

**TRUSTEES OF THE HERETAUNGA TAMATEA SETTLEMENT TRUST**

**and**

**HE TOA TAKITINI**

**and**

**THE CROWN**

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**DEED RECORDING ON-ACCOUNT ARRANGEMENTS**  
**in relation to**  
**HERETAUNGA TAMATEA HISTORICAL CLAIMS**

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## DEED RECORDING ON-ACCOUNT ARRANGEMENTS

**THIS DEED** is made between

**TRUSTEES OF THE HERETAUNGA TAMATEA SETTLEMENT TRUST**

and

**HE TOA TAKITINI**

and

**THE CROWN**

## 1 BACKGROUND

- 1.1 Heretaunga Tamatea mandated He Toa Takitini to negotiate a deed of settlement with the Crown by Deed of Mandate on 25 August 2010.
- 1.2 The Crown recognised the mandate on 4 February 2011. Heretaunga Tamatea, He Toa Takitini and the Crown have entered into an agreement in principle dated 11 June 2014.
- 1.3 He Toa Takitini and the Crown are now in negotiations to settle the Heretaunga Tamatea historical claims.
- 1.4 The parties acknowledge and agree:
  - 1.4.1 Heretaunga Tamatea established the Heretaunga Tamatea Settlement Trust by trust deed dated 30 June 2015;
  - 1.4.2 the Heretaunga Tamatea Settlement Trust will be the post settlement governance entity for the Heretaunga Tamatea settlement; and
  - 1.4.3 the Crown will provide the Heretaunga Tamatea Settlement Trust with a payment on-account of the settlement of the Heretaunga Tamatea historical claims according to the terms and conditions of this deed.

## 2 ON-ACCOUNT ARRANGEMENTS

### ON-ACCOUNT PAYMENT

- 2.1 Within ten business days of the date of this deed, the Crown will pay to the Heretaunga Tamatea Settlement Trust \$5,000,000, being the **on-account payment**.
- 2.2 The Heretaunga Tamatea Settlement Trust acknowledges and agrees that:
- 2.2.1 the on-account payment forms part of the financial and commercial redress to be provided by the Crown in the settlement of Heretaunga Tamatea historical claims;
  - 2.2.2 the on-account payment will be deducted from the financial and commercial redress amount offered by the Crown in the Heretaunga Tamatea settlement;
  - 2.2.3 the on-account payment will comprise two allocations and is made with the intention that:
    - (a) \$3,000,000 is to be used to invest in marae and education initiatives; and
    - (b) \$2,000,000 is to be used to establish a habitat restoration fund;
  - 2.2.4 any interest payable by the Crown to the Heretaunga Tamatea Settlement Trust on the on-account payment will only be payable for the period:
    - (a) beginning on the date of the agreement in principle; and
    - (b) ending on the day before the payment date.
- 2.3 This deed:
- 2.3.1 records on-account arrangements in relation to the Heretaunga Tamatea historical claims;
  - 2.3.2 subject to clause 2.2, does not settle or otherwise affect those claims; but
  - 2.3.3 may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to the Heretaunga Tamatea Settlement Trust on-account of the settlement of Heretaunga Tamatea historical claims.

### SETTLEMENT

- 2.4 Except as provided in this deed, the parties' rights and obligations remain unaffected.

### 3 MISCELLANEOUS

#### AMENDMENT

- 3.1 This deed may be amended only by a written amendment signed by the parties.

#### ENTIRE AGREEMENT

- 3.2 This deed:
- 3.2.1 constitutes the entire agreement in relation to the matters in it; and
  - 3.2.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

#### NO WAIVER OR ASSIGNMENT

- 3.3 Except as provided in this deed:
- 3.3.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and
  - 3.3.2 a single, or partial, exercise of a right or power under this deed, does not preclude:
    - (a) a further exercise of that right or power; or
    - (b) the exercise of another right or power; and
  - 3.3.3 a person may not transfer or assign a right or obligation under this deed.

#### COUNTERPARTS

- 3.4 This deed may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that the parties are not signatories to the original or same counterpart.

## **4 TAX**

### **INDEMNITY**

- 4.1 The provision of the on-account payment, or an indemnity payment, to the Heretaunga Tamatea Settlement Trust is not intended to be:
- 4.1.1 a taxable supply for GST purposes; or
  - 4.1.2 assessable income for income tax purposes.
- 4.2 The Crown must, therefore, indemnify the Heretaunga Tamatea Settlement Trust for:
- 4.2.1 any GST payable by the Heretaunga Tamatea Settlement Trust in respect of the provision of the on-account payment or an indemnity payment; and
  - 4.2.2 any income tax payable by the Heretaunga Tamatea Settlement Trust as a result of the on-account payment, or an indemnity payment, being treated as assessable income of the Heretaunga Tamatea Settlement Trust; and
  - 4.2.3 any reasonable cost or liability incurred by the Heretaunga Tamatea Settlement Trust in taking, at the Crown's direction, action:
    - (a) relating to an indemnity demand; or
    - (b) under clause 4.13 or clause 4.14.1(b).

### **LIMITS**

- 4.3 The tax indemnity does not apply to the following (which are subject to normal tax treatment):
- 4.3.1 the Heretaunga Tamatea Settlement Trust's:
    - (a) use of the on-account payment or an indemnity payment;
    - (b) payment of costs, or any other amounts, in relation to the on-account payment; or
    - (c) receipt of any income from the on-account payment or an indemnity payment.

### **ACKNOWLEDGEMENTS**

- 4.4 To avoid doubt, the parties acknowledge:
- 4.4.1 the on-account payment is provided:
    - (a) on-account of the future settlement redress of Heretaunga Tamatea historical claims in relation to the Treaty of Waitangi; and

(b) with no other consideration being provided;

4.4.2 nothing in this part is intended to imply that –

(a) the provision of the on-account payment, or an indemnity payment, is –

(i) a taxable supply for GST purposes; or

(ii) assessable income for income tax purposes; or

(b) if the Heretaunga Tamatea Settlement Trust is a charitable trust, or other charitable entity, it receives –

(i) the on-account payment, assets or rights other than for charitable purposes; or

(ii) income other than as exempt income for income tax purposes; and

4.4.3 the Heretaunga Tamatea Settlement Trust is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

#### **CONSISTENT ACTIONS**

4.5 Neither the Heretaunga Tamatea Settlement Trust, a person associated with it, or the Crown will act in a manner that is inconsistent with this part 4.

4.6 In particular, the Heretaunga Tamatea Settlement Trust agrees that:

4.6.1 from the payment date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and

4.6.2 neither it, nor any person associated with it, will claim with respect to the provision of the on-account payment, or an indemnity payment:

(a) an input credit for GST purposes; or

(b) a deduction for income tax purposes.

#### **INDEMNITY DEMANDS**

4.7 The Heretaunga Tamatea Settlement Trust and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the Heretaunga Tamatea Settlement Trust may be entitled to an indemnity payment.

4.8 An indemnity demand:

4.8.1 may be made at any time after the payment date; but

4.8.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:

- (a) specified in an assessment; or
- (b) a date for the payment of provisional tax; or
- (c) otherwise determined; and

4.8.3 must be accompanied by:

- (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and
- (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

### **INDEMNITY PAYMENTS**

4.9 If the Heretaunga Tamatea Settlement Trust is entitled to an indemnity payment, the Crown may make the payment to:

4.9.1 the Heretaunga Tamatea Settlement Trust; or

4.9.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the Heretaunga Tamatea Settlement Trust.

4.10 The Heretaunga Tamatea Settlement Trust must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of:

4.10.1 the due date for payment of the tax; or

4.10.2 the next business day after receiving the indemnity payment.

### **REPAYMENT**

4.11 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the Heretaunga Tamatea Settlement Trust must promptly repay to the Crown any amount that:

4.11.1 the Commissioner of Inland Revenue refunds or credits to the Heretaunga Tamatea Settlement Trust; or

4.11.2 the Heretaunga Tamatea Settlement Trust has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

4.12 The Heretaunga Tamatea Settlement Trust has no right of set-off or counterclaim in relation to an amount payable by it under clause 4.11.

### **RULINGS**

4.13 The Heretaunga Tamatea Settlement Trust must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of the on-account payment.

**CONTROL OF DISPUTES**

4.14 If the Heretaunga Tamatea Settlement Trust is entitled to an indemnity payment, the Crown may:

4.14.1 by notice to the Heretaunga Tamatea Settlement Trust, require it to:

- (a) exercise a right to defer the payment of tax; and/or
- (b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:
  - (i) a tax assessment; and/or
  - (ii) a notice in relation to the tax, including a notice of proposed adjustment; or

4.14.2 nominate and instruct counsel on behalf of the Heretaunga Tamatea Settlement Trust whenever it exercises its rights under clause 4.14.1; and

4.14.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

## 5 DEFINITIONS AND INTERPRETATION

### DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

**agreement in principle** means the agreement in principle entered into and dated 11 June 2014 by Heretaunga Tamatea, He Toa Takitini and the Crown recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling Heretaunga Tamatea historical claims; and

**assessable income** has the meaning given to it by section YA 1 of the Income Tax Act 2007; and

**business day** means the period of 9am to 5pm on any day other than –

- (a) a Saturday or a Sunday; or
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or
- (c) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or
- (d) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
- (e) a day that is observed as the anniversary of the province of –
  - (i) Wellington; or
  - (ii) Hawke's Bay; and

**Crown** has the meaning given to it in section 2(1) of the Public Finance Act 1989; and

**date of this deed** means the date this deed is signed by the parties; and

**deed** means this deed recording on-account arrangements between the Heretaunga Tamatea Settlement Trust, He Toa Takitini on behalf of Heretaunga Tamatea and the Crown, and that deed as amended from time to time; and

**financial and commercial redress** means the financial and commercial redress payable by the Crown pursuant to a deed of settlement for the settlement of Heretaunga Tamatea historical claims; and

**GST** means –

- (a) goods and services tax chargeable under the Goods and Services Tax Act 1985; and
- (b) includes, for the purposes of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of GST; and

**He Toa Takitini** means the representative group mandated by Heretaunga Tamatea and unconditionally recognised by the Crown on 4 February 2011 and which was incorporated under the Incorporated Societies Act 1908 on 23 December 2013; and

**Heretaunga Tamatea deed of settlement** means the Heretaunga Tamatea deed of settlement of historical claims to be signed between the Crown, Heretaunga Tamatea and the Heretaunga Tamatea Settlement Trust; and

**Heretaunga Tamatea historical claims** means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date (as defined in the Heretaunga Tamatea deed of settlement to be entered into between the Crown and Heretaunga Tamatea) that Heretaunga Tamatea had at, or at any time before, that date, or may have at any time after that date and that –

- (a) is, or is founded on, a right arising –
  - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
  - (ii) under legislation; or
  - (iii) at common law (including in relation to aboriginal title or customary law); or
  - (iv) from a fiduciary duty or otherwise; and
- (b) arises from or relates to acts or omissions before 21 September 1992 –
  - (i) by or on behalf of the Crown; or
  - (ii) by or under legislation; and

**Heretaunga Tamatea settlement** means the settlement of the Heretaunga Tamatea historical claims as agreed between the Crown and Heretaunga Tamatea; and

**Heretaunga Tamatea Settlement Trust** means the trust of that name established by the Heretaunga Tamatea Settlement Trust deed acting by and through the trustees of that trust; and

**Heretaunga Tamatea Settlement Trust trust deed** means the deed of trust establishing the Heretaunga Tamatea Settlement Trust dated 30 June 2015 and includes the schedules and any amendments to that deed; and

**income tax** means income tax imposed under the Income Tax Act 2007 and includes, for the purpose of part 4, any interest or penalty payable in respect of, or on-account of, the late or non-payment of income tax; and

**indemnity demand** means a demand made by the Heretaunga Tamatea Settlement Trust under part 4 for an indemnity payment; and

**indemnity payment** means a payment made by the Crown to the Heretaunga Tamatea Settlement Trust under part 4; and

**mandated negotiators** means the following individuals:

- (a) Elizabeth Munroe, Hastings, Barrister:

(b) Brian Charles Morris, Lower Hutt, Publisher/Company Director:

(c) Peter Alexander Paku, Hastings, Retired; and

**on-account payment** means the sum referred to in clause 2.1; and

**payment date** means the date the on-account payment is paid to the Heretaunga Tamatea Settlement Trust in accordance with clause 2.1; and

**provision**, in relation to the on-account payment, includes its allotting, payment, credit, transfer, vesting, making available, creation, or grant; and

**tax** includes income tax and GST; and

**tax indemnity** means an indemnity given by the Crown under part 4; and

**taxable activity** has the meaning given to it by section 6 of the Goods and Services Tax Act 1985; and

**taxable supply** has the meaning given to it by section 2 of the Goods and Services Tax Act 1985; and

**trustees of the Heretaunga Tamatea Settlement Trust** means the trustees from time to time of that trust; and

**use**, in relation to the on-account payment or an indemnity payment, includes dealing with, payment, transfer, distribution, or application.

## **INTERPRETATION**

5.2 In the interpretation of this deed, unless the context otherwise requires:

5.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;

5.2.2 defined terms have the meanings given to them by this deed but if there are any inconsistencies between the definitions in this deed and the Heretaunga Tamatea deed of settlement, the definitions in the Heretaunga Tamatea deed of settlement shall prevail;

5.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;

5.2.4 the singular includes the plural and vice versa;

5.2.5 a word importing one gender includes the other genders;

5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;

5.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;

5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally;

- 5.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;
- 5.2.10 a reference to a monetary amount is to New Zealand currency;
- 5.2.11 a reference to written or in writing includes all modes of presenting or reproducing words, figures, and symbols in a tangible and permanently visible form;
- 5.2.12 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
- 5.2.13 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives, any legislation;
- 5.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the working party and the Crown;
- 5.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and
- 5.2.16 a reference to time is to New Zealand time.

**HERETAUNGA TAMATEA  
DEED OF ON-ACCOUNT SETTLEMENT**

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**SIGNED** as a deed on

**SIGNED** by the trustees of the  
**HERETAUNGA TAMATEA  
SETTLEMENT TRUST**

in the presence of:

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Dr David Collins Tipene-Leach  
*Rongomaraeroa Marae*

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Signature of Witness

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Elizabeth Helen Graham  
*Pukehou Marae*

Witness Name:

Occupation:

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Peter Alexander Paku  
*Ruahāpia Marae*

Address:

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Margaret Akata McGuire  
*Kohupātiki Marae*

---

Brian Charles Morris  
*Rakautātahi Marae*

---

Penelope Hinehau WhitiWhiti  
*Omahu Marae*

---

Kellie Anne-Marie Jessup  
*Mihiroa Marae*

---

Tanira Hemana Te Rohu Te Au  
*Houngarea Marae*

---

Ngāmoa Hukapapa Gillies  
*Waimārama Marae*

---

Robert Lui Clarke  
*Taraia Marae*

---

Erin Marie Sandilands  
*Whatuiāpiti Marae*

---

John-Barry Heperi Smith  
*Te Rongo a Tahu Marae*

---

Charmaine Elizabeth Pene  
*Rūnanga Marae*

---

Ngahiwi Tomoana  
*Waipatu Marae*

---

Kohine Gwen Rata  
*Mataweka Marae*

**HERETAUNGA TAMATEA  
DEED OF ON-ACCOUNT SETTLEMENT**

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Thomas Eruera Mulligan  
*Matahiwi Marae*

---

Lisa Gay Tuhi  
*Te Awhina Marae*

---

Cordry Tawa Huata  
*Mangaroa Marae*

---

Koreene Hariata Henry  
*Kairakau marae*

---

Kevin Ronald Tamati  
*Korongatā Marae*

---

Waireamana Kara  
*Tapairu Marae*

---

Henare Matua Kani  
*Pourerere Marae*

---

Leon Fredrick Hawea  
*Kahurānaki Marae*

**SIGNED** for and on behalf of **HE TOA  
TAKITINI** by the Chair and mandated  
negotiators  
in the presence of:

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Dr David Collins Tipene-Leach, Chair

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Elizabeth Munroe, Negotiator

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Signature of Witness

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Brian Charles Morris, Negotiator

Witness Name:

Occupation:

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Peter Alexander Paku, Negotiator

Address:

**HERETAUNGA TAMATEA  
DEED OF ON-ACCOUNT SETTLEMENT**

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**SIGNED** for and on behalf of

**THE CROWN**

by the Minister for Treaty of Waitangi  
Negotiations in the presence of:

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Hon Christopher Finlayson

---

Signature of Witness

Witness Name:

Occupation:

Address:

**SIGNED** for and on behalf of

**THE CROWN**

by the Minister of Finance only in relation to  
the indemnities given in part 4 of this deed  
in the presence of:

---

Hon Simon William English

---

Signature of Witness

Witness Name:

Occupation:

Address: