

TE KAWERAU Ā MAKI
and
THE TRUSTEES OF TE KAWERAU IWI SETTLEMENT TRUST
and
THE CROWN

DEED OF SETTLEMENT SCHEDULE:
PROPERTY REDRESS

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1 DISCLOSURE INFORMATION AND WARRANTY

DISCLOSURE INFORMATION

1.1 The Crown –

1.1.1 has provided information to the governance entity about the redress properties, by various correspondence sent between 1 April 2011 and 10 December 2013; and

1.1.2 must under paragraph 7.2.1 provide information to the governance entity about a deferred selection property if the governance entity has, in accordance with part 7, 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.

1.3 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.

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 –

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1: DISCLOSURE INFORMATION AND WARRANTY

- (a) its state, condition, fitness for use, ownership, 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 (at a time approved by the land holding agency) and determine its state and condition; and
 - 1.7.2 consider the disclosure information in relation to it.

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 Te Kawerau ā Maki.

COMPLETION OF DOCUMENTATION

- 2.4 Any documentation required by this deed and/or the settlement legislation 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; 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 of any document required in relation to the vesting under the settlement legislation of a cultural redress property in the governance entity.

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3 DESCRIPTION OF RIVERHEAD FOREST LICENSED LAND

Description (all North Auckland Land District)	Interests	Land holding agency
3275.2200 hectares, more or less, being Lot 2 DP 138519, Lot 1 DP 138520, and Lots 1 and 2 DP 138521.	<p>Subject to a Crown Forestry Licence under section 30 Crown Forests Assets Act 1989 registered as computer interest register NA100A/2 (and variation 6613038.1).</p> <p>Subject to protective covenants created by C646570.1.</p> <p>Subject to an easement in gross for telecommunications purposes created by E6324550.1 (affects Lots 1 and 2 DP 138521).</p> <p>Together with a right of way easement created by Transfer 215163 (affects Lot 1 DP 138521).</p> <p>Together with a right of way easement created by Transfer D568664.5 (affects Lot 2 DP 138519 and Lot 1 DP 138520).</p> <p>Subject to a right of way easement created by D568664.6 (affects Lot 1 DP 138520).</p> <p>Subject to a right of way and a right to convey power, water, and telemetry easement created by D568664.7 (affects Lot 1 DP 138520).</p> <p>Subject to a Notice pursuant to section 195(2) Climate Change Response Act 2002 registered as instrument 9109811.1 (affects Lot 2 DP 138519 and Lot 2 DP 138521).</p> <p>Subject to a Notice pursuant to section 195(2) Climate Change Response Act 2002 registered as instrument 9109779.1 (affects Lot 1 DP 138520 and Lot 1 DP 138521).</p> <p>Subject to Part IVA Conservation Act 1987.</p> <p>Subject to section 11 Crown Minerals Act 1991.</p>	LINZ

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4 DESCRIPTIONS OF DEFERRED SELECTION PROPERTIES

Sale and Leaseback Site (Land Only)	Description (all North Auckland Land District)	Land holding agency
Campbells Bay Primary School site	3.8020 hectares, more or less, being Part Lot 128 and Lots 129, 130, 131, 132, 133, and 134 DP 9328. Part Gazette Notice A491404.	Ministry of Education
Waterview Primary School site	2.0460 hectares, more or less, being Allotment 226 Parish of Titirangi and Lot 53 DP 15528. All computer freehold register 588067. 0.0910 hectares, more or less, being Lot 63 DP 15528. All Gazette Notice 471786.1.	Ministry of Education
Henderson Primary School site	2.1413 hectares, approximately, being Part Allotments 8 and 90 Parish of Waipareira. Part Proclamation 276310.1. Subject to survey. 0.0188 hectares, more or less, being Part Lot 5 DP 20253. All Gazette Notice 715203.1.	Ministry of Education
Matipo Road School site	2.8163 hectares, approximately, being Part Lots 1 and 2 DP 38223 and Part Lot 5 DP 40734. Balance Proclamation 19132. Subject to survey.	Ministry of Education

5 PAREMOREMO HOUSING BLOCK

Property	Description	
Paremoremo Housing Block	31.9155 hectares, more or less, being Part Allotment 681 Parish of Paremoremo and Section 1 SO 70641. Balance computer freehold register 52447.	

