

NGĀTI WHĀTUA O KAIPARA

And

THE CROWN

**DEED OF SETTLEMENT SCHEDULE:
DOCUMENTS**

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1 TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA

**Te Kawenata Taiao o Ngāti Whātua o Kaipara
Conservation Charter**

DOCUMENTS SCHEDULE

1: TE KAWENATA TAIAO O NGĀTI WHĀTUA O KAIPARA



*Omeru Falls, Omeru Pā Scenic Reserve*¹

¹ Photograph from Omeru Pā Scenic Reserve Management Plan, May 2010 (<http://www.rodney.govt.nz>).

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1: TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA

**TE KAWENATA TAI AO O
NGĀTI WHĀTUA O KAIPARA**

Whakarongo ki te tangi a te Kāruhiruhi e tangi nei

Toitū te Mana, Toitū te Whenua, Toitū te Tangata

E toru ngā manu i tau ki runga i te mānia o Kaipara Moana

ko te tangi o te manu tuatahi ko tōkia tōkia tōkia

ko te tangi o te manu tuarua ko kēria kēria kēria

ko te tangi o te manu tuatoru ko whiti whiti whiti ora

Waiho mā te Rito Hou tātou e ārahi, kei rite tātou ki ngā ngaru o te Moana
e papaki ana ki te Takutai Moana

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Te Kawenata Taiao o Ngāti Whātua o Kaipara

Conservation Charter

TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA – CONSERVATION CHARTER is made between

THE MINISTER OF CONSERVATION (“MINISTER”)

and

THE DIRECTOR-GENERAL OF CONSERVATION (“DIRECTOR-GENERAL”)

and

NGĀTI WHĀTUA O KAIPARA

WHEREAS

- A. Te Kawenata Taiao o Ngāti Whātua o Kaipara – Conservation Charter (“Te Kawenata Taiao”) is part of the cultural redress in the Ngāti Whātua o Kaipara settlement referred to in clause 5.4 of the Ngāti Whātua o Kaipara Deed of Settlement dated [x] (“Deed of Settlement”) and relates to the Ngāti Whātua o Kaipara Area of Interest.
- B. The Minister and the Director-General have certain functions, powers and duties in terms of the Conservation Legislation as set out in section 6 of the Conservation Act 1987, including:
- to manage for conservation purposes, all land, and all other natural and historic resources (including flora and fauna), for the time being administered by the Department;
 - to preserve so far as is practicable all indigenous freshwater fisheries, and to protect recreational freshwater fisheries and freshwater fish habitats;
 - to advocate the conservation of natural and historic resources generally; and
 - to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism.
- C. Ngāti Whātua o Kaipara have exercised and continue to exercise tino rangatiratanga and kaitiakitanga in their rohe in accordance with tikanga o Ngāti Whātua. Accordingly, Ngāti

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Whātua o Kaipara wish to enter into Te Kawenata Taiao in order to participate with the Crown in conservation governance over the Ngāti Whātua o Kaipara Area of Interest.

PURPOSE

1. The purpose of Te Kawenata Taiao is to:
 - 1.1 provide a framework for how Ngāti Whātua o Kaipara, the Minister, the Director-General and the Department will establish and maintain a positive, co-operative and enduring partnership regarding conservation in the Ngāti Whātua o Kaipara Area of Interest;
 - 1.2 provide a framework to improve the quality of conservation management decisions;
 - 1.3 provide a mechanism for the Department to give effect to the principles of the Treaty of Waitangi as required by section 4 of the Conservation Act 1987, while recognising that compliance with Te Kawenata Taiao does not derogate from the Department's obligations under that section.

Application and implementation of Te Kawenata Taiao

2. Te Kawenata Taiao shall apply within the Ngāti Whātua o Kaipara Area of Interest ("Te Kawenata Taiao Area").

JOINT OBJECTIVE

3. Ngāti Whātua o Kaipara, the Minister, the Director-General and the Department are committed to:
 - 3.1 establishing and maintaining a positive and collaborative relationship that will give effect to the principles of the Treaty of Waitangi. Those principles provide the basis for an ongoing relationship between the parties to Te Kawenata Taiao to achieve, over time, the conservation policies, actions and outcomes sought by both Ngāti Whātua o Kaipara and the Department;
 - 3.2 the protection, and where possible, the enhancement of public conservation lands and Natural Resources in Te Kawenata Taiao Area; and
 - 3.3 enabling Ngāti Whātua o Kaipara to exercise their obligations as kaitiaki over public conservation lands in Te Kawenata Taiao Area.

Implementation and Communication

4. For the purposes of implementing Te Kawenata Taiao, the Department will engage with the Trustees of Ngā Maunga Whakahii o Kaipara Development Trust ("the Development Trust") as the Governance Entity mandated to represent Ngāti Whātua o Kaipara interests.
5. The Department and Ngāti Whātua o Kaipara will establish and maintain effective communication on a continuing basis including by:
 - 5.1 maintaining a record of key contact persons within the Department of Conservation and the Development Trust, including their address and contact details;

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- 5.2 providing a primary Departmental contact for Ngāti Whātua o Kaipara, being the Area Manager, who will act as a liaison person with other Departmental staff.
6. Within the first year of the operation of Te Kawenata Taiao and on a continuing basis the Department and Ngāti Whātua o Kaipara will discuss practical ways in addition to the provisions contained in Te Kawenata Taiao and the attached Interim Operational Agreement by which:
- 6.1 the Department can be fully informed of the relevant interests of Ngāti Whātua o Kaipara within Te Kawenata Taiao Area;
- 6.2 Ngāti Whātua o Kaipara can exercise kaitiakitanga over ancestral lands, natural and historic resources and other taonga administered by the Department within Te Kawenata Taiao Area;
- 6.3 Ngāti Whātua o Kaipara can participate in conservation management and activities within Te Kawenata Taiao Area; and
- 6.4 Ngāti Whātua o Kaipara and the Department can continuously improve the process of open, honest communication, and will consider particular initiatives to achieve this including:
- 6.4.1 inviting Ngāti Whātua o Kaipara to observe specific projects within Te Kawenata Taiao Area that may be of interest to Ngāti Whātua o Kaipara;
- 6.4.2 other initiatives that are agreed to by the Department and Ngāti Whātua o Kaipara.
7. To give effect to the commitments set out in Te Kawenata Taiao, within Te Kawenata Taiao Area, the Area Manager will meet with Ngāti Whātua o Kaipara within 12 months after Settlement Date to document practical ways to operationalise and give effect to the commitments in Te Kawenata Taiao, including paragraph 6 above. It is intended that this document will further guide the ongoing relationship between Ngāti Whātua o Kaipara and the Department at a practical level, and will address, but will not be limited to the following matters:
- 7.1 Engagement in Departmental Business Planning processes;
- 7.2 Communication processes including timeframes, meetings, and information sharing on operational and planning matters;
- 7.3 Input into specific conservation activities/projects including species research projects;
- 7.4 Ngāti Whātua o Kaipara engagement in the decision-making processes for statutory authorisations;
- 7.5 Ngāti Whātua o Kaipara participation in conservation planning processes;
- 7.6 Marine mammal and wildlife strandings;
- 7.7 Opportunities for Ngāti Whātua o Kaipara to provide professional services;
- 7.8 Freshwater quality and fisheries issues;

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1: TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA

- 7.9 Ngāti Whātua o Kaipara participation in the establishment processes for new protected areas;
 - 7.10 Cultural materials;
 - 7.11 Involvement and cooperation on pest plant and pest animal control;
 - 7.12 Training and employment opportunities;
 - 7.13 Visitor and public information;
 - 7.14 Cooperation on Resource Management Act issues;
 - 7.15 The identification of opportunities to participate in the review of Conservation Legislation; and
 - 7.16 Approaches to Departmental place name changes.
8. In the period between the Settlement Date and reaching agreement on the operational document, the Interim Operational Agreement in Appendix A is to operate.
9. Any operational documents referred to in clause 8 may be amended by mutual agreement.

DISPUTE RESOLUTION

10. In good faith, the Parties agree that every effort must be made to resolve matters arising under Te Kawenata Taiao at a local level between Ngāti Whātua o Kaipara and the Area Manager. However, if this has not been achieved, the matter will:
- 10.1 be referred to the Auckland Conservator, and to Ngāti Whātua o Kaipara to resolve within a reasonable time period;
 - 10.2 the Party referring the matter will give written notice of the dispute including a description of the main issues;
 - 10.3 if still unresolved, the Parties may agree to refer the dispute to mediation, with the mediator to be mutually agreed and each party to pay their own costs of mediation.

CONSULTATION

11. The basic principles that will be followed by the Department in consulting with Ngāti Whātua o Kaipara in each case are:
- 11.1 ensuring that Ngāti Whātua o Kaipara is consulted as soon as reasonably practicable following the identification and determination by the Department of the proposal, or issues, to be the subject of the consultation;
 - 11.2 providing Ngāti Whātua o Kaipara with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 11.3 ensuring, subject to statutory and policy time constraints, that sufficient time is given for the effective participation of Ngāti Whātua o Kaipara in the decision making process

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and for the preparation of submissions by Ngāti Whātua o Kaipara in relation to any of the matters that are the subject of the consultation;

- 11.4 ensuring that the Department will approach the consultation with Ngāti Whātua o Kaipara with an open mind, and will genuinely consider any feedback or concerns that Ngāti Whātua o Kaipara has advised the Department of in relation to any of the matters that are the subject of the consultation, and will consider options to provide for that feedback, and/or the concerns raised; and
- 11.5 reporting back to Ngāti Whātua o Kaipara on the decision made as a result of any such consultation.
12. When the Department engages with Ngāti Whātua o Kaipara on any matter, it will clarify at the outset whether it is seeking to engage Ngāti Whātua o Kaipara as a provider of a professional service, or whether it is seeking Ngāti Whātua o Kaipara's views as part of a consultation process.

REVIEW AND AMENDMENT OF TE KAWENATA TAI AO

13. The Minister and Director-General and Ngāti Whātua o Kaipara agree that Te Kawenata Taiao is a living document which should be updated and adapted to take account of future development, including amendments to legislation.
14. The first review of Te Kawenata Taiao will take place no later than ten years from the Settlement Date and at ten year intervals thereafter, unless earlier as agreed to between the Parties.
15. Ngāti Whātua o Kaipara, the Minister and the Director-General may only vary Te Kawenata Taiao by agreement in writing.

NOTING

16. A summary of the terms of Te Kawenata Taiao must be noted in the Conservation Documents affecting Te Kawenata Taiao Area, but the noting:
- 16.1 is for the purpose of public notice; and
- 16.2 does not amend the Conservation Documents for the purposes of the Conservation Act 1987 or the National Parks Act 1980.

LIMITS OF TE KAWENATA TAI AO

17. Te Kawenata Taiao does not:
- 17.1 restrict the Crown from exercising its powers and performing its functions and duties in good faith, and in accordance with the law and government policy, including:
- 17.1.1 introducing legislation; or
- 17.1.2 changing government policy; or
- 17.1.3 issuing a similar relationship document to Te Kawenata Taiao to, or interacting or consulting with, anyone the Crown considers appropriate including any iwi, hapū, marae, whānau or representatives of tangata whenua.

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17.2 restrict the responsibilities of the Minister or the Department or the legal rights of Ngāti Whātua o Kaipara; or

17.3 grant, create or provide evidence of an estate or interest in, or rights relating to:

17.3.1 land held, managed or administered under Conservation Legislation; or

17.3.2 flora or fauna managed or administered under the Conservation Legislation.

BREACH OF TE KAWENATA TAIAO

18. A breach of Te Kawenata Taiao is not a breach of the Deed of Settlement.

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INTERPRETATION

Area Manager means the Warkworth Great Barrier Area Manager, or equivalent

Area of Interest means area defined in clause 11.6 of the Deed of Settlement and represented in the attached map

Conservation Document means a national park management plan, conservation management strategy, conservation management plan, or freshwater fisheries management plan

Conservation Management Strategy has the same meaning as in the Conservation Act 1987

Conservation Legislation means the Conservation Act 1987 and the statutes in the First Schedule of the Act

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 Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement

Department means the Minister of Conservation, the Director-General and the Departmental managers to whom the Minister of Conservation's and the Director-General's decision-making powers can be delegated

Settlement Date means the date that is 20 business days after the date on which the Ngāti Whātua o Kaipara settlement legislation comes into force

Te Kawenata Taiao Area means the Area of Interest

Te Kawenata Taiao o Ngāti Whātua o Kaipara – Conservation Charter means the document called Te Kawenata Taiao o Ngāti Whātua o Kaipara and is in the Documents Schedule to the Deed of Settlement. For the avoidance of doubt, it is not a Kawenata for the purposes of section 27A of the Conservation Act and section 77A of the Reserves Act

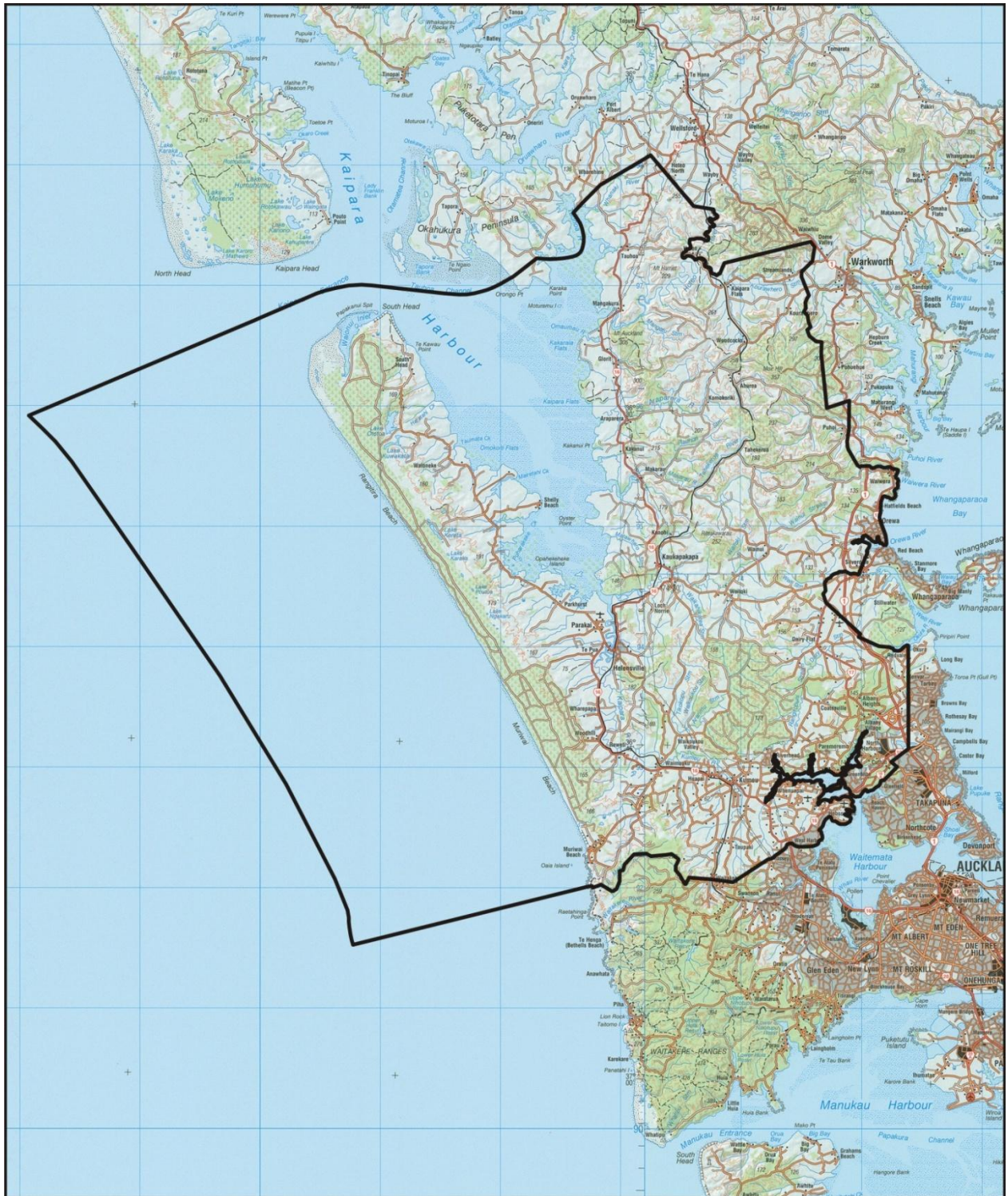
Natural Resources has the same meaning as in Part 1 of the Conservation Act 1987

Ngāti Whātua o Kaipara has the meaning set out in clauses 11.4 and 11.5 of the Deed of Settlement

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AREA OF INTEREST



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1: TE KAWENATA TAIAO O NGĀTI WHĀTUA O KAIPARA

Appendix A

Ngāti Whātua o Kaipara/Department of Conservation
Interim Operational Agreement

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TERM OF OPERATION

1. The Interim Operational Agreement will remain operative until the operational document, set out in clause 7 of Te Kawenata Taiao, has been agreed.
2. The Parties will use their best endeavours to reach agreement on the operational document within 18 months of the Settlement Date.
3. The Parties may, by mutual agreement in writing, decide at any time that this Interim Operational Agreement no longer meets their needs and will, on a date agreed by the Parties, cease to apply.

IMPLEMENTATION AND COMMUNICATION

4. For the purposes of implementing this Interim Operational Agreement, the Department will engage with the Trustees of Ngā Maunga Whakahii o Kaipara Development Trust (“the Development Trust”) as the Governance Entity mandated to represent Ngāti Whātua o Kaipara interests.

BUSINESS PLANNING PROCESS

5. The Department’s annual business planning process (informed by such things as the Government’s policy directives, the Department’s Statement of Intent and Strategic Direction, the Nature Heritage Management System and available funding) determines the Department’s conservation work priorities throughout the Auckland Conservancy and nationally.
6. The Department and Ngāti Whātua o Kaipara will meet annually at an early stage in the Department’s business planning cycle to discuss the following activities, within Te Kawenata Taiao Area:
 - 6.1 planning and budget priorities;
 - 6.2 work plans and projects; and
 - 6.3 proposed areas of cooperation in conservation projects, and the nature of that cooperation.
7. In the course of the annual business planning process, Ngāti Whātua o Kaipara will be able to request specific projects to be undertaken by the Department. Such requests will be taken forward into the business planning process and considered by the Department when it determines its overall priorities.
8. If a specific project is agreed, the Department and Ngāti Whātua o Kaipara will agree the nature of their collaboration on that project which may include finalising a work plan for the project. If a specific project is not undertaken, the Department will advise Ngāti Whātua o Kaipara of the reasons for this.

INPUT INTO SPECIFIC CONSERVATION ACTIVITIES AND PROJECTS

9. The Department will endeavour to support Ngāti Whātua o Kaipara to undertake its own conservation-related projects, for instance by identifying other funding sources or by providing technical advice for those projects.

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COMMUNICATION

10. The Department and Ngāti Whātua o Kaipara will seek to maintain effective and open communication with each other on an ongoing basis on additional operational matters including by:
 - 10.1 discussing operational issues, as required, at the initiative of either party;
 - 10.2 the Department and Ngāti Whātua o Kaipara hosting meetings on an alternating basis; and
 - 10.3 sharing of information in an open manner as requested by either party, subject to constraints such as the Official Information Act or Privacy Act.
11. As part of ongoing communication, the Department and Ngāti Whātua o Kaipara may agree to review the implementation of Te Kawenata Taiao.
12. The Department and Ngāti Whātua o Kaipara will brief relevant staff and Conservation Board members on the content of Te Kawenata Taiao.

STATUTORY AUTHORISATIONS

13. Statutory authorisations include;
 - 13.1 concessions such as leases, licences, permits, and easements under the Conservation Act 1987;
 - 13.2 permits or authorisations under the Wildlife Act 1953, such as for research, translocations, captive breeding and wildlife transfers;
 - 13.3 access arrangements under the Crown Minerals Act 1991; and
 - 13.4 any other statutory authorisation granted by the Minister or Director-General.

Statutory authorisations on Ngāti Whātua o Kaipara Land

14. In respect of the following listed reserves created on the Settlement Date, the taonga statutory authorisations process (refer clauses 15 – 16 and 21 – 25) will apply to all applications for the Minister of Conservation's authorisation under sections 42(1), 46(1), 46(2), 49 and 50(1) of the Reserves Act 1977:
 - Atuanui Scenic Reserve
 - Makarau Local Purpose (Estuarine Habitat) Reserve
 - Makarau Bridge Local Purpose (Estuarine Habitat) Reserve
 - Parakai Local Purpose (Estuarine Habitat) Reserve
 - Ten Acre Block Recreation Reserve.

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Notification

15. When the Department is approached regarding a proposed statutory authorisation application that falls within Te Kawenata Taiao Area, it will notify Ngāti Whātua o Kaipara and encourage the prospective applicant to consult with Ngāti Whātua o Kaipara.
16. The Department will provide separate written notification to Ngāti Whātua o Kaipara prior to any statutory authorisation being publicly notified.

Process for Statutory Authorisations

17. There are two processes for dealing with statutory authorisations:
 - 17.1 Taonga statutory authorisations; and
 - 17.2 Other statutory authorisations.
18. Taonga statutory authorisations shall be considered using the process set out in clauses 19 - 25, and all other statutory authorisations shall follow the process set out in clauses 26 - 28.

Taonga Statutory Authorisations

19. The Department recognises that statutory authorisations may potentially affect taonga of Ngāti Whātua o Kaipara. Ngāti Whātua taonga include:
 - 19.1 Species;
 - 19.2 The Kaipara Harbour, rivers and other waterways in Te Kawenata Taiao Area; and
 - 19.3 Wāhi tapu sites.
20. At an early stage during the development of the operational plan, Ngāti Whātua o Kaipara and the Department will meet to agree and record those categories of statutory authorisation that are likely to affect taonga of Ngāti Whātua o Kaipara (“taonga statutory authorisations”).
21. The Parties recognise when dealing with taonga statutory authorisations:
 - 21.1 the benefits of seeking agreement, where possible; and
 - 21.2 that the Department works within statutory and government policy frameworks.
22. When considering a taonga statutory authorisation application, the Department will, in addition to the process set out in clauses 15 and 16 and 26 – 28, and within 10 working days of receipt of the application, discuss with Ngāti Whātua o Kaipara:
 - 22.1 the potential impacts that the application may have for Ngāti Whātua o Kaipara’s cultural, spiritual and historic values;
 - 22.2 ways to address those impacts; and
 - 22.3 how to proceed with the application.

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23. The Department will encourage the applicant to discuss with Ngāti Whātua o Kaipara, the potential impacts their application may have on Ngāti Whātua o Kaipara cultural, spiritual and historic values and how those impacts might be addressed.
24. Should discussions on the potential impacts of the application (clauses 22 and 23 refer) prove inconclusive, within statutory and policy frameworks (including timeframes), the decision-maker will make an informed decision under the relevant statutory frameworks, taking into account and recording Ngāti Whātua o Kaipara views in writing, including matters where agreement was reached between the parties.
25. The Department will, after making any decision on a taonga authorisation, report back to Ngāti Whātua o Kaipara explaining the decision, and in particular, how regard was given to the views of Ngāti Whātua o Kaipara throughout the process.

Other categories of statutory authorisations

26. In relation to any other statutory authorisation applications or renewals of applications applied for within Te Kawenata Taiao Area, the Department will consult with Ngāti Whātua o Kaipara with a view to identifying any potential impacts on Ngāti Whātua o Kaipara cultural, spiritual and historic values.
27. The Department has limited time to process concession applications, and therefore the time for Ngāti Whātua o Kaipara to indicate views on the concession application will also be limited.
28. The Minister and Director-General will have regard to the views expressed by Ngāti Whātua o Kaipara when considering whether to grant the application.

Implementation of statutory authorisations

29. The Minister and/or the Director-General will ensure, when granting statutory authorisations that give authority for other parties to manage or undertake activities on land administered by the Department, that those parties be required to manage sites of historic significance to Ngāti Whātua o Kaipara according to best practice standards of conservation practice for cultural heritage sites.
30. The Minister and/or the Director-General will ensure, when considering granting any statutory authorisations, that the applicant:
 - 30.1 is made aware of any cultural information that Ngāti Whātua o Kaipara has identified as being disclosed “in confidence” during the statutory authorisation process, and if not already in the public domain, that the applicant should obtain the consent of Ngāti Whātua o Kaipara for the use of that information; and
 - 30.2 is encouraged to consult with Ngāti Whātua o Kaipara when using other cultural information regarding Ngāti Whātua o Kaipara.

CONCESSION OPPORTUNITIES

31. The Department will, if requested by Ngāti Whātua o Kaipara, assist the development of concession proposals involving members of Ngāti Whātua o Kaipara by providing technical advice on the concession process.

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PEST CONTROL

32. Within the first year of the operation of Te Kawenata Taiao, the Department and Ngāti Whātua o Kaipara will discuss:
- 32.1 species of pest plant and pest animals of particular concern within Te Kawenata Taiao Area;
 - 32.2 the extent to which those pest species may impact on sites of significance to Ngāti Whātua o Kaipara;
 - 32.3 ways in which those pest species may be controlled or eradicated.
33. In relation to the species and sites identified, the Department will, as part of its annual business planning processes:
- 33.1 facilitate consultation with Ngāti Whātua o Kaipara on proposed pest control activities that it intends to undertake within Te Kawenata Taiao Area, particularly in relation to the use of poisons;
 - 33.2 provide Ngāti Whātua o Kaipara with opportunities to provide feedback on programmes and outcomes; and
 - 33.3 coordinate its pest control programmes with those of Ngāti Whātua o Kaipara, particularly where Ngāti Whātua o Kaipara is the adjoining landowner.

MARINE MAMMAL AND MARINE WILDLIFE STRANDINGS

34. The Department's approach to marine mammal strandings is guided by the Marine Mammals Protection Act 1978.
35. The Department's approach to stranded or dead turtles, sea snakes and great white sharks is guided by the Wildlife Act 1953.
36. The Department's management of stranded marine mammals is guided by the Marine Mammal Action Plan. At a Conservancy level the Marine Mammal Stranding Contingency Plan and Guidelines for dealing with other distressed marine wildlife also guides the management of stranded or dead marine mammals, turtles and sea snakes.
37. The Department and Ngāti Whātua o Kaipara will finalise a Memorandum of Understanding for the management of marine mammal strandings within Te Kawenata Taiao Area. This Memorandum of Understanding will be considered to be a key component of implementing Te Kawenata Taiao.

CONSERVATION MANAGEMENT PLANNING

38. The Department will engage with Ngāti Whātua o Kaipara at an early stage, before any public consultation, and throughout the process, when developing any relevant Conservation Management Strategy or Conservation Management Plans within Te Kawenata Taiao Area.
39. The Department will obtain the agreement of Ngāti Whātua o Kaipara to any statements that it proposes for inclusion in any draft Conservation Management Strategy or draft Conservation Management Plan that relate to the cultural, spiritual and/or historic relationship of Ngāti Whātua o Kaipara with any place within Te Kawenata Taiao Area. The

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New Zealand Conservation Authority has the approval role for the final text in any Conservation Management Strategy.

SPECIES/RESEARCH PROJECTS

40. Ngāti Whātua o Kaipara will identify species of particular significance to Ngāti Whātua o Kaipara and the Department will engage with Ngāti Whātua o Kaipara to discuss opportunities for it to provide input and participate in:
- 40.1 developing, implementing and/or amending the application of national species recovery programmes for those species within Te Kawenata Taiao Area; and
- 40.2 any research and monitoring projects that are, or may be, carried out (or authorised) by the Department for those species within Te Kawenata Taiao Area.
41. For species that have not been identified as being of particular significance to Ngāti Whātua o Kaipara, the Department will keep Ngāti Whātua o Kaipara informed of the national sites and species recovery programmes on which the Department will be actively working within Te Kawenata Taiao Area.

