

NGĀTI RĀHIRI TUMUTUMU
and
THE TRUSTEES OF THE
NGĀTI TUMUTUMU TRUST
and
THE CROWN

DEED OF SETTLEMENT SCHEDULE:
DOCUMENTS

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1 NGĀTI RĀHIRI TUMUTUMU VALUES, PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

Part Kaimai Mamaku Conservation Park (OTS-100-422)

Ngāti Rāhiri Tumutumu values

The Kaimai Mamaku Conservation Area covers a large area of native forest on the western part of the Ngāti Rāhiri Tumutumu rohe.

Ngāti Rāhiri Tumutumu interests in the Kaimai Mamaku Conservation Area lie within the area from the Karangahake Gorge in the north along the ridgeline to Aongatete Stream in the south, encompassing all the western flank in this area. Although Ngāti Rāhiri Tumutumu also have interests beyond this rohe, the overlay classification focuses on this area.

Ngāti Rāhiri Tumutumu tupuna occupied these lands, including caves. They buried loved ones within these lands and sought solitude and protection within these lands during times of war.

There are a number of important wahi tapu of Ngāti Rāhiri Tumutumu along this ridgeline, where hapu of Ngāti Rāhiri Tumutumu tupuna built fortified pa and kaianga. These include –

- Ngā Tukituki a Hikawera, the pa site of the eponymous ancestor of Ngāti Rāhiri Tumutumu, Te Ruinga;
- Wahine Rock, where the dog skin war gong of Te Ruinga was situated; and
- Tangitu, the final resting place of Te Ruinga.

Ngāti Rāhiri Tumutumu tupuna travelled across these lands to cultivate crops, snare birds and catch native fish within the waterways. They also used ancient tracks to travel across the range to their kaianga within Katikati Te Puna area.

Ngāti Rāhiri Tumutumu hapu associated with this part of the Kaimai Mamaku Conservation Area include Ngāti Kopirimau, Ngāti Rāhiri, Ngāti Te Ruinga, Ngāti Hue, Ngāti Tumutumu, Ngāti Kotopara, Ngāti Te Atua, Ngāti Te Kaha, Ngāti Haumia and Ngāti Tau.

Ngāti Rāhiri Tumutumu tikanga in relation to this part of the Kaimai Mamaku Conservation Area are as follows:

<i>Mana motuhake</i>	Respect for the authority and autonomy of the parties and their individual roles and responsibilities.
<i>Manaakitanga</i>	Emphasis on behaviours and activities that are mana enhancing towards others including generosity, care, respect and reciprocity.
<i>Wairuatanga / Mauri</i>	To acknowledge and understand the existences of mauri and the spiritual world that requires attention and nourishment.

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1: NGĀTI RĀHIRI TUMUTUMU VALUES, PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

<i>Kaitiakitanga</i>	Recognition of the role of iwi as tangata whenua as stewards and guardians of nga taonga tuku iho, including the natural and physical environment and its resources, and maintaining the health and wellbeing of the people and land.
<i>Kotahitanga</i>	Recognising and enhancing a unity of purpose and direction where all are able to encourage and contribute.
<i>Te Kawa o Ngāti Rāhiri Tumutumu</i>	Recognition of the customary philosophies and practices of the iwi.
<i>Mana whenua</i>	Recognition of the role Ngāti Rāhiri Tumutumu has as stewards and tangata whenua, and their customary roles through whakapapa and maintenance of te ahi ka roa.
<i>Kanohi e kitea</i>	Recognition of the importance of engaging with Ngāti Rāhiri Tumutumu.
<i>Korero pono</i>	The maintenance of open, honest and transparent communication.

Protection Principles

The following Protection Principles are directed at the Minister of Conservation avoiding harm to, or the diminishing of Ngāti Rāhiri Tumutumu's Values related to, Part Kaimai Mamaku Conservation Area:

- (a) recognition of Ngāti Rāhiri Tumutumu as kaitiaki over the Part Kaimai Mamaku Conservation Area, its waters and indigenous species;
- (b) recognition and respect for Ngāti Rāhiri Tumutumu mana, kaitiakitanga, and tikanga in respect of the Part Kaimai Mamaku Conservation Area;
- (c) protection of indigenous flora and fauna and waters within Part Kaimai Mamaku Conservation Area and its immediate environs;
- (d) protection of wāhi tapu and wāhi whakahirahira within the Part Kaimai Mamaku Conservation Area;
- (e) encouragement of respect for and recognition of the association of Ngāti Rāhiri Tumutumu with Part Kaimai Mamaku Conservation Area; and
- (f) accurate portrayal of the association of Ngāti Rāhiri Tumutumu with Part Kaimai Mamaku Conservation Area.

Director-General's Actions

The Director-General has determined that the following actions will be taken by the Department of Conservation in relation to the specific principles:

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1: NGĀTI RĀHIRI TUMUTUMU VALUES, PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

- (a) Ngāti Rāhiri Tumutumu's association with Part Kaimai Mamaku Conservation Area will be accurately portrayed in all new Department of Conservation information, signs and educational material about the area;
- (b) Ngāti Rāhiri Tumutumu will be consulted regarding all new Department of Conservation public information, educational material and signs regarding Part Kaimai Mamaku Conservation Area and, where agreed, the content will reflect their significant relationship with Part Kaimai Mamaku Conservation Area;
- (c) Department of Conservation staff, volunteers, researchers, contractors, conservation board members, concessionaires and the public visiting the reserve will be provided with information about Ngāti Rāhiri Tumutumu's values in relation to Part Kaimai Mamaku Conservation Area and the immediate environs and will be encouraged to recognise and respect Ngāti Rāhiri Tumutumu's association with the area, including their role as kaitiaki;
- (d) Ngāti Rāhiri Tumutumu will be consulted regarding any proposed introduction or removal of indigenous species to and from Part Kaimai Mamaku Conservation Area;
- (e) Significant earthworks and soil/ vegetation disturbance (other than for ongoing track maintenance) will be avoided where possible. Where significant earthworks and disturbances of soil and vegetation cannot be avoided, Ngāti Rāhiri Tumutumu will be consulted and particular regard given to their views, including those relating to koiwi (human remains) and archaeological sites; and
- (f) Any koiwi or other taonga found or uncovered will be left untouched and contact made as soon as possible with Ngāti Rāhiri Tumutumu to ensure iwi representation is present on site and appropriate tikanga is followed, noting that the treatment of the koiwi or other taonga will also be subject to any procedures required by law.

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2 STATEMENTS OF ASSOCIATION

The statements of association of Ngāti Rāhiri Tumutumu are set out below. These are statements of their particular cultural, spiritual, historical and traditional association with identified areas.

Wairakau Scenic Reserve (OTS-100-421)

Ngāti Rāhiri Tumutumu tūpuna traditionally occupied the native forest and caves of the Kaimai-Mamaku area, in the western part of the Aroha, the traditional name of the Ngāti Rāhiri Tumutumu rohe. Ngāti Rāhiri Tumutumu buried loved ones within these lands, and sought solitude and protection within these lands during times of war.

There are a number of important Ngāti Rāhiri Tumutumu wāhi tapu along the Kaimai-Mamaku ridgeline, where hapū of Ngāti Rāhiri Tumutumu tūpuna built fortified pā and kāinga, including: Ngāti Tukituki-a-Hikawera, the pā of the apical ancestor of Ngāti Rāhiri Tumutumu, Te Ruinga; Wahine Rock, where the dog skin war gong of Te Ruinga was situated; and Tangitu, the final resting place of Te Ruinga, an important Ngāti Rāhiri Tumutumu urupā on a peak of the Kaimai Range above Wairakau.

Ngāti Rāhiri Tumutumu tūpuna travelled across these lands to kāinga to cultivate, snare birds, and catch native fisheries within the waterways. They also used ancient tracks to travel across the range to their kāinga further afield. Although this statement focuses on this specific area, Ngāti Rāhiri Tumutumu also have interests beyond the rohe discussed here.

Wairakau is a fertile area between the Waihou River and Tangitu. Much of the Wairakau land was used by Ngāti Rāhiri Tumutumu as gardens to cultivate food for its people within the Aroha.

Ngāti Rāhiri Tumutumu hapū associated with this area include: Ngāti Kopirimau; Ngāti Rāhiri, Ngāti Te Ruinga; Ngāti Hue; Ngāti Tumutumu; Ngāti Kotopara; Ngāti Te Atua; Ngāti Te Kaha; Ngāti Haumia; and Ngāti Tau.

Ngāti Rāhiri Tumutumu are tangata whenua of these lands.

Part Maurihero Scenic Reserve (OTS-100-423)

[The statement of association of Ngāti Rāhiri Tumutumu in relation to Part Maurihero Scenic Reserve will be inserted into the signing version of this deed and this note will be removed]

DOCUMENTS

3 DEED OF RECOGNITION

THIS DEED is made by **THE CROWN** acting by the Minister of Conservation and the Director-General of Conservation

1 INTRODUCTION

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with –
 - 1.1.1 Ngāti Rāhiri Tumutumu (the **settling group**); and
 - 1.1.2 the trustees of the Ngāti Tumutumu Trust (the **governance entity**).
- 1.2 In the deed of settlement, the settling group made a statement of the settling group's particular cultural, spiritual, historical, and traditional association with the following areas:
 - 1.2.1 Wairakau Scenic Reserve (as shown on deed plan OTS-100-421):
 - 1.2.2 Part Maurihero Scenic Reserve (as shown on deed plan OTS-100-423)(the **statutory areas**).
- 1.3 Those statements of association are –
 - 1.3.1 in the documents schedule to the deed of settlement; and
 - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statement of association in the [Ngāti Rāhiri Tumutumu Claims Settlement Act [**year**]], being the settlement legislation that gives effect to the deed of settlement.

2 CONSULTATION

- 2.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 2.2 in relation to the statutory area, consult and have regard to the views of the governance entity concerning the settling group's association with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to each of the following activities (the **identified activities**):
 - 2.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977:
 - 2.2.2 preparing a national park management plan under the National Parks Act 1980:

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3: DEED OF RECOGNITION

- 2.2.3 preparing a non-statutory plan, strategy, programme, or survey in relation to the statutory area that is not a river for any of the following purposes:
- (a) to identify and protect wildlife or indigenous plants:
 - (b) to eradicate pests, weeds, or introduced species:
 - (c) to assess current and future visitor activities:
 - (d) to identify the appropriate number and type of concessions:
- 2.2.4 preparing a non-statutory plan, strategy, or programme to protect and manage the statutory area that is a river:
- 2.2.5 locating or constructing structures, signs, or tracks.
- 2.3 The Minister and the Director-General of Conservation must, when consulting the governance entity under clause 2.1, provide the governance entity with sufficient information to make informed decisions.

3 LIMITS

- 3.1 This deed –
- 3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and
 - 3.1.2 does not require the Crown to undertake, increase, or resume any identified activity; and
 - 3.1.3 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
 - 3.1.4 is subject to the settlement legislation.

4 TERMINATION

- 4.1 This deed terminates in respect of a statutory area, or part of it, if -
- 4.1.1 the governance entity, the Minister of Conservation, and the Director-General of Conservation agree in writing; or
 - 4.1.2 the relevant area is disposed of by the Crown; or
 - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister and/or Crown official.

