

NGĀTI AWA

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT TO
SETTLE NGĀTI AWA
HISTORICAL CLAIMS:
SCHEDULES

27 March 2003

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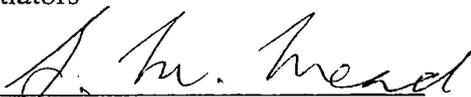
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THESE SCHEDULES form part of, and are to be read with, the Deed of Settlement to settle Ngāti Awa Historical Claims entered into between Ngāti Awa and the Crown on 27 March 2003.

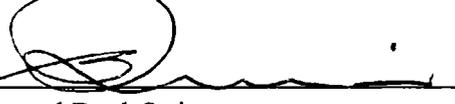
SIGNED for and on behalf of
NGĀTI AWA by the Mandated
Negotiators



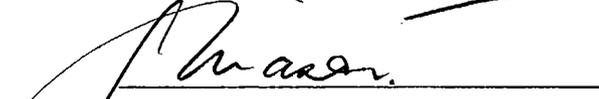
Dr Sidney Moko Mead



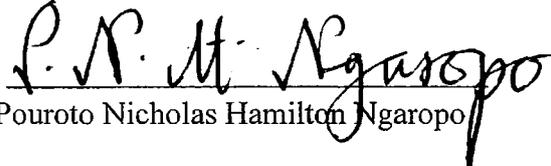
John Mahiti Wilson



Bernard Paul Quinn



Joseph Mason



Pouroto Nicholas Hamilton Ngaropo

In the presence of:



Name: MATĀHIKA MATĀHIKA
Occupation: SOLICITOR
Address: WELLINGTON

In the presence of:



Name: MATTHEW MATĀHIKA
Occupation: SOLICITOR
Address: TUCKLAND

In the presence of:

MS

Name: TAMU ARADETA WEEKS

Occupation: SOLICITOR

Address: WIRAKA, AUNE

In the presence of:

Name:

Occupation:

Address:

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

)
)
)
)
) [Signature]

Honourable Margaret Wilson

In the presence of:

R. Howbrook

Name: R. HOWBROOK

Occupation: Manager

Address: Wellington

He mea tautoko nā:

Supported by:

(

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SCHEDULE 2.1
DEED OF COVENANT
(Clause 2.1.1(b))

Date:

PARTIES

- (1) **THE [insert name] (Ngāti Awa Governance Entity)**
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand *(the Crown)*

BACKGROUND

- A Under a Deed of Settlement dated 27 March 2003 between Ngāti Awa and the Crown, the Crown agreed to provide certain redress to the Ngāti Awa Governance Entity, which was to be established by Ngāti Awa, subject to certain terms and conditions specified in the Deed of Settlement.
- B The Ngāti Awa Governance Entity was [registered/established] on [date] as the entity to be established by Ngāti Awa under *clause 2.1.1* of the Deed of Settlement and to receive the redress to be provided by the Crown under the Deed of Settlement.
- C As required by *clause 2.1.1* of the Deed of Settlement, the Ngāti Awa Governance Entity covenants with the Crown as set out in this Deed.

NOW THE NGĀTI AWA 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 Background A.
- 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 15.2* of the Deed of Settlement apply in the interpretation of this Deed.

2 THE NGĀTI AWA GOVERNANCE ENTITY'S COVENANT

- 2.1 The Ngāti Awa Governance Entity confirms that it has been ratified by Ngāti Awa by [*insert agreed process*] as an appropriate body to which the Crown will provide the redress under the Deed of Settlement, assume the assets and liabilities of Te Runanga o Ngāti Awa and to administer the redress for the benefit of Ngāti Awa.
- 2.2 The Ngāti Awa Governance Entity covenants with the Crown that from the date of this Deed the Ngāti Awa Governance Entity:
- (a) is 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) will observe and perform all the obligations of the Ngāti Awa Governance Entity under the Deed of Settlement; and
 - (c) is bound by the terms of the Deed of Settlement.
- 2.3 The Ngāti Awa Governance Entity hereby ratifies and confirms all acknowledgements 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 Ngāti Awa and by the agent appointed on behalf of Ngāti Awa under clause 2.3 of the Deed of Settlement and agrees to be bound by them.

3 CONFIRMATION BY CROWN

The Crown, by signing this Deed, confirms that it is satisfied:

- (a) With the ratification of the Ngāti Awa Governance Entity;
- (b) That the Ngāti Awa Governance Entity is an appropriate body to which the Crown will provide the redress under this Deed and that it has a structure that provides for:
 - (i) Representation of Ngāti Awa;
 - (ii) Transparent decision making, and dispute resolution processes; and
 - (iii) Accountability to Ngāti Awa.

4 NOTICES

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

EXECUTED as a deed on the date first written above.

[insert appropriate attestation for the Ngāti Awa 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)	[]
<i>in the presence of:</i>)	

Witness:

Signature

Occupation

Address

SCHEDULE 2.2
DISSOLUTION OF TE RUNANGA O NGĀTI AWA
(Clause 2.6)

1 Background

- 1.1 The Settlement Legislation will contain provisions of similar effect to those contained in other legislation which dissolves corporate bodies and transfers their Undertaking to another body.
- 1.2 This Schedule describes the effect of those provisions. Where provisions described in this Schedule have been included in other legislation, the provisions in the Settlement Legislation to give effect to them will be similar to any corresponding provisions in other legislation.

2 Repeal of Te Runanga o Ngāti Awa Act 1988

The Settlement Legislation will repeal, with effect from the Settlement Date, the Te Runanga o Ngāti Awa Act 1988 but will provide that, despite the repeal, section 11 of that Act will continue to have effect.

3 References to Te Runanga o Ngāti Awa

The Settlement Legislation will provide that references to Te Runanga o Ngāti Awa in any other legislation or in any regulation, order or notice made or given under any legislation or in any contract, instrument, register, record, notice, security, document or communication made, given, passed or executed before or after the Settlement Date shall, unless the context otherwise requires, be read and construed as a reference to the Ngāti Awa Governance Entity.

4 Documents in Te Runanga o Ngāti Awa's Name

- 4.1 The Settlement Legislation will provide that all contracts, including contracts of employment, agreements, conveyances, deeds, leases, licences, securities and other instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to Te Runanga o Ngāti Awa (whether alone or with any other person) before the Settlement Date and subsisting immediately before the Settlement Date shall, to the extent that they were previously binding on and enforceable by, against, or in favour of Te Runanga o Ngāti Awa, be binding on and enforceable by, against, or in favour of the Ngāti Awa Governance Entity as fully and effectually in every respect as if, instead of Te Runanga o Ngāti Awa, the Ngāti Awa Governance Entity had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be.

4.2 The Settlement Legislation will provide that any instruction, order, direction, mandate or authority given to Te Runanga o Ngāti Awa and subsisting immediately before the Settlement Date shall be deemed to have been given to the Ngāti Awa Governance Entity.

5 Savings

Nothing effected or authorised by *clause 2.6* or the provisions of the Settlement Legislation to give effect to this Schedule shall:

- (a) Be regarded as placing Te Runanga o Ngāti Awa or the Ngāti Awa Governance Entity or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) Be regarded as placing Te Runanga o Ngāti Awa, the Ngāti Awa Governance Entity, or any other person in breach of:
 - (i) Any enactment, rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property; or
 - (ii) The Privacy Act 1993 or any other enactment, rule of law or contractual provision relating to the collection, use or disclosure of any information; or
- (c) Release any surety wholly or in part from all or any of the surety's obligations; or
- (d) Be regarded as giving rise to a right for any person to:
 - (i) Terminate or cancel or modify any contract or agreement; or
 - (ii) Enforce or accelerate the performance of any obligation; or
 - (iii) Require the performance of an obligation not otherwise arising for performance; or
- (e) Invalidate or discharge any contract or security; or
- (f) Affect the rights of the Ngāti Awa Governance Entity in respect of any promise, covenant, warranty or guarantee given to it by any person relating to the liabilities of Te Runanga o Ngāti Awa.

6 Continuity of Legal Proceedings

The Settlement Legislation will provide that:

- (a) any action, arbitration or proceeding or cause of action, arbitration or proceeding which, immediately before the Settlement Date is pending or existing by, against or in favour of Te Runanga o Ngāti Awa or to which Te Runanga o Ngāti Awa is a party; or
- (b) any cause of action, arbitration or proceeding that arises on or after the Settlement Date in respect of any contract entered into by Te Runanga o Ngāti Awa or any act done or omitted to be done by or to Te Runanga o Ngāti Awa, as the case may be, before the Settlement Date that would, but for *clause 2.6* or the provisions of the Settlement Legislation to give effect to this Schedule, be available to, against, or in favour of Te Runanga o Ngāti Awa or to which Te Runanga o Ngāti Awa could have been a party,

shall not abate or be discontinued or be prejudicially affected by those provisions but may be prosecuted and, without amendment of any writ, pleading or other document continued and enforced by, against, or in favour of the Ngāti Awa Governance Entity in its own name to the same extent that it might have been prosecuted, continued and enforced by, against or in favour of Te Runanga o Ngāti Awa if those provisions had not been passed.

7 Books and Documents to Remain Evidence

The Settlement Legislation will provide that any document, matter or thing which, but for *clause 2.6* or the provisions of the Settlement Legislation to give effect to this Schedule, would have been admissible in evidence in respect of any matter for or against Te Runanga o Ngāti Awa shall, on and after the Settlement Date, be admissible in evidence in respect of the same matter for or against the Ngāti Awa Governance Entity.

8 Registers

The Settlement Legislation will provide that:

- (a) No Registrar of Deeds or the Registrar General or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Schedule to change the name of Te Runanga o Ngāti Awa to that of the Ngāti Awa Governance Entity in those books or registers or in any document;

- (b) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer by the Ngāti Awa Governance Entity:
- (i) executed or purporting to be executed by the Ngāti Awa Governance Entity; and
 - (ii) relating to any property held immediately before the Settlement Date by Te Runanga o Ngāti Awa; and
 - (iii) containing a recital that the property has become vested in the Ngāti Awa Governance Entity by virtue of these provisions,

shall, in the absence of evidence to the contrary, be sufficient evidence that the property is vested in the Ngāti Awa Governance Entity;

- (c) Without limiting *subparagraph (a)* or *(b)* above, where any security (as defined in section 2(1) of the Securities Act 1978) issued by any person or any rights or interests in property of any person are, by virtue of these provisions, vested in the Ngāti Awa Governance Entity, that person, on presentation of a certificate signed by a member or officer of the Ngāti Awa Governance Entity, stating that that security or any such rights or interests have, by virtue of these provisions, vested in the Ngāti Awa Governance Entity, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the Ngāti Awa Governance Entity as the holder of that security or as the person entitled to such rights or interests, as the case may be; and
- (d) Except as provided for above, these provisions do not derogate from the Land Transfer Act 1957.

9 Transitional Provisions Relating to Taxes and Duties

The Settlement Legislation will provide that:

- (a) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and any other enactment that imposes or provides for the collection of a tax, duty, levy, rate or other charge:
- (i) On and from the Settlement Date, Te Runanga o Ngāti Awa and the Ngāti Awa Governance Entity shall be deemed to be the same person; and

- (ii) All transactions entered into by, and acts of, Te Runanga o Ngāti Awa before the Settlement Date shall be deemed to have been entered into by, or to be those of, the Ngāti Awa Governance Entity and to have been entered into or performed by the Ngāti Awa Governance Entity at the time when they were entered into or performed by Te Runanga o Ngāti Awa; and
- (b) For the avoidance of doubt, any declaration of trust executed by Te Runanga o Ngāti Awa under section 24B of the Maori Trust Boards Act 1955 and approved by the Commissioner under that section before the Settlement Date:
 - (i) shall only apply and have force and effect in relation to property that before the Settlement Date was acquired by or vested in Te Runanga o Ngāti Awa and (before that date) has been subjected to that declaration of trust; and
 - (ii) shall not apply to, nor have force or effect in relation to, either (A) the redress under this Deed or any other property acquired by or vested in the Ngāti Awa Governance Entity pursuant to or consequent upon the Settlement or (B) any property acquired or vested in the Ngāti Awa Governance Entity on or after the Settlement Date; and
- (c) For the further avoidance of doubt, the Ngāti Awa Governance Entity shall not be entitled to execute a declaration of trust under section 24B of the Maori Trust Boards Act 1955.

10 Final Account to Te Runanga o Ngāti Awa

The Settlement Legislation will provide that:

- (a) As soon as reasonably practicable after the Settlement Date, the Ngāti Awa Governance Entity shall cause to be prepared final accounts of Te Runanga o Ngāti Awa as at the close of the Settlement Date;
- (b) The Ngāti Awa Governance Entity shall cause the final accounts prepared under *paragraph (a)* above to be audited by a person who, or a firm which, is qualified for appointment as an auditor of a company within the meaning of the Companies Act 1993;
- (c) A copy of the final accounts, together with a copy of the report of the auditor on those accounts, shall be sent by the Ngāti Awa Governance Entity to the Minister of Maori Affairs; and

- (d) A copy of the final accounts, together with a copy of the report of the auditor on those accounts, shall be laid before the House of Representatives by the Minister of Maori Affairs as soon as practicable after their receipt by that Minister.

DISCLOSURE INFORMATION

SCHEDULE 4.1
DISCLOSURE INFORMATION
(Clause 4.1)

Date of Letter	Disclosure Provided
5 October 2001	Former Matahina A4 Block Kāpūterangi Te Paripari Pā Te Toangapoto Te Ihukatia Whakapaukorero
2 November 2001	Otitapu Pā
7 November 2001	Kāpūterangi
22 March 2002	Otitapu Pā Whakapaukorero
15 May 2002	Te Paripari Pā
4 July 2002 25 February 2003	Kāpūterangi Te Paripari Pā Te Toangapoto Te Ihukatia Whakapaukorero Otitapu Pā Former Matahina A4 Block

SCHEDULE 4.2
PROTECTED PRIVATE LAND AGREEMENT FOR OTITAPU PĀ
(Clause 4.4.4)

(Section 76, Reserves Act 1977)

OTITAPU PĀ

THIS DEED made the day of 200[]

BETWEEN [NGĀTI AWA GOVERNANCE ENTITY] [insert description of the Ngāti Awa Governance Entity] (“Ngāti Awa Governance Entity”)

AND THE MINISTER OF CONSERVATION (“the Minister”)

BACKGROUND

- A. The Crown was registered as proprietor of the Land, known as Otitapu Pā, which formed part of the Mangaone Scenic Reserve.
- B. Ngāti Awa, the Ngāti Awa Governance Entity and the Crown are parties to a Deed of Settlement dated 27 March 2003 (the “Deed of Settlement”).
- C. Under the Deed of Settlement, the Crown agreed to transfer to the Ngāti Awa Governance Entity the Land, and the Ngāti Awa Governance Entity agreed to enter into this Protected Private Land Agreement.

NOW THEREFORE the parties, in accordance with section 76 of the Reserves Act 1977, **MUTUALLY AGREE** as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires:

“Act” means the Reserves Act 1977;

“Crown” means Her Majesty the Queen in right of New Zealand;

“Deed” means this Protected Private Land Agreement duly executed by the parties;

“Land” means 6.0 hectares, approximately, being Part Section 9 Block XII Rotoma Survey District. Part Gazette Notice S.264764. Subject to survey. As shown on SO 61687. South Auckland Land District.

1.2 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) Singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) A reference to an enactment or any Regulations is a reference to that enactment or those Regulations as amended or to any enactment or Regulation substituted for that enactment or those Regulations;
- (d) A reference to a party to this Deed or any other document of this Deed includes the party’s successors, heirs and assigns in perpetuity; and in the case of the Ngāti Awa Governance Entity means its successor in law;
- (e) A reference to the Minister includes any officer or duly authorised agent of the Minister; and
- (f) A reference to the Ngāti Awa Governance Entity includes any receiver, liquidator, statutory manager or assignee in bankruptcy of the Ngāti Awa Governance Entity or any lessee or mortgagee in possession of the Land or any part of it.

2 PURPOSES OF PROTECTION

2.1 The Ngāti Awa Governance Entity and the Minister agree that the Land has the following conservation values, which are to be protected:

- (a) cultural, traditional and historic values, including waahi tapu;
- (b) ecological associations and natural environment;
- (c) indigenous flora and fauna; and
- (d) scenic and landscape qualities.

3 RESTRICTION ON USE OF THE LAND

3.1 The Ngāti Awa Governance Entity agrees, to achieve the purposes of protection set out in *clause 2.1* of this Deed, that the Ngāti Awa Governance Entity will not, without the consent of the Minister:

- (a) remove or damage any indigenous vegetation, disturb the soil or undertake earthworks (unless for the purpose of retrieving or reburying kōiwi (human remains));
- (b) construct any tracks on the Land;
- (c) erect any buildings or structures on the Land; or
- (d) carry out any planting of exotic species on the Land.

4 MANAGEMENT OBLIGATIONS

4.1 The Ngāti Awa Governance Entity agrees that it will not undertake any activity associated with the Land which would prejudice the administration and/or conservation values associated with the Mangaone Scenic Reserve.

4.2 The Ngāti Awa Governance Entity grants to the Minister a right of access onto and through the Land for the purpose of integrating the management of the Mangaone Scenic Reserve with that of the Land so that the ecological integrity of the combined area can be maintained. This may include:

- (a) examining, monitoring and recording the condition of the Land and conservation values;
- (b) carrying out work for the protection, preservation and/or enhancement of the conservation values, including planting of indigenous species where appropriate;
- (c) erecting at the cost of the Minister, any fencing necessary for the protection, preservation and/or enhancement of the conservation values; or
- (d) carrying out weed control and pest destruction.

4.3 Before exercising the right provided in *clause 4.2*, the Minister shall consult with the Ngāti Awa Governance Entity and have particular regard to its views, and shall take all reasonable steps to minimise disruption to the Ngāti Awa

Governance Entity's kaitiakitanga or any third party rights granted by the Ngāti Awa Governance Entity in respect of the Land.

5 ENFORCEMENT AGAINST THIRD PARTIES

The Ngāti Awa Governance Entity agrees that subject to the terms of this Deed, the provisions of section 93 to 105 of the Act shall apply to the Land as if it were a scenic reserve.

6 MUTUAL OBLIGATIONS

- 6.1 Each of the parties hereby undertakes, when called upon, to do forthwith all such acts, matters and things and to endeavour promptly to obtain all necessary consents and to execute all such documents necessary in relation to the obligations contained in this Deed.
- 6.2 Where any consent, permission or other authorisation is required by statute or otherwise to carry out any obligation in this Deed, the party responsible for that obligation shall obtain at its own expense such consent, permission or other authorisation. In the case of consent, permission or other authorisation as between the parties, such consent, permission or other authorisation may not be unreasonably withheld.

7 NOTICES

- 7.1 Any notice required to be given to the Ngāti Awa Governance Entity under this Deed will be sufficiently given if made in writing and:
- (a) served as provided in section 152 of the Property Law Act 1952; or
 - (b) sent by post or delivered to the registered office of the Ngāti Awa Governance Entity or the Ngāti Awa Governance Entity's nominated solicitor.
- 7.2 Any consent, authorisation, approval or notice required to be given by the Minister shall be sufficiently given if it is signed by the Bay of Plenty Conservator, Department of Conservation, Rotorua. Any notice required to be given to the Minister will be sufficiently given if made in writing and sent by post or delivered to the office for the time being of the Bay of Plenty Conservator, Department of Conservation, Rotorua.

- 7.3 The Ngāti Awa Governance Entity must on execution of this Deed, advise the Minister of the details of its current registered office and must also advise the Minister immediately of any change of registered office.

8 DISPUTE RESOLUTION

- 8.1 Any dispute which arises between the Ngāti Awa Governance Entity and the Minister in any way relating to the interpretation, terms, obligations and/or breach of this Deed, may be resolved by referring the dispute to expert determination.
- 8.2 The expert shall be a person agreed on by the parties, but if the parties cannot agree within 14 days of the decision to go to expert determination, then the expert shall be appointed by the President for the time being of the Wellington District Law Society.
- 8.3 The parties further agree that the decision of the expert is final and binding on the parties.

9 TERMINATION RIGHTS

- 9.1.1 This Deed may be terminated only by mutual agreement between the parties.
- 9.1.2 This Deed may be varied by mutual agreement between the parties.
- 9.1.3 In the case of termination of this Deed, all rights and obligations shall cease; but termination of this Deed shall not prejudice either party's rights in law for breach by either party of the obligations contained herein.

10 MISCELLANEOUS MATTERS

- 10.1 The Minister shall not assign or otherwise dispose of the rights and obligations contained in this Deed.
- 10.2 Nothing in this Deed in any way diminishes or affects the rights of the Ngāti Awa Governance Entity to exercise rights as landowner under the Trespass Act 1908, any other statute or generally at law or otherwise in relation to the Land.
- 10.3 Subject to *clause 1.2(f)*, the Parties acknowledge the agreements contained in this Deed are between the Ngāti Awa Governance Entity and the Minister and are not intended to be a promise conferring benefits on any third party which support or

SCHEDULE 5.1
STATUTORY ACKNOWLEDGEMENT FOR
KOOHI POINT (KOOHI POINT)
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Koohi Point, as shown on SO 61401, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Koohi Point as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

3.1 It is the historical traditions of Ngāti Awa that illustrate the relationship of Ngāti Awa to Koohi Point Scenic Reserve. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, solidarity and continuity between generations and document the events which shaped the environment of Koohi Point and Ngāti Awa as an iwi.

3.2 Ngāti Awa has resided at Koohi Point since the time of the ancestor Tīwakawaka, many generations before the arrival of the Mātātua waka at Whakatāne. Tīwakawaka was the first explorer to discover and settle the land around Kākahoroa (Whakatāne). His waka was Te Aratauwahāiti and his descendants were the original people of Kākahoroa. Some of the crew of Te Aratauwahāiti are commemorated in the names of the rocks at Koohi Point.

3.3 Twelve generations from Tīwakawaka came the ancestor Toi-te-Huatahi. Toi resided at Kāpūterangi Pā which is located above the Koohi Point Scenic Reserve. On the arrival of Hoaki and Taukata to the area in search of their sister, Kanioro, they were treated to a feast consisting of fern root, berries, and other forest foods. Upon tasting these foods they took an instant dislike to them, remarking that it

was just like eating wood. It was from this event that Toi became known as Toi-kai-rākau (Toi the vegetarian). Hoaki and Taukata asked for a bowl of water in which they added dried preserved kūmara or kao and asked their hosts to taste it. Having tasted this delicious kai they desired to have more of it. A canoe was built from driftwood log (tāwhaowhao) and named accordingly Te Ara Tāwhao. Tama ki Hikurangi was chosen to captain the canoe to go in search of the source of the kūmara. These events occurred near Te Haehaenga, the beach immediately below Koohi near the Whakatāne River.

- 3.4 A significant event in the history of Ngāti Awa was the arrival of the waka Mātaatua, captained by Toroa, the chief of Mātaatua and one of the principal ancestors of Ngāti Awa. Mātaatua faced rough waters as it approached the headland at Whakatāne (Koohi Point). The turbulence was so bad that it caused the daughter of Toroa, Wairaka, to suffer the indignity of experiencing sea sickness. The term by which Ngāti Awa tipuna later called this experience was "kō-hī" (to be ill). Hence the name by which the rocks, the point and adjacent land is known today.
- 3.5 The name Koohi is well known in the traditions of Ngāti Awa and appears in several waiata and in the following well known proverb:

*Ngā mate i Koohi me tangi mai i Kawerau, ngā mate o
Kawerau me tangi atu i Koohi.*

*The deaths at Koohi will be wept over at Kawerau and
the deaths at Kawerau will be wept over at Koohi.*

- 3.6 Ngāti Awa have traditionally regarded the Koohi Point Rocks as toka tipua (rocks imbued with spiritual and sacred qualities) and the places as papanga tawhito (ancient sites of traditional significance). Ngāti Awa tipuna used the naming of the rocks at Koohi to record significant events and rangatira throughout their history. The Koohi Point Rocks have been personalised with the names of some of those involved in the Mātaatua canoe's lengthy ocean passage. The Koohi Point Rocks are made up of a number of different rocks, some of which are referred to here to signify the importance of the Koohi Point Scenic Reserve and contiguous coastal area to Ngāti Awa. All the Koohi Point Rocks, aside from Hine-tū-aho-anga, Hī-moki and Toka-tapu, are owned by Ngāti Awa.
- 3.7 Hi-moki is in the mouth of the Whakatāne River and was regarded as a very significant fishing spot. The next Koohi Point Rock is Hine-tū-aho-anga, named after a woman who was a leader of the sandstone people back in the ancient lands of Hawaiki. This rock was used for sharpening tools in ancient times.

- 3.8 To the west of Koohi pā is Te Puke a Hawaiki, also known as Hingarāe or Sugar Loaf Rock. This rock was named after an accident where a rangatira slipped and hit his forehead. Next to Hingarāe are Te Toka Koakaroa, commonly referred to as Koakaroa which is the traditional name of the entrance to the Whakatāne River, and Areiawa. The latter is submerged in the channel of the two former rocks and is historically known as the guardian rock of the Whakatāne River. Sited amongst these rocks is Toka Kuku-pōniana, commonly referred to as Niania Rock. Niania is a species of mussel commonly found in the area.
- 3.9 Kōpua Huruhuru is an area of water north-east of Te Puke a Hawaiki and encompasses the shoreline and bed of rocks north of it. This area was well known as a harvesting place for seafood. Below the very point of this headland are Koohi Point and Rukupō rocks. The latter rock is significant in Ngāti Awa mythology in that it was here that the famous tohunga Te Tahinga o te Rangi rested when he returned from Whakaari (White Island).
- 3.10 On the eastern coastline of Koohi Point Scenic Reserve is Te Toka o te Rua o te Ika (Fish Hole), a bay renowned by Ngāti Awa for the varieties of fish that dwell there. In the middle of this bay is a rock island of the same name. Located off its eastern point is a submerged rock called Whakaari of the same name as the island volcano. Whakaari and the adjoining bay, Pipiko, are popular nesting areas for the grey-faced petrel commonly known as muttonbird or tītī. The area was also a popular spot from which Ngāti Awa people collected kaimoana including koura, paua and kina. Paparoa and Ōtarawairere are also areas on the eastern side of Koohi Point Scenic Reserve that were well known as recreational sites for the collection of seafood.
- 3.11 The particular Ngāti Awa hapū who lived on and around the lands of the Koohi Point Scenic Reserve were Te Patutātahi or Ngai Taiwhakaea II, Ngāti Hokopū and Ngāti Pūkeko (which was previously referred to as Ngai Tonu). Patutāhora and Ngāti Rangataua were divisions of Ngāti Pūkeko. Ngāti Wharepaia, a division of Ngāti Hokopū, and Te Patuwai also have historical and cultural connections to Koohi Point by virtue of their descent from the Ngāti Awa ancestors, Taiwhakaea I, Te Rangitipukiwaho I, Taiwhakaea II, Nukutaimehameha, Paiaka, Te Hemahema, Te Pūtārera and Te Hāmaiwaho. Other hapū of the area included Ngāti Ikapuku, Ngāti Maumoana, Ngāti Hore, Ngāti Paeko, Ngāti Whakapoi, and Ngāti Whakahinga.
- 3.12 Ngāti Awa people occupied a number of pā sites at Koohi Point. Aside from Kāpūterangi, the famous pā of Toi, there was a neighbouring pā site called Ōrāhiri. Ōrāhiri derived its name from Rāhiri, the son of Puhi-moana-ariki, the brother of Toroa. Although there were other pā sites on Koohi Point during the

time of Puhi and Toroa, Ōrāhiri was the only settlement with a chief, namely Puhi. Toroa himself lived on the flat lands below Koohi Point.

- 3.13 There was an instance during the kūmara planting season when Puhi, who lived at Koohi Point, being jealous of his older brother Toroa for holding the mana of Mātaatua as bestowed upon him by his father Irakewa, set out to insult his tuakana (older brother). After hearing the insult directed at him by his younger brother, Toroa reciprocated. Bitter resentment arose between the two brothers, with Puhi deciding to take the Mātaatua waka and seek a new home in the North.
- 3.14 Papa-Whāriki was another area of occupation by Ngāti Awa at Koohi Point. Papa-Whāriki overlooked Te Ana o Muriwai (Muriwai's Cave). There were three sites at Papa-Whāriki. Below this site, directly opposite Te Ana o Muriwai at the water front, once stood Irakewa Island. Irakewa was the father of Toroa. The island held a spiritual significance for Ngāti Awa as descendants of this ancestor.
- 3.15 Another pā at Koohi Point was Taumata Kahawai. The name of this pā signifies a look out place for Kahawai. Taumata Kahawai was occupied by the chief Taiwhakaea I, founder of the hapū of Te Patutātahi or Ngai Taiwhakaea and of Ngāti Ikapuku. These hapū were responsible for observing the ocean and surrounding shores for possible invasion and shoals of fish.
- 3.16 Other pā sites within the Koohi Point Scenic Reserve include Te Rae o te Tāmure, Koohi and Te Whakaterere. Te Rae o te Tāmure Pā is situated on the ridge between Ōhope West and Ōtarawairere beach at Koohi Point. It runs north from the vicinity of Ōtarawairere down to the cliffs at the seaside edge of the ridge. Situated at the bottom of the cliff is a very important fishing rock called Whangapānui where snapper would gather in abundance (hence the name “The Gathering Place of Snapper”).
- 3.17 There were other pā sites at Koohi Point, adjacent to the modern day Koohi Point Scenic Reserve. Pāpaka was located directly above Pōhaturua Rock at Koohi Point. Opposite and south of Pāpaka is another well known pā site, Puketapu. To the east of Pāpaka and towards Te Wairere Falls were Koohinepipi and Tamatea-iwi. Below these pā to the north-east was Kuharua. Further Ngāti Awa pā at Koohi Point were Hauwai, Kuharua, Kāeaea, Pāhau, Tikotikorere and Tirotiro Whetū. These were all settlements named and occupied by Ngāti Awa. The people of these pā also utilised the abundant resources of the Koohi Point Scenic Reserve.
- 3.18 The various pā and other sites within and in the vicinity of Koohi Point Scenic Reserve demonstrate the general and special significance of the Statutory Area to

Ngāti Awa. They show how the region has been occupied by Ngāti Awa hapū since the time of the Mātaatua waka and before.

- 3.19 The Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Koohi Point area, the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 3.20 Koohi Point Scenic Reserve is the repository of many kōiwi tangata, secreted away in places throughout the Reserve. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations.
- 3.21 The mauri of the coastal area represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to Koohi Point Scenic Reserve.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Koohi Point, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5* and *5.2.6* of the Deed of Settlement); and
 - (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of

Ngāti Awa to Koohi Point as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Koohi Point than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Koohi Point.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Koohi Point to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.2
STATUTORY ACKNOWLEDGEMENT FOR
MOKORUA SCENIC RESERVE
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Mokorua Scenic Reserve, as shown on SO 310381, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Mokorua Scenic Reserve as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Mokorua Scenic Reserve. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Mokorua Scenic Reserve to Ngāti Awa.
- 3.2 According to Ngāti Awa traditions Tīwakawaka was the first explorer to discover and settle the land around Kākahoroa (Whakatāne). His waka was Te Aratauhāiti and his descendants became known as Ngāti Ngainui. The descendants of Tīwakawaka are the original people of Kākahoroa. Twelve generations from Tīwakawaka came the ancestor Toi-te-Huatahi. Toi resided at Kāpūterangi above Kākahoroa. Toi is acknowledged as the principal founding ancestor of many iwi including Ngāti Awa. Ngāti Awa history then records the arrival of the waka Mātaatua (the eye of the god) at Kākahoroa (Whakatāne) from the ancestral homeland Hawaiki. Many of the ancestors of Ngāti Awa on board Mātaatua and their descendants utilised the natural bounty of what is now known as the Mokorua Scenic Reserve.

- 3.3 Ngāti Awa from Whakatāne, Ngāti Pūkeko, Ngāti Hokopū, and Ngai Taiwhakaea II hapū of Ngāti Awa have resided in and around the lands of the Mokorua Scenic Reserve for many generations. Battle sites, urupā and landscape features bearing the names of tipuna record their history of occupation. The result of the struggles, alliances and marriages arising out of various inter- hapū disputes within Ngāti Awa was the eventual emergence of a stable, organised, and from time to time, united series of hapū located in and around the Mokorua Scenic Reserve area.
- 3.4 As recently as the mid-1800s the Mokorua Scenic Reserve was the centre of debate and conflict between tribes stemming from a plan to establish a flour mill in the area. After the battles, Ngāti Awa continued to reside on the lands of the Mokorua Scenic Reserve.
- 3.5 The lands of the Mokorua Scenic Reserve were always regarded by Ngāti Awa, particularly the hapū of the Whakatāne area, as a valuable source of foods such as birds including the kererū. Ever since ancient times the lands of the Mokorua Scenic Reserve have been from time to time the cause of many disputes because of the abundant nature of the area for food gathering. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Mokorua Scenic Reserve.
- 3.6 The Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails, places for gathering kai and other taonga, ways in which to use the resources of the Mokorua Scenic Reserve, the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 3.7 The Mokorua Scenic Reserve is the repository of many kōiwi tangata, secreted away in places throughout the Reserve. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2 of the Deed of Settlement*), and without limiting *clauses 5 and 6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Mokorua Scenic Reserve, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Mokorua Scenic Reserve as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Mokorua Scenic Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Mokorua Scenic Reserve.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Mokorua Scenic Reserve to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.3
STATUTORY ACKNOWLEDGEMENT FOR
ŌHOPE SCENIC RESERVE
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Ōhope Scenic Reserve, as shown on SO 61696, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Ōhope Scenic Reserve as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

3.1 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to the Ōhope Scenic Reserve. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Io-Matua-Kore, Ranginui and Papatuanuku. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.

3.2 Ngāti Awa history records the arrival of the waka Mata-atua (the face of the god) at Kākahoroa (Whakatāne) from the ancestral homeland Hawaiki. Mātaatua brought the kūmara to Kākahoroa and a parcel of soil from Rangiātea to place in the garden called Matirerau. Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa. From Toroa came Ruaihona, from Ruaihona came Tahinga o te rangi and from Tahinga o te rangi came Awanuiārangi II. The eponymous ancestor Awanuiārangi II, great-grandson of Toroa, is acknowledged by Ngāti Awa as the paramount and principal identifying ancestor to which all hapū of Ngāti Awa can trace descent.

- 3.3 During the early occupation of Ōhope by Ngāti Awa, various hapū established the customary interests of the iwi. Following that, during the late eighteenth-century two Ngāti Awa hapū, Ngāti Hokopū and Ngāti Wharepaia, were prominent within the Reserve and surrounding area.
- 3.4 A number of pā sites near the Ōhope Scenic Reserve illustrate the strong historical associations of Ngāti Awa to the Reserve. Westernmost was Ōtūmanu pā. Te Rae o te Tāmure was nearby, on the ridge between Ōhope West and Ōtarawairere beach at Koohi Point. Both these pā were occupied by Tamaruarangi, a well-known rangatira and ancestor of Ngāti Awa. Further east, near the coast below the Ōhope Scenic Reserve were two key strategic pā called Maungateone Pā (Sand Mountain) and Te Parihari or Gunfighters Pā. Further along Ōhope towards Ōhiwa were Mihi Marino Pā (Calm Greetings) and Raukawarua Pā. There were also pā within the Ōhope Scenic Reserve but their names have been lost over time.
- 3.5 The Ōhope Scenic Reserve was rich in resources and provided an abundance of wildlife, plant and vegetation for the hapū of Ngāti Awa that lived within or near the Reserve. The Reserve was a favourite food gathering place for the hapū of Ngāti Awa. The use of the Reserve area has been evidenced by the discovery of artefacts along the creekbed of Te Huki o te Tuna (Spit of the Eel) in past years.
- 3.6 To ensnare some of the abundant bird life within the area known today as the Ōhope Scenic Reserve the people of the hapū would hollow out miro logs as drinking troughs for birds such as kererū and wait in hiding for them.
- 3.7 The medicinal qualities of the plant life in the Ōhope Scenic Reserve were also important to Ngāti Awa. These cultural aspects of the Reserve constitute an essential part of the heritage of Ngāti Awa.
- 3.8 Particular stretches of the Ōhope Scenic Reserve also have their own traditions. West of Ōtūmanu along the cliff face is the path known as Te Ara-kā which means the burning path or illuminated pathway.
- 3.9 Ngāti Awa have always maintained a considerable knowledge of the lands of the Ōhope Scenic Reserve and surrounding area, its history, the traditional trails of the tipuna in the area the places for gathering kai and other taonga and the ways in which to use the resources of the Ōhope Scenic Reserve. Proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Ōhope Scenic Reserve. The sustainable management of the resources of the Reserve remains important to the people of Ngāti Awa today.

- 3.10 The Ōhope Scenic Reserve is the repository of many kōiwi tangata, secreted away in places throughout the Reserve. These urupā are waahi tapu and the knowledge of their location is often protected. Urupā provide an important link to the memories and traditions of Ngāti Awa tipuna and the protection of the relationship to those places is important to the spiritual wellbeing of the iwi.
- 3.11 The traditional values of mana, mauri, whakapapa and tapu are central to the relationship of Ngāti Awa with the Ōhope Scenic Reserve. The mana of Ōhope describes the power and importance of the Reserve to Ngāti Awa. Mana also implies the responsibility of Ngāti Awa as tangata whenua and guardians of the area. The mauri of Ōhope is the life force of Ōhope. All forms of life have a mauri and all forms of life are related. One of the roles of Ngāti Awa as tangata whenua is to protect the mauri of the Ōhope Scenic Reserve area. Whakapapa defines the genealogical relationship of Ngāti Awa to the Reserve. Tapu describes the sacred nature of the Reserve to Ngāti Awa. Mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Ōhope Scenic Reserve area. All of these values remain important to the people of Ngāti Awa today.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Ōhope Scenic Reserve, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5* and *5.2.6* of the Deed of Settlement); and
 - (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Ōhope Scenic Reserve as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):
- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
 - (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Ōhope Scenic Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.
- 5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Ōhope Scenic Reserve.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Ōhope Scenic Reserve to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.4
STATUTORY ACKNOWLEDGEMENT FOR MOUTOHORĀ (WHALE)
ISLAND WILDLIFE MANAGEMENT RESERVE
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Moutohorā (Whale) Island Wildlife Management Reserve, as shown on SO 61405, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Moutohorā (Whale) Island Wildlife Management Reserve as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to Moutohorā. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of Moutohorā to Ngāti Awa.
- 3.2 A significant event in the history of Ngāti Awa was the arrival of the waka Mātaatua to Aotearoa. Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa. The first occupation of Moutohorā was by the grandson of Toroa, Te-Rongo-Tauaroa-a-Tai. Te Rongo lived at a pā called Raetihi (The Summit of Gentle Breezes), now known as Pā Hill. Some of the descendants of Rongo are found among the hapū of Ngāti Awa.
- 3.3 Moutohorā derives its name from the words Motu (island) and tohorā (whale). With the passage of time the name was shortened to Moutohorā. It was here that Captain Cook’s first expedition described the only double-hulled war canoe that they saw during their expedition in Aotearoa. This confirms that in 1769 the Ngāti Awa hapū living at Moutohorā were using double-hulled waka for sea transport.

