

**NGAATI WHANAUNGA**  
**and**  
**THE TRUSTEES OF THE NGAATI WHANAUNGA RUUNANGA TRUST**  
**and**  
**THE CROWN**

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**DEED OF SETTLEMENT SCHEDULE:**  
**DOCUMENTS**

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## 1 NGAATI WHANAUNGA VALUES, PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

Repanga (Cuvier) Island Nature Reserve (as shown on deed plan OTS-403-215)

### *Ngaati Whanaunga values*

**[statement of values to be inserted prior to this deed being signed]**

### *Protection principles*

Recognition of, and respect for, the spiritual, cultural, customary, traditional and historical interests of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga with Repanga.

Recognition and respect for the mana, tikanga and kaitiakitanga of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga with Repanga.

Respect for and inclusion of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga tikanga and kawa in the management of Repanga.

Protection of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga wahi tupuna, wahi taonga and wahi whakahirahira at Repanga.

Respect for the presence of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga in the management and interpretation of Repanga.

Recognition of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga mahinga kai and the provision of cultural resources at Repanga.

Recognition of the interests of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga in actively protecting its taonga species at Repanga.

### *Director-General's actions*

The Director-General has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles:

1. The Department of Conservation will ensure that its management of Repanga maintains and enhances the ecological health of Repanga through regular monitoring, vigilance regarding biosecurity and compliance threats, and by advocating sound and sustainable environmental planning principles and processes.
2. Department of Conservation staff, contractors, conservation board members, concessionaires and the public will be provided with information about these values and the existence of the overlay classification, and the need to respect the Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga spiritual, cultural, customary, traditional and historical interests of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga with Repanga, and the mauri of Repanga.



**DOCUMENTS**

**1: NGAATI WHANAUNGA VALUES, PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS**

3. The spiritual, cultural, customary, traditional and historical interests of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga with Repanga will be accurately portrayed in all new Department of Conservation information and educational material. Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga will be engaged with regarding the provision of all new Department of Conservation public information or educational material, and the Department of Conservation will only use Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga information with the consent of Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga.
4. Department staff will consult Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga, and particular regard will be had to their world views over any proposed introductions or removal of indigenous or exotic species to and from Repanga.
5. Significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible.
6. Where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga will be consulted and particular regard will be had to their views, including those relating to koiwi (human remains) and archaeological sites.
7. Any koiwi (human remains) or other taonga found or uncovered by the Department of Conservation will be left untouched and Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga informed as soon as possible to enable the koiwi or taonga to be dealt with in accordance with their tikanga.
8. The Department will advise Ngāti Hei, Ngāti Maru, Ngāti Tamaterā and Ngaati Whanaunga of opportunities for input into management planning for Repanga and its immediate environs through early engagement in the Conservation Management Strategy/Conservation Management Plan processes by the relevant District or Regional Office.

DOCUMENTS

## 2 STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)

The statements of association of Ngaati Whanaunga are set out below. These are statements of their particular cultural, spiritual, historical, and traditional association with identified areas.

**Mercury Islands** (as shown on deed plan OTS-403-212)

*[statement of association to be inserted prior to this deed being signed]*

**Mahakirau Scenic Reserve** (as shown on deed plan OTS-403-218)

Mahakirau is the land of the Te Rapupo a shared hapuu of Ngaati Whanaunga and Ngaati Paoa.

Located at Waiau (taken for the river name) Mahakirau is inclusive of and bounded by important land marks and places of significance to Ngaati Whanaunga and the Marutuuahu.

Surrounded by other Te Rapupo / Ngaati Whanaunga and Marutuuahu lands of Maumaupaki, Te Weiti, Kaimarama, Waikawau, Kakatarahae, Waiparuparu and Taawhitirahi, the land takes its name from two prominent rivers running north to south (Waiau), and east to west (Mahakirau).

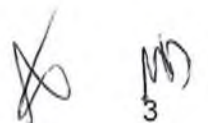
Specific places of Mahakirau include maunga, kaainga, awa and waahi tapu.

Papatuaraharaha (a boundary marker) located at the junction of the Maumaupaki and Opitonui lands to the north, Takinga Wairua (a waahi tapu) on the east at the conjunction of the Mahakirau River and the Te Weiti lands. From there it extends to Pukeotahu maunga and Papataiko to the south east, Kakatarahae whenua and maunga to the south, Waiparuparu and Taawhitirahi whenua to the east and back to Papatuaraharaha and Maumaupaki.

The named streams and rivers, maunga and waahi tapu are all important land marks for Ngaati Whanaunga and Te Rapupo.

All forms of kai from the ngahere and fresh water streams were accessed by Ngaati Whanaunga at all these places, the two rivers having significant spiritual relevance to Te Rapupo and Ngaati Whanaunga.

Mahakirau was part of the middle ridgeline peaks of the Coromandel Peninsula and marked an important part of the inland rohe of Ngaati Whanaunga and the Marutuuahu tribes and their combined raupatu of earlier tribes of the Coromandel peninsula.



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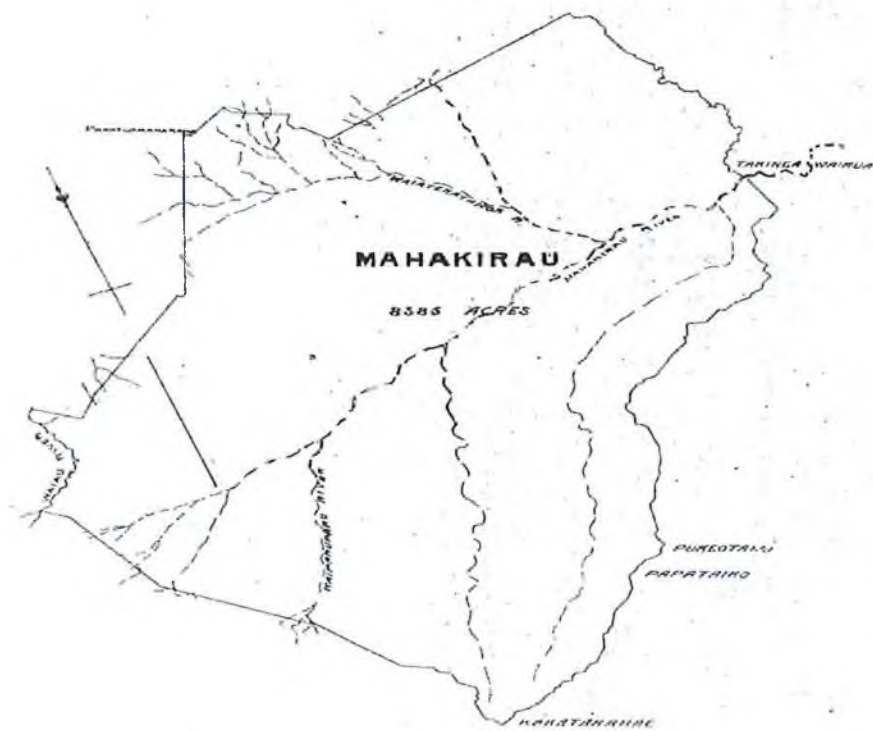
2: STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)



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**2: STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)**

**Part Whangapoua Forest Conservation Area (as shown on deed plan OTS-403-220)**

Motutere is a sacred maunga and burial cave for Ngaati Whanaunga. The name Ngaati Whanaunga use for this scared place is used to encompass the tihi, awa and land area.

Ngaati Whanaunga acknowledge that earlier iwi have named and used the cave (ana) and sacred places for a depository of tuupuna prior to the death of Tipa and the subsequent take raupatu that took place against the earlier iwi of the peninsular by Ngaati Whanaunga, Ngaati Paoa, Ngaati Tamatera and Ngaati Maru (the descendants of Te Ngako and Taurukapakapa).

When seen from the lowlands of Waiau (Coromandel Peninsula) from all directions, the tihi is often compared to a Castle turret (precipice).

Ngaati Whanaunga will fish in certain parts of Tiikapa and Te Tai tama tane when the base of Motutere is covered and the top (Te Urukehu) is for all to see as if a floating island.

For Ngaati Whanaunga, Motutere in its entirety is an important landmark and a waahi whakahirahira. It represents one of the key land marks which is tied to the source of claim (putake) of raupatu of the Waiau (Peninsula) and the following use and occupation of the resources within and upon Motutere, both physically and spiritually.

Motutere amongst other lands is the division of spoils as a result of a victorious battle between the earlier tribes of Waiau and the descendants of Marutuuahu, Ngaati Whanaunga, Ngaati Puku, Ngaati Karaua, Ngaati Paoa, Ngaati Hura, Te Patukirikiri and others, the leaders of this particular battle being Hika, Te Take and Te Pukeko.

An agreement was made at Te Whau (near Manaia) between Te Take and his brother Hika with Te Pukeko. Te Pukeko said that (if they were successful) the one side of Waiau River as far as the Arikitahi Paa should be his and that the other side of Waiau (the south side) Hika should have.

The Ngaati Whanaunga and Ngaati Paoa were victorious and Motutere which is south of the Waiau became Ngaati Whanaunga territory.

Tipa and many ancestors before him of the earlier tangata whenua people were placed in the many caves and hidden crevices of the top part of Motutere, hence a reflection of the waahi tapu status a part of the tihi has today.

The Motutere land became a point of dispute between the Ngaati Whanaunga and Ngaati Paoa in the time of the Native Land Court. It was in regard to whether the original agreement referred to above was still valid and where did it continue in an easterly direction.

The Ngaati Whanaunga boundary commences at the sea near the Waiau Stream. The south side of that stream belonged to Ngaati Whanaunga and the north side of that stream belonged to Ngaati Paoa. The boundary then follows the Waiau Stream to the junction with the Matawai Stream, follows Matawai Stream to the junction with the Maungakotukutuku then follows the Maungakotukutuku to the hill Tauwharekiri, there it reaches the land of Hamiora ma.

Patene Puhata and Hauauru (both descendants of Te Pukeko) and Te Horeta and his son Kitahi Te Taniwha (descendants of Te Take and Hika) left oral instruction and timber sale agreements to reflect the old boundary agreements. The korero was completed by Haora Tipa, Maihi Te Hinaki, Harata Kanuheke and her daughter Emma Te Aouru and Tamati Otatau for Ngaati Paoa, Renata Te Taniwha, Ngakapa Whanaunga and Tukaramaene, Hohepa Mataitaua, Tukumana Te Taniwha and Wiremu Te Aramoana for Ngaati Whanaunga.

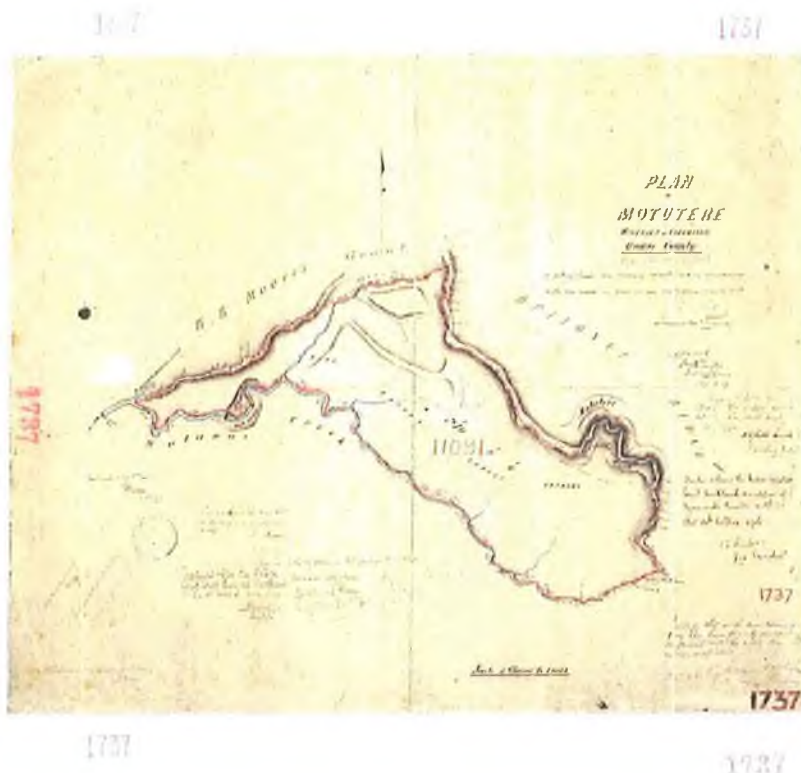
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2: STATEMENTS OF ASSOCIATION (STATUTORY ACKNOWLEDGEMENT)

The places of significance discussed and identified by both tribes were the rivers Waiau, Matawai (its source being at the foot of the Maumaupaki) and Maungakotukutuku, an upper peak and maunga Tauwharekiri, and the ridge line named Te Aki.

Because of the take raupatu, the places mentioned all have physical and spiritual significance to Ngaati Whanaunga.



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### 3 STATEMENTS OF ASSOCIATION

The statements of association of Ngaati Whanaunga are set out below. These are statements of their particular cultural, spiritual, historical, and traditional association with identified areas.

**Coastal statement of association**

*[statement of association to be inserted prior to this deed being signed]*

**Tāmaki Makaurau motu and maunga**

*[statement of association to be inserted prior to this deed being signed]*

**Moehau maunga**

*[statement of association to be inserted prior to this deed being signed]*

**Te Aroha maunga**

*[statement of association to be inserted prior to this deed being signed]*

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

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4.1 Taonga Tūturu Protocol

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGAATI WHANAUNGA ON SPECIFIED ISSUES**

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated xx between Ngaati Whanaunga and the Crown (the "Deed of Settlement"), the Crown agreed that the Minister for Arts, Culture and Heritage (the "Minister") would issue a protocol (the "Protocol") setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the "Chief Executive") will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2
  - 1.1.2 Terms of issue – Part 3
  - 1.1.3 Implementation and communication – Part 4
  - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5
  - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6
  - 1.1.7 Effects on Ngaati Whanaunga interests in the Protocol Area – Part 7
  - 1.1.8 Registration as a collector of Ngā Taonga Tūturu – Part 8
  - 1.1.9 Board Appointments – Part 9
  - 1.1.10 National Monuments, War Graves and Historical Graves – Part 10
  - 1.1.11 History publications relating to Ngaati Whanaunga – Part 11
  - 1.1.12 Cultural and/or Spiritual Practices and professional services – Part 12
  - 1.1.13 Consultation – Part 13
  - 1.1.14 Changes to legislation affecting this Protocol – Part 14
  - 1.1.15 Definitions – Part 15
- 1.2 For the purposes of this Protocol the governance entity is the body representative of Ngaati Whanaunga who have an interest in the matters covered under this Protocol. This derives from the status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.
- 1.3 Manatū Taonga also known as the Ministry (the Ministry) and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.

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**4: PROTOCOLS: TAONGA TŪTURU PROTOCOL**

- 1.4 The purpose of the Protected Objects Act 1975 ("the Act") is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in clause 1.1, as set out in clauses 5 to 11 of this Protocol.

**2 PROTOCOL AREA**

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Protocol Area").