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3: DEED OF RECOGNITION

- 4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into any identified activities in relation to the area with the new Minister and/or Crown official responsible for that activity.

5 NOTICES

- 5.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 4 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is -

Partnerships Manager,
Department of Conservation,
[*address*].

6 AMENDMENT

- 6.1 This deed may be amended only by written agreement signed by the governance entity and the Minister of Conservation and the Director-General of Conservation.

7 NO ASSIGNMENT

- 7.1 The governance entity may not assign its rights under this deed.

8 DEFINITIONS

- 8.1 In this deed -

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

deed means this deed of recognition as it may be amended from time to time; and

deed of settlement means the deed of settlement dated [*date*] between the settling group, the governance entity, and the Crown; and

Director-General of Conservation has the same meaning as Director-General in section 2(1) of the Conservation Act 1987; and

governance entity means the trustees of the Ngāti Tumutumu Trust, as defined in the deed of settlement; and

identified activity means each of the activities specified in clause 2.2; and

Minister means the Minister of Conservation; and

settling group and **Ngāti Rāhiri Tumutumu** have the meaning given to "Ngāti Rāhiri Tumutumu" by the deed of settlement; and

DOCUMENTS

3: DEED OF RECOGNITION

settlement legislation means the Act referred to in clause 1.4; and

statement of association means each statement of association in the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

statutory area means an area referred to in clause 1.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

writing means representation in a visible form on a tangible medium (such as print on paper).

9 INTERPRETATION

9.1 The provisions of this clause apply to this deed's interpretation, unless the context requires a different interpretation.

9.2 Headings do not affect the interpretation.

9.3 A term defined by –

9.3.1 this deed has that meaning; and

9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, has that meanings where used in this deed.

9.4 All parts of speech and grammatical forms of a defined term have corresponding meanings.

9.5 The singular includes the plural and vice versa.

9.6 One gender includes the other genders.

9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.

9.8 A reference to –

9.8.1 this deed or any other document means this deed or that document as amended, novated, or replaced; and

9.8.2 legislation means that legislation as amended, consolidated, or substituted.

9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

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3: DEED OF RECOGNITION

SIGNED as a deed on *[date]*

SIGNED for and on behalf of
THE CROWN by –

The Minister of Conservation in the
presence of -

WITNESS

Name:

Occupation:

Address:

The Director-General of Conservation
in the presence of –

WITNESS

Name:

Occupation:

Address:

DOCUMENTS

3: DEED OF RECOGNITION

Schedule

Copies of Statement of Association

Wairakau Scenic Reserve (as shown on deed plan OTS-100-421)

Ngāti Rāhiri Tumutumu tūpuna traditionally occupied the native forest and caves of the Kaimai-Mamaku area, in the western part of the Aroha, the traditional name of the Ngāti Rāhiri Tumutumu rohe. Ngāti Rāhiri Tumutumu buried loved ones within these lands, and sought solitude and protection within these lands during times of war.

There are a number of important Ngāti Rāhiri Tumutumu wāhi tapu along the Kaimai-Mamaku ridgeline, where hapū of Ngāti Rāhiri Tumutumu tūpuna built fortified pā and kāinga, including: Ngāti Tukituki-a-Hikawera, the pā of the apical ancestor of Ngāti Rāhiri Tumutumu, Te Ruinga; Wahine Rock, where the dog skin war gong of Te Ruinga was situated; and Tangitu, the final resting place of Te Ruinga, an important Ngāti Rāhiri Tumutumu urupā on a peak of the Kaimai Range above Wairakau.

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Wairakau is a fertile area between the Waihou River and Tangitu. Much of the Wairakau land was used by Ngāti Rāhiri Tumutumu as gardens to cultivate food for its people within the Aroha.

Ngāti Rāhiri Tumutumu hapū associated with this area include: Ngāti Kopirimau; Ngāti Rāhiri, Ngāti Te Ruinga; Ngāti Hue; Ngāti Tumutumu; Ngāti Kotopara; Ngāti Te Atua; Ngāti Te Kaha; Ngāti Haumia; and Ngāti Tau.

Ngāti Rāhiri Tumutumu are tangata whenua of these lands.

Part Maurihero Scenic Reserve (as shown on deed plan OTS-100-423)

[Statement of association to be inserted]

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4 PROTOCOLS

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4.1: TAONGA TŪTURU PROTOCOL

4.1 Taonga Tūturu protocol

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4.1: TAONGA TŪTURU PROTOCOL

TAONGA TŪTURU PROTOCOL: A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI RĀHIRI TUMUTUMU ON SPECIFIED ISSUES

1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated [date] between Ngāti Rāhiri Tumutumu and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a protocol (the “Protocol”) setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2
 - 1.1.2 Terms of issue – Part 3
 - 1.1.3 Implementation and communication – Part 4
 - 1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5
 - 1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6
 - 1.1.6 Effects on Ngāti Rāhiri Tumutumu interests in the Protocol Area – Part 7
 - 1.1.7 Registration as a collector of Ngā Taonga Tūturu – Part 8
 - 1.1.8 Board Appointments – Part 9
 - 1.1.9 National Monuments, War Graves and Historical Graves – Part 10
 - 1.1.10 History publications relating to Ngāti Rāhiri Tumutumu – Part 11
 - 1.1.11 Cultural and/or Spiritual Practices and professional services – Part 12
 - 1.1.12 Consultation – Part 13
 - 1.1.13 Changes to legislation affecting this Protocol – Part 14
 - 1.1.14 Definitions – Part 15
- 1.2 For the purposes of this Protocol the governance entity is the body representative of Ngāti Rāhiri Tumutumu who have an interest in the matters covered under this

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4.1: TAONGA TŪTURU PROTOCOL

Protocol. This derives from the status of Ngāti Rāhiri Tumutumu as tāngata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

- 1.3 Manatū Taonga also known as the Ministry for Culture and Heritage ("the Ministry") and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 1.4 The purpose of the Protected Objects Act 1975 ("the Act") is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in clause 1.1, as set out in clauses 5 to 11 of this Protocol.

2 PROTOCOL AREA

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the "Protocol Area").

3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section [] of the [Ngāti Rāhiri Tumutumu Claims Settlement Act *[date]*] ("the Settlement Legislation") that implements the Ngāti Rāhiri Tumutumu Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the governance entity by:
 - 4.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
 - 4.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;

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4.1: TAONGA TŪTURU PROTOCOL

- 4.1.4 meeting with the governance entity to review the implementation of this Protocol if requested by either party;
- 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Chief Executive under it;
- 4.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
- 4.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

General

- 5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
 - 5.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand;
 - 5.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand;
 - 5.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand;
 - 5.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
 - 5.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.

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4.1: TAONGA TŪTURU PROTOCOL

Ownership of Taonga Tūturu found in Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found elsewhere in New Zealand

- 5.2 If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 5.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

Custody of Taonga Tūturu found in Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found elsewhere in New Zealand

- 5.5 If the governance entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ngāti Rāhiri Tumutumu origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
- 5.5.1 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu;
- 5.5.2 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

Export Applications

- 5.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ngāti Rāhiri Tumutumu origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ngāti Rāhiri Tumutumu origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of the Chief Executive's decision.

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4.1: TAONGA TŪTURU PROTOCOL

6 THE ROLE OF THE MINISTER UNDER THE PROTECTED OBJECTS ACT 1975

6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:

6.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or

6.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand.

6.2 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

7 EFFECTS ON NGĀTI RĀHIRI TUMUTUMU INTERESTS IN THE PROTOCOL AREA

7.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ngāti Rāhiri Tumutumu interests in the Protocol Area.

7.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Rāhiri Tumutumu interests in the Protocol Area.

7.3 Notwithstanding clause 7.1 and 7.2 above the Chief Executive and governance entity shall meet to discuss Ngāti Rāhiri Tumutumu interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

8 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

8.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

9 BOARD APPOINTMENTS

9.1 The Chief Executive shall:

9.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

9.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

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4.1: TAONGA TŪTURU PROTOCOL

- 9.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

10 NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 10.1 The Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ngāti Rāhiri Tumutumu interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning.
- 10.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

11 HISTORY PUBLICATIONS

- 11.1 The Chief Executive shall:
- 11.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ngāti Rāhiri Tumutumu; and
- 11.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ngāti Rāhiri Tumutumu:
- (a) from an early stage;
 - (b) throughout the process of undertaking the work; and
 - (c) before making the final decision on the material of a publication.
- 11.2 It is accepted that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the governance entity, is entitled to make the final decision on the material of the historical publication.

12 PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

- 12.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāti Rāhiri Tumutumu within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.

DOCUMENTS

4.1: TAONGA TŪTURU PROTOCOL

- 12.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.
- 12.3 The procurement by the Chief Executive of any such services set out in clause 12.1 and 12.2 is subject to the Government Rules of Sourcing, all government good practice policies and guidelines, and the Ministry's purchasing policy.

13 CONSULTATION

- 13.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 13.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
 - 13.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 13.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
 - 13.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
 - 13.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

14 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 14.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:
- 14.1.1 notify the governance entity of the proposed policy development or any proposed legislative amendment upon which Māori generally will be consulted;
 - 14.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and
 - 14.1.3 report back to the governance entity on the outcome of any such consultation.

DOCUMENTS

4.1: TAONGA TŪTURU PROTOCOL

15 DEFINITIONS

15.1 In this Protocol:

Chief Executive means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive.

Crown means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement.

Expert Examiner has the same meaning as in section 2 of the Act and means a body corporate or an association of persons.

Found has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and 'finding' and 'finds' have corresponding meanings.

governance entity has the meaning given to it in the Deed of Settlement.

Ngā Taonga Tūturu has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu.

Ngāti Rāhiri Tumutumu has the meaning set out in clause [] of the Deed of Settlement.

Protocol means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

Taonga Tūturu has the same meaning as in section 2 of the Act and means an object that —

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been, —
 - (i) manufactured or modified in New Zealand by Māori; or
 - (ii) brought into New Zealand by Māori; or
 - (iii) used by Māori; and
- (c) is more than 50 years old.

DOCUMENTS

4.1: TAONGA TŪTURU PROTOCOL

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand
by the Chief Executive of the Ministry for Culture and Heritage:

WITNESS

Name:

Occupation:

Address:

Initialling version for presentation to Ngāti Rāhiri Tumutumu for ratification purposes.

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4.1: TAONGA TŪTURU PROTOCOL

ATTACHMENT A: PROTOCOL AREA

[The Protocol Area map will be inserted prior to the signing version of this deed of settlement and following completion of overlapping claims]

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4.1: TAONGA TŪTURU PROTOCOL

ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1 Amendment and cancellation

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting with the governance entity and having particular regard to its views (section []).

2 Limits

- 2.1 This Protocol does not -
- 2.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including –
- (a) introducing legislation; or
 - (b) changing government policy; or
 - (c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tangata whenua; or
- 2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Rāhiri Tumutumu (section []); or
- 2.1.3 grant, create, or evidence an estate or interest in, or rights relating to, taonga tūturu.

3 Breach

- 3.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section []).
- 3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause []).

