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# HEADS OF AGREEMENT

FOR A PROPOSED SETTLEMENT OF  
THE TE URI O HAU HISTORICAL  
CLAIMS AGAINST THE CROWN

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20 November 1999



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**THIS HEADS OF AGREEMENT** is made

**BETWEEN**

- (1) **TE URI O HAU** acting by their Mandated Representatives
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations

**WHAKATAUKI**

Whaia te iti kahurangi  
Ki te tuohu koe  
Mehe maunga tei tei

Seek ye the treasures of your heart  
If you bow your head  
Let it be to a lofty mountain

**KARAKIA**

E to matou MATUA te RUNGA – RAWA. Kia tiaho mai tou Maramatanga ki tou iwi pononga e tau nei, e hui tahi ana I raro I nga parirau o tou Arohanoa. Meinga ano kia tu hara kore I roto I te ngakau Ripeneta, mo nga puehu raukawa rauhangatanga I ropia nga haere, I tooku tangi whakaiti, e aroha e pupu ake ana, ka taaka-tahi ki nga putunga kikokiko. Kia whanau hou ai I roto I nga mahi pai a to te wairua kia rite ki te kukupa te hara-kore kia ma kia ma kia rite ki te hakarere te ma kia tu kotahi e IHOA ki mua I tou aroaro I runga I nga herenga e nga waka, ko koe ano te POU HERENGA e kore e whati i te taanga aroha, ko koe to matou MATUA I te RANGI te tahi ano, te pa kaha te piringa e tino tata ana I nga wa katoa.

Heavenly father, let the rays of your light be ever so present upon your servant people assembled here this day.

By their togetherness in the estate of love and true repentance may their sins be relinquished as I on their behalf say, that on many instances due to the sorrows of this world, the dust of remembrance seems to mar the existence of your direction and purpose. Let us be born again in this assembly so that we gather in true voice to accomplish the holy requirements of your domain, and to remember the lesson we learn from the dove. To be pure in heart and soul as like the sparkling snow Lord, God, today in your presence we gather in harmony of many religions united in love, to proclaim that you shall be and remain forever, our once and foremost father in Heaven.

## BACKGROUND

### A Whakapapa

Ko te tupuna taketake o Te Uri o Hau, ko Haumoewaarangi. Ka moe a Haumoewaarangi i a Waihekeao, ka puta ki waho ko a raua tamariki tokowhitu: ko Makawe, ko Mauku, ko Whiti, ko Weka, ko Ruinga, ko Rongo me Hakiputatomuri. Ka puta i a Hakiputatomuri ko nga uri matinitini e mohiotia nei i tenei wa, ko Te Uri o Hau.

The eponymous ancestor of Te Uri o Hau is Haumoewaarangi. From the marriage of Haumoewaarangi with Waihekeao came seven offspring: Makawe, Mauku, Whiti, Weka, Ruinga, Rongo and Hakiputatomuri. From Hakiputatomuri came many descendants known to this day as Te Uri o Hau.

### B Waiata

Ko etahi o nga korero nui mo Te Uri o Hau, he mea tuku iho ki nga whakatipuranga, i roto i tetahi waiata i waiatatia e ratou, i te wa i takotoria ta ratou tono ki mua o te Ropu Whakamana i te Tiriti i nga tau 1997 me 1998.

Some of the important elements of Te Uri o Hau history as passed down through the generations were included in a waiata which was sung by Te Uri o Hau at the hearings of Treaty claims before the Waitangi Tribunal in 1997 and 1998.

Haumoewaarangi

Haumoewaarangi te Tupuna kei runga

Nana ka puta Hakiputatomuri

Nana i tapa ana uri whakaheke

Ko nga Uri o Hau e

Ko nga Uri o Hau e

Mangawhai Taporapora Kaipara whakarere wahine

He whakataui ki o nga Tupuna

He ohaki mo ratou ra

Kua riro i te ripo e

Kua riro i te ripo e

Mahuhu Te Waka i hoea mai ai

aku tini Matua aku tini Tupuna

Mai i Hawaiiiki nui ki te awa o Kaipara

Ko nga Uri O Hau e  
Ko nga Uri O Hau e

Tena e nga Uri Hapainga ki runga  
Nga whakatauike o nga Tupuna  
Mai i Hawaiiiki nui ki te awa o Kaipara  
Ko nga Uri O Hau e  
Ko nga Uri O Hau e

Aue e rere ra  
Aue Aue e rere ra  
E te manu ki tona tauranga e  
Hi aue Hi

### **C Te Tiriti O Waitangi/Treaty of Waitangi**

Ko te putake o te hono i waenganui o Te Uri o Hau me te Karauna, ka kitea, ko te Tiriti o Waitangi.

“Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakāro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata māori o Nu Tirani - kia wakāetia e nga Rangatira māori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Māori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakāe ki nga Rangatira ki nga hapu-ki tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakāetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON  
Consul and Lieutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakāetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.”

The origins of the relationship between Te Uri o Hau and the Crown may be traced to the Treaty of Waitangi.

“HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those Islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native



population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

#### Article The First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

#### Article The Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

#### Article The Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the

same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.”

#### **D Te Hui Nui Ki Kohimarama/Kohimarama Conference**

I te hui nui a nga rangatira i tu ki Kohimarama i te tau 1860, i whakautia te hono i waenganui o Te Uri o Hau me te Karauna. Ko te whakatau a taua hui nui, he whakaritenga tapu te Tiriti o Waitangi. Na Paikea o Te Uri o Hau taua whakatau i whakatakoto ki te minenga. I penei te takoto.

HE KUPU-WHAKATUTURU ENEI NA TE RUNANGA, NO TE 10 O NGARA O AKUHATA, 1860.

Ka mine nga rangatira ki te Whare Runanga, ka tahi ka whakatika ko Paikea ka panui i tenei Kupu-whakatuturu.

“E whakaae ana tenei Runanga, i te tikanga o nga rangatira i noho ki roto, kua tino whakaae nei-tetahi ki tetahi kia kua rawa he pakanga ketanga i runanga i te kupu kua whakapuakina nuitia mo te mana o te Kuini, mo te whakakotahitanga hoki o nga iwi e rua; a kua-whakaae nei tetahi ki tetahi kia whakahengia nga mahi katoa mana e taka ai ta ratou kawenata tapu, kua whakatakotoria ki konei.”

Na Te Manihera Ruia i whakatuarua. Ka karanga a Te Makarini, “Ko nga rangatira o te Runanga e whakaae ana ki tenei, me hapai te ringaringa”. Whakaae katoa ana ki taua Kupu-whakatuturu.

Te Uri o Hau reaffirmed their relationship with the Crown at the Kohimarama conference of chiefs in 1860. A formal resolution of that conference affirmed the Treaty of Waitangi as a sacred covenant. That resolution was moved by Paikea of Te Uri o Hau. It read:

RESOLUTIONS ADOPTED BY THE CONFERENCE ON THE 10<sup>TH</sup> AUGUST, 1860

The Chiefs having assembled in the Conference Hall, PAIKEA rose and proposed the following Resolution:

“That this Conference takes cognizance of the fact that the several Chiefs, members thereof, are pledged to each other to do nothing inconstant with their declared recognition of the Queen’s sovereignty, and of the union of the two

racess; also to discountenance all proceedings tending to a breach of the covenant here solemnly entered into by them.”

Seconded by TE MANIHERA RUA.

Mr McLean then said, “Let those Chiefs of the Conference who approve of this hold up their hands”.

Resolution carried unanimously.

#### **E Te Whaikorero a Paikea/Speech of Paikea**

Ko te hononga i roto i nga tau, i waenganui i Te Uri o Hau me te Karauna, he mea nui tenei ki a Te Uri o Hau. I whakaputahia e Paikea enei korero i tana pohiri i te manene i u ki Port Albert i te tau 1862.

The ongoing relationship between Te Uri o Hau and the Crown has always been important to Te Uri o Hau. This was spoken of by Paikea when he welcomed the Port Albert settlers in 1862:

I now have my hearts desire. I have sold large blocks of land to the government so that my Pakeha brothers may live by me in good friendship and peace. We are all children of the great Queen Victoria. You are my Pakehas and I, and my tribe will ever be ready to protect you with our bodies. You have much to teach us, and you may learn many things from us that will be useful to you. May we be brothers forever. That is the wish of Paikea.

#### **F Nga Korero a-waha he mea tuku iho/Oral History**

Ko nga korero tuku iho a Te Uri o Hau e ki ana, i whakanuia peneitia te tino hononga i waenganui o Te Uri o Hau me te Karauna; tuatahi, i waitohungia tetahi whakaritenga ki runga kiri hipi, e ki ana, ka noho haumi raua ki a raua, a, ko te ingoa o taua whakaritenga, ko “Kirihipi Te Tiriti”; tuarua, i tukuna e te Karauna ki a Te Uri o Hau tetahi whakapakoko o Kuini Wikitoria, ka mutu, i ata whakanohia ia ki te wahi nui rawa o runga i te marae o Aotearoa, takiwa ki Otamatea, a, kei reira tonu i tenei ra.

The oral history of Te Uri o Hau records that Te Uri o Hau and the Crown had a special relationship, which was recognised in two distinctive ways. First by the signing of an agreement of alliance on a sheepskin parchment which is known to this day as “Kirihipi Te Tiriti”. Secondly in the presentation by the Crown of a bust of Queen Victoria which is sited in a place of importance at Aoteroa marae, Otamatea, to this day.

## **G Te Mahere Whakahiato/Development Plan**

Ko ta nga Mangai Mana Kokiri o te Uri o Hau titiro, ki te whakataungia nga tono o roto i nga tau a Te Uri o Hau, kua ahei Te Uri o Hau ki te timata i tetahi mahere whakahiato rua tekau ma rima tau nei te titiro, e taea te ahu whakamua o Te Uri o Hau, kia whakarerea nga amuamu o mua ki muri, kia hou atu ki te wa e rite ana ta ratou noho ki te pai o te noho a te iwi whanui puta noa.

The Te Uri o Hau Mandated Representatives envisage that the settlement of Te Uri o Hau Historical Claims will enable Te Uri o Hau to begin a 25 year development plan to enable the Te Uri o Hau people to move away from historical grievances and move towards obtaining socio-economic parity with the general population.

## **H Nga Whakamarama mo nga Whiti Korero/Background to the Negotiations**

Kua whakatakotoria etahi o nga tono a Te Uri o Hau ki mua i te aroaro o te Ropu Whakamana i te Tiriti. Ko nga tono nui katoa a Te Uri o Hau, ko WAI 229 me WAI 271, a, i whakatakotoria enei e Russell Kemp i te marama o Akuhata o te tau 1991, me Ross Wright i te marama o Noema o te tau 1991.

Ko te nuinga o nga tono a Te Uri o Hau, i rangona e te Ropu Whakamana i te Tiriti mai i te marama o Hune o te tau 1997, tae atu ki te marama o Hurae o te tau 1998, a, hui katoa, ka taka mai ki raro i nga hui me nga korero i puta i te wa o nga hui o Kaipara Wahanga 1. I te taenga ki te ra o te whakaritenga nei, kaore ano kia mahia mai e te Ropu Whakamana i te Tiriti tetahi purongo o ana whainganga.

I whakaritea i te ra 6 o Akuhata o te tau 1999, e Te Uri o Hau me te Karauna, tetahi Tikanga Whiti Korero e tohu ana i te whanuitanga o nga kororerero, tae noa ki nga whainganga me nga huarahi hei whai.

I tae ki te aroaro o te Karauna te korero a nga Mangai Mana Kokiri e whakau ana ta ratou ki, ara, kei a ratou te mana kokiri a Te Uri o Hau i roto i nga whiti korero me te Karauna mo te whakataui i nga tono a Te Uri o Hau.

Kua tae nga whiti korero ki te wa e whakaae ana a Te Uri o Hau me te Karauna, me uru atu raua ki tetahi Whakaaetanga Upoko (Heads of Agreement) e ki ana, kei te whakaae raua ki te putake o te kaupapa, ara, ko raua tahi kei te hiahia kia whakatauhia Nga Tono i Roto i te Wa a Te Uri o Hau, e tohungia ana i te *whiti 1.2*, a, ka taea tenei, ma te whakaaetanga ki tetahi Tikanga Whakataui, i runga i te Tono Whakataui a te Karauna e takoto ana ki te Whakaaetanga Upoko.

I RUNGA I TERA, e whakaae ana nga taha e rua nei.

Several Te Uri o Hau claims have been lodged with the Waitangi Tribunal. The main, overarching Te Uri o Hau claims are Wai 229 and Wai 271, which were lodged by Russell Kemp in August 1991 and Ross Wright in November 1991, respectively.

Most of the Te Uri o Hau claims were heard before the Waitangi Tribunal from June 1997 to July 1998 as part of the Kaipara Stage 1 Hearings. As at the date of this agreement, the Tribunal has not produced a report of its findings.

Te Uri o Hau and the Crown entered into Terms of Negotiation dated 6 August 1999 which specify the scope, objectives and general procedures for negotiations.

Under the Terms of Negotiation, the Mandated Representatives confirmed to the Crown that they have a mandate to represent Te Uri o Hau in negotiations with the Crown for settlement of the Te Uri o Hau claims.


Negotiations have now reached a stage where Te Uri o Hau and the Crown wish to enter into this Heads of Agreement recording that Te Uri o Hau and the Crown are, in principle, willing to settle the Te Uri o Hau Historical Claims that are referred to in *clause 1.2* by entering into a Deed of Settlement on the basis of the Crown's Settlement Proposal set out in this Heads of Agreement.

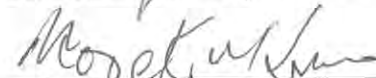
**ACCORDINGLY** the parties agree to enter into Heads of Agreement as follows




Signed this 20<sup>th</sup> day of November 1999.


By the Mandated Representatives of  
**TE URI O HAU:**

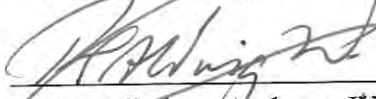
  
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Sir Graham Stanley Latimer

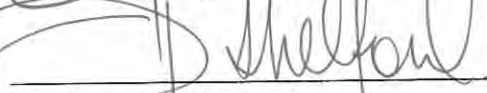
  
\_\_\_\_\_  
Morehu Kena

  
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Jimmy Maramatanga Connelly

  
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William Harry Pomare

  
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Russell Rata Kemp

  
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Rawson Sydney Ambrose Wright

  
\_\_\_\_\_  
Tapihana Shelford (Minister)

*In the presence of:*

Witness:

  
\_\_\_\_\_  
Name:

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

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

Witness:

  
\_\_\_\_\_  
Name:

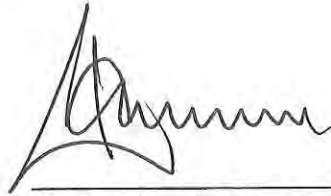
  
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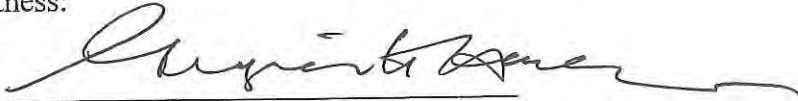


SIGNED for and on behalf of )  
HER MAJESTY THE QUEEN in right )  
of New Zealand by The Minister in Charge )  
of Treaty of Waitangi Negotiations in the )  
presence of: )

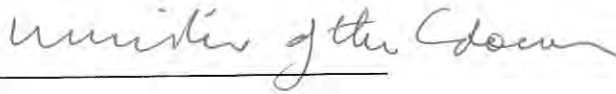


Sir Douglas Arthur Montrose Graham

Witness:



Signature



Occupation



Address:



## SECTION 1: DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

In this Heads of Agreement, unless the context requires otherwise:

*Business Day* means the period of 9am to 5pm on any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) The days observed as the anniversaries of the provinces of Wellington and Northland;

*Coastal Areas* means the Coastal Marine Area of the Kaipara Harbour and the Mangawhai Harbour;

*Coastal Marine Area* has the same meaning as in section 2 of the Resource Management Act 1991;

*Coastal Statutory Acknowledgements* means the statutory acknowledgements to be made by the Crown in respect of Coastal Areas under *clause 4.11*;

*Commercial Redress Schedule* means the Commercial Redress Schedule in this Heads of Agreement;

*Crown* means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of this Heads of Agreement to participate in, any aspect of the redress;

*Crown Forestry Properties* means the properties listed in Part 3 of the Commercial Redress Schedule;

*Crown's Settlement Proposal* means the proposal described in *clause 2.2*;

*Cultural Redress Schedule* means the Cultural Redress Schedule in this Heads of Agreement;

*Deed Date* means the date the Deed of Settlement is signed by Te Uri o Hau and the Crown;

*Deed of Recognition* means a deed entered into by the Crown under *clause 4.4*;

*Deed of Settlement* means a deed of settlement between Te Uri o Hau and the Crown settling the Te Uri o Hau Historical Claims;

*Department of Conservation Protocol* means the protocol to be issued by the Minister of Conservation under *clause 4.15.1*;

*Department of Conservation Protocol Subjects* means the matters to be included in the Department of Conservation Protocol as required by *clause 4.15.2*;

*Heads of Agreement* means this Heads of Agreement, including its Schedules;

*Identified Areas* means those areas set out in section A of Part 6 of the Cultural Redress Schedule;

*Leaseback Properties* means the properties specified in Part 2 of the Commercial Redress Schedule;

*Mandated Representatives* means Sir G Latimer, M Kena, J M Connelly, H W Pomare, R Kemp, R Wright and T Shelford;

*Memorials* means resumptive memorials imposed on land under the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990 or the Education Act 1989;

*Ministry of Commerce Protocol* means the protocol to be issued by the Minister of Energy under *clause 4.17.1*;

*Ministry of Fisheries Protocol* means the protocol to be issued by the Minister of Food, Fibre, Biosecurity and Border Control under *clause 4.16.1*;

*Ministry of Fisheries Protocol Subjects* means the matters to be included in a Ministry of Fisheries Protocol as required by *clause 4.16.2*;

*Nohoanga Camping Entitlement* means a renewable entitlement for the use of land of approximately 1 hectare and suitable for temporary occupation;

*Oyster Reserves* means the following areas of Kaipara Harbour:

- (a) The Arapaoa River between Wakaiti and Tahupo Creek;
- (b) The Arapaoa and Otamatea Rivers between Te Kopua Point and Waipako;

- (c) The Otamatea River between Batley Wharf and Tanoa Point;
- (d) The Otamatea River between Paparoa Point and Onoke Point;
- (e) The Oruawharo River between Raekau Wharf and Waingopai Creek;
- (f) The Wairoa River between Pouto Wharf and Sail Point.

*Party* means a party to this Heads of Agreement;

*Protection Principles* means the specific principles referred to in *clause 4.2* agreed upon by Te Uri o Hau and the Minister of Conservation the purpose of which is to facilitate avoiding harm to, or diminishing, the Te Uri o Hau Values;

*Recipient* means any member of Te Uri o Hau (or any entity representing such member) to which any redress is provided pursuant to this Deed;

*Redress Amount* means the amount referred to in *clause 5.1*;

*RFR Area* means the area identified in the map attached as Attachment 1 over which the Crown is to offer an RFR to Te Uri o Hau;

*RFR Shellfish Species* means the shellfish species described in Part 7 of the Cultural Redress Schedule;

*Settlement* means the settlement to be effected under the Deed of Settlement;

*Settlement Amount* means the amount referred to in *clause 5.7*;

*Settlement Assets* means:

- (a) Land proposed to be vested in Te Uri o Hau as set out in Part 5 of the Cultural Redress Schedule;
- (b) Any properties in Parts 1, 2 and 3 of the Commercial Redress Schedule, as agreed between Te Uri o Hau and the Crown to be vested in Te Uri o Hau on the Settlement Date;
- (c) The Settlement Amount as defined in *clause 5.7*, to be paid by the Crown to Te Uri o Hau Governance Entity on the Settlement Date;
- (d) Includes any Settlement Interest.

*Settlement Date* means the date to be specified as a number of days after the Deed of Settlement becomes unconditional;

*Settlement Interest* has the meaning set out in *clause 11.1.1*;

*Settlement Legislation* means the bill to give effect to the Settlement and, when the bill has become law, means, if the context requires, the Act resulting from the passing of such bill;

*Settlement Redress* means the settlement redress described in *clause 2.2.1*.