**3 TERMS OF ISSUE**

- 3.1 This Protocol is issued pursuant to section xx of the [Ngaati Whanaunga Claims Settlement Act [date]] ("the Settlement Legislation") that implements the Ngaati Whanaunga Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

**4 IMPLEMENTATION AND COMMUNICATION**

- 4.1 The Chief Executive will maintain effective communication with the governance entity by:
- 4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
  - 4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
  - 4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
  - 4.1.4 meeting with the governance entity to review the implementation of this Protocol if requested by either party;
  - 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Chief Executive under it;
  - 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
  - 4.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

**General**

5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand;

5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand;

5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand;

5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and

5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

**Ownership of Taonga Tūturu found in Protocol Area or identified as being of Ngaati Whanaunga origin found elsewhere in New Zealand**

5.2. If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.

5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.

5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

**DOCUMENTS**

**4: PROTOCOLS: TAONGA TŪTURU PROTOCOL**

**Custody of Taonga Tūturu found in Protocol Area or identified as being of Ngaati Whanaunga origin found elsewhere in New Zealand**

- 5.5 If the governance entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngaati Whanaunga origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
- 5.5.1 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
  - 5.5.2 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

**Export Applications**

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ngaati Whanaunga origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngaati Whanaunga origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of the Chief Executive's decision.

**6 THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975**

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
  - 6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.
- 6.2 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

**7 EFFECTS ON NGAATI WHANAUNGA INTERESTS IN THE PROTOCOL AREA**

- 7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngaati Whanaunga interests in the Protocol Area.
- 7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngaati Whanaunga interests in the Protocol Area.

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**4: PROTOCOLS: TAONGA TŪTURU PROTOCOL**

7.3 Notwithstanding paragraphs 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngaati Whanaunga interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

**8 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU**

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

**9 BOARD APPOINTMENTS**

9.1 The Chief Executive shall:

9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

**10 NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES**

10.1 The Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ngaati Whanaunga interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning.

10.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

**11 HISTORY PUBLICATIONS**

11.1 The Chief Executive shall:

11.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngaati Whanaunga; and

11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngaati Whanaunga:

(a) from an early stage;

(b) throughout the process of undertaking the work; and

(c) before making the final decision on the material of a publication.

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**4: PROTOCOLS: TAONGA TŪTURU PROTOCOL**

- 11.2 It is accepted that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the governance entity, is entitled to make the final decision on the material of the historical publication.
- 12 PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES**
- 12.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngaati Whanaunga within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.
- 12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 12.3 The procurement by the Chief Executive of any such services set out in clauses 12.1 and 12.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.
- 13 CONSULTATION**
- 13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 13.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
- 13.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- 13.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
- 13.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
- 13.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.
- 14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL**
- 14.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:
- 14.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

14.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and

14.1.3 report back to the governance entity on the outcome of any such consultation.

15 DEFINITIONS

15.1 In this Protocol:

**Chief Executive** means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

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

**Expert Examiner** has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

**Found** has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings

**governance entity** has the meaning given to it in the Deed of Settlement

**Ngaati Whanaunga** has the meaning set out in clause [xx] of the Deed of Settlement

**Ngā Taonga Tūturu** has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

**Protocol** means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol

**Taonga Tūturu** has the same meaning as in section 2 of the Act and means:

an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
  - (i) manufactured or modified in New Zealand by Māori; or
  - (ii) brought into New Zealand by Māori; or
  - (iii) used by Māori; and

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**4: PROTOCOLS: TAONGA TŪTURU PROTOCOL**

(c) is more than 50 years old

**ISSUED** on

**SIGNED** for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Arts, Culture and Heritage:

**WITNESS**

---

Name:

Occupation:

Address:

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

ATTACHMENT A: PROTOCOL AREA

*[The Protocol Area map will be inserted prior to the signing of this deed of settlement and following completion of the overlapping claims]*

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4: PROTOCOLS: TAONGA TŪTURU PROTOCOL

**ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE**

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

**1. Amendment and cancellation**

1.1 The Minister may amend or cancel this Protocol, but only after consulting with the governance entity and having particular regard to its views (section 89(3)).

**2. Limits**

2.1 This Protocol does not –

2.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including:

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whanau, or representative of tangata whenua (section 90(a)); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngaati Whanaunga (section 90(b) and (c)); or

2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tūturu.

**3. Breach**

3.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 91).

3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 5.25)

**DOCUMENTS**

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

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**4.2 Primary Industries Protocol**

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4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL

**Ministry for Primary Industries**  
Manatū Ahu Matua



**THE PRIMARY INDUSTRIES PROTOCOL WITH  
NGAATI WHANAUNGA**

**Issued by  
the Minister for Primary Industries**

X 21 MD

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

**PART ONE - RELATIONSHIP**

**PURPOSE**

1. The purpose of this Primary Industries Protocol (the "**Protocol**") is to set out how Ngaati Whanaunga, the Minister for Primary Industries (the "**Minister**") and the Director-General of the Ministry for Primary Industries (the "**Director-General**") will establish and maintain a positive, co-operative and enduring relationship.

**CONTEXT**

2. The Protocol should be read in a manner that best furthers the purpose of the Ngaati Whanaunga Deed of Settlement (the "**Deed of Settlement**").
3. The Protocol is a living document that should be updated to take account of the relationship between the parties, future developments and additional relationship opportunities.

**PRINCIPLES UNDERLYING THE PROTOCOL**

4. The Ministry and Ngaati Whanaunga are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to the Protocol. The relationship created by the Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
5. The parties recognise that to successfully implement the Protocol, the parties will need to work in partnership and in the spirit of collaboration.
6. The parties also acknowledge the below relationship and their importance to successfully achieve the purpose of the Protocol. These relationship principles provide that the Ministry and Ngaati Whanaunga will:
  - a. work in a spirit of co-operation;
  - b. ensure early engagement on issues of known mutual interest;
  - c. operate on a 'no surprises' approach;
  - d. acknowledge that the relationship is evolving, not prescribed;
  - e. respect the independence of the parties and their individual mandates, roles and responsibilities; and
  - f. recognise and acknowledge that both parties benefit from working together by sharing their vision, knowledge and expertise.
7. The Minister and the Director-General have certain functions, powers and duties in terms of legislation that they are responsible for administering. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngaati Whanaunga and the Ministry. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in



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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

8. The Ministry will have particular regard to the Statement of Pare Hauraki World View when exercising functions under the Fisheries Act 1996, the Forests Act 1949 and the Biosecurity Act 1993.
9. The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngaati Whanaunga or with another iwi or hapū with interests inside the Protocol Area on matters that could affect the interests of Ngaati Whanaunga.

**PART TWO - SCOPE AND INTERPRETATION**

**SCOPE**

10. The Protocol applies to agriculture (agriculture includes animal welfare and horticulture), forestry, fisheries, biosecurity and food safety portfolios administered by the Ministry for Primary Industries (the "**Ministry**").
11. The Protocol does not cover processes regarding the allocation of aquaculture space, or the Treaty settlement processes established for assets held by the Ministry's Crown Forestry unit.
12. The Ministry is required to provide for the utilisation of fisheries resources while ensuring sustainability, to meet Te Tiriti o Waitangi/the Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.
13. In addition to the requirements of clause 8, the Statement of Pare Hauraki World View will be given particular regard through the programmes and processes set out in this Protocol.
14. The Protocol applies to the Protocol Area as noted and described in the attached map ("**Appendix A**").

**DEFINITIONS AND INTERPRETATION**

15. In the Protocol:
  - a. "**Protocol**" means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;
  - b. "**Protocol Area**" means the land area as noted in the attached map at Appendix A, together with adjacent waters;
  - c. "**Crown**" means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by, the terms of the Deed of Settlement to participate in any aspect of the redress under the Deed of Settlement;

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- d. "**Fisheries Legislation**" means the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1983 and the Fisheries Act 1996, and any regulations made under the Fisheries Act 1983 and the Fisheries Act 1996;
- e. "**Governance Entity**" has the same meaning as 'governance entity' in the Deed of Settlement;
- f. "**iwi of Hauraki**" means the iwi referred to in clause 26 of this Protocol;
- g. "**Pare Hauraki Collective Redress Deed**" has the meaning given to it in the Deed of Settlement; and
- h. "**the parties**" means Ngaati Whanaunga, the Minister for Primary Industries (acting on behalf of the Crown), and the Director-General of the Ministry for Primary Industries (acting on behalf of the Ministry for Primary Industries).

