

**HAKO**  
and  
**NGĀI TAI KI TĀMAKI**  
and  
**NGĀTI HEI**  
and  
**NGĀTI MARU**  
and  
**NGĀTI PAOA**  
and  
**NGĀTI POROU KI HAURAKI**  
and  
**NGĀTI PŪKENGA**  
and  
**NGĀTI RĀHIRI TUMUTUMU**  
and  
**NGĀTI TAMATERĀ**  
and  
**NGĀTI TARA TOKANUI**  
and  
**NGAATI WHANAUNGA**  
and  
**TE PATUKIRIKIRI**  
  
and  
  
**THE CROWN**

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**PARE HAURAKI COLLECTIVE REDRESS DEED  
SCHEDULE: DOCUMENTS**

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TABLE OF CONTENTS

1	KAIMAI-MAMAKU RANGE STATEMENT OF ASSOCIATION.....	1
2	MINERALS RELATIONSHIP AGREEMENT .....	2
3	DEED OF COVENANT.....	14
4	FISHERIES RFR DEED OVER QUOTA.....	17
5	OVERSEAS INVESTMENT APPLICATIONS LETTER OF INTRODUCTION .....	29
6	ENCUMBRANCE FOR TUPUNA MAUNGA .....	30
6.1	TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT .....	31
7	ENCUMBRANCES FOR LICENSED LAND.....	39
7.1	TYPE A EASEMENT.....	40
7.2	TYPE B EASEMENT.....	52
7.3	TYPE C EASEMENT.....	61
7.4	HAURAKI ATHENREE FOREST EASEMENT .....	72
7.5	EASEMENT IN RELATION TO WHANGAPOUA FOREST .....	81
8	ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES .....	91
8.1	CONSERVATION COVENANT – TAIRUA FOREST CONSERVATION AREA.....	92
8.2	CONSERVATION COVENANT – KITAHU CONSERVATION AREA.....	106
8.3	CONSERVATION COVENANT – HIKUAI CONSERVATION AREA .....	120
8.4	CONSERVATION COVENANT – KITAHU CONSERVATION AREA SITE B .....	134
8.5	CONSERVATION COVENANT – OTEAO STREAM CONSERVATION AREA .....	148
8.6	CONSERVATION COVENANT – MANGAREHU STREAM CONSERVATION AREA .....	162
9	DEED OF ACCESSION.....	175
10	LAND EXCHANGE AGREEMENT .....	180
11	MEMORANDUM OF UNDERSTANDING.....	209

## 1 KAIMAI-MAMAKU RANGE STATEMENT OF ASSOCIATION

The Kaimai-Mamaku range is located towards the southern part of the Pare Hauraki tribal rohe.

The Kaimai-Mamaku range comprises many areas of spiritual, cultural, customary, traditional and historical significance to the Iwi of Hauraki, especially the prominent Pare Hauraki Tupuna Maunga of Te Aroha, a rugged mountain proliferated with high jagged peaks. At a height of 952 metres, it is the highest feature in the Kaimai-Mamaku range, dominating this landscape and forming a link to Te Paeroa o Toi range to the north:

### **Te Aroha ki uta, Moehau ki waho**

The Kaimai-Mamaku range was heavily populated and well utilised by the Iwi of Hauraki, with pā and kāinga to the east at Katikati-Te Puna and to the north and west flanked by the densely populated riverbanks of the Ōhinemuri and Waihou. The area is highly valued for its natural and geothermal resources by the Iwi of Hauraki, and the myriad streams and waterfalls that descend from its ridges are abundant with unique plant and fish species. Traditionally important to the Iwi of Hauraki, the Kaimai-Mamaku range contains our pā, kāinga, wāhi tapu and urupā. The range is imbued with the histories, places and events of our Pare Hauraki tūpuna which connect them to the footsteps of their tūpuna, of creation and the environment, including Te Kahaha, Waimata, Te Ure Tara, Te Ararimu, Koteahoroa, Mangakiri, Te Hanga, Roretangata and Waipu Mahanga, Karangahake Maunga and Te Aroha Maunga, revered in our tribal oratory and song.

The pā and kāinga of the Iwi of Hauraki surrounding and within the Kaimai-Mamaku range include Ngatukituki a Hikawera, Te Ngare and Waipapa to the east, Te Kahakaha, Waitewheta in the Ōhinemuri to the north, Whakapipi, Wairongomai, Ngatamahinerua and on to Te Pae o Turawaru to the south-west. Traditionally, our whānau, hapū and iwi settled, held mana and exercised kaitiakitanga over their places of the Kaimai-Mamaku range and surrounding kāinga.

The Kaimai-Mamaku range is covered in a myriad of centuries-old tracks fashioned and used by the Iwi of Hauraki to traverse the ranges at will. These tracks were used for daily excursions and ritual by whānau and hapū, and as a means of visiting their different pā and kāinga in the east and west of the range; for war excursions further afield, for the hunting and gathering of the foods of the forest, and for access to wāhi tapu to conduct spiritual and cultural rituals. There are traditionally four well-worn tracks of the Iwi of Hauraki that were used at will - from the track accessed from the Karangahake Gorge and southward to the Maurihoro, Wairere and Tuahu tracks. The pathways were all connected to hapū and whānau pā, kāinga to fortified pā and the tracks with access from the Karangahake were the key routes to Hauraki lands in the Katikati area, and on major excursions a large waka would be brought up the Ōhinemuri and berthed so the Iwi of Hauraki disembarked and continued their journey by foot towards Katikati and beyond.

## 2 MINERALS RELATIONSHIP AGREEMENT

### RELATIONSHIP AGREEMENT BETWEEN THE CROWN, ACTING BY AND THROUGH THE MINISTER OF ENERGY AND RESOURCES AND THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, AND IWI OF HAURAKI IN RELATION TO MINERALS

#### OBJECTIVE AND HIGH LEVEL PRINCIPLES FOR THE AGREEMENT

1. The Crown, acting by and through the Minister of Energy and Resources and the Ministry of Business, Innovation and Employment (“**Ministry**”), and the Pare Hauraki collective cultural entity representing the 12 iwi of Hauraki (“**Parties**”) will develop and maintain a robust relationship based on the principles of Te Tiriti o Waitangi / the Treaty of Waitangi (“**Treaty**”).
2. This document captures the intention to create a relationship that is dynamic, respectful and evolving. Relevant principles include:
  - a. meaningful engagement and consultation. This will include annual meetings and opportunities for discussion;
  - b. respecting information of a confidential nature. This will include developing processes for the appropriate management of confidential information shared between the Parties;
  - c. reflecting a balance between development and protection. This will include exploring mechanisms to enhance protection of wāhi tapu while acknowledging that iwi of Hauraki also seek to broaden economic development opportunities in the sector;
  - d. aimed at enhancing the capacity of both Parties, for example through opportunities for sharing information;
  - e. review and evolution, including measures to maintain and enhance the relationship, and mechanisms to resolve any issues that arise in the relationship.
3. The Parties acknowledge that this agreement is not intended to be legally enforceable, but that this does not diminish the intention of the Parties to comply with the terms and conditions of this agreement.
4. For clarity, this agreement does not override or limit the:
  - a. legislative rights, powers or obligations; or
  - b. functions, duties, obligations and powers of the Minister and any officials under legislation; or
  - c. ability of the Crown to introduce legislation and change government policy; or
  - d. ability of the Crown to interact or consult with any other person, including any iwi, hapū, marae, whānau or their representative; or
  - e. requirement that the Ministry act in accordance with directions from Ministers; or
  - f. any interests or rights of the iwi of Hauraki.

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

#### PREAMBLE STATEMENT

5. Part 17 of the Pare Hauraki Collective Redress Deed contains the following preamble in relation to minerals:
  - a. Mineral extraction, especially gold, is central to the history of Crown-Pare Hauraki relations and its harmful effects are still felt being felt in current times. Pākeha settlement in the Hauraki region was associated with the search for and exploitation of minerals, beginning with the discovery of gold near Coromandel Harbour in 1852.
  - b. The first minerals agreement between the Crown and Pare Hauraki rangatira was signed at Patapata in 1852, and involved gold mining at Kapanga. Subsequently, gold and other minerals were mined, on the basis that land would not be alienated, at Kauaeranga from 1866, Ōhinemuri from 1875, Te Aroha from 1880, and the East Coromandel Peninsula from Kuaotunu to Waihi from the late 1880s. Each of these transactions involved varying reactions from the Iwi of Hauraki, for example at Ōhinemuri.
  - c. The Waitangi Tribunal's Hauraki Report estimates that over 1,400 tonnes of gold and silver bullion was extracted from Hauraki in the period 1862-1952. The Iwi of Hauraki received an estimated £89,000 from mining cession agreements between 1867 and 1897 while the value of gold exported in the same period was worth approximately £7.8 million (representing around 1.1% for Pare Hauraki).
  - d. Some Pare Hauraki rangatira expressed a desire to derive income from the prospecting of gold in their rohe while continuing to retain control and ownership of those lands, others opposed mining on their lands altogether.
  - e. In the twentieth century, mining continued at Waihi. In 1940, the MacCormick commission recommended the Crown make an ex gratia payment to Pare Hauraki in recognition of the unequal nature of the mining agreements made in the nineteenth century. The Crown, however, neglected to implement this recommendation. The Crown also failed to return lands made available for mining and still in Māori ownership (but no longer used for mining purposes) to Māori. Mineral extraction remains a feature of the Hauraki region and the negative consequences for the Iwi of Hauraki continue to this day.
  - f. The extent of claims of breaches of the Treaty of Waitangi and its principles relating to minerals and mining is unique to Pare Hauraki. The Waitangi Tribunal devoted one third of the Hauraki Report to the Treaty issues arising from mining and the Coromandel goldfields. It found that nowhere else did Māori face the rapid expansion of so large a mining industry and nowhere else was so much Maori land affected. This had long-term impacts on the Iwi of Hauraki.
  - g. Over the generations, Hauraki rangatira persistently protested the alienation of mineral-bearing lands, the loss of wāhi tapu, environmental degradation including the deterioration of water quality and damage to waterways, declining revenues from mineral extraction, the loss of livelihood experienced by the iwi as a result of Crown actions, and the Crown's failure to honour minerals agreements. These form the foundation of the Pare Hauraki claims.



## DOCUMENTS

### 2: MINERALS RELATIONSHIP AGREEMENT

#### SCOPE

11. This agreement applies to all functions and responsibilities of the Minister of Energy and Resources and the Chief Executive of the Ministry within the Energy and Resources portfolio as it applies to Crown minerals in the Area identified in Schedule 2 and any land that is subject to the provisions entitled “Vesting of certain Crown owned minerals and related matters” in:
  - 11.1 legislation that settles the historical claims of Hako, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Rāhiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngaati Whanaunga and Te Patukirikiri;
  - 11.2 legislation giving effect to a deed signed by the Crown and certain mandated signatories for and on behalf of the Marutūāhu Iwi (being Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngaati Whanaunga and Te Patukirikiri); and
  - 11.3 legislation giving effect to a deed signed by the Crown and certain mandated signatories for and on behalf of the Iwi of Hauraki (being Hako, Ngāi Tai ki Tāmaki, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rāhiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngaati Whanaunga and Te Patukirikiri);
- 11.4 the Ngāi Tai ki Tāmaki Claims Settlement Act 2018; or
- 11.5 the Ngāti Pūkenga Claims Settlement Act 2017.

#### ENGAGEMENT, ANNUAL MEETING AND FORMAL CONSULTATION

12. The Parties agree:

##### Annual forum

- 12.1 there will be an annual forum attended by representatives of the iwi of Hauraki and senior managers from the Ministry;
- 12.2 such a forum will:
  - a. be timed to coincide with the Ministry’s business planning process;
  - b. include the following agenda items as they relate to the Hauraki rohe:
    - i. a discussion of policy, regulatory and work plan developments envisaged for the forthcoming year across both minerals and petroleum minerals development;
    - ii. broad aspects of permit operations within the Hauraki / Coromandel region;
    - iii. review of past year’s engagement and future opportunities to develop mutual understandings and relationships;
    - iv. review of early engagement, as outlined in clause viii below, on any competitive tenders for minerals;
    - v. a broad indication of the Ministry’s future strategy for block offer areas;
    - vi. discuss any vested areas where applications for associated royalties have yet to be received by the Ministry;
    - vii. review implementation of the Crown Minerals redress more generally;

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

- viii. any upcoming competitive tendering process and/or block offer before the process or offer is formally consulted on. This agenda item can encompass:
1. Ministry information about the upcoming minerals competitive tendering processes and/ or petroleum block offers to enable the iwi to plan for any formal engagement ahead of the formal process;
  2. sharing of information by the Parties about local issues and opportunities, and an explanation by the Ministry of the potential prospectivity of the area to be covered by the competitive tender or block offer for consideration;
  3. exploration of mechanisms to enhance the Ministry's understanding of iwi issues and wāhi tapu;

12.3 that the Ministry will endeavour to facilitate participation by other regulatory bodies with a role in minerals regulation at the annual meeting;

#### **Economic Development**

12.4 to discuss at the first annual regional forum, the nature of any assistance that the Ministry may be able to provide to the iwi of Hauraki to broaden their participation and investment in the sector, and thereby benefit more clearly from the economic development opportunities that the minerals sector can offer;

#### **Review of Minerals Programmes**

12.5 that in respect of any minerals programme review, the Ministry will:

- a. consider any proposals made by the governance entity as to the scope of any review of minerals programmes;
- b. provide an early opportunity, before any public consultation process, for discussion with the governance entity of those parts of new draft minerals programmes that either Party identifies as of interest;
- c. meet with the governance entity during the public consultation phase of any minerals programme review or the minerals regime generally if the review may affect iwi interests and the governance entity requests a meeting;

12.6 that the Parties will work together to identify opportunities for improving engagement by the Ministry with the iwi of Hauraki in relation to the management of minerals;

#### **Consultation**

12.7 that the Ministry will consult with the iwi of Hauraki:

##### **Petroleum exploration permit block offers**

- a. on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Crown Minerals Act 1991 and the relevant minerals programme), which relates, whether wholly or in part, to the Area identified in Schedule 2. This will include outlining the proposals for holding the block offer, and consulting with the iwi of Hauraki on these proposals over the consultation period set out in the relevant minerals programme;

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

#### **Other petroleum permit applications**

- b. when any application for a petroleum permit is received, which relates, whether wholly or in part, to the Area identified in Schedule 2, except where the application relates to a block offer over which consultation has already taken place under clause 12.7(a);

#### **Amendments to petroleum permits**

- c. when any application to amend a petroleum permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Area identified in Schedule 2;

#### **Competitive tender allocation for Crown owned minerals other than petroleum**

- d. on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Crown Minerals Act 1991 and any relevant minerals programme) which relates, whether wholly or in part, to the Area identified in Schedule 2;

#### **Other permit applications for Crown owned minerals other than petroleum**

- e. when any application for a permit in respect of Crown owned minerals other than petroleum is received, which relates, whether wholly or in part, to the Area identified in Schedule 2, except where the application relates to competitive tender allocations over which consultation has already taken place under clause 12.7(d) or where the application relates to newly available acreage over which consultation has already taken place under clause 12.7(f);

#### **Newly available acreage**

- f. before the Chief Executive proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Area identified in Schedule 2;

#### **Amendments to permits for Crown owned minerals other than petroleum**

- g. when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is received, where the application relates, wholly or in part, to the Area identified in Schedule 2; and

#### **Gold fossicking areas**

- h. when any request is received or proposal is made to designate lands as a gold fossicking area, which relates, whether wholly or in part, to the Area identified in Schedule 2;

12.8 when making any decision on a proposal referred to in clause 12.7, the relevant decision-maker:

- a. shall have regard to any matters raised as a result of consultation; and
- b. shall have regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi in accordance with Section 4 of the Crown Minerals Act 1991;

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

#### Involvement in any review of ownership of gold and silver

- 12.9 that if the Crown decides to initiate a review of the ownership of gold and silver (alone or as part of a wider review of all nationalised minerals), the Ministry, on behalf of the Crown, will:
- a. involve representatives of Pare Hauraki in the review process;
  - b. include Ministerial engagement with representatives of Pare Hauraki;
  - c. recognise the importance of the Statement of Pare Hauraki World View and Programme for a Culture of Natural Resources Partnership and ensure it is taken into account in the review; and
  - d. acknowledge the unique history that the Iwi of Hauraki have with gold and silver.

#### CONFIDENTIALITY

13. The Parties agree that:

- 13.1 subject to clause 14, the Ministry will ensure appropriate arrangements are in place to provide for confidentiality of material provided by the iwi of Hauraki and identified by those iwi as requiring such confidentiality;
- 13.2 that the governance entity of the Hauraki Collective will ensure appropriate arrangements are in place to provide for confidentiality of material provided by the Ministry and identified by the Ministry as requiring such confidentiality;
- 13.3 subject to clause 14, with regard to information sharing and confidential information, the Ministry will, on request, make available to the iwi of Hauraki existing information held by, and reasonably accessible to, the Ministry that is directly relevant to iwi with regard to this agreement.
14. Clauses 13.1 to 13.3 do not apply to information either:
- a. that the Ministry is legally prevented from providing (for example, information that is subject to an obligation of confidentiality or non-disclosure); or
  - b. that the Ministry is legally required to provide, for example under the Official Information Act 1982.

#### MĀORI LAND AND SIGNIFICANT SITES

15. The Parties agree, consistent with provisions and responsibilities within the Crown Minerals Act regime:
- 15.1 to enhance mechanisms and engagement to better provide for the protection of areas of importance to iwi, by means such as access by the Ministry to iwi sites of significance registers if iwi agree;
- 15.2 where iwi are requested to identify areas of importance, to provide guidance to the Ministry and iwi, the Parties will discuss:
- a. the characteristics and nature of significant sites, including wāhi tapu;
  - b. the nature and size of the area that could reasonably be expected to be excluded or amended; and

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

- c. the nature and quality of information required in order for an application for exclusion or amendment to be adequately considered by the Ministry;

15.3 to explore mechanisms for improving notice to Maori land owners of activities which will impact on Maori land (as defined by Te Ture Whenua Maori Act 1993).

#### INFORMATION PROVISION AND BUILDING MUTUAL CAPACITY

16. The Parties agree:

- a. the governance entity will assist the Ministry with the development of information resources (if any) about activities relating to minerals and petroleum for use in discussion with iwi and communities in other parts of Aotearoa/New Zealand;
- b. to work together to develop measures to enhance the capacity of both the Ministry and the iwi of Hauraki to engage constructively with each other including facilitating a better understanding by Ministry staff dealing with minerals and petroleum development and other issues of importance to the iwi of Hauraki as it relates to minerals and petroleum;
- c. to the extent that resources allow, provide opportunities (such as workshops and seminars) for information sharing and expertise enhancement so as to provide better information to each other including as specified at clauses 15.1 and 15.2;
- d. that the Ministry will facilitate the development of relationships between the iwi of Hauraki and industry relevant contacts, such as Crown Research Institutes;
- e. the Ministry will notify the governance entity of any re-structuring or re-organising of the Ministry which might affect the operation of the relationship agreement; and
- f. the Ministry will provide information through websites and other media as appropriate to make transparent agreements and protocols in place between the Crown and iwi of Hauraki, where both Parties support such publication.

#### FACILITATING TECHNICAL WORKSHOPS

17. The Ministry will facilitate a series of technical workshops with the iwi of Hauraki which will involve sharing information and expertise on:

- a. the nature of the non-nationalised minerals that have been vested to Hauraki iwi; and
- b. the economic potential and mining practices associated with them.

#### FACILITATING CONSTRUCTIVE ENGAGEMENT WITH INDUSTRY

18. The Ministry will:

- a. review information provided by the Ministry to industry on iwi interests and concerns and provide assistance to industry on how to build and maintain good relationships with iwi;
- b. require permit holders to report on the engagement they have undertaken with iwi, as required by legislation, minerals programmes and/or block offer notices;
- c. provide the affected iwi in Hauraki opportunity to comment to the Ministry on a permit holder's engagement with them;

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

- d. facilitate introductions of iwi representatives to permit holder/s as early as feasible after the allocation of a permit;
- e. facilitate the development of industry best practice guidelines for engagement with iwi;
- f. where requested by the iwi of Hauraki, endeavour to facilitate meetings with relevant permit holders; and
- g. for the avoidance of doubt, any engagement that the Ministry undertakes with iwi is not intended to replace a permit holder's engagement with iwi.

#### OPTION OF A WORKING GROUP

19. Where both Parties agree, they may establish working groups to examine particular issues. This may include matters such as the identification of circumstances in which a cultural impact assessment may be useful and the development of processes for better coordination between regulatory authorities.

#### MAINTAINING THE RELATIONSHIP

20. Each party will appoint a senior representative to oversee the implementation of the relationship agreement. The senior representatives will be the key point of contact for any matters relating to the agreement, and will be responsible for:
- a. taking action to implement this agreement; and
  - b. coordinating the annual relationship meeting between the Parties in a timely manner.
21. If it becomes apparent that elements of the agreement may not be achievable, the Parties will raise this with each other as soon as possible and work towards a common understanding of the issues and a positive way to address those elements.
22. The Ministry senior representative will endeavour to facilitate introductions to other parts of the Ministry if requested to do so by the iwi of Hauraki.
23. Outside of the relationship meetings provided for under this agreement, relevant representatives of the Parties will meet as required.

