

# AGREEMENT – RECLASSIFICATION OF STEWARDSHIP LAND IN THE NGĀI TAHU TAKIWĀ (“AGREEMENT”)

This Agreement is dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

## PARTIES

1. **Te Rūnanga o Ngāi Tahu (“TRONT” or “Ngāi Tahu”)**
2. **Minister of Conservation (“Minister”)**

## BACKGROUND, PURPOSE AND GUIDING PRINCIPLES

- A. The Acting Minister of Conservation (“**Acting Minister**”) made a public announcement on 28 May 2021 that the Government planned to accelerate the reclassification of stewardship land held under the Conservation Act 1987 (“**Decision**”) by streamlining legislation and establishing two independent expert national panels (“**NPs**”). The NPs have been tasked with assessing stewardship land, commencing in the Northern South Island and Western South Island, and providing recommendations to the Minister on how to classify such land. Such reclassification fits with the Government’s manifesto commitment to protect, preserve and restore our natural heritage and biodiversity and is one of the Department of Conservation’s (“**DOC’s**”) core roles and responsibilities.
- B. The 19 April 2021 Cabinet paper<sup>1</sup> says that the guiding principle of the stewardship land reclassification process commenced by the Minister is to undertake genuine technical assessments of conservation values. Key desired outcomes outlined in the paper are that, within shortened timeframes, land with a high conservation value is identified and managed appropriately, and if appropriate, that land with very low or no conservation value is made available for other uses.
- C. While Ngāi Tahu supports the reclassification and appropriate disposal of stewardship land in its takiwā as defined in the Te Rūnanga o Ngāi Tahu Act 1996 (“**the Ngāi Tahu Takiwā**”), Ngāi Tahu considered the process announced by the Acting Minister on 28 May 2021 under the Decision to be in breach of the Treaty of Waitangi (“**the Treaty**”)

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<sup>1</sup> “Improving the process for reclassification of conservation portfolio stewardship land” Cabinet paper (version proactively released on 24 August 2021).

partnership, Ngāi Tahu rangatiratanga, section 4 of the Conservation Act 1987 and the principles of the Treaty. For Ngāi Tahu, the intended process did not accord with the expectations of Ngāi Tahu as the Treaty partner for a process of this significance in the Ngāi Tahu Takiwā.

- D. Consequently, on 2 July 2021, TRONT and two Papatipu Rūnanga filed judicial review proceedings in the High Court challenging the Decision. Those proceedings are CIV-2021-485-342.
- E. On 21 and 22 July 2021, the Parties and senior DOC and TRONT officials met to discuss the issues raised by TRONT and endeavoured to find a way forward that addressed the concerns raised by Ngāi Tahu. TRONT agreed to pause the litigation temporarily while discussions between the Parties took place.
- F. At the 21-22 July 2021 meeting, the Parties:
  - a. discussed an amended process for the reclassification of stewardship land in the Ngāi Tahu Takiwā (“**Project**”), including the role of the Kaiwhakahaere of Ngāi Tahu (“**Kaiwhakahaere**”) in the decision-making process (leading up to the Minister’s decisions, as described in clause 6.1 of this Agreement) and TRONT establishing a Mana Whenua Panel (“**MWP**”) to engage in the Project; and
  - b. agreed that the Project should be undertaken in a manner that is consistent with any relevant legislative obligations, including the requirement under section 4 of the Conservation Act 1987 for that Act to be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi. A recognised principle of the Treaty of Waitangi is partnership.
- G. The Parties acknowledge that section 6 of the Ngāi Tahu Claims Settlement Act 1998 states that “the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.”
- H. The Parties have agreed on a way forward and have recorded the terms and conditions of that agreement in writing in this Agreement.

- I. The Parties intend for this Agreement to:
  - i. Reflect the Parties' desire to work together on the Project in a manner consistent with section 4 of the Conservation Act 1987;
  - ii. Acknowledge the respective roles of TRONT / the Kaiwhakahaere / MWP and the Minister / DOC / NPs in the Project; and
  - iii. Promote cooperation, collaboration, effective communication, and reciprocal facilitation between the Parties during the Project.
  
- J. To enable outcomes to be delivered effectively and efficiently, the Parties also intend to:
  - i. Act in good faith and demonstrate honesty, integrity and accountability in their dealings with one another;
  - ii. Work in a collegial and open manner and adopt a "no surprises" approach whenever possible;
  - iii. Conduct day to day business in a way that respects the mutual interests of each Party;
  - iv. Provide appropriate time and information to allow for meaningful participation in the Project; and
  - v. Provide open and constructive feedback in an effort to achieve a high-quality outcome.
  
- K. The Parties intend for the recommendations of the MWP and NPs to be provided to the Minister within eight (8) months of the induction of the MWP and NPs.

