NGĀTI RANGITIHI

and

TE MANA O NGĀTI RANGITIHI TRUST

and

THE CROWN

DEED OF SETTLEMENT SCHEDULE:

PROPERTY REDRESS

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1 DISCLOSURE INFORMATION AND WARRANTY

DISCLOSURE INFORMATION

1.1 The Crown –

1.1.1 has provided information to the governance entity about each cultural redress property, except for the council-administered cultural redress properties, by –

(a) The Office for Māori Crown Relations – Te Arawhiti to Te Mana o Ngāti Rangitihi Trust on 20 September 2019; and

(b) The Office for Māori Crown Relations – Te Arawhiti to Te Mana o Ngāti Rangitihi Trust on 13 November 2019; and

(c) The Office for Māori Crown Relations – Te Arawhiti to Te Mana o Ngāti Rangitihi Trust on 18 March 2020; and

1.1.2 must under paragraph 4.2.1 provide information to the governance entity about the deferred selection property if the governance entity has, in accordance with part 4, given the Crown notice of interest in purchasing the property.

WARRANTY IN RELATION TO ACQUIRED CROWN PROPERTIES

1.2 In this part, unless the context otherwise requires, –

1.2.1 **acquired Crown property** means –

(a) each cultural redress property, except for the council-administered cultural redress properties; and

(b) the purchased deferred selection property; and

1.2.2 **council-administered cultural redress property** means each of the following properties:

(a) Mihimarino:

(b) Part Matata property (being parts Matata Recreation Reserve):

(c) Otaramuturangi:

(d) Te Kaokaoroa; and

1.2.3 **disclosure information**, in relation to an acquired Crown property, means the information given by the Crown about the property referred to in paragraph 1.1.

1.3 The Crown warrants to the governance entity that the Crown has given to the governance entity in its disclosure information about an acquired Crown property all

material information that, to the best of the land holding agency's knowledge, is at the date of providing that information, in the agency's records about the property (including its encumbrances),–

1.3.1 having inspected the agency's records; but

1.3.2 not having made enquiries beyond the agency's records; and

1.3.3 in particular, not having undertaken a physical inspection of the property.

WARRANTY LIMITS

1.4 Other than under paragraph 1.3, the Crown does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to –

1.4.1 an acquired Crown property, including in relation to –

(a) its state, condition, fitness for use, occupation, or management; or

(b) its compliance with –

(i) legislation, including bylaws; or

(ii) any enforcement or other notice, requisition, or proceedings; or

1.4.2 the disclosure information about an acquired Crown property, including in relation to its completeness or accuracy.

1.5 The Crown has no liability in relation to the state or condition of an acquired Crown property, except for any liability arising as a result of a breach of paragraph 1.3.

NO WARRANTY IN RELATION TO COUNCIL-ADMINISTERED CULTURAL REDRESS PROPERTIES AND THE TE ARIKI SITE

1.6 The Crown –

1.6.1 does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to a council-administered cultural redress property or the Te Ariki site, including in relation to –

(a) its state, condition, fitness for use, occupation, or management; or

(b) its compliance with –

(i) legislation including bylaws; or

(ii) any enforcement or other notice, requisition, or proceedings; and

1.6.2 has given no disclosure information, and has no liability, in relation to any information received by the governance entity, in relation to a council-administered cultural redress property or the Te Ariki site; and

1.6.3 has no liability in relation to the state or condition of a council-administered cultural redress property or the Te Ariki site.

INSPECTION

1.7 In paragraph 1.8, **relevant date** means, in relation to –

1.7.1 an acquired Crown property that is –

(a) a cultural redress property, the date of this deed; and

(b) the purchased deferred selection property, the day on which the governance entity gives an election notice electing to purchase the property; and

1.7.2 a council-administered cultural redress property or the Te Ariki site, the date of this deed.

1.8 Although the Crown is not giving any representation or warranty in relation to an acquired Crown property, other than under paragraph 1.2, or any representation or warranty in relation to a council-administered cultural redress property or the Te Ariki site, Ngāti Rangitihi acknowledges that it could, before the relevant date –

1.8.1 inspect an acquired Crown property, or a council-administered cultural redress property or the Te Ariki site, and determine its state and condition; and

1.8.2 in the case of an acquired Crown property, consider the disclosure information in relation to it.

2 VESTING OF CULTURAL REDRESS PROPERTIES

SAME MANAGEMENT REGIME AND CONDITION

2.1 Until the settlement date, the Crown must –

2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and

2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed.

2.2 Paragraph 2.1 does not –

2.2.1 apply to a cultural redress property that is not managed and administered by the Crown; or

2.2.2 require the Crown to restore or repair a cultural redress property damaged by an event beyond the Crown's control.