*Statutory Acknowledgement* means an acknowledgement made by the Crown in the Deed of Settlement and the Settlement Legislation in accordance with *clause 4.3*;

*Surplus Crown Properties* means the properties specified in Part 1 of the Commercial Redress Schedule;

*Terms of Negotiation* means the Terms of Negotiation dated 6 August 1999;

*Te Uri o Hau* means each person who affiliates to any of the Te Uri o Hau Marae or identifies as Te Uri o Hau and who:

- (a) descends from Haumoewaarangi; and/or
- (b) is a member of any tribal groups associated with such persons (including Ngati Rangi, Ngai Tahuhu, Ngati Mauku, Ngati Tahinga, Ngati Kauae and Ngati Kaiwhare);

*Te Uri o Hau's Area of Interest* means the area identified in the map attached as Attachment 2 as the area which Te Uri o Hau identify as its area of interest;

*Te Uri o Hau Claimant* means any of the following:

- (a) Te Uri o Hau Governance Entity;
- (b) Te Uri o Hau;
- (c) One or more individuals, whanau, marae or hapu of Te Uri o Hau;
- (d) TUOH Company Limited; and

- (e) Any person acting on behalf of any one of the above, including the Mandated Representatives;

*Te Uri o Hau DOC Protocol Area* means the area shown on the map attached as Attachment 2;

*Te Uri o Hau Fisheries Advisory Area* means the area shown on the map attached as Attachment 2 together with:

- (a) the waters of the Kaipara harbour and its tributaries;
- (b) the waters lying between Mahuta Gap Beach entrance and a point equidistant between the westernmost extremity of the south head of the harbour and on the southernmost extremity of the north head of the harbour;
- (c) the waters lying between Te Arai Point and a point approximately 1.5 km north of the Mangawhai harbour;

*Te Uri o Hau Governance Entity* means an entity to be established in accordance with *clause 8.1.5*;

*Te Uri o Hau Historical Claims* has the meaning set out in *clause 1.2*;

*Te Uri o Hau Marae* are marae at Otamatea, Waikaretu, Oruawharo, Arapaoa, Oturei, Ripia, , Waiotea, Parirau, Te Kowhai, Nga Tai Whakarongorua, , Te Pouna, Naumai, Rawhitiora and Waiohau;

*Te Uri o Hau Protocol Area* means the area shown on the map attached as Attachment 2 together with:

- (a) the waters of the Kaipara harbour and its tributaries that are enclosed by the area shown on the map attached as Attachment 2, adjacent to that area, or within that area;
- (b) the waters lying between Mahuta Gap Beach entrance and a point equidistant between the westernmost extremity of the south head of the harbour and the southernmost extremity of the north head of the harbour;
- (c) the waters lying between Te Arai Point and a point approximately 1.5 km north of the Mangawhai harbour;



*Te Uri o Hau Shellfish RFR Area* means the seaward area adjacent to the marked areas shown on the map attached as Attachment 1 between Mahuta Gap to the north and Pouto to the south;

*Te Uri o Hau Values* means the values specified by Te Uri o Hau as the values of each area that is subject to a Kirihipi overlay pursuant to *clause 4.2*;

*Valuation Date* means the date being 30 Business Days before the date anticipated by Te Uri o Hau and the Crown to be the Deed Date;

## 1.2 MEANING OF TE URI O HAU HISTORICAL CLAIMS

In this Heads of Agreement, *Te Uri o Hau Historical Claims* means:

- 1.2.1 All claims made at any time whether before or after this Heads of Agreement (and whether or not the claims have been researched, registered or notified) by any Te Uri o Hau Claimant and:
- (a) Founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), fiduciary duty, or otherwise; and
  - (b) Arising out of or relating to acts or omissions before 21 September 1992:
    - (i) by or on behalf of the Crown; or
    - (ii) by or under legislation, and
- 1.2.2 All claims to the Waitangi Tribunal that specifically relate to Te Uri o Hau including:
- (a) *Wai 229 (Otamatea Lands Claim)*; and
  - (b) *Wai 259 (Tawhiri Pa Claim)*; and
  - (c) *Wai 271 (Pouto Peninsula Claim)*; and
  - (d) *Wai 294 (Pouto Lands Claim)*; and
  - (e) *Wai 409 (Pouto 2E7B2 Block Claim)*; and
  - (f) *Wai 448 (Tuhirangi Block Claim)*; and

- (g) *Wai 658 (Wai-riri Whanau Trust Claim); and*
- (h) *Wai 689 (Pouto Topu A, 2F, 2E7A and 2E6 blocks); and*
- (i) *Wai 721 (Kaipara Lands and Resources); and*

1.2.3 All claims to the Waitangi Tribunal so far as they relate to Te Uri o Hau including:

- (a) *Wai 121 (Ngati Whatua Lands and Fisheries Claim); and*
- (b) *Wai 303 (Te Runanga o Ngati Whatua Claim); and*
- (c) *Wai 468 (Ngapuhi Whanau Trust Claim); and*
- (d) *Wai 688 (Nga Hapu o Whangarei); and*
- (e) *Wai 719 (Kaipara Land and Resources Pirika Ngai Whanau Claim); and*

### **1.3 INTERPRETATION**

In the interpretation of this Heads of Agreement, unless the context otherwise requires:

- 1.3.1 Headings appear as a matter of convenience and are not to affect the interpretation of this Heads of Agreement;
- 1.3.2 Words or phrases (other than proper names) appearing in this Heads of Agreement with capitalised initial letters are defined terms and bear the meanings given to them in this Heads of Agreement;
- 1.3.3 Where a word or expression is defined in this Heads of Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 References to the Background, Recitals, Sections, clauses and Schedules are to the Background, Recitals, Sections and clauses of, and Schedules to, this Heads of Agreement. A Recital is a paragraph in the Background to this Heads of Agreement;

- 1.3.6 References within a Schedule to a paragraph or an Appendix means the paragraph in, or the Appendix to, that Schedule;
- 1.3.7 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 1.3.8 A reference to a party to this Heads of Agreement or any other document or agreement includes that party's successors;
- 1.3.9 A reference to any document or agreement, including this Heads of Agreement, includes a reference to that document or agreement as amended, novated or replaced from time to time;
- 1.3.10 References to monetary amounts are to New Zealand currency;
- 1.3.11 References to written or in writing include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- 1.3.12 A reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.13 References in this Heads of Agreement to the Crown or a Crown body endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result and, in particular, do not oblige the Crown or the Government of New Zealand to promote any legislation;
- 1.3.14 Where a clause includes a preamble, that preamble is intended to set out the background to, and intention of, the clause, but is not to affect the interpretation of the clause;
- 1.3.15 In the event of a conflict between the terms of the main body of the Heads of Agreement and the Schedules, then the terms of the main body of the Heads of Agreement shall prevail;
- 1.3.16 A reference to any document being in the form specified in a Schedule includes that document with such amendments as may be agreed in writing between the Te Uri o Hau and the Crown;

- 1.3.17 A reference to a date on which something must be done includes any other date which may be agreed in writing between the Te Uri o Hau and the Crown.
- 1.3.18 Consistent with the intention of *clauses 4.2, 5.8 and 8.1.6*, references in certain provisions of this Heads of Agreement to Te Uri o Hau are to be construed as references to the Te Uri o Hau Governance Entity and the provisions of the Deed of Settlement giving effect to those provisions will refer to the Te Uri o Hau Governance Entity.

## **SECTION 2: CROWN'S SETTLEMENT PROPOSAL AND PROPOSED SETTLEMENT PROCESS**

### **2.1 DESIRE TO SETTLE THE TE URI O HAU HISTORICAL CLAIMS**

Te Uri o Hau and the Crown wish to settle the Te Uri o Hau Historical Claims.

### **2.2 NATURE OF CROWN'S SETTLEMENT PROPOSAL**

2.2.1 The Crown proposes to settle the Te Uri o Hau Historical Claims by providing in a Deed of Settlement for the following Settlement Redress:

- (a) An apology to Te Uri o Hau; and
- (b) Cultural redress to Te Uri o Hau; and
- (c) Financial and commercial redress to Te Uri o Hau.

2.2.2 Sections 3, 4, 5 and 8 respectively of this Heads of Agreement set out the scope and nature, in principle, of:

- (a) The apology;
- (b) The cultural redress;
- (c) The financial and commercial redress; and
- (d) The conditions for that Settlement Redress,

that the Crown proposes to include in a Deed of Settlement with Te Uri o Hau (*the "Crown's Settlement Proposal"*).

### **2.3 CONDITIONS**

The Crown's Settlement Proposal, and the Deed of Settlement, will be subject to the conditions, the scope and nature of which, are set out in *Section 8*.

### **2.4 PROPOSED SETTLEMENT PROCESS**

The Crown proposes that, after the signing of this Heads of Agreement, Te Uri o Hau and the Crown work together in good faith to develop, as soon as reasonably practicable a Deed of Settlement that:

- 2.4.1 Incorporates the Crown's Settlement Proposal (including all matters of detail and implementation); and

- 2.4.2 Will, with effect from the Settlement Date, enable Te Uri o Hau and the Crown to settle the Te Uri o Hau Historical Claims.

## SECTION 3: PROPOSED APOLOGY

### 3.1 NATURE OF APOLOGY

The Crown proposes that a Deed of Settlement and Settlement Legislation will provide for an apology to Te Uri o Hau that incorporates:

- 3.1.1 A recital based on the historical account in *clause 3.2*; and
- 3.1.2 Acknowledgements by the Crown of breaches of the principles of the Treaty of Waitangi; and
- 3.1.3 An apology by the Crown, in a form to be agreed by the Parties.

### 3.2 HISTORICAL ACCOUNT

The Crown proposes that the apology to Te Uri o Hau be based on the following historical account:

#### **Land Claims Commission**

Te Uri o Hau participated in several transactions that were claimed to have been purchases made by individual Europeans in the Kaipara area in 1839 and 1840. Te Uri o Hau participants in these transactions sought to promote settlement and trade opportunities by entering into these transactions.

The Land Claims Commission was established to investigate land transactions that occurred in New Zealand prior to 14 January 1840, in order to determine whether they were equitable. Between 1841 and 1844, the Commission heard claims relating to land in which Te Uri o Hau had interests. The Land Claims Commission inquired into whether a transaction occurred or not, and generally validated those claims where Maori supported the transaction, but did not explore possible broader Maori expectations regarding the transactions.

Four of these claims were further considered by the Bell Commission in the 1850's. Two of those claims were not pursued by the settler claimants, but the Crown provided some compensation to the settlers for previous outlay and made further payments to Maori. In respect of the two claims that were pursued, the Commissioner made awards of land to the European claimants. 6,000 acres of the land under claim was retained by the Crown as surplus. Of this 6,000 acres, the Crown later purchased approximately 5,400 acres from Maori.



## **Te Kopuru Land**

In 1842, the Protector of Aborigines prevailed upon chiefs of Te Uri o Hau and Nga Puhi to cede an area of land as restitution for the plunder of the store of a local resident. Maori suspected that the storeowner had desecrated an urupa and removed human remains. Representative chiefs selected an area of land at Te Kopuru for this purpose. The Crown made no payment for the land and retained the area as punishment for the plunder. Uncertainty surrounded the boundaries of the ceded block and the area does not appear to have been surveyed until 1857, when land to the south of Te Kopuru was purchased by the Crown. It is estimated that the block contained 6,000 – 8,000 acres.

## **Pre-1865 Purchases**

The first Crown purchases involving Te Uri o Hau land occurred in 1854. By 1865, approximately 300,000 acres in the northern Kaipara area had been alienated.

These early Crown purchases were characterised by the following features:

- Inter-iwi rivalry between the groups of Nga Puhi/Te Parawhau and Te Uri o Hau/Ngati Whatua with regard to the ownership of blocks that the Crown sought to purchase.
- Approximately 60% of land in which Te Uri o Hau had interests was purchased before 1865.
- Only one small reserve was set aside out of the twelve purchases made in the Otamatea area in which Te Uri o Hau had interests. The two reserves made in the purchases of blocks on the Pouto peninsula were almost entirely alienated within a few years of their exclusion from the purchases.

The Crown's purchase in 1854 of the Mangawhai block was notable in that the Deed stated that "ten per cent. of the proceeds of the sale of this block of land by the Queen is to be expended for the benefit of the Natives". There was performance of this clause up to 1874. No further payments were made after this date.

## **The Operations of the Native Land Laws and Purchases 1871-1900**

The Native Land Court began title investigation in the Kaipara area from 1864 onwards. A number of mostly small blocks in which Te Uri o Hau had an interest, were heard by the Court in the late 1860s and early 1870s in the Otamatea. Little

land was alienated during this time and revenue was generated through leasing the land.

By the late 1870s/early 1880s, Te Uri o Hau's use of the Court was restricted to blocks of land that they intended to sell. Te Uri o Hau subsequently introduced to the Court, and sold, large areas.

The complexity of the Native Land Laws were an issue in the sale of the Okahukura block. Te Uri o Hau non-seller Hemana Whiti agreed to the transfer of the block after reaching an agreement with the private purchaser. The witnessed and signed agreement documented that 100 acres was to be reconveyed to Hemana Whiti subsequent to the block's sale. The Courts' inability to give legal recognition to this agreement due to a provision in the Native Land Act 1873 however, saw Hemana Whiti evicted from his land and his property destroyed. Successive governments did not intervene in this legal dispute.

Advance payments were made by the Crown to rangatira of Te Uri o Hau prior to title investigation by the Native Land Court, in an attempt to secure the purchase of blocks following the determination of title. Such payments occurred for example in Crown purchases of the Tikinui block and Pouto Point.

Reserves set aside in land purchases in which Te Uri o Hau had an interest:

- often encompassed wahi tapu sites
- several were made inalienable but were subsequently alienated
- were in some cases awarded exclusively to individual Maori, leaving them subject to partition and succession and consequently, fragmentation.

The Validation Court, which was established to hear claims from those seeking to "validate" incomplete dealings in Maori land, investigated the alleged purchase of 2,200 acres of Pouto land in 1893 and 1897. The operative land legislation enabled the Validation Court to rule in favour of a provisional and disputed purchase agreement between a settler and Te Uri o Hau, and allow it to be validated despite strong objections from Te Uri o Hau.

### **Desecration of Urupa and other Wahi Tapu**

Taonga were taken from wahi tapu in the Wairoa-Kaipara district and the Pouto peninsula without the permission of the tangata whenua despite Maori concerns about the violation of wahi tapu.

Specific legislation to provide protection against the taking of taonga did not exist until 1901.

### **20<sup>th</sup> Century Land Administration**

The Taitokerau District Maori Land Board was created under the Maori Land Settlement Act 1905. Some Te Uri o Hau land was compulsorily vested in the Land Board after 1905 for lease. Later legislation allowed some land to be sold by the Board without the permission of owners. The mandate of the owners was required in other cases.

Due to the existing private and State lending criteria, attempts to obtain development finance by some Te Uri o Hau landowners were unsuccessful. State funding was provided after 1929 to assist in the economic development of the land in Kaipara.

The operative land administration legislation gave the Minister of Maori Affairs, followed by the Board of Maori Affairs, substantial powers, leaving the landowners with few, if any, legal powers over their own land.

In 1930, all land owned by Maori within the Kaipara area was brought under the provisions of Maori land development legislation. Maori could enter into land development schemes either through station development or smaller individual 'unit' schemes.. From the 1940s Maori owners were progressively distanced from the schemes' administration, due to a number of political and economic changes.

Administration and economic difficulties with little immediate prospect of land being released from state control, may have encouraged some landowners to sell their interests in scheme land to the Crown. The Crown actively promoted such sales with legislation to foster "live buying" of Maori land interests. These interests were retained by the Crown in many instances and later became available for repurchase by the remaining owners.

The long-term benefits of the schemes have been variable. Some of the schemes have had positive outcomes. However, some of the individual 'unit' schemes, in particular, were of limited economic benefit and failed to fulfil owners' expectations.

## SECTION 4: PROPOSED CULTURAL REDRESS

### 4.1 LAND TO BE VESTED IN TE URI O HAU IN FEE SIMPLE

#### 4.1.1 Pukekaroro

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) The revocation of the scenic reserve status of that part of the Pukekaroro Scenic Reserve described in Part 5 of the Cultural Redress Schedule; and
- (b) The vesting in Te Uri o Hau of the fee simple estate of that part of Pukekaroro Scenic Reserve subject to:
  - (i) a registrable covenant for the protection of the natural values of that site; and
  - (ii) Te Uri o Hau and the Minister of Conservation entering into an agreement for the management of that part of the Pukekaroro Scenic Reserve to be vested in Te Uri o Hau.

#### 4.1.2 Maungaturoto Scenic Reserve

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) The identification of a 0.5 hectare portion of the Maungaturoto Scenic Reserve described in Part 5 of the Cultural Redress Schedule;
- (b) The revocation of the scenic reserve status of that agreed area;
- (c) The vesting in Te Uri o Hau of the fee simple estate in that agreed area subject to a registrable covenant for the protection of the natural values of that site.

#### 4.1.3 Whakahuranga Pa

- (a) Te Uri o Hau and the Crown acknowledge that the Crown is currently negotiating with the owner to purchase the fee simple estate in the Whakahuranga Pa Site described in Part 5 of the Cultural Redress Schedule. If the Crown acquires the fee simple estate in the Whakahuranga Pa Site, the Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for the vesting in Te Uri o Hau of the fee simple estate of the Whakahuranga Pa Site.

- (b) The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:
- (i) The identification of any part of the Whakahuranga Pa site within the Oruawharo River Stewardship Area (if any) described in Part 5 of the Cultural Redress Schedule (up to a maximum agreed area of 1 hectare);
  - (ii) The cessation of the stewardship area status of that agreed area; and
  - (iii) The vesting in Te Uri o Hau of the fee simple estate in that agreed area.

#### 4.1.4 Oteono

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) The identification of the burial site of Tutaki (Grid co-ordinates 02/43) in the Pouto North Stewardship Area described in Part 5 of the Cultural Redress Schedule (up to a maximum agreed area of 1 hectare);
- (b) The cessation of the stewardship area status of that agreed area; and
- (c) The vesting in Te Uri o Hau of the fee simple estate in that agreed area.

#### 4.1.5 Rocky Point Marginal Strip (Whakapirau)

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) The identification of the cliff area of the Rocky Point Marginal Strip described in Part 5 of the Cultural Redress Schedule;
- (b) The reduction of the Rocky Point Marginal Strip so as to exclude the cliff area identified under *clause 4.1.5(a)* from that marginal strip; and
- (c) The vesting in Te Uri o Hau of the fee simple estate in that cliff area free from the requirement under Part IVA of the Conservation Act 1987 to reserve a marginal strip.

#### 4.1.6 Okahukura Stewardship Area

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:



- (a) The identification of a site up to a maximum area of 2 hectares in size within that part of the Okahukura Stewardship Area described in Part 5 of the Cultural Redress Schedule;
- (b) The cessation of the stewardship area status of that agreed area; and
- (c) The vesting in Te Uri o Hau of the fee simple estate in that agreed area.

#### 4.1.7 **Hokarako Cave**

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) The cessation of the stewardship area status of Hokarako Stewardship Area described in Part 5 of the Cultural Redress Schedule; and
- (b) The vesting in Te Uri o Hau of the fee simple estate in the Hokarako Stewardship Area.

#### 4.1.8 **Humuhumu Lake Bed**

Te Uri o Hau and the Crown acknowledge that members of Te Uri o Hau currently hold the fee simple estate in a major portion of the bed of Lake Humuhumu. The Crown proposes that the Deed of Settlement and Settlement Legislation will provide:

- (a) for the vesting in Te Uri o Hau of the fee simple estate in that part of the bed of Lake Humuhumu described in Part 5 of the Cultural Redress Schedule and vested in the Crown; and
- (b) that the vesting in Te Uri o Hau of the fee simple estate in that part of the bed of Lake Humuhumu:
  - (i) will not, of itself, confer any rights, or impose any obligations, on Te Uri o Hau, in respect of ownership, management or control of the waters of Lake Humuhumu or the aquatic life of Lake Humuhumu but nothing in this clause will affect the obligations of Te Uri o Hau in respect of noxious weeds;
  - (ii) is subject to any existing lawful rights of public access to the bed of Lake Humuhumu so long as, and to the extent that, such rights otherwise remain lawful; and
  - (iii) is subject to any commercial use affecting the bed of Lake Humuhumu, or rights of ownership and occupation of structures

attached to the bed of the lake so long as, and to the extent that, those rights otherwise remain lawful.

#### 4.1.9 **Pouto Road End**

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for the vesting in Te Uri o Hau of the fee simple estate in the Pouto Road End land described in Part 5 of the Cultural Redress Schedule.