## **SCHEDULE**

### **1 Discontinuance of Proceedings in CIV-2021-485-342**

- 1.1 TRONT and the Papatipu Rūnanga agree to discontinue their proceedings in CIV-2021-485-342 as soon as reasonably practicable, but no later than two (2) weeks after the date on which the Agreement is signed by both Parties.
- 1.2 If the proceedings in CIV-2021-485-342 are not discontinued by TRONT and the Papatipu Rūnanga in accordance with clause 1.1 above, or new proceedings are brought by TRONT and / or the Papatipu Rūnanga in relation to the process announced by the Acting Minister on 28 May 2021, either Party has the right to terminate this Agreement immediately.

1.3 For the avoidance of doubt, if this Agreement is terminated in accordance with clause 1.2 above:

1.3.1 Any remaining instalments under clause 7.2 (as at the date of the termination) will not become due, and will not be paid, to TRONT; but

1.3.2 Any instalments paid to TRONT prior to the date of the termination will not be affected by the termination and these funds will remain the sole property of TRONT.

1.4 There will be no costs sought against or payable by any party to the proceedings on the discontinuance of those proceedings.

## **2 Design and Establishment of Mana Whenua Panel**

2.1 TRONT agrees to design and establish a MWP to engage in the Project as set out in this Agreement.

2.2 TRONT will use best endeavours to notify DOC of the composition and terms of reference for the MWP by 30 September 2021.

## **3 Induction of National Panels**

3.1 Once TRONT has established the MWP, TRONT and DOC will meet to jointly develop an induction programme for the NPs and MWP. The induction programme will include content provided by both TRONT and DOC.

3.2 The NPs will then be convened and TRONT and DOC will jointly induct the NPs in accordance with the programme referenced in clause 3.1 above.

## **4 Information Gathering and Sharing**

4.1 Once established, the MWP will gather information on the stewardship land in the Ngāi Tahu Takiwā (including but not limited to information on mahika kai, mātauranga, commercial interests, development opportunities and future aspirations for use of the place).

4.2 The MWP will provide this information to the NPs to enable the NPs to carry out their respective role in the Project. The format for the information provided by the MWP will be decided by the MWP (acting reasonably).

4.3 DOC will also make all the same information available to the MWP as the NPs, as well as access to DOC staff and technical expertise to enable the MWP to carry out its respective role in the Project to the same standard as the NPs.

- 4.4 The MWP will also be given the opportunity to review and provide input into the information on conservation values that is being collated into Conservation Value Reports and any other information provided to the NPs by DOC's technical teams. This opportunity will be provided to the MWP before the information is provided to the NPs.
- 4.5 The Parties acknowledge that DOC's technical teams have already begun to compile information on the conservation values of the stewardship land in the Ngāi Tahu Takiwā.

## **5 Information Analysis and Recommendations to the Minister**

- 5.1 Once information is provided to the NPs, the Parties agree that:
- 5.1.1 DOC and the MWP will support the NPs while the NPs develop their draft recommendations to the Minister. This will involve at least one meeting directly between the MWP and the NPs and further meetings if requested by the MWP (acting reasonably);
- 5.1.2 The NPs will then work with DOC and the MWP to develop and implement a public consultation process. The MWP (as part of the public) will have the right to be involved in this consultation process if they consider that appropriate;
- 5.1.3 Following the public consultation process, the NPs will review and / or finalise their draft recommendations with assistance from the MWP;
- 5.1.4 The MWP will be provided the NPs' draft recommendations and the MWP will have an opportunity to provide recommendations and commentary on those recommendations;
- 5.1.5 The NPs will then provide their recommendations to the Kaiwhakahaere and invite comment. At this stage, the recommendations will still be in draft form and will include any recommendations / commentary from the MWP pursuant to clause 5.1.4 above;
- 5.1.6 Any feedback from the Kaiwhakahaere and the MWP will be considered by the NPs in finalising their recommendations and will be provided with the NPs' final recommendations to the Minister;
- 5.1.7 The MWP and Kaiwhakahaere will have an opportunity to provide separate views and / or recommendations directly to the Minister if need be; and
- 5.1.8 The Minister will consider all views / recommendations in good faith and in accordance with this Agreement and the Kaiwhakahaere will be given a reasonable opportunity to meet with the Minister before any final decisions are made.

## **6 Minister's Decision on Reclassification**

- 6.1 The Parties acknowledge that the final decision on any reclassification (or potential disposal) of stewardship land in the Ngāi Tahu Takiwā sits with, and will be made by, the Minister. That decision must be made in a manner consistent with any relevant legislative obligations, including the requirement under section 4 of the Conservation Act 1987 for that Act to be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi. As per Recital G, the Minister acknowledges that section 6 of the Ngāi Tahu Claims Settlement Act 1998 states that "the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui".

## **7 Financial Support**

- 7.1 The Minister has agreed that DOC will provide <sup>s 9(2)(f)</sup> [REDACTED] to TRONT for the design, establishment and work of the MWP associated with the Western South Island and Northern South Island NP processes.
- 7.2 That payment will be made to TRONT in equal monthly instalments over the twelve (12) months following on from the later of:
- 7.2.1 The date on which this Agreement is signed by both Parties; and
- 7.2.2 The date on which the proceedings in CIV-2021-485-342 are discontinued by TRONT and the Papatipu Rūnanga.