ACCESS

2.3 The Crown is not required to enable access to a cultural redress property for the governance entity or members of Ngāti Rangitihi, except under clauses 5.141 and 5.143.

COMPLETION OF REQUIRED DOCUMENTATION

2.4 Any documentation, required by the settlement documentation to be signed by the governance entity in relation to the vesting of a cultural redress property, must, on or before the settlement date, be –

2.4.1 provided by the Crown to the governance entity; and

2.4.2 duly signed and returned by the governance entity.

SURVEY AND REGISTRATION

2.5 The Crown must arrange, and pay for, –

2.5.1 the preparation, approval and, where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a record of title for the property; and

2.5.2 the registration of any document required in relation to the vesting under the settlement legislation of a cultural redress property in the governance entity.

3 DEFERRED SELECTION PROPERTY

Subpart A

Name/Address	Description	Valuation Process (Separately/ Jointly)	Land holding agency
Matata School site (land only)	*South Auckland Land District – Whakatane District* 0.8018 hectares, more or less, being Part Lot 9 of Allotment 3 Matata Parish. All Proclamation S191437. 0.7144 hectares, approximately, being Part Allotment 3A Matata Parish. Part Proclamation 4778. Subject to survey. Related school site description subject to clauses 7.5 and 7.6.	Separately	Ministry of Education

Subpart B

DSP school house site information for related school site

Name/Address	Description
Matata School house site (land only)	0.10 hectares, approximately – subject to ground verification, being Part Allotment 3A Matata Parish, part Proclamation 4778, as shown bordered yellow on the DSP school house site diagram in the attachments. Related school site: the property described as Matata School site (land only) above

4 DEFERRED PURCHASE

SUBPART A. RIGHT OF PURCHASE

NOTICE OF INTEREST

4.1 The governance entity may, during the period of two years starting on the settlement date, give the Crown a written notice of interest in purchasing the deferred selection property.

EFFECT OF NOTICE OF INTEREST

4.2 If the governance entity gives, in accordance with this part, a notice of interest in the deferred selection property –

4.2.1 the Crown must, not later than [10] business days after the notification date, give the governance entity all material information that, to the best of its knowledge, is in its records about the property, including its encumbrances; and

4.2.2 the property's transfer value must be determined or agreed in accordance with subpart B.

ELECTION TO PURCHASE

4.3 If the governance entity gives a notice of interest in the deferred selection property in accordance with this part, it must give the Crown written notice of whether or not it elects to purchase the property, by not later than 15 business days after its transfer value being determined or agreed in accordance with this part.

The governance entity must include the tax information required pursuant to paragraph 5.44 in its election notice.

EFFECT OF ELECTION TO PURCHASE

4.4 If the governance entity gives an election notice electing to purchase the deferred selection property in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with this part, plus GST (if any), on the terms in part 5 and under which –

4.4.1 on the DSP settlement date –

(a) the Crown must transfer the property to the governance entity; and

(b) the governance entity must pay to the Crown an amount equal to the transfer value of the property determined or agreed in accordance with this part, plus GST (if any), by –

(i) the SCP system, as defined in Guideline 7 of the New Zealand Law Society's Property Law Section's Property Transactions and E-Dealing Practice Guidelines (July 2020); or

(ii) another payment method agreed by the parties; and

4.4.2 the parties must, by or on the DSP settlement date, sign the Crown leaseback (being a registrable lease of the property), –

(a) commencing on the actual DSP settlement date; and

(b) at an initial annual rent determined by multiplying the transfer value of the property by the percentage specified in clause 2.2 of the Crown leaseback to the Ministry of Education (plus GST (if any), on the amount so determined); and

(c) on the terms provided in part 11 of the documents schedule for the leaseback.

SUBPART B. DETERMINING THE TRANSFER VALUE

APPLICATION OF THIS SUBPART

4.5 This subpart provides how the transfer value is to be determined after the governance entity has given, in accordance with this part, a notice of interest in the deferred selection property.

4.6 The transfer value is to be determined as at the notification date.

APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

4.7 Not later than [10] business days after the notification date, the parties, in relation to the deferred selection property –

4.7.1 must each –

(a) instruct a valuer using the form of instructions in appendix 1 to part 4; and

(b) give written notice to the other of the valuer instructed; and

4.7.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the deferred selection property.

4.8 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within [15] business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.

4.9 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

4.10 Each valuer must be a registered valuer.

4.11 The valuation arbitrator –

4.11.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties; and

4.11.2 is appointed when he or she confirms his or her willingness to act.

