

Doug Graham

30 SEPTEMBER, 1996

Cabinet approves settlement of Whakatohea's historical claims

The Minister in Charge of Treaty of Waitangi Negotiations, Hon D.A.M. Graham, said today Cabinet had approved a settlement of Whakatohea's historical claims for breaches of the Treaty of Waitangi particularly the confiscation of approximately 170,000 acres of land in the Bay of Plenty.

The Deed of Settlement will be signed in the Beehive's Banquet Hall at 9.00am tomorrow.

The grievances date back to actions begun by the Crown in Opotiki in 1865.

Whakatohea filed a claim to the Waitangi Tribunal in 1989. The Whakatohea Raupatu Negotiating Committee was mandated to negotiate a settlement on behalf of the tribe in 1994.

'Today's Cabinet approval is the culmination of a lot of hard work by the negotiating committee and Crown officials,' Mr Graham said.

'Whakatohea people are travelling to Wellington today for tomorrow's signing ceremony.

'Full details of the settlement will be released tomorrow to enable the tribe's negotiators to brief their people first,' he said.

Doug Graham Treaty of Waitangi Negotiations

SHARE

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HER MAJESTY THE QUEEN
in right of New Zealand

and

WHAKATOHEA

DEED OF SETTLEMENT

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1 October 1996

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THIS DEED is made on the 1st day of October 1996

BETWEEN

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations
- (2) **WHAKATOHEA**

BACKGROUND

A The Treaty of Waitangi provides:

"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 Atapoko hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaatua e nga Rangatira maori 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 kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho i te kare 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 ki te Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu e nei ture ka koreroia 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 wakaee 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. Otira ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki

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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 wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori 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 ko 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 wakaaetia katoatia e matou, koia ka tokungia 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."

"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

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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 Preemption 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. HORSFORD Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waikato 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 affixed our signatures or marks at the places and the dates respectively specified.

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

- B From 1860, the Crown engaged in a war against Maori in Taranaki, Waikato and the western Bay of Plenty.
- C In 1863, the Suppression of Rebellion Act and New Zealand Settlements Act were passed to enable the Crown to suppress those Maori it deemed to be rebels, and to punish them by confiscation of their land.

[Handwritten initials]

- D Prior to 1865 Whakatohea had little direct contact with Government and the tribe's involvement in the New Zealand Wars had consisted of sending men to Waikato and participation in the Tai Rawhiti expedition of February 1864.
- E In March 1865, the missionary the Reverend Carl Sylvius Volkner (who was, amongst other things, accused of being a Government informer) was killed at Opotiki. The Reverend Thomas Grace and a number of European sailors and settlers were detained. Only some Whakatohea participated in the killing which was incited by Pai Marire adherents from outside the tribe.
- F A Proclamation of Peace was issued by the Governor on 5 September 1865, declaring that the war, which had begun in Taranaki, was over, and pardoning any previous acts of "rebellion", including Whakatohea's earlier involvement in the wars, but excluding the killing of Volkner.
- G On the same date, another proclamation was gazetted declaring martial law over the eastern Bay of Plenty. In accordance with the proclamation, troops were despatched immediately to Opotiki with instructions to apprehend Volkner's murderers.
- H The troops attacked Opotiki on 8 September 1865. The tribe attempted to defend their land and homes. Subsequently the troops overran the area around Opotiki, looting and plundering the land and possessions of Whakatohea and killing many Whakatohea people.
- I The invasion took place before notification of either of the two proclamations, or the purpose of the expedition, could have reached Whakatohea.
- On 16 January 1866, a proclamation issued under the New Zealand Settlements Act 1863 wrongfully declared Whakatohea to be rebels against the Crown. All of their coastal lands, including their most productive land and major settlements were unjustly confiscated.
- K In February 1866, several men were tried and executed for Volkner's murder, including the Whakatohea chief Mokomoko, who steadfastly maintained his innocence.
- L The Crown returned only a small proportion of the confiscated land being a block at Opape, a block at Hiwarau, and small scattered grants to individuals. Most of Whakatohea were forced to leave their ancestral lands to move to Opape, an area traditionally occupied by one hapu, Ngati Ruatakenga.

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- M Military settlers were then introduced to occupy much of the land around Opotiki and the Waioatahe Valley, which had formerly belonged to Whakatohea.
- N Whakatohea suffered extensive and enduring hardship as a result of the war waged against them. The loss of life, the destruction of their possessions and taonga, the confiscation of their lands, and the consequent effects of Raupatu have lasted until the present day.
- O For many years, Whakatohea have pursued claims against the Crown concerning the unfairness and iniquity of the Raupatu and the harmful effects suffered by the iwi as a result. Petitions submitted in 1914 and 1944 were particularly prominent in this process.
- P Subsequent to the confiscation Whakatohea lost most of their remaining land. In 1908 the Stout-Ngata Commission found "they have little land left in their hands".
- Q In 1921, a Royal Commission, known as the Native Land Commission, was appointed to consider Maori grievances. The Commission affirmed that the penalty endured by Whakatohea was unduly harsh.
- R In 1926, another Royal Commission, known as the Sim Commission, was appointed to consider whether confiscations under the New Zealand Settlements Act 1863 and its amendments had been "excessive". The Commission was not empowered to consider whether the confiscations were legal, justified, or conducted in an appropriate manner. The Commission concluded that the confiscation of Whakatohea land was excessive.
- S In response to the Sim Commission's findings and recommendations, compensation of £20,000 was granted to Whakatohea pursuant to the Finance Act (No. 2) 1946. At the request of the chiefs of Whakatohea, compensation took the form of a lump sum payment rather than an annuity. The payment was made, in 1952, when the Whakatohea Maori Trust Board was established.
- T Through the enactment of the Treaty of Waitangi Amendment Act 1985, the Crown made it possible for Maori to bring claims before the Waitangi Tribunal in respect of historical grievances arising after 6 February 1840.
- U In 1989 Claude Augustin Edwards, the then Executive Chairman of the Whakatohea Maori Trust Board, on behalf of all the descendants of the tipuna of Whakatohea, submitted a claim to the Waitangi Tribunal. The claim, registered as Wai 87, related to the Raupatu grievances.

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- V In 1992 the Crown posthumously granted a pardon to the Whakatohea chief Mokomoko in respect of his alleged complicity in the killing of Volkner.
- W In February 1994, under Te Ture Whenua Maori Act 1993 the Maori Land Court determined the most appropriate hapu representatives and other individuals to comprise the Whakatohea Raupatu Negotiating Committee, which was to negotiate the claim on behalf of the Whakatohea iwi. In 1995, the mandate of the claim negotiators was widened to include all Whakatohea claims relating to the actions of the Crown which breached the principles of the Treaty of Waitangi.
- X In 1994 the Crown returned to Whakatohea the Opotiki Police station site for the benefit of Whakatohea.
- Y The Crown now acknowledges that grave injustice was done to Whakatohea when the Crown, in breach of the principles of the Treaty of Waitangi, sent its forces into the Whakatohea rohe, occupied and subsequently confiscated Whakatohea land, and wrongly labelled Whakatohea as rebels.
- Z The Crown and Whakatohea have negotiated with each other in good faith in an endeavour to settle the Whakatohea claims and to remove the sense of grievance felt over time by Whakatohea.
- AA The Crown, having acknowledged that Whakatohea have suffered grave injustices which significantly impaired Whakatohea's economic, social and cultural development now wishes to enter into a Deed of Settlement, recording the matters required to give effect to a settlement of all Whakatohea's historical claims. Whakatohea also wishes to enter into such a Deed of Settlement.
- BB This settlement is intended to put the past grievances to rest and herald the beginning of a new relationship between the Crown and Whakatohea which is based on the implementation of the partnership envisaged by the Treaty of Waitangi.

ACCORDINGLY, in a spirit of co-operation, compromise and good faith and in consideration of the respective obligations and agreements contained in this Deed, the Crown and Whakatohea agree as follows:

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1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context requires otherwise:

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington, and shall be deemed to commence at 9.00am and to terminate at 5.00pm;

Coastal Marine Area has the same meaning as in section 2(1) of the Resource Management Act 1991;

CPI means the consumers price index (All Groups) published by Statistics New Zealand (or any successor body or organisation) on a quarterly basis. If such index ceases to be published or the basis of calculation of the index is fundamentally changed so as to make it inappropriate in the circumstances then "CPI" will mean such index as the Crown and Whakatohea may agree, or failing such agreement, as may be determined by an independent expert with appropriate qualifications and expertise appointed for the purpose by the Crown and Whakatohea or, failing agreement between the Crown and Whakatohea, by the President for the time being of the Institute of Chartered Accountants of New Zealand or its successor body;

Crown means Her Majesty the Queen in right of New Zealand;

Crown Agency means a Government Department, a Crown Entity or a State Enterprise or any company which is wholly-owned by a Crown Entity or a State Enterprise;

Crown Body means the Crown or a Crown Agency;

Crown Entity has the meaning given to it in the Public Finance Act 1989;

date of this Deed means the date stated at the beginning of this Deed, being the date on which this Deed is signed;

Deed means this Deed of Settlement, including the Attachments and Appendices to this Deed;

GST means Goods and Services Tax;

Incoming Government means a Government of New Zealand in office after the General Election to be held on 12 October 1996;



Lease means each lease to be granted by the Crown referred to in paragraph 5 of Attachment 2;

Memorials means resumptive memorials imposed on land pursuant to the State-Owned Enterprises Act 1986, the New Zealand Railways Corporation Restructuring Act 1990 and the Education Act 1989 and any legislative provision having a similar intent;

natural and physical resources includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures;

Negotiating Committee means the Whakatohea Raupatu Negotiating Committee referred to in the Deed of Mandate dated 7 June 1996.

Overlapping Claims means any claim by any Maori other than Whakatohea to any land, interests in land, water, rivers, harbours, Coastal Marine Area or other property in the Whakatohea Claim Area and registered with the Waitangi Tribunal; and includes the following claims:

- (a) Wai 46 by Ngati Awa;
- (b) Wai 36 by Tuhoe;

Ratification Date means the date (if any) on which the acknowledgement is given by the Incoming Government in accordance with clause 13.1.3;

Raupatu means the confiscation of land in the Whakatohea Claim Area under the New Zealand Settlements Act 1863, and includes the hostilities, war, loss of life, destruction of taonga and property, and consequent suffering, distress, and deprivation, referred to in recitals B to BB of the Background to this Deed;

Redress Value means \$40,000,000 (forty million dollars);

River Bed does not include any water or aquatic life;

Settlement means the settlement to be effected pursuant to this Deed;

Settlement Amount means the sum calculated in accordance with clause 9 to be paid by the Crown to the Trustee under clause 8;

Settlement Assets Trust means the trust to be established by Whakatohea under clause 11.1.2;

Settlement Date means the day which is 20 Business Days after those provisions of the Settlement Legislation that are necessary to give effect to the Settlement come into force;

Settlement Legislation means the bill to give effect to the Settlement referred to in clause 14 and, where the bill has become law, means, if the context requires, the Act resulting from the passing of the Bill;

Settlement Properties means -

- (a) all of the parcels of land described in Attachment 1; or
- (b) if and when the number of Settlement Properties is reduced under clause 8.1.3, that parcel or those parcels of land described in Attachment 1 that remain after the reduction;

and in either case (unless agreed otherwise) includes the improvements on that land as well as any fittings, plant, equipment, and other chattels which are situated on or in land and intended to be transferred with the land as part of a going concern or as an integral part of the transaction and *Settlement Property* means any one of the Settlement Properties;

State Enterprise has the meaning given to it in the State-Owned Enterprises Act 1986;

Transfer Value, in respect of any Settlement Property, means the purchase price for that property determined in accordance with the provisions of Attachment 4;

Trust Board means the Whakatohea Maori Trust Board constituted under section 12 of the Maori Trust Boards Act 1955, or any successor of that trust board;

Trustee means the trustee or trustees for the time being of the Settlement Assets Trust acting in that capacity;

unconditional means that all the conditions set out in clause 13 of this Deed are satisfied;



Whakatohea means any or all of the descendants of the people of the constituent hapu of Whakatohea, such hapu being at the date of this Deed the following:

- Ngai Tama Haua
- Ngati Ruatakenga
- Ngati Patumoana
- Ngati Ngahere
- Ngati Ira
- Upokorehe

Whakatohea Claims has the meaning set out in *clause 2*.

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

1.2.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;

1.2.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;

1.2.3 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;

1.2.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;

1.2.5 references to Recitals, clauses and Attachments are to Recitals and clauses of, and Attachments to, this Deed;

1.2.6 a reference, within an Attachment, to a paragraph, means the paragraph in that Attachment;

1.2.7 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;

1.2.8 a reference to a party to this Deed or any other document or agreement includes that party's successors;

- 1.2.9 a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced from time to time;
- 1.2.10 references to monetary amounts are to New Zealand currency;
- 1.2.11 references to "written" or "in writing" include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- 1.2.12 references in the Attachments and Appendices to this Deed 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;
- 1.2.13 words and phrases in the Attachments that are not otherwise defined have the same meanings as in section 2 of the Property Law Act 1952;
- 1.2.14 in the event of a conflict between the terms of the main body of the Deed and the Attachments, then the terms of the main body of the Deed shall prevail;
- 1.2.15 a reference to a *relevant Crown Agency* in respect of a Settlement Property means the Crown Agency that is the current owner of that Settlement Property.

2 MEANING OF WHAKATOHEA CLAIMS

In this Deed, *Whakatohea Claims* -

- 2.1 means all claims made at any time by, or on behalf of, all of Whakatohea or one or more individuals, marae or hapu and -
- 2.1.1 founded on rights arising in or by the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), or otherwise; and
- 2.1.2 arising out of or relating to -
- (a) the Raupatu or any aspect of the Raupatu; or

- (b) any loss of land, interests in land, water, rivers, harbours, Coastal Marine Areas, minerals, forests or any natural and physical resource in the Whakatohea Claim Area, caused by acts or omissions by or on behalf of the Crown or by or under legislation, being a loss that occurred prior to 21 September 1992;

whether or not the claims have been researched, registered, or notified; and

- 2.2 includes the claims made in the Wai 87 claim, dated 22 May 1989, to the Waitangi Tribunal, being the claim made by Claude Augustin Edwards, on behalf of all the descendants of the Tipuna of Whakatohea, and
- 2.3 includes the claims made in the Wai 203 claim, dated 14 May 1991, made to the Waitangi Tribunal, being made by Tuiringa Mokomoko on behalf of himself and of the members of the Mokomoko family of the Whakatohea tribe, and the further statement of claim, dated 17 March 1994, by Tuiringa Mokomoko on behalf of himself and the members of the Mokomoko whanau of the Whakatoheaiwi (other than any claim for financial compensation for the execution of the Whakatohea chief Mokomoko in 1866); and
- 2.4 includes the claims made in the Wai 339 claim dated 17 December 1992, and the amended claim dated 2 June 1993, made to the Waitangi Tribunal, being made by Tuiringa Mokomoko for trustees of Hiwarau C relating to the Hiwarau block; and
- 2.5 includes the claims made in the Wai 558 claim, dated 9 June 1995, made to the Waitangi Tribunal, being made by Hone John Kameta JP on behalf of himself and Ngati Ira o Waioeaka.

3 MEANING OF WHAKATOHEA CLAIM AREA

- 3.1 In this Deed, *Whakatohea Claim Area* means the area claimed by Whakatohea commencing at Pakihi at the mouth of the river along the sea coast to the mouth of the Waiotahe stream to the mouth of the Ohiwa Harbour past Tehoro (a hill) on to Maraetotara and then turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pa; and then descending to Waimana Stream Mapouriki being on the bank; following the stream; then following Parau Stream to Tangata-e-roha (a hill) on to Kaharoa (an old settlement); from Kaharoa to Pa Harakeke a ridge leading towards Maungapohatu to Maungatapere (a hill) descending into the Motu river to

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Kaitaura falls to Peketutu (a rock in the river that was an old crossing); leaving the river and up a ridge to Whakakaronga (a hill); following the hill tops until it reaches Tipi o Houmea (a peak) descending towards Makomako (another hill) until it crosses Takaputahi Stream to Ngaupoko Tangata (a mountain) following the ridge to Kamakama (a mound resting place); along the ridge to Oroi (a trig station) then turning seawards to Te Rangi on the sea coast, (a stone visible on the sea coast at low tide); then along the sea coast to the mouth of the Opape Stream, to Awahou Stream to Tirohanga and back to Pakihi.

- 3.2 The Crown and Whakatohea acknowledge the existence of Overlapping Claims in relation to certain parts of the Whakatohea Claim Area.

4 ACKNOWLEDGEMENT BY CROWN

The Crown acknowledges:

- 4.1 the breach of the principles of the Treaty of Waitangi by the Crown in relation to the Raupatu, and that certain other of its actions and omissions may have been in breach of the principles of the Treaty of Waitangi in relation to Whakatohea; and
- 4.2 that the Settlement does not diminish or in any way affect the Treaty of Waitangi or any of its articles or the ongoing relationship between the Crown and Whakatohea in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights; and
- 4.3 that the terms of this Deed are not intended to affect the rights of Whakatohea in respect of fisheries as confirmed and recognised by the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and section 26ZH of the Conservation Act 1987; and
- 4.4 that the decision of Whakatohea in relation to the Settlement is a decision that Whakatohea take for themselves alone and does not purport to affect the position of other tribes; and
- 4.5 that the Crown has not asked Whakatohea to concur with, and Whakatohea have never concurred with, the concept of the settlement envelope or its quantum; and
- 4.6 that Whakatohea, by agreeing to the Settlement, is forgoing a substantial part of the redress sought by Whakatohea in respect of the Raupatu and any other breaches of the principles of the Treaty of Waitangi, and that this is

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recognised by the Crown as a contribution to the development of New Zealand.

5 APOLOGY BY CROWN

The Crown apologises formally and will apologise publicly to Whakatohea for the Crown's part in the events described in the Background to this Deed. The form of the apology is as follows:

- 1 The Crown acknowledges that it acted unjustly and in breach of the principles of the Treaty of Waitangi by sending its forces into Opotiki in September 1865, without prior warning or explanation, and in unfairly labelling Whakatohea as rebels.
- 2 The Crown expresses its profound regret and apologises unreservedly for the loss of life arising from its attack on Whakatohea, and the devastation of property and social structure which resulted.
- 3 The Crown acknowledges that the subsequent confiscation of land, taonga and other resources under the New Zealand Settlements Act 1863 was wrongful, and has had a profoundly harmful impact on the welfare, economy and development of Whakatohea, devastating the tribe's mana and mauri and causing great distress and suffering.
- 4 The Crown recognises that it has failed previously to act towards Whakatohea reasonably and with the utmost good faith in a manner consistent with the honour of the Crown.
- 5 The Crown also acknowledges that certain other of its past actions or omissions in relation to Whakatohea may also have been breaches of the principles of the Treaty of Waitangi.
- 6 The Crown acknowledges that the sense of grief and loss thus engendered within Whakatohea has remained unrecognised.
- 7 Accordingly, the Crown seeks on behalf of all New Zealanders to atone for the injustice to Whakatohea so far as that is now possible. With Raupatu and other historical grievances finally settled by this Deed of Settlement the Crown seeks to begin the process of healing and to enter a new age of co-operation with Whakatohea."

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6 REDRESS FROM CROWN

The Crown agrees, subject to this Deed becoming unconditional, to provide the following redress to atone for the wrongs done to Whakatohea and to discharge the Crown's obligations to Whakatohea in respect of the Whakatohea Claims:

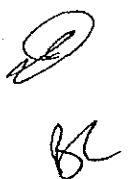
- 6.1 the transfer to the Trustee of the Settlement Properties in accordance with *clause 7*; and
- 6.2 payment of the Settlement Amount to the Trustee in accordance with *clause 8*; and
- 6.3 payment to the Trust Board or the Negotiating Committee of certain costs incurred by the Trust Board or the Negotiating Committee (as the case may be) since July 1994 for research and negotiation of the Whakatohea Claims and other assistance in relation to the Whakatohea Claims for which the Crown has already agreed or agrees in the future to advance or reimburse to the Trustee or the Negotiating Committee, as the case may be, (and the parties acknowledge that at the date of this Deed some of these payments have already been made); and
- 6.4 to comply with *clause 10* in relation to conservation matters.

7 TRANSFER OF SETTLEMENT PROPERTIES BY CROWN

- 7.1 The Crown will, subject to this Deed becoming unconditional, transfer the Settlement Properties to the Trustee on the terms and in accordance with the procedure specified in *Attachment 2*.
- 7.2 The Crown and Whakatohea (acting through the Negotiating Committee) may agree on variations to any of the details in *Attachment 1* or terms and conditions in *Attachments 2, 3 or 4* by agreement in writing signed on behalf of the Crown and Whakatohea.

8 PAYMENT OF SETTLEMENT AMOUNT

- 8.1 The Crown will, subject to this Deed becoming unconditional, pay to the Trustee an amount calculated in accordance with *clause 9* (the "Settlement Amount"). The Settlement Amount will be paid as follows:
 - 8.1.1 the Crown will make an initial payment of \$35,000,000 to the Trustee on the Settlement Date; and



8.1.2 no later than the date which is 20 Business Days after the precise amount of the Settlement Amount is able to be calculated, the parties will calculate whether the total of the amounts referred to in clauses 9.1, 9.2 and 9.3 ("the balance amount") is more or less than \$5,000,000 and, if the balance amount is less than \$5,000,000, the Crown will pay the amount of the difference to the Trustee on that date;

8.1.3 if the balance amount is more than \$5,000,000, then (unless the parties agree otherwise) the number of Settlement Properties to be transferred under clause 7.1 will be reduced by that Settlement Property or those Settlement Properties having the lowest value or lowest combined value necessary to bring the balance amount to less than \$5,000,000;

8.1.4 if the number of Settlement Properties is reduced under clause 8.1.3 the Crown will pay the amount of the difference between the resulting balance amount and \$5,000,000 to the Trustee in accordance with clause 8.1.2.

8.2 Each amount payable by the Crown to the Trustee under any of clauses 8.1.1, 8.1.2 and 8.1.4 shall, before payment, be adjusted to reflect any movements in the CPI in the period from 30 September 1996 to the date of payment, and the Crown shall pay to the Trustee the adjusted amount at the time required by that clause.

9 CALCULATION OF SETTLEMENT AMOUNT

The parties agree that the Settlement Amount will be calculated by deducting from the Redress Value the following amounts:

9.1 the sum of \$95,625, being:

9.1.1 the value of land on which the Opotiki Police Station is situated (as described in certificate of title 5D/351) which was transferred from the Crown to the Whakatohea Maori Trust Board in 1994; and

9.1.2 the associated transfer costs (including GST); and

9.2 the aggregate Transfer Values of the Settlement Properties transferred to the Trustee and the aggregate Transfer Values of any Settlement Properties resumed under the Memorials and transferred to the Trustee or any other entity representing Whakatohea (if any); and

- 9.3 the amount of the Trust Board's and the Negotiating Committee's research, negotiation and other assistance costs advanced or reimbursed to the Trust Board or the Negotiating Committee by the Crown since July 1994 and the amount of any further costs which the Crown advances or reimburses to the Trustee or the Negotiating Committee after the date of this Deed.

10 CONSERVATION MATTERS

- 10.1 The Crown will, within 12 months of the Ratification Date, initiate discussions with Whakatohea and other relevant iwi whose rohe extends into the area of the East Coast Conservation Board, on a process for providing dedicated iwi representation on that Board.

- 10.2 The Crown will, within 12 months of the Ratification Date, -

10.2.1 initiate discussions between representatives of the Department of Conservation, the Ministry for the Environment, Whakatohea, other relevant iwi, and the Bay of Plenty Regional Council on the role of the iwi in the management of the Ohiwa Harbour

10.2.2 through the Department of Conservation, initiate discussions with Whakatohea leading to Protocols for Whakatohea to access kiekie, totara (in accordance with any statutory requirements), and nga rongoa Maori (to be specified in the Settlement Legislation or Protocols) for cultural, traditional or medicinal purposes on land administered by the Department of Conservation within the Whakatohea Claim Area,

10.2.3 through the Department of Conservation, initiate discussions with Whakatohea leading to a Protocol defining the respective roles of Whakatohea and the Department of Conservation in the disposal of skeletal remains of whales within the Whakatohea Claim Area.

- 10.3 The Crown agrees that the Settlement Legislation will include acknowledgements -

10.3.1 that whalebone within the Whakatohea Claim Area is a traditional taonga of Whakatohea; and

10.3.2 of the significance to Whakatohea of kiekie, totara, and nga rongoa Maori (to be specified in the legislation) within the Whakatohea Claim Area.

10.4 The Crown agrees that -

10.4.1 Whakatohea may nominate identified sites of special significance that are within the Whakatohea Claim Area and that are within land administered by the Department of Conservation; and

10.4.2 the Department of Conservation will enter into discussions with Whakatohea with a view to providing special recognition for those sites, through -

(a) provisions in the Settlement Legislation establishing ~~Topuni~~ Special Areas or Reserves for not more than 3 identified sites which must be nominated within 3 months of the date of this Deed;

(b) for not more than 6 identified sites -

(i) Statutory Acknowledgements in the Settlement Legislation, which sites must be nominated within 3 months of the date of this Deed; or

(ii) Deeds of Recognition, which sites must be nominated within 12 months of the Ratification Date.

10.5 In addition to ~~clause~~ *clause* 10.4, Whakatohea may, within 12 months of the Ratification Date, notify the Crown of their desire for a Deed of Recognition in respect of those parts of not more than 6 River Beds in the Whakatohea Claim Area that are owned by the Crown.

10.6 Subject to *clause* 12.2, nothing in this Deed limits the right of Whakatohea to seek recognition of their interests in land administered by the Department of Conservation by means of any statutory or non-statutory rights or procedures.

10.7 Whakatohea acknowledge that, to the extent that any Protocol, Legislation or Deed of Recognition under any of *clauses* 10.2.2, 10.2.3, 10.4 and 10.5 applies to any part of the Whakatohea Claim Area that is subject to any Overlapping Claim, that Protocol, Legislation or Deed of Recognition will not necessarily give Whakatohea exclusive rights in respect of the matters referred to in the clause concerned.

10.8 Whakatohea -

- 10.8.1 acknowledge that other Maori have claims relating to parts of the Whakatohea Claim Area; and
- 10.8.2 will agree with the Crown, within 3 months of the date of this Deed, on a process of consultation with other Maori in respect of those Protocols, Legislation, and Deeds of Recognition which relate to the parts of the Whakatohea Claim Area that are subject to Overlapping Claims.
- 10.9 In the implementation of this clause, regard should be had to the content of this Deed as a whole.
- 10.10 In this clause -

"Protocol" means a statement of policy or procedure which may be amended from time to time in the same manner as it was created;

"Deed of Recognition" means a deed entered into between the Crown and Whakatohea that includes provisions to the following effect:

- (a) details of the history of the land or River Bed to which the deed relates, Whakatohea's grievance or claim against the Crown (if any) in respect of the land or River Bed and the resolution of any such grievance or claim;
- (b) Crown recognition of Whakatohea's mana and tangata whenua status;
- (c) Whakatohea's role in respect of the management of those parts of the land or River Bed that are administered by the Department of Conservation or (to the extent that the Crown so agrees) by another Government Department, which role will be established in accordance with the principles of the Treaty of Waitangi;

"Statutory Acknowledgement", in relation to any site, means legislation that -

- (a) describes the essence of the relationship of Whakatohea to the site; and
- (b) ensures that Whakatohea have standing under the Resource Management Act 1991 in respect of any applications that relate to the site (including applications made by the Crown); and

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- (c) provides that Whakatohea is a person "directly affected" for the purposes of sections 14 and 20 of the Historic Places Act 1993 in respect of that site:

"Topuni Special Area or Reserve" means a site in respect of which:

- (a) the Crown acknowledges the mana and tangata whenua status of Whakatohea in relation to the site, and its cultural, spiritual, historic or traditional values in relation to Whakatohea, as identified on the basis of Whakatohea's advice;
- (b) the Department of Conservation and Whakatohea have agreed on those activities, uses and management practices which would diminish or harm those values;
- (c) the Department of Conservation will acknowledge the values of the site referred to in paragraph (a) of this definition in the management of the area.

10.11 Where there is a reference in this clause 10 to Whakatohea discussing, nominating, or agreeing to something, or notifying the Crown, or entering into a Deed of Recognition, that reference to Whakatohea shall mean the Negotiating Committee or its successor.

