**NGĀTI WHĀTUA ŌRĀKEI**

**and**

**NGĀTI WHĀTUA ŌRĀKEI TRUSTEE LIMITED**

**and**

**THE CROWN**

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# DEED OF SETTLEMENT SCHEDULE: GENERAL MATTERS

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# 1 IMPLEMENTATION OF SETTLEMENT

1.1 The governance entity must use best endeavours to ensure that every historical claim proceedings is discontinued –

1.1.1 by the settlement date; or

1.1.2 if not by the settlement date, as soon as practicable afterwards.

1.2 The Crown may, after the settlement date, do all or any of the following:

1.2.1 advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement:

1.2.2 request the Waitangi Tribunal to amend its register of claims, and adapt its procedures, to reflect the settlement:

1.2.3 from time to time propose for introduction to the House of Representatives a bill or bills for either or both of the following purposes:

(a) terminating an historical claim proceedings:

(b) giving further effect to this deed, including achieving –

(i) certainty in relation to a party's rights and/or obligations; and/or

(ii) a final and durable settlement.

1.3 The Crown may cease any land bank arrangement in relation to Ngāti Whātua Ōrākei or a representative entity.

1.4 Ngāti Whātua Ōrākei and every representative entity must –

1.4.1 support a bill referred to in paragraph 1.2.3; and

1.4.2 not object to a bill removing resumptive memorials from any certificate of title or computer register.

# 2 INTEREST

2.1 The Crown must pay interest on the financial and commercial redress amount, less the amount of $2,000,000 paid under the Railways deed, to the governance entity on the settlement date.

2.2 The interest is payable —

2.2.1 on $8,000,000 for the period beginning on 9 June 2006, being the date of the agreement in principle, to 11 February 2010, being the day before the date of the supplementary agreement; and

2.2.2 on $16,000,000 for the period beginning on 12 February 2010 and ending on the day before the settlement date; and

2.2.3 at the rate from time to time set as the official cash rate by the Reserve Bank, calculated on a daily basis but not compounding.

2.3 The interest is –

2.3.1 subject to any tax payable in relation to it; and

2.3.2 payable after withholding any tax required by legislation to be withheld.

# 3 TAX

**INDEMNITY**

3.1 The provision of Crown redress, or an indemnity payment, to the governance entity is not intended to be –

3.1.1 a taxable supply for GST purposes; or

3.1.2 assessable income for income tax purposes.

3.2 The Crown must, therefore, indemnify the governance entity for –

3.2.1 any GST payable by the governance entity in respect of the provision of Crown redress or an indemnity payment; and

3.2.2 any income tax payable by the governance entity as a result of any Crown redress, or an indemnity payment, being treated as assessable income of the governance entity; and

3.2.3 any reasonable cost or liability incurred by the governance entity in taking, at the Crown's direction, action –

(a) relating to an indemnity demand; or

(b) under paragraph 3.13 or paragraph 3.14.1(b).

**LIMITS**

3.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):

3.3.1 interest paid under part 2:

3.3.2 the governance entity's –

(a) use of Crown redress or an indemnity payment; or

(b) payment of costs, or any other amounts, in relation to Crown redress.

## 3 TAX

### ACKNOWLEDGEMENTS

3.4 To avoid doubt, the parties acknowledge –

3.4.1 the Crown redress is provided –

(a) to settle the historical claims; and

(b) with no other consideration being provided; and

3.4.2 in particular, the following are not consideration for the Crown redress:

(a) an agreement under this deed to –

(i) enter into an encumbrance, or other obligation, in relation to Crown redress; or

(ii) pay costs (such as rates, or other outgoings, or maintenance costs) in relation to Crown redress:

(b) the performance of that agreement; and

3.4.3 nothing in this part is intended to imply that the provision of Crown redress, or an indemnity payment, is –

(a) a taxable supply for GST purposes; or

(b) assessable income for income tax purposes; and

3.4.4 the governance entity is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007; and

3.4.5 Ngāti Whātua Ōrākei intends that the governance entity will structure its affairs so that the governance entity holds shares in a wholly-owned subsidiary that owns land that is subject to Te Ture Whenua Maori Act 1993, with the effect that the wholly-owned subsidiary is eligible to be a Maori Authority under section HF 2(2)(b) of the Income Tax Act 2007.

### CONSISTENT ACTIONS

3.5 None of the governance entity, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 3.

3.6 In particular, the governance entity agrees that –

3.6.1 from the settlement date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and

3.6.2 neither it, nor any person associated with it, will claim with respect to the provision of Crown redress, or an indemnity payment, –

(a) an input credit for GST purposes; or

(b) a deduction for income tax purposes; and

3.6.3 having regard to paragraph 3.4.4 and despite an exercise of the right of nomination under paragraph 6.29 of the property schedule, neither it, nor any person associated with it, will claim that any entity other than the governance entity is an entity that this deed contemplates performing the functions described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

**INDEMNITY DEMANDS**

3.7 The governance entity and the Crown must give notice to the other, as soon as reasonably possible, after becoming aware that the governance entity may be entitled to an indemnity payment.

3.8 An indemnity demand –

3.8.1 may be made at any time after the settlement date; but

3.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is –

(a) specified in an assessment; or

(b) a date for the payment of provisional tax; or

(c) otherwise determined; and

3.8.3 must be accompanied by –

(a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and

(b) if the demand relates to GST and the Crown requires, a GST tax invoice.

**INDEMNITY PAYMENTS**

3.9 If the governance entity is entitled to an indemnity payment, the Crown may make the payment to –

3.9.1 the governance entity; or

3.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the governance entity.

3.10 The governance entity must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of –

3.10.1 the due date for payment of the tax; or

3.10.2 the next business day after receiving the indemnity payment.

**REPAYMENT**

3.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the governance entity must promptly repay to the Crown any amount that –

3.11.1 the Commissioner of Inland Revenue refunds or credits to the governance entity; or

3.11.2 the governance entity has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

3.12 The governance entity has no right of set-off or counterclaim in relation to an amount payable by it under paragraph 3.11.

**RULINGS**

3.13 The governance entity must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of Crown redress.

**CONTROL OF DISPUTES**

3.14 If the governance entity is entitled to an indemnity payment, the Crown may –

3.14.1 by notice to the governance entity, require it to –

(a) exercise a right to defer the payment of tax; and/or

(b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest, –

(i) a tax assessment; and/or

(ii) a notice in relation to the tax, including a notice of proposed adjustment;

3.14.2 nominate and instruct counsel on behalf of the governance entity whenever it exercises its rights under paragraph 3.14.1; and

3.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

**DEFINITIONS**

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

**provision**, in relation to redress, includes its payment, credit, transfer, vesting, making available, creation, or grant; and

**use**, in relation to redress or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

# 4 NOTICE

## APPLICATION

4.1 Unless otherwise provided in this deed, or a settlement document, this part applies to notices under this deed or a settlement document.

## REQUIREMENTS

4.2 A notice must be –

4.2.1 in writing; and

4.2.2 signed by the person giving it; and

4.2.3 addressed to the recipient at its address or facsimile number as provided –

(a) in paragraph 4.5; or

(b) if the recipient has given notice of a new address or facsimile number, in the most recent notice of a change of address or facsimile number; and

4.2.4 given by –

(a) personal delivery (including by courier) to the recipient's street address; or

(b) sending it by pre-paid post addressed to the recipient's postal address; or

(c) by faxing it to the recipient's facsimile number.

## TIMING

4.3 A notice is to be treated as having been received:

4.3.1 at the time of delivery, if personally delivered; or

4.3.2 on the second day after posting, if posted; or

4.3.3 on the day of transmission, if faxed.

4.4 However, if a notice is treated under paragraph 4.3 as having been received after 5pm on a business day, or on a non-business day, it is to be treated as having been received on the next business day.

**ADDRESSES**

4.5 The address of –

4.5.1 Ngāti Whātua Ōrākei, and the governance entity, is –

Level 6
99 Queen Street
PO Box 42 045
**Auckland 1010**

Facsimile No. 09 929 0002

4.5.2 the Crown is –

C/- The Solicitor-General
Crown Law Office
Level 10
Unisys House
56 The Terrace
PO Box 2858
**Wellington 6011**

Facsimile No. 04 473 3482

# 5 MISCELLANEOUS

**AMENDMENTS**

5.1 This deed may be amended only by written agreement signed by the governance entity and the Crown.

**ENTIRE AGREEMENT**

5.2 This deed, and each of the settlement documents, in relation to the matters in it, –

5.2.1 constitutes the entire agreement; and

5.2.2 supersedes all earlier representations, understandings, and agreements.

**NO ASSIGNMENT OR WAIVER**

5.3 Paragraph 5.4 applies to rights and obligations under this deed or a settlement document.

5.4 Except as provided in this deed or a settlement document, a party –

5.4.1 may not transfer or assign its rights or obligations; and

5.4.2 does not waive a right by –

(a) failing to exercise it; or

(b) delaying in exercising it; and

5.4.3 is not precluded by a single or partial exercise of a right from exercising –

(a) that right again; or

(b) another right.

# 6 DEFINED TERMS

6.1 In this deed –

**99 Owens Road** means the property described as 99 Owens Road in part 3 of the property schedule; and

**actual transfer date**, in relation to a commercial property, means the date on which transfer of the property under the property schedule takes place; and

**administering body** has the meaning given to it by section 2(1) of the Reserves Act 1977; and

**agreement in principle** means the agreement in principle referred to in clause 1.4.2; and

**assessable income** has the meaning given to that term by section YA 1 of the Income Tax Act 2007; and

**attachments** means the attachments to this deed, being the primary area of interest, the deed plans, and the draft settlement bill; and

**Beresford block** means the property described under that name in part 3 of the property schedule; and

**Birchfield block** means the property described under that name in part 3 of the property schedule; and

**Board** means the Ngāti Whātua o Ōrākei Maori Trust Board continued by section 9 of the Orakei Act 1991; and

**business day** means a day that is not –

(a) a Saturday or a Sunday; or

(b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour Day; or

(c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; and

(d) a day that is observed as the anniversary of the province of –

(i) Wellington; or

(ii) Auckland; and

**charitable trust board** means the Ngāti Whātua o Ōrākei Maori Trust Board incorporated as a Board under the Charitable Trusts Act 1957 on 20 November 1992; and

**commercial property** means each of the following:

(a) each NZDF property; and

(b) 99 Owens Road; and

(c) the Plymouth Crescent site; and

**Commissioner** means the Commissioner of Inland Revenue and includes, where applicable, the Inland Revenue Department; and

**conservation protocol** means the conservation protocol in the documents schedule; and

**Crown** has the meaning given to it by section 2(1) of the Public Finance Act 1989; and

**Crown minerals protocol** means the Crown minerals protocol in the documents schedule; and

**Crown redress** –

(a) means redress –

(i) provided by the Crown to the governance entity; or

(ii) vested by the settlement legislation in the governance entity that was, immediately prior to the vesting, owned by or vested in the Crown; and

(b) includes any part of the Crown redress; and

(c) does not include –

(i) the transfer of the commercial properties; or

(ii) the on-account payment; and

## 6 DEFINED TERMS

**cultural redress** means the redress provided under clauses 5.1 to 5.17 and the settlement legislation giving effect to any of those clauses; and