VALUATION REPORTS

4.12 Each party must, in relation to the deferred selection property, not later than –

4.12.1 [50] business days after the notification date, provide a copy of its final valuation report to the other party; and

4.12.2 [60] business days after the notification date, provide its valuer's written analysis report (referred to in part 4, appendix 1 para (f) under heading "Valuation of Property") to the other party.

4.13 Valuation reports must comply with the latest International Valuation Standards that apply on the valuation date, or explain where they are at variance with those standards.

EFFECT OF DELIVERY OF ONE VALUATION REPORT

4.14 If only one valuation report for the deferred selection property is delivered by the required date, the transfer value of the property is the market value as assessed in the report (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

NEGOTIATIONS TO AGREE A TRANSFER VALUE

4.15 If both valuation reports for the deferred selection property are delivered by the required date –

4.15.1 the parties must endeavour to agree in writing the transfer value (being the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and

4.15.2 either party may, if the transfer value of the deferred selection property is not agreed in writing within [70] business days after the notification date and if a valuation arbitrator has been appointed under paragraph 4.7.2 or paragraph 4.8, refer that matter to the determination of the valuation arbitrator; or

4.15.3 if agreement under paragraph 4.15.1 has not been reached within the [70] business days after the notification date but the valuation arbitrator has not been appointed under paragraph 4.7.2 or paragraph 4.8, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further [5] business days; and

4.15.4 if paragraph 4.15.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further [5] business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and

4.15.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

VALUATION ARBITRATION

4.16 The valuation arbitrator must, not later than [10] business days after the arbitration commencement date, –

4.16.1 give notice to the parties of the arbitration meeting, which must be held –

(a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but

(b) not later than [30] business days after the arbitration commencement date; and

4.16.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable, –

(a) each valuer; and

(b) any other person giving evidence.

4.17 Each party must –

4.17.1 not later than 5pm on the day that is [5] business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer –

(a) its valuation report; and

(b) its submission; and

(c) any sales, rental, or expert evidence that it will present at the meeting; and

4.17.2 attend the arbitration meeting with its valuer.

4.18 The valuation arbitrator must –

4.18.1 have regard to the requirements of natural justice at the arbitration meeting; and

4.18.2 no later than [50] business days after the arbitration commencement date, give his or her determination –

(a) of the market value of the deferred selection property (which is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and

(b) being no higher than the higher, and no lower than the lower, assessment of market value contained in the parties' valuation reports.

4.19 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

TRANSFER VALUE AND INITIAL ANNUAL RENT

4.20 The transfer value of the deferred selection property for the purposes of paragraph 4.4.1(b), is –

4.20.1 determined under paragraph 4.14; or

4.20.2 agreed under paragraph 4.15.1; or

4.20.3 the market value determined by the valuation arbitrator under paragraph 4.18.2, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

TRANSFER VALUE AND INITIAL ANNUAL RENT FOR MATATA SCHOOL SITE (LAND ONLY) INCLUDING MATATA SCHOOL HOUSE SITE (IF APPLICABLE)

4.21 Part of Matata School Site (land only) legally described as Allotment 3A Matata Parish, Proclamation 4778, was gifted to the Crown by Ngāti Rangitihi. The Crown acknowledges that it is appropriate to treat the governance entity as the successor to Ngāti Rangitihi and the donor of the land. For the purposes of determining a transfer value at which the governance entity may elect to purchase the property under this part 4, any part of Allotment 3A Matata Parish, Proclamation 4778 that forms part of the Matata School site (land only), will be treated as having a nil value. The nil value will be disregarded for the purposes of determining a transfer value to calculate the initial annual rental.

4.22 In order to give effect to paragraph 4.21, the Crown and the governance entity will –

4.22.1 determine the transfer value at which the governance entity may elect to purchase Matata School Site (land only) by –

(a) assessing Allotment 3A Matata Parish, Proclamation 4778 as having a nil value; and

(b) otherwise in accordance with this part 4; and

4.22.2 determine the transfer value to calculate the initial annual rent for Matata School Site (land only) by assessing the transfer value for Matata School site (land only) in accordance with this part 4 without reference to paragraph 4.21 or 4.22.1.