11. WHAKATOHEA'S OBLIGATIONS AND AGREEMENTS

Whakatohea, acting through the Negotiating Committee, agree:

11.1 to ensure that -

- 11.1.1 within one month of the date of this Deed a draft trust deed for the Settlement Assets Trust is prepared and delivered to the Crown for its consideration and comment; and
- 11.1.2 within 10 Business Days after the introduction into the House of Representatives of the Settlement Legislation (or within such longer period as the Crown may agree), the Settlement Assets Trust is established on terms to be specified in a trust deed, the terms of which have been ratified by Whakatohea and approved by the Crown, such approval not to be unreasonably withheld; and

11.2 to the removal of Memorials from the titles of land within that part of the Whakatohea Claim Area that is not or ceases to be subject to Overlapping

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Claims; and the removal of the obligation to impose Memorials on the titles to such land; and

11.3 to the removal of the right of Whakatohea to lodge claims with the Waitangi Tribunal in respect of land within the Whakatohea Claim Area that is subject both to Memorials and Overlapping Claims.

12 ACKNOWLEDGEMENTS BY WHAKATOHEA

12.1 Whakatohea believe that the Crown has acted honourably and reasonably in relation to the Settlement and that the Settlement is fair, final and durable.

12.2 Whakatohea acknowledge that -

12.2.1 this Deed and the Settlement Legislation will, when this Deed becomes unconditional, settle all the Whakatohea Claims and the Crown is released and discharged in respect thereof; and

12.2.2 the rights and obligations on the part of Whakatohea in this Deed are for the benefit of, and binding upon, Whakatohea and that the Settlement is not for the benefit of any individual, single marae or single hapu.

13 CONDITIONS

13.1 This Deed and the Settlement are conditional on -

13.1.1 the Incoming Government notifying Whakatohea that, subject to ratification by Whakatohea, it intends to propose for introduction legislation to implement the Settlement; and

13.1.2 the ratification of this Deed by Whakatohea by a process and majority acceptable to the Incoming Government; and

13.1.3 written acknowledgement by the Incoming Government to Whakatohea that it accepts that Whakatohea have ratified this Deed by a process and majority that is acceptable to the Incoming Government; and

13.1.4 the establishment of the Settlement Assets Trust in accordance with clause 11.1.2; and

implementation or interpretation of this Deed or the Settlement Legislation); and

14.1.6 acknowledging the matters referred to in *clause 10.3*; and

14.1.7 for recognition of sites of special significance in accordance with *clause 10.4*; and

14.1.8 that the Settlement is for the benefit of all Whakatohea collectively, and not for the benefit of any individual, single marae or single hapu; and

14.1.9 for any other provisions required to achieve certainty, finality and durability of the Settlement and to give effect to this Deed.

14.2 The proposed legislation shall include provision to the effect that

14.2.1 no Order in Council may be made bringing the Act into force unless the Negotiating Committee has provided a statement in writing to the Crown that the legislation as enacted is acceptable to Whakatohea; and

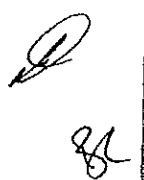
14.2.2 if an Order in Council bringing the Act into force has not been made within 6 months after the legislation is enacted, then the legislation shall be deemed to be repealed.

14.3 The Negotiating Committee or their nominated advisors will participate along with officials in preparing drafting instructions to Parliamentary Counsel to prepare the Bill to be introduced. The final form of the Bill as introduced will be determined by Cabinet.

15 PROCEDURES REQUIRED TO DISCONTINUE PROCEEDINGS

15.1 Whakatohea acknowledge that they have no existing litigation before the Courts in relation to the Whakatohea Claims.

15.2 Whakatohea, acting through the Negotiating Committee, will, immediately after this Deed becomes unconditional, advise the Waitangi Tribunal by written memorandum of the terms of this Settlement. The Crown will file an acknowledgement of the Settlement with the Waitangi Tribunal.



16 TAXES

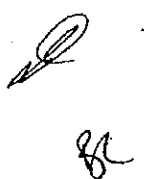
16.1 The Redress Value (as adjusted in accordance with *clause 8.2*) is intended by the parties to be received by the Trustee without any obligation for the Trustee to account to the Inland Revenue Department for any GST on that amount. If a GST liability exists or arises, it is intended by the parties that no net detriment or benefit should result to the Trustee or the Crown. To this end the parties agree the following:

16.1.1 if the payment of any amount, or the transfer of any property, forming part of the Redress Value to the Trustee, or the payment of any indemnity payment made under this clause, results in the Trustee being required to account for output tax as provided by the Goods and Services Tax Act 1985, the Crown will indemnify the Trustee against that GST liability and, on the Business Day on which the Trustee accounts to the Inland Revenue Department for such output tax, the Crown must (subject to *clauses 16.1.2, 16.1.3 and 16.3*) pay to the Trustee the amount of such GST liability and any GST paid on that payment;

16.1.2 if, for whatever reason, the Trustee obtains a refund or credit in respect of any output tax for which an indemnity payment is made by the Crown to the Trustee under *clause 16.1.1*, or in respect of any supply on which GST was not chargeable then, on the Business Day following the Business Day on which the refund or credit arises, the Trustee must pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on that refund or credit;

16.1.3 the Crown is not liable to make any payment under *clause 16.1.1* in respect of any part of the Redress Value for reimbursement or payment of costs for which the Trustee has claimed or may claim an input tax credit.

16.2 The Redress Value (as adjusted in accordance with *clause 8.2*) is intended by the parties to be received by the Trustee without any obligation for the Trustee (or Whakatohea or any other representative of Whakatohea) to pay any income tax on that amount. If such income tax liability exists or arises, it is intended by the parties that no net detriment or benefit should result to the Trustee (or Whakatohea or any other representative of Whakatohea) or the Crown. To this end the parties agree the following:



16.2.1 if the payment of any amount, or the transfer of any property, forming part of the Redress Value to the Trustee, or the payment of any indemnity payment made under this clause, results in the Trustee (or Whakatohea or any other representative of Whakatohea) being required to pay income tax on that instalment or transfer, the Crown will indemnify the Trustee (or Whakatohea or any other representative of Whakatohea) against that income tax liability and, on the Business Day on which the Trustee (or Whakatohea or any other representative of Whakatohea) pays to the Inland Revenue Department any amount on account of such income tax (including any relevant instalments of provisional tax or tax which is payable as a result of absorption of tax losses), the Crown must (subject to clauses 16.2.2, 16.2.3 and 16.3) pay to the Trustee (or Whakatohea or any other representative of Whakatohea) the amount of that income tax liability.

16.2.2 if, for whatever reason, the Trustee (or Whakatohea or any other representative of Whakatohea) obtains a refund or credit in respect of any income tax for which an indemnity payment is made by the Crown under clause 16.2.1 then, on the Business Day following the Business Day on which the benefit from that refund or credit is received, the Trustee (or Whakatohea or any other representative of Whakatohea) must pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on or in respect of that refund or credit;

16.2.3 the Crown is not liable to make any payment under clause 16.2.1 in respect of any part of the Redress Value for reimbursement or payment of costs for which the Trustee has claimed or may claim a deduction for income tax purposes.

16.3 The Trustee undertakes to take reasonable steps in accordance with New Zealand law to prevent and minimise any liability for GST or income tax to which this clause would apply.

16.4 For the avoidance of doubt, the parties acknowledge that this clause 16 applies only to the receipt by the Trustee of the Redress Value and does not apply to any subsequent dealings or distributions by the Trustee with the Redress Value or any part thereof.

16.5 In this clause, "Trustee" includes the Trust Board and the Negotiating Committee in respect of any part of the Redress Value paid or transferred to the Trust Board or the Negotiating Committee, as the case may be.

17 ENTIRE AGREEMENT

This Deed, the Leases and the documents evidencing the transfer of the Settlement Properties to the Trustee constitute the entire agreement between the parties in relation to the matters referred to in this Deed. This Deed supersedes all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to such matters but not the Treaty of Waitangi itself.

18 DECLARATION BY CROWN

The Crown declares that the Minister in Charge of Treaty of Waitangi Negotiations is authorised to sign this Deed on behalf of the Crown.

19 NOTICES

19.1 Any notice or other communication given under this Deed 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	<i>Whakatohea, Negotiating Committee, and Settlement Assets Trust</i>
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C/- The Solicitor-General
Crown Law Office
St Pauls Square
45 Pipitea Street
(PO Box 5012)
WELLINGTON
Facsimile: 04 473 3482

C/- Luckie Hain
24 Johnston Street
(P O Box 204)
WELLINGTON
Facsimile: 04 471 2212

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

19.3 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

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notice or other communication will be deemed to have been delivered on the next Business Day.

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

19.5 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.

20 NO ASSIGNMENT

Neither party may transfer or assign any rights or obligations in this Deed.

21 BUSINESS DAY

Where any payment is required to be made on a day which is not a Business Day, the payment must be made on the next Business Day after that day.

22 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of the Crown and Whakatohea (acting through the Negotiating Committee or its successor).

23 APPOINTMENT

Except as expressly provided otherwise in this Deed, Whakatohea appoint the Trustee or such other person or body as the Trustee may, by notice to the Crown, nominate for the purposes of this clause, as their agent to give any notice, exercise any election or enforce any right under this Deed, or to waive any provision of this Deed on behalf of Whakatohea.

24 TRUSTEE

The parties agree that, in the period prior to the establishment of the Settlement Assets Trust, any right, power, discretion or obligation of the Trustee under this Deed may be exercised or performed by the Negotiating Committee, and the Trustee will be bound by any such act or omission of the Negotiating Committee during that period as if the act or omission had been that of the Trustee itself.

25 ATTACHMENTS

The parties acknowledge that the Attachments contain information which is commercially sensitive and that they will endeavour to keep that information confidential.

EXECUTED as a deed

SIGNED for and on behalf of
HER MAJESTY THE QUEEN
in right of New Zealand by DOUGLAS
ARTHUR MONTROSE GRAHAM
in the presence of:

)
)
)
)
) *Douglas Graham*

Witness:

Signature: _____

Occupation: _____

Address: _____

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SIGNED for and on behalf of
WHAKATOHEA by
CLAUDE AUGUSTIN EDWARDS
in the presence of:

)
)
)
)
) *C. Edwards*

Witness: *Belinda Clark*

Signature: *Belinda Clark*

Occupation: *Director*

Address: *Office of Treaty Settlements*

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GUIDE TO THE ATTACHMENTS TO THE DEED

Attachment 1.	Attachment 1 lists the properties in Opotiki to be transferred to Whakatohea. It includes addresses and legal descriptions of each property and indicates whether there is to be a lease of the property back to the relevant Government agency.
Attachment 2	Attachment 2 sets out the key terms applying to the transfer of ownership of the properties to Whakatohea. It also sets out the process for determining the lease terms in respect of the properties which are to be leased back by the Police and the Department of Courts from Whakatohea. The standard Auckland District Law Society Lease form is proposed as the basic Lease document.
Attachment 3	Attachment 3 sets out the detailed provisions for the transfer of ownership of the properties to Whakatohea. These detailed terms are largely drawn from the Auckland District Law Society form of Agreement for Sale and Purchase.
Attachment 4	Attachment 4 sets out the procedure for valuing the properties to determine a market value for the transfer of ownership to Whakatohea and also for valuing the current market rent for the properties to be leased back from Whakatohea to the Police and the Department of Courts.
Attachment 5	Attachment 5 sets out the first right of purchase which Whakatohea will have in respect of the hospital.

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**ATTACHMENT 1
SETTLEMENT PROPERTIES**

1. Property Description	2. Area	3. Nature of Transfer	4. Crown Body	5. Initial Term (Years)	6. Number of Renewals	7. Renewal Lease Term (Years)
1. Post Shop Church Street, Opotiki	1175m ² Lot 1 DP 7785 Certificate of Title 5B/600	Sale of land and improvements	-	-	-	-
2. Telecom Site (part) Potts Avenue, Opotiki	2129 m ² (subject to survey) (part) Lots 2 and 3 DP 7785 being Lot 1 on a scheme plan dated October 1995 prepared by Bloxam Burnett Olliver	Sale of land and improvements	-	-	-	-
3. Works Consultancy Services Depot State Highway 2, Opotiki	1.3942ha Lot 5 DP 8094 Certificate of Title 5C/320	Sale of land and improvements	-	-	-	-
4. Road Services Depot Car Elliott Street and St John Street, Opotiki	4046m ² Allotment 7 Section 2 Town of Opotiki Certificate of Title 5C/12	Sale of land and improvements	-	-	-	-

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5. Children and Young Persons Duke Street, Opotiki	1624m ² Certificate of Title 2D/795 202m ² Certificate of Title 1C/692	Sale of land and improvements					
6. Courthouse Cnr Elliott Street and Church Street, Opotiki	720m ² Allotment 447 of Section 2 Town of Opotiki	Sale of land and improvements with leaseback of land and improvements	2 years	3	2 years		
7. Police Residential Properties: 18 Potts Avenue 10 Elliott Street 9 Windsor Street 11 Windsor Street Opotiki	653m ² and 885m ² Sections 2 and 3 SO 8555 Lots 5 & 6 Deposited Plan 4160	Sale of land and improvements with leaseback of land and improvements	10 years	6	3 years		
8. Police Station King Street, Opotiki	833m ² Certificate of Title 5C/481	Sale of land and improvements with leaseback of land and improvements	10 years		10 years		
9. Moutohora Quarry	15.3993 ha being part Whakapaupakihi	Sale of land and improvements subject to					

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	No 2 Block and part Section 23, Block 11, Momi Survey District	existing tenancy to Eastworks Limited				
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ATTACHMENT 2 - TERMS AND PROCEDURE FOR TRANSFER OF SETTLEMENT PROPERTIES

1 TRANSFER TERMS

- 1.1 Each Settlement Property will be transferred to the Trustee for its Transfer Value and on the terms set out in this Attachment and in *Attachment 3*.
- 1.2 The provisions of Attachments 2, 3 and 4 shall be applied separately to each Settlement Property.

2 ENCUMBRANCES AND RESERVATIONS

Each transfer of a Settlement Property will, except to the extent that this Deed provides otherwise, be subject to:

- 2.1 all encumbrances and interests affecting the relevant parcel of land which are noted on the certificate of title for that land or otherwise disclosed in writing to the Trustee, except any mortgage securing indebtedness of the relevant Crown Agency from which it is to be transferred; and
- 2.2 the reservation of the Crown's right to minerals as provided in the Crown Minerals Act 1991, and
- 2.3 any other reservation made by or under any statute or statutory instrument.