FRESHWATER QUALITY AND FISHERIES

Freshwater quality

42. The Department and Ngāti Whātua o Kaipara have a mutual concern to ensure effective riparian management and water quality management in Te Kawenata Taiao Area and that freshwater bodies are free from contamination. For Ngāti Whātua o Kaipara, the health and wellbeing of rivers within the Kaipara Harbour catchment and other waterways is of primary importance.
43. The Department will take all reasonable steps to prevent the pollution of waterways and the wider environment as a result of the Department's management activities (e.g. ensuring provision of toileting facilities).

Freshwater fisheries and habitat

44. Ngāti Whātua o Kaipara have identified that freshwater habitat and all indigenous freshwater species that were historically or are presently within Te Kawenata Taiao Area (including fish and other aquatic life), are of high cultural value and to which they have a close association and interest.
45. The parties to Te Kawenata Taiao will co-operate in the conservation of freshwater fisheries and freshwater habitats. Objectives for freshwater fisheries and habitats will be integrated into the annual business planning process. Actions may include: areas for cooperation in the protection, restoration and enhancement of riparian vegetation and habitats (including marginal strips); and the development or implementation of research and monitoring programmes within Te Kawenata Taiao Area.

NEW PROTECTED AREAS

46. If the Department proposes to establish:
- 46.1 new, or to reclassify existing, public conservation land; or

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1: TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA

46.2 a marine protected area under the Department's jurisdiction (e.g. a marine reserve or a marine mammal sanctuary) -

the Department will notify Ngāti Whātua o Kaipara at an early stage and engage with Ngāti Whātua o Kaipara to ascertain Ngāti Whātua o Kaipara's views on the proposal.

CULTURAL MATERIALS

47. For the purpose of Te Kawenata Taiao, cultural materials are plants (including fungi), plant materials, and materials derived from animals, marine mammals, birds or species protected under the Wildlife Act, for which the Department is responsible within Te Kawenata Taiao Area and which are important to Ngāti Whātua o Kaipara for maintaining and expressing its cultural values and practices, including and especially access to rongoa.
48. Current legislation requires that a concession or permit is required for any gathering and/or possession of cultural materials.
49. Ngāti Whātua o Kaipara and the Department will explore opportunities for improving awareness of both parties about mātauranga Māori and scientific values of plants.
50. In relation to cultural materials, the Department will:
- 50.1 work in partnership with Ngāti Whātua o Kaipara to develop and agree a process to authorise members of Ngāti Whātua o Kaipara to access and use cultural materials within Te Kawenata Taiao Area when required for cultural purposes, in accordance with the relevant legislation. Where it is consistent with conservation objectives and relevant legislation, multi-site and/or multi-take authorisations may be granted;
- 50.2 consult with Ngāti Whātua o Kaipara in circumstances where there are competing requests between Ngāti Whātua o Kaipara and persons or entities other than those of Ngāti Whātua o Kaipara for the use of cultural materials, for example for scientific research purposes;
- 50.3 subject to competing requests between iwi being resolved through tikanga or any other special circumstances agreed to by the Department and Ngāti Whātua o Kaipara, provide for Ngāti Whātua o Kaipara to have access to cultural materials which become available as a result of Departmental operations such as track maintenance or clearance, or culling of species, or where materials become available as a result of accidental death or otherwise through natural causes.
51. The Department will, as far as practicable:
- 51.1 identify areas administered by the Department which may be suitable as sites for revegetation planting of plants suitable for cultural use; and
- 51.2 provide advice, where possible and practicable, to Ngāti Whātua o Kaipara for the management and propagation of indigenous plants of interest to Ngāti Whātua o Kaipara.

TRAINING AND EMPLOYMENT OPPORTUNITIES

52. The Department and Ngāti Whātua o Kaipara will work together to identify opportunities for conservation capacity building for Ngāti Whātua o Kaipara and Departmental staff.

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1: TE KAWENATA TAI AO O NGĀTI WHĀTUA O KAIPARA

53. The Department and Ngāti Whātua o Kaipara will inform each other of any conservation related educational or training opportunities (such as ranger training courses, short term employment opportunities or secondments). These could include opportunities for the Department's staff to learn about Ngāti Whātua o Kaipara's tikanga and mātauranga and for members of Ngāti Whātua o Kaipara to augment their conservation knowledge and skills through being involved in the Department's work programmes and/or training initiatives.
54. When opportunities for conservation capacity building are available, the Department and Ngāti Whātua o Kaipara will seek to ensure that the other's staff or members are able to participate.
55. The Department will inform Ngāti Whātua o Kaipara when opportunities for full time positions, holiday employment or student research projects arise within Te Kawenata Taiao Area. Ngāti Whātua o Kaipara may propose candidates for these roles or opportunities.

VISITOR AND PUBLIC INFORMATION

56. The promotion of Ngāti Whātua o Kaipara values will include the following measures:
 - 56.1 seeking to raise public awareness of positive conservation partnerships developed by Ngāti Whātua o Kaipara, the Department and other stakeholders, for example, by way of publications, presentations and seminars;
 - 56.2 consulting with Ngāti Whātua o Kaipara on how Ngāti Whātua o Kaipara tikanga, spiritual and historic values are respected in the provision of visitor facilities, public information and Departmental publications;
 - 56.3 taking reasonable steps to respect Ngāti Whātua o Kaipara tikanga, spiritual and historic values in the provision of visitor facilities, public information and Departmental publications;
 - 56.4 ensuring the appropriate use of information about Ngāti Whātua o Kaipara in the provision of visitor facilities and services, public information and Departmental publications by:
 - 56.4.1 obtaining the consent of Ngāti Whātua o Kaipara prior to disclosure of information obtained in confidence from Ngāti Whātua o Kaipara;
 - 56.4.2 consulting with Ngāti Whātua o Kaipara, before the Department uses information relating to Ngāti Whātua o Kaipara values;
 - 56.4.3 encouraging Ngāti Whātua o Kaipara participation in the Department's volunteer and conservation events programmes by informing Ngāti Whātua o Kaipara of these programmes; and
 - 56.4.4 encouraging any concessionaire proposing to use information provided by or relating to Ngāti Whātua o Kaipara to obtain the agreement (including on any terms and conditions) of Ngāti Whātua o Kaipara.

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LEGISLATION

Resource Management Act

57. Ngāti Whātua o Kaipara and the Department both have interests in the effects of activities controlled and managed under the Resource Management Act 1991. Areas of common interest include riparian management, effects on freshwater fish habitat, water quality management, and protection of indigenous vegetation and habitats.
58. Ngāti Whātua o Kaipara and the Department will seek to identify issues of mutual interest and/or concern ahead of each party making submissions in relevant processes.

Review of legislation

59. The Department undertakes to keep Ngāti Whātua o Kaipara informed of any public reviews of the Conservation Legislation administered by the Department.
60. Ngāti Whātua o Kaipara may suggest to the Minister of Conservation proposals for amendments to, or for, the review of Conservation Legislation.

CONTRACTING FOR SERVICES

61. Where appropriate, the Department will consider using Ngāti Whātua o Kaipara as a provider of professional services.
62. Where contracts are to be tendered for conservation management within Te Kawenata Taiao Area, the Department will inform Ngāti Whātua o Kaipara.
63. The Department will, subject to available resourcing, and if requested by Ngāti Whātua o Kaipara, provide advice on how to achieve the technical requirements to become a provider of professional services.
64. In accordance with standard administrative practice, wherever Ngāti Whātua o Kaipara individuals or entities are applying to provide services, appropriate steps will be taken to avoid any perceived or actual conflict of interest in the decision making process.

CHANGE OF DEPARTMENTAL PLACE NAMES

65. Subject to legislation, the Department will consult with Ngāti Whātua o Kaipara prior to any name changes for reserves or conservation areas within Te Kawenata Taiao Area being submitted to the New Zealand Geographic Board by the Department.
66. The Department will consult Ngāti Whātua o Kaipara on any new or amended office (e.g. Area Office) names.

CONTACT INFORMATION

67. Unless advised in writing to the contrary, the first contacts for Te Kawenata Taiao are:

67.1 Area Office:

The Area Manager
Department of Conservation
Warkworth Great Barrier Island Area Office

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1: TE KAWENATA TAIAO O NGĀTI WHĀTUA O KAIPARA

28 Baxter Street
Warkworth 0910

67.2 Ngāti Whātua o Kaipara:

Ngā Maunga Whakahii o Kaipara Development Trust
96 Commercial Road
PO Box 41
Helensville 0840

2 STATEMENTS OF ASSOCIATION

Ngāti Whātua o Kaipara statements of association are set out below. These are statements by Ngāti Whātua o Kaipara of their particular cultural, spiritual, historical, and traditional association with identified areas.

Papakanui Conservation Area and Papakanui Spit Wildlife Refuge (as shown on deed plan OTS-674-11)

Papakanui Spit is a remnant of a sand plain that once extended far seaward of where it can be seen today. The associated Waionui Inlet was, and remains, an important fishing ground, seafood and bird gathering area, and tauranga waka (waka landing area). Humuhumu, a taniwha with the form of a log, is also often seen from this location.

Papakanui Spit cannot be viewed in isolation, but should be viewed as a traditional site and resource hub in a Kaipara landscape of connected kāinga (villages), pā (e.g. nearby Ngītū Pā) and use sites. The Kaipara landscape was intimately understood by our ancestors, who practiced an economic cycle that made use of all the resources of the region in different seasons at different places – as is attested to by the prevalence of archaeological sites (including those associated with the Papakanui Spit).

Nā Kawharu mā te whenua nei i takahi (Kawharu and others tramped this land). This statement alludes to the conquest of the Kaipara by Kawharu and the Ngāti Whātua ope tauā (war party) in the 17th Century. It reflects the cultural history of the Ngāti Whātua occupation in the South Kaipara. It was through the actions of Ngāti Whātua warriors, led by Kawharu and others, that Ngāti Whātua came to dwell in the region.

Ngāti Whātua o Kaipara have continued to be active participants in the society and development of Kaipara, and are entwined inextricably in the history of the post-Treaty of Waitangi era of this region. During this time, the Papakanui Spit has remained a significant site for Ngāti Whātua o Kaipara. Ngāti Whātua o Kaipara have struggled over time to preserve their resources and their intrinsic and spiritual values, and although developments have sometimes occurred around Papakanui Spit without the support of Ngāti Whātua (e.g. roading, reserves, (military) construction and use, and landscaping) this does not negate the importance of the Spit to Ngāti Whātua o Kaipara. This said, the condition of the area, its mauri, reflects our ability as ngā kaitiaki and predicts our own wellbeing. The iwi has never ceased visiting this location or appreciating its cultural significance and we continue to maintain an unbroken interest in the ongoing sustainable management of the area.

Traditional resources in the area include or have included: Parāoa and Tohorā (Whales), Kekeno (Seals), Kororā me Hoihō (Blue and Yellow eyed Penguin), Mango (Shark), Tamure (Snapper), Pātiki (Flounder), Kanae (Mullet), Toheroa, Tio (Oyster), Tipa (Scallops), Pupu (Periwinkles), Pipi, Kuaka (Godwit), Tiitii (Shearwater), Tōrea (Oystercatchers), Taraiti (Terns) as well as other fish, seafoods and birds, when in season and abundance, as well as Pingao, Momo Harakeke (Various Flaxes) and other natural resources.

Rototoa Conservation Area and Lake Rototoa Scenic Reserve (as shown on deed plan OTS-674-15) (being, at the date of this deed, Ototoa Conservation Area and Lake Ototoa Scenic Reserve)

Rototoa is one of *Ngā Tapuwaewae o Kawharu* – The Footsteps of Kawharu the giant, the famed 17th Century warrior leader who led the Ngāti Whātua warriors in the conquest of the Kaipara.

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He taumata rau te toa o Kawharu (Kawharu the warrior has many places). This statement reflects the widespread area and many significant sites where Ngāti Whātua stand in South Kaipara.

Nā Kawharu mā te whenua nei i takahi (Kawharu and others tramped this land). In this statement Ngāti Whātua of the Kaipara honour their tūpuna who claimed Kaipara for their descendants.

These *whakataukī* (aphorisms) reflect the cultural history of the Ngāti Whātua occupation in the South Kaipara and the reason Ngāti Whātua o Kaipara have continued to be active participants in the society and development of Kaipara in the post-Treaty era.

Rototoa is part of the movement and transport routes throughout the Kaipara region, a tauranga waka, a place of recovery from war, and a fresh water resource. Rototoa is of significant spiritual value to the iwi; *kōrero* (oral knowledge) is held testifying to its importance to the spiritual and cultural life and wellbeing of Ngāti Whātua.

Rototoa cannot be seen in isolation, but should be viewed as a traditional site and resource hub in a Kaipara landscape of connected kāinga (villages), pā (e.g. nearby Waioneke) and sites used by the tūpuna. The Kaipara landscape was intimately understood by our ancestors, whose lives traced an economic cycle that made use of all the resources of the region in different seasons at different places – as is attested to by the prevalence of archaeological sites (including those associated with Rototoa).

As above, Ngāti Whātua o Kaipara have continued to be active participants in the society and development of Kaipara in the post-Treaty era, and we share in the history of the past one hundred and seventy years of this region. During this time Rototoa has remained a significant site for Ngāti Whātua o Kaipara, who have struggled to preserve its resources, ecology and spiritual and cultural values. Yet, although developments around Rototoa have sometimes occurred without the support of Ngāti Whātua (e.g. roading, reserves, water infrastructure, buildings, construction, landscaping, and the introduction of foreign species) this does not negate the importance of Rototoa to Ngāti Whātua o Kaipara. This said, the condition of the water and surrounding land and their mauri, reflect our ability as kaitiaki and predict our own wellbeing. The iwi has never ceased visiting this location or appreciating its cultural significance, and shares an ongoing interest in its sustainable management for the benefit of all.

Traditional resources in the area include or have included: Tuna (eels), Kanae (Freshwater Mullet), Kewai (Freshwater Crayfish), Momo Kōkopu (Galaxias, Grayling), Kūkupa (Pigeon), Kiwi, Kāka, Raupō, Toetoe, Momo Harakeke (Various flax varieties), Karaka, Rākau (assorted timber species) and other natural resources.