SUBPART C. GENERAL PROVISIONS

TIME LIMITS

4.23 Time is of the essence for the time limits in paragraphs 4.1 and 4.3.

4.24 In relation to the time limits in this part, other than those referred to in paragraph 4.23, each party must use reasonable endeavours to ensure –

4.24.1 those time limits are met and delays are minimised; and

4.24.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

DETERMINATION FINAL AND BINDING

4.25 The valuation arbitrator's determination under subpart B is final and binding.

COSTS

4.26 In relation to the determination of the transfer value of the deferred selection property, each party must pay –

4.26.1 its costs; and

4.26.2 half the costs of a valuation arbitration; or

4.26.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

ENDING OF OBLIGATIONS

4.27 The Crown's obligations under this deed in relation to the deferred selection property immediately cease if –

4.27.1 the governance entity –

(a) does not give notice of interest in relation to the property in accordance with paragraph 4.1; or

(b) gives notice of interest in relation to the property in accordance with paragraph 4.1 but the governance entity –

(i) gives an election notice under which it elects not to purchase the property; or

(ii) does not give an election notice in accordance with paragraph 4.3 electing to purchase the property; or

(c) gives the Crown written notice that it is not interested in purchasing the property at any time before an agreement for the sale and purchase of the property is constituted under paragraph 4.4; or

4.27.2 an agreement for the sale and purchase of the property is constituted under paragraph 4.4 and the agreement is cancelled in accordance with the terms of transfer in part 5.

APPENDIX 1 – SEPARATE VALUATION

[*Valuer's name*]

[*Address*]

Valuation instructions

INTRODUCTION

[*Name*] (the governance entity) has the right under a deed of settlement to purchase a property from [*name*] (the land holding agency).

This right is given by –

(a) clause 7.2 of the deed of settlement; and

(b) part 4 of the property redress schedule.

PROPERTY TO BE VALUED

The governance entity has given the land holding agency a notice of interest in purchasing the property, being –

[*describe the property including its legal description*]

PROPERTY TO BE LEASED BACK

If the governance entity purchases the property from the Crown, the governance entity will lease the property back to the Crown on the terms provided by the lease in part 11 of the documents schedule to the deed of settlement (the agreed lease).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the Lessee's improvements), remains unaffected by the transfer.

DEED OF SETTLEMENT

A copy of the deed of settlement is enclosed.

Your attention is drawn to –

(a) part 4; and

(b) the agreed lease of the property in part 11 of the documents schedule to the deed.

All references in this letter to subparts or paragraphs are to subparts or paragraphs of part 4.

A term defined in the deed of settlement has the same meaning when used in these instructions.

Subpart B of part 4 applies to the valuation of the deferred selection property.

ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property that is a school site in accordance with the methodology below as at [*date*] (the valuation date), being the date the land holding agency received the notice of interest in the property from the governance entity.

As the Lessee's improvements will not transfer, the market value of the property is to be the market value of its land (i.e. not including any Lessee's improvements).

The [land holding agency][governance entity][delete one] will require another registered valuer to assess the market value of the property as at the valuation date.

The two valuations are to enable the market value of the property to be determined either –

(a) by agreement between the parties; or

(b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which the governance entity may elect to purchase the property under part 4, plus GST (if any).

MARKET VALUE

For the purposes of these instructions the intention of the parties is to determine the transfer value of the property to reflect the designation and use of the land for education purposes.

The market value of the property is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

You will need to complete two assessments:

1) determine the market value of the property, excluding Allotment 3A Matata Parish, Proclamation 4778 on the basis it has a nil value, for the purposes of determining a transfer value at which the governance entity may elect to purchase the property under part 4, plus GST (if any):

2) determine the market value of the property, including Allotment 3A Matata Parish, Proclamation 4778, for the purposes of determining a transfer value to calculate the initial annual rent based on an agreed rental percentage of the transfer value, determined in accordance with the Crown leaseback (plus GST (if any), on the amount so determined).

In each case, a two step process is required –

1) firstly, the assessment of the unencumbered market value (based on highest and best use) by –

   (a) disregarding the designation and the Crown leaseback; and

   (b) considering the zoning in force at the valuation date; and

   (c) excluding any improvements on the land; and

2) secondly, the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST (if any), on the amount so determined).

VALUATION OF PROPERTY

You must –

(a) before inspecting the property, determine with the other valuer –

   (i) the valuation method or methods applicable to the property; and

   (ii) the comparable sales to be used in determining the market value of the property; and

(b) inspect the property, where practical, together with the valuer appointed by the other party; and

(c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and

(d) by not later than [30] business days after the valuation date, prepare, and deliver to us, a draft valuation report; and

(e) by not later than [45] business days after the valuation date:

   (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and

   (ii) deliver a copy of your final valuation report to us; and

(f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property; and

(g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value; and

(h) if a consensus on market value is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and

(i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property; and

(j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and

(k) participate in any arbitration process required under subpart B to determine the market value of the property.

REQUIREMENTS OF YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

(a) the property is a current asset and was available for immediate sale as at the valuation date; and

(b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

(a) to assess market value on the basis of market value as defined in the latest editions of the Australia and New Zealand Valuation and Property Standards, and the International Valuation Standards that apply on the valuation date; and

(b) to take into account –

(i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and

(ii) the terms of the agreed lease; and

(iii) the attached disclosure information about the property that has been given by the land holding agency to the governance entity, including the disclosed encumbrances; and

(iv) the terms of transfer in part 5 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property by the governance entity); but

(c) not to take into account a claim in relation to the property by or on behalf of Ngāti Rangitihi.

REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the latest editions of the Australia and New Zealand Valuation and Property Standards, and the International Valuation Standards that apply on the valuation date, including –

(a) an executive summary, containing a summary of –

(i) the valuation; and

(iii) the key valuation parameters; and

(iv) the key variables affecting value; and

(b) a detailed description, and a clear statement, of the land value; and

(c) a clear statement as to any impact of –

(i) the disclosed encumbrances; and

(ii) the agreed lease; and

(d) details of your assessment of the highest and best use of the property; and

(e) comment on the rationale of likely purchasers[, and tenants,] of the property; and

(f) a clear identification of the key variables which have a material impact on the valuation; and

(g) full details of the valuation method or methods; and

(h) appendices setting out –

(i) a statement of the valuation methodology and policies; and

(ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in the latest International Valuation Standard, Market Value Basis of Valuation, and other relevant standards, that apply on the valuation date.

Your report must contain a clear statement of the treatment of Goods and Services Tax (**GST**) (if any) to the property valuation.

You may, with our prior consent, obtain specialist advice, such as engineering or planning advice.

ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than –

(a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and

(b) [45] business days after the valuation date, to –

(i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and

(ii) deliver a copy of your final valuation report to us; and

(c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and

(d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

ACCESS

As the property is a school site, you should not enter on to the property without first arranging access through the Ministry of Education [*give contact details*] and should not contact the school directly.

OPEN AND TRANSPARENT VALUATION

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must –

(a) copy any questions you have or receive with regard to the valuation, together with the responses, to the governance entity, the land holding agency, and the other valuer; and

(b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final report to us.

Yours faithfully

[*Name of signatory*]
[*Position*]
[*Governance entity/Land holding agency*][delete one]

5 TERMS OF TRANSFER FOR PURCHASED DEFERRED SELECTION PROPERTY

APPLICATION OF THIS PART

5.1 This part applies to the transfer by the Crown to the governance entity of the purchased deferred selection property:

TRANSFER

5.2 The Crown must transfer the fee simple estate in the purchased deferred selection property to the governance entity –

5.2.1 subject to, and where applicable with the benefit of, –

(a) the disclosed encumbrances affecting or benefiting the property (as they may be varied by a non-material variation, or a material variation entered into under paragraph 5.14.4(a)); and

(b) any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 5.14.4(b); and

5.2.2 subject to the Crown leaseback in relation to the property.

5.3 The Crown must pay any survey and registration costs required to transfer the fee simple estate in the purchased deferred selection property to the governance entity.

POSSESSION

5.4 On the DSP settlement date, possession of the property must –

5.4.1 be given by the Crown; and

5.4.2 taken by the governance entity; and

5.4.3 be vacant possession subject only to –

(a) any encumbrances referred to in paragraph 5.2.1 that prevent vacant possession being given and taken; and

(b) the Crown leaseback.

SETTLEMENT

5.5 Subject to paragraphs 5.6 and 5.34.2, the Crown must provide the governance entity with the following in relation to the purchased deferred selection property on the DSP settlement date:

5.5.1 evidence of –

(a) a registrable transfer instrument; and

(b) any other registrable instrument required by this deed in relation to the property:

5.5.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered owner's interest in the property after the DSP settlement date.

5.6 If the fee simple estate in the purchased deferred selection property may be transferred to the governance entity electronically under the Land Transfer Act 2017, –

5.6.1 paragraph 5.5.1 does not apply; and

5.6.2 the Crown must ensure its solicitor, –

(a) a reasonable time before the DSP settlement date, –

(i) creates a Landonline workspace for the transfer to the governance entity of the fee simple estate in the property and for any other registrable instruments required by the deed in relation to the property (the electronic transfer instruments); and

(ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the electronic transfer instruments; and

(b) on the DSP settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation; and

5.6.3 the governance entity must ensure its solicitor, a reasonable time before the DSP settlement date, certifies and signs the electronic transfer instruments for the property prepared in the Landonline workspace under paragraph 5.6.2(a)(ii); and

5.6.4 paragraphs 5.6.2 and 5.6.3 are subject to paragraph 5.34.2.

5.7 The Crown must, on the actual DSP settlement date, provide the governance entity with any key or electronic opener to a gate or door on, and any security code to an alarm for, the property that are held by the Crown unless to provide it would be inconsistent with the Crown leaseback.

