

*Parties*

HER MAJESTY THE QUEEN

in right of New Zealand

*and*

WAIKATO-TAINUI

---

**DEED OF SETTLEMENT**

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22 May 1995

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**THIS DEED** is made on the 22<sup>nd</sup> day of May 1995

**BETWEEN**

- (1) **HER MAJESTY THE QUEEN** in the right of New Zealand acting by the Prime Minister
- (2) **WAIKATO-TAINUI**

**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 rätou o rätou rangatiratanga, me to rätou wenua, a kia mau tonu hoki te Rongo ki a rätou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani – kia wakaetia 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 kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.*

*Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua äiane, ämua ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu ënei ture ka körerotia 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 rätou wenua.*

*Ko te Tuarua*

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

*Ko te Tuatoru*

*Hei wakaritenga mai hoki tēnei mo wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuinio Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a rätou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.*

*(Signed) WILLIAM HOBSON  
Consul and Lieutenant-Governor*

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

*Ka meatia tēnei 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 bring desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty’s Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.*

*Article The First*

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

*Article The Second*

*Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of 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.HOBSON Lieutenant Governor.*

*Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.*

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

- B In 1863-1864 the Crown engaged in a war against Maaori in the Waikato, causing suffering to the people there.
- C After the war in the Waikato, large areas of land as delineated on the annexed map (See *Attachment 1*) were unjustly confiscated by the Crown under the New Zealand Settlements Act 1863.
- D In 1925 a Royal Commission chaired by Sir William Sim (the Sim Commission was appointed to consider whether confiscations under the New Zealand Settlements Act 1863 had been excessive.” In its report (AJHR 1928, 6-7), the Sim Commission found that the general confiscations of lands in the Waikato were “excessive”. The Sim Commission was precluded by its terms of reference from inquiring into the consistency of the confiscations with the Treaty of Waitangi. The Sim Commission also reported that the confiscation of lands from tribes driven from their kainga north of Mangataawhiri before its crossing by General Cameron in July 1863 was a “grave injustice”.

- E The Crown acknowledges that grave injustice was also done to Waikato-Tainui south of the Managtaawhiri, their lands being invaded and confiscated.
- F The Waitangi Tribunal wrote in the Manukau Report (Wai 8) in 1985: “It can simply be said that from the contemporary record of Sir John Gorst in 1864, from the Report of the Royal Commission sixty years after that, and from historical research almost a century removed from the event, all sources agree that the Tainui people of the Waikato never rebelled but were attacked by British troops in direct violation of Article II of the Treaty of Waitangi”.
- G The war caused loss of life among Waikato Iwi and the effect of the raupatu both immediately and over time has had a crippling impact on the welfare, economy and development of Waikato-Tainui.
- H The injustice of the raupatu is felt as keenly by Waikato-Tainui today as in the past, as has been testified to the Crown by the kaumaatua and kuia as expressed in the affidavits filed by the plaintiffs in *RT Mahuta and Tainui Maaori Trust Board v Attorney-General* [1989] 2 NZLR 513.
- I Waikato-Tainui have pursued compensation on the basis of the principle of “land for land” – “i riro whenua atu, me hoki whenua mai” (as land was taken land must be returned), and “ko te moni hei utu mo te hara” (the money is the acknowledgement by the Crown of their crime).
- J On 16 March 1987 Robert Te Kotahi Mahuta on behalf of himself and on behalf of the members of Waikato-Tainui, the Tainui Maaori Trust Board and Nga Marae Toopu filed a claim with the Waitangi Tribunal concerning Crown actions in relation to the Waikato-Tainui Claim Area, and certain other matters. That claim was registered with the Waitangi Tribunal as Wai 30. Those parts of the Wai 30 claim dealing with the raupatu have been the subject of petitions to the Crown since 1865 and direct negotiations with the Crown since 1989.
- K Having reviewed these long-standing claims in relation to raupatu, the Crown has concluded that the confiscations of land in the Waikato following the hostilities of 1863 were both unjust and a breach of the Treaty of Waitangi.
- L The Crown and the Claimants have negotiated with each other in good faith and an endeavour to settle the Waikato-Tainui Claim and to remove the sense of grievance over time felt by Waikato-Tainui. They recorded their agreement in principle to the matters required to effect a settlement of the Raupatu Claims in the Heads of Agreement.

- M In 1993, the Crown vested in Potatau Te Wherowhero for the benefit of Waikato-Tainui the Hopuhopu Military Base as a goodwill gesture.
- N As contemplated by the Heads of Agreement, the parties now wish to record the basis on which they will settle the Waikato-Tainui Claim and the Overlapping Claims will be settled.

**ACCORDINGLY**, in the spirit of co-operation, compromise and good faith evidenced by the Heads of Agreement and in consideration of the respective obligations and agreements contained in this Deed, the Crown and Waikato-Tainui agree as follows:

## **1 DEFINITIONS AND INTERPRETATION**

Unless the context otherwise requires, terms defined in *clause 34* have the meanings given to them in that clause and the rules of interpretation set out in *clause 35* will apply in the interpretation of this Deed.

## **2 ACKNOWLEDGEMENT BY CROWN**

The Crown acknowledges:

- 2.1 the legitimacy of the Waikato-Tainui Claim and the breach of the Treaty of Waitangi by the Crown in relation to the raupatu; and
- 2.2 the fact that the recognition of the grievance of Waikato-Tainui in relation to the raupatu is overdue; and
- 2.3 the contribution of the raupatu land to the development of New Zealand (such raupatu land being estimated by Waikato-Tainui to have a minimum value today of approximately \$12 billion); and
- 2.4 that Waikato-Tainui, by agreeing to the Settlement, is forgoing a substantial part of the redress sought by Waikato-Tainui in respect of the raupatu, and that this is recognised by the Crown as a contribution to the development of New Zealand; and
- 2.5 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 Waikato-Tainui in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights; and
- 2.6 that the decision of Waikato-Tainui in relation to the Settlement is a decision that Waikato-Tainui take for themselves alone and does not purport to affect the position of other tribes.

### 3 APOLOGY BY CROWN

The Crown apologises formally and will apologise publicly to Waikato-Tainui for its actions in sending imperial forces across the Mangataawhiri, for the loss of life and devastation of property that ensued of raupatu on Waikato-Tainui. The form of the apology, which is set out in Maaori as *Attachment 13*, is as follows:

- “1. The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangataawhiri in July 1863 and in unfairly labelling Waikato as rebels.*
- 2. The Crown expresses its profound regret and apologises unreservedly for the loss of lives because of the hostilities arising from its invasion, and at the devastation of property and social life which resulted.*
- 3. The Crown acknowledges that the subsequent confiscations of land and resources under the New Zealand Settlements Act 1863 of the New Zealand Parliament were wrongful, have caused Waikato to the present time to suffer feelings in relation to their lost lands akin to those of orphans, and have had a crippling impact on the welfare, economy and development of Waikato.*
- 4. The Crown appreciates that this sense of grief, the justice of which under the Treaty of Waitangi has remained unrecognised, has given rise to Waikato’s two principles ‘i riro whenua atu, me hoki whenua mai’ (as land was taken, land should be returned) and ‘ko te moni hei utu mo te hara’ (the money is the acknowledgement by the Crown of their crime). In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato.*
- 5. The Crown recognises that the lands confiscated in the Waikato have made a significant contribution to the wealth and development of New Zealand, whilst the Waikato tribe has been alienated from its lands and deprived of the benefit of its lands.*
- 6. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledge injustices, so far as that is now possible, and, with the grievance of raupatu finally settled as to the matters set out in the Deed of Settlement signed on 22 May 1995 to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato.”*

### 4 REDRESS FROM CROWN

The Crown agrees, subject to the passing of the legislation referred to in *clause 19*, to provide the following redress to atone for the wrong done to Waikato-Tainui by the raupatu, in recognition of the mana of the Kiingitanga and to discharge the Crown’s obligations to Waikato-Tainui in respect of the Raupatu Claims:

- 4.1 the transfer to the Land Holding Trustee of the Settlement Properties in accordance with *clause 5* and *clause 6* with provision for those Settlement Properties to be held in the name of Potatau Te Wherowhero if the Land Holding Trustee so elects; and
- 4.2 the establishment of the Land Acquisition Trust and the provision of funds to the Land Acquisition Trustee in accordance with *clause 9*; and
- 4.3 making provision for the payment to the Land Holding Trustee of the accumulated rentals held by the Crown Forestry Rental Trust relating to the Maramarua and Onewhero Forests, subject to *clause 17.3*; and
- 4.4 the transfer of the Te Rapa Air Force Base, which, Waikato-Tainui acknowledge, the Crown vested in Potatau Te Wherowhero for the benefit of Waikato-Tainui in 1993; and
- 4.5 payment to the Trust Board of certain costs incurred by the Trust Board since 21 September 1992 for research and negotiation of the Waikato-Tainui Claim and other assistance in relation to the Raupatu Claims for which the Crown has already agreed or agrees in the future to reimburse the Trust Board; and
- 4.6 a right of first refusal in favour of the Land Holding Trustee over Residual Crown Land as described in *clause 10*; and
- 4.7 payment of interest in the Land Holding Trustee, as provided in *clause 11*.

## **5. TRANSFER OF SETTLEMENT LAND BY CROWN**

- 5.1 Subject to *clause 5.5*, *clause 5.6*, *clause 8* and *clause 17*, the Crown will transfer the parcels of Settlement Land described in column 1 of *Attachment 2* to the Land Holding Trustee on a date which is no later than the last business Day of the quarter specified in column 2 of *Attachment 2*. The terms on which the parcels of Settlement Land will be transferred will be those specified in *Attachment 4*, with such amendments as may be agreed by the Crown and the Land Holding Trustee. In this regard, the parties acknowledge that circumstances may exist which were not known to, or contemplated by, a party at the date of this Deed and for which there is no applicable provisions in the terms specified in *Attachment 4*. The nature of such transfer will be that specified in column 3 of *Attachment 2*. The Settlement Land is estimated to be approximately 15,553 hectares (29,803 acres).

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- 5.2 Where it is specified in column 3 of *Attachment 2* that any parcel of Settlement Land is to be transferred subject to a leaseback to the Crown Body referred to in column 4 of *Attachment 2*, the relevant parcel of Settlement Land will be transferred subject to and with the benefit of a registrable memorandum of lease to that Crown Body for an initial term specified in column 6 of *Attachment 2* with the number of rights of renewal specified in column 8 of *Attachment 2* for terms of years specified in column 7 of *Attachment 2*. The rental for such lease will be determined pursuant to *clause 18* and will be subject to review at intervals of 5 years where the term of the lease is 25 years or longer (including rights of renewal) and, otherwise, at intervals of 3 years (unless specified otherwise in *Attachment 2* or *Attachment 5*). The Lease will otherwise include provisions agreed or determined under *clause 7*.
- 5.3 Each parcel of Settlement Land transferred to the Land Holding Trustee pursuant to this *clause 5* will be transferred for its Transfer Value.
- 5.4 All such transfers will, except to the extent that this Deed provides otherwise, be subject to:
- 5.4.1 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 Land Holding Trustee, except any mortgage securing indebtedness of the Crown Body from which it is to be transferred; and
  - 5.4.2 the reservation of the Crown's right to minerals as provided in the Crown Minerals Act 1991; and
  - 5.4.3 any other reservation made by or under any statute or statutory instrument. The Crown recognises that the issue of the creation of marginal strips on land to be transferred to the Land Holding Trustee is of serious concern to Waikato-Tainui. The Crown acknowledges that Waikato-Tainui intend to advance their concerns about the creation of marginal strips to the Minister of Conservation.
- 5.5 The Crown and the Land Holding Trustee may vary any of the details referred to in *clause 5.1* and *clause 5.2* by agreement in writing signed on behalf of the Crown and the Land Holding Trustee. The Crown may also elect to add properties to the list in *Attachment 2* or amend column 3 of *Attachment 2* in respect of any parcel of Settlement Land which is to be transferred subject to a Lease so that it states that that parcel of Settlement Land will be transferred on the basis that it is not subject to a Lease. If the Crown makes such an election, *Attachment 2* and/or *Attachment 3* will be deemed to be amended accordingly and, where the election involves an amendment to column 3 which adversely affects the income expectations of the Land Holding Trustee, the Land Holding Trustee may require an amendment to column 2 of *Attachment 2* in respect of the relevant property and other

properties to ensure that one or more income-producing properties is transferred to the Land Holding Trustee earlier than provided in column 2 of *Attachment 2* and the relevant property is transferred correspondingly later, with the objective of preventing or minimising any detriment to the Land Holding Trustee. The Crown may make such an election at any time up to 15 July 1995. The Crown must give the Land Holding Trustee 10 Business Days notice of its intention to make such an election.

5.6 The Crown's obligation to transfer any parcel of the Settlement Land will be subject to, and will not apply in respect of, any parcel of Settlement Land until the Crown or the relevant Crown Body has complied with, section 40 of the Public Works Act 1981 or equivalent legislation and other statutory provisions which must be complied with before any disposal of such land and is also subject to:

5.6.1 the terms of any gifts or endowments relation to the parcel of land; and

5.6.2 the terms of any trust relating to the parcel of land; and

5.6.3 any feature of the title to the parcel of land held by the Crown or a Crown Body which prevents or limits the right of the Crown or Crown Body cannot satisfy after taking reasonable steps to do so. For the avoidance of doubt, "reasonable steps" does not include initiating a change in the law.

The Crown will diligently and expeditiously seek to satisfy the above requirements with a view to removing any impediment to the transfer of such land to the Land Holding Trustee. The requirement to comply with section 40 of the Public Works Act 1981 will not apply to any land to which that section would, by virtue of section 8A(5) of the Treaty of Waitangi Act 1975, have ceased to apply on the making of a recommendation for the return of the land to Maaori by the Waitangi Tribunal under section 8A(2) of that Act.

5.7 For the purposes of this *clause 5*, the term "parcel of Settlement Land" includes any grouping of parcels indicated in column 9 of *Attachment 2* or otherwise agreed in writing between the Crown and the Land Holding Trustee.

- 5.8 The parties acknowledge that there may be errors in the details relating to the Settlement Properties shown in column 1 of *Attachment 2*. The parties agree that, whenever any such error or omission is identified, the party which identifies the error will immediately notify the other and the parties will procure that an amendment be made to *Attachment 2* as may be required to give effect to the intention of this Deed.

## **6. TRANSFER OF IMPROVED LAND BY CROWN**

- 6.1 Subject to *clause 6.5, clause 6.6, clause 8 and clause 17*, the Crown will transfer the parcels of Improved Land described in column 1 of *Attachment 3* to the Land Holding Trustee on a date which is no later than the last Business Day of the quarter specified in column 2 of *Attachment 3*. The terms on which the parcels of Improved Land will be transferred will be those specified in *Attachment 4*, with such amendments as may be agreed by the Crown and the Land Holding Trustee. In this regard, the parties acknowledge that circumstances may exist which were not known to, or contemplated by, a party at the date of this Deed and for which there is no applicable provisions in the terms specified in *Attachment 4*. The nature of such transfer will be that specified in column 3 of *Attachment 2*. The Improved Land is estimated to be approximately 3,487 hectares (8,614 acres).
- 6.2 Where it is specified in column 3 of *Attachment 3* that any parcel of Improved Land is to be transferred subject to a leaseback to the Crown Body referred to in column 4 of *Attachment 3*, the relevant parcel of Improved Land will be transferred subject to and with the benefit of a registrable memorandum of lease to that Crown Body for an initial term specified in column 6 of *Attachment 3* with the number of rights of renewal specified in column 8 of *Attachment 3* for terms of years specified in column 7 of *Attachment 3*. The rental for such lease will be determined pursuant to *clause 18* and will be subject to review at intervals of 5 years where the term of the lease is 25 years or longer (including rights re renewal) and, otherwise, at intervals of 3 years (unless specified otherwise in *Attachment 3* or *Attachment 5*). The Lease will otherwise include provisions agreed or determined under *clause 7*.
- 6.3 Each parcel of Improved Land transferred to the Land Holding Trustee pursuant to this *clause 6* will be transferred for its Transfer Value.
- 6.4 All such transfers will, except to the extent that this Deed provides otherwise, be subject to:
- 6.4.1 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 Land

Holding Trustee, except any mortgage securing indebtedness of the Crown Body from which it is to be transferred; and

6.4.2 the reservation of the Crown's right to minerals as provided in the Crown Minerals Act 1991; and

6.4.3 any other reservation made by or under any statute or statutory instrument. The Crown recognises that that issue of the creation of marginal strips of land to be transferred to the Land Holding Trustee is of serious concern to Waikato-Tainui. The Crown acknowledges that Waikato-Tainui intend to advance their concerns about the creation of marginal strips to the Minister of Conservation.

6.5 The Crown and the Land Holding Trustee may vary any of the details referred to in *clause 6.1* and *clause 6.2* by agreement in writing signed on behalf of the Crown and the Land Holding Trustee. The Crown may also elect to add properties to the list in *Attachment 3* or amend column 3 of *Attachment 3* in respect of any parcel of Improved Land which is to be transferred subject to a Lease so that it states that that parcel of Improved Land will be transferred on the basis that it is not subject to a Lease or transfer any such parcel of Improved Land from *Attachment 3* to *Attachment 2* so that it becomes Settlement Land. If the Crown makes such an election, *Attachment 3* will be deemed to be amended accordingly and, where the election involves an amendment to column 3 which adversely affects the income expectations of the Land Holding Trustee, the Land Holding Trustee may require an amendment to column 2 of *Attachment 3* in respect of the relevant property and other properties to ensure that one or more income-producing properties is transferred to the Land Holding Trustee earlier than provided in column 2 of *Attachment 3* and the relevant property is transferred correspondingly later, with the objective of preventing or minimizing any detriment to the Land Holding Trustee. The Crown may make such an election at any time up to 15 July 1995. The Crown must give the Land Holding Trustee 10 Business Days notice of its intention to make such an election.

6.6 The Crown's obligation to transfer any parcel of the Improved Land will be subject to, and will not apply in respect of, any parcel of Improved Land until the Crown or the relevant Crown Body 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 any Crown Body's current policy to provided tenants of houses owned by the Crown or a Crown Body 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:

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- 6.6.1 the terms of any gifts or endowments relating to the parcel of land or any improvements on the land; and
  - 6.6.2 the terms of any trust relating to the parcel of land or any improvements on the land; and
  - 6.6.3 any feature of the title to the parcel of land held by the Crown or a Crown Body which prevents or limits the right of the Crown or Crown Body to transfer the parcel of land or any improvements on the land; and
  - 6.6.4 any other legal requirement which impedes the Crown's or the Crown Body's ability to transfer the parcel of land or any improvements on the land and which the Crown or Crown Body cannot satisfy after taking reasonable steps to do so. For the avoidance of doubt, "reasonable steps" does not include initiating a change in the law.

The Crown will diligently and expeditiously seek to satisfy the above requirements with a view to removing any impediment to the transfer of such land to the Land Holding Trustee. The requirement to comply with section 40 of the Public Works Act 1981 will not apply to any land to which that section would, by virtue of section 8A(5) of the Treaty of Waitangi Act 1975, have ceased to apply on the making of a recommendation for the return of the land to Maaori by the Waitangi Tribunal under section 8A(2) of that Act.