#### 4.1.10 **Wahi Tapu Sites in the Pouto Forest**

The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide for:

- (a) the vesting in Te Uri o Hau of the fee simple estate in each of the Wahi Tapu Sites described in Part 5 of the Cultural Redress Schedule; and
- (b) the vesting in Te Uri o Hau of the fee simple estate in each of the Wahi Tapu sites to be subject to Te Uri o Hau purchasing on the Settlement Date, as part of the Commercial Redress, the Pouto Forest described in Part 3 of the Commercial Redress Schedule. If the vesting in Te Uri o Hau of the fee simple in the Wahi Tapu sites occurs, there will be no change to the existing access rights and arrangements in relation to those sites.

#### 4.1.11 **Pou Tu O Te Rangi (Pa of Haumoewaarangi)**

Te Uri o Hau and the Crown acknowledge that the Kaipara District Council has indicated its intention to undertake a process of public consultation with regard to the revocation of the management and control of the Pou Tu O Te Rangi described in Part 5 of the Cultural Redress Schedule. The Crown proposes that (if before the Deed Date the Kaipara District Council agrees in writing to the cancellation of its control and management of Pou Tu O Te Rangi described in Part 5 of the Cultural Redress Schedule) the Deed of Settlement and the Settlement legislation will provide for:

- (a) The revocation of the reserve status of the Pou Tu O Te Rangi;
- (b) The appointment of the Kaipara District Council to control and manage the Pou Tu O Te Rangi as a reserve will be cancelled;
- (c) The vesting in Te Uri o Hau of the fee simple estate in the Pou Tu O Te Rangi subject to Te Uri o Hau administering the site as a reserve under the Reserves Act 1977.



#### 4.2 DECLARATION OF AREA AS SUBJECT TO A KIRIHIPI OVERLAY

Te Uri o Hau and the Crown acknowledge that the word “Kirihipi” has special significance to Te Uri o Hau as described in Recital F of the Background. The Kirihipi overlay will ensure that the special Te Uri o Hau values associated with the site are recognised in statute and regard is given to those values in relation to actions taken by the Director-General of Conservation. The high conservation values that are already protected in statute will remain protected. To achieve these objectives the Crown proposes that the Deed of Settlement and Settlement Legislation will:

4.2.1 Provide for each of the following areas, which are special areas to Te Uri o Hau, to be declared as being subject to a Kirihipi overlay:

- (a) The Tapura Government Purpose (Wildlife Management) Reserve as identified in Section B of Part 6 of the Cultural Redress Schedule;
- (b) The Pouto Stewardship Area identified in Section B of Part 6 of the Cultural Redress Schedule;

4.2.2 Describe the Te Uri o Hau Values specified by Te Uri o Hau and acknowledged by the Crown;

4.2.3 Enable Te Uri o Hau and the Minister of Conservation to agree upon, and publicise, the Protection Principles the purpose of which is to facilitate the Minister of Conservation avoiding harm to, or diminishing, the Te Uri o Hau Values in an area which is subject to a Kirihipi overlay;

4.2.4 Require the New Zealand Conservation Authority, or any conservation board, in considering general policy, a conservation management strategy or a conservation management plan in respect of an area which is subject to a Kirihipi overlay to:

- (a) Have particular regard to the Te Uri o Hau Values in relation to that area which is subject to a Kirihipi overlay; and any relevant Protection Principles; and
- (b) Consult with Te Uri o Hau and have particular regard to its views, as to the effect of that policy, strategy or plan on the Te Uri o Hau Values;

4.2.5 Provide that the declaration of each area as being subject to a Kirihipi overlay and the acknowledgement of Te Uri o Hau Values are in accordance with the requirements set out in Part 2 of the Cultural Redress Schedule; and

4.2.6 Provide that the Director-General of Conservation, upon notification by the Minister of Conservation in the Gazette:

- (a) must take action in relation to the Protection Principles; and
- (b) has complete discretion to determine the method and extent of the action to be taken in relation to the Protection Principles.

### **4.3 STATUTORY ACKNOWLEDGEMENTS IN RELATION TO IDENTIFIED AREAS**

The Crown proposes that the Deed of Settlement and the Settlement Legislation will:

- 4.3.1 Make a Statutory Acknowledgement in respect of each of the Identified Areas;
- 4.3.2 Include a statement by Te Uri o Hau of the particular cultural, spiritual, historic and/or traditional association of Te Uri o Hau with each of those Identified Areas;
- 4.3.3 Provide for an acknowledgement by the Crown of that statement of association by Te Uri o Hau;
- 4.3.4 Enable regulations to be made that require the consent authorities that consider resource consents under the Resource Management Act 1991 to forward to Te Uri o Hau summaries of applications for resource consents where those Te Uri o Hau applications relate to activities within, adjacent to, or impacting directly on any or all of those Identified Areas;
- 4.3.5 Require the consent authorities and the Environment Court to have regard to the Statutory Acknowledgements in relation to the Identified Areas in deciding whether Te Uri o Hau should be heard under sections 93, 94 or 274 of the Resource Management Act 1991 (without derogating from their obligations under Part II of that Act);
- 4.3.6 Require the Historic Places Trust and the Environment Court to have regard to the Statutory Acknowledgements in deciding whether Te Uri o Hau is a person “directly affected” under sections 14 and 20(1) of the Historic Places Trust Act 1983;
- 4.3.7 Enable Te Uri o Hau, or any member of Te Uri o Hau, to cite the Statutory Acknowledgements as evidence (but not binding as a deemed fact) of the association of Te Uri o Hau with the Identified Areas in

submissions to proceedings before a consent authority, the Environment Court or the Historic Places Trust concerning activities within, adjacent to, or impacting directly upon any or all of the Identified Areas;

4.3.8 Provide that Statutory Acknowledgements in relation to the Identified Areas are in accordance with the applicable requirements set out in Part 3 of the Cultural Redress Schedule; and

4.3.9 Provide that local authorities within the RFR Area and the Te Uri o Hau's Area of Interest will attach to all regional policy statements, district plans and regional plans (including proposed plans and proposed policy statements) from time to time prepared pursuant to the Resource Management Act 1991, information recording the Statutory Acknowledgements affecting the Identified Areas covered wholly or partly by such policy statements or plans.

#### **4.4 DEEDS OF RECOGNITION IN RELATION TO IDENTIFIED AREAS**

The Crown proposes that the Deed of Settlement and Settlement Legislation will:

4.4.1 With respect to any Identified Area, enable the Crown to enter into a Deed of Recognition that will provide that Te Uri o Hau must be consulted, and that regard must be had to its views, in respect of the association described in the Statutory Acknowledgement to which the Deed relates, concerning the management or administration of the Identified Area by the responsible Minister or the Commissioner of Crown Lands;

4.4.2 Provide that entry into a Deed of Recognition does not require the Crown to:

- (a) Undertake any management function; or
- (b) Increase its management or administrative functions; or
- (c) Resume any management or administrative function;

4.4.3 Provide that, if there is a change of management or administration of an Identified Area, the Crown will take reasonable steps to facilitate the negotiation of a new or amended Deed of Recognition; and

4.4.4 Provide that, if the land to which a Deed of Recognition applies is disposed of by the Crown, the Deed of Recognition will terminate.

#### **4.5 NOHOANGA CAMPING ENTITLEMENTS FOR TE URI O HAU**

4.5.1 The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide:

- (a) For the granting by the Crown to Te Uri o Hau of three Nohoanga Camping Entitlements of approximately 1 hectare in relation to the Pouto Stewardship Area described in Section A of Part 6 of the Cultural Redress Schedule;
- (b) For Nohoanga Camping Entitlements to be:
  - (i) For renewable terms of 10 years;
  - (ii) Created only for the purpose of permitting members of the Te Uri o Hau to occupy temporarily land close to a waterway on a non-commercial basis; so as to have access to nearby waterways for lawful fishing and gathering of natural resources; and
  - (iii) For up to 210 days in any calendar year (except for the period from 1 May to 15 August in any calendar year);

to the exclusion of other persons (except for agents of the Crown, and persons permitted by legislation, who are undertaking their normal functions in relation to the land); and

- (c) That Nohoanga Camping Entitlements are in accordance with the applicable requirements set out in Part 4 of the Cultural Redress Schedule.

4.5.2 The granting of each Nohoanga Camping Entitlement is subject to a site inspection by the Crown and Te Uri o Hau to identify, and agree upon, three suitable sites of approximately 1 hectare each.

#### **4.6 RIGHT OF WAY TO PIHAHA**

4.6.1 Te Uri O Hau and the Crown acknowledge that:

- (a) the owner of the fee simple title to Lot 1 DP 187903 has agreed to grant to Te Uri o Hau a right of way over Lot 1 DP 187903 in order for Te Uri o Hau to have access to Pouto 2C block (ML 3875/5); and
- (b) the location of the right of way and any conditions the right of way may be subject to will be determined by the owner of Lot 1 DP 187903 at its discretion.

- 4.6.2 The Crown proposes that the Deed of Settlement will provide for the Crown to meet the costs of any survey work necessary to register the right of way over Lot 1 DP 187903.

#### **4.7 RIGHT OF WAY TO POUTO 2E7B2**

- 4.7.1 The Crown proposes that the Deed of Settlement will provide:

- (a) for the granting by the Crown to the owners of Pouto 2E7B2 block (ML9470) a right of way over Lot 2DP39454 in order for the owners of Pouto 2E7B2 block (ML9470) to have access to Pouto 2E7B2 block (ML9470);
- (b) the location of the right of the way and any terms and conditions will be determined by the Crown.

#### **4.8 TE URI O HAU TO FORM ADVISORY COMMITTEE TO MINISTER**

The Crown proposes that the Deed of Settlement will provide that the Minister for Food, Fibre, Biosecurity and Border Control will:

- 4.8.1 Appoint Te Uri o Hau, as from the Settlement Date, as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995, to provide advice to the Minister on all matters concerning the sustainable utilisation of fish, aquatic life and seaweed administered by the Minister for Food, Fibre, Biosecurity and Border Control within the Te Uri o Hau Fisheries Advisory Area under the Fisheries Act 1996; and

- 4.8.2 Consider the advice of the advisory committee; and

- 4.8.3 Recognise and provide for the interests of Te Uri o Hau in respect of all matters concerning the sustainable utilisation of fish, aquatic life and seaweed within the Te Uri o Hau Fisheries Advisory Area.

#### **4.9 ACKNOWLEDGEMENT OF CUSTOMARY INTEREST IN CERTAIN FISH SPECIES**

##### **4.9.1 Customary interest in Toheroa**

The Crown proposes that the Deed of Settlement will provide for:

- (a) The Crown to acknowledge that:
  - (i) Te Uri o Hau have a customary interest in the toheroa in the Te Uri o Hau Protocol Area; and



- (ii) The toheroa fishery in the Te Uri o Hau Protocol Area is not currently fished commercially or recreationally (other than for customary non commercial purposes); and
- (b) The Minister of Food, Fibre, Biosecurity and Border Control to consult with the advisory committee referred to in *clause 4.8* in relation to any proposal to the Minister affecting the toheroa fishery in the Te Uri o Hau Protocol Area;
- (c) The Crown to confirm that the Minister will, in considering any proposal, ensure that the customary non-commercial fishing interests of Te Uri o Hau in toheroa, in the Te Uri o Hau Protocol Area, are recognised and provided for in accordance with the provisions of:
  - (i) Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
  - (ii) Section 21 of the Fisheries Act 1996.

#### 4.9.2 **Customary interest in Shark, Ray, Flounder, Snapper, Kahawai and Mullet**

The Crown proposes that the Deed of Settlement will provide for:

- (a) The Crown to acknowledge that Te Uri o Hau have a customary interest in the shark, ray, flounder, snapper, kahawai and mullet fisheries in the Te Uri o Hau Fisheries Advisory Area; and
- (b) The Minister of Food, Fibre, Biosecurity and Border Control will when making decisions concerning the sustainable utilisation of shark, ray, flounder, snapper, kahawai or mullet within the Te Uri o Hau Fisheries Advisory Area, to the extent that the Minister is responsible for those species, consult with the advisory committee referred to in *clause 4.8* and recognise and provide for the customary interest of Te Uri o Hau in shark, ray, flounder, snapper, kahawai and mullet, consistent with the overall objectives of the Fisheries Act 1983 and the Fisheries Act 1996.

#### **4.10 RIGHT OF FIRST REFUSAL OVER SHELLFISH SPECIES**

##### **4.10.1 Shellfish RFR in RFR Area**

The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that if any of the RFR Shellfish Species are to be made subject to the quota management system under the Fisheries Act 1996, then the Crown will, subject to *clause 4.10.2*, grant Te Uri o Hau a right of first refusal (the "Shellfish RFR") to purchase from the Crown (on terms and conditions (including price) determined by the Crown) the lesser of the following:

- (a) 40% of the total allowable commercial catch for the RFR Shellfish Species in respect of any quota management area within the Te Uri o Hau Shellfish RFR Area; or
- (b) The quantity of quota allocated to the Crown under section 49(3) of the Fisheries Act 1996 in respect of the RFR Shellfish Species in any quota management area within the Te Uri o Hau Shellfish RFR Area.

##### **4.10.2 Application of the Shellfish RFR**

The Crown proposes that the Deed of Settlement and Settlement Legislation will provide that:

- (a) If only part of a quota management area referred to in *clause 4.10.1* is within the Te Uri o Hau Shellfish RFR Area, the proportion of the total allowable commercial catch for the purposes of the Shellfish RFR will be the lesser of the following:
  - (i) 40% of the total allowable commercial catch for the RFR Shellfish Species that relates to that part of the quota management area within the Te Uri o Hau Shellfish RFR Area; and
  - (ii) The quantity of quota allocated to the Crown under section 49(3) of the Fisheries Act 1996 in respect of the RFR Shellfish Species in that part of the quota management area within the Te Uri o Hau Shellfish RFR Area;
- (b) The Shellfish RFR will not apply in respect of:
  - (i) Any provisional individual transferable quota allocated to the Crown under section 49 of the Fisheries Act 1996; or
  - (ii) Any individual transferable quota acquired by any means by the Crown after the initial allocation of individual transferable quota;



- (c) The Shellfish RFR will not require the Crown to purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996, prior to the allocation of individual transferable quota; and
- (d) To the extent that, as a result of exercising the Shellfish RFR, Te Uri o Hau holds a percentage of quota that exceeds any limit on holding quota under section 59 of the Fisheries Act 1996, Te Uri o Hau will be deemed to have received, under section 60 of the Fisheries Act 1996, the consent of the relevant Minister to hold the percentage of quota in excess of that limit.

#### 4.10.3 Crown's Obligations in respect of Quota Management System

The Crown and Te Uri o Hau will acknowledge in the Deed of Settlement that although the Shellfish RFR will be provided under the Deed of Settlement and Settlement Legislation:

- (a) The Crown will not be required to introduce any of the RFR Shellfish Species into the quota management system; and
- (b) Any introduction of an RFR Shellfish Species into the quota management system may not result in any, or any significant, holdings by the Crown of quota for that RFR Shellfish Species.

#### 4.11 COASTAL STATUTORY ACKNOWLEDGEMENTS

The Crown proposes that the Deed of Settlement and Settlement Legislation will:

- 4.11.1 Make a Coastal Statutory Acknowledgement in respect of each of the Coastal Areas;
- 4.11.2 Include a statement by Te Uri o Hau of the particular cultural, spiritual, historic and/or traditional association of Te Uri o Hau with each of those Coastal Areas;
- 4.11.3 Provide for an acknowledgement by the Crown of that Statement of Association by Te Uri o Hau;
- 4.11.4 Enable regulations to be made that require the consent authorities that consider resource consents under the Resource Management Act 1991 to forward to Te Uri o Hau summaries of applications for resource consents where those applications relate to activities within, adjacent to, or impacting directly on either or both of the Coastal Areas;
- 4.11.5 Require the consent authorities and the Environment Court to have regard to the Coastal Statutory Acknowledgements in relation to the Coastal

Areas in deciding whether Te Uri o Hau should be heard under sections 93, 94 or 274 of the Resource Management Act 1991 (without derogating from their obligations under Part II of that Act);

- 4.11.6 Require the Historic Places Trust and the Environment Court to have regard to the Coastal Statutory Acknowledgements in relation to the Coastal Areas in deciding whether Te Uri o Hau is a person “directly affected” under sections 14 and 20(1) of the Historic Places Trust Act 1983;
- 4.11.7 Enable Te Uri o Hau or any member of Te Uri o Hau to cite the Coastal Statutory Acknowledgements as evidence (but not binding as deemed fact) of the association of Te Uri o Hau with the Coastal Areas in submissions to proceedings before a consent authority, the Environment Court or the Historic Places Trust concerning activities within, adjacent to, or impacting directly upon either of the Coastal Areas;
- 4.11.8 Provide that the Coastal Statutory Acknowledgements in relation to the Coastal Areas are in accordance with the applicable requirements set out in paragraphs 3.1.1, 3.1.2, 3.1.4 and 3.3 to 3.5 of Part 3 of the Cultural Redress Schedule (as if a Coastal Statutory Acknowledgement was a Statutory Acknowledgement); and
- 4.11.9 Provide that local authorities within the RFR Area and the Te Uri o Hau's Area of Interest will attach to all regional policy statements, district plans and regional plans (including proposed plans and proposed policy statements) from time to time prepared pursuant to the Resource Management Act 1991, information recording the Coastal Statutory Acknowledgements affecting the Coastal Areas covered wholly or partly by such policy statements or plans.

#### **4.12 EEL FISHERIES**

- 4.12.1 Te Uri o Hau and the Crown acknowledge that by virtue of section 3(2) of the Fisheries (Kaimoana Customary Fishing) Regulations 1998, those regulations do not apply to those fisheries resources (as that term is defined in those regulations) which are taken in fresh water.
- 4.12.2 The Crown proposes that the Deed of Settlement will provide that, upon receipt of a proposal from Te Uri o Hau to include the eel fisheries in the Pouto Lakes within the application of the Fisheries (Kaimoana Customary Fishing) Regulations, the Minister of Food, Fibre, Biosecurity and Border Control will consult with the advisory committee referred to in *clause 4.8.2* in respect of such a proposal by Te Uri o Hau.

4.12.3 Te Uri o Hau and the Crown acknowledge that the only obligation of the Minister in *clause 4.12.2* is to consider the proposal and to consult with the advisory committee in respect of the proposal, and, in particular, there is no obligation or expectation that:

- (a) The Minister will agree with all or part of that proposal; or
- (b) The Fisheries (Kaimoana Customary Fishing) Regulations 1998, Fisheries Act 1996, the Fisheries Act 1983 or any other legislation or regulations will be amended in accordance with the proposal.

4.12.4 The Crown proposes that the Deed of Settlement will provide for the Minister of Food, Fibre, Biosecurity and Border Control to consider in accordance with section 186A of the Fisheries Act 1996 temporarily restricting or prohibiting the use of certain eel fishing methods, being fyke net and hinaki, in respect of the Pouto Lakes and will commence the relevant consultation processes provided for in section 186A of the Fisheries Act 1996. Te Uri o Hau and the Crown acknowledge that the only obligation of the Minister in this clause is to consider restricting or prohibiting the use of the specified eel fishing methods in the Pouto Lakes and to consult in respect of this in accordance with section 186A of the Fisheries Act 1996, and, in particular there is no obligation or expectation that the Minister will, by notice in the Gazette, temporarily restrict or prohibit the use of any of the specified eel fishing methods in the Pouto Lakes; and

4.12.5 The Crown proposes that the Deed of Settlement will provide for:

- (a) discussion between officials of the Ministry of Fisheries and Te Uri o Hau concerning:
  - (i) the maximum quantity of undersized eel that is likely to be permitted to be taken under section 63 of the Fisheries Act 1983 (the "Permitted Catch") from each of not more than 3 sites within that part of the Te Uri o Hau Protocol Area specified by Te Uri o Hau to the Ministry of Fisheries in writing; and
  - (ii) the likely conditions of any Permitted Catch under section 63 of the Fisheries Act 1983 in relation to each of those specified sites, including the likely conditions in relation to the relocation of any of that Permitted Catch in waterways in the Te Uri o Hau Protocol Area; and aquacultural farms;
- (b) the Ministry of Fisheries to consider, in accordance with the relevant legislation and operational processes, any application from Te Uri o Hau for

a special permit to take undersized eels (elvers or glass eels) from waterways within the Te Uri o Hau Protocol Area as part of any enhancement or aquacultural project;

- (c) eel to be defined as:
  - (i) *anguilla dieffenbachii* (longfinned eel);
  - (ii) *anguilla australis* (shortfinned eel); and
  - (iii) *anguilla rheinhartii*; and
- (d) undersized eel to be defined as eel with a weight of less than 220g.