DOCUMENTS

4.2: PRIMARY INDUSTRIES PROTOCOL

4.2 Primary industries protocol

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4.2: PRIMARY INDUSTRIES PROTOCOL

Ministry for Primary Industries
Manatū Ahu Matua



**THE PRIMARY INDUSTRIES PROTOCOL WITH
NGĀTI RĀHIRI TUMUTUMU**

**Issued by
the Minister for Primary Industries**

DOCUMENTS

4.2: PRIMARY INDUSTRIES PROTOCOL

PART ONE - RELATIONSHIP

PURPOSE

1. The purpose of this Primary Industries Protocol (the “**Protocol**”) is to set out how Ngāti Rāhiri Tumutumu, the Minister for Primary Industries (the “**Minister**”) and the Director-General of the Ministry for Primary Industries (the “**Director-General**”) will establish and maintain a positive, co-operative and enduring relationship.

CONTEXT

2. The Protocol should be read in a manner that best furthers the purpose of the Ngāti Rāhiri Tumutumu Deed of Settlement (the “**Deed of Settlement**”).
3. The Protocol is a living document that should be updated to take account of the relationship between the parties, future developments and additional relationship opportunities.

PRINCIPLES UNDERLYING THE PROTOCOL

4. The Ministry and Ngāti Rāhiri Tumutumu are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to the Protocol. The relationship created by the Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
5. The parties recognise that to successfully implement the Protocol, the parties will need to work in partnership and in the spirit of collaboration.
6. The parties also acknowledge the principles below and their importance to successfully achieve the purpose of the Protocol. These relationship principles provide that the Ministry and Ngāti Rāhiri Tumutumu will:
 - a. work in a spirit of co-operation;
 - b. ensure early engagement on issues of known mutual interest;
 - c. operate on a ‘no surprises’ approach;
 - d. acknowledge that the relationship is evolving, not prescribed;
 - e. respect the independence of the parties and their individual mandates, roles and responsibilities; and
 - f. recognise and acknowledge that both parties benefit from working together by sharing their vision, knowledge and expertise.
7. The Minister and the Director-General have certain functions, powers and duties in terms of legislation that they are responsible for administering. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāti Rāhiri Tumutumu and the Ministry. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the

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4.2: PRIMARY INDUSTRIES PROTOCOL

opportunity for input into the policy and planning processes relating to matters set out in the Protocol.

8. The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngāti Rāhiri Tumutumu or with another iwi or hapū with interests inside the Protocol Area on matters that could affect the interests of Ngāti Rāhiri Tumutumu.

PART TWO - SCOPE AND INTERPRETATION

SCOPE

9. The Protocol applies to agriculture (agriculture includes animal welfare and horticulture), forestry, fisheries, biosecurity and food safety portfolios administered by the Ministry for Primary Industries (the “**Ministry**”).
10. The Protocol does not cover processes regarding the allocation of aquaculture space, or the Treaty settlement processes established for assets held by the Ministry’s Crown Forestry unit.
11. The Ministry is required to provide for the utilisation of fisheries resources while ensuring sustainability, to meet Te Tiriti o Waitangi/the Treaty of Waitangi and international obligations, to enable efficient resource use and to ensure the integrity of fisheries management systems.
12. The Protocol applies to the Ngāti Rāhiri Tumutumu area of interest as noted and described in the attached map (Attachment A).

DEFINITIONS AND INTERPRETATION

13. In the Protocol:
 - a. “**Protocol**” means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol;
 - b. “**Protocol area**” means the land area as noted in the attached map at Attachment A;
 - c. “**Crown**” means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by, the terms of the Deed to participate in any aspect of the redress under the Deed;
 - d. “**Fisheries Legislation**” means the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Fisheries Act 1983 and the Fisheries Act 1996, and any regulations made under the Fisheries Act 1983 and the Fisheries Act 1996;
 - e. “**Governance Entity**” and the “**trustees**” means the trustees of the Ngāti Tumutumu Trust;
 - f. “**iwi of Hauraki**” means the iwi referred to in clause 24 of this Protocol; and

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4.2: PRIMARY INDUSTRIES PROTOCOL

- g. the “**parties**” means the trustees of the Ngāti Tumutumu Trust, the Minister for Primary Industries (acting on behalf of the Crown), and the Director-General of the Ministry for Primary Industries (acting on behalf of the Ministry for Primary Industries).

TERMS OF ISSUE

14. The Protocol is issued pursuant to section [] of the [Ngāti Rāhiri Tumutumu Claims Settlement Act *[date]*] (the “**Settlement Legislation**”) and clause [] of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

PART THREE - FISHERIES

15. The Minister and the Director-General of the Ministry have certain functions, powers and duties in terms of the Fisheries Legislation. With the intention of creating a relationship that achieves, over time, the policies and outcomes sought by both Ngāti Rāhiri Tumutumu and the Ministry.
16. The Protocol sets out how the Minister, Director-General and the Ministry will exercise their functions, powers and duties in relation to matters set out in the Protocol. In accordance with the Protocol, the Governance Entity will have the opportunity for input into the policy and planning processes relating to matters set out in the Protocol.
17. The Protocol must be read subject to the summary of the terms of issue set out in Attachment B.

INPUT INTO AND PARTICIPATION INTO THE MINISTRY’S NATIONAL FISHERIES PLANS

18. The Ministry’s national fisheries plans will reflect the high level goals and outcomes for fisheries. The plans will guide annual identification of the measures (which may include catch limits, research, planning and compliance services) required to meet these goals and outcomes.
19. There are five National Fisheries Plans, which relate to:
- a. inshore fisheries;
 - b. shellfish;
 - c. freshwater fisheries;
 - d. highly migratory fisheries; and
 - e. deepwater fisheries.
20. The National Fisheries Plans are implemented through an Annual Review Report and Annual Operational Plan.
21. The Annual Review Report presents information on:
- a. the current status of fisheries relative to the performance measures recorded in the National Fisheries Plans; and

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4.2: PRIMARY INDUSTRIES PROTOCOL

- b. the extent of the delivery of previous and existing services and management actions.
- 22. The Annual Review Report is developed through engagement with tāngata whenua about what future services are required to meet agreed objectives, address gaps in performance and meet tāngata whenua interests, including research, compliance and special permits. The Ministry will engage with the parties to produce the Annual Review Report.
- 23. The Annual Operational Plan will record the future services agreed through the Annual Review Report process to be delivered to fisheries for the next financial year (1 July - 30 June). The demand for services is often greater than can be provided by the Ministry. The Ministry undertakes a prioritisation of proposed services to address competing interests.
- 24. The Ministry will provide for the input and participation of the twelve iwi of Hauraki, Ngai Tai ki Tāmaki, Ngāti Hei, Hako, Ngāti Porou ki Hauraki, Ngāti Pukenga, Ngāti Tara Tokanui, Ngāti Rāhiri Tumutumu, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri, which includes Ngāti Rāhiri Tumutumu into national fisheries plans through iwi forum fisheries plans. Iwi forum fisheries plans allow the Ministry to engage and involve iwi in fisheries management activities and national fisheries planning.

IWI FORUM FISHERIES PLANS

- 25. The twelve iwi of Hauraki collectively will have input into the relevant forum fisheries plan. The plan will incorporate:
 - a. the objectives of the iwi of Hauraki for the management of their customary, commercial, recreational, and environmental interests;
 - b. views of the iwi of Hauraki on what constitutes the exercise of kaitiakitanga within the Protocol Area;
 - c. how the iwi of Hauraki will participate in fisheries planning and management; and
 - d. how the customary, commercial, and recreational fishing interests of forum members will be managed in an integrated way.
- 26. The iwi of Hauraki, which includes Ngāti Rāhiri Tumutumu, will have the opportunity to jointly develop an iwi fisheries plan that will inform the content of the relevant forum fisheries plan.
- 27. Any person exercising functions, powers and duties under sections 12 to 14 of the Fisheries Act 1996 will have particular regard to forum plans interpretation of kaitiakitanga (see section 12(1)(b) of the Fisheries Act 1996).

MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

- 28. The Ministry, with available resources, undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include, but is not limited to:
 - a. discussions with the Ministry on the implementation of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the Protocol Area; and

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4.2: PRIMARY INDUSTRIES PROTOCOL

- b. making available existing information, if any, relating to the sustainability, biology, fishing activity and fisheries management within the Protocol Area.

RĀHUI

- 29. The Ministry recognises that rāhui is a traditional use and management practice of Ngāti Rāhiri Tumutumu and supports their rights to place traditional rāhui over their customary fisheries.
- 30. The Ministry and the Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. The Governance Entity undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngāti Rāhiri Tumutumu over their customary fisheries, and also the reasons for the rāhui.
- 31. The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngāti Rāhiri Tumutumu over their customary fisheries, in a manner consistent with the understandings outlined in clause 27 of this Protocol.
- 32. As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngāti Rāhiri Tumutumu over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

PROVISION OF FISHERIES SERVICES AND RESEARCH

- 33. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.
- 34. Ngāti Rāhiri Tumutumu input and participation into Ministry fisheries services and research will occur through Ngāti Rāhiri Tumutumu input and participation into the Ministry's national fisheries plans.

PART FOUR – STRATEGIC PARTNERSHIPS

INFORMATION SHARING AND COLLABORATION

- 35. The Governance Entity and the Ministry will use reasonable endeavours to exchange and share relevant information of mutual benefit, subject to the provisions of the Settlement Legislation, any other enactment, and the general law.
- 36. For the purpose of carrying out its function, the Governance Entity may make a reasonable request of the Ministry to:
 - a. provide information or advice to the Governance Entity requested by the Governance Entity, but only on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity; and/or

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4.2: PRIMARY INDUSTRIES PROTOCOL

- b. provide a Ministry representative to attend a meeting with the Governance Entity.
37. In respect of the above requests for information or advice:
- a. where reasonably practicable, the Ministry will provide the information or advice; and
 - b. in deciding whether it is reasonably practicable to provide the information or advice, the Ministry will have regard to any relevant consideration, including:
 - i. whether, where a request has been made under the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987, there are permitted reasons for withholding the information;
 - ii. whether making the information available would contravene the provisions of an enactment; and
 - iii. the time and cost involved in researching, collating and providing the information or advice; and
 - iv. whether making the information available would put at risk any of the Ministry's wider stakeholder relationships.
38. In respect of requests for the Ministry to attend a meeting with the Governance Entity:
- a. only where reasonably practicable, the Ministry will comply with the request;
 - b. the Ministry will determine the appropriate representative to attend any meeting; and
 - c. in deciding whether it is reasonably practicable to comply with the request, the Ministry may have regard to any relevant consideration, including:
 - i. the number and frequency of such requests the management agency has received from the Governance Entity;
 - ii. the time and place of the meeting and the adequacy of notice given; and
 - iii. the time and cost involved in complying with the request.

JOINT WORK PROGRAMMES

39. If agreed to by both parties, the Ministry and the Governance Entity, will work together to develop and implement joint work programmes on matters relating to fisheries, agriculture (agriculture includes animal welfare and horticulture), forestry, food safety and biosecurity.
40. The work programme/s must be beneficial to both parties, must align with the parties objectives and priorities relating to the primary sector, and be based on agreed-to terms of delivery.

PROVISION OF SERVICE AND RESEARCH RELATING TO AGRICULTURE, FORESTRY, FOOD SAFETY AND BIOSECURITY

41. Each party acknowledges that there is potential for the other to provide services to, or conduct research for, the other.

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4.2: PRIMARY INDUSTRIES PROTOCOL

42. Where the Ministry undertakes or contracts for services or research relating to agriculture (agriculture includes animal welfare and horticulture), forestry, food safety or biosecurity, and where the Ministry considers it to have a direct impact on the Protocol area, the Ministry will:
- a. notify the Governance Entity of its intention to do so and provide the Governance Entity with an opportunity to be involved in the planning for services or research, as appropriate;
 - b. where applicable, invite the Governance Entity to provide a representative to be a member of the tender evaluation panel, subject to the Ministry's conflict of interest policy;
 - c. advise the Governance Entity of the provider it has chosen;
 - d. require any research provider to engage with the Governance Entity; and
 - e. provide the Governance Entity with the results of that research, as appropriate.

CONSULTATION

43. Where the Ministry is required to consult in relation to the Protocol, the principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- a. ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - b. providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - c. ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation;
 - d. ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and
 - e. where the Ministry has consulted with the Governance Entity in relation to this Protocol, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

PART FIVE – IMPLEMENTATION

MAINTAINING THE RELATIONSHIP

44. Each party will identify a senior representative to oversee the implementation of the Protocol. The senior representatives will be the key point of contact for any matters relating to the Protocol, and will be responsible for ensuring the outcomes and deliverables of the Protocol are monitored, and achieved.

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4.2: PRIMARY INDUSTRIES PROTOCOL

45. Where elements of the Protocol may not be achievable, the parties will communicate this as soon as possible and work towards a common understanding of the issues and a positive way forward for both parties to achieve the outcomes of the Protocol.
46. Representatives of the parties will meet as required, and as agreed to by both parties.

ESCALATION OF MATTERS

47. If one party considers that there has been a breach of the Protocol then that party may give notice to the other that they are in dispute.
48. As soon as possible, upon receipt of the notice referred to in clause 46, the Ministry and the Governance Entity representative(s) will meet to work in good faith to resolve the issue.
49. If the dispute has not been resolved within 45 working days despite the process outlined in clauses 47 and 48 having been followed, the Ministry and Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

REVIEW AND AMENDMENT

50. The parties agree that this Protocol is a living document which should be updated and adapted to take account of any future developments and relationship opportunities.
51. The parties may only vary this or terminate this Protocol by agreement in writing.

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4.2: PRIMARY INDUSTRIES PROTOCOL

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Primary Industries

WITNESS

Name:

Occupation:

Address:

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4.2: PRIMARY INDUSTRIES PROTOCOL

ATTACHMENT A: PROTOCOL AREA

[The Protocol Area map will be inserted prior to the signing version of this deed of settlement and following completion of overlapping claims]

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4.2: PRIMARY INDUSTRIES PROTOCOL

ATTACHMENT B: SUMMARY OF TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

1.1 The Minister may amend or cancel this Protocol, but only after consulting with the Governance Entity and having particular regard to its views (*section []*).

2. Noting

2.1 A summary of the terms of this Protocol must be noted in the fisheries plans affecting the Protocol Area, but the noting -

2.1.1 is for the purpose of public notice only; and

2.1.2 does not amend the fisheries plans for the purposes of the Fisheries Act 1996 (*section []*).

3. Limits

3.1 This Protocol does not:

3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including -

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tāngata whenua; or

3.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Rāhiri Tumutumu (*section []*); or

3.1.3 grant, create, or evidence an estate or interest in, or rights relating to, assets or property rights (including in relation to fish, aquatic life, or seaweed) under -

(a) the Fisheries Act 1996; or

(b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(c) the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(d) the Maori Fisheries Act 2004 (*section []*).

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4.2: PRIMARY INDUSTRIES PROTOCOL

4. Breach

- 4.1 Subject to the Crown Proceedings Act 1950, the Governance Entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section []*).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (*clause [X]*).

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5 ENCUMBRANCES

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5.1: PAEWAI CONSERVATION COVENANT

5.1 Paewai conservation covenant

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5.1: PAEWAI CONSERVATION COVENANT

PAEWAI CONSERVATION COVENANT

**(Section 27 Conservation Act 1987
and
Section 77 Reserves Act 1977)**

THIS DEED of COVENANT is made this day of

BETWEEN **[the trustees of the Ngāti Tumutumu Trust]** *[to be inserted]* (the Owner)

AND **MINISTER OF CONSERVATION** (the Minister)

BACKGROUND

- A Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Ngāti Rāhiri Tumutumu Claims Settlement Act
- D The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

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5.1: PAEWAI CONSERVATION COVENANT

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation and Reserve Values”	means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Land’s Values”	means the Conservation and Reserve values specified in Schedule 1.
“Natural Water”	includes water contained in streams the banks of which have, from time to time, been re-aligned.
“Owner”	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
“Working Days”	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3 IMPLEMENTATION OF OBJECTIVES

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

- 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
 - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
 - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
 - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
 - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
 - 3.2.3 keeping the Land free from exotic tree species;
 - 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

4 PUBLIC ACCESS

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
 - 4.1.1 only access the Land by foot;
 - 4.1.2 do not take firearms or animals on the Land; and
 - 4.1.3 do not camp on the Land.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:
 - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
 - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act

- 10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.
- 10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

- 10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

- 10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

- 10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

11 DEFAULT

- 11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

- 11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 11.2.1 advise the defaulting party of the default;
 - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12 DISPUTE RESOLUTION PROCESSES

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

12.2 Mediation

- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

12.3 Failure of Mediation

- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
- 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

13 NOTICES

- 13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.
- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:
- 13.2.1 personal delivery, on the date of delivery;
 - 13.2.2 pre-paid post, on the third working day after posting;
 - 13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;
 - 13.2.4 electronic mail, on the day of successful delivery of the mail.
- 13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

14 SPECIAL CONDITIONS

- 14.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address : _____

Occupation: _____

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

Signed by _____ and)
acting under a written delegation from the Minister)
of Conservation and exercising his/her powers under)
section 117 of the Reserves Act 1977 as designated)
Commissioner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

SCHEDULE 1

Description of Land:

South Auckland Land District — Western Bay of Plenty District

Part Crown Land (SO 48402). Subject to survey.

As shown on OTS-100-416 and known as Paewai.

Conservation and Reserve Values:

The Land adjoins, and is part of the wider habitat associated with, the Kaimai - Mamaku Conservation Park. The Park provides some of the most contiguous areas of native forest in the Bay of Plenty including New Zealand's most northern stands of kamahi, red and silver beech. The main spine of the Kaimai Range is a prominent feature of the area. Extensive ancient volcanic outcrops on the main Kaimai Range provide habitat for a diverse range of plants.

Faunal values within the Kaimai - Mamaku Conservation Park include native bird species such as the whitehead, kākā, kōkako, kiwi, long-tailed cuckoo and kārearea. More common native bird such as tūī and bellbirds are readily seen within the Park. Hochstetter's Frogs are also found in the vicinity of this site. There is a diverse range of invertebrates in the Park including the Te Aroha stag beetle.

The Land is unique botanically, with vegetation including kauri, beech and hard woods.

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

SCHEDULE 2

Address for Service

The address for service of the Owner is:

The address for service of the Minister is:

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

SCHEDULE 3

Special Conditions

Recreational facilities

1. For the avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

Taking of plant material

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

Propagation

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

Removal of rock

4. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

Managing public access

5. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.
6. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

Cultural activities

7. The Owner may undertake cultural activities on the Land, subject to:
 - (a) consultation with the Department of Conservation; and
 - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

5.1: PAEWAI CONSERVATION COVENANT

GRANT OF CONSERVATION COVENANT

Under section 27 of the
Conservation Act 1987
and section 77 of the
Reserves Act 1977

to

MINISTER OF CONSERVATION

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

Legal Services
Department of Conservation

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

5.2 Pukewhakatara conservation covenant

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

PUKEWHAKATARATARA CONSERVATION COVENANT

**(Section 27 Conservation Act 1987
and
Section 77 Reserves Act 1977)**

THIS DEED of COVENANT is made this day of

BETWEEN [*the trustees of the Ngāti Tumutumu Trust*] [*to be inserted*] (the Owner)

AND **MINISTER OF CONSERVATION** (the Minister)

BACKGROUND

- A Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Ngāti Rāhiri Tumutumu Claims Act
- D The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation and Reserve Values”	means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Land’s Values”	means the Conservation and Reserve values specified in Schedule 1.
“Natural Water”	includes water contained in streams the banks of which have, from time to time, been re-aligned.
“Owner”	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
“Working Days”	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3 IMPLEMENTATION OF OBJECTIVES

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

- 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
 - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
 - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
 - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
 - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
 - 3.2.3 keeping the Land free from exotic tree species;
 - 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

4 PUBLIC ACCESS

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
- 4.1.1 only access the Land by foot;
- 4.1.2 do not take firearms or animals on the Land; and
- 4.1.3 do not camp on the Land.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:
- 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
- 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act

10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

11 DEFAULT

- 11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

11.2.1 advise the defaulting party of the default;

11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12 DISPUTE RESOLUTION PROCESSES

12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

12.2 Mediation

12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

12.3 Failure of Mediation

12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.

12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.

12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

13 NOTICES

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:
- 13.2.1 personal delivery, on the date of delivery;
 - 13.2.2 pre-paid post, on the third working day after posting;
 - 13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;
 - 13.2.4 electronic mail, on the day of successful delivery of the mail.
- 13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

14 SPECIAL CONDITIONS

- 14.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

Signed by _____ and)
acting under a written delegation from the Minister)
of Conservation and exercising his/her powers under)
section 117 of the Reserves Act 1977 as designated)
Commissioner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

SCHEDULE 1

Description of Land:

South Auckland Land District — Western Bay of Plenty District

Part Crown Land (SO 48402). Subject to survey.

As shown on OTS-100-408 and known as Pukewhakatara.

Conservation and Reserve Values:

The Land adjoins, and is part of the wider habitat associated with, the Kaimai - Mamaku Conservation Park. The Park provides some of the most contiguous areas of native forest in the Bay of Plenty including New Zealand's most northern stands of kamahi, red and silver beech. The main spine of the Kaimai Range is a prominent feature of the area. Extensive ancient volcanic outcrops on the main Kaimai Range provide habitat for a diverse range of plants.

Faunal values within the Kaimai - Mamaku Conservation Park include native bird species such as the whitehead, kākā, kōkako, kiwi, long-tailed cuckoo and kārearea. More common native bird such as tūī and bellbirds are readily seen within the Park. Hochstetter's Frogs are also found in the vicinity of this site. There is a diverse range of invertebrates in the Park including the Te Aroha stag beetle.

The Land is unique botanically, with vegetation including kauri, beech and hard woods.

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

SCHEDULE 2

Address for Service

The address for service of the Owner is:

The address for service of the Minister is:

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

SCHEDULE 3

Special Conditions

Recreational facilities

1. For the avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

Taking of plant material

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

Propagation

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

Removal of rock

4. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

Managing public access

5. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.
6. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

Cultural activities

7. The Owner may undertake cultural activities on the Land, subject to:
 - (a) consultation with the Department of Conservation; and
 - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

5.2: PUKEWHAKATARATARA CONSERVATION COVENANT

GRANT OF CONSERVATION COVENANT

Under section 27 of the
Conservation Act 1987
and section 77 of the
Reserves Act 1977

to

MINISTER OF CONSERVATION

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

Legal Services
Department of Conservation

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

5.3 Takaihuehue conservation covenant

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

TAKAIHUEHUE CONSERVATION COVENANT

**(Section 27 Conservation Act 1987
and
Section 77 Reserves Act 1977)**

THIS DEED of COVENANT is made this day of

BETWEEN [*the trustees of the Ngāti Tumutumu Trust*] [*to be inserted*] (the Owner)

AND **MINISTER OF CONSERVATION** (the Minister)

BACKGROUND

- A Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Ngāti Rāhiri Tumutumu Claims Act
- D The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation and Reserve Values”

means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

“Director-General”

means the Director-General of Conservation.

“Fence”

includes a gate.

“Land’s Values”

means the Conservation and Reserve values specified in Schedule 1.

“Natural Water”

includes water contained in streams the banks of which have, from time to time, been re-aligned.

“Owner”

means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.

“Working Days”

means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3 IMPLEMENTATION OF OBJECTIVES

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

- 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
 - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
 - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
 - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
 - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
 - 3.2.3 keeping the Land free from exotic tree species;
 - 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

4 PUBLIC ACCESS

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
 - 4.1.1 only access the Land by foot;
 - 4.1.2 do not take firearms or animals on the Land; and
 - 4.1.3 do not camp on the Land.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:
 - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
 - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act

10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

11 DEFAULT

- 11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

11.1.2 will also be entitled to recover from the party responsible for the breach as a debt

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

11.2.1 advise the defaulting party of the default;

11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12 DISPUTE RESOLUTION PROCESSES

12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

12.2 Mediation

12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

12.3 Failure of Mediation

12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.

12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.

12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

13 NOTICES

13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:
- 13.2.1 personal delivery, on the date of delivery;
 - 13.2.2 pre-paid post, on the third working day after posting;
 - 13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;
 - 13.2.4 electronic mail, on the day of successful delivery of the mail.
- 13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

14 SPECIAL CONDITIONS

- 14.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

Signed by _____ and)
acting under a written delegation from the Minister)
of Conservation and exercising his/her powers under)
section 117 of the Reserves Act 1977 as designated)
Commissioner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

SCHEDULE 1

Description of Land:

South Auckland Land District — Western Bay of Plenty District

Part Crown Land (SO 48402). Subject to survey.

As shown on OTS-100-411 and known as Takaihuehue.

Conservation and Reserve Values:

The Land adjoins, and is part of the wider habitat associated with, the Kaimai - Mamaku Conservation Park. The Park provides some of the most contiguous areas of native forest in the Bay of Plenty including New Zealand's most northern stands of kamahi, red and silver beech. The main spine of the Kaimai Range is a prominent feature of the area. Extensive ancient volcanic outcrops on the main Kaimai Range provide habitat for a diverse range of plants.

Faunal values within the Kaimai - Mamaku Conservation Park include native bird species such as the whitehead, kākā, kōkako, kiwi, long-tailed cuckoo and kārearea. More common native bird such as tūī and bellbirds are readily seen within the Park. Hochstetter's Frogs are also found in the vicinity of this site. There is a diverse range of invertebrates in the Park including the Te Aroha stag beetle.

The Land is unique botanically, with vegetation including kauri, beech and hard woods.

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

SCHEDULE 2

Address for Service

The address for service of the Owner is:

The address for service of the Minister is:

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

SCHEDULE 3

Special Conditions

Recreational facilities

1. For the avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

Taking of plant material

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

Propagation

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

Removal of rock

4. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

Managing public access

5. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.
6. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

Cultural activities

7. The Owner may undertake cultural activities on the Land, subject to:
 - (a) consultation with the Department of Conservation; and
 - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

5.3: TAKAIHUEHUE CONSERVATION COVENANT

GRANT OF CONSERVATION COVENANT

Under section 27 of the
Conservation Act 1987
and section 77 of the
Reserves Act 1977

to

MINISTER OF CONSERVATION

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

Legal Services
Department of Conservation

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

5.4 Wahine Rock property conservation covenant

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

WAHINE ROCK PROPERTY CONSERVATION COVENANT

**(Section 27 Conservation Act 1987
and
Section 77 Reserves Act 1977)**

THIS DEED of COVENANT is made this day of

BETWEEN [*the trustees of the Ngāti Tumutumu Trust*] [*to be inserted*] (the Owner)

AND **MINISTER OF CONSERVATION** (the Minister)

BACKGROUND

- A Section 27 of the Conservation Act 1987 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Conservation Values; and Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Ngāti Rāhiri Tumutumu Claims Act
- D The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Land and bind all subsequent owners of the Land, the Owner and Minister agree as follows.

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation and Reserve Values”

means the preservation and protection of natural, landscape and historic resources including Conservation and Reserve Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

“Director-General”

means the Director-General of Conservation.

“Fence”

includes a gate.

“Land’s Values”

means the Conservation and Reserve values specified in Schedule 1.

“Natural Water”

includes water contained in streams the banks of which have, from time to time, been re-aligned.

“Owner”

means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.

“Working Days”

means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

1.1.1 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.

1.1.2 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.

1.1.3 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

2.1.2 to provide, subject to section 4 and Schedule 3 of this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

3 IMPLEMENTATION OF OBJECTIVES

3.1 Unless agreed in writing by the parties the Owner must not carry out or permit on or in relation to the Land:

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

- 3.1.1 grazing of the Land by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
 - 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
 - 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
 - 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
 - 3.1.8 the damming, diverting or taking of Natural Water;
 - 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
 - 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
 - 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 Subject to the Owner having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owner must take all reasonable steps to maintain the Land, including:
- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owner may undertake minor clearance of vegetation;
 - 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
 - 3.2.3 keeping the Land free from exotic tree species;
 - 3.2.4 keeping the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

- 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, granting to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
- 3.2.6 keeping all existing Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
- 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.

4 PUBLIC ACCESS

- 4.1 Subject to Schedule 3, the Owner must, subject to this Covenant, permit the public to enter upon the Land for non-commercial purposes without the consent of the Owner provided the public:
 - 4.1.1 only access the Land by foot;
 - 4.1.2 do not take firearms or animals on the Land; and
 - 4.1.3 do not camp on the Land.

5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:
 - 5.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant;
 - 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this Covenant.

6 JOINT OBLIGATIONS

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work, or activity or improvement or take any action either jointly or individually better to achieve the objectives set out in clause 2.

7 DURATION OF COVENANT

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

8 OBLIGATIONS ON DISPOSAL OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

- 9.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

10 MISCELLANEOUS MATTERS

10.1 Trespass Act

10.1.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

10.1.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

10.2 Reserves Act

10.2.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

10.3 Registration

10.3.1 This Covenant must be signed by both parties and registered against the Computer Freehold Register for the Land.

10.4 Acceptance of Covenant

10.4.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.

11 DEFAULT

- 11.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

- 11.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and
 - 11.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.
- 11.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:
- 11.2.1 advise the defaulting party of the default;
 - 11.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
 - 11.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

12 DISPUTE RESOLUTION PROCESSES

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

12.2 Mediation

- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.

12.3 Failure of Mediation

- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
- 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

13 NOTICES

- 13.1 Any notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, by facsimile or by electronic mail addressed to the receiving party at the address, facsimile number or electronic mail address set out in Schedule 2.
- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received in the case of:
 - 13.2.1 personal delivery, on the date of delivery;
 - 13.2.2 pre-paid post, on the third working day after posting;
 - 13.2.3 facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch;
 - 13.2.4 electronic mail, on the day of successful delivery of the mail.
- 13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land or change in the particulars in Schedule 2 and must supply the Minister with the name and address of the new owner or person in control.

14 SPECIAL CONDITIONS

- 14.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 14.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ as)
Owner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

Signed by _____ and)
acting under a written delegation from the Minister)
of Conservation and exercising his/her powers under)
section 117 of the Reserves Act 1977 as designated)
Commissioner in the presence of:)

Witness: _____

Address: _____

Occupation: _____

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

SCHEDULE 1

Description of Land:

South Auckland Land District — Western Bay of Plenty District and Matamata-Piako District

Part Crown Land (SO 48402). Subject to survey.

As shown on OTS-100-410 and known as Wahine Rock property.

Conservation and Reserve Values:

The Land adjoins, and is part of the wider habitat associated with, the Kaimai - Mamaku Conservation Park. The Park provides some of the most contiguous areas of native forest in the Bay of Plenty including New Zealand's most northern stands of kamahi, red and silver beech. The main spine of the Kaimai Range is a prominent feature of the area. Extensive ancient volcanic outcrops on the main Kaimai Range provide habitat for a diverse range of plants.

Faunal values within the Kaimai - Mamaku Conservation Park include native bird species such as the whitehead, kākā, kōkako, kiwi, long-tailed cuckoo and kārearea. More common native bird such as tūī and bellbirds are readily seen within the Park. Hochstetter's Frogs are also found in the vicinity of this site. There is a diverse range of invertebrates in the Park including the Te Aroha stag beetle.

The Land is unique botanically, with vegetation including kauri, beech and hard woods.

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

SCHEDULE 2

Address for Service

The address for service of the Owner is:

The address for service of the Minister is:

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

SCHEDULE 3

Special Conditions

Recreational facilities

1. For the avoidance of doubt, clause 2.1.2 does not place any obligation on the Owner over and above allowing physical access to and within the Land, and does not include an obligation to provide facilities, recreational or otherwise, for public enjoyment of the Land.

Taking of plant material

2. Despite clause 3.1.2 the Owner may authorise the taking or removal of materials from native plants, shrubs and trees from the Land in accordance with tikanga Maori for customary purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.

Propagation

3. Despite clause 3.1.2, the Owner may take seed or cuttings of plant species from the Land for propagation purposes and planting within the Land. This right to take native plant seed and cuttings does not include harvesting of seed or the taking of cuttings for commercial purposes.

Removal of rock

4. Despite clause 3.1.11, the Owner may take rock of any kind from the Land for cultural or spiritual purposes.

Managing public access

5. Despite clause 4.1, the Owner may manage public access (including restrictions) in order to protect the privacy of users of buildings and associated areas, wāhi tapu, the Conservation and Reserve Values, or for the purposes of public safety. However, any restrictions cannot exclude the public from all of the Land indefinitely.
6. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

Cultural activities

7. The Owner may undertake cultural activities on the Land, subject to:
 - (a) consultation with the Department of Conservation; and
 - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

5.4: WAHINE ROCK PROPERTY CONSERVATION COVENANT

GRANT OF CONSERVATION COVENANT

Under section 27 of the
Conservation Act 1987
and section 77 of the
Reserves Act 1977

to

MINISTER OF CONSERVATION

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

**Legal Services
Department of Conservation**

DOCUMENTS

5.5: TANGITU CONSERVATION COVENANT

5.5 Tangitu conservation covenant

DOCUMENTS

5.5: TANGITU CONSERVATION COVENANT

[To be inserted following final agreement between Ngāti Rāhiri Tumutumu, Ngāti Maru and Ngāti Tamaterā]

DOCUMENTS

5.6: NGĀ TUKITUKI A HIKAWERA CONSERVATION COVENANT

5.6 Ngā Tukituki a Hikawera conservation covenant

DOCUMENTS

5.6: NGĀ TUKITUKI A HIKAWERA CONSERVATION COVENANT

[To be inserted following final agreement between Ngāti Rāhiri Tumutumu, Ngāti Maru and Ngāti Tamaterā]

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

5.7 Matamata-Piako District Council water easement

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

Easement instrument to grant easement or *profit à prendre*, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

South Auckland

Grantor

Sumame(s) must be underlined.

[the trustees of the Ngāti Tumutumu Trust] [names to be inserted]

Grantee

Sumame(s) must be underlined.

Matamata-Piako District Council

Grant* of easement or *profit à prendre* or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule if required.

Purpose (nature and extent) of easement, <i>profit(s) à prendre</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	[That area shown blue on deed plans OTS-100-405, OTS-100-407 and OTS-100-415]	[Section [] SO [] (formerly Part Section 17C Block IX Aroha Survey District and Section 122 Block IX Aroha Survey District)]	In Gross
Right to Convey Water and Right to Drain Water	[That area shown blue on deed plans OTS-100-405, OTS-100-407 and OTS-100-415]	561059 [Section [] SO [] (formerly Part Section 169 Block IX Aroha Survey District)]	

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are ~~varied/negated/added to~~ or substituted by:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

The provisions set out in the Annexure Schedule.

Covenant provisions

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

~~Annexure Schedule 2.~~

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

Annexure Schedule

Insert type of instrument

Easement

Dated

Page

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of

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Pages

Continue in additional Annexure Schedule, if required.

<p>1 Definitions and Interpretation</p> <p>1.1 In this instrument, unless the context requires otherwise:</p> <p>(a) Easement Area means each of the Right of Way Area, the Right to Convey Water Area and the Right to Drain Water Area;</p> <p>(b) Equipment:</p> <p>(i) in relation to a right of way means that part of the surface of the Land contained in the Right of Way Area;</p> <p>(ii) in relation to a right to convey water means pipes, pumps, pump sheds, storage tanks, water purifying equipment, water bores infrastructure or other equipment suitable for that purpose (whether above or under the ground) and anything in replacement or substitution, to the intent that any Equipment which exists and is located under the ground as at the date of this easement instrument remains located under the ground in the case of any replacement, substitution or expansion;</p> <p>(iii) in relation to a right to drain water means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, water bores, infrastructure, other equipment suitable for that purpose (whether above or under the ground) and anything in replacement or substitution, to the intent that any Equipment which exists and is located under the ground as at the date of this easement instrument remains under the ground in the case of any replacement, substitution or expansion;</p> <p>(c) Land means the Servient Tenement set out in Schedule A;</p> <p>(d) Right of Way Area means those parts of the Servient Tenement identified as Schedule A as defining the right of way easement;</p> <p>(e) Right to Convey Water Area means those parts of the Servient Tenement identified as Schedule A as defining the right to convey water easement;</p> <p>(f) Right to Drain Water Area means those parts of the Servient Tenement identified as Schedule A as defining the right to drain water easement;</p> <p>(g) Working Day means any day of the week other than:</p> <p>(i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day (or its observance day), the Sovereign's Birthday, Labour Day, Waitangi Day (or its observance day) and Auckland Anniversary Day; and</p> <p>(ii) A day in the period commencing with 25 December in any year and ending with 4 January in the following year;</p> <p>(h) headings are included for convenience only and do not affect the interpretation of this instrument;</p> <p>(i) words importing the singular include the plural and vice-versa;</p> <p>(j) references to the parties include references to the parties' respective executors, administrators, successors in title and assigns and their employees, contractors, agents, tenants, licensees and invitees (unless repugnant to the context); and</p> <p>(k) references to legislation and other documents includes references to any amendment or replacement legislation or documents.</p> <p>2 Right of Way Easement</p> <p>2.1 The Grantee shall have the right at all times to:</p> <p>(a) go over and along the Right of Way Area with or without any kind of vehicle, machinery, tools or equipment; and</p>

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

Annexure Schedule

Insert type of instrument

Easement

Dated

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of

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Pages

Continue in additional Annexure Schedule, if required.

- (b) establish a driveway, to repair and maintain an existing driveway and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted).

3 Right to Convey Water

3.1 The Grantee shall have the right at all times to:

- (a) Take, store and convey water in free and unimpeded flow from the source of supply or point of entry through the Equipment and over the Right to Convey Water Area;
- (b) Construct, lay, equip, maintain, inspect, repair, alter, renew, replace, upgrade, add to, remove and operate the Equipment in the Right to Convey Water Area; and
- (c) Undertake any other works required to assist in the operation of the Equipment including but not limited to, excavating trenches and constructing support structures in the Right to Convey Water Area.

4 Right to Drain Water

4.1 The Grantee shall have the right at all times to:

- (a) convey water (whether sourced from rain, springs, soakage, seepage [or other source]) in any quantity through the Equipment and over the Right to Drain Water Area;
- (b) construct, lay, equip, maintain, inspect, repair, alter, renew, replace, upgrade, add to, remove and operate the Equipment in the Right to Drain Water Area; and
- (c) undertake any other works required to assist in the operation of the Equipment including but not limited to, excavating trenches and constructing support structures in the Right to Drain Water Area.

5 Rights of Entry

5.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied under this easement, the Grantee may:

- (a) enter upon the Easement Area by a reasonable route and with all necessary tools, vehicles and equipment;
- (b) remain on the Easement Area for a reasonable time for the sole purpose of completing the necessary work; and
- (c) leave any vehicles or equipment on the Easement Area for a reasonable period of time if work is proceeding.

6 Grantee's Rights and Obligations

6.1 The parties agree that the Grantee may exercise its rights under this easement instrument at any and all times.

6.2 The Grantee will, in exercising its rights under this easement:

- (a) cause as little damage as reasonably possible to the Land and to any building or improvement located on the Land;
- (b) ensure that all work is performed in a proper and workmanlike manner and completed promptly; and
- (c) make good any damage caused to the surface of the Land or to any building or improvement located on the Land to as close as reasonably possible to its former condition.

6.3 The Grantee must, at its cost and at all times, keep any vehicular and pedestrian access routes over the Land used by the Grantee to and along the Easement Area clear and in good condition including the prompt undertaking of any necessary repair or reinstatement works.

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

Annexure Schedule

Insert type of instrument

Easement

Dated

Page

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of

4

Pages

Continue in additional Annexure Schedule, if required.

<p>7 Grantor's Obligations</p> <p>7.1 The Grantor must not, without obtaining the Grantee's prior consent:</p> <ul style="list-style-type: none">(a) place or allow to be placed any buildings, fences, poles, pipes, wires, lines, cables or other structures or equipment on, in, over or under the Easement Area;(b) operate any heavy machinery or cultivating equipment on the Easement Area;(c) do or allow anything that may interfere with or limit the Grantee's rights under this easement instrument;(d) do or allow anything that may interfere with the Equipment or damage the Equipment;(e) breach any legal requirements relating to the Equipment;(f) grant any right to any person that may limit or detrimentally affect the Grantee's Rights; or(g) subdivide the Land if that subdivision could prevent the Grantee's legal or practical access (or both) to or along the Easement Area on foot or by vehicle (or both). <p>7.2 The Grantee acknowledges that the Easement Area is predominantly covered in bush and other vegetation. The Grantor is under no obligation to clear this bush or vegetation from the Easement Area. If such bush or vegetation (whether growing now or in the future) interferes with the Grantee's rights under this Easement Instrument, the Grantee will be responsible, at its sole cost, to clear such bush or vegetation.</p> <p>7.3 The Grantor must not do and must not allow to be done anything on the Land that may cause the purity or flow of water in the water supply system to be diminished or polluted.</p> <p>8 Default</p> <p>8.1 If the Grantor does not meet its obligations under this instrument:</p> <ul style="list-style-type: none">(a) the Grantee may serve on the Grantor written notice requiring the Grantor to meet a specific obligation and stating that, after the expiration of 7 Working Days from service of the notice of default, the Grantee may meet the obligation;(b) if, at the expiry of the 7 Working Day period, the Grantor has not met the obligation set out in the written notice, the Grantee may:<ul style="list-style-type: none">(i) meet the obligation; and(ii) for that purpose, enter the Land and the Easement Area;(c) the Grantor is liable to pay the Grantee the cost of preparing and serving the default notice and the costs incurred in meeting the obligation; and(d) the Grantee may recover from the Grantor, as a liquidated debt, any money payable under this clause. <p>9 General</p> <p>9.1 There is no power for the Grantor to cancel this easement for any breach of its provisions or for any other cause with the intention being that this easement continues forever until surrendered.</p> <p>9.2 The Equipment and any other property of the Grantee will not, for any reason, become part of the Land or the property of the Grantor.</p>

DOCUMENTS

5.7: MATAMATA-PIAKO DISTRICT COUNCIL WATER EASEMENT

Annexure Schedule

Insert type of instrument

Easement

Dated

Page

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of

4

Pages

Continue in additional Annexure Schedule, if required.

10 **Disputes**

10.1 If any dispute arises between the Grantor and the Grantee concerning this instrument:

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party;
- (b) the parties must first seek to resolve the dispute directly by negotiation;
- (c) if the dispute is not resolved within 15 Working Days of the date on which the parties begin their negotiations, the dispute may be resolved by reference to mediation if both parties agree to do so; and
- (d) if the dispute is not resolved within 15 Working Days of reference to mediation or if the parties do not agree to refer the dispute to mediation, the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 and the arbitration must be conducted by a single arbitrator to be agreed by the parties or, failing agreement, to be appointed by the President (or the President's nominee) of the New Zealand Law Society (or any replacement organisation).

10.2 Clause 10.1 is not intended to replace the right of either party to:

- (a) refer any dispute to any other dispute resolution scheme (provided that it complies with the jurisdiction of that scheme); or
- (b) seek relief in the New Zealand courts (including urgent relief).

11 **Reserves Act 1977**

11.1 Notwithstanding that the Servient Tenement is subject to the Reserves Act 1977, this instrument is enforceable in accordance with its terms and is to be treated as having been granted in accordance with the Reserves Act 1977.

DOCUMENTS

5.8: TE AROHA SITE A EASEMENT

5.8 Te Aroha site A easement

DOCUMENTS

5.8: TE AROHA SITE A EASEMENT

Easement instrument to grant easement or *profit à prendre*, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Land registration district

South Auckland

Grantor

Sumame(s) must be underlined.

[the trustees of the Ngāti Tumutumu Trust]

Grantee

Sumame(s) must be underlined.

Matamata-Piako District Council

Grant* of easement or *profit à prendre* or creation of covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule if required.