5.8 The transfer value of the purchased deferred selection property is not affected by –

5.8.1 a non-material variation, or a material variation entered into under paragraph 5.14.4(a), of a disclosed encumbrance affecting or benefiting the property; or

5.8.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 5.14.4(b).

APPORTIONMENT OF OUTGOINGS AND INCOMINGS

5.9 If, as at the actual DSP settlement date, –

5.9.1 the outgoings for the property pre-paid by the Crown for any period after that date exceed the incomings received by the Crown for any period after that date, the governance entity must pay the amount of the excess to the Crown; or

5.9.2 the incomings for the property received by the Crown for any period after that date exceed the outgoings for the property pre-paid by the Crown for any period after that date, the Crown must pay the amount of the excess to the governance entity.

5.10 The outgoings for the purchased deferred selection property for the purposes of paragraph 5.9 do not include insurance premiums and the governance entity is not required to take over from the Crown any contract of insurance in relation to the property.

5.11 An amount payable under paragraph 5.9 in relation to the purchased deferred selection property must be paid on the actual DSP settlement date.

5.12 The Crown must, before the actual DSP settlement date, provide the governance entity with a written statement calculating the amount payable by the governance entity or the Crown under paragraph 5.9.

FIXTURES, FITTINGS, AND CHATTELS

5.13 The transfer does not include the Lessee's improvements or chattels.

OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD

5.14 During the transfer period, the Crown must –

5.14.1 ensure the property is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and

5.14.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the property, except where those charges are payable by a tenant or occupier to the supplier; and

5.14.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the property during the period –

(a) by the Crown; or

(b) with the Crown's written authority; and

5.14.4 obtain the prior written consent of the governance entity before –

(a) materially varying a disclosed encumbrance affecting or benefiting the property; or

(b) entering into an encumbrance affecting or benefiting the property; or

(c) procuring a consent, providing a waiver, or giving an approval, that materially affects the property, under the Resource Management Act 1991 or any other legislation; and

5.14.5 use reasonable endeavours to obtain permission for the governance entity to enter and inspect the property under paragraph 5.15.2 if the governance entity is prevented from doing so by the terms of an encumbrance referred to in paragraph 5.2, but

these obligations are modified to the extent necessary to ensure they do not add to, or vary, the obligations of the Crown under the Crown leaseback as if it applied during the transfer period.

5.15 During the transfer period, the governance entity –

5.15.1 must not unreasonably withhold or delay any consent sought under paragraph 5.14.4; and

5.15.2 may enter and inspect the property on one occasion –

(a) after giving reasonable notice; and

(b) subject to the terms of the encumbrances referred to in paragraph 5.2; and

(c) subject to complying with all reasonable conditions imposed by the Crown.

OBLIGATIONS AFTER SETTLEMENT

5.16 The Crown must –

5.16.1 give the relevant territorial authority notice of the transfer of the purchased deferred selection property immediately after the actual DSP settlement date, or as soon as reasonably practicable thereafter where the property is subject to survey; and

5.16.2 if it receives a written notice in relation to the purchased deferred selection property from the Crown, a territorial authority, or a tenant after the actual DSP settlement date, –

(a) comply with it; or

(b) provide it promptly to the governance entity or its solicitor; or

5.16.3 pay any penalty incurred by the governance entity to the person providing the written notice as a result of the Crown not complying with paragraph 5.16.2.

RISK AND INSURANCE

5.17 The purchased deferred selection property is at the sole risk of –

5.17.1 the Crown, until the actual DSP settlement date; and

5.17.2 the governance entity, from and including the actual DSP settlement date.

DAMAGE AND DESTRUCTION

5.18 Paragraphs 5.19 to 5.27 apply if, before the actual DSP settlement date –

5.18.1 the purchased deferred selection property is destroyed or damaged; and

5.18.2 the destruction or damage has not been made good.

5.19 Paragraph 5.20 applies if the purchased deferred selection property, as a result of the destruction or damage, is not tenantable.

5.20 Where this paragraph applies, –

5.20.1 the governance entity may cancel its transfer by written notice to the Crown; or

5.20.2 the Crown may cancel its transfer by written notice to the governance entity.

5.21 Notice under paragraph 5.20 must be given before the actual DSP settlement date.

5.22 Paragraph 5.23 applies if the property is –

5.22.1 despite the destruction or damage, tenantable; or

5.22.2 as a result of the damage or destruction, not tenantable, but its transfer is not cancelled under paragraph 5.20 before the actual DSP settlement date.

5.23 Where this paragraph applies –

5.23.1 the governance entity must complete the transfer of the property in accordance with this deed; and

5.23.2 the Crown must pay the governance entity –

(a) the amount by which the value of the property has diminished, as at the actual DSP settlement date, as a result of the destruction or damage;

(b) plus GST (if any).

5.24 The value of the property for the purposes of paragraph 5.23.2 is to be its transfer value as determined or agreed in accordance with part 4.

5.25 An amount paid by the Crown under paragraph 5.23.2 is a partial refund of the purchase price.

5.26 Each party may give the other notice –

5.26.1 requiring a dispute as to the application of paragraphs 5.20 to 5.25 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and

5.26.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.

5.27 If a dispute as to the application of paragraphs 5.20 to 5.25 is not determined by the DSP settlement date, the date the parties must comply with their obligations on transfer of the property is to be –

5.27.1 the fifth business day following the determination of the dispute; or

5.27.2 if an arbitrator appointed under paragraph 5.26 so determines, another date including the original DSP settlement date.

BOUNDARIES AND TITLE

5.28 The Crown is not required to point out the boundaries of the purchased deferred selection property.

5.29 If the purchased deferred selection property is subject only to the encumbrances referred to in paragraph 5.2 and, the Crown leaseback, the governance entity –

5.29.1 is to be treated as having accepted the Crown's title to the property as at the actual DSP settlement date; and

5.29.2 may not make any objections to, or requisitions on, it.

5.30 An error or omission in the description of the purchased deferred selection property or its title does not annul its transfer.

FENCING

5.31 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between the purchased deferred selection property and any contiguous land of

the Crown, unless the Crown requires the fence, in which case the provisions of the Fencing Act 1978 will apply.

5.32 Paragraph 5.31 does not continue for the benefit of a purchaser from the Crown of land contiguous to the purchased deferred selection property.

5.33 The Crown may require a fencing covenant to the effect of paragraphs 5.31 and 5.32 to be registered against the title to the purchased deferred selection property.

DELAYED TRANSFER OF TITLE

5.34 The Crown covenants for the benefit of the governance entity that it will –

5.34.1 arrange for the creation of a record of title for the fee simple estate for the purchased deferred selection property; and

5.34.2 if the record of title has not been created by the actual DSP settlement date, transfer (in accordance with paragraph 5.5 or 5.6, whichever is applicable) the fee simple estate in the purchased deferred selection property as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the actual DSP settlement date.

5.35 If paragraph 5.34.2 applies to the purchased deferred selection property, and paragraph 5.6 is applicable, the governance entity must comply with its obligations under paragraph 5.6.3 by a date specified by written notice by the Crown.

5.36 The covenant given by the Crown under paragraph 5.34 has effect and is enforceable, despite –

5.36.1 being positive in effect; and

5.36.2 there being no benefitted land.

5.37 If paragraph 5.34.2 applies then, for the period from the actual DSP settlement date until the date that the Crown transfers the fee simple estate in the purchased deferred selection property to the governance entity –

5.37.1 the governance entity will be the beneficial owner of the property; and

5.37.2 all obligations and rights will be performed and arise as if the fee simple estate had been transferred to the governance entity on the actual DSP settlement date; and

5.37.3 the governance entity may not serve a settlement notice under paragraph 5.40.

INTEREST

5.38 If for any reason (other than the default of the Crown) all or any of the amount payable by the governance entity to the Crown in relation to the purchased deferred selection property is not paid on the DSP settlement date –

5.38.1 the Crown is not required to give possession of the property to the governance entity; and

5.38.2 the governance entity must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST (if any)) for the period from the TSP settlement date to the actual DSP settlement date.

5.39 Paragraph 5.38 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

SETTLEMENT NOTICE

5.40 If, without the written agreement of the parties, settlement of the purchased deferred selection property is not effected on the DSP settlement date –

5.40.1 either party may at any time after the DSP settlement date serve notice on the other (a settlement notice) requiring the other to effect settlement; but

5.40.2 the settlement notice is effective only if the party serving it is –

(a) ready, able, and willing to effect settlement in accordance with the settlement notice; or

(b) not ready, able, and willing to effect settlement only by reason of the default or omission of the other party; and

5.40.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and

5.40.4 time is of the essence under paragraph 5.40.3; and

5.40.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by paragraph 4.4.

5.41 Paragraph 5.40, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

FURTHER ASSURANCES

5.42 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things that the other may reasonably require to give full force and effect to this part.

NON-MERGER

5.43 On transfer of the purchased deferred selection property to the governance entity –

5.43.1 the provisions of this part will not merge; and

5.43.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

GST

5.44 When the governance entity gives a written notice of election to purchase under part 4, it must include in that notice the following information in relation to the factual situation that will exist at the DSP settlement date and warrants the correctness of that information –

5.44.1 whether or not the governance entity is or will be at the DSP Settlement Date a registered person for GST purposes; and

5.44.2 the governance entity's registration number (if any); and

5.44.3 whether or not the governance entity intends to use the property for the purposes of making taxable supplies; and

5.44.4 whether or not the governance entity intends to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.

5.45 If any of that information provided in the election to purchase notice under paragraph 5.44 alters before the DSP settlement date, the governance entity must immediately notify the Crown and warrants that the altered information is correct as at the date of notification.

5.46 If the information provided (subject to alteration, if any) indicates that, at the DSP settlement date, each of the following statements is correct and the supply of the property is a taxable supply by the Crown, the parties agree that GST will apply to the supply at the rate of zero percent:

5.46.1 the governance entity is or will be at the DSP Settlement Date a registered person for GST purposes:

5.46.2 the governance entity intends to use the property for the purposes of making taxable supplies:

5.46.3 the governance entity does not intend to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.

6 NOTICE IN RELATION TO CULTURAL REDRESS PROPERTIES AND DEFERRED SELECTION PROPERTY

6.1 If this schedule requires the governance entity to give notice to the Crown in relation to or in connection with a cultural redress property, or the deferred selection property, the governance entity must give the notice in accordance with part 4 of the general matters schedule, except the notice must be addressed to the land holding agency for the property at its address, or email address, or facsimile number provided –

6.1.1 in paragraph 6.2; or

6.1.2 if the land holding agency has given notice to the governance entity of a new address or email address or facsimile number, in the most recent notice of a change of address, or email address, or facsimile number.

6.2 Until any other address, or email address, or facsimile number of a land holding agency is given by notice to the governance entity, the address of each land holding agency is as follows for the purposes of giving notice to that agency in accordance with this part.

Land holding agency	Contact details
Department of Conservation	Department of Conservation Conservation House Whare Kaupapa Atawhai 18 Manners Street Wellington 6011 PO Box 10420 The Terrace Wellington 6143
Ministry of Education	Ministry of Education National Office PO Box 1666 Thorndon Wellington 6140

7 DEFINITIONS

7.1 In this schedule, unless the context otherwise requires, party means each of the governance entity and the Crown.

7.2 In this deed, unless the context otherwise requires, –

acquired Crown property has the meaning given to it by paragraph 1.2.1; and

actual DSP settlement date, in relation to the purchased deferred selection property, means the date on which **settlement** of the property takes place; and

arbitration commencement date, in relation to the determination of the market value of the deferred selection property means –

(a) in relation to a referral under paragraph 4.15.2 the date of that referral; and,

(b) in relation to an appointment under paragraph 4.15.3 or 4.15.4, a date specified by the valuation arbitrator under paragraph 4.15.5; and

arbitration meeting, in relation to the determination of the market value of the deferred selection property, means the meeting notified by the valuation arbitrator under paragraph 4.16.1; and

Crown leaseback means, in relation to the deferred selection property, the lease to be entered into by the governance entity and the Crown under paragraph 4.4.2; and

disclosed encumbrance, in relation to the purchased deferred selection property, means an encumbrance affecting or benefiting the property that is disclosed in the disclosure information about the property; and

disclosure information has the meaning given to it by paragraph 1.2.3; and

DSP settlement date, in relation to the purchased deferred selection property, means the date that is 40 business days after the Crown receives an election notice from the governance entity electing to purchase the property; and

election notice means a written notice given by the governance entity in accordance with paragraph 4.3 electing whether or not to purchase the deferred selection property; and

initial annual rent in relation to the deferred selection property, means the rent payable under the Crown leaseback from its commencement determined in accordance with part 4; and

Lessee's improvements, in relation to the deferred selection property has the meaning given to it in the Crown leaseback; and

market value, in relation to the deferred selection property, has the meaning provided in the valuation instructions in appendix 1 to part 4; and

notice of interest, in relation to the deferred selection property, means a notice given by the governance entity under paragraph 4.1 in relation to the property; and

notification date, in relation to the deferred selection property, means the date that the Crown receives a notice of interest in the property from the governance entity; and

registered bank has the meaning given to it by section 2(1) of the Reserve Bank of New Zealand Act 1989; and

registered valuer means a person registered as a valuer with the Valuers Act 1948; and

school site, means the deferred selection property; and

settlement notice has the meaning given to it by paragraph 5.40.1; and

terms of transfer means the terms of transfer set out in part 5; and

transfer period means, in relation to the purchased deferred selection property, the period from the notification date to the actual DSP settlement date; and

transfer value, in relation to the deferred selection property, means the amount payable by the governance entity for the transfer of the property determined or agreed in accordance with part 4; and

valuation arbitrator, in relation to the deferred selection property means the person appointed under paragraphs 4.7.2 or 4.8, in relation to the determination of its market value; and

valuation date, in relation to the deferred selection property, means the notification date.