

**THE RANGITAIKI 60C CLAIMANTS**

*and*

**HER MAJESTY THE QUEEN**

in right of New Zealand

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**DEED OF SETTLEMENT TO  
SETTLE RANGITAIKI 60C  
HISTORICAL CLAIMS**

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15 September 2004

*J.A.*  
*J.A.*

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A handwritten signature in black ink, appearing to be 'J. A. John', is located in the bottom right corner of the page.

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

**BETWEEN**

- (1) **THE RANGITAIKI 60C CLAIMANTS**
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations

**BACKGROUND**

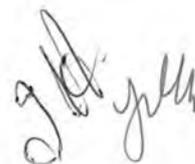
1. In 1895 the Native Land Court awarded title to the 5,170 acre Rangitaiki 60C block to 479 Māori owners. This block was, at times, later referred to as Omataroa 60C.

**Land Acquired for Public Works**

2. In 1960 the Crown acquired 145 acres 4 roods of land from Rangitaiki 60C by proclamation under the Public Works Act 1928 for the Rangitaiki River Power Scheme (the construction of the Matahina Dam on the Rangitaiki River). The land was used for the Te Mahoe construction village. In 1962 the Crown revoked part of the proclamation, returning 53 acres 2 roods 20 perches of land to the former owners of the land.
3. In 1962 a further 2 acres 21.3 perches were acquired from Rangitaiki 60C under the Public Works Act 1928 for roading purposes.
4. In 1968 the Crown acquired 226 acres 3 roods 30 perches of land from Rangitaiki 60C by proclamation under the Public Works Act 1928 for purposes relating to the Rangitaiki River Power Scheme. The land was used for the construction village, a quarry, a permanent village and for road deviation. In June 1977 approximately 171 acres of this land, which had been used as a quarry, was revested without cost in its former owners.

**Claim under the Treaty of Waitangi Act 1975**

5. In 1988 the Omataroa Rangitaiki Trustees submitted a claim concerning metal extraction from Rangitaiki 60C for the dam at Te Mahoe. The claim was registered as Wai 248.



**Negotiations between the Rangitaiki 60C Claimants and the Crown**

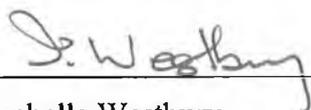
6. The Crown and the Rangitaiki 60C Claimants entered into negotiations in 1997 to achieve a final settlement of the Wai 248 claim and to remove the sense of grievance felt by the Rangitaiki 60C Claimants.
7. The Heads of Agreement dated 21 December 1998 signed between the Crown and Te Rūnanga o Ngāti Awa stated that the Crown would negotiate a settlement of the Wai 248 claim together with the settlement of historical claims of Ngāti Awa.

**Settlement of the Claim**

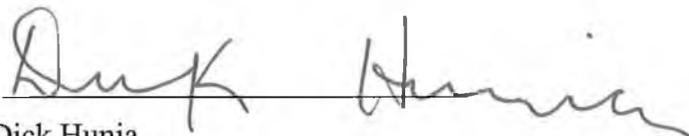
8. The Crown now wishes to enter into a deed of settlement recording the matters required to give effect to a final settlement of the Rangitaiki 60C Historical Claims and the Rangitaiki 60C Claimants also wish to enter into such a deed of settlement.

**ACCORDINGLY**, the Rangitaiki 60C 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 Rangitaiki 60C Historical Claims:

**SIGNED** for and on behalf of  
**THE RANGITAIKI 60C**  
**CLAIMANTS** by the  
Mandated Negotiators

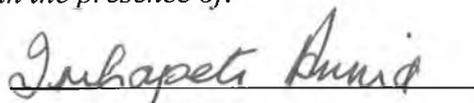


Isabella Westbury



Dick Hunia

*in the presence of:*



Name:

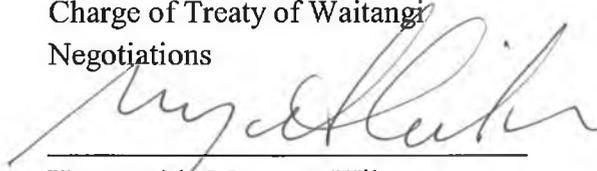
Occupation: *Partnership*

Address: *RD3 Whakatane*

*akatanu*

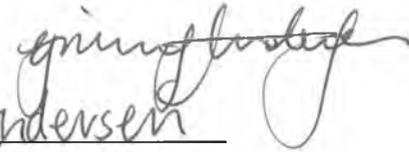


**SIGNED** for and on behalf of  
**HER MAJESTY THE QUEEN** in  
right of New Zealand by the Minister in  
Charge of Treaty of Waitangi  
Negotiations



Honourable Margaret Wilson

in the presence of:

  
Virginia Andersen

Name:

Occupation: private secretary

Address: Wellington



**SECTION 1: SCOPE AND NATURE OF SETTLEMENT****1.1 THIS DEED SETTLES THE RANGITAIKI 60C 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 Rangitaiki 60C Historical Claims.

**1.1.2 Settlement**

The Rangitaiki 60C Claimants and the Crown agree that this Deed settles the Rangitaiki 60C Historical Claims.

**1.1.3 Release**

The Rangitaiki 60C Claimants release and discharge the Crown from any obligations, liabilities and duties in respect of the Rangitaiki 60C Historical Claims.

**1.1.4 Support for Discontinuance of Application**

The Rangitaiki 60C Claimants agree to support the discontinuance, in accordance with *clause 4.1.2*, of the Rangitaiki 60C Application from the Maori Land Court.

**1.2 RELATIONSHIP TO NGĀTI AWA SETTLEMENT****1.2.1 Acknowledgment by Rangitaiki 60C Claimants**

The Rangitaiki 60C 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 RANGITAIKI 60C CLAIMANTS****1.3.1 Definition of Rangitaiki 60C Claimants**

**Rangitaiki 60C Claimants** means any of the following:

- (a) The owners of Rangitaiki 60C, including any part of Rangitaiki 60C, during the period between 14 June 1960 and 9 August 1968, including (for the avoidance of doubt) any individual who:
  - (i) purchased or otherwise acquired; or
  - (ii) sold or otherwise disposed of,

an ownership interest in Rangitaiki 60C during that period;

- (b) The descendants of the individuals referred to in (a) above;
- (c) The collective group composed of the individuals referred to in (a) and (b) above; and

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

- (a) Birth; or
- (b) Legal adoption; or
- (c) Māori customary adoption in accordance with the custom of the Rangitaiki 60C Claimants.

## 1.4 MEANING OF RANGITAIKI 60C HISTORICAL CLAIMS

*Rangitaiki 60C Historical Claims* means:

Claims by the Rangitaiki 60C 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 under the Public Works Act 1928, and subsequent administration, of Rangitaiki 60C, and includes Wai 248 (Omataroa Rangitaiki) received by the Waitangi Tribunal on 23 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 Rangitaiki 60C 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 Rangitaiki 60C 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
  - (ii) In respect of the Deed of Settlement between Māori 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 Rangitaiki 60C Claimants and the Crown acknowledge that:

- (a) Nothing in this Deed extinguishes or limits any aboriginal title or customary rights that the Rangitaiki 60C 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 Rangitaiki 60C 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 the Rangitaiki 60C 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 Rangitaiki 60C 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 Rangitaiki 60C Historical Claims, such Claims having been settled in accordance with clauses 1.1.2 and 1.1.3.

### 1.7 ACKNOWLEDGMENTS BY THE RANGITAIKI 60C CLAIMANTS CONCERNING THE SETTLEMENT

The Rangitaiki 60C Claimants acknowledge that:

- (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 Rangitaiki 60C Claimants under this Deed, will be binding upon the Rangitaiki 60C Claimants and any Representative Entity;
- (d) It is intended that the Settlement and the rights on the part of the Rangitaiki 60C Claimants and the Governance Entity under this Deed:
  - (i) Will be for the benefit of the Rangitaiki 60C Claimants; and
  - (ii) May be for the benefit of particular Rangitaiki 60C 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 Rangitaiki 60C Historical Claims;



- (ii) This Deed;
- (iii) The redress provided to the Rangitaiki 60C 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).

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

The Rangitaiki 60C Claimants agree, as soon as reasonably practicable after the date of this Deed, and in any event within 3 months after the date of this Deed (or such longer period as the Rangitaiki 60C Claimants and the Crown may agree):

- (a) To procure the establishment of a body (the "***Governance Entity***") which the Crown has advised the Rangitaiki 60C 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 the Rangitaiki 60C Claimants;
    - (bb) Transparent decision-making, and dispute resolution, processes; and
    - (cc) Accountability to the Rangitaiki 60C Claimants; and
  - (iii) Has been ratified by the Rangitaiki 60C Claimants (by a ratification process agreed in writing by the Rangitaiki 60C Claimants and the Crown) as an appropriate body to receive the redress under this Deed; and
- (b) 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 Rangitaiki 60C Claimants agree that the Crown will provide the redress under this Deed to the Governance Entity on the terms set out in this Deed.

**2.1.3 Perpetuities Act 1964**

The Settlement Legislation will provide that, if the Governance Entity is a trust, the rule against perpetuities and any relevant provisions of the Perpetuities Act 1964 will not prescribe or restrict the period:

- (a) During which the Governance Entity may exist in law; or

- (b) During which the Governance Entity may deal with property.

## 2.2 RATIFICATION OF SETTLEMENT AND MANDATE TO SIGN DEED

### 2.2.1 Confirmation by the Rangitaiki 60C Claimants

The Rangitaiki 60C Claimants confirm that:

- (a) This Deed was ratified by the Rangitaiki 60C Claimants by virtue of a majority of 98% of the valid votes (92% of all votes) cast in a postal ballot of the eligible Rangitaiki 60C Claimants; and
- (b) Each Mandated Negotiator has a mandate from the Rangitaiki 60C Claimants to sign this Deed on their behalf by virtue of the ratification process referred to in *clause 2.2.1(a)*.

### 2.2.2 Confirmation by Crown

The Crown confirms that it is satisfied with:

- (a) The ratification of this Deed by the Rangitaiki 60C Claimants; and
- (b) The mandate to the Mandated Negotiators from the Rangitaiki 60C Claimants to sign this Deed on behalf of the Rangitaiki 60C Claimants.

## 2.3 APPOINTMENT OF AGENT

### 2.3.1 Rangitaiki 60C Claimants' agent

The Rangitaiki 60C Claimants appoint Isabella Westbury and Dick Hunia, members of the whānau associated with Rangitaiki 60C, to act jointly as the Rangitaiki 60C 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 Rangitaiki 60C Claimants. In the event of the death or incapacity of either Isabella Westbury or Dick Hunia, the person who is unaffected may act as the Rangitaiki 60C 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.



**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 \$40,000, being the value that is attributed to Rangitaiki 60C Settlement Land.

**3.1.2 Other Payments**

The Parties record that the Rangitaiki 60C Claimants have also received \$35,000, paid in instalments of \$15,000, \$10,000 and \$10,000 on 14 June 2002, 2 October 2003 and 10 September 2004 respectively, as a contribution towards the Rangitaiki 60C Claimants' negotiating costs but that those amounts are not part of the Redress Amount.

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**SECTION 4: RANGITAIKI 60C SETTLEMENT LAND****4.1 VESTING OF RANGITAIKI 60C SETTLEMENT LAND****4.1.1 Vesting of Rangitaiki 60C Settlement Land**

The Settlement Legislation will provide that:

- (a) The fee simple estate in Rangitaiki 60C Settlement Land will be vested in the Governance Entity, subject to the Drainage Easements and the Natural Gas Pipeline Easements; and
- (b) The vesting under *clause 4.1.1(a)* will take place on, and with effect from, the Settlement Date.

**4.1.2 Discontinuance of Application to Maori Land Court**

- (a) The Crown will, as soon as reasonably practicable after the date of this Deed, and in any event before the passing and coming into force of the Settlement Legislation, request in writing to the Maori Land Court that the Rangitaiki 60C Application be discontinued.
- (b) The Settlement Legislation will provide that, if the Rangitaiki 60C Application has not been discontinued before the passing and coming into force of the Settlement Legislation, then the Rangitaiki 60C Application will be deemed to be discontinued.

**4.2 TITLE TO RANGITAIKI 60C SETTLEMENT LAND**

The Settlement Legislation will provide that:

- (a) The Registrar-General of Land must on written application by any person authorised by the chief executive of Land Information New Zealand (and after the completion of survey (if any) as may be necessary) create, in accordance with that application, one or more computer freehold registers in the name of the Governance Entity for the fee simple estate in land that forms all or part of Rangitaiki 60C Settlement Land, subject to the Drainage Easements and the Natural Gas Pipeline Easements;
- (b) One or more computer freehold registers for Rangitaiki 60C Settlement Land must be created under *clause 4.2(a)* as soon as reasonably practicable after the Settlement Date and, in any event, no later than 24 months after the vesting of Rangitaiki 60C Settlement Land (or such later date as may be agreed in writing between the Governance Entity and the Crown).



### 4.3 SETTLEMENT LEGISLATION

The Settlement Legislation will provide that:

- (a) Neither section 11 nor Part X of the Resource Management Act 1991 will apply to the vesting of the fee simple estate in Rangitaiki 60C Settlement Land in the Governance Entity, or anything incidental to, or required for the purposes of, any such vesting;
- (b) The vesting of Rangitaiki 60C Settlement Land 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
- (c) 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 Rangitaiki 60C Settlement Land contained in the records of Land Information New Zealand. This warranty does not extend to information that may be apparent from a physical inspection of Rangitaiki 60C Settlement Land or an enquiry beyond the records of Land Information New Zealand.

#### 4.4.2 Acknowledgement by Rangitaiki 60C Claimants

The Rangitaiki 60C Claimants acknowledge and agree that, other than the warranty 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 Rangitaiki 60C Settlement Land;



- (c) The compliance or otherwise of Rangitaiki 60C Settlement Land 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 Rangitaiki 60C Settlement Land; or
- (d) Any other matter relating to the ownership, occupation, use or management of Rangitaiki 60C Settlement Land.

#### 4.4.3 Acknowledgment by Rangitaiki 60C Claimants and the Crown

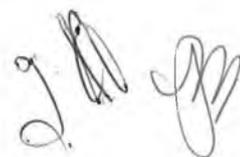
The Rangitaiki 60C Claimants and the Crown acknowledge and record that prior to the date of this Deed, the Rangitaiki 60C Claimants had the opportunity to inspect Rangitaiki 60C Settlement Land and satisfy themselves as to the state and condition of Rangitaiki 60C Settlement Land.

#### 4.4.4 Definition

In this *clause 4.4*, **Disclosure Information** means the information provided by, or on behalf of, the Crown to the Rangitaiki 60C Claimants in respect of Rangitaiki 60C Settlement Land by letter of 21 May 2004 from the Office of Treaty Settlements to the Mandated Negotiators.

#### 4.5 ACCESS

The Rangitaiki 60C Claimants acknowledge that no arrangements for access by the Rangitaiki 60C Claimants to Rangitaiki 60C Settlement Land following vesting of Rangitaiki 60C Settlement Land 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 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 Rangitaiki 60C Claimants and the Crown, subject to termination of the relevant clause under *clause 5.2.3*:

- (a) *Clause 2.1.1*;
- (b) *Clauses 4.1.2 and 1.1.4*; and
- (c) *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 Rangitaiki 60C Claimants and the Crown may agree in writing), then either the Rangitaiki 60C Claimants or the Crown may, by notice in writing to the other, terminate this Deed.

**5.2.2 Without prejudice basis**

The Rangitaiki 60C 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 Rangitaiki 60C 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 Rangitaiki 60C 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 Rangitaiki 60C Claimants' agreement**

The Rangitaiki 60C 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 Rangitaiki 60C Claimants agree that the Crown:

- (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 Settlement Date, request that the Waitangi Tribunal amend its register, and adapt its procedures, to reflect the effect of the Settlement on the Rangitaiki 60C Historical Claims.



## SECTION 6: TAX

### 6.1 DEFINITIONS AND INTERPRETATION

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

*Indemnified Redress* means the redress relating to Rangitaiki 60C Settlement Land.

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 Rangitaiki 60C Claimants and the Crown agree that:

- (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
- (f) The Rangitaiki 60C 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 Rangitaiki 60C 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 Rangitaiki 60C 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****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 Rangitaiki 60C 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 Rangitaiki 60C 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 Rangitaiki 60C 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:

**Crown:**

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

Facsimile: 04 473 3482

**Rangitaiki 60C Claimants:**

C/- Isabella Westbury  
PO Box 379  
TAUPO

Facsimile: (07) 343 2204

**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.

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**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;

**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 Schedules to it;

**Drainage Easements** means the drainage easements referred to in the definition of Rangitaiki 60C Settlement Land, which are to be granted in gross on the terms set out in Schedule 2, those terms having been disclosed to the Mandated Negotiators by letter of 21 May 2004;

**Governance Entity** has the meaning set out in *clause 2.1.1*;

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

**Mandated Negotiators** means Isabella Westbury and Dick Hunia who jointly have the Rangitaiki 60C Claimants' authority to sign this Deed;

**Natural Gas Pipeline Easements** means the natural gas pipeline easements referred to in the definition of Rangitaiki 60C Settlement Land, which are to be granted in gross on the terms set out in Schedule 3, those terms having been disclosed to the Mandated Negotiators by letter of 21 May 2004;

**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 Rangitaiki 60C Claimants and the Crown;

**Rangitaiki 60C** means the land with the following legal description:

Allotment 60C Rangitaiki Parish;

**Rangitaiki 60C Application** means the application dated 13 March 1985 made by the Crown to the Maori Land Court, Waiariki District, for the reversion of land situated in Block XV Rangitaiki Upper Survey District that had been acquired for a public work;

**Rangitaiki 60C Claimants** has the meaning set out in *clause 1.3.1*;

**Rangitaiki 60C Historical Claims** has the meaning set out in *clause 1.4*;

**Rangitaiki 60C Settlement Land** means the land with the following legal description:

South Auckland Land District – Whakatane District

1748 square metres, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked “B” on SO 53267. Part Proclamation 193727. Subject to survey.

2.1190 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked “C” on SO 53267. Part Proclamation 193727. Subject to the creation of the Natural Gas Pipeline Easement marked “O” on DPS 42966. Subject to survey.

4.4270 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked “D1” on SO 53267. Part Proclamation S.416063. Subject to the creation of the Natural Gas Pipeline Easement marked “P” on DPS 42966. Subject to survey.

10.6780 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked “E1” on SO 53267. Part Proclamation 193727. Subject to the creation of the Natural Gas Pipeline Easement marked “N” on DPS 42966. Subject to survey.

6.2204 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked "E" on SO 56363. Part Proclamation S.416063. Subject to survey.

11 hectares, approximately, being Part Allotment 60C Rangitaiki Parish, being Part of the area shown marked "A" on SO 56363 (as modified by Section 2 SO 60568). Part Proclamation 193727. Subject to the creation of part of the Drainage Easement marked "X" on SO 56363. Subject to survey.

1.3997 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked "B" on SO 56363. Part Proclamation 193727. Subject to the creation of the Drainage Easements marked "Y" and "Z" on SO 56363. Subject to survey.

1.4441 hectares, approximately, being Part Allotment 60C Rangitaiki Parish as shown marked "D" on SO 56363. Part Proclamation S.416063. Subject to survey.

27 square metres, approximately, being road to be stopped adjoining Part Allotment 60C Rangitaiki Parish as shown marked "C" on SO 56363. Subject to survey.

1.7925 hectares, approximately, being road to be stopped adjoining Part Allotment 60C Rangitaiki Parish and Omataroa Rangitaiki 1 as shown marked "A" on SO 53267. Subject to the creation of the Natural Gas Pipeline Easement, identified on DPS 42966. Subject to survey.

As shown on SO 61743.

**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(c)*; or
  - (ii) any one or more of the individuals referred to in *clauses 1.3.1(a)* and *(b)*; or
  - (iii) any whānau, hapū or group to the extent that that whānau, hapū or group includes persons referred to in *clauses 1.3.1(a)* or *(b)*;

**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

**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 Schedules are to the clauses of, or Schedules 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;

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- (j) A reference to monetary amounts are to New Zealand currency;
- (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 Rangitaiki 60C 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 Rangitaiki 60C Claimants and the Crown; and
- (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.

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

*Date:*

**PARTIES**

- (1) **RANGITAIKI WHENUA VALLEY 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 Rangitaiki 60C Claimants and the Crown, the Crown agreed to provide certain redress to the Governance Entity, which was to be established by the Rangitaiki 60C Claimants, subject to certain terms and conditions specified in the Deed of Settlement.
- B The Governance Entity was constituted on [date] and is the entity to which the Rangitaiki 60C 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.

**2 THE GOVERNANCE ENTITY'S COVENANT**

- 2.1 The Governance Entity confirms that it has been ratified by the Rangitaiki 60C 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:

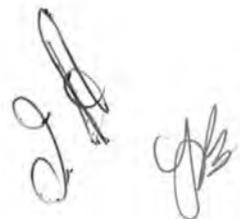
- (a) Become a Party to the Deed of Settlement as if it had been named as a Party to the Deed of Settlement and had executed it; and
- (b) Observe and perform all the obligations under the Deed of Settlement which are expressed to be performed by the Governance Entity and will be bound by the terms of 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 Rangitaiki 60C Claimants, and by the agent appointed on behalf of the Rangitaiki 60C 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:

Rangitaiki Whenua Valley Trust  
C/- Isabella Westbury  
PO Box 379  
Taupo

Two handwritten signatures in black ink, one larger and more prominent than the other, located in the bottom right corner of the page.

**EXECUTED** as a deed on the date first written above.

**SIGNED** for and on behalf of  
**RANGITAIKI WHENUA VALLEY**  
**TRUST** by its trustees

\_\_\_\_\_  
Dick Hunia

\_\_\_\_\_  
Isabella Westbury

\_\_\_\_\_  
Kelley Samuels

\_\_\_\_\_  
Bernice Kitney

\_\_\_\_\_  
Raymond Poia Nelson

*in the presence of:*

Witness:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*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:* )

Witness:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Occupation*

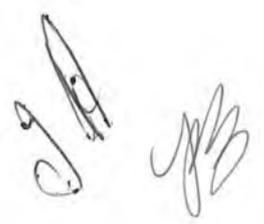
\_\_\_\_\_  
*Address*

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**SCHEDULE 2: DRAINAGE EASEMENTS**

The implied rights and powers as set out in paragraph 4 of the Fourth Schedule to the Land Transfer Regulations 2002 shall apply in respect of the easements stipulated in this Instrument TOGETHER WITH the rights and powers as set out in paragraphs 10, 11, 12, 13 and 14 of the Fourth Schedule to the Land Transfer Regulations 2002 SAVE THAT:

1. Any maintenance, repair or replacement of any easement facility in respect of any easement that is necessary because of any act or omission by any user (whether any owner of the servient tenement or the Grantee) of the easement facility (which includes any of their agents, employees, contractors, subcontractors or invitees of the user) must be carried out promptly by that user at the sole cost of that user or in such proportion as relates to the act or omission.
2. The Grantor covenants with the Grantee not to place any buildings, erections, fences or other permanent structures on the stipulated area without the prior consent of the Grantee and the Grantor will not at any time commit or suffer to be done any acts whereby the rights, powers, licences and liberties hereby granted to the Grantee may be interfered with or affected.
3. Any rights, powers and remedies or immunities from liabilities which the Grantee may have or be entitled to by virtue of statute or at common law shall not be affected by this grant of easement and the Grantee may exercise any such other rights, powers and remedies vested in it at common law or by statute independently of this grant of easement.
4. Where there is a conflict between the provisions of the Fourth Schedule to the Land Transfer Regulations 2002 and the modifications in this Easement Instrument, the modifications in this Instrument shall prevail.

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EXECUTED by **RANGITAIKI  
WHENUA VALLEY TRUST**  
as Grantor by:

\_\_\_\_\_  
\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

EXECUTED by **THE WHAKATANE  
DISTRICT COUNCIL** as Grantee  
by the affixing of its common seal  
in the presence of:

\_\_\_\_\_  
David Robert Christison – Chief Executive

\_\_\_\_\_  
Colin James Hammond – Mayor



**SCHEDULE 3: NATURAL GAS PIPELINE EASEMENTS**

**DEFINITIONS**

1 In this Transfer unless the context otherwise requires:

1.1 The “Transferor’s Land” is the Land owned by the Transferor described on page 1; and

1.2 The “Easement Land” is that portion of the Transferor’s Land marked on [*insert plan reference*].

**RIGHT TO CONVEY GAS**

2 The Transferor grants to the Transferee the rights which may be exercised at any time, for the Transferee, its employees, servants, agents, contractors and invitees:

2.1 To lay, construct, operate, inspect, maintain, repair, replace, renew and remove pipelines and all associated fittings (“the Pipelines”) on, over or under the Easement Land;

2.2 To convey gas (as defined in the Crown Minerals Act 1991) through the Pipelines, to supply gas, or such other purpose as shall from time to time be approved in writing by the transferor;

2.3 To remove, with the prior written approval of the Transferor, all cultivated or natural vegetation including trees and shrubs situated within, or partly within, the Easement Land;

2.4 To enter onto the Transferor’s Land and remain there for a reasonable time with or without any vehicles, tools, machinery, equipment, pipes and materials of any kind for any and all purposes necessary or convenient to the exercise by the Transferee of its rights under this Transfer.