Purpose (nature and extent) of easement, <i>profit(s) à prendre</i> , or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	[The strip marked red on deed plan OTS-100-413 (subject to survey)]	[Part Lot 1 DPS 18195]	In Gross

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are ~~varied/negated/added to or~~ substituted by:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

The provisions set out in the Annexure Schedule.

Covenant provisions

Delete phrases in [] and insert memorandum number as required. Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

Memorandum number _____, registered under section 155A of the Land Transfer Act 1952.

Annexure Schedule 2.

DOCUMENTS

5.8: TE AROHA SITE A EASEMENT

Annexure Schedule			
Insert type of instrument			
<input type="text" value="Easement"/>	Dated	<input type="text"/>	Page <input type="text" value="1"/> of <input type="text" value="4"/> Pages
<i>Continue in additional Annexure Schedule, if required.</i>			
1. Definitions and Interpretation			
1.1 In this instrument, unless the context requires otherwise:			
(a) Easement Area means the Right of Way Area;			
(b) Equipment : in relation to a right of way means that part of the surface of the Land contained in the Right of Way Area;			
(c) Land means the Servient Tenement set out in Schedule A;			
(d) Right of Way Area means those parts of the Servient Tenement identified as Schedule A as defining the right of way easement;			
(e) Working Day means any day of the week other than:			
(i) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day (or its observance day), the Sovereign's Birthday, Labour Day, Waitangi Day (or its observance day) and Auckland Anniversary Day; and			
(ii) a day in the period commencing with 25 December in any year and ending with 4 January in the following year;			
(f) headings are included for convenience only and do not affect the interpretation of this instrument;			
(g) words importing the singular include the plural and vice-versa;			
(h) references to the parties include references to the parties' respective executors, administrators, successors in title and assigns and their employees, contractors, agents, tenants, licensees and invitees (unless repugnant to the context); and			
(i) references to legislation and other documents includes references to any amendment or replacement legislation or documents.			
2. Right of Way Easement			
2.1 The Grantee shall have the right at all times to:			
(a) go over and along the Right of Way Area with or without any kind of vehicle, machinery, tools or equipment; and			
(b) establish a walkway, to repair and maintain an existing walkway and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted).			
2.2 The General Public (as the invitees of the Grantee) shall have the right at all times to go over and along the Right of Way Area on foot or by bicycle.			
3. Rights of Entry			
3.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied under this easement, the Grantee may:			
(a) enter upon the Easement Area by a reasonable route and with all necessary tools, vehicles and equipment;			
(b) remain on the Easement Area for a reasonable time for the sole purpose of completing the necessary work; and			
(c) leave any vehicles or equipment on the Easement Area for a reasonable period of time if work is proceeding.			

DOCUMENTS

5.8: TE AROHA SITE A EASEMENT

Annexure Schedule			
Insert type of instrument			
Easement	Dated		Page 2 of 4 Pages
<i>Continue in additional Annexure Schedule, if required.</i>			
4.	Grantee's Rights and Obligations		
4.1	The parties agree that the Grantee may exercise its rights under this easement instrument at any and all times.		
4.2	The Grantee will, in exercising its rights under this easement:		
(a)	cause as little damage as reasonably possible to the Land and to any building or improvement located on the Land;		
(b)	ensure that all work is performed in a proper and workmanlike manner and completed promptly; and		
(c)	make good any damage caused to the surface of the Land or to any building or improvement located on the Land to as close as reasonably possible to its former condition.		
5.	Grantor's Obligations		
The Grantor must not, without obtaining the Grantee's prior consent:			
(a)	place or allow to be placed any buildings, fences, poles, pipes, wires, lines, cables or other structures or equipment on, in, over or under the Easement Area;		
(b)	plant or allow any tree, shrub or other vegetation to grow on the Easement Area;		
(c)	operate any heavy machinery or cultivating equipment on the Easement Area;		
(d)	do or allow anything that may interfere with or limit the Grantee's rights under this easement instrument;		
(e)	do or allow anything that may interfere with the Equipment or damage the Equipment;		
(f)	breach any legal requirements relating to the Equipment;		
(g)	grant any right to any person that may limit or detrimentally affect the Grantee's Rights; or		
(h)	subdivide the Land if that subdivision could prevent the Grantee's legal or practical access (or both) to or along the Easement Area on foot or by vehicle (or both).		
6.	Default		
If the Grantor does not meet its obligations under this instrument:			
(a)	the Grantee may serve on the Grantor written notice requiring the Grantor to meet a specific obligation and stating that, after the expiration of 7 Working Days from service of the notice of default, the Grantee may meet the obligation;		
(b)	if, at the expiry of the 7 Working Day period, the Grantor has not met the obligation set out in the written notice, the Grantee may:		
(c)	meet the obligation; and		
(d)	for that purpose, enter the Land and the Easement Area;		
(e)	the Grantor is liable to pay the Grantee the cost of preparing and serving the default notice and the costs incurred in meeting the obligation; and		
(f)	the Grantee may recover from the Grantor, as a liquidated debt, any money payable under this clause.		

DOCUMENTS

5.8: TE AROHA SITE A EASEMENT

Annexure Schedule			
Insert type of instrument			
Easement	Dated		Page 3 of 4 Pages
<i>Continue in additional Annexure Schedule, if required.</i>			
7.	General		
7.1	There is no power for the Grantor to cancel this easement for any breach of its provisions or for any other cause with the intention being that this easement continues forever until surrendered.		
7.2	The Equipment and any other property of the Grantee will not, for any reason, become part of the Land or the property of the Grantor.		
8.	Disputes		
8.1	If any dispute arises between the Grantor and the Grantee concerning this instrument:		
	(a)	the party initiating the dispute must provide full written particulars of the dispute to the other party;	
	(b)	the parties must first seek to resolve the dispute directly by negotiation;	
	(c)	if the dispute is not resolved within 15 Working Days of the date on which the parties begin their negotiations, the dispute may be resolved by reference to mediation if both parties agree to do so; and	
	(d)	if the dispute is not resolved within 15 Working Days of reference to mediation or if the parties do not agree to refer the dispute to mediation, the dispute must be referred to arbitration in accordance with the Arbitration Act 1996 and the arbitration must be conducted by a single arbitrator to be agreed by the parties or, failing agreement, to be appointed by the President (or the President's nominee) of the New Zealand Law Society (or any replacement organisation).	
8.2	Clause 8.1 is not intended to replace the right of either party to:		
	(a)	refer any dispute to any other dispute resolution scheme (provided that it complies with the jurisdiction of that scheme); or	
	(b)	seek relief in the New Zealand courts (including urgent relief).	

DOCUMENTS

5.9: TANGITU EASEMENT

5.9 Tangitu easement

DOCUMENTS

5.9: TANGITU EASEMENT

[To be inserted following agreement between Ngāti Rāhiri Tumutumu, Ngāti Maru and Ngāti Tamaterā]

6 LEASE FOR LEASEBACK PROPERTY

DOCUMENTS

6: LEASE FOR LEASEBACK PROPERTY

MINISTRY OF EDUCATION
TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[]

Affected instrument Identifier
and type (if applicable)

All/part

Area/Description of part or stratum

[]

[]

[]

Lessor

[the trustees of the Ngāti Tumutumu Trust] [*names to be inserted*]

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

Insert "fee simple"; "leasehold in lease number " etc.

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure Schedule(s)

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Signature of the Lessor	Signed in my presence by the Lessor
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:
_____ []	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name: Occupation: Address:

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<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>_____</p> <p>[]</p>	<p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters (unless legibly printed)</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>

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BACKGROUND

- A The purpose of this Lease is to give effect to the signed Deed of Settlement between **[insert name of claimant group]** and the Crown, under which the parties agreed to transfer the Land to **[insert name of post-settlement governance entity]** and lease it back to the Crown.
- B The Lessor owns the Land described in Item 1 of Schedule A.
- C The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Lease.
- D The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- E The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants as set out in Schedules A and B.

SCHEDULE A

ITEM 1 THE LAND

[insert full legal description - note that improvements are excluded].

ITEM 2 START DATE

[insert start date].

ITEM 3 ANNUAL RENT

[\$[insert agreed rent] plus GST per annum payable monthly in advance on the first day of each month but the first payment shall be made on the Start Date on a proportionate basis for any broken period until the first day of the next month.

ITEM 4 TERM OF LEASE

21 Years.

ITEM 5 LESSEE OUTGOINGS

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).
- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

ITEM 6 PERMITTED USE

The Permitted Use referred to in clause 9.

ITEM 7 RIGHT OF RENEWAL

Perpetual rights of renewal of 21 years each with the first renewal date being the 21st anniversary of the Start Date, and then each subsequent renewal date being each 21st anniversary after that date.

ITEM 8 RENT REVIEW DATES

The 7th anniversary of the Start Date and each subsequent 7th anniversary after that date.

ITEM 9 LESSEE'S IMPROVEMENTS

As defined in clause 1.9 and including the following existing improvements: ***[List here all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent, contractor or sublessee or licensee of the Lessee on the Land].***

[]

The above information is taken from the Lessee's records as at [].
A site inspection was not undertaken to compile this information.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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ITEM 11 CLAUSE 16.6 NOTICE

To: [Post-Settlement Governance Entity] (“the Lessor”)

And to: The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6140 (“the Lessee”)

From [Name of Mortgagee/Chargeholder] (“the Lender”)

The Lender acknowledges that before it advanced monies to the Lessor under a security (“the Security”) given by the Lessor over the Land described in the Schedule to the Lease attached to this Notice) it had notice of and agreed to be bound by the provisions of clause 16.6 of the Lease and that in particular it agrees that despite any provision of the Security to the contrary and regardless of how any Lessee’s Improvement is fixed to the Land it:

- (i) will not claim any security interest in any Lessee’s Improvement (as defined in the Lease) at any time; and
- (ii) acknowledges that any Lessee’s Improvements remain the Lessee’s property at all times.

SCHEDULE

[]

[Form of execution by Lender]

[Date]

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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SCHEDULE B

1 Definitions

1.1 The term “Lessor” includes and binds:

- (a) the persons executing this Lease as Lessor; and
- (b) any Lessor for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessor and if more than one jointly and severally.

1.2 The term “Lessee” includes and binds:

- (a) the person executing this Lease as Lessee; and
- (b) all the Lessees for the time being under the Lease; and
- (c) all the respective executors, administrators, successors, assignees and successors in the title of each Lessee and if more than one jointly and severally.

1.3 “Business Day” means a day that is not:

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, and Labour Day; or
- (c) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; or
- (d) the days observed as the anniversaries of the provinces of [Auckland] [and] Wellington; or
- (e) the days observed as Waitangi Day or Anzac Day under section 45A of the Holidays Act 2003.

1.4 “Crown” has the meaning given in section 2(1) of the Public Finance Act 1989.

1.5 “Crown Body” means:

- (a) a Crown entity (as defined by section 7(1) of the Crown Entities Act 2004); and
- (b) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); and
- (c) the New Zealand Railways Corporation; and

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- (d) a company or body that is wholly owned or controlled by one or more of the following:
- (i) the Crown;
 - (ii) a Crown entity;
 - (iii) a State enterprise; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 “Department” has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 “Education Purposes” means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 “Legislation” means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 “Lessee’s Improvements” means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 “Lessee’s property” includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 “Maintenance” includes repair.
- 1.12 “Public Work” has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 “Sublet” and “Sublease” include the granting of a licence to occupy the Land or part of it.
- 2 Payment of Annual Rent**
- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6.5% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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3 Rent Review

When a party initiates the rent review process as set out in clause 3.5:

3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6.5% of the lesser of:

- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
- (b) the Nominal Value being:
 - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
 - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.

3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.

3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.

3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:

- (a) at the start date of every new Term; and
- (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.

3.5 The rent review process will be as follows:

- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
- (c) If the notified party does not agree with the notifying party's assessment it has 30 Business Days after it receives the Rent Review Notice to issue a notice disputing the proposed new rent ("the Dispute Notice"), in which case the steps set out in (d) to (k) below must be followed. The Dispute Notice must specify a new Annual Rent, calculated in accordance with clause 3.1, which the notified party considers should be charged from that Rent Review Date, and be supported by a registered valuer's certificate.
- (d) Until the new rent has been determined or agreed, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.
- (f) If a new Annual Rent has not been agreed within 20 Business Days of the receipt of the Dispute Notice then the new Annual Rent may be determined either:
 - (i) by one party giving written notice to the other requiring the new Annual Rent to be determined by arbitration; or
 - (ii) if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 10 Business Days of receipt of the written notice each party will appoint a valuer and give written notice of the appointment to the other party. If the party receiving a notice fails to appoint a valuer within the 10 Business Day period then the valuer appointed by the other party will determine the new Annual Rent and that determination will be binding on both parties.
- (h) Within 10 Business Days of their appointments the two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire they must ask the president of the Property Institute of New Zealand Incorporated (or equivalent) to appoint an umpire.
- (i) Once the umpire has been appointed the valuers must try to determine the new Annual Rent by agreement. If they fail to agree within 40 Business Days (time being of the essence) the Annual Rent will be determined by the umpire.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (j) Each party will have the opportunity to make written or verbal representations to the umpire within the period, and on the conditions, set by the umpire.
- (k) When the rent has been determined or agreed, the umpire or valuers must give written notice of it to the parties. The parties will each pay their own valuer's costs and will share the umpire's costs equally between them.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the notifying party's notice if that notice is given later than 60 Business Days after the Rent Review Date.
- (m) The new Annual Rent may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

4 Payment of Lessee Outgoings

During the Term of this Lease the Lessee must pay the Lessee Outgoings specified in Item 5 of Schedule A directly to the relevant person.

5 Valuation Roll

Where this Lease is registered under section 115 of the Land Transfer Act 1952 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land and will be responsible for payment of any rates.

6 Utility Charges

- 6.1 The Lessee must promptly pay to the relevant authority or supplier all utility charges including water, sewerage, drainage, electricity, gas, telephone and rubbish collection which are separately metered or charged in respect of the Land.
- 6.2 If any utility or service is not separately charged in respect of the Land then the Lessee will pay a fair and reasonable proportion of the charges.
- 6.3 If required to do so by the Lessor or any local authority the Lessee must at its own expense install any meter necessary to assess the charges for any utility or other service supplied to the Land.

7 Goods and Services Tax

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the Annual Rent and other payments payable by the Lessee under this Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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8 **Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 **Permitted Use of Land**

The Land may be used for Education Purposes, and/or any other Public Work, including any lawful secondary or incidental use.

10 **Designation**

The Lessor consents to the Lessee requiring a designation or designations under the Resource Management Act 1991 for the purposes of the Permitted Use and maintaining that designation or those designations for the Term of this Lease.

11 **Compliance with Law**

The Lessee must at its own cost comply with the provisions of all relevant Legislation.

12 **Hazards**

12.1 The Lessee must take all reasonable steps to minimise or remedy any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used by the Lessee or its agents on the Land in accordance with all relevant Legislation.

12.2 Subject to clause 13, in the event the state of the Land is altered by any natural event including flood, earthquake, slip or erosion the Lessor agrees at its own cost to promptly address any hazards for the protection of occupants of the site and to remediate any hazards as soon as possible.

13 **Damage or Destruction**

13.1 **Total Destruction**

If the Land or the Lessee's Improvements or any portion thereof shall be destroyed or so damaged so as to render the Land or the Lessee's Improvements unsuitable for the Permitted Use to which it was put at the date of the destruction or damage (the "Current Permitted Use"), then either party may, within three months of the date of the damage, give the other 20 Business Days notice of termination, and the whole of the Annual Rent and Lessee Outgoings shall cease to be payable as from the date of the damage.

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13.2 Partial Destruction

- (a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate the Land so as to allow the Lessee to repair and reinstate the Lessee's Improvements, as the case may be.
- (b) The whole (or a fair proportion, having regard to the nature and extent to which the Lessee can use the Land for the Current Permitted Use) of the Annual Rent and Lessee's Outgoings shall cease to be payable for the period starting on the date of the damage and ending on the date when:
 - (i) the repair and reinstatement of the Land have been completed; and
 - (ii) the Lessee can lawfully occupy the Land.
- (c) If:
 - (i) in the reasonable opinion of the Lessor it is not economically viable to repair and reinstate the Land; or
 - (ii) any necessary council consents shall not be obtainable,then the term will terminate with effect from the date that either such fact is established.

13.3 Natural Disaster or Civil Defence Emergency

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
 - (i) such inability ceases; or
 - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
- (i) the relevant clause has applied for a period of 6 months or more; or
 - (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.
- 13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.
- 13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:
- (a) assert that this lease has terminated; or
 - (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.
- 14 Contamination**
- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.
- 15 Easements**
- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

16 Lessee's Improvements

16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.

16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.

16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.

16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.

16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.

16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.

16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.

16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.

17 **Rubbish Removal**

The Lessee agrees to remove at its own cost all rubbish from the Land and to keep any rubbish bins tidy.

18 **Signs**

The Lessee may display any signs which relate to the Permitted Use without the Lessor's consent. The Lessee must remove all signs at the end of the Lease.

19 **Insurance**

19.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.

19.2 The Lessee must ensure that any third party which is not the Crown or a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

20 **Fencing**

20.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land.

20.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

21 **Quiet Enjoyment**

21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.

21.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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22 **Assignment**

- 22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:
- (a) any Department or Crown Body; or
 - (b) any other party provided that the assignment complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).
- 22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).
- 22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.
- 22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

23 **Subletting**

The Lessee may without the Lessor's consent sublet to:

- (a) any Department or Crown Body; or
- (b) any other party provided that the sublease complies with the Education Act 1989 and the Public Works Act 1981 (if applicable).

24 **Occupancy by School Board of Trustees**

- 24.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on terms and conditions set by the Lessee from time to time in accordance with the Education Act 1989 and otherwise consistent with this Lease.
- 24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.
- 24.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease will continue in effect until that licence or lease ends.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

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25 **Lessee Break Option**

The Lessee may at any time end this Lease by giving not less than six months' notice in writing to the Lessor. At the end of the notice period the Lease will end and the Lessee will pay a further 12 months' rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage which the Lessor could otherwise claim because the Lease has ended early, but without prejudice to any right or remedy available to the Lessor as a consequence of any breach of this Lease by the Lessee which occurred before the Lease ended.

26 **Breach**

Despite anything else in this Lease, the Lessor agrees that, if the Lessee breaches any terms or conditions of this Lease, the Lessor must not in any circumstances cancel this Lease or re-enter into possession but may seek such other remedies which are lawfully available to it.

27 **Notice of Breach**

27.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 26 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within 20 Business Days of the notice; or
- (b) by undertaking in writing to the Lessor within 20 Business Days of the notice to remedy the breach and then remedying it within a reasonable time; or
- (c) by paying to the Lessor within 60 Business Days of the notice compensation to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of the breach.

27.2 If the Lessee remedies the breach in one of the ways set out above the Lessor will not be entitled to rely on the breach set out in the notice to the Lessee and this Lease will continue as if no such breach had occurred.

28 **Renewal**

28.1 If the Lessee has performed its obligations under this Lease the Lessor agrees that the Lease will automatically be renewed on the 21st anniversary of the Start Date for a further 21 year period unless the Lessee gives written notice to the Lessor at least six months before the expiry of the Lease Term that it does not wish the Lease to be renewed.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

DOCUMENTS

6: LEASE FOR LEASEBACK PROPERTY

Annexure Schedule

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Insert instrument type

Lease Instrument

28.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of perpetual renewal, provided that either party may initiate the rent review process in accordance with clause 3.

29 Right of First Refusal for Lessor's Interest

29.1 If at any time during the Lease Term the Lessor wishes to sell or transfer its interest in the Land the Lessor must immediately give written notice ("Lessor's Notice") to the Lessee setting out the terms on which the Lessor wishes to sell the Land and offering to sell it to the Lessee on those terms.

29.2 The Lessee has 60 Business Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor ("Lessee's Notice") accepting the offer contained in the Lessor's Notice.

29.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 29.2 the Lessor may sell or transfer the Lessor's interest in the Land to any person on no more favourable terms than those previously offered to the Lessee.

29.4 If the Lessor wishes to offer more favourable terms for selling or transferring the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms by written notice to the Lessee and clauses 29.1–29.4 (inclusive) will apply and if the re-offer is made within six months of the Lessor's Notice the 60 Business Days period must be reduced to 30 Business Days.

29.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and in that case the consent of the Lessee is not required and the Lessee's right to purchase the land under clause 29 will not apply.

[29A Single point of contact

29A.1 If the Land is held by two or more separate entities as tenants-in-common, those entities must nominate:

- (a) one bank account for payment of rent under this lease (and provide details of that bank account to the Lessee); and
- (b) one representative (*Lessor's Nominee*) that the Lessee can deal with in relation to any matter arising under this Lease.]

30 Exclusion of Implied Provisions

30.1 For the avoidance of doubt, the following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:

All signing parties and either their witnesses or solicitors must either sign or initial in this box.

Insert instrument type

Lease Instrument

(a) Clause 11 – Power to inspect premises.

31 Entire Agreement

This Lease sets out the entire agreement between the parties in relation to the Land and any variation to the Lease must be recorded in writing and executed in the same way as this Lease.

32 Disputes

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

33 Service of Notices

33.1 Notices given under this Lease by the Lessor must be served on the Lessee by hand delivery or by registered mail addressed to:

The Secretary for Education
Ministry of Education
PO Box 1666
WELLINGTON 6140

33.2 Notices given under this Lease by the Lessee must be served on the Lessor by hand delivery or by registered mail addressed to:

[insert contact details]

33.3 Hand delivered notices will be deemed to be served at the time of delivery. Notices sent by registered mail will be deemed to be served two Business Days after posting.

34 Registration of Lease

The parties agree that the Lessee may at its expense register this Lease under the Land Transfer Act 1952. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease before registration.

35 Costs

The parties will pay their own costs relating to the negotiation, preparation and execution of this Lease and any renewal, variation or surrender of the Lease.

All signing parties and either their witnesses or solicitors must either sign or initial in this box.