**TERMS OF ISSUE**

- 16. The Protocol is issued pursuant to section [X] of the [Ngaati Whanaunga Claims Settlement Act *[date]*] (the "**Settlement Legislation**") and clause [X] of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

**PART THREE - FISHERIES**

- 17. The Minister and the Director-General of the Ministry have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngaati Whanaunga and the Ministry.
- 18. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.
- 19. This Protocol must be read subject to the summary of the terms of issue set out in **Appendix B**.

**INPUT INTO AND PARTICIPATION INTO THE MINISTRY'S NATIONAL FISHERIES PLANS**

- 20. The Ministry's national fisheries plans will reflect the high level goals and outcomes for fisheries. The plans will guide annual identification of the measures (which may include catch limits, research, planning and compliance services) required to meet these goals and outcomes.
- 21. There are five National Fisheries Plans, which relate to:
  - a. inshore fisheries;
  - b. shellfish;

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4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL

- c. freshwater fisheries;
  - d. highly migratory fisheries; and
  - e. deepwater fisheries.
22. The National Fisheries Plans are implemented through an Annual Review Report and Annual Operational Plan.
23. The Annual Review Report presents information on:
- a. the current status of fisheries relative to the performance measures recorded in the National Fisheries Plans; and
  - b. the extent of the delivery of previous and existing services and management actions.
24. The Annual Review Report is developed through engagement with tāngata whenua about what future services are required to meet agreed objectives, address gaps in performance and meet tāngata whenua interests, including research, compliance and special permits. The Ministry will engage with the parties to produce the Annual Review Report.
25. The Annual Operational Plan will record the future services agreed through the Annual Review Report process to be delivered to fisheries for the next financial year (1 July - 30 June). The demand for services is often greater than can be provided by the Ministry. The Ministry undertakes a prioritisation of proposed services to address competing interests.
26. The Ministry will provide for the input and participation of the twelve iwi of Hauraki, Ngāi Tai ki Tāmaki, Ngāti Hei, Hako, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Tara Tokanui, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri which includes Ngaati Whanaunga, into national fisheries plans through iwi forum fisheries plans. Iwi forum fisheries plans allow the Ministry to engage and involve iwi in fisheries management activities and national fisheries planning.

**IWI FORUM FISHERIES PLANS**

27. The twelve iwi of Hauraki collectively will have input into the relevant forum fisheries plan. The plan must incorporate:
- a. the objectives of the iwi of Hauraki for the management of their customary, commercial, recreational, and environmental interests;
  - b. views of the iwi of Hauraki on what constitutes the exercise of kaitiakitanga within the Protocol Area;
  - c. how the iwi of Hauraki will participate in fisheries planning and management; and
  - d. how the customary, commercial, and recreational fishing interests of forum members will be managed in an integrated way.

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

28. The iwi of Hauraki, which includes Ngaati Whanaunga, will have the opportunity to jointly develop an iwi fisheries plan that will inform the content of the relevant forum fisheries plan.
29. Any person exercising functions, powers and duties under sections 12 to 14 of the Fisheries Act 1996 will have particular regard to forum plans interpretation of kaitiakitanga (see section 12(1) (b) of the Fisheries Act 1996).

**MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES**

30. The Ministry, with available resources, undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:
  - a. discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Protocol Area; and
  - b. making available existing information relating to the sustainability, biology, fishing activity and fisheries management within the Protocol Area.

**RĀHUI**

31. The Ministry recognises that rāhui is a traditional use and management practice of Ngaati Whanaunga and supports their rights to place traditional rāhui over their customary fisheries.
32. The Ministry and the Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. The Governance Entity undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngaati Whanaunga over their customary fisheries, and also the reasons for the rāhui.
33. The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngaati Whanaunga over their customary fisheries, in a manner consistent with the understandings outlined in clause 31 of this Protocol.
34. As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngaati Whanaunga over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

**PROVISION OF FISHERIES SERVICES AND RESEARCH**

35. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

36. Ngaati Whanaunga input and participation into Ministry fisheries services and research will occur through Ngaati Whanaunga input and participation into the Ministry's national fisheries plans.

**PART FOUR – STRATEGIC PARTNERSHIPS**

***INFORMATION SHARING AND COLLABORATION***

37. The Governance Entity and the Ministry will use reasonable endeavours to exchange and share information relevant of mutual benefit, subject to the provisions of the Settlement Legislation, any other enactment, and the general law.
38. For the purpose of carrying out its function, the Governance Entity may make a request of the Ministry to:
- a. provide information or advice to the Governance Entity requested by the Governance Entity, but only on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity; and/or
  - b. provide a Ministry representative to attend a meeting with the Governance Entity.
39. In respect of the above requests for information or advice:
- a. where reasonably practicable, the Ministry will provide the information or advice; and
  - b. in deciding whether it is reasonably practicable to provide the information or advice, the Ministry will have regard to any relevant consideration, including:
    - i. whether, where a request has been made under the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, there are permitted reasons for withholding the information;
    - ii. whether making the information available would contravene the provisions of an enactment;
    - iii. the time and cost involved in researching, collating and providing the information or advice; and
    - iv. whether making the information available would put at risk any of the Ministry's wider stakeholder relationships.
40. In respect of requests for the Ministry to attend a meeting with the Governance Entity:
- a. only where reasonably practicable, the Ministry will comply with the request;
  - b. the Ministry will determine the appropriate representative to attend any meeting; and
  - c. in deciding whether it is reasonably practicable to comply with the request, the Ministry may have regard to any relevant consideration, including:

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

- i. the number and frequency of such requests the management agency has received from the Governance Entity;
- ii. the time and place of the meeting and the adequacy of notice given; and
- iii. the time and cost involved in complying with the request.

***JOINT WORK PROGRAMMES***

41. If agreed to by both parties, the Ministry and the Governance Entity, will work together to develop and implement joint work programmes on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity.
42. The work programme/s must be beneficial to both parties, must align with the parties objectives and priorities relating to the primary sector, and be based on agreed-to terms of delivery.

***PROVISION OF SERVICE AND RESEARCH RELATING TO AGRICULTURE, FORESTRY, FOOD SAFETY AND BIOSECURITY***

43. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
44. Where the Ministry undertakes or contracts for services or research relating to agriculture (agriculture includes animal welfare and horticulture), forestry, food safety or biosecurity, and where the Ministry considers it to have a direct impact on the Protocol Area, the Ministry will:
  - a. notify the Governance Entity of its intention to do so and provide the Governance Entity with an opportunity to be involved in the planning for services or research, as appropriate;
  - b. where applicable, invite the Governance Entity to provide a representative to be a member of the tender evaluation panel, subject to the Ministry's conflict of interest policy;
  - c. advise the Governance Entity of the provider it has chosen;
  - d. require any research provider to engage with the Governance Entity; and
  - e. provide the Governance Entity with the results of that research, as appropriate.

***CONSULTATION***

45. Where the Ministry is required to consult in relation to the Protocol, the principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
  - a. ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;

**DOCUMENTS**

**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

- b. providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- c. ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
- d. ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider its submissions in relation to any of the matters that are the subject of the consultation; and
- e. where the Ministry has consulted with the Governance Entity in relation to this Protocol, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

**PART FIVE – IMPLEMENTATION**

***MAINTAINING THE RELATIONSHIP***

- 46. Each party will identify a senior representative to oversee the implementation of the Protocol. The senior representatives will be the key point of contact for any matters relating to the Protocol, and will be responsible for ensuring the outcomes and deliverables of the Protocol are monitored, and achieved.
- 47. Where elements of the Protocol may not be achievable, the parties will communicate this as soon as possible and work towards a common understanding of the issues and a positive way forward for both parties to achieve the outcomes of the Protocol.
- 48. Representatives of the parties will meet as required, and as agreed to by both parties.

***ESCALATION OF MATTERS***

- 49. If one party considers that there has been a breach of the Protocol then that party may give notice to the other that they are in dispute.
- 50. As soon as possible, upon receipt of the notice referred to in clause 49, the Ministry and the Governance Entity's representative(s) will meet to work in good faith to resolve the issue.
- 51. If the dispute has not been resolved within 45 working days despite the process outlined in clauses 49 and 50 having been followed, the Ministry and the Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

***REVIEW AND AMENDMENT***

- 52. The parties agree that this Protocol is a living document which should be updated and adapted to take account of any future developments and relationship opportunities.

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**4: PROTOCOLS: PRIMARY INDUSTRIES PROTOCOL**

53. The parties may vary or terminate this Protocol only in writing.





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**4: PROTOCOLS: MINISTRY FOR PRIMARY INDUSTRIES PROTOCOL**

<p><b>APPENDIX A: PROTOCOL AREA</b></p>
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*[The Protocol Area map will be inserted prior to signing of this deed of settlement and following completion of overlapping claims.]*

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4: PROTOCOLS: MINISTRY FOR PRIMARY INDUSTRIES PROTOCOL

**APPENDIX B: SUMMARY OF TERMS OF ISSUE**

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

**1. Amendment and cancellation**

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting with the Governance Entity and having particular regard to its views (*section 89(3)*).

**2. Noting**

- 2.1 A summary of the terms of this Protocol must be noted in the fisheries plans affecting the Protocol Area, but the noting -

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the fisheries plans for the purposes of the Fisheries Act 1996 (*section 92(2)*).

**3. Limits**

- 3.1 This Protocol does not:

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including -

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tāngata whenua (*section 90(a)*); or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngaati Whanaunga (*section 90(b) and (c)*); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, assets or property rights (including in relation to fish, aquatic life, or seaweed) under -

(a) the Fisheries Act 1996; or

(b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(c) the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(d) the Maori Fisheries Act 2004 (*section 92(3)*).

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**4: PROTOCOLS: MINISTRY FOR PRIMARY INDUSTRIES PROTOCOL**

**4. Breach**

- 4.1 Subject to the Crown Proceedings Act 1950, the Governance Entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section 91*).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (*clause 5.25*).

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**5 ENCUMBRANCES**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

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**5.1 Conservation Covenant for Ngaherehere o Kohukohunui**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

**Te Kawenata mo te Ngaherehere o Kohukohunui**

**CONSERVATION COVENANT**

**(Section 27 Conservation Act 1987  
and  
Section 77 Reserves Act 1977)**

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [Ngāti Whanaunga Post Settlement Governance Entity]** (the Owner)

**AND MINISTER OF CONSERVATION** (the Minister)

**BACKGROUND**

- A. Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B. Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C. The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated ..... and implemented by the..... Act .....
- D. The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

**OPERATIVE PARTS**

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

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5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

**1 INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

**"Conservation and Reserve Values"** means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

**"Director-General"** means the Director-General of Conservation.

**"Fence"** includes a gate.

**"Land's Values"** means the Conservation and Reserve values specified in Schedule 1

**"Natural Water"** includes water contained in streams the banks of which have, from time to time, been re-aligned.

**"Owner"** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.

**"Working Days"** means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVES OF THE COVENANT**

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3 IMPLEMENTATION OF OBJECTIVES**

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:



**DOCUMENTS**

**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

- 3.1.1 grazing of the Land by livestock;
  - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
  - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
  - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
  - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
  - 3.1.8 the damming, diverting or taking of Natural Water;
  - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
  - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
  - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; and
  - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
  - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
  - 3.2.3 keeping the Land free from exotic tree species;
  - 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

**DOCUMENTS**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2; and
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

**4 PUBLIC ACCESS**

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
  - 4.1.1 only access the Land by foot;
  - 4.1.2 do not take firearms or animals on the Land; and
  - 4.1.3 do not camp on the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 5.1 The Minister must:
  - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
  - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

**6 JOINT OBLIGATIONS**

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

**7 DURATION OF COVENANT**

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

DOCUMENTS

5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act

- 10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.
- 10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

- 10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

- 10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

- 10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

DOCUMENTS

5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

**11 DEFAULT**

11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

11.2.1 advise the defaulting party of the default;

11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**12 DISPUTE RESOLUTION PROCESSES**

12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**12.2 Mediation**

12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

**12.3 Failure of Mediation**

12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.

12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.

**DOCUMENTS**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

**13 NOTICES**

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:

13.2.1 personal delivery, on the date of delivery;

13.2.2 pre-paid post, on the third working day after posting;

13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;

13.2.4 electronic mail, on the day of successful delivery of the mail.

13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

**14 SPECIAL CONDITIONS**

14.1 Special conditions relating to this Covenant are set out in Schedule 3.

14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

DOCUMENTS

5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ and )  
acting under awritten delegation from the Minister )  
of Conservation and exercising his/her powers under )  
section 117 of the Reserves Act 1977 as designated )  
Commissioner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

DOCUMENTS

5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

SCHEDULE 1

**Description of Land:**

That piece of land containing 40.7014 hectares, more or less, being Section 1 SO 509461.

**Ngāti Whanaunga Values:**

The Land is situated on the slopes of the maunga tupuna Kohukohunui and part of Te Ngahere o Kohukohunui. It contains the likely path taken by the ancestral tupuna Marutuahu as he ascended Kohukohunui, a passage much noted in Marutuahu tradition. This is culturally important in the establishment of the tribes in Hauraki and Tamaki Makaurau.

After the establishment of the Kingitanga Hauraki rangatira placed four maunga under the mana of the king in the name of the four Marutuahu iwi, Kohukohunui was named for Ngāti Whanaunga. Ngāherehere o Kohukohunui is home to numerous culturally significant plants, animals and minerals, the whakapapa and values of which are recounted in tribal traditions.

As a party to the Treaty of Waitangi, Ngaati Whanaunga note that section 4 of the Conservation Act 1987 requires that the Conservation Act 1987 and the statutes listed in Schedule 1 to the Conservation Act (including the Reserves Act 1977) shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

**Conservation and Reserve Values:**

Steep to rolling forested land surrounded by Hunua Regional Park (Auckland Council) containing mixed podocarp and associated species, with planted kaiwaka. Part of the Hunua Range habitat supporting North Island kokako, pied tit, kereru, North Island kaka habitat, and likely Hochstetter's frog habitat.

Historic manganese mine relics present, including buildings located around a natural outcrop of manganese ore, and include: a large open cast mine, two adits, several open cut trenches, terraces, and tracks. There is also mining machinery (including a large chassis and radiator) and a miners hut (at the end of the road) located on the land, which remain part of the Conservation and Reserve values to the extent that they are covered by NZAA ID S12/309.

**DOCUMENTS**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

[TO BE INSERTED]

The address for service of the Minister is:

Operations Manager, Tamaki Makaurau/Auckland  
Ground Floor, Building 2, Carlaw Park Commercial,  
12-16 Nicholls Lane, Parnell  
Private Bag 68908, Newton, Auckland 1141

Phone: 09 307 9279

Email: auckland@doc.govt.nz

*A*



DOCUMENTS

5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI

SCHEDULE 3

Special Conditions

*Recreational facilities*

1. For avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

*Taking of plant material*

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

*Propagation*

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

*Taking of water*

4. Clause 3.1.8 does not apply to the taking of water from the Land in accordance with tikanga Maori for customary purposes.

