

**HAURAKI COLLECTIVE IWI NEGOTIATORS FOR
NGĀTI MARU, NGĀTI PĀOA,
NGĀTI TAMATERĀ, NGĀTI TARA TOKANUI
AND TE PATUKIRIKIRI**

and

THE CROWN

**DEED RECORDING POUARUA ON-ACCOUNT
ARRANGEMENTS**

**in relation to
PARE HAURAKI COLLECTIVE DEED**

JUNE 2013

DEED RECORDING POUARUA ON-ACCOUNT ARRANGEMENTS

THIS DEED is made between

HAURAKI COLLECTIVE IWI NEGOTIATORS FOR NGĀTI MARU, NGĀTI PĀOA, NGĀTI TAMATERĀ, NGĀTI TARA TOKANUI AND TE PATUKIRIKIRI

and

THE CROWN

1 BACKGROUND

- 1.1 The Iwi of Hauraki and the Crown have been in Te Tiriti o Waitangi/Treaty of Waitangi settlement negotiations since 2010.
- 1.2 The Iwi of Hauraki entered into a Framework Agreement between the Hauraki Collective and the Crown dated 1 October 2010.
- 1.3 The Iwi of Hauraki entered into iwi-specific individual Agreement in Principle Equivalents with the Crown dated 22 July 2011.
- 1.4 The Framework Agreement and Agreement in Principle Equivalents represent incremental steps towards comprehensive deeds of settlement between the Crown and the Iwi of Hauraki.
- 1.5 The Hauraki Collective Iwi Negotiators have been mandated by their respective iwi to negotiate settlements with the Crown on their appointing iwi's behalf and on that basis have the authority to enter into this deed on behalf of their appointing iwi.
- 1.6 The Crown has agreed, subject to certain conditions, to make a payment on-account of the Pare Hauraki collective deed to an entity representing five of the Iwi of Hauraki to enable that entity to acquire the Pouarua Dairy Complex.
- 1.7 The Hauraki Collective Iwi Negotiators are to establish the entity by 30 September 2013.

2 ON-ACCOUNT ARRANGEMENTS

On-Account Payment

- 2.1 The Crown will pay to the Pouarua on-account entity \$53,500,000 on receipt by the Crown of a written request from the Pouarua on-account entity which includes evidence of the date of the obligation to pay the purchase price under the purchase agreement. The Crown will make the payment on the later of the following dates:
- 2.1.1 5 business days after receipt by the Crown of the request:
- 2.1.2 5 business days before the date of the obligation to pay the purchase price under the purchase agreement.
- 2.2 The Hauraki Collective Iwi Negotiators acknowledge and agree that the full payment under clause 2.1:
- 2.2.1 will be applied to the \$53,500,000 purchase price, payable by the purchaser under the purchase agreement; and
- 2.2.2 forms part of and will be deducted from the financial redress amount of up to \$100,000,000 to be provided by the Crown, in the settlement of the historical claims of the Iwi of Hauraki.
- 2.3 The Hauraki Collective Iwi Negotiators and the Crown agree that payment under clause 2.1 will be allocated to and be deducted from the financial redress amount in respect of the settlement of the historical Treaty of Waitangi claims of each of the following Iwi of Hauraki in the following amounts whether the financial redress amount is delivered through the Pare Hauraki collective deed or through individual comprehensive settlements:

Iwi	On-account financial redress allocation	Iwi financial redress amount under Pare Hauraki collective deed	Balance financial redress amount under Pare Hauraki collective deed
Ngāti Maru	\$19,615,000	\$20,800,000	\$1,185,000
Ngāti Pāoa	\$15,625,000	\$16,000,000	\$375,000
Ngāti Tamaterā	\$15,300,000	\$18,000,000	\$2,700,000
Ngāti Tara Tokanui	\$2,710,000	\$6,000,000	\$3,290,000
Te Patukirikiri	\$250,000	\$2,000,000	\$1,750,000
	\$53,500,000		

- 2.4 The parties record, for the avoidance of doubt, that interest under the Pare Hauraki collective deed will be payable, in respect of each iwi financial redress amount, on:

2.4.1 the amount (as recorded in the table in clause 2.3) from the date to be specified in the Pare Hauraki collective deed; and

2.4.2 on the balance of that amount after deduction from it of the part of the payment under clause 2.1 allocated to it.