#### **4.13 OYSTER RESERVES**

##### **4.13.1 Consultation on Regulations**

The Crown proposes that the Deed of Settlement will provide that the Crown will consult with Te Uri o Hau in respect of the development of the regulations referred to in *clause 4.13.1*.

##### **4.13.2 Making Regulations**

Section 9 of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1996 prohibits any person who is not a Maori from taking any oyster in certain parts of the Kaipara Harbour. The Crown proposes that the Deed of Settlement will provide for the Minister of Food, Fibre, Biosecurity and Border Control to recommend to the Governor-General the making of regulations pursuant to Part IX of the Fisheries Act 1996 with the purpose of providing for:

- (a) Section 9 of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 and section 23 of the Fisheries (Amateur Fishing) Regulations 1986 to cease to apply to Te Uri o Hau;
- (b) The empowering of Te Uri o Hau to nominate a management structure to manage non-commercial customary food gathering within the Oyster Reserves;
- (c) Recognition of and provision for exclusive non-commercial customary food gathering by Te Uri o Hau in respect of the Oyster Reserves to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade, such recognition will include recognition and provision for the exclusion of recreational harvest by any other persons in respect of the Oyster Reserves;



- (d) The definition of the location and description of the Oyster Reserves;
- (e) The empowering of the management structure nominated by Te Uri o Hau to:
  - (i) authorise any individuals to take oysters for customary food gathering purposes from within the whole or any part of the Oyster Reserves;
  - (ii) restrict or prohibit the taking of oysters from within the whole or part of the Oyster Reserves for any purpose that Te Uri o Hau considers necessary for the sustainable utilisation of the oyster resources in the Oyster Reserves subject to review and approval of controls by the Minister of Food, Fibre, Biosecurity and Border Controls in respect of the purposes of the Fisheries Act 1996;
  - (iii) to prepare a management plan or strategy for the Oyster Reserves for approval by the Minister of Food, Fibre, Biosecurity and Border Control;
  - (iv) authorise any person to take oysters from any area within the Oyster Reserves and to release those oysters within another part of the Oyster Reserves, for the purpose of enhancing the stock;
  - (v) request the Minister of Food, Fibre, Biosecurity and Border Control to recommend the making of regulations to allow the commercial taking of oysters by quantity or time period within the Oyster Reserves. On receipt of a request, the Minister may recommend to the Governor-General the making of regulations under section 186 and section 297 of the Fisheries Act 1996 to provide for commercial fishing in the Oyster Reserves for oysters in such quantities and for such time as may be requested by the management structure. Such commercial fishing must be conducted in accordance with the Fisheries Act 1996 and the relevant commercial fishing regulations applying under that Act;
  - (vi) here the commercial taking of oysters within the Oyster Reserves is approved under the Fisheries Act 1996, provide advice to the Minister of Food, Fibre, Biosecurity and Border Control on whether any marine farming lease or licence issued under the Marine Farming Act 1971 should be issued or extended and whether further commercial fishing of oysters should be approved taking into account the sustainable utilisation of the oysters in the Oyster Reserves.

- (f) The management structure nominated by Te Uri o Hau to keep accurate records of the quantities of oysters taken by those persons authorised by them to take oysters;
- (g) The management structure nominated by Te Uri o Hau to each year hold a meeting with Te Uri o Hau to report on matters relevant to the effective management of customary food gathering by the management structure, including reporting on the number of authorisations granted for the period and any restrictions or prohibitions in force for that period.

#### **4.14 FISH, FLORA AND FAUNA**

4.14.1 The Crown proposes that the Deed of Settlement and the Settlement Legislation will provide:

- (a) An acknowledgement by the Crown of the cultural, spiritual, historic and/or traditional association of Te Uri o Hau with all the indigenous fish, flora, and fauna species found within the Te Uri O Hau DOC Protocol Area that the Department of Conservation has statutory responsibility for;
- (b) For the obligations upon the Crown arising out of that acknowledgment to be included in the Department of Conservation Protocol referred to in *clause 4.15*; and
- (c) An acknowledgement by the Crown that is in accordance with the requirements of Part 9 of the Cultural Redress Schedule.

#### **4.15 DEPARTMENT OF CONSERVATION PROTOCOL**

##### **4.15.1 Department of Conservation Protocol to be issued**

The Crown proposes that, in order to foster a good working relationship between Te Uri o Hau and the Department of Conservation, the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Minister of Conservation to issue on the Settlement Date a Department of Conservation Protocol to Te Uri o Hau:

- (a) Relating to the Department of Conservation Protocol Subjects that *clause 4.15.2* requires be included in that Protocol;
- (b) That sets out how the Department of Conservation will interact with Te Uri o Hau in relation to the Department of Conservation Protocol Subjects, in a way that will enable Te Uri o Hau to provide input into the processes undertaken by the Department of Conservation;

- (c) That (together with a summary of the Department of Conservation Protocol's terms of issue) must be noted (for the purpose of public notice only) in conservation management strategies and conservation management plans affecting the Te Uri o Hau DOC Protocol Area; and
- (d) that is in accordance with Part 1 of the Cultural Redress Schedule.

#### 4.15.2 Department of Conservation Protocol Subjects

The Department of Conservation Protocol will specify how the Department of Conservation will interact with Te Uri o Hau, and how the annual business plan will be developed by the Department of Conservation's Whangarei and Warkworth Area offices, in relation to the following matters within the Te Uri o Hau DOC Protocol Area:

- (a) Access to, or the use of, cultural materials which:
  - (i) Are derived from plants, plant materials, animals or birds for which the Department of Conservation is responsible in the Te Uri o Hau DOC Protocol Area; and
  - (ii) Are of importance to Te Uri o Hau in maintaining its culture, including medicinal practices and gathering of mahinga kai;
- (b) The management of historic resources (including wahi tapu and wahi taonga of, and places of historic significance to, Te Uri o Hau) if, and to the extent that, the Department of Conservation is responsible for those historic resources and including setting out processes for dealing with confidential information about wahi tapu sites;
- (c) The management of threatened species within the Te Uri o Hau DOC Protocol Area;
- (d) The management of marine mammals that have been stranded on the Coastal Marine Area within the Te Uri o Hau DOC Protocol Area;
- (e) The Department of Conservation:
  - (i) Exchanging information with Te Uri o Hau;
  - (ii) Working with Te Uri o Hau to identify their priorities and issues of mutual concern; and



- (iii) Having regard to those priorities and issues of mutual concern in making decisions; -

in relation to the Department of Conservation's advocacy under the Resource Management Act 1991;

- (f) The performance of the Department of Conservation's functions in relation to freshwater fisheries and, in particular, in relation to the conservation and management of customary freshwater fisheries and freshwater fish habitats;
- (g) Consultation with Te Uri o Hau on animal pest control undertaken by the Department of Conservation in the Te Uri o Hau DOC Protocol Area;
- (h) The provision of information and facilities for visitors on the land the Department of Conservation manages within the Te Uri o Hau DOC Protocol Area in a way that recognises the importance to Te Uri o Hau of the cultural, spiritual, traditional and historic values of Te Uri o Hau; and
- (i) The Department of Conservation informing Te Uri o Hau of concession applications over conservation land in the Te Uri o Hau DOC Protocol Area.

#### **4.16 MINISTRY OF FISHERIES PROTOCOL**

##### **4.16.1 Ministry of Fisheries Protocol to be issued**

The Crown proposes that, in order to foster a good working relationship between Te Uri o Hau and the Ministry of Fisheries, the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Minister of Food, Fibre, Biosecurity and Border Control to issue on the Settlement Date a Ministry of Fisheries Protocol to Te Uri o Hau:

- (a) Relating to the various Ministry of Fisheries Protocol Subjects that *clause 4.16.2* requires be included in that Protocol;
- (b) That sets out how the Ministry of Fisheries will interact with Te Uri o Hau in relation to the Ministry of Fisheries Protocol Subjects in a way that will enable Te Uri o Hau to provide input into the processes of the Ministry; and
- (c) That is in accordance with Part 1 of the Cultural Redress Schedule.

##### **4.16.2 Ministry of Fisheries Protocol Subjects**

The Ministry of Fisheries Protocol will specify how the Ministry of Fisheries will interact with Te Uri o Hau in relation to the following matters within the Te Uri o Hau Protocol Area:

- (a) Recognition of the customary interests of Te Uri o Hau in, and the special relationship of Te Uri o Hau with, all species of fish, aquatic life or seaweed found within the Te Uri o Hau Protocol Area and managed by the Ministry under the Fisheries Act 1996; and
- (b) The performance of the functions of the Ministry of Fisheries in relation to the Te Uri o Hau Protocol Area including provision for:
- (i) Te Uri o Hau to have input into, and participate in:
    - the setting of sustainability measures for fisheries;
    - the development of regulations affecting fisheries;
    - the development of plans affecting fisheries; and
    - research planning processes of the Ministry of Fisheries;
  - (ii) Information and assistance to be supplied to Te Uri o Hau to assist in the management of the customary fisheries of Te Uri of Hau and the implementation of customary fishing regulations;
  - (iii) Te Uri o Hau to be consulted on the required services of the Ministry of Fisheries; and the cost of recovery of fisheries services;
  - (iv) Te Uri o Hau to have the opportunity for input into the process if the Ministry of Fisheries is considering contracting services that relate to the customary fisheries of Te Uri o Hau; and
  - (v) Input and participation by Te Uri o Hau in certain aspects of the employment process if a particular vacancy directly affects the customary fisheries of Te Uri o Hau.

#### **4.17 MINISTRY OF COMMERCE PROTOCOL**

4.17.1 The Crown proposes that the Deed of Settlement will provide for, and Settlement Legislation will enable, the Minister of Energy to issue on the Settlement Date a Ministry of Commerce Protocol in relation to consultation with Te Uri o Hau. The Protocol will concern the Crown's administration of Crown owned minerals (being Crown owned petroleum, coal, metallic minerals, non-metallic minerals, industrial rocks, building stones and precious stones) in the Te Uri o Hau Protocol Area. The Ministry of Commerce Protocol will be consistent with legislation, policy and practice with respect to Crown owned minerals, and will cover

consultation over the following matters in relation to the Te Uri o Hau Protocol Area:

- (a) In relation to Crown owned minerals other than petroleum:
  - (i) The preparation by the Minister of Energy of new minerals programmes in accordance with the Crown Minerals Act 1991;
  - (ii) Planning in respect of a competitive tender allocation of a permit block (being a specific area with defined boundaries available for allocation as a permit in accordance with the Minerals Programme for coal or the Minerals Programme for minerals other than coal and petroleum);
  - (iii) Applications received for permits or applications received for amendments to permits which seek to extend the land covered by an existing permit (except where consultation has already taken place as part of planning in respect of a competitive tender);
- (b) In relation to Crown owned petroleum:
  - (i) The preparation by the Minister of Energy of new minerals programmes in respect of petroleum in accordance with the Crown Minerals Act 1991;
  - (ii) The planning by the Ministry of Commerce in respect of any petroleum exploration permit block offer (being a method of allocating available acreage for petroleum exploration by public tender under section 24 of the Crown Minerals Act 1991);
  - (iii) Applications for petroleum exploration permits allocated under the Crown Minerals Act 1991 ("Petroleum Exploration Permits") except where consultation has already taken place in relation to a petroleum exploration permit block offer; and
  - (iv) Applications for amendments to a Petroleum Exploration Permit to extend the land or minerals to which the Petroleum Exploration Permit relates.

4.17.2 The Ministry of Commerce Protocol will:

- (a) Recognise the Crown's obligations under the Crown Minerals Act 1991 (as provided for in the Minerals Programme for Petroleum, the Minerals

Programme for Coal, and the Minerals Programme for Minerals other than coal and petroleum) to consult with parties whose interests may be affected by prospecting, exploration and mining activities associated with Crown owned minerals (being Crown owned petroleum, coal, metallic minerals, non-metallic minerals, industrial rocks, building stones and precious stones);

- (b) Confirm that, if exploration and mining activities associated with Crown owned minerals (being Crown owned petroleum, coal, metallic minerals, non-metallic minerals, industrial rocks and building stones and precious stones) in the Te Uri o Hau Protocol Area may affect the interests of Te Uri o Hau, the Ministry of Commerce will consult with Te Uri o Hau;
- (c) Not restrict the ability of the Ministry of Commerce to consult with other entities in addition to Te Uri o Hau under the Crown Minerals Act 1991 (as provided for in the Minerals Programme for Petroleum, the Minerals Programme for Coal, and the Minerals Programme for Minerals other than coal and petroleum); and
- (d) Be in accordance with Part 1 of the Cultural Redress Schedule.

#### **4.18 ANTIQUITIES PROTOCOL**

The Crown proposes that the Deed of Settlement will provide for, and the Settlement Legislation will enable, the Crown through the appropriate Minister to issue a protocol to Te Uri o Hau that:

- 4.18.1 Concerns antiquities in the Te Uri o Hau Protocol Area that are newly found taonga (as that term is defined under the Antiquities Act 1975); and
- 4.18.2 Is in accordance with Part 1 of the Cultural Redress Schedule.

#### **4.19 PROMOTION OF RELATIONSHIPS BETWEEN TE URI O HAU AND REGIONAL AND DISTRICT COUNCILS**

The Crown proposes that the Deed of Settlement will require that, as soon as practicable after the Settlement Date, the Minister in Charge of Treaty of Waitangi Negotiations will write to the Northland Regional Council, the Auckland Regional Council, Kaipara District Council and the Rodney District Council encouraging each council to enter into a memorandum of understanding (or a similar document) with Te Uri o Hau in relation to the interaction between the council and Te Uri o Hau.

#### **4.20 PLACE NAMES**

- 4.20.1 Subject to *clause 4.20.3*, the Deed of Settlement and Settlement Legislation will provide for the appropriate amendment or allocation of the place names provided in Part 8 of the Cultural Redress Schedule from the existing place name shown in the left column to the combined Maori and English name shown in the right column.
- 4.20.2 Subject to *clause 4.20.3*, the Deed of Settlement will include provision for the progressive amending of the place names and official signs and publications as those signs and publications become due in the ordinary course for replacement and reprinting.
- 4.20.3 The parties acknowledge that the Crown will consult with the New Zealand Geographic Board about the steps referred to in *clauses 4.20.1 and 4.20.2* and its performance of the obligations contained in those clauses is conditional upon that consultation not revealing any issues which make it undesirable for the Crown to perform them.
- 4.20.4 The Crown proposes that the Deed of Settlement will require that, as soon as practicable after the Settlement Date, the Minister in Charge of Treaty of Waitangi Negotiations will write to the Rodney District Council encouraging the Council to amend the existing place name “Te Ngaio Point Road” to “Hemanawhiti/Te Ngaio Point Road”.

#### **4.21 TERMS OF TRANSFER**

Each property the fee simple title to which is to be vested in Te Uri o Hau pursuant to this *Section 4* will be vested subject to all encumbrances and interests affecting each property.

#### **4.22 BODY TO RECEIVE CULTURAL REDRESS**

The Crown proposes that unless expressly agreed otherwise by Te Uri o Hau and the Crown, all of the cultural redress under this *Section 4* will be provided to the Te Uri o Hau Governance Entity referred to in *clause 8.1.5*.



## SECTION 5: PROPOSED FINANCIAL AND COMMERCIAL REDRESS

### 5.1 REDRESS AMOUNT

5.1.1 The Crown proposes that the Redress Amount is \$15,250,000, being the sum of:

- (a) Any amount or amounts advanced by the Crown to Te Uri o Hau, or the Mandated Representatives of Te Uri o Hau, as part of the Redress Amount; and
- (b) The transfer value of each of the Surplus Crown Properties, Leaseback Properties or Crown Forestry Properties determined under *clause 5.5*; and
- (c) The Settlement Amount.

### 5.2 SURPLUS CROWN PROPERTIES

The Crown is proposing to transfer on the Settlement Date title to any or all of the Surplus Crown Properties that Te Uri o Hau notifies the Crown in writing:

- 5.2.1 As soon as reasonably practicable after this Heads of Agreement is signed, that they wish to be valued in accordance with Part 4 of the Commercial Redress Schedule; and
- 5.2.2 Once valued, that they wish the Crown to transfer to Te Uri o Hau on the Settlement Date.

### 5.3 POTENTIAL LEASEBACK PROPERTIES

5.3.1 The Crown will discuss with the Mandated Representatives of Te Uri o Hau in good faith, as soon as reasonably practicable after this Heads of Agreement is signed:

- (a) Transferring title to Te Uri o Hau on the Settlement Date;
- (b) The leasing back from Te Uri o Hau from the Settlement Date; and
- (c) The terms and conditions of any leases (which in the case of leases of education land will be ground leases only);

of some or all of the Leaseback Properties.

5.3.2 If the Parties agree on the Leaseback Properties and the terms and conditions of the leases, the Mandated Representatives of Te Uri o Hau will notify the Crown in writing which of those agreed Leaseback Properties:

- (a) they wish to be valued in accordance with Part 4 of the Commercial Redress Schedule; and
- (b) once valued, that they wish the Crown to transfer to Te Uri o Hau on, and to leaseback from Te Uri o Hau on lease terms agreed under *clause 5.3.1(c)* from, the Settlement Date.

#### **5.4 CROWN FORESTRY PROPERTIES**

The Crown is proposing to transfer on the Settlement Date title to any or all of the Crown Forestry Properties that Te Uri o Hau notifies the Crown in writing:

- 5.4.1 As soon as reasonably practicable after this Heads of Agreement is signed that they wish to be valued in accordance with Part 4 of the Commercial Redress Schedule; and
- 5.4.2 Once valued, that they wish the Crown to transfer to Te Uri o Hau, subject to the forestry licences granted in respect of those properties, on the Settlement Date.

#### **5.5 TRANSFER VALUE FOR, AND OTHER TERMS OF TRANSFER OF SURPLUS CROWN, LEASEBACK AND CROWN FORESTRY PROPERTIES**

##### **5.5.1 Transfer Value**

The transfer value for all Surplus Crown Properties, Leaseback Properties and Crown Forestry Properties to be transferred by the Crown to Te Uri o Hau on the Settlement Date:

- (a) Is to be determined by the valuation process set out in Part 4 of the Commercial Redress Schedule; and
- (b) Will be taken into account for the purposes of the Redress Amount in *clause 5.1.1*.

##### **5.5.2 Valuation Date**

The Surplus Crown Properties, Leaseback Properties and Crown Forestry Properties selected by the Mandated Representatives of Te Uri o Hau will be valued as at the Valuation Date.

##### **5.5.3 Terms of Transfer**

All transfers of Surplus Crown Properties, Leaseback Properties and Crown Forestry Properties by the Crown to Te Uri o Hau on the Settlement Date will:



- (a) Be subject to:
  - (i) All encumbrances and interests affecting the relevant property which:
    - (aa) Are as at the Valuation Date registered against the relevant certificate of title; or
    - (bb) The Crown advises to the Te Uri o Hau will be registered against the relevant certificate of title before the Settlement Date; (except any encumbrances that secure indebtedness of the Crown); and
  - (ii) All unregistered encumbrances and interests notified to Te Uri o Hau (except any encumbrances securing indebtedness of the Crown);
- (b) Be on the basis of all outgoing and incoming (except for insurance premiums) being apportioned on the Settlement Date;
- (c) Be otherwise on the terms and conditions agreed between Te Uri o Hau and the Crown; and
- (d) In the case of the Forest on Pouto Peninsula, be conditional upon appropriate legal access being established for the Licensee before the date of the transfer.

#### **5.5.4 Settlement legislation**

The transfer of the Crown Forest Properties will be deemed, by the Settlement Legislation, to have been made pursuant to a binding recommendation by the Waitangi Tribunal to return the properties (being licensed land) to Maori. By way of explanation the consequences of such deemed final recommendation include:

- (a) no compensation shall be paid by the Crown to Te Uri o Hau pursuant to section 36(1)(b) of the Crown Forest Assets Act 1989;
- (b) the Crown shall issue notices to the licensee of any relevant forestry licence over the land pursuant to section 17(4) of the Crown Forests Assets Act 1989;

- (c) Te Uri o Hau shall be entitled to receive payment of:
- (i) the Crown forestry licence fees held by the Crown Forestry Rental Trust as at the final transfer date in accordance with the provisions in the Trust Deed dated 30 April 1990 establishing that Trust; and
  - (ii) any Crown forestry licence fees held by the Crown as at the final transfer date that have not been paid by the Crown to that Trust; and
- (d) Te Uri o Hau shall become the licensor of the relevant Crown forestry licence and shall be entitled to receive the licence fees directly from the licensee of any relevant crown forestry licence for the remaining term of the relevant Crown forestry licence.

