

THE WAIOHAU CLAIMANTS

and

HER MAJESTY THE QUEEN

in right of New Zealand

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

1 December 2004

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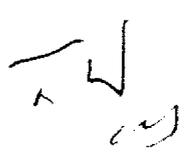
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THIS DEED is made on the *1st* day of *December* 2004

BETWEEN

- (1) **THE WAIIOHAU 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 1878 the Native Land Court awarded title to Waiohau No.1 block to approximately 150 Māori owners. Two subdivisions of the block, Waiohau 1A1D1 and 1A1D2, were brought into a land development scheme in 1933 and consolidated into one block with 10 owners in 1936. The consolidated block was named Waiohau C26.

Land Acquired for Public Works

2. In August 1962 the Crown acquired 46 acres 3 roods 10 perches of land from Waiohau C26 under the Public Works Act 1928 for the development of water power. The land was used as a quarry to supply aggregate to the construction of the Matahina Dam site.

Claim under the Treaty of Waitangi Act 1975

3. Kaari Waaka, one of the former owners of Waiohau C26, submitted a claim to the Waitangi Tribunal in 1987 concerning the Crown's acquisition of Waiohau C26 under the Public Works Act 1928. The claim was registered as Wai 247.

Negotiations between the Waiohau Claimants and the Crown

4. The Crown and the Waiohau Claimants entered into negotiations in 1997 to achieve a final settlement of the Wai 247 claim and to remove the sense of grievance felt by the Waiohau Claimants.
5. 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 247 claim together with the settlement of historical claims of Ngāti Awa.

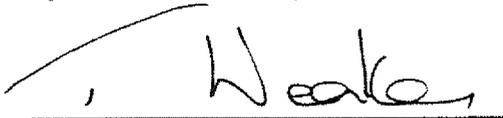
Settlement of the Claim

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

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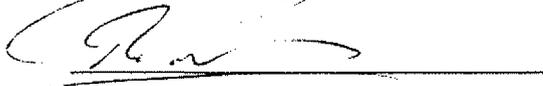
ACCORDINGLY, the Waiohau Claimants and the Crown wish in a spirit of co-operation and compromise, to enter, in good faith, into this Deed providing for the settlement of the Waiohau Historical Claims:

SIGNED for and on behalf of
THE WAIIOHAU CLAIMANTS
by the Mandated Negotiator



Tukorehu Waaka

in the presence of:



Name: Rachel Huriana Paul

Occupation: Solicitor

Address: Opashki

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

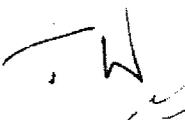
in the presence of:



Name: Rex Sinnott

Occupation: Senior Analyst

Address: 44 McCowan Road
Wairua



SECTION 1: SCOPE AND NATURE OF SETTLEMENT**1.1 THIS DEED SETTLES THE WAIOHAU 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 Waiohau Historical Claims.

1.1.2 Settlement

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

1.1.3 Release

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

1.1.4 Support for Discontinuance of Application

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

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

The Waiohau 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 WAIOHAU CLAIMANTS**1.3.1 Definition of Waiohau Claimants**

Waiohau Claimants means any of the following:

- (a) The descendants of the following individuals, who were the owners of Waiohau prior to its acquisition by the Crown on 23 August 1962:
 - (i) Araera Waaka;
 - (ii) Ani Hiki;
 - (iii) Heni Hiki;

SCOPE AND NATURE OF SETTLEMENT

- (iv) Huka Hiki;
 - (v) Te Kari Waaka;
 - (vi) Merania Waaka;
 - (vii) Paora Waaka;
 - (viii) Rua Hiki;
 - (ix) Wharetakahia Hiki;
 - (x) Whakaki Waaka;
- (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:

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

1.4 MEANING OF WAIOHAU HISTORICAL CLAIMS

Waiohau Historical Claims means:

Claims by the Waiohau 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 taking in 1962 under the Public Works Act 1928, and subsequent administration, of Waiohau, and includes Wai 247 (Waiohau) received by the Waitangi Tribunal on 11 November 1991.

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 Waiohau 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 Waiohau 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 Waiohau Claimants and the Crown acknowledge that:

- (a) Nothing in this Deed extinguishes or limits any aboriginal title or customary rights that the Waiohau 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

SCOPE AND NATURE OF SETTLEMENT

- (b) The Settlement:
- (i) Is not intended:
 - (aa) To prevent any of the Waiohau 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 Waiohau 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 Waiohau 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 Waiohau Historical Claims, such Claims having been settled in accordance with *clauses 1.1.2 and 1.1.3*.

1.7 ACKNOWLEDGMENTS BY THE WAIOHAU CLAIMANTS CONCERNING THE SETTLEMENT

The Waiohau Claimants acknowledge that:

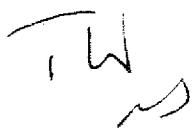
- (a) The Crown has acted honourably and reasonably in negotiating the Settlement, which, taking all matters into account, is fair in the circumstances;
- (b) The Settlement will be final;
- (c) The Settlement, and the rights and obligations on the part of the Waiohau Claimants under this Deed, will be binding upon the Waiohau Claimants and any Representative Entity;
- (d) It is intended that the Settlement and the rights on the part of the Waiohau Claimants and the Governance Entity under this Deed:
 - (i) Will be for the benefit of the Waiohau Claimants; and
 - (ii) May be for the benefit of particular Waiohau Claimants, including any particular group of individuals, family, whānau, or marae, if the

SCOPE AND NATURE OF SETTLEMENT

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 Waiohau Historical Claims;
 - (ii) This Deed;
 - (iii) The redress provided to the Waiohau 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**

The Waiohau 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 Waiohau Claimants and the Crown may agree):

- (a) To procure the establishment of a body (the "***Governance Entity***") which the Crown has advised the Waiohau 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 Waiohau Claimants;
 - (bb) Transparent decision-making and dispute resolution processes; and
 - (cc) Accountability to the Waiohau Claimants; and
 - (iii) Has been ratified by the Waiohau Claimants at the same time as this Deed (by a ratification process agreed in writing by the Waiohau 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 Waiohau 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 Waiohau Claimants' confirmation

The Waiohau Claimants confirm that:

- (a) This Deed was ratified by the Waiohau Claimants by virtue of a majority of 97.9% of the valid votes (73.7% of all votes) cast in a ballot of the eligible Waiohau Claimants; and
- (b) The Mandated Negotiator has been given a mandate from the Waiohau 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 Crown's confirmation

The Crown confirms that it is satisfied with:

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

2.3 APPOINTMENT OF AGENT

2.3.1 Waiohau Claimants' agent

The Waiohau Claimants appoint Tukorehu Waaka, the son of the original claimants of Wai 247, to act as the Waiohau 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 Waiohau Claimants.

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.

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 \$70,000, being the sum of:

- (a) The portion of the Redress Amount attributable to Waiohau Settlement Land, being \$20,000; and
- (b) The Cash Settlement Amount of \$50,000.

3.1.2 Other Payments

The Parties record that the Waiohau Claimants have also received \$35,000, paid in instalments from 22 August 1997, as a contribution towards the Waiohau Claimants' negotiating costs but that this amount is not part of the Redress Amount.

3.2 PAYMENT BY THE CROWN OF THE CASH SETTLEMENT AMOUNT

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

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WAIOHAU SETTLEMENT LAND

SECTION 4: WAIOHAU SETTLEMENT LAND**4.1 VESTING OF WAIOHAU SETTLEMENT LAND****4.1.1 Vesting of Waiohau Settlement Land**

The Settlement Legislation will provide that:

- (a) The fee simple estate in Waiohau Settlement Land will be vested in the Governance Entity; 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 Waiohau Application be discontinued.
- (b) The Settlement Legislation will provide that, if the Waiohau Application has not been discontinued before the passing and coming into force of the Settlement Legislation, then the Waiohau Application will be deemed to be discontinued.

4.2 TITLE TO WAIOHAU 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 computer freehold register in the name of the Governance Entity for the fee simple estate in Waiohau Settlement Land; and
- (b) The computer freehold register for Waiohau 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 Waiohau Settlement Land (or such later date as may be agreed between the Governance Entity and the Crown);

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WAIOHOU SETTLEMENT LAND

- (c) The Crown will pay any survey and registration costs, and any other costs agreed by the Crown and the Waiohau Claimants, required to vest Waiohau Settlement Land in the Governance Entity.

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 Waiohau Settlement Land in the Governance Entity, or anything incidental to, or required for the purposes of, any such vesting;
- (b) The vesting of Waiohau 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 Waiohau 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 Waiohau Settlement Land or an enquiry beyond the records of Land Information New Zealand.

4.4.2 Acknowledgment by Waiohau Claimants

The Waiohau 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;

WAIOHOU SETTLEMENT LAND

- (b) The physical condition of Waiohau Settlement Land;
- (c) The compliance or otherwise of Waiohau 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 Waiohau Settlement Land; or
- (d) Any other matter relating to the ownership, occupation, use or management of Waiohau Settlement Land.

4.4.3 Acknowledgment by Waiohau Claimants and the Crown

The Waiohau Claimants and the Crown acknowledge and record that prior to the date of this Deed, the Waiohau Claimants had the opportunity to inspect Waiohau Settlement Land and satisfy themselves as to the state and condition of Waiohau 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 Waiohau Claimants in respect of Waiohau Settlement Land by letter of 21 May 2004 from the Office of Treaty Settlements to the Mandated Negotiator.

4.5 ACCESS

The Waiohau Claimants acknowledge that no arrangements for access by the Waiohau Claimants to Waiohau Settlement Land following vesting of Waiohau 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 Waiohau 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 Waiohau Claimants and the Crown may agree in writing), then either the Waiohau Claimants or the Crown may, by notice in writing to the other, terminate this Deed.

5.2.2 Without prejudice basis

The Waiohau 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.



CONDITIONS AND SETTLEMENT LEGISLATION

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 Waiohau 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 Waiohau 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 Waiohau Claimants' agreement

The Waiohau 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 Waiohau 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 Waiohau Historical Claims.

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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 Waiohau 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

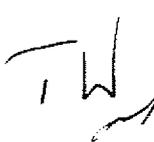
6.2.1 Principles and indemnity

The Waiohau Claimants and the Crown agree that:



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- (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



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- (f) The Waiohau 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 Waiohau 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 Waiohau Claimants (or any person on their behalf, including without limitation the Mandated Negotiator 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.

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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 Waiohau 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 Waiohau Claimants and the Crown.

7.3 ENTIRE AGREEMENT

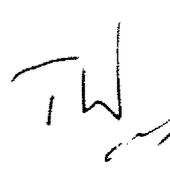
This Deed constitutes the entire agreement between the parties in relation to the matters referred to in this Deed. This Deed supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between any Waiohau Claimant and the Crown relating to such matters, but not 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:



MISCELLANEOUS MATTERS

Crown:

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

Waiohau Claimants:

C/- Taane Turei
415 Braemar Road
WHAKATANE

Facsimile: 04 473 3482

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;

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 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 Negotiator means Tukorehu Waaka who has the Waiohau 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 Waiohau Claimants and the Crown;

DEFINITIONS AND INTERPRETATION

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

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.

Waiohau means the land with the following legal description:

South Auckland Land District – Whakatane District

18.9443 hectares, more or less, being that part of Section 1 SO 41434 which was formerly Part Waiohau 1A1D1 and Part Waiohau 1A1D2

Waiohau Application means application 28655 dated 25 July 1984 made by the Crown to the Maori Land Court, Waiariki District, for the re-vesting of land situated in Block XI Rangitaiki Lower Survey District that had been acquired for a public work;

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

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

DEFINITIONS AND INTERPRETATION

Waiohau Settlement Land means the land with the following legal description:

South Auckland Land District – Whakatane District

20.0648 hectares, more or less, being Section 1 SO 41434. All Proclamation S.241231.

As shown on SO 61744.

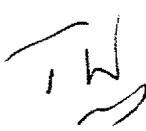
8.2 INTERPRETATION

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;

DEFINITIONS AND INTERPRETATION

- (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 Waiohau 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 Waiohau 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.



DEED OF COVENANT

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

Date:

PARTIES

- (1) **THE [insert name]** (*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 Waiohau Claimants and the Crown, the Crown agreed to provide certain redress to the Governance Entity, which was to be established by the Waiohau 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 Waiohau 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 Waiohau Claimants as an appropriate body to which the Crown will provide the redress under the Deed of Settlement.

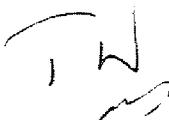
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DEED OF COVENANT

- 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 Waiohau Claimants, and by the agent appointed on behalf of the Waiohau 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]*



DEED OF COVENANT

EXECUTED as a deed on the date first written above.

[insert appropriate attestation for the Governance Entity]

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