

**TUMUAKI**  
**and**  
**NGĀTI HAUĀ**  
**and**  
**THE TRUSTEES OF THE NGĀTI HAUĀ IWI TRUST**  
**and**  
**THE CROWN**

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

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## 1 RECIPIENTS OF LETTER OF INTRODUCTION

### 1 Crown agencies

- Ministry for Primary Industries
- Ministry of Business, Innovation and Employment
- Ministry of Education
- Ministry of Health
- Ministry of Justice
- New Zealand Police
- Ministry of Social Development
- Ministry of Transport
- Ministry for the Environment
- New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa

### 2 Local authorities

- South Waikato District Council

### 3 Entities

- Mighty River Power Limited
- Transpower New Zealand Limited
- Creative New Zealand
- Film Archives

### 4 Museums

- Te Awamutu Museum
- Te Aroha and District Museum
- Cambridge Museum
- Waikato Coalfields Museum
- Raglan and District Museum
- Tararu Cultural Centre
- Morrinsville Heritage Centre
- Archive of Maori and Pacific Music (Auckland)
- Auckland War Memorial Museum
- Canterbury Museum (Christchurch)
- Christchurch Art Gallery Te Puna o Waiwhetu
- City Gallery Wellington
- Hocken Collections Uare Taoke o Hakena (Dunedin)
- Kawhia Regional Museum Gallery
- Otago Museum (Dunedin)
- Puke Ariki (New Plymouth)
- Rotorua Museum of Art and History = Te Whare Taonga o Te Arawa
- Sound Archive/Nga Taonga Korero (Christchurch)
- Te Awamutu Museum
- Waikato Museum Te Whare Taonga o Waikato
- Katikati Heritage Museum

## **2 TAONGA TŪTURU PROTOCOL**

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2: TAONGA TŪTURU PROTOCOL

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

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated xx between Ngāti Hauā 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 Ngāti Hauā 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 – Part 11
  - 1.1.12 Cultural and/or Spiritual Practices and professional services – Part 12
  - 1.1.13 Te Kauwhanganui – Part 13
  - 1.1.14 Consultation – Part 14
  - 1.1.15 Changes to legislation affecting this Protocol –Part 14
  - 1.1.16 Definitions – Part 15
- 1.2 For the purposes of this Protocol Ngāti Hauā Iwi Trust is the body representative of the whānau, hapū, and iwi of Ngāti Hauā 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 The Te Kauwhanganui Trust has custody over and cares for the Kauwhanganui building, monument and taonga collection at Rukumoana. In carrying out clauses 4.2, and 13.1, or any other matters relating to the Kauwhanganui building, the Ministry will engage with the Trustees of the Te Kauwhanganui Trust.

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**2: TAONGA TŪTURU PROTOCOL**

- 1.4 Manatū Taonga also known as the Ministry (the Ministry) and Ngāti Hauā Iwi Trust 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.
- 1.5 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.
- 1.6 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 Ngāti Hauā Iwi Trust 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 xxx (“the Settlement Legislation”) that implements the Ngāti Hauā 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 Ngāti Hauā Iwi Trust by:
- 4.1.1 maintaining information provided by the Ngāti Hauā Iwi Trust on the office holders of the Ngāti Hauā Iwi Trust and their addresses and contact details;
  - 4.1.2 discussing with the Ngāti Hauā Iwi Trust concerns and issues notified by the Ngāti Hauā Iwi Trust about this Protocol;
  - 4.1.3 as far as reasonably practicable, providing opportunities for the Ngāti Hauā Iwi Trust to meet with relevant Ministry managers and staff;
  - 4.1.4 meeting with the Ngāti Hauā Iwi Trust to review the implementation of this Protocol at least once a year, 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

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2: TAONGA TŪTURU PROTOCOL

- 4.1.7 including a copy of the Protocol with the Ngāti Hauā Iwi Trust on the Ministry's website.
- 4.2 The Chief Executive will maintain effective communication with the trustees of Te Kauwhanganui Trust by discussing with the Trustees, where requested, matters relating to the Kauwhanganui building, monument and taonga collection.

**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 Ngāti Hauā Iwi Trust within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
- 5.1.1 notify Ngāti Hauā Iwi Trust in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Hauā 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 Ngāti Hauā origin found anywhere else in New Zealand;
- 5.1.3 notify Ngāti Hauā Iwi Trust 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 Ngāti Hauā origin found anywhere else in New Zealand;
- 5.1.4 notify Ngāti Hauā Iwi Trust 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 Ngāti Hauā 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 Ngāti Hauā Iwi Trust 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 Ngāti Hauā 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 Ngāti Hauā origin found elsewhere in New Zealand**

- 5.2. If Ngāti Hauā Iwi Trust 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 Ngāti Hauā 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 Ngāti Hauā Iwi Trust's claim of ownership, the Chief Executive will consult with Ngāti Hauā Iwi Trust 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.

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2: TAONGA TŪTURU PROTOCOL

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

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

- 5.5 If Ngāti Hauā Iwi Trust does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Hauā 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 Ngāti Hauā Iwi Trust before a decision is made on who may have custody of the Taonga Tūturu; and
- 5.5.2 notify Ngāti Hauā Iwi Trust 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 Ngāti Hauā Iwi Trust on any export applications to remove any Taonga Tūturu of Ngāti Hauā origin from New Zealand, the Chief Executive will register Ngāti Hauā Iwi Trust 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 Ngāti Hauā origin from New Zealand, the Chief Executive will consult Ngāti Hauā Iwi Trust as an Expert Examiner on that application, and notify Ngāti Hauā Iwi Trust 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 Ngāti Hauā Iwi Trust within the limits of the Act. In circumstances where the Chief Executive originally consulted Ngāti Hauā Iwi Trust as an Expert Examiner, the Minister may consult with Ngāti Hauā Iwi Trust 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 Ngāti Hauā Iwi Trust in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where Ngāti Hauā Iwi Trust was consulted as an Expert Examiner.

**7. EFFECTS ON NGĀTI HAUĀ INTERESTS IN THE PROTOCOL AREA**

- 7.1 The Chief Executive and Ngāti Hauā Iwi Trust shall discuss any policy and legislative development, which specifically affects Ngāti Hauā interests in the Protocol Area.



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**2: TAONGA TŪTURU PROTOCOL**

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7.2 The Chief Executive and Ngāti Hauā Iwi Trust shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Hauā interests in the Protocol Area.

7.3 Notwithstanding paragraphs 7.1 and 7.2 above the Chief Executive and Ngāti Hauā Iwi Trust shall meet to discuss Ngāti Hauā 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 Ngāti Hauā Iwi Trust as a Registered Collector of Taonga Tūturu.

**9. BOARD APPOINTMENTS**

9.1 The Chief Executive shall:

9.1.1 notify Ngāti Hauā Iwi Trust of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add Ngāti Hauā Iwi Trust'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 Ngāti Hauā Iwi Trust 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 Ngāti Hauā Iwi Trust 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 Ngāti Hauā's 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 Ngāti Hauā Iwi Trust, 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 Ngāti Hauā Iwi Trust with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Hauā; and

11.1.2 where reasonably practicable, consult with Ngāti Hauā Iwi Trust on any work the Ministry undertakes that relates substantially to Ngāti Hauā:

(a) from an early stage;

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**2: TAONGA TŪTURU PROTOCOL**

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

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

- 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 Ngāti Hauā Iwi Trust, 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 Ngāti Hauā 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 Ngāti Hauā Iwi Trust 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 TE KAUWHANGANUI**

- 13.1 The Chief Executive will discuss with the Trustees of the Kauwhanganui Trust, where requested, whether any opportunities reasonably exist, within existing budgetary, policy and resource constraints, for the Ministry to support or provide advice on the activities being undertaken by the Trustees concerning the Kauwhanganui building, monument and taonga collection.

**14. CONSULTATION**

- 14.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with Ngāti Hauā Iwi Trust in each case are:
- 14.1.1 ensuring that Ngāti Hauā Iwi Trust 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;
- 14.1.2 providing Ngāti Hauā Iwi Trust with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- 14.1.3 ensuring that sufficient time is given for the participation of Ngāti Hauā Iwi Trust 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;
- 14.1.4 ensuring that the Chief Executive will approach the consultation with Ngāti Hauā Iwi Trust with an open mind, and will genuinely consider the submissions of Ngāti Hauā Iwi Trust in relation to any of the matters that are the subject of the consultation; and

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2: TAONGA TŪTURU PROTOCOL

14.1.5 report back to Ngāti Hauā Iwi Trust, either in writing or in person, in regard to any decisions made that relate to that consultation.

14.2 To the extent that the Chief Executive may be required to consult with the Trustees of the Kauwhanganui Trust under this Protocol, clause 14.1. above shall apply to that consultation as if the references to Ngāti Hauā Iwi Trust were references to the Trustees of Te Kauwhanganui Trust.

**15 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL**

15.1 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:

15.1.1 notify Ngāti Hauā Iwi Trust of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

15.1.2 make available to Ngāti Hauā Iwi Trust the information provided to Māori as part of the consultation process referred to in this clause; and

15.1.3 report back to Ngāti Hauā Iwi Trust on the outcome of any such consultation.

**16. DEFINITIONS**

16.1 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

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

**Ngāti Hauā Iwi Trust** has the meaning set out in clause 8 of the Deed of Settlement.

**Trustees of Te Kauwhanganui Trust** means the trustees from time to time of the Te Kauwhanganui Building and Monument Charitable Trust, established by trust deed dated [xx] 2012.

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2: TAONGA TŪTURU PROTOCOL

**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
- (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**

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Name:

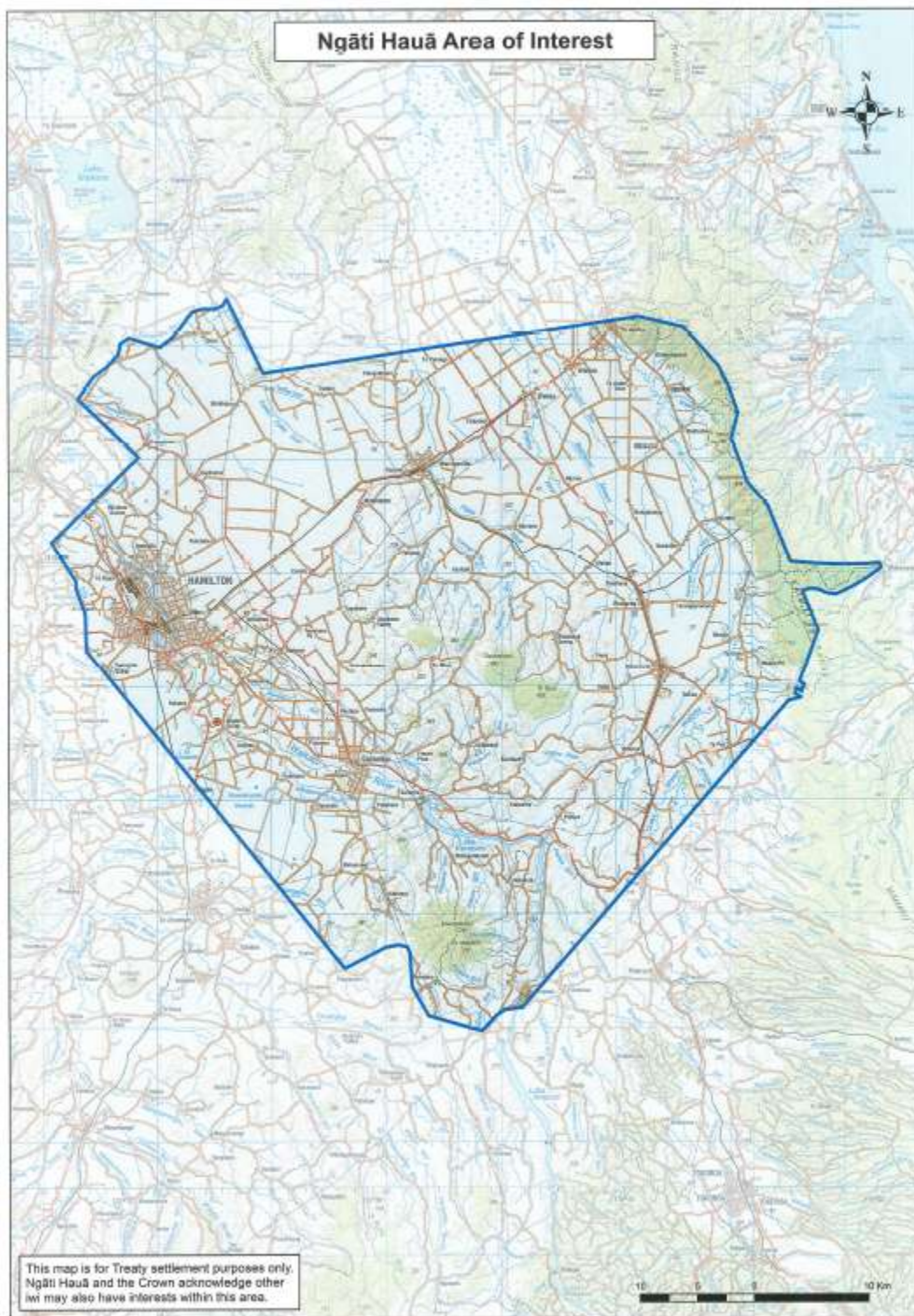
Occupation:

Address:

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2: TAONGA TŪTURU PROTOCOL

ATTACHMENT A  
THE MINISTRY FOR CULTURE AND HERITAGE PROTOCOL AREA



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2: 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 Ngāti Hauā Iwi Trust and having particular regard to its views (section [ ]).

**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, hapu, marae, whanau, or representative of tangata whenua (section [ ]); or
- 2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of [ ] (section [ ]); or
- 2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tuturu.