3 COMPLIANCE WITH PRIOR OBLIGATIONS, INTEREST AND IMPEDIMENTS

The Crown's obligation to transfer any Settlement Property will be subject to, and will not apply in respect of, any Settlement Property until the Crown or the relevant Crown Agency has complied with section 40 of the Public Works Act 1981 or equivalent legislation, any other statutory provisions which must be complied with before any disposal of such land and the Crown's or the relevant Crown Agency's current policy to provide tenants of houses owned by the Crown or the relevant Crown Agency with the opportunity of buying the house in which they dwell and the relevant land is free to be disposed of to third parties and is also subject to:

- 3.1 the terms of any gifts or endowments relating to the parcel of land or any improvements on the land; and

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- 3.2 the terms of any trust relating to the parcel of land or any improvements on the land; and
- 3.3 any feature of the title to the parcel of land held by the Crown or the relevant Crown Agency which prevents or limits the right of the Crown or the relevant Crown Agency to transfer the parcel of land or any improvements on the land; and
- 3.4 the resolution of any Overlapping Claim in respect of a Settlement Property: such resolution being by negotiation between the claimants or by order of the Maori Land Court on application by the claimants; and
- 3.5 any other legal requirement which impedes the Crown's or the relevant Crown Agency's ability to transfer the parcel of land or any improvements on the land and which the Crown or the relevant Crown Agency cannot satisfy after endeavouring to do so.

4 TELECOM PROPERTY

- 4.1 The Crown's obligation to transfer the Telecom property listed as No 2 in Attachment 2 will be subject to, and entirely conditional on, the Crown purchasing the Telecom property from Telecom Central Limited at its current market value and on terms and conditions acceptable to the Crown.
- 4.2 The Crown will use all reasonable endeavours to satisfy the conditions of paragraph 4.1.

5 LEASEBACK PROPERTIES

The Settlement Properties numbered 6, 7 and 8 in Attachment 1 will be transferred subject to, and with the benefit of, a registrable Memorandum of Lease to the relevant Crown Agency referred to in column 4 of Attachment 1 for an initial term specified in column 5 of Attachment 1 with the number of rights of renewal specified in column 6 of Attachment 1 for terms of years specified in column 7 of Attachment 1. The rental for such lease will be determined in accordance with the procedure set out in Attachment 4 and will be subject to review at intervals of 3 years (unless specified otherwise in Attachment 1). The Lease will otherwise include provisions agreed or determined under paragraph 6 of this Attachment.

6 TERMS OF LEASES

- 6.1 The parties agree that the terms of the Leases will (apart from the rental, which will be determined in accordance with the procedure set out in Attachment 4) be determined in accordance with the following provisions of this paragraph.

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- 6.2 The matters set out in columns 5, 6 and 7 of *Attachment 1* must be included in the relevant Lease to be granted by the Crown.
- 6.3 Except as specified in this Deed or as otherwise required by any party, the Leases shall be on the terms and conditions of the Auckland District Law Society Third Edition Deed of Lease modified to reflect the specific features or uses of the relevant Settlement Property or any reasonable special requirements of the relevant Crown Agency.
- 6.4 The Crown, the Trustee and the relevant Crown Agency will actively, in good faith and without delay, proceed with completing their negotiations and attempt to agree on all matters that are not referred to in *paragraph 6.2* and on any special terms to be inserted in the relevant Lease pursuant to *paragraph 6.3* and any requirements of any of the parties for amendments to the Auckland District Law Society Deed of Lease.
- 6.5 If the Crown, the Trustee and the relevant Crown Agency fail to agree on any matter referred to in *paragraph 6.4* within 2 months after the Settlement Date (or such later date which the parties agree) either the Crown or the Trustee may, by notice to the other, require that all unresolved matters will be settled by expert determination in accordance with this paragraph.
- 6.6 The parties agree that:
- 6.6.1 the expert shall be a person agreed on by the parties or, failing agreement within one month from the date of the notice given pursuant to *paragraph 6.5*, a person who is an expert in the field of landlord and tenant law appointed by the President of the New Zealand Law Society at the request of any party;
- 6.6.2 on accepting appointment the expert will be required within 5 Business Days to:
- (a) confirm that the appointment does not give rise to any conflict of interest in relation to the parties or the relevant Crown Agency or circumstance which is likely to lead to a presumption of bias; and
- (b) agree to comply with the requirements placed on an appointee by this paragraph.
- 6.6.3 if the appointed expert fails to act, or is or becomes incapable of acting, or dies, then any party may give written notice to the other or others requiring a replacement expert to be appointed. In such a case the replacement expert will be a person agreed on by the parties or, failing agreement within 2 Business Days of the receipt of notice referred to above, a person who is an expert in the

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field of landlord and tenant law appointed by the President of the New Zealand Law Society at the request of either party. If necessary, this provision for the appointment of a replacement expert may be used on each occasion that a replacement expert is required.

6.7 Within 5 Business Days of the expert's appointment the parties must each provide the expert with a written submission and with any relevant supporting material and the parties must exchange submissions. The parties will have a further 5 Business Days within which to make further written submissions. The expert must begin the determination immediately on expiry of the second period of 5 Business Days even if the expert has not received any further submission.

6.8 The expert is to act as an expert and not as an arbitrator. While being required to consider the written submissions of the parties and take them into account, the expert may also:

6.8.1 rely on his or her own knowledge, skill and experience in relation to the matter in dispute without reference to the parties; and

6.8.2 make his or her own enquiries without reference to the parties.

6.9 The expert may:

6.9.1 arrange to meet with the parties either together or alone to discuss the dispute; and

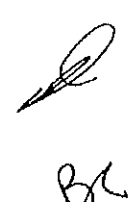
6.9.2 require the parties to provide such evidence as he or she considers necessary to determine the dispute; and

6.9.3 establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this paragraph.

6.10 In making his or her determination, the expert:

6.10.1 must first have regard to the aspects of the Lease which have been agreed by the parties and resolve the matter in dispute in a manner that is consistent with those aspects; and

6.10.2 must then have regard to the intention that (so far as is possible having regard to those principles and matters which have been agreed) the Lease be on commercial terms prevailing in the open market at the time of determination,



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recognising the particular requirements which may arise from the actual and permitted use of the Settlement Property; and

6.10.3 must assume that the parties are a willing landlord and a willing tenant with equal bargaining strength and that neither has the ability to impose terms on the other.

6.11 The expert:

6.11.1 must give his or her determination as soon as practicable (but within 20 Business Days of his or her appointment or within any further period that the parties agree on); and

6.11.2 must in addition, give reasons for his or her determination; and

6.11.3 may decide how the reasonable costs, fees and other expenses of the expert in relation to the determination are to be borne provided that if the expert makes no decision as to costs, the parties are to share them equally.

6.12 The expert may, if requested by the parties, make any further determination as may be required to clarify any provisions of the expert's determination which, in the opinion of the parties or of the expert, require clarification.

6.13 Subject to paragraph 6.12, the parties agree to be bound by the expert's determination and agree that the expert's determination and any decision as to costs will be final.

6.14 The parties do not intend this paragraph to be a submission to arbitration, and it is not to be treated as such, except to the extent that the Arbitration Act 1908 provides otherwise.

6.15 Whakatohea appoint the Trustee to act on their behalf in respect of the procedure set out in this paragraph.

7 VALUATION OF SETTLEMENT PROPERTIES AND FIXING OF RENTAL

7.1 The Transfer Value of each Settlement Property will be the value determined using the methodology and in accordance with the process outlined in *Attachment 4*. Where any Settlement Property is to be leased to any relevant Crown Agency pursuant to *paragraph 5* of this Attachment, the rental for that Settlement Property as from the commencement of the lease will be the rental determined in accordance with the process outlined in *Attachment 4*.


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ATTACHMENT 3 - TRANSFER TERMS

(Clause 7.1)

1 DEFINITIONS

1.1 In this Attachment, unless the context requires otherwise:

chattels means in relation to the Settlement Property all such chattels disclosed by the relevant Crown Agency or the Crown to the Trustee as being chattels which are to be transferred to the Trustee;

contaminant has the meaning give to it by section 2 of the Resource Management Act 1991;

Possession Date means; in respect of each Settlement Property, the date which is 20 Business Days after the Transfer Value of the relevant Settlement Property has been determined subject however to the provisions of *paragraph 3.5*;

1.2 references to "agreement" and "the agreement" (where appropriate) shall be deemed to be references to this Attachment;

2 OPERATIVE CLAUSES AND PURCHASE PRICE

2.1 It is agreed that the Crown shall transfer and the Trustee shall take on transfer the fee simple interest in the Settlement Property and absolute ownership of the chattels (if any) upon the terms set out in the Deed and this Attachment subject to all matters noted on the register of title to the Settlement Property at the date upon which the Deed is signed by both parties and all other matters disclosed in writing to the Trustee in accordance with *paragraph 10* of this Attachment.

2.2 The purchase price for the Settlement Property will be the Transfer Value determined in accordance with *paragraph 7* of Attachment 2 and Attachment 4. The purchase price for the Settlement Property will be satisfied by deducting the relevant Transfer Value from the Redress Value in accordance with *clause 9.2* of the Deed.

3 POSSESSION AND SETTLEMENT

3.1 Unless particulars of a Lease are included in Attachment 1 to the Deed or details of existing tenancies are disclosed to the Trustee pursuant to *paragraph*

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10 of this Attachment the Settlement Property is to be transferred with vacant possession and the Crown shall so yield the Settlement Property on the Possession Date together with keys to all interior and exterior doors (if lockable). Where particulars of a Lease or Leases are so included or disclosed the Settlement Property will be sold subject to and with the benefit of that Lease or Leases.

3.2 Possession shall be given and taken upon the Possession Date.

3.3 On the Possession Date, the Crown shall hand to the Trustee:

3.3.1 a registrable Memorandum of Transfer of the Settlement Property to be prepared by and at the expense of the Trustee and tendered to the Crown or the Crown's solicitor a reasonable time prior to the Possession Date, executed by the Trustee if necessary; and

3.3.2 all other instruments in registrable form which may be required for the purpose of registering the memorandum of transfer; and

3.3.3 all instruments of title; and

3.3.4 where relevant, the Memorandum of Lease referred to in *paragraph 5 of Attachment 2* in a duly executed, stamped and registrable form together with the disbursements to register the Memorandum of Lease. The Crown shall be entitled to sign the Lease as lessee if for whatever reason the relevant Crown Agency has not signed the Lease by the Possession Date.

3.4 All outgoings and incomings excluding insurance premiums shall be apportioned at the Possession Date.

3.5 Where -

3.5.1 The transfer of the Settlement Property is to be registered against a new title document in the course of issuing (including a new or provisional title document following the loss of the outstanding copy of the title); and

3.5.2 A search copy, as defined in section 172A of the Land Transfer Act 1952, of that title document is not obtainable by the fifth Business Day prior to the Possession Date then the Possession Date shall be deferred to the fifth Business Day following the date on which the search copy is obtainable, and the Crown has so advised the Trustee in writing,

unless the Trustee shall elect that settlement shall still take place on the original Possession Date. This paragraph shall not apply where it is necessary to register the transfer of the Settlement Property to enable a plan to deposit and title to the Settlement Property to issue or if section 172A is not in force at the Possession Date.

- 3.6 The Crown shall permit the Trustee or any person authorised by the Trustee in writing, upon reasonable notice in writing, to enter the Settlement Property on one occasion prior to the Possession Date for the purposes of examining the Settlement Property and chattels and fixtures which are included in the sale (if any), and ascertaining the state of repair of the Settlement Property and the chattels and fixtures and on like notice to re-enter the property to confirm compliance by the Crown with any agreement made by the Crown to carry out any work on the property and the chattels and fixtures.

4 RISK AND INSURANCE

- 4.1 The Settlement Property and chattels shall remain at the sole risk of the Crown until possession is given and taken.
- 4.2 The provisions of this ~~paragraph 4.2~~ and of ~~paragraph 4.3~~ shall apply only if the Transfer Value for any Settlement Property was determined on the basis that the destruction or damage referred to below had not occurred. In the event that prior to the giving and taking of possession the Settlement Property is destroyed or damaged and such destruction or damage has not been made good by the Possession Date then the following provisions shall apply:

4.2.1 If the destruction or damage has been sufficient to render the Settlement Property untenable and it is untenable on the Possession Date the Trustee may:

- (a) complete the purchase at the Transfer Value less a sum equal to the amount of diminution in value of the Settlement Property; or
- (b) cancel this agreement as it affects the Settlement Property by serving on the Crown notice in writing.

4.2.2 if the Settlement Property is not untenable on the Possession Date the Trustee shall complete the purchase at the Transfer Value less a

sum equal to the amount of the diminution in value of the Settlement Property;

4.3 Either party may serve on the other party notice in writing requiring that any dispute as to the application of this paragraph be determined by an arbitrator to be appointed by the president or vice-president for the time being of the Law Society for the district where the Settlement Property is situated, and the party serving the notice may at any time thereafter refer the dispute for determination. If the dispute is not determined by the Possession Date then the Possession Date shall be deferred to the fifth Business Day following the date on which the dispute is determined.

4.4 The Trustee shall not be required to take over any insurance policies held by the Crown.

5 TITLE, BOUNDARIES, ETC

5.1 The Crown shall not be bound to point out the boundaries of the Settlement Property save that on the sale of a vacant residential lot which is not limited as to parcels the Crown shall ensure that the Settlement Property is pegged at the Possession Date.

5.2 The Trustee is deemed to have accepted the Crown's title save as to objections or requisitions on it which the Trustee is entitled to make and delivers to the Crown or the Crown's solicitor on or before the Possession Date.

5.3 If a plan has been or is to be lodged in the Land Transfer Office for deposit in respect of the Settlement Property, then in respect of objections or requisitions arising out of the plan the Trustee is deemed to have accepted the title save as to objections or requisitions which the Trustee is entitled to make and delivers to the Crown or the Crown's solicitor on or before the tenth Business Day after the date on which the Trustee or the Trustee's solicitor is notified in writing that the plan has deposited and that the title has issued.

5.4 If the Crown is unable or unwilling to remove or comply with any objection or requisition as to title so delivered by the Trustee and the Trustee does not on or before the fifth Business Day after the date on which the Trustee is notified in writing of such inability or unwillingness notify the Crown in writing that the Trustee waives the objection or requisition the Crown may (notwithstanding any intermediate negotiations) by notice in writing to the Trustee cancel this agreement as it relates to the Settlement Property.

