crown, the Crown agreed to provide certain redress to the Governance Entity, which was to be established by the Pukaahu Claimants, subject to certain terms and conditions specified in the Deed of Settlement.
- B The Governance Entity was constituted by the Māori Land Court on 4 March 2004 and is the entity to which the Pukaahu Claimants wish the redress to be provided by the Crown under the Deed of Settlement.
- C As required by *clause 2.1.1(b)* of the Deed of Settlement, the Governance Entity covenants with the Crown as set out in this Deed.

NOW THE GOVERNANCE ENTITY AGREES with the Crown as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context otherwise requires *Deed of Settlement* means the deed referred to in paragraph A of the Background.
- 1.2 Terms defined in the Deed of Settlement have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in *clause 8.2* of the Deed of Settlement apply in the interpretation of this Deed.



SCHEDULE 1: DEED OF COVENANT

2 THE GOVERNANCE ENTITY'S COVENANT

- 2.1 The Governance Entity confirms that it has been ratified by the Pukaahu Claimants as an appropriate body to which the Crown will provide the redress under the Deed of Settlement.
- 2.2 The Governance Entity covenants with the Crown that from the date of this Deed the Governance Entity will:
- (a) Become a Party to the Deed of Settlement as if it had been named as a Party to the Deed of Settlement and had executed it; and
 - (b) Observe and perform all the obligations under the Deed of Settlement which are expressed to be performed by the Governance Entity and will be bound by the terms of the Deed of Settlement.
- 2.3 The Governance Entity hereby ratifies and confirms all acknowledgments and agreements made in the Deed of Settlement and all elections made by, waivers given by, and all other actions taken in relation to, the Deed of Settlement by the Pukaahu Claimants, and by the agent appointed on behalf of the Pukaahu Claimants under *clause 2.3* of the Deed of Settlement, and agrees to be bound by them.

3 NOTICES

Any notice to the Governance Entity may be given in the same manner as is specified in the Deed of Settlement. The Governance Entity's address for notices is: *[Details to be inserted]*

Handwritten signatures and initials at the bottom right of the page, including a large signature and several smaller initials.

SCHEDULE 1: DEED OF COVENANT

EXECUTED as a deed on the date first written above.

Signed for and on behalf of **[WIREMU TE
WHATAPAPA AND ROOHA PETERA
WHANAU TRUST]** as Transferor by:

in the presence of:

Name:
Occupation:
Address:

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

[]

in the presence of:

Name:
Occupation:
Address:

