

4 SETTLEMENT

ACKNOWLEDGEMENTS

- 4.1 Each party acknowledges that –
- 4.1.1 the Crown has to set limits on what and how much redress is available to settle historical claims; and
 - 4.1.2 it is not possible –
 - (a) to assess the loss and prejudice suffered by the Hapū as a result of the events on which the historical claims are or could be based; or
 - (b) to fully compensate the Hapū for all loss and prejudice suffered; and
 - 4.1.3 the Hapū intend their foregoing of full compensation to contribute to New Zealand's development; and
 - 4.1.4 the settlement is intended to enhance the ongoing relationship between the Hapū and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).
- 4.2 The Hapū acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair and the best that can be achieved in the circumstances.
- 4.3 Each party acknowledges that, in negotiating this settlement, within the context of wider settlement policy including the need by the Crown to consider the rights and interests of others, the other parties have acted with an open and honest intent in relation to the settlement.

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- 4.4 Therefore, on and from the settlement date, –
- 4.4.1 the historical claims are settled; and
 - 4.4.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 4.4.3 the settlement is final.
- 4.5 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.
- 4.6 Without limiting clause 4.5, nothing in this deed or the settlement legislation will –

DEED OF SETTLEMENT

4: SETTLEMENT

- 4.6.1 extinguish or limit any aboriginal title or customary right that the Hapū may have; or
- 4.6.2 constitute or imply an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or
- 4.6.3 except as provided in this deed or the settlement legislation –
- (a) affect a right that the Hapū may have, including a right arising –
 - (i) from 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
 - (v) otherwise; or
 - (b) be intended to affect any action or decision under the deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims; or
 - (c) affect any action or decision under any legislation and, in particular, under legislation giving effect to the deed of settlement referred to in clause 4.6.3(b), including –
 - (i) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
 - (ii) the Fisheries Act 1996; or
 - (iii) the Maori Fisheries Act 2004; or
 - (iv) the Maori Commercial Aquaculture Claims Settlement Act 2004.
- 4.7 Clause 4.6 does not limit clause 4.4.

REDRESS

- 4.8 The redress, to be provided in settlement of the historical claims, –
- 4.8.1 is intended to benefit the Hapū collectively; but
 - 4.8.2 may benefit particular members, or particular groups of members, of the Hapū if the governance entity so determines in accordance with the governance entity's procedures.

DEED OF SETTLEMENT

4: SETTLEMENT

IMPLEMENTATION

- 4.9 The settlement legislation will, on the terms provided by sections 14 to 19 of the draft settlement bill, –
- 4.9.1 settle the historical claims; and
 - 4.9.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and
 - 4.9.3 provide that the legislation referred to in section 16 of the draft settlement bill does not apply –
 - (a) to a redress property, or any RFR land; or
 - (b) for the benefit of the Hapū or a representative entity; and
 - 4.9.4 require any resumptive memorial to be removed from a computer register for, a redress property, or any RFR land; and
 - 4.9.5 provide that the rule against perpetuities and the Perpetuities Act 1964 does not –
 - (a) apply to a settlement document; or
 - (b) prescribe or restrict the period during which –
 - (i) the trustees of the Maungaharuru-Tangitū Trust, being the governance entity, may hold or deal with property; and
 - (ii) the Maungaharuru-Tangitū Trust may exist; and
 - 4.9.6 require the Secretary for Justice to make copies of this deed publicly available.
- 4.10 Part 1 of the general matters schedule provides for other action in relation to the settlement.