- 5.5 Except as otherwise expressly set forth in this agreement, no error, omission or misdescription of the Settlement Property or the title shall annul the sale but compensation, if demanded in writing before settlement but not otherwise, shall be made or given as the case may require.
- 5.6 In respect of each Settlement Property which is rural and which is not being sold subject to a Lease or other arrangements giving rights of occupation to a third party, the Trustee may give notice in writing to the Crown not later than six months before the Possession Date requiring the Crown to adequately fence the boundary of the Settlement Property on or before the Possession Date to an appropriate standard having regard to the purpose for which the Settlement Property is used or reasonably intended to be used. If such a notice is given, the Crown must ensure that the relevant Crown Agency must comply with the notice within 5 months of receipt by the Crown of that notice, failing which the Trustee may fence the boundary to that standard and recover the reasonable cost of doing so from the Crown.

6 CROWN'S WARRANTIES AND UNDERTAKINGS

6.1 The Crown warrants and undertakes to the Trustee that except to the extent disclosure to the contrary is permitted to be and is made under *paragraph 10*:

6.1.1 any chattels and fixtures included in the sale:

(a) will be the unencumbered Settlement Property of the Crown at the giving and taking of possession; and

(b) at the date upon which the Transfer Value is determined, are or will be in the condition disclosed pursuant to *paragraph 10*;

6.1.2 the relevant Crown Agency or the Crown has paid all general and water rates due by them as owner or occupier to the Possession Date. If the water charges are determined by meter the Crown will on or immediately after the Possession Date have the water meter read and will pay the amount of the charge payable pursuant to that reading but if the territorial authority will not make special readings the water charges shall be apportioned;

6.1.3 any adjustments of outgoings are paid to the dates shown in the Crown's statement of apportionments to be supplied to the Trustee before the Possession Date or will be so paid immediately after the Possession Date;

6.1.4 the Crown will pay all charges for electric power and gas supplied to the Settlement Property down to the Possession Date;

6.1.5 if the Crown or the relevant Crown Agency receives any notice or demand from the Crown or any territorial authority or from any tenant after the Possession Date the Crown or the relevant Crown Agency will if not paying or complying with such notice or demand forthwith deliver it to the Trustee or the Trustee's solicitor and if the Crown fails to do so the Crown shall be liable for any penalty incurred;

6.1.6 immediately after the Possession Date the Crown shall give notice of sale to Valuation New Zealand and the territorial authority having jurisdiction and where the Settlement Property comprises a stratum estate will serve a copy of the notice of sale on the secretary of the body corporate;

6.1.7 in respect of Settlement Property, where the Crown or the relevant Crown Agency has done or caused to be done on the property any works for which a permit or building consent was required by law, such permit or consent was obtained for those works and where appropriate, a code compliance certificate was issued for those works;

6.1.8 in respect of each Settlement Property except the Settlement Property numbered 9, all obligations imposed on the Crown and the relevant Crown Agency under the Building Act 1991 ("Act") shall be fully complied with at the Possession Date, and without limiting the generality of the foregoing:

- (a) the Crown or the relevant Crown Agency has fully complied with the requirements specified in any compliance schedule issued by a territorial authority under section 44 of the Act in respect of any building on the property;
- (b) any building on the Settlement Property which is the subject of a compliance schedule issued by a territorial authority under section 44 of the Act has a current building warrant of fitness supplied under section 45 of the Act and the Crown and the relevant Crown Agency is not aware of any reason, that has not been disclosed in writing to the Trustee, which would prevent a building warrant of fitness complying with section 45 of the Act from being supplied to the territorial authority when the building warrant of fitness is next due; and

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- (c) the territorial authority has not issued any notice under section 45(4) of the Act to the Crown or to any agent of the Crown or to the relevant Crown Agency which has not been disclosed in writing to the Trustee, which could entitle the territorial authority to issue such a notice;
- 6.1.9 as far as the Crown or the relevant Crown Agency is aware (having made all reasonable enquiry) the Leases are all the leases, licences or other occupancy rights affecting the Settlement Property;
- 6.1.10 as far as the Crown or the relevant Crown Agency is aware (having made all reasonable enquiry) there is no amendment or variation to any Lease;
- 6.1.11 as far as the Crown or the relevant Crown Agency is aware (having made all reasonable enquiry) no right or easement exists in respect of the Settlement Property in favour of any person, which has not been notified in writing to the Trustee or is not apparent on inspection of the title to the Settlement Property;
- 6.1.12 as far as the Crown or the relevant Crown Agency is aware (having made all reasonable enquiry) there is no outstanding enforcement or other notice, requisition or proceeding issued under any Code by any relevant authority relating to the Settlement Property;
- 6.1.13 the Crown or the relevant Crown Agency has no actual notice of any order or resolution for the compulsory acquisition of any part of the Settlement Property or any proposal for road widening which affects the Settlement Property;
- 6.1.14 in respect of any Settlement Property for which, at the date of this Deed, no certificate of title has been issued, all easements, rights or other interest as may reasonably be required to be registered to ensure enjoyment of the Settlement Property for its current use will be registered against the new certificate when it is issued.
- 6.2 As far as the Crown or the relevant Crown Agency is aware there are no contaminants on any Settlement Property other than those disclosed to the Trustee under *paragraph 10*.
- 6.3 Where the existence of contaminants is disclosed under *paragraph 10* the Trustee must, after transfer of the Settlement Property, allow the Crown or the relevant Crown Agency reasonable access to the Settlement Property if it

is or becomes a legal requirement to clean up or otherwise treat the contaminants. For these purposes "legal requirement" includes contractual obligations and compliance with notices or orders issued by an enforcement agency. The Crown shall, or shall procure that the relevant Crown Agency shall, comply with any such legal requirements.

6.4 The Crown shall, and shall procure that the relevant Crown Agency shall, immediately disclose in writing to the Trustee any matter or circumstance which may arise prior to the Possession Date which may constitute a breach of any of the warranties referred to in *paragraph 6.1* of this Attachment (or any other warranty contained in this agreement), or which is sufficiently material as to be likely to affect the value of the Settlement Property. The Crown shall not knowingly do or omit to do or allow to be done anything whereby any such warranty may become untrue, misleading or inaccurate as at the Possession Date.

6.5 The Crown indemnifies, or shall procure that the relevant Crown Agency indemnifies the Trustee from and against all:

6.5.1 notices, orders and requisitions imposing obligation on the Trustee to carry out any rectification, remedial or other works;

6.5.2 claims, demands and proceedings made or issued against the Trustee; and

6.5.3 damages, costs and expenses suffered or incurred by the Trustee or for which the Trustee may become liable;

as a consequence of or arising from any breach by the Crown or the relevant Crown Agency of the warranties given under this agreement.

7 NON-MERGER

The agreement obligations and warranties of the parties in this Deed shall not merge with the transfer of title to the Settlement Property or with delivery of the chattels (if any).

8 GOODS AND SERVICES TAX (GST)

8.1 *Clause 16* of the Deed applies to the transfer of the Settlement Property.

8.2 If Goods and Services Tax ("GST") is chargeable on the transfer of the Settlement Property, the Trustee must pay such GST on the Business Day after it receives an input credit in respect of that supply.

9 GENERAL

If there is more than one Trustee, the liability of the Trustees is joint and several. Where the Crown and a Crown Agency covenant under this Deed, the liability of the Crown and the Crown Agency is joint and several.

10 DISCLOSURE

The Crown shall no later than 20 Business Days prior to the *Commencement Date* defined in *Attachment 4* provide or procure the relevant Crown Agency to provide the Trustee with all relevant material and information relating to any of the matters referred to in *paragraphs 6.1.1(a), 6.1.7 to 6.1.14 and 6.2 to 6.4* which the Crown or the relevant Crown Agency has in the actual knowledge, control or possession of the Crown or the relevant Crown Agency.

11 TITLE

11.1 If a certificate or certificates of title for the Settlement Property have not been issued under the Land Transfer Act 1952, then the Crown, shall, prior to the Possession Date, procure the deposit with the relevant District Land Registrar of a survey plan and the Crown shall thereupon arrange for the issue of the simple certificates of title for the Settlement Property under the Land Transfer Act 1952.

11.2 The Crown will use reasonable endeavours to ensure that all easements, rights or other interests as may be reasonably required to ensure enjoyment by the Trustee of the Settlement Property for its current use are registered against the new certificate or certificates of titles to issue.

11.3 The Crown shall carry out or shall procure that the relevant Crown Entity carry out all such work as may be required to satisfy any conditions of the local authority for the deposit of the relevant plan.

12 MAINTENANCE OF PROPERTY

During the period to the Possession Date, the Crown shall ensure that the Settlement Property and any chattels and fixtures referred to in *paragraph 6.1.1* are maintained in the same condition (fair wear and tear excepted) they were in at the date upon which Transfer Value is determined. In the case of rural land the

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Crown shall ensure that during the period up to the Possession Date, all pastures are properly fertilised, that the Settlement Property is kept free of noxious weeds and that generally the Settlement Property is maintained in accordance with the best farming practices.

13 CROWN DELAY IN SETTLEMENT

If settlement of any Settlement Property does not occur on the Possession Date solely as a result of the default of the relevant Crown Agency and the Trustee is ready, willing and able to settle on the Possession Date, the Trustee may serve on the Crown a written notice requiring the Crown to settle within 20 Business Days. If the Crown does not settle within the 20 Business Day period, the Crown shall pay to the Trustee interest on the Transfer Value of the property at the rate of 12% per annum from the Possession Date until the date on which settlement occurs. Interest shall be calculated at a daily rate and shall be assessed and paid calendar monthly from the Possession Date until settlement occurs.

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ATTACHMENT 4 - VALUATION METHODOLOGY

1 OBJECT

This Attachment outlines the process to be followed, the factors to be considered and the methodology to be adopted in determining the Transfer Value of the Settlement Properties and the initial rental of the Leases. The parties record their intention that the procedure outlined in this Attachment should apply in all cases unless the parties agree otherwise in any particular case.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Attachment, unless the context otherwise requires:

Arbitrator means the person appointed as Arbitrator to determine the Market Value of any Settlement Property pursuant to *paragraph 3.12*;

Chattels means fittings, plant, equipment, livestock or other chattels;

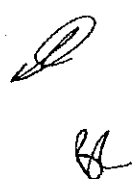
Commencement Date means the later of the date which is 20 Business Days after the date on which the Deed becomes unconditional and the date which is 2 Business Days after the date on which the terms of the Lease of the Settlement Property (other than value or rental) are agreed or determined under *paragraph 6 of Attachment 2*;

Improvements in relation to any land, means all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour by any owner or occupier thereof in so far as the effect of the work done or material is to increase the value of the land and the benefit thereof is unexhausted at the time of valuation;

Market Rental means the estimated amount at which an asset would lease, at a specified date and subject to specific lease terms and conditions, by a willing lessor to a willing lessee in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

In applying this definition to any Settlement Property the following matters must be taken into account:

- (a) the explanatory notes setting out the conceptual framework of each element of the definition which appear in *Appendix 1*;



- (b) the terms and conditions of the Lease of the Settlement Property including, in particular, the provisions relating to the factors to be taken into account in relation to rent reviews;
- (c) the rental is to be a GST exclusive figure, that is it is to ignore the incidence of GST;

Market Value has the meaning which has been adopted for that term by the International Valuation Standards Committee and the New Zealand Institute of Valuers, which is:

"Market Value" is the estimated amount for which an asset should exchange on the date of valuation, between a willing buyer and a willing seller, in an arms length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.

In applying this definition to any Settlement Property, the following matters must be taken into account:

- (a) the explanatory notes setting out the conceptual framework of each element of the definition which appear in *Appendix 2*;
- (b) the terms and conditions of transfer of the Settlement Property including any warranties given or not given in respect of a Settlement Property;
- (c) the terms of any lease of the Settlement Property;
- (d) any encumbrances or interests affecting or benefiting the Settlement Property;
- (e) the value is to be a GST exclusive figure; that is it is to ignore the incidence of GST;

Non-Objector means, in a case where only the relevant Crown Agency has registered an objection under *paragraph 3.3*, the Trustee, and in a case where only the Trustee has registered an objection under *paragraph 3.3*, the relevant Crown Agency;

Objector means, the party or parties which register an objection under *paragraph 3.3*;


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OTS means the Office of Treaty Settlements or any other department or agency of the Crown which assumes the functions of OTS in the future;

OTS Valuation Report means the valuation report prepared by the OTS Valuer;

OTS Valuer means the Registered Valuer appointed by OTS in accordance with *paragraph 3.1*;

Registered Valuer means a person who is registered under the Valuers Act 1948 (or any statute which replaces the Valuers Act 1948) and who holds a current practising certificate;

3 PROCESS

The following procedure must be followed in assessing the Market Value of any Settlement Property, unless OTS and the Trustee agree otherwise in writing in respect of any Settlement Property:

3.1 At the Commencement Date, OTS will appoint a Registered Valuer to assess the Market Value of the Settlement Property. OTS must ensure that the terms of appointment of the OTS Valuer require him or her to prepare a valuation report which includes the assessment of Market Value of the Settlement Property and to deliver the OTS Valuation Report to OTS, within 40 Business Days of his or her appointment. OTS will serve copies of the OTS Valuation Report on the relevant Crown Agency and the Trustee as soon as possible after it receives it, and in any event not later than 42 Business Days after the Commencement Date.

3.2 Time shall be of the essence in relation to all stipulations as to time in this Attachment unless OTS, the relevant Crown Agency and the Trustee agree otherwise in writing. However, non-compliance with time limits in this Attachment shall not invalidate any Market Valuation or Market Rental arrived at from the process.

3.3 If the relevant Crown Agency or the Trustee is not in agreement with the assessment of Market Value in the OTS Valuation Report, it must register its objection with OTS (by giving written notice to OTS) and notify the other parties not more than 10 Business Days after the expiry of the 42 Business Day period referred to in *paragraph 3.1*.

3.4 If neither the Trustee nor the relevant Crown Agency registers an objection with OTS within the 10 Business Day period referred to in *paragraph 3.3*, the

Market Value of the Settlement Property assessed by the OTS Valuer will be the Transfer Value of the Settlement Property for the purposes of this Deed.

- 3.5 If the Trustee or the relevant Crown Agency registers an objection, the Objector must serve on OTS and the Non-Objector a current Registered Valuer's report containing an assessment of the Market Value of the Settlement Property, based on the valuation methodology set out in this Attachment, not more than 10 Business Days after registering an objection. If it fails to do so, its objection will become void and, unless there has been more than one objection, *paragraph 3.4* will apply as if no objection had been made.
- 3.6 If the Non-Objector does not agree with the Objector's Registered Valuer's report and the provisions of *paragraph 3.7* do not apply, the Non-Objector must obtain and serve on OTS and the Objector a Registered Valuer's report based on the valuation methodology set out in this Attachment within 20 Business Days of receiving the Objector's Registered Valuer's report, in which case the Non-Objector will also be treated as objecting.
- 3.7 In order to facilitate a speedy resolution, where the assessments of Market Value of the Settlement Property in the reports of the Registered Valuers appointed by the parties are within 5% of the assessment of Market Value made by the OTS Valuer, then the Market Value of the Settlement Property assessed by the OTS Valuer will be the Transfer Value of the Settlement Property for the purposes of this Deed.
- 3.8 Where an assessment of Market Value by a Registered Valuer appointed by any party differs by more than 5% from the assessment of Market Value by the OTS Valuer, OTS will act as a mediator in an endeavour to resolve any differences to the satisfaction of all parties. Any party may make a reasonable request for further information in support of any of the valuation reports and the party supplying that report must comply with any such request forthwith. Mediation between the parties will proceed on the basis that each party will make full disclosure of all relevant information to the other parties.
- 3.9 If the differences are resolved to the satisfaction of the parties, OTS will request from both the relevant Crown Agency and the Trustee a written acknowledgement that they agree on a specified Market Value for the Settlement Property. If the relevant Crown Agency and the Trustee serve such a written acknowledgement on OTS not more than 40 Business Days after the service on OTS of the Objector's valuation report which contained an assessment of Market Value which differed by more than 5% from the assessment of Market Value by the OTS Valuer was served on OTS, then

the Market Value of the Settlement Property contained in the written acknowledgements will be the Transfer Value of the Settlement Property for the purposes of this Deed.

- 3.10 If OTS does not receive written acknowledgements of an agreed Market Value from both the relevant Crown Agency and the Trustee within the 40 Business Day period referred to in *paragraph 3.9*, OTS must refer the difference or dispute to an Arbitrator to be appointed pursuant to *paragraph 3.12*.
- 3.11 If *paragraph 3.10* applies, OTS must within 5 Business Days after the expiry of the 40 Business Day period referred to in *paragraph 3.9* serve on the relevant Crown Agency and the Trustee notice that the difference or dispute is to be referred for determination by an Arbitrator.
- 3.12 OTS must, in the notice it gives under *paragraph 3.11*, nominate a Registered Valuer to be the Arbitrator. Such Registered Valuer must be a person who is a member of the panel referred to in *paragraph 3.24*. If the Trustee or the relevant Crown Agency does not accept the person nominated by OTS, it must serve on OTS within 2 Business Days of receipt of the notice from OTS referred to in *paragraph 3.11* notice of that objection. If neither the Trustee nor the relevant Crown Agency serves on OTS a notice of objection within the 2 Business Days referred to above, the Registered Valuer nominated by OTS will be appointed as the Arbitrator by OTS. If a notice of objection is served on OTS within the 2 Business Days referred to above, OTS will immediately request the President (or any Vice President if the President has a conflict of interest) for the time being of the Institute of Valuers Inc or its successor to appoint as sole arbitrator any one of the Registered Valuers who are members of the panel referred to in *paragraph 3.24* including the valuer initially nominated by OTS (but the appointee must not be the OTS Valuer or any member of the panel who otherwise has a conflict of interest). OTS will request that such appointment be made within 5 Business Days after the date of OTS's request.
- 3.13 As soon as the Arbitrator accepts appointment, he or she shall serve notice on the relevant Crown Agency and the Trustee of his or her acceptance and shall, in doing so, indicate that he or she will make his or her determination within 35 Business Days after the date of such notice.
- 3.14 Within 5 Business Days after service of the notice referred to in *paragraph 3.13*, the Arbitrator must convene a meeting of the parties and their respective Registered Valuers, at a venue to be decided by the Arbitrator.

- 3.15 That meeting must take place within 20 Business Days after the service of the notice referred to in *paragraph 3.13*. The Arbitrator's notice of the meeting must include a request by the Arbitrator to OTS, the relevant Crown Agency and the Trustee that they forward to the Arbitrator all information relating to the assessment of the Market Value of the Settlement Property which is in their possession. OTS, the relevant Crown Agency and the Trustee must ensure that this information is provided to the Arbitrator at least 5 Business Days prior to the date of the meeting.
- 3.16 The information sent to the Arbitrator by OTS, the relevant Crown Agency and the Trustee must constitute no more than the information already provided to OTS by the relevant Crown Agency and the Trustee and the reports of the OTS Valuer and the Registered Valuers appointed by the parties. No new information is to be supplied to or considered by the Arbitrator prior to or at the meeting.
- 3.17 At the meeting, the Arbitrator will establish a procedure and give each party the right to examine, cross examine and re-examine the Registered Valuers appointed by the other parties in relation to the information provided to the Arbitrator, and subject to *paragraph 3.16*, otherwise have regard to the requirements of natural justice in the conduct of the meeting.
- 3.18 The meeting shall proceed only on the basis that the Arbitrator is to hear evidence from the Registered Valuers appointed under the procedure described in this Attachment.
- 3.19 The Arbitrator will then determine the Market Value of the Settlement Property within 35 Business Days after the date of the notice referred to in *paragraph 3.13*.
- 3.20 Once the Arbitrator has determined the Market Value he or she must serve notice on OTS, the relevant Crown Agency and the Trustee of his or her decision. The Market Value of the Settlement Property determined by the Arbitrator will be the Transfer Value of the Settlement Property for the purposes of this Deed.
- 3.21 The determination of the Arbitrator will be final and binding on the parties, and the persons claiming under them. No party will have any right of appeal against, or review of the decision of the Arbitrator in relation to any matter of fact or law or procedural irregularity or any other grounds other than misconduct by the Arbitrator.
- 3.22 The Arbitrator must not make an interim decision.

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- 3.23 Notwithstanding any other provision in *paragraphs 3.1 to 3.28*, the Arbitrator may, if he or she thinks fit, prescribe an alternative procedure for determining the matters in dispute so long as it does not cause the determination to be delayed to a date which is later than 35 Business Days after the date of the notice referred to in *paragraph 3.13* or any later date agreed by all parties and does not limit the rights of the parties referred to in *paragraph 3.17*.
- 3.24 OTS will, in conjunction with the Trustee, establish a panel of not less than 2 Registered Valuers who are independent, sufficiently qualified and experienced to be considered experts in the area of Settlement Property valuation who are ready, willing and able to act as Arbitrators. The panel must be made up in the following way. OTS may appoint 1 such Registered Valuer after consultation with the Trustee. The Trustee may appoint 1 such Registered Valuer after consultation with the OTS. OTS and the Trustee will both be required to have discharged their obligation to consult, and appoint Registered Valuers under this provision within 20 Business Days after the date of the execution of the Deed. If either of them fails to do so, the panel will consist only of the person or persons appointed by the other until the party which has failed to consult and appoint does so.
- 3.25 From time to time and as the need arises the parties shall appoint replacements and additional valuers to the panel constituted under *paragraph 3.24*.
- 3.26 Each party shall bear its own costs in connection with the process set out in this Attachment and the costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in *paragraph 3.14* (if any) shall be borne by the relevant Crown Agency and the Trustee equally. However, the Arbitrator may award costs against any party where the Arbitrator considers that it would be just to do so on account of the party's unreasonable conduct.
- 3.27 OTS, the Trustee and the relevant Crown Agency each acknowledge that they are required to use reasonable endeavours to ensure the process outlined in this Attachment operates in the manner, and within the timeframes, specified in this Attachment.
- 3.28 In the event that the procedure outlined in *paragraphs 3.1 to 3.27* is delayed or aborted through any event (such as the death or incapacity of any Registered Valuer or the Arbitrator), OTS, the Trustee and the relevant Crown Agency will use reasonable endeavours to, and co-operate with each other to, minimise the delay and/or to appoint a replacement Arbitrator.

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4 SPECIAL PROVISIONS RELATING TO THE DETERMINATION OF THE MARKET RENTAL OF PROPERTIES WHICH ARE TO BE TRANSFERRED SUBJECT TO A LEASE BACK TO THE CROWN AGENCY

Where any Settlement Property is to be transferred to the Trustee subject to a Lease to a Crown Agency the OTS Valuation Report must include an assessment of the Market Rental and the preceding provisions of *paragraphs 3.1 to 3.28* will apply with all necessary modifications with the intent that the initial rent payable under the Lease will be:

- 4.1 the Market Rental assessed by the OTS Valuer if neither the Trustee nor the Crown Agency objects within the relevant time limits to the OTS Valuers assessment of the Market Value of the Settlement Property or to the OTS Valuers' assessment of the Market Rental;
- 4.2 if either the Trustee or the Crown Agency do object within the relevant time limits to the OTS Valuers' assessment of the Market Value of the Settlement Property or to the OTS Valuers' assessment of the Market Rental, the Market Rental shall be agreed or determined under *paragraphs 3.4 to 3.28* as if references to "Market Value" were references to "Market Value and Market Rental".

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APPENDIX 1 : DEFINITION OF "MARKET RENTAL"**Explanatory Notes**

- (a) "The estimated amount" refers to a money price upon which the Market Rental transaction should be based. It is measured as the most probable rental for the asset considering all other elements of definition, rather than a price inflated or deflated by special or unusual creative financing unless such financing sets market levels, or special considerations or concessions granted by anyone associated with the leasing.
- (b) "an asset would lease" refers to the fact that the asset's rental assessment is an estimated or forecasted amount rather than an actual market transaction. It is the rent which the market expects the transaction would occur in keeping with other elements of the definition.
- (c) "at a specified date" specifies that the estimated rent is time specific. Because markets and market conditions are subject to a continual change, a properly rendered rental assessment is appropriate as of that point in time but may not be appropriate at another time.
- (d) "subject to the specific lease terms and conditions" specifies that the rental assessment is dependent upon a set of terms and conditions (including any specific use provisions) defined within a lease document. This document provides the framework of the agreement between the lessor and the lessee forming the foundation of the market rent.
- (e) "between a willing lessee and a willing lessor" recognises the basic market conditions; there must be a lessee and lessor for a market to be identified. In usual market circumstances a sufficient number of lessees and lessors are available and in a Market Rental estimate are assumed to have typical market knowledge and an understanding of the uses for which an asset has been created and how it can be best employed. In these instances where either lessors or lessees are limited in number, a restricted market may exist in which the valuer should make reasonable commercial judgments as to the level of rental which would be agreed between a willing lessor and a willing lessor for the land and (where appropriate) Improvements.
- (f) "in an arms length transaction" eliminates from consideration a transaction in which the relationship of the parties or other special dealings would establish a transaction that is not typical of others within the valued property's market. A Market Rental transaction is one in which each party operates independently of the other.

- (g) "wherein the parties had each acted knowledgeably and prudently" presumes that both the lessee and lessor are reasonably informed and that both will act in a way which demonstrates their knowledge of the property, its markets, and normal alternatives that are available to each party (including any higher uses to which the property could be put). Each will act for self interest using that knowledge.
- (h) "and without compulsion" establishes a market situation in which each party is motivated to undertake the transaction, but neither is forced or unduly coerced to complete it.

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APPENDIX 2 : DEFINITION OF "MARKET VALUE"**Explanatory Notes**

- (a) "The estimated amount" refers to a price, normally in terms of money, upon which the Market Value transaction should be based. It is measured as the most probable price for the asset considering all other elements of the definition, rather than a price inflated or deflated by special or unusual creative financing unless such financing sets market levels, or special consideration or concessions granted by anyone associated with the sale.
- (b) "an asset should exchange" refers to the fact that the valuation of an asset is an estimated or forecasted amount rather than an actual sale transaction. It is the price at which the market expects that a transaction would occur in keeping with other elements of the definition.
- (c) "on the date of valuation" specifies that the estimated value is time specific. Because markets and market conditions are subject to continual change, a properly rendered valuation is appropriate as of that point in time, but may not be appropriate at another time.
- (d) "between a willing buyer and a willing seller" recognises the basic market condition; there must be a buyer and a seller for a market to be identified. In usual market circumstances, a sufficient number of buyers and sellers are available, and in a Market Value estimate they are assumed to have typical market knowledge and an understanding of the uses for which the asset has been created and how it can be best employed. In instances where either buyers or sellers are limited in number, a restricted market condition may exist, in which case the valuer should proceed to make a reasonable commercial judgment on the impact which these conditions would have on the market value of the owner's or lessor's interest in the land (and improvements).
- (e) "in an arms length transaction" eliminates from consideration a transaction in which the relationship of the parties or other special dealings would establish a transaction that is not typical of others within the valued property's market. A Market Value transaction is one in which each party operates independently of the other.
- (f) "wherein the parties had each acted knowledgeably and prudently" presumes that both the buyer and the seller are reasonably informed and that both will act in a way which demonstrates their knowledge of the property, its markets, and normal alternatives that are available to each party. Each will act for self-interest using that knowledge.



- (g) "and without compulsion" establishes a market situation in which each party is motivated to undertake the transaction, but neither is forced to unduly coerced to complete it.

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**ATTACHMENT 5 - FIRST REFUSAL IN RESPECT OF HOSPITAL
LAND**

- 1 The Crown will procure Eastbay Health Limited ("EHL") to enter into a Deed in favour of the Trustee which grants the Trustee the right to acquire the hospital property at Hukutaia Road, Opotiki (being the land described in Certificates of Title 2D/596, 5B/939 and 5B/940) ("the EHL Property") in certain circumstances.
- 2 The Deed will be in the attached form subject to any amendments agreed by the Crown, EHL and the Trustee.
- 3 The effect and operation of the Deed will be conditional on this Deed of Settlement becoming unconditional.

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[Handwritten initials]

DEED**Parties**

EASTBAY HEALTH LIMITED ("EHL")

THE TRUSTEE OF THE SETTLEMENT ASSETS TRUST (THE
"TRUSTEE")

[Background]

- (1) Where EHL proposes to sell the EHL Property to any person other than:
- (a) another Crown body; or
 - (b) a person who is entitled to purchase the land pursuant to an offer made under Section 40 of the Public Works Act 1981 or that section as applied by any other enactment, or any equivalent enactment;
 - (c) a person who at the date of this Deed has a legal right to purchase the land; or
 - (d) a person who is entitled to purchase the land under the terms of any gift, endowment, or trust relating to the land, or under any enactment or rule of law;

EHL shall give to the Trustee notice of the proposed sale setting out the price and other proposed terms of sale and offering to sell the EHL Property to the Trustee on those terms.

- (2) Where, within three months after the date on which the Trustee receives a notice under clause (1) from EHL (time being of the essence), the Trustee:
- (a) accepts the offer set out in the notice by giving written notice of acceptance to EHL; or
 - (b) otherwise agrees with EHL in writing to purchase the EHL Property

[Handwritten initials]

a contract for sale and purchase of the EHL Property shall be thereby constituted between EHL and the Trustee and that contract may be enforced accordingly.

- (3) If, within three months after the date on which the Trustee receives a notice under clause (1) from EHL (time being of the essence), a contract for sale and purchase of EHL Property to which the notice relates is not constituted under clause (2), EHL:

- (a) may, at any time during the period of 2 years following the expiry of three months from the date of receipt of the notice under clause (1) by the Trustee sell the land to any person (including the Trustee) it wishes on terms not more favourable to the purchaser than those set out in that notice; but
- (b) may not sell the land after the expiry of that 2 year period without first re-offering it to the Trustee in accordance with clause (1), and this clause shall apply to any such re-offer.


- (4) Where EHL:

- (a) has offered to sell the EHL Property to the Trustee under clause (1); and
- (b) wishes to again offer the EHL Property for sale, but on terms more favourable to the purchaser than the terms of the first offer:

EHL may do so, so long as it first re-offers the EHL Property for sale on the more favourable terms to the Trustee in accordance with clause (1) and in that event clauses (2) and (3) shall apply to any such re-offer except that the Trustee shall only have 10 Business Days (time being of the essence) to accept the re-offer or otherwise agree to purchase the EHL Property.

- (5) The obligations of EHL under clause (1) to (4) of this Deed shall terminate on the completion of the sale of the EHL Property.

- (a) To the Trustee; or
- (b) In accordance with clause (3)(a); or
- (c) To a person of a kind referred to in any of paragraphs (b) to (d) of clause (1)


BC

whichever first occurs,

- (6) Nothing in this Deed affects or derogates from, and the rights created by this Deed are subject to:
- (a) the terms of any gift, endowment, or trust relating to, and the rights of any holders of mortgages or other securities over, the EHL Property or any improvements on the EHL Property;
 - (b) any other enactment or rule of law that must be complied with before the EHL Property is disposed of;
 - (c) any feature of the title to the EHL Property which prevents or limits EHL's right to transfer the land or any improvements on the EHL Property;
 - (d) any legal requirement which impedes EHL's ability to sell or otherwise dispose of the EHL Property or any improvements on the EHL Property and which EHL cannot satisfy after taking reasonable steps to do so (and for the avoidance of doubt, "reasonable steps" does not include initiating a change in the law).

(7) Where the EHL Property is transferred (without breaching this Deed) to any person other than the Trustee or a Crown body the rights created by this Deed shall cease to have effect and shall be at an end.

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Doug Graham

19 JUNE, 1997

Whakatohea Given Extra Time to Ratify Deed of Settlement

The Minister in Charge of Treaty of Waitangi Negotiations, Hon D.A.M. Graham, said today Cabinet had approved a nine-month extension to the Whakatohea Deed of Settlement's ratification deadline.

'The ratification process has taken longer than originally envisaged and during that time it has become clear that the Deed will not be ratified in its present form,' he said.

'The negotiating committee has therefore been given till 31 March next year to renegotiate specific elements in the settlement and then seek ratification from Whakatohea.

'These elements are restricted to the Crown apology and the generic natural resource instruments offered to Whakatohea in recognition of their interests in lands administered for conservation purposes and natural resources.

'Cabinet's approval to re-negotiate is limited to the non-fiscal elements of the Deed.

'All other aspects of the Deed, including the \$40 million quantum, will remain intact.'

The Deed of Settlement signed on 1 October last year agreed a comprehensive settlement of Whakatohea's historical Treaty of Waitangi claims against the Crown.

Doug Graham Treaty of Waitangi Negotiations

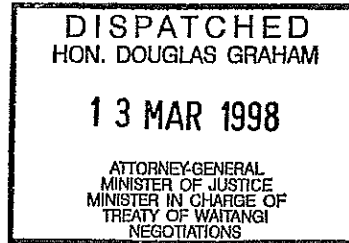
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Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**



13 MAR 1998

All Members
Whakatohea Negotiating Committee

Dear Mr Kameta

On 11 March 1998 I met with representatives of the Whakatohea Negotiating Committee to discuss the Crown's settlement offer to Whakatohea, the Deed of Settlement agreed to between the Crown and the Whakatohea negotiators in October 1996. Those present included Bishop Whakahuihui Verese and Mr John Kameta (claim managers appointed by the Maori Land Court), Mr Tairongo Ainoamo (committee chairman) Tahu Taia (committee administration officer) and Professor Ranginui Walker (committee member). Mr Claude Edwards (claim manager) apologised for not being able to attend because of ill health.

At the meeting I expressed my view that the Deed of Settlement, though negotiated in good faith by both parties at the time, had itself become a bone of contention and needed to be put to rest. Clearly the Deed has not been ratified. Given that some eighteen months have passed since the Deed was signed it should now be treated as cancelled by the agreement of both parties. This view met with the agreement of those members of the Negotiating Committee present. It is therefore my intention to seek Cabinet's approval for the Deed of Settlement to be terminated and treated of no effect once the deadline for its ratification of 31 March 1998 has passed.

The Crown continues to acknowledge the historical injustices committed against Whakatohea and is committed to achieving a fair and durable settlement of these grievances. Committee members present at the meeting also agreed that the Whakatohea claim should be progressed to settlement as quickly as is practicable.

It is apparent from the proposals I have received, however, that the Negotiating Committee wished to exclude the claims of the Mokomoko whanau and Ngati Ira hapu from any renegotiated settlement. It is also apparent that the Negotiating Committee wished to protect Whakatohea's right to make further claims regarding historical grievances arising from the operation of the Native Land Court, the Public Works Act and certain other alleged Crown breaches of the Treaty.

As I made clear at the meeting, in order for settlements to be fair, final and durable all historical grievances must be addressed within the context of a comprehensive iwi level settlement. This is for several reasons. Firstly, this is to remove the iwi's sense of grievance and with it the burden of having to pass unresolved grievances on to the next generation. If certain grievances are excluded from the settlement this obviously cannot be achieved.

→ APH (4)

Secondly, public support, which is essential to the success of the Treaty settlements process, will be eroded if further historical claims continue to be made once a settlement has been concluded. Thirdly, it is simply not possible for the Crown to negotiate settlements at hapu or whanau level. The specific claims of groups such as the Mokomoko whanau and Ngati Ira hapu thus need to be addressed, but contemporaneously with those of the wider iwi and with the consent of the iwi.

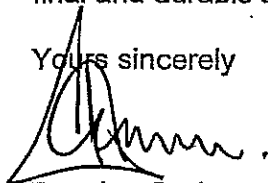
I therefore suggest that following the termination of the Deed of Settlement the Negotiating Committee should set about completing its research. When this is completed, and a united Negotiating Committee is prepared to negotiate the settlement of all Whakatohea's historical claims, negotiations with the Crown toward a new Deed of Settlement may recommence. This cannot take precedence, however, over other claims negotiations that may be taking place at the time. The first stage in any renegotiation process would be the execution of a Terms of Negotiation document, outlining the agreed ground-rules and objectives of the new negotiations.

There are two further points I wish to make. The first involves the issue of mandate. In May of 1997 I wrote to all members of the Negotiating Committee advising them that it would be necessary for any decisions regarding the Deed of Settlement to be taken by a clear majority of committee members. Then in January 1998 a judicial conference before Judge Kingston of the Maori Land Court resulted in the appointment of three claims managers (although I understand that this decision may be subject to legal challenge). Despite these developments, it appears that there is still some internal division within the committee, as was evidenced by my receipt of two quite different proposals to renegotiate the Deed of Settlement. While it is understandable that members within the wider claimant community may differ in their views about any Crown offer, it is a near imperative that their mandated representatives be prepared to speak with one voice, and accept collective responsibility for both the negotiations and the negotiations outcome.

The second point relates to claimant funding. At the meeting I advised that I am prepared to seek Cabinet's approval for the release of further claimant funding to enable renegotiations to take place. I also explained that the Crown does not provide funding for claim research, as this is available from the Waitangi Tribunal (or the Crown Forest Rental Trust). I therefore suggest that, once the necessary research has been completed, you submit a budget for negotiations to the Office of Treaty Settlements for consideration. I also note that over \$800,000 of claimant funding has already been released and that this will have to be off-set against any eventual settlement concluded with Whakatohea. Under current policies, however, any future advances for costs will be separate from settlement redress.

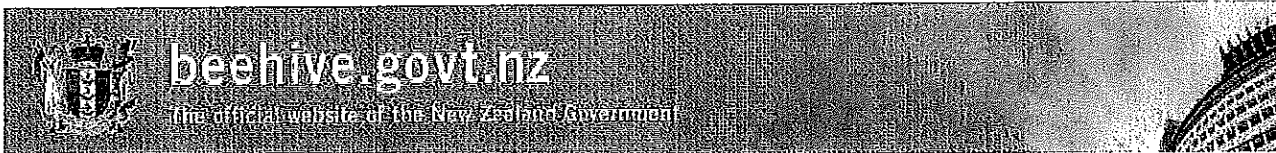
To conclude, I am disappointed that the Deed of Settlement has to be terminated, as it represented considerable work on behalf of both parties. Nevertheless, I hope that once the Negotiating Committee has completed its necessary research and resolved its internal representation issues, we can again work together as parties to the Treaty toward the fair, final and durable settlement of Whakatohea's historical claims.

Yours sincerely



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Sent directly to: Bishop Whakahuihui Vercoe, Claude Edwards, John Kameta, Tairongo Amoamo and Tahu Taia.



Doug Graham

13 MARCH, 1998

Whakatohea Deed of Settlement to be Terminated

The Minister in Charge of Treaty of Waitangi Negotiations, Hon D.A.M. Graham, said today that following a meeting with Whakatohea's negotiators it was clear there was insufficient support among them for the Deed of Settlement.

As a result no formal ratification proposal had been put to the beneficiaries by the negotiators since the Deed was signed in October 1996.

'I understand that at least some of the negotiators wish to conduct some further research in support of their claim,' he said.

'No settlement would be durable in those circumstances and it is best for the parties to return to square one.'

It had therefore been agreed the proposed settlement would be terminated on 31 March 1998, Mr Graham said.

The Deed of Settlement, signed by the Crown and a representative of the negotiators, agreed a \$40 million comprehensive settlement of Whakatohea's historical Treaty of Waitangi claims against the Crown subject to ratification by tribal beneficiaries.

Mr Graham said he regretted the negotiations had come to nothing as both the Crown and Whakatohea had put a great deal of effort into the settlement.

'I have invited the negotiators to contact me when they have completed the further research and wish, as a united group, to enter negotiations again,' he said.

'But I have told them I am not prepared to give Whakatohea any precedence over current or planned negotiations with other claimants and they must now take their place among other tribes seeking to settle their historical grievances.'

Doug Graham Treaty of Waitangi Negotiations

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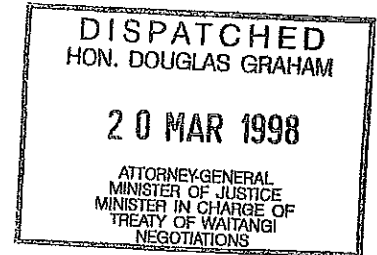
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Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

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20 MAR 1998

Russell McVeagh McKenzie Bartleet & Co.
PO Box 10-214
WELLINGTON

Attention: Martin Dawson and Kathy Ertel

Dear Partners

I acknowledge receipt of your letters of 17 and 19 March 1998 in which you advise that your client, Mr Claude Edwards, seeks a court order that the Whakatohea Deed of Settlement be put to a vote of Whakatohea beneficiaries. In your letter of 19 March you suggest that it would be quite wrong for the Crown to treat the Deed as having been rejected by Whakatohea, or that Whakatohea has accepted the Crown's refusal to further extend the ratification deadline, based on recent representations to me by members of the Whakatohea Negotiating Committee.

The decision I have made to seek Cabinet's approval in the coming weeks to terminate the Deed is in full accordance with the provisions of the Deed. Section 13.2 states that if the Deed "had not become unconditional by 30 June 1997 (or such later date as the parties agreed in writing), then either party may, by notice to the other, terminate the Deed".

"Unconditional" in the context of the Deed means ratified by Whakatohea and passed into legislation by the Crown. Cabinet agreed to extend the deadline for ratification to 31 March 1998 in order to allow time to renegotiate specified non-fiscal aspects of the Deed. Cabinet also noted that a further three to four months would be required for the passage of legislation.

I advised all members of the Whakatohea Negotiating Committee of Cabinet's decision in a letter of 19 June 1997. In accordance with Section 13.2 of the Deed, the letter asked that the committee confirm in writing (as soon as possible) its agreement to the proposed extension of the ratification deadline. Agreement to Cabinet's conditions on the proposed renegotiations was also sought. A clear majority of the committee did not provide the written agreement to the deadline extension required by the Deed, and accordingly the Deed has remained operable since 30 June 1997 at the discretion of the parties.

My decision to seek Cabinet's approval to terminate the Deed was not based on either Whakatohea having formally rejected the Deed or my meeting with representatives of the Whakatohea Negotiating Committee. Rather, it was based on the lack of progress that has

been made over the past eighteen months towards the ratification of the Deed. Disunity among members has also meant that the Whakatohea Negotiating Committee has been unable to respond to the Crown's offer to renegotiate parts of the Deed. This was clearly evident from my receipt earlier this month of two quite different renegotiation proposals; both of which went far beyond the conditions agreed to by Cabinet and what I understood each faction of the committee had agreed to in previous correspondence with me.

I am of the strong view that the Deed itself has now become a bone of contention, both within the Negotiating Committee and the wider iwi, and that progress can only be made if it is put to one side. Clearly the Negotiating Committee needs time to work through its internal representation issues before negotiations can recommence. I also understand that at least some members wish to complete outstanding research to enable them to renegotiate a comprehensive settlement of Whakatohea's grievances.

I therefore wish to advise that I still intend to seek Cabinet's agreement to terminate the Whakatohea Deed of Settlement, effective 31 March 1998, and will advise all committee members of Cabinet's decision on this matter once it has been made.

Yours sincerely



pp. Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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CABINET STRATEGY COMMITTEE

STR (98) M 7/3

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MINUTES of a joint meeting of the Cabinet Strategy Committee and the Cabinet Strategy Subcommittee on Expenditure Control and Government Administration held on Wednesday 1 April 1998 at 9.15am

PRESENT: Hon Jenny Shipley (Chair)
Rt Hon Bill Birch
Hon John Luxton
Hon Tau Henare
Hon Douglas Graham
Rt Hon Don McKinnon
Hon Tony Ryall
Hon Deborah Morris

IN ATTENDANCE: Officials from Department of the Prime Minister and Cabinet Treasury
Office of the Deputy Prime Minister
Office of the Minister of Finance

TERMINATION OF THE WHAKATOHEA DEED OF SETTLEMENT

Reference: STR (98) 49

The Committee:

BACKGROUND

- a noted that in October 1996 the Minister in Charge of Treaty of Waitangi Negotiations and the claim manager of the Whakatohea Negotiating Committee signed a Deed of Settlement agreeing to settle comprehensively Whakatohea's historical Treaty claims [CAB (96) M 37/22 refers];
b noted that in June 1997 Cabinet agreed to extend the deadline for ratification of the Deed of Settlement by Whakatohea beneficiaries from 30 June 1997 to 31 March 1998, to allow time to renegotiate non-fiscal aspects of the Deed [CAB (97) M 22/20 refers];
c noted that, as a result of ongoing internal division within the Whakatohea Negotiating Committee, and opposition to the Deed of Settlement from within Whakatohea Iwi, no renegotiations have taken place, and the Deed of Settlement has not been ratified;

Sue Sharp

Not relevant

Sue Sharp
Secretary

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Miriam Evans, PM&C
Secretary to the Treasury
John Wilson, Treasury
John Tamahori, Te Puni Kokiri
~~Matthew Palmer, Ministry of Justice~~
Belinda Clark, Office of Treaty Settlements
Solicitor-General
State Services Commissioner

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Office of the Minister in Charge of Treaty of Waitangi Negotiations

Chair,

Cabinet Strategy Committee

Termination of the Whakatohea Deed of Settlement

Executive Summary

1. On 13 March 1998 the Minister in Charge of Treaty of Waitangi Negotiations wrote to all members of the Whakatohea Negotiating Committee advising them of his intention to seek Cabinet approval to terminate the Whakatohea Deed of Settlement. Eighteen months have passed since the Deed of Settlement was signed and no ratification process has taken place. Ongoing division within the Negotiating Committee has also meant that a limited renegotiation of aspects of the Deed has not been possible. This paper therefore seeks Cabinet approval for the Crown to terminate the Deed, effective of 31 March 1998.
2. The termination of the Deed of Settlement requires the settlement expense (less on account funding and property transfers advanced) to be reversed. It also requires a recalculation of the multi-year appropriation. Cabinet approval is sought for these fiscal implications.

Purpose

3. This paper seeks Cabinet approval for the Crown to terminate the Whakatohea Deed of Settlement. It also seeks approval for the resulting fiscal implications.

Coalition Agreement

4. This paper relates to the Government's Coalition Agreement objective of justice and equity in Treaty of Waitangi settlements.

Background

The Deed of Settlement

5. On 1 October 1996 the Minister in Charge of Treaty Waitangi Negotiations and Mr Claude Edwards, the claim manager of the Whakatohea Negotiating Committee, signed a Deed of Settlement setting out the agreed redress for settling comprehensively Whakatohea's historical Treaty claims against the Crown. The Whakatohea Negotiating Committee, and the position of claim manager within it, had been established in 1994 by an order of the Maori Land Court under Section 30 of Te Ture Whenua Maori Act 1993.
6. The Deed of Settlement comprised fiscal redress of \$40 million, including Crown owned properties and claimant costs, and non-fiscal redress, including a Crown apology and redress involving land administered for conservation purposes [CAB (96) M37/22 refers]. Whakatohea was the first medium sized claim to reach a Deed of Settlement and was therefore of considerable importance to the Crown for benchmarking purposes.
7. The Deed of Settlement was binding upon ratification by Whakatohea beneficiaries, and subsequent legislation. Section 13.2 of the Deed allowed for either party to terminate the Deed, by way of letter to the other party, if it had not been ratified and the settlement

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legislation enacted by 30 June 1997. The negative response of beneficiaries at a hui held in May 1997 to discuss the Deed, coupled with on-going divisions within the Negotiating Committee regarding how to progress the claim, indicated that the Deed would not be ratified in its present form.

Extension of the Ratification Deadline

8. In June 1997 Cabinet agreed to extend the deadline for ratification to 31 March 1998, so as to allow time to renegotiate non-fiscal aspects of the settlement, in particular the Crown apology and the conservation instruments [CAB (97) M22/20 refers]. Cabinet's agreement to the ratification deadline extension and to a limited renegotiation was subject to the Negotiating Committee agreeing that it would not seek to renegotiate the fiscal aspects of the Deed (in particular the \$40 million quantum and the non-provision of a relativity clause) or its comprehensive nature (the Deed was to settle all the claims of Whakatohea prior to 1992 arising under the Treaty and aboriginal title, including those historical claims yet to be researched). Cabinet also noted that a further three to four months would be required after ratification for the passage of settlement legislation.
9. On 19 June 1997 all members of the Negotiating Committee were advised of Cabinet's decision by way of a letter from the Minister in Charge of Treaty of Waitangi Negotiations. The Minister asked that the committee confirm in writing as soon as possible its agreement to Cabinet's proposal. While the Crown's proposal was generally well received, the internal divisions within the Negotiating Committee continued. No clear agreement could be reached by the committee and there has been no written agreement to the Crown's proposal. Accordingly, the Deed has remained operable since 30 June 1997 at the discretion of the parties.
10. In an attempt to resolve the representation dispute, a judicial conference was held in January 1998 and resulted in the Maori Land Court appointing two further claim managers (Bishop Vercoe and Mr John Kameta). This was to little avail. In March 1998 the Minister in Charge of Treaty Negotiations received two separate and quite distinct renegotiation proposals from factions within the committee, neither of which met Cabinet's conditions. One proposal, tabled by Mr Edwards, sought the exclusion of certain whanau and hapu claims, the provision of a relativity clause and to revisit the \$40 million quantum. The other proposal, tabled by the other claim managers, sought a "taupatu only" settlement, which protected Whakatohea's right to make further historical claims in the future.

Proposal to Terminate the Deed of Settlement

11. On 11 March 1998 the Minister in Charge of Treaty of Waitangi Negotiations met with representatives of the Negotiating Committee, including the two new claim managers (but not Mr Edwards), and advised them that he would seek Cabinet's agreement to terminate the Deed of Settlement, effective 31 March 1998. The Minister's decision was in accordance with Section 13.2 of the Deed and Cabinet's subsequent decision to extend the deadline for ratification to 31 March 1998.
12. The Minister then wrote to all members of the Negotiating Committee (including Mr Edwards) on 13 March advising them of his decision to seek Cabinet's approval to terminate the Deed. The letter explained the Crown's preference for comprehensive settlements and encouraged the Negotiating Committee to complete its claims research so that comprehensive settlement negotiations could be considered in the future. It was further noted that the Crown would only be prepared to enter into new negotiations with a unified committee. Whakatohea would not be accorded any special preference over other iwi with pending Treaty settlement negotiations and the claimant funding already

advanced to the Negotiating Committee would be deducted from any settlement eventually agreed to.

13. On 24 March the Maori Land Court dismissed the Negotiating Committee and annulled the Section 30 Order which established it. The Judge did not appoint a new committee, but said that it was for the hapu themselves to decide who their negotiators are to be.

Proposal

14. In view of the failure by the Whakatohea negotiators to either undertake a formal ratification process for the Deed or agree to Cabinet's conditions for a limited renegotiation, Cabinet approval is sought to terminate the Whakatohea Deed of Settlement, effective of 31 March 1998. The Deed will then be treated as of no effect and the Crown's settlement offer included within it formally withdrawn. Cabinet is also asked to invite the Minister in Charge of Treaty of Waitangi Negotiations to write to all members of the Negotiating Committee advising them of Cabinet's decision.

Comment

15. Termination of the Deed of Settlement is the only practical option available to the Crown. It is very unlikely that a further extension of the ratification deadline would serve a useful purpose, as the Negotiating Committee has already had eighteen months to work through its internal difficulties, renegotiate aspects of Deed and put a revised Deed to the people. Such an extension would also put the Deed's credibility at risk.
16. Nor would a Crown offer to renegotiate further aspects of the Deed be desirable. To do this would run the risk of giving other claimant groups and the public the impression that Deeds of Settlement, once agreed to, are open to ongoing and significant renegotiation.
17. Clearly Whakatohea needs time to work through its representation issues. Some members of the Negotiating Committee have also identified the need to complete outstanding historical research before a comprehensive settlement can be renegotiated. However, any new negotiations with Whakatohea can not take precedence over other claims negotiations that may be taking place at the time.

Not relevant

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Legislative Implications

26. This paper has no legislative implications.

Consultation

27. The Office of Treaty Settlements has consulted Treasury and Te Puni Kokiri in the preparation of this paper and they agree with it. The Department of Prime Minister and Cabinet and the Crown Law Office have also been consulted.

Recommendations

It is recommended that the Cabinet Strategy Committee

Background

- a. **note** that on 1 October 1996 the Minister in Charge of Treaty of Waitangi Negotiations and the claim manager of the Whakatohea Negotiating Committee signed a Deed of Settlement agreeing to settle comprehensively Whakatohea's historical Treaty claims [CAB (96) M37/22 refers];
- b. **note** that at its meeting of 16 June 1997 Cabinet agreed to extend the deadline for ratification of the Deed of Settlement by Whakatohea beneficiaries from 30 June 1997 to 31 March 1998, to allow time to renegotiate non-fiscal aspects of the Deed [CAB (97) M22/20 refers];
- c. **note** that as a result of ongoing internal division within the Whakatohea Negotiating Committee, and opposition to the Deed of Settlement from within Whakatohea, no renegotiations have taken place and the Deed of Settlement has not been ratified;

Termination of the Deed of Settlement

- d. **note** that on 13 March 1998 the Minister in Charge of Treaty of Waitangi Negotiations wrote to all members of the Negotiating Committee advising them of his intention to seek Cabinet's approval to terminate the Whakatohea Deed of Settlement, effective of 31 March 1998;
- e. **agree** that the Whakatohea Deed of Settlement be terminated, effective of 31 March 1998, in accordance with Section 13.2 of the Deed and Cabinet's decision of 16 June 1997 to extend the deadline for ratification to 31 March 1998;
- f. **invite** the Minister in Charge of Treaty of Waitangi Negotiations to write to all members of the Negotiating Committee after 31 March 1998 advising them that the Crown has exercised its right to terminate the Deed of Settlement;

Not relevant

Not relevant

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Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations



CABINET

CAB (98) M 12/3B

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Chair, Cabinet Strategy Committee

H Telohu
J Craig
P Sim
M Douglas
M [unclear]
P [unclear]
K Macaskill

COPIES TO:

- Prime Minister
- Minister of Women's Affairs
- Deputy Prime Minister
- Treasurer
- Minister of Education
- Minister of Finance
- Minister of Health
- Minister of Maori Affairs
- Minister of Social Welfare
- Minister of Employment

- Minister of Justice
- Minister in Charge of Treaty of Waitangi Negotiations
- Attorney General
- Minister of Energy
- Minister of State Services
- Minister for the Environment
- Minister of Youth Affairs
- Secretary, STR
- Secretary, EXG

REPORT OF THE JOINT MEETING OF THE CABINET STRATEGY COMMITTEE AND THE CABINET STRATEGY SUBCOMMITTEE ON EXPENDITURE CONTROL AND GOVERNMENT ADMINISTRATION - WEEK ENDED 3 APRIL 1998

Reference: CAB (98) 161

At the meeting on 3 April 1998 Cabinet made the following decisions on the work of the joint meeting of the Cabinet Strategy Committee and the Cabinet Strategy Subcommittee on Expenditure Control and Government Administration for the week ended 3 April 1998.

Committee Minute	Title	Cabinet decision
STR (98) M 7/3	Termination of the Whakatohea Deed of Settlement	CONFIRMED

not relevant

not relevant

Not relevant

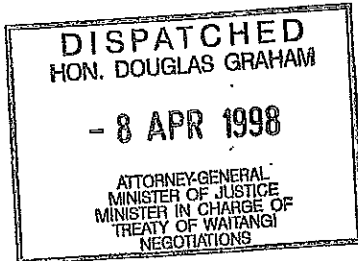
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Diane Wislizen
for Secretary of the Cabinet



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**



COPY

All Former Members
Whakatohea Negotiating Committee

Tena koutou

On 13 March 1998 I wrote to all members of the Whakatohea Negotiating Committee advising them of my intention to seek Cabinet's approval to terminate the Whakatohea Deed of Settlement ("the Deed"). I am aware that the Maori Land Court has since dissolved the Whakatohea Negotiating Committee.

I wish to advise you that at its meeting of 6 April 1998 Cabinet decided to terminate the Deed. The Deed is therefore to be treated as of no effect and the Crown's settlement offer included within it has been formally withdrawn.

Cabinet's decision was made in full accordance with Section 13.2 of the Deed, which states that if the Deed "had not become unconditional by 30 June 1997 (or such later date as the parties agree in writing), then either party may, by notice to the other, terminate the Deed". "Unconditional" in this context means ratified by Whakatohea and passed into legislation by the Crown. In June 1997 Cabinet agreed to extend the deadline for ratification of the Deed to 31 March 1998, but this deadline has also now passed. The Crown is therefore able to exercise its right to terminate the Deed and has done so.

As I stated in my letter of 13 March 1998, I am disappointed that the Deed has been terminated, as it represented considerable work on behalf of both parties. It is clear, however, that Whakatohea has important representation issues to work through and further claims research to undertake before Treaty settlement negotiations can recommence.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Send directly to: Bishop Whakahuihui Vercoe, Claude Edwards, John Kameta, Tairongo Amoamo and Tahu Taia.