6 RIGHT TO PURCHASE PAREMOREMO HOUSING BLOCK

- 6.1 The parties approve as redress for Te Kawerau ā Maki the rights of the governance entity under part 7 of the NWOK deed of settlement.
- 6.2 The terms and conditions of that redress in the NWOK deed of settlement apply as if the governance entity had signed the NWOK deed of settlement agreeing to the redress on these terms and conditions.
- 6.3 The parties record that this deed is the “**approving TKaM deed of settlement**” for the purposes of the NWOK deed of settlement.

7 DEFERRED SELECTION

A RIGHT OF PURCHASE

NOTICE OF INTEREST

- 7.1 Subject to clause 6.6C, the governance entity may, for 2 years after the settlement date, give the Crown a written notice of interest in purchasing a deferred selection property.

EFFECT OF NOTICE OF INTEREST

- 7.2 If the governance entity gives, in accordance with this part, a notice of interest in a deferred selection property –
- 7.2.1 the Crown must, not later than 15 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
- 7.2.2 the property's transfer value must be determined or agreed in accordance with subpart B.

ELECTION TO PURCHASE

- 7.3 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 transfer value being determined or agreed in accordance with this part.

EFFECT OF ELECTION TO PURCHASE

- 7.4 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 transfer value determined or agreed in accordance with this part, plus GST if any, on the terms provided in part 8 and under which –
- 7.4.1 on the DSP settlement date –
- (a) the Crown must transfer the property to the governance entity; and
- (b) the governance entity must pay to the Crown an amount equal to the transfer value of the property determined or agreed in accordance with 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

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- 7.4.2 the parties must, by or on the DSP settlement date, sign the Crown leaseback (being a registrable lease of the property) –
- (a) commencing on the actual TSP settlement date; and
 - (b) at an initial annual rent determined by multiplying the transfer value of the property determined under this part by the percentage specified in clause 2.2 of the Crown leaseback to the Ministry of Education (plus GST, if any, on the amount so determined); and
 - (c) on the terms provided in part 8 of the documents schedule for the leaseback.

B DETERMINING THE TRANSFER VALUE OF A DEFERRED SELECTION PROPERTY

APPLICATION OF THIS SUBPART

- 7.5 This subpart provides how the transfer 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 deferred selection property.
- 7.6 The transfer value is to be determined as at the notification date.

APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

- 7.7 The parties not later than 10 business days after the notification date:
- 7.7.1 must each:
 - (a) instruct a valuer using the form of instructions in appendix 1; and
 - (b) give written notice to the other of the valuer instructed; and
 - 7.7.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the property.
- 7.8 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within 15 business days after the notification date, 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

- 7.9 Each valuer must be a registered valuer.
- 7.10 The valuation arbitrator –

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7.10.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties;

7.10.2 is appointed when he or she confirms his or her willingness to act.

VALUATION REPORTS FOR A PROPERTY

7.11 Each party must, in relation to a valuation, not later than:

7.11.1 50 business days after the notification date, provide a copy of its final valuation report to the other party; and

7.11.2 60 business days after the notification date, provide its valuer's written analysis report to the other party.

7.12 Valuation reports must comply with the International Valuation Standards 2012, or explain where they are at variance with those standards.

EFFECT OF DELIVERY OF ONE VALUATION REPORT

7.13 If only one valuation report for a property is delivered by the required date, the transfer value of the property is the market value as assessed in the report, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

NEGOTIATIONS TO AGREE A TRANSFER VALUE

7.14 If both valuation reports for a property are delivered by the required date:

7.14.1 the parties must endeavour to agree in writing the transfer value (being the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%)

7.14.2 either party may, if the transfer value of the property is not agreed in writing within 70 business days after the notification date and if a valuation arbitrator has been appointed under paragraph 7.7.2 or paragraph 7.8, refer that matter to the determination of the valuation arbitrator; or

7.14.3 if that agreement has not been reached within the 70 business day period but the valuation arbitrator has not been appointed under paragraph 7.7.2 or paragraph 7.8, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further 5 business days; and

7.14.4 if paragraph 7.14.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further 5 business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and

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7.14.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

VALUATION ARBITRATION

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

7.15.1 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

7.15.2 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.