- 3.4 Taiwhakaea I, a noted chief of Ngāti Awa and eponymous ancestor of the Taiwhakaea hapū of Ngāti Awa, lived from time to time on Moutohorā. Te Ngārara, another Ngāti Awa rangatira, also made frequent use of the island.
- 3.5 There were a number of pā sites on Moutohorā that were used by the hapū of Ngāti Awa who occupied the Island. Raetihi is one such pā. The unusual feature of Raetihi is that it has stone walls on the lower north eastern side of the pā. Moutohorā was occupied for relatively short periods of time when people travelled to the Island to gather food. Gathering tītī (mutton bird – grey faced petrels) and kaimoana from Moutohorā were regular seasonal activities for the Whakatāne based hapū of Ngāti Awa.
- 3.6 There are also a number of significant Ngāti Awa waahi tapu on Moutohorā. Te Pari Kawau (Boulder Bay) was an ancient urupā of the hapū of Ngāti Awa. Another waahi tapu on Moutohorā is Waiariki (Sulphur Bay). Separate areas at Waiariki were set aside for cooking, bathing and medicinal purposes. Various Ngāti Awa people suffering from skin ailments and especially from hakahaki were able to go to the hot springs at Waiariki and bathe in the sulphur laden water. Te Puna Wai (The Water Spring) is a small spring on Moutohorā. Te Puna Wai was the only reliable source of fresh water. However, during a very dry summer it was necessary to carry additional water to Moutohorā from Whakatāne. Te Rātahi (McEwens Bay) was where the hapū of Ngāti Awa living on Moutohorā established their gardens and grew kūmara and other root vegetables.
- 3.7 The abundant resources of Moutohorā made it a valuable place to live for those hapū of Ngāti Awa fortunate enough to occupy the Island. The gathering of tītī was always a traditional and annual activity involving many of the hapū of Ngāti Awa. Ngāti Awa people used the cultural practice of rāhui to ensure the tītī were never depleted completely on the Island. Moutohorā was also useful as a lookout point to intercept any intruders who were en route to some other part of the eastern coast.
- 3.8 Moutohorā has always been a rich source of pāua, kina, crayfish and the popular varieties of shellfish for the hapū of Ngāti Awa.
- 3.9 The Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Moutohorā, the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the hapū of Ngāti Awa today.

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3.10 Moutohorā is the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations.

3.11 The mauri of Moutohorā represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to Moutohorā.

4 Purposes of Statutory Acknowledgement

4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Moutohorā (Whale) Island Wildlife Management Reserve, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5* and *5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Moutohorā (Whale) Island Wildlife Management Reserve as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11* and *5.2.17* of the Deed of Settlement):

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- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Moutohorā (Whale) Island Wildlife Management Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Moutohorā (Whale) Island Wildlife Management Reserve.

6 **No limitation on Crown**

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Moutohorā (Whale) Island Wildlife Management Reserve to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.5
STATUTORY ACKNOWLEDGEMENT FOR PART ŌHIWA HARBOUR
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is Part Ōhiwa Harbour marked “A” on SO 61441, South Auckland Land District, being the foreshore, seabed, and coastal water (as those terms are defined in the Resource Management Act 1991) and the air space above the water and, where the boundary of the area marked “A” on SO 61441 is shown as a landward boundary, the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point is whichever is the lesser of:

- (a) One kilometre upstream from the mouth of the river; or
- (b) The point upstream that is calculated by multiplying the width of the river mouth by 5.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Part Ōhiwa Harbour as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Ōhiwa Harbour. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of Ōhiwa Harbour to Ngāti Awa.
- 3.2 According to Ngāti Awa the first person to settle in the region was Maui. After him was Tīwakawaka. His descendant was Toi te Huatahi who was also known as Toi Kairākau. From Toi descended many tribes collectively known as Te Tini o Toi. Another of these ancient tribes was Te Hapūoneone, a division of Te Tini o Awa who occupied the lands around Ōhiwa. The harbour has always been a source of sustenance to those residing around the harbour, at pā such as

Tauwhare, Te Horo and Paparoa. The name Ōhiwa comes from Te Ōhiwa o Awanuiārangi II which means the standing place of Awanuiārangi II. The name arose when Awanuiārangi II stood on the summit of the pā site Paparoa at Wainui on the shores of Ōhiwa. Since then Awanuiārangi's descendants, the hapū of Ngāti Awa, have resided and maintained a presence at Ōhiwa Harbour.

- 3.3 There are a number of important Ngāti Awa pā sites and waahi tapū in the Ōhiwa Harbour, which demonstrate Ngāti Awa connections with the harbour. Generations of Ngāti Awa have watched over Ōhiwa from such places. One such waahi tapū was Te Horonga o Ngai Te Hapū (the bathing place of Te Hapū). Te Hapū was the son of Tāroakaikaha, the founding ancestor of the Patuwai hapū of Ngāti Awa who are now located at Pupuāruhe, Toroa Marae and Mōtiti Island. Te Horo, at the mouth of the Ōhiwa Harbour, was also an important settlement of Te Kooti and his Ngāti Awa followers. Taipari is a waahi tapū also located at the mouth of the harbour near Te Horo. Taipari is the area where Ngāti Awa hapū would read the signs of the ocean, hence the name Taipari which means the rising and falling of the tides. Taipari is also the name of a chief of the Ngāti Awa hapū, Ngāti Hokopū. There are numerous other pā and waahi tapū known to Ngāti Awa around the harbour.
- 3.4 Ngāti Awa from Whakatāne, Ngāti Hokopū and Ngāti Wharepaia were instrumental in establishing and maintaining a Ngāti Awa presence at Ōhiwa Harbour. Several pā were destroyed in the many battles between Ngāti Awa and Whakatōhea until peace was finally made between the two tribes in 1857. There were several minor incidents following the peace agreement regarding boundaries, but it is Ngāti Awa's tradition that a boundary between the iwi generally agreed at that time was to the Hokianga River in the Ōhiwa harbour. This boundary is still contested today. The Hokianga River, which winds its way through the harbour and out to sea, can only be seen at low tide.
- 3.5 The Ōhiwa harbour has provided Ngāti Awa hapū with all the resources of life they required to survive. The harbour provided an abundance of fish and shellfish such as flounder, kahawai, mussels, pipi, cockles, scallops, and oysters. The harbour was also rich in bird life and building material. The Ngāti Awa hapū, Ngāti Hokopū and Ngāti Wharepaia settled throughout the Ōhiwa Harbour. Ōtao was a favourite place of Ngāti Hokopū for gathering kaimoana particularly pipi, scallops and cockles.
- 3.6 Throughout the years Ngāti Awa have exercised custodianship over the harbour and have imposed rāhui (temporary restrictions) when appropriate, restricting the taking of mussels, scallops and other kaimōana. Proper and sustainable

management of Ōhiwa harbour has always been at the heart of the relationship of Ngāti Awa with the harbour.

- 3.7 Ōhiwa Harbour is the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna and are frequently protected in secret locations.
- 3.8 Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Ōhiwa Harbour, the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 3.9 The Ōhiwa Harbour is of great cultural and historical importance to Ngāti Awa. The mauri of Ōhiwa Harbour represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Ōhiwa Harbour.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Part Ōhiwa Harbour, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and
 - (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Part Ōhiwa Harbour as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):
- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
 - (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Part Ōhiwa Harbour than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.
- 5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Part Ōhiwa Harbour.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Part Ōhiwa Harbour to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.6
STATUTORY ACKNOWLEDGEMENT FOR URETARA ISLAND
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Uretara Island, as shown on SO 61690, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Uretara Island as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to Uretara Island. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 3.2 According to Ngāti Awa Te Hapūoneone, a division of Te Tini o Awa, were the original inhabitants of Ōhiwa Harbour. These people resided at Uretara and other pā at Tauwhare, Te Horo and Papanoa. Ngāti Awa tipuna also whakapapa to various pre-migration iwi including Te Hapūoneone, Maruiwi, Ngā Pōtiki, Ngā Maihi, Te Mārangananga, Te Tini o Toi and Te Tini o Kawerau. From time to time, these groups traversed the lands around and within the Ōhiwa harbour, including Uretara Island.
- 3.3 The name Ōhiwa comes from Te Ōhiwa o Awanuiārangi II. Awanuiārangi II is the great grandson of Toroa, captain of the Mātaatua waka and is the principal ancestor of Ngāti Awa. Hapū of Ngāti Awa have resided at Uretara, within the Ōhiwa Harbour, since the time of Awanuiārangi II.
- 3.4 Uretara Island is one of a number of important Ngāti Awa pā sites and waahi tapu in the Ōhiwa Harbour. Generations of Ngāti Awa have watched over Ōhiwa from

Uretara Island. To the people of Ngāti Awa, Uretara Island is of great cultural and historical importance. Two major pā, Paripari and Karamea, were built on Uretara Island to access, protect and watch over Ōhiwa. The strategic geographical position of the island made it an ideal fortified village. During the time of warfare the strategically built pā, terraces, surrounding water and skilled Ngāti Awa warriors made it almost impossible for outsiders to conquer the island.

- 3.5 Many battles were fought between Ngāti Awa and other iwi over the control of Uretara Island. Ngāti Awa were often successful in those conflicts but sometimes suffered temporary defeats at the hands of other related Mātaatua tribes. During this time ownership of Uretara Island fluctuated between Ngāti Awa and Whakatōhea hapū, including Upokorehe. Prior to 1840 and the arrival of tauwiwi (European settlers) Uretara Island was occupied by Te Keepa Toihau and his people of the Whakatāne section of Ngāti Awa.
- 3.6 In 1862 a dispute over rights to Uretara Island arose between Ngāti Awa and Whakatōhea. Independent assessors were called in and they decided in favour of Ngāti Awa although Whakatōhea continued to express objections. Uretara Island was then included in the confiscation area in 1866 and was not returned to Maori by the Compensation Court. Since this time the island has been out of Ngāti Awa's control. However Ngāti Awa have always maintained a cultural and spiritual association to Uretara.
- 3.7 Uretara Island is one of the areas where the footprints of Ngāti Awa tipuna remain. It is a place where the people of Ngāti Awa would be able to sit and reflect on the life of their ancestors sensing the ihi (power), wehi (fear) and the mauri (life force) emanating from the land and water.
- 3.8 The Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai, other taonga and ways in which to use the resources of Uretara Island. The tipuna were also knowledgeable in the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the hapū of Ngāti Awa today.
- 3.9 Uretara Island is also the repository of kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna.
- 3.10 To the people of Ngāti Awa, Uretara Island is of the utmost importance because of its physical, spiritual and social significance in the past, present and future.

The mauri of Uretara Island represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to Uretara Island.

4 Purposes of Statutory Acknowledgement

4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Uretara Island, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5* and *5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Uretara Island as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11* and *5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Uretara Island than that person or entity would give under the relevant

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statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

- 5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Uretara Island.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Uretara Island to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.7
STATUTORY ACKNOWLEDGEMENT FOR THE WHAKATĀNE RIVER
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the River known as the Whakatāne River, as shown on SO 61404, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic and traditional association to the Whakatāne River as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to the Whakatāne River. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 3.2 The Whakatāne River is rich in historical and cultural association for Ngāti Awa. One of the founding ancestors of Ngāti Awa, Tīwakawaka, lived at the mouth of the Whakatāne River. Hoaki and Taukata landed here and were stranded at the River mouth. The Mātaatua waka also landed at the mouth of the Whakatāne River.
- 3.3 The present name "Te Awa o Whakatāne" relates to the arrival of the waka Mātaatua to Aotearoa. Wairaka was the daughter of Toroa and a member of the crew of the waka Mātaatua. When Mātaatua arrived at Whakatāne, most of the men of the waka climbed the hill at Kāpūterangi to observe the new land. They left the waka attended by a group of women. The mooring of the waka became loosened and it began to drift out to sea. Wairaka, who had been observing the situation, took the matter in hand and cried "E! Kia whakatāne ake au i ahau" (Let me act the part of a man). Hence the name "Whakatāne". Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa.

- 3.4 The naming of various features including rocks in the Whakatāne River reflects the succession of explorers and ancestors of Ngāti Awa who lived along the Whakatāne River. Rocks in the mouth of the Whakatāne River include Te Puke-a-Hawaiki, Koakaroa, Areiawa, Toka Mauku, Toka Roa, Rangaia and Roimata Turuturu.
- 3.5 The Ngāti Awa people have used the Whakatāne river to access sacred sites along its banks. When the Mātaatua waka landed at Whakatāne, one of the very first tasks performed by Toroa and its other occupants was to build a sacred alter called a pouahu. The spot on which the pouahu was built was located on the bank of the Whakatāne River. The mauri of the Mātaatua waka was placed at the pouahu. This was an object that represented the physical and spiritual welfare of the waka and its occupants during its voyage. Later the mauri represented the welfare of the people in their residence. A Mānuka tree was planted at the pouahu as a symbol representing life and well-being for the people of the Mātaatua waka. At this place people revealed their misfortunes, afflictions and transgressions. The symbolic nature of the Mānuka tree gave expression to the term "Te Mānuka Tūtahi " (the lone standing Mānuka tree). This term has become a strong spiritual identifying term for the people of Ngāti Awa.
- 3.6 Close to Te Mānuka Tūtahi on the side of the Whakatāne River was Hine Tuahoanga (Ancestress of stone). This rock was once used by the hapū of Ngāti Awa for sharpening stone, aided with the waters from Whakatāne River alongside. On the other side of the river mouth from Te Mānuka Tūtahi lies the ancient urupā of Ōpihi-whanaunga-kore where many of the remains of the Ngāti Awa people who lived at Whakatāne are now buried and watch over Whakatāne River. Some notable Ngāti Awa ancestors buried at Ōpihi are Te Waiopōtanga, Toihau, Te Keepa Toihau, Te Hāmaiwaho, Te Apanui and Uaterangi.
- 3.7 There were a number of tipua (guardian spirits) and taniwha of special significance to Ngāti Awa that lived along the Whakatāne River. Tūtarakauika was one of the tipua that lived in the Whakatāne River. Tūtarakauika, because of his ability to communicate with life in the ocean, caused much jealousy among other young men of the tribe who later plotted and then clubbed him to death, and his body was taken out and cast into the sea. His father Takatūtahi and remaining sons Rongoiri and Tūtahi sought revenge, found the culprits and took them to the same spot where they threw Tūtarakauika overboard. Takatūtahi, Rongoiri and Tūtahi cast the offenders overboard and watched as they transformed into kutukutu moana (sea lice). Tūtarakauika, however, was revived, cared for, and became part of the family of Tangaroa, being adopted by Kiwa and Hinemōana.

- 3.8 Te Tahi o te Rangī is a famous taniwha of the Whakatāne River in the historical traditions of Ngāti Awa. In ancient times Te Tahi was a tohunga of great status in Ngāti Awa. It was believed that Te Tahi had great powers concerning the supernatural, and it was suspected by members of his tribe that these powers were being used for sinister purposes. These sinister suspicions were eventually brought to the fore when kūmara plants became blighted one season and it was Te Tahi who was blamed. A secret meeting was held in his absence and it was decided that he should be taken to Whakaari and left there to perish. A fishing expedition was organised and Te Tahi was led to believe that he would guide them due to his superior knowledge of the best fishing grounds. Once the expedition arrived at Whakaari, Te Tahi was tricked and the waka left without him, leaving him stranded on the island. Te Tahi summoned a whale which swam towards the rock where he sat. Te Tahi climbed onto the whale. The whale asked if the waka that had left Te Tahi should be destroyed and Te Tahi replied "waiho ma te whakamā rātou e patu, waiho hei kōrero i a tātou kia atawhai ki te iwi" (let their shame punish them, let us acquire fame by means of mercy). Te Tahi landed on a rock by the mouth of the Whakatāne River named Rukupō and could be seen by the returning canoes. Te Tahi then travelled to the rock Te Toka a Houmea, further inland along the Whakatāne River, where he rested. Later he was killed and his body then taken up the Rangitaiki River to Ōpuru (Te Ōpurunga o Te Tahi - The place where the body of Te Tahi was buried). His kaitiaki, the whale monster Tūtarakauika, swam up the Rangitaiki River and excavated a channel to Ōpuru, retrieved the body of Te Tahi and turned the body into a taniwha. There are several places along the Whakatāne River that are named after Te Tahi. Te Tahi is represented as a Marikihau in several carved houses of Ngāti Awa.
- 3.9 The Whakatāne River and its banks have been occupied by the ancestors of Ngāti Awa since before the arrival of Mātaatua. More recently in the eighteenth and nineteenth centuries the chiefs Te Pūtarera, Tohi Te Ururangi, Toihau, Hokimōana, Te Ngārara and their people resided at Te Whare o Toroa, the area around the present day Wairaka Marae which was located originally up against the banks of the river. Since this time there has been reclamation due to the change in the river's course. Cultivations and sites of houses were well established in this region. Throughout this period a number of hapū of Ngāti Awa resided along the Whakatāne River including Ngāti Maumoana, Ngai Te Hapū, Ngāti Ikapuku, Te Patuwai, Ngāti Pūkeko, Te Whānau a Taiwhakaea, Ngāti Hinanoa, Ngāti Kama, Ngai Tāpiki, and Ngāti Hokopū. The Whakatāne River was a life and spiritual source for those people. All of these hapū had various pā, kāinga and waahi tapu along the banks of the river.
- 3.10 There were also a number of waahi tapu sites of significance to Ngāti Awa along the Whakatāne River. Mimihanui, Ōtangi-haku, Ōtarehie, Puke-rārauhe, Motueka,

Rauporoa, Hūrepo, Ōtarehu and Ōhineteraraku were kāinga (settlements) of Ngāti Awa along the river. Ōtarahioi and Te Mauku Pā are pā sites at Tāneatua. Pekapekatahi is a waahi tapu near Tāneatua. This was the place where the Ngāti Awa tohunga Te Tahī o te Rangi crossed the Whakatāne River. Generations of Ngāti Awa have watched over the Whakatāne River from such places. The sites highlight Ngāti Awa's connections to Whakatāne River and the numerous residences along its shores.

- 3.11 In particular, Pōhaturua is a significant waahi tapu site along the Whakatāne River. Pōhaturua is important because it was where the Treaty of Waitangi was signed by Ngāti Awa. On 16 June 1840, representatives of the Ngāti Awa hapū of Ngāti Pūkeko and Ngai Tōnu signed a copy of the Treaty of Waitangi at Pōhaturua. This was an event of great historical significance for Whakatāne as well as for the people of Ngāti Pūkeko and Ngāti Awa. The chiefs that signed the Treaty were Tautari, Mōkai, Mato, Tarawatewate, Tūnui, Taupiri, Haukakawa, Pīariari, Matatehokia, Rewa, Tūpara and Mōkai II - presumed to be Mōkai's son.
- 3.12 Ngāti Awa have always maintained a considerable knowledge of the Whakatāne River, its history, the traditional trails of the tipuna along the River, the landing places of waka, the places for gathering kai and other taonga and the ways in which to use the resources of the Whakatāne River. The Whakatāne River was valued by Ngāti Awa as a source of food including eels, kākahi, oysters, fish and whitebait. The Whakatāne River was also used by Ngāti Awa to transport goods to and from the inland settlements of the iwi. Proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Whakatāne River.
- 3.13 The traditional values of mana, mauri, whakapapa and tapu are central to the relationship of Ngāti Awa with the Whakatāne River. The mana of the Whakatāne River is the power and importance of the River to Ngāti Awa. Mana also defines the custodian responsibility of Ngāti Awa as guardians of the River. The mauri of the Whakatāne River is the life force of the Whakatāne River. All forms of life have a mauri and all forms of life are related. One of the essential roles of Ngāti Awa is to protect the mauri of the River. Whakapapa defines the genealogical relationship of Ngāti Awa to the Whakatāne River. Tapu describes the sacred nature of the relationship of Ngāti Awa to the Whakatāne River. Mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Whakatāne River. All of these values remain important to the people of Ngāti Awa today.

4 Purposes of Statutory Acknowledgement

4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Whakatāne River, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to the Whakatāne River as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

4.2 In this Statutory Acknowledgement “River”:

- (a) means:
 - (i) A continuously or intermittently flowing body of fresh water, including a stream and modified water course; and
 - (ii) the bed of the river; but
- (b) does not include:
 - (i) any artificial watercourse;
 - (ii) any part of the bed of the river which is not owned by the Crown;
 - (iii) any land which the waters of the river do not cover at its fullest flow without overlapping its banks; or
 - (iv) any tributary flowing into the river.

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):
- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
 - (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with the Whakatāne River than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.
- 5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Whakatāne River.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Whakatāne River to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.8
STATUTORY ACKNOWLEDGEMENT FOR THE RANGITAIKI RIVER
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the River known as the Rangitaiki River, as shown on SO 61406, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (*clause 5.2.3 of the Deed of Settlement*), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic and traditional association to the Rangitaiki River as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

3.1 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Rangitaiki River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Rangitaiki River to Ngāti Awa.

3.2 The Rangitaiki River has been a treasured taonga and resource for Ngāti Awa. Traditionally the Rangitaiki River and, in times past, the associated swamp area have been a source of food as well as a communication waterway. Te Mārangaranga were one group that held primacy over the swamp during the pre-migration period. They were principally located in the Rangitaiki valleys of Te Houhi and Te Whāiti. Upon the arrival of the waka Mātaatua this group intermarried with the new arrivals.

3.3 There were a number of taniwha and tipua (guardian spirits) that lived in and along the Rangitaiki River. One such taniwha was Hākai Atua. Hākai Atua was a taniwha of the Ngāti Awa hapū of Ngai Tamaoki and resided close to their kāinga. Hākai Atua travelled the river and was a kaitiaki who protected the Ngai Tamaoki people.

3.4 Raukawarua was a taniwha who lived at Kōkōhinau. Raukawarua was supposed to be a kaitiaki of other taniwha that lived in the River, thus Raukawarua became

known as the rangatira of Ngāti Awa (the chief of the river tribe and of all other river creatures).

- 3.5 Rimurimu was a tipua of the Ngāti Awa hapū of Warahoe and Ngā Maihi who lived along the Rangitaiki River between Te Teko and Matahina. Rimurimu was only recognisable to the Warahoe hapū and only revealed itself to warn the people of danger. Rimurimu came about after Miro, daughter of Hikareia (a chief of Warahoe) drowned herself after her plan to be with her lover was thwarted. Miro chanted Te Punga i Orohia. A line in the chant refers to her being a rimu. Miro then took the form of Rimurimu.
- 3.6 Hine-i-Whāroa was a tipua in the form of a white eel that lived in the Rangitaiki River. Hine-i-Whāroa was the kaitiaki of all the other eels that lived in the River. Hine-i-Whāroa became the kaitiaki that limited the number of eels that could be caught by the people thereby ensuring that the fishery would survive. No matter how hard the people tried to catch Hine-i-Whāroa to clear the way so they would have unrestricted access to all eels, they could never do so.
- 3.7 In time the Warahoe hapū of Ngāti Awa, also descendants of Te Mārangaranga, occupied the lands along the Rangitaiki River. Warahoe was also the old name of the Ōrini Stream that connects the Rangitaiki and Whakatāne Rivers. The resources of the Rangitaiki River and swamp area were shared by the hapū of Ngāti Awa living in the area. The Ngāti Awa hapū of Ngāti Pūkeko, Ngāti Hokopū and Te Patutātahi occupied the eastern bank of the Rangitaiki River. Te Pahipoto, Ngā Maihi and Te Patutātahi occupied the upper (southern) portion of the River around Te Teko. Te Tāwera, Ngai Te Rangihouhiri II and Ngāti Hikakino occupied the western edge of the River. Te Patutātahi had a large grouping of hapū that included Ngāti Hinanoa, Ngāti Kama, Ngāti Hina, Ngai Tāpiki and Te Whānau a Taiwhakaea II. This group occupied the important central reaches of the Rangitaiki River. Te Patutātahi are today known as Ngai Taiwhakaea II. The Rangitaiki River was an essential resource and taonga for those hapū communities from the Ngātamawahine, Pōkairoa, Pāhekeheke and Waikōwhewhe streams to the original outlet of the river at Mātata, where it once converged with the Tarawera River.
- 3.8 A number of settlements have been established by the hapū of Ngāti Awa along the Rangitaiki River. Such settlements highlight the connections of Ngāti Awa with the Rangitaiki River and their occupation of the River's catchments. One such settlement was Te Pūtere located on the coast between the Tarawera and Rangitaiki Rivers. Te Pūtere was a block of land slightly higher than the surrounding swamp area, originally inhabited by Ngāti Patuwai and later Te Patutātahi, Te Pahipoto and Te Patuwai. Inland hapū used Te Pūtere as a fishing

nohoanga allowing them access to the resources of the lower reaches of the Rangitaiki River and the sea.

- 3.9 Further inland along the Rangitaiki River were the Ngāti Awa settlements of Te Kupenga and Te Teko (which remains one of the principal Ngāti Awa settlements along the River). Kōkōhinau Marae is another important Ngāti Awa settlement located in the Te Teko area along the bank of the Rangitaiki River. Te Pahipoto are the hapū of Kōkōhinau. Ngā Maihi, Ngāti Tamawera and Ngai Tamaoki also had villages along the river. Ngāti Hāmua also have their kāinga and marae on the banks of the Rangitaiki River. Ōtipa Pā, occupied at different times by Ngā Maihi, Warahoe and Ngāti Hāmua, is another Ngāti Awa kāinga located along the Rangitaiki River.
- 3.10 The Rangitaiki River provided the hapū of Ngāti Awa, particularly those living in pā along the river, with abundant food and material resources. Water from the River was used by Ngāti Awa to irrigate crops along the riverbanks. Flax and raupo grew well along the River and, in times past, in the swamp ground. These provided materials for clothing, building and trade for the Ngāti Awa hapū. Fish, eels and birds were also in plentiful supply. Not only did the Rangitaiki River provide the Ngāti Awa hapū with food, trade and building materials but it also allowed easy internal movement for the hapū of Ngāti Awa from one end of the rohe to the other and provided refuge in times of danger.
- 3.11 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Rangitaiki River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 3.12 All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Rangitaiki River.
- 3.13 The Rangitaiki River has always been an integral part of the social, spiritual and physical lifestyle of the Ngāti Awa people.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

STATUTORY ACKNOWLEDGEMENT FOR THE RANGITAIKI RIVER

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Rangitaiki River, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to the Rangitaiki River as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

4.2 In this Statutory Acknowledgement “River”:

- (a) means:
 - (i) A continuously or intermittently flowing body of fresh water including a stream and modified water course; and
 - (ii) the bed of the river; but
- (b) does not include:
 - (i) any artificial watercourse;
 - (ii) any part of the bed of the river which is not owned by the Crown;
 - (iii) any land which the waters of the river do not cover at its fullest flow without overlapping its banks; or
 - (iv) any tributary flowing into the river.

5 Limitations on effect of Statutory Acknowledgement

- 5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):

STATUTORY ACKNOWLEDGEMENT FOR THE RANGITAIKI RIVER

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with the Rangitaiki River than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Rangitaiki River.

6 **No limitation on Crown**

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Rangitaiki River to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.9
STATUTORY ACKNOWLEDGEMENT FOR THE TARAWERA RIVER
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the River known as the Tarawera River, as shown on SO 61403, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic and traditional association to the Tarawera River as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Tarawera River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Tarawera River to Ngāti Awa.
- 3.2 The Tarawera River was created by the tears of Tarawera. Tarawera yearned for her husband, Pūtauaki, who left her for the island of Moutohorā. In ancient times before the arrival of the waka Mātaatua the banks of the Tarawera River were inhabited by ancestors of Ngāti Awa including Te Tini o Toi, Te Tini o Awa and Te Tini o Kawerau. In more modern times, but long before the arrival of Europeans, hapū such as Ngai Te Rangihouhiri II, Ngāti Hikakino and Te Tāwera utilised the resources of the river and occupied its banks.
- 3.3 A number of tipua (guardian spirits) and taniwha of special significance to Ngāti Awa inhabited the Tarawera River. Taratua was one such taniwha. This feared taniwha of Ngāti Awa lived at Ruataniwha. In ancient times Taratua terrorised and devoured people attempting to travel along the River. Taratua was later killed by an ancestor of Ngāti Awa named Iratūmoana. The story of Taratua is well known and features the Ngāti Awa tipuna Iratūmoana, who was successful in killing the feared taniwha.

- 3.4 Te Awa a Te Atua is the name of the mouth of the Tarawera River. When the Mātaatua waka arrived at Te Awa a Te Atua, Wairaka bathed at the river mouth. While Wairaka was swimming she was overcome with her menstruation. Her father, Toroa, chief of the Mātaatua Waka saw blood floating down the river and asked whose godly blood it was. Wairaka confirmed that it was her blood and Toroa named the River mouth Te Awa a Te Atua (the River of the Gods).
- 3.5 The people of Ngāti Awa lived in many villages located along the banks of the Tarawera River. The riverbanks thus became the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Tarawera River.
- 3.6 Awaiti is a well known Ngāti Awa waahi tapu along the Tarawera River. Awaiti was named by the Ngāti Awa chief Tīhori when he released the two taniwha Tūtarakauika and Tūpai into the Tarawera River. These two taniwha formed the Kōmutumutu River, which connects the Rangitaiki and Tarawera Rivers. The Kōmutumutu River flows into the Tarawera River (the smaller river), hence the name, Te Awaiti o Tīhori. Another site near the Tarawera River named by Tīhori was Kōpai o Piko. Kōpai o Piko was named when Tīhori found out that his wife had been unfaithful to him and he decided to leave Matahina. Tīhori built a waka, Whakapaukarakia, and he left the district via the Rangitaiki River and then through Kōmutumutu into the Tarawera River and finally out at Te Awa a Te Atua. The two taniwha, Tūtarakauika and Tūpai, dug out a channel which enabled Tīhori to travel to Te Awa a Te Atua. The channel they created formed bends in the land that established the Kōmutumutu River hence the name Kōpai o Piko.
- 3.7 Te Tatau o Hape is another waahi tapu of Ngāti Awa at the Tarawera Falls. Hape was a great ancestor of Ngāti Awa who went in search of greenstone. Hape travelled along the Tarawera River during his journey. When Hape arrived at the Tarawera Falls, he placed a huge boulder in the path of the Tarawera River, hence the Maori name of the Tarawera Falls, Te Tatau a Hape (The door of Hape).
- 3.8 The Tarawera River was a major food and water resource to the Ngāti Awa people both prior to and since the arrival of the Mātaatua Waka. Ngāti Awa people resided in a number of pā sites located along the riverbank. Such sites are significant to Ngāti Awa and illustrate Ngāti Awa connections to the Tarawera River. A sacred pā site along the Tarawera River is Parawai. Parawai was one of

the pā of Te Tāwera hapū of Ngāti Awa. Parawai was the site of many battles between Ngāti Awa and other iwi. Another important pā of Ngāti Awa was Te Kohika. This was located toward the coast and near the island pā of Te Matata and Ōmarupōtiki and was used to access the reefs at the mouth of the river. Ōmataroro was another important Ngāti Awa pā near the Tarawera River. Ngāti Awa watched over and protected the Tarawera River from such pā.

- 3.9 From time to time other hapū such as Ngāti Pūkeko and Ngāti Hāmua also lived along the Tarawera River near its mouth.
- 3.10 The Tarawera River provided an abundance of fish, eels, kākahi and white bait for the hapū of Ngāti Awa. The junction of the Waikāmihi Stream and the Tarawera River was an important fishing location for white bait, eels and other fish for Te Tāwera hapū of Ngāti Awa. As well as being an abundant source of food for the hapū of Ngāti Awa, the Tarawera River was also used as a highway to assist the transportation of materials and people up and down the River. Waka that travelled up and down the Tarawera River were launched at Ōkauneke.
- 3.11 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Tarawera River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of its resources. All of these values remain important to the hapū of Ngāti Awa today.

4 Purposes of Statutory Acknowledgement

- 4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:
- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
 - (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to the Tarawera River, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and

- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to the Tarawera River as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

4.2 In this Statutory Acknowledgement “River”:

- (a) means:
 - (i) A continuously or intermittently flowing body of fresh water, including a stream and modified water course, and
 - (ii) the bed of the river; but
- (b) does not include:
 - (i) any artificial watercourse;
 - (ii) any part of the bed of the river which is not owned by the Crown;
 - (iii) any land which the waters of the river do not cover at its fullest flow without overlapping its banks; or
 - (iv) any tributary flowing into the river.

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa’s association with the Tarawera River than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

- 5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Tarawera River.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of the Tarawera River to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.10
STATUTORY ACKNOWLEDGEMENT FOR TE
KAOKAOROA HISTORIC RESERVE

(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Te Kaokaoroa Historic Reserve, as shown on SO 61402, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Te Kaokaoroa Historic Reserve as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 It is the historical traditions of Ngāti Awa that illustrate the cultural and spiritual association of Ngāti Awa to Te Kaokaoroa. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, solidarity and continuity between generations and document the events which shaped the environment of Te Kaokaroa and Ngāti Awa as an iwi.
- 3.2 A significant event in the history of Ngāti Awa was the arrival of the waka Mātaatua to Aotearoa. Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa. When the Mātaatua canoe made landfall at Te Awa o Te Atua (Matata), Toroa, observing that the shore line from the river mouth right across to Ōtamarakau was like a rib bone, named it Te Kaokaoroa o Toroa (the long rib of Toroa). Over time a number of pā sites and waahi tapu of Ngāti Awa hapū, including Ngai Te Rangihouhiri II, Ngāti Hikakino and Te Tāwera, developed along Te Kaokaoroa o Toroa. The pā sites included Mōkaingārara and Te Matata (near Matata) and Nohonoho, Hauone and Te Parihari (towards Ōtamarakau). The waahi tapu included Arakino and Te Awatarariki. Te Kaokaoroa Reserve is part of this landscape named by Toroa.
- 3.3 Te Kaokaoroa Reserve is sacred to several hapū of Ngāti Awa including Ngai Te Rangihouhiri II, Ngāti Hikakino and Te Tāwera, because it commemorates a great

battle between Government forces and the Tairawhiti force along Te Kaokaoroa o Toroa coastline in 1864.

- 3.4 The Tai Rawhiti force was a collection of armies of the East Coast tribes who intended to travel to Waikato to support the Kingitanga to defend the invasion of their lands by Government forces and European settlers. The Tai Rawhiti force included Ngāti Awa, Whakatōhea, Tūhoe, Te Whānau -a-Apanui and Ngāti Porou.
- 3.5 The Tai Rawhiti forces established a camp on the eastern side of the Waihi lagoon at Maketu. The joint Crown and Te Arawa force set up camp on the western side. The stalemate was broken with the arrival of two Government warships, the *HMS Falcon* and *HMS Sandfly*. The ships began shelling the Tai Rawhiti forces who were then forced to retreat towards Ōtamarakau. The battle of Te Kaokaoroa ensued. Many of the Tai Rawhiti force lost their lives. The dead included those of Whakatōhea, Te Whānau-a-Apanui, Ngāti Porou and Ngāti Awa.
- 3.6 Te Kaokaoroa Reserve is the resting place of Te Rangi-i-paea, a chief of Ngāti Hikakino, who was killed at the battle of Te Kaokaoroa. Many unnamed dead of Ngai Te Rangihouhiri II, Ngāti Hikakino, Te Tāwera, and other hapū of Ngāti Awa were buried at this site by Hori Kawakawa and other Ngāti Awa chiefs. Hoera-tama-titahi, chief of the Ngāti Porou contingent that was part of the Tai Rawhiti Force, also lies buried at Te Kaokaoroa.
- 3.7 Te Kaokaoroa is therefore the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations.
- 3.8 The mauri of Te Kaokaoroa Reserve represents the essence that binds the physical and spiritual elements of all things together, generating and upholding life. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to Te Kaokaoroa.

4 Purposes of Statutory Acknowledgement

4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Te Kaokaoroa Historic Reserve, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5 and 5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Te Kaokaoroa Historic Reserve as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11 and 5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and
- (b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Te Kaokaoroa Historic Reserve than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Te Kaokaoroa Historic Reserve.

6 No limitation on Crown

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Te Kaokaoroa Historic Reserve to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.11
STATUTORY ACKNOWLEDGEMENT FOR FORMER MATAHINA A5
BLOCK
(Clause 5.2.3)

1 Statutory Area

The area to which this statutory acknowledgement applies (*statutory area*) is the area known as Former Matahina A5 Block, as shown on SO 61685, South Auckland Land District.

2 Preamble

Under section [] of the [] Act [] (the “*Settlement Act*”) (*clause 5.2.3* of the Deed of Settlement), the Crown acknowledges Ngāti Awa’s statement of Ngāti Awa’s cultural, spiritual, historic and traditional association to Former Matahina A5 Block as set out below.

3 Cultural, spiritual, historic and traditional association of Ngāti Awa with the Statutory Area

- 3.1 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to Matahina A5. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 3.2 Ngāti Awa tipuna whakapapa to various pre-migration iwi including Te Hapūoneone, Maruiwi, Ngā Pōtiki, Ngā Maihi, Te Mārangaranga, Te Tini o Toi and Te Tini o Kawerau. From time to time, these groups also traversed the lands, rivers, mountains and forests of the Eastern Bay of Plenty region including the Matahina valley. Prior to the arrival of tauīwi (European settlers), the tipuna of Ngāti Awa established important communities all along the banks of the principal rivers of the region, including the Rangitaiki. The ancestors of Ngā Maihi, Warahoe, Ngāti Hāmua, Ngai Tamaoki, Ngai Taipoti, Ngāti Ahi, Ngai Taiwhakaea, Te Tāwera and Ngāti Pūkeko had settlements over the Matahina blocks and along the Rangitaiki River including the pā at Ōtipa.
- 3.3 The rich soils and waterways of the Rangitaiki and the Matahina Valley provided Ngāti Awa hapū with an abundance of food (birds, animals, fish), building materials, material for clothing and cultivation sites. As communities became

established around pā and kāinga, like those of Ngāti Awa along the banks of the Rangitaiki River, so too did the need for urupā (burying places). Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna.

- 3.4 Many battles were fought between Ngāti Awa and other iwi in the Matahina region and even further inland over several centuries, despite their close whakapapa and kin relationships. Ngāti Awa were often successful in those conflicts but sometimes suffered temporary defeats at the hands of other iwi and hapū. Hostilities between Ngāti Awa and other iwi continued for several decades following the arrival of the first settlers and missionaries to the area.
- 3.5 Matahina A5 is an urupā site in the far north of the former Matahina block. Once near the Rangitaiki River since the late 1960s it has been partially submerged within Lake Matahina.
- 3.6 As a consequence of settlement patterns, warfare and migrations, many Ngāti Awa hapū have dead buried in what became Matahina A5 including Ngā Maihi, Warahoe, Ngāti Hāmua, Ngai Tamaoki, Ngai Taipoti, Ngāti Ahi, Ngai Taiwhakaea, Te Tāwera and Ngāti Pūkeko. Ngāti Awa have maintained strong connections in their custodianship role over this urupā across many generations. Matahina A5 is therefore an ancient and important urupā for the hapū of Ngāti Awa.
- 3.7 According to Ngāti Awa traditions, after the arrival of Europeans Te Rangitūkehu restored Warahoe and Ngāti Hāmua to the Matahina area as an act of aroha for those hapū, including those who were and remain part of Ngāti Awa. They had previously been driven away by Te Rangitūkehu and his tipuna in the inter-iwi and hapū conflicts of an earlier era. It was on account of the gift from Te Rangitūkehu that Ngāti Awa say other iwi and hapū were permitted to re-settle in the Matahina region.
- 3.8 In 1881 and 1884, the Native Land Court recognised the customary interests of Ngāti Awa in Matahina A5 and a nearby urupā, Matahina A4, by vesting those waahi tapu in Te Rangitūkehu Hātua and Te Whāiti Paora as trustees. Te Rangitūkehu, as one of the leading rangatira of Ngāti Awa at that time, undertook the principal kaitiaki role over Matahina A5 on behalf of the iwi in accordance with Ngāti Awa custom. During the twentieth century Ngāti Awa continued to maintain their custodianship over Matahina A5 without interference from other iwi and hapū.

