

**NGĀI TAI KI TĀMAKI**

**and**

**THE CROWN**

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**AGREEMENT IN PRINCIPLE  
TO SETTLE  
HISTORICAL CLAIMS**

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**November 2011**

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## SCHEDULES

1. DEFINITIONS
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## 1 BACKGROUND

### Mandate and Terms of Negotiation

- 1.1 The Ngāi Tai ki Tāmaki Tribal Trust, on behalf of Ngāi Tai ki Tāmaki (the **settling group**), formally submitted a Deed of Mandate to the Crown in December 2009. That mandate was first advertised by Te Puni Kōkiri in December 2009. No submissions were received in relation to the Deed of Mandate.
- 1.2 By letter dated 26 February 2010, the Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations wrote to formally recognise the mandate of the Ngāi Tai ki Tāmaki Tribal Trust to negotiate with the Crown a deed of settlement settling the historical claims of the settling group.
- 1.3 The mandated entity and the Crown agreed the scope, objectives, and general procedures for the negotiations by Terms of Negotiation signed in June 2010.

### Nature and scope of deed of settlement agreed

- 1.4 The mandated entity and the Crown have agreed, in principle, the nature and scope of the deed of settlement.
- 1.5 This agreement in principle records that agreement.

### Crown acknowledgements relating to further redress

- 1.6 The Crown acknowledges that:
  - 1.6.1 Ngāi Tai ki Tāmaki will not have received full redress until Ngāi Tai ki Tāmaki enters into arrangements with the Crown through the Tāmaki Makaurau Collective deed and the Hauraki Collective deed (or deeds), or otherwise, providing:
    - (a) redress in relation to the Tāmaki Makaurau maunga, motu, harbours and co-governance arrangements for public conservation land; and
    - (b) a right of first refusal over land owned by the Crown in Tāmaki Makaurau; and
    - (c) redress in relation to the historical Treaty of Waitangi claims of Ngāi Tai ki Tāmaki in Hauraki.
  - 1.6.2 Therefore, the Crown owes Ngāi Tai ki Tāmaki a duty consistent with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi to negotiate in good faith with Ngāi Tai ki Tāmaki until those arrangements are entered into.



## **2 AGREEMENT IN PRINCIPLE**

### **2.1 The mandated entity and the Crown agree –**

- 2.1.1 that, in principle, the nature and scope of the deed of settlement is to be as provided in this agreement in principle except insofar as redress is to be provided through separate settlements as referred to at clause 1.6.1; and
- 2.1.2 to work together in good faith to develop, as soon as reasonably practicable, a deed of settlement based on this agreement in principle; and
- 2.1.3 the deed of settlement is to be signed by the governance entity (on behalf of the settling group) and the Crown.

## **3 HISTORICAL ACCOUNT, ACKNOWLEDGEMENT, AND APOLOGY**

### **3.1 The deed of settlement is to include –**

- 3.1.1 an agreed account of the historical relationship between the settling group and the Crown to be developed by the parties; and
- 3.1.2 the Crown's acknowledgement of its breaches of the Treaty of Waitangi referred to in the historical account; and
- 3.1.3 a Crown apology for those breaches of the Treaty of Waitangi.

### **3.2 The historical account will be based on the following agreed headings –**

- 3.2.1 Ngāi Tai ki Tāmaki – Origins/History
- 3.2.2 Ngāi Tai ki Tāmaki and the Crown
- 3.2.3 Old Land Claims and the Fairburn Purchase
- 3.2.4 Pre-emption Waiver Claims
- 3.2.5 Crown Purchasing to 1865
- 3.2.6 Raupatu – East Wairoa and Compensation Court
- 3.2.7 Native Land Court and Land Alienation (1865-1900)
- 3.2.8 Land Administration in the Twentieth Century
- 3.2.9 Specific Grievances:
  - (a) Maraetai Reserve

(b) Ten Percents

(c) Motutapu and Maxwell's Reserve

3.2.10 Socio-Economic and Political Consequences

3.2.11 Crown and Ngāi Tai ki Tāmaki Relationship Today

## **4 SETTLEMENT**

### **Settlement of historical claims**

4.1 The deed of settlement is to provide that, on and from the settlement date, -

4.1.1 the historical claims of the settling group are settled; and

4.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and

4.1.3 the settlement is final, except to the extent that redress is to be provided to the settling group through deeds of settlement with Ngā Mana Whenua o Tāmaki Makaurau (the Tāmaki Collective) and a deed or deeds of settlement with the iwi of Hauraki/Hauraki Collective, as described in clause 1.6.1.