7.16 Each party must –

7.16.1 not later than 5pm on the day that is 5 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, rental, or expert evidence that it will present at the meeting; and

(d) attend the arbitration meeting with its valuer.

7.17 The valuation arbitrator must –

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

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

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- (a) of the market value of the property (which is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
- (b) being no higher than the higher, and no lower than the lower, assessment of market value contained in the parties' valuation reports.

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

TRANSFER VALUE

7.19 The transfer value of the property, is:

7.19.1 determined under paragraph 7.13; or

7.19.2 agreed under paragraph 7.14.1; or

7.19.3 the market value determined by the valuation arbitrator under paragraph 7.17.2, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

C GENERAL PROVISIONS

TIME LIMITS

7.20 In relation to the time limits each party must use reasonable endeavours to ensure -

7.20.1 those time limits are met and delays are minimised; and

7.20.2 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

7.21 The valuation arbitrator's determination under subpart B is final and binding.

COSTS

7.22 In relation to the determination of the transfer value of a property, each party must pay -

7.22.1 its costs; and

7.22.2 half the costs of a valuation arbitration; or

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7.22.3 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

7.23 The Crown's obligations under this deed in relation to a deferred selection property immediately cease if –

7.23.1 the governance entity –

- (a) does not give notice of interest in relation to the property in accordance with paragraph 7.1; or
- (b) gives notice of interest in relation to the property in accordance with paragraph 7.1 but the governance entity –
 - (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 7.3 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 7.4; or
- (d) does not comply with any obligation in relation to the property under subpart B; or

7.23.2 an agreement for the sale and purchase of the property is constituted under paragraph 7.4 and the agreement is cancelled in accordance with the terms of transfer in part 8.

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APPENDIX 1

[Valuer's name]

[Address]

Valuation instructions

INTRODUCTION

The trustees of Te Kawerau Iwi Settlement Trust (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:

- (a) clause 6.5 and 6.6 of the deed of settlement; and
- (b) part 7 of the property redress schedule to the deed of settlement (part 7).

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]

PROPERTY TO BE LEASED BACK

The governance entity purchases the property from the Crown the governance entity will lease the property back to the Crown on the terms provided by the lease in part 8 of the documents schedule to the deed of settlement (the **agreed lease**).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the **Lessee's improvements**), remains unaffected by the transfer.

DEED OF SETTLEMENT

A copy of the deed of settlement is enclosed.

Your attention is drawn to –

- (a) part 7; and
- (b) the agreed lease of the property in part 8 of the documents schedule to the deed.

All references in this letter to subparts or paragraphs are to subparts or paragraphs of part 7.

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

Subpart B of part 7 applies to the valuation of the property.

ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property that is a school site in accordance with the methodology below 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 Lessee's improvements will not transfer, the market value of the property is to be the market value of its land (i.e. not including any Lessee's improvements).

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 will be the basis of establishing the "transfer value" at which the governance entity may elect to purchase the property as a deferred selection property under paragraph 7.3, plus GST (if any).

MARKET VALUE OF A SCHOOL SITE

For the purposes of these instructions the intention of the parties in respect of a school site is to determine a transfer value to reflect the designation and use of the land for education purposes.

The market value of a school site is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

A two step process is required:

- 1) firstly, the assessment of the unencumbered market value (based on highest and best use) by;
 - a) disregarding the designation and the Crown leaseback; and
 - b) considering the zoning in force at the valuation date and
 - c) excluding any improvements on the land; and;

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- 2) secondly the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).