3.9 In the 1960s, using public works legislation, the Crown took land from Ngāti Awa including Matahina A5 to create the Matahina Lake and power project and Te Māhoe village. During the construction of Matahina Dam, the Crown advised that it intended to destroy parts of Matahina A5. The elders of Ngāti Awa at the time, while expressing dismay at these proposals, acted to ensure the kōiwi tangata were protected and removed them from those burial sites including Matahina A5 that were threatened by the power project. Even though the title of Matahina A5 was taken from Ngāti Awa, the site remains a sacred urupā and waahi tapu for the iwi.

4 Purposes of Statutory Acknowledgement

4.1 Under section [] of the Settlement Act (*clause 5.2.2* of the Deed of Settlement), and without limiting *clauses 5* and *6*, the only purposes of this statutory acknowledgement are:

- (a) to require that Relevant Consent Authorities forward summaries of Resource Consent applications to the Ngāti Awa Governance Entity as provided in section [] of the Settlement Act (*clause 5.2.8* of the Deed of Settlement);
- (b) to require that Relevant Consent Authorities, the New Zealand Historic Places Trust or the Environment Court as the case may be, have regard to this statutory acknowledgement in relation to Former Matahina A5 Block, as provided in section [] of the Settlement Act (*clauses 5.2.4, 5.2.5* and *5.2.6* of the Deed of Settlement); and
- (c) to enable the Ngāti Awa Governance Entity and any Member of Ngāti Awa to cite this statutory acknowledgement as evidence of the association of Ngāti Awa to Former Matahina A5 Block as provided in section [] of the Settlement Act (*clause 5.2.11* of the Deed of Settlement).

5 Limitations on effect of Statutory Acknowledgement

5.1 Except as expressly provided in sections [] and [] of the Settlement Act (*clauses 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.11* and *5.2.17* of the Deed of Settlement):

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty or function by any person or entity under any statute, regulation or bylaw; and

(b) without limiting *clause 5.1(a)*, no person or entity, in considering any matter or making any decision or recommendation under statute, regulation or bylaw, may give any greater or lesser weight to Ngāti Awa's association with Former Matahina A5 Block than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement had not been made.

5.2 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

5.3 Except as expressly provided in [*insert relevant section/s or subpart of the Settlement Act*] of the Settlement Act, this statutory acknowledgement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, Former Matahina A5 Block.

6 **No limitation on Crown**

The existence of this statutory acknowledgement does not prevent the Crown from providing a statutory acknowledgement in respect of Former Matahina A5 Block to a person or persons other than Ngāti Awa or a Representative Entity.

SCHEDULE 5.12
DEED OF RECOGNITION FOR URETARA ISLAND
(Clauses 5.2.16)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of Uretara Island

The area which is the subject of this Deed is the area known as Uretara Island (*the Area*) as shown on SO 61690, South Auckland Land District. The Area is administered by the Department of Conservation.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to Uretara Island as set out below ("*Statement of Association*").

- 2.2 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to Uretara Island. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 2.3 According to Ngāti Awa Te Hapūoneone, a division of Te Tini o Awa, were the original inhabitants of Ōhiwa Harbour. These people resided at Uretara and other pā at Tauwhare, Te Horo and Papanoa. Ngāti Awa tipuna also whakapapa to various pre-migration iwi including Te Hapūoneone, Maruiwi, Ngā Pōtiki, Ngā Maihi, Te Mārangananga, Te Tini o Toi and Te Tini o Kawerau. From time to time, these groups traversed the lands around and within the Ōhiwa harbour, including Uretara Island.
- 2.4 The name Ōhiwa comes from Te Ōhiwa o Awanuiārangi II. Awanuiārangi II is the great grandson of Toroa, captain of the Mātaatua waka and is the principal ancestor of Ngāti Awa. Hapū of Ngāti Awa have resided at Uretara, within the Ōhiwa Harbour, since the time of Awanuiārangi II.
- 2.5 Uretara Island is one of a number of important Ngāti Awa pā sites and waahi tapu in the Ōhiwa Harbour. Generations of Ngāti Awa have watched over Ōhiwa from Uretara Island. To the people of Ngāti Awa, Uretara Island is of great cultural and historical importance. Two major pā, Paripari and Karamea, were built on Uretara Island to access, protect and watch over Ōhiwa. The strategic geographical position of the island made it an ideal fortified village. During the time of warfare the strategically built pā, terraces, surrounding water and skilled Ngāti Awa warriors made it almost impossible for outsiders to conquer the island.
- 2.6 Many battles were fought between Ngāti Awa and other iwi over the control of Uretara Island. Ngāti Awa were often successful in those conflicts but sometimes suffered temporary defeats at the hands of other related Mātaatua tribes. During this time ownership of Uretara Island fluctuated between Ngāti Awa and Whakatōhea hapū, including Upokorehe. Prior to 1840 and the arrival of tauwiwi (European settlers) Uretara Island was occupied by Te Keepa Toihau and his people of the Whakatāne section of Ngāti Awa.
- 2.7 In 1862 a dispute over rights to Uretara Island arose between Ngāti Awa and Whakatōhea. Independent assessors were called in and they decided in favour of Ngāti Awa although Whakatōhea continued to express objections. Uretara Island was then included in the confiscation area in 1866 and was not returned to Maori by the Compensation Court. Since this time the island has been out of Ngāti

Awa's control. However Ngāti Awa have always maintained a cultural and spiritual association to Uretara.

- 2.8 Uretara Island is one of the areas where the footprints of Ngāti Awa tipuna remain. It is a place where the people of Ngāti Awa would be able to sit and reflect on the life of their ancestors sensing the ihi (power), wehi (fear) and the mauri (life force) emanating from the land and water.
- 2.9 The Ngāti Awa tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai, other taonga and ways in which to use the resources of Uretara Island. The tipuna were also knowledgeable in the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the hapū of Ngāti Awa today.
- 2.10 Uretara Island is also the repository of kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna.
- 2.11 To the people of Ngāti Awa, Uretara Island is of the utmost importance because of its physical, spiritual and social significance in the past, present and future. The mauri of Uretara Island represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to Uretara Island.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Area if at any time the Crown, at its discretion, undertakes these activities:

- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Area;

- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Area in the relation to the following:
- (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species; or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
- (c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Ngāti Awa Governance Entity of all concession applications to the Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

Under sections [] of [] Act [] (*clauses 5.2.14 and 5.2.21 to 5.2.23* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
- (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give

under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;

- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of Uretara Island with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18* of the Deed of Settlement), a Deed of Recognition will terminate in relation to the Area or part of it (the “*Identified Area*”) if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different

Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Minister of
Conservation:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 5.13
DEED OF RECOGNITION FOR THE WHAKATĀNE RIVER
(Clause 5.2.16)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Whakatāne River

The area which is the subject of this Deed is the bed of the river known as the Whakatāne River (*the Area*) as shown on SO 61404, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Whakatāne River as set out below ("*Statement of Association*").

- 2.2 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to the Whakatāne River. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 2.3 The Whakatāne River is rich in historical and cultural association for Ngāti Awa. One of the founding ancestors of Ngāti Awa, Tīwakawaka, lived at the mouth of the Whakatāne River. Hoaki and Taukata landed here and were stranded at the River mouth. The Mātaatua waka also landed at the mouth of the Whakatāne River.
- 2.4 The present name "Te Awa o Whakatāne" relates to the arrival of the waka Mātaatua to Aotearoa. Wairaka was the daughter of Toroa and a member of the crew of the waka Mātaatua. When Mātaatua arrived at Whakatāne, most of the men of the waka climbed the hill at Kāpūterangi to observe the new land. They left the waka attended by a group of women. The mooring of the waka became loosened and it began to drift out to sea. Wairaka, who had been observing the situation, took the matter in hand and cried "E! Kia whakatāne ake au i ahau" (Let me act the part of a man). Hence the name "Whakatāne". Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa.
- 2.5 The naming of various features including rocks in the Whakatāne River reflects the succession of explorers and ancestors of Ngāti Awa who lived along the Whakatāne River. Rocks in the mouth of the Whakatāne River include Te Puke-a-Hawaiki, Koakaroa, Areiawa, Toka Mauku, Toka Roa, Rangaia and Roimata Turuturu.
- 2.6 The Ngāti Awa people have used the Whakatāne river to access sacred sites along its banks. When the Mātaatua waka landed at Whakatāne, one of the very first tasks performed by Toroa and its other occupants was to build a sacred alter called a pouahu. The spot on which the pouahu was built was located on the bank of the Whakatāne River. The mauri of the Mātaatua waka was placed at the pouahu. This was an object that represented the physical and spiritual welfare of the waka and its occupants during its voyage. Later the mauri represented the welfare of the people in their residence. A Mānuka tree was planted at the pouahu as a symbol representing life and well-being for the people of the Mātaatua waka. At this place people revealed their misfortunes, afflictions and transgressions. The symbolic nature of the Mānuka tree gave expression to the term "Te Mānuka Tūtahi" (the lone standing Mānuka tree). This term has become a strong spiritual identifying term for the people of Ngāti Awa.

DEED OF RECOGNITION FOR THE WHAKATANE RIVER

- 2.7 Close to Te Mānuka Tūtahi on the side of the Whakatāne River was Hine Tuahoanga (Ancestress of stone). This rock was once used by the hapū of Ngāti Awa for sharpening stone, aided with the waters from Whakatāne River alongside. On the other side of the river mouth from Te Mānuka Tūtahi lies the ancient urupā of Ōpihi-whanaunga-kore where many of the remains of the Ngāti Awa people who lived at Whakatāne are now buried and watch over Whakatāne River. Some notable Ngāti Awa ancestors buried at Ōpihi are Te Waiopōtanga, Toihau, Te Keepa Toihau, Te Hāmaiwaho, Te Apanui and Uaterangi.
- 2.8 There were a number of tipua (guardian spirits) and taniwha of special significance to Ngāti Awa that lived along the Whakatāne River. Tūtarakauika was one of the tipua that lived in the Whakatāne River. Tūtarakauika, because of his ability to communicate with life in the ocean, caused much jealousy among other young men of the tribe who later plotted and then clubbed him to death, and his body was taken out and cast into the sea. His father Takatūtahi and remaining sons Rongoiri and Tūtahi sought revenge, found the culprits and took them to the same spot where they threw Tūtarakauika overboard. Takatūtahi, Rongoiri and Tūtahi cast the offenders overboard and watched as they transformed into kutukutu moana (sea lice). Tūtarakauika, however, was revived, cared for, and became part of the family of Tangaroa, being adopted by Kiwa and Hinemōana.
- 2.9 Te Tahī o te Rangī is a famous taniwha of the Whakatāne River in the historical traditions of Ngāti Awa. In ancient times Te Tahī was a tohunga of great status in Ngāti Awa. It was believed that Te Tahī had great powers concerning the supernatural, and it was suspected by members of his tribe that these powers were being used for sinister purposes. These sinister suspicions were eventually brought to the fore when kūmara plants became blighted one season and it was Te Tahī who was blamed. A secret meeting was held in his absence and it was decided that he should be taken to Whakaari and left there to perish. A fishing expedition was organised and Te Tahī was led to believe that he would guide them due to his superior knowledge of the best fishing grounds. Once the expedition arrived at Whakaari, Te Tahī was tricked and the waka left without him, leaving him stranded on the island. Te Tahī summoned a whale which swam towards the rock where he sat. Te Tahī climbed onto the whale. The whale asked if the waka that had left Te Tahī should be destroyed and Te Tahī replied "waiho ma te whakamā ratou e patu, waiho hei kōrero i a tātou kia atawhai ki te iwi" (let their shame punish them, let us acquire fame by means of mercy). Te Tahī landed on a rock by the mouth of the Whakatāne River named Rukupō and could be seen by the returning canoes. Te Tahī then travelled to the rock Te Toka a Houmea, further inland along the Whakatāne River, where he rested. Later he was killed and his body then taken up the Rangitaiki River to Ōpuru (Te Ōpurunga o Te Tahī - The place where the body of Te Tahī was buried). His kaitiaki, the whale

monster Tūtarakauika, swam up the Rangitaiki River and excavated a channel to Ōpuru, retrieved the body of Te Tahī and turned the body into a taniwha. There are several places along the Whakatāne River that are named after Te Tahī. Te Tahī is represented as a Marikihau in several carved houses of Ngāti Awa.

- 2.10 The Whakatāne River and its banks have been occupied by the ancestors of Ngāti Awa since before the arrival of Mātaatua. More recently in the eighteenth and nineteenth centuries the chiefs Te Pūtarera, Tohi Te Ururangi, Toihau, Hokimōana, Te Ngārara and their people resided at Te Whare o Toroa, the area around the present day Wairaka Marae which was located originally up against the banks of the river. Since this time there has been reclamation due to the change in the river's course. Cultivations and sites of houses were well established in this region. Throughout this period a number of hapū of Ngāti Awa resided along the Whakatāne River including Ngāti Maumoana, Ngai Te Hapū, Ngāti Ikapuku, Te Patuwai, Ngāti Pūkeko, Te Whānau a Taiwhakaea, Ngāti Hinanoa, Ngāti Kama, Ngai Tāpiki, and Ngāti Hokopū. The Whakatāne River was a life and spiritual source for those people. All of these hapū had various pā, kāinga and waahi tapu along the banks of the river.
- 2.11 There were also a number of waahi tapu sites of significance to Ngāti Awa along the Whakatāne River. Mimihanui, Ōtangi-haku, Ōtarehie, Puke-rārauhe, Motueka, Rauporoa, Hūrepo, Ōtarehu and Ōhineteraraku were kāinga (settlements) of Ngāti Awa along the river. Ōtarahioi and Te Mauku Pā are pā sites at Tāneatua. Pekapekatahi is a waahi tapu near Tāneatua. This was the place where the Ngāti Awa tohunga Te Tahī o te Rangi crossed the Whakatāne River. Generations of Ngāti Awa have watched over the Whakatāne River from such places. The sites highlight Ngāti Awa's connections to Whakatāne River and the numerous residences along its shores.
- 2.12 In particular, Pōhaturua is a significant waahi tapu site along the Whakatāne River. Pōhaturua is important because it was where the Treaty of Waitangi was signed by Ngāti Awa. On 16 June 1840, representatives of the Ngāti Awa hapū of Ngāti Pūkeko and Ngai Tōnu signed a copy of the Treaty of Waitangi at Pōhaturua. This was an event of great historical significance for Whakatāne as well as for the people of Ngāti Pūkeko and Ngāti Awa. The chiefs that signed the Treaty were Tautari, Mōkai, Mato, Tarawatewate, Tūnui, Taupiri, Haukakawa, Piariari, Matatehokia, Rewa, Tūpara and Mōkai II - presumed to be Mōkai's son.
- 2.13 Ngāti Awa have always maintained a considerable knowledge of the Whakatāne River, its history, the traditional trails of the tipuna along the River, the landing places of waka, the places for gathering kai and other taonga and the ways in which to use the resources of the Whakatāne River. The Whakatāne River was

valued by Ngāti Awa as a source of food including eels, kākahi, oysters, fish and whitebait. The Whakatāne River was also used by Ngāti Awa to transport goods to and from the inland settlements of the iwi. Proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Whakatāne River.

- 2.14 The traditional values of mana, mauri, whakapapa and tapu are central to the relationship of Ngāti Awa with the Whakatāne River. The mana of the Whakatāne River is the power and importance of the River to Ngāti Awa. Mana also defines the custodian responsibility of Ngāti Awa as guardians of the River. The mauri of the Whakatāne River is the life force of the Whakatāne River. All forms of life have a mauri and all forms of life are related. One of the essential roles of Ngāti Awa is to protect the mauri of the River. Whakapapa defines the genealogical relationship of Ngāti Awa to the Whakatāne River. Tapu describes the sacred nature of the relationship of Ngāti Awa to the Whakatāne River. Mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Whakatāne River. All of these values remain important to the people of Ngāti Awa today.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Area if at any time the Crown, at its discretion, undertakes these activities:

- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Area;
- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;

DEED OF RECOGNITION FOR THE WHAKATANE RIVER

- (iv) any programme to eradicate pests and weeds or other introduced species; or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
- (c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Ngāti Awa Governance Entity of all concession applications to the Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22* of the Deed of Settlement):

- (a) except as expressly provided in this Deed of Recognition:
 - (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

DEED OF RECOGNITION FOR THE WHAKATANE RIVER

- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned and managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Whakatāne River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18 of the Deed of Settlement*), a Deed of Recognition will terminate in relation to the Area or part of it (the "*Identified Area*") if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Minister of
Conservation:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 5.14
DEED OF RECOGNITION FOR THE WHAKATĀNE RIVER
(Clause 5.2.16)

(Commissioner of Crown Lands)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** *(Ngāti Awa Governance Entity)*
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Commissioner of Crown Lands *(the Crown)*

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement *(the Deed of Settlement)* recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] *(clause 5.2.16 of the Deed of Settlement)*, Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Whakatāne River

The area which is the subject of this Deed is the bed of the river known as the Whakatāne River *(the Area)* as shown on SO 61404, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] *(clause 5.2.3(c) of the Deed of Settlement)*, the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Whakatāne River as set out below *(“Statement of Association”)*.

DEED OF RECOGNITION FOR THE WHAKATANE RIVER

- 2.2 It is the historical traditions of Ngāti Awa such as whakapapa, waiata, kōrero and whakairo that illustrate the cultural and spiritual association of Ngāti Awa to the Whakatāne River. These histories link the present generations of Ngāti Awa with their ancestors and the atua of the natural world such as Ranginui, Papatuanuku and Tāne. These traditions form the foundation of the identity of Ngāti Awa as an iwi. Some of these important historical traditions are recorded below.
- 2.3 The Whakatāne River is rich in historical and cultural association for Ngāti Awa. One of the founding ancestors of Ngāti Awa, Tīwakawaka, lived at the mouth of the Whakatāne River. Hoaki and Taukata landed here and were stranded at the River mouth. The Mātaatua waka also landed at the mouth of the Whakatāne River.
- 2.4 The present name "Te Awa o Whakatāne" relates to the arrival of the waka Mātaatua to Aotearoa. Wairaka was the daughter of Toroa and a member of the crew of the waka Mātaatua. When Mātaatua arrived at Whakatāne, most of the men of the waka climbed the hill at Kāpūterangi to observe the new land. They left the waka attended by a group of women. The mooring of the waka became loosened and it began to drift out to sea. Wairaka, who had been observing the situation, took the matter in hand and cried "E! Kia whakatāne ake au i ahau" (Let me act the part of a man). Hence the name "Whakatāne". Toroa, the chief of Mātaatua, is acknowledged as one of the principal ancestors of Ngāti Awa.
- 2.5 The naming of various features including rocks in the Whakatāne River reflects the succession of explorers and ancestors of Ngāti Awa who lived along the Whakatāne River. Rocks in the mouth of the Whakatāne River include Te Puke-a-Hawaiki, Koakaroa, Areiawa, Toka Mauku, Toka Roa, Rangaia and Roimata Turuturu.
- 2.6 The Ngāti Awa people have used the Whakatāne river to access sacred sites along its banks. When the Mātaatua waka landed at Whakatāne, one of the very first tasks performed by Toroa and its other occupants was to build a sacred alter called a pouahu. The spot on which the pouahu was built was located on the bank of the Whakatāne River. The mauri of the Mātaatua waka was placed at the pouahu. This was an object that represented the physical and spiritual welfare of the waka and its occupants during its voyage. Later the mauri represented the welfare of the people in their residence. A Mānuka tree was planted at the pouahu as a symbol representing life and well-being for the people of the Mātaatua waka. At this place people revealed their misfortunes, afflictions and transgressions. The symbolic nature of the Mānuka tree gave expression to the term "Te Mānuka Tūtahi " (the lone standing Mānuka tree). This term has become a strong spiritual identifying term for the people of Ngāti Awa.

- 2.7 Close to Te Mānuka Tūtahi on the side of the Whakatāne River was Hine Tuahoanga (Ancestress of stone). This rock was once used by the hapū of Ngāti Awa for sharpening stone, aided with the waters from Whakatāne River alongside. On the other side of the river mouth from Te Mānuka Tūtahi lies the ancient urupā of Ōpihi-whanaunga-kore where many of the remains of the Ngāti Awa people who lived at Whakatāne are now buried and watch over Whakatāne River. Some notable Ngāti Awa ancestors buried at Ōpihi Te Waiopōtanga, Toihau, Te Keepa Toihau, Te Hāmaiwaho, Te Apanui and Uaterangi.
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monster Tūtarakauika, swam up the Rangitaiki River and excavated a channel to Oporu, retrieved the body of Te Tahī and turned the body into a taniwha. There are several places along the Whakatāne River that are named after Te Tahī. Te Tahī is represented as a Marikihau in several carved houses of Ngāti Awa.

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- 2.12 In particular, Pōhaturua is a significant waahi tapu site along the Whakatāne River. Pōhaturua is important because it was where the Treaty of Waitangi was signed by Ngāti Awa. On 16 June 1840, representatives of the Ngāti Awa hapū of Ngāti Pūkeko and Ngai Tōnu signed a copy of the Treaty of Waitangi at Pōhaturua. This was an event of great historical significance for Whakatāne as well as for the people of Ngāti Pūkeko and Ngāti Awa. The chiefs that signed the Treaty were Tautari, Mōkai, Mato, Tarawatewate, Tūnui, Taupiri, Haukakawa, Pīariari, Matatehokia, Rewa, Tūpara and Mōkai II - presumed to be Mōkai's son.
- 2.13 Ngāti Awa have always maintained a considerable knowledge of the Whakatāne River, its history, the traditional trails of the tipuna along the River, the landing places of waka, the places for gathering kai and other taonga and the ways in which to use the resources of the Whakatāne River. The Whakatāne River was

valued by Ngāti Awa as a source of food including eels, kākahi, oysters, fish and whitebait. The Whakatāne River was also used by Ngāti Awa to transport goods to and from the inland settlements of the iwi. Proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Whakatāne River.

- 2.14 The traditional values of mana, mauri, whakapapa and tapu are central to the relationship of Ngāti Awa with the Whakatāne River. The mana of the Whakatāne River is the power and importance of the River to Ngāti Awa. Mana also defines the custodian responsibility of Ngāti Awa as guardians of the River. The mauri of the Whakatāne River is the life force of the Whakatāne River. All forms of life have a mauri and all forms of life are related. One of the essential roles of Ngāti Awa is to protect the mauri of the River. Whakapapa defines the genealogical relationship of Ngāti Awa to the Whakatāne River. Tapu describes the sacred nature of the relationship of Ngāti Awa to the Whakatāne River. Mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Whakatāne River. All of these values remain important to the people of Ngāti Awa today.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard must be had to its views relating to the association described in the Statement of Association concerning the consideration by the Crown from time to time of any application to the Crown for any rights for use or occupation (including any renewals), in relation to those parts of the riverbed within the Area that are administered by the Commissioner of Crown Lands, including the terms and conditions of any rights of use or occupation.
- 3.2 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities within the Area if at any time the Crown, at its discretion, undertakes these activities:
- 3.2.1 the preparation of any plans, strategies or programmes for the protection and management of the Area (including the involvement of the Ngāti Awa Governance Entity in such plans, strategies, or programmes);
 - 3.2.2 any survey to identify the number and type of uses which are appropriate in relation to the Area; and

3.2.3 any programme to eradicate noxious flora or fauna from the Area.

3.3 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clauses 3.1 and 3.2*, the Crown will:

3.3.1 inform the Ngāti Awa Governance Entity of any applications to the Crown for rights for use or occupation (including any renewals) in relation to the Area (but retains the right to withhold commercially sensitive information); and

3.3.2 provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its views to the Crown on any matter on which it is consulted.

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22* of the Deed of Settlement):

(a) except as expressly provided in this Deed of Recognition:

(i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and

(ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;

(b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

(c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;

(d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and

- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned and managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Whakatāne River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18* of the Deed of Settlement), a Deed of Recognition will terminate in relation to the Area or part of it (the “*Identified Area*”) if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or

management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed.
- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Commissioner of
Crown lands:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 5.15
DEED OF RECOGNITION FOR THE RANGITAIKI RIVER
(Clause 5.2.16)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Rangitaiki River

The area which is the subject of this Deed is the bed of river known as the Rangitaiki River (*the Area*) as shown on SO 61406, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Rangitaiki River as set out below ("*Statement of Association*").

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

- 2.2 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Rangitaiki River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Rangitaiki River to Ngāti Awa.
- 2.3 The Rangitaiki River has been a treasured taonga and resource for Ngāti Awa. Traditionally the Rangitaiki River and, in times past, the associated swamp area have been a source of food as well as a communication waterway. Te Mārangaranga were one group that held primacy over the swamp during the pre-migration period. They were principally located in the Rangitaiki valleys of Te Houhi and Te Whāiti. Upon the arrival of the waka Mātaatua this group intermarried with the new arrivals.
- 2.4 There were a number of taniwha and tipua (guardian spirits) that lived in and along the Rangitaiki River. One such taniwha was Hākai Atua. Hākai Atua was a taniwha of the Ngāti Awa hapū of Ngai Tamaoki and resided close to their kāinga. Hākai Atua travelled the river and was a kaitiaki who protected the Ngai Tamaoki people.
- 2.5 Raukawarua was a taniwha who lived at Kōkōhinau. Raukawarua was supposed to be a kaitiaki of other taniwha that lived in the River, thus Raukawarua became known as the rangatira of Ngāti Awa (the chief of the river tribe and of all other river creatures).
- 2.6 Rimurimu was a tipua of the Ngāti Awa hapū of Warahoe and Ngā Maihi who lived along the Rangitaiki River between Te Teko and Matahina. Rimurimu was only recognisable to the Warahoe hapū and only revealed itself to warn the people of danger. Rimurimu came about after Miro, daughter of Hikareia (a chief of Warahoe) drowned herself after her plan to be with her lover was thwarted. Miro chanted Te Punga i Ōrohia. A line in the chant refers to her being a rimu. Miro then took the form of Rimurimu.
- 2.7 Hine-i-Whāroa was a tipua in the form of a white eel that lived in the Rangitaiki River. Hine-i-Whāroa was the kaitiaki of all the other eels that lived in the River. Hine-i-Whāroa became the kaitiaki that limited the number of eels that could be caught by the people thereby ensuring that the fishery would survive. No matter how hard the people tried to catch Hine-i-Whāroa to clear the way so that they would have unrestricted access to all eels, they could never do so.
- 2.8 In time the Warahoe hapū of Ngāti Awa, also descendants of Te Mārangaranga, occupied the lands along the Rangitaiki River. Warahoe was also the old name of

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

the Ōrini Stream that connects the Rangitaiki and Whakatāne Rivers. The resources of the Rangitaiki River and swamp area were shared by the hapū of Ngāti Awa living in the area. The Ngāti Awa hapū of Ngāti Pūkeko, Ngāti Hokopū and Te Patutātahi occupied the eastern bank of the Rangitaiki River. Te Pahipoto, Ngā Maihi and Te Patutātahi occupied the upper (southern) portion of the River around Te Teko. Te Tāwera, Ngai Te Rangihouhiri II and Ngāti Hikakino occupied the western edge of the River. Te Patutātahi had a large grouping of hapū that included Ngāti Hinanoa, Ngāti Kama, Ngāti Hina, Ngai Tāpiki and Te Whānau a Taiwhakaea II. This group occupied the important central reaches of the Rangitaiki River. Te Patutātahi are today known as Ngai Taiwhakaea II. The Rangitaiki River was an essential resource and taonga for those hapū communities from the Ngātamawahine, Pōkairoa, Pāhekeheke and Waikōwhewhe streams to the original outlet of the river at Matata, where it once converged with the Tarawera River.

- 2.9 A number of settlements have been established by the hapū of Ngāti Awa along the Rangitaiki River. Such settlements highlight the connections of Ngāti Awa with the Rangitaiki River and their occupation of the River's catchments. One such settlement was Te Pūtere located on the coast between the Tarawera and Rangitaiki Rivers. Te Pūtere was a block of land slightly higher than the surrounding swamp area, originally inhabited by Ngāti Patuwai and later Te Patutātahi, Te Pahipoto and Te Patuwai. Inland hapū used Te Pūtere as a fishing nōhoanga allowing them access to the resources of the lower reaches of the Rangitaiki River and the sea.
- 2.10 Further inland along the Rangitaiki River were the Ngāti Awa settlements of Te Kupenga and Te Teko (which remains one of the principal Ngāti Awa settlements along the River). Kōkōhinau Marae is another important Ngāti Awa settlement located in the Te Teko area along the bank of the Rangitaiki River. Te Pahipoto are the hapū of Kōkōhinau. Ngā Maihi, Ngāti Tamawera and Ngai Tamaoki also had villages along the river. Ngāti Hāmua also have their kāinga and marae on the banks of the Rangitaiki River. Ōtipa Pā, occupied at different times by Ngā Maihi, Warahoe and Ngāti Hāmua, is another Ngāti Awa kāinga located along the Rangitaiki River.
- 2.11 The Rangitaiki River provided the hapū of Ngāti Awa, particularly those living in pā along the river, with abundant food and material resources. Water from the River was used by Ngāti Awa to irrigate crops along the riverbanks. Flax and raupo grew well along the River and, in times past, in the swamp ground. These provided materials for clothing, building and trade for the Ngāti Awa hapū. Fish, eels and birds were also in plentiful supply. Not only did the Rangitaiki River provide the Ngāti Awa hapū with food, trade and building materials but it also

allowed easy internal movement for the hapū of Ngāti Awa from one end of the rohe to the other and provided refuge in times of danger.

- 2.12 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Rangitaiki River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 2.13 All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Rangitaiki River.
- 2.14 The Rangitaiki River has always been an integral part of the social, spiritual and physical lifestyle of the Ngāti Awa people.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Area if at any time the Crown, at its discretion, undertakes these activities:
- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Area;
 - (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species; or

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

(v) any survey to identify the number and type of concessions which may be appropriate; and

(c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Ngāti Awa Governance Entity of all concession applications to the Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22* of the Deed of Settlement):

(a) except as expressly provided in this Deed of Recognition:

(i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and

(ii) without limiting *clause 4.1(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;

(b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

(c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned and managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Rangitaiki River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18 of the Deed of Settlement*), a Deed of Recognition will terminate in relation to the Area or part of it (the "*Identified Area*") if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Minister of
Conservation:

in the presence of:

Name:

Occupation:

Address:

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

SCHEDULE 5.16
DEED OF RECOGNITION FOR THE RANGITAIKI RIVER
(Clause 5.2.16)

(Commissioner of Crown Lands)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Commissioner of Crown Lands (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Rangitaiki River

The area which is the subject of this Deed is the bed of the river known as the Rangitaiki River (*the Area*) as shown on SO 61406, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Rangitaiki River as set out below ("*Statement of Association*").

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

- 2.2 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Rangitaiki River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Rangitaiki River to Ngāti Awa.
- 2.3 The Rangitaiki River has been a treasured taonga and resource for Ngāti Awa. Traditionally the Rangitaiki River and, in times past, the associated swamp area have been a source of food as well as a communication waterway. Te Mārangaranga were one group that held primacy over the swamp during the pre-migration period. They were principally located in the Rangitaiki valleys of Te Houhi and Te Whāiti. Upon the arrival of the waka Mātaatua this group intermarried with the new arrivals.
- 2.4 There were a number of taniwha and tipua (guardian spirits) that lived in and along the Rangitaiki River. One such taniwha was Hākai Atua. Hākai Atua was a taniwha of the Ngāti Awa hapū of Ngai Tamaoki and resided close to their kāinga. Hākai Atua travelled the river and was a kaitiaki who protected the Ngai Tamaoki people.
- 2.5 Raukawarua was a taniwha who lived at Kōkōhinau. Raukawarua was supposed to be a kaitiaki of other taniwha that lived in the River, thus Raukawarua became known as the rangatira of Ngāti Awa (the chief of the river tribe and of all other river creatures).
- 2.6 Rimurimu was a tipua of the Ngāti Awa hapū of Warahoe and Ngā Maihi who lived along the Rangitaiki River between Te Teko and Matahina. Rimurimu was only recognisable to the Warahoe hapū and only revealed itself to warn the people of danger. Rimurimu came about after Miro, daughter of Hikareia (a chief of Warahoe) drowned herself after her plan to be with her lover was thwarted. Miro chanted Te Punga i Ōrohia. A line in the chant refers to her being a rimu. Miro then took the form of Rimurimu.
- 2.7 Hine-i-Whāroa was a tipua in the form of a white eel that lived in the Rangitaiki River. Hine-i-Whāroa was the kaitiaki of all the other eels that lived in the River. Hine-i-Whāroa became the kaitiaki that limited the number of eels that could be caught by the people thereby ensuring that the fishery would survive. No matter how hard the people tried to catch Hine-i-Whāroa to clear the way so that they would have unrestricted access to all eels, they could never do so.

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

- 2.8 In time the Warahoe hapū of Ngāti Awa, also descendants of Te Mārangaranga, occupied the lands along the Rangitaiki River. Warahoe was also the old name of the Ōrini Stream that connects the Rangitaiki and Whakatāne Rivers. The resources of the Rangitaiki River and swamp area were shared by the hapū of Ngāti Awa living in the area. The Ngāti Awa hapū of Ngāti Pūkeko, Ngāti Hokopū and Te Patutātahi occupied the eastern bank of the Rangitaiki River. Te Pahipoto, Ngā Maihi and Te Patutātahi occupied the upper (southern) portion of the River around Te Teko. Te Tāwera, Ngai Te Rangihouhiri II and Ngāti Hikakino occupied the western edge of the River. Te Patutātahi had a large grouping of hapū that included Ngāti Hinanoa, Ngāti Kama, Ngāti Hina, Ngai Tāpiki and Te Whānau a Taiwhakaea II. This group occupied the important central reaches of the Rangitaiki River. Te Patutātahi are today known as Ngai Taiwhakaea II. The Rangitaiki River was an essential resource and taonga for those hapū communities from the Ngātamawahine, Pōkairoa, Pāhekeheke and Waikōwhewhe streams to the original outlet of the river at Matata, where it once converged with the Tarawera River.
- 2.9 A number of settlements have been established by the hapū of Ngāti Awa along the Rangitaiki River. Such settlements highlight the connections of Ngāti Awa with the Rangitaiki River and their occupation of the River's catchments. One such settlement was Te Pūtere located on the coast between the Tarawera and Rangitaiki Rivers. Te Pūtere was a block of land slightly higher than the surrounding swamp area, originally inhabited by Ngāti Patuwai and later Te Patutātahi, Te Pahipoto and Te Patuwai. Inland hapū used Te Pūtere as a fishing nohoanga allowing them access to the resources of the lower reaches of the Rangitaiki River and the sea.
- 2.10 Further inland along the Rangitaiki River were the Ngāti Awa settlements of Te Kupenga and Te Teko (which remains one of the principal Ngāti Awa settlements along the River). Kōkōhinau Marae is another important Ngāti Awa settlement located in the Te Teko area along the bank of the Rangitaiki River. Te Pahipoto are the hapū of Kōkōhinau. Ngā Maihi, Ngāti Tamawera and Ngai Tamaoki also had villages along the river. Ngāti Hāmua also have their kāinga and marae on the banks of the Rangitaiki River. Ōtipa Pā, occupied at different times by Ngā Maihi, Warahoe and Ngāti Hāmua, is another Ngāti Awa kāinga located along the Rangitaiki River.
- 2.11 The Rangitaiki River provided the hapū of Ngāti Awa, particularly those living in pā along the river, with abundant food and material resources. Water from the River was used by Ngāti Awa to irrigate crops along the riverbanks. Flax and raupo grew well along the River and, in times past, in the swamp ground. These provided materials for clothing, building and trade for the Ngāti Awa hapū. Fish, eels and birds were also in plentiful supply. Not only did the

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

Rangitaiki River provide the Ngāti Awa hapū with food, trade and building materials but it also allowed easy internal movement for the hapū of Ngāti Awa from one end of the rohe to the other and provided refuge in times of danger.

- 2.12 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Rangitaiki River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to the people of Ngāti Awa today.
- 2.13 All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Rangitaiki River.
- 2.14 The Rangitaiki River has always been an integral part of the social, spiritual and physical lifestyle of the Ngāti Awa people.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard must be had to its views relating to the association described in the Statement of Association concerning the consideration by the Crown from time to time of any application to the Crown for any rights for use or occupation (including any renewals), in relation to those parts of the riverbed within the Area that are administered by the Commissioner of Crown Lands, including the terms and conditions of any rights of use or occupation.
- 3.2 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities within the Area if at any time the Crown, at its discretion, undertakes these activities:
- 3.2.1 the preparation of any plans, strategies or programmes for the protection and management of the Area (including the involvement of the Ngāti Awa Governance Entity in such plans, strategies, or programmes);
- 3.2.2 any survey to identify the number and type of uses which are appropriate in relation to the Area; and

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

3.3.3 any programme to eradicate noxious flora or fauna from the Area.

3.3 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clauses 3.1 and 3.2*, the Crown will:

3.3.1 inform the Ngāti Awa Governance Entity of any applications to the Crown for rights for use or occupation (including any renewals) in relation to the Area (but retains the right to withhold commercially sensitive information); and

3.3.2 provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its views to the Crown on any matter on which it is consulted.

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22* of the Deed of Settlement):

(a) except as expressly provided in this Deed of Recognition:

(i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and

(ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;

(b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

(c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;

(d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and

DEED OF RECOGNITION FOR THE RANGITAIKI RIVER

- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned and managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Rangitaiki River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18* of the Deed of Settlement), a Deed of Recognition will terminate in relation to the Area or part of it (the “*Identified Area*”) if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new

responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

- 9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed.
- 9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Commissioner of
Crown lands:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 5.17
DEED OF RECOGNITION FOR THE TARAWERA RIVER
(Clause 5.2.16)

(Department of Conservation)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Tarawera River

The area which is the subject of this Deed is the bed of the river known as the Tarawera River (*the Area*) as shown on SO 61403, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Tarawera River as set out below ("*Statement of Association*").

- 2.2 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Tarawera River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Tarawera River to Ngāti Awa.
- 2.3 The Tarawera River was created by the tears of Tarawera. Tarawera yearned for her husband, Pūtauaki who left her for the island of Moutohorā. In ancient times before the arrival of the waka Mātaatua the banks of the Tarawera River were inhabited by ancestors of Ngāti Awa including Te Tini o Toi, Te Tini o Awa and Te Tini o Kawerau. In more modern times, but long before the arrival of Europeans, hapū such as Ngai Te Rangihouhiri II, Ngāti Hikakino and Te Tāwera utilised the resources of the river and occupied its banks.
- 2.4 A number of tipua (guardian spirits) and taniwha of special significance to Ngāti Awa inhabited the Tarawera River. Taratua was one such taniwha. This feared taniwha of Ngāti Awa lived at Ruataniwha. In ancient times Taratua terrorised and devoured people attempting to travel along the River. Taratua was later killed by an ancestor of Ngāti Awa named Iratūmoana. The story of Taratua is well known and features the Ngāti Awa tipuna Iratūmoana, who was successful in killing the feared taniwha.
- 2.5 Te Awa a Te Atua is the name of the mouth of the Tarawera River. When the Mātaatua waka arrived at Te Awa a Te Atua, Wairaka bathed at the river mouth. While Wairaka was swimming she was overcome with her menstruation. Her father, Toroa, chief of the Mātaatua Waka saw blood floating down the river and asked whose godly blood it was. Wairaka confirmed that it was her blood and Toroa named the River mouth Te Awa a Te Atua (the River of the Gods).
- 2.6 The people of Ngāti Awa lived in many villages located along the banks of the Tarawera River. The riverbanks thus became the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Tarawera River.
- 2.7 Awaiti is a well known Ngāti Awa waahi tapu along the Tarawera River. Awaiti was named by the Ngāti Awa chief Tīhori when he released the two taniwha Tūtarakauika and Tūpai into the Tarawera River. These two taniwha formed the Kōmutumutu River, which connects the Rangitaiki and Tarawera Rivers. The

Kōmutumutu River flows into the Tarawera River (the smaller river), hence the name, Te Awaiti o Tīhori. Another site near the Tarawera River named by Tīhori was Kōpai o Piko. Kōpai o Piko was named when Tīhori found out that his wife had been unfaithful to him and he decided to leave Matahina. Tīhori built a waka, Whakapaukarakia, and he left the district via the Rangitaiki River and then through Kōmutumutu into the Tarawera River and finally out at Te Awa a Te Atua. The two taniwha, Tūtarakauika and Tūpai, dug out a channel which enabled Tīhori to travel to Te Awa a Te Atua. The channel they created formed bends in the land that established the Kōmutumutu River hence the name Kōpai o Piko.

- 2.8 Te Tatau o Hape is another waahi tapu of Ngāti Awa at the Tarawera Falls. Hape was a great ancestor of Ngāti Awa who went in search of greenstone. Hape travelled along the Tarawera River during his journey. When Hape arrived at the Tarawera Falls, he placed a huge boulder in the path of the Tarawera River, hence the Maori name of the Tarawera Falls, Te Tatau a Hape (The door of Hape).
- 2.9 The Tarawera River was a major food and water resource to the Ngāti Awa people both prior to and since the arrival of the Mātaatua Waka. Ngāti Awa people resided in a number of pā sites located along the riverbank. Such sites are significant to Ngāti Awa and illustrate Ngāti Awa connections to the Tarawera River. A sacred pā site along the Tarawera River is Parawai. Parawai was one of the pā of Te Tāwera hapū of Ngāti Awa. Parawai was the site of many battles between Ngāti Awa and other iwi. Another important pā of Ngāti Awa was Te Kōhika. This was located toward the coast and near the island pā of Te Matata and Ōmarupōtiki and was used to access the reefs at the mouth of the river. Ōmataroro was another important Ngāti Awa pā near the Tarawera River. Ngāti Awa watched over and protected the Tarawera River from such pā.
- 2.10 From time to time other hapū such as Ngāti Pūkeko and Ngāti Hāmua also lived along the Tarawera River near its mouth.
- 2.11 The Tarawera River provided an abundance of fish, eels, kākahi and white bait for the hapū of Ngāti Awa. The junction of the Waikāmihi Stream and the Tarawera River was an important fishing location for white bait, eels and other fish for Te Tāwera hapū of Ngāti Awa. As well as being an abundant source of food for the hapū of Ngāti Awa, the Tarawera River was also used as a highway to assist the transportation of materials and people up and down the River. Waka that travelled up and down the Tarawera River were launched at Ōkaunake.
- 2.12 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the

resources of the Tarawera River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of its resources. All of these values remain important to the hapū of Ngāti Awa today.

3 Role of Ngāti Awa Governance Entity

3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities which may be undertaken from time to time by the Crown in relation to the land within the Area if at any time the Crown, at its discretion, undertakes these activities:

- (a) the preparation, consistent with Part IIIA of the Conservation Act 1987, sections 40A and 40B of the Reserves Act 1977 and section 47 of the National Parks Act 1980, of all Conservation Management Strategies, Conservation Management Plans and/or National Park Management Plans which relate to the Area;
- (b) the preparation of all non-statutory plans, strategies or programmes for the protection and management of the Area in the relation to the following:
 - (i) any programme to identify and protect indigenous plants;
 - (ii) any survey to assess current and future visitor activities;
 - (iii) any programme to identify and protect wildlife;
 - (iv) any programme to eradicate pests and weeds or other introduced species; or
 - (v) any survey to identify the number and type of concessions which may be appropriate; and
- (c) the location, construction and relocation of any structures, huts, signs and tracks.

3.2 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clause 3.1* the Crown will provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its view to the Crown on any matter on which it is consulted.

3.3 The Crown will inform the Ngāti Awa Governance Entity of all concession applications to the Area (but retains the discretion to withhold commercially sensitive material).

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22* of the Deed of Settlement):

(a) except as expressly provided in this Deed of Recognition:

(i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and

(ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;

(b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;

(c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;

(d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and

(e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

(a) Any part of the bed of the river which is not owned and managed by the Crown;

- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Tarawera River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18 of the Deed of Settlement*), a Deed of Recognition will terminate in relation to the Area or part of it (the “*Identified Area*”) if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity’s rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed. In addition:

concession has the meaning given to it in the Conservation Act 1987.

9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Minister of
Conservation:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE 5.18
DEED OF RECOGNITION FOR THE TARAWERA RIVER
(Clause 5.2.16)

(Commissioner of Crown Lands)

THIS DEED is made on *[insert date]*

PARTIES

- (1) **[Name of Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Commissioner of Crown Lands (*the Crown*)

BACKGROUND

- A On *[date]* Ngāti Awa, the Ngāti Awa Governance Entity and the Crown entered into a Deed of Settlement (*the Deed of Settlement*) recording the matters required to give effect to a settlement of all of the historical claims of Ngāti Awa.
- B Under section [] of [] Act [] (*clause 5.2.16* of the Deed of Settlement), Ngāti Awa Governance Entity and the Crown agreed to enter into Deeds of Recognition acknowledging, on the terms identified below, Ngāti Awa's statement of the cultural, spiritual, historic, and traditional association on which the mana and tangata whenua status of Ngāti Awa in relation to specific areas is based.

ACCORDINGLY, the parties acknowledge and agree as follows:

1 Specific area of the Tarawera River

The area which is the subject of this Deed is the bed of the river known as the Tarawera River (*the Area*) as shown on SO 61403, South Auckland Land District.

2 Cultural, spiritual, historic and traditional associations of Ngāti Awa

- 2.1 Under section [] of [] Act [] (*clause 5.2.3(c)* of the Deed of Settlement), the Crown acknowledges Ngāti Awa's statement of Ngāti Awa's cultural, spiritual, historic, and traditional association to the Tarawera River as set out below (*"Statement of Association"*).

- 2.2 The traditions of Ngāti Awa illustrate the cultural, historical and spiritual association of Ngāti Awa to the Tarawera River. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection and continuity between generations and confirm the importance of the Tarawera River to Ngāti Awa.
- 2.3 The Tarawera River was created by the tears of Tarawera. Tarawera yearned for her husband, Pūtauaki who left her for the island of Moutohorā. In ancient times before the arrival of the waka Mātaatua the banks of the Tarawera River were inhabited by ancestors of Ngāti Awa including Te Tini o Toi, Te Tini o Awa and Te Tini o Kawerau. In more modern times, but long before the arrival of Europeans, hapū such as Ngai Te Rangihouhiri II, Ngāti Hikakino and Te Tāwera utilised the resources of the river and occupied its banks.
- 2.4 A number of tipua (guardian spirits) and taniwha of special significance to Ngāti Awa inhabited the Tarawera River. Taratua was one such taniwha. This feared taniwha of Ngāti Awa lived at Ruataniwha. In ancient times Taratua terrorised and devoured people attempting to travel along the River. Taratua was later killed by an ancestor of Ngāti Awa named Iratūmoana. The story of Taratua is well known and features the Ngāti Awa tipuna Iratūmoana, who was successful in killing the feared taniwha.
- 2.5 Te Awa a Te Atua is the name of the mouth of the Tarawera River. When the Mātaatua waka arrived at Te Awa a Te Atua, Wairaka bathed at the river mouth. While Wairaka was swimming she was overcome with her menstruation. Her father, Toroa, chief of the Mātaatua Waka saw blood floating down the river and asked whose godly blood it was. Wairaka confirmed that it was her blood and Toroa named the River mouth Te Awa a Te Atua (the River of the Gods).
- 2.6 The people of Ngāti Awa lived in many villages located along the banks of the Tarawera River. The riverbanks thus became the repository of many kōiwi tangata. Urupā are the resting places of Ngāti Awa tipuna and, as such, are the focus of whānau traditions. Urupā and waahi tapu are places holding the memories, traditions, victories and defeats of Ngāti Awa tipuna, and are frequently protected in secret locations. All elements of the natural environment possess a life force and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāti Awa whānui to the Tarawera River.
- 2.7 Awaiti is a well known Ngāti Awa waahi tapu along the Tarawera River. Awaiti was named by the Ngāti Awa chief Tīhori when he released the two

taniwha Tūtarakauika and Tūpai into the Tarawera River. These two taniwha formed the Kōmutumutu River, which connects the Rangitaiki and Tarawera Rivers. The Kōmutumutu River flows into the Tarawera River (the smaller river), hence the name, Te Awaiti o Tīhori. Another site near the Tarawera River named by Tīhori was Kōpai o Piko. Kōpai o Piko was named when Tīhori found out that his wife had been unfaithful to him and he decided to leave Matahina. Tīhori built a waka, Whakapaukarakia, and he left the district via the Rangitaiki River and then through Kōmutumutu into the Tarawera River and finally out at Te Awa a Te Atua. The two taniwha, Tūtarakauika and Tūpai, dug out a channel which enabled Tīhori to travel to Te Awa a Te Atua. The channel they created formed bends in the land that established the Kōmutumutu River hence the name Kōpai o Piko.

- 2.8 Te Tatau o Hape is another waahi tapu of Ngāti Awa at the Tarawera Falls. Hape was a great ancestor of Ngāti Awa who went in search of greenstone. Hape travelled along the Tarawera River during his journey. When Hape arrived at the Tarawera Falls, he placed a huge boulder in the path of the Tarawera River, hence the Maori name of the Tarawera Falls, Te Tatau a Hape (The door of Hape).
- 2.9 The Tarawera River was a major food and water resource to the Ngāti Awa people both prior to and since the arrival of the Mātaatua Waka. Ngāti Awa people resided in a number of pā sites located along the riverbank. Such sites are significant to Ngāti Awa and illustrate Ngāti Awa connections to the Tarawera River. A sacred pā site along the Tarawera River is Parawai. Parawai was one of the pā of Te Tāwera hapū of Ngāti Awa. Parawai was the site of many battles between Ngāti Awa and other iwi. Another important pā of Ngāti Awa was Te Kōhika. This was located toward the coast and near the island pā of Te Matata and Ōmarupōtiki and was used to access the reefs at the mouth of the river. Ōmataroro was another important Ngāti Awa pā near the Tarawera River. Ngāti Awa watched over and protected the Tarawera River from such pā.
- 2.10 From time to time other hapū such as Ngāti Pūkeko and Ngāti Hāmua also lived along the Tarawera River near its mouth.
- 2.11 The Tarawera River provided an abundance of fish, eels, kākahi and white bait for the hapū of Ngāti Awa. The junction of the Waikāmihi Stream and the Tarawera River was an important fishing location for white bait, eels and other fish for Te Tāwera hapū of Ngāti Awa. As well as being an abundant source of food for the hapū of Ngāti Awa, the Tarawera River was also used as a highway to assist the transportation of materials and people up and down the

River. Waka that travelled up and down the Tarawera River were launched at Okauneke.

- 2.12 The tipuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Tarawera River, the relationship of people with the River and their dependence on it, and tikanga for the proper and sustainable utilisation of its resources. All of these values remain important to the hapū of Ngāti Awa today.

3 Role of Ngāti Awa Governance Entity

- 3.1 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard must be had to its views relating to the association described in the Statement of Association concerning the consideration by the Crown from time to time of any application to the Crown for any rights for use or occupation (including any renewals), in relation to those parts of the riverbed within the Area that are administered by the Commissioner of Crown Lands, including the terms and conditions of any rights of use or occupation.
- 3.2 By reason of the Crown's acknowledgement of the Statement of Association, the Ngāti Awa Governance Entity must be consulted and regard had to its views relating to the association described in the Statement of Association concerning the following management and administration activities within the Area if at any time the Crown, at its discretion, undertakes these activities:
- 3.2.1 the preparation of any plans, strategies or programmes for the protection and management of the Area (including the involvement of the Ngāti Awa Governance Entity in such plans, strategies, or programmes);
 - 3.2.2 any survey to identify the number and type of uses which are appropriate in relation to the Area; and
 - 3.2.3 any programme to eradicate noxious flora or fauna from the Area.
- 3.3 In order to enable the Ngāti Awa Governance Entity to fulfil its role under *clauses 3.1* and *3.2*, the Crown will:
- 3.3.1 inform the Ngāti Awa Governance Entity of any applications to the Crown for rights for use or occupation (including any renewals) in

DEED OF RECOGNITION FOR TARAWERA RIVER

relation to the Area (but retains the right to withhold commercially sensitive information); and

- 3.3.2 provide the Ngāti Awa Governance Entity with relevant information to enable the Ngāti Awa Governance Entity to consider and advise its views to the Crown on any matter on which it is consulted.

4 Other provisions

4.1 Under sections [] of [] Act [] (*clauses 5.2.13 and 5.2.20 to 5.2.22 of the Deed of Settlement*):

- (a) except as expressly provided in this Deed of Recognition:
- (i) this Deed of Recognition does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
 - (ii) without limiting *clause 4(a)(i)*, no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa's association to the Area than that person or entity would give under the relevant statute, regulation or bylaw, if this Deed of Recognition did not exist in respect of the Area;
- (b) except as expressly provided in this Deed of Recognition, this Deed does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement;
- (c) except as expressly provided in this Deed of Recognition, this Deed does not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Area;
- (d) nothing in this Deed requires the Crown to increase or resume any management or administrative function; and
- (e) it is recognised that the Crown may take only limited management or administrative functions in relation to the Area.

4.2 In this Deed of Recognition the bed of the river does not include:

- (a) Any part of the bed of the river which is not owned and managed by the Crown;
- (b) Any land which the waters of the river do not cover at its fullest flow without overlapping its banks;
- (c) The bed of any artificial watercourse; or
- (d) The bed of any tributary flowing into the river.

5 No limitation on Crown

The entry into this Deed does not prevent the Crown from entering into a Deed of Recognition in respect of the Tarawera River with a person or persons other than Ngāti Awa or a Representative Entity.

6 Termination

Under section [] of the [] Act [] (*clause 5.2.18* of the Deed of Settlement), a Deed of Recognition will terminate in relation to the Area or part of it (the “*Identified Area*”) if:

- (a) The Ngāti Awa Governance Entity and the Crown agree in writing that this Deed of Recognition is no longer appropriate in respect of the Identified Area; or
- (b) The Identified Area is disposed of by the Crown; or
- (c) The responsibility for managing the Identified Area is transferred to a different Ministry or Department of the Crown.

7 Continued input

If a Deed of Recognition terminates in relation to an Identified Area and responsibility for managing the Identified Area is transferred to a different Ministry or Department, the Crown will take reasonable steps to ensure that the Ngāti Awa Governance Entity continues to have input into the administration or management of that Identified Area through negotiation with the new responsible Minister, the Commissioner of Crown Lands or other responsible official, as the case may be.

8 No assignment

Ngāti Awa Governance Entity's rights and obligations under this Deed of Recognition are not assignable.

9 Interpretation

9.1 Terms defined in the Deed of Settlement and [] Act [] will have the same meaning in this Deed.

9.2 To the extent that any inconsistencies exist between this Deed of Recognition and the Deed of Settlement the provisions of the Deed of Settlement will prevail.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by the Commissioner of
Crown lands:

in the presence of:

Name:

Occupation:

Address:

NOHOANGA SITES

SCHEDULE 5.19
NOHOANGA SITES
(Clause 5.6.1)

South Auckland Land District – Whakatāne District

Waterway	Nohoanga Site	Description	Special Requirements
Tarawera River	Te Awa a Te Atua	1.0 hectare, approximately, being Part Section 6 Block VI Awaateatua Survey District. Part Gazette Notice S.594936. Subject to survey. As shown marked A on SO 307577.	No dogs No open fires
Part Ōhiwa Harbour	Port Ōhope Recreation Reserve	1.0 hectare, approximately, being Part Allotment 669 Waimana Parish. Part Gazette Notice H.045762. Subject to survey. As shown on SO 61692.	No open fires
Whakatāne River	Ōhineteraraku Scenic Reserve	1.0 hectare, approximately, being Part Allotment 666 Waimana Parish. Part New Zealand Gazette 1975 page 652. Subject to survey. As shown on SO 61693.	No open fires
Rangitaiki River	Thornton Lagoon Wildlife Management Reserve	1.0 hectare, approximately, being Part Allotment 274 Rangitaiki Parish.	No dogs No open fires

NOHOANGA SITES

Waterway	Nohoanga Site	Description	Special Requirements
		Part New Zealand Gazette 1975 page 16. Subject to survey. As shown on SO 61691.	

SCHEDULE 5.20
FORM OF NOHOANGA ENTITLEMENT

(Clause 5.6.3)

THIS NOHOANGA ENTITLEMENT is granted on *[insert date]*

PARTIES

- (1) **[Name of the Ngāti Awa Governance Entity]** (*Ngāti Awa Governance Entity*).
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Conservation *[and the Minister of Maori Affairs]* (*the Crown*).

BACKGROUND

- A. On [], the Crown, the Ngāti Awa Governance Entity and Ngāti Awa entered into a deed of settlement (the “Deed of Settlement”) recording the matters required to give effect to a settlement of all the historical claims of Ngāti Awa.
- B. Under the provisions of the Deed of Settlement, the [] Act [] provides for the granting as redress of Nohoanga Entitlements on the terms set out in the Deed of Settlement.

THE PARTIES agree as follows:

1 INTERPRETATION

1.1 Definitions from Act

Terms defined in the Deed of Settlement and the [] Act [] will have the same meaning in this Nohoanga Entitlement.

1.2 Other definitions

[Insert other definitions as required by specific Nohoanga Entitlements].

2 ENTITLEMENT LAND

The area which is the subject of this Nohoanga Entitlement is [*insert description of site as identified on final survey plan*] (the “Entitlement Land”) being adjacent to [*insert name of lake/river*] (the “Waterway”).

3 CREATION OF NOHOANGA ENTITLEMENT

The Crown hereby grants in favour of the Ngāti Awa Governance Entity a Nohoanga Entitlement for the sole purpose of permitting Members of Ngāti Awa on a temporary and non-commercial basis, to occupy the Entitlement Land:

- (a) so as to have access to the Waterway for lawful fishing; and
- (b) for lawful gathering of other natural resources in the vicinity of the Entitlement Land,

on the terms and conditions set out in this Nohoanga Entitlement.

4 TERMS OF NOHOANGA ENTITLEMENT

4.1 Length of Nohoanga Entitlement

The initial term of this Nohoanga Entitlement shall be a period of ten years with effect from the Settlement Date.

4.2 Nohoanga Entitlement shall be renewed

Unless terminated under *clause 5*, this Nohoanga Entitlement shall be renewed at the expiry of its term at the option of the Ngāti Awa Governance Entity for further terms of ten years each.

4.3 Nohoanga Entitlement period

4.3.1 Subject to *clauses 4.3.2* and *4.3.3*, the Ngāti Awa Governance Entity has the right to permit Members of Ngāti Awa to occupy the Entitlement Land:

- (a) for the purpose set out in *clause 3*; and
- (b) to the exclusion of other persons during the period or periods that it exercises the right to occupy the Entitlement Land.

4.3.2 The Ngāti Awa Governance Entity may permit Members of Ngāti Awa to occupy the Entitlement Land for such period or periods in a calendar year that do not exceed 210 days in total.

4.3.3 The Ngāti Awa Governance Entity must not permit Members of Ngāti Awa to occupy the Entitlement Land in a calendar year during the period beginning on 1 May and ending on the close of 15 August.

4.3.4 *Clause 4.3.1* and the grant and exercise of this Nohoanga Entitlement does not prevent agents of the Crown, or persons exercising statutory powers, undertaking their functions in relation to the Entitlement Land.

4.4 Temporary dwellings

The Ngāti Awa Governance Entity may permit Members of Ngāti Awa to erect camping shelters or similar temporary dwellings on the Entitlement Land during the period or periods that the right to occupy the Entitlement Land under *clause 4.3* is being exercised, provided that the Ngāti Awa Governance Entity must ensure the removal of any camping shelters or similar temporary dwellings that are erected on the Entitlement Land under this Nohoanga Entitlement whenever the right to occupy the Entitlement Land is not being exercised.

4.5 Condition of Entitlement Land when ceasing to occupy it

The Ngāti Awa Governance Entity must ensure, whenever Members of Ngāti Awa who have been permitted by the Ngāti Awa Governance Entity to occupy the Entitlement Land cease to exercise the right to occupy the Entitlement Land:

- (a) the removal of all rubbish and waste material (including human waste) from the Entitlement Land and any adjacent reserve; and
- (b) that the Entitlement Land is left in substantially the same condition as it was in at the beginning of that period of occupation, except for temporary effects normally associated with occupation of Entitlement Land under a Nohoanga Entitlement.

4.6 Activities on Entitlement Land

Subject to *clause 4.4*:

- (a) The Ngāti Awa Governance Entity may, with the consent of the Land Holding Agent, undertake such activities on the Entitlement Land that are reasonably necessary for the Entitlement Land to be used for the purpose set out in *clause 3*.
- (b) When applying for the Land Holding Agent's consent under *clause 4.6(a)*, the Ngāti Awa Governance Entity must provide to the Land Holding Agent details relating to the proposed activities, including (but not limited to):

- (i) the effect of the activities on the Entitlement Land and, if the Entitlement Land is land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, on the surrounding land and any associated flora or fauna; and
 - (ii) any measures that the Ngāti Awa Governance Entity proposes to take (if the Land Holding Agent's consent is given) to avoid, remedy, or mitigate any adverse effects.
- (c) In considering whether to give consent in relation to land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, the Land Holding Agent may require the Ngāti Awa Governance Entity to obtain, at the Ngāti Awa Governance Entity's expense, an environmental impact report about the proposed activities, and an audit of that report.
- (d) The giving of consent under *clause 4.6(a)* is at the complete discretion of the Land Holding Agent.
- (e) The Land Holding Agent may give consent under *clause 4.6(a)* subject to such conditions as he or she thinks fit to impose.
- (f) Without limiting *clause 4.6(e)*, in giving consent in relation to land held under the Conservation Act 1987 or any statute in the First Schedule to that Act, the Land Holding Agent may impose reasonable conditions to avoid, remedy, or mitigate any adverse effects of the proposed activities on the Entitlement Land, the surrounding land, or associated flora or fauna.
- (g) If the Crown has complied with its obligations under this Nohoanga Entitlement, the Crown is not liable to compensate the Ngāti Awa Governance Entity (whether on termination of this Nohoanga Entitlement or at any other time) for any activities undertaken by the Ngāti Awa Governance Entity under this clause..

4.7 Crown's obligation to provide lawful access

4.7.1 If an event in *clause 4.7.2* occurs during the term of this Nohoanga Entitlement, the Crown must ensure that the Ngāti Awa Governance Entity continues, for the rest of the term of the Nohoanga Entitlement, to have the same type of lawful access to the Entitlement Land as it had before the event occurred.

4.7.2 The events are:

- (a) The alienation by the Crown of land adjacent to the Entitlement Land; or

(b) A change in classification or status of land adjacent to the Entitlement Land.

4.7.3 The Crown's obligation in *clause 4.7.1* is subject to compliance with any applicable provision, in or under any legislation.

4.8 Continuing public access along Waterway

The granting by the Crown, and exercise by the Ngāti Awa Governance Entity, of this Nohoanga Entitlement must not impede access by members of the public along the Waterway that this Nohoanga Entitlement relates to.

4.9 Compliance with laws

The Ngāti Awa Governance Entity (and Members of Ngāti Awa permitted by the Ngāti Awa Governance Entity to occupy the Entitlement Land under *clause 4.3*), and the activities carried on by the Ngāti Awa Governance Entity on the Entitlement Land, (including any activities undertaken on the Entitlement Land under *clause 4.6*) are subject to all laws, bylaws, regulations, and land and water management practices that apply to the Entitlement Land including the need, as required, to apply for resource consent under the Resource Management Act 1991.

4.10 Notification of activities

The Land Holding Agent must, in carrying out land and water management practices relating to the Entitlement Land, have regard to the existence of this Nohoanga Entitlement and must:

- (a) notify the Ngāti Awa Governance Entity of any activity which may adversely affect the Ngāti Awa Governance Entity's use of the Entitlement Land for the purpose set out in *clause 3*; and
- (b) avoid unreasonable disruption to the Ngāti Awa Governance Entity's use of the Entitlement Land for the purpose set out in *clause 3*.

4.11 Nohoanga Entitlement non-assignable

The Ngāti Awa Governance Entity's rights under this Nohoanga Entitlement are not assignable.

4.12 Rights to alienate adjacent land

The grant and exercise of this Nohoanga Entitlement does not restrict the Crown's right to alienate the Entitlement Land, land adjacent to the Entitlement Land, or land adjacent to the Waterway next to which the Entitlement Land is situated.

4.13 Enforceability

During the term of this Nohoanga Entitlement and while Members of Ngāti Awa (who have been permitted by the Ngāti Awa Governance Entity to occupy the Entitlement Land under *clause 4.3*) are exercising the right to occupy the Entitlement Land under the terms of this Nohoanga Entitlement, the Ngāti Awa Governance Entity may enforce its rights under this Nohoanga Entitlement against persons who are not parties to the Deed of Settlement as if the Ngāti Awa Governance Entity were the owner of the Entitlement Land.

4.14 Crown not obliged to enforce

The Crown is not obliged to enforce the rights of the Ngāti Awa Governance Entity under this Nohoanga Entitlement against persons who are not parties to the Deed of Settlement on behalf of the Ngāti Awa Governance Entity.

4.15 Suspension of Nohoanga Entitlement

4.15.1 The Land Holding Agent may suspend this Nohoanga Entitlement in accordance with this *clause 4.15*.

4.15.2 The Land Holding Agent must not suspend the Nohoanga Entitlement unless he or she first:

- (a) consults the Ngāti Awa Governance Entity; and
- (b) has particular regard to the views of the Ngāti Awa Governance Entity.

4.15.3 The Land Holding Agent must not suspend this Nohoanga Entitlement unless he or she considers the suspension is necessary for the management of the land, having regard to the purposes for which the Entitlement Land is held.

4.15.4 If this Nohoanga Entitlement is suspended, the Ngāti Awa Governance Entity may, after the end of the suspension, permit Members of Ngāti Awa to occupy the Entitlement Land for a period equal to that part of the period of suspension equal to the period that the Governance Entity would otherwise have been entitled to occupy the Entitlement Land.

4.15.5 The occupation of Entitlement Land under *clause 4.15.4* is not subject to the restrictions in *clause 4.3.3*.

4.16 Targeted Rates

The Settlement Legislation will provide that:

- (a) Section 9 of the Local Government (Rating) Act 2002 will apply to the Entitlement Land; and
- (b) The Ngāti Awa Governance Entity is liable to pay targeted rates payable under section 9 of the Local Government (Rating) Act 2002 in respect of the Entitlement Land only in proportion to the period for which the Ngāti Awa Governance Entity is entitled to occupy the Entitlement Land under *clause 4.3*.

5 TERMINATION

5.1 Breach of terms of Nohoanga Entitlement

- 5.1.1 If the Ngāti Awa Governance Entity defaults in performing any of its obligations under this Nohoanga Entitlement, and such default is capable of remedy, the Crown may give written notice to the Ngāti Awa Governance Entity specifying the default and the remedy which the Crown requires (which remedy must be reasonable in the circumstances).
- 5.1.2 Unless within 41 Business Days after the giving of notice under *clause 5.1.1* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given under *clause 5.1.1*, the Crown may immediately terminate this Nohoanga Entitlement by notice in writing to the Ngāti Awa Governance Entity.
- 5.1.3 If the default is not one which is capable of remedy the Crown may immediately terminate this Nohoanga Entitlement by notice in writing to the Ngāti Awa Governance Entity.
- 5.1.4 On termination of this Nohoanga Entitlement under *clauses 5.1.2* or *5.1.3*, the Ngāti Awa Governance Entity may, after the expiry of two years from the date of termination of the Nohoanga Entitlement, apply to the Minister of Maori Affairs for the grant of a replacement Nohoanga Entitlement meeting the criteria set out in *clause 5.6.5* of the Deed of Settlement.
- 5.1.5 On receipt of an application under *clause 5.1.4*, the Crown may, in its discretion, take reasonable steps to grant a replacement Nohoanga Entitlement in the same form as this Nohoanga Entitlement (or as varied in accordance with *clause 6*) and over land that:
 - (a) meets the criteria set out in *clause 5.6.5* of the Deed of Settlement; and

- (b) is identified by similar processes used by the Crown and Ngāti Awa to identify Nohoanga Sites prior to entry into the Deed of Settlement.

5.1.6 *Clauses 5.1.4 and 5.1.5* shall survive the termination of this Nohoanga Entitlement.

5.2 Termination for other reasons

5.2.1 The Crown may terminate this Nohoanga Entitlement by giving written notice to the Ngāti Awa Governance Entity on one or more of the following grounds:

- (a) That the Crown has alienated the Entitlement Land;
- (b) That the Entitlement Land has, by a natural cause, been destroyed or permanently and detrimentally affected; or
- (c) That the Entitlement Land is on reserve land which may be required for the specific purpose that it is held as a reserve and the Entitlement Land becomes so required for that purpose;
- (d) That the Entitlement Land is an unformed road that has become formed; or
- (e) That, subject to *clause 4.7*, lawful access to the Entitlement Land no longer exists.

5.2.2 The Ngāti Awa Governance Entity and the Crown may terminate this Nohoanga Entitlement by agreement in writing.

5.2.3 On termination of a Nohoanga Entitlement under *clause 5.2.1* or *5.2.2*, the Crown must take reasonable steps to grant a replacement Nohoanga Entitlement to the Ngāti Awa Governance Entity.

5.2.4 *Clause 5.2.3* does not apply if the fee simple estate in the Entitlement Land is vested in the Ngāti Awa Governance Entity.

5.2.5 The grant of a replacement Nohoanga Entitlement under *clause 5.2.3* must be in the same form as this Nohoanga Entitlement (or as varied in accordance with *clause 6*) and be over land that:

- (a) meets the criteria set out in *clause 5.6.5* of the Deed of Settlement; and
- (b) is identified by similar processes used by the Crown and Ngāti Awa to identify Nohoanga Sites prior to entry into the Deed of Settlement.

5.2.6 *Clauses 5.2.3, 5.2.4 and 5.2.5 shall survive the termination of this Nohoanga Entitlement.*

6 VARIATION

6.1 The form of this Nohoanga Entitlement may be varied by:

- (a) The addition of terms reasonably required by the Crown to protect and preserve the Entitlement Land, the surrounding land, or associated flora or fauna; or
- (b) Agreement between the Land Holding Agent and the Ngāti Awa Governance Entity.

6.2 Any additional terms and any variation of terms under *clause 6.1* must be in writing and not be inconsistent with *clause 5.6* of the Deed of Settlement.

7 OTHER MATTERS

7.1 Rights not affected

Under section [] of the [] Act [] except as expressly provided in this Nohoanga Entitlement, the existence of this Nohoanga Entitlement will not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

7.2 Limitation of rights

Under section [] of the [] Act [] except as expressly provided in this Nohoanga Entitlement, the existence of this Nohoanga Entitlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Entitlement Land.

8 SPECIAL CONDITIONS

Including special requirement as set out in Schedule 5.19 of the Deed of Settlement]

[insert appropriate attestation for the Ngāti Awa Governance Entity]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Conservation

WITNESS

Name:

Occupation:

Address:

[**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Maori Affairs

WITNESS

Name:

Occupation:

Address:]

SCHEDULE 5.21
FORM OF DEPARTMENT OF CONSERVATION PROTOCOL
(Clause 5.7.2(a))

**A PROTOCOL issued by the CROWN through the MINISTER OF
CONSERVATION regarding DEPARTMENT OF CONSERVATION /
TE PAPA ATAWHAI INTERACTION with NGĀTI AWA on
SPECIFIED ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 27 March 2003 between Ngāti Awa, the Ngāti Awa Governance Entity and the Crown (the "*Deed of Settlement*"), the Crown, through the Minister of Conservation (the "*Minister*") agreed to issue a Protocol (the "*DOC Protocol*") setting out how the Department of Conservation (the "*Department*") will interact with the Ngāti Awa Governance Entity (the "*Governance Entity*") on the matters specified in the DOC Protocol.
- 1.2 Both the Department and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this DOC Protocol that achieves over time the conservation policies, actions and outcomes sought by both the Governance Entity and the Department, as set out in this DOC Protocol.
- 1.3 Ngāti Awa accept a responsibility to preserve, protect, and manage natural and historic resources through its tino rangatiratanga and kaitiakitanga.
- 1.4 The purpose of the Conservation Act 1987 (the "*Act*") is to manage natural and historic resources under the Act and the statutes in the First Schedule of the Act. The Minister and Director-General are required to exercise particular functions, powers and duties under that legislation.

2 PURPOSE OF THE PROTOCOL

- 2.1 The purpose of this Protocol is to assist the Department and the Governance Entity to exercise their respective responsibilities with the utmost co-operation to achieve over time the conservation policies, actions and outcomes sought by both.

- 2.2 This Protocol sets out a framework that enables the Department and Ngāti Awa to establish a healthy and constructive working relationship that is consistent with section 4 of the Act. It provides for Ngāti Awa to have meaningful input into certain decision-making processes and management of conservation lands within the Ngāti Awa DOC Protocol Area.

3 PROTOCOL AREA

- 3.1 This Protocol applies across the Ngāti Awa DOC Protocol Area which means the area identified in the map included in *Attachment A* of this Protocol together with the adjacent waters and Offshore Islands to the extent they are administered by the Department of Conservation.

4 TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section [] of the [] Act [] (the “*Settlement Legislation*”) and *clause 5.7* of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in *Attachment B* of this Protocol.

5 IMPLEMENTATION AND COMMUNICATION

- 5.1 The Department will seek to establish and maintain communication with Ngāti Awa on a continuing basis by:
- (a) Maintaining information on the Governance Entity’s office holders, and their addresses and contact details;
 - (b) Providing a primary departmental contact for the Governance Entity being the Whakatāne Field Centre Supervisor (or equivalent) who will act as a liaison person with other departmental staff;
 - (c) Providing reasonable opportunities for the Governance Entity to meet with Department managers and staff;
 - (d) Holding alternate meetings at the area office and a Ngāti Awa marae or other venue chosen by the Governance Entity to review implementation of this Protocol every six months, unless otherwise agreed. Ngāti Awa may, when such meetings are held at a Ngāti Awa marae or other venue chosen by the Governance Entity, arrange for an annual report back to the Ngāti Awa people at such meetings; and

- (e) Training relevant staff on the content of this Protocol and briefing Conservation Board members on the content of this Protocol.

5.2 Within the first year of this Protocol being issued, and on a continuing basis, the Department and the Governance Entity will discuss practical ways in which:

- (a) Ngāti Awa can exercise *kaitiakitanga* over ancestral lands, natural and historic resources and other *taonga* managed by the Department;
- (b) The Department can manage *waahi tapu*, and *taonga tapu* and other places of historic or cultural significance to Ngāti Awa in a manner which respects Ngāti Awa *tikanga* and values; and
- (c) Ngāti Awa can actively participate in conservation management and activities.

6 INPUT INTO BUSINESS PLANNING AT THE AREA OFFICE LEVEL

6.1 This Protocol provides for ongoing implementation of a range of matters as well as special projects identified by the Governance Entity, and implementation will be over time. Some of the projects identified will need specific resourcing set aside through the Department's business planning process.

6.2 The process for the involvement of the Governance Entity in the Department's business planning process will be as follows:

- (a) The Department and the Governance Entity will on an annual basis identify projects that require specific resourcing;
- (b) The identified projects will be taken into the Department's business planning process at the conservancy and regional levels and considered along with other priorities;
- (c) The decision on whether any of these projects will be funded in any business year will be made by the Conservator and the Regional General Manager;
- (d) If the Department decides to proceed with a specific project that has been identified under this paragraph 6.2, the Governance Entity (or designate) and the Department will meet again, if required, to finalise a work plan and timetable for implementation of the specified projects in that business year,

in accordance with the resources which have been allocated in the business plan.

7 CULTURAL MATERIALS

7.1 Cultural materials for the purpose of this Protocol are plants, plant materials, materials derived from animals, or birds for which the Department is responsible in the Ngāti Awa DOC Protocol Area. Some of these materials are of importance to Ngāti Awa in maintaining its culture, including medicinal practices and gathering of mahinga kai in accordance with Ngāti Awa tikanga.

7.2 Current legislation means that generally some form of concession or permit is required for any gathering and possession of cultural materials.

7.3 The Department will:

- (a) Consider requests from the Governance Entity for access to and use of cultural materials when required for cultural purposes, in accordance with the relevant legislation;
- (b) Consult with the Governance Entity in circumstances where there are competing requests between the Governance Entity and non-Ngāti Awa persons or entities for the use of cultural materials, for example for scientific research purposes, to see if the cultural and scientific or other needs can be reconciled before the Department makes a decision in respect of those requests;
- (c) Agree, where appropriate and including considering interests of other iwi, for the Governance Entity to have access to cultural materials which become available as a result of departmental operations such as track maintenance or clearance, or culling of species, or where materials become available as a result of roadkill; and
- (d) Consult with the Governance Entity on draft procedures for monitoring sustainable levels and methods of use of cultural materials.

8 HISTORIC RESOURCES / WAAHI TAPU

8.1 Ngāti Awa consider their waahi tapu, including urupā and other places of historic significance are taonga (priceless treasures). The Department will respect the great significance of these taonga by fulfilling the obligations contained in this section of this Protocol.

- 8.2 The Department has a statutory role to conserve historic resources in protected areas and will endeavour to do this for sites of significance to Ngāti Awa in association with them and having regard to Ngāti Awa tikanga.
- 8.3 The Department accepts that non disclosure of locations of places known to Ngāti Awa may be an option that the Governance Entity chooses to take to preserve the waahi tapu nature of places. There may be situations where the Governance Entity will ask the Department to treat information it provides on waahi tapu sites in a confidential way. The Department will consult the Governance Entity on draft processes for dealing with information on waahi tapu sites in a way that both recognises the management challenges that confidentiality can present and respects the views of Ngāti Awa.
- 8.4 The responsibility for identifying and assessing Ngāti Awa heritage values largely rests with Ngāti Awa. To assist in this process, the Governance Entity will notify the Field Centre Supervisor in the first instance of any concerns with the Department's management of waahi tapu areas and the Department will take reasonable steps to address the concerns.
- 8.5 The Department, at the area office level, will:
- (a) Manage sites of historic significance to Ngāti Awa according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning, as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993;
 - (b) Ensure, as far as possible, when issuing concessions that give authority for other parties to carry out activities on land administered by the Department, that the terms of the concessions provide for the concessionaire to:
 - (i) Manage the land according to the standards of conservation practice outlined in the ICOMOS New Zealand Charter 1993; and
 - (ii) Consult the Governance Entity before the utilisation of information relating to Ngāti Awa;
 - (c) Consult the Governance Entity on protection and conservation of waahi tapu and other sites of significance to Ngāti Awa;
 - (d) Inform the Governance Entity if kōiwi are found; and

- (e) When requested by the Governance Entity, discuss the recording and protecting of waahi tapu and other places of cultural significance to Ngāti Awa.

9 VISITOR AND PUBLIC INFORMATION

- 9.1 The Department has a role to share knowledge about natural and historic heritage with visitors, to satisfy their requirements for information, increase their enjoyment and understanding of this heritage, and develop an awareness of the need for its conservation.
- 9.2 In providing public information and interpretation services and facilities for visitors on the land it manages, the Department acknowledges the importance to Ngāti Awa of its tikanga, spiritual and historic values.
- 9.3 The Department, at the area office level, will seek to encourage respect for Ngāti Awa values by:
 - (a) Seeking to raise public awareness of positive conservation partnerships developed between the Governance Entity, the Department and other stakeholders, for example, by way of publications, presentations and seminars;
 - (b) Consulting the Governance Entity on how Ngāti Awa's tikanga, spiritual and historic values are respected in the provision of visitor facilities, public information and Department publications;
 - (c) Seeking to ensure that accurate information is provided about Ngāti Awa in the Department's publications by:
 - (i) Obtaining, so far as possible, the consent of the Governance Entity prior to disclosure of information obtained in confidence from Ngāti Awa; and
 - (ii) Consulting with the Governance Entity before the Department's utilisation of information relating to Ngāti Awa in new panels, signs and visitor publications;
 - (d) Seeking to encourage Ngāti Awa's participation in the Department's volunteer and conservation events programmes by informing the Governance Entity of these programmes.

10 CONSULTATION

10.1 Where the Department is required to consult under *clauses 7.3(b), 7.3(d), 8.3, 8.5(c), 9.3(b) and 9.3(c)(ii)* of this Protocol, the basic principles that will be followed by the Department in consulting with the Governance Entity in each case are:

- (a) Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal or issues to be the subject of the consultation;
- (b) Providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) Ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
- (d) Ensuring that the Department will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

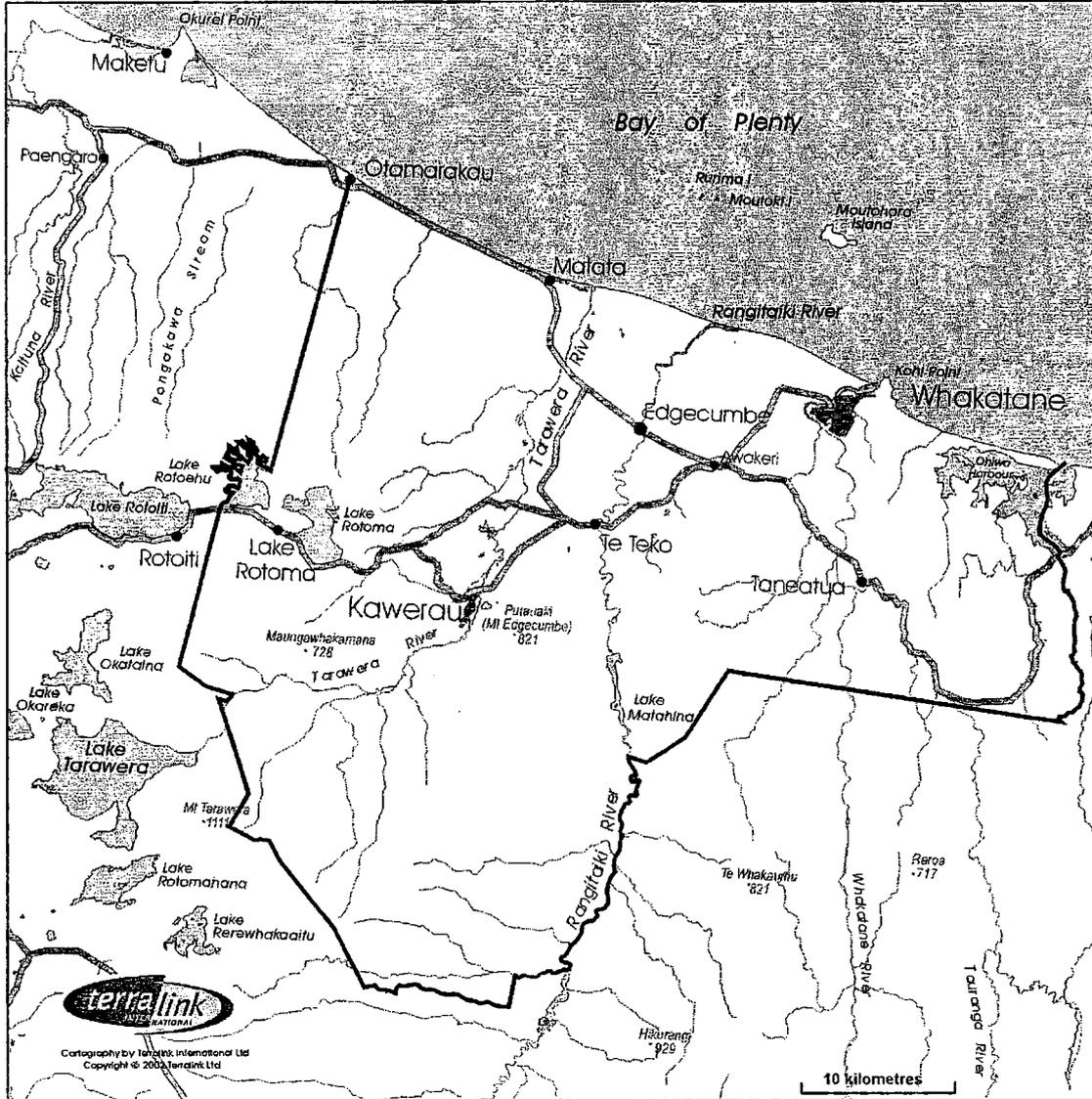
ISSUED on [insert Settlement Date]

SIGNED for and on behalf of **HER MAJESTY
THE QUEEN** in right of New Zealand by the
Minister of Conservation

WITNESS

Name:
Occupation:
Address:

ATTACHMENT A NGĀTI AWA DOC PROTOCOL AREA



ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

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

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

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

Ngāti Awa Governance Entity means [*insert name and description once entity established*]; and

Offshore Islands means the following islands situated in the Bay of Plenty, and includes any islands, islets or rocks adjacent to those islands:

- (a) Motiti Island;
- (b) Tokata Island;
- (c) Rurima Island;
- (d) Moutoki Island;
- (e) Moutohorā Island;
- (f) Whakaari/White Island; and

- (g) Volkner Rocks (to be re-named under *clause 5.10*);

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage and Chief Executive of the Ministry of Culture and Heritage (as the case may be), to the Ngāti Awa Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

2 Authority to issue, amend or cancel Protocols

Section [] of the Settlement Legislation provides that:

- (a) Subject to *clause 2(c)*, each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section [] of the Settlement Legislation at the initiative of either the Minister or the Ngāti Awa Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Ngāti Awa Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that all Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) The obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol;
- (b) That such noting of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980;
- (c) That the existence of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and
- (d) That such noting of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as it remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Ngāti Awa Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section [] of the Settlement Legislation, the Ngāti Awa Governance Entity may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with a Protocol; and

- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol issued under *clause 5.7.2* of the Deed of Settlement shall not constitute a breach of the Deed of Settlement.

7 Limitation of rights

- (a) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.
- (b) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).
- (c) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(c)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

SCHEDULE 5.22
FORM OF MINISTRY OF FISHERIES PROTOCOL
(Clause 5.7.2(b))

A PROTOCOL issued by the CROWN through the MINISTER OF FISHERIES and CHIEF EXECUTIVE, MINISTRY OF FISHERIES regarding INTERACTION with NGĀTI AWA on FISHERIES ISSUES

1 INTRODUCTION

1.1 Under the Deed of Settlement dated 27 March 2003 between Ngāti Awa, the Ngāti Awa Governance Entity and the Crown (the "*Deed of Settlement*"), the Crown through the Minister of Fisheries (the "*Minister*") agreed to issue a Protocol (the "*Fisheries Protocol*") setting out how the Ministry of Fisheries will interact with the Ngāti Awa Governance Entity (the "*Governance Entity*") on the following matters:

- (a) Recognition of the interests of Ngāti Awa in all species of fish, aquatic life or seaweed that exist within the Ngāti Awa Fisheries Protocol Area;
- (b) Development of sustainability measures, fisheries regulations and fisheries plans;
- (c) Management of customary non-commercial fisheries;
- (d) Research planning;
- (e) Consultation on the Ministry of Fisheries annual business plan;
- (f) Contracting for services; and
- (g) Employment of staff with non-commercial customary fisheries responsibilities.

1.2 For the purpose of the Fisheries Protocol, the Governance Entity is the body representative of the whānau, hapū and iwi of Ngāti Awa who have an interest in all species of fish, aquatic life and seaweed that exist within the Ngāti Awa Fisheries Protocol Area.

1.3 The obligations of the Ministry of Fisheries/Te Tautiaki i ngā tini a Tangaroa (the "*Ministry*") in respect of fisheries are to ensure ecological sustainability, to meet

FORM OF MINISTRY OF FISHERIES PROTOCOL

obligations under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the principles of the Treaty of Waitangi, to meet international obligations, to enable efficient resource use, and to ensure the integrity of fisheries management systems.

- 1.4 The Ministry and the Governance Entity are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Fisheries Protocol, as set out in this Fisheries Protocol.
- 1.5 The Minister and the Chief Executive have certain functions, powers and duties in terms of the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. In exercising such functions, powers and duties the Minister and Chief Executive will provide the Governance Entity with the opportunity for input, consistent with the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, into the policy, planning and decision-making processes as set out in this Protocol.

2 PROTOCOL AREA

- 2.1 This Fisheries Protocol applies across Ngāti Awa Fisheries Protocol Area which means the area identified in the map included as *Attachment A* of this Protocol together with the adjacent waters.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section [] of the [] Act [] (the “*Settlement Legislation*”) and *clause 5.7* of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement. The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Protocol is issued are set out in *Attachment B* of this Protocol.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will seek to establish and maintain effective and continuing communication with the Governance Entity by:
 - (a) Maintaining at national and regional levels information provided by the Governance Entity on the Governance Entity’s office holders, and their addresses and contact details; and

FORM OF MINISTRY OF FISHERIES PROTOCOL

- (b) Providing reasonable opportunities for representatives of the Governance Entity to meet with Ministry managers and staff.

4.2 The Chief Executive agrees that the appropriate Ministry staff will:

- (a) Meet with the Governance Entity to review implementation of this Protocol at least once a year, unless otherwise agreed, at a Ngāti Awa marae or any other venue chosen by the Governance Entity that is appropriate;
- (b) Train relevant staff on the content of the Protocol and provide ongoing training as required; and
- (c) Inform relevant fisheries stakeholders about this Protocol and the Ngāti Awa settlement, and provide ongoing information as required.

5 SPECIES OF FISH, AQUATIC LIFE AND SEAWEED

Taonga Fish Species

5.1 The Crown, through the Minister and Chief Executive, recognises that Ngāti Awa have a customary non-commercial interest in and a special relationship with all species of fish, aquatic life and seaweed found within the Ngāti Awa Fisheries Protocol Area and managed by the Ministry under the Fisheries legislation.

Tuna (Eel)

5.2 Without limiting *clause 5.1*, the Ministry recognises that Ngāti Awa have a customary non-commercial interest in the tuna (eel) fishery within the Ngāti Awa Fisheries Protocol Area and, in particular, that Ngāti Awa have an interest in the possibility of the enhancement of the tuna (eel) fishery within the Ngāti Awa Fisheries Protocol Area through the transfer of elvers.

5.3 The Ministry undertakes to meet with the Governance Entity within the first year of the Settlement Date at a mutually acceptable venue to:

- (a) Report to Ngāti Awa on current management of the tuna (eel) fishery within the Ngāti Awa Fisheries Protocol Area; and
- (b) Discuss any matters raised by Ngāti Awa in respect of ongoing management of the tuna (eel) fishery within the Ngāti Awa Fisheries Protocol Area, including the possibility of enhancing the tuna (eel) fishery in the Ngāti Awa Fisheries Protocol Area through the transfer of elvers.

6 DEVELOPMENT OF SUSTAINABILITY MEASURES, FISHERIES REGULATIONS AND FISHERIES PLANS

6.1 If the Ministry is exercising powers or functions, under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlements Act 1992, relating to the setting of sustainability measures, or the making of fisheries regulations, or the development/implementation of a fisheries plan, made under section 11A of the Fisheries Act 1996 (a "*Fisheries Plan*"), for any species of fish, aquatic life or seaweed within the Ngāti Awa Fisheries Protocol Area, the Ministry must:

- (a) Provide the Governance Entity with all reasonably available background information in relation to the setting of sustainability measures, the making of fisheries regulations, and the development/ implementation of Fisheries Plans;
- (b) Inform the Governance Entity, in writing, of any proposed changes in relation to:
 - (i) the setting of sustainability measures;
 - (ii) the making of fisheries regulations; and
 - (iii) the development/implementation of Fisheries Plans,as soon as reasonably practicable to enable Ngāti Awa to respond in an informed way;
- (c) Provide the Governance Entity at least 30 working days from receipt of the written information described in paragraph 6.1(b) in which to respond, verbally or in writing to any such proposed changes;
- (d) As far as reasonably practicable, meet with the Governance Entity to discuss any proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, if requested by the Governance Entity to do so;
- (e) Incorporate the views of the Governance Entity into any advice given to the Minister or other stakeholders on proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, that affect Ngāti Awa's interests and provide a copy of that advice to the Governance Entity; and

FORM OF MINISTRY OF FISHERIES PROTOCOL

- (f) Report back to the Governance Entity within 20 working days of any final decision in relation to sustainability measures, fisheries regulations, or Fisheries Plans.

7 MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

- 7.1 The Ministry undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include:
 - (a) Discussions with the Ministry on the implementation of the regulations within the Ngāti Awa Fisheries Protocol Area; and
 - (b) Provision of existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Ngāti Awa Fisheries Protocol Area.

8 RESEARCH PLANNING PROCESS

- 8.1 The Ministry will provide the Governance Entity with all reasonably available background information (including information on processes, timelines and Ministry objectives) so that the Governance Entity may have input into and participate in the research planning process of the Ministry.
- 8.2 The Ministry will consult with the Governance Entity on all research proposals for fisheries within the Ngāti Awa Fisheries Protocol Area.
- 8.3 The Ministry will provide the Governance Entity, within 30 working days of the execution of the Protocol, with information on the requirements for becoming an 'Approved Research Provider'. Should the requirements for becoming and remaining an 'Approved Research Provider' change over time, the Ministry will inform the Ngāti Awa Governance Entity about those changes.

9 CONSULTATION ON MINISTRY OF FISHERIES ANNUAL BUSINESS PLAN

- 9.1 The Ministry will each year consult with the Governance Entity on the Ministry of Fisheries annual business plan.
- 9.2 The Ministry will provide the Governance Entity with the opportunity to put forward proposals for the provision of services that they deem necessary for the

management of fisheries within the Ngāti Awa Fisheries Protocol Area and wider surrounding area.

10 CONTRACTING FOR SERVICES

10.1 The Ministry will consult with the Governance Entity in respect of any contract for the provision of services that may impact on the management of customary fisheries within the Ngāti Awa Fisheries Protocol Area, if the Ministry is proposing to enter into such a contract.

11 EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

11.1 The Ministry will:

- (a) Directly notify the Governance Entity of Ministry of Fisheries vacancies which directly affect the customary fisheries interests of Ngāti Awa within the Ngāti Awa Fisheries Protocol Area (including the relevant job description); and
- (b) Consult the Governance Entity on the work programme for any such positions, once filled.

12 CONSULTATION

12.1 Where the Ministry is required to consult under *clauses 8.2, 9.1, 10 and 11.1(b)* of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Ngāti Awa Governance Entity in each case are:

- (a) Ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
- (b) Providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) Ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;

FORM OF MINISTRY OF FISHERIES PROTOCOL

- (d) Ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

ISSUED on [insert settlement date]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Fisheries

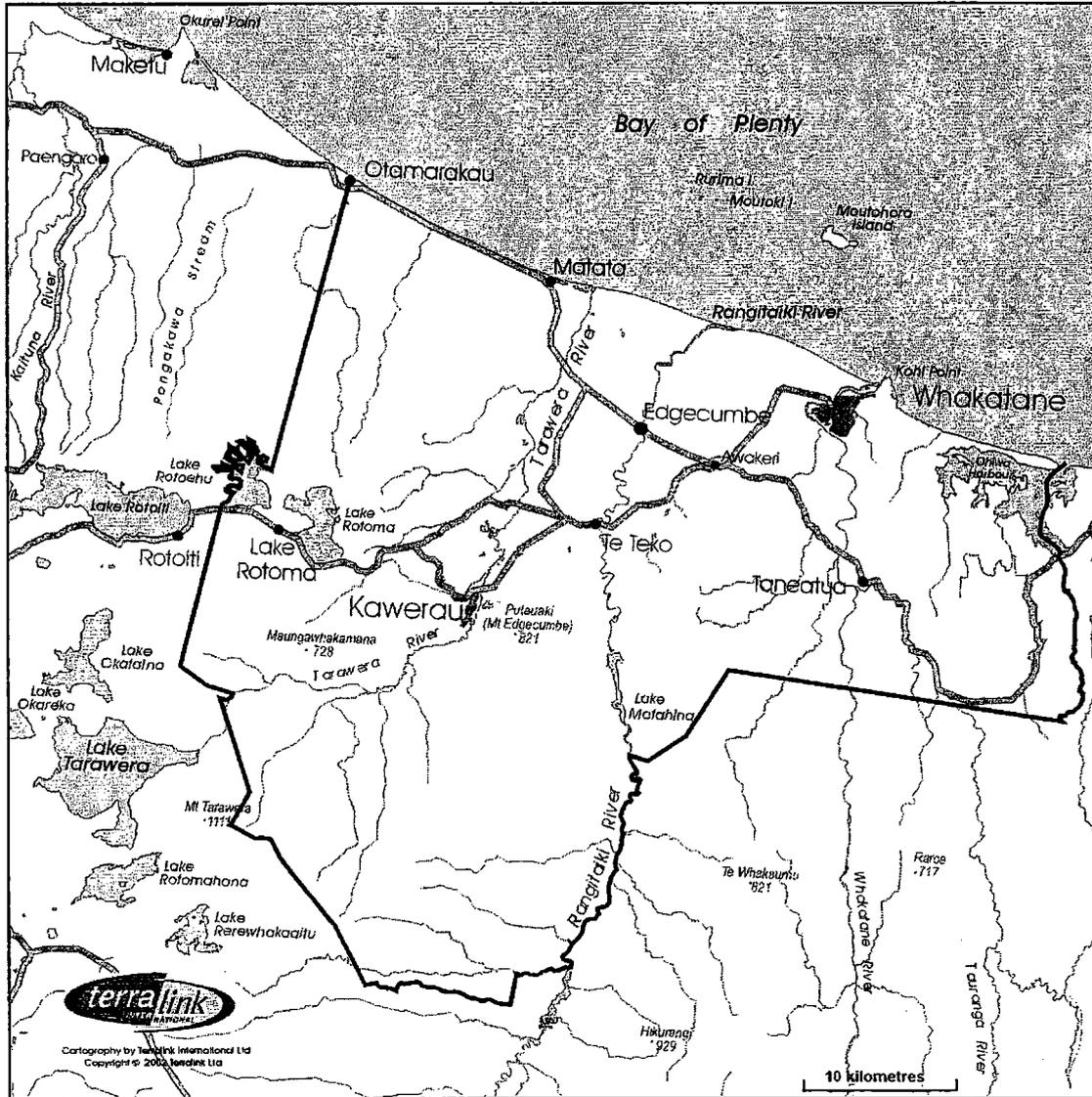
WITNESS

Name:

Occupation:

Address:

ATTACHMENT A NGATI AWA FISHERIES PROTOCOL AREA



ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

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

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

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

Ngāti Awa Governance Entity means [insert name and description once entity established];

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, , or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage, (as the case may be) to Ngāti Awa Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

2 Authority to issue, amend or cancel Protocols

Section [] of the Settlement Legislation provides that:

- (a) Subject to clause 2(c), each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;
- (b) A Protocol may be amended or cancelled pursuant to section [] of the Settlement Legislation at the initiative of either the Minister or Ngāti Awa Governance Entity; and

- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Ngāti Awa Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that all Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) The obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol; and
- (b) That such noting of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980;
- (c) That the existence of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and

- (d) That such noting of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as it remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Ngāti Awa Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section [] of the Settlement Legislation, the Ngāti Awa Governance Entity may not recover damages, or any form of monetary compensation (other than costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with the Protocol; and
- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol issued under *clause 5.7.2* of the Deed of Settlement shall not constitute a breach of the Deed of Settlement.

7 Limitation of rights

- (a) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.
- (b) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights

held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

- (c) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(c)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

SCHEDULE 5.23
FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL
(Clause 5.7.2(c))

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE
MINISTER FOR ARTS, CULTURE AND HERITAGE
REGARDING INTERACTION WITH NGĀTI AWA ON ANTIQUITIES ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated 27 March 2003 between Ngāti Awa, the Ngāti Awa Governance Entity and the Crown (the "*Deed of Settlement*"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "*Minister*") would issue a protocol (the "*Antiquities Protocol*") setting out how the Minister and the Ministry for Culture and Heritage (the "*Ministry*") will interact with the Ngāti Awa Governance Entity (the "*Governance Entity*") on matters specified in the Antiquities Protocol. These matters are:
- (a) newly found Artifacts;
 - (b) the export of Artifacts; and
 - (c) the Antiquities Act 1975 and any amendment or substitution thereof (the "*Act*").
- 1.2 The Minister and Chief Executive of the Ministry (the "*Chief Executive*"), or other such persons acting in those capacities and Ngāti Awa are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties to this Antiquities Protocol, as set out in this Antiquities Protocol.
- 1.3 Ngāti Awa has an interest in relation to the preservation, protection and management of its Artifacts through its tino rangatiratanga and kaitiakitanga. This derives from Ngāti Awa's status as tangata whenua in the Antiquities Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.4 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act . In exercising such functions, powers and duties, the Minister

and Chief Executive will provide the Governance Entity with the opportunity for input, in the policy and decision making processes as set out in this Protocol.

2 PROTOCOL AREA

- 2.1 This Antiquities Protocol applies across the Antiquities Protocol Area, which means the area identified in the map included in *Attachment A* together with the adjacent waters.

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to *clause 5.7.2* of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in *Attachment B*.

4 DEFINITIONS

- 4.1 Other terms are defined in *Attachment C*.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THIS PROTOCOL

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Chief Executive will:
- (a) provide the Governance Entity on request with information (including information on any Artifact identified as being of Ngāti Awa origin, including items found within the Antiquities Protocol Area or found anywhere else in New Zealand) in accordance with the Official Information Act 1982;
 - (b) notify the Governance Entity in writing of any registered Artifact found within the Antiquities Protocol Area and of any registered Artifacts identified as being of Ngāti Awa origin found anywhere else in New Zealand from the date of signing of this Protocol;
 - (c) notify the Governance Entity of its right to apply to the Maori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;

FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL

- (d) notify the Governance Entity of any application to the Maori Land Court from other persons for determination of the actual or traditional ownership, rightful possession or custody of any Artifact, or for any right, title, estate, or interest in any Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
- (e) If no application is made to the Maori Land Court by the Governance Entity or any other persons:
 - (i) consult the Governance Entity before a decision is made on who may have custody of an Artifact found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
 - (ii) notify the Governance Entity in writing of the decision made by the Chief Executive on the custody of an Artifact where the Governance Entity has been consulted;
 - (iii) consult the Governance Entity where there are requests from persons for the custody of Artifacts found within the Antiquities Protocol Area or identified as being of Ngāti Awa origin found anywhere else in New Zealand;
- (f) seek from the Governance Entity an expert opinion on any Artifacts of Ngāti Awa origin for which a person has applied to the Chief Executive for permission to export from New Zealand; and
- (g) notify the Governance Entity in writing of the decision made by the Chief Executive on an application to export an Artifact where the expert opinion was sought from the Governance Entity.

5.2 The Chief Executive will also:

- (a) review the implementation of this Protocol biennially unless otherwise mutually agreed in writing by the Chief Executive and the Governance Entity; and
- (b) as far as reasonably practicable ensure relevant employees within the Ministry are aware of the purpose, content and implications of this Protocol.

6 THE ROLE OF THE MINISTER UNDER THIS PROTOCOL

6.1 The Minister has functions, powers and duties under the Act and can consult, notify and provide information to the Governance Entity within the limits of the Act. The Minister will consult with the Governance Entity where a person appeals the decision of the Chief Executive to:

- (a) refuse permission to remove any Artifact, or Artifacts from New Zealand; or
- (b) impose conditions on an approval to export any Artifact, or Artifacts from New Zealand;

in the circumstances where the Governance Entity was originally asked for an expert opinion by the Chief Executive.

7 CONSULTATION

7.1 Where the Ministry is required to consult under *clauses 5.1(e)(i) and (iii) and clause 6.1* of this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

- (a) ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
- (b) providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (c) ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
- (d) ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters that are the subject of the consultation.

8 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

8.1 If the Ministry consults with Maori generally on policy development or any proposed legislative amendment to the Act which impacts upon this Protocol the Ministry shall:

- (a) notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which Maori generally will be consulted; and
- (b) make available to the Governance Entity the information provided to Maori as part of the consultation process referred to in this clause.

ISSUED on [insert settlement date]

SIGNED for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister for Arts, Culture and Heritage

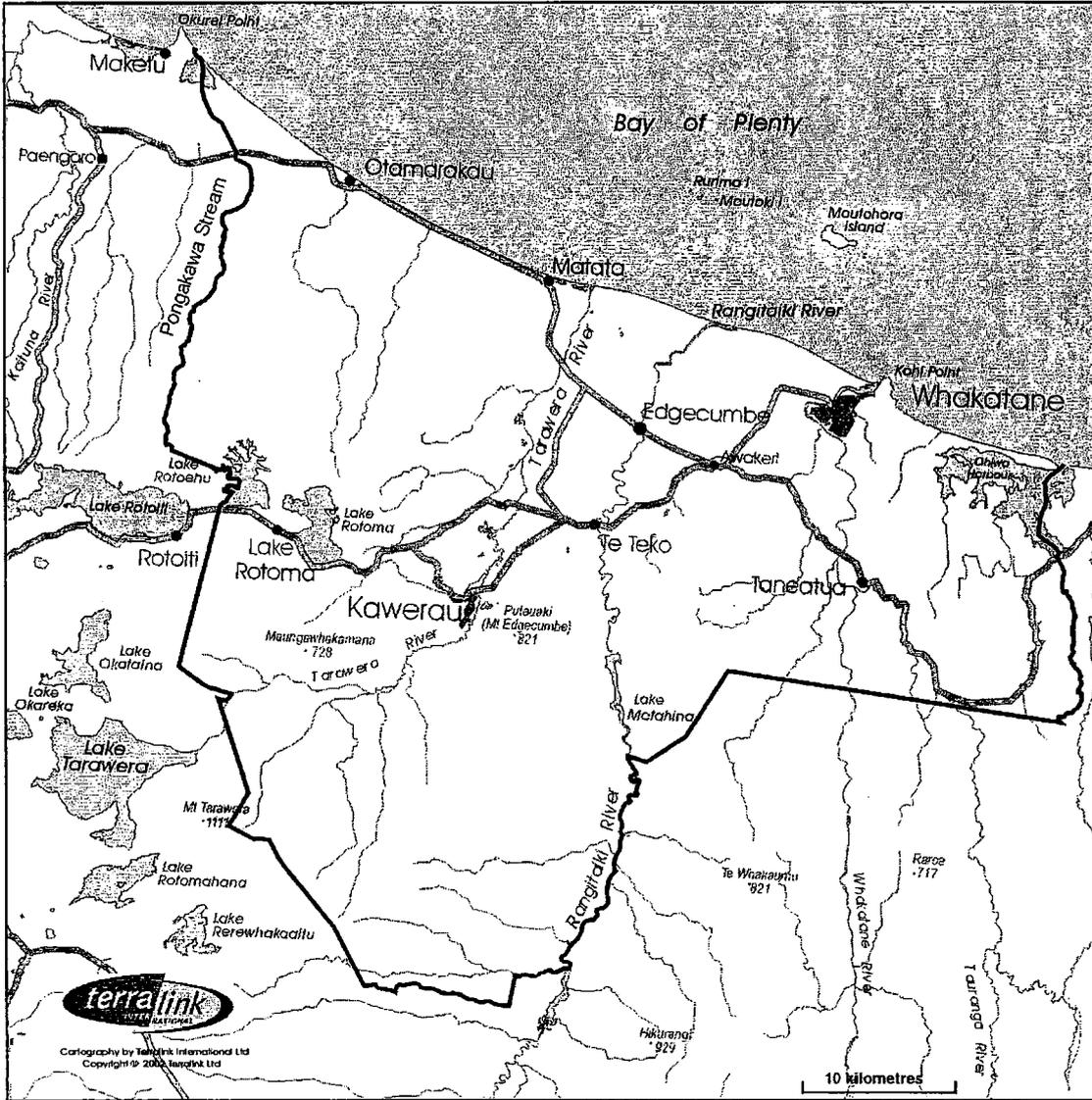
WITNESS

Name:

Occupation:

Address:

ATTACHMENT A
NGĀTI AWA
ANTIQUITIES PROTOCOL AREA



ATTACHMENT B TERMS OF ISSUE

1 Definitions

In this Schedule, terms defined in this Protocol have the same meaning and:

Conservation Legislation means the Conservation Act 1987 and the statutes listed under the First Schedule to that Act;

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

Fisheries Legislation means the Fisheries Act 1996 or the Fisheries Act 1983;

Minister means the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage (as the case may be);

Ministry means the Department of Conservation, the Ministry of Fisheries, or the Ministry for Culture and Heritage (as the case may be);

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

Ngāti Awa Governance Entity means [*insert name and description once entity established*]; and

Protocol means a statement in writing, issued by the Crown through the Minister of Conservation, the Minister of Fisheries, or the Minister for Arts, Culture and Heritage and Chief Executive of the Ministry for Culture and Heritage and Chief Executive of the Ministry of Culture and Heritage (as the case may be), to the Ngāti Awa Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

2 Authority to issue, amend or cancel Protocols

Section [] of the Settlement Legislation provides that:

- (a) Subject to *clause 2(c)*, each Minister may issue a Protocol, and may, from time to time, amend or cancel that Protocol;

FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL

- (b) A Protocol may be amended or cancelled pursuant to section [] of the Settlement Legislation at the initiative of either the Minister or the Ngāti Awa Governance Entity; and
- (c) The relevant Minister may amend or cancel a Protocol, only after consulting with, and having particular regard to the views of, the Ngāti Awa Governance Entity.

3 Protocols subject to Crown obligations

Section [] of the Settlement Legislation provides that all Protocols shall be issued and amended, subject to, and without restriction upon:

- (a) The obligations of the relevant Minister and the relevant Ministry to discharge their respective functions, powers and duties in accordance with existing law and government policy from time to time, including, without limitation, the ability of the relevant Minister or Ministry to interact or consult with any person or persons the Crown considers appropriate (including, without limitation, any other iwi, hapū, marae, whānau, or other representatives of tangata whenua); and
- (b) The Crown's powers to amend policy and introduce legislation, including amending legislation.

4 Noting of Protocols

Section [] of the Settlement Legislation provides:

- (a) The existence of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement, once issued, and as amended from time to time, and including a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in conservation management strategies, conservation management plans and national park management plans from time to time affecting the area covered by the Protocol;
- (b) That such noting of the Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 171 of the Conservation Act 1987 or section 46 of the National Parks Act 1980;
- (c) That the existence of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement, once issued, and as amended from time to time, and including

FORM OF MINISTRY FOR CULTURE AND HERITAGE PROTOCOL

a definition of the Protocols as set out in section [] of the Settlement Legislation and a summary of the terms of issue of the Protocols, shall be noted in fisheries plans from time to time affecting the area covered by the Protocol; and

- (d) That such noting of the Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement shall be for the purpose of public notice only and shall not be amendments to the relevant strategies or plans for the purposes of section 11A of the Fisheries Act 1996.

5 Enforceability of Protocols

Section [] of the Settlement Legislation provides that:

- (a) The Crown must comply with its obligations under a Protocol as long as it remains in force;
- (b) If the Crown fails, without good cause, to comply with its obligations under a Protocol, the Ngāti Awa Governance Entity may, subject to the Crown Proceedings Act 1950, enforce the Protocol;
- (c) Notwithstanding section [] of the Settlement Legislation, the Ngāti Awa Governance Entity may not recover damages, or any form of monetary compensation (other than any costs related to the bringing of proceedings awarded by a Court), from the Crown for failure to comply with the Protocol; and
- (d) Section [] of the Settlement Legislation does not apply to any guidelines developed in relation to a Protocol.

6 Not breach of Deed

The Deed of Settlement provides that any failure by the relevant Minister to comply with a Protocol issued under *clause 5.7.2* of the Deed of Settlement shall not constitute a breach of the Deed of Settlement.

7 Limitation of rights

- (a) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(a)* of the Deed of Settlement does not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, land held, managed or administered, or flora and fauna managed or administered, under the Conservation Legislation.

- (b) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(b)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, any assets or other property rights held, managed or administered under the Fisheries Legislation (including fish, aquatic life or seaweed).

- (c) The Settlement Legislation provides that a Protocol issued under *clause 5.7.2(c)* of the Deed of Settlement will not have the effect of granting, creating or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, antiquities or artifacts, managed or administered under the Antiquities Act 1975.

ATTACHMENT C DEFINITIONS

In this Protocol:

“Antiquity” has the same meaning as in section 2 of the Antiquities Act 1975 being:

- (a) Any chattel of any kind whatsoever, not being a chattel to which any of paragraphs (b) to (h) of this definition applies which:
 - (i) is of national, historical, scientific, or artistic importance; and
 - (ii) relate to the European discovery, settlement, or development of New Zealand; and
 - (iii) is, or appears to be, more than 60 years old.
- (b) Any Artifact;
- (c) Any book, diary, letter, document, paper, record, or other written matter (whether in manuscript or printed form), photographic negative or print, film, printed reproduction of any picture, or sound recording:
 - (i) which relates to New Zealand and is of national, historical, scientific, artistic, or literary importance; and
 - (ii) which is more than 60 years old; and
 - (iii) of which, in the case of a book first printed and published in New Zealand, no copy is in the custody of the National Library of New Zealand;
- (d) Any work of art which relates to New Zealand, is more than 60 years old, and is of national, historical, or artistic value or importance;
- (e) Any type specimen of any animal, plant, or mineral existing or formally existing in New Zealand;
- (f) Any meteorite or part of a meteorite recovered in New Zealand;

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- (g) Any bones, feathers, or other parts or the eggs of the Mōa or other species of animals, birds, reptiles, or amphibians native to New Zealand which are generally believed to be extinct;
- (h) Any ship, boat, or aircraft, or any part of any ship, boat or aircraft, equipment, cargo, or article belonging to any ship, boat, or aircraft in any case where that ship, boat, or aircraft has been, or appears to have been, a wreck in New Zealand, or within the territorial waters of New Zealand, for more than 60 years and that ship, boat, aircraft, equipment, cargo, or article, as the case may be, is of national, historical, scientific, or artistic value or importance.” (section 2, Antiquities Act 1975).

“*Artifact*” has the same meaning as in the Antiquities Act 1975, being:

“Any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Māori or other pre-European inhabitants of New Zealand and which was or appears to have been manufactured or modified in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor by any such inhabitant, or used by any such inhabitant, prior to 1902.” (section 2, Antiquities Act 1975).

SCHEDULE 5.24
SITES CONSIDERED BY NGĀTI AWA TO BE WAAHI TAPU
(Clause 5.9)

A The following Cultural Redress Properties as defined in *Section 4* of the Deed of Settlement:

Kāpūterangi

Otitapu Pā

Te Paripari Pā

Whakapaukorero

B The following Crown owned properties as defined in *clause 5.4.1* and *Schedules 5.4, 5.6 and 5.10*:

Moutohorā (Whale) Island Wildlife Management Reserve

Tauwhare Pā

Te Kaokaoroa

Uretara Island

C The following Crown owned properties:

One Turuturu Spit (Ōhiwa Harbour
Sandspit Wildlife Refuge)

South Auckland Land District –
Whakatāne District

24.5200 hectares, more or less, being
Allotment 644 Waimana Parish. All
New Zealand Gazette 1976 page 1639.

Te Kanawa (Piripai Wildlife
Management Reserve)

South Auckland Land District –
Whakatāne District

8.1300 hectares, more or less, being Lot
1 DPS 19874. All Gazette Notice
B.547453.1.

PLACE NAMES

SCHEDULE 5.25**PLACE NAMES***(Clause 5.10)*

Existing Place Name	Amended Place Name
Volkner Rocks	Te Paepae o Aotea
Awaateatua Beach	Te Awa a Te Atua Beach

Names to be allocated to sites presently not named	Location
Te Waiu o Pukemaire/Braemar Springs	NZMS 260 Sheet V15 New Zealand map grid co-ordinates 387527

SCHEDULE 5.26
RIGHT TO PURCHASE AUTHORISATIONS IN RESPECT OF
COASTAL TENDERING

(Clause 5.15)

RIGHT TO PURCHASE AUTHORISATIONS IN RESPECT OF
COASTAL TENDERING

1 Exercise of Right to Purchase Authorisations

The Settlement Legislation will provide that the right to purchase Authorisations described in *clause 5.15.2* of the Deed of Settlement will be exercisable as follows:

- (a) at least 10 Business Days before any offer by public tender, in accordance with section 157 of the Resource Management Act 1991, of Authorisations for the whole or any part of the Specified Coastal Marine Area the Minister of Conservation will notify the Ngāti Awa Governance Entity of that intended offer and will provide to the Ngāti Awa Governance Entity, or ensure the Ngāti Awa Governance Entity has reasonable access to, any information:
 - (i) which would be included in a public notice of the offer of Authorisations in accordance with section 157 of that Act; or
 - (ii) which the Minister would make available, upon request, to any other tenderer or member of the public who so requested;
- (b) at the same time as giving the notification under *paragraph 1(a)*, the Minister of Conservation will specify by notice in writing to the Ngāti Awa Governance Entity, a proportion of the Authorisations which satisfy the conditions of *clause 5.15.3* of the Deed of Settlement in respect of that tender round;
- (c) after considering tenders submitted for any part of the Specified Coastal Marine Area in accordance with section 158 of the Resource Management Act 1991, the Minister of Conservation will give written notice to the Ngāti Awa Governance Entity:
 - (i) offering the Ngāti Awa Governance Entity, on the terms and conditions (including as to remuneration) specified in the tender or tenders most preferred by the Minister for each Authorisation, that Authorisation or those Authorisations (if more than one) which the

RIGHT TO PURCHASE AUTHORISATIONS IN RESPECT OF COASTAL TENDERING

Minister has specified under *paragraph 1(b)*. If the only tender is the tender deemed to have been lodged by the Ngāti Awa Governance Entity under *clause 5.15.5* of the Deed of Settlement, or if there are other tenders but the Minister decides not to accept any of those other tenders, the deemed tender by the Ngāti Awa Governance Entity will, for the purposes of this *paragraph 1(c)(i)* be treated as the tender most preferred by the Minister for that Authorisation; and

- (ii) specifying:
 - (aa) the terms and conditions (including as to remuneration) of every other tender that the Minister proposes to accept for any part of the Specified Coastal Marine Area (which information the Ngāti Awa Governance Entity must keep strictly confidential);
 - (bb) the size, shape and location of the Authorisations to which those tenders relate;
 - (cc) such other information (if any) as to those Authorisations and tenders as the Minister considers would be made available, upon request, to any other tenderer or member of the public who so requested;
- (d) without limiting the ability of the Ngāti Awa Governance Entity and the Crown to discuss any matters, by no later than 5.00pm on the 3rd Business Day following receipt of the notice given by the Minister pursuant to *paragraph 1(c)* the Ngāti Awa Governance Entity will either:
 - (i) notify the Minister in writing that the Ngāti Awa Governance Entity accept the Minister's offer under *paragraph 1(c)(i)* and pay any remuneration then due for the Authorisation or Authorisations within the period specified in that notice (which period will be no less than that which would have applied to the relevant tenderer and will commence on the date notice is received by the Ngāti Awa Governance Entity); or
 - (ii) notify the Minister in writing that the Ngāti Awa Governance Entity does not wish to exercise the right to acquire any of the Authorisations so offered;

provided that if the Ngāti Awa Governance Entity fails to give such notice within that time period, *paragraph 1(f)* will apply;

- (e) if the Ngāti Awa Governance Entity gives notice to the Minister of Conservation under *paragraph 1(d)(i)* that the Ngāti Awa Governance Entity accepts the Minister's offer under *paragraph 1(c)(i)*, the Minister will, in accordance with section 161 of the Resource Management Act 1991, grant the Authorisation or Authorisations to the Ngāti Awa Governance Entity accordingly;
- (f) if the Ngāti Awa Governance Entity fails or declines to exercise the right to purchase any Authorisation in the manner and within the period specified in *paragraph 1(d)*:
- (i) subject to *paragraph 1(f)(ii)* or *(iv)*, upon the expiry of the period specified in *paragraph 1(d)* or the date on which the Ngāti Awa Governance Entity declines to exercise the right to purchase an Authorisation (whichever is the earlier), the right to purchase that Authorisation pursuant to that tender round will lapse;
 - (ii) the Minister of Conservation may grant any Authorisation in respect of which the right to purchase has so lapsed to any other tenderer, on identical terms and conditions (including as to remuneration) to those offered to the Ngāti Awa Governance Entity;
 - (iii) the Minister may grant such Authorisation to any other tenderer on terms and conditions different from those upon which the Minister offered the Authorisation to the Ngāti Awa Governance Entity, provided that the Minister has first offered the Authorisation to the Ngāti Awa Governance Entity on those new terms, in accordance with the procedures set out in this Schedule (excepting *paragraphs 1(a)* and *1(d)(i)*) and the Ngāti Awa Governance Entity has failed or declined to exercise the right to purchase the Authorisation on those new terms and conditions; and
 - (iv) if the Minister wishes to re-offer the Authorisation by public tender in accordance with section 157 of the Resource Management Act 1991, the Minister must comply with all of the procedures set out in this Schedule.

2 Resolution of disputes

The Ngāti Awa Governance Entity and the Crown agree that the following provisions will apply if the Ngāti Awa Governance Entity seeks to dispute that the Authorisations specified in the notice given under *paragraph 1(b)* satisfy the conditions of *clause 5.15.3* of the Deed of Settlement:

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- (a) in respect of the various time limits specified in *paragraphs 1(c)* and *(d)*, time will be of the essence;
- (b) if the Ngāti Awa Governance Entity disputes the notice given by the Minister under *paragraph 1(b)*, the Ngāti Awa Governance Entity may give notice in writing to the Minister, by no later than 5.00pm on the 5th Business Day following receipt of that notice, that the Ngāti Awa Governance Entity seeks that the dispute be referred to arbitration and the parties agree that the dispute will then be referred to arbitration under the Arbitration Act 1996, in accordance with this *paragraph 2*, provided that if the Ngāti Awa Governance Entity fails to give notice within the period specified the Ngāti Awa Governance Entity will be deemed not to dispute the Minister's notice;
- (c) the arbitration will be conducted by a single arbitrator:
 - (i) appointed by the Ngāti Awa Governance Entity and the Crown if, by 5.00pm on the next Business Day following the day of receipt by the Minister of the notice given by the Ngāti Awa Governance Entity under *paragraph 2(b)*, the parties so agree and appoint; or
 - (ii) otherwise appointed by the President or his or her nominee, for the time being of the Arbitrators' Institute of New Zealand, at the request of either the Ngāti Awa Governance Entity or the Crown;
- (d) the Ngāti Awa Governance Entity and the Crown agree:
 - (i) to be bound by the decision in the arbitration;
 - (ii) that there will be no appeal to any Court arising from that decision;
 - (iii) that, accordingly, clauses 4 and 5 of the Second Schedule to the Arbitration Act 1996 will not apply;
 - (iv) the decision in the arbitration will be made not more than 15 Business Days after the appointment of the arbitrator under *paragraph 2(c)*; and

RIGHT TO PURCHASE AUTHORISATIONS IN RESPECT OF COASTAL TENDERING

- (v) the Ngāti Awa Governance Entity and the Crown will bear the costs of the arbitration equally, unless otherwise determined by the arbitrator.

DISCLOSURE INFORMATION

SCHEDULE 8.1
DISCLOSURE INFORMATION
(Clause 8.1)

The Disclosure Information was attached to the following correspondence from the Office of Treaty Settlements to Martelli McKegg Wells & Cormack:

Date of Cover Letter	Properties for which Disclosure Information was provided
1/12/2000	Redress Licensed Land
16/02/2001	Redress Licensed Land
27/02/2001	Whakatāne Court House; Whakatāne High School; Ōhope School; Apanui School; Ōhope Beach Holiday Park Land
1/03/2001	Redress Licensed Land (disclosure update)
16/03/2001	Apanui Resource Centre
16/03/2001	Redress Licensed Land (disclosure update)
18/10/2001	Redress Licensed Land (disclosure update)
20/12/2001	Redress Licensed Land (disclosure update)
26/02/2002	Redress Licensed Land (disclosure update)
28/03/2002	Redress Licensed Land (disclosure update)
17/05/2002	Redress Licensed Land (disclosure update)
4/07/2002	Ōhope Beach Holiday Park Land; Whakatāne Court House (disclosure update)
5/07/2002	Redress Licensed Land; land administered by the

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	Department of Education (disclosure update)
15/08/2002	Redress Licensed Land
23/08/2002	Redress Licensed Land
28/08/2002	Redress Licensed Land
29/08/2002	Redress Licensed Land
4/09/2002	Redress Licensed Land
16/09/2002	Redress Licensed Land

DISCLOSURE INFORMATION

29/10/2002	Redress Licensed Land
29/10/2002	Rotoehu West Redress Licensed Land
11/12/2002	Redress Licensed Land
13/03/2003	Land administered by the Ministry of Education, Whakatane Courthouse, Redress Licensed Land, Ohope Beach Holiday Park Land

TERMS OF TRANSFER

SCHEDULE 8.2
TERMS OF TRANSFER
(Clause 8.2.2)

1 OPERATIVE CLAUSES

- 1.1 The Crown must transfer the fee simple estate in each Commercial Redress Property upon the terms set out in *Section 8* and this *Schedule* subject to and, where applicable, with the benefit of:
- 1.1.1 all matters noted on the register of title to the Commercial Redress Property at the Date of this Deed; and
 - 1.1.2 all other Encumbrances and free of all other tenancies, leases, licences to occupy, easements, covenants or other property rights.
- 1.2 The Commercial Redress Property shall be transferred as redress and without charge to, or consideration to be provided or paid by, the Ngāti Awa Governance Entity or any other person.

2 OBLIGATIONS PRIOR TO TRANSFER

- 2.1 From the date of this Deed until the Settlement Date:
- 2.1.1 the Crown shall maintain each Redress Land that is not a Leaseback Property to a standard no worse than that which it was in at the date of this Deed, fair wear and tear excepted;
 - 2.1.2 in respect of each Leaseback Property, the Crown shall keep the Redress Land clean and tidy and free and clear from all rubbish, noxious weeds and plants and shall take any steps necessary to control any pest infestation occurring on or emanating from the Redress Land; and
 - 2.1.3 the Crown shall give the Ngāti Awa Governance Entity any material information relating, in the case of the Redress Licensed Land, to the licensor's interest in the Redress Licensed Land and, in the case of the other Commercial Redress Property, to the Commercial Redress Property, as soon as practicable after becoming aware of the information.
- 2.2 *Clause 12.1.1* (which provides that this Deed is conditional) does not apply to *paragraph 2.1.3*.

TERMS OF TRANSFER

3 POSSESSION AND SETTLEMENT

- 3.1 Each Redress Land that is not a Leaseback Property is to be transferred with vacant possession, except for the Apanui Resource Centre which transfers subject to the lease described in Attachment 8.1. Each Leaseback Property is to be transferred subject to possession by the Transferor Agency under the Leaseback.
- 3.2 On the Settlement Date possession shall be given and taken.
- 3.3 Subject to *paragraph 9* of this Schedule, on the Settlement Date the Crown shall hand to Ngāti Awa Governance Entity:
- 3.3.1 a registrable memorandum of transfer of the Commercial Redress Property (to be prepared by the Crown and approved by (such approval not to be unreasonably withheld), and, if necessary, signed by the Ngāti Awa Governance Entity provided it has been supplied to the Ngāti Awa Governance Entity a reasonable time before the Settlement Date); and
- 3.3.2 all other instruments in registrable form which may be required for the purpose of registering the memorandum of transfer, together with all instruments of title and the originals (or certified copies) of all contracts and other documents which create rights, interests and obligations affecting the registered proprietor's interest and which shall continue following settlement other than proclamations, Gazette Notices and similar public notices.
- 3.4 All outgoings and incomings including rates but excluding insurance premiums must be apportioned at the Settlement Date.
- 3.5 The Crown must pay all charges for electric power, gas, water, and other utilities together with any penalties or charges due by it as owner or occupier of the Commercial Redress Property to the Settlement Date except where those charges are payable by any tenant or occupier directly to the relevant supplier.
- 3.6 The Crown must supply a separate statement of apportionments for each Commercial Redress Property to the Ngāti Awa Governance Entity before the Settlement Date. On the Settlement Date:
- 3.6.1 the Ngāti Awa Governance Entity must pay to the Crown the amount by which the outgoings (except for insurance premiums) for the Commercial Redress Property prepaid by the Crown in respect of a

period after the Settlement Date exceed the incomings received by the Crown for that period; or

- 3.6.2 the Crown must pay to the Ngāti Awa Governance Entity the amount by which the incomings received by the Crown in respect of a period after the Settlement Date exceed the outgoings (except for insurance premiums) for the Commercial Redress Property prepaid by the Crown for that period.

4 RISK AND INSURANCE

- 4.1 The Commercial Redress Property shall remain at the sole risk of the Crown until possession is offered by the Crown in accordance with this *Schedule 8.2* and from that date, it shall remain at the sole risk of the Ngāti Awa Governance Entity.

- 4.2 In the event that prior to the giving and taking of possession the Commercial Redress Property is destroyed or damaged and such destruction or damage has not been made good by the Settlement Date then the following provisions shall apply:

- (a) if the destruction or damage has been sufficient to render the Commercial Redress Property untenable and it is untenable on the Settlement Date the Ngāti Awa Governance Entity may:
- (i) complete the transfer on condition that the Crown pay an amount as alternative redress to the Ngāti Awa Governance Entity equal to the amount of diminution in value of the Commercial Redress Property as at the Settlement Date; or
 - (ii) cancel this agreement as it affects the Commercial Redress Property by serving the Crown notice in writing in which case the Crown shall promptly pay as alternative redress to the Ngāti Awa Governance Entity the Redress Value in respect of that Commercial Redress Property; or
- (b) if the Commercial Redress Property is still tenable on the Settlement Date the Ngāti Awa Governance Entity shall complete the transfer on condition that the Crown pay an amount as alternative redress to the Ngāti Awa Governance Entity equal to the amount of the diminution in value of the Commercial Redress Property as at the Settlement Date; and

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- (c) either Party may give the other Party notice in writing requiring that any dispute as to the application of this paragraph be determined by an arbitrator to be appointed by the president or vice-president for the time being of the Law Society for the district where the Commercial Redress Property is situated, and the Party serving the notice may at any time after that refer the dispute for determination. If the dispute is not determined by the Settlement Date then the Parties' obligations relating to transfer and possession shall be deferred to the 5th Business Day following the date on which the dispute is determined. The arbitrator may determine that the possession date shall not be deferred or shall be deferred to another day or days.

- 4.3 The Ngāti Awa Governance Entity shall not be required to take over any insurance policies held by the Crown.

5 REDRESS VALUE

- 5.1 For the purposes of establishing a diminution in value under *paragraphs 4.2(b) 4.2(a)(i) and 10.4* or the amount of any damages arising out of a breach by the Crown of any of its obligations under this Schedule in respect of a Commercial Redress Property, the value of the Commercial Redress Property (immediately before the relevant event or damage) shall be deemed to be the Redress Value for that Commercial Redress Property.
- 5.2 If the Ngāti Awa Governance Entity validly cancels under the Contractual Remedies Act 1979 the agreement created by this Schedule in respect of a Commercial Redress Property, then within 60 Business Days of the valid cancellation the Crown shall pay to the Ngāti Awa Governance Entity the Redress Value for that property.

TERMS OF TRANSFER

6 TITLE, BOUNDARIES, ETC

- 6.1 The Crown shall not be bound to point out the boundaries of the Commercial Redress Property.
- 6.2 The Ngāti Awa Governance Entity is deemed to have accepted the Crown's title and shall not be entitled to make any objections or requisitions on it, if the title is subject only to the Encumbrances and not to any other tenancy, lease, licence to occupy, easement, covenant or other property right.
- 6.3 Except as otherwise expressly set out in this Schedule, no error, omission or misdescription of a Commercial Redress Property or its title shall annul the transfer of the Commercial Redress Property.
- 6.4 The Crown shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the Commercial Redress Property and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence) but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the Crown shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the Commercial Redress Property.

7 FURTHER TRANSFER OBLIGATIONS

- 7.1 If the Crown or the relevant Transferor Agency receives any notice or demand from the Crown or any territorial authority or from any person relating to the Commercial Redress Property after the Date of this Deed the Crown or the relevant Transferor Agency, if it is obliged to pay or comply with such notice or demand, shall do so (and give copies of such notice of demand to the Ngāti Awa Governance Entity if the notice or demand will materially affect the Ngāti Awa Governance Entity as owner after the Settlement Date) and if not paying or complying, shall immediately deliver it to the Ngāti Awa Governance Entity or the Ngāti Awa Governance Entity's solicitor and if the Crown fails to do so the Crown shall be liable for any penalty incurred.
- 7.2 Immediately after the Settlement Date the Crown shall give notice of the transfer to the territorial authority having jurisdiction in respect of the Commercial Redress Property.

8 DISCLOSURE INFORMATION

8.1 The Crown warrants to the Ngāti Awa Governance Entity that, at the date of this Deed, the Disclosure Information contains all the material information that relates:

- (a) to the licensor's interest in the Redress Licensed Land, in the case of the Redress Licensed Land; and
- (b) to the Commercial Redress Property, in the case of the other Commercial Redress Property,

of which the Transferor Agency is aware, the Transferor Agency having inspected its records but not having undertaken a physical inspection of the Commercial Redress Property or made enquiries beyond its own records. This warranty does not extend to information which may be apparent from such an inspection or enquiry.

8.2 In respect of the Leaseback Properties and the Redress Licenced Land, the Ngāti Awa Governance Entity accepts and acknowledges that:

- (a) the Crown has provided no information in respect of any improvements on those properties (as defined in the Leasebacks as Lessee's Improvements and in the definition of Redress Licensed Land in *clause 8.1*) and;
- (b) no representation or warranty is given by the Crown in relation to any such improvements.

8.3 The Ngāti Awa Governance Entity acknowledges and agrees that, other than those set out in *paragraph 8.1*, 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 Disclosure Information in relation to the Commercial Redress Property;
- (b) the physical condition of the Commercial Redress Property;
- (c) the compliance or otherwise of the Commercial Redress Property with any statutes, regulations, by-laws or any powers, rights and obligations under them, including any outstanding enforcement or other notice,

TERMS OF TRANSFER

requisition or proceeding issued under any code by any relevant authority, relating to or affecting the Commercial Redress Property;

- (d) any other matter relating to the ownership, occupation, use or management of the Commercial Redress Property.

8.4 The Parties acknowledge and record that prior to the date of this Deed, Ngāti Awa had the opportunity to inspect the Commercial Redress Properties and satisfy itself as to the state and condition of the Commercial Redress Property.

9 DELAYED TRANSFER OF LEGAL TITLE

9.1 If a computer freehold register or registers for the Commercial Redress Property has or have not been created, then the Crown covenants for the benefit of the Ngāti Awa Governance Entity that it will, as soon as reasonably practicable after the Settlement Date, commence and, after that, expeditiously continue to, arrange for the creation of a computer freehold register or registers at its cost for the Commercial Redress Property and shall then transfer the property in accordance with *paragraph 3.3* as soon as reasonably practicable, but no later than:

- (a) five years after the Settlement Date in the case of Redress Licensed Land; and
- (b) three years after the Settlement Date in the case of the other Commercial Redress Properties.

9.2 The covenant given by the Crown under *paragraph 9.1* shall (whether registered or not) have effect and be enforceable, notwithstanding it is positive in effect and there may be no dominant tenement.

9.3 If *paragraph 9.1* applies then, for the period from the Settlement Date until the date that the Crown transfers the title to that Commercial Redress Property to the Ngāti Awa Governance Entity, the Ngāti Awa Governance Entity will be the beneficial owner of that property and all the other obligations and rights to be performed or arising on the Settlement Date will still be performed and arise as if full legal title had passed to the Ngāti Awa Governance Entity on the Settlement Date. In particular, the Crown shall permit the Ngāti Awa Governance Entity to enter into and take possession of and receive the income from the Commercial Redress Property, including the Redress Licensed Land (subject to the Crown Forestry Licence). For the Leaseback Properties, the Ngāti Awa Governance Entity shall, as beneficial owner of that property, grant the Leaseback even though it is not the registered proprietor and this lease shall

be registered once title is transferred by the Crown to the Ngāti Awa Governance Entity.

10 MISCELLANEOUS

10.1 Further Assurances

Each of the Crown and the Ngāti Awa Governance Entity shall, at the request of the other party, execute and deliver any further documents or assurances and do all acts and things that the other party may reasonably require to give full force and effect to *Section 8* and its Attachments and Schedules.

10.2 Provision of Information

- (a) The Ngāti Awa Governance Entity shall provide to the Crown such information as the Crown may reasonably require to assist the Crown to defend actions and claims relating to the management of the Commercial Redress Property before the Settlement Date, and the Crown will reimburse the Ngāti Awa Governance Entity for the reasonable costs and expenses incurred by the Ngāti Awa Governance Entity in doing so.
- (b) The Ngāti Awa Governance Entity shall permit the Crown and its employees and agents access at all reasonable times to all information held by the Ngāti Awa Governance Entity in any form that it has received from the Crown in relation to management of the Commercial Redress Property before the Settlement Date.
- (c) The Crown shall provide to the Ngāti Awa Governance Entity such information as the Ngāti Awa Governance Entity may reasonably require to defend actions and claims relating to the management of the Commercial Redress Property after the Settlement Date and the Ngāti Awa Governance Entity will reimburse the Crown for the reasonable costs and expenses incurred by the Crown in doing so.

10.3 Non-Merger

On transfer of the Commercial Redress Property to the Ngāti Awa Governance Entity under this Deed, the provisions of *Section 8* and its Attachments and Schedules will not merge and, to the extent any provision has not been fulfilled, will remain in force.

10.4 Compensation

The Crown shall compensate the Ngāti Awa Governance Entity for any net diminution in value of the Redress Licensed Land arising out of the existence of encumbrances required to give effect to a right arising out of the creation of computer freehold registers for the Redress Licensed Land which were not disclosed or referred to in the Disclosure Information; and *paragraph 5.1* of this Schedule applies to the calculation of the amount of any such compensation.

10.5 Balancing payment following survey

- (a) In this *paragraph 10.5*, *Specified Area* means:
- (i) 6889.52 hectares in respect of the Redress Licensed Land described in *paragraph 1.1.1* of *Attachment 8.2* and
 - (ii) 1044.004 hectares, in respect of the Redress Licensed Land described in *paragraph 3.1.1* of *Attachment 8.2*.
- (b) This *paragraph 10.5* applies if:
- (i) the Redress Licensed Land described in *paragraph 1.1.1* of *Attachment 8.2*; or
 - (ii) the Redress Licensed Land described in *paragraph 3.1.1* of *Attachment 8.2*,
- finally determined following approval by the Chief Executive (as defined in the Cadastral Survey Act 2002) of a survey plan differs in area from the Specified Area. It applies separately to each of the areas referred to above.
- (c) Subject to *paragraph 10.5(e)*:
- (i) the Ngāti Awa Governance Entity must make a balancing payment to the Crown if the surveyed area of the Redress Licensed Land is larger than the Specified Area;

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- (ii) the Crown must make a balancing payment to the Ngāti Awa Governance Entity if the surveyed area of the Redress Licensed Land is smaller than the Specified Area.
- (d) The balancing payment will be the amount (if any) by which the value of the Redress Licensed Land differs from its Redress Value as a result of the surveyed area being different from the Specified Area. That amount is referred to as the *value difference* in this *paragraph 10.5*.
- (e) If the value difference is less than \$50,000 then neither Party has to make a balancing payment under *paragraph 10.5(c)*.
- (f) The value difference will be agreed or determined as follows:
 - (i) No later than 30 Business Days after the date (referred to in this *paragraph 10.5* as the *approval date*) on which the Chief Executive approves the Survey Plan for the Redress Licensed Land, a Party who considers that the other must make a balancing payment may, by giving notice to the other, require the value difference to be established;
 - (ii) If neither Party gives a notice under *paragraph 10.5(f)(i)*, the value difference is taken to be zero and *paragraph 10.5(e)* applies;
 - (iii) If a Party does give a notice under *paragraph 10.5(f)(i)*, the Parties shall attempt to agree the value difference;
 - (iv) If the Parties have not agreed the value difference by the date which is 60 Business Days after the approval date, then the Party who gave notice under *paragraph 10.5(f)(i)* may require the value difference to be determined by the Valuer, as defined in *clause 8.1*;
 - (v) If a notice is not given under *paragraph 10.5(f)(iv)* by the date which is 70 Business Days after the approval date, the value difference is taken to be zero and *paragraph 10.5(e)* applies;
 - (vi) If a notice is given under *paragraph 10.5(f)(iv)* by the date which is 70 Business Days after the approval date, the value difference will be determined by the Valuer as defined in *clause 8.1* and his or her determination will be final and binding on the Parties.
- (g) All the costs incurred by the appointed registered valuer will be shared equally by the parties, unless the valuer determines that the value

TERMS OF TRANSFER

difference is less than \$50,000 and, in that case, the costs will be borne by the Party who gave notice under *paragraph 10.5(f)(iv)*.

- (h) The balancing payment must be made:
 - (i) on the Settlement Date, if the value difference is agreed or determined 60 Business Days or more before the Settlement Date;
or
 - (ii) otherwise, on the date which is 60 Business Days after the date on which the value difference is agreed or determined.

LEASEBACKS

SCHEDULE 8.3

LEASEBACKS

(Clause 8.2.3)

PART A

MINISTRY OF EDUCATION LEASE

MINISTRY OF EDUCATION

LONG TERM LEASE OF BARE GROUND

FOR STATE SCHOOL PURPOSES

[*NGĀTI AWA GOVERNANCE ENTITY*] (hereafter called "the Lessor") being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in that piece of land situated in the South Auckland Land District containing [*Here insert legal description as per Attachment 8.1, after new computer freehold registers have been created, including encumbrances, if any*].

does hereby lease to **HER MAJESTY THE QUEEN** acting through the Secretary for Education (hereafter called "the Lessee") all the said land (hereafter called "the Land") to be held by the Lessee as tenant for a term of forty years at the yearly rental of \$[insert amount from *Attachment 8.1*] plus GST payable annually in advance on the [*Day*] day of [*Month*] 200[*Year*] in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

The Lessee does hereby accept the lease of the above described land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants set forth in Schedules A and B following.

Dated this day of 200[].

SIGNED by _____)

)

)

)

SIGNED for and on behalf)

of HER MAJESTY THE QUEEN as)

Lessee by _____)

(acting pursuant to a delegation)

given to him by the Secretary for)

Education) in the presence of:)

SCHEDULE A**ITEM 1 THE LAND**

All that parcel of land being the Land previously specified.

ITEM 2 THE COMMENCEMENT DATE

The Commencement Date of this Lease shall be the [Day] day of [Month] 200[Year].

ITEM 3 ANNUAL RENTAL

[\$insert amount from *Attachment 8.1*] per annum plus GST payable annually in advance on the first day of each year during the continuance of this lease with a first payment due on the [Day] day of [Month] 200[Year].

ITEM 4 TERM OF LEASE**4.1 Initial term**

Forty years from the Commencement Date to determination on the [Day] day of [Month] 200[Year].

4.2 Subsequent terms

Perpetual rights of renewal of forty years each from the [Day] day of [Month] 200[Year] and each fortieth anniversary after that date.

ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes levied against the Lessor in respect of its interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

LEASEBACKS

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.

ITEM 6 PERMITTED USE

- (i) State School or any other Government Work
- (ii) Any use undertaken, established, managed, operated or maintained by a Crown entity (as defined in Section 2 Public Finance Act 1989) for any public purpose; or
- (iii) Any use of the Land or any part of the Land consented to by the Lessee as sub Lessor under clause 4.02 of this Lease where both the sublease and the use of the Land comply with the requirements of Clause 4.02.

ITEM 7 RIGHTS OF RENEWAL

Perpetually renewable as provided in Item 4.2 above.

ITEM 8 RENT REVIEW DATES

Five yearly from the Commencement Date of this Lease.

ITEM 9 LESSOR'S PROPERTY

Nil.

ITEM 10 LESSEE'S IMPROVEMENTS

All improvements of the Lessee as described in *clause 1.04*.

ITEM 11 CLAUSE 3.04(b) NOTICE

To: [Ngāti Awa Governance Entity]
[Address]
(hereafter called "the Lessor")

And to: The Secretary
Ministry of Education
National Property Office
Private Box 1666
WELLINGTON

LEASEBACKS

(hereafter called "the Lessee")

From: [Mortgagee / Chargeholder]
(hereafter called "the Lender")

In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("the Land") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (i) it has notice of the provisions of Clause 3.04(b) and (c) of the said Lease; and
- (ii) it agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of three months after the expiration or sooner determination of the Lease (hereafter collectively called "the relevant period");
- (iii) it will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (iv) it agrees that this acknowledgement is irrevocable.

SCHEDULE

[That parcel of land containing]

.....

(LENDER EXECUTION)

/ /0_

ITEM 12 CLAUSE 3.04(c) NOTICE

To: [Ngāti Awa Governance Entity]
[Address]
(hereafter called "the Lessor")

LEASEBACKS

And to: The Secretary
 Ministry of Education
 National Property Office
 Private Box 1666
 WELLINGTON
 (hereafter called "the Lessee")

From: [Mortgagee/Chargeholder]
 (hereafter called "the Lender")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the land described in the Schedule below ("the Land") it had notice of and agreed to be bound by the provisions of Clause 3.04(c) of the lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (ii) will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of three months after the expiration or sooner determination of the Lease.

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
 - (i) the persons executing this Lease as Lessor; and
 - (ii) any Lessor for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally;

LEASEBACKS

- (b) The expression "**the Lessee**" shall include and bind:
- (i) the person executing this Lease as Lessee;
 - (ii) all the Lessees for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "the Lessee" shall include the Lessee's agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

- 1.02 "**Goods and Services Tax**" or "**GST**" means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.
- 1.03 "**Government Work**" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.
- 1.04 "**Lessee's Improvements**" shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent or permitted occupier of the Lessee prior to or after the commencement of this Lease but shall exclude "Lessor's Property".
- 1.05 "**Lessee's Outgoings**" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.06 "**Lessor's Property**" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this lease.

LEASEBACKS

- 1.07 **"the Land", "the Commencement Date", "Annual Rental", "Term of the Lease", and "Permitted Use"** shall have the meanings ascribed to them in Schedule A.
- 1.08 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.
- 1.09 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.10 A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.11 Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

PART II - LESSEE'S COVENANTS**2.00 LESSEE'S COVENANTS****2.01 PAYMENT OF ANNUAL RENT**

The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 3 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.

2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

LEASEBACKS

2.03 USE OF LAND

The Lessee shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A which consent may be given or withheld at the absolute discretion in all things of the Lessor. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgment and not in reliance on any representation or warranty by the Lessor.

2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) promptly remedy any danger or hazard that may arise on the Land;
- (c) at all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS

- (a) The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.
- (b) Without limiting the generality of the foregoing, the Lessee shall take full responsibility for:
 - (i) all costs and charges relating to the repair and maintenance of any Lessee Improvements (whether of a structural nature or not);
 - (ii) all costs and charges for ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas;
 - (iii) all costs and charges associated with the repair, maintenance or replacement of any fencing on the Land.

2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

The Lessee shall punctually and at the Lessee's expense:

- (a) keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor;
- (b) take any steps necessary to control any pest infestation occurring on or emanating from the Land;
- (c) regularly cause all rubbish and garbage to be removed from the Land and will keep any rubbish bins or containers in a tidy condition. The Lessee will also at the Lessee's own expense cause to be removed all trade waste, boxes and other goods or rubbish not removable in the ordinary course by the Territorial Authority.

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2.09 SIGNAGE

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

2.10 INSURANCE

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at each rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of the original term of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of this clause shall be of no application whilst the Lessee is HER MAJESTY THE QUEEN

2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS

The Lessee acknowledges:

- (a) that the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- (b) that the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

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2.12 GST

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

2.13 LESSEE'S FURTHER COVENANT

The Lessee shall make good to the fullest extent possible any damage or loss caused to the Lessor by any act or omission of the Lessee. The Lessee shall recompense the Lessor for all reasonable expenses in making good any loss or damage to which this clause relates.

2.14 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

PART III - LESSOR'S COVENANTS**3.00 LESSOR'S COVENANTS****3.01 QUIET ENJOYMENT**

Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to

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the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land and such consent shall not be unreasonably or arbitrarily withheld.

3.03 LESSOR'S PROPERTY

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
 - (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such improvements are annexed to the Land;
 - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
 - (iii) when any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee;
- (b) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing

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mortgagees or chargeholders of the Land prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;

- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;
- (d) That the Lessee may demolish and/or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

3.05 LESSOR CONSENT TO GROUNDWORKS

- (a) Notwithstanding anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:
 - (i) make any excavation of the Land; or
 - (ii) conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
 - (iii) remove any boundary fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed removal;
 - (iv) make any sub-soil installation alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working

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days notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions which the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision shall be final and binding on the parties. The engineer's costs shall be met in equal shares by the parties unless the engineer otherwise so determines.

3.06 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for educational purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.

3.07 LESSEE BREAK OPTION

The Lessor acknowledges that the Lessee may at any time during the continuance of this Lease, or during any renewal of it, but not before the 10th anniversary of the Commencement Date, upon the giving of not less than six months' notice, determine this Lease. Upon the determination of this Lease, in accordance with such notice, the Lessee shall pay a further one year's rental at the rate which applied immediately prior to the determination and this shall be accepted by the Lessor in full and final satisfaction of all claims, losses and damage howsoever accruing to the

LEASEBACKS

Lessor from the date of such determination but without prejudice to any antecedent breach of this Lease prior to its determination.

PART IV - MUTUAL COVENANTS**4.00 MUTUAL COVENANTS****4.01 ASSIGNMENT**

- (a) Subject to clause 4.03 following and satisfaction of the provisions of clause 4.01(c) following, the Lessee shall be permitted as of right to assign its interest under this Lease to any "Crown entity" as defined in Section 2 of the Public Finance Act 1989, but shall not otherwise be able to assign its interest under this Lease;
- (b) It is acknowledged between the parties that a transfer of the interest of one "Department" as defined in Section 2 of the Public Finance Act 1989 to another Department shall be permitted as of right by the Lessor and shall not be deemed to be an assignment for the purposes of this clause 4.01;
- (c) The Lessor shall consent to any assignment permitted by clause 4.01(a) where:
 - (i) all rental and other monies payable hereunder have been paid and there is not any subsisting breach of any of the Lessee's covenants; and
 - (ii) the Lessee, at the Lessee's own expense, procures the execution by the Assignee of a Deed of Covenant with the Lessor that the Assignee will, at all times, duly pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease (but without thereby releasing the Lessee from the Lessee's obligations under this Lease).

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4.02 **SUBLETTING**

- (a) Subject to clause 4.03 following and the satisfaction of the provisions of clause 4.02(b) following, the Lessee shall be permitted as of right to sublet to any person or body (whether corporate or unincorporate) where:
- (i) the Land is used for the purposes of a State School and a part of the Land is not needed by the State School occupying it; and
 - (aa) it is considered by the Lessee that it is in the public interest to grant a sublease; and
 - (bb) that the sublease will bring no significant educational disadvantage (or no educational disadvantage at all) to any school concerned or to its community; or will bring to the school concerned educational benefits that outweigh any educational disadvantages;
 - (ii) the sublease is essential or conducive to the carrying out of the then existing Permitted Use
- but otherwise no subletting shall be permitted.
- (b) Subletting shall be permitted by clause 4.02(a):
- (i) where all rent and other monies payable hereunder have been paid and there is not any subsisting breach of any of the Lessee's covenants; and
 - (ii) where the Lessee, at the Lessee's own expense, procures the execution by the sublessee of a Deed of sublease which is not inconsistent with the provisions of this Lease;
 - (iii) without prejudice to any of the Lessor's rights, powers or remedies under this Lease.

4.03 OCCUPANCY BY SCHOOL BOARD OF TRUSTEES

- (a) Where the Lessee hereunder being HER MAJESTY THE QUEEN acting by and through the Secretary for Education has issued either a Licence to Occupy or a Property Occupancy Document to any School Board of Trustees duly constituted under the provisions of the Sixth Schedule to the Education Act 1989 (it being agreed and acknowledged by the Lessor that the Lessee has the right to issue a Property Occupancy Document under the provisions of Section 70 Education Act 1989 to any Board of Trustees in possession of the Land) then the occupancy so conferred shall not be an underletting or an assignment to which Clause 4.01 relates and shall be permitted as of right, the Lessor agreeing that the covenant for quiet enjoyment contained in Clause 3.01 hereof extends to and includes the occupancy of the Land by any such Board whether pursuant to a Licence to Occupy or a Property Occupancy Document;
- (b) The Lessee covenants that it will save harmless and indemnify the Lessor to the fullest extent permitted by law from and against any claim for loss, damage or compensation howsoever brought by any third party against the Lessor which arises from any School Board of Trustee's use and occupation of the Land.

4.04 FURTHER PROVISIONS RELATING TO SUB LETTING & ASSIGNMENT

- (a) Where the Lessor consents to a subletting the consent shall extend only to that subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (b) Any assignment or subletting of the type or in the manner referred to in Section 109(2) of the Property Law Act 1952 shall be a breach of the provisions of this Lease.
- (c) Where the Lessee hereunder is a Crown entity within the definition of Section 2 Public Finance Act 1989 and any event or series of events (whether or not related) occurs which results in the Lessee no longer coming within that definition, then the Lessee shall be deemed to have contravened the provisions of Clause 4.01 of this

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Lease relating to assignment on the date on which the event having that result occurs.

4.05 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty one (21) clear days written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee;
- (b) Any notice served under the provisions of Clause 4.05(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

4.06 LESSEE'S IMPROVEMENTS

The parties acknowledge that:

- (a) the Lessee not being in breach of this Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land and shall, if required by the Lessor on the expiry of the term of this Lease, remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of three months from the expiration or sooner determination of this Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to Enter the Land for a period of three (3) months

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subsequent to the expiration of this Lease and remove Lessee's Improvements and further that the provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;

- (b) in the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and restore the Land to a neat, tidy and safe condition subsequent to any such removal;
- (c) the Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within three months after this time and notwithstanding any rule of law or equity to the contrary;
- (d) in any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental;
- (e) notwithstanding the generality of the provisions of clause 4.06(a), the Lessee shall not remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor, which may be given or withheld at the discretion in all things of the Lessor.

For the avoidance of doubt, nothing herein shall obligate the Lessee to remove the property referred to in this Clause 4.06(e), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease.

- (f) the Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease (whether by effluxion of time or otherwise) for the three month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land. For the avoidance of doubt, this licence fee shall be additional to the further years rental specified in clause 3.07 in the event that provision applies to any early determination of this Lease.

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- (g) where the Lessee is in breach of this Lease either prior to or upon its expiry and the Lessor prohibits the removal of any Lessee's Improvements from the Land pursuant to Clause 4.06(a) because of such breach, then the parties shall either agree upon the monetary loss accruing to the Lessor or failing agreement, refer the matter to arbitration as hereafter provided in Clause 4.14. Upon the quantum of any such loss being agreed or determined the Lessee shall pay the Lessor for such loss, together with rental up until the date of payment and shall thereafter have three months in which to remove the Lessee's Improvements, such right of removal being subject to all relevant provisions of this Lease.
- (h) the provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall enure for the benefit of the party entitled until completely performed.
- (i) if the Lessee fails to remove any of the Lessee's Improvements required by the Lessor to be removed pursuant to subclause 4.06(a) then, without prejudice to any other rights of the Lessor, the Lessor may by further notice in writing to the Lessee, at any time after the expiration of the three month period given for the Lessee to remove such Improvements, elect to forfeit those specified Lessee's Improvements and on service of such notice the same shall become the property of the Lessor. All other Lessee's Improvements remaining upon the Land after the expiration of the three month period provided in subclause 4.06(a) shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor.

4.07 RENEWAL

- (a) Should the Lessee, not being in breach of its covenants under this Lease, give written notice of its intention to renew this Lease no earlier than twelve months prior to the expiration of any term of this Lease and no later than nine months prior to the expiration of any term of this Lease (time not being of the essence), then the Lessor will, at the cost of the Lessee, renew the Lease for the next further term from the renewal date as hereafter provided;
- (b) Should the Lessee fail to give written notice as provided in clause 4.07(a), then the Lessor may at any time no earlier than nine months minus one day prior to the expiration of any term of this

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Lease, serve written notice on the Lessee ("the Lessor's Notice") which specifies:

- (i) that the Lessee is required to advise, by notice in writing, within three months from the date of receipt of the Lessor's Notice, whether it elects to renew the Lease or not; and
- (ii) that should the Lessee fail to respond to the Lessor's Notice (time being of the essence in all things), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease;
- (c) The annual rental for the first term of any renewal shall be agreed upon or, failing agreement, shall be determined in accordance with clause 4.08 which shall apply with such modifications as may be necessary;
- (d) Otherwise, the renewed Lease shall be upon the same terms and conditions as are expressed or implied in this Lease.

4.08 RENT REVIEW

- (a) The annual rental shall be reviewed by the Lessor at intervals of five (5) years as follows:
 - (i) the Lessor shall commence a review by not earlier than three (3) months prior to a review date or at any time up to one year after any review date (time being of the essence) by giving written notice to the Lessee specifying the annual rental considered by the Lessor to be the current market rent as at that review date;
 - (ii) if, by written notice to the Lessor within twenty eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the proposed new annual rental is the current market rent, then the new rental shall be determined in accordance with the provisions of Clause 4.08 (b);
 - (iii) the rental so determined or accepted shall be the annual rental from the review date or the date of the Lessor's notice if such notice is given later than three (3) months after the review date;

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- (iv) pending the determination of the new rental, the Lessee shall pay the rental specified in the Lessor's notice provided that the rental is substantiated by a registered valuer's report. Upon determination of the new rental, an appropriate adjustment shall be made;
 - (v) the rent review at the option of either party may be recorded in a variation of this Lease, the cost of which and the stamp duty thereon shall be payable by the Lessee.
- (b) Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the current market rent but if agreement is not reached within twenty eight (28) days then the new rental may be determined either:
- (i) by one party giving written notice to the other requiring the new rental to be determined by arbitration; or
 - (ii) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - (aa) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to so determine the new rental;
 - (bb) the valuers appointed before commencing their determination shall appoint an Umpire who shall be a registered valuer or Solicitor of the High Court. In the event the valuers fail to agree upon an Umpire, the appointment of an Umpire shall be made by the President of the Arbitrator's Institute of New Zealand Incorporated on the joint application of the valuers;
 - (cc) the valuers shall determine the current market rent of the Land and if they fail to agree then the rental shall be determined by the Umpire;
 - (dd) each party shall be given the opportunity to make written or verbal representations to the valuers or the Umpire subject to such reasonable time and other limits as the valuers or the Umpire may

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prescribe and they shall have regard to any such representations but not be bound thereby.

When the rental has been determined, the Umpire or the valuers shall give written notice thereof to the parties. Any Umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the rental is determined by the parties' valuers and not the Umpire, the parties shall pay their own costs.

- (c) Notwithstanding the generality of the foregoing, the parties agree the reviewed current market rent shall be determined at 6% of:
- (i) the value of the freehold interest in Land as vacant land in an unsubdivided state assessed in accordance with its underlying zoning or as a school site, whichever is the greater; and
 - (ii) the value of any Lessor's property on the Land;

except to the extent that the rental so determined shall never be less than the rental fixed at the Commencement Date of the initial term of this Lease, namely the annual rental of \$[] plus GST.

4.09 DISTRESS

The Lessor may distrain for rental or other monies payable under this Lease, should these remain unpaid thirty days after their due date PROVIDED HOWEVER that so long as HER MAJESTY THE QUEEN is the Lessee hereunder the provisions of this clause shall be of no application.

4.10 RE-ENTRY

- (a) The Lessor may re-enter the Land where:
- (i) rental is in arrears for a period exceeding 30 days after any rental payment date;

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- (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
- (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
- (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry but without prejudice to the rights of either party against the other;

- (b) Whilst HER MAJESTY THE QUEEN is the Lessee under this Lease and should HER MAJESTY THE QUEEN either default in the payment of any rental for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "the Default Notice") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The Default Notice notwithstanding anything to the contrary contained in Clause 4.10(b) above shall specify that:
 - (i) the Lessee must within 30 days of receipt of such notice remedy the default specified; and
 - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this Clause 4.10;
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of Clause 4.10(b) have been satisfied in full and further that any re-entry contrary to the provisions of Clause 4.10(b) shall be null and void ab initio.

4.11 INSURANCE

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land;
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land;
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of that party) whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.

4.12 RATING ASSESSMENTS

The parties agree that the Lessee may at any time make application to the relevant Territorial Authority for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

4.13 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

4.14 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration;
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the District Law Society of the District within which the Land is situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of

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the Arbitration Act 1996 are to be read subject hereto and varied accordingly;

- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other monies payable hereunder which remain unpaid or from exercising the rights and remedies in the event of such default prescribed in clauses 4.09 and 4.10 hereof;
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.08(b)(ii).

4.15 SERVICE OF NOTICES

- (a) Notices given under this Lease by the Lessor shall be served on the Lessee by hand delivery in accordance with Section 152 of the Property Law Act or by registered mail addressed to:

The Property Manager
National Office
Ministry of Education
Private Bag 1666
WELLINGTON.

- (b) Notices given under this Lease by the Lessee shall be served on the Lessor by hand delivery in accordance with Section 152 of the Property Law Act or by registered mail addressed to:

[*Ngāti Awa Governance Entity*]
[*Address*]

- (c) Notices shall be deemed to be served at the time of delivery, or in the case of notices which are posted by registered mail, two days after the date of posting.

4.16 REGISTRATION OF LEASE

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the

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Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register this Lease as soon as possible and the Lessee shall uplift any caveat it has lodged on the registration of this Lease.

4.17 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the negotiation, preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents of approvals associated with this Lease and shall also pay all stamp duty at any time payable on this Lease or any variation or extension of it.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

4.18 INTEREST

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

4.19 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

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(a) Payment of Rental:

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) Assignment and Sub Leasing:

The provisions dealing with assignment and sub leasing; or

(c) Use of Land:

The provisions restricting the use of the Land.

4.20 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

4.21 RENTAL MORATORIUM

If any moratorium or other law, act or regulation that (notwithstanding clause 4.08 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rental to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

4.22 ARTEFACTS OR FOSSILS

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and

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carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

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LESSOR:

[Ngāti Awa Governance Entity]

Correct for the purposes of the
Land Transfer Act 1952

.....
SOLICITOR FOR THE LESSEE

LESSEE:

HER MAJESTY THE QUEEN
acting by and through the Secretary
for Education

Particulars entered in the
Register as shown herein
on the date and at the time
endorsed below

MEMORANDUM OF LEASE

**THE SECRETARY
MINISTRY OF EDUCATION
NATIONAL OFFICE
WELLINGTON**

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**PART B
(DEPARTMENT FOR COURTS LEASE)**

LESSOR:

[NGĀTI AWA GOVERNANCE ENTITY] Correct for the purposes of the Land Transfer Act 1952

.....
SOLICITOR FOR THE LESSEE

LESSEE:

HER MAJESTY THE QUEEN
acting by and through the Chief
Executive of the Department for
Courts

Particulars entered in the
Register as shown herein
on the date and at the
time endorsed below

MEMORANDUM OF LEASE

**THE CHIEF EXECUTIVE
DEPARTMENT FOR COURTS
WELLINGTON**

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DEPARTMENT FOR COURTS

LONG TERM LEASE OF BARE GROUND

FOR COURTHOUSE PURPOSES

[NGĀTI AWA GOVERNANCE ENTITY] (hereafter called “**the Lessor**”) being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed on Computer Freehold Register SA45A/58 (South Auckland Registry), in that piece of land situated in South Auckland Land District containing 2021 square metres more or less, being Section 1 SO57375 and being comprised and described therein.

does hereby lease to **HER MAJESTY THE QUEEN** acting through the Chief Executive of the Department for Courts (hereafter called “**the Lessee**”) all the said land (hereafter called “**the Land**”) to be held by the Lessee as tenant for a term of twenty years at the yearly rental of \$[] plus GST payable annually in advance on the day of in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

The Lessee doth hereby accept the lease of the above described land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants set forth in Schedules A and B following.

Dated this day of 200

SIGNED by **[NGĀTI AWA**)
GOVERNANCE ENTITY as Lessor)

LEASEBACKS

SIGNED for and on behalf of **HER**)

MAJESTY THE QUEEN as Lessee)

by)

(acting by and through the Chief)

Executive of the Department for Courts))

SCHEDULE A**ITEM 1 THE LAND**

All that parcel of land being the Land previously specified.

ITEM 2 THE COMMENCEMENT DATE

The commencement date of this Lease shall be the day of
20 .

ITEM 3 ANNUAL RENTAL

[insert amount from *Attachment 8.1*]
per annum plus GST payable annually in advance on the first day of each year
during the continuance of this lease with a first payment due on the day
of 200 .

ITEM 4 TERM OF LEASE**4.1 Initial term**

Twenty years from the Commencement Date to determination on the
day of 20 .

4.2 Subsequent terms

Ten rights of renewal of five years each from the day of
20 and each fifth anniversary after that
date.

ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local,
territorial, governmental and any other statutory authority excluding
only taxes levied against the Lessor in respect of its interest in the
Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or
services.

5.3 Rubbish collection charges.

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- 5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.

ITEM 6 PERMITTED USE

- 6.1 For the general purposes of the Department of Courts or any other use which conforms with the local Code of Ordinances or District Plan applying to the premises.
- 6.2 Any use undertaken, established, managed, operated or maintained by a Crown entity (as defined in section 2 Public Finance Act 1989) for any public purpose; or
- 6.3 Any use of the Land or any part of the Land consented to by the Lessee as sub Lessor under clause 4.01 of this Lease where both the sub lease and the use of the Land comply with the requirements of clause 4.01.

ITEM 7 RIGHTS OF RENEWAL

Renewable as provided in Item 4.2 above.

ITEM 8 RENT REVIEW DATES

Five yearly from the Commencement Date of this Lease.

ITEM 9 LESSOR'S PROPERTY

Nil.

ITEM 10 LESSEE'S IMPROVEMENTS

All buildings and other improvements together with foundations, sub-soil works and services now or hereafter constructed on the Land by the Lessee or any agent or permitted occupier of the Lessee including, without limitation, the 1607m² court house building, steel cage saliport, cobblestoned areas and courtyards and asphalted carpark comprising 12 parking spaces, and all fixtures, fittings and chattels therein contained.

ITEM 11 CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE

To: [The Lessor]
(hereafter called "the Lessor")

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And to: [The Lessee]
(hereafter called "**the Lessee**")

From: [Mortgagee / Chargeholder]
(hereafter called "**the Lender**")

In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("**the Land**") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (i) It has notice of the provisions of clause 3.04(b) and (c) of the said Lease; and
- (ii) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease (hereafter collectively called "**the relevant period**");
- (iii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE ***

[That parcel of land containing]

.....

(LENDER EXECUTION)

/ / 200

ITEM 12 CLAUSE 3.04(c) CHARGEHOLDER'S NOTICE

To: [The Lessor]
(hereafter called "**the Lessor**")

LEASEBACKS

And to: [The Lessee]
(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder]
(hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of clause 3.04(c) of the Lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (ii) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease.

ITEM 13 ADDRESS FOR SERVICE

Lessor: [Ngāti Awa Governance Entity]

WHAKATĀNE

Attn: General Manager

Facsimile:

Lessee: Chief Executive
Department for Courts
Level 3
Vogel Building
Aitken Street
WELLINGTON

Facsimile: (04) 918 8820

SCHEDULE B**PART I - PRELIMINARY****1.00 DEFINITIONS AND INTERPRETATION****1.01 In this Lease:**

- (a) The expression “**the Lessor**” shall include and bind:
 - (i) the persons executing this lease as Lessor; and
 - (ii) any Lessor for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.

- (b) The expression “**the Lessee**” shall include and bind:
 - (i) the person executing this lease as Lessee;
 - (ii) all the Lessees for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression “**the Lessee**” shall include the Lessee’s agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (c) Words importing the singular or plural number shall include the plural or singular number respectively.
- 1.02 “Goods and Services Tax” or “GST” means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.**
- 1.03 “Government Work” means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.**

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- 1.04 **“Lease”** means, unless the context otherwise requires, this lease and any further or renewal term thereof.
- 1.05 **“Lessee’s Improvements”** shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude **“Lessor’s Property”**.
- 1.06 **“Lessee’s Outgoings”** means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.07 **“Lessor’s Property”** means all improvements on the land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the land by the Lessor after the commencement of this Lease.
- 1.08 **“Market Value of the Land”** means the market value of the freehold interest in the Land as at the relevant rent review date, as vacant land in an unsubdivided state assessed in accordance with its then current underlying zoning or a courthouse, whichever is the greater.
- 1.09 **“The Land”, “The Commencement Date”, “Annual Rental”, “Term of the Lease” and “Permitted Use”** shall have the meanings ascribed to them in Schedule A.
- 1.10 The term **“to sublet”** shall include the granting of a licence to occupy the Land or part thereof and **“subletting”** and **“sublease”** shall be construed accordingly.
- 1.11 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.12 A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.13 Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

PART II - LESSEE'S COVENANTS**2.00 LESSEE'S COVENANTS****2.01 PAYMENT OF ANNUAL RENT**

The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 1 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.

2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

2.03 USE OF LAND

The Lessee shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A which consent may be given or withheld at the absolute discretion in all things of the Lessor. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor.

2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws,

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codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) Promptly remedy any danger or hazard that may arise on the Land;
- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS

- (a) The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

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2.09 SIGNAGE

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

2.10 INSURANCE

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at any rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of the original term of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of this clause shall be of no application whilst the Lessee is **HER MAJESTY THE QUEEN**.

2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS

The Lessee acknowledges:

- (a) That the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;

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- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

2.12 GST

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

2.13 LESSEE'S FURTHER COVENANT

The Lessee shall indemnify the Lessor against all costs, damages, losses and expenses which the Lessor may incur or for which the Lessor may become liable in respect of or arising from:

- (a) The use or misuse of the Land or any Lessee's Improvements or the condition of the Land or any Lessee's Improvements (or any part of the Land or Lessee's Improvements);
- (b) Any accident or damage to property or person arising from any occurrence in or near the Land wholly or in part by reason of any act or omission by the Lessee;
- (c) Failure by the Lessee to comply with any obligations imposed on the Lessee under this Lease or by statute, regulation, by-law or other laws relating to the use or occupation of the Land.

2.14 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

PART III**3.00 LESSOR'S COVENANTS****3.01 QUIET ENJOYMENT**

Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land and such consent shall not be unreasonably or arbitrarily withheld.

3.03 LESSOR'S PROPERTY

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:

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- (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
 - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
 - (iii) when any Lessee's improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;
- (d) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

3.05 LESSOR CONSENT TO GROUND WORKS

- (a) Notwithstanding anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:
- (i) Make any excavation of the Land; or
 - (ii) Conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
 - (iii) Remove any boundary-fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference;
 - (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the

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engineer's decision shall be final and binding on the parties.
The engineer's costs shall be met in equal shares by the parties unless the engineer otherwise so determines.

3.06 DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for courthouse purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.

3.07 PROVISION OF CERTAIN NOTICES TO THE LESSEES

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

PART IV – MUTUAL COVENANTS**4.00 MUTUAL COVENANTS****4.01 ASSIGNMENT AND SUBLETTING**

- (a) The Lessee will not without the previous consent in writing of the Lessor assign, transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee, transferee or sublessee.
- (b) Notwithstanding subclause (a), where the Crown (as that term is defined in section 2 of the Public Finance Act 1989) remains as the Lessee under this Lease and in occupation of the Land no such consent shall be required from the Lessor except that on each occasion that a different Crown entity (as defined in section 2 of the Public Finance Act 1989) or any other Crown body or State Owned Enterprise assumes the role and

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obligations of the Lessee under this Lease, the Lessee shall notify the Lessor in writing of that change.

- (c) In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form acceptable to the Lessor.
- (d) This clause 4.01 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- (e) For the purpose of this clause 4.01, any proposed change in the shareholding of the Lessee or any amalgamation under section 209 of the Companies Act 1955 or section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 4.01(f).
- (f) For the purposes of clause 4.01(a), a proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 2 of the Public Finance Act 1989 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- (g) Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.

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- (h) Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any Sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (i) Any assignment or subletting of the type or in the manner referred to in section 109(2) of the Property Law Act 1952 shall be a breach of the provisions of this Lease.
- (j) Notwithstanding any rule of law to the contrary it is specifically agreed that in the event of an assignment or transfer of this Lease by Her Majesty the Queen (“**the Crown**”), the following provisions shall apply:
 - (i) in the event of an assignment or transfer during the initial term of the Lease the liability of the Crown shall cease at the expiration date of the initial term of the Lease or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of the initial term of the Lease;
 - (ii) in the event of an assignment or transfer during any renewed term of the Lease, the liability of the Crown shall cease and determine as from the expiration of that renewed term or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of such renewed term.

4.02 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Should the Lessee default in the observance or performance of any of the Lessee’s obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days’ written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such

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acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.

- (b) Any notice served under the provisions of clause 4.02(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

4.03 LESSEE'S IMPROVEMENTS

The parties acknowledge that:

- (a) The Lessee not being in breach of the Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of six months from the expiration or sooner determination of the within Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to enter the Land for a period of six (6) months subsequent to the expiration of this Lease and remove Lessee's Improvements and further that this provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
- (b) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and restore the Land to a neat, tidy and safe condition subsequent to any such removal;

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- (c) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within six months after this time and notwithstanding any rule of law or equity to the contrary;
- (d) In any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental;
- (e) Notwithstanding the generality of the provisions of clause 4.03(a), the Lessee shall not remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor, which may be given or withheld at the discretion in all things of the Lessor.

For the avoidance of doubt, nothing herein shall obligate the Lessee to remove the property referred to in this clause 4.03(e), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease;

- (f) The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the six month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- (g) The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall enure for the benefit of the party entitled until completely performed;
- (h) All Lessee's Improvements remaining upon the Land after the expiration of the six month period provided in subclause 4.03(a) shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor.

4.04 RENEWAL

- (a) Should the Lessee, not being in breach of its covenants under this Lease, give written notice of its intention to renew this Lease no earlier than twelve (12) months prior to the expiration

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of any term of this Lease and no later than nine (9) months prior to the expiration of any term of this Lease (time not being of the essence), then the Lessor will renew the Lease for the next further term from the renewal date as hereafter provided.

- (b) Should the Lessee fail to give written notice as provided in clause 4.04(a), then the Lessor may at any time no earlier than nine months minus one day prior to the expiration of any term of this Lease, serve written notice on the Lessee (“**the Lessor’s Notice**”) which specifies:
 - (i) that the Lessee is required to advise, by notice in writing, within three (3) months from the date of receipt of the Lessor’s Notice, whether it elects to renew the Lease or not; and
 - (ii) that should the Lessee fail to respond to the Lessor’s Notice (time being of the essence in all things), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease under clause 4.04(c).
- (c) In the event that the Lessee fails to respond to the Lessor’s Notice within the time frame set out in clause 4.04(b)(i) (time being of the essence in all things), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease.
- (d) The annual rent for the first term of any renewal shall be agreed upon or, failing agreement, shall be determined in accordance with clause 4.05 which shall apply with such modifications as may be necessary.
- (e) Otherwise, the renewed Lease shall be upon the same terms and conditions as are expressed or implied in this Lease.

4.05 RENT REVIEW

- (a) The annual rental shall be reviewed by the Lessor at intervals of five (5) years as follows:
 - (i) the Lessor shall commence a review by not earlier than three (3) months prior to a review date or at any time up to one year after any review date (time being of the

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- essence) by giving written notice to the Lessee specifying the annual rental considered by the Lessor to be the current rent of the Land which shall be equal to six percent (6%) of the Market Value of the Land as at that review date;
- (ii) if, by written notice to the Lessor within twenty-eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the proposed new annual rental is as aforesaid, then the new rental shall be determined in accordance with the provisions of clause 4.05(b);
 - (iii) the annual rental so determined or accepted shall be the annual rental from the review date or the date of the Lessor's notice if such notice is given later than three (3) months after the review date;
 - (iv) pending the determination of the new rental, the Lessee shall pay the rental specified in the Lessor's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the new rental, an appropriate adjustment shall be made;
 - (v) the rent review at the option of either party may be recorded in a variation of this Lease, the cost of which and the stamp duty thereon shall be payable by the Lessee.
- (b) Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the Market Value of the Land but if agreement is not reached within twenty-eight (28) days then the same may be determined either:
- (i) by one party giving written notice to the other requiring the Market Value of the Land to be determined by arbitration; or
 - (ii) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - (aa) each party shall appoint a valuer and give written notice of the appointment to the other

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party within twenty eight (28) days of the parties agreeing to so determine the new rental;

- (bb) the valuers appointed before commencing their determination shall appoint an Umpire who shall be a registered valuer or Solicitor of the High Court. In the event the valuers fail to agree upon an Umpire, the appointment of an Umpire shall be made by the President of the Arbitrator's Institute of New Zealand Incorporated on the joint application of the valuers;
- (cc) the valuers shall determine the Market Value of the Land and if they fail to agree then the same shall be determined by the Umpire;
- (dd) each party shall be given the opportunity to make written or verbal representations to the valuers or the Umpire subject to such reasonable time and other limits as the valuers or the Umpire may prescribe and they shall have regard to any such representations but not be bound thereby.

When the rent (which shall be an amount equal to six percent (6%) of the Market Value of the Land) has been determined, the Umpire or the valuers shall give written notice thereof to the parties. Any Umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the rental is determined by the parties' valuers and not the Umpire, the parties shall pay their own costs.

- (c) Notwithstanding the foregoing, the parties agree the reviewed rent shall never be less than the rental fixed at the Commencement Date of the initial term of this Lease, namely the annual rental of \$[] plus GST.

4.06 DISTRESS

The Lessor may distrain for rental or other monies payable under this Lease, should these remain unpaid thirty days after their due date **PROVIDED HOWEVER** that so long as **HER MAJESTY THE QUEEN** is the Lessee hereunder the provisions of this clause shall be of no application.

4.07 RE-ENTRY

- (a) The Lessor may re-enter the Land where:
- (i) rental is in arrears for a period exceeding thirty (30) days after any rent payment date;
 - (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
 - (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
 - (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.

- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient

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particularity to enable the Lessee to clearly identify the default alleged.

- (c) The Default Notice notwithstanding anything to the contrary contained in clause 4.07(a) above shall specify that:
 - (i) the Lessee must within 30 days of receipt of such notice remedy the default specified; and
 - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.07.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.07(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.07(b) shall be null and void ab initio.

4.08 INSURANCE

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land.
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land.
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.

4.09 RATING ASSESSMENTS

The parties agree that the Lessee may at any time make application to the Valuation Department for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

4.10 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

4.11 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the District Law Society of the District within which the Land is situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clauses 4.06 and 4.07 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(b)(ii).

4.12 SERVICE OF NOTICES

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

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If either party does not have a current address for service, then service in terms of this clause may be effected on that party:

- (a) In any manner mentioned in Section 152 of the Property Law Act 1952; or
- (b) By registered post addressed to the registered office or principal place of business of the party intended to be served;

and any notice or other document given or served by the method mentioned in paragraph (a) shall be deemed to have been given or served and received by the other party two days after the date of posting.

4.13 REGISTRATION OF LEASE

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

4.14 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease and shall also pay all stamp duty at any time payable on this Lease or any variation or extension of it.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

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4.15 INTEREST

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

4.16 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Assignment and Sub Leasing:***

The provisions dealing with assignment and sub leasing; or

(c) ***Use of Land:***

The provisions restricting the use of the Land.

4.17 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

4.18 RENT MORATORIUM

If any moratorium or other law, act or regulation that (notwithstanding clause 4.06 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

4.19 ARTEFACTS OR FOSSILS

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

EASEMENT

SCHEDULE 8.4**EASEMENT***(Clauses 8.4.4(a) and 8.4.4(c))***DEED GRANTING EASEMENT OF RIGHT OF WAY IN GROSS**

Date

PARTIES

- 1 [NGĀTI AWA GOVERNANCE ENTITY] (the “Grantor”)
- 2 HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Minister of Conservation (the “Grantee”)

BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land on the terms and conditions set out in this Deed.

BY THIS DEED IT IS AGREED AND DECLARED as follows:**1 DEFINITIONS AND CONSTRUCTION****1.1 Definitions:**

In this Deed, unless the context otherwise requires:

“Commencement Date” means the date first written above;**“Deed”** means this deed, the Background and the Schedule annexed hereto;**“Grantee”** also includes the Grantee’s licensees, lessees, employees, agents, contractors, successors and assigns but does not otherwise include members of the general public;**“Grantor”** also includes the other registered proprietors from time to time of the Grantor’s Land;**“Grantor’s Land”** means the land described in paragraph 1 of the First Schedule and includes any part thereof;

EASEMENT

[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

["**Crown Forestry Licence**" means a Crown Forestry Licence granted under section 14 of the Crown Forestry Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantor's Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

1.2 Construction

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2 GRANT OF ACCESS RIGHTS

- 2.1 The Grantor hereby grants to the Grantee a right of way in gross over that (those) part(s) of the Grantor's Land known as [] Road(s) and shown marked [insert identifying information] on the diagram attached hereto together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed.
- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under Clause 2 of this Agreement are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or re-passing over the Grantor's Land:
- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
 - 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;
 - 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
 - 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
 - 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this Clause 3.1.5):
 - (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
 - (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;

EASEMENT

- 3.2 Subject to Clauses 3.7 and 3.8, The Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee;
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road;
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land;
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- (a) widen the road; or
 - (b) alter the location of the road; or
 - (c) alter the way in which the run-off from the road is disposed of; or
 - (d) change the nature of the road surface; or

EASEMENT

- (e) park or store equipment or material on the Grantor's Land

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor;

3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;

3.11 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

4 GRANTOR'S RIGHTS

4.1 The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

4.2 The Grantor may relocate any part or all of the right of way defined in clause 2.1 where such relocation is required to enable the Grantor to reasonably obtain the full benefit of the Grantor's Land provided that such relocation shall be no less convenient to the Grantee in enabling the full benefit of the Grantee's land. The Grantee will sign all documents required to effect any relocation and the Grantor will bear all the costs of relocation and provide an alternative right of way to the same standard as the existing right of way.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the preparation, registration and enforcement of any provision in this Deed.

6 GRANTOR'S OBLIGATION ON SALE

The Grantor agrees that this Deed is binding on the Grantor and on all the successors in title to the Grantor's Land. The Grantor agrees that it will not transfer the Grantor's Land without first obtaining from the successor in title a Deed of Covenant from that successor agreeing to be bound by the provisions of this Deed.

7 LICENCE

[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantor's Land and this Deed is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Deed.

8 ASSIGNMENT

8.1 The Grantee may assign its rights and obligations under this Deed to any one of the following who acquires land for an estate or interest in land from the Grantee and requires rights under this Deed as the means of providing reasonable access to the land:

- (a) Any Crown entity as defined in section 2(1) of the Public Finance Act 1989;
- (b) Any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986;
- (c) Any person who holds the land in trust for the Grantee;
- (d) To any other person with the prior consent of the Grantor, which shall not be unreasonably withheld.

EASEMENT

- 8.2 As from the date of assignment the Grantee shall cease to have any liability whatsoever in respect of this Deed and the Grantor agrees to release the Grantee from all obligations under this Deed from that date, but only if the assignee enters into a deed of covenant with the Grantor agreeing to be bound by the terms of the Deed from the date of release of the Grantee.

9 REGISTRATION

- 9.1 In the event that the Grantee wishes to have this Deed, or a Memorandum of Transfer granting a right of way easement and/or a right of way easement in gross on substantially the same terms and conditions as this Deed, registered against the Grantor's Land in the appropriate Land Registry Office the parties shall do all such acts and things necessary to ensure that such registration can be effected. Such registration, including any necessary survey of the right of way, shall be at the cost of the Grantee.
- 9.2 If the Grantee transfers the fee simple estate in the Grantee's land or any part of it which requires the benefit of this Deed, and the Grantor declines to consent to the assignment of the Deed pursuant to clause 8.1(d) the Grantee shall, prior to any such transfer and at its cost, either survey and register this easement or surrender this Deed and both parties shall do all such acts and things necessary to ensure that such registration can be effected.

10 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

11 NOTICES

- 11.1 Any notices to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:
- 11.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;
- 11.1.2 the Grantee's address as set out in paragraph 3 of the First Schedule;

EASEMENT

11.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

12 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

13 [ENTER NAME OF SETTLEMENT LEGISLATION]

The Grantor and the Grantee record that this Deed is entered into under section [*enter section number*] of the Deed of Settlement dated [*enter date of deed*] between the Crown and Ngāti Awa.

14 DISPUTES RESOLUTION

Should any dispute arise between the parties touching any matter relating to this Deed then:

14.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a “without prejudice” basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the Auckland District Law Society);

14.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

14.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party’s desire to have the matter referred to arbitration;

14.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

EASEMENT

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

Signed for and on behalf of **[NGĀTI
AWA GOVERNANCE ENTITY]** as
Grantor by:

in the presence of:

Name:

Occupation:

Address:

Signed for and on behalf of **HER
MAJESTY THE QUEEN** as Grantee
by

Conservator for the Bay of Plenty
Conservancy acting for the Minister
of Conservation under delegated
authority pursuant to sections 57 and
58 of the Conservation Act 1987 and
section 41 of the State Sector Act
1988

In the presence of:

Name:

Occupation:

Address:

EASEMENT

FIRST SCHEDULE

1 GRANTOR'S LAND: [*Enter details*]

2 GRANTOR'S ADDRESS:

[*Ngāti Awa Governance Entity*]

[*Address*]

3 GRANTEE'S ADDRESS:

Department of Conservation

Bay of Plenty Conservancy

PO Box 1146

ROTORUA

EASEMENT

SCHEDULE 8.5
EASEMENT
(Clause 8.4.4(d))

Deed Granting Easement of Right of Way

Date

PARTIES

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “Grantor”)
- 2 **[NGĀTI AWA GOVERNANCE ENTITY]** (the “Grantee”)

BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

BY THIS DEED IT IS AGREED AND DECLARED as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions:**

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

EASEMENT

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

“**Grantee’s Land**” means the land described in paragraph 3 of the First Schedule;

“**Grantor’s Land**” means the land described in paragraph 1 of the First Schedule and includes any part thereof.

[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

["**Crown Forestry Licence**” means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

“**Crown Forestry Licensee**” means the Licensee under a Crown Forestry Licence over the Grantee’s Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

1.2 Construction

In the construction of this Deed unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;

1.2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Deed;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2 GRANT OF ACCESS RIGHTS

2.1 Pursuant to section [*enter appropriate section and title of settlement legislation*] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor’s Land shown marked D on DPS 57549 together with the rights and powers set out in Schedule Four of the Land Transfer Regulations

EASEMENT

2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.

- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under Clause 2 of this Agreement are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or re-passing over the Grantor's Land:

3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that:

the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);

3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to

EASEMENT

take reasonable and proper precautions pursuant to this Clause 3.1.5):

- (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
- (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;

- 3.2 Subject to Clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee;
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road;
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land;
- 3.6 Subject to Clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;

EASEMENT

3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:

- (a) widen the road; or
- (b) alter the location of the road; or
- (c) alter the way in which the run-off from the road is disposed of; or
- (d) change the nature of the road surface; or
- (e) park or store equipment or material on the Grantor's Land

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor;

3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;

3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section [*enter appropriate section and title of settlement legislation*], this easement will be enforceable in accordance with its terms, notwithstanding Part IIIB of the Conservation Act 1987.

EASEMENT

4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

6 LICENCE

[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

7 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or a Memorandum of Transfer Grant of Right of Way on substantially the same terms) is registered in the South Auckland Land Registry Office as soon as the Registrar-General of Land confirms that this Deed, or such a memorandum of transfer, can be registered against the Grantor's Land.

8 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

9 NOTICES

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

10 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

11 DISPUTES RESOLUTION

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the Auckland District Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;

EASEMENT

11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** as Grantor
by

**Conservator for the Bay of Plenty
Conservancy** acting for the Minister
of Conservation under delegated
authority pursuant to sections 57 and
58 of the Conservation Act 1987 and
section 41 of the State Sector Act 1988

In the presence of:

Name:

Occupation:

Address:

Signed for and on behalf of [**NGĀTI
AWA GOVERNANCE ENTITY**] as
Grantee by:

in the presence of:

Name:

Occupation:

Address:

EASEMENT

FIRST SCHEDULE**1. GRANTOR'S LAND:**

[enter details]

2. GRANTOR'S ADDRESS:

Department of Conservation
Bay of Plenty Conservancy
PO Box 1146
ROTORUA

3. GRANTEE'S LAND:

[enter details]

4. GRANTEE'S ADDRESS:

[Ngāti Awa Governance Entity]

[Enter address]

EASEMENT

SCHEDULE 8.6
EASEMENT
(Clause 8.4.4(e))

Deed Granting Easement of Right of Way

Date

PARTIES

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “Grantor”)
- 2 **[NGĀTI AWA GOVERNANCE ENTITY]** (the “Grantee”)

BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

BY THIS DEED IT IS AGREED AND DECLARED as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions:**

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

EASEMENT

“**Grantee’s Land**” means the land described in paragraph 3 of the First Schedule;

“**Grantor’s Land**” means the land described in paragraph 1 of the First Schedule and includes any part thereof;

[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

“**Crown Forestry Licence**” means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

“**Crown Forestry Licensee**” means the Licensee under a Crown Forestry Licence over the Grantee’s Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

1.2 Construction

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2 GRANT OF ACCESS RIGHTS

- 2.1 Pursuant to section [*enter appropriate section and title of settlement legislation*] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor’s Land shown marked A on DPS 68064 together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the

EASEMENT

terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.

- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under Clause 2 of this Agreement are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:

3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that

the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);

3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this Clause 3.1.5):

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- (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
 - (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;
- 3.2 Subject to Clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee;
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road;
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land;
- 3.6 Subject to Clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:

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- (a) widen the road; or
- (b) alter the location of the road; or
- (c) alter the way in which the run-off from the road is disposed of; or
- (d) change the nature of the road surface; or
- (e) park or store equipment or material on the Grantor's Land

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;

- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor;
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section [*enter appropriate section and title of settlement legislation*], this easement will be enforceable in accordance with its terms, notwithstanding Part IIIB of the Conservation Act 1987.

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4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

6 LICENCE

[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

7 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or a Memorandum of Transfer Grant of Right of Way on substantially the same terms) is registered in the South Auckland Land Registry Office as soon as the Registrar-General of Land confirms that this Deed, or such a memorandum of transfer, can be registered against the Grantor's Land.

8 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

9 NOTICES

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

10 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

11 DISPUTES RESOLUTION

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the Auckland District Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;

EASEMENT

11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** as Grantor
by

**Conservator for the Bay of Plenty
Conservancy** acting for the Minister
of Conservation under delegated
authority pursuant to sections 57 and
58 of the Conservation Act 1987 and
section 41 of the State Sector Act
1988

In the presence of:

Name:

Occupation:

Address:

Signed for and on behalf of [**NGĀTI
AWA GOVERNANCE ENTITY**] as
Grantee by:

in the presence of:

Name:

Occupation:

Address:

EASEMENT

FIRST SCHEDULE

1 GRANTOR'S LAND:

[enter details]

2 GRANTOR'S ADDRESS:

Department of Conservation
Bay of Plenty Conservancy
PO Box 1146
ROTORUA

3 GRANTEE'S LAND:

[enter details]

4 GRANTEE'S ADDRESS:

[Ngāti Awa Governance Entity]
[Enter address]

SCHEDULE 8.7
INSTRUCTIONS TO INDEPENDENT VALUER
(Clause 8.4.2)

CROWN – NGĀTI AWA TREATY SETTLEMENT NEGOTIATIONS

UPDATE TO VALUATION

INTRODUCTION

- 1 The Crown and Ngāti Awa propose to sign a Deed of Settlement for the settlement of the Ngāti Awa historical claims. As part of the settlement, the Ngāti Awa Governance Entity is to acquire the licensor's interest in:
 - a the Crown forest land subject to the Rotoehu East Crown forestry licence;
 - b part of the Crown forest land subject to the Rotoehu West Crown forestry licence; and
 - c part of the Crown forest land subject to the Kaingaroa/Northern Boundary Crown forestry licence.
- 2 The Principals are the Crown and Te Runanga o Ngāti Awa.
- 3 The Principals commissioned Mr T I Marks, Registered Valuer, to assess the value of the licensor's interest in the land as at 1 April 2001. The Principals are seeking an updated valuation to incorporate any material changes arising as a result of new information not available at the time of the original valuation.

REQUIREMENTS

- 4 The valuer is required, as soon as practicable, to provide an unqualified opinion of the updated market value of the licensor's interest in the subject land.
- 5 The updated valuation should:
 - a assume a valuation date of 30 September 2002;
 - b assume that the termination period of the licences will begin on 30 September 2003;
 - c assume that the land will transfer on the basis set out in section 8 and schedule 8.2 of the initialled Deed of Settlement (a copy of this section and schedule are attached). We draw your attention in

particular to:

- i section 8.3 (legislative changes relating to commercial properties generally);
 - ii section 8.4 (further provisions relating to Redress Licensed Land);
 - iii Attachment 8.2 (description of the Redress Licensed Land); and
 - iv Schedule 8.2 (terms of transfer);
- d use the same methodology and assumptions as the 1 April 2001 valuation reports, with any adjustments necessary to take account of new information not available at the time of the original valuation; and
- e include separate valuation update reports, to be read in conjunction with the 1 April 2001 valuation reports, for:
- i the Rotoehu East licensed land;
 - ii that part of the Rotoehu West licensed land proposed for transfer to the Ngāti Awa Governance Entity; and
 - iii that part of the Kaingaroa/Northern Boundary licensed land proposed for transfer to the Ngāti Awa Governance Entity.
- 6 Any issues requiring further instruction from Principals should be discussed with both Principals.

DESCRIPTION OF LAND TO BE TRANSFERRED

- 7 The description of the land to be transferred is contained in Attachment 8.2 of the initialled Deed of Settlement.
- 8 In the case of the Rotoehu East and Rotoehu West Crown forestry licences there has been no substantive change in the land since the 1 April 2001 valuation reports. The amount of land subject to the Northern Boundary Crown forest licence that is to be transferred has reduced by approximately 25% since the original valuation. The Crown's updated disclosure information will include details of the reduced area, including a list of the forest compartments contained in the reduced area.

VALUATION UPDATE PROCESS AND TIMING

- 9 The valuation update shall commence as soon as practicable.
- 10 By 12 August 2002, the Crown will provide the valuer, and Ngāti Awa, with updated disclosure information, together with copies of any relevant documents. The updated disclosure information will contain any new disclosure information since the 1 April 2001 valuation reports. The Crown will continue to disclose any further new information that becomes apparent during the valuation update process.
- 11 Within two weeks of receipt of the updated disclosure information, the Crown and Ngāti Awa will make submissions to the valuer commenting on:
 - a the updated disclosure information; and
 - b any other matters that the Crown or Ngāti Awa consider to be material resulting from new information that was not available to the valuer at the time of his original valuation.
- 12 The valuer will decide what are the material matters arising as a result of new information not available to him at the time of the original valuation, and how they are to be taken into account.
- 13 The valuer will provide draft valuation reports (within 8 weeks of receiving submissions or such longer time as the Crown and Ngāti Awa may agree) to the Crown and Ngāti Awa, who will then have two weeks to make final submissions to the valuer. The valuer will then finalise the valuation update within 4 weeks (or such longer time the Crown and Ngāti Awa may agree).

**SCHEDULE 10.1: DEED OF GRANT OF RIGHT OF FIRST
REFUSAL OVER CROWN LAND***(Clause 10.1.1)***DATE:****BETWEEN:**

- (1) [*insert name of Ngāti Awa Governance Entity*] (“*Ngāti Awa Governance Entity*”)
- (2) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (*the Crown*)

BACKGROUND:

- A. Ngāti Awa, Ngāti Awa Governance Entity and the Crown are parties to a Deed of Settlement dated [].
- B. Under that Deed of Settlement, the Crown agreed with Ngāti Awa that the Crown would on the Settlement Date enter into a deed granting Ngāti Awa Governance Entity a right of first refusal over certain properties owned by the Crown.
- C. This Deed is in satisfaction of the obligations of the Crown referred to in *Background B*.

IT IS AGREED as follows:**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Deed, unless the context otherwise requires:

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

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

Control for the purposes of subclause (d) of the definition of Crown Body means:

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

- (a) in relation to a company, control of the composition of the board of directors of the company; and
- (b) in relation to any other body, control of the composition of the group that would be the board of directors if the body was a company;

Crown has the same meaning as in section 2(1) of the Public Finance Act 1989 but, for the avoidance of doubt, does not include the New Zealand Railways Corporation;

Crown Body means:

- (a) the Crown (whether acting through a Minister or otherwise);
- (b) a Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (c) a State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (d) any company or body which is wholly-owned or controlled by:
 - (i) the Crown, a Crown entity or a State enterprise; or
 - (ii) a combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises,

and includes any subsidiary of or related company to, any such company or body;

Dispose means:

- (a) to transfer an estate in fee simple; or
- (b) to grant a new lease the term of which, including rights of renewal or of extension is, or could be, for 35 years or longer;

but does not include the vesting of a reserve under section 26 or section 26A of the Reserves Act 1977;

Effective Date means [*here insert the Settlement Date*];

Expiry Date means, in respect of an RFR Notice, the date one month after the RFR Notice is received by Ngāti Awa Governance Entity;

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

RFR Area has the same meaning as in the Deed of Settlement and is:

- (a) the area identified in the map included in the *Fourth Schedule*; and
- (b) the area known as Te Teko School, being 3.0865 hectares, more or less, being Part Allotments 123, 72A and 72B3A Matata Parish, all Gazette Notice B.103897 South Auckland Land District.

RFR Notice means a written notice to Ngāti Awa Governance Entity which offers to Dispose of the RFR Property to Ngāti Awa Governance Entity or its nominee (being a wholly-owned and controlled subsidiary of Ngāti Awa Governance Entity) at the price and on the terms and conditions set out in the notice;

RFR Property means every parcel of land which is:

- (a) in the RFR Area on the Effective Date and is:
 - (i) vested in the Crown or held by the Crown under any Act; or
 - (ii) vested in another person under section 26 or section 26A of the Reserves Act 1977;

but does not include:

- (iii) the properties described in the *First Schedule* to this Deed; or
 - (iv) any land or roads vested in the Crown by section 44 of the Transit New Zealand Act 1989, or
 - (v) any “railways assets” of the Crown within the meaning of paragraph (c) of the definition of “railway assets” in section 2 of the New Zealand Railways Corporation Restructuring Act 1990;
- (b) transferred to the Crown as the consideration, or part of the consideration, for a disposal under *clause 7.1(g)*.

1.2 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;

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- (b) 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;
- (c) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (d) 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;
- (e) a reference to a document includes an amendment or supplement to, or a replacement or novation of, that document;
- (f) references to monetary amounts are to New Zealand currency;
- (g) a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (h) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (i) a reference to a date on which something must be done includes any other date which may be agreed in writing between Ngāti Awa Governance Entity and the Crown;
- (j) where the day on or by which anything to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (k) a reference to time is to time in New Zealand.

2 NOTICE TO BE GIVEN BEFORE DISPOSING OF AN RFR PROPERTY

2.1 Crown must give RFR Notice

The Crown must, before Disposing of an RFR Property, give Ngāti Awa Governance Entity an RFR Notice in respect of the property.

2.2 Crown may withdraw RFR notice

The Crown may withdraw an RFR Notice at any time before Ngāti Awa Governance Entity accepts the offer in that notice under *clause 3*. If the Crown withdraws an RFR notice, this Deed still applies to the RFR Property and, in

particular, the Crown must give another RFR Notice before it Disposes of the RFR Property.

3 ACCEPTANCE BY NGĀTI AWA GOVERNANCE ENTITY

If Ngāti Awa Governance Entity accepts, by the Expiry Date, the offer set out in the RFR Notice by notice in writing to the Crown, a contract for the Disposal of the RFR Property is constituted between the Crown and Ngāti Awa Governance Entity.

4 NON-ACCEPTANCE BY NGĀTI AWA GOVERNANCE ENTITY

If:

- (a) the Crown gives Ngāti Awa Governance Entity an RFR Notice; and
- (b) Ngāti Awa Governance Entity does not accept the offer set out in the RFR Notice by notice in writing to the Crown by the Expiry Date; -

the Crown:

- (c) may, at any time during the period of 2 years from the Expiry Date, Dispose of the RFR Property if the price, and other terms and conditions of the Disposal, are not more favourable to the purchaser or lessee than the price, and other terms and conditions, set out in the RFR Notice to Ngāti Awa Governance Entity; but
- (d) must, promptly after entering into an agreement to Dispose of the RFR Property to a purchaser or lessee give written notice to Ngāti Awa Governance Entity of that fact and disclosing the terms of the agreement; and
- (e) must not Dispose of the RFR Property after the end of that 2 year period after the Expiry Date without first giving an RFR Notice to Ngāti Awa Governance Entity under *clause 2.1*.

5 RE-OFFER REQUIRED

If:

- (a) the Crown has given Ngāti Awa Governance Entity an RFR Notice; and

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- (b) Ngāti Awa Governance Entity does not, by the Expiry Date, accept the offer set out in the RFR Notice by notice in writing to the Crown ; and
- (c) the Crown proposes to Dispose of the RFR Property again but at a price, or on other terms and conditions, more favourable to the purchaser or lessee than on the terms in the RFR Notice,

the Crown may do so only if it first offers the RFR Property for disposal on the same favourable terms and conditions to Ngāti Awa Governance Entity in another RFR Notice under *clause 2.1*.

6 TERMS OF THIS DEED NOT TO AFFECT CERTAIN RIGHTS AND RESTRICTIONS

Nothing in this Deed affects, or derogates from, and the rights and obligations created by this Deed are subject to:

- (a) the terms of any gift, endowment, or trust relating to any RFR Property existing before the Effective Date;
- (b) the rights of any holders of mortgages over, or of security interests in, any RFR Property ;
- (c) any requirement at common law or under legislation:
 - (i) that must be complied with before any RFR Property is Disposed of to Ngāti Awa Governance Entity; or
 - (ii) that the Crown must Dispose of an RFR Property to any third party;
- (d) any feature of the title to, or any characteristic of, any RFR Property that prevents or limits the Crown's right to Dispose of the RFR Property to Ngāti Awa Governance Entity; and
- (e) any legal requirement that:
 - (i) prevents or limits the Crown's ability to sell or otherwise Dispose of an RFR Property to Ngāti Awa Governance Entity; and
 - (ii) the Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law).

7 THIS DEED DOES NOT APPLY IN CERTAIN CASES

7.1 Disposal to certain persons are exempt

Clause 2.1 does not apply if the Crown is Disposing of an RFR Property to:

- (a) Ngāti Awa Governance Entity or its nominee;
- (b) a person to give effect to this Deed or to the Deed of Settlement referred to in *Background A*;
- (c) a Crown Body, if that Crown Body takes the RFR Property subject to the terms of this Deed and enters into a deed (at the Crown's expense) in favour of Ngāti Awa Governance Entity in the form set out in the *Second Schedule* to this Deed;
- (d) a person to whom the RFR Property is being Disposed of under any of the following enactments:
 - (i) sections 40 or 41 of the Public Works Act 1981 (or those sections as applied by any other legislation);
 - (ii) sections 23, 24 or 26 of the New Zealand Railways Corporation Restructuring Act 1990;
 - (iii) section 207(4) of the Education Act 1989;
- (e) the existing tenant of a house on any RFR Property that is held on the Effective Date for education purposes;
- (f) a person who immediately before the Disposal, holds a legal right created on or before the Effective Date to purchase the RFR Property or to be granted a lease of it or be offered the opportunity to purchase the RFR Property or take a lease of it;
- (g) a person to whom the RFR Property is being Disposed of under any of the following enactments:
 - (i) sections 16A or 24E of the Conservation Act 1987;
 - (ii) section 15 of the Reserves Act 1977; or
 - (iii) an Act of Parliament that:

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- (aa) excludes the RFR Property from a national park within the meaning of the National Parks Act 1980; and
 - (bb) authorises the RFR Property to be disposed of in consideration or part consideration for other land to be held or administered under the Conservation Act 1987, the National Parks Act 1980 or the Reserves Act 1977;
- (h) a person to whom the RFR Property is being Disposed of under section 93(4) of the Land Act 1948;
- (i) the lessee under a lease of an RFR Property granted, on or before the Effective Date, (or granted after that date but in renewal of a lease granted on or before that date) under:
 - (i) section 66 of the Land Act 1948;
 - (ii) section 67 of the Land Act 1948;
 - (iii) section 93(4) of the Land Act 1948; or
 - (iv) the Crown Pastoral Lands Act 1998;
- (j) a person to whom the land is being Disposed of under any of the following enactments:
 - (i) section 105(1) of the Public Works Act 1981;
 - (ii) section 117(3) of the Public Works Act 1981 (other than a person to whom the land is being Disposed of under the words “may be dealt with as Crown land under the Land Act 1948” in paragraph (b) of that section); or
 - (iii) section 119(2) of the Public Works Act 1981;
- (k) a person to whom the RFR Property is being Disposed of by way of gift for charitable purposes; or
- (l) a person to whom the RFR Property is being Disposed of under section 355(3) of the Resource Management Act 1991.

7.2 Effect of exempt Disposals to Crown Bodies

A Crown Body to whom an RFR Property is being Disposed of under *clause 6* or *clauses 7.1(d) to (l)* (inclusive) is not required to enter into a deed under *clause 7.1(c)*.

7.3 Disposals for certain purposes are exempt

Clause 2.1 does not apply:

- (a) To the Disposal of an RFR Property to a local authority under section 50 of the Public Works Act 1981; or
- (b) To the Disposal of an RFR Property which:
 - (i) immediately before the Disposal is held by the Crown for a public work (as defined in the Public Works Act 1981); and
 - (ii) after the Disposal will be held or used for the purpose or activity which, immediately before the Disposal, constituted the public work,

if the person to whom the RFR Property was Disposed of takes the RFR Property subject to the terms of this Deed and enters into a Deed (at the Crown's expense) in favour of Ngāti Awa Governance Entity in the form set out in the *Second Schedule* to this Deed if *clause 7.3(a)* applies or the *Third Schedule* to this Deed if *clause 7.3(a)* does not apply.

7.4 Effect of exempt Disposals

A person to whom an RFR Property is being Disposed of under *clause 6* or *clause 7.1(d) to (l)* (inclusive) is not required to enter into a deed under *clause 7.3*.

7.5 Notification of exempt Disposals

The Crown must give written notice to Ngāti Awa Governance Entity of a Disposal under *clause 6* or *clauses 7.1(d) to (l)* (inclusive) not later than 10 Business Days before the Disposal specifying:

- (a) the legal description of the RFR Property to be Disposed of;
- (b) the person to whom the RFR Property is being Disposed of; and
- (c) the reasons why one or more of *clause 6* and *clauses 7.1(d) to (l)* (inclusive) apply to the Disposal.

8 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown and Ngāti Awa Governance Entity under this Deed. The Crown and Ngāti Awa Governance Entity may agree in writing to an extension of time limits.

9 ENDING OF RIGHT OF FIRST REFUSAL

9.1 RFR ends on Disposal which complies with this Deed

The obligations of the Crown set out in this Deed shall end in respect of each RFR Property on a transfer of the estate in fee simple of the RFR Property in accordance with *clauses 3, 4, 6 or 7*.

9.2 RFR ends after 50 years

The obligations of the Crown set out in this Deed end 50 years after the Effective Date.

10 DISPOSAL OF MORE THAN ONE PROPERTY

Any offer made under *clause 2.1* may be in respect of more than one RFR Property but this Deed shall apply to that offer as if all the RFR Properties included in the offer were a single RFR Property.

11 NOTICES

11.1 Notices in writing

Any notice or other communication given under this Deed to a party shall 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:

The Crown:

The Solicitor General
Crown Law Office
St Pauls Square
45 Pipitea Street
(PO Box 5012)
WELLINGTON

Ngāti Awa Governance Entity:

[*tba*]

Facsimile: 04 473 3482

11.2 Methods of delivery

Delivery of a notice may be effected by hand, by mail or by facsimile.

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

11.3 Hand delivery

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 pm on a Business Day, then the notice or other communication will be deemed to have been received on the next Business Day.

11.4 Delivery by post

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

11.5 Delivery by facsimile

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 pm on a Business Day then the notice or other communication will be deemed to have been received on the next Business Day after the date of transmission.

12 NO ASSIGNMENT

Ngāti Awa Governance Entity's rights and obligations under this Deed of Grant of Right of First Refusal Over Crown Land are not assignable.

EXECUTED as a deed on the date first written above.

[Insert execution clauses]

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

FIRST SCHEDULE*(Clause 1.1)*

South Auckland Land District – Whakatāne District

Comprised In	Legal Description	Area	Street	Town
Computer Freehold Register SA55B/829	Lot 10 DPS 5786	0.0971	39 Churchill Street	Whakatāne
Computer Freehold Register SA55B/637	Part Lot 1 DP 37084	0.0986	7 Landing Road	Whakatāne
Computer Freehold Register SA55B/638	Lot 45 DPS 10000	0.0708	132 Douglas Street	Whakatāne
Computer Freehold Register SA53B/757	Lot 1 DPS 1046	0.1057	65 Alexander Avenue	Whakatāne
Computer Freehold Register SA57B/639	Lot 24 DP 16278	0.1214	23 Beach Street	Whakatāne
Computer Freehold Register SA57C/22	Lot 1 DPS 71508	3.1050	White Pine Bush Road	Whakatāne
Transfer B631872.1	Lot 8 DPS 66626	0.4286	58 Stewart Street	Whakatāne

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

SECOND SCHEDULE
(*Clause 7.1(c) And Clause 7.3*)

DEED OF COVENANT

Date:

PARTIES

- (1) [*insert name of Ngāti Awa Governance Entity*](“*Ngāti Awa Governance Entity*”)
- (2) [THE CROWN BODY] or [THE LOCAL AUTHORITY] (*New Owner*)
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [The Crown Body] *if this Deed relates to a second or subsequent intra-Crown disposal*] (*Current Owner*)

BACKGROUND

- A The New Owner intends to take from the Current Owner a Disposal of the Property described in the schedule to this Deed (*Property*).
- B The Property is subject to a deed of grant of right of first refusal dated [] between the Crown and Ngāti Awa Governance Entity (*Principal Deed*).
- C Under the Principal Deed, the Current Owner must, before Disposing of the Property to the New Owner, obtain a deed from the New Owner in favour of Ngāti Awa Governance Entity ensuring that the New Owner takes the Property subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner’s obligation.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but are defined in the Principal Deed, have the meanings given to them by the Principal Deed;

Effective Date means the date on which the New Owner takes a Disposal of the Property;

DEED OF GRANT OF RIGHT OF FIRST REFUSAL OVER CROWN LAND

Property has the meaning given to it in Background A;

Principal Deed has the meaning given to it in Background B;

Transfer means the transfer described in *clause 2*.

1.2 Interpretation

The rules of interpretation set out in *clause 1.2* of the Principal Deed also apply to the interpretation of this Deed.

2 TRANSFER BY CURRENT OWNER

The Current Owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Property.

3 ACCEPTANCE BY NEW OWNER

The New Owner, for the benefit of the Current Owner and Ngāti Awa Governance Entity, accepts the Transfer and agrees to be bound by the Principal Deed in so far as it relates to the Property.

4 CONSENT AND RELEASE BY NGĀTI AWA GOVERNANCE ENTITY

Ngāti Awa Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed insofar as they relate to the Property.

EXECUTED as a deed on the date first written above

[Insert execution clauses for Current Owner

New Owner

Ngāti Awa Governance Entity.]

**SCHEDULE
THE PROPERTY**

[insert legal description of the Property]

THIRD SCHEDULE*(Clause 7.3)***DEED OF COVENANT***Date:***PARTIES**

- (1) [*insert name of Ngāti Awa Governance Entity*] (“*Ngāti Awa Governance Entity*”)
- (2) [*Insert name of person taking Disposal under clause 7.3*] (*New Owner*)
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [The Crown Body] (*Current Owner*)

BACKGROUND

- A The New Owner intends to take from the Current Owner a Disposal of the Property described in the schedule to this Deed (*Property*).
- B The Property is subject to a deed of grant of right of first refusal dated [] between the Crown and Ngāti Awa Governance Entity (*Principal Deed*).
- C Under the Principal Deed, the Current Owner must, before Disposing of the Property to the New Owner, obtain a deed from the New Owner in favour of Ngāti Awa Governance Entity ensuring that the New Owner takes the Property subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner’s obligation.

IT IS AGREED as follows:**1 DEFINITIONS AND INTERPRETATION****1.1 Defined Terms**

In this deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but are defined in the Principal Deed, have the meanings given to them by the Principal Deed;

Effective Date means the date on which the New Owner takes a Disposal of the Property;

Property has the meaning given to it in Background A;

Principal Deed has the meaning given to it in Background B;

Transfer means the transfer described in *clause 2*.

1.2 Interpretation

The rules of interpretation set out in *clause 1.2* of the Principal Deed also apply to the interpretation of this Deed.

2 TRANSFER BY CURRENT OWNER

The Current Owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Property.

3 ACCEPTANCE BY NEW OWNER

The New Owner, for the benefit of the Current Owner and Ngāti Awa Governance Entity, accepts the Transfer and agrees to be bound by the Principal Deed in so far as it relates to the Property.

4 CONSENT AND RELEASE BY NGĀTI AWA GOVERNANCE ENTITY

Ngāti Awa Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed insofar as they relate to the Property.

5 OBLIGATION TO MAKE OFFER

5.1 Request by Ngāti Awa Governance Entity

Ngāti Awa Governance Entity may give written notice to the New Owner requesting the New Owner to give an RFR Notice under *clause 2.1* of the Principal Deed.

5.2 RFR Notice to be given if Property no longer required

The New Owner must give a RFR Notice under *clause 2.1* of the Principal Deed if, on the date of receipt by the New Owner of a notice under *clause 5.1*, the Property is no longer being held or used for the purpose or activity which, immediately before the Disposal to the New Owner, constituted the public work referred to in *clause 7.3* of the Principal Deed. *Clause 2.2* of the Principal Deed does not apply to that RFR Notice.

5.3 Frequency of requests

A notice under *clause 5.1* may not be given within 3 years:

- (a) of the Effective Date; and
- (b) of the date of receipt by the New Owner of the last notice under *clause 5.1*.

5.4 Principal Deed not affected

The obligations under *clause 5* do not limit the obligations under the Principal Deed.

EXECUTED as a deed on the date first written above

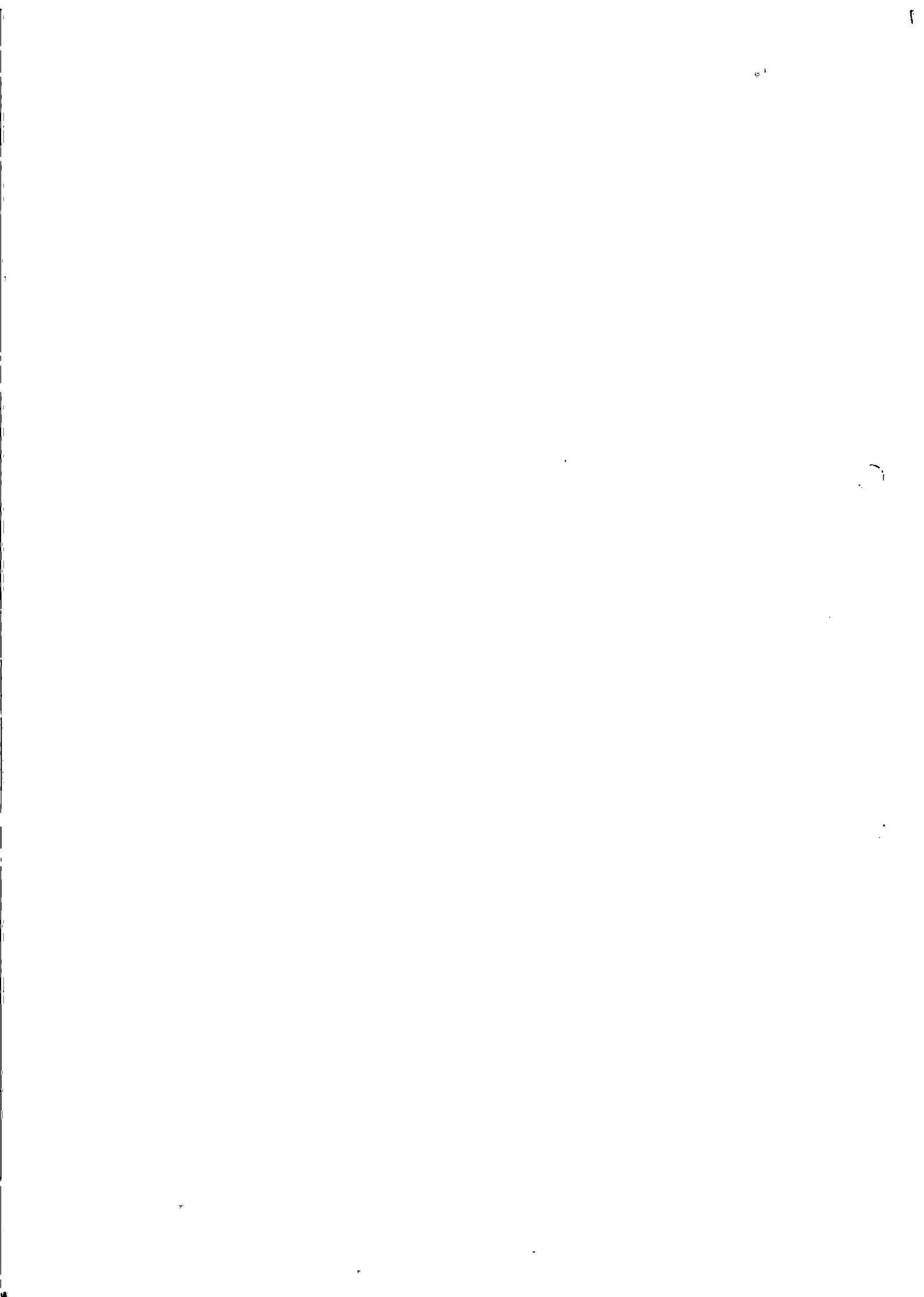
[Insert execution clauses for Current Owner

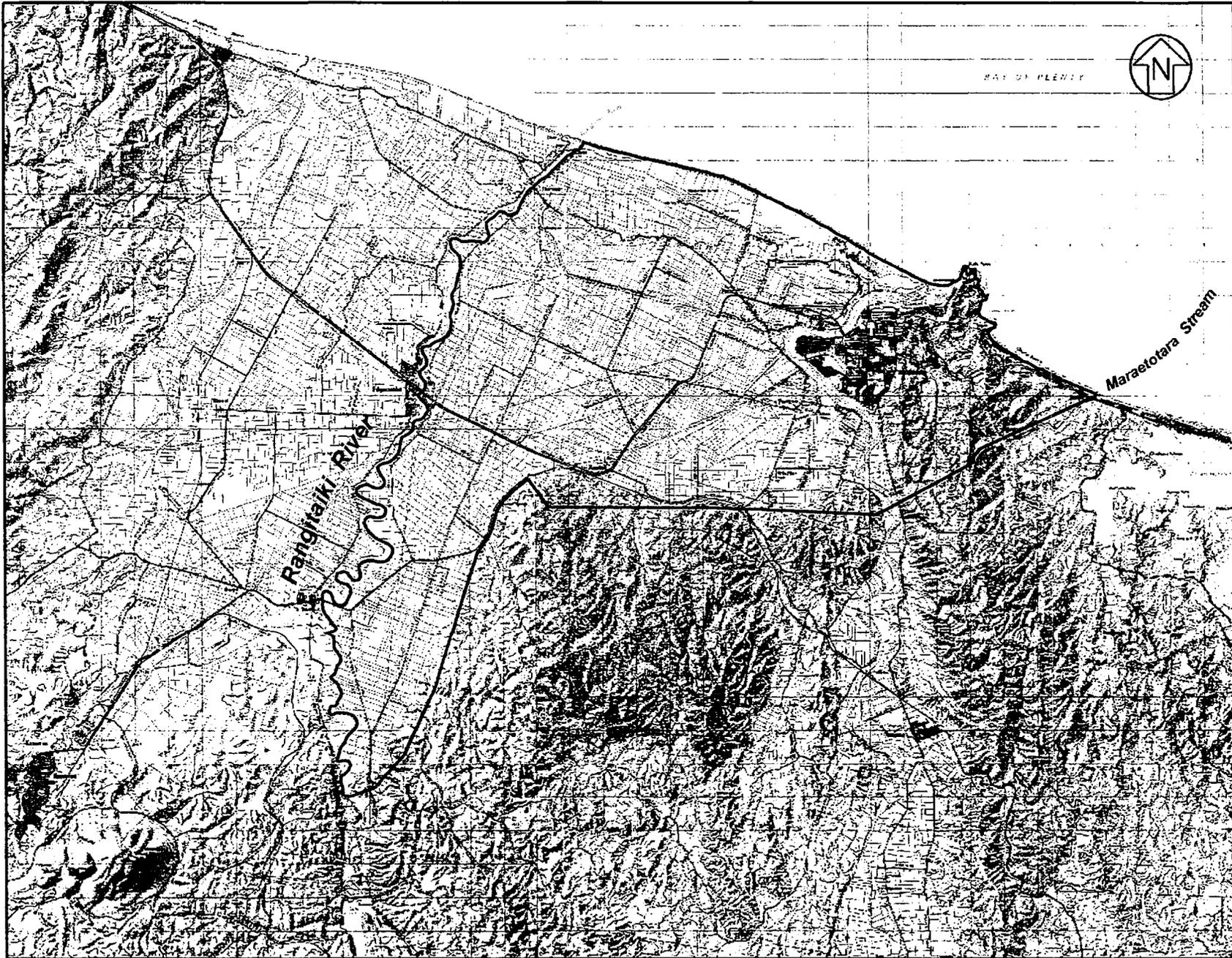
New Owner

Ngāti Awa Governance Entity]

**SCHEDULE
THE PROPERTY**

[insert legal description of the Property]





MAP OF PLENITY



This plan is only for the purpose of the Right of First Refusal over Crown Land and to identify the area that Memorials will be removed from as referred to in the Deed of Settlement between the Crown and Ngati Awa. It is not intended for any other purpose.

Certified that the boundary shown hereon is the same as that boundary agreed to for the purposes of the Right of First Refusal over Crown Land in the Deed of Settlement between the Crown and Ngati Awa.

...../.....
for and on behalf of Ngati Awa

...../.....
for and on behalf of The Crown

Notes:

1. Right of First Refusal Area (RFR Area) boundary is bold black line.
2. If the majority of any parcel lying across the RFR Area boundary falls within that Area then all of that parcel shall be deemed to be included.
3. Coordinates are in terms of New Zealand Map Grid.
4. All seaward boundaries follow the line of mean high water springs but cross the mouths of all rivers, inlets and estuaries except where otherwise shown.
5. For boundary detail refer to Sheet 2.
6. Base mapping sourced from Land Information NZ data. Crown copyright reserved.

Total Area —

Comprised in—

I, _____
being a person entitled to practice as a registered surveyor certify that:
(a) The surveys to which this dataset relates are accurate, and were undertaken by me or under my direction in accordance with the Survey Act 1986 and the Survey Regulations 1998.
(b) This dataset is accurate and has been created in accordance with the Act and those Regulations.

Signed _____ Date / /

Field Book p. Traverse Book p.
Reference Plans

Examined Correct

Approved for Parliamentary Purposes Only

..... Chief Surveyor

Deposited this... day of

..... for Registrar-General of Land

Land District : South Auckland
Survey Block & District :
NZMS 261 Sheet V15, W15 Record Map No.

Ngati Awa
Right of First Refusal Area

TERRITORIAL AUTHORITY: Whakatane District
Compiled by Sinclair Knight Merz Ltd
Scale 1:80 000 Date May 2002

File WF00502
Received
Instructions:

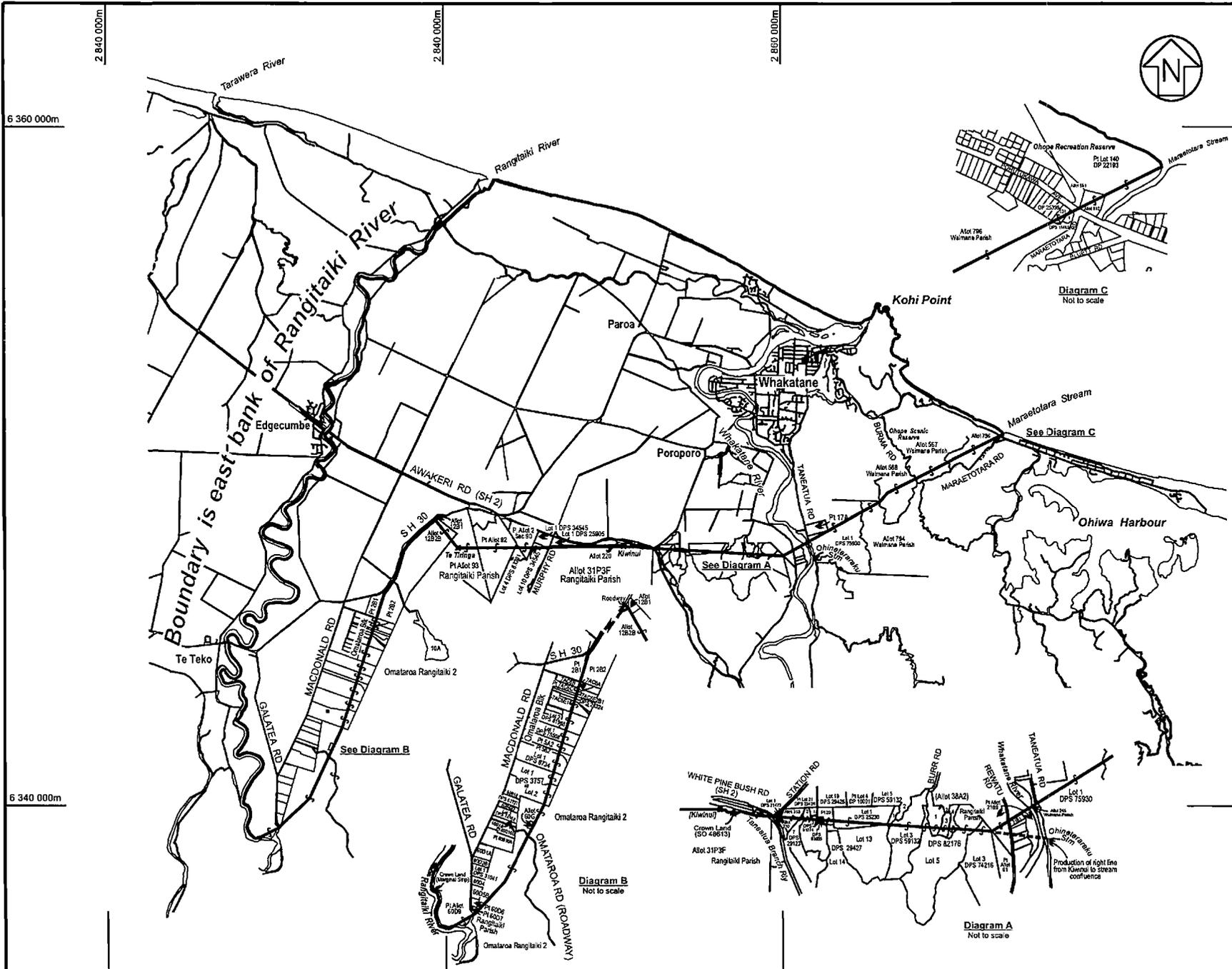
SO 306422

SECRET

SECRET

SECRET

SECRET



This plan is only for the purpose of the Right of First Refusal over Crown Land and to identify the area that Memorials will be removed from as referred to in the Deed of Settlement between the Crown and Ngati Awa. It is not intended for any other purpose.

Certified that the boundary shown hereon is the same as that boundary agreed to for the purposes of the Right of First Refusal over Crown Land in the Deed of Settlement between the Crown and Ngati Awa.

.....
for and on behalf of Ngati Awa

.....
for and on behalf of the Crown

- Notes:
1. Right of First Refusal Area (RFR Area) boundary is bold black line.
 2. If the majority of any parcel lying across the RFR Area boundary falls within that Area then all of that parcel shall be deemed to be included.
 3. Coordinates are in terms of New Zealand Map Grid.
 4. All seaward boundaries follow the line of mean high water springs but cross the mouths of all rivers, inlets and estuaries except where otherwise shown.
 5. The southern and eastern boundary of the RFR Area is reproduced from the Tuhoe Tribal Boundary map compiled by Dept of Survey and Land Information, 7 August 1995.

Total Area _____
Comprised in _____

I, _____
being a person entitled to practise as a registered surveyor certify that:
(a) The surveys to which this dataset relates are accurate, and were undertaken by me or under my direction in accordance with the Survey Act 1968 and the Survey Regulations 1958.
(b) This dataset is accurate and has been created in accordance with the Act and those Regulations.

Signed _____ Date / /

Field Book p. Traverse Book p.
Reference Plans

Examined Correct

Approved for Parliamentary Purposes Only

..... Chief Surveyor

Deposited this...day of

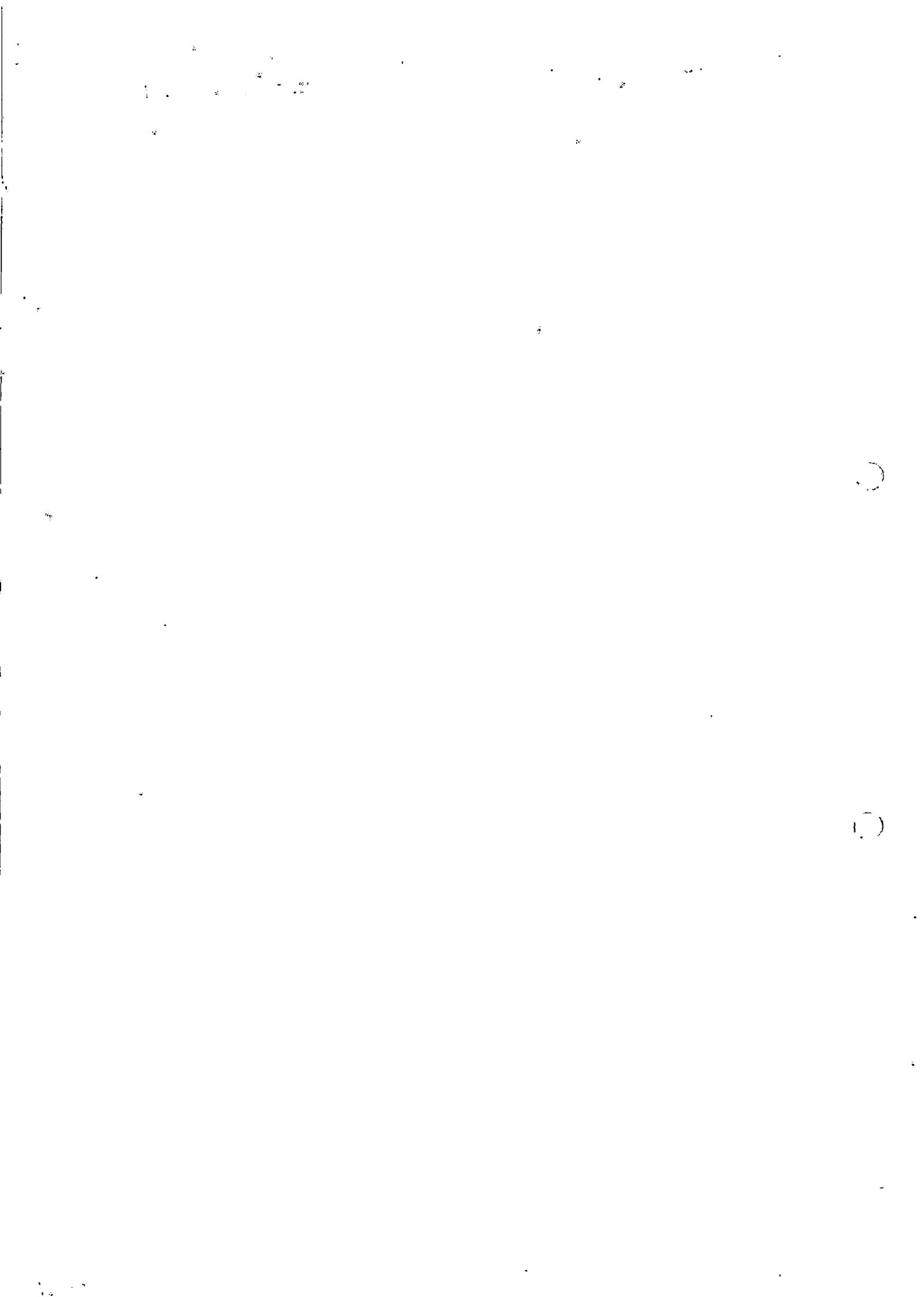
..... for Registrar-General of Land

Land District : South Auckland
Survey Block & District :
NZMS 261 Sheet V15, W15 Record Map No.

Ngati Awa Right of First Refusal Area

TERRITORIAL AUTHORITY: Whakatane District
Compile Sinclair Knight Merz Ltd
Scale 1:80,000 Date May 2002

File WF00502
Received
Instructions: **SO 306422**



FOURTH SCHEDULE

(Clause 1.1)

RFR AREA