Motutara Settlement Scenic Reserve and Goldie Bush Scenic Reserve (as shown on deed plan OTS-674-12)

This area of regenerating bush and its associated waterway is on the ‘border’ established between Ngāti Whātua o Kaipara and Te Kawerau ā Maki through the peacemaking celebrated in the name Taupaki. *Nā Kawharu mā te whenua nei i takahi* (Kawharu and others tramped this land). In this statement Ngāti Whātua of the Kaipara honour their tūpuna who spread throughout the area.

For Ngāti Whātua o Kaipara the Mokoroa Falls (named for the taniwha there) was a tāmoko site. The area is of significant spiritual value to the iwi, *kōrero* (oral knowledge) is held by members of the iwi alluding to its importance to the spiritual and cultural life and wellbeing of Ngāti Whātua.

Goldie Bush / Mokoroa cannot be seen in isolation, but should be viewed as a traditional site and resource hub in a Kaipara landscape of connected kāinga (villages), pā and use sites. The

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Kaipara landscape was intimately understood by our ancestors, who practised an economic cycle that was attuned to cosmological rhythms and made use of all the resources of the region in different seasons at different places – as is attested to by the prevalence of archaeological sites (such as the pā found within the reserves area).

Ngāti Whātua o Kaipara have continued to be active participants in the society and development of Kaipara in the post-Treaty era, and thus we share in the history of the past one hundred and seventy years of this region. During this time, the Goldie Bush / Mokoroa area has remained a location of great significance for Ngāti Whātua o Kaipara, who have struggled to preserve its resources, ecology, and spiritual and cultural values. Although developments have sometimes occurred around Goldie Bush / Mokoroa without the support of Ngāti Whātua (e.g. roading and tracks, reserves, logging and dam building, construction, landscaping) this does not negate the importance of Goldie Bush / Mokoroa to Ngāti Whātua o Kaipara. This said, the condition of the land reflects its mauri and our ability as kaitiaki and predicts our own wellbeing. The iwi has never ceased visiting this area or lost an appreciation of its spiritual and cultural significance or its importance to Ngāti Whātua. We share an interest in its ongoing sustainable management and the long term direction for the whole Waitakere area, as mana whenua.

Traditional resources in the area include or have included: Tuna (eels), Kewai (Freshwater Crayfish), Momo Kōkopu (Galaxias, Grayling), Kūkupa (Pigeon), Kiwi, Kāka, Raupō, Toetoe, Momo Harakeke (Various flax varieties), Karaka, Tōtara, Kauri, me ētahi atu Rākau (assorted timber species) and other natural resources.

The coastal statutory acknowledgement area (as shown on deed plan OTS-674-10)

Ngāti Whātua o Kaipara look to the ancestral waka that brought our tūpuna to the southern shores of the Kaipara - Māhūhū ki te Rangī, Te Wharau and Te Pōtae o Wahieroa. The iwi holds kōrero (oral history), haka, waiata me pātere (traditional haka, songs and chants), that give embodiment to the cultural and spiritual importance of the Kaipara to the iwi. Ko āna takutai, moana hoki ō Kaipara he ipu kai (Kaipara - the harbour, its shores and its hinterland is the foodbowl). This statement reflects the importance that the Kaipara held and continues to hold in the fabric of Ngāti Whātua life.

The harbour cannot be seen in isolation but should be viewed as part of a Kaipara landscape of connected kāinga (villages), pā, and resource and use sites. The Kaipara landscape was intimately understood by our tūpuna, who practiced an economic cycle that utilised all the resources of the region in different seasons at different places – as is attested to by the prevalence of archaeological sites (many concentrated along the extensive coastline).

Nā Kawharu mā te whenua nei i takahi (Kawharu leading Ngāti Whātua tramped this land). This statement explains the reason Ngāti Whātua o Kaipara have continued to be active participants in the society and development of Kaipara in the post-Treaty era. As Ngāti Whātua, we share in the history of the past one hundred and seventy years of this region. During this time, the harbour and the coast have remained of utmost importance for Ngāti Whātua o Kaipara, who have fought over time to preserve its resources, its significant sites, and its cultural and spiritual values. Although developments have occurred around the coastline, sometimes without the support of Ngāti Whātua (e.g. roading; tracks; reserves; construction; landscaping; forest clearance; land reclamation; sand mining; dredging; commercial fishing and aquaculture), this does not detract from the significance of the coast and harbour to Ngāti Whātua o Kaipara. This said, the condition of the land, the harbour and the sea and their mauri, reflect our ability as kaitiaki and predict our own wellbeing. In the post-Treaty era, the bounty of kai moana and other coastal resources have been depleted, as has the quality of the associated water itself. Ngāti Whātua have never ceased caring for or using

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our takutai moana however, nor have we ever stopped appreciating its cultural and spiritual significance, and we look forward to being a partner in its ongoing sustainable management.

The significance of the harbour is reflected in the pepeha of all Ngāti Whātua of South Kaipara who state Ko Kaipara te moana, irrespective of which maunga (mountain), awa (river) or marae, they stand on. Although Ngāti Whātua see the entire coastline of Kaipara as significant and interconnected, mention will be made of a few specific locations of note:

- Maukatia – the traditional name for what became commonly known as ‘Māori Bay’. A settlement area (including the Ōtakamiro Pā) rich in marine and volcanic rock resources (used for tools etc). The rock stack Motutara is a prominent feature off the northern end of the bay.
- Te Oneone Rangatira – the long beach stretching from Ōkiritoto Stream northwards up to Kaipara South Head. This is a pathway for the spirits on their long journey to Te Reinga.
- Papakānui Spit
- Manunutahi – the beach where the Ngāti Whātua tupuna Haumoewaarangi and his daughter were killed.
- Te Au Kahanga o Aotea – the landing place of the Aotea waka and the site of one of the Ngāti Whātua parliaments.
- Puatahi and Kakānui – locations of Ngāti Whātua o Kaipara coastal marae. Cultural bases for our people in the maintenance of mana whenua / ahi kā.

Traditional resources from the harbour area include or have included: Parāoa and Tohorā (Whales), Aihe (Dolphin), Kekeno (Seals), Kororā me Hoiho (Blue and Yellow eyed Penguin), Mango (Shark), Tamure (Snapper), Pātiki (Flounder), Kanae (Mullet), Toheroa, Tipa (Scallops), Tio (Oyster), Kuharu, Pupu (Periwinkles), Pipi, Kuaka (Godwit), Tiitii (Shearwater), Tōrea (Oystercatchers), Taraiti (Terns), Tuna (eels), Kewai (Freshwater Crayfish), Momo Kōkopu (Galaxias, Grayling), Kūkupa (Pigeon), Kiwi, Kāka, as well as other fish, seafoods and birds, when in season and abundance, and Raupō, Toetoe, Momo Harakeke (Various flax varieties), Karaka, Tōtara, Kauri, me ētahi atu Rākau (assorted timber species), Pingao, and other natural resources.

3 CULTURE AND HERITAGE PROTOCOL

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3: CULTURAL AND HERITAGE PROTOCOL

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH NGĀTI WHĀTUA O KAIPARA ON SPECIFIED ISSUES

1 INTRODUCTION

1.1 Under the Deed of Settlement dated xx between Ngāti Whātua o Kaipara and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a Protocol setting out how the Minister and the Chief Executive for the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the trustees of the Development Trust on matters specified in the Protocol. These matters are:

1.1.1 Protocol Area – Part 2;

1.1.2 Terms of issue – Part 3;

1.1.3 Implementation and communication – Part 4;

1.1.4 The role of the Chief Executive under the Protected Objects Act 1975 – Part 5;

1.1.5 The role of the Minister under the Protected Objects Act 1975 – Part 6;

1.1.6 Ngāti Whātua o Kaipara Taonga held by Te Papa Tongarewa – Part 7;

1.1.7 Effects on Ngāti Whātua o Kaipara interest in the Protocol Area – Part 8;

1.1.8 Registration as a collector of Ngā Taonga – Part 9;

1.1.9 Board Appointments – Part 10;

1.1.10 National Monuments, War Graves and Historical Graves – Part 11;

1.1.11 History publications relating to Ngāti Whātua o Kaipara – Part 12;

1.1.12 Cultural and/or Spiritual Practices and Tendering – Part 13;

1.1.13 Consultation – Part 14;

1.1.14 Changes to legislation affecting this Protocol – Part 15; and

1.1.15 Definitions – Part 16;

1.2 The Minister and the Chief Executive or other such persons acting in those capacities, and Ngāti Whātua o Kaipara are seeking a relationship consistent with the Treaty of Waitangi and its principles. Those principles provide the basis for the relationship between the parties, as set out in this Protocol.

1.3 The Chief Executive recognises that Ngāti Whātua o Kaipara have an interest in relation to the preservation, protection and management of Taonga through its tino rangatiratanga and kaitiakitanga. This derives from the status of Ngāti Whātua o Kaipara as tangata whenua within the Protocol Area.

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3: CULTURAL AND HERITAGE PROTOCOL

- 1.4 The purpose of the Act is to provide for the better protection of certain objects by, among other things, regulating the export of protected New Zealand objects, and by establishing and recording the ownership of Taonga found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain functions, powers and duties in terms of the Act. In exercising such functions, powers and duties, the Minister and Chief Executive will provide the trustees of the Development Trust with the opportunity for input in the policy and decision-making processes as set out in this Protocol.
- 1.6 In respect of Taonga of Ngāti Whātua o Kaipara found prior to 1 April 1976, the Minister and Chief Executive recognise the importance of such Taonga to Ngāti Whātua o Kaipara and acknowledge the efforts of Ngāti Whātua o Kaipara to protect and repatriate those Taonga.

2 PROTOCOL AREA

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

3 TERMS OF ISSUE

- 3.1 The Protocol is issued under clause 5.10 of the deed of settlement and section [] of the [insert name of settlement legislation] (“the Settlement Legislation”), and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 A summary is attached of the terms of issue of this Protocol in the deed of settlement and the settlement legislation.

4 IMPLEMENTATION AND COMMUNICATION

- 4.1 The Chief Executive will maintain effective communication with the trustees of the Development Trust by:
- 4.1.1 maintaining information provided by the trustees on the office holders of the Development Trust and their addresses and contact details;
 - 4.1.2 discussing with them concerns and issues notified by the trustees about this Protocol;
 - 4.1.3 as far as reasonably practicable, providing opportunities for the trustees to meet with relevant Ministry Managers and staff;
 - 4.1.4 meeting with the trustees to review the implementation of this Protocol at least once a year, if requested by either party;
 - 4.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol;
 - 4.1.6 as far as reasonably practicable, informing other organisations with whom it works, central government agencies and stakeholders about this Protocol and providing ongoing information; and

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4.1.7 including a copy of this Protocol on the Ministry's website.

5 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE PROTECTED OBJECTS ACT 1975

General

5.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the trustees of the Development Trust within the limits of the Act. From the date this Protocol is issued the Chief Executive will:

5.1.1 notify the trustees of the Development Trust in writing of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.2 provide for the care, recording and custody of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.3 notify the trustees of the Development Trust in writing of their right to lodge a claim with the Chief Executive for ownership of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand;

5.1.4 notify the trustees of the Development Trust in writing of their right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga; and

5.1.5 notify the trustees of the Development Trust in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga.

Applications for Ownership

5.2. If the trustees of the Development Trust lodge a claim of ownership with the Chief Executive and there are no competing claims for any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga.

5.3 If there is a competing claim or claims lodged in conjunction with the claim of ownership of the trustees of the Development Trust, the Chief Executive will consult with the trustees for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga.

5.4 If the competing claims for ownership of any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the trustees of the Development

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Trust may facilitate an application to the Māori Land Court for determination of ownership of the Taonga.

Applications for Custody

- 5.5 If no ownership application is made to the Māori Land Court for any Taonga found within the Protocol Area or identified as being of Ngāti Whātua o Kaipara origin found elsewhere in New Zealand by the trustees of the Development Trust or any other person, the Chief Executive will:
- 5.5.1 consult the trustees of the Development Trust where there is any request from any other person for the custody of the Taonga;
 - 5.5.2 consult the trustees of the Development Trust before a decision is made on who may have custody of the Taonga; and
 - 5.5.3 notify the trustees of the Development Trust in writing of the decision made by the Chief Executive on the custody of the Taonga.

Export Applications

- 5.6 For the purpose of seeking an expert opinion from the trustees of the Development Trust on any export applications to remove any Taonga of Ngāti Whātua o Kaipara origin from New Zealand, the Chief Executive will register the trustees of the Development Trust on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 5.7 Where the Chief Executive receives an export application to remove any Taonga of Ngāti Whātua o Kaipara origin from New Zealand, the Chief Executive will consult the trustees of the Development Trust as an Expert Examiner on that application, and notify the trustees in writing of his or her decision.

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

- 6.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the trustees of the Development Trust within the limits of the Act. In circumstances where the Chief Executive originally consulted the trustees of the Development Trust as an Expert Examiner, the Minister may consult with the trustees where a person appeals the decision of the Chief Executive to:
- 6.1.1 refuse permission to export any Taonga from New Zealand; or
 - 6.1.2 impose conditions on the approval to export any Taonga from New Zealand;
- 6.2 The Ministry will notify the trustees of the Development Trust in writing of the Minister's decision on an appeal in relation to an application to export any Taonga where the trustees were consulted as an Expert Examiner.

7. NGĀTI WHĀTUA O KAIPARA NGĀ TAONGA TŪTURU HELD BY TE PAPA TONGAREWA

- 7.1 The Chief Executive will invite Te Papa Tongarewa to enter into a relationship with the trustees of the Development Trust, for the purposes of Te Papa Tongarewa compiling a full inventory of Taonga held by Te Papa Tongarewa, which are of cultural, spiritual and historical importance to Ngāti Whātua o Kaipara.

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7.2 Associated costs and/or additional resources required to complete the obligations under paragraph 7.1 will be funded by Te Papa Tongarewa, as resources allow.

8. EFFECTS ON NGĀTI WHĀTUA O KAIPARA INTERESTS IN THE PROTOCOL AREA

8.1 The Chief Executive and the trustees of the Development Trust shall discuss any policy and legislative development, which specifically affects Ngāti Whātua o Kaipara interests in the Protocol Area.