VALUATION OF PROPERTY

You must, in relation to a property:

- (a) before inspecting the property, determine with the other valuer:
 - (i) the valuation method or methods applicable to the property; and
 - (ii) the comparable sales to be used in determining the market value of the property; and
- (b) inspect the property, where practical, together with the valuer appointed by the other party; and
- (c) attempt to resolve any matters or issues arising from your inspections and input assumptions; 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 45 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 us; and
- (f) by not later than 55 business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property; and
- (g) by not later than 65 business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value; and
- (h) if a consensus on market value is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and
- (i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property; and

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- (j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and
- (k) participate in any arbitration process required under subpart A to determine the market value of the property.

REQUIREMENTS OF 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 current edition of the Australia and New Zealand Valuation and Property Standards [2009] and International Valuation Standards [2012]; 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; 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 attached terms of transfer (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 the governance entity.

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 [2009] and International Valuation Standards [2012], including –

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- (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
- (b) a detailed description, and a clear statement, of the land value; and
- (c) a clear statement as to any impact of –
 - (i) the disclosed encumbrances; and
 - (ii) 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 or methods; 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 A.

You may, with our prior consent, 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) 45 business days after the valuation date, to:

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- (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 us; and
- (c) 55 business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and
- (d) 65 business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

ACCESS

As the property is a school site, you should not enter on to **[insert name(s) of school site(s)]** without first arranging access through the Ministry of Education **[give contact details]** and should not contact the school(s) directly.

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:

- (a) copy any questions you have or receive with regard to the valuation, together with the responses, to the governance entity, the land holding agency, and the other valuer: and
- (b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final valuation report to us.

Yours faithfully

[Name of signatory]

[Position]

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

8 TERMS OF TRANSFER FOR RIVERHEAD FOREST LICENSED LAND AND PURCHASED DEFERRED SELECTION PROPERTIES

APPLICATION OF THIS SUBPART

- 8.1 This part –
- 8.1.1 applies to the transfer by the Crown under this deed of each of the following properties (a **transfer property**):
- (a) the Riverhead Forest licensed land, under clause 6.2; and
 - (b) each purchased deferred selection property, under paragraph 7.4.1; and
- 8.1.2 when it refers to **party** means each of the following:
- (a) the Crown;
 - (b) the governance entity.

TRANSFER

- 8.2 The Crown must transfer the fee simple estate in a transfer property to the governance entity –
- 8.2.1 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 8.18.4(a)); and
 - (b) any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 8.18.4(b); and
- 8.2.2 if the property is a deferred selection property, subject to the Crown leaseback in relation to the property.
- 8.3 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

- 8.4 Possession of a transfer property must, on the TSP settlement date for the property, –
- 8.4.1 be given by the Crown; and

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8.4.2 taken by the transferee; and

8.4.3 be vacant possession subject only to –

- (a) any encumbrances referred to in paragraph 8.2.1 that prevent vacant possession being given and taken; and
- (b) if the property is a deferred selection property, the Crown leaseback.

SETTLEMENT

8.5 Subject to paragraphs 8.6 and 8.42, the Crown must provide the transferee with the following in relation to a transfer property on the TSP settlement date for that property:

8.5.1 evidence of –

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

8.5.2 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:

8.5.3 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 –

- (a) the property is a deferred selection property; and
- (b) to do so would be inconsistent with the Crown leaseback.

8.6 If the fee simple estate in the transfer property may be transferred to the transferee electronically under the relevant legislation, –

8.6.1 paragraphs 8.5.1 and 8.5.2 do not apply; and

8.6.2 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 transferee of the fee simple estate in the transfer property and for any other registrable instruments required by the deed in relation to the property (the **electronic instruments**); and

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- (ii) prepares, certifies, signs, and pre-validates in the Landonline workspace the electronic instruments; and
 - (b) on the TSP settlement date, releases the electronic instruments so that the transferee's solicitor may submit them for registration under the relevant legislation; and
- 8.6.3 the transferee must ensure its solicitor, a reasonable time before the TSP settlement date, certifies and signs the electronic instruments prepared in the Landonline workspace under paragraph 8.6.2(a)(ii).
- 8.7 The **relevant legislation** for the purposes of paragraph 8.6 is –
 - 8.7.1 the Land Transfer Act 1952; and
 - 8.7.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- 8.8 The transfer value of, or the amount payable by the transferee for, a transfer property is not affected by –
 - 8.8.1 a non-material variation, or a material variation entered into under paragraph 8.18.4(a), of a disclosed encumbrance affecting or benefiting the property ; or
 - 8.8.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 8.18.4(b).

APPORTIONMENT OF OUTGOINGS AND INCOMINGS

- 8.9 If, as at the actual TSP settlement date for a transfer property, –
 - 8.9.1 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 transferee must pay the amount of the excess to the Crown; or
 - 8.9.2 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 transferee.
- 8.10 The outgoings for a transfer property for the purposes of paragraph 8.9 do not include insurance premiums and the transferee is not required to take over from the Crown any contract of insurance in relation to the property.
- 8.11 The incomings for the Riverhead Forest licensed land for the purposes of paragraph 8.9 do not include licence fees under the Crown forestry licence.
- 8.12 An amount payable under paragraph 8.9 in relation to a transfer property must be paid on the actual TSP settlement date for the property.

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- 8.13 The Crown must, before the actual TSP settlement date for a transfer property, provide the transferee with a statement calculating the amount payable by the transferee or the Crown under paragraph 8.9.

FIXTURES, FITTINGS, AND CHATTELS

- 8.14 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.
- 8.15 Paragraph 8.14 does not apply to the Lessee's improvements located on a deferred selection property.
- 8.16 Fixtures and fittings transferred under paragraph 8.14 must not be mortgaged or charged.
- 8.17 The transfer of a transfer property does not include chattels.

PRE-TRANSFER OBLIGATIONS AND RIGHTS

- 8.18 The Crown must during the transfer period for a transfer property,—
- 8.18.1 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
- 8.18.2 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
- 8.18.3 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
- 8.18.4 obtain the prior written consent of the transferee before –
- (a) materially varying a disclosed encumbrance affecting or benefiting the property; or
- (b) entering into an encumbrance affecting or benefitting the property; or
- (c) procuring a consent, or providing a waiver, under the Resource Management Act 1991, or any other legislation, that materially affects the property; and

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8.18.5 use reasonable endeavours to obtain permission for the transferee to enter and inspect the property under paragraph 8.19 if the transferee is prevented from doing so by the terms of an encumbrance referred to in paragraph 8.2, but

in the case of a deferred selection property these obligations are modified to the extent necessary to ensure they do not add to, or vary, the obligations of the Crown under the Crown leaseback as if it applied during the transfer period.

8.19 The transferee, during the transfer period in relation to a transfer property, –

8.19.1 must not unreasonably withhold or delay any consent sought under paragraph 8.18 in relation to the property; and

8.19.2 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 8.2; and

8.19.3 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 RIVERHEAD FOREST LICENSED LAND

8.20 During the transfer period for the Riverhead Forest licensed land, the Crown –

8.20.1 must prudently manage the licensor's rights under the Crown forestry licence; and

8.20.2 in reviewing the licence fee under the Crown forestry licence –

(a) must ensure that, so far as reasonably practicable, the governance entity's interests as licensor after the settlement date are not prejudiced; and

(b) must not agree a licence fee for the Riverhead Forest licensed land that is less per square metre than any licence fee agreed to by the Crown for the balance of the land that is subject to the Crown forestry licence (the **balance of the land**); and

8.20.3 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 8.20.1 and 8.20.2; and

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- 8.20.4 must, so far as is reasonably practicable, provide the information to the governance entity under paragraph 8.20.3 in sufficient time to enable it to make effective submissions on the performance of the Crown's obligations under paragraphs 8.20.1 and 8.20.2; but
- 8.20.5 is not required to provide information to the governance entity under paragraph 8.20.3 if that would result in the Crown breaching a confidentiality obligation.
- 8.21 The governance entity acknowledges and agrees that –
- 8.21.1 the licence-splitting process may not be completed until after the settlement date as, in particular, the licensee has no obligation to participate in them until that date; and
- 8.21.2 the governance entity must –
- (a) provide any assistance reasonably required by the Crown to assist with the licence-splitting process; and
 - (b) sign all documents, and do all other things, required of it as owner of the Riverhead Forest licensed land to give effect to the matters agreed or determined under the licence-splitting process.

SPLITTING OF LICENCE FEES

- 8.22 Until completion of the licence splitting process in relation to the Riverhead Forest licensed land under the NWoK deed of settlement, unless otherwise agreed by the governance entity as licensor, and the licensee under the Crown forestry licence, and the Crown, the licence fee under the Crown forestry licence attributable to the Riverhead Forest licensed land are to be calculated in accordance with the following formula:

$$A \times (B \div C)$$

- 8.23 For the purposes of the formula in paragraph 8.22 –
- 8.23.1 **A** is the licence fees under the Crown forestry licence; and
- 8.23.2 **B** is the area of Riverhead Forest licensed land; and
- 8.23.3 **C** is the area of land covered by the Crown forestry licence.

OBLIGATIONS AFTER SETTLEMENT

- 8.24 The Crown must –

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- 8.24.1 give the relevant territorial authority notice of the transfer of a transfer property immediately after the actual TSP settlement date for the property; and
- 8.24.2 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 transferee or its solicitor; or
- 8.24.3 pay any penalty incurred by the transferee as a result of the Crown not complying with paragraph 8.24.2.
- 8.25 The transferee must, from the settlement date, comply with the licensor's obligations under the Crown forestry licence in relation to the Riverhead Forest licensed land –
- 8.25.1 including the obligation to –
- (a) repay any overpayment of licence fees by the licensee; and
 - (b) pay interest arising on or after the settlement date on that overpayment; but
- 8.25.2 not including the Crown's obligations under clause 17.4 of the Crown forestry licence.

RISK AND INSURANCE

- 8.26 A transfer property is at the sole risk of –
- 8.26.1 the Crown, until the actual TSP settlement date for the property; and
- 8.26.2 the transferee, from the actual TSP settlement date for the property.

DAMAGE AND DESTRUCTION

- 8.27 Paragraphs 8.28 to 8.35 apply if, before the actual TSP settlement date for a transfer property, –
- 8.27.1 the property is destroyed or damaged; and
- 8.27.2 the destruction or damage has not been made good.
- 8.28 If the property is a deferred selection property and, as a result of the destruction or damage, the property is not tenantable –

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- 8.28.1 the transferee may cancel its transfer by written notice to the Crown; or
- 8.28.2 the Crown may cancel its transfer by written notice to the transferee if the property is a leaseback property.
- 8.29 Notice under paragraph 8.28 must be given before the actual TSP settlement date.
- 8.30 Paragraph 8.31 applies if the property is –
 - 8.30.1 the Riverhead Forest licensed land; or
 - 8.30.2 a deferred selection property; and
 - (a) despite the destruction or damage, the property is tenatable; or
 - (b) as a result of the damage or destruction, the property is not tenatable but its transfer is not cancelled under paragraph 8.28 before the actual TSP settlement date.
- 8.31 Where this paragraph applies –
 - 8.31.1 the transferee must complete the transfer of the property in accordance with this deed; and
 - 8.31.2 the Crown must pay the transferee –
 - (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.
- 8.32 The value of the property for the purposes of clause 8.31.2 is to be –
 - 8.32.1 in the case of the Riverhead Forest licensed land, its transfer value as provided in part 3; or
 - 8.32.2 in the case of a deferred selection property, its transfer value as determined or agreed in accordance with part 7.
- 8.33 An amount paid by the Crown under paragraph 8.31.2 –
 - 8.33.1 is redress, if it relates to the destruction or damage of the Riverhead Forest licensed land; and
 - 8.33.2 is a partial refund of the purchase price if it relates to the destruction or damage of a deferred selection property.

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- 8.34 Each party may give the other notice –
- 8.34.1 requiring a dispute as to the application of paragraphs 8.28 to 8.33 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and
 - 8.34.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.
- 8.35 If a dispute as to the application of paragraphs 8.28 to 8.33 is not determined by the TSP settlement date, that date is to be –
- 8.35.1 the fifth business day following the determination of the dispute; or
 - 8.35.2 if an arbitrator appointed under paragraph 8.34 so determines, another date including the original TSP settlement date.

BOUNDARIES AND TITLE

- 8.36 The Crown is not required to point out the boundaries of a transfer property.
- 8.37 If a transfer property is subject only to the encumbrances referred to in paragraph 8.2 and, if the property is a deferred selection property, the leaseback to the Crown, the transferee –
- 8.37.1 is to be treated as having accepted the Crown's title to the property as at the actual TSP settlement date; and
 - 8.37.2 may not make any objections to, or requisitions on, it.
- 8.38 An error or omission in the description of a transfer property or its title does not annul its transfer.

FENCING

- 8.39 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, in which case the provisions of the Fencing Act 1978 will prevail.
- 8.40 Paragraph 8.39 does not continue for the benefit of a purchaser from the Crown of land contiguous to a transfer property.
- 8.41 The Crown may require a fencing covenant to the effect of paragraphs 8.39 and 8.40 to be registered against the title to a transfer property.

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DELAYED TRANSFER OF TITLE

- 8.42 If all the land comprising a transfer property is not all of the land contained in a computer freehold register or registers, the Crown covenants for the benefit of the transferee that it will –
- 8.42.1 arrange for the creation of a computer freehold register or registers for all that land; and
 - 8.42.2 transfer title to the property, as soon as is reasonably practicable, but no later than five years after the actual TSP settlement date.
- 8.43 The covenant given by the Crown under paragraph 8.42 has effect and is enforceable, despite:
- 8.43.1 being positive in effect; and
 - 8.43.2 there being no dominant tenement.
- 8.44 If paragraph 8.42 applies then, for the period from the actual TSP settlement date until the date that the Crown transfers the title to the transfer property to the transferee –
- 8.44.1 the transferee will be the beneficial owner of the property; and
 - 8.44.2 all obligations and rights will be performed and arise as if full legal title had passed to the transferee on the actual TSP settlement date; and
 - 8.44.3 the transferee may not serve a settlement notice under paragraph 8.47.

INTEREST

- 8.45 If for any reason (other than the default of the Crown) all or any of the amount payable by the transferee to the Crown in relation to a purchased deferred selection property is not paid on the TSP settlement date –
- 8.45.1 the Crown is not required to give possession of the property to the transferee; and
 - 8.45.2 the transferee 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.
- 8.46 Paragraph 8.45 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

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SETTLEMENT NOTICE

- 8.47 If, without the written agreement of the parties, settlement of a purchased deferred selection property is not effected on the TSP settlement date –
- 8.47.1 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
- 8.47.2 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
- 8.47.3 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
- 8.47.4 time is of the essence under paragraph 8.47.3; and
- 8.47.5 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 6.11 or paragraph 7.4, as the case may be.
- 8.48 Paragraph 8.47, 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

- 8.49 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

- 8.50 On transfer of a transfer property to the transferee –
- 8.50.1 the provisions of this subpart will not merge; and
- 8.50.2 to the extent any provision of this subpart has not been fulfilled, it will remain in force.

GST

- 8.51 No later than 10 working days before the TSP settlement date of a transfer property, the governance entity must provide the Crown with the following information in relation

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to the factual situation that will exist at the TSP settlement date for the property, and must warrant the correctness of that information:

8.51.1 the governance entity's GST registration number (if any); and

8.51.2 whether or not the governance entity:

- (a) is a registered person for GST purposes;
- (b) intends to use the property for the purposes of making taxable supplies; and
- (c) intends to use the property as a principal place of residence for the relevant trustees under section 2A(1)(c) of the Goods and Services Tax Act 1985.

8.52 If the information provided by the governance entity under paragraph 8.51 in relation to a transfer property alters before the relevant TSP settlement date, the governance entity must immediately notify the Crown of how that information has altered, and warrant the correctness of that altered information.