**3. Breach**

- 3.1 Subject to the Crown Proceedings Act 1950, Ngāti Hauā Iwi Trust may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section [ ]).
- 3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause [ ])

### **3 EASEMENT IN RELATION TO MAUNGAKAWA**

DOCUMENTS SCHEDULE

3 EASEMENT IN RELATION TO MAUNGAKAWA

EASEMENT INSTRUMENT  
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

Surname must be underlined

Ngati Hauā Iwi Trust need to insert correct name of the PSGE

Grantee

Surname must be underlined

Her Majesty the Queen acting through the Minister of Conservation

Grant of easement

**The Grantor**, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** in perpetuity the easement **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

Signed in my presence by the Grantor:

\_\_\_\_\_  
Signature of Witness

Witness Name:

Occupation:

Address:



DOCUMENTS SCHEDULE

3 EASEMENT IN RELATION TO MAUNGAKAWA

Signature of Grantor	
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<p>Signed on behalf of Her Majesty the Queen by</p> <p>Acting under a delegation from the Director General of Conservation dated</p> <p>_____</p> <p>Signature of Grantee</p>	<p>Signed in my presence by the Grantee</p> <p>_____</p> <p>Signature of Witness</p> <p>Witness Name:</p> <p>Occupation:</p> <p>Address:</p>
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Certified correct for the purposes of the Land Transfer Act 1952

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Solicitor for the Grantee

DOCUMENTS SCHEDULE

3 EASEMENT IN RELATION TO MAUNGAKAWA

ANNEXURE SCHEDULE A

Easement Instrument	Dated:	Page 1 of 5 pages
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Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way	<p>Marked [] to be surveyed - 5 metres wide] over area A on S.O. [].</p> <p><i>[note for the document to be registered need to insert the legal description after the survey is completed]</i></p> <p><b>The Easement Area</b></p>	<p><i>[need to add in CT reference following the survey]</i></p> <p><b>The Grantor's Land</b></p>	In gross

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

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

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**3 EASEMENT IN RELATION TO MAUNGAKAWA**

**ANNEXURE SCHEDULE B**

Easement Instrument	Dated:	Page 2 of 5 pages
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**RIGHTS AND POWERS**

**1 Rights of way**

- 1.1 The right of way includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Area.
- 1.2 The right of way includes the right for the public as the Grantee's invitees to go over and along the Easement Area on foot and where the Grantee wishes to carry out work to develop, improve or maintain the Easement Area or undertake conservation activities on adjoining land administered by the Grantee, its employees or contractors may proceed along the Easement Area by vehicle or any other means of transport and with all necessary tools, vehicles and equipment to carry out the work.
- 1.3 The right of way includes—
  - 1.3.1 the right to establish a walking track on the Easement Area, to repair and maintain any existing walking track on the Easement Area, to repair, maintain, replace or remove the existing viewing platform on the Easement Area and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
  - 1.3.2 the right to have the Easement Area kept clear at all times of obstructions (whether caused by deposit of materials, or unreasonable impediment) to the use and enjoyment of the walking track and viewing platform.
  - 1.3.3 The right for the Grantee to improve the Easement Area in any way it considers expedient, including the installation of track markers and stiles, but without at any time causing damage to or interfering with the Grantor's management of the Grantor's Land.
  - 1.3.4 The right for the Grantee to erect and display notices on the Easement Area or with the Grantor's prior consent on the Grantor's Land.
- 1.4 The right of way does not confer on the public the right to camp on the Easement Area without the prior consent of the Grantor.
- 1.5 No horse or any other animal (including any dogs or other pets of any description whether on a leash or not) may be taken on the Easement Area without the consent of the Grantor.
- 1.6 No firearm or other weapon may be discharged on the Easement Area without the consent of the Grantor.

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

DOCUMENTS SCHEDULE

3 EASEMENT IN RELATION TO MAUNGAKAWA

Easement Instrument	Dated:	Page 3 of 5 pages
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1.7 The public may not use any vehicle, including motorcycles or bicycles or any means of locomotion, mechanical electrical or otherwise on the Easement Area without the consent of the Grantor.

1.8 The public may not light any fires or deposit any rubbish on the Easement Area.

**2 General rights**

2.1 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement Area.

2.2 Except as provided in this Easement the Grantee must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.

2.3 The Grantee may transfer or otherwise assign this Easement.

**3 Repair, maintenance, and costs**

3.1 The Grantee is responsible for arranging the repair and maintenance of the walking track and its structures on the Easement Area and for the associated costs, to a standard suitable for its activities.

3.2 The Grantee must meet any associated requirements of the relevant local authority.

3.3 The Grantee will repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this Easement.

3.4 The Grantor will repair at its cost all damage caused to the walking track or the Grantee's structures located on the Easement Area through its negligence or improper actions or omissions.

**4 Rights of entry**

4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the Easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —

4.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles, and equipment; and

4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and

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

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3 EASEMENT IN RELATION TO MAUNGAKAWA

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4.1.3 leave any vehicles or equipment on the Grantor's Land for a reasonable time if work is proceeding.

4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor's Land or to the Grantor.

4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.

4.4 The Grantee must ensure that all work is completed promptly.

4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.

4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

**5 Default**

5.1 If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

(a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:

(b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—

(i) meet the obligation; and

(ii) for that purpose, enter the Grantor's Land:

(c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:

(d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

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

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3 EASEMENT IN RELATION TO MAUNGAKAWA

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**6 No Power to Terminate**

- 6.1. There is no implied power in this Easement for the Grantor to terminate the easement rights due to the Grantee breaching any term of this Easement for any other reason, it being the intention of the parties that the easement rights will continue forever unless surrendered.

**7 Disputes**

- 7.1 If a dispute in relation to this easement arises between the Grantor and Grantee—
- (a) the parties shall enter into negotiations in good faith to resolve the dispute;
  - (b) if the dispute cannot be resolved by the parties themselves then they shall explore whether the dispute can be resolved by use of an alternative dispute resolution technique;
  - (c) if the dispute is not resolved within one month of the date on which the parties begin their negotiations the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President of the New Zealand Law Society, however, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.

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

## **4 CONSERVATION RELATIONSHIP AGREEMENT**

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4: CONSERVATION RELATIONSHIP AGREEMENT

AN AGREEMENT REGARDING THE RELATIONSHIP BETWEEN NGĀTI HAUĀ AND THE DEPARTMENT OF CONSERVATION

**1 BACKGROUND**

- 1.1 Ngati Hauā refer to their lands as being held under the mana of Te Waharoa, the paramount chief of Ngāti Hauā who in the 1830s consolidated the Ngāti Hauā rohe. The customary rohe stretches from Te Aroha, south along the Kaimai range to Te Weraiti, from Te Weraiti west to Maungatautari, from Maungatautari northwest to Te Rapa, from Te Rapa eastward to Mangateparu and from thence to Te Aroha. Te Waharoa also established interests outside this area such as at Omokoroa, on the Tauranga Moana coastline. (see Attachment A for rohe map) The Ngati Hauā area of interest is a core area within the Ngati Hauā rohe.
- 1.2 Ngati Hauā have always viewed themselves as kaitiaki of the lands, waterways, flora and fauna within their rohe. Pākehā settlement and colonisation has resulted in significant changes to their rohe and the ability to exercise kaitiakitanga. It is intended that this relationship agreement will increase Ngāti Hauā participation in the management of conservation lands and resources within their area of interest and therefore assist in maintaining Te Mana o Te Waharoa.

**2 PURPOSE**

- 2.1 This Agreement sets out how the Department of Conservation (the “Department”) and Ngāti Hauā Iwi Trust (“the Governance Entity”) will work together in fulfilling conservation objectives across the Rohe.
- 2.2 The intention is that, by giving effect to this Agreement, Ngāti Hauā and the Department will foster and develop a positive, collaborative and enduring relationship into the future.
- 2.3 The provisions of the Settlement Legislation and the Deed of Settlement specifying the terms on which this Agreement is issued are set out in Attachment A.

**3 AGREEMENT AREA**

- 3.1 This Agreement will apply within the Ngati Hauā area of interest outlined on the Map included in Attachment B.

**4 OBJECTIVES**

**Joint Objectives**

- 4.1 Ngāti Hauā and the Department are committed to the restoration and protection of the health and well being of the Ngati Hauā area of interest for present and future generations.

**Ngāti Hauā Objectives**

- 4.2 Ngāti Hauā seek to ensure that in the furtherance of the joint objective at 5.1, Ngāti Hauā are recognised as kaitiaki of the conservation lands within its area of interest and that such lands are managed in a manner consistent with Ngāti Hauā tikanga and kawa.



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**4: CONSERVATION RELATIONSHIP AGREEMENT**

**The Department's Objectives**

- 4.3 The Department of Conservation – Te Papa Atawhai – is the Crown agency responsible for managing Conservation Land and other resources as provided for in the Conservation Legislation. Its functions include advocating for the conservation of the natural and historic resources of New Zealand on behalf of, and for the benefit of, all New Zealanders. In accordance with section 4 of the Conservation Act 1987 the Conservation Legislation must be interpreted and administered to give effect to the principles of the Treaty of Waitangi to the extent required under the Conservation Legislation.
- 4.4 The Department, recognising the cultural, historic and spiritual interests of Ngāti Hauā and the commitment of Ngāti Hauā, as kaitiaki, to restoring and maintaining the well being of Conservation Land in the Rohe, is seeking to strengthen its relationship with Ngāti Hauā.

**5 PRINCIPLES**

- 5.1 Ngāti Hauā and the Department agree that their relationship, and the implementation of this Agreement, will be guided by a commitment to:
- 5.1.1 A positive and collaborative approach, including acting in good faith and with transparency, with 'no surprises' and accountability;
  - 5.1.2 An enduring relationship which is evolving, not prescribed;
  - 5.1.3 Cooperation to seek to protect wāhi tapu, sites of significance and other taonga of Ngāti Hauā on Conservation Land;
  - 5.1.4 Provide Ngāti Hauā with the use of their taonga on Conservation Land to the fullest extent practicable;
  - 5.1.5 Respect the independence of each other including mandates, roles and responsibilities;
  - 5.1.6 Share knowledge and expertise, including mātauranga Māori and the latest scientific methods, and take them into account when considering issues relating to Conservation Land; and
  - 5.1.7 Acknowledge that Ngāti Hauā and the Department may only make commitments within their resources and capacity.

**6 NGĀTI HAUĀ CONSERVATION VISION AND STRATEGY**

- 6.1 Ngāti Hauā and the Department have agreed to together cooperate to fulfil their respective conservation objectives across the Rohe'
- 6.2 The Governance Entity will prepare a conservation vision and strategy document to be known as Te Mana o Waharoa that is to cover all conservation lands in the Ngati Hauā area of interest vested in the Governance Entity and the Department that will contain vision, aspirations, objectives, and policies or outcomes for the integrated management of the conservation lands within the Ngati Hauā area of interest, including where appropriate Ngāti Hauā recommendations on the Department's annual work and budget priorities and commitments

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- 6.3 Te Mana o Waharoa will be reviewed by the Governance Entity where there is a change or a proposed change to the legislation, policy or circumstances relevant to the Department that has the potential to affect the matters covered by Te Mana o Waharoa as it refers to the area of interest. Additional reviews may take place at the option of the Governance Entity.
- 6.4 The Department of Conservation will have regard to Te Mana o Waharoa or any relevant part of the document, particularly when preparing reviewing, advising on, or amending any Statutory Planning Document relating to the Ngati Hauā area of interest.
- 6.5 At their annual business planning meeting the parties will consider the Te Mana o Waharoa in their consultations on the matters listed in clause 10.2.

**7 CONFIDENTIALITY**

- 7.1 The Department will not disclose any information given to it by Ngāti Hauā or information relating to Ngāti Hauā without first obtaining the consent of Ngāti Hauā.
- 7.2 The Department's obligations under this Agreement relating to the disclosure of information are subject to any statutory obligation under the Official Information Act 1982 or any other legislation.

**8 COMMUNICATION**

- 8.1 The Parties will maintain effective and efficient communication with each other on an ongoing basis by:
- 8.1.1 Maintaining a record of each other's office holders, and their contact details;
  - 8.1.2 Advising each other of their principle contacts and their contact details, the principle contacts for the Department being the relevant area manager(s);
  - 8.1.3 Promptly informing each other of any changes to the contact information;
  - 8.1.4 Meeting to consult on issues of shared interest that relate to the Ngati Hauā area of interest:
    - (a) at the commencement of the Department's annual business planning processes as provided in Clause 10; and
    - (b) as agreed by the Governance Entity and the Department; and
  - 8.1.5 Advising each other of any matters of significance to Ngāti Hauā that relate to the Ngati Hauā area of interest.

**9 VISITOR AND PUBLIC INFORMATION**

- 9.1 Ngāti Hauā and the Department wish to share knowledge about natural and historic heritage within the Ngati Hauā area of interest with visitors and the general public. This is important to increase enjoyment and understanding of this heritage, and to develop awareness of the need for its conservation.
- 9.2 The parties will encourage respect for and awareness of conservation in, and the Ngāti Hauā relationship with, the Ngati Hauā area of interest. This may include:

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

- 9.2.1 Raising public awareness of positive conservation relationships developed between the parties; and
- 9.2.2 Consulting with each other in the development of visitor and public information published by either party that relates to Ngāti Hauā; and
- 9.2.3 Ngāti Hauā values in land and resources managed under Conservation Legislation, particularly where that information relates to Ngāti Hauā sites of significance as identified in clause 15.3 and aspirations relating to the land.

**10 BUSINESS AND MANAGEMENT PLANNING**

- 10.1 The Department undertakes business planning processes prior to the beginning of each new financial year. The business planning processes determine the Department's work priorities and commitments for the year. Operational business planning processes largely sit with relevant Conservation Services Managers.
- 10.2 The Governance Entity and the relevant Conservation Services Managers will meet at an early stage in the Department's annual business planning processes to consult on:
  - 10.2.1 timeframes for the development of annual work programmes;
  - 10.2.2 the Department's annual work and budget priorities and commitments;
  - 10.2.3 potential projects requested by the Governance Entity to be undertaken together or separately in the Ngati Hauā area of interest;
  - 10.2.4 Any new legislation or national policy or statutory document that may impact on the Agreement;
  - 10.2.5 Issues relating to cultural materials, sites of significance, species and habitat protection, including pest control, freshwater fisheries and their habitat;
  - 10.2.6 Any other issue affecting the Agreement.
- 10.3 If a review of the Agreement is required under clause 24, the parties will commence the review as part of these annual consultations.
- 10.4 Where possible the relevant Conservation Services Managers of the Department will hold their annual business planning meetings with the Governance Entity jointly;
- 10.5 If a specific project is undertaken, the Department and the Governance Entity will determine the nature of their collaboration on that project which may include finalising a work plan for that project. If a specific project is not undertaken, the Department will advise the Governance Entity of the reason(s) for this.
- 10.6 The Department and the Governance Entity will meet to identify and seek to address issues affecting Ngāti Hauā at an early stage (before public consultation, if any, and throughout the process) in the preparation, review or amendment of any Statutory Planning Document relating to the Ngati Hauā area of interest.

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**11 INTEGRATED MANAGEMENT OF MAUNGAKAWA**

- 11.1 The settlement provides for part of ancestral mountain to be vested in the Governance Entity with the Crown retaining the balance of the reserve. The part to be vested in the Governance Entity will become known as the Maungakawa Scenic Reserve. The Crown's part will remain under the name of Te Tapui Scenic Reserve.
- 11.2 To the extent compatible with the scenic reserve classification, the Department and the Governance Entity agree to work together to ensure a consistent approach to the management of Maungakawa Scenic Reserve and Te Tapui Scenic Reserve (together "Maungakawa" for the purposes of this Agreement) with the objective of integrating and coordinating the management of natural, historical, and traditional resources within Maungakawa by:
- (i) providing for Ngāti Hauā tikanga and matauranga Māori in conservation management of Maungakawa;
  - (ii) preserving and enhancing the natural character of Maungakawa;
  - (iii) maintaining and enhancing indigenous biological diversity;
  - (iv) protecting and enhancing the identified habitats of significance for customary activities on Maungakawa;
  - (v) protecting conservation values in relation to Maungakawa.
- 11.3 The integrated management of Maungakawa will form part of the annual business planning discussions between the Department and the Governance Entity at clause 10 and will include the principal conservation management issues and priorities that arise in respect of Maungakawa as a consequence of the matters identified under clause 11.2 and the resourcing of any activities associated with giving effect to those issues and priorities.

**12 HUNTING PERMITS FOR MAUNGAKAWA**

- 12.1 The Governance Entity and the Department will meet in November of each year to:
- 12.1.1 Set the conditions, including any charges for permits to hunt on Maungakawa;
  - 12.1.2 Set the processes for balloting permits on Maungakawa during the following March and April;
  - 12.1.3 Set aside periods of the year when hunting permits will not be issued;
  - 12.1.4 Confirm the relevant notification procedures for the matters in 12.1.1 – 12.1.3 above.
- 12.2 The parties will carry out the balloting of hunting permits on Maungakawa together.
- 12.3 Without the consent of the other party neither the Governance Entity nor the Department will introduce species that are not indigenous to Maungakawa or seek authority to do so, if the Minister's authority is required.

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

- 12.4 Should any matters in clause 12.1 require amendment outside the annual meeting date in November, the Governance Entity and the Department will work together to resolve such matters and notify the relevant parties as appropriate.

**13 CULTURAL MATERIALS**

- 13.1 For the purpose of this Agreement, cultural materials are plants, plant materials and materials derived from dead protected fauna, found within the Ngati Hauā area of interest that are protected under the Conservation Legislation and which are important to Ngāti Hauā in maintaining, restoring and expressing Ngāti Hauā cultural values and practices.
- 13.2 Current legislation requires some form of authorisation for gathering or the possession of plants and plant materials and the possession of dead fauna.
- 13.3 At the request of Ngāti Hauā, the Department will collaborate with Ngāti Hauā to develop a Cultural Materials plan which should provide for Ngāti Hauā to enable members of Ngāti Hauā to take and use Cultural Materials in accordance with the plan. The plan should:
- 13.3.1 prescribe streamlined processes for Ngāti Hauā members to gather or be in possession of Cultural Materials on Conservation Land;
  - 13.3.2 Identify, sites, quantities, methods and conditions relating to the multi-take and multi-site plan; and
  - 13.3.3 Matters to be considered when consulting on the feasibility of including a plant or plant material in the Plan.
- 13.4 Ngāti Hauā may propose new species to be included in the Cultural Materials Plan on an incremental basis and the parties will discuss the feasibility of the proposal.
- 13.5 When Ngāti Hauā and the Department collaborate on the Cultural Materials Plan, appropriate Departmental experts and Ngāti Hauā experts in mātauranga Māori will take part.
- 13.6 The Governance Entity may issue a written authorisation in accordance with the cultural materials plan to a member of Ngati Hauā to:
- 13.6.1 Take plants and plant materials without requiring a permit or other authorisation under the Conservation Act 1987 or the Reserves Act 1977; or
  - 13.6.2 Possess dead protected fauna.
- 13.7 The Cultural Materials plan should be revised:
- 13.7.1 If an unforeseen event (such as a fire) takes place that affects sites included in the Plan; and
  - 13.7.2 If through monitoring it is found that the impacts of a harvest under the Plan is having a significant negative impact on the values for which the Conservation Land is held.
  - 13.7.3 If there is a change in the status of a species under the Plan (i.e. it is classified as threatened or at risk).
- 13.8 In relation to cultural materials the Department will:

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

- 13.8.1 Work with the Governance Entity to resolve circumstances where there are competing requests between the Governance Entity and non-Ngāti Hauā members or entities for the use of cultural materials in the Ngāti Hauā area of interest, for example for scientific research purposes; or requests for access to and use of cultural materials within the Rohe from persons and entities other than the Governance Entity;
- 13.8.2 Consult with the Governance Entity on the restoration and enhancement of cultural materials on Conservation Land;
- 13.8.3 Assist as far as reasonably practicable, the Governance Entity to obtain plant stock for propagation to reduce the need for plants to be gathered from land administered by the Department and to provide advice to the Governance Entity in the establishment of its own cultivation areas;
- 13.8.4 Provide, as far as reasonably practicable, ongoing advice to the Governance Entity for the management and propagation of plant stock; and
- 13.8.5 Where appropriate, the Department and the Governance Entity will develop procedures for monitoring levels of use of cultural materials in accordance with the relevant legislation and appropriate Ngāti Hauā tikanga.

**Materials from Flora and Dead Protected Fauna**

- 13.9 The Department will, as far as reasonably practicable provide the Governance Entity with access to materials from flora and dead protected fauna which have become available as a result of Departmental operations within the Ngāti Hauā area of interest but where other iwi also have an interest in the area from which the materials are derived, the Department will consult with the Governance Entity to see whether agreement can be reached with all interested parties.

**14 STATUTORY AUTHORISATIONS**

- 14.1 The Department acknowledges authorisations granted to third parties in relation to Conservation Land within the Rohe may impact on the spiritual, cultural or historic values of Ngāti Hauā. The Department will advise and encourage prospective applicants within the Ngāti Hauā area of interest to consult with Ngāti Hauā before filing their application.
- 14.2 From time to time Ngāti Hauā and the Department will identify categories of Statutory Authorisations that may have a significant impact on the spiritual, cultural or historic values of Ngāti Hauā.
- 14.3 For the categories of any Statutory Authorisations that Ngāti Hauā and the Department agree may be significant to Ngāti Hauā, the Governance Entity and the Department will adopt the following processes:
  - 14.3.1 the Department will notify Ngāti Hauā of the application, timeframe for a decision and the timeframe for a Ngāti Hauā response;

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

- 14.3.2 Ngāti Hauā, within an agreed timeframe, will notify the Department of their response including the nature of their interests in the proposal and their views in relation to the proposal;
  - 14.3.3 the Department will acknowledge Ngāti Hauā interests and views as conveyed (providing an opportunity to clarify or correct the Department's understanding of those interests and views), how those interests and views will be included in the decision-making process and any apparent issues or conflict that may arise;
  - 14.3.4 the Department will, in making a decision, consider whether it is possible to reconcile any conflict between Ngāti Hauā interests and views and other considerations in the decision-making process;
  - 14.3.5 the Department will record in writing as part of a decision document the nature of Ngāti Hauā interests and the views of Ngāti Hauā as conveyed.
- 14.4 The Department will advise Ngāti Hauā of potential opportunities for Ngāti Hauā or its members to obtain statutory authorisations on Conservation Land within the Ngāti Hauā area of interest, including in relation to commercial opportunities.

**15 SITES OF SIGNIFICANCE**

**Sites of Significance**

- 15.1 Both parties recognise that there are wāhi tapu and sites of significance to Ngāti Hauā on lands managed under Conservation Legislation.
- 15.2 Ngāti Hauā and the Department share aspirations for protecting wāhi tapu, sites of significance and other historic places. The parties will work together to conserve, as far as practicable, sites of significance in areas managed under Conservation Legislation within the Ngāti Hauā area of interest. Where these sites have been identified, this will be done according to:
- 15.2.1 Ngāti Hauā tikanga; and
  - 15.2.2 Professional standards for conservation of historic places relating to their cultural heritage value, their structures, materials and cultural meaning, including those outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1993.
- 15.3 The Parties will develop a process for advising one another of sites of significance and wāhi tapu.
- 15.4 On advice from the Governance Entity that any wāhi tapu or other site of significance requires active protection, the Department will consult on methods to achieve the objectives that are appropriate for the specific site.
- 15.5 The Department will comply with the process developed pursuant to clause 15.3 if kōiwi are found in the Ngāti Hauā area of interest.
- 15.6 Information relating to Ngāti Hauā sites of significance will be treated in confidence by the Department in order to preserve the wāhi tapu nature of places, unless otherwise agreed by the Governance Entity or may be required by law.

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

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**16 SPECIES AND HABITAT PROTECTION**

- 16.1 The parties share aspirations of protecting ecosystems and indigenous flora and fauna within the rohe.
- 16.2 The Department aims to conserve the full range of New Zealand's ecosystems, maintain or restore the ecological integrity of managed sites, and ensure the survival of threatened species, in particular those most at risk of extinction. This work involves a number of national programmes.
- 16.3 As part of annual discussions the Department will update the Governance Entity on any national sites and species programmes operating in the rohe and will discuss with Ngāti Hauā how they wish to be involved in these programmes. The Department and the Governance Entity will also discuss opportunities and processes for collaboration with one another on other field projects of mutual interest.
- 16.4 Preventing, managing and controlling threats to natural, historic and cultural values from animal and weed pests is an integral part of protecting the unique biodiversity of New Zealand. This is done in a way that maximises the value from limited resources available to do this work.
- 16.5 It is envisaged that the Department and Ngāti Hauā will discuss the strategic outcomes sought from pest control programmes within the Ngāti Hauā area of interest, including: monitoring and assessment of programmes; the use of poisons; and co-ordination of pest control where Ngāti Hauā is the adjoining landowner. Through the annual business planning process, the parties will create actions to progress these objectives.

**17 FRESHWATER FISHERIES**

- 17.1 The Department's functions include the preservation, as far as practicable, of all indigenous freshwater fisheries, and the protection of recreational freshwater fisheries and their habitats. Active management is limited to whitebait fishing and those fisheries and habitats that are located on Conservation Land. In all other areas, advocacy for the conservation of freshwater fisheries is undertaken primarily through Resource Management Act processes.
- 17.2 A co-operative approach will be adopted with the Governance Entity in the conservation of freshwater fisheries and freshwater habitats. This may include seeking to identify areas for co-operation in the protection of riparian vegetation and habitats, and consulting with the Governance Entity when the Department is developing or contributing to research and monitoring programmes.

**18 PLACE NAMES**

- 18.1 The Department and the Governance Entity will consult on:
- 18.1.1 whether to support an application by third parties to change the name of a Crown Protected Area in the Conservation Land;
  - 18.1.2 Any proposals by the Department or Ngāti Hauā to name or rename Conservation Land, including reinstatement of traditional place names.



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**4: CONSERVATION RELATIONSHIP AGREEMENT**

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**19 CROSS-ORGANISATIONAL OPPORTUNITIES**

- 19.1 As part of the annual business planning process, the parties will discuss:
- 19.1.1 Opportunities and processes to share scientific and cultural resources and information, including data and research material;
  - 19.1.2 Opportunities for developing mutual understanding and developing relationships, with respect to conservation, environmental and cultural matters within the Ngati Hauā area of interest. Options may include wānanga, education, training, development and secondments;
  - 19.1.3 Opportunities for Ngati Hauā individuals to be nominated and participate in relevant training programmes, including those run by both parties, including the Kaiarahi Taiao programme; and
  - 19.1.4 Staff changes and key contacts in each organisation.
- 19.2 Where Ngati Hauā nominates an iwi member to take part in a Kaiarahi Taiao programme and that member meets the selection criteria, Ngati Hauā will fund the costs of the iwi member and the pastoral care in order for the iwi member to participate in the programme.
- 19.3 Where appropriate, the Department will consider using Ngāti Hauā individuals or entities as providers of professional services.

**20 RESOURCE MANAGEMENT ACT 1991**

- 20.1 From time to time, Ngāti Hauā and the Department will each have concerns with the effects of activities controlled and managed under the Resource Management Act 1991.
- 20.2 The Governance Entity and the Department will seek to identify and consult on issues of mutual interest and/or concern ahead of each party making submissions in Resource Management Act processes.

**21 STATUTORY LAND MANAGEMENT**

- 21.1 Ngāti Hauā has an on going interest in the range of statutory land management activities that are occurring within the Ngati Hauā area of interest. Those activities include:
- 21.1.1 establishing a new, or reclassifying any existing Conservation Land;
  - 21.1.2 vestings or management appointments under the Reserves Act 1977;
  - 21.1.3 other management arrangements with third parties; and
  - 21.1.4 disposing of Conservation Land
- 21.2 The Department will consult with Ngāti Hauā at an early stage and prior to any public consultation process, proposals relating to statutory land management activities within the categories identified.
- 21.3 The Department and the Governance Entity will discuss any proposal of Ngāti Hauā to be granted a vesting or an appointment to control and manage a reserve under the Reserves Act for a site of significance.

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**4: CONSERVATION RELATIONSHIP AGREEMENT**

**22 CONSULTATION**

- 22.1 The Department and the Governance Entity will discuss how consultation should occur between the parties in relation to this Agreement.
- 22.2 Where not otherwise specified, where consultation is required under this Agreement, the Department will follow the consultation procedure adopted by the parties under clause 22.1, which may direct the Department to:
- 22.2.1 Ensure that the Governance Entity is consulted as soon as reasonably practicable following the identification of the proposal or issues to be the subject of the consultation;
  - 22.2.2 Provide the Governance Entity with sufficient information and time to make informed comments and/or submissions in relation to any of the matters that are subject of the consultation;
  - 22.2.3 Approach the consultation with an open mind and genuinely consider any views and/or concerns that the Governance Entity may have in relation to any of the matters that are subject to the consultation. and
  - 22.2.4 Report back to the Governance Entity on any decision that is made.

**23 DISPUTE RESOLUTION**

- 23.1 If a dispute arises in connection with this Agreement, every effort will be made in good faith to resolve the matters at a local level within a reasonable time frame. If this process is not successful. The matter may be escalated to a meeting of the relevant Director or Directors, Conservation Services and a nominated representative of the Governance Entity who will meet within a reasonable timeframe.
- 23.2 If following the process in clause 23.1 the parties cannot reach a negotiated outcome, they may agree to refer the dispute to an independent and mutually agreed mediator. The costs of the mediator are to be split equally between the parties.
- 23.3 If the dispute is not resolved following mediation and the parties agree that the matter is of such importance that it requires the attention of the Governance Entity and the Minister of Conservation, then that matter will be escalated to a meeting between a nominated representative of the Minister, or the Minister's representative, if the parties agree.

**24 REVIEW**

- 24.1 The parties agree that this Agreement is a living document that should be updated and adapted to take account of future developments and additional co-management opportunities.
- 24.2 This agreement will only be varied by agreement in writing of the Governance Entity and the Department.

**25 TERMS OF AGREEMENT**

- 25.1 A summary of the terms of this agreement must be noted in the Conservation Documents affecting the Ngati Hauā area of interest, but the noting:

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4: CONSERVATION RELATIONSHIP AGREEMENT

- 25.1.1 is for the purpose of public notice; and
- 25.1.2 does not amend the Conservation Documents for the purposes of the Conservation Act 1987 or the National Parks Act 1980.
- 25.2 The Agreement does not override or limit:
- 25.2.1 legislative rights, powers or obligations of the parties;
- 25.2.2 the functions, duties and powers of the Minister of Conservation, Director-General of Conservation and any Departmental officials, or statutory officers;
- 25.2.3 the ability of the Crown to introduce legislation and change government policy;
- 25.2.4 the ability of the Crown to interact or consult with any other person, including any iwi, hapū, marae, whānau or their representative;
- 25.3 The Agreement does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to, land or any other resource held, managed or administered under Conservation Legislation.
- 25.4 A breach of the Agreement is not a breach of the Deed of Settlement.

