

This **Deed of Undertaking** is made on

2019

- between** (1) **Leith Pirika Comer** and **Catherine Moana Dewes** as Trustees of **Te Mana o Ngāti Rangitihī Trust (Te Mana)**
- and** (2) **Allan Hamiora Skipwith, Rangitihī Darrell Guy Pene** and **Watu Anne Mihinui** as Trustees of **Tuhourangi Tribal Authority (TTA)**

## Introduction

- A. Te Mana entered into an Agreement in Principle with the Crown on 22 December 2018 (the **AIP**) to settle the historical claims of Ngāti Rangitihī against the Crown.
- B. Under clause 7 of the AIP, Te Mana has agreed to work with the Crown in resolving overlapping claims with groups that the Crown has identified as having interests in the Ngāti Rangitihī area of interest, set out in Attachment 2, Map 1 to the AIP, which includes TTA, as a party represented by Te Pūmāutanga o Te Arawa Trust (**TPT**).
- C. Te Mana and TTA have written a joint letter to the Crown, dated 10 May 2019, attaching a joint submission (the **Joint Submission**) for the return of land at Waimangu of deep cultural significance to Ngāti Rangitihī and Tuhourangi, which is described in the Joint Submission (and being part of the Waimangu Scenic Reserve).
- D. The land at Otūkapuarangi, being part of the Waimangu Scenic Reserve and part of the Rotomahana Conservation Area, is of particular cultural significance to TTA and its beneficiaries, and TTA wishes to secure the return of this land for the Tuhourangi people.
- E. By this Deed of Undertaking (**Deed**), the parties agree:
- (i) to work together to jointly negotiate, in good faith, for the return of the freehold title to the Land on the basis of the terms and conditions set out in this Deed;
  - (ii) certain parameters in relation to the cultural redress that will be sought by Te Mana in pursuit of historical Treaty settlement; and
  - (iii) the terms of certain other arrangements in relation to the management of the Land, should it be returned as part of the Ngāti Rangitihī settlement.

## It is agreed

### 1. Definitions and interpretation

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In this Deed, unless the context otherwise requires:

**Administering Body** means the entity that is to be appointed to control and manage the Land pursuant to the Reserves Act 1977 (subject to any modifications contained in the DOS and/or the Settlement Legislation), being the entity established pursuant to clause 3.1, which, if applicable, will also manage any part of the Otūkapuarangi Land that does not have any reserves classification pursuant to clause 2.2(b);

**DOS** means the deed of settlement to be entered into between the Crown and New Te Mana to settle Ngāti Rangitihī's historical Treaty of Waitangi grievances;

**Land** means the Waimangu Land and the Otūkapuarangi Land together, or any part thereof (as applicable);

**New Te Mana** means, as the context requires, Te Mana or any new entity established to succeed Te Mana and receive Ngāti Rangitihī's settlement assets through the DOS (if any);

**Otūkapuarangi Land** means the land described in recital D, or any part of it (as applicable);

**Settlement Legislation** means the relevant legislation to be passed in order to give effect to the DOS;

**Waimangu Business** means Te Hononga o Tuhourangi me Ngāti Rangitihī Limited Partnership; and

**Waimangu Land** means the land described in recital C, or any part of it (as applicable).

## 2. Joint Negotiations and Land Transfers

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2.1 Te Mana and TTA agree:

- (a) to jointly negotiate with the Crown in good faith to seek the return of the freehold title to the Land on the basis of the terms contained in this Deed (**Joint Negotiations**);
- (b) that the Joint Negotiations are to be undertaken urgently with a view to concluding the Joint Negotiations as soon as reasonably practicable.

2.2 The parties will use all reasonable endeavours to procure, including (without limitation) through the Joint Negotiations, that the following matters are provided for in the DOS and effected by virtue of the commencement of the Settlement Legislation:

- (a) the freehold interests in the Land are vested by the Crown so that they are held as follows:
  - (i) **Waimangu Land:**
    - (A) New Te Mana; and
    - (B) TTA (or TTA's nominated entity),as tenants in common in equal shares (on a 50:50 basis); and
  - (ii) **Otūkapuarangi Land:** TTA (or TTA's nominated entity) as to 100%, (together the **Land Transfers**);
- (b) that that part of the Otūkapuarangi Land currently forming part of the Rotomahana Conservation Area has no classification assigned to it under the Reserves Act 1977 or the Conservation Act 1987;
- (c) other than as set out in paragraph (b) above, that the Land is reclassified as either local purpose reserve or recreation reserve pursuant to the Reserves Act 1977;
- (d) if the parties are not able to procure paragraph (c), that the leasing powers applying to a local purpose reserve or a recreation reserve under the Reserves Act 1977 apply to the Land and the Administering Body, notwithstanding the particular reserve classification of any vested land;
- (e) that the company or trust established by the parties in accordance with clause 3.1 is declared to be the Administering Body;

- (f) that the financial controls applying to administering bodies under Part 4 of the Reserves Act 1977 do not, to the extent it is beneficial to the parties, apply to the Land (including sections 78(1)(a), 79 to 81, and 88) so that (without limitation) the arrangements contemplated by clauses 4.2 and 4.3 can be executed;
- (g) that the concession granted to the Waimangu Business in respect of the Waimangu Land is either:
  - (i) assigned, novated or otherwise transferred from the Department of Conservation to New Te Mana and TTA; or
  - (ii) surrendered and a new lease and new contractual arrangements are granted by New Te Mana and TTA to the Waimangu Business on substantially similar terms (except as set out below),

so that all rental / concession fees are paid to New Te Mana and TTA in 50/50 shares; and
- (h) that the Crown indemnifies New Te Mana and TTA in respect of any taxation (of any kind) payable in connection with the Land Transfers, including (if applicable) in relation to the transfer of the Land from New Te Mana to TTA.

### 3. Administering Body

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#### 3.1 Establishment of Administering Body

New Te Mana and TTA will, no later than one month before the date on which the Settlement Legislation is due to commence, incorporate a company or settle a trust (depending on the structure agreed between the parties) for the purposes of being declared the Administering Body in accordance with 2.2(e).

#### 3.2 Ownership of Administering Body

If the entity referred to in clause 3.1 is a:

- (a) **company:** New Te Mana and TTA will each own 50% of the share capital of the Administering Body; or
- (b) **trust:** New Te Mana and TTA will each be the sole beneficiaries of the Administering Body.

#### 3.3 Governance of Administering Body

- (a) The governing body of the Administering Body (the **Administering Body Board**) will comprise two directors or trustees (as applicable) appointed by New Te Mana and two directors or trustees (as applicable) appointed by TTA (or such other number as is agreed in writing between the parties).
- (b) The initial members of the Administering Body Board will be selected by each party before the Administering Body is established under clause 3.1.
- (c) The parties will, simultaneously with the establishment of the Administering Body, enter into a shareholders' agreement and/or constitution or procure that the initial trustees selected by each party to comprise the Administering Body Board enter into a trust deed (as applicable) containing substantially the following terms:

- (i) that New Te Mana and TTA will have the power to replace and remove each director or trustee appointed to the Administering Body Board by it, but will have no power to replace and remove each director or trustee appointed by the other party;
- (ii) that the Administering Body board will manage the Land as follows:
  - (A) **Waimangu Land:** all decisions regarding the management and use of the Waimangu Land will be made on a unanimous basis; and
  - (B) **Otūkapuarangi Land:** all decisions regarding the management and use of the Otūkapuarangi Land will initially be made on a unanimous basis. However, in the event of a deadlock, the directors or trustees appointed by TTA will hold a casting vote in respect of all decisions;
- (iii) that the Administering Body Board will prepare regular (and at least quarterly) reports in respect of the current and proposed use of the Land which reports are to be provided to each of TTA and Te Mana (and, for TTA, to TPT);
- (iv) the Administering Body must, to the fullest extent possible within the relevant management framework established through the DOS and the Settlement Legislation, facilitate the development of the Otūkapuarangi Land including through the commercial arrangements referred to in clause 4.3(b); and
- (v) that the costs relating to the ongoing management of the Administering Body and the Administering Body Board will be shared between New Te Mana and TTA on a 50/50 basis.

## 4. Management of Land

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- 4.1 The Administering Body and the parties will manage the Land for the benefit of Ngāti Rangitihi and Tuhourangi in accordance with the below provisions.
- 4.2 In relation to the Waimangu Land, the parties agree that:
  - (a) the Waimangu Land will be managed by the Administering Body in a way that maximises value to the underlying land owners but having regard to the parties' respective cultural values;
  - (b) in the event that the Administering Body enters into any new commercial arrangements in respect of the use and/or development of the Waimangu Land (i.e. but not the Waimangu Business, which is already managed by its general partner, Waimangu Volcanic Valley (2017) Limited), the terms of that arrangement must (unless the parties agree in writing otherwise) provide for the following to be shared between TTA (or its nominee) and New Te Mana on an equal basis:
    - (i) any and all rent, licence fees and/or royalties, derived from the Waimangu Land;
    - (ii) any and all costs relating to the ongoing management of the Waimangu Land (including any rates, insurance and maintenance costs); and
    - (iii) any and all profits derived from the Waimangu Land.
- 4.3 In relation to the Otūkapuarangi Land, the parties agree that (unless the parties agree in writing otherwise):

- (a) the Otūkapuarangi Land will be managed by the Administering Body in a way that maximises value to the underlying land owners but having regard to the Tuhourangi cultural values;
- (b) in the event that the Administering Body enters into any new commercial arrangements in respect of the use and/or development of the Otūkapuarangi Land, the terms of that arrangement must (unless agreed in writing otherwise) provide for the following:
  - (i) any and all rent, licence fees and/or royalties, derived from the Otūkapuarangi Land will go solely to TTA (or its nominee) as the landowner; and
  - (ii) any and all profits derived from the use and/or development of the Otūkapuarangi Land will be shared between TTA (or its nominee) and New Te Mana on an equal basis; and
- (c) any and all costs relating to the ongoing management of the Otūkapuarangi Land (including any rates, insurance and maintenance costs) will be shared by the parties on an equal basis.

4.4 The parties agree that:

- (a) the research activities currently being carried out on the Land at the date of this Deed will be permitted to continue; and
- (b) to the maximum extent permitted by law, the provisions of the Property Law Act 2007 in relation to orders for division of property among co-owners (Part 6, Subpart 5) do not apply to the Land.

## 5. Future transfer of interests – Waimangu Land

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- (a) If, in future, either party wishes to sell, transfer, assign or otherwise dispose of all or any part of its freehold interest in the Waimangu Land, and the relevant legal framework allows this to occur, then an option in the first instance should be given to the other party to purchase or otherwise acquire the land.
- (b) It shall be a condition of any such transfer of the Waimangu Land that the transferee enters into a deed of covenant agreeing:
  - (i) to be bound by and comply with the provisions of this Deed; and
  - (ii) to carry out its business in a manner that gives expression to, and is consistent with, such cultural principles as reasonably requested by the remaining owner (including, for example, any principles of tikanga Māori).

## 6. Contemporary claim

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TTA undertakes to Te Mana that should TTA pursue a contemporary Treaty of Waitangi claim against the Crown, TTA will not as redress seek the return of any assets specified in the Ngati Rangitahi AIP.

## 7. Other cultural redress

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### 7.1 Reclassification of lakefront strip

Te Mana agrees and undertakes to TTA to seek from the Crown, as part of the redress package to be contained in the DOS, the reclassification of the lakefront strip from Te Ariki to Tapahoro (being part of the Lake Tarawera Scenic Reserve and more particularly described as part of Section 3 SO 354520) as an historic reserve pursuant to the Reserves Act 1977. To the extent that any documentation in respect of the constitution or reclassification of such historic reserve is drafted or amended for publication (including any management plan(s)), Te Mana agrees that it will procure (including seeking that the Crown procures) that any such documentation describes New Te Mana and TTA's respective interests in the underlying land on an equal basis.