**date of this deed** means the date this deed is signed by the parties; and

**deed of settlement** and **deed** means the main body of the deed, the schedules, and the attachments; and

**disclosed encumbrance**, in relation to a settlement property, –

(a) means an encumbrance affecting or benefiting the property that is disclosed in the disclosure information about the property; and

(b) includes, in relation to 99 Owens Road, the UMM lease, as defined in paragraph 4.1 of the property schedule; and

**disclosure information**, in relation to a settlement property, means the information about the property described in paragraph 1.1 of the property schedule; and

**documents schedule** means the documents schedule to this deed of settlement; and

**draft settlement bill** means the draft settlement bill in the attachments; and

**eligible member of Ngāti Whātua Ōrākei** means a member of Ngāti Whātua Ōrākei who on 31 October 2012 was –

(a) aged 18 years or over; and

(b) whose name appears on the roll of beneficiaries maintained by the Board under section 11 of the Orakei Act 1991; and

**encumbrance**, in relation to a property, means a lease, tenancy, licence, easement, covenant, or other right or obligation affecting that property; and

**Environment Court** means the court referred to in section 247 of the Resource Management Act 1991; and

**financial and commercial redress** means the redress provided under clause 6.1 and the settlement legislation giving effect to that clause; and

**financial and commercial redress amount** means the amount of $18,000,000 referred to in clause 6.1; and

**general matters schedule** means this schedule; and

**governance entity** means Ngāti Whātua Ōrākei Trustee Limited, in its capacity as trustee of the Ngāti Whātua Ōrākei Trust; and

**GST** –

(a) means goods and services tax chargeable under the GST Act; and

(b) includes, for the purposes of part 3 of this schedule, any interest or penalty payable in respect of, or on account of, the late or non-payment of GST; and

**GST Act** means the Goods and Services Tax Act 1985; and

**Hillary block** means the property described under that name in part 3 of the property schedule; and

**historical claim proceedings** means an historical claim made in any court, tribunal, or other judicial body; and

**historical claims** has the meaning given to it by clauses 8.2 to 8.4; and

**income tax** means income tax imposed under the Income Tax Act 2007 and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, income tax; and

**indemnity payment** means any indemnity payment made by the Crown under or for the purposes of this part, and **indemnify, indemnification** and **indemnity** have a corresponding meaning; and

**initial term** means the "Initial Term" as defined in the Narrow Neck leaseback, being the first term of the Narrow Neck leaseback, and in respect of which all the rent is pre-paid on the commencement date of the leaseback; and

**land holding agency**, in relation to –

(a) the Pourewa Creek site, means the Department of Conservation; and

(b) each NZDF property and Plymouth Crescent site, means the New Zealand Defence Force; and

(c) 99 Owens Road, means LINZ; and

**LINZ** means Land Information New Zealand; and

**loan agreement**, in respect of each NZDF housing block, means the vendor mortgage finance loan agreement in the form agreed by the Crown and the governance entity before the date of this deed; and

**main body of the deed** means all of this deed, other than the schedules and attachments; and

**Marsden block** means the property described under that name in part 3 of the property schedule; and

**member of Ngāti Whātua Ōrākei** means an individual referred to in clause 8.5.1; and

**Minister** means a Minister of the Crown; and

**month** means a calendar month; and

**Narrow Neck leaseback** means the lease of the Narrow Neck property in the form set out in part 3 of the documents schedule to be entered into under part 6 of the property schedule; and

**Narrow Neck property** means the property described under that name in part 3 of the property schedule; and

**New Zealand Historic Places Trust** means the trust referred to in section 38 of the Historic Places Act 1993;

**Ngāti Whātua Ōrākei Reserves Board** or **Reserves Board** means the board established as Ngati Whatua o Orakei Reserves Board by section 20 of the Orakei Act 1991 and to be renamed under the settlement legislation; and

**Ngāti Whātua Ōrākei Trust** means the trust known by that name and established by a trust deed dated 3 November 2011; and