- 6.7 For the purposes of this *clause 6*, the term "parcel of Improved Land" includes any grouping of parcels indicated in column 9 of *Attachment 3* or otherwise agreed in writing between the Crown and the Land Holding Trustee.
- 6.8 The parties acknowledge that there may be errors in the details relating to Settlement Properties shown in column 1 of *Attachment 3*. The parties agree that, whenever any such error or omission is identified, the party which identifies the error will immediately notify the other and the parties will procure that an amendment be made to *Attachment 3* as may be required to give effect to the intention of this Deed.

## **7 TERMS OF LEASES**

- 7.1 The parties acknowledge that the Crown and Waikato-Tainui have, prior to the date of this Deed, agreed on some but not all of the terms of the Leases and accordingly, the terms of the Leases will (apart from the rental, which will be determined pursuant to *clause 18*) be determined in accordance with the following provisions of this *clause 7*.

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- 7.2 The matters set out in columns 6 of 8 of *Attachment 2* and *Attachment 3* must be included in the relevant Lease to be granted by the Crown under *clause 5.2* and *clause 6.2*. However, if there are no details specified in any of those columns in respect of any Settlement Property those matters must be the subject of negotiations under *clause 7.5* and, if they are not agreed by 15 July 1995 (or, in the case of Coalcorp Land 31 July 1995), they will be submitted to expert determination under *clause 7.6*.
- 7.3 Part A of *Attachment 5* sets out general principles which have been agreed in respect of Leases and which, the Crown and Waikato-Tainui have agreed, must be given effect to in the relevant Lease.
- 7.4 Part B of *Attachment 5* sets out, in respect of some Crown Bodies, certain principles which, the Crown and Waikato-Tainui have agreed prior to the date of this Deed, must be given effect to in the relevant Lease.
- 7.5 The Crown and Waikato-Tainui 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 *clause 7.2* and on provisions to be inserted in the relevant Lease to give effect to the principles referred to in *clause 7.3* and *clause 7.4*. Where the Settlement Property is to be leased to a Crown Body the parties intend that that Crown Body will participate in those negotiations.
- 7.6 Subject to *clause 7.17* if the Crown, Waikato-Tainui and, where relevant, the Crown Body fail to agree on any matter referred to in *clause 7.5* by 15 July 1995 (or, in the case of Coalcorp Land 31 July 1995) time being of the essence, all such matters will be settled by expert determination in accordance with this *clause 7*.
- 7.7 The parties agree that:
- 7.7.1 the expert shall be a person agreed on by the parties or, failing agreement by 15 July 1995, 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 either part;
- 7.7.2 on accepting appointment the expert will be required to:
- 7.7.2.1 confirm that the appointment does not give rise to any conflict of interest in relation to the parties or the relevant Crown Body or circumstance which is likely to lead to a presumption of bias; and
- 7.7.2.2 agree to comply with the requirements placed on an appointee by this *clause 7*.

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- 7.7.3 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 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 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 more than one occasion.
- 7.8 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.
- 7.9 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:
- 7.9.1 rely on his or her own knowledge, skill and experience in relation to the matter in dispute without reference to the parties; and
- 7.9.2 make his or her own enquiries without reference to the parties.
- 7.10 The expert may:
- 7.10.1 arrange to meet with the parties either together or alone to discuss the dispute; and
- 7.10.2 require the parties to provide such evidence as he or she considers necessary to determine the dispute; and
- 7.10.3 establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this *clause 7*.
- 7.11 In making his or her determination, the expert:
- 7.11.1 must first have regard to the aspects of the Lease which have been agreed by the parties including the principles referred in *clause 7.3* and *clause 7.4* even if the manner by which those principles should be given effect to have not been agreed and resolve the matter in dispute in a manner that is consistent with those principles; and

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- 7.11.2 must have regard to the intention that (so far as 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, recognising the particular requirements which may arise from the actual and permitted use of the property; and
- 7.11.3 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.
- 7.12 The expert:
- 7.12.1 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
- 7.12.2 must in addition, give reasons for his or her determination; and
- 7.12.3 may decide how the reasonable costs, fees and other expenses of the parties in relation to the determination are to be borne. But if the expert makes no decision as to costs, the parties are to share them equally.
- 7.13 The expert's determination must be a written lease document based on any lease from which the parties, in their submissions, confirm they agree should form the basis of the Lease. The written lease document must include:
- 7.13.1 all matters that have been agreed prior to the reference for determination; and
- 7.13.2 provisions giving effect to the principles that have been agreed where the parties and the relevant Crown Body have failed to agree on the manner in which those principles should be given effect to; and
- 7.13.3 provisions given effect to any matter that is unresolved at the time of the appointment of the expert.
- 7.14 The parties agree to be bound by the expert's determination and agree that the expert's determination will be final.
- 7.15 The parties do not intend this *clause 7* 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.

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- 7.16 Waikato-Tainui appoint the Trust Board to act on their behalf in respect of the procedure set out in this *clause 7*.
- 7.17 The parties agree that *clause 7.6* will apply to the Coalcorp Land as if the date mentioned in that clause was 30 November 1995 or, if agreed between Coalcorp and the Land Holding Trustee, 30 May 1996 and this *clause 7* will be modified accordingly (but in no other respect) in respect of the Coalcorp Land.
- 7.18 For the avoidance of doubt, the Crown agrees that if, for any reason, a Crown Body does not participate in, or agree to accept the outcome of, the process referred to in this clause, that process will proceed between the Crown and Waikato-Tainui only and the Crown and Waikato-Tainui will be bound by the outcome notwithstanding that the Crown Body has not participated in the process or agreed to accept its outcome.

## **8 CHOICE OF LAND BY WAIKATO-TAINUI**

- 8.1 Waikato-Tainui may elect not to take any Settlement Property if the valuation of such land is not acceptable to Waikato-Tainui, the nature or location of the land or other characteristics of or encumbrances over the land make it unsuitable to Waikato-Tainui or the aggregate Transfer Values of the Settlement Properties will, when aggregated with the amount referred to in *clause 13.1.2* to *clause 13.1.4*, exceed the Redress Value.
- 8.2 Such election must be made in respect of any Settlement Property (other than the Coalcorp Land) at the earlier of the date which is 18 months after the date of this Deed and the last Business Day of the quarter specified in column 2 of *Attachment 2* or *Attachment 3* or otherwise agreed as the date on which the Crown will transfer any Settlement Property to the Land Holding Trustee. In the case of the Coalcorp Land, such election must be made by the date which is 12 months after the date on which the terms of any Leases for that land have been agreed or determined under *clause 7*. However, Waikato-Tainui shall act reasonable having due regard to the overall terms of the Settlement in deciding whether to make such an election.
- 8.3 Any such election must be made by the Land Holding Trustee on behalf of Waikato-Tainui by giving notice of the election to the Crown. Such notice must be given 10 Business Days before the date that the election takes effect.

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## 9 LAND ACQUISITION TRUST FOR ACQUISITION OF FURTHER LAND

As further redress to Waikato-Tainui the Crown, within 20 Business Days after this Deed becomes unconditional, will subject to *clause 13* and *clause 17*:

- 9.1 establish a trust which will be the Land Acquisition Trust. The terms on which the Land Acquisition Trust is established will be those set out in the trust deed, a copy of which is attached as *Attachment 6* (with such amendments as the Crown and the Trust Board may agree);
- 9.2 for the purposes of settling the Land Acquisition Trust, pay to the Land Acquisition Trustee an amount calculated in accordance with *clause 13.1* as the capital of the Land Acquisition Trust. The Capital will be paid by the Crown to the Land Acquisition Trustee during the 5 years after the date on which this Deed becomes unconditional in six instalments as follows:
  - 9.2.1 the first instalment will be a nominal amount paid to the Land Acquisition Trustee on the date on which the Land Acquisition Trust is established;
  - 9.2.2 the second instalment will be paid within 40 Business Days after the completion of the 18 month period referred to in *clause 8.2*. The Crown will pay four further annual instalments;
  - 9.2.3 the amount of each instalment will be determined by the Crown. As far as is practicable, the Crown will endeavour to make each instalment (other than the first instalment paid under *clause 9.2.1*) equal to the others, but the Crown may, in calculating each instalment, reserve a reasonable amount to ensure that the Crown does not pay the Land Acquisition Trustee more than the amount of the Capital;
  - 9.2.4 if, at the date on which the last instalment is to be paid, the amount of the Capital cannot be finally determined, the Crown may defer the last instalment until the amount of the Capital is known or make a payment on account of the last instalment, with the balance to be paid when the amount of the Capital is known.

## 10 RIGHT OF FIRST REFUSAL

The Crown grants to the Land Holding Trustee a right of first refusal over the Residual Crown Land on the following terms:

- 10.1 Subject to *clause 10.6* and *clause 17*, the right will apply to any proposed sale of any Residual Crown Land by the Crown or the relevant Crown Body to anyone other than the Crown or another Crown Body. In the event of a sale of any Residual Crown Land by the Crown or any Crown Body to the Crown or a Crown Body, the right set out in this *clause 10* will continue in existence.

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- 10.2 The Crown or Crown Body proposing to sell any Residual Crown Land must give notice to the Land Holding Trustee of the proposed sale setting out the price and other proposed terms and giving the Land Holding Trustee one month to give notice to the Crown or the Crown Body that it will purchase the land on the terms set out in the notice. If the Land Holding Trustee gives such a notice it must purchase the land for the price, on the terms, and at the date specified in the notice given to the Land Holding Trustee by the Crown or the Crown Body.
- 10.3 If the Land Holding Trustee does not give a notice to the Crown or Crown Body within the one month period referred to in the notice given under *clause 10.2* (time being of the essence) that it will purchase the relevant Residual Crown Land on such terms, the Crown or Crown Body will be entitled to sell that land to any person. However,:
- 10.3.1 if the Crown or Crown Body proposes to sell the relevant Residual Crown Land at a price or on terms more favourable to a purchaser than those set out in the notice given under *clause 10.2*, the Crown or Crown Body must give another notice to the Land Holding Trustee in accordance with *clause 10.2* and the procedure set out in that clause will apply again; and
- 10.3.2 if the Crown or Crown Body has not entered into an agreement to sell the relevant Residual Crown Land at a price or on terms which are not more favourable to a purchaser than those set out in the notice given under *clause 10.2* on or before the date which is 2 years after the end of the one month period referred to in the most recent notice given in respect of the relevant Residual Crown Land under *clause 10.2*, and the Crown or Crown Body proposes to sell that parcel of Residual Crown Land, the Crown or Crown Body must again give notice to the Land Holding Trustee in accordance with *clause 10.2* and the procedure set out in that clause will apply again.
- 10.4 The Crown will include in the Bill introduced in Parliament to give legislative effect to the Settlement, a provision incorporating the right referred to in this *clause 10* and to provide a mechanism for the right to be noted on the titles (if any) of the relevant Residual Crown Land while the right continues in force or, where there is no title for any part of the relevant Residual Crown Land, for the right to be noted on the title when the title is created. The Crown will arrange for the District Registrar of Lands to provide to Waikato-Tainui quarterly reports listing all Residual Crown Land in respect of which the right has been noted on the title in the previous quarter.

- 10.5 The right will continue in force in respect of any Residual Crown Land held by a Crown Body even if the Crown or a Crown Body ceases to be the owner of the Crown Body, but will not affect the right of the Crown or a Crown Body to sell any Crown Body or require the Crown or a Crown Body to offer to the Land Holding Trustee a right to buy the Crown Body.
- 10.6 The right referred to in this clause will be subject to, and will not apply in respect of, any parcel of Residual Crown Land until after the Crown or Crown Body 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 any Crown Body's current policy to provide tenants of houses owned by the Crown or a Crown Body 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:
- 10.6.1 the terms of any gifts or endowments relating to the parcel of land or any improvements on the land; and
  - 10.6.2 the terms of any trust relating to the parcel of land or any improvements on the land; and
  - 10.6.3 any feature of the title to the parcel of land held by the Crown or a Crown Body which prevents or limits the right of the Crown or Crown Body to transfer the parcel of land or any improvements on the land; and
  - 10.6.4 any other legal requirement which impedes the Crown's or the Crown Body's ability to transfer the parcel of land or any improvements on the land and which the Crown or Crown Body cannot satisfy after taking reasonable steps to do so. For the avoidance of doubt, "reasonable steps" does not include initiating a change in the law.

The Crown or the Crown Body will diligently and expeditiously seek to satisfy the above requirements with a view to removing any impediment to the transfer of such land to the Land Holding Trustee.

- 10.7 The right referred to in this clause will terminate in respect of any Residual Crown Land at the time of the occurrence of the first of the following events:
- 10.7.1 the exercise of the right by the Land Holding Trustee;

10.7.2 the disposal of the Residual Crown Land under *clause 10.3* where *clause 10.3.1* and *clause 10.3.2* do not apply;

10.7.3 the disposal of Residual Crown Land to any person to whom it has been offered under section 40 of the Public Works Act or equivalent or to any person having a prior right to it under the other requirements referred to in *clause 10.6* or, in the case of any Residual Crown Land which is a house owned by the Crown or Crown Body, its disposal to the existing tenant.

At the time the right terminates, any notation of the right on the title for the relevant land will be removed.

10.8 The provisions of this *clause 10* shall apply to any parcel of Rejected Land in the period before that Rejected Land becomes Residual Crown Land as if a notice had been given in respect of such parcel under *clause 10.2* offering such parcel for sale on the terms and for the price specified in *clause 5* in respect of that parcel, the Land Holding Trustee had not given a notice pursuant to *clause 10.3* within the period prescribed in that clause and the one month period referred to in *clause 10.2* had expired on the date that Waikato-Tainui exercise their rights under *clause 8* in respect of that parcel. Once any parcel of the Rejected Land becomes Residual Crown Land, this *clause 10* will apply to any proposal to sell such parcel.

10.9 On the passing of the legislation referred to in *clause 19*, including a provision which provides for a right of first refusal as described in this *clause 10*, the legislation will govern the rights and obligations of the Crown, any Crown Body, the Land Holding Trustee and Waikato-Tainui in relation to the right of first refusal to the exclusion of this clause.

## 11 INTEREST

Subject to *clause 17*, the Crown will pay interest to the Land Holding Trustee on behalf of Waikato-Tainui from 21 December 1994, being the date of the Heads of Agreement, on the diminishing balance of the value of the redress to be provided by the Crown (being the Redress Value less the amount referred to in *clause 13.1.2* and the amount of costs reimbursed to the Trust Board by the Crown (pursuant to *clause 4.5*) before 21 December 1994) at a rate of 8.8716 per cent per annum. The balance on which interest will be payable will be reduced by:

11.1 The Transfer Value of any Settlement Property transferred to the Land Holding Trustee determined pursuant to *clause 18* at the date of each such transfer (subject to *clause 12*); and

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- 11.2 the amounts of any payments of Capital to the Land Acquisition Trustee under *clause 9* at the date of each such payment; and
- 11.3 the amount of any of the costs referred to in *clause 13.1.3* (other than those reimbursed to the Trust Board before 21 December 1994) when they are or were reimbursed to the Trust Board by the Crown.

Interest will be calculated on a daily balance and will be payable half-yearly in arrears and will be subject to normal taxation law. The first payment of interest will be made on the Business Day which falls 5 Business Days after the date on which this Deed becomes unconditional for the period from 21 December 1994 to the date of the payment, and the subsequent payments will be made at half yearly intervals thereafter, apart from the last payment, which will be made at the same time as the last element of the Redress Value is provided.

## **12 DELAY IN TRANSFER OF SETTLEMENT PROPERTIES**

- 12.1 Waikato-Tainui and the Land Holding Trustee agree that the transfers of Settlement Properties to the Land Holding Trustee under *clause 5* or *clause 6* will take place on the last Business Day of the quarter specified in column 2 of *Attachment 2* or *Attachment 3* or on such other date as the Crown and the Land Holding Trustee agree.
- 12.2 If the Land Holding Trustee is unable to accept such a transfer (other than as a result of the exercise by Waikato-Tainui of their right under *clause 8* to elect not to take any Settlement Property), interest on the Transfer Value or the Settlement Property will no longer be payable from the last Business Day of the quarter specified in column 2 of *Attachment 2* or *Attachment 3* for the transfer of that Settlement Property or such other agreed date or, if the Crown was not, at that date, ready to transfer the Settlement Property, from the date on which the Crown was ready to transfer the Settlement Property.
- 12.3 If interest ceases to be payable under *clause 12.2*, the rental agreed for the relevant Settlement Property (less any holding costs incurred by the Crown) will be payable to the Land Holding Trustee from the date on which interest ceases to be payable.

## **13 CALCULATION OF CAPITAL**

- 13.1 The parties agree that the Capital will be calculated by deducting from the Redress Value the following amounts:
- 13.1.1 the aggregate Transfer Values of the Settlement Properties transferred to the Land Holding Trustee and the aggregate Transfer Values of any Settlement Properties

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resumed under the Memorials and transferred to the Land Holding Trustee or any other entity representing Waikato-Tainui; and

- 13.1.2 \$4,123,000 being the agreed value of the Te Rapa Air Force Base which was transferred by the Crown to trustees who hold it for the benefit of Waikato-Tainui in 1993 as an advance on the Settlement; and
- 13.1.3 the amount of the Trust Board's research, negotiation and other assistance costs reimbursed to the Trust Board by the Crown since 21 September 1992 and the amount of any further costs for which the Crown reimburses the Trust Board after the date of this Deed; and
- 13.1.4 any accumulated rentals paid to the Land Holding Trustee under the Crown Forest Assets Act 1989 (not including any rentals paid to the Land Holding Trustee as proprietor under any Crown forestry licence after the transfer of the relevant land to the Land Holding Trustee or any money received from the Crown Forestry Rental Trust as payment of costs for the preparation and presentation of the Claimants' claim to the Maramarua forest).
- 13.2 If, for any reason, the amounts referred to in *clause 13.1.1* to *clause 13.1.4* exceed the Redress Value then:
- 13.2.1 no amount will be payable by the Crown under *clause 9*; and
- 13.2.2 the Land Holding Trustee will have the option of rejecting Settlement Properties having Transfer Values at least equal to the excess or of purchasing any Settlement Properties having Transfer Values at least equal to the excess or a combination of the two.
- 13.3 The option referred to in *clause 13.2.2* must be exercised by the Land Holding Trustee within 30 Business Days after the Crown notifies the Land Holding Trustee that the amounts referred to in *clause 13.1.1* to *clause 13.1.4* exceed the Redress Value.
- 13.4 The option may be exercised by the Land Holding Trustee giving notice to the Crown setting out its intention to reject any Settlement Property or to purchase any Settlement Property or Settlement Properties. If the Land Holding Trustee gives a notice of intention to purchase any Settlement Property, it must purchase and pay for any Settlement Property referred to in the notice on the date specified in column 2 of *Attachment 2* or *Attachment 3* on the terms specified in *clause 5* or *clause 6*, as appropriate, with any necessary modifications.

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- 13.5 If the Land Holding Trustee exercises the option referred to in *clause 13.2.2* to reject any Settlement Properties, those properties will be removed from *Attachment 2* or *Attachment 3* accordingly.
- 13.6 If the Land Holding Trustee fails to exercise the option referred to in *clause 13.2.2*, it will be deemed to have rejected the Settlement Properties which would otherwise have been transferred to it last, unless that would lead to the Maramarua Forest being deemed to be rejected, in which case the Settlement Properties which would otherwise have been transferred immediately before the Maramarua Forest will be deemed to have been rejected.

#### **14 WAIKATO-TAINUI'S OBLIGATIONS**

Waikato-Tainui agree:

- 14.1 to ensure that, within 5 Business Days after this Deed becomes unconditional, the Land Holding Trust (which Waikato-Tainui intends to be a charitable trust) is established on the terms set out in the trust deed, a copy of which is attached as *Attachment 7* (with such amendments as the Crown and the Trust Board may agree) and the Land Holding Trustee is appointed; and
- 14.2 to support the passing of the legislation referred to in *clause 19* and any other legislation required to give effect to this Deed and to achieve certainty, finality and durability of the obligations undertaken by each party in order to achieve the Settlement; and
- 14.3 subject to *clause 17.3*, to the removal of Memorials from the titles of land within the Waikato-Tainui Claim Area apart from the Listed Properties and the removal of the obligation to impose Memorials on the titles to such land; and
- 14.4 that, except to the extent necessary to give effect to the Settlement, the right of Waikato-Tainui or any party acting on its behalf to receive accumulated rentals and compensation under the Crown Forest Assets Act 1989 will cease to operate in respect of Crown forests within the Waikato-Tainui Claim Area after the relevant provision in the legislation referred to in *clause 19* comes into force (but without prejudicing any right which the Claimants may have to apply to the Crown Forestry Rental Trust for payment of costs for the preparation and presentation of their claim to the Maramarua forest) or any right of the Land Holding Trustee to rentals as proprietor as referred to in *clause 13.1.4*; and
- 14.5 that the declarations made by the Court of Appeal in *Tainui Maaori Trust Board v Attorney-General* [1989] 2 NZLR 513 (CA 126/89), the interim orders made by Justice Greig by consent in those proceedings, and the undertaking set out in a letter dated 30 March from

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the Crown Law Office on behalf of the Crown will no longer apply, and to initiate or support a discontinuance of the court proceedings as specified in *clause 20*; and

- 14.6 that any land bank arrangement will cease to operate within the Waikato-Tainui Claim Area after this Deed becomes unconditional (except to the extent necessary to give effect to this Deed); and
- 14.7 to use their best endeavours to ensure that the Overlapping Claims are withdrawn by the parties making those claims on the basis that they have been settled by this Deed; and
- 14.8 to forgo redress in relation to their claim to the land referred to in *clause 16.3*, other than as provided in that clause; and
- 14.9 to endorse any application to the Waitangi Tribunal by the Crown for a case to be stated to the Maori Appellate Court to determine any interests in relation to the Maramarua Lands and any other applications to any court to determine those interests, to provide information to enable the determination of such applications, to endorse the need to determine these matters at the hearing of such applications and otherwise to support steps taken by the Crown to resolve the Cross Claims.

## **15 ACKNOWLEDGEMENTS BY WAIKATO-TAINUI**

Waikato-Tainui acknowledge that:

- 15.1 the Crown has acted honourable and reasonable in relation to the Settlement; and
- 15.2 the Settlement is fair, final and durable; and
- 15.3 their agreement to the Settlement is entered into with knowledge of the Crown's proposed policy for settling natural resources claims. Such knowledge does not reflect acceptance of that policy by Waikato-Tainui; and
- 15.4 this Deed and the legislation referred to in *clause 19* will, when this Deed becomes unconditional, settle the Raupatu Claims including those related to coal, other minerals and forests and the raupatu aspects of other grievances held by Waikato-Tainui which relate to land (not including the Waikato River and the West Coast Harbours) in the Waikato-Tainui Claim Area (which does not include the Waiuku and Wairoa blocks) and the Crown is released and discharged in respect thereof; and

- 15.5 the parties intend that the rights and obligations on the part of Waikato-Tainui in this Deed are for the benefit of, and binding upon, Waikato-Tainui and that the Settlement is not for the benefit of any individual, single marae or single hapuu.

## **16 ACKNOWLEDGEMENTS BY BOTH PARTIES**

- 16.1 The parties acknowledge that the public acknowledgement of the wrong done and the redress to be provided under the Settlement reflects:

16.1.1 the final amount of land confiscated and the death and destruction visited on Waikato-Tainui (it being the largest confiscation by area); and

16.1.2 the manner by which Waikato-Tainui's grievance came about; and

16.1.3 the seriousness with which the Crown view raupatu;

and that, accordingly, the Redress Value represents 17% of the value of the redress deemed to have been set aside by the Government for Historical Claims on 21 September 1992 including the 1992 settlement of the fisheries claims (and approximately 20% of the redress for all such Historical Claims excluding those fisheries claims). The parties also agree to the relativity mechanism set out in *Attachment 9*.

- 16.2 The Crown acknowledges that the Crown has not asked Waikato-Tainui to concur with, and Waikato-Tainui has never concurred with, the concept of the settlement envelope or its quantum.

- 16.3 The parties acknowledge that the approximately 19,000 hectares (approximately 47,000 acres) of land (not including the Waikato River and the West Coast Harbours) within the Waikato-Tainui Claim Area administered by the Department of Conservation is significant to Waikato-Tainui. In recognition of the fact that that land is held by the Crown on behalf of all New Zealanders, for the purposes of conservation, and therefore is significant for all New Zealanders, Waikato-Tainui in exercising their mana and as a free gift will through the Settlement give up their claim to that land and forgo further redress in respect of that claim, except the right of first refusal referred to in *clause 10*.

## **17 CONDITION**

- 17.1 The Settlement is conditional on the passing of the legislation referred to in *clause 19* by a majority of the House of Representatives which, in the sole discretion of the Crown, is satisfactory to the Crown and the provision of redress by the Crown under *clause 4*, *clause*

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5, *clause 6* and *clause 9* will take place, and the provisions of *clause 10* and *clause 11* will take effect, only after that the legislation has come into force.

- 17.2 If the legislation referred to in *clause 19* has not been passed by 31 December 1995, then either party may, by notice to the other, terminate this Deed. If that happens, this Deed will be at an end and neither party will have any rights or obligations under it. The parties agree that this Deed will be treated as having been entered into on a “without prejudice” basis until it becomes unconditional.
- 17.3 The parties acknowledge that the Maramarua Lands are the subject of a competing claim by the Hauraki Maaori Trust Board (Wai 373).  
Accordingly:
- 17.3.1 It will be necessary for that matter to be resolved in favour of either the Claimants or the Hauraki Maaori Trust Board by an appropriate authority or by agreement between the Claimants and the Hauraki Maaori Trust Board before the transfer of the Maramarua Lands or any portion of the Maramarua Lands and payment of any accumulated rentals, and the removal of Memorials on the titles of the Maramarua Lands can take place. Both parties will endeavour to have the issue resolved expeditiously;
- 17.3.2 In the event that it is finally determined or agreed that the proper claimant is the Hauraki Maaori Trust Board, then the Memorials on the titles to the Maramarua Lands will not be removed under *clause 14.3*, the Maramarua Lands or any portion of the Maramarua Lands will be deleted from the Settlement Properties to be transferred to the Land Holding Trustee, and the accumulated rentals from the Maramarua forest or the relevant portion of them will not be paid to the Land Holding Trustee with a consequential increase to the amount of the Capital;
- 17.3.3 If any Settlement Properties which are Maramarua Lands (other than the Maramarua forest) are transferred to Waikato-Tainui before the proper claimant for the Maramarua Lands is determined or agreed, such properties will be transferred subject to Memorials. Such Memorials will be removed if it is subsequently determined or agreed that the Claimants are the proper claimants;
- 17.3.4 If, at the date which is 5 years after the date on which this Deed becomes unconditional the proper claimant for the Maramarua Lands had not been determined or agreed, the Maramarua forest will not be transferred to the Land Holding Trustee at that date, and the Crown will pay the remainder of the Capital to the Land Acquisition Trustee. However, if it is subsequently determined that the Claimants are the proper claimants for the Maramarua forest or any portion of

it, the Land Holding Trustee will have an option to purchase with respect to the Maramarua forest or the relevant portion of it on the following terms:

- (i) the option must be exercised by the Land Holding Trustee within 30 Business Days after it is determined or agreed that the claimants are the proper claimants;
- (ii) the price will be determined by agreement between the Crown and the Land Holding Trustee or, in the absence of agreement, by the process outlined in *Attachment 8* being undertaken again;
- (iii) the option will lapse if not exercised by the end of the 30 Business Day period referred to in *clause 17.3.3(l)*;
- (iv) the terms of purchase will otherwise be as specified in *clause 5* with any necessary modifications.

17.3.5 If, after the full Redress Value has been provided to Waikato-Tainui, Waikato-Tainui or any party acting on their behalf become entitled to the accumulated rentals from the Maramarua forest or any portion of it (not including any rentals paid to the Land Holding Trustee as proprietor under any Crown forestry licence after the transfer of the relevant land to the Land Holding Trustee or any money received from the Crown Forestry Rental Trust as payment of costs for the preparation and presentation of the Claimants' claim to the Maramarua forest), Waikato-Tainui will take such steps as are required to ensure that the total amount of redress received by Waikato-Tainui does not exceed the Redress Value, either by waiving that entitlement or accounting to the Crown for any accumulated rentals received.

## **18 VALUATION OF SETTLEMENT PROPERTIES AND FIXING OF RENTAL**

The Transfer Value of each parcel of Settlement Land and each parcel of Improved Land (or where relevant, any combination of parcels of Settlement Land or Improved Land which are identified in *Attachment 2* or *Attachment 3* as a portfolio) will be the value determined using the methodology and in accordance with the process outlined in *Attachment 8* except the land described in CT 53C/662 (South Auckland Registry) (No. 4 Dairy Farm) for which the Transfer Value will be \$2,100,000 (GST exclusive). Where any Settlement Property is to be leased to any Crown Body pursuant to *clause 5.2* or *clause 6.2*, 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 8*. For the avoidance of doubt, the Crown agrees that if, for any reason, a Crown Body

does not participate in, or agree to accept the outcome of, the process referred to in this clause, that process will proceed between the Crown and Waikato-Tainui only and the Crown and Waikato-Tainui will be bound by the outcome notwithstanding that the Crown Body has not participated in the process or agreed to accept its outcome.

## 19 INTRODUCTION OF LEGISLATION

The Crown agrees that it will propose for the consideration of Parliament legislation to give effect to the Settlement, and to achieve certainty in respect of, and to record the approval by Parliament of, the Settlement. The proposed legislation shall include provision:

- 19.1 for such matters as are necessary to give effect to the trust deed for the Land Acquisition Trust and the Land Holding Trust; and
- 19.2 for a mechanism which permits the Land Holding Trustee, if it elects to do so, to hold in the name of Potatau Te Wherowhero any Settlement Properties, any other properties which have been purchased by the Land Holding Trustee, the former Te Rapa Air Force Base and the former Hopuhopu Military Base; and
- 19.3 for the removal of Memorials and titles to land within the Waikato-Tainui Claim Area (apart from the Listed Properties) when this Deed becomes unconditional or, in the case of any title to the Maramarua Lands, when it is determined or agreed that the Claimants or any other party representing Waikato-Tainui are the proper claimant in respect of that part of the Maramarua Lands to which the title relates; and
- 19.4 for the removal of the obligation to impose Memorials on the titles to land within the Waikato-Tainui Claim Area; and
- 19.5 for the right of first refusal referred to in *clause 10* including the provision for a notation referring to the right to appear on the titles to land to which it applies as described in *clause 10.4*; and
- 19.6 for the payment to the Land Holding Trustee of the accumulated rentals held by the Crown Forestry Rental Trust relating to the Maramarua and Onewhero forests (subject to *clause 17.3*) and for the cessation of the right of Waikato-Tainui or any party acting on its behalf to receive accumulated rentals and compensation under the Crown Forest Assets Act 1989 in respect of Crown forests within the Waikato-Tainui Claim Area (but without prejudicing any right which the Claimants may have to apply to the Crown Forestry Rental Trust for payment of costs for the preparation and presentation of their claim to the Maramarua forest)

or any right of the Land Holding Trustee to rentals as proprietor as referred to in *clause 13.1.4*; and

- 19.7 for the cessation of the annuity of \$15,000 - \$17,000 per year which is payable to the Trust Board under sections 7(2), 7(2A) and 7(3) of the Maori Trust Boards Act 1955; and
- 19.8 for the discontinuance of any of the Overlapping Claims which the claimants have not withdrawn or agreed to withdraw and for the removal of the jurisdiction of the Waitangi Tribunal to hear further raupatu claims with respect to the Waikato-Tainui Claim Area other than the Excluded Claims and the Cross Claims; and
- 19.9 for the appointment of the Head of the Kahui Ariki for the time being recognised by the Waikato-Tainui tribes or his or her nominee to be a permanent member of the Waikato Conservation Board or any Conservation Board which assumes the responsibilities of the Waikato Conservation Board; and
- 19.10 that the Settlement is for the benefit of all Waikato-Tainui collectively, and not for the benefit of any individual, single marae or single hapuu; and
- 19.11 for any other provisions required to achieve certainty, finality and durability of the Settlement and to give effect to this Deed.

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

## **20 PROCEDURES REQUIRED TO DISCONTINUE PROCEEDINGS**

- 20.1 Waikato-Tainui will on or before the date on which this Deed becomes unconditional obtain from the plaintiff in the litigation referred to in *clause 14.5* and deliver to the Crown a notice of discontinuance of the proceedings in respect of that litigation signed by the solicitor for the plaintiff to those proceedings. In the event that Waikato-Tainui are unable to provide prior to the date specified above a notice of discontinuance:
  - 20.1.1 Waikato-Tainui will continue to use their best endeavours to secure a notice of discontinuance from the plaintiff in the litigation; and

- 20.1.2 Waikato-Tainui acknowledge that the Crown will introduce legislation to terminate such proceedings on the same basis as if they had been discontinued by the plaintiff.
- 20.2 Waikato-Tainui will ensure that counsel for the Claimants will, immediately after this Deed becomes unconditional, advise the Waitangi Tribunal by written memorandum in a form approved by the Crown of the Settlement, the terms on which the Settlement has been reached, and the matters which are excluded from the Settlement and request that the Tribunal amend its register to reflect that the Waikato-Tainui Claim has been settled. The Crown will ensure that counsel for the Crown signs an acknowledgement of the matters referred to in the memorandum in accordance with the requirements of the Waitangi Tribunal.

## 21 GOODS AND SERVICES TAX

The amount of Capital payable by the Crown to the Land Acquisition Trustee is intended by the parties to be received by the Land Acquisition Trustee without any obligation for the Land Acquisition Trustee to account to the Inland Revenue Department for any GST. Similarly, it is intended that the transfer of the Settlement Properties to the Land Holding Trustee will not give rise to any obligation for the Land Holding Trustee to account to the Inland Revenue Department for any GST. If a GST liability exists or arises, it is intended by the parties that no net detriment or benefit should result to the Land Acquisition Trustee or the Land Holding Trustee or the Crown. To this end the parties agree the following:

- 21.1 if the payment of any instalment of the Capital to the Land Acquisition Trustee or the transfer of any Settlement Property to the Land Holding Trustee (or the payment of any indemnity payment made under this clause) results in the Land Acquisition Trustee or the Land Holding Trustee being required to account for output tax as provided by the Goods and Services Tax Act 1985, the Crown will indemnify the Land Acquisition Trustee or the Land Holding Trustee against that GST liability and, on the Business Day on which the Land Acquisition Trustee or the Land Holding Trustee accounts to the Inland Revenue Department for such output tax, the Crown must (subject to *clause 21.2*) pay to the Land Acquisition Trustee or the Land Holding Trustee the amount of such GST liability and any GST paid on that payment;
- 21.2 if, for whatever reason, the Land Acquisition Trustee or the Land Holding Trustee obtains a refund or credit in respect of any output tax for which an indemnity payment is made by the Crown to the Land Acquisition Trustee or the Land Holding Trustee under *clause 21.1*, 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 Land Acquisition Trustee or the Land Holding 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.

## **22 STAMP DUTY**

The Crown acknowledges that the transfers of the Settlement Properties to the Land Holding Trustee, being transfers to which the Crown is a party, will be exempt from stamp duty under section 13(1)(a) of the Stamp and Cheque Duties Act 1971.

## **23 ENTIRE AGREEMENT**

This Deed, and the trust deed for the Land Acquisition Trust, the Leases and the documents evidencing the transfer of the Settlement Properties to the Land Acquisition Trustee and the mandates from Ngaa Marae Toopu and the Trust Board which are attached to this Deed as *Attachment 12* constitute the entire agreement between the parties in relation to the matters referred to in this Deed. This Deed supersedes the Heads of Agreement and 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.

## **24 EXCLUDED CLAIMS: WITHOUT PREJUDICE**

24.1 The Crown acknowledges that the position of Waikato-Tainui in relation to the Waikato River is as follows:

24.1.1 Waikato-Tainui's claim to the Waikato River arises as a result of the raupatu;

24.1.2 Waikato-Tainui have a special relationship with the Waikato River since the Waikato River is the ancestor of Waikato-Tainui and the water is the life blood of the ancestor;

24.1.3 the Waikato River determines the identity and wellbeing of Waikato-Tainui and their rangatiratanga over the Waikato River is confirmed by the Treaty of Waitangi;

24.1.4 for Waikato-Tainui the Waikato River means "the Waikato River from the Huka Falls to the mouth and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation and floodplains as well as its metaphysical being";

24.1.5 one of the issues which Waikato-Tainui will raise in their claim relating to the Waikato River to the Waitangi Tribunal is the issue that the creation of the

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marginal strips by the Crown has divorced and continues to divorce Waikato-Tainui further from the Waikato River and is inconsistent with the Treaty of Waitangi and Waikato-Tainui will be claiming the marginal strips as part of their claim to the Waikato River;

24.1.6 this Deed will not affect any claims, rights and interests of Waikato-Tainui in their relationship with the Waikato River.

24.2 The Crown agrees that it will ensure that the marginal strips adjacent to the Waikato River remain in Crown ownership until Waikato-Tainui's claim to the Waikato River is resolved.

24.3 Waikato-Tainui acknowledge that the Crown's acknowledgement in *clause 24.1* and its agreement in *clause 24.2* do not prejudice the Crown's ability to dispute Waikato-Tainui's position as outlined in that clause in the context of Waikato-Tainui's claim to the Waikato River, to argue that the marginal strips do not form part of the Waikato River or to contend that the definition of the Waikato River is narrower than that set out in *clause 24.1.4*.

24.4 The Crown acknowledges that this Deed will not affect any claims of Waikato-Tainui or any rights and interests which Waikato-Tainui may have in their relationship with the Waikato River.

24.5 The parties agree that:

24.5.1 the Settlement will not affect the Excluded Claims (including the claims to the Waikato River, the West Coast Harbours and the Wairoa and Waiuku blocks) or any remedies which Waikato-Tainui wish to pursue in respect thereof; and

24.5.2 the Settlement is, without prejudice to the positions of the parties or the Claimants in relation to the Excluded Claims (including the claims to the Waikato River, the West Coast Harbours and the Wairoa and Waiuku blocks). However, Waikato-Tainui acknowledge that the retention of Memorials on the titles for the Listed Properties means that Waikato-Tainui can pursue the remedy which arises from land being subject to Memorials in respect of their claim to the Waikato River only in respect of those properties. The Crown acknowledge that the removal of Memorials from land adjacent to the Waikato River other than the Listed Properties does not prejudice Waikato-Tainui's ability to claim that the land which was formerly subject to Memorials is part of the Waikato River; and

- 24.5.3 a raupatu argument is reserved to the Claimants in their claim to the Waikato River, the West Coast Harbours and the Wairoa and Waiuku blocks; and
- 24.5.4 the Settlement will not be affected in any way by the outcome of any of the claims by Waikato-Tainui or any party representing Waikato-Tainui to the Waikato River and the West Coast Harbours or the Waiuku or Wairoa blocks; and
- 24.5.5 Waikato-Tainui regard the Waikato River as their Tuupuna; and
- 24.5.6 References in this Deed to the “Waikato River” are to be read as reflecting the differences between the Crown and Waikato-Tainui as to the definition of that term and as to the boundaries of the Waikato River.

## **25 DECLARATION BY CROWN**

The Crown declares that the Prime Minister is authorised to sign this Deed on behalf of the Crown.

## **26 MANDATE OF WAIKATO-TAINUI**

By the execution of this Deed, Waikato-Tainui confirm that Te Arikinui Dame Te Atairangikaahu has been given a mandate from Waikato-Tainui and the Claimants properly authorising her to:

- 26.1 conclude the Waikato-Tainui raupatu claim negotiations by her signing this Deed on behalf of Waikato-Tainui; and
- 26.2 approve the essential terms of the deed establishing the Land Holding Trust, the transfer of the Settlement Properties to the Land Holding Trustee on behalf of Waikato-Tainui, the terms on which the Land Holding Trustee will hold the Settlement Properties on an interim basis and approving the process for agreeing the final management structure for the holding and managing of the Settlement Properties and the establishment of scholarships and endowed colleges; and
- 26.3 approve the essential terms of the deed establishing the Land Acquisition Trust and the payment of the Capital to the Land Acquisition Trustee; and
- 26.4 to take the steps referred to in *clause 20*.

The Crown confirms that it is satisfied with that mandate.

**27 NOTICES**

27.1 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:*

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

Facsimile: 04 4733 482

*Waikato-Tainui:*

C/- Tainui Maaori Trust Board  
Tainui Maaori Trust Board Headquarters  
Te Rapa Complex  
State Highway 1  
(PO Box 10392)  
HAMILTON

Facsimile: 07 8493 832

- 27.2 Delivery may be effected by hand, by post with postage prepaid, or by facsimile.
- 27.3 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 notice or other communication will be deemed to have been delivered on the next Business Day.
- 27.4 A notice or other communication delivered by pre-paid post will be deemed to have been received on the 2<sup>nd</sup> Business Day after posting.
- 27.5 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.

**28 NO ASSIGNMENT**

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

**29 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.

### 30 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of the parties.

### 31 RIGHTS AND OBLIGATIONS OF OTHER PARTIES

By the execution of this Deed on their behalf, the Claimants agree to the terms of this Deed and agree with the Crown that they will perform any obligations which they are required to perform under this Deed.

### 32 APPOINTMENT

Waikato-Tainui appoint Robert Te Kotahi Mahuta or such other person or body as Mr Mahuta (or, on his death or incapacity, the Land Holding 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, to waive any provision of this Deed or to agree to any amendment of this Deed on behalf of Waikato-Tainui and on behalf of the Claimants.

### 33 LAND HOLDING TRUSTEE

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

### 34 DEFINITIONS

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;

“**Capital**” means the sum calculated in accordance with *clause 13.1* to be paid by the Crown to the Land Acquisition Trustee under *clause 9*;

“**Coalcorp**” means Coal Corporation of New Zealand Limited;

“**Coalcorp Land**” means the properties in *Attachment 2* as in respect of which Coalcorp is named in column 4 of *Attachment 2* and in respect of which the symbol 2A appears in column 3 of *Attachment 2*;

“**Claimants**” means the claimants in respect of the Waitangi Tribunal claim registered as Wai 30, being Robert Te Kotahi Mahuta on behalf of himself and on behalf of the members of Waikato-Tainui, the members of the Tainui Maaori Trust Board and Nga Marae Toopu;

**“Cross Claims”** means:

- (i) The Wai 373 claim to the Waitangi Tribunal relating to Maramarua State Forest and surrounding lands and interests in those lands; and
- (ii) The Wai 389 claim to the Waitangi Tribunal being the claim by Ngati Raukawa; and
- (iii) The Wai 443 claim to the Waitangi Tribunal being the claim by Ngati Raukawa; and
- (iv) The Wai 454 claim to the Waitangi Tribunal being the claim by Walter Taipari and others;

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

**“Crown Body”** means the Crown or a Crown Entity or a State Enterprise or any company which is wholly-owned by a Crown Entity or a State Enterprise;

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

**“Crown Forestry Rental Trust”** means the forestry rental trust established under the Crown Forest Assets Act 1989;

**“Excluded Claims”** means:

- (i) Any claims by Waikato-Tainui to the rivers and harbours within the Waikato-Tainui rohe and to the Wairoa and Waiuku blocks and including those parts of the Wai 30 claim to the Waitangi Tribunal relating to the Waikato River and the West Coast Harbours, being paragraphs A1-5 and C8-9 of the Statement of Claim dated 16 March 1987; and
- (ii) Any claims by individual hapu of Waikato-Tainui to non-raupatu land outside of the Waikato-Tainui Claim Area; and
- (iii) The Wai 185 claim to the Waitangi Tribunal being the claim by A Wirihana in relation to the Pepepe land;

**“Heads of Agreement”** means the Heads of Agreement between the Crown and Robert Te Kotahi Mahuta on behalf of himself, Nga Marae Toopu, the Tainui Maaori Trust Board and the various hapu of Waikato-Tainui dated 21 December 1994;

**“Historical Claims”** has the meaning given to it in *Attachment 9*;

**“Improved Land”** means the parcels of land described in *Attachment 3* and the improvements on that land as well as any fittings, plant, equipment, livestock 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;

**“Land Acquisition Trust”** means the trust to be established by the Crown under *clause 9.1*;

**“Land Acquisition Trustee”** means the trustee for the time being of the Land Acquisition Trust acting in that capacity;

**“Land Holding Trust”** means the trust to be established by Waikato-Tainui under *clause 14.1*;

**“Land Holding Trustee”** means the trustee for the time being of the Land Holding Trust acting in that capacity;

**“Lease”** means each lease to be granted by the Crown referred to in *clause 7*;

**“Lease Form”** means one of the standard forms of lease set out in Part A of *Attachment 5*;

**“Listed Properties”** means any parcels of land which are, at the date of this Deed, subject to Memorials and which are adjacent to the Waikato River. For the purposes of this definition and for no other purpose, and specifically, without prejudice to *clause 24*, a parcel of land is adjacent to the Waikato River if:

- (i) it has a common boundary with the bed of the Waikato River (being the space of land which the waters of the River cover at its fullest flow without overtopping its banks (“the bed”));
- (ii) it has a common boundary with a marginal strip, esplanade strip or esplanade reserve which itself has a common boundary with the bed of the Waikato River.

Where any area of land has been subdivided since the time of the notation of the Memorial on its title, the whole area of land prior to the subdivision will be deemed for the purposes of this definition to be adjacent to the Waikato River if any subdivided part of it is adjacent to the Waikato River;

**“Maramarua Lands”** means the land described in *Attachment 10*;

**“Memorials”** means the 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;

**“Overlapping Claims”** means the Raupatu Claims other than the Waikato-Tainui Claim, including the Wai 306 claim to the Waitangi Tribunal being the claim by Garth Banks on behalf of Ngaati haua and the Wai 494 claim to the Waitangi Tribunal being the claim by Taka o te Rangi Taka on behalf of Ngaati Koheriki;

**“raupatu”** means the confiscation of land referred to in *Recital C*;

**“Raupatu Claims”** means all claims by or on behalf of Waikato-Tainui or any hapuu of Waikato-Tainui arising out of the loss of land and of interests in land in the Waikato-Tainui Claim Area by raupatu, and whether arising at law or otherwise, and including –

- (i) Parts of the Wai 30 claim to the Waitangi Tribunal, namely:
  - Statement of Claim of 16 March 1987 (#1.1 on Waitangi Tribunal record);
  - Amended Statement of Claim of 16 March 1987 (#1.1(a));
  - Letter of 12 August 1987 (#1.1(b)); and
  - Statement of Claim of 17 June 1991 (#1.1(c)).
- (ii) The Wai 306 claim to the Waitangi Tribunal being the claim by Garth Banks on behalf of Ngaati Haua; and
- (iii) The Wai 494 claim to the Waitangi Tribunal being the claim by Taka o te Rangi Taka on behalf of Ngaati Koheriki

including all claims to coal, other minerals and forests within the Waikato-Tainui Claim Area but excluding the Excluded Claims.

**“Redress Value”** means \$170,000,000 (one hundred and seventy million dollars);

**“Rejected Land”** means any parcels of Settlement land or Improved Land (except those in respect of which column 3 of *Attachment 2* states that such parcels are currently owned by Electricity Corporation of New Zealand Limited or any wholly-owned subsidiary of it) in respect of which Waikato-Tainui have exercised their rights under *clause 8*;

**“Residual Crown Land”** means:

- (i) any freehold parcels of real property (including improvements) situated in the Waikato-Tainui Claim Area which is owned by the Crown or any of the Crown Bodies described in *Attachment 11* at the date on which this Deed becomes

unconditional and which are not Settlement Properties other than as a result of the exercise by Waikato-Tainui of their rights under *clause 8*; and

- (ii) any parcels of Rejected Land in respect of which the relevant Crown Body has not entered into an agreement to sell which complies with *clause 10* on or before the date which is 2 years after the date on which Waikato-Tainui exercised its rights under *clause 8*;

**“Settlement”** means the settlement to be effected pursuant to this Deed;

**“Settlement Land”** means the parcels of land described in *Attachment 2* (but, where there are improvements on the relevant parcel of land, does not include those improvements);

**“Settlement Properties”** means all of the properties comprising the Settlement Land and the Improved Land and **“Settlement Property”** means any one of the Settlement Properties or any grouping referred to in *clause 5.7* and *clause 6.7*;

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

**“Transfer Value”** in respect of any Settlement Property has the meaning set out in *clause 18*;

**“Trust Board”** means the Tainui Maaori Trust Board;

**“Waikato-Tainui”** means the Waikato descendants of the Tainui Waka who suffered or were affected by the confiscation of their lands by the New Zealand Government under the New Zealand Settlements Act 1863 being the following hapuu of Waikato-Tainui:

Ngaitai	Ngaati Pou	Ngaati Kuiaarangi
Ngaati Tamaoho	Ngaati Ruru	Ngaati Tai
Ngaati Koheriki	Ngaati Werokoko	Ngaati Maahanga
Ngaati Te Ata	Ngaati Paretekawaa	Ngaati Tamainupo
Te Aakitai	Ngaati Ngutu	Ngaati Wairere
Ngaati Paretauua	Ngaati Hikairo	Ngaati Makirangi
Ngaati Tiipaa	Ngaati Puhiawe	Ngaati Koroki
Ngaati Aamaru	Ngaati Mahuta(North)	Ngaati Raukawa ki Panehakua
Ngaati Naho	Ngaati Mahuta (South)	Ngaati Tahinga
Ngaati Hine	Ngaati Te Wehi	Ngaati Apakura
Ngaati Taratikitiki	Ngaati Whaawaakia	Ngaati Hauaa

“**Waikato-Tainui Claim**” means the following parts of the Wai 30 claim:

- (i) Statement of Claim of 16 March 1987 (#1.1 on Waitangi Tribunal record);
- (ii) Amended Statement of Claim of 16 March 1987 (1.1(a));
- (iii) Letter of 12 August 1987 (#1.1(b)); and
- (iv) Statement of Claim of 17 June 1991 (#1.1(c)),

excluding the Excluded Claims;

“**Waikato-Tainui Claim Area**” means the land bordered with bold black lines on Survey Office plan number 60013, lodged in the office of the Department of Survey and Land Information at Hamilton and approved for Parliamentary purposes, a copy of which is attached as *Attachment 1* (which excludes the Waiuku and Wairoa blocks);

“**West Coast Harbours**” means the harbours of Kawhia, Aotea, Whaingaroa, and Manukau including their waters, their beds and their foreshores.

## 35 INTERPRETATION

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

- 35.1 Headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 35.2 Words or phrases (other than proper names) appearing in this Deed with capitalised initial letters and the term “raupatu” are defined terms and bear the meanings given to them in this Deed;
- 35.3 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;
- 35.4 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 35.5 References to Recitals, clauses and Attachments are to Recitals and clauses of, and Attachments to, this Deed;
- 35.6 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;

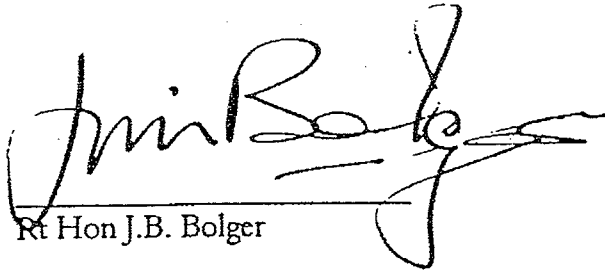
- 35.7 A reference to a party to this Deed or any other document or agreement includes that party's successors;
- 35.8 A reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, notated or replaced from time to time;
- 35.9 References to monetary amounts are to New Zealand currency;
- 35.10 References to "written" or "in writing" include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

### **36 ATTACHMENTS**

The parties agree that the Attachments to this Deed are the documents identified as such which have been signed by a representative of the Crown and a representative of the Trust Board on behalf of Waikato-Tainui for identification purposes. 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 on 22 May 1995

SIGNED for and on behalf of  
HER MAJESTY THE QUEEN in right  
of New Zealand by the Right Honourable  
JAMES BRENDAN BOLGER,  
Prime Minister of New Zealand  
in the presence of:

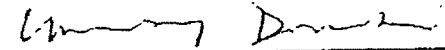
  
Rt Hon J.B. Bolger

Witness:

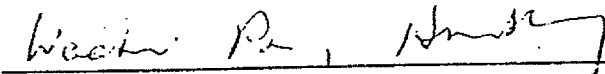
Signature:

  
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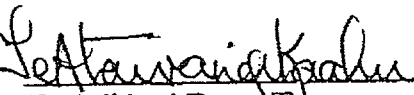
Occupation:

  
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Address:

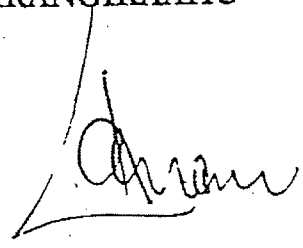
  
\_\_\_\_\_

SIGNED for and on behalf  
of WAIKATO-TAINUI and the  
Claimants by TE ARIKINUI  
DAME TE ATAIRANGIKAAHU  
in the presence of:

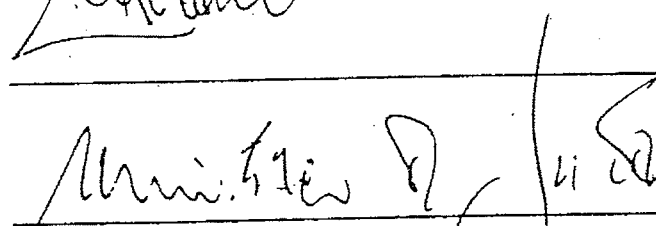
  
Te Arikiniui Dame Te  
Atairangikaahu

Witness:

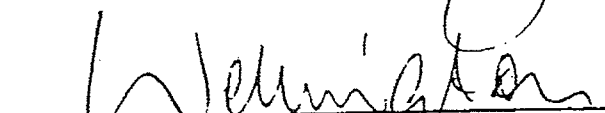
Signature:

  
\_\_\_\_\_

Occupation:

  
\_\_\_\_\_

Address:

  
\_\_\_\_\_

## ATTACHMENT 13

### Te Muruhara A Te Karauna

1. E whakaae ana Te Karauna ko oona reo ko oona mana i hara ki nga tikanga o Te Tiriti o Waitangi i taa raatou whakawhiunga i te Kiingitanga me Waikato ki ngaa hooia i Mangataawhiri i te marama o Hōngongoi 1863 i raro i ta raatou tohu whakaingoa. “he iwi whakakeke a Waikato”.
2. E whakaatu ana Te Karauna i toona pouri tino hoohonu, aa, kaaore he mutunga o taana tuku whakapaa mo ngaa taangata i mate i nga parekura whakaeke o aana hooia, aa, mo te taaorotanga hoki o ngaa whenua tae atu ki te whakararururutanga o te nohoanga o ngaa Iwi.
3. E whakaae ana Te Karauna teeraa ko nga raupatutanga o ngaa whenua me ngaa rawa i whakamanahia e te Ture Mo Te Whakanoho i Te Hunga Maarie, ara, te Iwi Paakeha 1863, a Te Paaremata o Niu Tireni he mahi tino hee, e peehi kino nei i a Waikato mai raano. E noho pani tonu nei raatou i roto i te rawakoretanga me to hauwareatanga o nga mahi toko i te ora, o ngaa mahi whanaketanga mo ngaa Iwi o Waikato.
4. E maarama pai ana Te Karauna teeraa ko teenei pouritanga tino toimaha, kaaore nei anoo kia whakatikaina i raro i te Tiriti o Waitangi kei te whakatāiri i eenei puutake e rua o Waikato: “i riro whenua atu, me hoki whenua mai” te tuatahi; “ko te moni hei utu mo te hara” te tuarua. Hei whakatutuki, e whakaae ana Te Karauna ki te whakahoki ki te iwi nga whenua e taea ai i roto i teenei whakaaetanga kei raro i toona mana i Waikato.
5. E Whakaae ana Te Karauna teeraa anoo nga whenua raupatu o Waikato te tino taakoha nui ki te rangatiratanga me te whanaketanga o Niu Tireni ahakoa kei te noho rawakore tonu te Iwi o Waikato i oona whenua me nga hua o aua whenua.
6. Nooreira ka kimi Te Karauna, mo te taha ki ngaa Iwi Katoa o Niu Tireni, i te huarahi e whakamārie ai i eenei tuukinotanga, araa, mo te waahanga e taea ai, aa, i teenei whaktutukitanga o teenei take whakamau o Te Raupatu. He whakaotinga teenei i raro i ngaa take raarangi o Te Pukapuka Whakaaetanga i hainatia i te 22 o ngaa raa o Haratua 1995, maana hei arahi atu ki te ao hoou o te mahi tahi ki Te Kiingitanga me Waikato.