## **5.6 RIGHT OF FIRST REFUSAL**

### **5.6.1 RFR in RFR Area**

The Crown proposes that it will, in the Deed of Settlement, agree to give Te Uri o Hau a right of first refusal when the Deed of Settlement becomes unconditional over certain property in the RFR Area on the terms and conditions set out in Part 5 of the Commercial Redress Schedule.

### **5.6.2 Property in Te Uri o Hau's Area of Interest**

In certain circumstances, the Crown may also include property which becomes surplus in Te Uri o Hau's Area of Interest (but is not in the RFR Area) as if it were subject to the right of first refusal.

## **5.7 SETTLEMENT AMOUNT**

### **5.7.1 The Settlement Amount equals the Redress Amount less:**

- (a) The amounts referred to in *clause 5.1.1(a)*; and
- (b) The transfer value of each of the Surplus Crown Properties, Leaseback Properties or Crown Forestry Properties determined under *clause 5.5*.

### **5.7.2 The Crown proposes to pay the Settlement Amount to Te Uri o Hau on the Settlement Date.**

## **5.8 BODY TO RECEIVE FINANCIAL AND COMMERCIAL REDRESS**

The Crown proposes, unless expressly agreed otherwise by Te Uri o Hau and the Crown, that the Settlement Amount and all of the other redress under this *Section 5* will be provided to the Te Uri o Hau Governance Entity referred to in *clause 8.1.5*.

## SECTION 6: ACCEPTANCE OF THE CROWN'S SETTLEMENT PROPOSAL

### 6.1 GENERAL ACKNOWLEDGEMENTS

The Mandated Representatives of Te Uri o Hau acknowledge that:

- 6.1.1 The Crown's Settlement Proposal (including the conditions in *Section 8*) is, in principle acceptable;
- 6.1.2 A Deed of Settlement and the Settlement Legislation giving effect to the Crown's Settlement Proposal will, with effect from the Settlement Date;
- (a) Settle all Te Uri o Hau Historical Claims; and
  - (b) In the case of the Deed of Settlement, contain agreement that, and in the case of the Settlement Legislation, a provision to the effect that, the Crown will be released and discharged in respect of Te Uri o Hau Historical Claims;
- 6.1.3 The Deed of Settlement giving effect to the Crown's Settlement Proposal will include acknowledgements from Te Uri o Hau, in particular, that:
- (a) The Crown has acted honorably and reasonably in relation to the Settlement; and
  - (b) The Settlement is final; and
  - (c) the rights and obligations on the part of Te Uri o Hau in the Deed of Settlement are for the benefit of, and binding upon, Te Uri o Hau and are not for the benefit of any individual, particular whanau, particular marae or particular hapu (except to the extent that, after the Settlement Date, the Te Uri o Hau Governance Entity determines in accordance with its governance procedures);
- 6.1.4 The Settlement Legislation giving effect to the Crown's Settlement Proposal will:
- (a) Declare that, without limiting the acknowledgments expressed in, or any provisions of, the Deed of Settlement, the Settlement is final;

- (b) Provide for the removal of the jurisdiction of the Courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of:
  - (i) The Te Uri o Hau Historical Claims; or
  - (ii) The validity of the Deed of Settlement; or
  - (iii) The adequacy of the redress provided to Te Uri o Hau and other parties by the Crown under the Deed of Settlement; or
  - (iv) The Settlement Legislation,

(but not for the removal of such jurisdiction in respect of the implementation or interpretation of the Deed of Settlement or the Settlement Legislation);

- (c) Provide that the rights and obligations on the part of Te Uri o Hau in the Deed of Settlement are for the benefit of, and binding upon Te Uri o Hau and are not for the benefit of any individual, particular whanau, particular marae or particular hapu (except to the extent that after the Settlement Date the Te Uri o Hau Governance determines in accordance with its governance procedures); and

6.1.5 The Settlement Assets are to be transferred to the Te Uri o Hau Governance Entity;

6.1.6 They must obtain, before the Deed of Settlement is signed, a mandate from Te Uri o Hau (through a process agreed with the Crown) authorising them to:

- (a) Enter into the Deed of Settlement on behalf of Te Uri o Hau;
- (b) In particular, settle the Te Uri o Hau Historical Claims on the terms provided in that Deed of Settlement.

**SECTION 7: MUTUAL ACKNOWLEDGEMENTS AND AGREEMENTS****7.1 ACKNOWLEDGEMENTS IN RELATION TO THE CROWN'S SETTLEMENT PROPOSAL**

Te Uri o Hau and the Crown acknowledge:

- 7.1.1 That this Heads of Agreement represents and the Deed of Settlement will represent, the results of extended negotiations conducted in good faith and in a spirit of co-operation and compromise;
- 7.1.2 The difficulty in assessing redress for the loss and prejudice suffered by Te Uri o Hau;
- 7.1.3 That it is not possible to fully compensate Te Uri o Hau for all loss and prejudice suffered;
- 7.1.4 That this foregoing of compensation by Te Uri o Hau is intended to contribute to the development of New Zealand;

and that, taking all matters into consideration (some of which are specified in this *clause*), the Crown's Settlement Proposal is fair in the circumstances.

**7.2 ABORIGINAL TITLE AND CUSTOMARY AND OTHER RIGHTS**

Te Uri o Hau and the Crown acknowledge that:

- 7.2.1 The provisions to be included in the Deed of Settlement relating to the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other judicial body or tribunal as provided in *clause 6.1.4*:
  - (a) Will not be intended to prevent any Te Uri o Hau Claimant from pursuing claims against the Crown based on aboriginal title or customary rights which do not come within the definition of Te Uri o Hau Historical Claims or to prevent the Crown from disputing such claims or the existence of such title or rights; but
  - (b) Will be intended to prevent any Te Uri o Hau Claimant from pursuing claims against the Crown (including claims based on aboriginal title or customary rights) if such claims come within the definition of Te Uri o Hau Historical Claims.

7.2.2 Nothing in the Deed of Settlement will:

- (a) Extinguish any aboriginal title or customary rights that Te Uri o Hau may have or constitute or imply any acknowledgement or acceptance by the Crown that such title or rights exist;
- (b) Except as expressly provided in this Heads of Agreement, be intended to derogate from any rights or powers Te Uri o Hau or any Te Uri o Hau Claimant or the Crown may have at common law, or under legislation or under the Treaty of Waitangi;
- (c) Extinguish any right any person has to redress under the Maori Reserved Land Amendment Act 1997;
- (d) In any way affect the Treaty of Waitangi or the ongoing relationship between Te Uri o Hau and the Crown in terms of the Treaty of Waitangi.

### 7.3 DECISION OF WAITANGI FISHERIES COMMISSION

Te Uri o Hau and the Crown acknowledge that nothing in this Heads of Agreement or in the Deed of Settlement or the Settlement Legislation will be intended to affect any decision of the Treaty of Waitangi Fisheries Commission either:

7.3.1 Under the Maori Fisheries Act 1989; or

7.3.2 In respect of the Deed of Settlement between Maori and Crown dated 23 September 1992.

### 7.4 MANGAWHAI DEED

#### Definition

7.4.1 In this clause 7.4, *Mangawhai Block* means the land transferred to the Crown pursuant to the Mangawhai Deed dated 3 March 1854 having boundaries commencing at the Hororoa, then to Ngaroto, Nga rakau e wha, then in a westerly direction to Waititi, then along the river of Waititi, Papawi, ascending the hill at Rauawo Wakaraurangi, emerging at Kaparauunui, then in the valley to the river Hakuru, then along the course of the Hakuru, then to the top of Pukekohe, then to Taumatatirotiro, then ascending Mari roai, then emerging at Wakatarariki – then along the coast to the Hororoa.



7.4.2 Te Uri o Hau and the Crown acknowledge and agree that:

- (a) The Deed of Settlement will provide that, the parties agree that the effect of the provision in the Mangawhai Deed dated 3 March 1854 between the vendors of the Mangawhai Block and the Crown (the “Mangawhai Deed”) for the payment by the Crown of 10 per cent of the proceeds of the sale of Mangawhai Block is uncertain; and
- (b) the Deed of Settlement and the Settlement Legislation will provide that, to extent that any Te Uri o Hau Claimant has any rights under the Mangawhai Deed, the Crown shall be deemed by the Settlement to have met any obligations owing by the Crown to any Te Uri o Hau Claimant in respect of the transfer to or vesting in the Te Uri o Hau Governance Entity of any property within the Mangawhai Block pursuant to the exercise of any rights and obligations under the Deed of Settlement or any document entered into in accordance with the Deed of Settlement.

## SECTION 8: PROPOSED CONDITIONS

### 8.1 PROPOSED CONDITIONS

The Crown's Settlement Proposal, and the Settlement, are subject to the following conditions:

- 8.1.1 Te Uri o Hau acknowledging and agreeing in the Deed of Settlement and the Settlement Legislation providing, with effect from the Settlement Date that:
- (a) All the Te Uri o Hau Historical Claims are settled;
  - (b) The Crown is released and discharged in respect of the Te Uri o Hau Historical Claims;
  - (c) The Settlement is final; and
  - (d) The rights and obligations of Te Uri o Hau in the Deed of Settlement are for the benefit of, and binding upon Te Uri o Hau;
- 8.1.2 Te Uri o Hau acknowledging and agreeing in the Deed of Settlement to, and the Settlement Legislation providing for, the removal with effect from the Settlement Date of the jurisdiction of the Courts, the Waitangi Tribunal, and any other judicial body or tribunal in respect of:
- (a) The Te Uri o Hau Historical Claims; or
  - (b) The validity of the Deed of Settlement; or
  - (c) The adequacy of the redress provided to Te Uri o Hau and other parties by the Crown under the Deed of Settlement; or
  - (d) The Settlement Legislation,
- (but not for the removal of such jurisdiction in respect of the implementation or interpretation of the Deed of Settlement or the Settlement Legislation);
- 8.1.3 Any proceedings in relation to the Te Uri o Hau Historical Claims being discontinued;
- 8.1.4 Te Uri o Hau supporting the passage of the Settlement Legislation;

- 8.1.5 The establishment of an entity (*the "Te Uri o Hau Governance Entity"*) which the Crown is satisfied:
- (a) Has been ratified by Te Uri o Hau (by a process agreed by the Te Uri o Hau and the Crown) as an appropriate body to which the Crown will transfer the Settlement Assets to; and
  - (b) Has a governance structure that:
    - (i) Represents all members of Te Uri o Hau;
    - (ii) Has transparent decision-making and dispute resolution processes; and
    - (iii) Is fully accountable to Te Uri o Hau,
- 8.1.6 Te Uri o Hau acknowledging and agreeing in the Deed of Settlement that Settlement Redress will be administered by the Te Uri o Hau Governance Entity for the benefit of the present and future members of Te Uri o Hau;
- 8.1.7 Any land bank arrangement ceasing in relation to Te Uri o Hau;
- 8.1.8 Te Uri o Hau acknowledging and agreeing that, except to the extent necessary to give effect to the Settlement, the jurisdiction of the Waitangi Tribunal (or any other court, tribunal or judicial body) to make recommendations for the return of any of the Crown Forestry Properties described in Part 3 of the Commercial Redress Schedule to Maori ownership or the payment of compensation to Maori in respect of any such property will be removed with effect from the Settlement Date;
- 8.1.9 Te Uri o Hau acknowledging and agreeing that, except to the extent necessary to give effect to the Settlement, the right of any Maori to receive licence fees held by the Crown Forestry Rental Trust or the Crown relating to and of the Crown Forestry Properties described in Part 3 of the Commercial Redress Schedule other than any such property transferred to Te Uri o Hau under *Section 5.4*, will cease with effect from the Settlement Date.
- 8.1.10 Te Uri o Hau acknowledging and agreeing in the Deed of Settlement that so far as Te Uri o Hau is concerned as from the Settlement Date:
- (a) The Memorials may be removed from any land in:

- (i) The RFR Area; or
  - (ii) The Te Uri o Hau's Area of Interest, provided that Memorials affecting other iwi or tribal groups in that Te Uri o Hau's Area of Interest are not removed without the consent of those iwi or tribal groups; and
- (b) Nothing in the following statutory provisions:
- (i) Sections 8A to 8H of the Treaty of Waitangi Act 1975;
  - (ii) Sections 27A to 27C of the State-Owned Enterprises Act 1986;
  - (iii) Part III of the New Zealand Railways Corporation Restructuring Act 1990; and
  - (iv) Sections 211 to 213 of the Education Act 1989;
- will apply to any land in the RFR Area or the Te Uri o Hau's Area of Interest;

8.1.11 The Crown confirming that it is satisfied that all cross-claims, and issues relating to cross-claims, in relation to any part of the Settlement Redress within the Te Uri o Hau's Area of Interest, have been resolved;

8.1.12 Te Uri o Hau acknowledging and agreeing in the Deed of Settlement that the Crown has acted honorably and reasonably in relation to the Settlement; and

8.1.13 The Mandated Representatives obtaining, before the Deed of Settlement is signed, a mandate from Te Uri o Hau (through a process agreed with the Crown) authorising them to:

- (a) Enter into that Deed of Settlement on behalf of Te Uri o Hau; and
- (b) In particular, settle the Te Uri o Hau Historical Claims on the terms provided in that Deed of Settlement.

## 8.2 SETTLEMENT LEGISLATION

Settlement, and the Deed of Settlement (except where it provides otherwise), will be conditional upon the passing of Settlement Legislation.

### 8.3 TRANSFER OF PROPERTY

Transfer of any property that forms part of the Settlement Assets is subject to:

- (a) Clearances under section 40 of the Public Works Act 1981 (or that section as applied by any other legislation), sections 23(1) or 24(4) of the New Zealand Railways Corporation Restructuring Act 1980, section 207(4) of the Education Act 1989 or any equivalent legislation and other statutory provisions which must be complied with before transfer; and
- (b) Any rights, in respect of that property, existing at the Deed Date.

## SECTION 9: TAX

### 9.1 DEFINITIONS AND INTERPRETATION

For the purposes of this *Section 9* (where the context requires):

- 9.1.1 *Other Properties* means those properties referred to in Part 5 of the Cultural Redress Schedule and *clause 4.1* which are to be transferred or vested or rights granted in respect of which to or in the Te Uri o Hau Governance Entity, the value of which is not taken into account under the Redress Amount (and the particulars and/or arrangements in respect of which are specified in *Section 4*);
- 9.1.2 *Redress Amount Properties* means those properties referred to in Parts 1, 2 and 3 of the Commercial Redress Schedule which may be transferred or vested to or in the Governance Entity, the value of which would be taken into account under the Redress Amount (and the particulars and/or arrangements in respect of which are specified in *Section 5*);
- 9.1.3 *Tangible Redress* means:
- (a) the amounts referred to in *clauses 5.1.1(a)* and *5.7* payable by the Crown to the Te Uri o Hau Governance Entity; and
  - (b) the transfer or vesting of the Redress Amount Properties; and
  - (c) the transfer or vesting of the Other Properties.
- 9.1.4 *Commercial Properties/Rights* means those properties in the RFR Area and Te Uri o Hau's Area of Interest referred to in *clause 5.6* over which the Crown gives Te Uri o Hau a right of first refusal and the total allowable catch or quota within the Te Uri o Hau Shellfish RFR Area referred to in *clause 4.10* over which the Crown gives Te Uri o Hau a Shellfish RFR;
- 9.1.5 references to the payment, crediting, transfer or vesting of the "Tangible Redress" (or any equivalent wording) include a reference to the payment, crediting, transfer or vesting of any part (or the applicable part) of the Tangible Redress;
- 9.1.6 the expression "tax" includes income tax, GST, and gift duty;
- 9.1.7 the word "payment" extends to the transfer or making available of cash amounts as well as to the transfer or vesting of non cash amounts (such as land).



## 9.2 TAX PRINCIPLES

Te Uri o Hau and the Crown intend that the redress to be provided by the Crown under the Deed of Settlement will be received by the Te Uri o Hau Governance Entity on the basis of the following principles and Te Uri o Hau and the Crown agree to negotiate in good faith with a view to giving effect to this intent in the Deed of Settlement:

- (a) The payment, crediting, transfer or vesting of Tangible Redress to or in the Te Uri o Hau Governance Entity (as redress provided by the Crown) is not intended to be, or to give rise to, a taxable supply for GST purposes;
- (b) The payment, crediting, transfer or vesting of Tangible Redress to or in the Te Uri o Hau Governance Entity (as redress provided by the Crown) is not intended to be, or to give rise to, gross income for income tax purposes.
- (c) Neither the Te Uri o Hau Governance Entity nor any person associated with it will claim an input credit (for GST purposes) or a deduction (for income tax purposes) with reference to the payment, crediting, transfer or vesting by the Crown of any Tangible Redress;
- (d) The transfer or vesting of the Other Properties to or in the Te Uri o Hau Governance Entity (as redress provided by the Crown), is not intended to be, or to give rise to, a dutiable gift;
- (e) Any interest paid by the Crown under any provision of the Deed of Settlement is either gross income or exempt income, for income tax purposes, depending on the recipient's status for income tax purposes; and, furthermore, the receipt or payment of such interest is not to be subject to indemnification for tax by the Crown under the Deed of Settlement;
- (f) The payment of any indemnity payment by the Crown under the Deed of Settlement is not intended to be, or to give rise to, a taxable supply for GST purposes or to be, or to give rise to, gross income for income tax purposes;
- (g) The Te Uri o Hau Governance Entity (at all applicable times) will be a registered person for GST purposes;
- (h) For the avoidance of doubt, Te Uri o Hau and the Crown acknowledge that any tax indemnities to be given by the Crown under the Deed of Settlement would apply only to the receipt by the Te Uri o Hau Governance Entity of the Tangible Redress or indemnity payments and would not apply to any

subsequent dealings, distributions, payments, uses or applications by the Te Uri o Hau Governance Entity with or of Tangible Redress;

- (i) Any transfer, sale, vesting, grant or other transaction in relation to Commercial Property/Rights is to be treated in accordance with ordinary transaction principles; and is not to be subject to indemnification for tax by the Crown under the Deed of Settlement.
- (j) The receipt by the Te Uri o Hau Governance Entity of any Crown forestry license fees from the Crown Forestry Rental Trust or from the Crown is to be treated in accordance with ordinary taxation principles, and is not to be subject to indemnification for tax by the Crown under the Deed of Settlement.

### 9.3 CROWN INDEMNITY

The Crown will indemnify the Te Uri o Hau Governance Entity in the Deed of Settlement for any liability to tax it incurs where and to the extent the principles in *clauses 9.2(a), (b), (d) or (f)* are not held to be correct under existing tax laws.

**SECTION 10: CONTINUATION OF SETTLEMENT PROCESS****10.1 CONTINUE TO WORK TOGETHER IN GOOD FAITH**

Te Uri o Hau and the Crown agree to continue to work together in good faith to develop as soon as reasonably practicable a Deed of Settlement that:

- (a) Incorporates the Crown's Settlement Proposal (including all matters of detail and implementation); and
- (b) Will, with effect from the Settlement Date, enable Te Uri o Hau and the Crown to settle the Te Uri o Hau Historical Claims.

**10.2 CONTINUED APPLICATION OF TERMS OF NEGOTIATION**

Te Uri o Hau and the Crown agree that the provisions of the Terms of Negotiation continue to apply in relation to their negotiations (except to the extent that they are changed by this Heads of Agreement).

**SECTION 11: OTHER FINANCIAL MATTERS****11.1 INTEREST**

11.1.1 The Crown will pay interest (“*Settlement Interest*”) on the Settlement Amount from the Deed Date until the Settlement Date.

11.1.2 Settlement Interest will:

- (a) Be calculated on each Calculation Date and will be at a rate equal to the weighted average of the successful yield for 1 year Treasury Bills resulting from the Treasury Bill tender process that takes place during the week prior to each Calculation Date;
- (b) Not compound;
- (c) Be payable for the period from the Deed Date to the Settlement Date;
- (d) Be paid on the Settlement Date; and
- (e) Be subject to normal taxation law.

11.1.3 In this *clause 11.1*:

*Anniversary Date* means the first Business Day after the expiry of each period of 12 months commencing on the Deed Date or the previous Anniversary Date (as the case may be);

*Calculation Date* means:

- (a) The Deed Date, in respect of the period commencing on the Deed Date and expiring on the date before the first Anniversary Date; and
- (b) Each Anniversary Date, in respect of the period commencing on the first Anniversary Date and expiring on the Settlement Date.

**SECTION 12: MISCELLANEOUS MATTERS****12.1 NOTICES****12.1.1 Address for notices**

Except as expressly provided in this Heads of Agreement, any notice or other communication given under this Heads of Agreement to a party must be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

***Crown:***

C/- The Solicitor-General  
Crown Law Office  
St Pauls Square  
45 Pipitea Street  
(PO Box 5012)  
WELLINGTON

Facsimile: 04 473 3482

***Te Uri o Hau:***

TUOH Company Limited  
169 Hurndal Street  
MAUNGATUROTO  
(PO Box 657)  
(WHANGAREI)

Facsimile: 09 431 8480

**12.1.2 Delivery**

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

**12.1.3 Delivered Notice**

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 p.m. on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

**12.1.4 Posted Notice**

A notice or other communication delivered by pre-paid post will be deemed to have been received on the 2nd Business Day after posting.

**12.1.5 Facsimile Notice**

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 p.m. on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

**12.2 NO ASSIGNMENT**

Neither Te Uri o Hau or the Crown may transfer or assign any rights or obligations under this Heads of Agreement.

**12.3 AMENDMENT**

No amendment to this Heads of Agreement will be effective unless it is in writing and signed on behalf of Te Uri o Hau and the Crown.



## **SECTION 13: NATURE AND TERMINATION OF THIS HEADS OF AGREEMENT**

### **13.1 NATURE OF THIS HEADS OF AGREEMENT**

13.1.1 Te Uri o Hau and the Crown acknowledge that this Heads of Agreement:

- (a) Represents an agreement in principle; and
- (b) Is not intended to create legal relations.

13.1.2 Te Uri o Hau and the Crown acknowledge that the Crown's Settlement Proposal includes the scope and nature, in principle, of all redress the Crown is to offer Te Uri o Hau.

### **13.2 MADE ON WITHOUT PREJUDICE BASIS**

Te Uri o Hau and the Crown acknowledge that:

13.2.1 This Heads of Agreement is entered into, and the Crown's Settlement Proposal is made, on a without prejudice basis; and

13.2.2 In particular, this Heads of Agreement may not be used as evidence in any proceedings before, or presented to, any court, the Waitangi Tribunal or any other judicial body or tribunal (except for proceedings concerning the implementation and interpretation of the Deed of Settlement and the Settlement Legislation).

### **13.3 TERMINATION OF THIS HEADS OF AGREEMENT**

The Parties acknowledge that:

13.3.1 The Crown may, at any time before a Deed of Settlement is entered into, terminate this Heads of Agreement by written notice to the Mandated Representatives if those Mandated Representatives do not maintain their mandate to negotiate the Te Uri o Hau Historical Claims with the Crown under the Terms of Negotiation;

13.3.2 Either Party may terminate this Heads of Agreement by written notice to the other Party if the Crown and Te Uri o Hau do not enter into a Deed of Settlement within 12 months after the date of this Heads of Agreement; and

13.3.3 This Heads of Agreement will be superseded by the Deed of Settlement on the Deed Date.

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**CULTURAL REDRESS SCHEDULE**

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## PART 1

### REQUIREMENTS FOR DEPARTMENTAL PROTOCOLS

#### *Definitions*

- 1.1 In this Part "Departmental Protocol" means a protocol issued to Te Uri o Hau by the Minister of Conservation, the Minister for Food, Fibre, Biosecurity and Border Control, the Minister for Energy or any other Minister under:
- 1.1.1 the Deed of Settlement; and/or
  - 1.1.2 the Settlement Legislation.

#### *Amendment of Departmental Protocols*

- 1.2 A Departmental Protocol may be amended or cancelled at any time by the Crown through the relevant Minister at the initiative of:
- 1.2.1 Te Uri o Hau; or
  - 1.2.2 the Crown (after consultation with Te Uri o Hau and having particular regard to the views of Te Uri o Hau).

#### *Departmental Protocols subject to other obligations*

- 1.3 A Departmental Protocol will be subject to, and will not restrict:
- 1.3.1 the obligations of the Crown, any Minister, Government Department, or official to exercise their powers, or perform their functions or duties, in accordance with the law and government policy; or
  - 1.3.2 the Crown's powers to:
    - (a) amend policy; or
    - (b) introduce legislation (including amending legislation).

#### *Enforceability of Departmental Protocols*

- 1.4 Te Uri o Hau may (subject to the Crown Proceedings Act 1950) enforce any Departmental Protocol:

- 1.4.1 by way of public law action against the Crown where the relevant Minister fails unreasonably to comply with that Protocol; but
- 1.4.2 damages are not available as a remedy.

*Not breach of Deed Of Settlement*

- 1.5 A failure by a Minister to comply with a Departmental Protocol does not constitute a breach of the Deed of Settlement and/or the Settlement Legislation.

*Limitation of rights*

- 1.6 A Departmental Protocol does not of itself have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to:
  - 1.6.1 land held, managed, or administered under the Conservation Act 1987 or the statutes listed in the First Schedule to that Act;
  - 1.6.2 flora and fauna managed according to the Conservation Act 1987 or the statutes listed in the First Schedule to that Act;
  - 1.6.3 fish, aquatic life and seaweed managed according to the Fisheries Act 1983 or the Fisheries Act 1996;
  - 1.6.4 minerals managed under the Crown Minerals Act 1991; or
  - 1.6.5 newly found taonga managed under the Antiquities Act 1975.

**PART 2****REQUIREMENTS IN RELATION TO DECLARATIONS OF AN AREA  
TO BE SUBJECT TO A KIRIHIPI OVERLAY AND  
ACKNOWLEDGEMENTS OF TE URI O HAU VALUES***Status of conservation areas or reserve*

- 2.1 Any existing protection or classification of an area subject to a Kirihipi overlay as a conservation area, or reserve is not overridden by the declaration of that area as being subject to a Kirihipi overlay.

*Revocation of an area from being subject to a Kirihipi overlay*

- 2.2 The Governor-General may, on the recommendation of the Minister of Conservation, by Order in Council declare that an area declared as being subject to a Kirihipi overlay is to cease to be subject to a Kirihipi overlay. The Minister of Conservation must not make a recommendation to declare that an area cease to be subject to a Kirihipi overlay unless Te Uri o Hau and the Minister of Conservation have agreed in writing that it is no longer appropriate that the area be subject to a Kirihipi overlay.

*Purpose of declaration of an area as being subject to a Kirihipi overlay*

- 2.3 The declaration of an area as being subject to a Kirihipi overlay, and the acknowledgement of the Te Uri o Hau Values in respect of that area, is for the following purposes only:
- 2.3.1 to enable agreement on the Protection Principles;
  - 2.3.2 to require the New Zealand Conservation Authority, and conservation boards, to:
    - (a) have particular regard to the Te Uri o Hau Values and those Protection Principles; and
    - (b) consult with Te Uri o Hau and have particular regard to its views; and
  - 2.3.3 to require the Director-General of Conservation to take action in relation to the Protection Principles.

*Exercise of powers, duties, and functions*

2.4 Except as expressly provided in paragraph 2.3:

2.4.1 neither the declaration of an area as being subject to a Kirihipi overlay, nor the acknowledgement of the Te Uri o Hau Values, affects, or may be taken into account in the exercise of any power, or the performance of any duty or function, under any legislation; and

2.4.2 no person, in considering any matter or making any decision or recommendation under any legislation, may give any greater or lesser weight to the Te Uri o Hau Values than that person would give under that legislation if:

(a) the area had not been declared to be subject to a Kirihipi overlay; and

(b) Te Uri o Hau Values had not been acknowledged.

*Rights not affected*

2.5 The declaration of an area as being subject to a Kirihipi overlay, and the acknowledgement of the Te Uri o Hau Values, does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

*Limitation of rights*

2.6 The declaration of an area as being subject to a Kirihipi overlay, and the acknowledgement of the Te Uri o Hau Values, does not, of itself, have the effect of granting, creating, or providing evidence of any estate or interest in, or any right in relation to, an area that is subject to a Kirihipi overlay.



## PART 3

### REQUIREMENTS FOR STATUTORY ACKNOWLEDGEMENTS AND DEEDS OF RECOGNITION IN RELATION TO IDENTIFIED AREAS

#### *Purposes of Statutory Acknowledgements*

- 3.1 The only purposes of Statutory Acknowledgements in relation to Identified Areas are:
- 3.1.1 to require that consent authorities forward summaries of certain applications for resource consents to Te Uri o Hau;
  - 3.1.2 to require that consent authorities, the Historic Places Trust, or the Environment Court, as the case may be, have regard to the Statutory Acknowledgements in relation to the Identified Areas in certain cases;
  - 3.1.3 to enable the Minister responsible for management of the Identified Areas, or the Commissioner of Crown Lands, as the case may be, to enter into Deeds of Recognition; and
  - 3.1.4 to enable Te Uri o Hau to cite Statutory Acknowledgements as evidence of the association of Te Uri o Hau with the Identified Areas in certain cases.

#### *Purposes of Deeds of Recognition*

- 3.2 The only purposes of Deeds of Recognition are to require that Te Uri o Hau is consulted, and regard is had to its views, in certain cases in respect of the statement of association described in the Statutory Acknowledgement to which the Deed of Recognition relates.

#### *Exercise of powers, duties, and functions*

- 3.3 Except as provided in paragraphs 3.1 and 3.2:
- 3.3.1 neither a Statutory Acknowledgement nor a Deed of Recognition, affects, or may be taken into account in, the exercise of any power, or the performance of any duty or function, under any legislation; and
  - 3.3.2 no person, in considering any matter or making any decision or recommendation under any legislation, may give any greater or lesser weight to the association of Te Uri o Hau with an Identified Area (as

described in the relevant Statutory Acknowledgement) than that person would have given under that legislation if:

- (a) that Statutory Acknowledgement had not been made; and
- (b) no Deed of Recognition existed in respect of that Identified Area.

***Rights not affected***

- 3.4 Neither a Statutory Acknowledgement nor a Deed of Recognition affects the lawful rights or interests of any person who is not a party to the Deed of Settlement.

***Limitation of rights***

- 3.5 Neither a Statutory Acknowledgement, nor a Deed of Recognition, has of itself the effect of granting, creating, or providing evidence of any estate or interest in, or any rights relating to, an Identified Area.

## PART 4

### TERMS AND CONDITIONS OF NOHOANGA CAMPING ENTITLEMENTS

- 4.1 The land for Nohoanga Camping Entitlements must be land:
- 4.1.1 that is Crown-owned;
  - 4.1.2 that is not a national park, marginal strip, nature reserve, esplanade reserve, scientific reserve or any part of an unformed road within 20 metres of a waterway;
  - 4.1.3 that is situated sufficiently close to any relevant waterway to permit convenient access for fishing;
  - 4.1.4 to which lawful access is available; and
  - 4.1.5 where the existing practices and patterns of public use at the time the Nohoanga Camping Entitlement is created will not be unreasonably impaired by the creation of that Nohoanga Camping Entitlement.
- 4.2 Public access must not, as a result of a Nohoanga Camping Entitlement, be:
- 4.2.1 unreasonably excluded to the waterway; or
  - 4.2.2 impeded along the waterway.
- 4.3 Occupiers under a Nohoanga Camping Entitlement may erect camping shelters or temporary dwellings, but the occupier must:
- 4.3.1 remove those camping shelters or temporary dwellings while the right of occupation is not being exercised; and
  - 4.3.2 leave the land in substantially the same condition that it was in at the commencement of occupation, except for temporary effects normally associated with that type of occupation.
- 4.4 The occupier, and activities carried on by the occupier, under a Nohoanga Camping Entitlement, are subject to all legislation and land and water management practices that relate to the relevant land and this includes the need, as required, to apply for a resource consent under the Resource Management Act 1991.

- 4.5 Te Uri o Hau must pay rates, charges and fees in relation to a Nohoanga Camping Entitlement under section 7 of the Rating Powers Act 1988, in proportion to the period of the Nohoanga Camping Entitlement.
- 4.6 The Crown may terminate a Nohoanga Camping Entitlement (but must make reasonable endeavours to provide a replacement Nohoanga Camping Entitlement) if:
- 4.6.1 the Crown disposes of the relevant land;
  - 4.6.2 the relevant land is destroyed, or permanently detrimentally affected, by a natural cause;
  - 4.6.3 the land becomes required for the specific purpose for which it was originally set apart as a reserve;
  - 4.6.4 the land becomes a formed road; or
  - 4.6.5 lawful access to the Nohoanga Camping Entitlement no longer exists.
- 4.7 The Crown may terminate a Nohoanga Camping Entitlement if Te Uri o Hau fails to comply with a condition of that Nohoanga Camping Entitlement.
- 4.8 The Crown may dispose of land over which there is a Nohoanga Camping Entitlement.
- 4.9 The existence of a Nohoanga Camping Entitlement does not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.
- 4.10 Except as expressly recognised in the Deed of Settlement and the Settlement Legislation, the existence of a Nohoanga Camping Entitlement does not, of itself, have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights relating to, the relevant land.

## PART 5

## LAND TO BE VESTED IN TE URI O HAU

<i>Clause reference</i>	<i>Name of Site</i>	<i>Description</i>
4.1.1	Part of Pukekaroro Scenic Reserve	Up to 15 hectares (the top 1/3) of: Lots 1,2,3,4,5,6,7,8,11 DP 41763; Lot 1 DP 74141; Allot S79 Kaiwaka Parish; Lot 1 DP 84890; situated in Blk XIV Waipu SD
4.1.2	Part of Maungaturoto Scenic Reserve	Up to 0.5 hectares of Lot 14 DP 2845; Allots 226, 227, and 228, Parish of Wairau; situated in Blk XIII, Waipu SD
4.1.3(a)	Whakahuranga Pa Site	Up to 0.5 hectares of CT 81A/754, Lot 7 DP 180722
4.1.3(b)	Part of Oruawharo River Stewardship Area	Up to 0.5 hectares of Pt Okahukura No. 2 Block; DP 10011; situated in Blk XVI Hukatere SD
4.1.4	Part of Pouto North Stewardship Area	Up to 1 hectare of Pt. Te Kuri Block; Pt 2B Pouto; situated in Blks VI and VII, Te Kuri SD
4.1.5	Part of Rocky Point Marginal Strip	The cliff area of the Crown land adjoining Allots 64 and 65, Parish of Whakapirau; situated in Blk VIII, Hukatere SD
4.1.6	Part of the Okahukura Stewardship Area	Up to 2 hectares of Pts Okahukura No. 1 and No. 2 Blocks; DP 10011; situated in Blks XV and XVI Hukatere SD in the vicinity of Te Ngaio Point
4.1.7	Hokarako Stewardship Area	Sec 48, Blk 1, Otamatea SD
4.1.8	Part of Humuhumu Lake Bed	Part Pouto 2E10 Block (CT 428/225)

<i>Clause reference</i>	<i>Name of Site</i>	<i>Description</i>
		(part) (cancelled))
4.1.9	Pouto Road End land	0.6526 hectares of Part Pouto Block
4.1.10	Wahi Tapu Sites within the Crown Forestry Property on Pouto Peninsula	0.05 hectares being SO65781, Lot 1 DP136785  0.04 hectares being Sec 2 SO65781, Lot 1 DP136785  0.04 hectares being Sec 3 SO65781, Lot 1 DP136785  0.07 hectares being Sec 4 SO65781, Lot 1 DP136785  0.3 hectares being Sec 5 SO65781, Lot 1 DP136785
4.1.11	Pou Tu O Te Rangi	Lot 1 DP 79437



**PART 6****Section A****IDENTIFIED AREAS**

**Areas in respect of which Statutory Acknowledgements and Deeds of Recognition are to be given**

<i>Area</i>	<i>Description</i>
Mangawhai Marginal Strip	21 hectares, more or less, land subject to the provisions of Part IVA of the Conservation Act 1987 and adjoining Lot 1 DP 138524 situated in Blk IV Mangawhai SD; Lot 1 DP 138522 situated in Blks II, III, and IV Pakiri SD
Oruawharo River Stewardship Area	207.5 hectares, more or less, being Pt Okahukura No. 2 Block; DP 10011; situated in Blk XVI Hukatere SD
Pouto Stewardship Area	3300 hectares, more or less, being Pt. Allot 24, Te Kuri Parish; situated in Blks I, II, IV Okaka SD

**Section B**

**Areas which will be subject to a Kirihipi Overlay**

<i>Area</i>	<i>Description</i>
The Tapora Government Purpose (Wildlife Management) Reserve	63.5356 hectares, more or less, being Part Okahukura No, 1 Block; DP 1001; situated in Blk III Okaka SD; Gazette 1980 page 3322
Pouto Stewardship Area	3300 hectares, more or less, being Pt. Allot 24, Te Kuri Parish; situated in Blks I, II, IV Okaka SD

## PART 7

## RFR Shellfish Species

Maori Name	Common Name	Formal Name
Toheroa	Toheroa	Paphies ventricosa
Tuatua	Tuatua	Paphies subtriangulata, Paphies donacina
<i>[Maori name to be inserted]</i>	Surf-clams	Dosinea anus, Paphies donacina, Mactra discors, Mactra murchisoni, Spisula aequilata, Bassina yatei, or Dosinia subrosea
<i>[Maori name to be inserted]</i>	Paddlecrab	Ovalipes catharus

## PART 8

## PLACE NAMES

<i>Existing Place Name</i>	<i>Amended Place Name</i>
Rocky Point	Whakapirau / Rocky Point
Maungaturoto Scenic Reserve	Pukeareinga Scenic Reserve
Lake Matthews	Lake Karoro / Matthews (grid ref 34/06)
Brynderwyn	Puroa / Brynderwyn
Bald Rock	Puke pohatu / Bald Rock
Mt Wesley	Pou Tu O Te Rangi / Mt Wesley
Tapu Bush	Whakapaingarara / Tapu Bush
Pretty Bush	Te Hou Otapuiti / Pretty Bush
Waikere Creek	Waikeri Creek
Tapora Government Purpose (Wildlife Management) Reserve	Manukapua Government Purpose (Wildlife Management) Reserve

<i>Names to be allocated to sites presently not named</i>	<i>Location</i>
Rangitane Pa	Grid co-ordinates 07/44
Mahipatua Pa	Grid co-ordinates 09/43
Lake Wairere	Grid co-ordinates 01-02/46-48
Lake Otapuiti	Grid co-ordinates 06/37
Lake Rotopauri	Grid co-ordinates 08/43

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Whakaneke	Grid co-ordinates 03/34
Otaraka	Grid co-ordinates 05/33
Oteono	Grid co-ordinates 02/43

**PART 9****REQUIREMENTS FOR STATUTORY ACKNOWLEDGEMENT IN  
RELATION TO INDIGENOUS SPECIES*****Exercise of powers, duties and functions***

- 10.1 The acknowledgement of the association of Te Uri o Hau with the Fish, Flora and Fauna found in the Te Uri o Hau DOC Protocol Area ("Species") does not affect, and may not be taken into account in the exercise of any power, or the performance of any duty or function, under any legislation.
- 10.2 No person, in considering any matter or making any decision or recommendation under any legislation, may give any greater or lesser weight to the association of Te Uri o Hau with the Species than that person would have given under the relevant legislation if no acknowledgement had been made by the Crown of that association with the Species.

***Rights not affected***

- 10.3 The acknowledgement of the association of Te Uri o Hau with the Species will not affect the lawful rights or interests of any person who is not a party to the Deed of Settlement.

***Limitation of rights***

- 10.4 The acknowledgement of the association of Te Uri o Hau with the Species will not, of itself, have the effect of granting, creating or providing evidence of any interest in, or any rights of any kind relating to, any of the Species.