**Ngāti Whātua Ōrākei** has the meaning given to it by clause 8.5; and

**notice** means a notice given under part 4 of this schedule, or any other applicable provisions of this deed, and **notify** has a corresponding meaning; and

**NZDF housing blocks** means together Beresford block, Birchfield block, Hillary block, Marsden block and Plymouth block; and

**NZDF housing leaseback** means the lease of each of the NZDF housing blocks in the form set out in part 3 of the documents schedule to be entered into under part 6 of the property schedule; and

**NZDF leaseback property** means each of the following:

(a) each of the NZDF housing blocks; and

(b) the Narrow Neck property; and

**NZDF property** means each of the following:

(a) each of the NZDF housing blocks;

(b) the Narrow Neck property; and

(c) Wakakura; and

**on-account payment** means the amount referred to in clause 6.1.1; and

**party** means each of the following:

(a) Ngāti Whātua Orākei:

(b) the governance entity:

(c) the Crown; and

**payment** includes the credit, transfer, or making available, of cash amounts as well as the transfer of non cash amounts (such as land); and

**person** includes an individual, a corporation sole, a body corporate, and an unincorporated body; and

**Plymouth block** means the property described under that name in part 3 of the property schedule; and

**Plymouth Crescent site** means the property described under that name in part 3 of the property schedule; and

**Pourewa Creek site** means the property described by that name in schedule 1 of the draft settlement bill; and

**primary area of interest** means the area identified as the primary area of interest in the attachments; and

**property schedule** means the property schedule to this deed; and

**protocol** means a protocol issued under clause 5.3 and the settlement legislation; and

**provision**, in relation to redress, includes its payment, credit, transfer, or vesting; and

**Railways deed** mans the deed of settlement signed in June 1993 by the Crown, the Board and Te Rūnanga o Ngāti Whātua relating to the claims of Ngāti Whātua in respect of surplus railway lands in the Auckland region; and

**redress** means –

(a) the acknowledgements and the apology made by the Crown under clauses 3.1 to 3.10; and

(b) the cultural redress; and

(c) the financial and commercial redress; and

**representative entity** means –

(a) the governance entity; and

(b) a person (including any trustee or trustees) acting for or on behalf of:

(i) the collective group, referred to in clause 8.5.1; or

(ii) any one or more members of Ngāti Whātua Ōrākei; or

(iii) any one or more of the whānau, hapū, or groups of individuals referred to in clause 8.5.2; and

**responsible Minister** has the meaning given to it by section 10 of the draft settlement bill; and

**resource consent** has the meaning given to it by section 2 of the Resource Management Act 1991; and

**resumptive memorial** means a memorial entered on a certificate of title or computer register under any of the following sections:

(a) 27A of the State-Owned Enterprises Act 1986:

(b) 211 of the Education Act 1989:

(c) 38 of the New Zealand Railways Corporation Restructuring Act 1990; and

**schedules** means the schedules to this deed of settlement, being the property schedule, the general matters schedule, and the documents schedule; and

**settlement** means the settlement of the historical claims under this deed and the settlement legislation; and

**settlement date** means the 1st day of the third calendar month after the month in which the settlement legislation receives the Royal assent; and

**settlement document** means a document entered into to give effect to this deed; and

**settlement legislation** means, if the bill proposed by the Crown for introduction to the House of Representatives under clause 7.1 is passed, the resulting Act; and

**settlement property** means –

(a) the Pourewa Creek site; and

(b) each commercial property; and

**statement of association** means the statement of association in the documents schedule; and

**statutory acknowledgement** has the meaning given to it by section 28(1) of the draft settlement bill; and

**supplementary agreement** means the agreement referred to in clause 1.3.3; and

**Tāmaki Makaurau collective deed** means a deed to be entered into by the Crown and certain iwi, including Ngāti Whātua Ōrākei, and their representative entities, to give effect to a framework agreement dated 12 February 2010 in relation to interests in motu and maunga and a right of first refusal over surplus Crown land in Tāmaki Makaurau; and

**taonga tūturu protocol** means the taonga tūturu protocol in the documents schedule; and

**tax** includes income tax and GST; and

**tax indemnity** means any indemnity made by the Crown under part 3 of this schedule; and

**taxable activity** has the meaning given to that term by section 6 of the GST Act; and

**taxable supply** has the meaning given to it by section 2 of the GST Act; and

**terms of negotiation** means the terms of negotiation referred to in clause 1.3.1; and

**transfer** includes recognising, creating, vesting, granting, licensing, leasing, or any other means by which the relevant properties, interests, rights or assets are disposed of or made available, or recognised as being available, to the governance entity; and

**transfer date** means, in relation to –

(a) each NZDF property, the settlement date; and

(b) 99 Owens Road, the date determined under paragraph 4.5.1 or 4.6.1 of the property schedule, whichever applies; and

(c) the Plymouth Crescent site, the date determined under paragraph 5.6 of the property schedule; and

**transfer period** means, in relation to each commercial property, the period from the date of this deed to the transfer date; and

**Treaty of Waitangi** means the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975; and

**Waitangi Tribunal** has the meaning given to it by section 4 of the Treaty of Waitangi Act 1975; and

**vesting**, in relation to the Pourewa Creek site, means its vesting under the settlement legislation; and

**Wakakura** means the property described under that name in part 3 of the property schedule.

# 7 INTERPRETATION

7.1 This part applies to this deed's interpretation, unless the context requires a different interpretation.

7.2 Headings do not affect the interpretation.

7.3 A term defined by –

7.3.1 this deed has the meaning given to it by this deed; and

7.3.2 the draft settlement bill, but not by this deed, has the meaning given to it by that bill.

7.4 All parts of speech, and grammatical forms, of a defined term have corresponding meanings.

7.5 The singular includes the plural and vice versa.

7.6 One gender includes the other genders.

7.7 Any monetary amount is in New Zealand currency.

7.8 Time is New Zealand time.

7.9 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.

7.10 A period of time specified as –

7.10.1 beginning on, at, or with a specified day, act, or event includes that day or the day of the act or event; or

7.10.2 beginning from or after a specified day, act, or event does not include that day or the day of the act or event; or

7.10.3 ending by, on, at, with, or not later than, a specified day, act, or event includes that day or the day of the act or event; or

7.10.4 ending before a specified day, act or event does not include that day or the day of the act or event; or

7.10.5 continuing to or until a specified day, act, or event includes that day or the day of the act or event.

7.11 A reference to –

7.11.1 an agreement or document, including this deed or a document in the documents schedule, means that agreement or that document as amended, novated, or replaced; and

7.11.2 legislation, including the settlement legislation, means that legislation as amended, consolidated, or substituted; and

7.11.3 a party includes a permitted successor of that party; and

7.11.4 a particular Minister includes any Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the relevant matter.

7.12 An agreement by two or more persons binds them jointly and severally.

7.13 If the Crown must endeavour to do something or achieve some result, the Crown –

7.13.1 must use reasonable endeavours to do that thing or achieve that result; but

7.13.2 is not required to propose for introduction to the House of Representatives any legislation, unless expressly required by this deed.

7.14 Provisions in –

7.14.1 the main body of this deed are referred to as clauses; and

7.14.2 the property, and general matters, schedules are referred to as paragraphs; and

7.14.3 the draft settlement bill are referred to as sections; and

7.14.4 the documents in the documents schedule are referred to as clauses.

7.15 If there is a conflict between a provision that is –

7.15.1 in the main body of this deed and a provision in a schedule or an attachment, the provision in the main body of the deed prevails; and

7.15.2 in English and a corresponding provision in Māori, the provision in English prevails.

7.16 The deed plans in the attachments that are referred to in the statutory acknowledgement indicate the general locations of the relevant areas but not their precise boundaries.