8.53 If the information provided under paragraph 8.51 (as altered by any alteration under paragraph 8.52) indicates that, at the TSP settlement date, each of the following statements is correct and the supply of the transfer property is a taxable supply by the Crown, the parties agree that GST will apply to the property at the rate of zero percent:

8.53.1 the governance entity is a registered person for GST purposes;

8.53.2 the governance entity intends to use the property for the purpose of making taxable supplies; and

8.53.3 the governance entity does not intend to use the property as a principal place of residence of the trustees or a person associated with the trustees under section 2A(1)(c) of the Goods and Services Tax Act 1985.

9 NOTICE IN RELATION TO SETTLEMENT PROPERTIES

NOTICE

- 9.1 If this part requires a person to give notice to the Crown in relation to or in connection with a redress property, or a deferred selection property, the person 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 provided in paragraph 9.2.
- 9.2 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
Department of Conservation	Conservation House - Whare Kaupapa Atawhai 18-32 Manners Street PO Box 10420 Wellington Fax: +64 4 381 3057
Ministry of Education	45-47 Pipitea Street PO Box 1666 Thorndon Wellington 6011 Fax: +64 4 463 8001
Land Information New Zealand (LINZ)	Level 7, Radio New Zealand House 155 The Terrace Private Bag 5501 Wellington Fax: +64 4 472 2244
Department of Corrections	Private Box 1206 Wellington 6140 New Zealand Fax: +64 4 460 3208
Housing NZ	Housing New Zealand National Office PO Box 2628 Wellington, 6140 Fax: 0800 201 202

10 DEFINITIONS

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

acquired property has the meaning given to it by paragraph 1.3; and

actual TSP settlement date, in relation to a transferred 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 and/or market rental of a deferred selection property, means:

- (a) in relation to a referral under paragraph 7.14.2, the date of that referral; and
- (b) in relation to an appointment under paragraph 7.14.3 or 7.14.4, a date specified by the valuation arbitrator; and

arbitration meeting means a meeting notified by the valuation arbitrator under paragraph 7.15.1; and

balance of the land has the meaning given to it by paragraph 8.20.2(b); and

Crown leaseback means, in relation to a deferred selection property, the ground lease to be entered into by the governance entity and the Crown under paragraph 7.4.2; and

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

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

disclosure information, in relation to an acquired property, means the information given by the Crown about the property referred to in paragraph 1.1; and

DSP settlement date, in relation to a deferred selection property, means the date that is 40 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 7.3 electing whether or not to purchase a deferred selection property; and

Lessee's improvements, in relation to a leaseback property has the meaning given to it in the Crown leaseback for the property; and

leaseback property means each deferred selection property; and

market value, in relation to a deferred selection property, has the meaning provided in the valuation instructions in appendix 1 to part 7; and

notice of interest, in relation to a deferred selection property, means a notice given by the governance entity under paragraph 7.1 in relation to the property; and

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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

party means each of the governance entity and the Crown; and

purchased deferred selection property means each deferred selection property in relation to which the parties are to be treated under paragraph 7.4 as having entered into an agreement for sale and purchase; and

redress property means –

- (a) each cultural redress property; and
- (b) the Riverhead Forest licensed land; and

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 any valuer for the time being registered under the Valuers Act 1948; and

school site means a leaseback property in respect of which the land holding agency is the Ministry of Education; and

settlement notice has the meaning given to it by paragraph 8.47.1; and

terms of transfer means the terms of transfer set out in part 8; and

transfer property has the meaning given to it by paragraph 8.1; and

transfer period means, in relation to –

- (a) the Riverhead Forest licensed land, 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

transfer value, in relation to a deferred selection property, means the amount payable by the governance entity for the transfer of the property determined or agreed in accordance with part 7; and

TSP settlement date means, in relation to –

- (a) the Riverhead Forest licensed land, the settlement date (as defined in paragraph 7.1 of the general provisions schedule); and
- (b) a 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 paragraph 7.7.2 or 7.8 or 7.16.3 or 7.16.4 in relation to the determination of its market value; and

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