4.2 The definitions of "historical claims", and of "the settling group", are to be based on the definitions of those terms in Schedule 1.

### **Terms of settlement**

4.3 The terms of the settlement provided in the deed of settlement are to be –

4.3.1 those in Schedule 2; and

4.3.2 any additional terms agreed by the parties prior to initialling the deed of settlement.

### **Redress**

4.4 The deed of settlement is to provide for redress in accordance with this agreement in principle.

4.5 However, the deed of settlement will include –



- 4.5.1 redress contemplated by this agreement in principle only if any overlapping claim issues in relation to that redress, particularly with respect to Ngāti Whātua Ōrākei and the Marutūāhu iwi, have been addressed to the parties' satisfaction; and
  - 4.5.2 a property that this agreement in principle specifies as a potential cultural redress property or a potential commercial redress property only, if the Crown provides final written confirmation to the settling group that the property is available for settlement.
- 4.6 If the Crown does not provide final written confirmation under clause 4.5.2 in relation to a property, it will not necessarily substitute another property.

#### **Transfer or vesting of settlement properties**

- 4.7 The settlement documentation is to provide that the vesting or transfer of –
- 4.7.1 a redress property, or a purchased deferred selection property, will be subject to –
    - (a) any further identification and/or survey required; and
    - (b) confirmation that no prior offer back or third party right, such as those under the Public Works Act 1991, exists in relation to the site and that any other statutory provisions that must be complied with to enable the site to be vested are complied with; and
    - (c) Part 4A of the Conservation Act 1987 (unless the settlement documentation provides otherwise); and
    - (d) Sections 10 and 11 of the Crown Minerals Act 1991; and
    - (e) any relevant provisions included in the settlement documentation; and
  - 4.7.2 a redress property will be subject to any encumbrance or right or obligation that –
    - (a) the disclosure information for that property provides will exist at the settlement date; or
    - (b) the settlement documentation requires to be created on or before the settlement date; or
    - (c) is entered into on or before the settlement date in accordance with the settlement documentation; and
  - 4.7.3 a purchased deferred selection property will be subject to any encumbrance or right that –
    - (a) the disclosure information for that property provides will exist at the date the property is purchased by the governance entity; or



- (b) is entered into in accordance with the deed of settlement before the date the governance entity purchases the property.

## 5 CULTURAL REDRESS

### Cultural redress to be explored

- 5.1 Between agreement in principle and the initialling of a deed of settlement the parties will explore the following:
- 5.1.1 Ngāi Tai ki Tāmaki aspirations for increased involvement in the governance and management of the Wairoa River, Clevedon;
  - 5.1.2 specific recognition for Ngāi Tai ki Tāmaki within any governance arrangements agreed with Ngā Mana Whenua o Tāmaki Makaurau (the Tāmaki Collective) in respect of Rangitoto Island and Motutapu Island;
  - 5.1.3 the fee simple vesting of up to two pā sites on Motutapu Island (of up to two hectares each) subject to reserve status;
  - 5.1.4 the vesting of a small and discrete coastal site on Motutapu Island for a tauranga waka subject to recreation reserve status;
  - 5.1.5 inclusion in the deed of settlement of a statement that recognises the significance of the lizards on Motutapu Island to Ngāi Tai ki Tāmaki;
  - 5.1.6 redress over the Ngāi Tai ki Tāmaki pā site on Motuihe Island;
  - 5.1.7 a statutory acknowledgement over Motuihe Island;
  - 5.1.8 redress over Mutukaroa/Hamlin Hill (the parties note that other iwi/hapū may also seek redress in respect of Mutukaroa/Hamlin Hill);
  - 5.1.9 a mix of cultural and commercial redress over the Crown-owned parts of Musick Point (Te Naupata);
  - 5.1.10 the fee simple vesting of Motukaraka (Flat) Island subject to the agreement of the Auckland Council including with respect to its ongoing management of the Recreation Reserve; and
  - 5.1.11 in consultation with the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa the possibility of assigning or altering a list of official geographic names and Crown protected area names, in consultation with the Department of Conservation, for inclusion in the deed of settlement.
- 5.2 With respect to the sites on Motutapu listed at clauses 5.1.3 and 5.1.4 the parties will explore the size and location of these sites including whether they will adjoin each other and the purposes for which the sites may be used, as appropriate.



### Potential cultural redress properties

- 5.3 The deed of settlement is to provide that the settlement legislation will vest in the governance entity at settlement date those properties described in Table 1, that the parties agree are to be cultural redress properties, on the basis provided in Table 1.
- 5.4 Following the signing of this agreement in principle the Crown will confirm the extent of any third party rights (including established public rights) with respect to these properties and the extent of those rights.

**TABLE 1: Potential cultural redress properties**

Name of site	Area (hectares)	Basis on which property is to be vested and rights or encumbrances affecting the property of which the Crown is currently aware
Musick Point (Te Naupata)	41.4240	Subject to all existing rights and encumbrances – to be confirmed through disclosure. Site to be vested as cultural redress to the extent that it is not vested as commercial redress.
Clevedon Conservation Area	13.76	Scenic Reserve
Wairoa River Conservation Area	0.7	Local Purpose (Landing) Reserve – fencing and legal access issues for the settling group to resolve
Waikopua Creek Conservation Area	15.7	Local Purpose (Wetland management) Reserve
Whitford Conservation Area	0.5	Conservation Covenant
Sharpes Bush – Tai Rawhiti Scenic Reserve	62.0	Scenic Reserve

### Cultural redress generally non-exclusive

- 5.5 The Crown may do anything that is consistent with the cultural redress contemplated by this agreement in principle, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress. This clause may not apply to certain cultural redress properties outlined at clause 5.1 given that the parties will be exploring the nature of the redress prior to the initialling of the deed of settlement.
- 5.6 However, the Crown must not enter into another settlement that provides for the same redress as set out in Table 1.



## Statutory acknowledgements

5.7 The deed of settlement is to provide for the settlement legislation to –

- 5.7.1 provide the Crown's acknowledgement of the statements by the settling group of their particular cultural, spiritual, historical, and traditional association with each of the areas described in Table 2 as statutory areas, to the extent those areas are owned and/or managed by the Crown; and
- 5.7.2 require relevant consent authorities, the Environment Court and the Historic Places Trust to have regard to the statutory acknowledgements; and
- 5.7.3 require relevant consent authorities to forward to the governance entity summaries and copies of resource consent applications affecting a statutory area; and
- 5.7.4 enable the governance entity, and any member of the settling group, to cite the statutory acknowledgement as evidence of the settling group's association with a statutory area.

## Deeds of recognition

5.8 The Crown and the mandated entity will explore deeds of recognition.

5.9 Any deeds of recognition will relate to the statutory areas in Table 2, to the extent those areas are owned and/or managed by the Crown.

5.10 Any deeds of recognition issued will require the Minister of Conservation and the Director-General of Conservation, or the Commissioner of Crown Lands (as the case may be) when undertaking certain activities within a statutory area, to -

- 5.10.1 consult the governance entity; and
- 5.10.2 have regard to the views of the governance entity concerning the settling group's association with the statutory area as described in a statement of association.

**TABLE 2: Statutory areas**

Name of site	Area (hectares)
Mataitai Forest Conservation Area	364
Mataitai Scenic Reserve	108.75
Whakatiri Scenic Reserve	225.02
Wairoa Gorge Scenic Reserve	57.22

Name of site	Area (hectares)
Landels Bush – Papa Turoa Scenic Reserve	47
Stony Batter Historic Reserve	18.42
Te Matuku Bay Scenic Reserve	53.03
Papepape Marginal Strip	4.25
Turanga Creek Stewardship Area	4.50
A coastal statutory acknowledgement over the marine and coastal area from Maungauika/North Head in the north to Orere in the south and including all inner Hauraki Gulf motu	

### Protocols

5.11 The deed of settlement is to require that, on the settlement date, the responsible Minister issue the governance entity with the following protocols:

5.11.1 a Crown minerals protocol issued by the Minister of Energy and Resources; and

5.11.2 a Taonga Tūturu Protocol issued by the Minister for Arts, Culture and Heritage.

### Letter of recognition

5.12 The deed of settlement is to require that, on the settlement date, the Director-General of the Ministry of Agriculture and Forestry write to the Governance Entity regarding fisheries matters within the Ngāi Tai ki Tāmaki area of interest. The letter, among other things, will recognise that pipi and tuangi are important shellfish species to Ngāi Tai ki Tāmaki.

### Letter of introduction

5.13 Following the signing of this agreement of principle, the Minister for Treaty of Waitangi Negotiations will write to Auckland Council encouraging it to enter into a formal Memorandum of Understanding with Ngāi Tai ki Tāmaki in respect of matters within the Ngāi Tai ki Tāmaki area of interest.

### Consultation

5.14 The Department of Conservation will consult with Ngāi Tai ki Tāmaki in relation to the arrangements for pasture management on Motutapu, including any arrangements with third parties.



## 6 FINANCIAL AND COMMERCIAL REDRESS

### Financial and commercial redress amount

6.1 The deed of settlement is to provide that the Crown will pay the governance entity on the settlement date the financial and commercial redress amount of **\$11.5 million** less –

6.1.1 the total of the market values of the properties (or value as a school site for Ministry of Education leaseback properties) that the deed of settlement provides are commercial redress properties to be transferred to the governance entity on the settlement date.

### Potential commercial redress properties

6.2 The deed of settlement is to provide that the Crown must transfer to the governance entity on the settlement date those of the properties described in Table 3, as potential commercial redress properties, and those properties in the Office of Treaty Settlements landbank that the parties agree are to be commercial redress properties.

6.3 If a commercial redress property to be transferred to the governance entity –

6.3.1 is a leaseback commercial redress property, the deed of settlement is to provide that the property is to be leased back by the governance entity to the Crown, from the settlement date, –

(a) on the terms and conditions provided by a registrable ground lease for that property (and, where specified in Table 3, ownership of the Lessee's improvements remaining with the Lessee) agreed between the parties before the signing of, and incorporation in, the deed; and

(b) if the leaseback is to a department other than the Ministry of Education, at an initial market rental.

**TABLE 3: Potential commercial redress properties**

Agency	Property Name	Improvements	Legal Description	Area (hectares)	Address	Lease-back	Other
Land Information New Zealand	Musick Point (Te Naupata)	Not included in offer	LOTS 1 & 2 DP 158600	41.4240	20 Musick Point Road and 4 Clovelly Road, Bucklands Beach, Auckland	No	Subject to existing encumbrances. To be vested as commercial redress to the extent not vested as cultural redress.
New Zealand Defence Force	Housing Papakura	Included in offer (49 houses)	LOTS 1 & 2 DP_201101 (to be surveyed to separate title by NZDF)	3.90	Dittmer, Arium, Russell and Porchester Avenues, Papakura	No	Subject to addressing overlapping claims to the satisfaction of the parties, specifically with Ngāti Tamaoho



							who have also expressed an interest in this property as settlement redress.
New Zealand Defence Force	Torpedo Bay	Not included in offer	SO 52566 and SO 59186	1.31	64 King Edward Parade, Devonport	Yes	Jointly with the Marutūāhu iwi and/or to the extent not purchased by the Marutūāhu iwi.
Department of Corrections	Community Probation Service Manukau Area Office	Included in offer	NA138A/137	0.4000	9 Barrowcliffe Place, Manukau City	Yes	
New Zealand Police	Glen Innes Police Station	Not included in offer	LOT 160-161 DP 43833	0.0997	Corner of Taniwha St & Line Rd Glen Innes	Yes	

### Ministry of Education commercial redress properties

- 6.4 The deed of settlement will provide that the Crown will transfer to the governance entity on the settlement date up to four Ministry of Education school sites (land only) of which only one site may be a secondary school.
- 6.5 If the Ministry of Education school sites (land only) selected include land in which a Board of Trustees has a beneficial interest it will not be included in the land for transfer.
- 6.6 The properties agreed for transfer will be geographically spread.
- 6.7 The properties are to be leased back by the governance entity to the Crown, from the settlement date, –
- 6.7.1 at an initial annual rental determined in accordance with the Crown leaseback (excluding GST); and
  - 6.7.2 on the terms and conditions provided by a registrable ground lease for that property (and ownership of the Lessee's improvements remaining with the Lessee) agreed between the parties before the signing of, and incorporation in, the deed.

### Potential deferred selection properties

- 6.8 The Crown will explore the possibility of providing the governance entity the rights to purchase at a fair market value (determined under the valuation process specified in the deed) properties through a deferred selection mechanism.



## **7 INTEREST AND TAX**

### **Interest**

- 7.1 The deed of settlement is to provide for the Crown to pay to the governance entity, on the settlement date, interest on the financial and commercial redress amount -
  - 7.1.1 for the period –
    - (a) beginning on the date of this agreement in principle; and
    - (b) ending on the day before the settlement date; and
  - 7.1.2 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.
- 7.2 The interest is to be -
  - 7.2.1 subject to any tax payable; and
  - 7.2.2 payable after withholding any tax required by legislation to be withheld.

### **Tax**

- 7.3 Subject to the Minister of Finance's consent, the deed of settlement is to provide that the Crown must indemnify the governance entity for any GST or income tax payable in respect of the provision of Crown redress.
- 7.4 The governance entity agrees that neither it, nor any other person, will claim with respect to the provision of Crown redress –
  - 7.4.1 an input credit for GST purposes; or
  - 7.4.2 a deduction for income tax purposes.

## **8 NEXT STEPS**

### **Disclosure information**

- 8.1 The Crown will, as soon as reasonably practicable, prepare, and provide to the mandated entity, disclosure information in relation to –
  - 8.1.1 each potential cultural redress property; and
  - 8.1.2 each potential commercial redress property.

## **Resolution of outstanding matters**

8.2 The parties will work together in good faith to agree, as soon as reasonably practicable, all matters necessary to complete the deed of settlement, including agreeing on or determining, as the case may be –

8.2.1 the terms of –

(c) the historical account; and

(d) the Crown's acknowledgement and apology; and

8.2.2 the cultural redress, the commercial redress properties, and the deferred selection properties from the potential commercial properties or land; and

8.2.3 the transfer values of the potential commercial redress properties including the Ministry of Education commercial redress properties; and

8.2.4 the terms of a registrable ground lease for any leaseback property, including any Ministry of Education commercial redress properties; and

8.2.5 the initial market rental for any leaseback commercial redress property, excluding Ministry of Education commercial redress properties; and

8.2.6 the annual rental for any Ministry of Education commercial redress properties; and

8.2.7 the new and altered geographic place names;

8.2.8 the terms of the following (which will, where appropriate, be based on the terms provided in recent settlement documentation) -

(a) the cultural redress;

(b) the transfer of the commercial redress properties;

(c) the right to purchase a deferred selection property, including the process for determining its fair market value and, if it is a leaseback property, its initial market rental;

(d) the annual rental for any Ministry of Education commercial redress properties;

(e) the tax indemnity; and

8.2.9 the following documents -

(a) the settling group's statements of association with each of the statutory areas;



- (b) any deeds of recognition;
- (c) the protocols;
- (d) the settlement legislation; and

8.2.10 all other necessary matters.

### **Development of governance entity and ratification process**

8.3 The settling group will, as soon as reasonably practicable, -

- 8.3.1 form a single governance entity that the Crown is satisfied meets the requirements of clause 9.1.2(a); and
- 8.3.2 develop a ratification process referred to in clause 9.1.2(b) that is approved by the Crown.

## **9 CONDITIONS**

### **Entry into deed of settlement conditional**

9.1 The Crown's entry into the deed of settlement is subject to –

9.1.1 Cabinet agreeing to the settlement and the redress; and

9.1.2 the Crown being satisfied the settling group has –

- (a) established a governance entity that –
  - (i) is appropriate to receive the redress; and
  - (ii) provides, for the settling group, –
    - (I) appropriate representation; and
    - (II) transparent decision-making and dispute resolution processes; and
    - (III) full accountability; and
- (b) approved, by a ratification process approved by the Crown, –
  - (i) the governance entity to receive the redress; and
  - (ii) the settlement on the terms provided in the deed of settlement; and

- (iii) signatories to sign the deed of settlement on the settling group's behalf.

### **Settlement conditional on settlement legislation**

- 9.2 The deed of settlement is to provide that the settlement is conditional on settlement legislation coming into force.
- 9.3 However, some of the provisions of the deed of settlement may be binding from its signing.

## **10 GENERAL**

### **Nature of this agreement in principle**

- 10.1 This agreement in principle –

- 10.1.1 is entered into on a without prejudice basis; and
- 10.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal; and
- 10.1.3 is non-binding; and
- 10.1.4 does not create legal relations.

### **Termination of this agreement in principle**

- 10.2 The Crown or the mandated entity, on behalf of the settling group, may terminate this agreement in principle by notice to the other.
- 10.3 Before terminating this agreement in principle, the Crown or the mandated entity as the case may be, must give the other at least 20 business days notice of an intention to terminate.
- 10.4 This agreement in principle remains without prejudice even if it is terminated.

### **Definitions**

- 10.5 In this agreement in principle –

- 10.5.1 the terms defined in Schedule 1 have the meanings given to them by that schedule; and
- 10.5.2 all parts of speech, and grammatical forms, of a defined term have a corresponding meaning.



## **Interpretation**

10.6 In this agreement in principle –

10.6.1 headings are not to affect its interpretation; and

10.6.2 the singular includes the plural and vice versa.

10.7 Provisions in –

10.7.1 the schedules to this agreement in principle are referred to as paragraphs;  
and

10.7.2 other parts of this agreement are referred to as clauses.

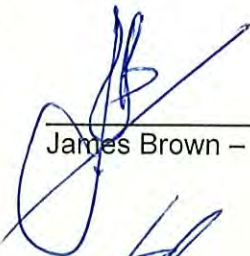






## AGREEMENT IN PRINCIPLE

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**SIGNED** for and on behalf  
of **NGĀI TAI KI TĀMAKI** and the mandated  
entity by the Ngāi Tai ki Tāmaki Negotiation  
Team

  
\_\_\_\_\_  
James Brown – Chief Negotiator  
\_\_\_\_\_  
Laurie Beamish – Negotiator  
\_\_\_\_\_  
Carmen Kirkwood – Negotiator  
\_\_\_\_\_  
Lucy Steel – Negotiator

**SIGNED** on

5/11/11

**SIGNED** for and on behalf  
of **THE CROWN** by the Minister for Treaty of  
Waitangi Negotiations

  
\_\_\_\_\_  
Hon Christopher Finlayson

**SIGNED** on 3/11/11

## SCHEDULES



## 1 DEFINITIONS

### Historical claims

1.1 The deed of settlement will provide that **historical claims** –

1.1.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that the settling group, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that -

(a) is, or is founded on, a right arising –

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 -

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

1.1.2 includes every claim to the Waitangi Tribunal to which paragraph 1.1.1 applies that relates exclusively to the settling group or a representative entity, including the following claims:

(a) Wai 236 - Ngāi Tai Claim;

(b) Wai 357 - Ngāi Tai ki Tāmaki Surplus Railway Land Claim;

(c) Wai 423 - Ngāi Tai ki Tāmaki Rohe Claim;

(d) Wai 960 - Ngāi Tai Umupuia o Tāmaki Claim;

(e) Wai 1749 - Ngāi Tai/Ngāti Tai Claim;

(f) Wai 1825 – Claim on behalf of the Descendants of Hetaraka Takapuna.

1.1.3 includes every other claim to the Waitangi Tribunal to which paragraph 1.1.1 applies, so far as it relates to the settling group or a representative entity, including the following claims:

(a) Wai 96 -East Wairoa Raupatu Claim.

1.1.4 does not include the following claims –

- (a) a claim that a member of the settling group, or a whānau, hapū, or group referred to in paragraph 1.3.2, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in paragraph 1.3.1;
- (b) a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 1.1.3(a)
- (c) any claim relating to Ngaitai interests at Torere.
- (d) any claims relating to the marine and coastal area which may be dealt with under the Marine and Coastal Area (Takutai Moana) Act 2011;

1.2 The deed of settlement will, to avoid doubt, provide paragraph 1.1.1 is not limited by paragraphs 1.1.2 or 1.1.3.

**Ngāi Tai ki Tāmaki**

1.3 The deed of settlement will provide that **Ngāi Tai ki Tāmaki** or the **settling group** means –

1.3.1 those who descend from the eponymous ancestor, Te Whatataui;

1.3.2 every whānau, hapū, or group of persons to the extent that it is composed of individuals referred to in paragraph 1.3.1; and

1.3.3 every individual referred to in paragraph 1.3.1.

1.4 The deed of settlement will provide, for the purposes of paragraph 1.3.1 that, –

1.4.1 a person is **descended** from another person if the first person is descended from the other by –

- (a) birth; or
- (b) legal adoption; or
- (c) Māori customary adoption in accordance with the settling group's tikanga; and

1.4.2 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including –

- (a) rights to occupy land; and
- (b) rights in relation to the use of land or other natural or physical resources.



**Other definitions**

1.5 In this agreement in principle –

**area of interest** means the area identified as the area of interest in clause 11 and

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

- (a) a Saturday or 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; or
- (d) a day that is observed as the anniversary of the province of –
  - (i) Wellington; or
  - (ii) Auckland; and

**commercial redress property** means each property described as a commercial redress property in the deed of settlement; and

**conservation document** means a national park management plan, conservation management strategy, or conservation management plan; and

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

**Crown leaseback**, in relation to a leaseback commercial redress property, means the lease to be entered into by the governance entity and the Crown under clause 6.3.1; 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 right of the governance entity under the settlement documentation –
  - (i) to acquire a deferred selection property; and
- (c) does not include:

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- (i) an obligation of the Crown under the settlement documentation to transfer a deferred selection property; or
  - (ii) a deferred selection property; and
- (d) offers to explore redress are not undertakings by the Crown to provide specific redress or recognition; and

**cultural redress** means the redress to be provided under the settlement documentation referred to in part 5; and

**cultural redress property** means each property described as a cultural redress property in the deed of settlement; and

**deed of settlement** means the deed of settlement to be developed under clause 2.1.2; and

**deferred selection property** means each property described as a deferred selection property in the deed of settlement; and

**disclosure information** means –

- (a) in relation to a redress property, the information provided by the Crown to the governance entity under clause 8.1; and
- (b) in relation to a purchased deferred selection property, the disclosure information about the property that the deed of settlement requires to be provided by the Crown to the governance entity; and

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

**financial and commercial redress** means the redress to be provided under the settlement documentation referred to in part 6; and

**financial and commercial redress amount** means the amount referred to as the financial and commercial redress amount in clause 6.1; and

**governance entity** means the governance entity to be formed by the settling group under clause 8.3.1; and

**leaseback commercial redress property** means a potential commercial redress property that Table 3 identifies as a leaseback property; and

**leaseback property** means each leaseback commercial redress property and each leaseback deferred selection property and Ministry of Education commercial redress properties; and

**mandated entity** means –



the Ngāi Tai ki Tāmaki Tribal Trust; and

**party** means each of the settling group and the Crown; and

**potential commercial redress property** means each property described as a potential commercial redress property in Table 3; and

**potential cultural redress property** means each property described as a potential cultural redress property in Table 1; and

**protocol** means a protocol referred to in clause 5.11; and

**purchased deferred selection property** means each deferred selection property in relation to which the governance entity and the Crown are to be treated under the deed of settlement as having entered into an agreement for its sale and purchase; and

**redress** means the following to be provided under the settlement documentation –

- (a) the Crown's acknowledgement and apology referred to in clause 3.1;
- (b) the financial and commercial redress;
- (c) the cultural redress; and

**redress property** means -

- (a) each cultural redress property; and
- (b) each commercial redress property; and

**representative entity** means a person or persons acting for or on behalf of the settling group; 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

**settlement** means the settlement of the historical claims under the settlement documentation; and

**settlement date** means the date that is 20 business days after the date on which the settlement legislation comes into force; and

**settlement document** means a document to be entered into by the Crown to give effect to the deed of settlement; and

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**settlement documentation** means the deed of settlement and the settlement legislation; and

**settlement legislation** means the legislation giving effect to the deed of settlement; and

**settlement property** means –

- (a) each cultural redress property; and
- (b) each commercial redress property; and
- (c) each deferred selection property; and

**statement of association** means each statement of association referred to in clause 5.10.2; and

**statutory acknowledgement** means the acknowledgement to be made by the Crown in the settlement legislation referred to in clause 5.7.1 on the terms to be provided by the settlement legislation; and

**statutory area** means an area referred to in Table 2 as a statutory area; and

**tax indemnity** means the indemnity to be provided in the deed of settlement under clauses 7.3 and 7.4; and

**Treaty of Waitangi** means the Treaty of Waitangi as set out in Schedule 1 to the Treaty of Waitangi Act 1975.



## **2 SETTLEMENT TERMS**

### **Rights unaffected**

- 2.1 The deed of settlement is to provide that, except as provided in the settlement documentation, the rights and obligations of the parties will remain unaffected.

### **Acknowledgements**

- 2.2 Each party to the deed of settlement is to acknowledge in the deed of settlement that –
- 2.2.1 the other party has acted honourably and reasonably in relation to the settlement; but
  - 2.2.2 full compensation of the settling group is not possible; and
  - 2.2.3 the settling group intends its foregoing of full compensation to contribute to New Zealand's development; and
  - 2.2.4 the settlement is intended to enhance the ongoing relationship between the settling group and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).
- 2.3 The settling group is to acknowledge in the deed of settlement that –
- 2.3.1 taking all matters into consideration (some of which are specified in paragraph 2.2), the settlement is fair in the circumstances; and
  - 2.3.2 the redress –
    - (a) is intended to benefit the settling group collectively; but
    - (b) may benefit particular members, or particular groups of members, of the settling group if the governance entity so determines in accordance with the governance entity's procedures.

### **Implementation**

- 2.4 The deed of settlement is to provide that the settlement legislation will, on terms agreed by the parties (based on the terms in recent settlement legislation), –
- 2.4.1 settle the historical claims; and
  - 2.4.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and
  - 2.4.3 provide that certain legislation does not apply –
    - (a) to a redress property, a purchased deferred selection property; or
    - (b) for the benefit of the settling group or a representative entity; and
  - 2.4.4 the legislation referred to at paragraph 2.4.3 is –
    - (a) 8A to 8HJ of the Treaty of Waitangi Act 1975;

- (b) 27A to 27C of the State-Owned Enterprises Act 1986;
  - (c) 211 to 213 of the Education Act 1989;
  - (d) Part 3 of the Crown Forest Assets Act 1989;
  - (e) Part 3 of the New Zealand Railways Corporation Restructuring Act 1990; and
- 2.4.5 require any resumptive memorials to be removed from the certificates of title to, or the computer registers for, the settlement properties; and
- 2.4.6 provide that the rule against perpetuities and the Perpetuities Act 1964 does not apply to any settlement document; and
- 2.4.7 require the Secretary for Justice to make copies of the deed of settlement publicly available.
- 2.5 The deed of settlement is to provide that –
  - 2.5.1 the governance entity must use its best endeavours to ensure every historical claim is discontinued by the settlement date or as soon as practicable afterwards; and
  - 2.5.2 the Crown may, after the settlement date advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement; and
  - 2.5.3 the Crown may cease any land bank arrangement in relation to the settling group, the governance entity, or any representative entity, except to the extent necessary to comply with its obligations under the deed.