

NGAI TĀMANUHIRI
and
TRUSTEES OF THE TĀMANUHIRI TUTU POROPORO TRUST
and
THE CROWN

DEED OF SETTLEMENT SCHEDULE:
PROPERTY REDRESS

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TABLE OF CONTENTS

1 DISCLOSURE INFORMATION AND WARRANTY1

2 VESTING OF CULTURAL REDRESS PROPERTIES3

3 COMMERCIAL REDRESS PROPERTIES.....4

4 DEFERRED SELECTION PROPERTIES6

5 DEFERRED PURCHASE7

6 TERMS OF TRANSFER FOR COMMERCIAL REDRESS AND
PURCHASED DEFERRED SELECTION PROPERTIES.....19

7 NOTICE IN RELATION TO REDRESS AND DEFERRED
SELECTION PROPERTIES.....30

8 DEFINITIONS31

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PROPERTY REDRESS

1 DISCLOSURE INFORMATION AND WARRANTY

1 DISCLOSURE INFORMATION AND WARRANTY

DISCLOSURE INFORMATION

1.1 The Crown –

1.1.1 has provided information to the mandated negotiators about –

- (a) the cultural redress properties, by Office of Treaty Settlements (Jane Fletcher) to Dawn Pomana on 9 December 2010; and
- (b) the commercial redress properties, by Office of Treaty Settlements (Jane Fletcher) to Dawn Pomana on 15 December 2010; and
- (c) the commercial redress properties, by Office of Treaty Settlements (Clinton Geeves) to Nathan Milner of Kahui Legal on 2 and 3 March 2011; and

1.1.2 must under paragraph 5.3.1 provide information to the governance entity about a deferred selection property if the governance entity has, in accordance with part 5, given the Crown notice of interest in purchasing the property.

WARRANTY

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

1.2.1 **acquired property** means –

- (a) each redress property; and
- (b) each purchased deferred selection property; and

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

1.3 The Crown warrants to the governance entity that the Crown has given to the governance entity in its disclosure information about an acquired property all material information that, to the best of the land holding agency's knowledge, is in the agency's records about the property (including its encumbrances), at the date of providing that information, –

1.3.1 having inspected the agency's records; but

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

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

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PROPERTY REDRESS

1 DISCLOSURE INFORMATION AND WARRANTY

WARRANTY LIMITS

- 1.4 Other than under paragraph 1.3, the Crown does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to –
- 1.4.1 an acquired property, including in relation to –
- (a) its state, condition, fitness for use, occupation, or management; or
 - (b) its compliance with –
 - (i) legislation, including bylaws; or
 - (ii) any enforcement or other notice, requisition, or proceedings; or
- 1.4.2 the disclosure information about an acquired property, including in relation to its completeness or accuracy.
- 1.5 The Crown has no liability in relation to the state or condition of an acquired property, except for any liability arising as a result of a breach of paragraph 1.3.

INSPECTION

- 1.6 In paragraph 1.7, **relevant date** means, in relation to an acquired property that is –
- 1.6.1 a redress property, the date of this deed; and
- 1.6.2 a purchased deferred selection property, the day on which the governance entity gives an election notice electing to purchase the property.
- 1.7 Although the Crown is not giving any representation or warranty in relation to an acquired property, other than under paragraph 1.3, the governance entity acknowledges that it could, before the relevant date, –
- 1.7.1 inspect the property and determine its state and condition; and
- 1.7.2 consider the disclosure information in relation to it.

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PROPERTY REDRESS

2 VESTING OF CULTURAL REDRESS PROPERTIES

2 VESTING OF CULTURAL REDRESS PROPERTIES

SAME MANAGEMENT REGIME AND CONDITION

- 2.1 Until the settlement date, the Crown must –
- 2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and
 - 2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed.
- 2.2 Paragraph 2.1 does not –
- 2.2.1 apply to a cultural redress property that is not managed and administered by the Crown; or
 - 2.2.2 require the Crown to restore or repair a cultural redress property damaged by an event beyond the Crown's control.

ACCESS

- 2.3 The Crown is not required to enable access to a cultural redress property for the governance entity or members of Ngai Tāmanuhiri.

COMPLETION OF DOCUMENTATION

- 2.4 Any documentation, required by the settlement documentation to be signed by the governance entity in relation to the vesting of a cultural redress property, must, on or before the settlement date, be –
- 2.4.1 provided by the Crown to the governance entity no later than 10 business days before the settlement date; and
 - 2.4.2 duly signed and returned by the governance entity.

SURVEY AND REGISTRATION

- 2.5 The Crown must arrange, and pay for –
- 2.5.1 the preparation, approval, and where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a computer freehold register for the property; and
 - 2.5.2 the registration on the computer freehold register for each cultural redress property of its vesting in the governance entity under the settlement legislation.

PROPERTY REDRESS

3 COMMERCIAL REDRESS PROPERTIES

3 COMMERCIAL REDRESS PROPERTIES

Address	Description	Encumbrances
Licensed land		
Wharerata Forest	<p>Gisborne Land District – Gisborne District</p> <p>6141.6700 hectares, more or less, being Lot 1 DP 6508, Lots 1 and 2 DP 8023, Lots 1, 2, 3, 4, 5 and 6 DP 8024, and Lot 1 DP 8025. All Computer Freehold Registers GS2D/1325, GS2D/1335, GS2D/1343, GS2A/281, GS3A/630, GS4A/205, GS5A/128, GS5A/263, GS6A/807, GN 185108.1, GN 185108.2, GN 88188, GN 107894, GN 107896, GN 126783.1, GN 139156.1, and Transfer Document 75443. Balance Computer Freehold Register GS4D/852.</p> <p>Hawke’s Bay Land District – Hawke’s Bay District</p> <p>1870.0316 hectares, more or less, being Lot 1 DP 16752, Lots 1, 2 and 3 DP 17644. Lots 1, 2 and 3 DP 21823, Lot 1 DP 22121. All Computer Freehold Register HBK2/904, HBK2/905, HBK2/906, and HBH4/1019, All GN 540463.1, GN 540464.1, and GN 540462.1. Balance Computer Freehold Registers HBK1/473 and HBG2/1360, Part Computer Freehold Register HB4/39.</p>	<p>Subject to the Crown forestry licence held in computer interest register GS6A/6 (varied by 5166007.1).</p> <p>Subject to the protective covenant certificate held in computer interest register GS6A/7.</p> <p>Subject to the public access easement certificate held in computer interest register GS6A/8.</p> <p>Subject to the right of way marked A on DP 6508 created by transfer easement instrument 165194.1.</p> <p>Subject to the right of way on MLC Plan 1938 for access of Puninga No.7.</p> <p>Subject to the right of way in gross in favour of The Gisborne City Council created by transfer easement instrument 115891.2.</p> <p>Subject to the Crown forestry licence (577743.3) held in computer interest register HBP1/1406.</p> <p>Subject to the protective covenant certificate created by easement instrument 581749.1.</p> <p>Subject to certificate pursuant to Section 308 Local Government Act 1974 created by easement instrument 405842.6.</p> <p>Subject to Wharerata walkway shown V, W, X and Y on DP 8024 and A, B and C on DP 22121 (Walking Access Act 2008).</p> <p>Subject to a right of way (in favour of Kiwi Rail) shown as Railway Road over Part Lot 1 DP 8024. To be created.</p> <p>Together with a right of way over A to Q on LT 22215 and A and B on DP 8026. To be created.</p>

PROPERTY REDRESS

3 COMMERCIAL REDRESS PROPERTIES

1858 Waingake Road, Waingake		
1858 Waingake Road, Waingake	Gisborne Land District – Gisborne District	
	0.7528 hectares, more or less, being Part Lot 2 DP 2280. All Computer Freehold Register 138198	

PROPERTY REDRESS

4 DEFERRED SELECTION PROPERTIES

4 DEFERRED SELECTION PROPERTIES

Property Name	Legal Description Gisborne Land District - Gisborne District	Address	Leaseback Property	Land Holding Agency
Muriwai School DSP site	1.6100 hectares, approximately, being Part Lot 1 DP 3561. Part Computer Freehold Register GS2A/870. Subject to survey. *	1684 Wharerata Road, Muriwai	Yes	Ministry of Education
LINZ property # 11306	1097.1885 hectares, more or less, being Section 1 SO 8542. All Computer Freehold Register GS6A/808.	Mangapahi Road, Mangapoike	No	LINZ

* Description subject to clauses 6.20 and 6.21

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PROPERTY REDRESS

5 DEFERRED PURCHASE

5 DEFERRED PURCHASE

A RIGHT OF PURCHASE

NOTICE OF INTEREST

- 5.1 The governance entity may, for two years after the settlement date, give the Crown a written notice of interest in purchasing a deferred selection property.
- 5.2 The governance entity may only give the Crown a notice of interest in purchasing LINZ property # 11306 under paragraph 5.1 if the notice –
- 5.2.1 nominates an entity (which may be the governance entity) to take title to the property; and
- 5.2.2 contains evidence satisfactory to the Crown that the other Wharerata claimants agree to the nominated entity taking title to the property.

EFFECT OF NOTICE OF INTEREST

- 5.3 If the governance entity gives, in accordance with this part, a notice of interest in a deferred selection property –
- 5.3.1 the Crown must, not later than 10 business days after the notification date, give the governance entity all material information that, to the best of its knowledge, is in its records about the property, including its encumbrances; and
- 5.3.2 the property's market value must be determined in accordance with subpart B.

ELECTION TO PURCHASE

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

EFFECT OF ELECTION TO PURCHASE

- 5.5 If the governance entity gives an election notice electing to purchase a deferred selection property in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the property at its market value determined under this part, plus GST if any, on the terms in part 6 and under which –
- 5.5.1 on the DSP settlement date –

CTG 7

PROPERTY REDRESS

5 DEFERRED PURCHASE

- (a) the Crown must transfer the property to –
 - (i) the governance entity if the property is the Muriwai School DSP site; and
 - (ii) the nominated entity if the property is LINZ property #11306; and
- (b) the governance entity must pay to the Crown an amount equal to the market value of the property determined under this part, plus GST if any, by –
 - (i) bank cheque drawn on a registered bank and payable to the Crown; or
 - (ii) another payment method agreed by the parties; and

5.5.2 if the property is the Muriwai School DSP site, the parties must, by or on the DSP settlement date, sign the lease for the Muriwai School DSP site (being a registrable ground lease for the property) –

- (a) commencing on the actual DSP settlement date; and
- (b) at an initial annual rent determined by multiplying the market value of the property, which will be determined under this part and in accordance with clause 3.2 of the lease for the Muriwai School DSP site, by the percentage specified in clause 3.1(a) of schedule B of the lease for the Muriwai School DSP site to the Ministry of Education (exclusive of GST), if any, on the amount so determined); and
- (c) on the terms provided in part 3 of the documents schedule.

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PROPERTY REDRESS

5 DEFERRED PURCHASE

B DETERMINING THE MARKET VALUE

APPLICATION OF THIS SUBPART

- 5.6 This subpart provides how the market value of a deferred selection property is to be determined after the governance entity has given, in accordance with this part, a notice of interest in the property.
- 5.7 The market value is to be determined as at the notification date.

APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

- 5.8 The parties must, not later than 10 business days after the notification date –
- 5.8.1 each –
- (a) instruct a valuer using the form of instructions in the appendix; and
 - (b) give written notice to the other of the valuer instructed; and
- 5.8.2 agree upon and jointly appoint one person to act as the valuation arbitrator.
- 5.9 If the parties do not jointly appoint a valuation arbitrator in accordance with paragraph 5.8.2, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.

QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

- 5.10 Each valuer must be a registered valuer.
- 5.11 The valuation arbitrator –
- 5.11.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties; and
- 5.11.2 is appointed when he or she confirms his or her willingness to act.

VALUATION REPORTS

- 5.12 Each valuer must, not later than 50 business days after the notification date, –
- 5.12.1 prepare a draft valuation report in accordance with the valuation instructions; and
- 5.12.2 provide a copy of his or her final valuation report to –
- (a) in respect of –

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PROPERTY REDRESS

5 DEFERRED PURCHASE

- (i) LINZ property #11306, each party; and
- (ii) the Muriwai School DSP site, the party for whom that valuer prepared the valuation report; and

(b) the other valuer.

5.12A Each party must, not later than two business days after receiving its valuation report for the Muriwai School DSP site under paragraph 5.12.2(a)(ii), provide a copy of that valuation report to the other party.

MARKET VALUE

5.13 If only one valuation report is delivered under paragraph 5.12 for LINZ property #11306 or paragraph 5.12A for the Muriwai School DSP site by the required date, the market value of the property is as assessed in the report.

5.14 If both valuation reports are delivered under paragraph 5.12 for LINZ property #11306 or paragraph 5.12A for the Muriwai School DSP site by the required date, –

5.14.1 the parties must endeavour to agree in writing the market value of the property; and

5.14.2 either party may, if the market value of the property is not agreed in writing within 70 business days after the notification date, refer that matter to the determination of the valuation arbitrator.

VALUATION ARBITRATION

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

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

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

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

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

(a) each valuer; and

(b) any other person giving evidence.

5.16 Each party must –

GTG 10/01

PROPERTY REDRESS

5 DEFERRED PURCHASE

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

- (a) its valuation report; and
- (b) its submission; and
- (c) any sales or expert evidence that it will present at the meeting; and

5.16.2 attend the arbitration meeting with its valuer.

5.17 The valuation arbitrator must –

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

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

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

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

MARKET VALUE

5.19 The market value of the property for the purposes of paragraph 5.5.1(b) is the market value –

5.19.1 determined under paragraph 5.13; or

5.19.2 agreed under paragraph 5.14.1; or

5.19.3 determined by the valuation arbitrator under paragraph 5.17.2.

5.19A As specified in the valuation instructions, the "market value" of the Muriwai School DSP site for the purposes of clause 5.5.1(b) is 80% of the actual market value of that property.

11/12

PROPERTY REDRESS

5 DEFERRED PURCHASE

C GENERAL PROVISIONS

TIME LIMITS

- 5.20 Time is of the essence for the time limits in paragraphs 5.1 and 5.4.
- 5.21 In relation to the time limits in this part, other than those referred to in paragraph 5.20, each party must use reasonable endeavours to ensure –
- 5.21.1 those time limits are met and delays are minimised; and
 - 5.21.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

DETERMINATION FINAL AND BINDING

- 5.22 The determination of a deferred selection property's market value under this part is final and binding.

COSTS

- 5.23 In relation to the determination of the market value of a property, each party must pay –
- 5.23.1 its costs; and
 - 5.23.2 half the costs of a valuation arbitration; or
 - 5.23.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

ENDING OF OBLIGATIONS

- 5.24 The Crown's obligations under this deed in relation to a deferred selection property immediately cease if –
- 5.24.1 the governance entity –
 - (a) does not give notice of interest in relation to the property in accordance with paragraph 5.1; or
 - (b) gives notice of interest in relation to the property in accordance with paragraph 5.1 but the governance entity –

CTG 12/05

PROPERTY REDRESS

5 DEFERRED PURCHASE

- (i) gives an election notice under which it elects not to purchase the property; or
- (ii) does not give an election notice in accordance with paragraph 5.4 electing to purchase the property; or
- (c) gives the Crown written notice that it is not interested in purchasing the property at any time before an agreement for the sale and purchase of the property is constituted under paragraph 5.5; or
- (d) does not comply with any obligation in relation to the property under subpart B; or

5.24.2 an agreement for the sale and purchase of the property is constituted under paragraph 5.5 and the agreement is cancelled in accordance with the terms of transfer in part 6.

PROPERTY REDRESS

5 DEFERRED PURCHASE

APPENDIX

[Valuer's name]

[Address]

Valuation instructions

INTRODUCTION

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

This right is given by part 5 of the property redress schedule to the deed of settlement (part 5).

PROPERTY TO BE VALUED

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

[describe the property including its legal description]

[MURIWAI SCHOOL DSP SITE TO BE LEASED BACK

If the governance entity purchases the Muriwai School DSP site from the Crown, the governance entity will lease the property back to the Crown on the terms provided by the lease for the Muriwai School DSP site in part 3 of the documents schedule to the deed of settlement (the agreed lease).

The Crown will not transfer any improvements to the governance entity, but will continue to own those improvements, or they will continue to be owned by any third party.

The lease of the Muriwai School DSP site by the governance entity to the Crown will, therefore, be of land.]

DEED OF SETTLEMENT

A copy of the deed of settlement is enclosed.

Your attention is drawn to –

- (a) part 5 of the deed[; and
- (b) the agreed lease for the Muriwai School DSP site in part 3 of the documents schedule to the deed.]

All references in this letter to subparts or paragraphs are to subparts or paragraphs of part 5.

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

Subpart B of part 5 applies to the valuation of a deferred selection property.

PROPERTY REDRESS

5 DEFERRED PURCHASE

ASSESSMENT OF MARKET VALUE REQUIRED

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

[As the Crown or any third party is to retain ownership of improvements, the market value of the Muriwai School DSP site is to be the market value of its land only. Improvements are to be disregarded.]

The market value is to be established on the same basis as under the agreed lease for the purposes of determining rent on review.]

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

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

- (a) by agreement between the parties; or
- (b) by arbitration.

The market value of the property so determined (plus GST if any) ~~[less 20 percent]~~ **[Delete for LINZ property]** will be the price at which the governance entity may elect to purchase the property under part 5.

VALUATION PROCESS

You must –

- (a) before inspecting the property, agree with the other valuer –
 - (i) the valuation method applicable to the property; and
 - (ii) the comparable sales to be used in determining the value of the property; and
- (b) inspect the property together with the valuer appointed by the other party; and
- (c) attempt to resolve by the following day any matters or issues arising from your inspections; and
- (d) by not later than 30 business days after the valuation date, prepare, and deliver to us, a draft valuation report; and
- (e) by not later than 50 business days after the valuation date –
 - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) deliver a copy of your final valuation report to –
 - A. in respect of the Muriwai School DSP site, the party for whom you have prepared the valuation report; or

PROPERTY REDRESS

5 DEFERRED PURCHASE

- B. in respect of LINZ property #11306, both parties,
and the valuer instructed by the other party; and
- (f) participate in any arbitration process required under subpart B to determine the market value of the property.

REQUIREMENTS FOR YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

- (a) the property is a current asset and was available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

- (a) to assess market value on the basis of market value as defined in the International Valuation Standards contained in the current edition of the Australia and New Zealand Valuation and Property Standards; and
- (b) to take into account –
- (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and
 - (ii) the terms of the agreed lease;] **[delete for LINZ property]** and
 - (iii) the attached disclosure information about the property that has been given by the land holding agency to the governance entity, including the disclosed encumbrances; and
 - (iv) the terms of transfer in part 6 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property by the governance entity); but
- (c) not to take into account a claim in relation to the property by or on behalf of Ngai Tāmanuhiri.

REQUIREMENTS FOR YOUR VALUATION REPORT

We require a full valuation report in accordance with the current edition of the Australia and New Zealand Valuation and Property Standards, including –

- (a) an executive summary containing a summary of –
- (i) the valuation; and
 - (ii) the key valuation parameters; and
 - (iii) the key variables affecting value; and

PROPERTY REDRESS

5 DEFERRED PURCHASE

- (b) a detailed description, and a clear statement, of –
 - (i) the land value; [and
 - (ii) the value of [the Crown-owned] improvements;] **[delete for the Muriwai School DSP site]**
- (c) a clear statement as to any impact of the disclosed encumbrances[; and the agreed lease]; and
- (d) details of your assessment of the highest and best use of the property; and
- (e) comment on the rationale of likely purchasers of the property; and
- (f) a clear identification of the key variables which have a material impact on the valuation; and
- (g) full details of the valuation method; and
- (h) appendices setting out –
 - (i) a statement of the valuation methodology and policies; and
 - (ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation, and other relevant standards, insofar as they are consistent with subpart B.

You may obtain specialist advice, such as engineering or planning advice.

ACCEPTANCE OF THESE INSTRUCTIONS

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

- (a) 30 business days after the valuation date, to prepare and deliver to us a draft valuation report; and
- (b) 50 business days after the valuation date, to –
 - (i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and
 - (ii) deliver a copy of your final valuation report to –
 - A. in respect of the Muriwai School DSP site, the party for whom you have prepared the valuation report; or
 - B. in respect of LINZ property #11306, both parties, and the valuer instructed by the other party.

CTG 17/10

PROPERTY REDRESS

5 DEFERRED PURCHASE

OPEN AND TRANSPARENT VALUATION

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

In particular, you must copy any questions you have or receive with regard to the valuation, together with the responses, to the governance entity and the land holding agency.

Yours faithfully

[Name of signatory]

[Position]

[Governance entity/Land holding agency][delete one]

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PROPERTY REDRESS

6: TERMS OF TRANSFER

6 TERMS OF TRANSFER FOR COMMERCIAL REDRESS AND PURCHASED DEFERRED SELECTION PROPERTIES

APPLICATION OF THIS SUBPART

- 6.1 This part applies to the transfer by the Crown to the governance entity or the nominated entity of each of the following properties (a **transfer property**):
- 6.1.1 each commercial redress property under clause 6.10 except that paragraphs 6.9, 6.19.5, 6.20.2, 6.20.3, 6.25 to 6.34 and 6.45 to 6.48 do not apply to 1858 Waingake Road; and
- 6.1.2 each purchased deferred selection property, under paragraph 5.5.1.

TRANSFER

- 6.2 The Crown must transfer the fee simple estate in a transfer property to the governance entity or the nominated entity –
- 6.2.1 subject to, and where applicable with the benefit of, –
- (a) the disclosed encumbrances affecting or benefiting the property (as they may be varied by a non-material variation, or a material variation entered into under paragraph 6.19.4(a)); and
- (b) any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 6.19.4(b);
- 6.2.2 if the property is the Muriwai School DSP site, subject to the lease for the Muriwai School DSP site.
- 6.3 The Crown must pay any survey and registration costs required to transfer the fee simple estate in a transfer property to the governance entity.

POSSESSION

- 6.4 Possession of a transfer property must, on the TSP settlement date for the property, –
- 6.4.1 be given by the Crown; and
- 6.4.2 taken by the governance entity or the nominated entity; and
- 6.4.3 be vacant possession subject only to –

PROPERTY REDRESS

6: TERMS OF TRANSFER

- (a) any encumbrances referred to in paragraph 6.2.1 that prevent vacant possession being given and taken; and
- (b) if the property is the Muriwai School DSP site, the lease for the Muriwai School DSP site.

SETTLEMENT

6.5 Subject to paragraphs 6.6 and 6.41.3, the Crown must provide the governance entity with the following in relation to a transfer property on the TSP settlement date for that property:

6.5.1 evidence of –

- (a) a registrable transfer instrument; and
- (b) any other registrable instrument required by this deed in relation to the property:

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

6.6 If the fee simple estate in the transfer property may be transferred to the governance entity or the nominated entity electronically under the relevant legislation, –

6.6.1 paragraph 6.5.1 does not apply; and

6.6.2 the Crown must ensure its solicitor, –

- (a) a reasonable time before the TSP settlement date for the property, –
 - (i) creates a Landonline workspace for the transfer to the governance entity or the nominated entity of the fee simple estate in the property; and
 - (ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the transfer instrument, and all other instruments, necessary, to effect the transfer electronically (the **electronic transfer instruments**); and
- (b) on the TSP settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation; and

6.6.3 the governance entity must ensure its solicitor, a reasonable time before the TSP settlement date, certifies and signs the transfer instrument for the

PROPERTY REDRESS

6: TERMS OF TRANSFER

property prepared in the Landonline workspace under paragraph 6.6.2(a)(ii);
and

6.6.4 paragraphs 6.6.2 and 6.6.3 are subject to paragraph 6.41.3.

6.7 The **relevant legislation** for the purposes of paragraph 6.6 is –

6.7.1 the Land Transfer Act 1952; and

6.7.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

6.8 The Crown must, on the actual TSP settlement date for a transfer property, provide the governance entity with any key or electronic opener to a gate or door on, and any security code to an alarm for, the property that are held by the Crown unless –

6.8.1 the property is the Muriwai School DSP site; and

6.8.2 to provide it would be inconsistent with the lease for the Muriwai School DSP site.

6.9 The transfer value of, or the amount payable by the governance entity for, a transfer property is not affected by –

6.9.1 a non-material variation, or a material variation entered into under paragraph 6.19.4(a), of a disclosed encumbrance affecting or benefiting the property; or

6.9.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 6.19.4(b).

APPORTIONMENT OF OUTGOINGS AND INCOMINGS

6.10 If, as at the actual TSP settlement date for a transfer property, –

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

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

6.11 The outgoings for a transfer property for the purposes of paragraph 6.10 do not include insurance premiums and the governance entity is not required to take over from the Crown any contract of insurance in relation to the property.

PROPERTY REDRESS

6: TERMS OF TRANSFER

- 6.12 The incomings for the licensed land for the purposes of paragraph 6.10 do not include licence fees under the Crown forestry licence.
- 6.13 An amount payable under paragraph 6.10 in relation to a transfer property must be paid on the actual TSP settlement date for the property.
- 6.14 The Crown must, before the actual TSP settlement date for a transfer property, provide the governance entity with a written statement calculating the amount payable by the governance entity or the Crown under paragraph 6.10.

FIXTURES, FITTINGS, AND CHATTELS

- 6.15 The transfer of a transfer property includes all fixtures and fittings that were owned by Crown, and located on the property, on the first date of the transfer period for that property.
- 6.16 Paragraph 6.15 does not apply to the Lessee's improvements located on the Muriwai School DSP site.
- 6.17 Fixtures and fittings transferred under paragraph 6.15 must not be mortgaged or charged.
- 6.18 The transfer of a transfer property does not include chattels.

OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD

- 6.19 The Crown must, during the transfer period for a transfer property, –
- 6.19.1 ensure the property is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
- 6.19.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the property, except where those charges are payable by a tenant or occupier to the supplier; and
- 6.19.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the property during the period –
- (a) by the Crown; or
- (b) with the Crown's written authority; and
- 6.19.4 obtain the prior written consent of the governance entity before –
- (a) materially varying a disclosed encumbrance affecting or benefiting the property; or

PROPERTY REDRESS

6: TERMS OF TRANSFER

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

6.19.5 use reasonable endeavours to obtain permission for the governance entity to enter and inspect the property under paragraph 6.20.2 if the governance entity is prevented from doing so by the terms of an encumbrance referred to in paragraph 6.2, but

in the case of the Muriwai School DSP site, these obligations are modified to the extent necessary to ensure they do not add to, or vary, the obligations of the Crown under the lease for the Muriwai School DSP site as if it applied during the transfer period.

6.20 The governance entity, during the transfer period in relation to a transfer property, –

6.20.1 must not unreasonably withhold or delay any consent sought under paragraph 6.19.4 in relation to the property; and

6.20.2 may enter and inspect the property on one occasion –

- (a) after giving reasonable notice; and
- (b) subject to the terms of the encumbrances referred to in paragraph 6.2; and

6.20.3 must comply with all reasonable conditions imposed by the Crown in relation to entering and inspecting the property.

PRE-TRANSFER OBLIGATIONS AND RIGHTS IN RELATION TO LICENSED LAND

6.21 During the transfer period for the licensed land, the Crown –

6.21.1 must prudently manage the licensor's rights under the Crown forestry licence in relation to the licensed land; and

6.21.2 in reviewing the licence fee under the Crown forestry licence must ensure that, so far as reasonably practicable, the governance entity's interests as licensor after the settlement date are not prejudiced; and

6.21.3 must provide the governance entity with all material information, and must have regard to the governance entity's written submissions, in relation to the performance of the Crown's obligations under paragraphs 6.21.1 and 6.21.2; and

6.21.4 must, so far as is reasonably practicable, provide the information to the governance entity under paragraph 6.21.3 in sufficient time to enable it to

PROPERTY REDRESS

6: TERMS OF TRANSFER

make effective submissions on the performance of the Crown's obligations under paragraphs 6.21.1 and 6.21.2; but

6.21.5 is not required to provide information to the governance entity under paragraph 6.21.3 if that would result in the Crown breaching a confidentiality obligation.

OBLIGATIONS AFTER SETTLEMENT

6.22 The Crown must –

6.22.1 give the relevant territorial authority notice of the transfer of a transfer property immediately after the actual TSP settlement date for the property; and

6.22.2 if it receives a written notice in relation to a transfer property from the Crown, a territorial authority, or a tenant after the actual TSP settlement date for the property, –

(a) comply with it; or

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

6.22.3 pay any penalty incurred by the governance entity to the person providing the written notice as a result of the Crown not complying with paragraph 6.22.2.

6.23 The governance entity must, from the settlement date, comply with the licensor's obligations under the Crown forestry licence in relation to the licensed land –

6.23.1 including the obligation to repay any overpayment of licence fees by the licensee; and

6.23.2 pay interest arising on or after the settlement date on that overpayment.

RISK AND INSURANCE

6.24 A transfer property is at the sole risk of –

6.24.1 the Crown, until the actual TSP settlement date for the property; and

6.24.2 the governance entity, from the actual TSP settlement date for the property.

DAMAGE AND DESTRUCTION

6.25 Paragraphs 6.26 to 6.34 apply if, before the actual TSP settlement date for a transfer property, –

6.25.1 the property is destroyed or damaged; and

PROPERTY REDRESS

6: TERMS OF TRANSFER

- 6.25.2 the destruction or damage has not been made good.
- 6.26 Paragraph 6.27 applies if the transfer property is –
- 6.26.1 a deferred selection property; and
- 6.26.2 as a result of the destruction or damage, the property is not tenantable.
- 6.27 Where this paragraph applies, –
- 6.27.1 the governance entity may cancel its transfer by written notice to the Crown;
or
- 6.27.2 the Crown may cancel its transfer by written notice to the governance entity if the property is the Muriwai School DSP site.
- 6.28 Notice under paragraph 6.27 must be given before the actual TSP settlement date.
- 6.29 Paragraph 6.30 applies if the property is –
- 6.29.1 licensed land; or
- 6.29.2 a deferred selection property, that –
- (a) despite the destruction or damage, is tenantable; or
- (b) as a result of the damage or destruction, is not tenantable, but its transfer is not cancelled under paragraph 6.27 before the actual TSP settlement date.
- 6.30 Where this paragraph applies –
- 6.30.1 the governance entity must complete the transfer of the property in accordance with this deed; and
- 6.30.2 the Crown must pay the governance entity –
- (a) the amount by which the value of the property has diminished, as at the actual TSP settlement date for the property, as a result of the destruction or damage;
- (b) plus GST if any.
- 6.31 The value of the property for the purposes of paragraph 6.30.2 is to be –
- 6.31.1 in the case of the licensed land, the transfer value of Ngai Tāmanuhiri's interest in the licensed land; or

CTG
25

PROPERTY REDRESS

6: TERMS OF TRANSFER

- 6.31.2 in the case of a deferred selection property, its market value as determined under part 5.
- 6.32 An amount paid by the Crown under paragraph 6.30.2 –
- 6.32.1 is redress, if it relates to the destruction or damage of the licensed land; and
- 6.32.2 is a partial refund of the purchase price if it relates to the destruction or damage of a deferred selection property.
- 6.33 Each party may give the other notice –
- 6.33.1 requiring a dispute as to the application of paragraphs 6.27 to 6.32 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and
- 6.33.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.
- 6.34 If a dispute as to the application of paragraphs 6.27 to 6.32 is not determined by the TSP settlement date, that date is to be –
- 6.34.1 the fifth business day following the determination of the dispute; or
- 6.34.2 if an arbitrator appointed under paragraph 6.33 so determines, another date including the original TSP settlement date.

BOUNDARIES AND TITLE

- 6.35 The Crown is not required to point out the boundaries of a transfer property.
- 6.36 If a transfer property is subject only to the encumbrances referred to in paragraph 6.2 and, if the property is the Muriwai School DSP site, the lease for the Muriwai School DSP site, the governance entity –
- 6.36.1 is to be treated as having accepted the Crown's title to the property as at the actual TSP settlement date; and
- 6.36.2 may not make any objections to, or requisitions on, it.
- 6.37 An error or omission in the description of a transfer property or its title does not annul its transfer.

FENCING

- 6.38 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between a transfer property and any contiguous land of the Crown, unless the Crown requires the fence.

PROPERTY REDRESS

6: TERMS OF TRANSFER

- 6.39 Paragraph 6.38 does not continue for the benefit of a purchaser from the Crown of land contiguous to a transfer property.
- 6.40 The Crown may require a fencing covenant to the effect of paragraphs 6.38 and 6.39 to be registered against the title to a transfer property.

DELAYED TRANSFER OF TITLE

- 6.41 The Crown covenants for the benefit of the governance entity that it will –
- 6.41.1 arrange for the creation of one computer freehold register for parcels of licensed land situated in a single land registration district that is subject to a particular Crown forestry licence if that land –
- (a) is not contained in one computer freehold register; or
 - (b) is contained in one computer freehold register but together with other land; and
- 6.41.2 arrange for the creation of a computer freehold register for the land of a transfer property if that land –
- (a) is not licensed land; and
 - (b) is not contained in a computer freehold register; or
 - (c) is contained in a computer freehold register or registers but together with other land; and
- 6.41.3 transfer (in accordance with paragraph 6.5 or 6.6, whichever is applicable) the fee simple estate in a transfer property to which paragraph 6.41.1 or 6.41.2 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the settlement date.
- 6.42 If paragraph 6.41.3 applies to a transfer property, and paragraph 6.6 is applicable, the governance entity must comply with its obligations under paragraph 6.6.3 by a date specified by written notice to the Crown.
- 6.43 The covenant given by the Crown under paragraph 6.41 has effect and is enforceable, despite:
- 6.43.1 being positive in effect; and
 - 6.43.2 there being no dominant tenement.
- 6.44 If paragraph 6.41 applies then, for the period from the actual TSP settlement date until the date that the Crown transfers the fee simple estate in the transfer property to the governance entity –

PROPERTY REDRESS

6: TERMS OF TRANSFER

- 6.44.1 the governance entity will be the beneficial owner of the property; and
- 6.44.2 all obligations and rights will be performed and arise as if the fee simple estate had been transferred to the governance entity on the actual TSP settlement date; and
- 6.44.3 the governance entity may not serve a settlement notice under paragraph 6.47.

INTEREST

- 6.45 If for any reason (other than the default of the Crown) all or any of the amount payable by the governance entity to the Crown in relation to a purchased deferred selection property is not paid on the TSP settlement date –
 - 6.45.1 the Crown is not required to give possession of the property to the governance entity; and
 - 6.45.2 the governance entity must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST if any) for the period from the TSP settlement date to the actual TSP settlement date.
- 6.46 Paragraph 6.45 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

SETTLEMENT NOTICE

- 6.47 If, without the written agreement of the parties, settlement of a purchased deferred selection property is not effected on the TSP settlement date –
 - 6.47.1 either party may at any time after the TSP settlement date serve notice on the other (a **settlement notice**) requiring the other to effect settlement; but
 - 6.47.2 the settlement notice is effective only if the party serving it is –
 - (a) ready, able, and willing to effect settlement in accordance with the settlement notice; or
 - (b) not ready, able, and willing to effect settlement only by reason of the default or omission of the other party; and
 - 6.47.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and
 - 6.47.4 time is of the essence under paragraph 6.47.3; and
 - 6.47.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by paragraph 5.5.

G/P 28

PROPERTY REDRESS

6: TERMS OF TRANSFER

6.48 Paragraph 6.47, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

FURTHER ASSURANCES

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

NON-MERGER

6.50 On transfer of a transfer property to the governance entity –

6.50.1 the provisions of this part will not merge; and

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

PROPERTY REDRESS

7 NOTICE IN RELATION TO REDRESS AND DEFERRED SELECTION PROPERTIES

7 NOTICE IN RELATION TO REDRESS AND DEFERRED SELECTION PROPERTIES

NOTICE

- 7.1 If this part requires the governance entity to give notice to the Crown in relation to or in connection with a redress property, or a deferred selection property, the governance entity must give the notice in accordance with part 4 of the general matters schedule, except the notice must be addressed to the land holding agency for the property at its address or facsimile number provided –
- 7.1.1 in paragraph 7.2; or
- 7.1.2 if the land holding agency has given notice to the governance entity of a new address or facsimile number, in the most recent notice of a change of address or facsimile number.
- 7.2 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of each land holding agency is as follows for the purposes of giving notice to that agency in accordance with this part.

Land holding agency	Address and facsimile number
Land Information New Zealand	Lambton House, 160 Lambton Quay PO Box 5501 Wellington 6145 Fax: +64 4 472 2244
Office of Treaty Settlements	Level 3, The Vogel Centre, 19 Aitken Street PO Box 919 Wellington Fax +64 4 494 9940
Ministry of Education	National Office, 45-47 Pipitea Street PO Box 1666 Wellington 6011 Fax: +64 4 463 8001
Department of Conservation	Conservation House – Whare Kaupapa Atawhai, 18-32 Manners Street PO Box 10420 Wellington Fax: +64 4 381 3057

PROPERTY REDRESS

8: DEFINITIONS

8 DEFINITIONS

8.1 In this part, unless the context otherwise requires, **party** means each of the governance entity and the Crown.

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

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

actual TSP settlement date, in relation to a transfer property, means the date on which settlement of the property takes place; and

arbitration commencement date, in relation to the determination of the market value of a deferred selection property, means the date the determination is referred to a valuation arbitrator under paragraph 5.14.2; and

arbitration meeting, in relation to the determination of the market value of a deferred selection property, means the meeting notified by the valuation arbitrator under paragraph 5.15.1; and

deferred selection property means each property described in part 4; and

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

disclosure information has the meaning given to it by paragraph 1.2.2; and

DSP settlement date, in relation to a purchased deferred selection property, means the date that is 20 business days after the Crown receives an election notice from the governance entity electing to purchase the property; and

election notice means a written notice given by the governance entity in accordance with paragraph 5.4 electing whether or not to purchase a deferred selection property; and

lease for the Muriwai School DSP site means the lease to be entered into by the governance entity and the Crown under paragraph 5.5.2; and

Lessee's improvements, in relation to the Muriwai School DSP site, has the meaning provided in the lease for the Muriwai School DSP site; and

market value, in relation to a deferred selection property, has the meaning provided in the valuation instructions in the appendix to part 5; and

nominated entity means the entity nominated by the governance entity to take title to LINZ property #11306 under paragraph 5.2; and

notice of interest, in relation to a deferred selection property, means a notice given by the governance entity under paragraph 5.1 in relation to the property; and

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

G.P. 31

PROPERTY REDRESS

8: DEFINITIONS

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

registered valuer means a person registered as a valuer with the Valuers' Registration Board of New Zealand; and

settlement notice has the meaning given to it by paragraph 6.47.1; and

terms of transfer means the terms of transfer set out in part 6; and

transfer property has the meaning given to it by paragraph 6.1; and

transfer period means, in relation to –

- (a) a commercial redress property, the period from the date of this deed to its actual TSP settlement date; and
- (b) a deferred selection property, the period from the notification date for that property to its actual TSP settlement date; and

TSP settlement date means, in relation to –

- (a) a commercial redress property the settlement date (as defined in paragraph 6.1 of the general provisions schedule); and
- (b) a purchased deferred selection property, the DSP settlement date for the property; and

valuation arbitrator, in relation to a deferred selection property, means the person appointed under paragraphs 5.8.2 or 5.9 in relation to the determination of its market value; and

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

CTG 10/32