## **8 Intellectual Property**

- 8.1 The Parties agree that:
- 8.1.1 Any existing intellectual property rights held by the Parties or DOC remain the property of the relevant Party or DOC;
- 8.1.2 Any new intellectual property rights arising from TRONT's or the MWP's contributions to the Project are the property of the relevant Rūnanga or TRONT and neither the Minister nor DOC will make any claim to the ownership of these intellectual property rights.
- 8.2 For the avoidance of doubt, clause 8.1 is legally binding and survives any termination of this Agreement.

## **9 Confidentiality**

- 9.1 In respect of this Agreement and the Project, the Parties agree that "Confidential Information" means any proprietary scientific, technical and / or business information disclosed in the course of the relationship between the Parties.

- 9.2 Except as required by law, the Parties agree that:
- 9.2.1 They will not disclose any Confidential Information to any third party (other than the Parties' professional representatives or advisers) without the prior written consent of the other Party; and
  - 9.2.2 Each Party must use all reasonable endeavours to prevent the accidental publication or disclosure of any Confidential Information.
- 9.3 Clause 9.2 does not prevent:
- 9.3.1 The disclosure of Confidential Information to entities in the Te Rūnanga Group, Papatipu Rūnanga or Ngāi Tahu Whānui; or
  - 9.3.2 The Minister from publicly sharing any Confidential Information when it is reasonably required to explain the Minister's reasons for a decision in respect of the Project or any reclassification or disposal of stewardship land in the Ngāi Tahu Takiwā.
- 9.4 For the avoidance of doubt, clauses 9.1 to 9.3 survive any termination of this Agreement.

## **10 Term and Effect of Agreement**

- 10.1 This Agreement will take effect on and from the date on which the last Party to this Agreement signs it ("**Start Date**").
- 10.2 The Parties confirm all parts of this Agreement are binding, including the Background, Purpose and Guiding Principles section which is an operative and binding part of this Agreement.
- 10.3 The term of this Agreement will be two (2) calendar years from the Start Date ("**Term**").
- 10.4 Subject to earlier termination in accordance with this Agreement, the Parties agree to meet to consider the continuation or termination of this Agreement no later than three (3) calendar months before the end of the Term.
- 10.5 The Parties can agree in writing to terminate this Agreement at any time. If the Parties agree to terminate this Agreement, it will end on and from the date specified by the Parties. If only one Party wants to terminate this Agreement, the Parties will discuss this disagreement in accordance with the dispute provisions in clause 11.1.

## 11 Disputes

11.1 The Parties acknowledge that disputes in relation to the performance of this Agreement may occur from time to time and agree that:

11.1.1 The Parties will use their best endeavours to resolve any such dispute by such means of informal dispute resolution as the Parties may agree (such as good faith negotiation, mediation or independent expert appraisal); and

11.1.2 If a dispute is not resolved within two (2) weeks of the dispute arising, either Party (if the Parties agree) may refer the dispute to arbitration, to be carried out in accordance with the provisions of the Arbitration Act 1996 (or any equivalent Act) and seated in Christchurch, NZ.

11.2 Where appropriate, the Parties agree to involve the Kaiwhakahaere, MWP, DOC and NPs in any informal dispute resolution process contemplated by clause 11.1.1.

11.3 To avoid doubt, nothing in this Agreement prevents TRONT or any Papatipu Rūnanga commencing at any time court proceedings in relation to the Project for a Judicial Review Dispute,<sup>2</sup> including:

11.3.1 In relation to the matters that are the subject of announcement by the Acting Minister on 28 May 2021; and

11.3.2 By way of example, if it is considered that any action, inaction or process undertaken by any entity or person is in breach of relevant legal obligations, such as under section 4 of the Conservation Act.

## 12 Contact Details

12.1 The key contact details for TRONT are:

Rakihia Tau

s 9(2)(a)



12.2 The key contact details for the Minister are:

Karl Beckert

kbeckert@doc.govt.nz

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<sup>2</sup> Disputes amenable to the jurisdiction of the High Court under the Judicial Review Procedure Act 2016, Part 30 of the High Court Rules 2016, or the High Court's common law jurisdiction to review exercises of public power.



This Agreement is signed by the following:



Hon. Kiritapu Allan  
Minister of Conservation

Date: 13/10/2021

s 9(2)(a)

Witness signature

Name: Huia Lloyd  
Occupation: Director  
Address: 583c Hamurana Rd  
RD7 Hamurana  
Rotorua 3097

Date:

13/10/2021

s 9(2)(a)

Lisa Tumahai  
Kaiwhakahaere  
Te Rūnanga o Ngāi Tahu

Date: 28 October 2021

s 9(2)(a)

Witness signature

Name: Jacqui Veint  
Occupation: Legal Executive  
Address: 15 Show Place, Addington  
Christchurch 8024

Date: 28 October 2021