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**COMMERCIAL REDRESS SCHEDULE**

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**PART 1****SURPLUS CROWN PROPERTIES THAT MAY BE TRANSFERRED ON  
SETTLEMENT**

Street	City/Town	Physical Description	Legal Description		Land Area (ha)	Vendor
Kellys Bay Road	Kellys Bay, Pouto	Vacant rural land with minimal improvements	Sec 26 BLK VIII Te Kuri SD		2.0404	Office of Treaty Settlements
Pouto Road	Pouto	Land with buildings	Lots 1 and 2 DP 39454		1.9779	Ministry of Education

## PART 2

**PROPERTIES THAT MAY BE TRANSFERRED ON SETTLEMENT AND  
LEASED BACK**

Description	Street	City/Town	Owner Name
Tapora School	Okahukura Road	Tapora	Ministry of Education
Oruawharo School	Oruawharo School Road	Oruawharo	Ministry of Education
Otamatea High School	Bickerstaffe Road	Maungaturoto	Ministry of Education
Mangawhai Beach Primary School	Insley Street	Mangawhai	Ministry of Education
Tinopai Primary School	Tinopai Road	Tinopai	Ministry of Education
Ruawai College	Main Road	Ruawai	Ministry of Education
Paparoa Primary School	Franklin Road	Paparoa	Ministry of Education
Kaiwaka Primary School	Mangawhai Road	Kawakawa	Ministry of Education
Maungaturoto School	Gorge Road	Maungaturoto	Ministry of Education
Pouto Primary School	Cnr Pouto Road and Opuna Road	Pouto	Ministry of Education

**PART 3****CROWN FOREST PROPERTIES**

Forest Name	Legal Description	Area	Crown Forest Licensee
Mangawhai Forest	Lots 1, 2, 3, 4 DP 138523	123.945 ha	Carter Holt Harvey
Mangawhai Forest	Lot 1 DP 138524	492.49ha	Carter Holt Harvey
Forest on Pouto Peninsula	Lot 1 DP 136785	3.172.23 ha	Rayonier

## PART 4

### VALUATION PROCESS

#### *Definitions and interpretation*

4.1 In this Part 4 unless the context otherwise requires:

"**Arbitrator**" means a member of the panel established under **paragraph 4.12**;

"**Arbitrated Property**" has the meaning set out in **paragraph 4.10**;

"**Selected Properties**" means:

- (a) the Selected Surplus Crown Properties (as defined in **paragraph 4.3.1**);
- (b) the Selected Leaseback Properties (as defined in **paragraph 4.3.2**); and
- (c) the Selected Crown Forestry Properties (as defined in **paragraph 4.3.3**);

and "**Selected Property**" means any one of them;

"**Market Value**" means the estimated amount for which an asset should exchange on the Valuation Date, between a willing buyer and a willing seller in an arm's length transaction, after proper marketing, with each party acting knowledgeably, prudently and without compulsion. In applying this definition to any Selected Property, the following matters shall be taken into account:

- (a) any encumbrances or interests or other matters affecting or benefiting the Selected Property as are noted on the certificate of title for that Selected Property or as are disclosed in writing by the Crown, provided that the Valuer shall not take into account any claim by, or on behalf of, Te Uri o Hau over that property;
- (b) the terms of transfer; and

the value is to be on a plus GST (if any) basis;

"**Valuer**" means, for each Party, the valuer/s appointed by it in accordance with **paragraph 4.5.1**;

"**Valuation Date**" means the date agreed by the parties as being 30 Business Days before the date anticipated by the Parties to be the Deed Date;

"**Valuation Report**" means the valuation report prepared by the Valuer appointed by the Mandated Representatives of Te Uri o Hau, or by the Crown, or by the Parties jointly, in each case in accordance with this Part 4.

- 4.2 In this **Part 4**, all references to paragraphs are to paragraphs of this Schedule and all references to clauses are to clauses of the Heads of Agreement, in each case unless the context otherwise requires.

### *Selected Properties*

- 4.3 As soon as reasonably practicable after this Heads of Agreement is signed:
- 4.3.1 the Mandated Representatives of Te Uri o Hau will select, and will notify the Crown in writing of those Surplus Crown Properties which, under *clause 5.2*, they wish to be valued in accordance with this Part 4 ("Selected Surplus Crown Properties") and, once valued, from which the Mandated Representatives of Te Uri o Hau will select the properties they wish the Crown to transfer to Te Uri o Hau on the Settlement Date;
  - 4.3.2 the Parties will in accordance with *clause 5.3*, discuss in good faith and agree the terms and conditions of lease for, and which of, the Leaseback Properties that will be valued in accordance with this **Part 4** ("Selected Leaseback Properties") and, once valued, from which the Mandated Representatives of Te Uri o Hau will select the properties they wish the Crown to transfer to Te Uri o Hau on, and which Te Uri o Hau will leaseback to the Crown on the lease terms agreed under *clause 5.3* from, the Settlement Date; and
  - 4.3.3 the Mandated Representatives of Te Uri o Hau will select, and will notify the Crown in writing of those Crown Forestry Properties which, under *clause 5.4*, they wish to be valued in accordance with this **Part 4** ("Selected Crown Forestry Properties") and, once valued, from which the Mandated Representatives of Te Uri o Hau will select the properties they wish to Crown to transfer to Te Uri o Hau on the Settlement Date.
- 4.4 Each of the Selected Properties will:
- 4.4.1 before being valued, be grouped by the Parties into the following categories:
    - (a) Selected Surplus Crown Properties which have a government valuation of \$300,000 or less, and other Selected Surplus Crown

Properties which the parties agree, shall be valued by a Valuer jointly appointed by the Parties;

- (b) Selected Surplus Crown Properties which have a government valuation of more than \$300,000, and not agreed to be valued by a single Valuer under paragraph (a), shall be valued by each Party's Valuer;
- (c) Selected Leaseback Properties shall be valued by each Party's Valuer; and
- (d) Selected Crown Forestry Properties shall be valued by each Party's Valuer.

4.4.2 once categorised, be valued as at the Valuation Date, on the basis set out in this **Part 4**.

#### *Appoint Valuers and Agree Valuation Methodology*

4.5 Each Party will, as soon as reasonably practicable after this Heads of Agreement is signed:

4.5.1 appoint a valuer or valuers who, in each case, is registered under the Valuers Act 1948 and holds a current annual practicing certificate and who is active in the market for the relevant category of Selected Property to assess in accordance with this **Part 4** the Market Value of each Selected Property which the appointing Party requests it to value. The terms and conditions of such appointment shall be consistent with, and enable the appointing Party to comply with the process and obligations contemplated by, this **Part 4** and each Party will bear the costs of its Valuer (unless the Valuer is appointed jointly, in which case the parties will share equally the Valuer's costs);

4.5.2 notify the other Party of the identity of its Valuer and the Selected Properties in respect of which that Valuer is appointed.

#### *Disclosure*

4.6 As soon as reasonably practicable after this Heads of Agreement is signed, and initial selection of Selected Properties is made, the Crown shall, in relation to each Selected Property, disclose to the Mandated Representatives of Te Uri o Hau all material it has in its possession which might affect the Market Value of the Selected Property.



### *Valuation Report*

- 4.7 Each Valuation Report provided by a Valuer shall:
- 4.7.1 include an assessment of the Market Value of the Selected Property being valued as at the Valuation Date, and, in the case of a Selected Leaseback Property, shall include the terms of the lease;
  - 4.7.2 meet the minimum requirements set out in Section 5 of the "New Zealand Institute of Valuers Valuation Standard 1: Market Value Basis of Valuation" and any other relevant standards that are consistent with the requirements of this **Part 4**;
  - 4.7.3 include an executive summary containing:
    - (a) a summary of the valuation along with key valuation parameters;
    - (b) a summary of key issues affecting value, if any;
    - (c) the name of the Valuer and his or her firm; and
    - (d) the signature of the Valuer and lead valuer (if applicable);
  - 4.7.4 include a property report based on the standard referred to in **paragraph 4.7.2**; and
  - 4.7.5 attach appendices setting out:
    - (a) a statement of valuation methodology and policies; and
    - (b) relevant market and sales information.

### *Valuation of Properties by Jointly Appointed Valuer*

- 4.8 For each Selected Property which, under **paragraph 4.4.1(a)**, is to be valued by a jointly appointed Valuer:
- 4.8.1 the Valuer shall inspect the property and prepare, and present to each Party no later than 10 Business Days after the Valuation Date, a Valuation Report that complies with **paragraph 4.7**;
  - 4.8.2 the Valuation Report, and in particular the Market Value assessed for the property, shall be final and binding on the Parties; and

4.8.3 the Parties will share equally the Valuer's costs.

*Valuation of Properties by Each Party's Valuer*

- 4.9 For each Selected Property which, under **paragraph 4.4.1(b)**, is to be valued by each Party's Valuer:
- 4.9.1 the Valuer shall inspect the property, and prepare and present to each Party no later than 10 Business Days after the Valuation Date, a Valuation Report that complies with **paragraph 4.7**;
- 4.9.2 each Party will promptly review, and seek to negotiate and agree, a final valuation based on the Valuation Report provided by the other Party's Valuer;
- 4.9.3 if the Parties are satisfied with the Market Value assessed by these Valuation Reports (in other words, the Market Values are the same or, if not the same, the Parties agree in writing a Market Value (and any related valuation basis) satisfactory to both Parties), then the Market Value, is the same in each Report, will be final and binding on both Parties as will the Market Value agreed if they are not the same; and
- 4.9.4 if the Parties are not satisfied with the Market Value assessed by these Valuation Reports (in other words, the Market Values are not the same and the Parties cannot agree a Market Value (and any related valuation basis) satisfactory to both Parties), then the arbitration provisions in **paragraphs 4.10 to 4.16** will apply to determine the Market Value of that property;
- 4.9.5 before those provisions apply to a Selected Property, the government valued of which is \$1,500,000.00 or more, the Parties shall both refer the dispute to a person experienced in mediating disputes about valuation in an attempt to reach agreement on the Market Value and to avoid arbitration. For those Selected Properties, the period referred to in **paragraph 4.10** shall be 7 Business Days to allow time for mediation;
- 4.9.6 each party shall bear the costs of the Valuers appointed by that Party.

*Arbitration of Disputed Market Values*

- 4.10 If within 5 Business Days of the valuers presenting the valuation reports for a Selected Property under **paragraph 4.9.1**, the Parties cannot agree a Market Value, then that property (the "Arbitrated Property") shall be:

- 4.10.1 allocated by the Parties to an Arbitrator; or
  - 4.10.2 if the Parties cannot agree on an Arbitrator, to an Arbitrator selected by the President of the New Zealand Institute of Valuers; and
- valued by that Arbitrator in accordance with **paragraphs 4.10 to 4.16**.

***Principles applying to arbitration***

- 4.11 The following principles apply to any arbitration, and the allocating of Arbitrated Properties to an Arbitrator:
  - 4.11.1 Arbitrated Properties which have similar characteristics, and/or are in reasonably close proximity and/or to which similar market conditions apply and/or which are owned by the same person should be allocated to one Arbitrator;
  - 4.11.2 as few Arbitrators as possible are to be used;
  - 4.11.3 the Market Value for all Arbitrated Properties must be determined as at the Valuation Date and the arbitration completed no later than 5 Business Days before the Deed Date;
  - 4.11.4 neither party will involve legal counsel in the conduct of arbitration (unless agreed otherwise); and
  - 4.11.5 the parties will share equally the Arbitrator's costs.

***Panel of Arbitrators***

- 4.12 As soon as reasonably practicable after the Heads of Agreement is signed, the Parties will:
  - 4.12.1 establish a panel of 4 persons who are independent, who are considered to be experts in valuing the types of properties comprising the Surplus Crown Properties, the Leaseback Properties and the Crown Forestry Properties, who are ready, willing and able to act as arbitrators, and who each confirm in writing to the Parties that he or she agrees to act on the terms and conditions set out in this **Part 4** for determining the Market Value for an Arbitrated Property; and
  - 4.12.2 each nominate half of the Arbitrators on the panel.

*Notice of meeting*

- 4.13 The Arbitrator shall, for each Arbitrated Property allocated to him or her under **paragraph 4.10**:
- 4.13.1 promptly notify the Parties of a meeting to be held between the Parties and their respective Valuers at a venue determined by the Arbitrator; and
  - 4.13.2 in that notice, require the Parties to provide to the Arbitrator all information in their possession relating to the Market Value of the Arbitrated Property (being the Valuation Report and, in the case of a Leaseback Property, the lease agreed under *clause 5.3*), any sales evidence relating to the Arbitrated Property and any submission and/or expert evidence the Party wishes to provide) (and copied to each other Party) at least 5 Business Days before the meeting.

*Conduct of Meeting*

- 4.14 The Arbitrator shall hold the meeting on the specified date. At the meeting, the Arbitrator shall:
- 4.14.1 establish a procedure;
  - 4.14.2 give each Party to the arbitration the right to examine, cross-examine and re-examine the Valuers and any other experts appointed by the other Party in relation to the information provided to the Arbitrator; and
  - 4.14.3 in conducting the meeting, ensure that each Party's interests are fairly and equitably represented.
- 4.15 Within 5 Business Days of the meeting, the Arbitrator shall provide a written determination of the Market Value of each Arbitrated Property allocated to him or her and shall provide a copy to the Parties.
- 4.16 The Arbitrator's determination of the Market Value for each Arbitrated Property shall be:
- 4.16.1 final and binding on the Parties; and
  - 4.16.2 no higher than the higher, and no lower than the lower, of the Market Value assessed by the Valuer for the Mandated Representatives of Te Uri o Hau and the Crown's Valuer for that property.

*Valuation and Transfer of Properties*

4.17 Each Selected Property will be valued, and its Market Value determined, as at the Valuation Date.

4.18 Once the Market Value for each Selected Property has been determined, the Mandated Representatives of Te Uri o Hau will select from, and notify the Crown which:

4.18.1 Selected Surplus Crown Properties it wishes the Crown to transfer to Te Uri o Hau on the Settlement Date;

4.18.2 Selected Leaseback Properties it wishes the Crown to transfer to Te Uri o Hau on, and which Te Uri o Hau will leaseback to the Crown on the lease terms agreed under *clause 5.4* from, the Settlement Date; and

4.18.3 Selected Crown Forestry Properties it wishes the Crown to transfer to Te Uri o Hau, subject to the forestry licences granted in respect of those properties, on the Settlement Date;

(together, the "**Final Selected Properties**").

4.19 Each Final Selected Property will be transferred on the Settlement Date at the Market Value determined in accordance with this **Part 4** provided that:

4.19.1 for those Selected Properties (if any) which the Parties agree it is not possible to complete the valuation process and determine a Market Value by the Deed Date (both parties having used their best endeavours to achieve that):

(a) those Selected Properties will be valued as soon as possible after the Deed Date under a more formal process to be set out in the Deed of Settlement; and

(b) if selected by Te Uri o Hau in accordance with **paragraph 4.18**, those Selected Properties shall be transferred at the Market Value determined in accordance with this **Part 4** on the Settlement Date, or (if the Market Value is not determined until after the Settlement Date) as soon as reasonably practicable after the Market Value is determined and, in that case, the Crown shall be entitled to retain from the Redress Amount a sum equivalent to the Market Value assessed by the Crown's Valuer and the Crown shall pay any adjustment to Te Uri o Hau on settlement of the transfer of the

relevant Property (except to the extent that the Crown may retain or deduct any part of such sum under this Heads of Agreement or at law);

- 4.19.2 if the Deed Date is more than six months after the date which, for the purpose of setting the Valuation Date, the parties anticipated would be the Deed Date, then the Parties may agree adjustments to the Market Value of each Selected Property to reflect changes in the market for such property between the Valuation Date and the Deed Date. Failing agreement, any such adjustment shall be determined by arbitration under paragraphs 4.10 to 4.16; and
- 4.19.3 The Market Value of a Final Selected Property may be adjusted in accordance with any adjustment provisions as may be agreed by the Parties in the terms of transfer relating to that property.

*Initial rent under Selected Leaseback Properties*

- 4.20 Where there is a reference in this Part 4 to a Market Value being agreed or determined then, in the case of each Leaseback Property, the market rent for each Property is to be agreed or determined at the same time and as a precondition to the Market Value being established.



**PART 5****DEED OF GRANT OF RIGHT OF FIRST REFUSAL  
OVER CROWN LAND**

Date:

**BETWEEN:**

- (1) THE TE URI O HAU GOVERNANCE ENTITY
- (2) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND

**BACKGROUND:**

- A. Te Uri o Hau and the Crown are parties to a Deed of Settlement dated [        ].
- B. Under that Deed of Settlement, the Crown agreed with Te Uri o Hau that (if that Deed of Settlement became unconditional) it would enter into a deed granting the Te Uri o Hau Governance Entity a right of first refusal over certain properties owned by the Crown.
- C. This Deed is in satisfaction of the obligations of the Crown referred to in *Background B*.

**NOW THEREFORE** the parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this **Deed**, unless the context otherwise requires:

*Business Day* means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Northland;

*Control* for the purposes of subclause (d) of the definition of Crown Body means:

- (a) in relation to a company, control of the composition of the board of directors of the company; and
- (b) in relation to any other body, control of the composition of the group that would be the board of directors if the body was a company;

*Crown* has the same meaning as in section 2(1) of the Public Finance Act 1989 but, for the avoidance of doubt, does not include the New Zealand Railways Corporation;

*Crown Body* means:

- (a) the Crown (whether acting through a Minister or otherwise);
- (b) a Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (c) a State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (d) any company or body which is wholly-owned or controlled by:
  - (i) the Crown, a Crown entity or a State enterprise; or
  - (ii) a combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises, and includes any subsidiary of or related company to, any such company or body;

*Dispose* means:

- (a) to transfer an estate in fee simple; or
- (b) to grant a new Lease the term of which, including rights of renewal or of extension is, or could be, for 50 years or longer;

but does not include the vesting of a reserve under section 26 or section 26A of the Reserves Act 1977;

*Effective Date* means [here insert the date on which the Deed of Settlement becomes unconditional];

*Expiry Date* means, in respect of an RFR Notice, the date 1 month after the RFR Notice is received by the Te Uri o Hau Governance Entity;

*Lease* includes any right which grants exclusive possession;

*RFR Area* means the area identified in Attachment 1 over which the Crown is to offer a right of first refusal to Te Uri o Hau;

*RFR Notice* means a notice under *clause 2.1*;

*RFR Property* means every parcel of land which is:

- (a) in the RFR Area on the Effective Date and is:
  - (i) vested in the Crown or held by the Crown under any Act; or
  - (ii) vested in another person under section 26 or section 26A of the Reserves Act 1977;

but does not include:

- (iii) [*here insert any Landbank properties not selected (there may need to be a definition) and any definition of land included in selection process in transfer of commercial property section*]; or
  - (iv) any land or roads vested in the Crown by section 44 of the Transit New Zealand Act 1989, or
  - (v) any “railways assets” of the Crown within the meaning of paragraph (c) of the definition of “railway assets” in section 2 of the New Zealand Railways Corporation Restructuring Act 1990;
- (b) transferred to the Crown as the consideration, or part of the consideration, for a disposal under *clause 8.1(g)*;
  - (c) described in a notice in writing given to the Te Uri o Hau Governance Entity under *clause [ ]*. *This will be a clause elsewhere in the Deed of Settlement which provides that the Crown must give notice to the Te Uri o Hau Governance Entity that a specified property in Te Uri o Hau Area of Interest has been cleared for use in this RFR*].

## 1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (c) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (d) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (e) a reference to a document includes an amendment or supplement to, or a replacement or novation of, that document;
- (f) references to monetary amounts are to New Zealand currency;
- (g) references to written or in writing include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (h) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (i) a reference to a date on which something must be done includes any other date which may be agreed in writing between the Te Uri o Hau Governance Entity and the Crown;
- (j) where the day on or by which anything to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (k) a reference to time is to time in New Zealand.

## 2 NOTICE TO BE GIVEN BEFORE DISPOSING OF AN RFR PROPERTY

### 2.1 Crown must give offer by written notice

The Crown must, before Disposing of an RFR Property, give a written notice to the Te Uri o Hau Governance Entity which offers to Dispose of the RFR Property

to the Te Uri o Hau Governance Entity at the price and on the terms and conditions set out in the RFR Notice.

## 2.2 **Crown may withdraw notice**

The Crown may withdraw any notice given to the Te Uri o Hau Governance Entity under *clause 2.1* at any time before the Te Uri o Hau Governance Entity accepts the offer in that notice under *clause 3*. If the Crown withdraws a notice, *clause 2.1* still applies to the RFR Property.

## 3 **AGREEMENT TO DISPOSE OF AN RFR PROPERTY**

If, by the Expiry Date, the Te Uri o Hau Governance Entity accepts the offer set out in the RFR Notice by notice in writing to the Crown, a contract for the Disposal of the RFR Property is constituted between the Crown and the Te Uri o Hau Governance Entity.

## 4 **NON-ACCEPTANCE BY THE TE URI O HAU GOVERNANCE ENTITY**

If:

- 4.1 the Crown gives the Te Uri o Hau Governance Entity an RFR Notice; and
- 4.2 the Te Uri o Hau Governance Entity does not accept the offer set out in the RFR Notice by notice in writing to the Crown by the Expiry Date; -

the Crown:

- 4.3 may, at any time during the period of 2 years from the Expiry Date, Dispose of the RFR Property if the price and other terms and conditions of the Disposal are not more favourable to the purchaser or lessee than the price and other terms and conditions set out in the RFR Notice to the Te Uri o Hau Governance Entity; but
- 4.4 must, promptly after entering into an agreement to Dispose of the RFR Property to a purchaser or lessee give written notice to the Te Uri o Hau Governance Entity of that fact and disclosing the terms of the agreement; and
- 4.5 must not Dispose of the RFR Property after the end of that 2 year period without first offering to Dispose of the RFR Property for sale to the Te Uri o Hau Governance Entity in an RFR Notice under *clause 2.1*.

## **5 RE-OFFER REQUIRED**

If:

- 5.1 the Crown has given the Te Uri o Hau Governance Entity an RFR Notice;  
and
- 5.2 the Te Uri o Hau Governance Entity does not accept the offer set out in the RFR Notice by notice in writing to the Crown by the Expiry Date; and
- 5.3 the Crown proposes to offer that RFR Property for Disposal again but at a price, or on other terms and conditions, more favourable to the purchaser or lessee than on the terms in the RFR Notice,

the Crown may do so only if it first offers the RFR Property for Disposal on the more favourable terms to the Te Uri o Hau Governance Entity in an RFR Notice under *clause 2.1*.

## **6 PROVISIONS OF THIS DEED THAT APPLY TO A RE-OFFER**

*Clause 3, 4 and 5* apply to any RFR Notice given under *clause 4.5* or *5*.

## **7 TERMS OF THIS DEED NOT TO AFFECT CERTAIN RIGHTS AND RESTRICTIONS**

Nothing in this Deed affects, or derogates from, and the rights and obligations created by this Deed are subject to:

- 7.1 the terms of any gift, endowment, or trust relating to any RFR Property existing before the Effective Date;
- 7.2 the rights of any holders of mortgages over, or of security interests in, any RFR Property ;
- 7.3 any legislation or rule of law that must be complied with before any RFR Property is Disposed of to the Te Uri o Hau Governance Entity;
- 7.4 any feature of the title to, or any characteristic of, any RFR Property that prevents or limits the Crown's right to Dispose of the RFR Property to the Te Uri o Hau Governance Entity;



- 7.5 any legal requirement that:
- (a) prevents or limits the Crown's ability to sell or otherwise Dispose of an RFR Property to the Te Uri o Hau Governance Entity; and
  - (b) the Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law);
- 7.6 any requirement under any legislation or rule of law that the Crown must Dispose of an RFR Property to any third party.

## **8 THIS DEED DOES NOT APPLY IN CERTAIN CASES**

### **8.1 Disposal to certain persons are exempt**

*Clause 2.1* does not apply if the Crown is Disposing of an RFR Property to:

- (a) the Te Uri o Hau Governance Entity;
- (b) a person to give effect to this Deed or to the Deed of Settlement referred to in *Background A*;
- (c) a Crown Body, if that Crown Body takes the RFR Property subject to the terms of this Deed and enters into a deed (at the Crown's expense) in favour of the Te Uri o Hau Governance Entity in the form set out in the First Schedule to this Deed;
- (d) a person to whom the RFR Property is being Disposed of under any of the following enactments:
  - (i) sections 40 or 41 of the Public Works Act 1981 (or those sections as applied by any other legislation);
  - (ii) sections 23, 24 or 26 of the New Zealand Railways Corporation Restructuring Act 1990;
  - (iii) section 207(4) of the Education Act 1989;
- (e) the existing tenant of a house on any RFR Property that is held on the Effective Date for education purposes;
- (f) a person who immediately before the Disposal, holds a legal right created on or before the Effective Date to purchase the RFR Property or to be granted

- a lease of it or be offered the opportunity to purchase the RFR Property or take a lease of it;
- (g) a person to whom the RFR Property is being Disposed of under any of the following enactments:
- (i) sections 16A or 24E of the Conservation Act 1987;
  - (ii) section 15 of the Reserves Act 1977;
  - (iii) an Act of Parliament that:
    - (aa) excludes the RFR Property from a national park within the meaning of the National Parks Act 1980; and
    - (bb) authorises the RFR Property to be disposed of in consideration or part consideration for other land to be held or administered under the Conservation Act 1987, the National Parks Act 1980 or the Reserves Act 1977;
- (h) a person to whom the RFR Property is being Disposed of under section 93(4) of the Land Act 1948;
- (i) the lessee under a lease of an RFR Property granted, on or before the Effective Date, (or granted after that date but in renewal of a lease granted on or before that date) under:
- (i) section 66 of the Land Act 1948;
  - (ii) section 67 of the Land Act 1948;
  - (iii) section 93(4) of the Land Act 1948; or
  - (iv) the Crown Pastoral Lands Act 1998;
- (j) a person to whom the land is being disposed of under any of the following enactments:
- (i) section 117(3) of the Public Works Act 1981 (other than a person to whom the land is being Disposed of under the words “ may be dealt with as Crown land under the Land Act 1948” in paragraph (b) of that section); or

- (ii) section 119(2) of the Public Works Act 1981;
- (k) a person to whom the RFR Property is being Disposed of by way of gift for charitable purposes; or
- (l) a person to whom the RFR Property is being Disposed of under section 355(3) of the Resource Management Act 1991.

## 8.2 Effect of exempt Disposals to Crown Bodies

A Crown Body to whom an RFR Property is being Disposed of under *clause 7* or *clauses 8.1(d) to (l)* (inclusive) is not required to enter into a deed under *clause 8.1(c)*.

## 8.3 Disposals for certain purposes are exempt

8.3.1 *Clause 2.1* does not apply to the Disposal of an RFR Property which:

- (a) immediately before the Disposal is held by the Crown for a public work (as defined in the Public Works Act 1981); and
- (b) after the Disposal will be held or used for the purpose or activity which, immediately before the Disposal, constituted the public work,

if the person to whom the RFR Property was Disposed of takes the RFR Property subject to the terms of this Deed and enters into a Deed (at the Crown's expense) in favour of the Te Uri o Hau Governance Entity in the form set out in the Second Schedule to this Deed.

8.3.2 A person to whom an RFR Property is being Disposed of under *clause 7* or *clause 8.1(d) to (l)* (inclusive) is not required to enter into a deed under *clause 8.3.1*.

## 9 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown and the Te Uri o Hau Governance Entity under this Deed. The Crown and the Te Uri o Hau Governance Entity may agree in writing to an extension of time limits.

## 10 ENDING OF RIGHT OF FIRST REFUSAL

### 10.1 RFR ends on Disposal which complies with this Deed

The obligations of the Crown set out in this Deed shall end in respect of each RFR Property on a transfer of the estate in fee simple of the RFR Property in accordance with *clauses 4, 7 or 8*.

## 10.2 RFR ends after 50 years

The obligations of the Crown set out in this Deed end 50 years after the Effective Date.

## 11 DISPOSAL OF MORE THAN ONE PROPERTY

Any offer made under *clause 2.1* may be in respect of more than one RFR Property but this Deed shall apply to that offer as if all the RFR Properties included in the offer were a single RFR Property.

## 12 NOTICES

### 12.1 Notices in writing

Any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

*The Crown:*

The Solicitor General  
Crown Law Office  
St Pauls Square  
45 Pipitea Street  
(PO Box 5012)  
WELLINGTON

*Te Uri o Hau:*

TUOH Company Limited  
169 Hurndal Street  
MAUNGATUROTO  
(PO Box 657)  
(WHANGAREI)

### 12.2 Methods of delivery

Delivery of a notice may be effected by hand, by mail or by facsimile.

### 12.3 Hand delivery

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been received on the next Business Day.

### 12.4 Delivery by post

A notice or other communication delivered by mail will be deemed to have been received on the second Business Day after posting.

### 12.5 Delivery by facsimile

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the

notice or other communication will be deemed to have been received on the next Business Day after the date of transmission.

**EXECUTED** as a deed on the date first written above.

*[Insert execution clauses]*

**FIRST SCHEDULE***(Clause 8.1(b))***DEED OF COVENANT**

*Date:*

**PARTIES**

- (1) THE TE URI O HAU GOVERNANCE ENTITY
- (2) [THE CROWN BODY] *(New Owner)*
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [The Crown Body] *if this Deed relates to a second or subsequent intra-Crown disposal* *(Current Owner)*

**BACKGROUND**

- A The New Owner intends to take from the Current Owner a Disposal of the Property described in the schedule to this Deed *(Property)*.
- B The Property is subject to a deed of grant of right of first refusal dated [ ] between the Crown and the Te Uri o Hau Governance Entity *(Principal Deed)*.
- C Under the Principal Deed, the Current Owner must, before Disposing of the Property to the New Owner, obtain a deed from the New Owner in favour of [the Governance Entity] ensuring that the New Owner takes the Property subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner's obligation.

**NOW THEREFORE** the parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION****1.1 Defined Terms**

In this deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but that are defined in the Principal Deed, have the meanings given to them by the Principal Deed;

*Effective Date* means the date on which the New Owner takes a Disposal of the Property;



*Property* has the meaning given to in Background A;

*Principal Deed* has the meaning given to it in Background B;

*Transfer* means the transfer described in *clause 2*.

## **1.2 Interpretation**

The rules of interpretation set out in *clause 1.2* of the Principal Deed also apply to the interpretation of this Deed.

## **2 TRANSFER BY CURRENT OWNER**

The Current Owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Property.

## **3 ACCEPTANCE BY NEW OWNER**

The New Owner, for the benefit of the Current Owner and the Te Uri o Hau Governance Entity, accepts the Transfer.

## **4 CONSENT AND RELEASE BY THE TE URI O HAU GOVERNANCE ENTITY**

The Te Uri o Hau Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed.

**EXECUTED** as a deed on the date first written above

*[Insert execution clauses]*

**SCHEDULE  
THE PROPERTY**

**SECOND SCHEDULE  
(Clause 8.3.1)**

**DEED OF COVENANT**

*Date:*

**PARTIES**

- (1) THE TE URI O HAU GOVERNANCE ENTITY
- (2) [*Insert name of person taking Disposal under clause 8.3.1*] (*New Owner*)
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [The Crown Body] (*Current Owner*)

**BACKGROUND**

- A The New Owner intends to take from the Current Owner a Disposal of the Property described in the schedule to this Deed (*Property*).
- B The Property is subject to a deed of grant of right of first refusal dated [ ] between the Crown and the Te Uri o Hau Governance Entity (*Principal Deed*).
- C Under the Principal Deed, the Current Owner must, before Disposing of the Property to the New Owner, obtain a deed from the New Owner in favour of the Te Uri o Hau Governance Entity ensuring that the New Owner takes the Property subject to the Principal Deed. This Deed is entered into to give effect to the Current Owner's obligation.

**NOW THEREFORE** the parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Defined Terms**

In this deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but that are defined in the Principal Deed, have the meanings given to them by the Principal Deed;

*Effective Date* means the date on which the New Owner takes a Disposal of the Property;

*Property* has the meaning given to in Background A;

*Principal Deed* has the meaning given to it in Background B;

*Transfer* means the transfer described in *clause 2*.

## **1.2 Interpretation**

The rules of interpretation set out in *clause 1.2* of the Principal Deed also apply to the interpretation of this Deed.

## **2 TRANSFER BY CURRENT OWNER**

The Current owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Property.

## **3 ACCEPTANCE BY NEW OWNER**

The New Owner, for the benefit of the Current Owner and the Te Uri o Hau Governance Entity, accepts the Transfer.

## **4 CONSENT AND RELEASE BY THE TE URI O HAU GOVERNANCE ENTITY]**

The Te Uri o Hau Governance Entity consents to the Transfer and releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed insofar as they relate to the Property.

## **5 OBLIGATION TO MAKE OFFER**

### **5.1 Request by the Te Uri o Hau Governance Entity**

The Governance Entity may give written notice to the New Owner requesting the New Owner to make an offer under clause 2.1 of the Principal Deed.

### **5.2 Offer notice to be given if Property no longer required**

The New Owner must give a written notice under clause 2.1 of the Principal Deed if, on the date of receipt by the New Owner of a notice under clause 5.1, the Property is no longer being held or used for the purpose or activity which, immediately before the Disposal to the New Owner, constituted the public work

referred to in clause 8.3.1 of the Principal Deed. Clause 2.2 of the Principal Deed does not apply to that written notice.

### **5.3 Frequency of requests**

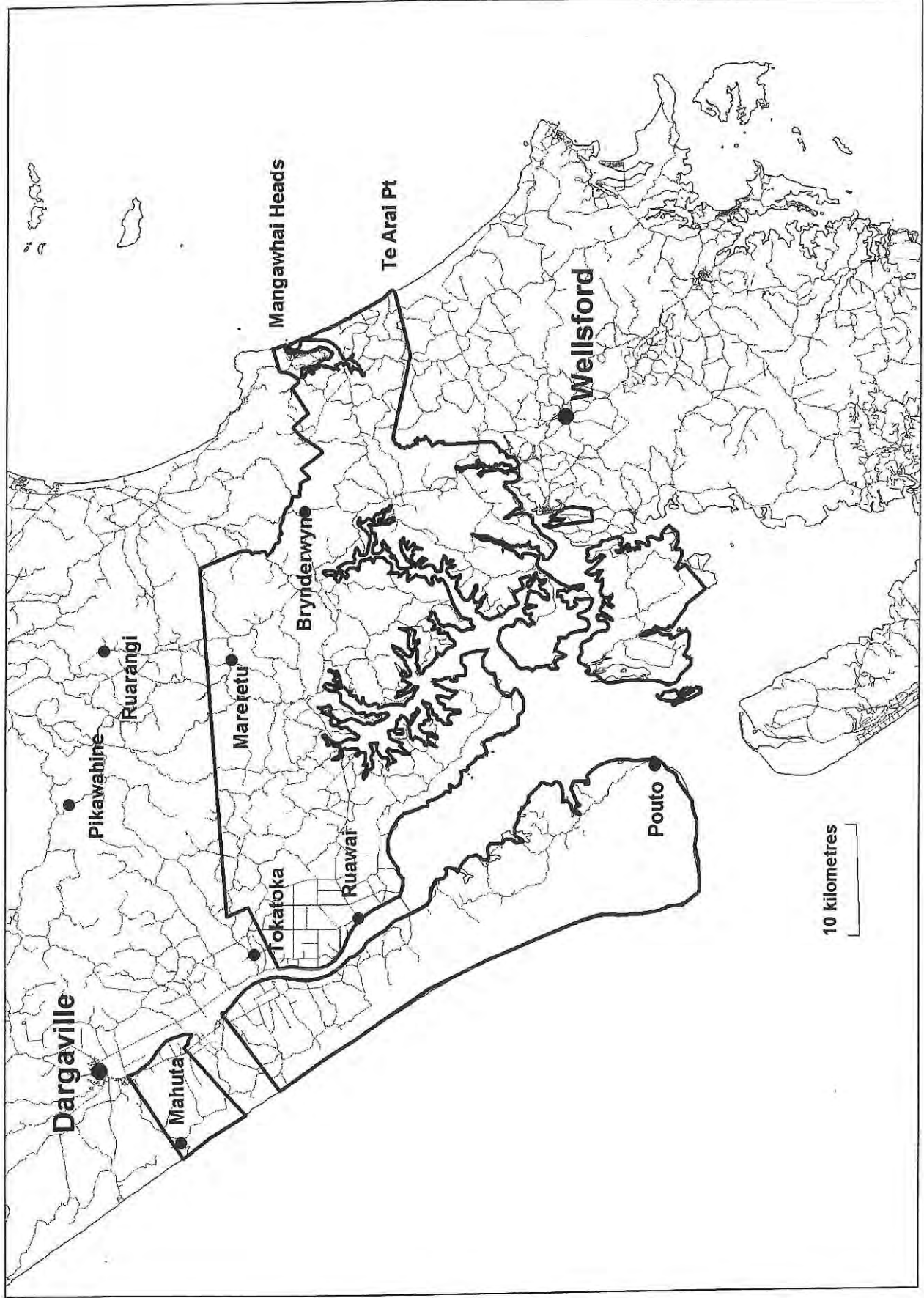
A notice under *clause 5.1* may not be given within 3 years:

5.3.1 of the Effective Date; and

5.3.2 of the date of receipt by the New Owner of the last notice under *clause 5.1*.

**EXECUTED** as a deed on the date first written above

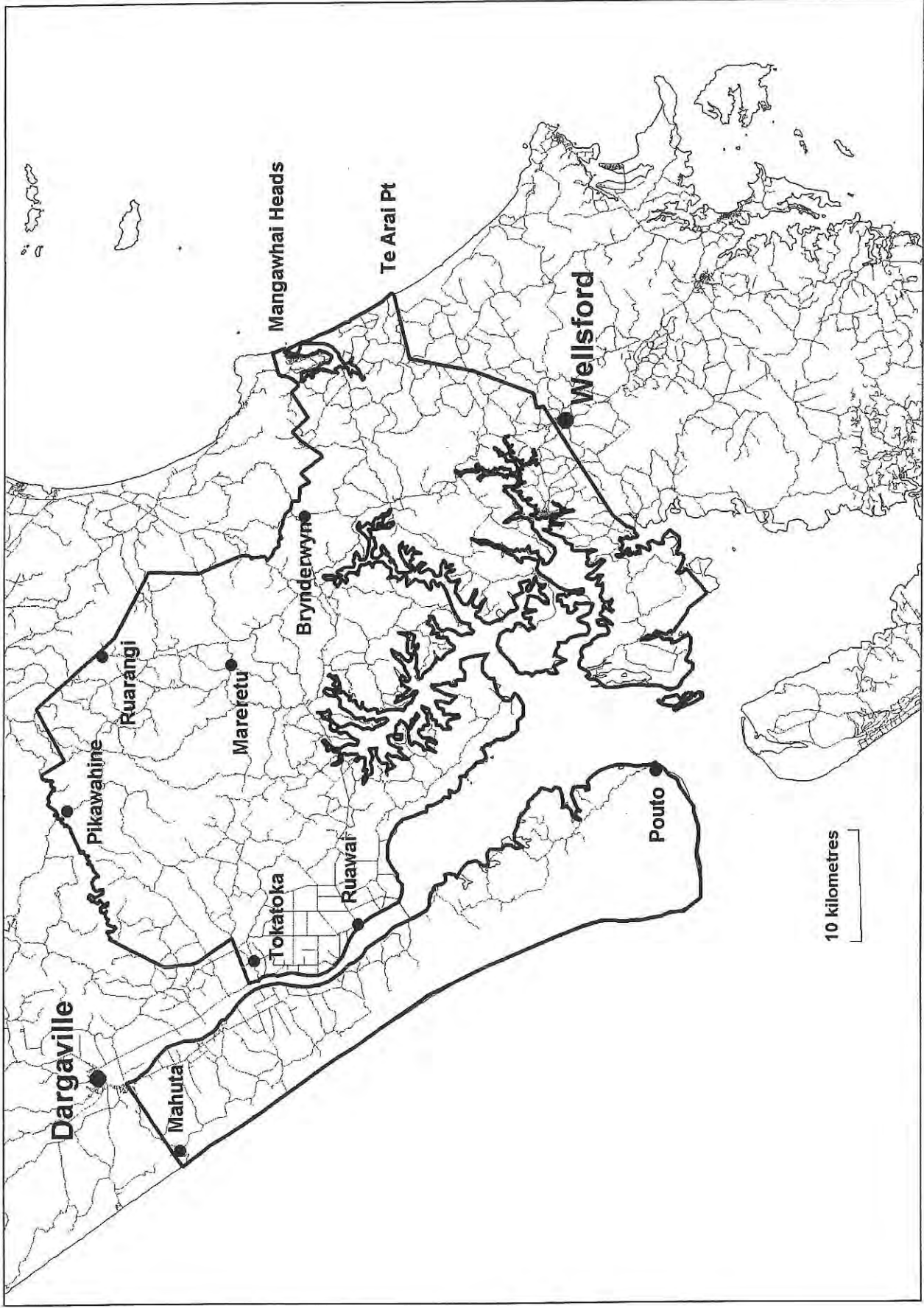
[*Insert execution clauses*]



Attachment 1 - Te Uri o Hau's RFR Area







Attachment 2 - Te Uri o Hau's Area of Interest