8.2 The Chief Executive and the trustees of the Development Trust shall discuss any of the Ministry's operational activities, which specifically affect Ngāti Whātua o Kaipara interests in the Protocol Area.

8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and the trustees of the Development Trust shall meet to discuss Ngāti Whātua o Kaipara interests in the Protocol Area as part of the meeting specified in clause 4.1.4.

9. REGISTRATION AS A COLLECTOR OF TAONGA

9.1 The Chief Executive will register the trustees of the Development Trust as a Registered Collector of Taonga.

10. BOARD APPOINTMENTS

10.1 The Chief Executive shall:

10.1.1 notify the trustees of the Development Trust of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;

10.1.2 add nominees of the trustees of the Development Trust onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and

10.1.3 notify the trustees of the Development Trust of any ministerial appointments to Boards, which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

11. NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

11.1 The Chief Executive shall seek and consider the views of the trustees of the Development Trust on any national monument, war grave, historical grave or urupā, managed or administered by the Ministry, which specifically relates to Ngāti Whātua o Kaipara interests.

12. HISTORY PUBLICATIONS RELATING TO NGĀTI WHĀTUA O KAIPARA

12.1 The Chief Executive shall:

12.1.1 provide the trustees of the Development Trust with a list and copies of all history publications commissioned or undertaken by the Ministry that relate substantially to Ngāti Whātua o Kaipara; and

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12.1.2 where reasonably practicable, consult with the trustees of the Development Trust on any work the Ministry undertakes that relates substantially to Ngāti Whātua o Kaipara:

- (a) from an early stage;
- (b) throughout the process of undertaking the work; and
- (c) before making the final decision on the material of a publication.

12.2 The trustees of the Development Trust accept that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the trustees, is entitled to make the final decision on the material of the historical publication.

13. PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

13.1 When the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ngāti Whātua o Kaipara within the Protocol Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.

13.2 Where appropriate, the Chief Executive will consider using the trustees of the Development Trust as a provider of professional services.

13.3 The procurement by the Chief Executive of any such services set out in Clauses 13.1 and 13.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

14. CONSULTATION

14.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the trustees of the Development Trust in each case are:

14.1.1 ensuring that the trustees of the Development Trust are consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;

14.1.2 providing the trustees of the Development Trust with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;

14.1.3 ensuring that sufficient time is given for the participation of the trustees of the Development Trust in the decision making process including the preparation of submissions by the trustees in relation to any of the matters that are the subject of the consultation;

14.1.4 ensuring that the Chief Executive will approach the consultation with the trustees of the Development Trust with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation; and

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14.1.5 reporting back to the trustees of the Development Trust, either in writing or in person, in regard to any decisions made that relate to that consultation.

15 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

15.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:

15.1.1 notify the trustees of the Development Trust of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;

15.1.2 make available to the trustees of the Development Trust the information provided to Māori as part of the consultation process referred to in this clause; and

15.1.3 report back to the trustees of the Development Trust on the outcome of any such consultation.

16. DEFINITIONS

16.1 In this Protocol:

Chief Executive means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive;

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

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

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

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

Ngā Maunga Whakahii o Kaipara Development Trust has the same meaning as in the Deed of Settlement;

Protocol means a statement in writing, issued by the Crown through the Minister to the trustees of the Development Trust under the Settlement Legislation and the Deed of Settlement and includes this Protocol;

Trustees of the Development Trust means the trustees for the time being of Ngā Maunga Whakahii o Kaipara Development Trust, in their capacity as trustees;

Taonga has the same meaning given to "Taonga Tūturu" in section 2 of the Protected Object Act 1975. Taonga Tūturu is defined in section 2 of the Act as:

an object that—

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

Ngāti Whātua o Kaipara has the meaning set out in clause xx of the Deed of Settlement.

ISSUED on

SIGNED for and on behalf of **THE SOVEREIGN** in right of
New Zealand by the Minister for Arts,
Culture and Heritage:

WITNESS

Name:

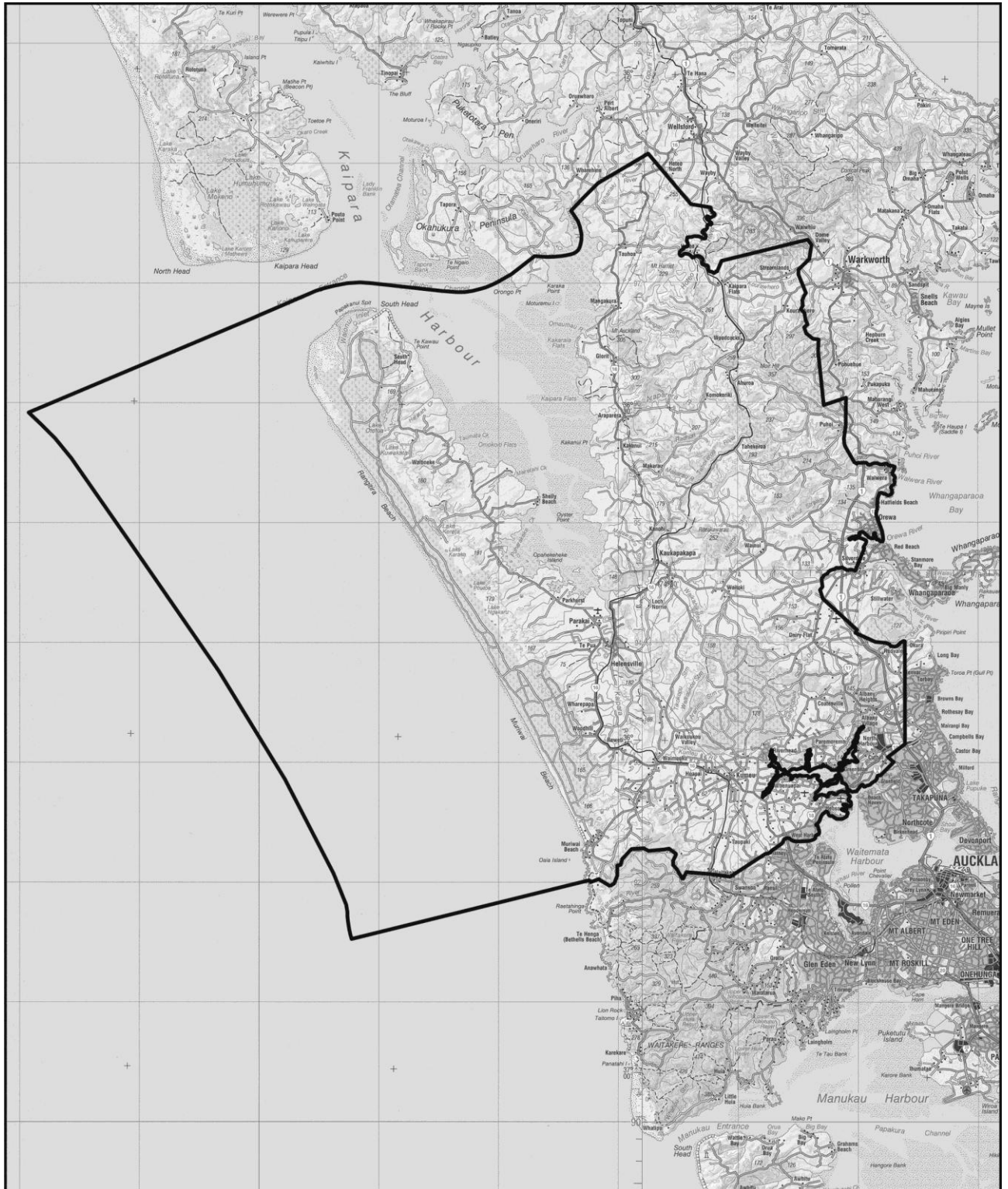
Occupation:

Address:

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ATTACHMENT A
THE PROTOCOL AREA



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3: CULTURAL AND HERITAGE PROTOCOL

ATTACHMENT B

SUMMARY OF THE TERMS OF ISSUE

This protocol is subject to the the deed of settlement and the settlement legislation. A summary of the relevant provisions is set out below.

1. Amendment and cancellation

1.1 The Minister may amend or cancel this protocol, but only after consulting with the trustees of the Development Trust and having particular regard to their views (*section [number]*).

2. Limits

2.1 This protocol does not -

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

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tangata whenua (*section [number]*); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ngāti Whātua o Kaipara (*section [number]*); or

2.1.3 grant, create, or evidence an estate or interest in, or rights relating to taonga tūturu.

3. Breach

3.1 Subject to the Crown Proceedings Act 1950, the trustees of the Development Trust may enforce this protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (*section [number]*).

3.2 A breach of this protocol is not a breach of the deed of settlement (*clause [number]*).

4 CONSERVATION COVENANTS

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4: CONSERVATION COVENANTS

Subpart A

MAIRETAHI LANDING CONSERVATION

COVENANT

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4: CONSERVATION COVENANTS: MAIRETAHI LANDING

MAIRETAHI LANDING CONSERVATION COVENANT

(Section 27 Conservation Act 1987

and

Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this day of

BETWEEN [THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI
PUPURITAONGA TRUST] (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.
- B. The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Act
- C. The Land contains Conservation Values and Reserve Values which the parties to the Deed of Settlement agreed 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.
- D. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Conservation Values and the Reserve 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:

“Conservation Purposes” means the preservation and protection of natural and historic resources including Conservation Values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational

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	enjoyment by the public, and safeguarding the options of future generations.
“Conservation Values”	means the conservation values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Fire Authority”	means a fire authority as defined in the Forest and Rural Fires Act 1977.
“Land”	means the land described in Schedule 1.
“Minerals”	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“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.
“Reserve Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
“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.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.

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- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.
- 1.2.9 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 for Conservation Purposes;
 - 2.1.2 so as to preserve the Reserves Values;
 - 2.1.3 to provide, subject to this Covenant, freedom of access on foot to the public for the appreciation and recreational enjoyment of the Land, for non-commercial purposes.

3 IMPLEMENTATION OF OBJECTIVE

- 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, felling, removal or damage of any tree, shrub or other plant;
 - 3.1.3 the planting of any species of exotic tree, shrub or other plant;
 - 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 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 deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;

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- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
 - 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep 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, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
 - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
 - 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
 - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

4 PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, permit the public to enter on foot upon the Land for non-commercial purposes.

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.

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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.

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

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 SALE OF LAND

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

8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9 CONSENTS

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

10 MISCELLANEOUS MATTERS

10.1 Rights

10.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

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10.2 Trespass Act

10.2.1 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;

10.2.2 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.

10.3 Reserves Act

10.3.1 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.

10.4 Registration

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

10.5 Acceptance of Covenant

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

10.6 Fire

10.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

10.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

10.6.2.1 requested to do so; or

10.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

10.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

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

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

12 DISPUTE RESOLUTION PROCESSES

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

12.2 Mediation

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

12.3 Failure of Mediation

- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being 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, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received:

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- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third Working Day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

13.3 The Owner must notify the Minister of any change of ownership or control of all or any part of the Land 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.

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Executed as a Deed

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: _____

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4: CONSERVATION COVENANTS: MAIRETAHI LANDING

SCHEDULE 1

Description of Land:

4.3250 hectares, more or less, being Section 1 SO 439996.

Conservation Values to be protected:

This Land includes estuarine qualities. It adjoins the north side of Mairetahi Creek and backs on to Mairetahi Road. The southern aspect of the land is 0-20 metres above sea level.

Reserve Values to be protected:

Historical values include midden sites (Q10/710-2) and gum diggers' camps.

Recorded flora include kānuka, *pittosporum*, and mahoe along the river bank escarpment, and mangroves along the river bank. Estuarine vegetation is fenced from grazing.

Recorded fauna include common bush birds, ducks, and shags.

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SCHEDULE 2

Address for Service

The address for service of the Owner is:

Ngā Maunga Whakahii o Kaipara
96 Commercial Road
PO Box 41
Helensville 0840

The address for service of the Minister is:

The Area Manager
Department of Conservation
Warkworth Great Barrier Island Area Office
28 Baxter Street
Warkworth 0910

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SCHEDULE 3

Special Conditions

1. Notwithstanding clause 3.1.2, the Owner may authorise the taking or removal of plant materials from native plants, shrubs and trees from the Land in accordance with tikanga Māori for customary Māori purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.
2. Notwithstanding clause 3.1.1, the Owner may authorise the grazing of the Land excluding the area where estuarine vegetation is present.

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GRANT of

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

CONSERVATION COVENANT

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

THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA TRUST

to

MINISTER OF CONSERVATION

Legal Services
Department of Conservation

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4: CONSERVATION COVENANTS

Subpart B

MAUNIU ISLAND CONSERVATION

COVENANT

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4: CONSERVATION COVENANTS: MAUINIU ISLAND

MAUINIU ISLAND CONSERVATION COVENANT

(Section 27 Conservation Act 1987

and

Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this day of

BETWEEN [THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA TRUST] (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.
- B. The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Act
- C. The Land contains Conservation Values and Reserve Values which the parties to the Deed of Settlement agreed 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.
- D. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Conservation Values and the Reserve 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:

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“Conservation Purposes”	means the preservation and protection of natural and historic resources including Conservation 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.
“Conservation Values”	means the conservation values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Fire Authority”	means a fire authority as defined in the Forest and Rural Fires Act 1977.
“Land”	means the land described in Schedule 1.
“Minerals”	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“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.
“Reserve Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
“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.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.

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- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.
- 1.2.9 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 for Conservation Purposes;
- 2.1.2 so as to preserve the Reserves Values;
- 2.1.3 to provide, subject to this Covenant, freedom of access on foot to the public for the appreciation and recreational enjoyment of the Land, for non-commercial purposes.

3. IMPLEMENTATION OF OBJECTIVE

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, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of exotic tree, shrub or other plant;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;

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- 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 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 deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
 - 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
 - 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
 - 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep 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, grant 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;

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3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;

3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.

3.3 The Owner acknowledges that:

3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;

3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

4. PUBLIC ACCESS

4.1 The Owner must, subject to this Covenant, permit the public to enter on foot upon the Land for non-commercial purposes.