**26 DEFINITIONS**

- 26.1 In this document:

**Conservation Land** means the land managed by the Department under the Conservation Legislation;

**Conservation Legislation** means the Conservation Act 1987 and the statutes listed in the First Schedule of the Act;

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

**Crown Protected Area** has the meaning given to it under the New Zealand Geographic Board (Nga Pou Taunaha o Aotearoa) Act 2008;

**Department** means the Minister of Conservation, the Director-General and the Departmental managers to whom the Minister of Conservation's and the Director-General's decision-making powers can be delegated;

**Ngāti Hauā** has the meaning set out in the Deed of Settlement;

**Area of interest** is the area outlined in Attachment A;

**Statutory Authorisation** means an authorisation granted under the Conservation Legislation including a Concession granted under Part 3B of the Conservation Act 1987;

**Statutory Planning Document** includes any relevant Conservation Management Strategy or Conservation Management Plan under the Conservation Legislation.

DOCUMENTS

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4: CONSERVATION RELATIONSHIP AGREEMENT

**SIGNED** for and on behalf of **HER**

**MAJESTY THE QUEEN** in right of

New Zealand by the Minister of

Conservation:

**WITNESS:**

Name:

---

Occupation:

---

Address:

---

**SIGNED** by the Director-General of

Conservation in the presence of:

**WITNESS:**

Name:

---

Occupation:

---

DOCUMENTS

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4: CONSERVATION RELATIONSHIP AGREEMENT

Address:

---

**SIGNED** by Anaru Thompson, Tumuaki

**WITNESS:**

Name:

---

Occupation:

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Address:

---

**SIGNED** by Mokoro Gillett, Co – Chairperson of Ngāti Hauā Iwi Trust

**WITNESS:**

Name:

---

Occupation:

---

Address:

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DOCUMENTS

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4: CONSERVATION RELATIONSHIP AGREEMENT

**SIGNED** by Lance Rapana, Co – Chairperson of Ngāti Hauā Iwi Trust

**WITNESS:**

Name:

---

Occupation:

---

Address:

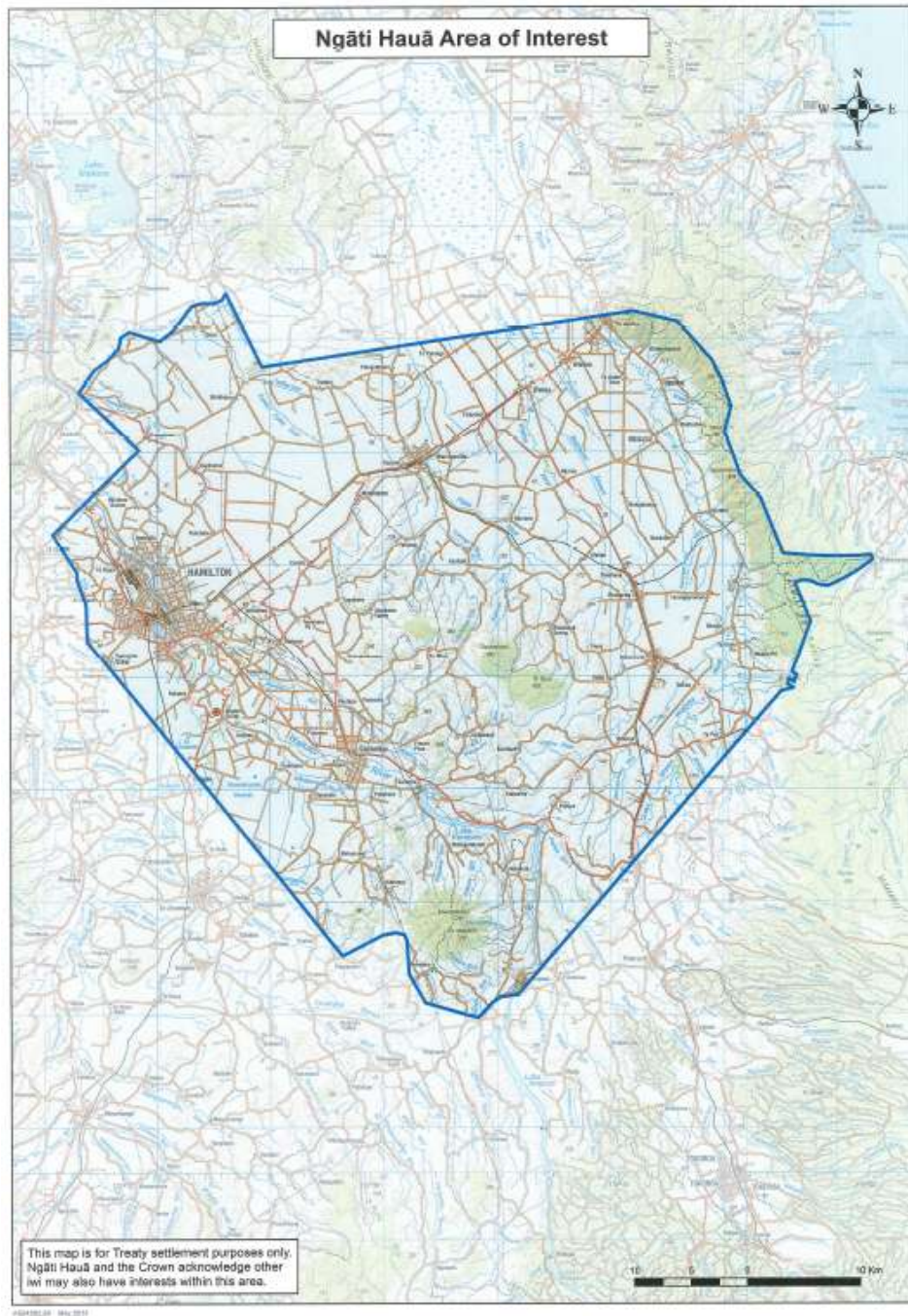
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DOCUMENTS

4: CONSERVATION RELATIONSHIP AGREEMENT

ATTACHMENT A

MAP OUTLINING THE NGATI HAUĀ AREA OF INTEREST



**5 OVERLAY CLASSIFICATION – NGĀTI HAUĀ VALUES, PROTECTION  
PRINCIPLES, AND DIRECTOR GENERAL OF CONSERVATION'S  
ACTIONS**



DOCUMENTS

5: OVERLAY CLASSIFICATION

1 **Statement of values for Te Miro Scenic Reserve**

*Koia nei te hē o te manu e rere noa. He topa mai kōore he tauranga  
Ka toro te kauhanga nui o Tāwhiao. Hei taunga mō ngā manu o te motu  
Kāhui mai ngā matariki, ngā manukura me ngā whakamarumarū*

- 1.1 (Te Miro is a place that caters for all peoples from across the land through Te Kauwhanganui o Tawhiao. Which is a landing place for all peoples)
- 1.2 Te Miro is located at the northern end of the Maungakawa range and has a significant place in the history of Ngāti Hauā Iwi.
- 1.3 Historically, Te Miro provided Ngāti Hauā with an abundance of traditional food sources including kōore, kereru, tuna, tīkouka and kāio (fresh water mussel). Te Miro also provided a strategic vantage against raiding parties as its locations gave Ngāti Hauā clear unobstructed views of the plains to the north, south and east.
- 1.4 It was here at Te Miro, at Te Kawehitiki pā, that the prominent and influential Ngāti Hauā chief Te Waharoa was raised.
- 1.5 Ngāti Hauā refer to Te Miro as a thriving economic community, where they planted and harvested crops of wheat for markets in Auckland, Australia and North America, and established a flour mill, post office, printing office and bank.
- 1.6 In May 1891, King Tāwhiao built the first Te Kauwhanganui building between Te Miro and Maungakawa, and every year on the second day of May Māori chiefs and leaders from across the nation would gather at Te Kauwhanganui to address issues that were affecting Māori across the motu. It was in the Te Kauwhanganui o Tawhiao that the third Māori King, Mahuta assumed his father's throne.
- 1.7 The peak Ruru is located within the Te Miro area and is of significance to Ngāti Hauā as Ruru is the mother of Waenganui, a hapū of Ngāti Hauā. There are also papakainga located at Te Miro.
- 1.8 Te Miro represents for Ngāti Hauā the essence of linking the spiritual, political and economic aspirations of the past with the future. It binds the mauri of all living elements existent in the Ngāti Hauā world past, present and future and connects us all together in the now and into the future.

2 **Protection principles**

- 2.1 The following protection principles are directed at the Minister of Conservation avoiding harm to, or the diminishing of Ngāti Hauā values related to Te Miro Scenic Reserve:
  - (a) protection of wāhi tapu, significant places, traditional materials and resources, flora and fauna, water and the wider environment of the Reserve;

DOCUMENTS

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5: OVERLAY CLASSIFICATION

- (b) recognition of Ngāti Hauā mana, kaitiakitanga, tīkanga/ kawa over and within the Reserve;
- (c) respect for Ngāti Hauā tīkanga and kaitiakitanga within the Reserve;
- (d) encouragement of recognition and respect for the association of Ngāti Hauā with the Reserve;
- (e) accurate portrayal of the association and kaitiakitanga relationship of Ngāti Hauā with the Reserve; and
- (f) respect for and recognition of the relationship of Ngāti Hauā with the wāhi tapu and significant places; and
- (g) recognition of the interest of Ngāti Hauā in actively protecting indigenous species within the Reserve.

3 **Actions by the Director-General of Conservation in relation to specific principles**

3.1 Pursuant to clause [ ] of the deed of settlement, the Director-General has determined that the following actions will be taken by the Department of Conservation (the **Department**) in relation to the specific principles:

- (a) the Department staff, volunteers, contractors, conservation board members, concessionaires, administering bodies and the public (including local landowners) will be provided with information about Ngāti Hauā values related to the Reserve and will be encouraged to respect the association Ngāti Hauā have with the Reserve;
- (b) the Department will engage with the trustees regarding the provision of all new Department public information or educational material related to the Reserve, and the Department will only use Ngāti Hauā cultural information with the consent of the trustees;
- (c) the association Ngāti Hauā have with the Reserve will be accurately portrayed in all new Department information and educational material related to the Reserve;
- (d) the Department will engage with the trustees on the design and location of any new signs to discourage inappropriate behaviour, including fossicking, the modification of wāhi tapu sites and disturbance of other taonga;
- (e) where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, the trustees will be consulted and particular regard will be had to their views, including those relating to kōiwi (human remains), wāhi tapu and archaeological sites;
- (f) any kōiwi or other taonga found or uncovered by the Department within the Te Miro Scenic Reserve will be left untouched and the trustees informed as soon as possible to enable Ngāti Hauā to deal with the kōiwi or taonga in accordance with their tīkanga, subject to any procedures required by law;
- (g) the Department will ensure that Ngāti Hauā are informed of any indigenous species management programmes and will identify opportunities for involvement of Ngāti Hauā.

## **6 STATEMENTS OF ASSOCIATION**

DOCUMENTS

6: STATEMENTS OF ASSOCIATIONS

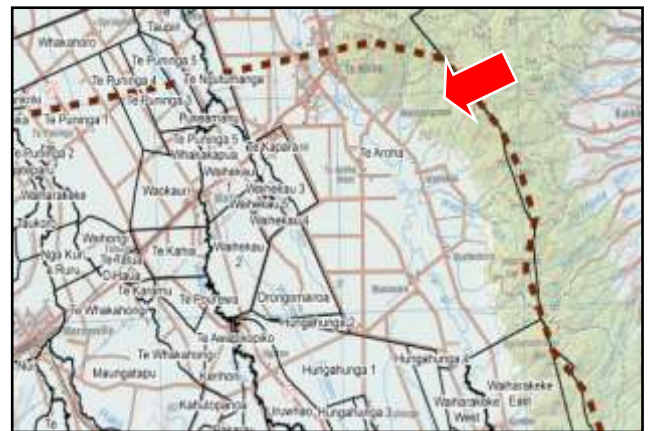
The statements of association of Ngāti Hauā are set out below. These are statements of the particular cultural, spiritual, historical, and traditional association of Ngāti Hauā with identified areas.

Waiorongomai (as shown on deed plan OTS-190-02)		
<b>Site Type</b>	Puke Tapu (Sacred hill)	<b>Ngāti Hauā association (history, significance)</b>
<b>Location</b>	South of Te Aroha, North of Old Te Aroha Road	<p>Waiorongomai is a Puke Tapu of great significance to Ngāti Hauā.</p> <p>According to Ngāti Hauā traditions, Waihoka pa was located at the base of Waiorongomai.</p> <p>Waiorongomai overlooked areas where Ngāti Hauā resided, cultivated, hunted, gathered food, and fished.</p> <p>Ngāti Hauā have continually used Waiorongomai area for eeling and other purposes right up to this present time.</p>
<b>Description of Site</b>	Being part of Kaimai Mamaku Conservation Park	
<b>Ngāti Hauā Tupuna association</b>	Te Waharoa, Te Wharenuī	
<b>Ngāti Hauā hapu association</b>	Ngāti Te Oro / Ngāti Rangi / Ngāti Tawhaki / Ngāti Werewere	
<b>Pepeha, waiata or whakatauki</b>	<p>Ka titiro au ki te rangi Ko whea tera e tu ana, Ā, ko Te Aroha o Kahu</p> <p><i>I look skyward And I am amazed by the impressive stance of the Love of Kahu</i></p> <p>(Te Aroha)</p>	

Images of Waiorongomai



Photo 1: Taken from Old Te Aroha Road, Waiorongomai



DOCUMENTS

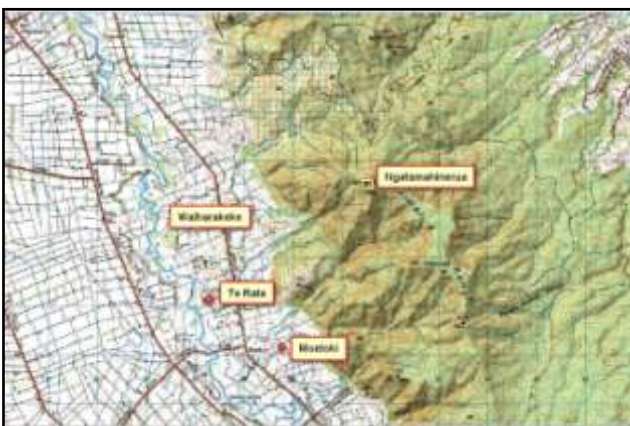
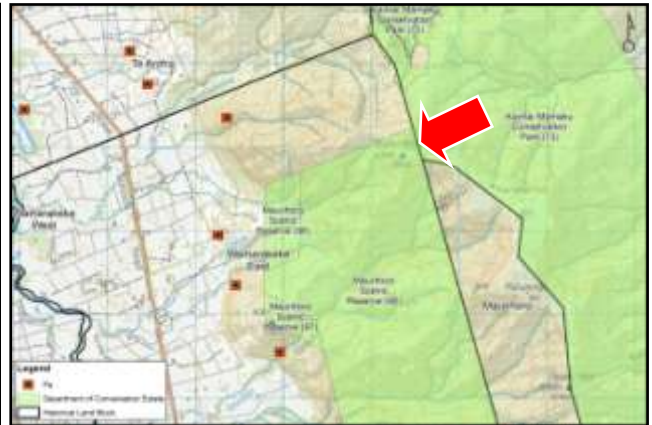
6: STATEMENTS OF ASSOCIATIONS

Nga Tamahine e Rua (as shown on deed plan OTS-190-03)		
Site Type	TeTihi Maunga (Mountain Peaks)	Ngāti Hauā association (history, significance)
Location	Part of Kaimai Mamaku Conservation Park and part of Mauihoro Scenic Reserve, Kaimai Ranges	<p>Ngā Tamahine e Rua is located in the Kaimai Ranges.</p> <p>Ngā Tamaahine e Rua overlooks the Waiharakeke area and was used as a significant marker by the Ngāti Hauā people, who had a number of settlements and cultivations in the vicinity.</p> <p>According to Ngāti Hauā traditions, Ngāti Hauā's occupation at the foot of Nga Tamahine e Rua was solidified by the cementing of peace following the battle of Taumatawiwi in 1830.</p> <p>Ngāti Hauā have always lived in the vicinity of Ngā Tamahine e Rua and have used this area for food gathering (birds), hunting and collection of rongoā. Ngāti Hauā to this day have land in Ngā Tamahine e Rua, and continue to gather food in this area.</p>
Description of Site	Nga Tamahine e Rua are two large peaks in the Kaimai Ranges.	
Ngāti Hauā Tupuna association	Te Waharoa, Wiremu Tamehana	
Ngāti Hauā hapu association	Ngāti Hauā / Ngāti Te Oro / Ngāti Rangi / Ngāti Tāwhaki	
Pepeha, waiata or whakatauki	<p><i>Ka puia taku mata ki te horowai Ki Te Wairere Ka huri atu rā ki Waiharakeke E noho ana i te taumarumarutanga O Ngā Tamaahine e Rua Ka titiro au ki te rangi, ko whea tērā e tū ana Ā, ko Te Aroha o Kahu e Katahi ka tere taku haere ki Tātuanui o Hauā</i></p> <p><i>My face has succumbed to the wondrous cascade of Te Wairere And I turn to gaze upon Waiharakeke, Which is sheltered by the envelopment of Ngā Tamaahine e Rua I look skyward And I am amazed by the impressive stance of the Love of Kahu (Te Aroha) Thenceforth I continue my journey to Te Tātua nui o Hauā</i></p>	

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6: STATEMENTS OF ASSOCIATIONS

Images of Nga Tamahine e Rua



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6: STATEMENTS OF ASSOCIATIONS

Te Wairere (as shown on deed plan OTS-190-04)		
Site Type	Horowai (waterfall) and track	Ngāti Hauā association (history, significance)
Location	Wairere Falls Scenic Reserve, and being part of Gordon Park Scenic Reserve, and part of Kaimai Mamaku Conservation Park, Kaimai Ranges	<p>The Wairere Falls is a unique landmark and provides spiritual sustenance to the Ngāti Hauā people. The source of the Wairere Falls travels from the Tauranga district and runs through the heart of the Kaimai Ranges, then flows out into the Okauia Valley and gushes into the Waihou river.</p> <p>According to the traditions of Ngāti Hauā, from ancient times Ngāti Tāwhaki, Ngāti Rangi and Ngāti Hauā maintained their rights of access to and from Omokoroa via the Wairere track which passed over the Kaimai Ranges.</p> <p>The Wairere Falls is also a site of great historical significance for the people of Ngāti Hauā. In the early contact period, the Wairere track was used to transport flax for trade over the Kaimai Ranges to the port at Tauranga.</p> <p>In the year 1836, Wairere Falls was the place where Tarore, the grand-niece of Te Waharoa, was killed by a raiding party, who were at war with Ngāti Hauā. According to Ngāti Hauā traditions, Tarore's bible was stolen from the Wairere campsite and was credited with converting her assailant, who later sought forgiveness from Tarore's father Ngākuku. Tarore's bible, "The Gospel of Luke", cemented peace with Ngāti Hauā. It was then taken to Otaki, and possibly even to the South Island, in the possession of Maori preaching the gospel of peace and reconciliation. Such was the influence of this book, "The Gospel of Luke" and the story of this young girl Tarore who died at Te Wairere.</p> <p>In August 1838 Te Waharoa was taken ill at Motu Hoa, in Tauranga. As Te Waharoa's illness grew stronger, Ngāti Hauā carried him home to Matamata, to die. According to Ngāti Hauā traditions, as they approached Wairere Falls, they stopped at a place near the river of Waitioko, which flows in the forest, between Wairere and Waipapa. Te Waharoa thence asked for a drink of Waitioko's sweet waters. Subsequently his</p>
Description of Site	The Wairere Falls is a waterfall nestled at the southern end of the Kaimai Ranges and flows down into the Waihou River	
Ngāti Hauā Tupuna association	Te Waharoa, Tamehana Te Waharoa	
Ngāti Hauā hapu association	Ngāti Hauā / Ngāti Tāwhaki / Ngāti Rangi	
Pepeha, waiata or whakatauki	<p>Wiremu Tamehana was walking through the Kaimai Ranges when he quotes the following tongikura. Upon seeing the burning fires, he knew that there was comfort, with the people living there.</p> <p><i>Kua kaimai ahau a paowa nei</i></p> <p><i>I have eaten From the smoke of the fire</i></p> <p><i>As long as I see The smoke of the burning fires It is sufficient for food</i></p>	

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6: STATEMENTS OF ASSOCIATIONS

		<p>people went to fill his calabash, and gave it to him, which revived him for a while. Te Waharoa thence declared the stream his own.</p> <p>The Wairere Falls overlooked Papa Kainga and sacred burial grounds, and is professed to be near the resting place of Te Waharoa's renowned son, Wiremu Tamehana.</p>
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6: STATEMENTS OF ASSOCIATIONS

Images of Te Wairere



Location view



Aerial view

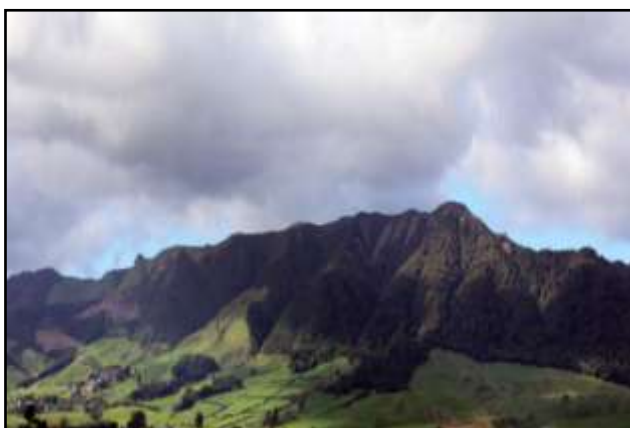


DOCUMENTS

6: STATEMENTS OF ASSOCIATIONS

Te Weraiti (as shown on deed plan OTS-190-05)		
Site Type	Puke Tapu (Sacred Hill)	Ngāti Hauā association (history, significance)
Location	Te Weraiti (Being part of Kaimai Mamaku Conservation Park), at the southern end of the Kaimai Ranges	<p>Te Weraiti is a Puke tapu of Ngāti Hauā located in the Okauia district; it is a key boundary marker used to define both the eastern and southern boundaries of Ngāti Hauā rohe.</p> <p>Te Weraiti was acknowledged as a significant landmark, viewed from Ngāti Hauā pā and kāinga in the vicinity of Te Weraiti.</p> <p>According to Ngāti Hauā tradition, Te Waharoa of Ngāti Hauā provided protection to those who resided in the areas below Te Weraiti at Waihou, Waiharakeke, Parekarewarewa and Okauia where there were mahinga kai (areas of cultivation), papa kāinga (inhabitations) and urupā (sacred burial grounds).</p> <p>Ngāti Hauā, through the hapū of Ngāti Rangi Te Oro, Ngāti Rangi, Ngāti Tāwhaki, have had a strong association with Te Weraiti.</p>
Description of Site	Te Weraiti is a hill in the Kaimai Ranges	
Ngāti Hauā Tupuna association	Te Waharoa, Tamehana Te Waharoa	
Ngāti Hauā hapu association	Ngāti Rangi / Ngāti Tāwhaki / Ngāti Te Oro	
Pepeha, waiata or whakatauki	None provided	

Images of Te Weraiti



DOCUMENTS

6: STATEMENTS OF ASSOCIATIONS

Whewells Bush Scientific Reserve (as shown on deed plan OTS-190-06)		
<b>Site Type</b>	Scientific Reserve	<b>Ngāti Hauā association (history, significance)</b>
<b>Location</b>	Tamahere	<p>The Tamahere area, where the Whewells Bush Scientific Reserve is located, is a significant cultural landscape of Ngāti Hauā.</p> <p>The Tamahere area has many wāhi tapu of great significance to Ngāti Hauā. Our ancestor Hauā was born and raised at Te Rapa Pā.</p> <p>Maniapoto Pā was situated besides Mangaone stream, which is one of the three Ngāti Hauā fortresses that is expounded in Ngāti Hauā's pepeha:</p> <p style="text-align: center;">Mai i Te Pae o Tūrāwaru Ki Te Kaweitiki Ki Maniapoto</p> <p>According to the Kaumatua of Ngāti Hauā, Maniapoto Pā was also known as a 'launching pad' for many of the warring campaigns of the Ngāti Hauā taua (warriors) during the early 1700's under the leadership of Taiporutu and Tangimoana.</p> <p>Tamahere was renowned for its rich fertile soil. The Ngāti Hauā people cultivated the land, and traded with the Auckland markets in the 1850s – 1860s.</p> <p>It was there in Tamahere where Wiremu Tamehana laid down his taiaha before his enemy of the time, as a covenant of peace between Ngāti Hauā and the Crown, which is known as Te Maungarongo o Tamehana.</p>
<b>Description of Site</b>	Bush area	
<b>Ngāti Hauā Tupuna association</b>	Te Waharoa, Tamehana Te Waharoa	
<b>Ngāti Hauā hapu association</b>	Ngāti Rangi / Ngāti Tāwhaki / Ngāti Te Oro	
<b>Pepeha, waiata or whakatauki</b>	<p>Ka hunuku atu ki Motumaoho Ka haere tonu ra taku haere ki Kirikiriroa Ka titiro ki te rāwhiti ki te maunga I whakatau atu ngā manu nui o te motu Ko wai kē Ko Maungakawa Kei raro rā Ko Tamahere Ko te wāhi i hohouhia te maungarongo Ka tū kau ake rā ko Pukemoremore Ka huri tonu atu ki Te Tikitiki o Ihingarangi</p> <p>Journeying still to Motumāoho And traversing through to Hamilton The birthplace of our ancestor, Hauā My eyes are transfixed eastward To the mountain which embraced All noblemen and dignitaries Yes indeed it was Maungakawa Below was the hallowed setting of Tamahere The place upon which the covenant of peace was humbly cemented Within the refuge of the sacred prominence of Pukemoremore</p> <p style="text-align: center;">Mai i Te Pae o Tūrāwaru Ki Te Kaweitiki (Kaweitiki) Ki Maniapoto</p> <p>From the Pae o Tūrāwaru (Waharoa) Ki te Kaweitiki (Maungakawa) Ki Maniapoto (Tamahere)</p>	

DOCUMENTS

6: STATEMENTS OF ASSOCIATIONS

Images of Whewells Bush Scientific Reserve



DOCUMENTS

6: STATEMENTS OF ASSOCIATIONS

Te Oko Horoi (as shown on deed plan OTS-190-07)		
Site Type	DOC owned Marginal Strip	Ngāti Hauā association (history, significance)
Location	Marginal Strip, Waikato River, Cambridge	<p>Kemureti is captured within the well known proverb of King Tawhiao:</p> <p><i>Ko Arekahanara taku haona kaha Ko Kemureti taku oko horoi Ko Ngaruawahia taku turangawaewae</i></p> <p><i>Alexandra will ever be a symbol of my strength Cambridge a symbol of my wash bowl of sorrow And Ngaruawahia my footstool.</i></p> <p>Te Oko Horoi is within an area of high cultural significance to Ngāti Hauā. Notable sites in the area include Tikapu, Horotiu Pa and the Pa of Taowhakaio.</p> <p>According to Ngāti Hauā traditions, Koroki lived on the south side of the Waikato River near Cambridge at Tikapu and Taowhakaio lived on the northern bank of the river.</p> <p>When Taowhakaio found Koroki visiting his wife in his absence, he vowed to cook Koroki and eat him, Koroki wasted no time addressing this insult. He called on his Waikato cousins for help and together they attacked and defeated Taowhakaio and his people.</p> <p>Through the union of Koroki and Tumataura – Haua the eponymous ancestor of Ngāti Hauā iwi is born.</p> <p>Horotiu is acknowledged as one of the Pa where Haua was raised.</p>
Description of Site	Marginal Strip situated alongside Cambridge Golf Course within the rohe of Kemureti.	
Ngāti Hauā Tupuna association	Koroki, Taowhakaio, Tumataura, Haua	
Ngāti Hauā hapu association	Ngāti Hauā whānui	
Pepeha, waiata or whakatauki	<p><i>Ko Arekahanara taku haona kaha Ko Kemureti taku oko horoi Ko Ngaruawahia taku turangawaewae</i></p> <p><i>Alexandra will ever be a symbol of my strength Cambridge a symbol of my wash bowl of sorrow And Ngaruawahia my footstool.</i></p>	

Images of Te Oko Horoi



## **7 DEEDS OF RECOGNITION**

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**A: DEED OF RECOGNITION BY THE MINISTER OF CONSERVATION AND THE  
DIRECTOR-GENERAL OF CONSERVATION**

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DOCUMENTS

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7: DEEDS OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Minister of Conservation and the Director-General of Conservation.

**1 INTRODUCTION**

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with:
  - 1.1.1 Ngāti Hauā (the **settling group**); and
  - 1.1.2 Ngāti Hauā Trust (the **governance entity**).
- 1.2 In the deed of settlement, the settling group made a statement of the settling group's particular cultural, spiritual, historical, and traditional association with the following area (the statutory area):
  - 1.2.1 Waikato River and tributaries within the Ngāti Hauā Area of Interest (as shown on deed plan OTS-190-08).
- 1.3 Those statements of association are:
  - 1.3.1 in the documents schedule to the deed of settlement; and
  - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statements of association in the [**name**] Act [**year**], being the settlement legislation that gives effect to the deed of settlement.

**2 CONSULTATION**

- 2.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning the settling group's association with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to each of the following activities (the **identified activities**):
  - 2.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977;
  - 2.2.2 preparing a national park management plan under the National Parks Act 1980;
  - 2.2.3 preparing a non-statutory plan, strategy, programme, or survey in relation to a statutory area that is not a river for any of the following purposes:
    - (a) to identify and protect wildlife or indigenous plants;
    - (b) to eradicate pests, weeds, or introduced species;



**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

- (c) to assess current and future visitor activities;
  - (d) to identify the appropriate number and type of concessions.
- 2.2.4 preparing a non-statutory plan, strategy, or programme to protect and manage a statutory area that is a river:
- 2.2.5 locating or constructing structures, signs, or tracks.
- 2.3 The Minister and the Director-General of Conservation must, when consulting the governance entity under clause 2.1, provide the governance entity with sufficient information to make informed decisions.

**3 LIMITS**

- 3.1 This deed:
  - 3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and
  - 3.1.2 does not require the Crown to undertake, increase, or resume any identified activity; and
  - 3.1.3 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
  - 3.1.4 is subject to the settlement legislation.

**4 TERMINATION**

- 4.1 This deed terminates in respect of a statutory area, or part of it, if:
  - 4.1.1 the governance entity, the Minister of Conservation, and the Director-General of Conservation agree in writing; or
  - 4.1.2 the relevant area is disposed of by the Crown; or
  - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister and/or Crown official.
- 4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into any identified activities in relation to the area with the new Minister and/or Crown official responsible for that activity.

**5 NOTICES**

- 5.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 4 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is:

DOCUMENTS

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7: DEEDS OF RECOGNITION

Conservation Services Manager  
Department of Conservation  
5 Northway Street  
Te Rapa  
PO Box 20025  
Hamilton 3241

**6 AMENDMENT**

- 6.1 This deed may be amended only by written agreement signed by the governance entity and the Minister of Conservation and the Director-General of Conservation.

**7 NO ASSIGNMENT**

- 7.1 The governance entity may not assign its rights under this deed.

**8 DEFINITIONS**

- 8.1 In this deed:

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

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated 20 December 2012 between the settling group, the governance entity, and the Crown; and

**Director-General of Conservation** has the same meaning as Director-General in section 2(1) of the Conservation Act 1987; and

**governance entity** has the meaning given to it by the deed of settlement; and

**identified activity** means each of the activities specified in clause 2.2; and

**Minister** means the Minister of Conservation; and

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

**settling group** and **Ngāti Hauā** have the meaning given to them by the deed of settlement; and

**settlement legislation** means the Act referred to in clause 1.4; and

**statement of association** means each statement of association in the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 1.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**writing** means representation in a visible form on a tangible medium (such as print on paper).

**9 INTERPRETATION**

- 9.1 The provisions of this clause apply to this deed's interpretation, unless the context requires a different interpretation.
- 9.2 Headings do not affect the interpretation.
- 9.3 A term defined by:
  - 9.3.1 this deed has that meaning; and
  - 9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, has that meanings where used in this deed.
- 9.4 All parts of speech and grammatical forms of a defined term have corresponding meanings.
- 9.5 The singular includes the plural and vice versa.
- 9.6 One gender includes the other genders.
- 9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.
- 9.8 A reference to:
  - 9.8.1 this deed or any other document means this deed or that document as amended, novated, or replaced; and
  - 9.8.2 legislation means that legislation as amended, consolidated, or substituted.
- 9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**SIGNED** as a deed on [***date***]

**SIGNED** for and on behalf of )  
**THE CROWN** by the )  
Minister of Conservation in the presence of: )

) \_\_\_\_\_

---

Signature of Witness

Witness Name:

Occupation:

Address:

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**SIGNED** by the \_\_\_\_\_ )

Director-General of Conservation \_\_\_\_\_ )

in the presence of: \_\_\_\_\_

---

Signature of Witness

Witness Name:

Occupation:

Address:

**Schedule**

**Copies of Statements of Association**

**Waikato River and tributaries within the Ngāti Hauā Area of Interest** (as shown on deed plan OTS-190-08) [To be included]

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**B: DEED OF RECOGNITION BY THE COMMISSIONER OF CROWN LANDS**

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**THIS DEED** is made by **THE CROWN** acting by the Commissioner of Crown Lands

**1. INTRODUCTION**

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with Ngāti Hauā.

**2. STATEMENT OF ASSOCIATION**

- 2.1 In the deed of settlement Ngāti Hauā made statements of its particular cultural, spiritual, historical, and traditional association with the following area (the **statutory area**):

- (a) Waikato River and tributaries within the Ngāti Hauā Area of Interest (as shown on OTS-190-08);

- 2.2 The statement of association is:

- 2.2.1 in the documents schedule to the deed of settlement, and

- 2.2.2 copied, for ease of reference, in the schedule to this deed.

- 2.3 The Crown has acknowledged the statement of association in the [**name**] Act [**year**], being the settlement legislation that gives effect to the deed of settlement.

**3. CONSULTATION**

- 3.1 The Commissioner of Crown Lands must, if undertaking an activity referred to in clause 3.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning the association of Ngāti Hauā with that statutory area as described in a statement of association.

- 3.2 Clause 3.1 applies to the following activities (the identified activities):

- 3.2.1 considering an application to the Crown for a right of use or occupation (including renewing such a right);

- 3.2.2 preparing a plan, strategy or programme for protection and management;

- 3.2.3 conducting a survey to identify the number and type of uses that may be appropriate; or

- 3.2.4 preparing a programme to eradicate noxious flora and fauna.

- 3.3 The Commissioner of Crown Lands must, when consulting the governance entity under clause 2.1:

- 3.3.1 provide the governance entity with relevant information; and

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

- 3.3.2 inform the governance entity of an application for a right of a use or occupation (including a renewal) in relation to a statutory area referred to in clause 2.3 (but the Commissioner of Crown Lands may withhold commercially sensitive information and material included within, or that relates to, that application).

**4. LIMITS**

- 4.1 This deed relates only to those parts of the statutory area owned and managed by the Crown.
- 4.2 This deed does not, in relation to a statutory area:
- 4.2.1 require the Crown to undertake, increase or resume any activity of the kind referred to in clause 3.2; or
- 4.2.2 preclude the Crown from not undertaking, or ceasing to undertake, any or all of the activities referred to in clause 3.2.
- 4.3 If this deed relates to a statutory area that is a river:
- 4.3.1 it relates only to:
- (a) the bed of that river; and
- (b) that part of the bed of the river (if any) that is:
- (i) owned by the Crown; and
- (ii) managed by the Crown;
- 4.3.2 it does not relate to:
- (a) the bed of an artificial watercourse;
- (b) land that the waters of the river do not cover at its fullest flow without overlapping its banks; or
- (c) the bed of a tributary flowing into that river; and
- 4.3.3 in determining whether the Crown manages a river for the purposes of this clause, management exercised by a local authority under the Resource Management Act 1991 is not relevant.
- 4.4 Except as provided in clause 3.1, this deed:
- 4.4.1 does not affect, and may not be taken into account by, any person exercising a power or performing a function or duty under legislation or a bylaw;
- 4.4.2 affect the lawful rights or interests of any person; or



DOCUMENTS

7: DEEDS OF RECOGNITION

4.4.3 grant, create or provide evidence of an estate or interest in, or rights relating to, a statutory area.

4.5 This deed does not prevent the Crown from entering into a deed of recognition with a person or persons other than Ngāti Hauā in relation to a statutory area.

5. TERMINATION

5.1 This deed terminates in respect of a statutory area (or part of it) if:

5.1.1 the governance entity and the Commissioner of Crown Lands agree in writing that this deed is no longer appropriate for the area concerned;

5.1.2 the area concerned is disposed of by the Crown; or

5.1.3 the Commissioner of Crown Lands ceases to be responsible for the activities referred to in clause 3.2 in relation to or within the area concerned and they are transferred to another person or official within the Crown.

5.2 If this deed terminates in relation to an area under clause 5.1.3, the Crown will take reasonable steps to ensure the governance entity continues to have input into the activities referred to in clause 3.2 in relation to or within the area concerned through negotiation with the new person or official within the Crown that is responsible for those activities.

6. AMENDMENT

6.1 This deed may be amended only by written agreement signed by the governance entity and the Commissioner of Crown Lands.

7. NO ASSIGNMENT

7.1 The governance entity may not assign its rights or obligations under this Deed.

8. INTERPRETATION

8.1 In this Deed, unless the context requires otherwise:

**Commissioner of Crown Lands** and **Commissioner** means the Commissioner of Crown Lands appointed under section 24AA of the Land Act 1948.

8.2 In this Deed, unless the context requires otherwise, the following terms have the meaning for that term given by the clause or Part of this Deed set opposite that term:

**Term**

[To be inserted]

**Defining Clause**

[To be inserted]

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**Term**

**Defining Clause**

8.3 In this deed, references to SO plans are included for the purpose of indicating the general location of a statutory area and do not establish the precise boundaries of a statutory area.

8.4 Unless the context requires otherwise:

8.4.1 terms or expressions defined in the Deed of Settlement have the same meanings in this deed; and

8.4.2 rules of interpretation in the Deed of Settlement also apply in this deed.

8.5 If there are any inconsistencies between this deed and the Deed of Settlement, the provisions of the Deed of Settlement will prevail.

**SIGNED** as a deed on \_\_\_\_\_20XX

**SIGNED** for and on behalf of **HER** )

**MAJESTY**

**THE QUEEN** by the )

Commissioner of Crown Lands )

in the presence of: ) \_\_\_\_\_

---

Signature of Witness

Witness Name:

Occupation:

Address:

**DOCUMENTS**

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**7: DEEDS OF RECOGNITION**

**Schedule**

**Copy of Statement of Association**

**Waikato River and tributaries within the Ngāti Hauā Area of Interest** (as shown on deed plan OTS-190-08) [To be included]

DOCUMENTS

## 8 STATEMENT OF SIGNIFICANCE OF MAUNGATAUTARI

Maungatautari		
Site Type	Maunga Tupuna (Ancestral Mountain)	Ngāti Hauā association (history, significance)
Location	Maungatautari Mountain Scenic Reserve, Maungatautari	<p>Maungatautari is the tupuna maunga (ancestral mountain) and a living taonga (beloved treasure) to Ngāti Hauā, who are undeniably connected to the mountain through the ancestral ties of whakapapa, which evolved in the aeons of time, when Papatūānuku was formed.</p> <p>Maungatautari is a principal mountain for Ngāti Hauā. Maungatautari was named by the tohunga (high priest) of the Tainui waka (Tainui canoe) Rakataura, from whom Ngāti Hauā descends.</p> <p>In the 1820s, as a result of inter-tribal tensions, Ngāti Hauā gave shelter to refugees from other iwi in the vicinity of Maungatautari. In 1830 tensions with those iwi gave rise to a battle on the northern side of the mountain.</p> <p>The battle was known as Taumatawiwi, and was spearheaded by the renowned Te Waharoa, who alongside the rangatira of Ngāti Rangi Te Oro and other rangatira of Ngāti Hauā, and 300 warriors, sought to reclaim their homelands.</p> <p>The campaign was fierce, with casualties on both sides. According to Ngāti Hauā traditions, during a respite in the fighting, Te Waharoa became concerned by possible corruption of his fallen warriors, and therefore had their bodies burnt on the rocks at Karāpiro. Karā meaning rock, and piro, derived from the putrid smell of the burning. Te Waharoa canvassed to cease fighting, and an agreement was reached whereby Maungatautari was re-established for Ngāti Hauā and their whanaunga.</p>
Description of Site	Maungatautari is a mountain that stands tall south of Cambridge	
Ngāti Hauā Tupuna association	Te Waharoa, Te Tiwha	
Ngāti Hauā hapu association	Ngāti Hauā whānui	
Pepeha, waiata or whakatauki	<p><i>Ko wai te maunga E tautari mai rā</i></p> <p><i>Who is that mountain That is suspended yonder?</i></p> <p><i>Kāore i ārikarika a Maungatautari, a Maungakawa ōku puke maunga ngā taonga tuku iho</i></p> <p><i>The plentiful bounties of Maungatautari and Maungakawa, the hills of my inheritance handed down unto me</i></p> <p><i>Tērā te pūkohu tairi ana mai</i></p> <p><i>Te tara ki Tautari, kia tangi atu au</i></p> <p><i>Behold the mist suspended high up yonder, On the peak of (Maunga)Tautari, which causes me to weep</i></p>	

DOCUMENTS

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8: STATEMENT OF SIGNIFICANCE

Images of Maungatautari



## 9 STATEMENT OF SIGNIFICANCE OF WAIKATO RIVER

Waikato River		
Site Type	Te Awa Tupuna (The Ancestral River)	Ngāti Hauā association (history, significance)
Location	Waikato River	<p>Waikato is our awa tapu (sacred river), our awa tupuna (ancestral river). It is our living taonga (a precious treasure) to the people of Ngāti Hauā. Ngāti Hauā is inextricably connected to the river through the ancestral ties of whakapapa which originated from the beginning of time, from the creation of the world when Ranginui (Sky Father) and Papatūānuku (Mother Earth) separated. That is when Tangaroa (Guardian of the Sea) flooded into the realm of daylight and brought nourishment to the world. This depicts the Ngāti Hauā worldview and highlights the importance of our waterways, its tributaries, and all that dwell within, to the people of Ngāti Hauā. This forms the foundation of Kaitiakitanga, which states that this taonga must be cherished and respected, and is a matter of great significance and priority, for the Ngāti Hauā people as guardians of the Waikato river.</p> <p>The Waikato river was named by the ancestors of Tainui waka, of whom Ngāti Hauā descend. There is a well-known iwi legend which recounts the river Waikato being given as a gift hailing from Ruapehu maunga, by Tongariro, to his sick relative, Taupiri.</p> <p>The Waikato River, and its region, has been populated for at least the past 700 to 800 years. The river provides physical and spiritual sustenance, and traditional healing powers for the people of Ngāti Hauā living along its catchment. The Waikato river is synonomous with mana, and Ngati Haua regard the awa as a source of mana, and an indicator of their own mauri, identity and wellbeing.</p> <p>According to Ngati Hauā the Waikato River provided nutrients that enabled lands to remain fertile, thereby allowing areas of cultivation to flourish. These fertile areas yielded water fowl to reproduce aquatic foods such as fish and tuna, with the Ngāti Hauā region being known as 'Te rohe o te Tuna' (The land that was rich in tuna) in those times, right up to this present time. The tupuna Te Oro, originator of the hapū Ngāti Te Oro, was a grandson to Hauā, and he resided at Horotiu, on the banks of the Waikato River.</p> <p>Ngāti Hauā are infinitely connected to the awa</p>
Description of Site	Waikato River is the longest river in New Zealand	
Ngāti Hauā Tupuna association	Te Waharoa, Te Tiwha	
Ngāti Hauā hapu association	Ngāti Hauā	
Pepeha, waiata or whakatauki	<p><i>Waikato taniwha rau He piko, he taniwha He piko, he taniwha</i></p> <p><i>Waikato of many taniwha (chiefs) A taniwha (chief), at every bend Indeed, a taniwha (chief), at every bend</i></p> <p><i>Tōku awa koiōra Ko ngōna pikonga He kura tangihia nō te mātaamuri</i></p> <p><i>My river of life Each curve More beautiful than the last</i></p>	

DOCUMENTS

9: STATEMENT OF SIGNIFICANCE

		through the renowned chief, Te Waharoa, and his warriors, who fought at the significant battle of Taumatawiwi, at Karāpiro, on the Waikato River. In the lull of battle Te Waharoa burnt his fallen warriors there, which is the derivation of the name Karāpiro, karā meaning rock and piro from the putrid smell of the burning bodies.
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Images of Te Awa Tupuna o Waikato



DOCUMENTS

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**10 LEASES FOR LEASEBACK PROPERTIES**



**DOCUMENTS**

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**10: LEASEBACKS**

**A: MINISTRY OF EDUCATION LEASE**

DOCUMENTS

10: LEASEBACKS

WITHOUT PREJUDICE and SUBJECT TO APPROVAL BY MINISTER

Draft as at 29 June 2012

MINISTRY OF EDUCATION  
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

[ ]	[ ]	[ ]
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Lessor

[ ]

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

**DOCUMENTS**

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**10: LEASEBACKS**

**Form F** *continued*

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and on the Terms of Lease set out in the Annexure Schedule(s)

DOCUMENTS

10: LEASEBACKS

Form F *continued*

Attestation

Signature of the Lessor

\_\_\_\_\_  
[            ]

\_\_\_\_\_  
[            ]

\_\_\_\_\_  
[            ]

\_\_\_\_\_  
[            ]

Signed in my presence by the Lessor

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

\_\_\_\_\_  
*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

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

DOCUMENTS

10: LEASEBACKS

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>
<p><b>Signature of the Lessee</b></p> <p>_____</p>	<p><b>Signed in my presence by the Lessee</b></p> <p>_____</p> <p><i>Signature of witness</i></p>

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

## DOCUMENTS

Form F *continued*

**Certified correct** for the purposes of the Land Transfer Act 1952

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

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DOCUMENTS

10: LEASEBACKS

Form F *continued*

Annexure Schedule

Page

**BACKGROUND**

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between [*insert name of claimant group*] and the Crown, under which the parties agreed to transfer the Land to [*insert name of post-settlement governance entity*] 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.