Effect of this deed

2.5 This deed:

2.5.1 records on-account arrangements in relation to the Iwi of Hauraki historical claims; and

2.5.2 subject to clause 2.2 does not settle or otherwise affect those claims.

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

Authority of the Hauraki Iwi Collective Negotiators

2.7 The Hauraki Collective Iwi Negotiators have been mandated by their respective iwi to negotiate settlements with the Crown on their appointing iwi's behalf and such mandates have been recognised by the Crown.

2.8 The Hauraki Iwi Collective Negotiators hereby warrant to the Crown that on the basis of clause 2.7 they have the authority:

- (a) to enter into this deed and to bind (subject to clause 3.1.2) their respective appointing iwi, and
- (b) to establish (subject to clause 3.1.2) the Pouarua on-account entity.

3 CONDITIONS

- 3.1 This deed and the Crown's obligation to make the payment under clause 2.1 is conditional upon:
- 3.1.1 the Hauraki Collective Iwi Negotiators establishing an entity which the Crown is satisfied is an appropriate entity to receive the Property on account of the redress under the Hauraki Collective deed; and
 - 3.1.2 the Crown being satisfied that those Iwi of Hauraki who will receive Pouarua on-account payments as specified in clause 2.3 have ratified this deed and the Pouarua on-account entity; and
 - 3.1.3 the Pouarua on-account entity entering into a binding agreement with Landcorp to purchase the Property which will be conditional only on the Office of Treaty Settlements providing the funding for the purchase of the Property by the Pouarua on-account entity; and
 - 3.1.4 the Pouarua on-account entity signing the deed of covenant in the form provided in the schedule (under which the Pouarua on-account entity agrees, among other things, to comply with its obligations under this deed).
- 3.2 The conditions in clause 3.1 are to be satisfied on or before 30 September 2013.
- 3.3 The conditions in clause 3.1 are inserted for the benefit of the Crown and cannot be waived by the Hauraki Collective Iwi Negotiators.
- 3.4 If the conditions are not satisfied by the date specified in clause 3.2 then this deed will be at an end and neither party will have any claim against the other in respect of it.
- 3.5 For the avoidance of doubt, the Crown may be satisfied with ratification of the Pouarua on-account entity and of this deed even though not every Iwi of Hauraki has ratified or will be represented by the Pouarua on-account entity.

4 MISCELLANEOUS

NOTICES

- 4.1 Unless otherwise provided in this deed the following provisions apply to any notice given under this deed:

Notices to be signed

- 4.1.1 the person giving the notice must sign it but, where the person is a trustee, a minimum of two of the trustees must sign it;

Notices to be in writing

- 4.1.2 the notice must be in writing addressed to the recipient at its address or facsimile number or electronic email address;

Addresses and facsimile numbers of Hauraki Collective Iwi Negotiators and the Crown

- 4.1.3 the address, facsimile number and electronic email address of the Crown is:

C/- The Solicitor-General
Crown Law Office
Level 10
Unisys House
56 The Terrace
PO Box 2858
WELLINGTON 6140
Facsimile No. 04 473 3482
Email address: library@crownlaw.govt.nz;

- 4.1.4 the address and facsimile number and electronic email address of the Hauraki Collective Iwi Negotiators is:

Paul F Majurey
Level 19
48 Emily Place
PO Box 1585
Shortland Street
AUCKLAND 1140
Facsimile No: 09 309 1821
Email address: paul.majurey@ahjmlaw.com;

Change of address or facsimile number

- 4.1.5 the address or facsimile of a party may be changed by notice of one party to the other;

Delivery

- 4.1.6 delivery of a notice may be made:

- (a) by hand to the recipient's address;

- (b) by posting an envelope with pre-paid postage addressed to the recipient's address;
- (c) by facsimile to the facsimile number of the recipient; or
- (d) by sending it by electronic mail to the recipient's electronic email address;

Timing of delivery

4.1.7 a notice delivered:

- (a) by hand will be treated as having been received at the time of delivery; or
- (b) by pre-paid post will be treated as having been received on the second day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; or
- (d) by electronic mail will be treated as having been received on the day of successful delivery of the mail; and

Deemed date of delivery

4.1.8 if a notice is treated as having been received on a day that is not a business day, or after 5pm on a business day, that notice is (despite clause 4.1.7) to be treated as having been received the next business day.

AMENDMENT

4.2 This deed may be amended only by a written amendment signed by the Hauraki Collective Iwi Negotiators and the Crown.

ENTIRE AGREEMENT

4.3 This deed:

- 4.3.1 constitutes the entire agreement in relation to the matters in it; and
- 4.3.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it including those referred to in the background section of this deed.

NO WAIVER OR ASSIGNMENT

4.4 Except as provided in this deed:

- 4.4.1 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
- 4.4.2 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

4.4.3 a person may not transfer or assign a right or obligation under this deed.

4.5 For the avoidance of doubt, clause 4.4.1 does not apply in relation to the Property after its transfer to the Pouarua on-account entity.

TAX

4.6 The payment by the Crown to the Pouarua on-account entity under clause 2.1, or an indemnity payment under clause 4.7, is not intended to be –

4.6.1 a taxable supply for GST purposes; or

4.6.2 assessable income for income tax purposes.

4.7 The Crown must, therefore, indemnify the Pouarua on-account entity for –

4.7.1 any GST payable by the entity in respect of the payment under clause 2.1 or this clause 4.7; and

4.7.2 any income tax payable by the Pouarua on-account entity as a result of any payment under clause 2.1 or this clause 4.7 being treated as assessable income of the entity.

4.8 The tax indemnity does not apply to the use by the Pouarua on-account entity of the payment under clause 2.1.

4.9 To avoid doubt, the parties acknowledge that the payment under clause 2.1 is provided as an on-account arrangement in relation to the Iwi of Hauraki historical claims and nothing in this part is intended to imply that the payment involves –

4.9.1 a taxable supply for GST purposes; or

4.9.2 assessable income for income tax purposes.

4.10 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the Pouarua on-account entity must promptly repay to the Crown any amount that –

4.10.1 the Commissioner of Inland Revenue refunds or credits to the entity; or

4.10.2 the entity has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

5 DEFINITIONS AND INTERPRETATION

OTHER DEFINED TERMS

5.1 In this deed, unless the context requires otherwise:

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) 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
- (c) the day observed as the anniversaries of the province of Wellington or Auckland;

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

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

deed means this deed recording on-account arrangements between the Hauraki Collective Iwi Negotiators on behalf of Iwi of Hauraki and the Crown, and that deed as amended from time to time;

Pare Hauraki collective deed means the collective deed providing redress in respect of shared interests of historical claims of Hauraki Collective Iwi to be signed between the Crown and Hauraki Collective Iwi;

Hauraki Collective Iwi Negotiators means the individuals whose names appear in print on the signing pages of the deed;

Iwi of Hauraki means Ngāi Tai ki Tāmaki, Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Pāoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rahiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngāti Whanaunga and Te Patukirikiri;

Landcorp means Landcorp Farming Limited;

Pouarua on-account entity means the entity referred to in clause 3.1.1;

Property means the property known as the Pouarua Dairy Complex, owned by Landcorp and held under computer freehold register 317403 (South Auckland Registration District);

purchase agreement means the binding agreement for sale and purchase of the Property to be entered into by the Pouarua on-account entity as purchaser and Landcorp as vendor.

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; and

- 5.2.2 defined terms have the meanings given to them by this deed; and
- 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; and
- 5.2.4 the singular includes the plural and vice versa; and
- 5.2.5 a word importing one gender includes the other genders; and
- 5.2.6 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted; and
- 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; and
- 5.2.8 an agreement on the part of two or more persons binds each of them jointly and severally; and
- 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; and
- 5.2.10 a reference to a monetary amount is to New Zealand currency; and
- 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; and
- 5.2.12 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate; and
- 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, except if this deed requires the Crown to introduce legislation; and
- 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; and
- 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; and
- 5.2.17 reference to a particular Minister includes any Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant legislation or matter.

SIGNED as a deed on

SIGNED for and on behalf of **THE CROWN**
by the Minister for Treaty of Waitangi
Negotiations in the presence of:

Hon Christopher Finlayson

Signature of Witness

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of **NGĀTI MARU** by

Ngakoma Ngamane

in the presence of:

Signature of Witness

Paul F Majurey

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of **NGĀTI PĀOA** by

Hauāuru Eugene Rawiri

in the presence of:

Signature of Witness

Morehu Anthony Wilson

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of **NGĀTI
TAMATERĀ** by

Terrence John McEnteer

in the presence of:

Signature of Witness

Debra Liane Ngamane

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of **NGĀTI TARA
TOKANUI** by

Amelia Williams

in the presence of:

Signature of Witness

Russell Karu

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of **TE
PATUKIRIKIRI** by

Williams Peters

in the presence of:

Signature of Witness

David Williams

Witness Name:

Occupation:

Address:

DEED OF COVENANT

(Clause 3.1.4)

THIS DEED is made the _____ day of _____ 20.....

BETWEEN [Insert the name of the [Pouarua on-account entity]] ([Pouarua **on-account entity**])

AND **THE SOVEREIGN** in right of New Zealand acting by the Minister for Treaty of Waitangi Negotiations (**Crown**)

BACKGROUND

- A. Under a deed recording on-account arrangements dated [] between Hauraki Collective Iwi Negotiators and the Crown (the "**on-account deed**"), the Crown agreed, subject to the terms and conditions specified in the on-account deed, to provide certain redress on account of Iwi of Hauraki historical claims, to an entity to be established under clause 3 of the Pouarua on-account deed.
- B. The [Pouarua on-account entity] was established on [date] as the entity to:
- be established by Iwi of Hauraki Negotiators under clause 3 of the on-account deed; and
 - receive the payment as redress to be provided to the [Pouarua on-account entity] under the terms of the on-account deed.
- C. As required by clause 3.1.4 of the on-account deed, the [Pouarua on-account entity] enters into this deed with the Crown.

IT IS AGREED as follows:

1 CONFIRMATION OF RATIFICATION

- 1.1 The [Pouarua on-account entity] confirms that it has been ratified by those Iwi of Hauraki who will receive Pouarua on-account payments as specified in clause 2.3 (by a ratification process agreed in writing by the Crown and the Hauraki Collective Iwi Negotiators) as an appropriate entity to receive the payment that is to be provided to it under the terms of the on-account deed.

2 COVENANT

- 2.1 The [Pouarua on-account entity] covenants with the Crown that, from the date of this deed, the [Pouarua on-account entity]:
- 2.1.1 is a party to the on-account deed as if it had been named as a party to the on-account deed and had signed it;
- 2.1.2 must comply with all the obligations of the [Pouarua on-account entity] under the on-account deed; and
- 2.1.3 is bound by the terms of the on-account deed.

DEED RECORDING POUARUA ON-ACCOUNT ARRANGEMENTS

SIGNED for and on behalf of)
THE SOVEREIGN in right of New Zealand)
by the Minister for Treaty of Waitangi)
Negotiations in the presence of:)

Signature of witness

Witness name

Occupation

Address