*Removal of rock*

5. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

*Plantation trees*

6. Despite clause 3.2.3, the Owner is not required to remove exotic tree species that have been planted as part of a plantation.

*Fences*

7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

*Managing public access*

8. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.

**DOCUMENTS**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

*Cultural activities*

9. The Owner may undertake cultural activities on the Land provided that any effects on the Conservation and Reserve Values are no more than minor. If the effects are likely to be more than minor, the Owner will consult with the Department of Conservation to confirm if the written agreement of the parties is required.

*J*

**DOCUMENTS**

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**5.1: CONSERVATION COVENANT FOR NGAHEREHERE O KOHUKOHUNUI**

**GRANT OF CONSERVATION COVENANT**

Under section 27 of the  
Conservation Act 1987  
and section 77 of the  
Reserves Act 1977

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**

  
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**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR AHIRAU**

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**5.2 Conservation Covenant for Ahirau**

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DOCUMENTS

5.2: CONSERVATION COVENANT FOR AHIRAU

**Te Kawenata mo te Ahirau**  
**CONSERVATION COVENANT**  
**(Section 27 Conservation Act 1987**  
**and**  
**Section 77 Reserves Act 1977)**

THIS DEED of COVENANT is made this            day of

**BETWEEN [Ngāti Whanaunga Post Settlement Governance Entity]** (the Owner)

**AND MINISTER OF CONSERVATION** (the Minister)

**BACKGROUND**

- A. Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated ..... and implemented by the..... Act .....
- D The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

**OPERATIVE PARTS**

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

DOCUMENTS

5.2: CONSERVATION COVENANT FOR FOR AHIRAU

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

**"Conservation and Reserve Values"**

means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

**"Director-General"**

means the Director-General of Conservation.

**"Fence"**

includes a gate.

**"Land's Values"**

means the Conservation and Reserve values specified in Schedule 1.

**"Natural Water"**

includes water contained in streams the banks of which have, from time to time, been re-aligned.

**"Owner"**

means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.

**"Working Days"**

means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

**3 IMPLEMENTATION OF OBJECTIVES**

- 3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:
- 3.1.1 grazing of the Land by livestock;
  - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
  - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
  - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
  - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
  - 3.1.8 the damming, diverting or taking of Natural Water;
  - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
  - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
  - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; and
  - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
  - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;

**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

- 3.2.3 keeping the Land free from exotic tree species;
- 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2; and
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

**4 PUBLIC ACCESS**

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
  - 4.1.1 only access the Land by foot;
  - 4.1.2 do not take firearms or animals on the Land; and
  - 4.1.3 do not camp on the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 5.1 The Minister must:
  - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
  - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

**6 JOINT OBLIGATIONS**

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.



**DOCUMENTS**

**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

**7 DURATION OF COVENANT**

7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**8 OBLIGATIONS ON DISPOSAL OF LAND**

8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

**9 CONSENTS**

9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**10 MISCELLANEOUS MATTERS**

**10.1 Trespass Act**

10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**10.2 Reserves Act**

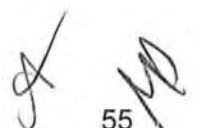
10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**10.3 Registration**

10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

**10.4 Acceptance of Covenant**

10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

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DOCUMENTS

5.2: CONSERVATION COVENANT FOR FOR AHIRAU

**11 DEFAULT**

11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

11.2.1 advise the defaulting party of the default;

11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**12 DISPUTE RESOLUTION PROCESSES**

12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**12.2 Mediation**

12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

**12.3 Failure of Mediation**

12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.

12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.

**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

**13 NOTICES**

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:

13.2.1 personal delivery, on the date of delivery;

13.2.2 pre-paid post, on the third working day after posting;

13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;

13.2.4 electronic mail, on the day of successful delivery of the mail.

13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

**14 SPECIAL CONDITIONS**

14.1 Special conditions relating to this Covenant are set out in Schedule 3.

14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

DOCUMENTS

5.2: CONSERVATION COVENANT FOR FOR AHIRAU

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ and )  
acting under awritten delegation from the Minister )  
of Conservation and exercising his/her powers under )  
section 117 of the Reserves Act 1977 as designated )  
Commissionerin the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

DOCUMENTS

5.2: CONSERVATION COVENANT FOR FOR AHIRAU

SCHEDULE 1

**Description of Land:**

[That piece of land containing 176.50 ha subject to survey being Section 2 Block III Harataunga Survey District; as shown edged yellow on the attached plan].

**Ngāti Whanaunga Values:**

*[To be inserted before this deed is signed]*

As a party to the Treaty of Waitangi, Ngaati Whanaunga note that section 4 of the Conservation Act 1987 requires that the Conservation Act 1987 and the statutes listed in Schedule 1 to the Conservation Act (including the Reserves Act 1977) shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

**Conservation and Reserve Values:**

An area of moderately steep coastal forest with extensive areas of kanuka forest cover and pockets of regenerating lowland coastal broadleaf forest. This block of the Coromandel Forest Park is an outlier of the greater Moehau Ecological Area and is linked to Moehau by privately owned regenerating forest. The Land overlays the southern end of the Moehau Range and is in close proximity to the Colville coast and Big Bay. The natural forest cover adds significantly to the visual landscape.

Common birds likely to be present include native pigeon, fantail, silvereye, grey warbler, tui, bellbird and pied tit. Notable species include North Island brown kiwi and kaka, with Pateke (brown teal) resident in good numbers in the general area. Hochstetters frog and Long tailed bats are likely to be present.

A joint community and Department of Conservation animal pest control programme is active on the Land (and in the area) in order to provide protection for the kiwi population present on and north of the Land.

**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

[TO BE INSERTED]

The address for service of the Minister is:

[TO BE INSERTED]

DOCUMENTS

5.2: CONSERVATION COVENANT FOR FOR AHIRAU

SCHEDULE 3

Special Conditions

*Recreational facilities*

1. For avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

*Taking of plant material*

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

*Propagation*

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

*Taking of water*

4. Clause 3.1.8 does not apply to the taking of water from the Land in accordance with tikanga Maori for customary purposes.

*Removal of rock*

5. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

*Plantation trees*

6. Despite clause 3.2.3, the Owner is not required to remove exotic tree species that have been planted as part of a plantation.

*Fences*

7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

*Managing public access*

8. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.

DOCUMENTS

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5.2: CONSERVATION COVENANT FOR FOR AHIRAU

*Cultural activities*

9. The Owner may undertake cultural activities on the Land provided that any effects on the Conservation and Reserve Values are no more than minor. If the effects are likely to be more than minor, the Owner will consult with the Department of Conservation to confirm if the written agreement of the parties is required.

*Access for ground-based animal pest control operations*

10. Clause 3.2.5 is deleted and replaced with (new text in bold):

3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land **including ground-based animal pest control operations on the Land** or to ascertain whether the provisions of this Covenant are being observed;



**DOCUMENTS**

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**5.2: CONSERVATION COVENANT FOR FOR AHIRAU**

**GRANT OF CONSERVATION COVENANT**

Under section 27 of the  
Conservation Act 1987  
and section 77 of the  
Reserves Act 1977

---

to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**



**DOCUMENTS**

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**6 LEASES FOR LEASEBACK PROPERTIES**

**DOCUMENTS**

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**6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE (LAND ONLY)**

---

**6.1 Lease for Turua Primary School site (land only)**

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DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE (LAND ONLY)

MINISTRY OF EDUCATION  
NGAATI WHANAUNGA TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)



Land registration district

[ ]

Affected instrument Identifier and type (if applicable)

All/part

Area/Description of part or stratum

[ ]	[ ]	[ ]
-----	-----	-----

Lessor

[The trustees of the Ngaati Whanaunga Ruunanga Trust] *[names to be inserted]*

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

*Insert "fee simple"; "leasehold in lease number" etc.*

Fee simple

Lease Memorandum Number *(if applicable)*

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

*If required, set out the terms of lease in Annexure Schedules*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Attestation

Signature of the Lessor	Signed in my presence by the Lessor
<hr/> [            ]	<hr/> <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>
	Witness name:
	Occupation:
	Address:
<hr/> [            ]	<hr/> <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>
	Witness name:
	Occupation:
	Address:

*A* 67 *MD*

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F continued

<p>_____</p> <p>[                    ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                    ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                    ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[                    ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>



DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

*Insert instrument type*

Lease Instrument

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between Ngaati Whanaunga and the Crown, under which the parties agreed to transfer the Land to the trustees of the Ngaati Whanaunga Ruunanga Trust and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

**SCHEDULE A**

**ITEM 1 THE LAND**

*[insert full legal description - note that improvements are excluded].*

**ITEM 2 START DATE**

*[insert start date].*

**ITEM 3 ANNUAL RENT**

*[\$[insert agreed rent] plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.*

**ITEM 4 TERM OF LEASE**

21 Years.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each with the first renewal date being the 21<sup>st</sup> anniversary of the Start Date, and then each subsequent renewal date being each 21<sup>st</sup> anniversary after that date.

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

[ ]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE (LAND ONLY)

Form F continued

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

The above information is taken from the Lessee's records as at [ ]. A site inspection was not undertaken to compile this information.

ITEM 10 CLAUSE 16.5 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6140 ("the Lessee")

From: [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
(ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
(iii) It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and
(iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Handwritten initials and page number 72

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE (LAND ONLY)

Form F continued

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

ITEM 11 CLAUSE 16.6 NOTICE

To: [Post-Settlement Governance Entity] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6140 ("the Lessee")

From [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:

- (i) will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and
(ii) acknowledges that any Lessee's Improvements remain the Lessee's property at all times.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Handwritten signatures and initials, including the number 73.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "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, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington; or
- (e) the days observed as Waitangi Day or Anzac Day under section 45A of the Holidays Act 2003.

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

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Lease Instrument

1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by one or more of the following:
  - (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).

1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.

1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.

1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.

1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.

1.11 "Maintenance" includes repair.

1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.

1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

**2 Payment of Annual Rent**

2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.

2.2 The initial Annual Rent payable at the Start Date will be set at 6.5% of the Transfer Value of the Land.

2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

**3 Rent Review**

When a party initiates the rent review process as set out in clause 3.5:

3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6.5% of the lesser of:

(a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or

(b) the Nominal Value being:

(i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or

(ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.

3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
  - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
  - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
  - (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
  - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
  - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

**4 Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

**5 Valuation Roll**

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

**6 Utility Charges**

- 6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.
- 6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.
- 6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

**7 Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

8 **Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 **Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

10 **Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

11 **Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

12 **Hazards**

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

13 **Damage or Destruction**

13.1 **Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days' notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

13.2 **Partial Destruction**

- (a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.
- (b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:
  - (i) the repair and reinstatement of the Land have been completed; and
  - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
  - (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
  - (ii) any necessary council consents shall not be obtainable,then the term will terminate with effect from the date that either such fact is established.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

13.3 Natural Disaster or Civil Defence Emergency

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
- (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
  - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

**6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)**

Form F *continued*

**Annexure Schedule**

Page [ ] of [ ] Pages

*Insert instrument type*

Lease Instrument

**14 Contamination**

- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

**15 Easements**

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

**16 Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

17 **Rubbish Removal**

The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.

18 **Signs**

The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.

19 **Insurance**

19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.

19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

20 **Fencing**

20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.

20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

21 **Quiet Enjoyment**

21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.

21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

22 **Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

23 **Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

24 **Occupancy by School Board of Trustees**

24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

25 **Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

26 **Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

27 **Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

(a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or

(b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

**6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)**

Form F *continued*

**Annexure Schedule**

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*Insert instrument type*

Lease Instrument

(c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

**28 Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

**29 Right of First Refusal for Lessor's Interest**

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

[29A **Single point of contact**

29A.1 If the Land is held by two or more separate entities as tenants-in-common, those entities must nominate:

- (a) one bank account for payment of rent under this Lease (and provide details of that bank account to the Lessee); and
- (b) one representative (*Lesssor's Nominee*) that the Lessee can deal with in relation to any matter arising under this Lease.]

30 **Exclusion of Implied Provisions**

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 11 – Power to inspect premises.

31 **Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.1: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TURUA PRIMARY SCHOOL SITE  
(LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

32 **Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

33 **Service of Notices**

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6140

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

34 **Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

35 **Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

**DOCUMENTS**

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**6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE  
(LAND ONLY)**

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**6.2 Lease for Te Wharekura o Manaia site (land only)**

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DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

MINISTRY OF EDUCATION  
[NGAATI WHANAUNGA] TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ]	[ ]	[ ]
-----	-----	-----

Lessor

[the trustees of the Ngaati Whanaunga Ruunanga Trust] *[names to be inserted]*  
[the trustees of the Ngāti Maru Rūnanga Trust] *[names to be inserted]*  
[the trustees of the Te Tāwharau o Ngāti Pūkenga Trust] *[names to be inserted]*  
[Lessor subject to provisions of deed of settlement]

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number " etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

Attestation

Signature of the Lessor	Signed in my presence by the Lessor
<hr/> <p>[            ]</p>	<hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr/> <p>[            ]</p>	<hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr/> <p>[            ]</p>	<hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<hr/> <p>[            ]</p>	<hr/> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

<p>_____</p> <p>[            ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[            ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[            ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[            ]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>



DOCUMENTS

**6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)**

Form F *continued*

<p><b>Signature of the Lessee</b></p> <p>Signed for and on behalf of  <b>HER MAJESTY THE QUEEN</b> as Lessee  by  [                    ]  (acting pursuant to a written delegation  given to him/her by the Secretary for  Education) in the presence of:</p>	<p><b>Signed in my presence by the Lessee</b></p> <p>Signature of witness</p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address</p>
--	---

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Lessee

\* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed [Deed(s) of Settlement] between [Ngaati Whanaunga] [Ngāti Maru] [Ngāti Pūkenga] and the Crown, under which the parties agreed to transfer the Land to [the trustees of the Ngaati Whanaunga Ruunanga Trust] [the trustees of the Ngāti Maru Rūnanga Trust] [the trustees of Te Tāwharau o Ngāti Pūkenga Trust] [**Lessor subject to provisions of the deed of settlement**] and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

**SCHEDULE A**

**ITEM 1 THE LAND**

*[insert full legal description - note that improvements are excluded].*

**ITEM 2 START DATE**

*[insert start date].*

**ITEM 3 ANNUAL RENT**

\$(*insert agreed rent*) plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

**ITEM 4 TERM OF LEASE**

21 Years.

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

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*Insert instrument type*

Lease Instrument

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each with the first renewal date being the 21<sup>st</sup> anniversary of the Start Date, and then each subsequent renewal date being each 21<sup>st</sup> anniversary after that date.

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F continued

Annexure Schedule

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Lease Instrument

[ ]

The above information is taken from the Lessee's records as at [ ]. A site inspection was not undertaken to compile this information.

ITEM 10 CLAUSE 16.5 NOTICE

To: [Post-Settlement Governance Entity(s)] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6140 ("the Lessee")

From: [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
(ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
(iii) It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary; and
(iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F continued

Annexure Schedule

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Lease Instrument

ITEM 11 CLAUSE 16.6 NOTICE

To: [Post-Settlement Governance Entity(s)] ("the Lessor")

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6140 ("the Lessee")

From [Name of Mortgagee/Chargeholder] ("the Lender")

The Lender acknowledges that before it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee's Improvement is fixed to the Land it:

- (i) will not claim any security interest in any Lessee's Improvement (as defined in the Lease) at any time; and
- (ii) acknowledges that any Lessee's Improvements remain the Lessee's property at all times.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

K 99 MB

DOCUMENTS

6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term "Lessee" includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 "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, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington; or
- (e) the days observed as Waitangi Day or Anzac Day under section 45A of the Holidays Act 2003.

1.4 "Crown" has the meaning given in section 2(1) of the Public Finance Act 1989.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

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1.5 "Crown Body" means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by one or more of the following:
  - (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).

1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.

1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.

1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.

1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.

1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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6.2: LEASES FOR LEASEBACK PROPERTIES: TE WHAREKURA O MANAIA SITE (LAND ONLY)

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- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

**2 Payment of Annual Rent**

- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6.5% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

**3 Rent Review**

When a party initiates the rent review process as set out in clause 3.5:

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6.5% of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



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- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.
  - (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
  - (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
  - (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
  - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
  - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

4 **Payment of Lessee Outgoings**

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

5 **Valuation Roll**

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

6 **Utility Charges**

- 6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.
- 6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.
- 6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

7 **Goods and Services Tax**

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

**9 Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

**10 Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

**11 Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

**12 Hazards**

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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13 **Damage or Destruction**

13.1 **Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days' notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

13.2 **Partial Destruction**

- (a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.
- (b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:
  - (i) the repair and reinstatement of the Land have been completed; and
  - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
  - (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
  - (ii) any necessary council consents shall not be obtainable,then the term will terminate with effect from the date that either such fact is established.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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13.3 Natural Disaster or Civil Defence Emergency

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
- (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
  - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

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14 **Contamination**

- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

15 **Easements**

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

16 **Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.

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- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.



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17 **Rubbish Removal**

The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.

18 **Signs**

The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.

19 **Insurance**

19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.

19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

20 **Fencing**

20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.

20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

21 **Quiet Enjoyment**

21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.

21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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**22 Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

**24 Occupancy by School Board of Trustees**

24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

**25 Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

**26 Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

**27 Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or

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- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.
- 27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.
- 28 Renewal**
- 28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.
- 28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.
- 29 Right of First Refusal for Lessor's Interest**
- 29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.
- 29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.
- 29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

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29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

[29A] **Single point of contact**

29A.1 If the Land is held by two or more separate entities as tenants-in-common, those entities must nominate:

- (a) one bank account for payment of rent under this Lease (and provide details of that bank account to the Lessee); and
- (b) one representative (*Lessor's Nominee*) that the Lessee can deal with in relation to any matter arising under this Lease.]

30 **Exclusion of Implied Provisions**

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

- (a) Clause 11 – Power to inspect premises.

31 **Entire Agreement**

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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**32 Disputes**

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

**33 Service of Notices**

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education  
Ministry of Education  
PO Box 1666  
WELLINGTON 6140

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

*[insert contact details]*

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

**34 Registration of Lease**

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

**35 Costs**

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

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## 7 LETTER OF FACILITATION

[Date]

[Contact details: Mayor of local authority]

Tēnā koe

### **Ngaati Whanaunga – Letter of facilitation**

On [date] the Crown signed a deed of settlement with Ngaati Whanaunga to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On [date] the Ngaati Whanaunga Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngaati Whanaunga has suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngaati Whanaunga expressed interest in strengthening their existing relationship with local authorities that [reason for relationship], including [local authority]. As tangata whenua of [council] area Ngaati Whanaunga are particularly interested in enhancing their involvement with [relationship objective].

In the Deed of Settlement, the Crown agreed to write letters encouraging a co-operative ongoing relationship between Ngaati Whanaunga and [local authority] in their area of interest (refer to the Area of Interest map attached). Accordingly, I am writing to introduce you to the trustees of the Ngaati Whanaunga Ruunanga Trust as the post-settlement governance entity of Ngaati Whanaunga and to suggest that your [local authority] makes contact with Ngaati Whanaunga to foster a co-operative relationship and to discuss matters of common interest.



Ngaati Whanaunga is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau deed was signed on 7 June 2012. The Hauraki Collective deed was signed on [date]. The Marutūāhu Collective deed was signed on [date]. These documents, and the Ngaati Whanaunga Deed of Settlement, can be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite [local authority] to contact the trustees of the Ngaati Whanaunga Ruunanga Trust directly in relation to the matters raised in this letter. Their contact details are:

[contact details]; and

[contact details].

I hope that [local authority] and Ngaati Whanaunga will continue to build an effective relationship based on mutual trust, respect and co-operation for the benefit of all people within the [local authority] area of responsibility.

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DOCUMENTS

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7: LETTER OF FACILITATION

If you have any further questions please contact [**contact person**] at the Office of Treaty Settlements at [**email address**] or [**number**].

Nāku noa, nā

[Hon Christopher Finlayson]  
**Minister for Treaty of Waitangi Negotiations**

Handwritten initials and a circled number 118.



DOCUMENTS

## 8 LETTER OF INTRODUCTION

[Date]

[Contact details: Chief Executive of Crown agency]

Tēnā koe

### Ngaati Whanaunga – Letter of Introduction

On [date] the Crown signed a deed of settlement with Ngaati Whanaunga to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On [date] the Ngaati Whanaunga Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngaati Whanaunga has suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngaati Whanaunga expressed interest in enhancing their relationships with entities that [reason for relationship], including [Crown agency]. The essence of the request relates to [relationship objective].

In the Deed of Settlement, the Crown agreed to write letters encouraging a co-operative ongoing relationship between Ngaati Whanaunga and [Crown agency] in their area of interest (refer to the Area of Interest map attached). Accordingly, I am writing to introduce you to the trustees of the Ngaati Whanaunga Ruunanga Trust as the post-settlement governance entity of Ngaati Whanaunga and to suggest that your [Crown agency] makes contact with Ngaati Whanaunga to foster a co-operative relationship and to discuss matters of common interest.

Ngaati Whanaunga is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau deed was signed on 7 June 2012. The Hauraki Collective deed was signed on [date]. The Marutūāhu Collective deed was signed on [date]. These documents, and the Ngaati Whanaunga Deed of Settlement, can be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite [Crown agency] to contact the trustees of the Ngaati Whanaunga Ruunanga Trust directly in relation to the matters raised in this letter. Their contact details are:

[contact details]; and

[contact details].

If you have any further questions please contact [contact person] at the Office of Treaty Settlements at [email address] or [number].

Nāku noa, nā

[Director's name]

Director, Office of Treaty Settlements



DOCUMENTS

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## 9 LETTER TO MUSEUMS

**[Contact details of director of museum]**

Tēnā koe

### **Ngaati Whanaunga – Letter of Introduction**

On **[date]** the Crown signed a deed of settlement with Ngaati Whanaunga to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On **[date]** the Ngaati Whanaunga Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngaati Whanaunga have suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngaati Whanaunga sought the opportunity to have greater management and control over their tāonga. Ngaati Whanaunga specifically expressed an interest in enhancing their relationships with **[museum name]** to engage with you regarding this tāonga. The essence of the request relates to **[relationship objective]**.

**[Iwi background summary and with an area of interest map]**.

Ngaati Whanaunga is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and the Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act was enacted in 2014. The Hauraki Collective deed was signed on **[date]**. The Marutūāhu Collective deed was signed on **[date]**. These documents, and the Ngaati Whanaunga deed of settlement can all be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite **[entity name]** to contact the Ngaati Whanaunga Ruunanga Trust Chairperson directly in relation to the matters raised in this letter. Their contact details are:

**[contact details]**; and  
**[contact details]**.

If you have any further questions please contact **[contact person]** at the Office of Treaty Settlements at **[email address]** or 04 **[number]**.

Nāku noa, nā

[Hon Christopher Finlayson]  
**Minister for Treaty of Waitangi Negotiations**