**TERMS AND CONDITIONS**

3 The following terms and conditions shall apply to the Easement created by this Transfer:

3.1 Right to Convey Gas shall include the right to convey petroleum (as defined in the Crown Minerals Act 1991), water and other liquids.

- 3.2 The Transferor may use the Easement Land but in doing so must not erect any building or construction encroaching on the Easement Land or otherwise unreasonably interfere with the Transferee's full enjoyment of its rights under this memorandum;
- 3.3 Without limiting the Transferor's obligations under clause 3.1 the Transferor must not:
- (a) erect any fence or other improvement or plant any tree or shrub on the Easement Land;
  - (b) disturb the soil of the Easement Land below a depth of 0.4 metres from the surface; or
  - (c) do anything on or to the Easement Land which would or could damage or endanger the Pipelines or the use of the Pipelines;

without first obtaining the written consent of the Transferee.

The Transferee may give its written consent subject to reasonable conditions including the power to revoke the consent in specified circumstances. This will be done in consultation and discussion in good faith with the Transferor.

- 3.4 Subject to the Transferee's rights granted herein the Transferee must bury the Pipelines so that the Pipelines will not interfere with the ordinary cultivation of the Land (subject to Clause 2.1).
- 3.5 The Transferee must maintain the Pipelines in good order, until such time as the Pipelines are abandoned or removed.
- 3.6 The Transferee must cause as little damage to the surface of the Easement Land and as little disruption and disturbance to the Transferor's use of the Transferor's Land as is reasonably consistent with the nature of the Transferee's rights.
- 3.7 The Transferee must meet the reasonable costs of restoring any damage caused by the Transferee to the surface of the Transferor's Land or any fences.

- 3.8 The Pipelines shall remain the sole property of the Transferee.
- 3.9 This easement is not in substitution for and is without prejudice to all statutory rights the Transferee has now or may have later in respect of the Transferor's Land and the Easement Strip.
- 3.10 The Transferee may grant any licence or right in respect of the interest conferred on it by this Transfer and may also assign its interest provided that the Transferor's consent to the assignment of the easement is obtained, such consent not to be unreasonably or arbitrarily withheld.
- 3.11 This grant and the covenants and conditions set out in this Transfer shall be binding upon the executors, administrators, successors and assigns of the parties.

#### **DEFAULT**

- 4 If either party fails ("the defaulting party") to perform or join with the other party ("the other party") in performing any obligation under this Transfer the following provisions will apply:
- 4.1 The other party may serve a written notice on the defaulting party ("a defaulting notice") specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the default notice, the other party may perform the obligation;
- 4.2 If after the expiry of one month from service of the default notice the defaulting party has not performed or joined in performing the obligation the other party may perform the obligation.
- 4.3 The defaulting party shall pay to the other party the costs of the default notice and the costs of the other party in performing the obligation of the defaulting party within one month of receiving written notice of the other party's costs; and
- 4.4 The other party may recover any money payable under Section 4.3 from the defaulting party as a liquidated debt.

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**DISPUTES**

- 5 If any dispute arises between the Transferor and the Transferee concerning the rights created by this Transfer the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations the parties shall submit to the arbitration of any independent arbitrator appointed by the President for the time being of the District Law Society in which the Transferor's Land is situated. Such arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution. The parties' execution of this Transfer shall be deemed a submission to arbitration.

Signed for and on behalf of  
**NGC NEW ZEALAND LIMITED**  
by its Attorney RENE PAUL D'ATH  
under Power of Attorney No. 5244705.2  
(South Auckland Land Registry):

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

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Signed for and on behalf of  
**RANGITAIKI WHENUA VALLEY**  
**TRUST** as Transferor by:

\_\_\_\_\_

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

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