#### ESCALATION OF MATTERS

24. If one party considers that there has been a breach of the agreement then that party may give notice to the other that they are in dispute.
25. As soon as practicable upon receipt of the notice referred to in clause 24, the Parties' representative(s) will meet to work in good faith to resolve the issue.
26. If the dispute has not been resolved within 20 Working Days of receipt of the notice, the Chief Executive of the Ministry and the senior representative will meet in good faith to resolve the issue.
27. If the dispute has not been resolved within 20 Working Days of the meeting set out in clause 26, the Chair of the Pare Hauraki collective cultural entity will meet in good faith with the Minister to resolve the issue.

## DOCUMENTS

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### 2: MINERALS RELATIONSHIP AGREEMENT

#### REVIEW AND AMENDMENT

28. The Parties agree:

- a. that the relationship agreement is a living document, which can be updated and adapted to take account of future developments and additional relationship opportunities;
- b. this agreement will be reviewed within three years of the date on which it is entered and thereafter every three years. The matters to be covered by the review of the agreement will be agreed between the Parties;
- c. where the Parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in clauses 24 to 27 above; and
- d. the Parties may vary or cancel this agreement at any time by agreement in writing.

## DOCUMENTS

### 2: MINERALS RELATIONSHIP AGREEMENT

#### SCHEDULE 1: DEFINITIONS

In this Agreement, the following terms have the following meanings except to the extent that they may be inconsistent with the context:

**'Agreement'** means this agreement and includes any amendments made in accordance with clause 28.(d);

**'Annual Forum'** means the meeting held in accordance with clause 12.1;

**'block offer'** means a petroleum exploration permit round as set out in the Minerals Programme for Petroleum 2013;

**'Chief Executive'** has the meaning given in section 2 of the Crown Minerals Act 1991;

**'competitive tender allocation'** is a method for allocating permits for minerals (excluding petroleum) as set out in the Minerals Programme for Minerals (Excluding Petroleum) 2013;

**'Crown'** means Her Majesty the Queen 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 Collective Redress Deed to participate in, any aspect of the redress under the Collective Redress Deed;

**'Crown owned minerals'** and **'Crown minerals'** mean any mineral that is the property of the Crown;

**'Collective Redress Deed'** means the Deed of Settlement dated [ ] between the Crown and the iwi of Hauraki;

**'Governance Entity'** means the trust known as Pare Hauraki Collective established by trust deed dated [insert date];

**'Mineral'** has the meaning given in section 2 of the Crown Minerals Act 1991;

**'Minister'** has the meaning given in section 2 of the Crown Minerals Act 1991;

**'Ministry'** means the Ministry of Business, Innovation and Employment;

**'newly available acreage'** is a method for allocating permits for minerals (excluding petroleum) as set out in the Minerals Programme for Minerals (Excluding Petroleum) 2013;

**'Parties'** refers to the Crown, acting by and through the Minister and the Ministry, and Pare Hauraki collective cultural entity representing the 12 iwi of Hauraki;

**'petroleum'** has the meaning given in section 2 of the Crown Minerals Act 1991;

**'vested minerals'** means Crown owned minerals that are vested in or transferred to the iwi of Hauraki through the Settlement legislation with the iwi of Hauraki;

**'Working Day'** means the days Monday through Friday exclusive of any public holiday and excluding 24 December to 2 January (inclusive).

2: MINERALS RELATIONSHIP AGREEMENT

SCHEDULE 2: MINERALS RELATIONSHIP AGREEMENT AREA



### 3 DEED OF COVENANT

[To be entered into by each Pare Hauraki Collective Entity]

**THIS DEED** is made

**BETWEEN**

[Insert details of the Pare Hauraki collective entity] (“**Pare Hauraki collective entity**”)

**AND**

**THE CROWN**

#### **BACKGROUND**

- A. Under a collective redress deed dated [ ] between the Iwi of Hauraki and the Crown (the “**Hauraki Collective deed**”), the Crown agreed, subject to the terms and conditions specified in the Hauraki Collective deed, to provide certain redress to an entity to be established under clause 18.7 of the Hauraki Collective deed.
- B. The Pare Hauraki collective entity was established on [date] as one of the entities to:
- be established by the Iwi of Hauraki under clause 18.7 of the Hauraki Collective deed; and
  - receive the redress to be provided to the Pare Hauraki collective entities.
- C. As required by clause 18.7.1 of the Hauraki Collective deed, the Pare Hauraki collective entity enters into this deed with the Crown.

**IT IS AGREED** as follows:

#### **1 COVENANT**

- 1.1 The Pare Hauraki collective entity covenants with the Crown that, from the date of this deed, the Pare Hauraki collective entity:
- 1.1.1 is a party to the Hauraki Collective deed as if it had been named as a party to that deed and had signed it;
  - 1.1.2 must comply with all the obligations of the Pare Hauraki collective entity under the Hauraki Collective deed; and
  - 1.1.3 is bound by the terms of the Hauraki Collective deed.

#### **2 RATIFICATION AND CONFIRMATION OF ACKNOWLEDGEMENTS AND ACTIONS**

- 2.1 The Pare Hauraki collective entity ratifies and confirms:
- 2.1.1 all acknowledgements and agreements made by the Iwi of Hauraki in the Hauraki Collective deed; and

## DOCUMENTS

### 3: DEED OF COVENANT

- 2.1.2 all rights and powers exercised, all waivers given, all amendments agreed to, and any other actions taken in relation to the Hauraki Collective deed, by the mandated negotiators and agrees to be bound by them.

### 3 ACCESSION

[Clause 3, and related definitions, not required for the Pare Hauraki collective cultural entity.]

- 3.1 On receipt of notice from the Crown that an acceding iwi has signed a deed of accession in the form set out in part 9 of the documents schedule, the Pare Hauraki collective entity must, as soon as reasonably practicable, do all things necessary to give effect to [*insert, in respect of the Pare Hauraki collective entity, the accession provisions of its constitutional documents*] in respect of acceding iwi.

[Clauses 3.2 and 3.3 to be inserted for Pare Hauraki CFL land entity only]

- 3.2 The Crown may only give a notice under clause 3.1 until the fifth anniversary of the settlement date.
- 3.3 Until the fifth anniversary of the settlement date, the Pare Hauraki collective entity must not do anything that affects the rights of an acceding iwi under [*insert details of the partnership agreement*] to receive the acceding iwi's percentage of assets and income of the entity including the acceding iwi's percentage of –
- 3.3.1 accumulated rentals received by the entity on the settlement date that were not applied to acquiring the licensed land;
- 3.3.2 rentals and other income received subsequently; and
- 3.3.3 New Zealand units.
- 3.4 For the purposes of the Contracts (Privity) Act 1982 and subpart 1 of part 2 of the Contract and Commercial Law Act 2017, the Pare Hauraki collective entity acknowledges that the provisions of this deed confer a legally enforceable benefit on the governance entity of each acceding iwi.

### 4 INTERPRETATION

- 4.1 Unless the context requires otherwise:
- 4.1.1 **acceding iwi** means each of the following iwi:
- (a) Ngāti Porou ki Hauraki;
  - (b) Ngāti Rāhiri Tumutumu;
  - (c) Ngāti Pūkenga; and
- 4.1.2 **acceding iwi percentage** means, in respect of each acceding iwi, the following percentage:
- (a) Ngāti Porou ki Hauraki, 2.5 per cent;
  - (b) Ngāti Rāhiri Tumutumu, 5.5 per cent;



## 4 FISHERIES RFR DEED OVER QUOTA

### DEED GRANTING A RIGHT OF FIRST REFUSAL OVER QUOTA

#### BETWEEN

[Insert the name of the Governance Entity] (the Governance Entity).

#### AND

**HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister of Fisheries (the **Crown**).

#### BACKGROUND

- A. *[insert name of the governance entity]* and the Crown are parties to a Collective Redress Deed to settle the Historical Claims of dated *[Insert the date of the Collective Redress Deed]* (the **Collective Redress Deed**).
- B. The Crown agreed under the Collective Redress Deed that (if the Collective Redress Deed became unconditional) the Crown would, by or on the Settlement Date under that Deed, provide the Governance Entity with a deed in this form granting the Governance Entity a right of first refusal over certain Quota.
- C. The Collective Redress Deed has become unconditional and this Deed is entered into:
  - by the Crown in satisfaction of its obligations referred to in clause Y of the Collective Redress Deed; and
  - by the Governance Entity in satisfaction of its obligations under clause Z of the Collective Redress Deed.

**IT IS AGREED** as follows:

#### 1. THIS DEED APPLIES IF THE MINISTER SETS A TACC OF A CERTAIN KIND

1.1 This Deed applies only if, during the period of 178 years from the Settlement Date:

- 1.1.1 the Minister of Fisheries declares, under the Fisheries Legislation, a species to be subject to the Quota Management System; and
- 1.1.2 nominates that species as an 'applicable species', meaning one to which they wish to have a right of first refusal (**RFR**); and
- 1.1.3 the Minister of Fisheries sets, under the Fisheries Legislation, a Total Allowable Commercial Catch (a **TACC**) for that Applicable Species for one or more Quota Management Areas that includes some or all of the areas identified in the map of the RFR Area in Schedule 1 (an **Applicable TACC**).

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

#### **2. THIS DEED APPLIES ONLY TO QUOTA ALLOCATED TO THE CROWN UNDER AN APPLICABLE TACC**

2.1 This Deed applies only to Quota (Applicable Quota) that:

2.1.1 relates to an Applicable TACC; and

2.1.2 has been allocated to the Crown as either:

- (a) Individual Transferable Quota (and not as Provisional Individual Transferable Quota) under section 49(1) of the Fisheries Act 1996; or
- (b) Provisional Individual Transferable Quota that has become Individual Transferable Quota under section 49(3) of the Fisheries Act 1996.

#### **3. THE CROWN MUST OFFER MINIMUM AMOUNT OF APPLICABLE QUOTA TO THE GOVERNANCE ENTITY**

3.1 Before the Crown sells any Applicable Quota relating to an Applicable TACC, the Crown must offer (in accordance with clause 6) the Governance Entity the right to purchase the Required Minimum Amount or more of the Applicable Quota relating to that Applicable TACC calculated in accordance with clause 4.1 or clause 4.2 or clause 5 (whichever is applicable).

3.2 For the purposes of clause 3.1:

3.2.1 where the Crown offers an RFR to the Governance Entity for any fish stock that is entered into the Quota Management System, the Crown shall determine the quantity of each fish stock to be offered to the Governance Entity in accordance with any coastline agreements reached between iwi in accordance with the provisions of the Māori Fisheries Act 2004, or absent such agreements, in accordance with the allocation provisions of the Māori Fisheries Act 2004;

3.2.2 where a fish stock is brought into the Quota Management System and no allocation mechanism has been developed in accordance with the Māori Fisheries Act 2004, the Crown reserves the right, after consultation with affected parties, to develop an RFR allocation mechanism for that stock, noting that the allocation mechanism will not be based on coastlines.

#### **4. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED WHERE COASTLINE IS USED TO DETERMINE THAT MINIMUM APPLICABLE QUOTA**

4.1 Where:

4.1.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.1.2 no person was eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

$$x = \left[ \frac{2}{5} \times \frac{A}{B} \times C \right]$$

4.2 Where:

4.2.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.2.2 a person, or persons, were eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC.

The Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \text{the lesser of } \left[ \frac{2}{5} \times \frac{A}{B} \times C \right] \text{ or } \left[ \frac{A}{B} \times D \right]$$

4.3 For the purposes of this clause:

“A” is the length of coastline of the RFR Area that is within the coastline of the relevant Quota Management Area to be determined in accordance with any coastline agreements reached between iwi in accordance with the provisions of the Māori Fisheries Act 2004, or absent such agreements, in accordance with the allocation provisions of the Māori Fisheries Act 2004;

“B” is the length of coastline of the relevant Quota Management Area;

“C” is the total amount of Quota relating to the relevant Applicable TACC;

“D” is the amount of Applicable Quota held by the Crown in relation to the relevant Applicable TACC; and

“x” is the Required Minimum Amount of Applicable Quota.

## 5. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED WHERE COASTLINE IS NOT USED TO DETERMINE THAT MINIMUM APPLICABLE QUOTA

5.1 Where coastline is not used to determine a Minimum Applicable Quota, the required Minimum Amount of that Applicable Quota must be calculated in accordance with the formula:

$$x = [2/5 \times A \times B]$$

5.2 For the purpose of this clause:

“A” is the proportion of quota allocated to Governance Entity in accordance with clauses 3.2.1 or 3.2.2;

“B” is the total amount of Quota relating to the relevant Applicable TACC; and

“x” is the Required Minimum Amount of Applicable Quota.

4: FISHERIES RFR DEED OVER QUOTA

**6. CROWN MUST GIVE NOTICE BEFORE SELLING APPLICABLE QUOTA**

**Crown must give RFR Notice**

- 6.1 Before the Crown Sells any Applicable Quota, the Crown must give a written notice (an RFR Notice) to the Governance Entity which offers to sell not less than the Required Minimum Amount of that Applicable Quota to the Governance Entity at the price and on the terms and conditions set out in the RFR Notice.

**Crown may withdraw RFR Notice**

- 6.2 The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that RFR Notice under clause 7.

**Effect of withdrawing RFR Notice**

- 6.3 If the Crown withdraws an RFR Notice, clause 3 still applies to the Applicable Quota referred to in that RFR Notice.

**Crown has no obligation in relation to balance of Applicable Quota**

- 6.4 Where the Crown has given, in accordance with clause 6.1, an RFR Notice in relation to Applicable Quota relating to an Applicable TACC, the Crown has no obligations under this Deed in relation to the balance of the Applicable Quota (if any) not referred to in that RFR Notice that also relate to that Applicable TACC.

**7. ACCEPTANCE OF RFR NOTICE BY THE GOVERNANCE ENTITY**

- 7.1 A contract for the Sale of the Applicable Quota referred to in an RFR Notice (or a lesser amount referred to in the acceptance) is constituted between the Crown and the Governance Entity, at the price and on the terms and conditions set out in the RFR Notice, if the Governance Entity accepts the offer in that RFR Notice (or accepts a lesser amount) of Applicable Quota:

7.1.1 by notice in writing to the Crown; and

7.1.2 by the relevant Expiry Date.

**8. NON-ACCEPTANCE BY THE GOVERNANCE ENTITY**

- 8.1 If:

8.1.1 the Crown gives the Governance Entity an RFR Notice; and

8.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date, the Crown -:

- (a) may, at any time during the period of two years from the Expiry Date, Sell any of the Applicable Quota referred to in that RFR Notice that is not accepted by the Governance Entity if the price per Quota Share, and the other terms and conditions of the Sale, are not more favourable to the purchaser than the price per Quota Share, and the other terms and conditions, set out in the RFR Notice to the Governance Entity; but

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

- (b) must, promptly after entering into an agreement to Sell any Applicable Quota referred to in the RFR Notice to a purchaser, give written notice to the Governance Entity of that fact and disclose the terms of that agreement; and
- (c) must not Sell any of that Applicable Quota referred to in the RFR Notice after the end of the two year period after the Expiry Date without first offering to Sell that Applicable Quota to the Governance Entity in an RFR Notice under clause 6.1.

## 9. RE-OFFER REQUIRED

### 9.1 If:

- 9.1.1 the Crown gives the Governance Entity an RFR Notice;
- 9.1.2 the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date; and
- 9.1.3 the Crown during the period of two years from the Expiry Date proposes to offer any of those Applicable Quota not accepted by the Governance Entity for Sale again but at a price (per Quota Share), or on other terms and conditions, more favourable to the purchaser than on the terms and conditions in the RFR Notice.

The Crown may do so only if it first offers that Applicable Quota for Sale on those more favourable terms and conditions to the Governance Entity in another RFR Notice under clause 6.1.

## 10. EFFECT OF THIS DEED

### 10.1 Nothing in this Deed will require the Crown to:

- 10.1.1 purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996;
- 10.1.2 introduce any of the Applicable Species into the Quota Management System; or
- 10.1.3 offer for sale any Applicable Quota held by the Crown except on the terms of the Fisheries RFR Deed over quota.

### 10.2 The Governance Entity acknowledges that the introduction of any of the Applicable Species into a Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota for that species.

### 10.3 Nothing in this Deed affects, or limits, and the rights and obligations created by this Deed are subject to:

#### 10.3.1 any requirement at common law or under legislation that:

- (a) must be complied with before any Applicable Quota is sold to the Governance Entity; or
- (b) the Crown must Sell the Applicable Quota to a third party; and

#### 10.3.2 any legal requirement that:

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

- (a) prevents or limits the Crown's ability to Sell the Applicable Quota to the Governance Entity; and
- (b) the Crown cannot satisfy after taking reasonable steps to do so (and, to avoid doubt, reasonable steps do not include changing the law).

#### 11. THIS DEED DOES NOT APPLY IN CERTAIN CASES

- 11.1 Neither clause 3 nor clause 6.1 apply, if the Crown is Selling Applicable Quota to the Governance Entity.

#### 12. TIME LIMITS

- 12.1 Time is of the essence for the time limits imposed on the Crown and the Governance Entity under this Deed.
- 12.2 The Crown and the Governance Entity may agree in writing to an extension of a time limit.

#### 13. ENDING OF RIGHT OF FIRST REFUSAL

##### RFR ends on Sale which complies with this Deed

- 13.1 The obligations of the Crown set out in this Deed end in respect of any Applicable Quota on a transfer of the Applicable Quota in accordance with this Deed.

##### RFR ends after 178 years

- 13.2 The obligations of the Crown set out in this Deed end 178 years after the Settlement Date.

#### 14. NOTICES

- 14.1 The provisions of this clause apply to Notices under this Deed:

##### Notices to be signed

- 14.1.1 the Party giving a Notice must sign it;

##### Notice to be in writing

- 14.1.2 any Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

##### Addresses for notice

- 14.1.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

The Crown:

Governance Entity:

[Address]

[Address]

---

4: FISHERIES RFR DEED OVER QUOTA

**Delivery**

14.1.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with prepaid postage;
- (c) by facsimile; or
- (d) by electronic mail to the recipient's email address;

**Timing of delivery**

14.1.5 a Notice:

- (a) delivered by hand will be treated as having been received at the time of delivery;
- (b) delivered by prepaid post will be treated as having been received on the third day after posting; or
- (c) sent by facsimile or electronic mail will be treated as having been received on the day of transmission; and

**Deemed date of delivery**

14.1.6 if a Notice is treated as having been received on a day that is not a Working Day, or after 5pm on a Working Day, that Notice will (despite clause 14.1.5) be treated as having been received the next Working Day.

**15. AMENDMENT**

15.1 This Deed may not be amended unless the amendment is in writing and signed by, or on behalf of, the Governance Entity and the Crown.

**16. NO ASSIGNMENT**

16.1 The Governance Entity may not assign its rights or obligations under this Deed.

**17. DEFINITIONS AND INTERPRETATION**

**Definitions**

17.1 In this Deed, unless the context otherwise requires:

**Applicable Quota** means Quota of the kind referred to in clause 2;

**Applicable Species** means a species which nominates as one to which they wish to have a right of first refusal (RFR), under circumstances set out in clause 1;

**Applicable TACC** has the meaning given to that term by clause 1.1.2;

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

**Crown** has the meaning given to that term by section 2(1) of the Public Finance Act 1989 (which, at the date of this Deed, provides that the Crown means:

- (a) Her Majesty the Queen in right of New Zealand; and
- (b) includes all Ministers of the Crown and all Departments; but
- (c) does not include:
  - (i) an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989);
  - (ii) a Crown entity (as defined in section 2(1) of the Public Finance Act 1989); or
  - (iii) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986));

**Collective Redress Deed** means the Pare Hauraki Collective Redress Deed;

**Deed** means this Deed granting a right of first refusal over quota;

**Expiry Date**, in respect of an RFR Notice, means the date one calendar month after the RFR Notice is received by the Governance Entity;

**Fisheries Legislation** means the Fisheries Act 1983 and the Fisheries Act 1996;

**Individual Transferable Quota** has the same meaning as in section 2(1) of the Fisheries Act 1996;

**Minister of Fisheries** means the Minister of the Crown who is for the time being responsible for the administration of the Fisheries Legislation;

**Party** means the Governance Entity or the Crown;

**Provisional Individual Transferable Quota** has the same meaning as under section 2(1) of the Fisheries Act 1996;

**Quota** means Quota in relation to an Applicable Species (being a species referred to in schedule 1);

**Quota Management Area** means any area declared by or under the Fisheries Legislation to be a quota management area;

**Quota Management System** means a quota management system established under Part IV of the Fisheries Act 1996;

**Quota Share** has the same meaning as in the Fisheries Act 1996;

**Required Minimum Amount**, in relation to Applicable Quota, means an amount of that Applicable Quota calculated under clause 4.1 or clause 4.2 (whichever is applicable);

**RFR Area** means the area identified in the map included in schedule 1;

**RFR Notice** and **Notice** means a notice under clause 6.1;

## DOCUMENTS

### 4: FISHERIES RFR DEED OVER QUOTA

**Sell** means to transfer ownership of Quota for valuable consideration and Sale has a corresponding meaning, but neither term includes the transfer by the Crown of Quota under section 22 of the Fisheries Act 1996;

**Settlement Date** means the date which is 60 Working Days after the Collective Redress Deed becomes unconditional;

**Total Allowable Commercial Catch** or **TACC** means a total allowable commercial catch for a species under section 20 of the Fisheries Act 1996; and

**Working Day** means a day that is not –

- (a) a Saturday or a Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or
- (c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of –
  - (i) Wellington; or
  - (ii) Auckland.

17.2 Terms or expressions that are not defined in this Deed, but are defined in the Collective Redress Deed, have the meaning given to them by the Collective Redress Deed unless the context requires otherwise.

#### **Interpretation**

17.3 In the interpretation of this Deed, unless the context requires otherwise:

- (a) headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- (b) defined terms appear in this Deed with capitalised initial letters and have the meanings given to them by this Deed;
- (c) where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (d) the singular includes the plural and vice versa;
- (e) words importing one gender include the other genders;
- (f) a reference to legislation is a reference to that legislation as amended, consolidated or substituted;
- (g) a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced;

## DOCUMENTS

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### 4: FISHERIES RFR DEED OVER QUOTA

- (h) a reference to a schedule is a schedule to this Deed;
- (i) a reference to a monetary amount is to New Zealand currency;
- (j) a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (k) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (l) a reference to a date on which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
- (m) where the day on or by which anything to be done is not a Working Day, that thing must be done on or by the next Working Day after that day; and
- (n) a reference to time is to New Zealand time.

DOCUMENTS

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4: FISHERIES RFR DEED OVER QUOTA

**SIGNED** as a Deed on [ ]

*[Insert appropriate signing clauses for the Governance Entity]*

**WITNESS**

---

Name:

Occupation:

Address:

**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Fisheries in the presence of:

**WITNESS**

---

Name:

Occupation:

Address:

DOCUMENTS

4: FISHERIES RFR DEED OVER QUOTA

SCHEDULE 1



## 5 OVERSEAS INVESTMENT APPLICATIONS LETTER OF INTRODUCTION

Hon [ NAME ]  
Minister of Finance  
Parliament Buildings  
WELLINGTON

Hon [ NAME ]  
Minister for Land Information  
Parliament Buildings  
WELLINGTON

Dear Ministers

### **Hauraki Collective Redress Deed: Letter of Introduction**

I am writing to introduce you to the [insert iwi PSGE name] which is the recognised post settlement governance entity for the twelve Iwi of Hauraki currently represented in collective Treaty of Waitangi settlement negotiations by the Hauraki Collective.

### **Pare Hauraki settlement**

On [date] the Crown signed the Pare Hauraki Collective Redress Deed. The Deed is conditional on the passing of settlement legislation which will give effect to the settlement.

The Iwi of Hauraki have spiritual, cultural, customary and historical interests across a wide area, from the Western Bay of Plenty to the Mahurangi and islands of those areas [refer attached map].

The [insert PSGE name] is responsible for administering significant commercial assets, in particular, Crown Forest Licensed Land and a right of first refusal for 178 years should any Crown land within the Hauraki region come available for purchase.

### **Relationship with the Overseas Investment Office**

In the course of Treaty of Waitangi settlement negotiations, the Iwi of the Hauraki Collective have expressed an interest in applications by foreign investors looking to purchase sensitive land in the Pare Hauraki Redress Area.

Should you, or your delegates, elect to consult mana whenua on overseas investment applications to purchase land in the Pare Hauraki Redress Area, the [insert Iwi PSGE name] is an appropriate contact, as a body which represents the Iwi of Hauraki. The [insert PSGE name] seeks to be contacted with respect to all relevant applications.

For the avoidance of doubt, this letter does not propose an obligation to consult with or seek information in addition to any obligation(s) that you might otherwise have.

[Contact Name] is the [Title] of [insert PSGE name], and I invite you to contact on [Contact details].

Nāku noa, nā

Hon [NAME]  
**Minister for Treaty of Waitangi Negotiations**

## **6 ENCUMBRANCE FOR TUPUNA MAUNGA**

**DOCUMENTS**

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**6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT**

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**6.1 Te Aroha Tupuna Maunga – Right of Way Easement**

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DOCUMENTS

6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT

EASEMENT INSTRUMENT  
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

Surname must be underlined

[Trustees of the Pare Hauraki Cultural Redress Trust]

Grantee

Surname must be underlined

Her Majesty the Queen acting by and through the Minister of Conservation

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee in gross and in perpetuity the easement set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule B

Dated this

day of

20

ATTESTATION:

----- Signature of Grantor	<b>Signed in my presence by the Grantor:</b>
	_____
	Signature of Witness
	Witness Name:
	Occupation:
	Address:

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

DOCUMENTS

6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT

<p><b>Signed on behalf of Her Majesty the Queen by</b></p> <p>acting under a delegation from the Minister of Conservation</p> <p>_____</p> <p><b>Signature of Grantee</b></p>	<p><b>Signed in my presence by the Grantee</b></p> <p>_____</p> <p><i>Signature of Witness</i></p> <p><b>Witness Name:</b></p> <p><b>Occupation:</b></p> <p><b>Address:</b></p>
---	---

**Certified correct** for the purposes of the Land Transfer Act 1952

\_\_\_\_\_

**Solicitor for the Grantee**

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

**DOCUMENTS**

**6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT**

**SCHEDULE A**

Easement Instrument	Dated:	Page 1 of 5 pages
---------------------	--------	-------------------

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way	[The strip of no less than 7 metres, coloured grey; and the 4-metre wide strip coloured red; on OTS-100-303. Subject to survey]  <b>The Easement Area</b>	[Section [] SO [] (formerly Part Te Aroha; Section 5 Block VI Te Aroha Survey District; Part Section 79 Block XII Aroha Survey District and Section 63 Block XII Aroha Survey District. Subject to survey)]  <b>The Grantor's Land</b>	In gross

The rights and powers implied in specific classes of easement prescribed by the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 do not apply and the easement rights and powers are as set out in **Annexure Schedule B**.

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

**DOCUMENTS**

**6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT**

**ANNEXURE SCHEDULE B**

Easement Instrument	Dated:	Page 2 of 5 pages
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**RIGHTS AND POWERS**

**1 Rights of way**

- 1.1 The right of way includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Area.
- 1.2 The right of way includes the right for the public as the Grantee’s invitees to go over and along the Easement Area on foot and when the Grantee wishes to carry out work to develop, improve or maintain the Easement Area or undertake conservation activities on adjoining land administered by the Grantee, then the Grantee its employees or contractors may proceed along the Easement Area by foot or by vehicle or any other means of transport and with all necessary tools, vehicles, equipment (including firearms) and dogs to carry out the work.
- 1.3 The right of way includes—
  - 1.3.1 the right to repair and maintain the existing recreation tracks and access vehicle track (“the track”) on the Easement Area, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
  - 1.3.2 the right to have the Easement Area kept clear at all times of obstructions, deposit of materials, or unreasonable impediment to the use and enjoyment of the track; and
  - 1.3.3 the right for the Grantee to improve the Easement Area in any way it considers expedient but consistent with its purposes of recreation and access, including the installation of track markers, stiles but without at any time causing damage to or interfering with the Grantor’s use and management of the Grantor’s Land; and
  - 1.3.4 the right for the Grantee to erect and display notices on the Easement Area and with the Grantor’s consent, which must not be unreasonably withheld, on the Grantor’s Land.
- 1.4 The right of way does not confer on the public the right to camp on or otherwise occupy the Easement Area without the consent of the Grantor.
- 1.5 No horse or any other animal (including any dogs or other pets of any description whether on a leash or not) may be taken on the Easement Area without the consent of the Grantor.

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

**DOCUMENTS**

**6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT**

Easement Instrument	Dated:	Page 3 of 5 pages
---------------------	--------	-------------------

1.6 No firearm or other weapon may be carried or discharged on the Easement Area without the consent of the Grantor.

1.7 The public may not light any fires or deposit any rubbish or other materials on the Easement Area.

**2 General rights**

2.1 The Grantor must not do and must not allow to be done on the Grantor’s Land anything that may interfere with or restrict the rights of the Grantee under this easement or interfere with the efficient operation of the Easement Area.

2.2 Except as provided in this easement the Grantee must not do and must not allow to be done on the Grantor’s Land anything that may interfere with or restrict the rights of the Grantor under this easement or interfere with the efficient operation of the Easement Area.

2.3 The Grantee may transfer or otherwise assign this easement but only to a Crown body, local authority or other public body that has responsibility for managing public access on land that is part of the Kaimai Mamaku Conservation Park.

**3 Repair, maintenance, and costs**

3.1 The Grantee is responsible for arranging the repair and maintenance of the track on the Easement Area and for the associated costs, so as to keep the track to a standard suitable for its use.

3.2 If the Grantee (or grantees if more than one) and the Grantor share the use of the track then each of them is responsible for arranging the repair and maintenance of the track on the Easement Area and for the associated costs, so as to keep the track to a standard suitable for their use.

3.3 The Grantee (or grantees if more than one) must (equally if more than one) meet any associated requirements of the relevant local authority.

3.4 The Grantee must repair all damage that may be caused by the negligent or improper exercise by the Grantee of any right or power conferred by this easement.

3.5 The Grantor must repair at its cost all damage caused to the track through its negligence or improper actions.

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

## DOCUMENTS

### 6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT

Easement Instrument	Dated:	Page 4 of 5 pages
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#### 4 Rights of entry

4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld but may be given subject to any reasonable conditions —

4.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles, and equipment; and

4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and

4.1.3 leave any vehicles or equipment on the Grantor's Land for a reasonable time if work is proceeding.

4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor's Land or to the Grantor.

4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.

4.4 The Grantee must ensure that all work is completed promptly.

4.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.

4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Grantor's Land.

#### 5 Default

If the Grantor or the Grantee does not meet the obligations implied or specified in this easement,—

(a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:

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

**DOCUMENTS**

**6.1: TE AROHA TUPUNA MAUNGA – RIGHT OF WAY EASEMENT**

Easement Instrument	Dated:	Page 5 of 5 pages
---------------------	--------	-------------------

- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may —
  - (i) meet the obligation; and
  - (ii) for that purpose, enter the Grantor’s Land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

**6 Disputes**

If a dispute in relation to this easement arises between the Grantor and Grantee —

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties) —
  - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
  - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

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

## 7 ENCUMBRANCES FOR LICENSED LAND

**DOCUMENTS**

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**7.1: TYPE A EASEMENT**

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**7.1 Type A Easement**

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**DOCUMENTS**

**7.1: TYPE A EASEMENT**

Approved by Registrar-General of Land under No. 2007/6225  
**Annexure Schedule 1**



Easement instrument

Dated

Page

of

pages

**Schedule A**

*(Continue in additional Annexure Schedule if required.)*

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	[to be inserted]	[to be inserted]	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 Annexure Schedule 2].

**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].

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

## DOCUMENTS

### 7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

#### Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page

1

9

Pages

*Continue in additional Annexure Schedule, if required.*

#### 1 DEFINITIONS AND CONSTRUCTION

##### 1.1 Definitions:

In this Easement Instrument, unless the context otherwise requires:

["**Crown Forestry Licence**" means a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantor's Land and includes the successors and assigns of the Crown Forestry Licensee;]

*[These definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

"**Her Majesty the Queen** in right of New Zealand acting by and through the Minister of Conservation" includes the servants, tenants, agents, workmen, licensees and invitees of the Minister but does not include members of the general public.

##### 1.2 Construction

In the construction of this Easement Instrument unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Easement Instrument;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page 2

9 Pages

Continue in additional Annexure Schedule, if required.

2 GRANT OF ACCESS RIGHTS

- 2.1 The Grantor hereby grants to the Grantee a right of way in gross over that part of the Grantor's Land shown marked [insert details] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement Instrument.
2.2 The covenants implied by section 297(1) of the Property Law Act 2007 do not apply to this easement instrument.
2.3 In consideration of the Grantor agreeing to enter into this Easement Instrument the Grantee shall duly observe the obligations imposed on it under this Easement Instrument.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under clause 2 are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:
3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;
3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page 3

9 Pages

Continue in additional Annexure Schedule, if required.

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor’s Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor’s Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):

- (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
(b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor’s roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.

3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor’s Land commensurate with the use made by the Grantee of such roads or tracks PROVIDED THAT the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor’s negligent use of that track or road.

3.4 The Grantee shall not exhibit any notice or sign on the Grantor’s Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.

3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Easement Instrument that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor’s Land.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page

4

9

Pages

*Continue in additional Annexure Schedule, if required*

- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land,
- without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page 5

9 Pages

Continue in additional Annexure Schedule, if required

3.11 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement Instrument.

3.12 Clauses 3.13 to 3.16 do not limit clause 3.11 and apply to the exercise of rights and compliance with obligations under this easement instrument.

3.13 In accordance with section 34 of the Health and Safety at Work Act 2015, the Grantee shall, so far as is reasonably practicable, consult, cooperate with, and coordinate activities with:

3.13.1 the Grantor; and

3.13.2 other persons conducting a business or undertaking (as defined in section 17 of the Health and Safety at Work Act 2015) who are accessing any part of the Grantor’s Land

in order to ensure that at all times, each of the parties referred to is complying with its duties under the Health and Safety at Work Act 2015 and promulgated regulations.

3.14 The Grantee shall comply with its duties in respect of the Health and Safety at Work Act 2015 and regulations and shall ensure, so far as is reasonably practicable, its own health and safety and that of its workers and any person who enters on any part of the Grantor’s Land at the request of the Grantee.

3.15 The Grantee shall, so far as is reasonably practicable, ensure the safety of other persons is not put at risk from work carried out by the Grantee on the Grantor’s Land.

3.16 The Grantee shall comply with any reasonable instructions from the Grantor regarding the elimination or isolation of hazards and risks and/or the health and safety of persons on the Grantor’s Land.

4 GRANTOR’S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor’s Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage PROVIDED THAT the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page 6

9 Pages

Continue in additional Annexure Schedule, if required.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the preparation, registration and enforcement of any provision in this Easement Instrument.

6 LICENCE [this clause will be omitted if there is no crown forestry licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantor’s Land and this Easement Instrument is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement Instrument.

7 ASSIGNMENT

7.1 The Grantee may assign its rights and obligations under this Easement Instrument to any one of the following who acquires land for an estate or interest in land from the Grantee and requires rights under this Easement Instrument as the means of providing reasonable access to that land:

7.1.1 any Crown entity as defined in section 2(1) of the Public Finance Act 1989;

7.1.2 any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986;

7.1.3 any person who holds the land in trust for the Grantee; or

7.1.4 any other person with the prior consent of the Grantor, which shall not be unreasonably withheld.

7.2 As from the date of assignment the Grantee shall cease to have any liability whatsoever in respect of this Easement Instrument and the Grantor agrees to release the Grantee from all obligations under this Easement Instrument from that date, but only if the assignee enters into a deed of covenant with the Grantor agreeing to be bound by the terms of this Easement Instrument from the date of release of the Grantee.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page

7

9

Pages

Continue in additional Annexure Schedule, if required

**8 DELEGATION**

All rights, benefits, and obligations of a party to this Easement Instrument arising under this Easement Instrument may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement Instrument.

**9 NOTICES**

9.1 Any notices to be given by one party under this Easement Instrument to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

9.1.1 the Grantor's address as set out in paragraph 1 of the First Schedule; and

9.1.2 the Grantee's address as set out in paragraph 2 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement Instrument which shall remain in full force.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type A

Dated

Page 8

9 Pages

Continue in additional Annexure Schedule, if required.

Continuation of "Attestation"

Signed for and on behalf of [**name of Pare Hauraki collective CFL Land entity to be inserted**] as Grantor by:

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

Signed for and on behalf of **HER MAJESTY THE QUEEN** as Grantee by

\_\_\_\_\_

**[Operations Manager]** acting for the Minister of Conservation under delegated authority pursuant to sections 57 and 58 of the Conservation Act 1987 and section 41 of the State Sector Act 1988

in the presence of:

\_\_\_\_\_

Name:  
Occupation:  
Address:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.1: TYPE A EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

**Annexure Schedule**

Insert type of instrument

Easement – Type A

Dated

Page

9

9

Pages

*Continue in additional Annexure Schedule, if required.*

**SCHEDULE**

**1 GRANTOR'S ADDRESS:**

*[Name of Pare Hauraki collective CFL Land entity]*

*[enter address]*

**2 GRANTEE'S ADDRESS:**

Department of Conservation

*[enter address]*

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

**DOCUMENTS**

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**7.2: TYPE B EASEMENT**

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**7.2 Type B Easement**

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Date

**PARTIES**

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “**Grantor**”)
- 2 [*Insert name of Pare Hauraki collective CFL Land entity*] (the “**Grantee**”)

**BACKGROUND**

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

**BY THIS DEED IT IS AGREED AND DECLARED** as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions**

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

“**Grantee’s Land**” means the land described in paragraph 3 of the First Schedule;

“**Grantor’s Land**” means the land described in paragraph 1 of the First Schedule and includes any part thereof;

*[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

“**Crown Forestry Licence**” means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

“**Crown Forestry Licensee**” means the Licensee under a Crown Forestry Licence over the Grantee’s Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

## DOCUMENTS

### 7.2: TYPE B EASEMENT

#### 1.2 Construction

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

#### 2 GRANT OF ACCESS RIGHTS

- 2.1 Pursuant to section [*enter appropriate section and title of settlement legislation*] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor's Land shown marked [ ] on DP [ ] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.
- 2.2 The covenants implied by section 297(1) of the Property Law Act 2007 do not apply to this Deed.
- 2.3 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

#### 3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under clause 2 of this Deed are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:
  - 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
  - 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);
  - 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

## DOCUMENTS

### 7.2: TYPE B EASEMENT

- 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
- 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):
- (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
  - (b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.
- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or

## DOCUMENTS

### 7.2: TYPE B EASEMENT

- 3.7.4 change the nature of the road surface; or
- 3.7.5 park or store equipment or material on the Grantor's Land,
- without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in exercising rights or complying with obligations under this Deed.
- 3.12 Without limiting clause 3.11, the Grantee shall comply with the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed **PROVIDED THAT** pursuant to section [*enter appropriate section and title of settlement legislation*], this easement will be enforceable in accordance with its terms, notwithstanding Part 3B of the Conservation Act 1987.
- 3.13 Clauses 3.14 to 3.17 do not limit clause 3.11 and apply to the exercise of rights and compliance with obligations under this Deed.
- 3.14 In accordance with section 34 of the Health and Safety at Work Act 2015, the Grantee shall, so far as is reasonably practicable, consult, cooperate with, and coordinate activities with:
- 3.14.1 the Grantor; and
- 3.14.2 other persons conducting a business or undertaking (as defined in section 17 of the Health and Safety at Work Act 2015) who are accessing any part of the Grantor's Land
- in order to ensure that at all times, each of the parties referred to is complying with its duties under the Health and Safety at Work Act 2015 and promulgated regulations.
- 3.15 The Grantee shall comply with its duties in respect of the Health and Safety at Work Act 2015 and regulations and shall ensure, so far as is reasonably practicable, its own health and safety and that of its workers and any person who enters on any part of the Grantor's Land at the request of the Grantee.

## DOCUMENTS

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### 7.2: TYPE B EASEMENT

3.16 The Grantee shall, so far as is reasonably practicable, ensure the safety of other persons is not put at risk from work carried out by the Grantee on the Grantor's Land.

3.17 The Grantee shall comply with any reasonable instructions from the Grantor regarding the elimination or isolation of hazards and risks and/or the health and safety of persons on the Grantor's Land.

#### 4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

#### 5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

#### 6 LICENCE

*[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

#### 7 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or an Easement Instrument Grant of Right of Way on substantially the same terms) is registered as soon as the Registrar-General of Land confirms that this Deed, or such an easement instrument, can be registered against the Grantor's Land.

#### 8 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

#### 9 NOTICES

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

## DOCUMENTS

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### 7.2: TYPE B EASEMENT

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served four (4) working days after the date of posting.

#### 10 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

#### 11 DISPUTES RESOLUTION

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the New Zealand Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;

11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

DOCUMENTS

7.2: TYPE B EASEMENT

**IN WITNESS WHEREOF** this Deed has been duly executed on the date first written above.

Signed for and on behalf of **HER  
MAJESTY THE QUEEN** as Grantor by

\_\_\_\_\_  
**[Operations Manager]** acting for the  
Minister of Conservation under  
delegated authority pursuant to sections  
57 and 58 of the Conservation Act 1987  
and section 41 of the State Sector Act  
1988

*In the presence of:*

\_\_\_\_\_

*Name:*

*Occupation:*

*Address:*

Signed for and on behalf of [**Name of  
Pare Hauraki collective CFL Land  
entity to be inserted**] as Grantee by:

\_\_\_\_\_

*in the presence of:*

\_\_\_\_\_

*Name:*

*Occupation:*

*Address:*

## DOCUMENTS

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### 7.2: TYPE B EASEMENT

#### FIRST SCHEDULE

1 **GRANTOR'S LAND:**

*[enter details]*

2. **GRANTOR'S ADDRESS:**

Department of Conservation  
*[enter address details]*

3. **GRANTEE'S LAND:**

*[enter details]*

4. **GRANTEE'S ADDRESS:**

*[Name of Pare Hauraki collective CFL Land entity to be inserted]*  
*[enter address details]*

**DOCUMENTS**

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**7.3: TYPE C EASEMENT**

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**7.3 Type C Easement**

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DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 1

8 Pages

Continue in additional Annexure Schedule, if required.

1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions:

In this Easement Instrument, unless the context otherwise requires:

["Crown Forestry Licence" means a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989;

"Crown Forestry Licensee" means the Licensee under a Crown Forestry Licence over the Grantor's Land and includes the successors and assigns of the Crown Forestry Licensee;]

[These definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]

"Her Majesty the Queen in right of New Zealand acting by and through the Minister of Conservation" includes the servants, tenants, agents, workmen, licensees and invitees of the Minister but does not include members of the general public.

1.2 Construction

In the construction of this Easement Instrument unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Easement Instrument;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 2

8 Pages

Continue in additional Annexure Schedule, if required.

2 GRANT OF ACCESS RIGHTS

- 2.1 The Grantor hereby grants to the Grantee a right of way over that part of the Grantor’s Land shown marked [insert details] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement Instrument.
2.2 The covenants implied by section 297(1) of the Property Law Act 2007 do not apply to this easement instrument.
2.3 In consideration of the Grantor agreeing to enter into this Easement Instrument the Grantee shall duly observe the obligations imposed on it under this Easement Instrument.

3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under clause 2 are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor’s Land:
3.1.2 wherever possible, remain on the roads and tracks constructed on the Grantor’s Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;
3.1.3 take all due care when taking any welding equipment over the Grantor’s Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor’s Land without the prior written permission of the Grantor;
3.1.4 immediately after passing through any gates on the Grantor’s Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 3

8 Pages

Continue in additional Annexure Schedule, if required.

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor’s Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor’s Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):

- (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
(b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor’s roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.

3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor’s Land commensurate with the use made by the Grantee of such roads or tracks PROVIDED THAT the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor’s negligent use of that track or road.

3.4 The Grantee shall not exhibit any notice or sign on the Grantor’s Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.

3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Easement Instrument that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor’s Land.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page

4

8

Pages

*Continue in additional Annexure Schedule, if required.*

- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
  - 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land,without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 5

8 Pages

Continue in additional Annexure Schedule, if required.

- 3.11 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement Instrument.
- 3.12 Clauses 3.13 to 3.16 do not limit clause 3.11 and apply to the exercise of rights and compliance with obligations under this easement instrument.
- 3.13 In accordance with section 34 of the Health and Safety at Work Act 2015, the Grantee shall, so far as is reasonably practicable, consult, cooperate with, and coordinate activities with:
  - 3.13.1 the Grantor; and
  - 3.13.2 other persons conducting a business or undertaking (as defined in section 17 of the Health and Safety at Work Act 2015) who are accessing any part of the Grantor's Land

in order to ensure that at all times, each of the parties referred to is complying with its duties under the Health and Safety at Work Act 2015 and promulgated regulations.
- 3.14 The Grantee shall comply with its duties in respect of the Health and Safety at Work Act 2015 and regulations and shall ensure, so far as is reasonably practicable, its own health and safety and that of its workers and any person who enters on any part of the Grantor's Land at the request of the Grantee.
- 3.15 The Grantee shall, so far as is reasonably practicable, ensure the safety of other persons is not put at risk from work carried out by the Grantee on the Grantor's Land.
- 3.16 The Grantee shall comply with any reasonable instructions from the Grantor regarding the elimination or isolation of hazards and risks and/or the health and safety of persons on the Grantor's Land.

4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 6

8 Pages

Continue in additional Annexure Schedule, if required.

5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the preparation, registration and enforcement of any provision in this Easement Instrument.

6 LICENCE [this clause will be omitted if there is no Crown forestry licence at the time this easement is granted]

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantor’s Land and this Easement Instrument is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement Instrument.

7 DELEGATION

All rights, benefits, and obligations of a party to this Easement Instrument arising under this Easement Instrument may be exercised by a person duly appointed by that party PROVIDED THAT the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement Instrument.

8 NOTICES

8.1 Any notices to be given by one party under this Easement Instrument to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

8.1.1 the Grantor’s address as set out in paragraph 1 of the First Schedule; and

8.1.2 the Grantee’s address as set out in paragraph 2 of the First Schedule.

8.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

9 SEVERABILITY

If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement Instrument which shall remain in full force.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

Annexure Schedule

Insert type of instrument

Easement – Type C

Dated

Page 7

8 Pages

Continue in additional Annexure Schedule, if required.

Continuation of "Attestation"

Signed for and on behalf of [name of Pare Hauraki collective CFL Land entity to be inserted] as Grantor by:

In the presence of:

Name:
Occupation:
Address:

Signed for and on behalf of HER MAJESTY THE QUEEN as Grantee by

[Operations Manager] acting for the Minister of Conservation under delegated authority pursuant to sections 57 and 58 of the Conservation Act 1987 and section 41 of the State Sector Act 1988

In the presence of:

Name:
Occupation:
Address:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

7.3: TYPE C EASEMENT

Approved by the Registrar-General of Land under number 2003/5041

**Annexure Schedule**

Insert type of instrument

Easement – Type C

Dated

Page

8

8

Pages

*Continue in additional Annexure Schedule, if required.*

**SCHEDULE**

**1 GRANTOR'S ADDRESS:**

*[Name of Pare Hauraki collective CFL Land entity]*

*[enter address]*

**2 GRANTEE'S ADDRESS:**

Department of Conservation

*[enter address]*

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

## DOCUMENTS

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### 7.4: HAURAKI ATHENREE FOREST EASEMENT

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#### 7.4 Hauraki Athenree Forest Easement

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**DOCUMENTS SCHEDULE**

**7.4: HAURAKI ATHENREE FOREST EASEMENT**

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

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

1.	Her Majesty the Queen
2.	Her Majesty the Queen

**Grantee**

1.	Her Majesty the Queen
2.	Her Majesty the Queen

**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</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	Marked red on Deed Plan OTS-215-14 attached as Annexure Schedule 2	<b>[ Section [ ] SO [ ] (formerly Lot 1 DPS 26279, Part Lot 1 DPS 56705, Lots 2, 3, 4 and 5 DPS 56705, Lots 1, 2, 3, 4 and 5 DPS 56706 and Sections 1, 2, 3 and 4 SO 313136) and for identification purposes only as coloured blue on the Deed Plan OTS-215-13 attached as Annexure Schedule 3 - Subject to survey ]</b>	<b>[ Section [ ] SO [ ] (formerly Part Lot 1 DPS 56705) and for identification purposes only as coloured yellow on the Deed Plan OTS-215-13 attached as Annexure Schedule 3 -Subject to survey ]</b>
Right of Way	Marked red on Deed Plan OTS-215-14 attached as Annexure Schedule 2	<b>[ Section [ ] SO [ ] (formerly Part Lot 1 DPS 56705) and for identification purposes only as coloured yellow on the Deed Plan OTS-215-13 attached as Annexure Schedule 3 - Subject to survey ]</b>	<b>[ Section [ ] SO [ ] (formerly Lot 1 DPS 26279, Part Lot 1 DPS 56705, Lots 2, 3, 4 and 5 DPS 56705, Lots 1, 2, 3, 4 and 5 DPS 56706 and Sections 1, 2, 3 and 4 SO 313136) and for identification purposes only as coloured blue on the Deed Plan OTS-215-13 attached as Annexure Schedule 3 - Subject to survey ]</b>

## DOCUMENTS SCHEDULE

### 7.4: HAURAKI ATHENREE FOREST EASEMENT

#### **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 specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied] [negatived] [added to]~~ or ~~[substituted]~~ by:

~~{Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952}~~

~~{the provisions set out in Annexure Schedule 1}~~

#### **Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require;  
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 \_\_\_\_\_}~~

DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 1

Insert type of instrument

Easement

Dated

Page 1

of 5

Pages

Continue in additional Annexure Schedule, if required.

1. Definitions

In this Easement Instrument, unless the context otherwise requires:

“Dominant Tenement” means each area of land described as the Dominant Tenement in Schedule A of this Easement Instrument;

“Grantee” means each registered proprietor of each Dominant Tenement in respect of that Dominant Tenement only and includes that Grantee’s servants, tenants, agents, employees, contractors, licensees and invitees of the Grantee but does not include members of the general public;

“Grantor” means each registered proprietor of each Servient Tenement in respect of that Servient Tenement only;

“Licence” means the Crown Forest Licence registered under section 30 of the Crown Forests Assets Act 1989 as more particularly described in Computer Interest Register SA50D/250 (South Auckland Registry) and includes any substitute Computer Interest Register(s) issued in respect of the Licence as a result of the issue of a separate CFR for the Dominant Tenement or the Servient Tenement;

“Licensee” means the registered proprietor of the Licence; and

“Servient Tenement” means each area of land described as the Servient Tenement in Schedule A of this Easement Instrument.

2. Construction

In the construction of this Easement Instrument unless the context otherwise requires:

2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Easement Instrument;

2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

3. Grant of Access Rights

3.1 The Grantor hereby grants to the Grantee a right of way over those parts of the Servient Tenement shown in Schedule A of this Easement Instrument (“Easement Area”) together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 and the Fifth Schedule to the Property Law Act 2007 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement Instrument.

3.2 In consideration of the Grantor agreeing to enter into this Easement Instrument the Grantee shall observe the obligations imposed on it under this Easement Instrument.

DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 1

Insert type of instrument

Easement

Dated

Page 2 of 5 Pages

Continue in additional Annexure Schedule, if required.

4. Obligations of the Grantee

The rights and powers conferred under clause 3 are granted subject to the following conditions and obligations:

- 4.1 The Grantee shall when passing or repassing over the Servient Tenement:
  - (a) wherever possible, remain on the roads and tracks constructed on the Easement Area and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
  - (b) not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;
  - (c) shall not use or operate or cause to be used or operated any welding equipment on the Servient Tenement without the prior written permission of the Grantor;
  - (d) immediately after passing through any gates on the Servient Tenement, close such of them as were closed and lock such of them as were locked immediately before such passing through;
  - (e) take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Servient Tenement, on any surrounding or adjoining land, forest or water, or to any forest produce on the Servient Tenement, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 4.1(e)):
    - (i) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
    - (ii) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.
- 4.2 Subject to clauses 4.4 and 4.7, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 4.3 Subject to clauses 4.4, 4.7 and 5, in the event that the Grantor's roads, tracks and other structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements shall be at the sole cost of the Grantee.
- 4.4 When carrying out any repairs or improvements to a road under clauses 4.2 and 4.3, the Grantee shall not:
  - (a) widen the road; or
  - (b) alter the location of the road; or
  - (c) alter the way in which the run-off from the road is disposed of; or
  - (d) change the nature of the road surface; or

DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 1

Insert type of instrument

Easement

Dated

Page 3 of 5

Pages

Continue in additional Annexure Schedule, if required.

(e) park or store equipment or material on the Servient Tenement,

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed. Whilst the licence referred to in clause 7 remains in force, the Grantee must also secure the prior written approval of the Licensee.

- 4.5 The Grantee shall not exhibit any notice or sign on the Servient Tenement without prior written consent of the Grantor (as to style, content, wording, size and location) provided that such consent not to be unreasonably or arbitrarily withheld.
- 4.6 The Grantee will ensure, at all times, in the exercise of the rights set out in this Easement Instrument that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees or contractors in its or their normal or reasonable use of the Servient Tenement.
- 4.7 The Grantee shall not erect any structures on the Servient Tenement or make any additions or alterations to existing structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;
- 4.8 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Servient Tenement nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor;
- 4.9 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Servient Tenement, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor; and
- 4.10 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement Instrument.

5. Maintenance

- 5.1 Subject to clauses 5.2 to 5.5, if the Grantee's use of the right of way is sufficient to require a contribution to maintenance costs, then the Grantor may charge the Grantee for maintenance based on actual costs and actual use by the Grantee.
- 5.2 The Grantor and the Grantee acknowledge that the road established on the Easement Area is part of a private forestry road ("Roadway") and will be used by other persons including the Licensee.
- 5.3 The Grantor and Grantee shall in good faith seek to discuss and agree between them and all other persons with rights of access over the Roadway a maintenance plan on matters including:
  - (a) the party or parties responsible for undertaking the maintenance and upgrade works (if required) to the Roadway;
  - (b) the timing and standard of maintenance and upgrade works (as appropriate);

DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 1

Insert type of instrument

Easement

Dated

Page

4

of

5

Pages

Continue in additional Annexure Schedule, if required.

- (c) the reasonable apportionment of costs of any maintenance and upgrade works between the various users of the Roadway as determined by the frequency and nature of use (which may assume the form of a unit charge or annual payment system together with the establishment of a sinking fund); and
- (d) any other matter relating to maintenance of the Roadway as the Grantor, Grantee, the Licensee and/or other users of the Roadway considers necessary; and
- (e) such maintenance plan shall incorporate appropriate processes to review and update the maintenance plan annually.

5.4 The Grantee shall be liable for the cost of making good any damage to the Roadway subject to this Easement Instrument caused by its servants, agents, employees, contractors, workers and invitees and any licensee, lessee or tenant of the Grantee.

5.5 The Grantor shall be liable for the cost of making good any damage to the Roadway subject to this Easement Instrument caused by its servants, agents, employees, contractors, workers and invitees and any licensee, lessee or tenant of the Grantor.

6. Costs

6.1 The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Easement Instrument,

7. Existing Forestry Licence

7.1 The Grantor and the Grantee record that at the time that this easement is granted the Dominant Tenement and the Servient Tenement are both subject to a Crown Forestry licence under section 30 of the Crown Forests Assets Act 1989 as more particularly described in Computer Interest Register SA50D/250 (South Auckland Registry). This Easement Instrument is entered into subject to, and does not override, the terms of the Licence.

8. Delegation

8.1 All rights, benefits, and obligations of a party to this Easement Instrument arising under this Easement Instrument may be exercised by a person duly appointed by that party provided that the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement Instrument.

9. Notices

9.1 Any notices to be given by one party under this Easement Instrument to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

- (a) The Grantor's address as set out in paragraph 1 of the Schedule for Notices; and
- (b) The Grantee's address as set out in paragraph 2 of the Schedule for Notices.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 2

Insert type of instrument

Easement

Dated

Page

1

of

[ ]

Pages

Continue in additional Annexure Schedule, if required.



DOCUMENTS SCHEDULE

7.4: HAURAKI ATHENREE FOREST EASEMENT

Annexure Schedule 3

Insert type of instrument

Easement

Dated

Page

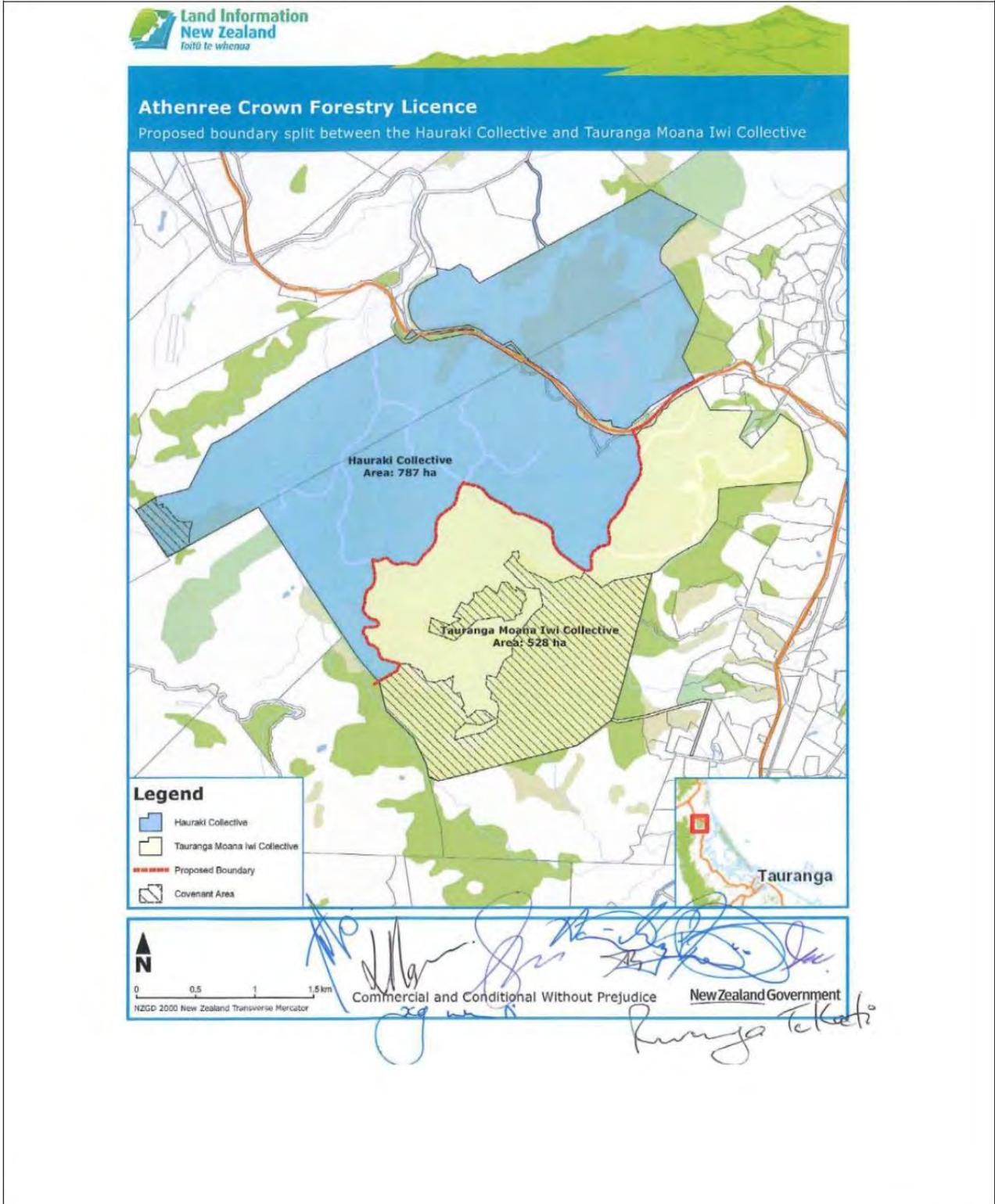
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Continue in additional Annexure Schedule, if required.



**DOCUMENTS**

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**7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST**

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**7.5 Easement in relation to Whangapoua Forest**

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## DOCUMENTS

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### 7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

Date

#### PARTIES

- 1 **HER MAJESTY THE QUEEN** [in right of New Zealand] acting by and through the Minister of Conservation pursuant to the Conservation Act 1987 (the “**Grantor**”)
- 2 **HER MAJESTY THE QUEEN** [in right of New Zealand] acting by and through the Minister for State-Owned Enterprises and the Minister of Finance pursuant to sections 8 and 8A of the Crown Forest Assets Act 1989 (the “**Grantee**”)

#### BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

**BY THIS DEED IT IS AGREED AND DECLARED** as follows:

#### 1 DEFINITIONS AND CONSTRUCTION

##### 1.1 Definitions

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

“**Grantee’s Land**” means the land described in paragraph 3 of the First Schedule;

“**Grantor’s Land**” means the land described in paragraph 1 of the First Schedule and includes any part thereof;

*[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

## DOCUMENTS

### 7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

["**Crown Forestry Licence**"] means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantee's Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;].

#### 1.2 Construction

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

#### 2 GRANT OF ACCESS RIGHTS

- 2.1 Pursuant to section [*enter appropriate section and title of settlement legislation*] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor's Land shown marked [ ] on DP [ ] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.
- 2.2 The covenants implied by section 297(1) of the Property Law Act 2007 do not apply to this Deed.
- 2.3 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

#### 3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under clause 2 of this Deed are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:

## DOCUMENTS

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### 7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
- 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);
- 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
- 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
- 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):
  - (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
  - (b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.
- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land,

## DOCUMENTS

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### 7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.

- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
  - 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land,  
  
without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in exercising or complying with obligations under this Deed.

## DOCUMENTS

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### 7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

- 3.12 Without limiting clause 3.11, the Grantee shall comply with the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section [***enter appropriate section and title of settlement legislation***], this easement will be enforceable in accordance with its terms, notwithstanding Part 3B of the Conservation Act 1987.
- 3.13 Clauses 3.14 to 3.17 do not limit clause 3.11 and apply to the exercise of rights and compliance with obligations under this Deed.
- 3.14 In accordance with section 34 of the Health and Safety at Work Act 2015, the Grantee shall, so far as is reasonably practicable, consult, cooperate with, and coordinate activities with:
- 3.14.1 the Grantor; and
- 3.14.2 other persons conducting a business or undertaking (as defined in section 17 of the Health and Safety at Work Act 2015) who are accessing any part of the Grantor's Land
- in order to ensure that at all times, each of the parties referred to is complying with its duties under the Health and Safety at Work Act 2015 and promulgated regulations.
- 3.15 The Grantee shall comply with its duties in respect of the Health and Safety at Work Act 2015 and regulations and shall ensure, so far as is reasonably practicable, its own health and safety and that of its workers and any person who enters on any part of the Grantor's Land at the request of the Grantee.
- 3.16 The Grantee shall, so far as is reasonably practicable, ensure the safety of other persons is not put at risk from work carried out by the Grantee on the Grantor's Land.
- 3.17 The Grantee shall comply with any reasonable instructions from the Grantor regarding the elimination or isolation of hazards and risks and/or the health and safety of persons on the Grantor's Land.

#### 4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

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7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

**5 COSTS**

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

**6 LICENCE**

*[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

**7 REGISTRATION**

The parties shall take and do all such acts and things necessary to ensure that this Deed (or an Easement Instrument Grant of Right of Way on substantially the same terms) is registered as soon as the Registrar-General of Land confirms that this Deed, or such an easement instrument, can be registered against the Grantor's Land.

**8 DELEGATION**

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

**9 NOTICES**

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

**11 DISPUTES RESOLUTION**

Should any dispute arise between the parties touching any matter relating to this Deed then:

- 11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a “without prejudice” basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the New Zealand Law Society);
- 11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;
- 11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party’s desire to have the matter referred to arbitration;
- 11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

DOCUMENTS

7.5: EASEMENT IN RELATION TO WHANGAPOUA FOREST

IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

[Signed for and on behalf of **HER MAJESTY THE QUEEN** [in right of New Zealand] acting by and through the Minister of Conservation as Grantor by

\_\_\_\_\_  
[[**Operations Manager, Whitianga**] acting for the Minister of Conservation under delegated authority pursuant to sections 57 and 58 of the Conservation Act 1987 and section 41 of the State Sector Act 1988]

*in the presence of:*

\_\_\_\_\_  
*Name:*

*Occupation:*

*Address:]*

[Signed for and on behalf of **HER MAJESTY THE QUEEN** [in right of New Zealand] acting by and through the Minister for State Owned Enterprises and the Minister of Finance pursuant to sections 8 and 8A of the Crown Forest Assets Act 1989] as Grantee by:

\_\_\_\_\_  
[name of signatory]

\_\_\_\_\_  
[name of signatory]

\_\_\_\_\_  
*in the presence of:*

\_\_\_\_\_  
*Name:*

*Occupation:*

*Address:*

**FIRST SCHEDULE**

1. **GRANTOR'S LAND:**

[Section [ ] SO[ ] (formerly Part Kuaotunu 3A)]

2. **GRANTOR'S ADDRESS:**

[Department of Conservation]  
*[insert address details]*

3. **GRANTEE'S LAND:**

[Part Lot 1 DPS 57172]

4. **GRANTEE'S ADDRESS:**

*[insert address details]*

## **8 ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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**8.1 Conservation Covenant – Tairua Forest Conservation Area**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### TAIRUA FOREST CONSERVATION AREA CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

<b>“Conservation and Reserve Values”</b>	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.
<b>“Director-General”</b>	means the Director-General of Conservation.
<b>“Fence”</b>	includes a gate.
<b>“Land’s Values”</b>	means the Conservation and Reserve values specified in Schedule 1.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Working Days”</b>	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:

- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 841.0038 hectares, approximately, being Section 8 Block XI Tairua Survey District and Part Sections 2, 3, and 4 Block XI Tairua Survey District and Part Wharekawa East 1 and 2 Blocks] (Subject to survey) as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values**

The Land is a backdrop to the lowland coastal area off State Highway 25 and has areas of regeneration.

The Land has areas of vegetation cover comprised of semi-coastal and lowland forest. Vegetation types range from kauri-tanekaha forest, rata-podocarp/tawa forest, manuka/broadleaved scrub, and towai scrub/forest.

There is historic record of common bush birds on the Land with moderate-high wildlife value ranking, and that the Land includes areas of tall forest with frequent emergent northern rata and large kauri, which were uncommon elements in the Tairua Ecological District (as at 1990, Protected Natural Areas Programme report, Paritu Stream).

There is a pā site (T12/635) recorded on a hilltop overlooking Tairua Road, adjacent to a cluster of other sites on private land in the Paritu Stream area.

There is historic record of Hochstetter's Frog (1981) in the Paritu Stream tributary, and tuna, inanga, Smelt, torrentfish, common and red fin bully recorded in the Wharekawa River on Southeast boundary (2006).

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### Special Conditions

###### *Recreational facilities*

1. For 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.

###### *Plantation trees*

5. Despite clause 3.2.3, the Owner is not required to remove exotic tree species that have been planted as part of a plantation, including in the Area A marked on the map in Schedule 4.

###### *Fencing*

6. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

###### *Managing public access*

8. 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.
9. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### *Cultural activities*

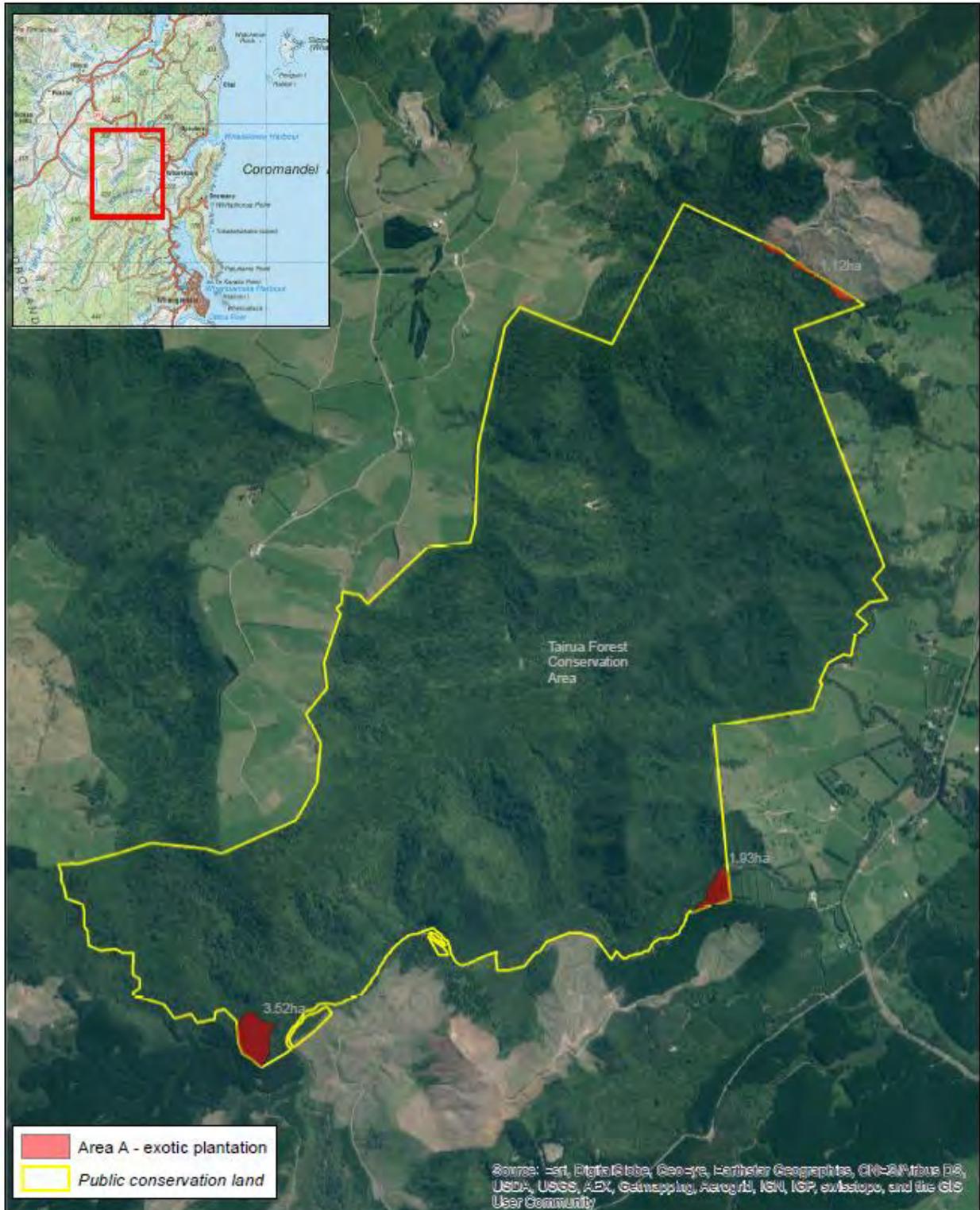
10. The Owner may undertake cultural activities on the Land, subject to:
  - (a) consultation with the Department of Conservation; and
  - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

SCHEDULE 4

Map



**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services**  
**Department of Conservation**

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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**8.2 Conservation Covenant – Kitahi Conservation Area**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### KITAHI CONSERVATION AREA CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

<b>“Conservation and Reserve Values”</b>	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.
<b>“Director-General”</b>	means the Director-General of Conservation.
<b>“Fence”</b>	includes a gate.
<b>“Land’s Values”</b>	means the Conservation and Reserve values specified in Schedule 1.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Working Days”</b>	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:
- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 389.433 hectares, more or less, being Sections 13 and 14 Block VII Tairua Survey District as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values**

The Land has vegetation cover comprised of semi-coastal and lowland forest and areas of regenerating high value podocarp/kauri forest.

There are historic records of koura in Kaituna Stream (1996).

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### *Recreational facilities*

1. For 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.

##### *Grazing*

2. Despite clause 3.1.1, the Owner may authorise grazing of the Land by livestock within Area A as marked on the map in Schedule 4.

##### *Taking of plant material*

3. 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*

4. 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*

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

##### *Fencing*

6. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

##### *Managing public access*

8. 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.
9. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

## DOCUMENTS

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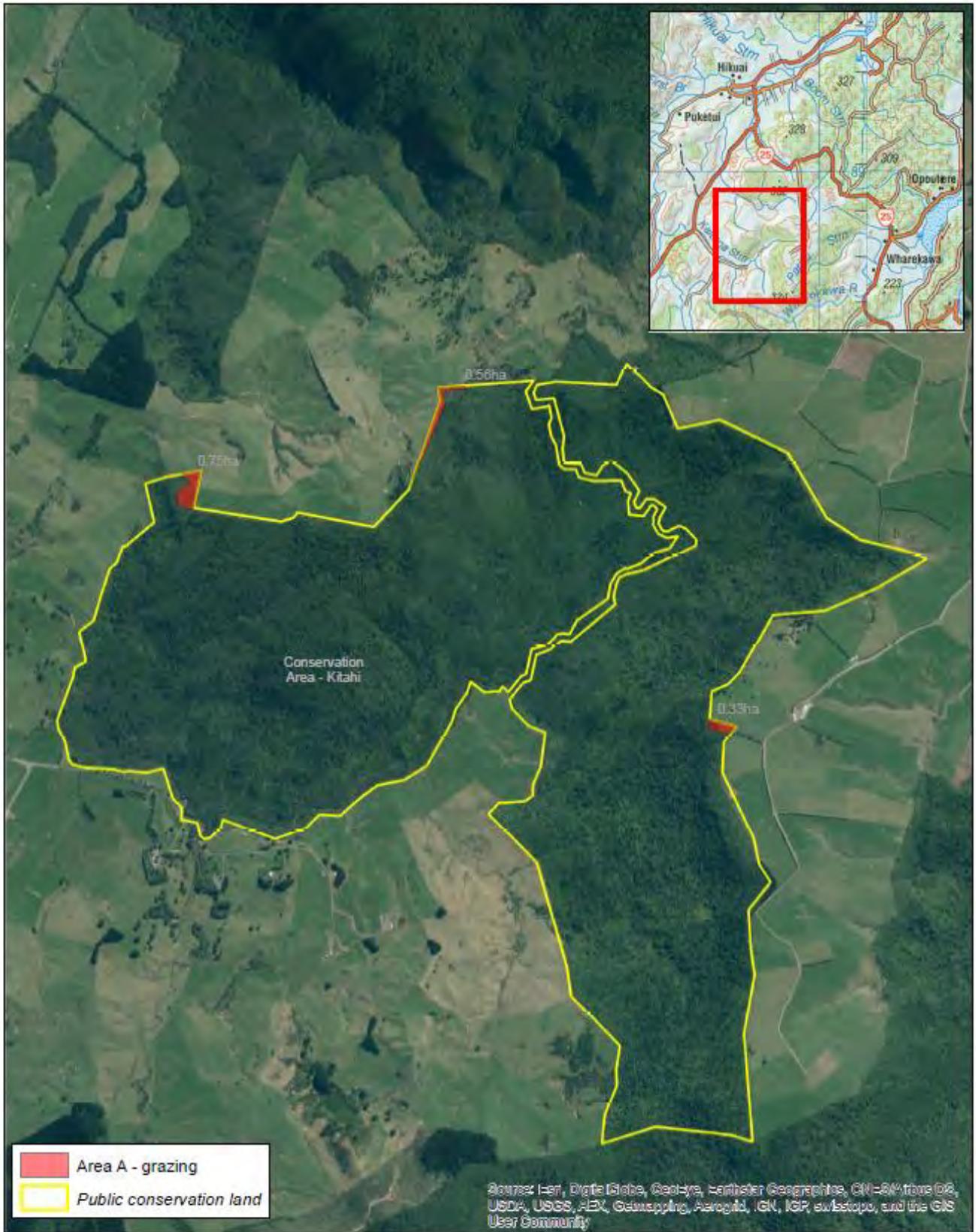
### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### *Cultural activities*

10. 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.

SCHEDULE 4

Map



8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services**  
**Department of Conservation**

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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**8.3 Conservation Covenant – Hikuai Conservation Area**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### HIKUAI CONSERVATION AREA CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- “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:
- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 554.2359 hectares, approximately, being Section 7 Block VII Tairua Survey District and Parts Tairua Block (Subject to survey) as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values:**

The Land has regenerating vegetation cover in areas of lowland broadleaf forest including podocarp, kauri, rata and tanekaha, with small areas of planted pine/eucalypts.

There are small areas of eucalypts that were established as a nurse crop for regenerating native forest on the western edge of the Land.

To the extent present, Hochstetter's Frog (last recorded in 1972 and 1974), koura and freshwater shrimp (last recorded in Tramway Gully in 1999), and tuna, Banded Kokopu, common and red fin bully (last recorded in 2000).

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### Special Conditions

###### *Recreational facilities*

1. For 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.

###### *Plantation trees*

5. Despite clause 3.2.3, the Owner is not required to remove exotic tree species that have been planted as part of a plantation, including in the Area A marked on the map in Schedule 4.

###### *Fencing*

6. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

###### *Managing public access*

8. 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.
9. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### *Cultural activities*

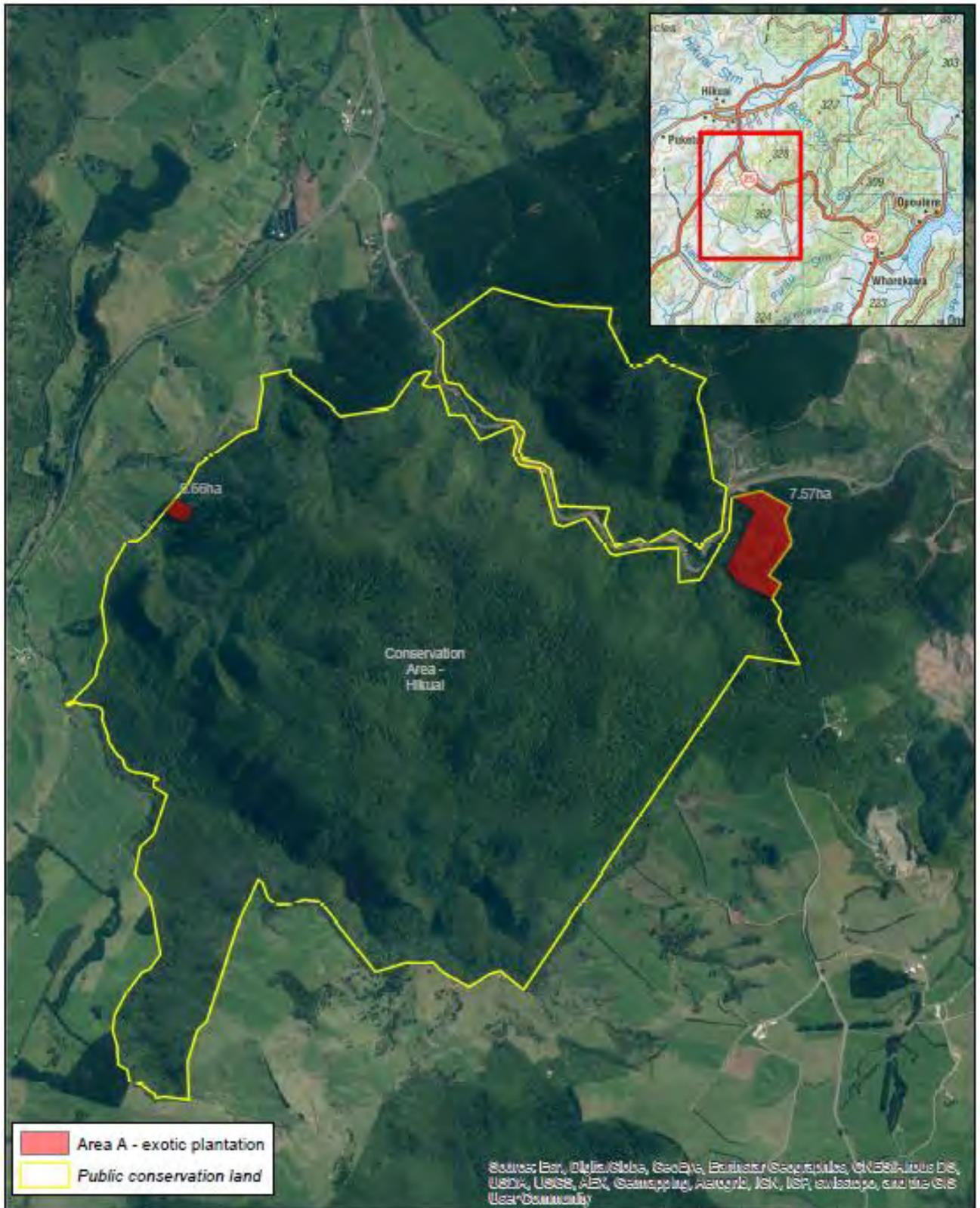
10. The Owner may undertake cultural activities on the Land, subject to:
  - (a) consultation with the Department of Conservation; and
  - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

SCHEDULE 4

Map



8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services**  
**Department of Conservation**

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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**8.4 Conservation Covenant – Kitahi Conservation Area site B**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### KITAHI CONSERVATION AREA SITE B CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- “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:
- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 187.536 hectares, approximately, being Part 43 Block II Tairua Survey District and Section 45 Block II Tairua Survey District (Subject to survey) as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values**

The Land is a backdrop to the Puketui area off State Highway 25A and Puketui Valley Road.

The Land has areas of regenerating vegetation cover, predominantly manuka/kanuka, fern and tree fern in the eastern edges, with predominantly broadleaf indigenous forest in the western portion.

Kauri, tanekaha and podocarp species are starting to show through along the lower slopes adjacent to Stony Stream.

The Land contains a blind gorge, not visible and difficult to access from the road that is an example of craggy bluffs composed of hard silicified rhyolitic tuff and beccia.

While knowledge of the biodiversity values of the Land is limited, bats may be present utilising suitable habitat within the gorge area.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### Special Conditions

###### *Recreational facilities*

1. For 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.

###### *Grazing*

2. Despite clause 3.1.1, the Owner may authorise grazing of the Land by livestock within Area A as marked on the map in Schedule 4.

###### *Taking of plant material*

3. 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*

4. 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*

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

###### *Fencing*

6. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

###### *Managing public access*

8. 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.
9. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### *Cultural activities*

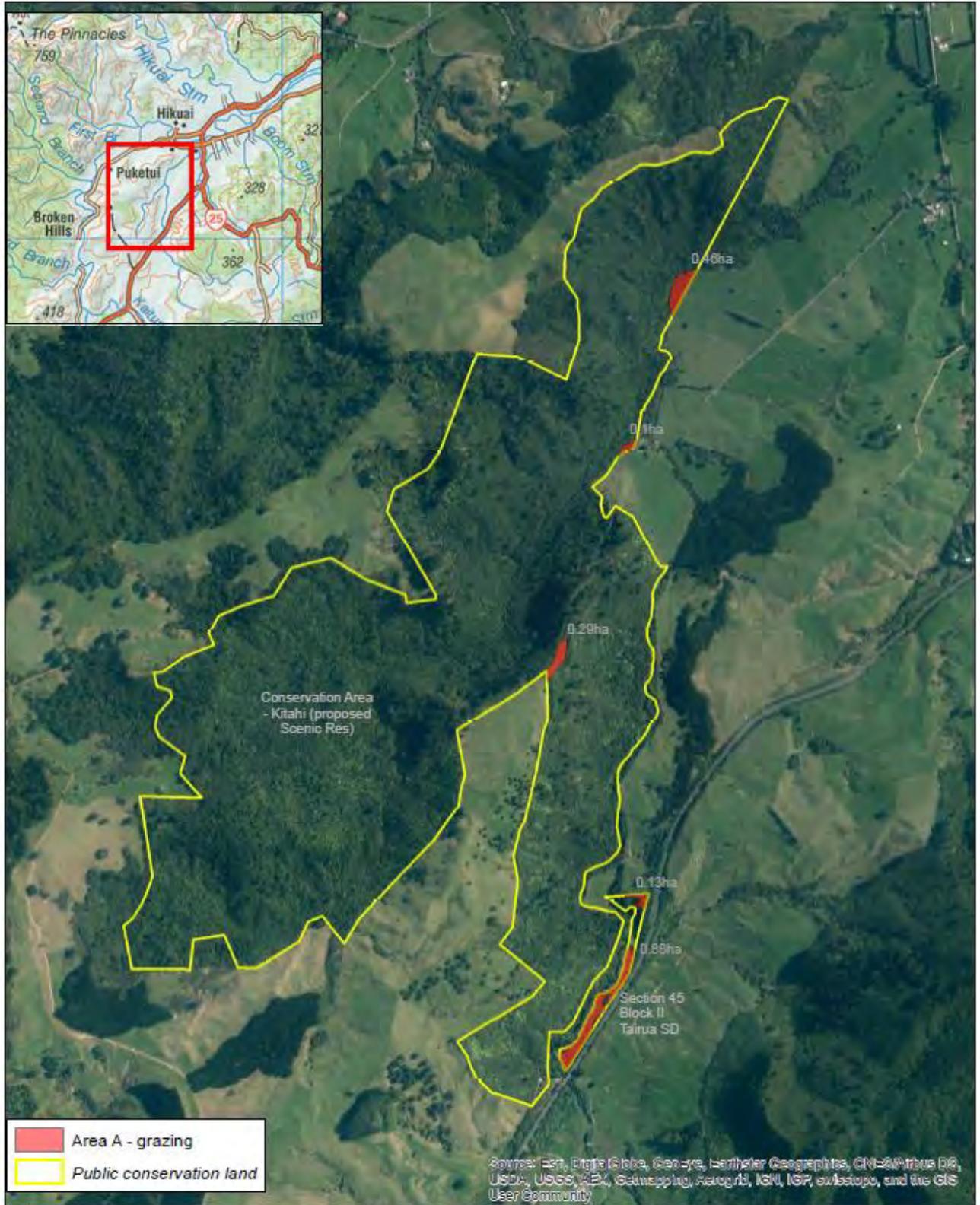
10. The Owner may undertake cultural activities on the Land, subject to:
  - (a) consultation with the Department of Conservation; and
  - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

SCHEDULE 4

Map



8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services**  
**Department of Conservation**

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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**8.5 Conservation Covenant – Oteao Stream Conservation Area**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### OTEAO STREAM CONSERVATION AREA CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- “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:
- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 283.85 hectares, approximately, being Part Section 20 Block VII Whitianga Survey District (Subject to survey) as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values**

The Land has mostly regenerating indigenous vegetation with some progression to high value podocarp/kauri forest from a predominantly manuka/kanuka forest, with areas of broadleaved indigenous hardwood forest.

While knowledge of the historical/archaeological values of the Land is limited there may be kauri logging artefacts on this Land, including dams.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### Special Conditions

###### *Recreational facilities*

1. For 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.

###### *Grazing*

2. Despite clause 3.1.1, the Owner may authorise grazing of the Land by livestock within Area A as marked on the map in Schedule 4.

###### *Taking of plant material*

3. 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*

4. 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*

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

###### *Fencing*

6. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
7. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

###### *Managing public access*

8. 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.
9. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

*Cultural activities*

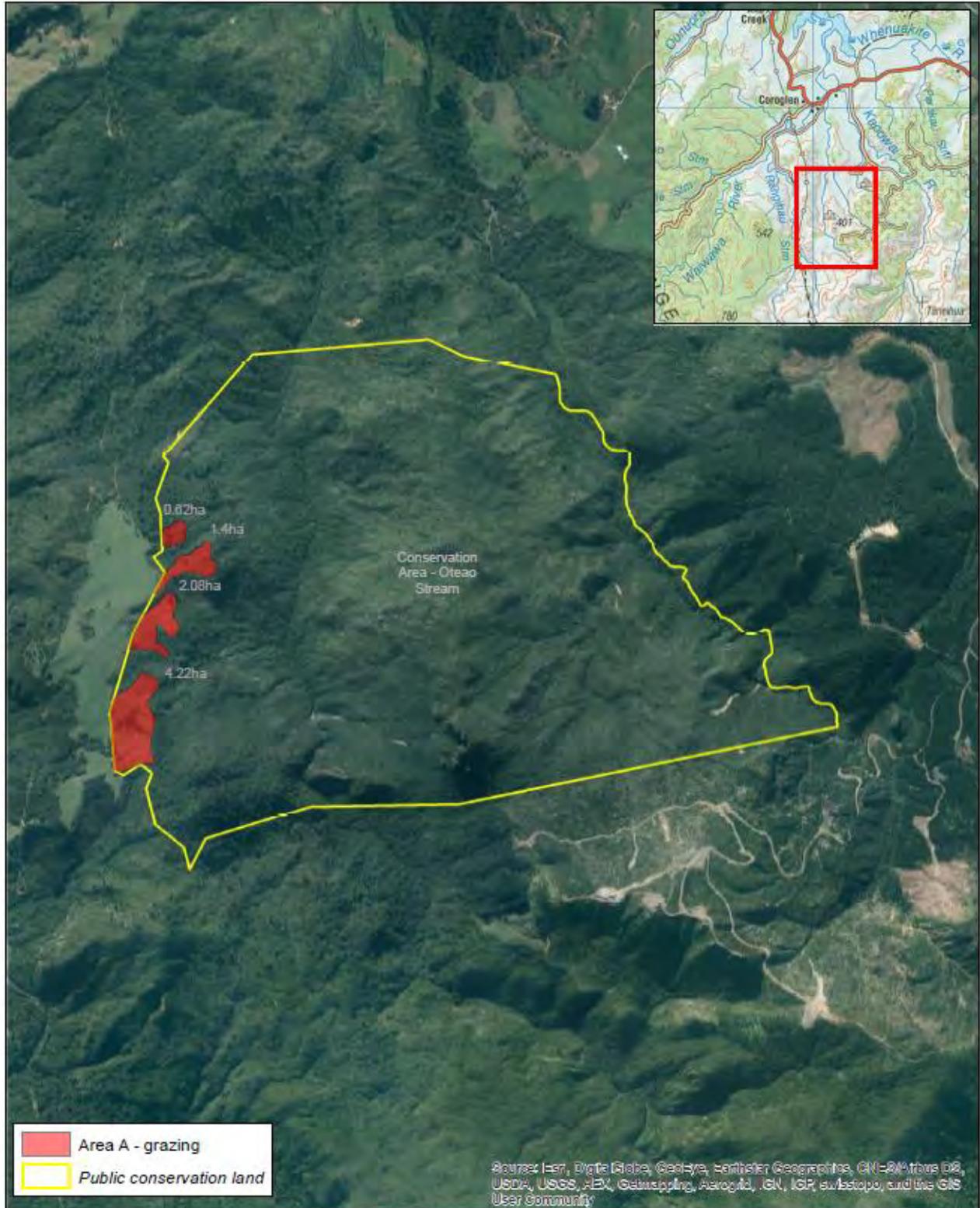
10. The Owner may undertake cultural activities on the Land, subject to:
  - (a) consultation with the Department of Conservation; and
  - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

SCHEDULE 4

Map



8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services**  
**Department of Conservation**

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**8.6 Conservation Covenant – Mangarehu Stream Conservation Area**

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## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### MANGAREHU STREAM CONSERVATION AREA CONSERVATION COVENANT

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

**THIS DEED of COVENANT** is made this            day of

**BETWEEN [PARE HAURAKI COLLECTIVE]** (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 Pare Hauraki Collective Redress 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.

#### 1 INTERPRETATION

- 1.1 In this Covenant unless the context otherwise requires:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

<b>“Conservation and Reserve Values”</b>	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.
<b>“Director-General”</b>	means the Director-General of Conservation.
<b>“Fence”</b>	includes a gate.
<b>“Land’s Values”</b>	means the Conservation and Reserve values specified in Schedule 1.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Working Days”</b>	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:
- 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

- 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; and
  - 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 any 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 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;
  - 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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; and

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.

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

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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 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;

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

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.

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.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

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: \_\_\_\_\_

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

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 1

Description of Land: [All that piece of land being 21.01 hectares, approximately, being Part Section 7 Block VI Thames Survey District (Subject to survey) as shown outlined yellow on the map in Schedule 4].

#### **Conservation and Reserve Values**

The Land has areas of forest contiguous to the Coromandel Forest Park. There is predominantly broadleaved indigenous forest on the southern boundary.

The Land is proximate to watercourses, noting that the Land is located between two streams and near the Kauaeranga River.

**DOCUMENTS**

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**8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES**

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

## DOCUMENTS

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### 8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

#### SCHEDULE 3

##### Special Conditions

###### *Recreational facilities*

1. For 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.

###### *Fencing*

5. For avoidance of doubt, the obligations under clause 3.2.6 do not require the Owner to improve the fences beyond their condition or type at the date of this Covenant.
6. Clause 3.2.6 only applies where boundary fences in place at the time of this Covenant, are required to prevent farm animals on adjoining land from entering the Land.

###### *Managing public access*

7. 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.
8. For avoidance of doubt, any member of the public when on the land may not undertake an activity in clause 3.1.

###### *Cultural activities*

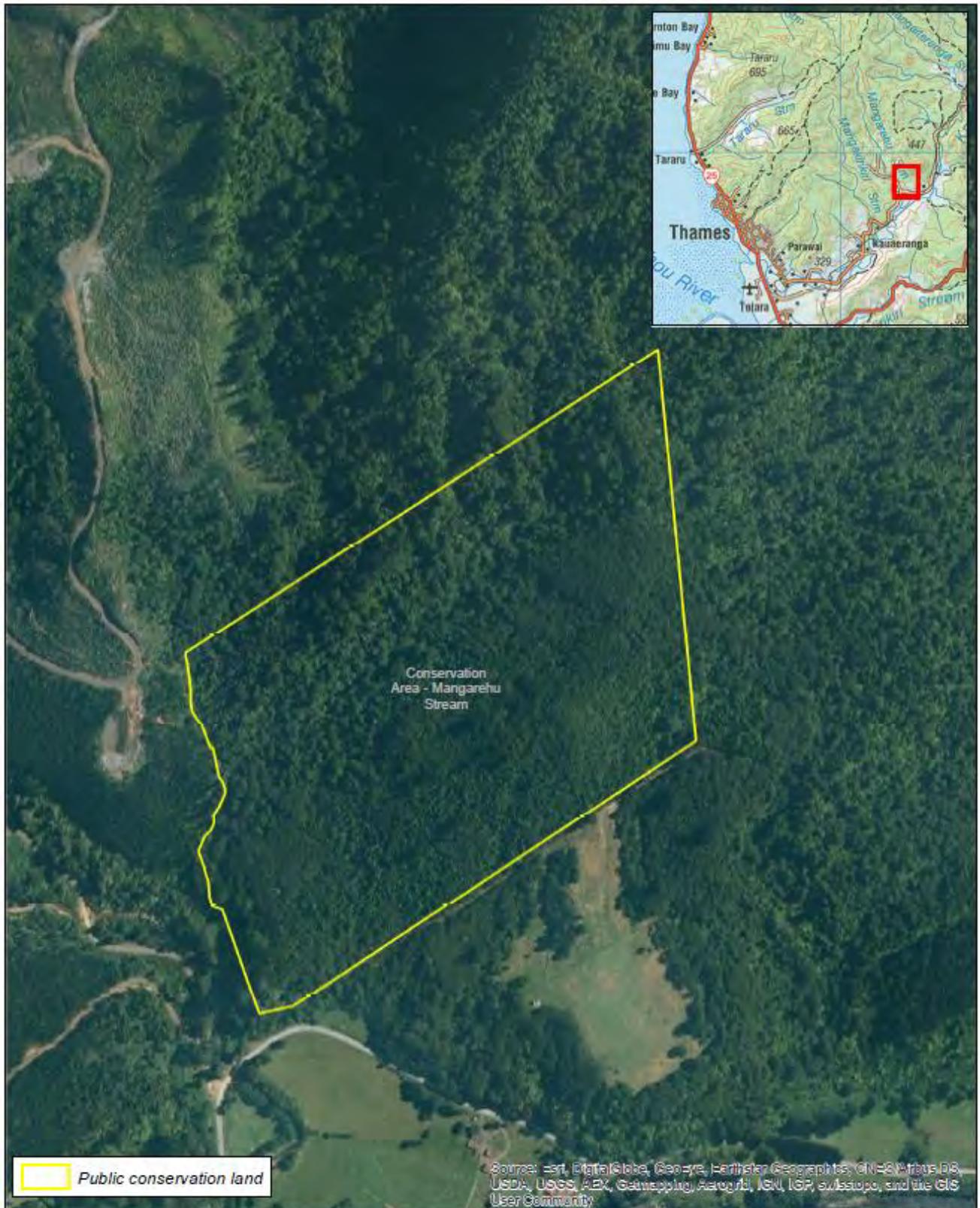
9. The Owner may undertake cultural activities on the Land, subject to:
  - (a) consultation with the Department of Conservation; and
  - (b) any effects on the Conservation and Reserve Values being no more than minor.

DOCUMENTS

8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

SCHEDULE 4

Map



8: ENCUMBRANCES FOR DEFERRED SELECTION PROPERTIES

**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**

## 9 DEED OF ACCESSION

***[INSERT NAME OF ACCEDING IWI]***

**and**

**THE CROWN**

---

**PARE HAURAKI COLLECTIVE REDRESS DEED:**

**DEED OF ACCESSION**

---

## DEED OF ACCESSION

**THIS DEED** is made between

**[INSERT NAME OF ACCEDING IWI]**

and

**THE CROWN**

### BACKGROUND

- A The Iwi of Hauraki and the Crown entered into a collective redress deed dated [ ] (the “**collective deed**”).
- B [**Acceding iwi**] had not ratified the collective deed and the collective redress entities to receive the redress.
- C [**Acceding iwi**] have, since the signing of the collective deed, by a majority of –
- [X]% ratified the collective deed and approved the signing of this deed; and
  - [X]% approved the collective redress entities receiving the redress.
- D Each majority referred to in C above is of valid votes cast in a ballot by eligible members of [**acceding iwi**].
- E The Crown is satisfied with the ratification and approvals.
- F Part 19 of the collective deed provides for accession by [**acceding iwi**] to the collective deed once those ratifications and approvals have been obtained and the Crown is satisfied with them.

**IT IS AGREED** as follows:

#### 1 ACCESSION

- 1.1 The acceding iwi accedes to the collective deed.

**DOCUMENTS**

---

**9: DEED OF ACCESSION**

1.2 [Acceding iwi] and the Crown record that this is the deed of accession for the purposes of part 19 of the collective deed.

**2 INTERPRETATION**

2.1 Unless the context requires otherwise:

2.1.1 **mandated signatories** means the individuals who signed this deed;

2.1.2 other terms or expressions defined in the collective deed have the same meanings in this deed; and

2.1.3 the rules of interpretation in the collective deed apply (with all appropriate changes) to this deed.

**SIGNED** as a deed on

**SIGNED** for and on behalf  
of [ACCEDING IWI] by  
the mandated signatories in the  
presence of –

---

---

**WITNESS**

---

Name:

Occupation:

Address:

DOCUMENTS

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9: DEED OF ACCESSION

**SIGNED** for and on behalf of **THE CROWN**  
in right of New Zealand by  
the Minister for Treaty of Waitangi  
Negotiations in the presence of –

---

Hon Andrew James Little

**WITNESS**

---

Name:

Occupation:

Address:

**10 LAND EXCHANGE AGREEMENT**

# Land Exchange Agreement

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Pare Hauraki Forests Limited Partnership

Thames-Coromandel District Council

**DOCUMENTS**

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**10: LAND EXCHANGE AGREEMENT**

**TABLE OF CONTENTS**

PARTIES.....

BACKGROUND.....

OPERATIVE PART.....

1     **DEFINITIONS**.....

2     **CONDITION**.....

3     **PROVISIONS OF COLLECTIVE REDRESS**.....

4     **SUBDIVISION**.....

5     **RIGHT OF WAY EASEMENT**.....

6     **EXCHANGE**.....

7     **SETTLEMENT OF EXCHANGE**.....

8     **LOWEST PRICE**.....

9     **LICENCE OF FIRE STATION PROPERTY**.....

10    **PURCHASER ACKNOWLEDGEMENTS – TRANSACTION 1**.....

11    **PURCHASER ACKNOWLEDGEMENTS – TRANSACTION 2**.....

12    **WARRANTIES**.....

13    **RISK AND INSURANCE**.....

14    **FURTHER ASSURANCES**.....

EXECUTION.....

SCHEDULE 1 – ENCUMBRANCES.....

SCHEDULE 2 – ONEMANA DRIVE PROPERTY PLAN.....

SCHEDULE 3 – FIRE STATION PROPERTY PLAN.....

SCHEDULE 4 – GENERAL TERMS.....

SCHEDULE 5 – RIGHT OF WAY EASEMENT.....

## DOCUMENTS

### 10: LAND EXCHANGE AGREEMENT

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Date:

#### **PARTIES**

Pare Hauraki Forests Limited Partnership (*PHFLP*)

Thames-Coromandel District Council (*TCDC*)

#### **BACKGROUND**

- A PHFLP will, under a collective redress deed with the Crown, become owner of licensed land at Tairua on which a fire station is informally situated.
- B TCDC owns a property on Onemana Drive, Tairua.
- C The legislation to give effect to the collective redress deed requires PHFLP and TCDC to exchange ownership of the fee simple estate in those properties.
- D The parties enter into this agreement to record their agreement in relation to that exchange.

#### **OPERATIVE PART**

##### **1 DEFINITIONS**

1.1 In this agreement, unless a contrary intention is required:

- (a) *Collective Redress Deed* means the Pare Hauraki collective redress deed between the Crown and the Iwi of Hauraki;
- (b) *Collective Redress Legislation* means:
  - (i) the Bill proposed by the Crown for introduction to the House of Representatives which gives effect to the Collective Redress Deed; and
  - (ii) if the Bill is passed, the resulting Act;
- (c) *Crown Forestry licence* means the licence referred to in clause 1.1(g);
- (d) *Encumbrance* in relation to a Property means the rights or obligations affecting that Property as at the date of this agreement, being the encumbrances and interests set out in Schedule 1;
- (e) *Fire Station Property* means that part of the Licensed Land comprising an approximate area of 0.14 hectares, as shown more particularly on the plan attached to this agreement as Schedule 3, subject to final survey in accordance with clause 4.1(a);
- (f) *General Terms* has the meaning given to it in clause 6.3;
- (g) *Licensed Land* means that part of the land at 567 Tairua Road, State Highway 25, Tairua, Whangamata, currently licensed to Matariki Forests North Island Limited pursuant to a Crown Forestry licence issued under section 30 of the Crown Forests Assets Act 1989, comprising an area of 159.8600 hectares more or less and being the land legally described as Lot 2 on Deposited Plan South Auckland 53794 and being part of the land comprised in Computer Interest Register SA50C/950 (South Auckland Registry);

## DOCUMENTS

### 10: LAND EXCHANGE AGREEMENT

- (h) **Onemana Drive Property** means that part of the TCDC Land comprising an approximate area of 0.14 hectares, as shown more particularly on the plan attached to this agreement as Schedule 2, subject to final survey in accordance with clause 4.1(b);
- (i) **Property** means each of the Fire Station Property and the Onemana Drive Property, and **Properties** means both of them;
- (j) **Settlement Date** means the date which is 20 working days after the later of:
  - (i) the date this agreement becomes unconditional;
  - (ii) the settlement date under the Collective Redress Legislation;
  - (iii) the date a new computer freehold register is issued for the Fire Station Property recording that Crown Forestry licence no longer applies to the Property; and
  - (iv) the date a new computer freehold register is issued for the Onemana Drive Property;
- (k) **TCDC** means the Thames-Coromandel District Council, a territorial authority constituted under the Local Government (Waikato Region) Reorganisation Order 1989 (refer Gazette 1989, page 2460) and as listed in Schedule 2 of the Local Government Act 2002;
- (l) **TCDC Land** means all of the land at 446 Onemana Drive, Onemana, Tairua, Whangamata, comprising an area of 7.3785 hectares more or less, being the land legally described as Lot 1 on Deposited Plan South Auckland 27603 and comprised in Computer Freehold Register SA26B/574 (South Auckland Registry);
- (m) **Transaction** means either of Transaction 1 or Transaction 2, and **Transactions** means both of them;
- (n) **Transaction 1** means the sale and purchase of the Onemana Drive Property from the TCDC as vendor to PHFLP as purchaser; and
- (o) **Transaction 2** means the sale and purchase of the Fire Station Property from PHFLP as vendor to the TCDC as purchaser.

#### 1.2 In this agreement:

- (a) references to clauses and schedules are to clauses and schedules of this agreement;
- (b) headings appear as a matter of convenience and do not affect the construction of this agreement;
- (c) any provision of this agreement to be performed or observed by two or more persons binds those persons jointly and severally;
- (d) a reference to a person includes any legal entity and also a body of persons (whether or not incorporated);
- (e) the singular includes the plural and vice versa;
- (f) any term used in this agreement and defined in the General Terms has, for the purposes of this agreement, the meaning given to it in the General Terms; and
- (g) a reference to the word 'include' or 'including' is to be construed without limitation.

## DOCUMENTS

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### 10: LAND EXCHANGE AGREEMENT

#### 2 CONDITION

- 2.1 This agreement is conditional on the Collective Redress Legislation, including all of the provisions listed in clause 3.1(a) to (c), coming into force.

#### 3 PROVISIONS OF COLLECTIVE REDRESS

- 3.1 The parties anticipate that the provisions of the Collective Redress Legislation will:
- (a) provide that section 11 and Part 10 of the Resource Management Act 1991 will not apply to the separation of the Fire Station Property from the balance of the Licenced Land and the separation of the Onemana Drive Property from the balance of the TCDC Land;
  - (b) provide that the vendors under the Transactions are not required to comply with any other enactment that would otherwise regulate or apply to the transfer of each Property including the creation of the right of way easement referred to in clause 5.1; and
  - (c) oblige the parties to effect the Transactions.

#### 4 SUBDIVISION

- 4.1 The parties agree (at the cost of TCDC) to:
- (a) procure the necessary deposited plan so that once the Collective Redress Legislation comes into force, a separate computer freehold register can issue for the Fire Station Property;
  - (b) procure the necessary deposited plan so that once the Collective Redress Legislation comes into force, a separate computer freehold register can issue for the Onemana Drive Property and the right of way easement described in clause 5.1(a) can be created and registered against the computer freehold registers for the Onemana Drive Property and the balance of the TCDC Land; and
  - (c) do all other things and sign all documents (including procuring the signing of all documents and obtaining the consent of all other parties) required in order to obtain the deposited plans described in clauses 4.1(a) and (b).
- 4.2 The computer freehold registers to the Onemana Drive Property and the Fire Station Property will be subject to the relevant Encumbrances. No party shall agree to any additional encumbrance or memorial being registered against the title to either of the Properties, without the consent of the other party, such consent not to be unreasonably withheld or delayed.

#### 5 RIGHT OF WAY EASEMENT

- 5.1 The parties agree that (at the cost of TCDC):
- (a) a right of way easement will be granted in favour of the balance of the TCDC Land over that part of the Onemana Drive Property coloured red and **marked "D" on the plan attached to this agreement as Schedule 2** to enable access to and from the balance of the TCDC Land and Onemana Drive;
  - (b) **this right of way easement shall be prepared by the TCDC's solicitors and shall be in registrable form in the form attached as Schedule 5;** and

## DOCUMENTS

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### 10: LAND EXCHANGE AGREEMENT

- (c) the parties will do all things and sign all documentation necessary to enable the right of way easement to be registered on the land registry contemporaneously with the registration of the deposited plan enabling a title to issue for the Onemana Drive Property in accordance with clause 4.1(b).

#### **6 EXCHANGE**

- 6.1 TCDC will transfer the Onemana Drive Property to PHFLP and in exchange, PHFLP will transfer the Fire Station Property to TCDC, on the Settlement Date.
- 6.2 On the Settlement Date, the purchase price for the Onemana Drive Property and the Fire Station Property will be satisfied in full by way of, respectively, an exchange of legal title to the Fire Station Property and the Onemana Drive Property.
- 6.3 The Transactions will be on the Auckland District Law Society 9th Edition 2012 (5) General Terms of Sale amended and attached as Schedule 4 (General Terms) which form part of this agreement. For this purpose:
  - (a) TCDC is deemed to be the vendor and PHFLP is deemed to be the purchaser under Transaction 1;
  - (b) PHFLP is deemed to be the vendor and TCDC is deemed to be the purchaser under Transaction 2; and
  - (c) each of the Onemana Drive Property and the Fire Station Property is deemed to be the Property (as applicable).

If there is any conflict between the General Terms and the terms of this agreement, then this agreement will prevail.

#### **7 SETTLEMENT OF EXCHANGE**

- 7.1 On the Settlement Date, each party will comply with their respective obligations under clause 3 of the General Terms so as to ensure that:
  - (a) PHFLP receives free and clear title to the Onemana Drive Property; and
  - (b) TCDC receives free and clear title to the Fire Station Property.
- 7.2 On settlement:
  - (a) TCDC will give PHFLP vacant possession of the Onemana Drive Property; and
  - (b) PHFLP will give TCDC vacant possession of the Fire Station Property.
- 7.3 Immediately following settlement the parties will instruct their solicitors to promptly submit for registration all instruments and documents necessary to give effect to clause 7.1 (in accordance with clause 3.8(2)(a) of the General Terms, as applicable), at the cost of TCDC.

#### **8 LOWEST PRICE**

For the purposes of the accrual rules in the Income Tax Act 2007, the parties agree that:

- (a) the purchase price under each Transaction is the lowest price they would have agreed for the Property transferred under the relevant Transaction, on the date this agreement was entered

## DOCUMENTS

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### 10: LAND EXCHANGE AGREEMENT

into, if payment would have been required in full at the time the first right in the contracted Properties was transferred; and

- (b) the purchase price under each Transaction is the value of the relevant Property.

#### 9 LICENCE OF FIRE STATION PROPERTY

PHFLP grants TCDC a licence to occupy the Fire Station Property from the settlement date under the Collective Redress Legislation until the date settlement of the Transactions occurs in accordance with clause 7 at an annual licence fee of \$1.00 (plus GST) payable on demand.

#### 10 PURCHASER ACKNOWLEDGEMENTS – TRANSACTION 1

PHFLP, as purchaser of the Onemana Drive Property under Transaction 1 acknowledges that the transfer of the Onemana Drive Property is subject to, and does not limit or affect:

- (a) the Encumbrances set out in Schedule 1 in relation to the Onemana Drive Property; and
- (b) the powerlines and other related infrastructure situated on the Onemana Drive Property.

#### 11 PURCHASER ACKNOWLEDGEMENTS – TRANSACTION 2

TCDC, as purchaser of the Fire Station Property under Transaction 2, acknowledges that the transfer of the Fire Station Property is subject to, and does not limit or affect, the Encumbrances set out in Schedule 1 in relation to the Fire Station Property.

#### 12 WARRANTIES

TCDC as vendor under Transaction 1 gives the warranties and undertakings set out in clause 7 of the General Terms in respect of that Transaction.

#### 13 RISK AND INSURANCE

- 13.1 The Property in respect of each Transaction will be at the risk of the vendor until possession is given and taken.
- 13.2 The purchaser in respect of each Transaction will not be required to take over any insurance policies held by the vendor.
- 13.3 If the Property in respect of each Transaction is damaged or destroyed before possession is given and taken:
  - (a) it will not entitle the parties to cancel this agreement and will not affect the obligations of the parties to settle on the Settlement Date;
  - (b) no compensation (including a reduction in the purchase price) whatsoever will be payable by the vendor to the purchaser in respect of the damage or destruction; and
  - (c) no party will have any right or claim against any other arising from this agreement.

#### 14 FURTHER ASSURANCES

- 14.1 Each of the parties agrees to enter into, execute and deliver any documents and to do all things as may reasonably be required by any other party to obtain the full benefit of this agreement according to its true intent.

DOCUMENTS

10: LAND EXCHANGE AGREEMENT

EXECUTION

**Signed** for and on behalf of **Pare Hauraki Forests Limited Partnership** by:

.....  
Authorised Signatory

.....  
Witness Signature

.....  
Authorised Signatory Full Name

.....  
Witness Name

.....  
Authorised Signatory Position

.....  
Witness Occupation

.....  
Witness Address

**Signed** by **Thames-Coromandel District Council** by its duly authorised signatory in the presence of:

.....  
Authorised Signatory

.....  
Witness Signature

.....  
Authorised Signatory Full Name

.....  
Witness Name

.....  
Authorised Signatory Position

.....  
Witness Occupation

.....  
Witness Address

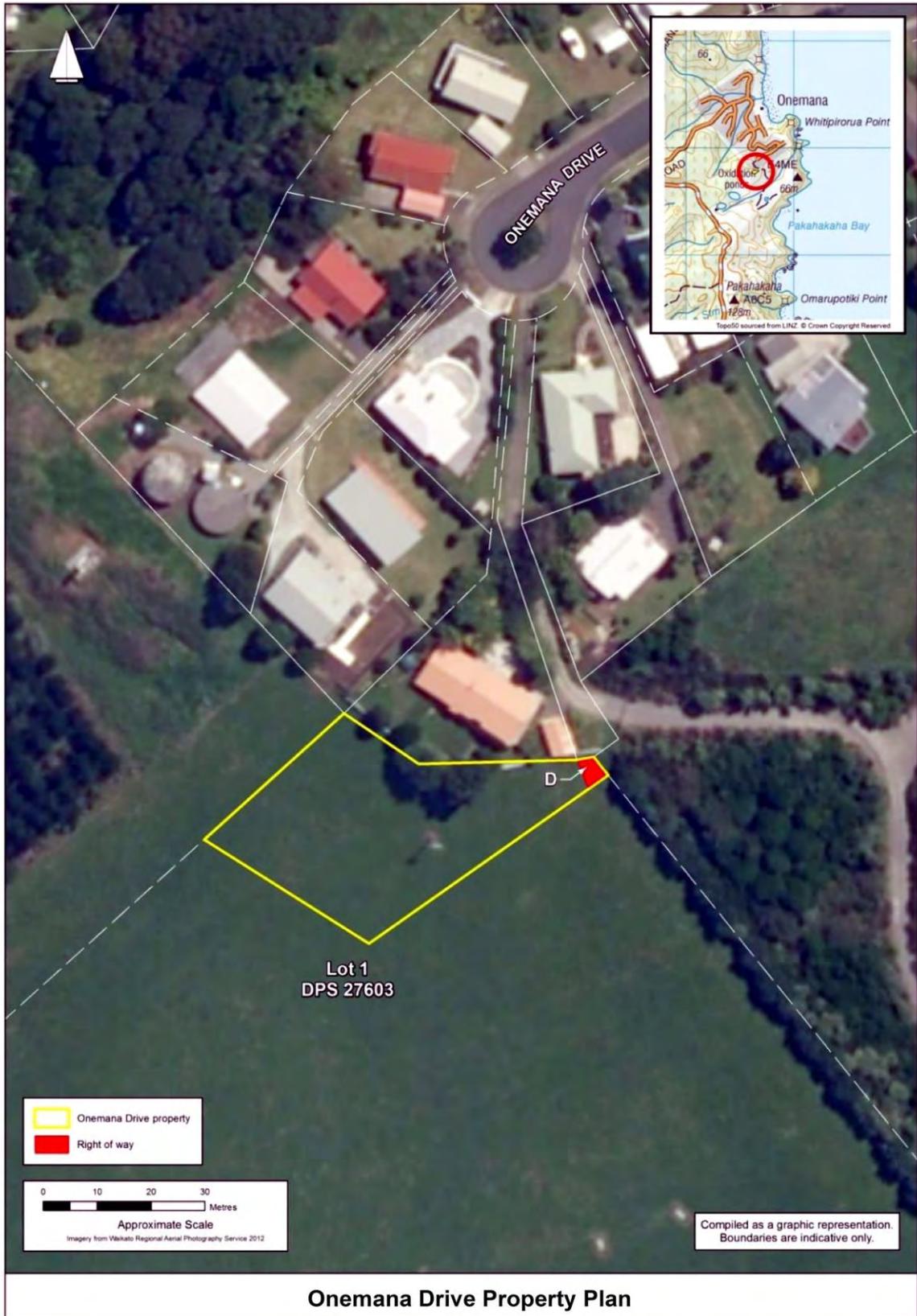
## DOCUMENTS

### 10: LAND EXCHANGE AGREEMENT

#### SCHEDULE 1 – ENCUMBRANCES

Property	Encumbrances
<p>TCDC Land (which currently contains the Onemana Drive Property)</p> <p>Computer Freehold Register SA26B/574</p>	<ul style="list-style-type: none"> <li>• Memorial on title noting that the land has no road frontage.</li> <li>• Subject to section 315 of the Land Act 1924.</li> <li>• <b>Appurtenant are rights of way over the areas marked "A" and "B" on Deposited Plan South Auckland 27602 created by Easement Certificate H304033.5.</b></li> <li>• The easements created by Easement Certificate H304033.5 are subject to section 37(1)(a) of the Counties Amendment Act 1961.</li> <li>• <b>Appurtenant is a right to drain sewage over the area marked "C" on Deposited Plan South Auckland 27602 created by Easement Certificate H304033.4.</b></li> <li>• The easement created by Easement Certificate H304033.4 is subject to section 37(1)(a) of the Counties Amendment Act 1961.</li> <li>• Subject to a (currently) unregistered right of way over that part of the Onemana Drive Property <b>coloured red and marked "D" on the plan in Schedule 2</b> and granted in favour of the balance of the TCDC Land in accordance with clause 5.1.</li> </ul>
<p>Licensed Land (which currently contains the Fire Station Property)</p> <p>Computer Interest Register SA50C/950</p>	<ul style="list-style-type: none"> <li>• Subject to part 4A of the Conservation Act 1987.</li> <li>• Protective Covenant issued pursuant to Section 19 of the Crown Forest Assets Act 1989 and created by instrument number B102559.1.</li> <li>• Public access easement issued pursuant to Section 25 of the Crown Forest Assets Act 1989 and created by instrument number B102559.2.</li> <li>• Exploration Permit embodied in title SA59D/307.</li> <li>• Notice issued pursuant to Section 94C of the Transit New Zealand Act 1989 declaring the adjoining State Highway No. 25 to be a limited access road (refer instrument number 5425408.1).</li> <li>• Gazette notice issued declaring part of the land to vest as road in the TCDC excluding minerals reserved by Section 11 of the Crown Minerals Act 1991 (refer instrument number 8937595.3).</li> <li>• Notice issued pursuant to Section 195(2) of the Climate Change Response Act 2002 (refer instrument number 9109973.1).</li> </ul>

SCHEDULE 2 – ONEMANA DRIVE PROPERTY PLAN



Onemana Drive Property Plan

SCHEDULE 3 – FIRE STATION PROPERTY PLAN



**DOCUMENTS**

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**10: LAND EXCHANGE AGREEMENT**

**SCHEDULE 4 – GENERAL TERMS**

DOCUMENTS

10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

**AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE**

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

DATE:

VENDOR: See Land Exchange Agreement

PURCHASER: See Land Exchange Agreement

and/or nominee

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement: Yes/No

**PROPERTY**  
Address: See Land Exchange Agreement

Estate: ~~FEE SIMPLE~~    ~~LEASEHOLD~~    ~~STRATUM IN FREEHOLD~~    ~~STRATUM IN LEASEHOLD~~  
                   **CROSSLEASE (FEE SIMPLE)**    **CROSSLEASE (LEASEHOLD)**    (fee simple if none is deleted)

Legal Description:  
Area (more or less):                      Lot/Flat/Unit:                      DP:                      Unique Identifier or CT:

See Land Exchange Agreement

**PAYMENT OF PURCHASE PRICE**  
Purchase price: \$ See Land Exchange Agreement Plus GST (if any) OR ~~Inclusive of GST (if any)~~  
If neither is deleted, the purchase price includes GST (if any).  
GST date (refer clause 14.0): Settlement Date

Deposit (refer clause 2.0): \$ Nil

Balance of purchase price to be paid or satisfied as follows:  
~~(1) By payment in cleared funds on the settlement date which is~~  
 OR  
 (2) In the manner described in the ~~Further Terms of Sale.~~  Land Exchange Agreement

Interest rate for late settlement: 12 % p.a.

**CONDITIONS** (refer clause 10.0) See Land Exchange Agreement

<del>Finance condition:</del>	<del>LIM required: (refer clause 10.2)</del>	<del>Yes/No</del>
<del>Lender:</del>	<del>Building report required: (refer clause 10.3)</del>	<del>Yes/No</del>
<del>Amount required:</del>	<del>OIA Consent required: (refer clause 10.4)</del>	<del>Yes/No</del>
<del>Finance date:</del>	<del>Land Act/OIA date:</del>	

~~TENANCIES (if any)~~  
Name of tenant: \_\_\_\_\_

~~Bond:~~ \_\_\_\_\_ ~~Rent:~~ \_\_\_\_\_ ~~Term:~~ \_\_\_\_\_ ~~Right of renewal:~~ \_\_\_\_\_

SALE BY:

Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 1, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

## GENERAL TERMS OF SALE

## 1.0 Definitions, time for performance, notices, and interpretation

## 1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
  - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
  - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (6) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (11) "LINZ" means Land Information New Zealand.
- (12) "Local authority" means a territorial authority or a regional council.
- (13) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (14) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (15) "Property" means the property described in this agreement.
- (16) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (17) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (18) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (19) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (20) "Settlement date" means the date specified as such in this agreement.
- (21) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title under the Unit Titles Act 2010.
- (24) The terms "principal unit", "accessory unit", "owner", "unit plan", and "unit" have the meanings ascribed to those terms in the Unit Titles Act 2010.
- (25) The term "rules" includes both body corporate rules under the Unit Titles Act 1972 and body corporate operational rules under the Unit Titles Act 2010.
- (26) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit", and "commercial on-seller" have the meanings ascribed to those terms in the Building Act.
- (27) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (28) The terms "going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (29) The terms "tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 1952.
- (30) The terms "associated person", "conveyancer", "residential land purchase amount", "offshore RLWT person", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (31) The term "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (32) "Working day" means any day of the week other than:
  - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
  - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
  - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 10.2(2) the 15th day of January) in the following year, both days inclusive; and
  - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (33) Unless a contrary intention appears on the front page or elsewhere in this agreement:
  - (a) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
  - (b) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

## 1.2 Time for performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.2(2).

## 1.3 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
  - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (b) on the party or on the party's lawyer:
    - (i) by personal delivery; or
    - (ii) by posting by ordinary mail; or
    - (iii) by facsimile; or
    - (iv) by email; or
    - (v) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.3(3)(b), a notice is deemed to have been served:
  - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
  - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
  - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
  - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically shall not constitute an acknowledgement;

## DOCUMENTS

### 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

- (e) In the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
  - (f) In the case of sending by secure web document exchange, at the time when in the ordinary course of operation of that secure web document exchange, a notice posted by one party is accessible for viewing or downloading by the other party.
  - (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.
  - (6) In accordance with section 20(1) of the Electronic Transactions Act 2002, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of an electronic communication, subject to the rules regarding service set out above.
- 1.4 Interpretation
- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
  - (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
  - (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
  - (4) Headings are for information only and do not form part of this agreement.
  - (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

#### 2.0 Deposit

- 2.1 ~~The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.~~
- 2.2 ~~If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.~~
- 2.3 ~~The deposit shall be in part payment of the purchase price.~~
- 2.4 ~~The person to whom the deposit is paid shall hold it as a stakeholder until:~~
  - (1) the requisition procedure under clause 6.0 is completed without either party canceling this agreement; and
  - (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and
  - (3) where the property is a unit title:
    - (a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act 2010; and
    - (b) an additional disclosure statement under section 148 of the Unit Titles Act 2010 (if requested by the purchaser within the time prescribed in section 148(2));have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 148(2) of the Unit Titles Act 2010 to postpone the settlement date until after the disclosure statements have been provided; or
  - (4) this agreement is cancelled pursuant to subclause 6.2(2)(c) or avoided pursuant to subclause 10.3(5) or, where the property is a unit title and the purchaser having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act 2010 has cancelled this agreement pursuant to that section, or has waived the right to cancel by giving notice to the vendor, or by completing settlement of the purchase.

#### 3.0 Possession and Settlement

##### Possession

- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2 ~~If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorized by the purchaser in writing, upon reasonable notice:~~
  - (1) to enter the property on one occasion prior to the settlement date for the purpose of examining the property, chattels and fixtures which are included in the sale; and
  - (2) to re-enter the property on or before the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and the fixtures;
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 ~~On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.~~

##### Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
  - 3.6 The purchaser's lawyer shall:
    - (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
    - (2) prior to settlement:
      - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
      - (b) certify and sign the transfer instrument.
  - 3.7 The vendor's lawyer shall:
    - (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
    - (2) prior to settlement:
      - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
      - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
  - 3.8 On the settlement date:
    - (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.14);
    - (2) the vendor's lawyer shall immediately thereafter:
      - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
      - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
      - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement.
  - 3.9 All obligations under subclause 3.8 are interdependent.
  - 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.
- Last Minute Settlement
- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
    - (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
    - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

## Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
  - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
    - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
    - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
- 3.13 Where subclause 3.12(1) applies and the parties are unable to agree upon any amount claimed by the vendor for additional expenses and damages:
- (1) an interim amount shall on settlement be paid to a stakeholder by the purchaser until the amount payable is determined;
  - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
  - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
  - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
  - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
  - (6) the amount determined to be payable shall not be limited by the interim amount; and
  - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

## Vendor Default: Late Settlement or Failure to Give Possession

- 3.14 (1) For the purposes of this subclause 3.14:
- (a) the default period means:
    - (i) in subclause 3.14(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
    - (ii) in subclause 3.14(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
    - (iii) in subclause 3.14(5), the period from the settlement date until the date when settlement occurs; and
  - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
    - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
    - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
  - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
    - (i) any withholding tax; and
    - (ii) any bank or legal administration fees and commission charges; and
    - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period. A purchaser in possession under this subclause 3.14(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.14(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.14(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.14(2)(b) during the default period.
- (6) The provisions of this subclause 3.14 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.14:
- (a) an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined;
  - (b) the interim amount shall be the lower of:
    - (i) the amount claimed; or
    - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date.
  - (c) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
  - (d) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
  - (e) the amount determined to be payable shall not be limited by the interim amount; and
  - (f) if the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.

## Deferment of Settlement and Possession

- 3.15 If
- (1) this is an agreement for the sale by a commercial or seller of a household unit; and
  - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit;
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.16 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.17 If
- (1) the property is a unit title;
  - (2) the settlement date is deferred pursuant to either subclause 3.15 or subclause 3.16; and
  - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 3.2(3);
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
  - (b) where there is a deferment of the settlement date pursuant to subclause 3.16, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

## New Title Provision

## 3.18 (1) Where

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
- (b) a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title is not obtainable by the tenth working day prior to the settlement date;
- (c) then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
  - (i) the vendor has given the purchaser notice that a search copy is obtainable; or
  - (ii) the requisitioning procedure under clause 6.2 is complete;
- (2) Subclause 3.16(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and file to the property to issue.

## 4.0 Residential Land Withholding Tax

- 4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:
- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
    - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
    - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
  - (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
  - (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
    - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
    - (b) any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.
- 4.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may:
- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
  - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 4.3 If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
  - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 4.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 4.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
  - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

## 5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
    - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
    - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
  - (2) if the property is not untenable on the settlement date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
  - (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
  - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 8.4 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

## 6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property ~~except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.~~
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
- (a) the tenth working day after the date of this agreement; or
  - (b) the settlement date.
- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 172A of the Land Transfer Act 1952 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:
- (a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
  - (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
  - (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement;
  - (4) In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.
- 6.3 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
- (a) in the case of a cross lease title:
    - (i) alterations to the external dimensions of any leased structure; or
    - (ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
  - (b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be);
- then the purchaser may requisition the title under subclause 6.2 requiring the vendor:
- (a) in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
  - (b) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.

- 6.4 Except as provided by section 7 or the Contractual Remedies Act 1979, no error, omission, or misdescription of the property or the title shall enable the purchaser to cancel this agreement but compensation, if claimed by notice before settlement in accordance with subclause 8.1 but not otherwise, shall be made or given as the case may require.
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not ensure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

**7.0 Vendor's warranties and undertakings**

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party; or
  - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at settlement:
- (1) The chattels and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver them shall only create a right of compensation.
  - (2) All electrical and other installations on the property are free of any charge whatsoever.
  - (3) There are no arrears of rates, water rates or charges outstanding on the property.
  - (4) Where an allowance has been made by the vendor in the settlement statement for Incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
  - (5) Where the vendor has done or caused or permitted to be done on the property any works:
    - (a) any permit, resource consent, or building consent required by law was obtained; and
    - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
    - (c) where appropriate, a code compliance certificate was issued for those works.
  - (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
    - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
    - (b) the building has a current building warrant of fitness; and
    - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
  - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
  - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party,

has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.

- (9) Any chattels included in the sale are the unencumbered property of the vendor.
- 7.3 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.2(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
  - (2) the building has a current building warrant of fitness; and
  - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.4 The vendor warrants and undertakes that on or immediately after settlement:
- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
  - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
  - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
  - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 7.5 If the purchaser has not validly canceled this agreement, the breach of any warranty or undertaking contained in this agreement does not defer the obligation to settle but that obligation shall be subject to the rights of the purchaser at law or in equity, including any rights under subclause 6.4 and any right of equitable set-off.

**8.0 Claims for compensation**

- 8.1 If the purchaser claims a right to compensation either under subclause 6.4 or for an equitable set-off:
- (1) the purchaser must serve notice of the claim on the vendor on or before the last working day prior to settlement; and
  - (2) the notice must:
    - (a) in the case of a claim for compensation under subclause 6.4, state the particular error, omission, or misdescription of the property or title in respect of which compensation is claimed;
    - (b) in the case of a claim to an equitable set-off, state the particular matter in respect of which compensation is claimed;
    - (c) comprise a genuine pre-estimate of the loss suffered by the purchaser; and
    - (d) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 8.2 For the purposes of subclause 8.1(1), "settlement" means the date for settlement fixed by this agreement unless, by reason of the conduct or omission of the vendor, the purchaser is unable to give notice by that date, in which case notice may be given on or before the last working day prior to the date for settlement fixed by a valid settlement notice served by either party pursuant to subclause 11.1.
- 8.3 If the amount of compensation is agreed, it shall be deducted on settlement.
- 8.4 If the amount of compensation is disputed:
- (1) an interim amount shall be deducted on settlement and paid by the purchaser to a stakeholder until the amount of the compensation is determined;
  - (2) the interim amount must be a reasonable sum having regard to all of the circumstances;
  - (3) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
  - (4) the stakeholder shall lodge the interim amount on interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1969 in the joint names of the vendor and the purchaser;
  - (5) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the direction of the interim amount;
  - (6) the amount of compensation determined to be payable shall not be limited by the interim amount; and
  - (7) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society.
- 8.5 The procedures prescribed in subclauses 8.1 to 8.4 shall not prevent either party taking proceedings for the specific performance of the contract.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

## 9.0 Unit title and cross-lease provisions

## Unit Titles

- 9.1 If the property is a unit title, sections 144 to 152 of the Unit Titles Act 2010 ("the Act") require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.
- 9.2 If the property is a unit title, the vendor warrants and undertakes as follows:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.
  - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
  - (3) Not less than five working days before the settlement date, the vendor will provide:
    - (a) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 126 of the Act; and
    - (b) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
  - (4) There are no other amounts owing by the owner under any provision of the Act or the Unit Titles Act 1972.
  - (5) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
  - (6) No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
  - (7) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
    - (a) the owner or the purchaser incurring any other liability under any provision of the Act or the Unit Titles Act 1972; or
    - (b) any proceedings being instituted by or against the body corporate; or
    - (c) any order or declaration being sought against the body corporate or the owner under any provision of the Act or the Unit Titles Act 1972.
  - (8) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
  - (9) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.
  - (10) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
    - (a) the transfer of the whole or any part of the common property;
    - (b) the addition of any land to the common property;
    - (c) the cancellation of the unit plan; or
    - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan, which has not been disclosed in writing to the purchaser.
  - (11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 9.3 If the property is a unit title, in addition to the purchaser's rights under sections 149 and 150 of the Act, and if the vendor does not provide the certificate of insurance and the pre-settlement disclosure statement under section 147 in accordance with the requirements of subclause 9.2(3), the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
  - (2) elect that settlement shall still take place on the settlement date.
- 9.4 If the property is a unit title, each party specifies that:
- (1) the facsimile number of the office of that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Act; and
  - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Act.
- 9.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 149(5) of the Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.5(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.

## Unauthorised Structures—Cross-Leases and Unit Titles

- 9.6 (1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross-lease title, any required lessors' consent; or
  - (b) in the case of a unit title, any required body corporate consent;
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
  - (ii) the settlement date;
- that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 6.2(3) and 6.2(4) shall apply with the purchaser's demand under subclause 9.6(1) being deemed to be an objection and requisition.

## 10.0 Conditions and mortgage terms

## Particular Conditions

- 10.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 10.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost;
  - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
  - (c) this agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld.
- (2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 10.3(6) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 10.3(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 10.3 If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the tenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment. The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods. Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report. The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent. If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 10.3(6), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.
- 10.4 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA Consent.
- 10.5 If this agreement relates to a transaction to which the Land Act 1946 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 10.6 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 66 working days from the date of this agreement whichever is the sooner.
- 10.7 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

**Operation of Conditions**

- ~~10.8~~ If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent;
  - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfillment;
  - (3) Time for fulfillment of any condition and any extended time for fulfillment to a fixed date shall be of the essence;
  - (4) The condition shall be deemed to be not fulfilled until notice of fulfillment has been served by one party on the other party;
  - (5) If the condition is not fulfilled by the date for fulfillment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination;
  - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

**Mortgage Terms**

- ~~10.9~~ Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- ~~10.10~~ If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by Auckland District Law Society Incorporated.

**11.0 Notice to complete and remedies on default**

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.  
 (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with this agreement or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.  
 (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
  - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive,
- time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.  
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.  
 (3) The vendor may give a settlement notice with a notice under this subclause.  
 (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
    - (a) sue the purchaser for specific performance; or
    - (b) cancel this agreement by notice and pursue either or both of the following remedies namely:
      - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
      - (ii) sue the purchaser for damages.
  - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
  - (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
    - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
    - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
    - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
  - (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
  - (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

**12.0 Non-merger**

- 12.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
  - (2) settlement;
  - (3) the transfer of title to the property;
  - (4) delivery of the chattels (if any); or
  - (5) registration of the transfer of title to the property.

**13.0 Agent**

- ~~13.1~~ If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.
- ~~13.2~~ The agent may provide statistical data relating to the sale to the Real Estate Institute of New Zealand Incorporated.

**14.0 Goods and Services Tax**

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
  - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
  - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
    - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
    - (b) any default GST;
  - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
  - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 14.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.

## DOCUMENTS

### 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

- 14.4 (1) Without prejudice to the vendor's rights and remedies under subclause 14.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

#### 15.0 Zero-rating

- 15.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.
- 15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 2 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 2 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
  - (2) the recipient is and/or will be at settlement a registered person;
  - (3) the recipient intends at settlement to use the property for making taxable supplies; and
  - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act.
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 15.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 2 or they have altered.
- 15.5 If any of the particulars stated by the purchaser in Schedule 2 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 2 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 2 state that part of the property is being used as a principal place of residence at the date of this agreement; and
  - (2) that part is still being so used at the time of the supply under this agreement,
- the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 15.7 If
- (1) the particulars stated in Schedule 2 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
  - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 15.3 and 15.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.

#### 16.0 Supply of a Going Concern

- 16.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
  - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
  - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
  - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 14.0 of this agreement shall apply.

#### 17.0 Limitation of Liability

- 17.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
    - (a) the person has power to enter into this agreement under the terms of the trust;
    - (b) the person has properly signed this agreement in accordance with the terms of the trust;
    - (c) the person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
    - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
  - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

#### 18.0 Counterparts

- 18.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

**FURTHER TERMS OF SALE**

Nil.



**SCHEDULE 1**

List all chattels included in the sale

*(strike out or add as applicable)*

~~Stove~~      ~~Fixed floor coverings~~      ~~Blinds~~      ~~Curtains~~      ~~Light fittings~~

All of the vendor's chattels in respect of Transaction 2 if now situated at the Fire Station Property are included in the sale.

Nil chattels in respect of Transaction 1.



## 10: LAND EXCHANGE AGREEMENT

Ninth Edition 2012 (5)

**BEFORE SIGNING THE AGREEMENT**

- It is recommended both parties seek professional advice before signing. This is especially so if:
  - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
  - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
  - the property is vacant land in the process of being subdivided or there is a new unit title or cross lease to be issued. In these cases additional clauses may need to be inserted.
  - there is any doubt as to the position of the boundaries.
  - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
  - the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act 2010;
  - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 9.0:
  - are able to be complied with; and if not
  - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- Before signing this agreement, both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

**THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.**

**PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.**

**THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.**

**AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE**

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DATE:

**VENDOR:**

Thames-Coromandel District Council

Contact Details:

Thames-Coromandel District Council's  
**VENDOR'S LAWYERS:**

Firm: Greenwood Roche

Individual Acting: Bob Roche

Contact Details:

PO Box 25501

Wellington 6146

Email: Bob@greenwoodroche.com

DDI: +64 4 494 8504

**PURCHASER:**

Pare Hauraki Forests Limited Partnership

Contact Details:

Pare Hauraki Forests Limited Partnership's  
**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Contact Details:

**LICENSED REAL ESTATE AGENT:**

Agent's Name:

Manager:

Salesperson:

Contact Details:

**DOCUMENTS**

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**10: LAND EXCHANGE AGREEMENT**

**SCHEDULE 5 – RIGHT OF WAY EASEMENT**

**DOCUMENTS**

**10: LAND EXCHANGE AGREEMENT**

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

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

Thames-Coromandel District Council

**Grantee**

Thames-Coromandel 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</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	[ ] on Deposited Plan [ ]	[Title Reference for Onemara Road Property]	[Title Reference for Balance of TCDC Land]

DOCUMENTS

10: LAND EXCHANGE AGREEMENT

**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 specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied] [negated] [added to]~~ and ~~[partially substituted]~~ by:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule 1]~~

**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 \_\_\_\_\_]~~

*Insert type of instrument*

Easement Instrument

*Continue in additional Annexure Schedule, if required.*

**1. Maintenance of Right of Way**

1.1 Notwithstanding any provision contained in the Fifth Schedule of the Property Law Act 2007 or the Fourth Schedule of the Land Transfer Regulations 2002, the Grantee shall be solely responsible for the costs of establishing, maintaining, up-keeping and repairing the easement facility to an appropriate standard, except for where the need for maintenance or repair is directly attributable to any deliberate or negligent act of the Grantor, in which case the Grantor will pay all costs of that maintenance and repair.

## 11 MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING  
IN RELATION TO THE APPOINTMENT  
OF HEARING COMMISSIONERS**

**WAIHOU, PIAKO, COROMANDEL  
CATCHMENT AUTHORITY**

**AND**

**PARE HAURAKI COLLECTIVE CULTURAL  
ENTITY**

**AND**

**WAIKATO REGIONAL COUNCIL,  
THAMES-COROMANDEL DISTRICT COUNCIL,  
HAURAKI DISTRICT COUNCIL, MATAMATA-  
PIAKO DISTRICT COUNCIL AND SOUTH  
WAIKATO DISTRICT COUNCIL**

**[Date]**

## DOCUMENTS

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### 11: MEMORANDUM OF UNDERSTANDING

DATED this                      day of

#### PARTIES

1. **Waihou, Piako, Coromandel Catchment Authority;**
2. **Pare Hauraki Collective Cultural Entity;** and
3. **Waikato Regional Council, Thames-Coromandel District Council, Hauraki District Council, Matamata-Piako District Council and South Waikato District Council ("the Councils")**

(together, "**the parties**").

#### BACKGROUND

1. [Pare Hauraki] are in collective negotiations with the Crown in relation to the settlement of historical Treaty of Waitangi claims.
2. The Pare Hauraki Collective Redress Deed of Settlement provides for the Waihou, Piako, Coromandel Catchment Authority to develop and maintain a commissioner register for certain applications for resource consent relating to the waterways of the Waihou, Piako and Coromandel catchments.
3. The Pare Hauraki Collective Redress Deed also provides for the Waihou, Piako, Coromandel Catchment Authority and a relevant local authority to agree in writing that for a specified period:
  - (a) the arrangement for the appointment of commissioners set out in the Pare Hauraki Collective Redress Deed will not apply; and
  - (b) an alternative arrangement for the appointment of commissioners will apply.
4. The parties have agreed an alternative arrangement for the appointment of commissioners and have agreed to record that arrangement in this Memorandum of Understanding.

#### APPOINTMENT OF COMMISSIONERS

5. The following framework will apply in relation to the appointment of hearing commissioners for Resource Management Act plan and resource consent hearings ("**commissioner arrangement**").
6. There will be three registers of accredited hearing commissioners for the Waihou, Piako and Coromandel catchments as follows:
  - (a) one register will be agreed and maintained by the Pare Hauraki Collective Cultural Entity and the governance entities for Raukawa, Ngāti Haua and Ngāti Hinerangi ("**Iwi register**");

## DOCUMENTS

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### 11: MEMORANDUM OF UNDERSTANDING

- (b) one register will be agreed and maintained by the relevant local authorities ("**local authority register**"); and
  - (c) one register will be agreed and maintained by the Pare Hauraki Collective Cultural Entity, the governance entities for Raukawa, Ngāti Haua and Ngāti Hinerangi and the local authorities ("**joint register**").
7. Each register must identify the names of at least 10 accredited hearing commissioners.
8. The registers referred to in clause 6 must include appointees with:
- (a) skills, knowledge and experience across a range of disciplines, including tikanga Māori; and
  - (b) knowledge of the Waihou, Piako and Coromandel catchments.
9. To avoid doubt, appointees may appear on more than one register.
10. The registers referred to in clause 6:
- (a) must be kept under review to ensure that they remain fit for purpose; and
  - (b) may be amended by agreement between the relevant parties.
11. Clauses 12 to 15 apply to any application for a resource consent received that:
- (a) is notified, or is to be notified;
  - (b) is to:
    - (i) take, use, dam, or divert water in the waterways of the Waihou, Piako and Coromandel catchments;
    - (ii) make a point source discharge to the waterways of the Waihou, Piako and Coromandel catchments;
    - (iii) undertake any activity listed in section 13 of the Resource Management Act in relation to the waterways of the Coromandel Waihou, Piako and Coromandel catchments; or
    - (iv) undertake any other activity where the relevant authority decides it is appropriate for those clauses to apply.
12. Where a relevant local authority receives an application for resource consent referred to in clause 11, that local authority must, as soon as is practicable, inform the Waihou, Piako, Coromandel Catchment Authority if the application has been or is to be notified and that a hearing may be held.
13. Where a hearing is to be held on an application for resource consent referred to in clause 11:

## DOCUMENTS

### 11: MEMORANDUM OF UNDERSTANDING

- (a) where one commissioner is to be appointed, that commissioner must be appointed from the joint register;
  - (b) where two commissioners are to be appointed:
    - (i) one commissioner must be appointed from the Iwi register; and
    - (ii) the other commissioner must be appointed from the local authority register; and
  - (c) where three or more commissioners are to be appointed:
    - (i) one commissioner must be appointed from the Iwi register;
    - (ii) one commissioner must be appointed from the local authority register;
    - (iii) the third commissioner must be appointed from the joint register; and
    - (iv) any additional commissioners must be appointed from the local authority register.
14. To avoid doubt, this arrangement does not apply to appointments by a Minister to a Board of Inquiry under Part 6AA of the Resource Management Act.
15. Where a hearing is to be held on a Resource Management Act planning document that relates to the Waihou, Piako and Coromandel catchments, where three or more commissioners are to be appointed:
- (a) one commissioner must be appointed from the Iwi register;
  - (b) one commissioner must be appointed from the local authority register;
  - (c) the third commissioner must be appointed from the joint register; and
  - (d) any additional commissioners must be appointed from the local authority register.

#### **Review of commissioner agreement**

16. A local authority may give notice to the Waihou, Piako, Coromandel Catchment Authority, the Pare Hauraki Collective Cultural Entity and the local authorities that it wishes to review its participation in this commissioner arrangement in order to:
- (a) ensure that the arrangements are fit for purpose; or
  - (b) amend the arrangements; or
  - (c) opt out of the arrangements.

## DOCUMENTS

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### 11: MEMORANDUM OF UNDERSTANDING

17. Before undertaking a review, the local authority must:
- (a) give notice to the Waihou, Piako, Coromandel Catchment Authority, the Pare Hauraki Collective Cultural Entity and the other local authorities setting out:
    - (i) the intention to undertake a review;
    - (ii) the purpose of the review; and
    - (iii) any particular issues that are to be addressed in the review;
  - (b) engage with the Waihou, Piako, Coromandel Catchment Authority, the Pare Hauraki Collective Cultural Entity and the other local authorities to work through the matters referred to in clauses 16 and 17(a) with a view to using best endeavours to resolve any issues of concern.
18. In making a decision on the review, the local authority must consider:
- (a) the background to the commissioner arrangements including the Pare Hauraki Collective Redress Deed of Settlement; and
  - (b) any matters raised through the engagement referred to in clause 17(b).

#### **OTHER MATTERS**

19. This Memorandum may be amended at any time by agreement between the parties.
20. This Memorandum will remain in force until terminated.
21. Either party may terminate this Memorandum by written notice to the other party, but only after working through the process referred to in clauses 16 to 18 and after using best endeavours to resolve any issues of concern.
22. If a dispute arises under this Memorandum, the parties will work together in good faith to resolve that dispute and may seek the assistance of a facilitator or mediator.

DOCUMENTS

11: MEMORANDUM OF UNDERSTANDING

SIGNED BY THE PARTIES

**SIGNED** for and on behalf of )  
**PARE HAURAKI COLLECTIVE** )  
**CULTURAL ENTITY** by its authorised )  
signatory )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Position

**SIGNED** for and on behalf of )  
**THAMES-COROMANDEL DISTRICT** )  
**COUNCIL** by its authorised signatory )  
acting under delegated authority )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Position

**SIGNED** for and on behalf of )  
**HAURAKI DISTRICT COUNCIL** by )  
its authorised signatory acting under )  
delegated authority )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Position

DOCUMENTS

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11: MEMORANDUM OF UNDERSTANDING

**SIGNED** for and on behalf of )  
**MATAMATA-PIAKO DISTRICT** )  
**COUNCIL** by its authorised signatory )  
acting under delegated authority )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Position

**SIGNED** for and on behalf of )  
**SOUTH WAIKATO DISTRICT** )  
**COUNCIL** by its authorised signatory )  
acting under delegated authority )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Position