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.

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

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.

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7. DURATION OF COVENANT

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

8. OBLIGATIONS ON SALE OF LAND

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

9. CONSENTS

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

10 MISCELLANEOUS MATTERS

10.1 Rights

- 10.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

10.2 Trespass Act

- 10.2.1 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;
- 10.2.2 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.

10.3 Reserves Act

- 10.3.1 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.

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10.4 Registration

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

10.5 Acceptance of Covenant

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

10.6 Fire

- 10.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

- 10.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

10.6.2.1 requested to do so; or

10.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

- 10.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

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;

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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 for the time being 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, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

13.2 A notice given in accordance with clause 13.1 will be deemed to have been received:

(a) in the case of personal delivery, on the date of delivery;

(b) in the case of pre-paid post, on the third Working Day after posting;

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- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

13.3 The Owner must notify the Minister of any change of ownership or control of all or any part of the Land 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.

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Executed as a Deed

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: _____

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SCHEDULE 1

Description of Land:

2.1868 hectares, more or less, being Section 1 SO 440002.

Conservation Values to be protected:

The island is low-lying and is surrounded by dense mangrove forest. Native species predominate.

Reserve Values to be protected:

Historical values include a well preserved pā site (Q10/268). Iwi also advise that an urupā is present.

The habitat of the island is kānuka/mānuka cover, with a rich diversity of understory species and coastal rushes. A variety of forest birds and waterfowl are present, including fern bird.

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SCHEDULE 2

Address for Service

The address for service of the Owner is:

Ngā Maunga Whakahii o Kaipara
96 Commercial Road
PO Box 41
Helensville 0840

The address for service of the Minister is:

The Area Manager
Warkworth Great Barrier Island Area Office
Department of Conservation
28 Baxter Street
Warkworth 0910

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SCHEDULE 3

Special Conditions

1. Notwithstanding clause 3.1.2, the Owner may authorise the taking or removal of plant materials from native plants, shrubs and trees from the Land in accordance with tikanga Māori for customary Māori purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.
2. Clauses 3.2.6 and 5.1.2 (fencing provisions) do not apply.

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GRANT of

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

CONSERVATION COVENANT

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

**THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA
TRUST**

to

MINISTER OF CONSERVATION

Legal Services
Department of Conservation

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4: CONSERVATION COVENANTS

Subpart C

**MOTUREMU ISLAND
CONSERVATION COVENANT**

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MOTUREMU ISLAND CONSERVATION COVENANT

(Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this day of

BETWEEN [THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI
PUPURITAONGA TRUST] (the Owner)

AND MINISTER OF CONSERVATION (the Minister)

BACKGROUND

- A. 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.
- B. The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Act
- C. The Land contains Reserve Values which the parties to the Deed of Settlement agreed should be subject to a covenant under the Reserves Act 1977 which would provide that the Land should be managed to protect those values.
- D. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Reserve Values.

OPERATIVE PARTS

In accordance with 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:

“Covenant” means this Deed of Covenant made under section 77 of the Reserves Act 1977.

“Director-General” means the Director-General of Conservation.

“Fence” includes a gate.

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“Fire Authority”	means a fire authority as defined in the Forest and Rural Fires Act 1977.
“Land”	means the land described in Schedule 1.
“Minerals”	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“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.
“Reserve Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
“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.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.

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

1.2.9 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 so as to preserve the Reserve Values.

3 IMPLEMENTATION OF OBJECTIVE

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, felling, removal or damage of any tree, shrub or other plant;

3.1.3 the planting of any species of exotic tree, shrub or other plant;

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 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 deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

3.1.10 any other activity which might have an adverse effect on the Reserve Values;

3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;

3.1.12 the erection of utility transmission lines across the Land.

3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

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- 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep 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, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all 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 4.1.2;
 - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
 - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 4.1 The Minister must:
- 4.1.1 have regard to the objectives specified in clause 2.1 when considering any requests for approval under this Covenant.
 - 4.1.2 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.
- 4.2 The Minister may:

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- 4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

5 JOINT OBLIGATIONS

- 5.1 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.

6 DURATION OF COVENANT

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

7 OBLIGATIONS ON SALE OF LAND

- 7.1 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.
- 7.2 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.
- 7.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

8 CONSENTS

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

9 MISCELLANEOUS MATTERS

9.1 Rights

- 9.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

9.2 Trespass Act

- 9.2.1 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;

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9.2.2 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.

9.3 Reserves Act

9.3.1 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.

9.4 Registration

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

9.5 Acceptance of Covenant

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

9.6 Fire

9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;

9.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

(a) requested to do so; or

(b) if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;

9.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

10 DEFAULT

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

10.1.1 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

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

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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.

10.2 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:

10.2.1 advise the defaulting party of the default;

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

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

11 DISPUTE RESOLUTION PROCESSES

11.1 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.

11.2 Mediation

11.2.1 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;

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

11.3 Failure of Mediation

11.3.1 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.

11.3.2 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 for the time being of the New Zealand Law Society.

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

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4: CONSERVATION COVENANTS: MOTUREMU ISLAND

12 NOTICES

- 12.1 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, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 12.2 A notice given in accordance with clause 12.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of pre-paid post, on the third Working Day after posting;
 - (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 12.3 The Owner must notify the Minister of any change of ownership or control of all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.

13 SPECIAL CONDITIONS

- 13.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 13.2 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 _____ 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: _____

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4: CONSERVATION COVENANTS: MOTUREMU ISLAND

SCHEDULE 1

Description of Land:

5.0500 hectares, more or less, being Section 1 SO 440003.

Reserve Values to be protected:

The Land is largely one defensive pā site (N33/100). The pā was defended on the eastern side by steep cliffs and a small section of the western side. On the western section a large ditch defended the weaker portion which is approximately eight metres deep in places. From this ditch, a series of terraces rise and face the east. The southern portion also has a steep ditch and a double bank defence system which leads to another artificially levelled platform which was probably a living area. Other habitation evidence is visible as terracing and shell scatters (midden) cover most of the ground surface.

Recorded flora is typically low open pōhutukawa and karaka forest, five finger – mahoe on ridge tops, as well as tea tree and bracken. A unique form of Kōwhai Ngutukākā, critically endangered (*Kakabeak/Clianthus puniceus*), stems from this Land and a viable seedbank was present on the island in 2010. *Lepidium oleraceum* – Cooks Scurvy grass and *Pimelea orthia var orthia*, both threatened species, have been previously recorded on the Land.

Oi (grey-faced petrel/*Pterodroma macroptera gouldi*) and Kāruhiruhi (pied shag/*Phalacrocorax varius*) nest on the island. The bird-burrowed soils are a feature of the site, and make the island a naturally uncommon ecosystem. The eastern shell bank is used as a high tide roost by a variety of birdlife, including Tōrea (Variable oystercatchers/*Haematopus unicolor*), Tara (white fronted tern/*Sterna stiata*) and Kuaka (Bar-godwits/*Limosa lapponica*). Fantails are numerous and other bush birds visit or are present seasonally.

The island is free of mammalian pests.

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4: CONSERVATION COVENANTS: MOTUREMU ISLAND

SCHEDULE 2

Address for Service

The address for service of the Owner is:

Ngā Maunga Whakahii o Kaipara
96 Commercial Road
PO Box 41
Helensville 0840

The address for service of the Minister is:

The Area Manager
Warkworth Great Barrier Island Area Office
Department of Conservation
28 Baxter Street
Warkworth 0910

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4: CONSERVATION COVENANTS: MOTUREMU ISLAND

SCHEDULE 3

Special Conditions

1. Notwithstanding clause 3.1.2, and subject to a) and b) of this Condition, the Owner may authorise the taking or removal of plant materials from native plants, shrubs and trees from the Land in accordance with tikanga Māori for customary Māori purposes, but in granting such authorisations shall ensure that any impact on the Reserve Values is minimised.
 - (a) The taking or removal of plant materials from Kōwhai Ngutukākā/Kakabeak, a critically endangered plant species, is not permitted unless authorised by the Minister.
 - (b) The taking or removal of plant materials from threatened plant species is not permitted unless authorised by the Minister.
2. Clauses 3.2.6 and 4.1.2 (fencing provisions) do not apply.

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4: CONSERVATION COVENANTS: MOTUREMU ISLAND

GRANT of

Certified correct for the purposes
of the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

CONSERVATION COVENANT

Under section 77 of the
Reserves Act 1977

**THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA
TRUST**

to

MINISTER OF CONSERVATION

Legal Services
Department of Conservation

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4: CONSERVATION COVENANTS

Subpart D

TĪPARE CONSERVATION

COVENANT

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4: CONSERVATIONS COVENANTS

TĪPARE CONSERVATION COVENANT

(Section 27 Conservation Act 1987

and

Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this day of

BETWEEN [THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA TRUST] (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.
- B. The Owner is the registered proprietor of the Land as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated and implemented by the Act
- C. The Land contains Conservation Values and Reserve Values which the parties to the Deed of Settlement agreed 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.
- D. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Conservation Values and the Reserve 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:

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4: CONSERVATION COVENANTS: TĪPARE

“Conservation Purposes”	means the preservation and protection of natural and historic resources including Conservation 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.
“Conservation Values”	means the conservation values specified in Schedule 1.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“Director-General”	means the Director-General of Conservation.
“Fence”	includes a gate.
“Fire Authority”	means a fire authority as defined in the Forest and Rural Fires Act 1977.
“Land”	means the land described in Schedule 1.
“Minerals”	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
“Minister”	means the Minister of Conservation.
“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.
“Reserve Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
“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.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute.
- 1.2.2 references to clauses are references to clauses in this Covenant.
- 1.2.3 references to parties are references to the Owner and the Minister.
- 1.2.4 words importing the singular number include the plural and vice versa.
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the

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4: CONSERVATION COVENANTS: TĪPARE

interpretation of anything contained in this Covenant, and seek to determine the issue, the parties must have regard to the matters contained in the Background.

- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done.
- 1.2.7 words importing one gender include the other gender.
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity.
- 1.2.9 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 for Conservation Purposes;
- 2.1.2 so as to preserve the Reserves Values;
- 2.1.3 to provide, subject to this Covenant, freedom of access on foot to the public for the appreciation and recreational enjoyment of the Land, for non-commercial purposes.

3. IMPLEMENTATION OF OBJECTIVE

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, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 the planting of any species of exotic tree, shrub or other plant;
- 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 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 deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

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4: CONSERVATION COVENANTS: TĪPARE

- 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
- 3.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.12 the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
 - 3.2.1 eradicate or control all weeds and pests on the Land to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 co-operate with the Fire Authority when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling Rural Fire Officer in attendance at the fire regarding fire suppression;
 - 3.2.3 keep the Land free from exotic tree species;
 - 3.2.4 keep 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, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection or maintenance work on the Land, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Land in good order and condition and, notwithstanding clause 3.1.4, must rebuild and replace all such Fences when reasonably required except as provided in clause 5.1.2;
 - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
 - 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
 - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

4. PUBLIC ACCESS

- 4.1 The Owner must, subject to this Covenant, permit the public to enter on foot upon the Land for non-commercial purposes.

5. THE MINISTER'S OBLIGATIONS AND OTHER MATTERS

- 5.1 The Minister must:

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4: CONSERVATION COVENANTS: TĪPARE

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.

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in the objectives specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

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 SALE OF LAND

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

8.2 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.

8.3 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

9. CONSENTS

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

10. MISCELLANEOUS MATTERS

10.1 Rights

10.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

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4: CONSERVATION COVENANTS: TĪPARE

10.2 Trespass Act

- 10.2.1 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;
- 10.2.2 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.

10.3 Reserves Act

- 10.3.1 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.

10.4 Registration

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

10.5 Acceptance of Covenant

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

10.6 Fire

- 10.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land;
- 10.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- (a) requested to do so; or
 - (b) if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977;
- 10.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wild fire through wilful action or negligence (which includes the case where the wild fire is caused by the escape of a permitted fire due to non adherence to the conditions of the permit).

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

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4: CONSERVATION COVENANTS: TĪPARE

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

12. DISPUTE RESOLUTION PROCESSES

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

12.2 Mediation

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

12.3 Failure of Mediation

- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being 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, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

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4: CONSERVATION COVENANTS: TĪPARE

- 13.2 A notice given in accordance with clause 13.1 will be deemed to have been received:
- 13.2.1 in the case of personal delivery, on the date of delivery;
 - 13.2.2 in the case of pre-paid post, on the third Working Day after posting;
 - 13.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 13.3 The Owner must notify the Minister of any change of ownership or control of all or any part of the Land 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.

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4: CONSERVATION COVENANTS: TĪPARE

Executed as a Deed

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: _____

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4: CONSERVATION COVENANTS: TĪPARE

SCHEDULE 1

Description of Land:

2.3200 hectares, more or less, being Section 1 SO 440004. Part *Gazette* Notice C465397.2.

Conservation Values to be protected:

This Land is a small but visually significant feature of Waionui Inlet. It is less than 20 metres above sea level. Waionui Inlet is an area of extremely active sand erosion and accretion.

The Land is within an area that also includes Papakanui Conservation Area, Papakanui Spit Wildlife Refuge, Waionui Inlet Marginal Strip and two conservation covenants ("Papakanui"). Papakanui is an outstanding complex of protected areas. Papakanui is an important breeding and roosting area for a number of species, most notably the critically endangered Fairy Tern/Tara iti. New Zealand and Banded dotterels, godwits, and white fronted and Caspian terns nest and roost on the coastal areas and sand flats, foraging for food in the Inlet. The Waionui Inlet is also valuable for other species such as: fernbird, crane, bittern and other wetland wildlife.

Vegetation surrounding Waionui Inlet is ecologically significant and supports threatened and uncommon species and associations of plants. (*Picris burbidgei*, *Pratia aff angulata*, *Mazus novaezeelandiae* subsp *impolitus*, *Cyclosorus interruptus*, Marsh Lady/Swamp fern: *Thelypteris confluens*, *Lobelia angulata*, *Hebe diosmifolia*).

There are a number of archaeological sites in the area. Q09/542 is an eroded midden on the south west corner of the Land. Other middens have been recorded nearby (within Waionui Inlet Marginal Strip and Papakanui Stewardship Area).

The natural landscape values of the Land, particularly along estuarine margins, are a pleasant contrast to extensive exotic forest but are sensitive to human impact.

The Land receives a moderate to high level of recreational use, including from camping.

Reserve Values to be protected:

The Land was part of Tīpare Maori Reserve at the original survey of Okaka Block in 1861. One midden has been recorded: Q09/542.

Recorded flora on the Land include kānuka, wīwi and coprosma.

In addition the Spit and estuarine area is of international significance for bird habitat, including for threatened species.

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4: CONSERVATION COVENANTS: TĪPARE

SCHEDULE 2

Address for Service

The address for service of the Owner is:

Ngā Maunga Whakahii o Kaipara
96 Commercial Road
PO Box 41
Helensville 0840

The address for service of the Minister is:

The Area Manager
Department of Conservation
Warkworth Great Barrier Island Area Office
28 Baxter Street
Warkworth 0910

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4: CONSERVATION COVENANTS: TĪPARE

SCHEDULE 3

Special Conditions

1. Notwithstanding clause 3.1.2, the Owner may authorise the taking or removal of plant materials from native plants, shrubs and trees from the Land in accordance with tikanga Māori for customary Māori purposes, but in granting such authorisations shall ensure that any impact on the Conservation and Reserve Values is minimised.
2. The Owner must not allow dogs on the Land due to the presence of threatened bird species at Papakanui, including the critically endangered Fairy Tern/Tara iti.
3. Notwithstanding clause 3.1.5, the Owner may light or allow fires on the Land where any required approval from the Fire Authority has been obtained and where the fires occur in a designated area established by the Owner, in order to reduce the fire risk and protect the Conservation and Reserve Values.
4. The Owner may set conditions relating to use of the Land by the public in order to reduce the impact of public access on the Conservation and Reserve Values, such as camping activities and the lighting of fires.

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4: CONSERVATION COVENANTS: TĪPARE

GRANT of

Certified correct for the purposes of
the Land Transfer Act 1952

Solicitor for the Minister of
Conservation

CONSERVATION COVENANT

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

**THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA TARI PUPURITAONGA
TRUST**

to

MINISTER OF CONSERVATION

Legal Services
Department of Conservation

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5 MINISTRY OF EDUCATION LEASES

SUBPART A: COMPLETION OF SCHEDULE A OF EACH LEASE

Items 1, 2, 3, 3A, 7, 8, and 9 in schedule A of the lease for each leaseback property are to be completed in accordance with this subpart.

ITEM	DETAILS
ITEM 1: THE LAND	The full legal description for the leaseback property, as provided in part 3 of the property redress schedule, with any variations to encumbrances permitted under that schedule, is to be inserted.
ITEM 2: START DATE	The start date is to be - <ul style="list-style-type: none"> the settlement date, if the leaseback property is a commercial redress property; or the purchased non-forest commercial property settlement date, if the leaseback property is a purchased non-forest commercial property.
ITEM 3: ANNUAL RENT	The initial annual rent for the leaseback property is to be as provided for that leaseback property in the table immediately below clause 6.17 of the deed. The first payment of rent is to be due on - <ul style="list-style-type: none"> the settlement date, if the leaseback property is a commercial redress property; or the purchased non-forest commercial property settlement date, if the leaseback property is a purchased non-forest commercial property.
ITEM 3A: THE AGREED PERCENTAGE	The agreed percentage for the leaseback property is to be as provided for that leaseback property in the table immediately below clause 6.17 of the deed.
ITEM 7: RIGHT OF RENEWAL	The perpetual rights of renewal are to be from the date that is 21 years after – <ul style="list-style-type: none"> the settlement date, if the leaseback property is a commercial redress property; or the purchased non-forest commercial property settlement date, if the leaseback property is a purchased non-forest commercial property.
ITEM 8: RENT REVIEW DATES	The first rent review date is to be the date that is 7 years after - <ul style="list-style-type: none"> the settlement date, if the leaseback property is a commercial redress property; or the purchased non-forest commercial property settlement date, if the leaseback property is a purchased non-forest commercial property.

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5: MINISTRY OF EDUCATION LEASES

ITEM 9:
LESSEE'S
IMPROVEMENTS

Improvements at the settlement date, if the leaseback property is a commercial redress property, or at the purchased non-forest commercial property settlement date, are to be listed, in item 9.

Indicative improvements in relation to each leaseback property, being improvements at the date of this deed are set out immediately below.

Kaipara College: Improvements at the date of this deed

Block	Block Name	Asset Number	Type	Status
1	Pool 1	1392	SP	INUSE
A	ADMINISTRATION	3678	SB	INUSE
B	SPECIAL EDUCATION	3679	SB	INUSE
C	MAIN BLOCK	3680	SB	INUSE
D	TECHNOLOGY	3681	SB	INUSE
F	ART	3684	SB	INUSE
G	GYMNASIUM	3685	SB	INUSE
H	HORTICULTURE	3687	SB	INUSE
L	LIBRARY	3691	SB	INUSE
JW	Block JW	18913	SB	INUSE
K1	Block K1	50637	SB	INUSE
1	Boiler 1	59216	MP	INUSE
JY	Block JY	59217	AB	INUSE
H2	Block H2	59218	AB	INUSE
H1	Block H1	59219	AB	INUSE
GX	Block GX	59221	AB	INUSE
FI	Block FI	59222	AB	INUSE
M	ART BLOCK	65534	SB	INUSE
N	WHAREAKO	106504	SB	INUSE
Temp	Temp relocs	107026	SB	INUSE
T	Toilet Block	107301	AB	INUSE
5c	Science Block	108926	SB	INUSE
CW	Covered Way	99124	AB	INUSE

Kaukapaka School: Improvements at the date of this deed

Block	Block Name	Asset Number	Type	Status
1	Pool 1	1774	SP	INUSE
1	Admin Computer Library	9357	SB	INUSE
2	Music Room	9358	SB	INUSE
3	Block 3	9359	SB	INUSE
6	Block 6	50674	SB	INUSE
A	Block A	62766	SB	INUSE
ECC	Block ECC	62767	SB	INUSE

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5: MINISTRY OF EDUCATION LEASES

G	Block G	62769	AB	INUSE
C	Block C	62773	AB	INUSE
B	Block B	62774	AB	INUSE
8	Block 8	105639	SB	INUSE
New 6	6	109154	SB	INUSE
CW	Covered Way	99128	AB	INUSE
Parakai School: Improvements at the date of this deed				
Block	Block Name	Asset Number	Type	Status
1	Boiler 1	525	MP	INUSE
1	ADMIN. BLOCK	10007	SB	INUSE
3	ROOM FIVE, SIX. AND ROOM ONE	10008	SB	INUSE
6	GUIDANCE UNIT, RM SEVEN & EIGHT	50681	SB	INUSE
8	Block 8	53656	AB	INUSE
7	Block 7	53657	AB	INUSE
5	Block 5	53658	AB	INUSE
4	Block 4	53659	AB	INUSE
10331	Multi-purpose Room	100331	SB	INUSE
6A	RTL Unit	109114	SB	INUSE
Tauhoa School: Improvements at the date of this deed				
Block	Block Name	Asset Number	Type	Status
1	Pool 1	1664	SP	INUSE
1	Block 1	8390	SB	INUSE
2	Block 2	8391	SB	INUSE
3a	Block 3	8392	SB	INUSE
3	Block 3	52731	AB	INUSE
8	Block 8	107007	AB	INUSE
9	Block 9	107008	AB	INUSE
10	Block 10	107009	AB	INUSE
Waimauku School: Improvements at the date of this deed				
Block	Block Name	Asset Number	Type	Status
1	Boiler 1	605	MP	INUSE
1	Pool 1	1902	SP	INUSE
1	Block 1	10658	SB	INUSE
2	Block 2	10659	SB	INUSE
4	Block 4	10660	SB	INUSE
5	Block 5	10661	SB	INUSE

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6	Block 6	10662	SB	INUSE
7	Block 7	10663	SB	INUSE
8	Block 8	10664	SB	INUSE
9	Block 9	50536	SB	INUSE
F	Block F	60155	AB	INUSE
D	Block D	60156	AB	INUSE
C	Block C	60157	AB	INUSE
B	Block B	60158	AB	INUSE
A	Block A	60159	AB	INUSE
CW	Covered Way	99337	AB	INUSE
Woodhill School: Improvements at the date of this deed				
Block	Block Name	Asset Number	Type	Status
1	Boiler 1	58584	MP	INUSE
1	Pool 1	58585	SP	INUSE
C	Block C	58586	AB	INUSE
6	Block 6	102385	SB	INUSE
8	Permanent Classroom block	107339	SB	INUSE

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SUBPART B: TERMS AND CONDITIONS OF LEASE

MINISTRY OF EDUCATION
TREATY SETTLEMENT LEASE

MEMORANDUM OF LEASE dated 20

LESSOR THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA
DEVELOPMENT TRUST (“the Lessor”)

LESSEE HER MAJESTY THE QUEEN acting by and through the Secretary for
Education (“the Lessee”)

- A. The Lessor owns the Land described in Item 1 of Schedule A (“the Land”).
- B. The Lessor has agreed to lease the Land to the Lessee on the terms and conditions in this Memorandum.
- C. The Lessor leases to the Lessee the Land from the Start Date, at the Annual Rent, for the Term, with the Rights of Renewal and for the Permitted Use all as described in Schedule A.
- D. The Lessor and the Lessee agree to the conditions in Schedule B.
- E. The Lessee accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants in Schedules A and B.

[**SIGNED** on behalf of the Lessor by]

[**SIGNED** on behalf of the Lessee by]

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SCHEDULE A

ITEM 1 THE LAND

[Insert full legal description. Note that improvements are excluded].

ITEM 2 START DATE

[Insert start date].

ITEM 3 ANNUAL RENT

[\$] plus GST per annum payable monthly in advance on the first day of each month with a first payment due on the [Date] day of [Month & Year].

ITEM 3A THE AGREED PERCENTAGE

[Insert percentage]%.

ITEM 4 TERM OF LEASE

21 Years.

ITEM 5 LESSEE OUTGOINGS

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

5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).

5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

5.4 Maintenance of car parking areas.

5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

ITEM 6 PERMITTED USE

The Permitted Use referred to in clause 9.

ITEM 7 RIGHT OF RENEWAL

Perpetual rights of renewal of 21 years each from [Date], and each 21st yearly anniversary after that date.

ITEM 8 RENT REVIEW DATES

[Date] and 7 yearly after that Date.

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ITEM 9 LESSEE'S IMPROVEMENTS

As defined in clause 1.8 and including the following existing improvements:
[List all existing buildings and improvements on the Land together with all playing fields and sub soil works (including stormwater and sewerage drains) built or installed by the Lessee or any agent or sublessee or licensee of the Lessee on the Land].

ITEM 10 CLAUSE 17 (d) Notice

To: *The Trustees of Ngā Maunga Whakahii o Kaipara Development Trust, PO Box 41, HELENSVILLE 0840 ("the Lessor")*

And to: *The Secretary, Ministry of Education, National Office, PO Box 1666, WELLINGTON 6011 ("the Lessee")*

From: *[Name of Mortgagee/ Chargeholder] ("the Lender")*

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("the Land") which the lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 17(d) of the Lease; and*
- (ii) It agrees that that any Lessee's Improvements placed on the Land by the Lessee at any time before or during the lease shall remain the property of the Lessee at all times which the lease continues and for a reasonable period after the lease expires or is terminated (collectively "the relevant period");*
- (iii) It will not claim any interest in any Lessee's Improvements under the security of its loan during the relevant period no matter how any Lessee's Improvement may be fixed to the Land and regardless of any rule of law or equity to the contrary or any provisions of its security to the contrary;*
- (iv) It agrees that this acknowledgement is irrevocable.*

SCHEDULE

[]

[Form of execution by Lender]

[Date dd/mm/yy]

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SCHEDULE B

1 Definitions

1.1 The expression “the Lessor” includes and binds:

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

1.2 The expression “the Lessee” includes and binds:

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

1.3 “Crown” has the meaning given to it in section 2(1) of the Public Finance Act 1989 and includes:

- (a) Her Majesty the Queen in right of New Zealand; and
- (b) all Ministers of the Crown and all Departments.

1.4 “Crown Body” means:

- (a) the Crown (whether acting through a Minister or otherwise);
- (b) a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004);
- (c) a state enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); or
- (d) any company or body which is wholly owned or controlled by any one or more of the following:
 - i. the Crown;
 - ii. a Crown entity; or
 - iii. a state enterprise

and includes

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- iv. a subsidiary of, or related company to, a company or body referred to it in clause 1.4 (d): and
 - v. the New Zealand Railways Corporation.
- 1.5 “Department” has the meaning given to it in section 2 of the Public Finance Act 1989.
- 1.6 “Education Purposes” means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.7 “The Land”, “The Start Date”, “Annual Rent”, “The Agreed Percentage”, “Term of Lease”, “Lessee’s Outgoings” and “Permitted Use” have the meanings set out in Schedule A.
- 1.8 “Lessee’s Improvements” means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.9 “Lessee’s Outgoings” means all outgoings the Lessee is obliged to pay under this Lease.
- 1.10 “Maintenance” includes repair.
- 1.11 “Public Work” has the meaning in section 2 of the Public Works Act 1981.
- 1.12 “Sublet” and “sublease” include the granting of a licence to occupy the Land or part of it.
- 1.13 “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) a day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive; and
 - (d) a day that is observed as the anniversary of the province of:
 - i. Wellington; or
 - ii. Auckland.
- 1.14 References to a statute include regulations, orders, rules or notices made under that statute and include all amendments to or replacements of that statute.

2 Payment of Annual Rent

The Lessee will pay the Annual Rent as provided in Item 3 of Schedule A.

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3 Rent Review

3.1 The Annual Rent will be reviewed as provided below on the basis of an annual rent of The Agreed Percentage specified in Item 3A of Schedule A of the lesser of:

- (a) the current market value of the Land Exclusive of Improvements assessed on the current use as a school site; or
- (b) the nominal value being an assessed value based on 4% growth per annum of the transfer price for the property.

3.2 The current market value of the land in 3.1(a) above is equivalent to the market value of the land on the basis of highest and best use less 20%.

3.3 The nominal value will be reset to the midpoint between the values set out in 3.1 (a) and (b) above at:

- (a) the commencement date of the new Term; and
- (b) at any rent review date where the nominal value has been consistently either higher or lower than the market value for the three consecutive rent review or lease renewal dates.

The new nominal value will be used to set the Annual Rent from the date it is reset.

3.4 In any rent review under this Lease all Lessee's Improvements whether existing at the Start Date or not must be excluded from the assessment of any new rental.

3.5 The rent review process will be as follows:

- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent which the notifying party considers should be charged from that Rent Review Date.
- (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the notifying party's notice which will be payable in accordance with step (l) below.
- (c) If the notified party does not agree with the notifying party's assessment it has 30 Working Days after it receives the notice to issue a notice disputing the proposed new rent, in which case the steps set out in (d) to (k) below must be followed.
- (d) Until the new rent has been determined, the Lessee will continue to pay the Annual Rent at the existing amount which had been payable up to the Rent Review Date.
- (e) The parties must try to agree on a new Annual Rent.

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- (f) If a new Annual Rent has not been agreed within 20 Working Days of the issue of the notice disputing the proposed new rent (referred to in step (c) above), then the new rent may be determined either:
 - i. by one party giving written notice to the other requiring the new rent to be determined by arbitration; or
 - ii. if the parties agree, by registered valuers acting as experts and not as arbitrators as set out in steps (g) to (k) below.
- (g) Within 20 Working Days of the parties agreeing to refer the determination of the new Annual Rent to registered valuers in accordance with step (f) above, each party will appoint a valuer and give written notice of the appointment to the other party.
- (h) The two valuers must appoint an umpire who must be a registered valuer. If the valuers cannot agree on an umpire, they must ask the president of the Property Institute of New Zealand Incorporated to appoint an umpire.
- (i) Once the umpire has been appointed, the valuers must try to determine the new rent by agreement. If they fail to agree within 40 Working Days of the end of the time period specified in step (g) above, the rent will be determined by the umpire.
- (j) Each party will have the opportunity to make written or verbal representations to the valuers or umpire within the period, and on the conditions, set by the valuers or umpire. Each party must consider any representations but is not bound by them.
- (k) When the rent has been determined, the umpire or valuers must give written notice of it to the parties. Notice given by an umpire must provide how the costs of the determination are to be divided and the parties must pay their share accordingly. If the rent is determined by the parties' valuers and not the umpire, the parties will pay their own costs.
- (l) Once the new rent has been agreed or determined it will be the Annual Rent from the Rent Review Date or the date of the Lessor's notice if such notice is given later than three months after the Rent Review Date.
- (m) The rent review may at the option of either party be recorded in a variation of this Lease, at the cost of the party requesting that variation.

4 Payment of Lessee Outgoings

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

5 Valuation Roll

Where this lease is registered under section 115 of the Land Transfer Act 1952 and is for a term of not less than 10 years (including renewals):

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- 5.1 the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer for the Land; and
- 5.2 the Lessee will be responsible for payment of any rates.

6 Utility Charges

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

7 Goods and Services Tax

The Lessee will pay the Lessor on demand the goods and services tax (GST) payable by the Lessor in respect of the rental and other payments payable by the Lessee under this lease. If the Lessee fails to pay any GST demanded under this clause the Lessee shall be liable for any penalty GST incurred by the Lessor as a result of the Lessee's default and the Lessor shall have no obligation to pay any GST which should have been paid by the Lessee.

8 Interest

If the Lessee fails to pay within 14 days of the due date for payment any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 Permitted Use of Land

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

10 Designation

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

11 Compliance with Law

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

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12 Hazards

12.1 The Lessee must:

- (a) take all reasonable steps to minimise any hazard arising from the Lessee's use of the Land and ensure that any hazardous goods are stored or used on the Land in accordance with all relevant Legislation; and
- (b) promptly remedy any hazard that may arise on the Land.

12.2 The Lessor agrees to remedy promptly and at its own cost any hazard arising from any altered state of the Land caused by any natural event including flood, earthquake, slip and erosion.

13 Contamination

13.1 When this Lease ends the Lessee agrees to remedy any Contamination which has been caused by the Lessee's use of the Land during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

13.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.

13.3 In this provision "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in Section 2 of the Resource Management Act 1991.

14 Maintenance of Lessee's Improvements

The Lessee must at its expense keep any Lessee's Improvements in good condition during the Term of this Lease.

15 Construction of or Alterations to Lessee's Improvements

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

15.2 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.

15.3 The Lessee agrees that any easement will be for a term concurrent with the Lease and that it will take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

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16 No Lessor Maintenance

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

17 Lessor's Acknowledgments as to Lessee's Improvements

The Lessor acknowledges that:

- (a) Despite any rule of law or equity to the contrary, the Lessee will own all Lessee's Improvements whether or not attached to the land throughout the period of this Lease and any improvements owned by third parties shall continue to be owned by those third parties.
- (b) The Lessee must insure the Lessee's Improvements in its own name or self insure.
- (c) If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and the Lessee will own any insurance proceeds, provided however that the Lessee shall not leave any destroyed or damaged Lessee's Improvements in an unsafe condition.
- (d) If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- (e) If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Working Days from the date of their receipt by the Lessor.
- (f) The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Period without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from contamination in accordance with clause 13.

18 Removal of Lessee's Improvements

18.1 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed by the expiry date. The Lessor's consent is not required to any removal.

18.2 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvement or other Lessee's property left on the Land after this

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Lease ends and that any such Lessee's property shall at that point be deemed to have become the property of the Lessor.

- 18.3 The Lessor must not impede the removal of any Lessee's Improvements from the Land at any time during the Term of the Lease.

19 Rubbish Removal

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

20 Signs

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

21 Insurance

- 21.1 The Lessee is responsible for insuring or self insuring any Lessee's Improvements on the Land.
- 21.2 Each party has the right (subject to the rights of any of its mortgagees) to decide whether or not to reinstate any property insured by it, and the other party must abide by that decision.
- 21.3 The Lessee must ensure that any third party which is not a Crown Body permitted to occupy part of the Land has adequate insurance at its own cost against all public liability.

22 Fencing

- 22.1 The Lessee acknowledges that the Lessor is not obliged to build or maintain, or contribute towards the cost of, any boundary fence between the Land and any adjoining land owned by the Lessor.
- 22.2 If the Lessee considers it reasonably necessary for the purposes of the Permitted Use it may at its own cost fence the boundaries of the Land.

23 Quiet Enjoyment

- 23.1 If the Lessee pays the rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Period without any interruption by the Lessor or any person claiming by, through or under the Lessor.
- 23.2 The Lessor may not build on the Land or put any improvements on the Land without the prior written consent of the Lessee.

24 Benefits to Land Not to be Restricted or Cancelled

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

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25 Assignment

25.1 Provided that the Land continues to be used for Education Purposes, the Lessee may without the Lessor's consent assign its interest to:

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

25.2 If the site is no longer to be used for Education Purposes the Lessee must seek the Lessor's consent (which will not be unreasonably withheld or delayed) before assigning its interest to any party.

25.3 Without limiting clause 25.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 25 or a subletting for the purposes of clause 26.

25.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provisions of clause 3 setting the value of the land for rent review purposes.

25.5 The Lessee has the right to dispose of or transfer all or part of its interest in the Land under section 40, 41, 42, 50 or 52 of the Public Works Act 1981 and this will not be deemed to be an assignment for the purposes of clause 25 or a subletting for the purposes of clause 26.

26 Subletting

26.1 Provided that the Land continues to be used for Education Purposes, the Lessee may without the Lessor's consent sublet to:

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

26.2 If the site is no longer to be used for Education Purposes the Lessee must seek the Lessor's consent (which will not be unreasonably withheld or delayed) before subletting to any party.

27 Occupancy by School Board of Trustees

27.1 The Lessee has the absolute right to sublet to or otherwise permit a school board of trustees to occupy the Land on the terms and conditions set by the Lessee in accordance with the Education Act 1989 and otherwise consistent with this Lease.

27.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 23 extends to any board of trustees occupying the Land.

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27.3 A board of trustees occupying the Land has the right to sublet or license any part of the Land or the Lessee's Improvements to any third party in accordance with the Education Act 1989 and any licence or lease to any third party existing at the Start Date of this Lease shall continue in effect until that licence or lease ends.

28 Lessee Break Option

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

29 Breach

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

30 Notice of Breach

30.1 Despite anything expressed or implied in this Lease, the Lessor will not exercise its rights under clause 29 unless the Lessor has first given the Lessee written notice of the breach on which the Lessor relies and given the Lessee an opportunity to remedy the breach as provided below:

- (a) by paying the Lessor all money necessary to remedy the breach within one month of the notice; or
- (b) by undertaking in writing to the Lessor within one month of the notice to remedy the breach and then remedying it within a reasonable time having regard to the nature and extent of it; or
- (c) by paying to the Lessor within three months of the notice compensation of an amount that is to the reasonable satisfaction of the Lessor in respect of the breach having regard to the nature and extent of it.

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

31 Renewal

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

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31.2 The renewed lease will be on the terms and conditions expressed or implied in this Lease, including this right of renewal, and including the review of rent in terms of clause 3, the renewal date being regarded as a rent review date.

32 Right of First Refusal for Lessor's Interest

32.1 If at any time before the expiry or earlier termination of the Term, the Lessor:

- (a) decides to sell or transfer the Lessor's interest in the Land; or
- (b) receives an offer to purchase the Lessor's interest in the Land and wishes to accept that offer;

the Lessor must immediately give written notice (Lessor's Notice) to the Lessee setting out the terms on which the Lessor wishes to sell the Land, or the terms of the offer received (as the case may be). In the case of the Lessor's desire to sell, the offer must comprise the agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society Incorporated.

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

32.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 32.2, then the Lessor may sell or transfer the Lessor's interest in the Land to any other person on no more favourable terms than those previously offered to the Lessee.

32.4 If the Lessor wishes, or agrees, to offer more favourable terms for selling or transfer of the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms, by written notice to the Lessee and clauses 32.1 –32.4 (inclusive) shall apply and if the re-offer is made within six months of the Lessor's Notice the 60 Working Day period shall be reduced to 30 Working Days.

32.5 The Lessor may dispose of the Lessor's interest in the Land to a fully owned subsidiary of the Lessor and the consent of the Lessee shall not be required and the Lessee's right to purchase the land under clause 32 will not apply.

33 Entire Agreement

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

34 Disputes

The parties will try to resolve all disputes by negotiations in good faith. If negotiations are not successful, the parties will refer the dispute to the arbitration of two arbitrators (one to be

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appointed by each party) and an umpire (to be appointed by the arbitrators before arbitration) in accordance with the Arbitration Act 1996.

35 Service of Notices

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

The Secretary for Education
Ministry of Education
PO Box 1666
WELLINGTON 6011.

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

The Trustees of Ngā Maunga Whakahii o Kaipara Development Trust
PO Box 41
HELENSVILLE 0840.

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

36 Registration of Lease

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

37 Costs

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

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5: MINISTRY OF EDUCATION LEASES

LESSOR:

THE TRUSTEES OF NGĀ MAUNGA WHAKAHII
O KAIPARA DEVELOPMENT TRUST

LESSEE:

HER MAJESTY THE QUEEN
acting by and through the Secretary
for Education

MEMORANDUM OF LEASE

THE SECRETARY FOR EDUCATION
MINISTRY OF EDUCATION
NATIONAL OFFICE
WELLINGTON

6 WOODHILL FOREST EASEMENT

Date

PARTIES

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “**Grantor**”)
- 2 **THE TRUSTEES OF NGĀ MAUNGA WHAKAHII O KAIPARA DEVELOPMENT TRUST** (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;

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“**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, invitees, sublicensees 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 as B on sheet 10 of DP 138525 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 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:

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- 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

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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, contractors and invitees, 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

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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 particular 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.

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**

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

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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 Incorporated);

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;

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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.

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

**Conservator for the Auckland
Conservancy** 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 **THE TRUSTEES
OF NGĀ MAUNGA WHAKAHII O KAIPARA
DEVELOPMENT TRUST** as Grantee by:

in the presence of:

Name:

Occupation:

Address:

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FIRST SCHEDULE

1. **GRANTOR'S LAND:**

Part Allotment 63 and Allotment 86 Waioneke Parish

2. **GRANTOR'S ADDRESS:**

Department of Conservation
Auckland Conservancy
Private Bag 68908
Newton
AUCKLAND 1145

Ground Floor – Building 2
Carlaw Park Commercial
12-16 Nicholls Lane
Parnell
AUCKLAND 1010

Facsimile No: 09 377 2919

3. **GRANTEE'S LAND:**

Lot 1 DP 138525

4. **GRANTEE'S ADDRESS:**

The trustees of Ngā Maunga Whakahii o Kaipara Development Trust
PO Box 41
HELENSVILLE 0840

96 Commercial Road
HELENSVILLE 0800

Facsimile No: 09 420 8410

WAIATA TAUTOKO – E Tū Ana Ahau

*E tū ana ahau i runga Tuhirangi
Ka titiro atu au ki te hauauru, ki te Moana-nui-ā-Kiwa
Me ngā tamariki o Tangaroa.
Huri ake ngā kanohi, ki te awa Makarau
Me ōna tēina Kakānui Araparera.
Ko pikopiko ana tae atu ki te moana Kaipara e.
Huri ana te titiro ki te raki ko maunga Taranaki.
E toha rā ki te tai whakarunga ki te tai whakararo.
Maringi ana ngā roimata ki ngā uri mokopuna
E hurihuri ana i roto i te ao pakeha.
Ka hoki te mahara ki te wā o mua
Ki te mana ki te ihi o āku tūpuna.
Tēra e haehae tonu nei i roto te manawa.
Ka hoki te titiro ki te ara o Ngāti Whātua.
Kō ana, i roto, tū tonu ngā tohu o mua e.*