**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.

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

DOCUMENTS

10: LEASEBACKS

Form F *continued*

Annexure Schedule

Page

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***].

[ ]

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

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



DOCUMENTS

10: LEASEBACKS

Form F continued

Annexure Schedule

Page

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 6011 ("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

10: LEASEBACKS

Form F continued

Annexure Schedule

Page

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 6011 ("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.

DOCUMENTS

10: LEASEBACKS

Form F *continued*

Annexure Schedule

Page

**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.

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

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;

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

DOCUMENTS

10: LEASEBACKS

Form F *continued*

Annexure Schedule

Page

(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.

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 6.25% 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 6.25% 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:

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

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- (i) during the initial Term: a value based on **3.5%** growth per annum of the Transfer Value of the Land; or
  - (ii) for subsequent Terms: a value based on **3.5%** 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%.
- 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.
- (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.

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

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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.

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.

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

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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.

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.
- (a) 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.

13.3 Natural Disaster or Civil Defence Emergency

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



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- (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.
- 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.

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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.
- 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.

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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.

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.

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.

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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.

- 25.1 For the initial term only, the Lessee will pay a further 12 months' rent to the Lessor in addition to the 12 months specified in clause 25.1.

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
- (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.

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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.

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.

**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.

**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

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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 6011

- 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.

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10: LEASEBACKS

**[Insert as a new clause 25A in leaseback for Firth Primary/Matamata Intermediate School Site]**

25A Lessee Partial Surrender of Lease Option

25A.1 The Lessee may, in its sole and absolute discretion and without giving any reasons, partially surrender and convey to the Lessor, this Lease, as it relates to any part of the lease over the Land ("Surrender Land") by providing no less than six months' notice ("Surrender Notice") in writing at any time to the Lessor. The Lessor must accept any partial surrender of the Lease under this clause.

25A.2 A Surrender Notice issued under clause 25A.1 must clearly set out the terms and conditions of the partial surrender and must identify the Surrender Land and provide a reasonable estimate of the area of the Surrender Land ("the Surrender Land Area").

25A.3 The partial surrender will be effective from the date that is six months from the date of receipt of the Surrender Notice by the Lessor or such other later date as may be specified in the Surrender Notice ("Surrender Date").

25A.4 The residue of the Term of this Lease as it applies to the Surrender Land will merge with the Lessor's residual estate and be extinguished from the Surrender Date but without prejudice to either party's rights arising in relation to the Surrender Land before the Surrender Date.

25A.5 The adjusted Annual Rent payable under this Lease from the Surrender Date will be a pro-rated proportion of the Annual Rent payable at the date of the Surrender Notice, being the proportion that the area of the balance Land after the Surrender Land Area has been excluded ("Balance Land") bears to the total area of the Land.

25A.6 On or by the Surrender Date, the Lessee shall pay a further amount ("the Partial Surrender Payment") calculated in accordance with this clause 25A.6 to the Lessor, who agrees to accept the Partial Surrender Payment in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has been partially surrendered. The Partial Surrender Payment shall be calculated as follows:

(a) For the initial term of the Lease, in accordance with the following formula:

$$24 \text{ months' rent } \times \frac{\text{Surrender Land Area}}{\text{Total Area of the Land}}$$

(b) For any subsequent term of the Lease, in accordance with the following formula:

$$12 \text{ months' rent } \times \frac{\text{Surrender Land Area}}{\text{Total Area of the Land}}$$

25A.7 Following the issue and receipt of a Surrender Notice under clause 25A.1, the Lessor and Lessee will complete all tasks and actions necessary to give legal effect to the partial surrender, which will include, without limitation:

(a) The Lessee shall carry out a survey and re-definition of the Balance Land including obtaining all local authority consents necessary for such subdivision for leasehold purposes (as applicable).



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- (b) The Lessee shall arrange the preparation and execution of a partial surrender of lease instrument or lease instrument, to record the terms of the partial surrender and to reflect the adjusted Annual Rent.
  - (c) The Lessor shall cooperate in all respects with the tasks and actions necessary to give legal effect to the partial surrender and shall execute the partial surrender of lease instrument or lease instrument and do all acts and things necessary or desirable to implement and give full effect to the partial surrender.
- 25A.8 The parties must pay their own costs in relation to any actions or tasks required to give effect to partial surrender under this clause 25A and otherwise to give legal effect to any partial surrender. The Lessor will not be entitled to claim from the Lessee any damages or compensation arising in any way, either directly or indirectly, from any partial surrender under this clause 25A except as set out in clause 25A.6.

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**B: MINISTRY OF JUSTICE LEASE**

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(MINISTRY OF JUSTICE)

**LESSOR:**

**THE TRUSTEES OF THE**

**NGĀTI HAUĀ IWI TRUST**

Correct for the purposes of the Land

Transfer Act 1952

.....

SOLICITOR FOR THE LESSEE

**LESSEE:**

**HER MAJESTY THE QUEEN**

acting by and through the Chief

Executive of the Ministry of Justice

Particulars entered in the

Register as shown herein

on the date and at the

time endorsed below

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**MEMORANDUM OF LEASE**

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**THE CHIEF EXECUTIVE  
MINISTRY OF JUSTICE  
WELLINGTON**

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MINISTRY OF JUSTICE

LONG TERM LEASE OF BARE GROUND

FOR COURTHOUSE PURPOSES

The trustees of the Ngāti Hauā Iwi Trust (hereafter called “**the Lessor**”) being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed on Computer Freehold Register [ ----] Registry, in that piece of land situated in South Auckland Land District containing 787 square metres more or less, situated in Block VI Maungakawa Survey District being Section 2 on Survey Office Plan 59450 and being comprised and described therein, does hereby lease to **HER MAJESTY THE QUEEN** acting through the Chief Executive of the Ministry of Justice (hereafter called “**the Lessee**”) all the said land (hereafter called “**the Land**”) to be held by the Lessee as tenant for a term of three (3) years at the yearly rental of \$19,700.00 plus GST payable annually in advance on the first day of [-----] 20\_\_ in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

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

Dated this                                      day of                                      200

**SIGNED by THE TRUSTEES OF THE                                      )**  
**NGĀTI HAUĀ IWI TRUST as Lessor                                      )**

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**10: LEASEBACKS**

<b>SIGNED for and on behalf of HER</b>	)
<b>MAJESTY THE QUEEN as Lessee</b>	)
<b>by Fraser Gibbs</b>	)
(acting by and through the Chief	)
Executive of the Ministry of Justice)	)

**DOCUMENTS**

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**10: LEASEBACKS**

**SCHEDULE A**

**ITEM 1 THE LAND**

All that parcel of land being the Land previously specified.

**ITEM 2 THE COMMENCEMENT DATE**

The commencement date of this Lease shall be the first day of [ ] 20[ ].

**ITEM 3 ANNUAL RENTAL**

Nineteen thousand seven hundred dollars (\$19,700.00)

*per annum plus GST payable annually in advance on the first day of each year during the continuance of this lease with a first payment due on the day of 20\_\_.*

**ITEM 4 TERM OF LEASE**

**4.1 Initial term**

three (3) years from the Commencement Date to determination on the day of 20\_\_.

**4.2 Subsequent terms**

two (2) rights of renewal of three (3) years each from the day of 20\_\_ and each XX anniversary after that date.

**ITEM 5 LESSEE OUTGOINGS**

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

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

5.3 Rubbish collection charges.

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

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**10: LEASEBACKS**

**ITEM 6 PERMITTED USE**

- 6.1 For any Justice related purposes including (but not limited to) a courthouse and such other reasonable ancillary uses deemed necessary from time to time by the Lessee for the operation of a courthouse on the Land, or any other use which conforms with the local Code of Ordinances or District Plan applying to the premises.
- 6.2 Any secondary use for government works under the Public Works Act 1981 if a part of the land but not a significant part being more than half of the Land, is not required for Courthouse purposes. or
- 6.3 Any use of the Land or any part of the Land consented to by the Lessee as sub Lessor under clause 4.01 of this Lease where both the sub lease and the use of the Land comply with the requirements of clause 4.01.

**ITEM 7 RIGHTS OF RENEWAL**

Renewable as provided in Item 4.2 above.

**ITEM 8 RENT REVIEW DATES**

three (3) yearly from the Commencement Date of this Lease.

**ITEM 9 LESSOR'S PROPERTY**

Nil.

**ITEM 10 LESSEE'S IMPROVEMENTS**

All buildings and other improvements together with foundations, sub-soil works and services now or hereafter constructed on the Land by the Lessee or any agent or permitted occupier of the Lessee including, without limitation, the 184m<sup>2</sup> court house building, steel cage sallyport, exposed aggregate paving areas and courtyards and asphalted carpark comprising 3 parking spaces, and all fixtures, fittings and chattels therein contained.

**ITEM 11 CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE**

To: [The Lessor]  
(hereafter called "**the Lessor**")

And to: [The Lessee]  
(hereafter called "**the Lessee**")

DOCUMENTS

10: LEASEBACKS

From: [Mortgagee / Chargeholder]

(hereafter called “**the Lender**”)

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

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

SCHEDULE \*\*\*

[That parcel of land containing ]

.....

(LENDER EXECUTION)

/ / 200

ITEM 12 CLAUSE 3.04(c) CHARGEHOLDER’S NOTICE

To: [The Lessor]

(hereafter called “**the Lessor**”)

And to: [The Lessee]

(hereafter called “**the Lessee**”)



DOCUMENTS

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10: LEASEBACKS

From: [Mortgagee/Chargeholder]

(hereafter called “**the Lender**”)

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

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

**ITEM 13 ADDRESS FOR SERVICE**

Lessor: The trustees of the Ngāti Hauā Iwi Trust

[City/Town]

Attn: General Manager

Lessee: Facsimile:  
Chief Executive  
Ministry of Justice  
Level 3  
Vogel Building  
Aitken Street  
WELLINGTON (SX 10088, WELLINGTON)  
Facsimile: (04) 918 8820

DOCUMENTS

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10: LEASEBACKS

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

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

and the expression “**the Lessee**” shall include the Lessee’s agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.
- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 “**District Plan**” means a district plan within the meaning of the Resource Management Act 1991.

1.03 “**Goods and Services Tax**” or “**GST**” means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.

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10: LEASEBACKS

- 1.04** “**Government Agency**” includes any department or instrument of the Executive Government of New Zealand; and, includes:
- (a) a body corporate or corporation sole whether called a corporation sole, a corporation, commission, council, board, authority, or by any name that has been established or constituted by a public Act of Parliament and that is named in that Act;
  - (b) a body corporate or organisation that is controlled wholly by the Crown or by any department, instrument, corporate, corporation sole, or organisation;
  - (c) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
  - (d) a State enterprise within the meaning of the State-Owned Enterprises Act 1985;
- 1.05** “**Government Work**” means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.
- 1.06** “**Lease**” means, unless the context otherwise requires, this lease and any further or renewal term thereof.
- 1.07** “**Lessee’s Improvements**” shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude “Lessor’s Property”.
- 1.08** “**Lessee’s Outgoings**” means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.09** “**Lessor’s Property**” means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this Lease.
- 1.10** “**Working Day**” means a day other than:
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day or the Anniversary Day celebrated in the locality of the Premises; and

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**10: LEASEBACKS**

(b) A day in the period starting on 24 December in any year and ending on 5 January in the following year, both days included.

A Working Day shall be deemed to start at 9:00 am and finish at 5:00 pm.

**1.11 Market Value of the Land**” means the market value of the freehold interest in the Land as at the relevant rent review date, as vacant land in an unsubdivided state assessed in accordance with its then current underlying zoning or a courthouse, whichever is the greater.

**1.12 “The Land”, “The Commencement Date”, “Annual Rental”, “Term of the Lease” and “Permitted Use”** shall have the meanings ascribed to them in Schedule A.

**1.13** The term “**to sublet**” shall include the granting of a licence to occupy the Land or part thereof and “subletting” and “sublease” shall be construed accordingly.

**1.14** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.

**1.15** A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

**1.16** Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

**PART II - LESSEE’S COVENANTS**

**2.00 LESSEE’S COVENANTS**

**2.01 PAYMENT OF ANNUAL RENT**

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

**2.02 PAYMENT OF LESSEE OUTGOINGS**

(a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.

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**10: LEASEBACKS**

- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

**2.03 USE OF LAND**

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

**2.04 COMPLIANCE WITH LAW**

- (a) The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.
- (b) Without limiting the generality of the foregoing the Lessee will take all reasonable steps to maintain a current warrant of fitness in respect of any building on the Land where such warrant of fitness is required in terms of the Building Act 2004.

**2.05 AVOIDANCE OF DANGER**

The Lessee shall:

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

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**10: LEASEBACKS**

**2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS**

The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease, and in respect of buildings on the Land, will keep such buildings water tight throughout the term of the Lease.

**2.07 NO LESSOR MAINTENANCE**

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

**2.08 LESSEE'S MAINTENANCE AND REPAIR OBLIGATIONS IN RESPECT OF THE LAND**

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

**2.09 SIGNAGE**

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

**2.10 INSURANCE**

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

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**10: LEASEBACKS**

**2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS**

The Lessee acknowledges:

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

**2.12 GST**

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

**2.13 LESSEE'S ACKNOWLEDGEMENT**

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

**PART III**

**3.00 LESSOR'S COVENANTS**

**3.01 QUIET ENJOYMENT**

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

**3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS**

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land and such consent shall not be unreasonably or arbitrarily withheld.

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**10: LEASEBACKS**

**3.03 LESSOR'S PROPERTY**

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

**3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS**

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
  - (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
  - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
  - (iii) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;
- (d) That the Lessee may demolish or remove, at its own cost, any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent



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**10: LEASEBACKS**

or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

**3.05 LESSOR CONSENT TO GROUND WORKS**

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

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

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

**3.06 DESIGNATION**

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

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**10: LEASEBACKS**

**3.07 PROVISION OF CERTAIN NOTICES TO THE LESSEES**

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

**3.08 First right of refusal to purchase**

- (a) If, at any time during the term of this Lease or any renewal thereof, the Lessor shall desire to sell the Land the Lessor shall give to the Lessee notice in writing of the Lessor's intention to sell the Land, the price fixed by the Lessor for such purchase, and other terms and conditions proposed by the Lessor ('the Lessor's Notice').
- (b) The Lessor's Notice must be accompanied by a signed registered valuer's certificate substantiating the price fixed by the Lessor for such purpose, failing which the Lessor's Notice shall be null and void.
- (c) The Lessee shall have fifteen (15) Working Days from the date of receipt of the Lessor's notice within which to elect by notice in writing to the Lessor ("the Lessee's Notice") to purchase the Land at the price and on the terms and conditions specified in the Lessor's Notice.
- (d) Upon the Lessee having exercised the Lessee's option to purchase by serving the Lessee's Notice pursuant to clause 3.08 (c) the parties will be deemed to have entered into a contract for the sale and purchase of the Land on the terms of the agreement at the date of the exercise of the right then in use by the Auckland District Law Society in association with the Real Estate Institute of New Zealand.
- (e) The Lessee shall within forty (40) Working Days of receipt by the Lessor of the Lessee's Notice complete the purchase by making payment to the Lessor of the purchase price specified in the Lessor's Notice plus GST (if any) and all rent, outgoings and other amounts payable and due or accruing due under the Lease up to the date of settlement. Upon such payment being made by the Lessee to the Lessor the Lessor will transfer the Land to the Lessee for an estate in fee simple free of any mortgage, charge or encumbrance.
- (f) If the Lessee declines to elect to purchase the Land or does not give notice within the said period of fifteen (15) Working Days after receipt of the Lessor's Notice then the Lessor will be at liberty to sell the Land on the open market, PROVIDED THAT the Lessor may not offer to sell the Land to any other party at a price lower than that first offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser

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**10: LEASEBACKS**

than those specified in the Lessor's Notice without first reoffering the Land by notice in writing to the Lessee for purchase at such lower price and on such terms and conditions. In such case the Lessee shall have seven (7) Working Days after receipt of such notice in writing within which to elect to purchase the Land at such lower price or on such more favourable terms and conditions and shall complete such purchase in the manner hereinbefore provided within forty (40) Working Days of receiving the Lessor's amended notice.

- (g) The provisions of clause 3.08 (f) shall apply each time the Lessor wishes to sell the Land to any other party at a price lower than that offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser than those specified in the Lessor's Notice where such offer has been declined by the Tenant in accordance with the provisions of clause 3.08.6.
- (h) The Lessor agrees that this section 3.08 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest by way of the first right of refusal to purchase created by this section 3.08 at any time after the date of this Deed.
- (i) For the purposes of the section 3.08 the term "sale" means:
  - (i) A sale, transfer, vesting or other disposition of the Lessor's registered estate and interest in the Land;
  - (ii) The entering into by the Lessor of a superior lease in respect of the Land;
  - (iii) Where the Lessor is a company, the only asset of which is the Land (or the Land together with other Land leased to the Lessee), any change or rearrangement in the beneficial ownership of the shareholding of the Lessor having the effect of altering the effective control of the Lessor

and the word "sell" shall have a corresponding meaning.

**3.09 DISPOSAL OF LESSOR'S INTEREST**

- (a) Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided that:
  - (i) the Lessor has first complied with the provisions of clause 3.08 herein; and
  - (ii) any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and

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**10: LEASEBACKS**

(iii) for so long as the Lessee is a Government Agency the following further provisions shall apply:

(aa) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).

(ab) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:

- The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
- The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within five (5) working days of receiving the Lessor's advice pursuant to clause 3.09 (a)(iii)(aa) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

(ac) If the Lessor does not receive written notice from the Lessee pursuant to clause 3.09(a)(iii)(aa) or 3.09(a)(iii)(ab) above together with grounds to substantiate its reasonable apprehension within five (5) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.

(ad) If the Lessee objects to the proposed Assignee in accordance with clause 3.09(a)(iii)(aa) or 3.09(a)(iii)(ab) above, then the Lessor shall not dispose of its interest to the proposed Assignee.

(ae) The Lessor agrees that this section 3.09 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest in preventing the disposal of the Lessor's interest in the Land to a party to whom the Lessee has any reasonable objection in terms of clause 3.09(a)(iii)(ab) at any time after the date of this Deed. Such caveat shall ensure that any prospective purchaser of the Lessor's interest in the Land is aware of the provisions of this clause section 3.09 and shall prevent the Lessor disposing of its interest in the Land without first complying with the requirements of this section 3.09.

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**10: LEASEBACKS**

**PART IV – MUTUAL COVENANTS**

**4.00 MUTUAL COVENANTS**

**4.01 ASSIGNMENT AND SUBLETTING**

- (a) The Lessee will not without the previous consent in writing of the Lessor assign, transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee, transferee or sublessee and the proposed Use of the Land. The Lessee shall provide proof that the proposed assignee or sub-lessee, to the satisfaction of the Lessor, that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under this lease.
- (b) The Lessor will be entitled to withhold consent to any proposed assignment or sub-lease if the Lessee is in material breach of any covenant under this Lease and/or any rent or other payments payable under this Lease have not been paid.
- (c) The Lessee will pay the Lessor's reasonable legal costs as invoiced in connection with its enquiries made under this clause .
- (d) Notwithstanding subclause (a), where the Crown (as that term is defined in section 7 (1) of the Crown Entities Act 2004) remains as the Lessee under this Lease and in occupation of the Land no such consent shall be required from the Lessor except that on each occasion that a different Crown entity (as defined in section 2 of the Public Finance Act 1989) or any other Crown body or State Owned Enterprise assumes the role and obligations of the Lessee under this Lease, the Lessee shall notify the Lessor in writing of that change.
- (e) In the case of an assignment where the proposed assignee or transferee is a company, the Lessor may, where that is objectively a reasonable requirement in the circumstances, require the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form acceptable to the Lessor.
- (f) This clause 4.01 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- (g) For the purpose of this clause 4.01, any proposed change in the shareholding of the Lessee or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 4.01(f).

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- (h) For the purposes of clause 4.01(a), a proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7 (1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- (i) Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.
- (j) Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any Sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (k) Notwithstanding any rule of law to the contrary it is specifically agreed that in the event of an assignment or transfer of this Lease by Her Majesty the Queen ("**the Crown**"), the following provisions shall apply:
  - (i) in the event of an assignment or transfer during the initial Term of the Lease the liability of the Crown shall cease at the expiration date of the initial Term of the Lease or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of the initial Term of the Lease;
  - (ii) in the event of an assignment or transfer during any renewed Term of the Lease, the liability of the Crown shall cease and determine as from the expiration of that renewed term or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of such renewed term.

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**4.02 LESSOR MAY REMEDY LESSEE DEFAULT**

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.02(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

**4.03 LESSEE'S IMPROVEMENTS**

- (a) If at any time during the Term of the Lease the Lessee declares that the Lessee's Improvements is surplus to the requirements of the Crown and the Lessee decides to sell the Lessee's Improvements, then the Lessee will first give the Lessor notice in writing of the Lessee's intention to sell, the price fixed by the Lessee for such purposes, the timeframe for exercising the option to purchase and other terms and conditions proposed by the Lessee ("The Lessee's Notice"). If the Lessee does not exercise its right to purchase as specified in the Lessee's Notice, then the Lessee will be at liberty to sell the Lessee's Improvements on the open market provided the Lessee will not offer the Lessee's Improvements to any other party at a price lower than the first offered by the Lessee or more favourable terms and conditions than those specified in the Lessee's Notice.
- (b) Subject to clause 4.03(a), the parties acknowledge that:
  - (i) The Lessee not being in breach of the Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of six months from the expiration or sooner determination of the within Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to enter the Land for a period of six (6) months subsequent to the expiration of this Lease and remove Lessee's Improvements and further that this provision shall ensure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;

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- (ii) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and restore the Land to a neat, tidy and safe condition subsequent to any such removal;
- (iii) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within six months after this time and notwithstanding any rule of law or equity to the contrary;
- (iv) In any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental;
- (v) Notwithstanding the generality of the provisions of clause 4.03(b)(i), the Lessee shall not remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor, which may be given or withheld at the discretion in all things of the Lessor.
- (vi) For the avoidance of doubt, nothing herein shall obligate the Lessee to remove the property referred to in this clause 4.03 (b)(i) or clause 4.03(b)(v), should the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease;
- (vii) The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the six month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- (viii) The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall ensure for the benefit of the party entitled until completely performed;
- (ix) All Lessee's Improvements remaining upon the Land after the expiration of the six month period provided in subclause 4.03(b)(i) shall vest in and become the property of the Lessor. The Lessee's Improvements remaining on the land in accordance with this clause, shall be left in a neat and tidy condition by the Lessee. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor.

**4.04 RENEWAL**

- (a) Should the Lessee, not being in breach of its covenants under this Lease, give written notice of its intention to renew this Lease no earlier than twelve (12) months prior to the



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expiration of any term of this Lease and no later than nine (9) months prior to the expiration of any term of this Lease (time not being of the essence), then the Lessor will renew the Lease for the next further term from the renewal date as hereafter provided.

- (b) Should the Lessee fail to give written notice as provided in clause 4.04(a), then the Lessor may at any time no earlier than nine months minus one day prior to the expiration of any term of this Lease, serve written notice on the Lessee ("**the Lessor's Notice**") which specifies:
  - (i) that the Lessee is required to advise, by notice in writing, within three (3) months from the date of receipt of the Lessor's Notice, whether it elects to renew the Lease or not; and
  - (ii) that should the Lessee fail to respond to the Lessor's Notice (time being of the essence in all things), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease under clause 4.04(c).
- (c) In the event that the Lessee fails to respond to the Lessor's Notice within the time frame set out in clause 4.04(b)(i) (time being of the essence in all things), then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease.
- (d) The annual rent for the first term of any renewal shall be agreed upon or, failing agreement, shall be determined in accordance with clause 4.05 which shall apply with such modifications as may be necessary.
- (e) Otherwise, the renewed Lease shall be upon the same terms and conditions as are expressed or implied in this Lease.

**4.05 RENT REVIEW**

- (a) The Annual Rental shall be reviewed by the Lessor at intervals of three years as follows:
  - (i) the Lessor shall commence a review by not earlier than three (3) months prior to a review date or at any time up to one year after any review date (time being of the essence) by giving written notice to the Lessee specifying the Annual Rental considered by the Lessor to be the current rent of the Land which shall be equal to six and a quarter percent (6.25%) of the Market Value of the Land as at that review date;
  - (ii) if, by written notice to the Lessor within twenty-eight (28) days after receipt of the Lessor's notice, the Lessee disputes that the proposed new Annual Rental is as

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aforesaid, then the new rental shall be determined in accordance with the provisions of clause 4.05(b);

- (iii) the Annual Rental so determined or accepted shall be the Annual Rental from the review date or the date of the Lessor's notice if such notice is given later than three (3) months after the review date;
  - (iv) pending the determination of the new rental, the Lessee shall pay the rental specified in the Lessor's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the new rental, an appropriate adjustment shall be made;
  - (v) the rent review at the option of either party may be recorded in a variation of this Lease, the cost of which thereon shall be payable by the Lessee.
- (b) Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the Market Value of the Land but if agreement is not reached within twenty-eight (28) days then the same may be determined either:
- (i) by one party giving written notice to the other requiring the Market Value of the Land to be determined by arbitration; or
  - (ii) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
    - (aa) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to so determine the new rental;
    - (bb) the valuers appointed before commencing their determination shall appoint an Umpire who shall be a registered valuer or Solicitor of the High Court. In the event the valuers fail to agree upon an Umpire, the appointment of an Umpire shall be made by the President of the Arbitrator's Institute of New Zealand Incorporated on the joint application of the valuers;
    - (cc) the valuers shall determine the Market Value of the Land and if they fail to agree then the same shall be determined by the Umpire;
    - (dd) each party shall be given the opportunity to make written or verbal representations to the valuers or the Umpire subject to such reasonable time and other limits as the valuers or the Umpire may prescribe and they shall have regard to any such representations but not be bound thereby.

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When the rent (which shall be an amount equal to 6.25% of the Market Value of the Land) has been determined, the Umpire or the valuers shall give written notice thereof to the parties. Any Umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the rental is determined by the parties' valuers and not the Umpire, the parties shall pay their own costs.

- (c) Notwithstanding the foregoing, the parties agree the reviewed rent shall never be less than the rental fixed at the Commencement Date of the initial term of this Lease, namely the Annual Rental of \$19,700.00 plus GST.

4.06 RE-ENTRY

- (a) The Lessor may re-enter the Land where:
  - (i) rental is in arrears for a period exceeding thirty (30) days after any rent payment date;
  - (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
  - (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
  - (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.

- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The Default Notice notwithstanding anything to the contrary contained in clause 4.07(a) above shall specify that:

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- (i) the Lessee must within 30 days of receipt of such notice remedy the default specified; and
- (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.07.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.07(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.07(b) shall be null and void ab initio.

**4.07 INSURANCE**

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

**4.08 RATING ASSESSMENTS**

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

**4.09 ENTIRE AGREEMENT**

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

**4.10 DIFFERENCES AND DISPUTES**

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.

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- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the District Law Society of the District within which the Land is situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clauses 4.06 and 4.07 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(b)(ii).

**4.11 SERVICE OF NOTICES**

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party by registered post addressed to the registered office or principal place of business of the party intended to be served; and any notice or other document given or served shall be deemed to have been given or served and received by the other party two days after the date of posting.

**4.12 REGISTRATION OF LEASE**

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

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4.13 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

4.14 INTEREST

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

4.15 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

- (a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;

- (b) ***Assignment and Sub Leasing:***

The provisions dealing with assignment and sub leasing; or

- (c) ***Use of Land:***

The provisions restricting the use of the Land.

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**4.16 WAIVER**

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

**4.17 RENT MORATORIUM**

If any moratorium or other law, act or regulation that (notwithstanding clause 4.05 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

**4.18 ARTEFACTS OR FOSSILS**

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.