### 7.2 Whenua rāhui/overlay classification

Te Mana agrees that it will, to the extent within its control, procure that any documentation included in the DOS and/or Settlement Legislation in connection with any whenua rāhui/overlay classification (including any statement of Ngāti Rangitihī values, protection principles or Director-General actions (**Whenua Rāhui Documentation**)) in respect of the Lake Tarawera Scenic Reserve (or any part of it) will describe New Te Mana and TTA's respective interests on an equal basis and will, to the maximum extent possible, contain the same wording as the Whenua Rāhui Documentation granted in favour of TPT/TTA in respect of the same area under the Affiliate Te Arawa Iwi/Hapū Deed of Settlement dated 11 June 2008.

### 7.3 Statutory acknowledgements/deeds of recognition

Te Mana agrees that it will not seek or accept from the Crown, as part of its redress package to be contained in the DOS, any 'statutory acknowledgements' or 'deeds of recognition' in respect of the Rotomahana Parekarangi blocks which were awarded to Tuhourangi by the Māori Land Court.

## 8. DOS and Settlement Legislation drafting

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If, during or subsequent to the Joint Negotiations, the Crown informs either party that it is likely that any of the matters referred to in this Deed (including, without limitation, the Land Transfers) will form part of the redress package offered by the Crown to New Te Mana under the DOS and the Settlement Legislation, Te Mana will allow TTA to participate in, and contribute to, the negotiation and drafting of the DOS and the Settlement Legislation as follows (in each case only to the extent that they relate to matters set out in this Deed):

- (a) Te Mana must ensure that TTA is able to participate in any discussions or meetings held between the Crown and Te Mana by:
  - (i) giving TTA reasonable prior notice (being not less than five working days) in writing of any discussions or meetings to be held between the Crown and Te Mana; and
  - (ii) giving TTA details of the likely agenda items for such discussions or meetings; and
- (b) the parties will work together in good faith to determine, and articulate to the Crown, a joint position on any relevant matters, and, in doing so, Te Mana must have regard to the views of TTA.

## 9. Dispute resolution

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The process for the resolution of any dispute which arises under or in connection with this Deed shall be as follows:

- (a) a party must notify the other party in writing that it considers a dispute exists and the parties will negotiate in good faith to resolve the dispute;
- (b) if the dispute remains unresolved after 20 working days from the date written notice is given, then the dispute shall be referred to the senior officers of the parties, who shall negotiate in good faith to resolve the dispute;
- (c) if the dispute remains unresolved after a further 10 working days, then the dispute shall be referred to the respective boards of trustees of the parties who shall negotiate in good faith to resolve the dispute;
- (d) if the dispute remains unresolved after a further 10 working days, then each party shall continue to attempt to resolve the dispute in good faith;
- (e) if the dispute remains unresolved two calendar months after notification under paragraph (a), the dispute shall be referred to an independent expert for determination of such dispute (the identity of the independent expert and the applicable process to be agreed between the parties); and
- (f) if, following the expert's determination, the dispute remains unresolved, then the dispute shall be referred to the arbitration of a single arbitrator to be agreed between the parties, or, failing agreement, to the arbitration of an arbitrator nominated by the President for the time being of the New Zealand Law Society (and every arbitration pursuant to this clause shall be in accordance with the provisions of the Arbitration Act 1996 or any successor legislation).

## 10. Joint Negotiations failure

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- 10.1 If, at any time during the Joint Negotiations, either party to this Deed considers, acting reasonably, that the Joint Negotiations are, or have been, unsuccessful then that party may, by giving written notice to Te Arawhiti (by letter or by email), end the Joint Negotiations. The relevant party will provide a copy of such written notice to the other party to this Deed.
- 10.2 Where a party to this Deed delivers to Te Arawhiti a notice in accordance with clause 10.1, this Deed will automatically terminate and will no longer be binding on either Te Mana or TTA.
- 10.3 If this Deed is terminated:
  - (a) it will be of no further force or effect and all parties shall be released from their obligations under this Deed (subject to clause 10.3(b)); and
  - (b) such termination is without prejudice to either party's rights or remedies under this Deed or otherwise at law in relation to any antecedent breach of this Deed.
- 10.4 Upon termination of this Deed for any reason, the provisions of clause 11 (except for the words "This Deed is legally binding" in clause 11.4), together with those other provisions of this Deed which are incidental to and required in order to give effect to those clauses, will remain in full force and effect.

## 11. General

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- 11.1 In relation to the Waimangu Business Deed of Limited Partnership (**LP Deed**), the parties agree, and will procure that their relevant related parties agree in writing at the time of executing this Deed, that neither party (nor any of their related parties) will bring any warning letter, legal suit, or any other proceeding or action the other party (or any of its related parties) alleging any breach of any rights set out in the LP Deed arising in connection with the provisions or performance of this Deed or the actions of the Administering Body (once established) and, to the extent the same are brought, the parties (and/or their relevant related parties, as applicable) will work together in good faith to defend any such claim.
- 11.2 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all prior agreements and understandings between the parties about its subject matter.
- 11.3 Each party will do all acts and things, including the execution of all relevant documents, as may be reasonable to implement and carry out its obligations under, and contemplated by, this Deed.
- 11.4 This Deed is legally binding and is governed by, and is to be construed in accordance with, the laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Deed.
- 11.5 This Deed, and the arrangements incidental to this Deed which are disclosed in this Deed, are commercially sensitive and, accordingly, will be kept confidential between the parties.
- 11.6 Neither party will, without the prior written consent of the other party, disclose the details of this Deed or the incidental arrangements (other than to their professional advisers for the purposes of progressing the Ngāti Rangitihī settlement or the Land Transfers or for any purpose connected with the negotiation of the Ngāti Rangitihī settlement or the Land Transfers). However, this clause does not preclude either party from disclosing such information to:
- (a) iwi members for the purposes of reporting or obtaining any required approvals for the Land Transfers (and, for Te Mana, the ratification of the DOS);
  - (b) the Crown for the purposes of finalising the negotiations relating to the Ngāti Rangitihī settlement; and
  - (c) any related entity (including, for TTA, TPT) for the purposes set out in this clause 11.6.
- 11.7 This Deed may be executed in counterparts (including .pdf copies) and, provided that each party has duly executed a counterpart, the counterparts together will constitute a binding and enforceable deed between the parties.

**Executed and delivered as a deed**

**SIGNED** by **Leith Pirika Comer** )  
as Trustee [and Chairperson] of )  
**Te Mana o Ngāti Rangitahi Trust** )  
in the presence of: )

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\_\_\_\_\_  
Witness Signature

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Place of residence

**SIGNED** by **Catherine Moana Dewes** )  
as Trustee of )  
**Te Mana o Ngāti Rangitahi Trust** )  
in the presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Place of residence

**SIGNED** by **Allan Hamiora Skipwith** )  
as Trustee and Chairperson of )  
**Tuhourangi Tribal Authority** )  
in the presence of: )

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Witness Signature

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Print Name

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Witness Occupation

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Place of residence

**SIGNED** by )  
**Rangitahi Darrell Guy Pene** )  
as Trustee of )  
**Tuhourangi Tribal Authority** )  
in the presence of: )

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Witness Signature

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Print Name

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Witness Occupation

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Place of residence

**SIGNED** by **Watu Anne Mihinui** )  
as Trustee of )  
**Tuhourangi Tribal Authority** )  
in the presence of: )

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Witness Signature

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Print Name

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Witness Occupation

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Place of residence

**SIGNED** by the following kaumātua of **Ngāti Rangitahi**:

**SIGNED** by the following kaumātua of **Tuhourangi**: