

DOCUMENTS

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**5.17: HIKURANGI CONSERVATION COVENANT**

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**5.17 Hikurangi conservation covenant**

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# HIKURANGI CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

BETWEEN NGĀTI MARU RŪNANGA 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 (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B. Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C. The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [ ] and implemented by the Ngāti Maru Claims Settlement Act [ ].
- D. The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

## OPERATIVE PARTS

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

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## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

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

**“Fence”** includes a gate.

**“Land’s Values”** means the Conservation and Reserve values specified in Schedule 1.

**“Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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

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

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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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

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## **8 OBLIGATIONS ON DISPOSAL OF LAND**

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

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

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

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

## **12 DISPUTE RESOLUTION PROCESSES**

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 Mediation
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 Failure of Mediation
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
  - 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

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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:**

*South Auckland Land District—Thames-Coromandel District*

All that piece of land containing 14.7 hectares, approximately, being Part Section 5 and Part Lot 2 of Section 3 Block II Ohinemuri Survey District. Subject to survey.

As shown on OTS-403-315 and known as Hikurangi.

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

[The Land is contiguous to the Coromandel Forest Park, which contains extensive and largely continuous tracts of indigenous vegetation. The Park is also used for recreation including tramping, walking and hunting.]

The Land has scenic values as an elevated site (tihi), with the ridgeline mountain top a prominent landscape and landmark. It also has biodiversity, habitat and recreation values due to the Land adjoining the Coromandel Forest Park, as well as the tihi being an important and unique ecosystem with its own botanical and animal life. The tihi operates as a sanctuary with species able to retreat to this higher altitude area, where the threat of predators is reduced.

Common indigenous bird species may be present, including Brown kiwi and kokako and Archeys frogs are evident in this vicinity.]

**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

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**SCHEDULE 3**  
**Special Conditions**

*Recreational facilities*

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

*Taking of plant material*

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

*Propagation*

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

*Removal of rock*

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

*Plantation trees*

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

*Fencing*

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

*Managing public access*

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

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*Cultural activities*

10. The Owner may undertake cultural activities on the Land, subject to:

(a) consultation with the Department of Conservation; and

(b) any effects on the Conservation and Reserve Values being no more than minor.

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**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services  
Department of Conservation**

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DOCUMENTS

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**5.18: NGAPUKETURUA CONSERVATION COVENANT**

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**5.18 Ngapuketurua conservation covenant**

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# NGAPUKETURUA CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

BETWEEN NGĀTI MARU RŪNANGA 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 (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B. Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C. The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [ ] and implemented by the Ngāti Maru Claims Settlement Act [ ].
- D. The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

## OPERATIVE PARTS

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

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## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

**"Director-General"** means the Director-General of Conservation.

**"Fence"** includes a gate.

**"Land's Values"** means the Conservation and Reserve values specified in Schedule 1.

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

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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

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

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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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

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## **8 OBLIGATIONS ON DISPOSAL OF LAND**

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

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

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

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

## **12 DISPUTE RESOLUTION PROCESSES**

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
  - 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

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**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

} NN

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: \_\_\_\_\_

} NN

## SCHEDULE 1

### Description of Land:

*South Auckland Land District— Thames-Coromandel District and Hauraki District*

All that piece of land containing 13.1 hectares, approximately, being Part Section 5 and Part Lot 2 of Section 3 Block II Ohinemuri Survey District and Part Whangamata 3. Subject to survey.

As shown on OTS-403-316 and known as Ngapuketurua.

### Conservation and Reserve Values:

[The Land is contiguous to the Coromandel Forest Park, which contains extensive and largely continuous tracts of indigenous vegetation. The Park is also used for recreation including tramping, walking and hunting.

The Land has scenic values as an elevated site (tihi), with the ridgeline mountain top a prominent landscape and landmark. It also has biodiversity, habitat and recreation values due to the Land adjoining the Coromandel Forest Park, as well as the tihi being an important and unique ecosystem with its own botanical and animal life. The tihi operates as a sanctuary with species able to retreat to this higher altitude area, where the threat of predators is reduced.

Common indigenous bird species may be present including remnant kiwi and kokako and Archeys frogs are evident in this vicinity.]

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**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

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## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

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

#### *Plantation trees*

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

#### *Fencing*

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

#### *Managing public access*

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

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*Cultural activities*

10. The Owner may undertake cultural activities on the Land, subject to:

(a) consultation with the Department of Conservation; and

(b) any effects on the Conservation and Reserve Values being no more than minor.

} NN

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services  
Department of Conservation**

} NN

*Initialling version for presentation to Ngāti Maru for ratification purposes.*

DOCUMENTS

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**5.19: PUKETAIOKO CONSERVATION COVENANT**

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**5.19 Puketaioko conservation covenant**

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# PUKETAIOKO CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

BETWEEN NGĀTI MARU RŪNANGA 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 (both the Conservation Values and the Reserve Values are referred to as the Land's Values).
- B. Management of the Land's Values requires some restrictions on the Owner's use of the Land without the Minister's consent and the enabling of the Minister to undertake certain activities on the Land.
- C. The Owner is the registered proprietor of the Land described in Schedule 1 as a result of a Treaty settlement with the Crown in accordance with a Deed of Settlement dated [ ] and implemented by the Ngāti Maru Claims Settlement [ ].
- D. The parties to the Deed of Settlement agree the Land's Values should be subject to a covenant under the Conservation Act 1987 and the Reserves Act 1977 which would provide that the land should be managed to protect those values.
- E. The Owner has therefore agreed to grant the Minister a Covenant over the Land to preserve the Land's Values.

## OPERATIVE PARTS

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

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## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

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

**“Fence”** includes a gate.

**“Land’s Values”** means the Conservation and Reserve values specified in Schedule 1.

**“Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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

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

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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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

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## **8 OBLIGATIONS ON DISPOSAL OF LAND**

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

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

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

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

## **12 DISPUTE RESOLUTION PROCESSES**

- 12.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 **Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 **Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
  - 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

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**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
 Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
 Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

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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:**

*South Auckland Land District-Thames-Coromandel District and Hauraki District*

All that piece of land containing 67.5 hectares, approximately, being Part Omahu Block. Part *Gazette* 1935, p2735. Subject to survey.

As shown on OTS-403-332 and known as Puketaioko.

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

[The Land has habitat values due to being healthy regenerating forest, with vegetation cover including Kauri, Rimu, Parecorp, Tanika and Northern Rata. The Land is also part of a high value water catchment area.]

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**SCHEDULE 2**

**Address for Service**

The address for service of the Owner is:

The address for service of the Minister is:

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## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

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

#### *Plantation trees*

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

#### *Fencing*

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

#### *Managing public access*

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

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*Cultural activities*

10. The Owner may undertake cultural activities on the Land, subject to:

(a) consultation with the Department of Conservation; and

(b) any effects on the Conservation and Reserve Values being no more than minor.

**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

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**Legal Services  
Department of Conservation**

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DOCUMENTS

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**5.27: WHAKAMOEHAU CONSERVATION COVENANT**

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**5.27 Whakamoehau conservation covenant**

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7/18

# WHAKAMOEHAU CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this                      day of

**BETWEEN NGĀTI MARU RŪNANGA TRUST; and**

**NGĀTI TAMATERĀ TREATY SETTLEMENT TRUST (the Owners)**

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

## BACKGROUND

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

## OPERATIVE PARTS

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



## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

**"Director-General"** means the Director-General of Conservation.

**"Fence"** includes a gate.

**"Land's Values"** means the Conservation and Reserve values specified in Schedule 1.

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

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;
- 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
- 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
- 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; and
- 3.1.12 the erection of utility transmission lines across the Land.

3.2 Subject to the Owners having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owners must take all reasonable steps to maintain the Land, including:

- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owners may undertake minor clearance of vegetation;
- 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;
- 3.2.3 keeping the Land free from exotic tree species;

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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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



## **8 OBLIGATIONS ON DISPOSAL OF LAND**

- 8.1 If the Owners sell, lease, or part with possession of the Land, the Owners must ensure that the Owners obtain 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 Owners fail to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owners will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owners has parted with all interest in the Land in respect of which a breach occurs.

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

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

### **12.2 Mediation**

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

### **12.3 Failure of Mediation**

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



**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owners in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owners in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owners 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: \_\_\_\_\_

## SCHEDULE 1

### **Description of Land:**

*South Auckland Land District— Hauraki District*

All that piece of land containing 22.2 hectares, approximately, being Part Ohinemuri 20. Subject to survey.

As shown on OTS-403-49 and known as Whakamoehau.

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

[The Land is contiguous to the Coromandel Forest Park, which contains extensive and largely continuous tracts of indigenous vegetation. The Park is also used for recreation including tramping, walking and hunting.

The Land has scenic values as an elevated site (tihi), with the ridgeline mountain top a prominent landscape and landmark. It also has biodiversity, habitat and recreation values due to the Land adjoining the Coromandel Forest Park, as well as the tihi being an important and unique ecosystem with its own botanical and animal life. The tihi operates as a sanctuary with species able to retreat to this higher altitude area, where the threat of predators is reduced.

Common indigenous bird species may be present and Hochstetters and Archeys frogs are evident in this vicinity (with these frogs recorded at nearby Golden Cross). The last remnant kokako were also recorded around Golden Cross. Remnant brown kiwi also exists as does bats.]

7 VB

**SCHEDULE 2**

**Address for Service**

The address for service of the Owners is:

The address for service of the Minister is:

7 VB

## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

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

#### *Managing public access*

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

#### *Cultural activities*

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

Handwritten signature or initials in black ink, appearing to be '7 VB'.

**GRANT OF CONSERVATION COVENANT**

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

---

to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**

7/13

*Initialling version for presentation to Ngāti Maru for ratification purposes.*

DOCUMENTS

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**5.28: PUKEWHAKATARATARA CONSERVATION COVENANT**

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**5.28 Pukewhakatara conservation covenant**

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2/18



# PUKEWHAKATARATARA CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

BETWEEN NGĀTI MARU RŪNANGA TRUST; and

NGĀTI TAMATERĀ TREATY SETTLEMENT TRUST (the Owners)

AND MINISTER OF CONSERVATION (the Minister)

## BACKGROUND

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

## OPERATIVE PARTS

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



## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

**"Director-General"** means the Director-General of Conservation.

**"Fence"** includes a gate.

**"Land's Values"** means the Conservation and Reserve values specified in Schedule 1.

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

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

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

### 3 IMPLEMENTATION OF OBJECTIVES

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

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 subject to clauses 3.2.1 and 3.2.3 and Schedule 3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.3 subject to Schedule 3, the planting of any species of exotic tree, shrub or other plant, or any other plant not endemic to and not sourced from the location in which the Land is situated;
- 3.1.4 the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.5 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.6 subject to Schedule 3, any cultivation, earth works or other soil disturbances;
- 3.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 3.1.8 the damming, diverting or taking of Natural Water;
- 3.1.9 any action which will cause degradation of the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other watercourse in or on the Land;
- 3.1.10 any other activity which might have a more than minor adverse effect on the Land's Values;
- 3.1.11 any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; and
- 3.1.12 the erection of utility transmission lines across the Land.

3.2 Subject to the Owners having no obligation to do anything to improve the land beyond its condition at the date of this Covenant, the Owners must take all reasonable steps to maintain the Land, including:

- 3.2.1 eradicating or controlling all weeds and pests on the Land to the extent required by any statute; and, in particular, complying with the provisions of, and any notices given under, the Biosecurity Act 1993 and in so doing the Owners may undertake minor clearance of vegetation;
- 3.2.2 co-operating with the [Fire Authority] when it is responding to a fire that threatens to burn, or is burning, on the Land and follow the directives of any controlling [Rural Fire Officer] in attendance at the fire regarding fire suppression;



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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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



## **8 OBLIGATIONS ON DISPOSAL OF LAND**

- 8.1 If the Owners sell, lease, or part with possession of the Land, the Owners must ensure that the Owners obtain 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 Owners fail to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owners will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owners have parted with all interest in the Land in respect of which a breach occurs.

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

- 11.1 Where either the Owners 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 Owners 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 Owners and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 **Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 **Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.



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

### 13 NOTICES

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

### 14 SPECIAL CONDITIONS

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owners in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owners 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: \_\_\_\_\_

7.16



## SCHEDULE 1

### **Description of Land:**

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

All that piece of land containing 20.0 hectares, approximately, being Part Crown land (SO 48402) and Part Lot 5 DP 25781. Subject to survey.

As shown on OTS-403-52 and known as Pukewhakataratara.

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

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

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

In addition to the above, the Land (Pukewhakataratara) has recreational values with the North South Track running through it. The Land has scenic values with its ridgeline a prominent landmark. The Land is unique botanically, with vegetation including kauri, beech and hard woods.]

**SCHEDULE 2**

**Address for Service**

The address for service of the Owners is:

The address for service of the Minister is:

3/13

## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

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

#### *Managing public access*

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

#### *Cultural activities*

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

**GRANT OF CONSERVATION COVENANT**

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

---

to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**

*7/18*

DOCUMENTS

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**5.29: PUKEWHAKATARATARA RIGHT OF WAY EASEMENT**

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**5.29 Pukewhakataratara right of way easement**

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7 VB

The terms of the easement document are largely agreed. Only exceptional clauses will be negotiated and agreed between Chair of the Hauraki Collective, Director of the Office of Treaty Settlements and Deputy Director-General Strategy and People of the Department of Conservation prior to ratification of the Ngāti Maru deed of settlement.

EASEMENT INSTRUMENT  
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

Surname must be underlined

[the trustees of Ngāti Maru Settlement Trust] and [the trustees of Ngāti Tamaterā Treaty Settlement Trust]

Grantee

Surname must be underlined

Her Majesty the Queen in Right of New Zealand acting by and through the Minister of Conservation

Grant of easement

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

Dated this

day of

20

ATTESTATION:

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

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

*Handwritten signatures and initials in the bottom left corner of the page.*

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

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

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

**Solicitor for the Grantee**

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

*Handwritten initials/signatures:*  
 GB  
 VB

**SCHEDULE A**

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

Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way	The 4m strip marked [] on SO []  [currently dotted red on OTS-403-327]  The Easement Area	[That part of the Crown Land on SO 48402 and Part Lot 5 DP 25781 as edged orange on OTS-403-327]  The Grantor's Land	In gross

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

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



Easement Instrument	Dated:	Page of pages
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## RIGHTS AND POWERS

### 1 Rights of way

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

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

Easement Instrument	Dated:	Page of pages
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1.7 The public may not light any fires or deposit any rubbish or other materials on the Easement Area.

## 2 General rights

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

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

2.3 The Grantee may transfer or otherwise assign this easement but only to a Crown body, local authority or other public body.

## 3 Repair, maintenance, and costs

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

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

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

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

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

## 4 Rights of entry

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

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

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

Easement Instrument	Dated:	Page of pages
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4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and

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

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

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

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

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

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

## 5 Default

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

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

5.1.2 if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may —

(a) meet the obligation; and

(b) for that purpose, enter the Grantor's Land:

5.1.3 the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:

the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

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

Easement Instrument	Dated:	Page of pages
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## 6 Disputes

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

## 7 Other conditions

- 7.1 DOC will have the right of access to the grantor's land to undertake work on the relevant part of the grantor's land if something on that land poses an immediate health & safety risk to users of the relevant part of the easement area.
- 7.2 Where there is matter beyond the control of either grantee or grantor that necessitates the reinstatement of the track outside of the easement area the grantor cannot unreasonably withhold consent to a new location of the easement area (if it is within 10 metres of the original easement area - i.e. 5m on either side from the centre of the easement area).

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



DOCUMENTS

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**5.30: TAKAIHUEHUE CONSERVATION COVENANT**

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**5.30 Takaihuehue conservation covenant**

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3



# TAKAIHUEHUE CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

BETWEEN NGĀTI MARU RŪNANGA TRUST; and

NGĀTI TAMATERĀ TREATY SETTLEMENT TRUST (the Owners)

AND MINISTER OF CONSERVATION (the Minister)

## BACKGROUND

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

## OPERATIVE PARTS

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



## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

**"Director-General"** means the Director-General of Conservation.

**"Fence"** includes a gate.

**"Land's Values"** means the Conservation and Reserve values specified in Schedule 1.

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

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land's Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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



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



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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

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

#### **7 DURATION OF COVENANT**

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



## **8 OBLIGATIONS ON DISPOSAL OF LAND**

- 8.1 If the Owners sell, lease, or part with possession of the Land, the Owners must ensure that the Owners obtain 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 Owners fail to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owners will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owners have parted with all interest in the Land in respect of which a breach occurs.

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

- 11.1 Where either the Owners 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 Owners 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 Owners and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 **Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 **Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
  - 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.

**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
 Owners in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
 Owners in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

A handwritten signature or set of initials, possibly '7VB', is located at the bottom left of the page.

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: \_\_\_\_\_

ZVB

## SCHEDULE 1

### Description of Land:

*South Auckland Land District— Western Bay of Plenty District*

All that piece of land containing 2.9 hectares, approximately, being Part Crown land (SO 48402). Subject to survey.

As shown on OTS-403-328 and known as Takaihuehue.

### Conservation and Reserve Values:

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

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

In addition to the above, the Land (Takahuehue) has recreational values with the North South Track running through it. The Land has scenic values with its ridgeline a prominent landmark. The Land is unique botanically, with vegetation including kauri, beech and hard woods.]

? VB

**SCHEDULE 2**

**Address for Service**

The address for service of the Owners is:

The address for service of the Minister is:

*RB*

## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

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

#### *Managing public access*

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

#### *Cultural activities*

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



**GRANT OF CONSERVATION COVENANT**

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

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to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**

9 VB

*Initialling version for presentation to Ngāti Maru for ratification purposes.*

**DOCUMENTS**

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**5.31: PAEWAI CONSERVATION COVENANT**

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**5.31 Paewai conservation covenant**

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# PAEWAI CONSERVATION COVENANT

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

THIS DEED of COVENANT is made this            day of

**BETWEEN NGĀTI MARU RŪNANGA TRUST; and**

**NGĀTI TAMATERĀ TREATY SETTLEMENT TRUST (the Owners)**

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

## BACKGROUND

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

## OPERATIVE PARTS

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



## 1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

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

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

**“Fence”** includes a gate.

**“Land’s Values”** means the Conservation and Reserve values specified in Schedule 1.

**“Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.

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

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

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

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

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

## 2 OBJECTIVES OF THE COVENANT

2.1 The Land must be managed:

2.1.1 to preserve and protect the Land’s Values;

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

## 3 IMPLEMENTATION OF OBJECTIVES

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



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



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

#### **4 PUBLIC ACCESS**

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

#### **5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

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

#### **6 JOINT OBLIGATIONS**

- 6.1 The Owners 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.

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## **8 OBLIGATIONS ON DISPOSAL OF LAND**

- 8.1 If the Owners sell, lease, or part with possession of the Land, the Owners must ensure that the Owners obtain 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 Owners fail to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owners will continue to be liable in damages to the Minister for any breach of the Covenant committed after the Owners have parted with all interest in the Land in respect of which a breach occurs.

## **9 CONSENTS**

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

## **10 MISCELLANEOUS MATTERS**

### **10.1 Trespass Act**

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

### **10.2 Reserves Act**

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

### **10.3 Registration**

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

### **10.4 Acceptance of Covenant**

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

## **11 DEFAULT**

- 11.1 Where either the Owners 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 Owners 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 Owners and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.
- 12.2 **Mediation**
- 12.2.1 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
  - 12.2.2 If the parties do not agree on a mediator, the President of the New Zealand Law Society is to appoint the mediator.
- 12.3 **Failure of Mediation**
- 12.3.1 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
  - 12.3.2 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President of the New Zealand Law Society.
  - 12.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.





**13 NOTICES**

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

**14 SPECIAL CONDITIONS**

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

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owners in the presence of: )

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ as )  
Owners 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: \_\_\_\_\_

Handwritten signature or initials in black ink, consisting of a large, stylized 'A' followed by a smaller 'B'.

## SCHEDULE 1

### **Description of Land:**

*South Auckland Land District— Western Bay of Plenty District*

All that piece of land containing 2 hectares, approximately, being Part Section 8, Block IV Aongatete Survey District. Subject to survey.

As shown on OTS-403-54 and known as Paewai.

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

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

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

In addition to the above, the Land (Paewai) has scenic values with its ridgeline a prominent landmark. The Land is unique botanically, with vegetation including kauri, beech and hard woods.]



**SCHEDULE 2**

**Address for Service**

The address for service of the Owners is:

The address for service of the Minister is:

Handwritten signature or initials in the bottom left corner of the page.

## SCHEDULE 3

### Special Conditions

#### *Recreational facilities*

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

#### *Taking of plant material*

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

#### *Propagation*

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

#### *Removal of rock*

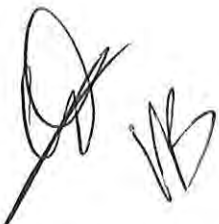
4. Despite clause 3.1.11, the Owners may take rock of any kind from the Land for cultural or spiritual purposes.

#### *Managing public access*

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

#### *Cultural activities*

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

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**GRANT OF CONSERVATION COVENANT**

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

---

to

**MINISTER OF CONSERVATION**

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

---

**Legal Services  
Department of Conservation**

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## Instrument to grant Restrictive Land Covenant (in gross)

Grantor

[NGĀTI MARU]

Grantee

HER MAJESTY THE QUEEN

### Grant of Restrictive Covenant (in gross)

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

### Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Restrictive Covenant in Gross pursuant to section [ ] of the [ ] Claims Settlement Act [ ]	[The area edged with a thick black line and shown "Port Jackson A" on the OTS plan attached (subject to survey)]	[[ ] hectares more or less being part of the land comprised in Computer Freehold Register SA19B/1495 (subject to survey)].	In Gross

**Dated** this                      day of                      2017

### Attestation

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

Her Majesty the Queen acting by and through the Minister of Conservation	Signed in my presence by the Grantee
	_____ <i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> <i>Witness name</i> <i>Occupation</i>
_____ Signature [common seal] of Grantee	_____ <i>Address</i>

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

[Solicitor for] the Grantee

**DOCUMENTS**

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**5.32: DANBY FIELD SCHOOL SITE (LAND ONLY) RIGHT OF WAY AND DRAINAGE EASEMENT**

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**5.32 Danby Field School site (land only) right of way and drainage easement**

---

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**The terms of this easement are to be finalised before the deed of settlement is initialled.**

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

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

Grantor

[NGĀTI MARU]

Grantee

THAMES COROMANDEL DISTRICT COUNCIL

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

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

**Schedule A**

*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to drain water	"A", "H", "I" and "J" on SO 511663	Section 2 on SO 511663 CFR [ ]	In gross
Right of Way	"J" and "K" on SO 511663	Section 2 on SO 511663 CFR [ ]	In gross



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

*Delete phrases in [ ] and insert memorandum number as required;  
continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002

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

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

the provisions set out in Annexure Schedule 1.

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as require;  
continue in additional Annexure Schedule, if required*

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

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

[Annexure Schedule \_\_\_\_\_]

Annexure Schedule 1

Insert type of instrument

Easement

Dated

Page

1

of

1

Pages

Continue in additional Annexure Schedule, if required.

1. Additional Provisions Relating to Right of Way

1.1 In respect of the right of way easements created pursuant to this easement instrument only, the definition of "grantee" in clause 1 of Schedule 4 of the Land Transfer Regulations 2002 ("Regulations") is deleted and replaced with the following:

"grantee, in relation to an easement creating a right of way means Thames Coromandel District Council and (subject to the provisions of this easement instrument) all other persons to the extent permitted by Thames Coromandel District Council either generally or specifically (which may include members of the general public)."

2. General

2.1 Clause 10(2) of the Regulations is deleted and replaced with the following:

"(2) The grantor must not do and must not allow to be done on the servient land anything that interferes with or restricts the rights of the grantee or interferes with the easement facility. For the avoidance of doubt, where an easement facility is buried below the surface of the servient land, the grantor may continue to use the surface of the servient land (including, without limitation, placing or erecting any structure, or planting any plants, on or above the servient land directly above the easement facility) provided that such use does not materially interfere with or restrict the rights of the grantee or materially interfere with the easement facility. Furthermore, the grantor may in consultation with the grantee relocate any easement facility in order to facilitate the use or development of the servient land."

2.2 Notwithstanding any other provisions contained in this easement instrument or the Regulations, the Grantor or the Grantee may at any time (upon obtaining the agreement of the other party) reconfigure or relocate the right to drain water easement shown "A" on SO Plan 511663 in order to minimise the extent of the said easement and maximise useable land on the servient land. Upon such agreement, the parties agree, at the Grantees cost, to do all things necessary and sign all documents necessary (including, without limitation, the relevant easement surrender and replacement easement instrument) to give effect to the reconfiguration and/or relocation of the said right to drain water easement.

2.3 The rights and powers implied by section 297 of the Property Law Act 2007 and Schedule 5 to the Property Law Act 2007 do not apply to any of the easements created by this instrument.

*Initialling version for presentation to Ngāti Maru for ratification purposes.*

**DOCUMENTS**

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**5.33: PORT JACKSON SITE A RESTRICTIVE COVENANT**

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**5.33 Port Jackson site A restrictive covenant**

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## Covenant provisions

The provisions applying to the specified covenants are those set out in Annexure Schedule 1.



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

## Annexure Schedule 1

Insert type of instrument

Restrictive Land Covenant

Dated

Page

1

of

2

Pages

*Continue in additional Annexure Schedule, if required.*

### 1 Restrictive Covenant

- 1.1 The Grantor will not carry out or permit to be carried out any development on the Covenant Area (or any part of it) including, without limitation, the erection of any fence, building, structure or other improvement for any purpose with the exception of any development comprising low impact building(s) and related improvements carried out on the Covenant Area for cultural or tourism purposes provided that such development complies with the relevant territorial authority's then operative District Plan and all required consents are granted.
- 1.2 For the purposes of clause 1.1, the term "Covenant Area" means the areas [edged with a thick black line and shown "Port Jackson A" on the OTS plan attached (subject to survey)].

### 2 Construction of Covenant in Gross

- 2.1 This restrictive covenant in gross is enforceable by:
- (a) the Grantee;
  - (b) the Grantee's assigns; and
  - (c) persons claiming through the Grantee.
- 2.2 This restrictive covenant in gross binds:
- (a) the Grantor;
  - (b) the Grantor's successors in title; and
  - (c) persons claiming through the Grantor or the Grantor's successors in title.
- 2.3 For the purposes of this clause 2 the Grantor's successors in title include an occupier for the time being of the Servient Tenement.

### 3 Legal Effect of Covenant in Gross

- 3.1 This restrictive covenant in gross is binding in equity on:
- (a) every person who becomes the registered proprietor of the Servient Tenement:
    - (i) whether by acquisition from the Grantor or from any of the Grantor's successors in title;
    - (ii) whether or not for valuable consideration; and
    - (iii) whether by operation of law or in any other manner; and
  - (b) every person who is for the time being the occupier of the Servient Tenement.



## Annexure Schedule 1

Insert type of instrument

Restrictive Land Covenant

Dated

Page

2

of

2

Pages

*Continue in additional Annexure Schedule, if required.*

3.2 This restrictive covenant in gross ceases to be binding on a person referred to in this clause 3 when that person ceases to be the owner or occupier of the Servient Tenement, but without prejudice to that person's liability for breach of the covenant arising before that person ceased to be the owner or occupier of the Servient Land.

3.3 The benefit of this restrictive covenant in gross may be assigned or transferred.

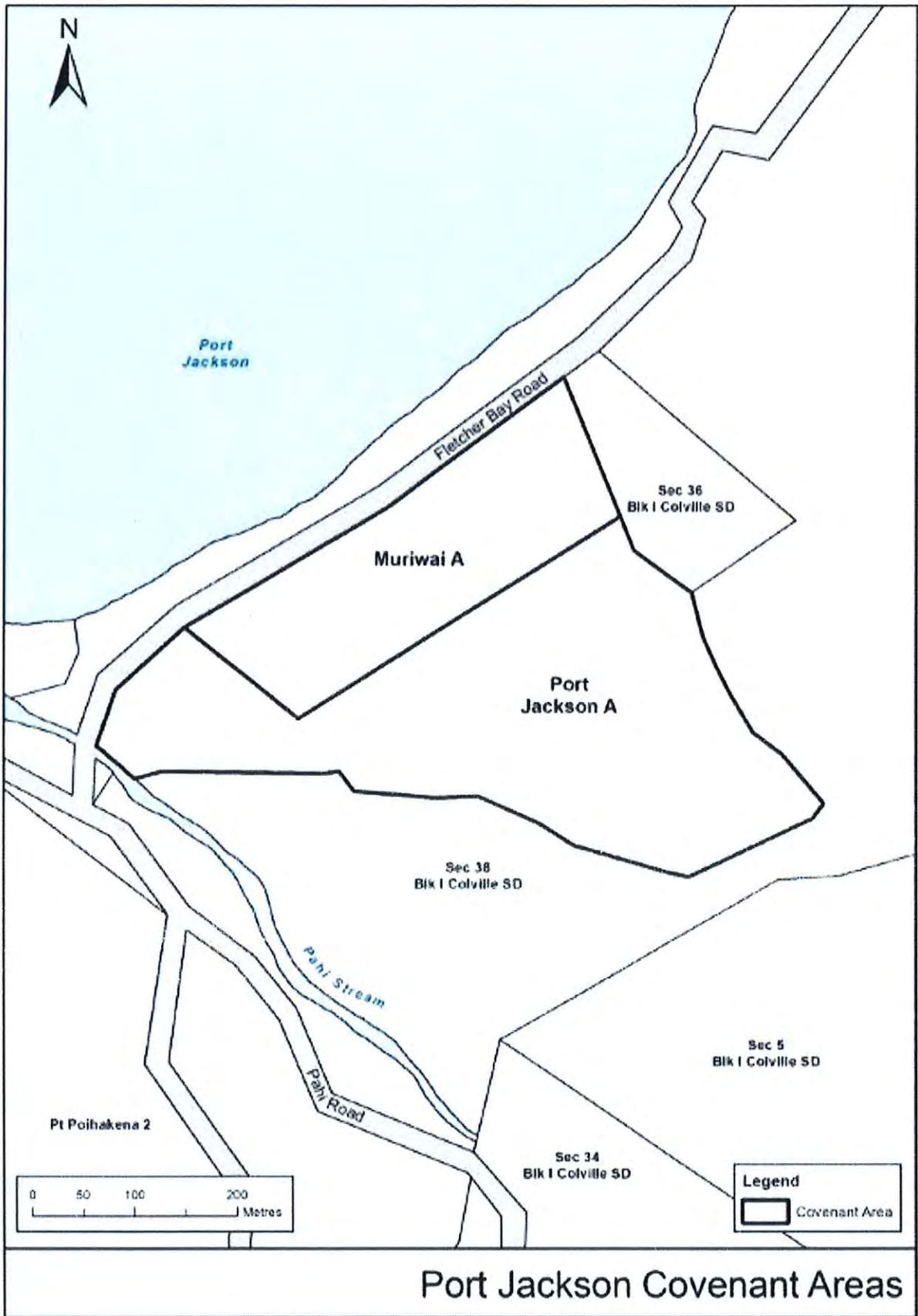
3.4 The provisions of this clause 3 override any other rule of law or equity, but are subject to clause 4.

#### 4 **Whether and to what extent, administrator bound by covenant in gross**

4.1 An administrator of the estate of a person who was bound, at the time of that person's death, by this restrictive covenant in gross is bound by this restrictive covenant:

- (a) only if assets of the estate are available in the administrator's hand for meeting the obligation under the restrictive covenant; and
- (b) if so, only to the extent that they are so available.





**Port Jackson Covenant Areas**



DOCUMENTS

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**5.34: PORT JACKSON SITE A RIGHT TO CONVEY WATER EASEMENT**

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**5.34 Port Jackson site A right to convey water easement**

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**SCHEDULE A**

Easement Instrument	Dated:	Page of      pages
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Purpose (nature and extent) of easement	Shown (plan reference)	Servient Tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right to convey water	[The area marked with the red pecked line on deed plan OTS-403-303      [(the easement area will be generally 4 metres wide) Subject to survey.]  The Easement Area	Section 6 SO 513040	In gross

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

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

Easement Instrument	Dated:	Page of pages
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## RIGHTS AND POWERS

### 1 Right to convey water

- 1.1 Easement facility in relation to this right to convey water means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution.
- 1.2 A right to convey water includes the right for the Grantee only to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the servient tenement to the dominant tenement.
- 1.3 The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- 1.4 The easement facility referred to in clause 1.1 is the easement facility laid or to be laid along the stipulated course or stipulated area.
- 1.5 The Grantor must not do and must not allow to be done anything on the Servient Tenement that may cause the purity or flow of water in the water supply system to be diminished or polluted.

### 2 General rights

- 2.1 All the easements referred to in this schedule include—
- (a) the right to use any easement facility already situated on the stipulated area or course for the purpose of the easement granted; and
- (b) if no suitable easement facility exists, the right to lay, install, and construct an easement facility reasonably required by the Grantee (including the right to excavate land for the purpose of that construction).
- 2.2 The Grantor must not do and must not allow to be done on the Servient Tenement anything that may interfere with or restrict the rights under this easement or of any other party or interfere with the efficient operation of the easement facility.
- 2.3 Except as provided in this easement the Grantee must not do and must not allow to be done on the Servient Tenement anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.
- 2.4 The Grantee may transfer or otherwise assign this easement.

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

Easement Instrument	Dated:	Page of	pages
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### 3 Repair, maintenance, and costs

- 3.1 If the Grantee has exclusive use of the easement facility, the Grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- 3.2 If the Grantee and the Grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, for the purposes set out in clause 3.1.
- 3.3 The parties responsible for maintenance under clause 3.1 or clause 3.2 or clause 3.5 (as the case may be) must meet any associated requirements of the relevant local authority.
- 3.4 The Grantor or Grantee must promptly carry out at that party's sole cost any repair and maintenance of the easement facility that is attributable solely to an act or omission by that party.
- 3.5 However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the Grantor or Grantee,—
- (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
- (b) the balance of those costs is payable in accordance with clause 3.2.
- 3.6 The costs of any electric power used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

### 4 Rights of entry

- 4.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
- 4.1.1 enter upon the Servient Tenement by a reasonable route and with all necessary tools, vehicles, and equipment; and
- 4.1.2 remain on the Servient Tenement for a reasonable time for the sole purpose of completing the necessary work; and
- 4.1.3 leave any vehicles or equipment on the Servient Tenement for a reasonable time if work is proceeding.

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

Easement Instrument	Dated:	Page of pages
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- 4.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Servient Tenement or to the Grantor.
- 4.3 The Grantee must ensure that all work is performed in a proper and workmanlike manner.
- 4.4 The Grantee must ensure that all work is completed promptly.
- 4.5 The Grantee must immediately make good any damage done to the Servient Tenement by restoring the surface of the land as nearly as possible to its former condition.
- 4.6 The Grantee must compensate the Grantor for all damages caused by the work to any buildings, erections, or fences on the Servient Tenement.

## 5 Application for Resource Consents

- 5.1 The Grantee may from time to time to apply for any resource consents and any other statutory consents required for the purposes of the exercise of any of the Grantee's rights under this easement in the same manner as if it were a registered proprietor of the Servient Tenement provided that it shall at the time of making the relevant application forward a copy to the Grantor and the Grantor shall provide, upon written request from the Grantee, at the reasonable cost of the Grantee, a reasonable degree of cooperation. Where any relevant application would not result in the Grantee obtaining any additional rights or powers over and above those held by it pursuant to its existing resource consents or other statutory consents or the provisions of this easement then the Grantor must not lodge any objection to such application.

## 6 Equipment Property of Grantee

- 6.1 The equipment constructed or installed by the Grantee on the Servient Tenement shall remain the property of the Grantee and may at any time be removed by it provided that any damage caused by such removal shall immediately be remedied by the Grantee at its cost. If within six months after the date when written notice of such damage is provided to the Grantee it fails to remedy such damage, the Grantor may, after first having given the Grantee at least one month's written notice of its intention to do so, remedy all or any of the damage and recover costs for this from the Grantee.

## 5 Default

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

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7

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

Easement Instrument	Dated:	Page of pages
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working days from service of the notice of default, the other party may meet the obligation:

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

## 6 Disputes

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

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

## 7 Other conditions

- 7.1 DOC will have the right of access to the grantor's land to undertake work on the relevant part of the grantor's land if something on that land poses an immediate health & safety risk to users of the relevant part of the easement area.

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



Easement Instrument	Dated:	Page of pages
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- 7.2 Where there is matter beyond the control of either grantee or grantor that necessitates the reinstatement of the track outside of the easement area the grantor cannot unreasonably withhold consent to a new location of the easement area (if it is within 10 metres of the original easement area - i.e. 5m on either side from the centre of the easement area).

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


DOCUMENTS

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**5.35: PORT JACKSON SITE B [RIGHT OF WAY AND RIGHT TO PARK] EASEMENT**

---

**5.35 Port Jackson site B [right of way and right to park] easement**

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A handwritten signature or set of initials in black ink, located in the bottom left corner of the page. The signature is stylized and appears to consist of a large, looped initial followed by a smaller, less distinct mark.

The terms of the easement document are largely agreed. Only exceptional clauses will be negotiated and agreed between Chair of the Hauraki Collective, Director of the Office of Treaty Settlements and Deputy Director-General Strategy and People of the Department of Conservation prior to ratification of the Ngāti Maru deed of settlement.

EASEMENT INSTRUMENT  
to grant easement

Sections 90A and 90F, Land Transfer Act 1952

Land Registration District

South Auckland

Grantor

Surname must be underlined

[the trustees of the Ngāti Maru Settlement Trust]

Grantee

Surname must be underlined

Her Majesty the Queen in Right of New Zealand acting by and through the Minister of Conservation

Grant of easement

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

Dated this

day of

20

ATTESTATION:

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

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

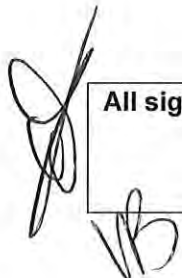


**SCHEDULE A**

Easement Instrument	Dated:	Page of      pages
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Purpose (nature and extent) of easement	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant Tenement (identifier CT or in gross)
Right of Way and Parking Rights	The area marked [ ] on SO 513040 and generally 4 metres wide Subject to survey.  The Easement Area	Section 1 on SO 513040 Subject to survey.  The Grantor's Land	In gross

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



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

Easement Instrument	Dated:	Page of pages
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## RIGHTS AND POWERS

### 1 Rights of way and parking rights

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

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

Easement Instrument	Dated:	Page of pages
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1.6 No firearm or other weapon may be carried or discharged on the Easement Area without the consent of the Grantor.

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

## 2 General rights

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

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

2.3 The Grantee may transfer or otherwise assign this easement but only to a Crown body, local authority or other public body.

## 3 Repair, maintenance, and costs

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

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

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

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

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

## 4 Rights of entry

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

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

Easement Instrument	Dated:	Page of pages
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- 4.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles, and equipment; and
- 4.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and
- 4.1.3 leave any vehicles or equipment on the Grantor's Land for a reasonable time if work is proceeding.

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

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

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

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

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

## 5 Default

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

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

5.1.2 if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may —

(a) meet the obligation; and

(b) for that purpose, enter the Grantor's Land:

5.1.3 the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:

the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

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



Easement Instrument	Dated:	Page of pages
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## 6 Disputes

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

6.1.1 the party initiating the dispute must provide full written particulars of the dispute to the other party; and

6.1.2 the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and

6.1.3 if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties) —

(a) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and

(b) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

## 7 Other conditions

7.1 DOC will have the right of access to the grantor's land to undertake work on the relevant part of the grantor's land if something on that land poses an immediate health & safety risk to users of the relevant part of the easement area.

7.2 Where there is matter beyond the control of either grantee or grantor that necessitates the reinstatement of the track outside of the easement area the grantor cannot unreasonably withhold consent to a new location of the easement area (if it is within 10 metres of the original easement area - i.e. 5m on either side from the centre of the easement area).

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

DOCUMENTS

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**6 LEASES FOR LEASEBACK PROPERTIES**

A handwritten signature or scribble in the bottom left corner of the page, consisting of several overlapping, fluid lines.

**DOCUMENTS**

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**6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)**

---

**6.1 Lease for Danby Field School site (land only)**

---



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

MINISTRY OF EDUCATION  
NGĀTI MARU TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ] [ ] [ ]

Lessor

[The trustees of the Ngāti Maru Rūnanga Trust] *[Names to be inserted]*

Lessee

**HER MAJESTY THE QUEEN** for education purposes

Estate or Interest

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

Fee simple

Lease Memorandum Number (if applicable)

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

Attestation

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

*Insert instrument type*

Lease Instrument

**BACKGROUND**

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

**SCHEDULE A**

**ITEM 1 THE LAND**

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

**ITEM 2 START DATE**

[*insert start date*].

**ITEM 3 ANNUAL RENT**

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

**ITEM 4 TERM OF LEASE**

21 Years.

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

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

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

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

[ ]

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

ITEM 10 CLAUSE 16.5 NOTICE

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

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

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

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
- (ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
- (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; and
- (iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F continued

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

ITEM 11 CLAUSE 16.6 NOTICE

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

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

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

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

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

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

Handwritten signatures and initials in the bottom left corner.

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

Insert instrument type

Lease Instrument

SCHEDULE B

1 Definitions

1.1 The term "Lessor" includes and binds:

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

1.2 The term "Lessee" includes and binds:

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

1.3 "Business Day" means a day that is not:

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

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

1.5 "Crown Body" means:

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

**Annexure Schedule**  
*Insert instrument type*

Page [ ] of [ ] Pages

Lease Instrument

- (d) a company or body that is wholly owned or controlled by one or more of the following:
- (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise; and
- (e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).
- 1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.
- 1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.
- 1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.
- 1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.
- 1.11 "Maintenance" includes repair.
- 1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.
- 1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.
- 2 Payment of Annual Rent**
- 2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.
- 2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.
- 2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

**Annexure Schedule**  
*Insert instrument type*

Page [ ] of [ ] Pages

Lease Instrument

**3 Rent Review**

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

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

4 **Payment of Lessee Outgoings**

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

5 **Valuation Roll**

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

6 **Utility Charges**

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

7 **Goods and Services Tax**

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

8 **Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 **Permitted Use of Land**

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

10 **Designation**

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

11 **Compliance with Law**

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

12 **Hazards**

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

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

13 **Damage or Destruction**

13.1 **Total Destruction**

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

13.2 **Partial Destruction**

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

**13.3 Natural Disaster or Civil Defence Emergency**

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
  - (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
  - (i) the relevant clause has applied for a period of 6 months or more; or

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

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- (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

- 13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.
- 13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:
- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

**14 Contamination**

- 14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.
- 14.2 Under no circumstances will the Lessee be liable for any Contamination on or about the Land which is caused by the acts or omissions of any other party, including the owner or occupier of any adjoining land.
- 14.3 In this clause "Contamination" means any change to the physical, biological, or chemical condition of the Land by a Contaminant and "Contaminant" has the meaning set out in section 2 of the Resource Management Act 1991.

**15 Easements**

- 15.1 The Lessee may without the Lessor's consent conclude (on terms no more favourable than this Lease) all easements or other rights and interests over or for the benefit of the Land which are necessary for, or incidental to, either the Permitted Use or to any permitted alterations or additions to the Lessee's Improvements and the Lessor agrees that it will execute any documentation reasonably required to give legal effect to those rights.
- 15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.
- 15.3 The Lessor must not cancel, surrender or modify any easements or other similar rights or interests (whether registered or not) which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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**16 Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends.

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

**17 Rubbish Removal**

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

**18 Signs**

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

**19 Insurance**

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

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

**20 Fencing**

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

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

**21 Quiet Enjoyment**

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

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

**22 Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

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

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

**24 Occupancy by School Board of Trustees**

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

24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

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

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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25 **Lessee Break Option**

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

26 **Breach**

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

27 **Notice of Breach**

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

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

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

28 **Renewal**

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

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

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

**29 Right of First Refusal for Lessor's Interest**

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

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

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

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

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

**[29A Single point of contact**

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

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

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



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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

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**30 Exclusion of Implied Provisions**

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

(a) Clause 11 – Power to inspect premises.

**31 Entire Agreement**

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

**32 Disputes**

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

**33 Service of Notices**

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

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

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

*[insert contact details]*

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

**34 Registration of Lease**

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR DANBY FIELD SCHOOL SITE (LAND ONLY)

Form F *continued*

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Lease Instrument

35 **Costs**

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

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

*Initialed version for presentation to Ngāti Maru for ratification purposes.*

**DOCUMENTS**

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**6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TE WHAREKURA O MANAIA SITE (LAND ONLY)**

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**6.2 Lease for Te Wharekura o Manaia site (land only)**

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DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TE WHAREKURA O MANAIA SITE  
(LAND ONLY)

MINISTRY OF EDUCATION  
NGĀTI MARU TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)

BARCODE

Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ]	[ ]	[ ]
-----	-----	-----

Lessor

[the trustees of the Ngāti Maru Rūnanga Trust] *[names to be inserted]*  
[the trustees of the Te Tāwharau o Ngāti Pūkenga Trust] *[names to be inserted]*  
[the trustees of the Ngaati Whanaunga Ruunanga Trust] *[names to be inserted]*  
[Lessor subject to provisions of deed of settlement]

Lessee

HER MAJESTY THE QUEEN for education purposes

Estate or Interest

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

Fee simple

Lease Memorandum Number *(if applicable)*

Not applicable

Term

See Annexure Schedule

Rental

See Annexure Schedule

Lease and Terms of Lease

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

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

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

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(LAND ONLY)

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Attestation

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



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



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BACKGROUND

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

SCHEDULE A

ITEM 1 THE LAND

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

ITEM 2 START DATE

[*insert start date*].

ITEM 3 ANNUAL RENT

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

ITEM 4 TERM OF LEASE

21 Years.

ITEM 5 LESSEE OUTGOINGS

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).

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



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

5.4 Maintenance of car parking areas.

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

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

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

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

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

[ ]

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

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

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ITEM 10 CLAUSE 16.5 NOTICE

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

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

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

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule to the Lease attached to this Notice which the Lender acknowledges will be for its benefit:

- (i) It has notice of the provisions of clause 16.5 of the Lease; and
- (ii) It agrees that any Lessee's Improvements (as defined in the Lease) placed on the Land by the Lessee at any time before or during the Lease shall remain the Lessee's property at all times; and
- (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; and
- (iv) It agrees that this acknowledgement is irrevocable.

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

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

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ITEM 11 CLAUSE 16.6 NOTICE

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

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

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

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

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

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

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

Handwritten signatures and initials in the bottom left corner.

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**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

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

1.2 The term "Lessee" includes and binds:

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

1.3 "Business Day" means a day that is not:

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

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

1.5 "Crown Body" means:

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

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

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

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

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3 Rent Review

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

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6.5% of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.

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

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

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

4 **Payment of Lessee Outgoings**

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

5 **Valuation Roll**

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

6 **Utility Charges**

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

7 **Goods and Services Tax**

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

8 **Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft

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facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 **Permitted Use of Land**

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

10 **Designation**

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

11 **Compliance with Law**

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

12 **Hazards**

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

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

13 **Damage or Destruction**

13.1 **Total Destruction**

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

13.2 **Partial Destruction**

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate

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

13.3 Natural Disaster or Civil Defence Emergency

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
  - (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
  - (i) the relevant clause has applied for a period of 6 months or more; or

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- (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or
- (b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

14 **Contamination**

14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

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

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

15 **Easements**

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

15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

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

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

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16 Lessee's Improvements

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends

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

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

17 **Rubbish Removal**

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

18 **Signs**

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

19 **Insurance**

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

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

20 **Fencing**

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

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

21 **Quiet Enjoyment**

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

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

22 **Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

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

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

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

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

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

**24 Occupancy by School Board of Trustees**

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

24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

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

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25 **Lessee Break Option**

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

26 **Breach**

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

27 **Notice of Breach**

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

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

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

28 **Renewal**

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

Annexure Schedule  
Insert instrument type

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Lease Instrument

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

**29 Right of First Refusal for Lessor's Interest**

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

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

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

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

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

**[29A Single point of contact**

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

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

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30 **Exclusion of Implied Provisions**

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

(a) Clause 11 – Power to inspect premises.

31 **Entire Agreement**

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

32 **Disputes**

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

33 **Service of Notices**

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

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

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

*[insert contact details]*

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

34 **Registration of Lease**

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TE WHAREKURA O MANAIA SITE (LAND ONLY)

Form F *continued*

**Annexure Schedule**

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Lease Instrument

35 **Costs**

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

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

**DOCUMENTS**

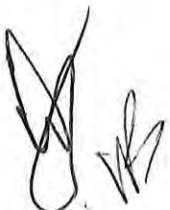
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**6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)**

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**6.3 Lease for Tairua School site (land only)**

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DOCUMENTS

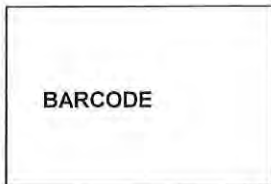
6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

MINISTRY OF EDUCATION  
NGĀTI MARU TREATY SETTLEMENT LEASE

Form F

LEASE INSTRUMENT

(Section 115 Land Transfer Act 1952)



Land registration district

[ ]

Affected instrument Identifier  
and type (if applicable)

All/part

Area/Description of part or stratum

[ ]	[ ]	[ ]
-----	-----	-----

Lessor

[the trustees of the Ngāti Maru Rūnanga Trust] *[names to be inserted]*  
[the trustees of the Hei o Wharekaho Settlement Trust] *[names to be inserted]*  
[Lessor subject to provisions of deed of settlement]

Lessee

**HER MAJESTY THE QUEEN** for education purposes

Estate or Interest

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

Fee simple

Lease Memorandum Number *(if applicable)*

Not applicable

Term

See Annexure Schedule

Rental

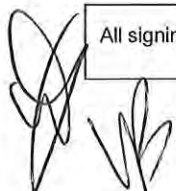
See Annexure Schedule

Lease and Terms of Lease

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

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

**Annexure Schedule**

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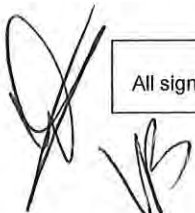
*Insert instrument type*

Lease Instrument

**Attestation**

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

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Lease Instrument

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

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



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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

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Lease Instrument

**BACKGROUND**

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

**SCHEDULE A**

**ITEM 1 THE LAND**

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

**ITEM 2 START DATE**

[*insert start date*].

**ITEM 3 ANNUAL RENT**

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

**ITEM 4 TERM OF LEASE**

21 Years.

**ITEM 5 LESSEE OUTGOINGS**

- 5.1 Rates and levies payable to any local or territorial authority, excluding any taxes levied against the Lessor in respect of its interest in the Land.
- 5.2 All charges relating to the maintenance of any Lessee Improvements (whether of a structural nature or not).

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



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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

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- 5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.
- 5.4 Maintenance of car parking areas.
- 5.5 All costs associated with the maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Use referred to in clause 9.

**ITEM 7 RIGHT OF RENEWAL**

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

**ITEM 8 RENT REVIEW DATES**

The 7<sup>th</sup> anniversary of the Start Date and each subsequent 7<sup>th</sup> anniversary after that date.

**ITEM 9 LESSEE'S IMPROVEMENTS**

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

[ ]

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

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ITEM 11 CLAUSE 16.6 NOTICE

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

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

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

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

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

SCHEDULE

[ ]

[Form of execution by Lender]

[Date]

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

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**SCHEDULE B**

**1 Definitions**

1.1 The term "Lessor" includes and binds:

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

1.2 The term "Lessee" includes and binds:

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

1.3 "Business Day" means a day that is not:

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

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

1.5 "Crown Body" means:

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

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

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(d) a company or body that is wholly owned or controlled by one or more of the following:

- (i) the Crown;
- (ii) a Crown entity;
- (iii) a State enterprise; and

(e) a subsidiary of, or related company to, a company or body referred to in clause 1.5(d).

1.6 "Department" has the meaning given in section 2 of the Public Finance Act 1989.

1.7 "Education Purposes" means any or all lawful activities necessary for, or reasonably related to, the provision of education.

1.8 "Legislation" means any applicable statute (including regulations, orders, rules or notices made under that statute and all amendments to or replacements of that statute), and all bylaws, codes, standards, requisitions or notices made or issued by any lawful authority.

1.9 "Lessee's Improvements" means all improvements on the Land of any kind including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works (including stormwater and sewerage drains) and other property of any kind built or placed on the Land by the Lessee or any agent or sub-lessee or licensee of the Lessee whether before or after the Start Date of this Lease and includes those listed in Item 9 of Schedule A.

1.10 "Lessee's property" includes property owned wholly or partly by a sublessee or licensee of the Lessee.

1.11 "Maintenance" includes repair.

1.12 "Public Work" has the meaning given in section 2 of the Public Works Act 1981.

1.13 "Sublet" and "Sublease" include the granting of a licence to occupy the Land or part of it.

## 2 Payment of Annual Rent

2.1 The Lessee will pay the Annual Rent as set out in Item 3 of Schedule A.

2.2 The initial Annual Rent payable at the Start Date will be set at 6% of the Transfer Value of the Land.

2.3 The Transfer Value of the Land is equivalent to the market value of the Land exclusive of improvements less 20%.

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

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3 **Rent Review**

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

- 3.1 The proposed Annual Rent will be calculated on the basis of an Annual Rent of 6% of the lesser of:
- (a) the Current Market Value of the Land as a School Site, as defined in clause 3.2; or
  - (b) the Nominal Value being:
    - (i) during the initial Term: a value based on 4% growth per annum of the Transfer Value of the Land; or
    - (ii) for subsequent Terms: a value based on 4% growth per annum of the reset Nominal Value as calculated in clause 3.4.
- 3.2 The Current Market Value of the Land as a School Site referred to in clause 3.1(a) above is equivalent to the market value of the Land exclusive of improvements based on highest and best use less 20%.
- 3.3 In any rent review under this Lease the highest and best use on which the Annual Rent is based is to be calculated on the zoning for the Land in force at the beginning of that Term.
- 3.4 A new value for the Nominal Value will be reset to the midpoint between the two values set out in 3.1(a) and whichever of (b)(i) or (b)(ii) is applicable:
- (a) at the start date of every new Term; and
  - (b) at any Rent Review Date where the Nominal Value has been consistently either higher than the market value for the three consecutive Rent Review Dates or Lease renewal dates, or lower than the market value for the three consecutive Rent Review Dates or Lease renewal dates.
- 3.5 The rent review process will be as follows:
- (a) At any time during the period which starts three months before any Rent Review Date and ends one year after any Rent Review Date (time being of the essence) either party may give written notice to the other specifying a new Annual Rent, calculated in accordance with clause 3.1, which the notifying party considers should be charged from that Rent Review Date ("Rent Review Notice"). The Rent Review Notice must be supported by a registered valuer's certificate.

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

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6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

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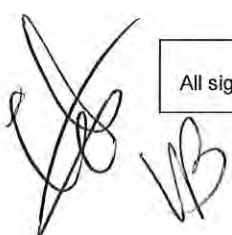
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- (b) If the notified party accepts the notifying party's assessment in writing the Annual Rent will be the rent specified in the Rent Review Notice which will be payable in accordance with step (l) below.
- (c) If the notified party does not agree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

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



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

**4 Payment of Lessee Outgoings**

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

**5 Valuation Roll**

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

**6 Utility Charges**

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

**7 Goods and Services Tax**

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

**8 Interest**

If the Lessee fails to pay within 10 Business Days any amount payable to the Lessor under this Lease (including rent) the Lessor may charge the Lessee interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for an overdraft

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



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facility plus a margin of 4% per annum accruing on a daily basis from the due date for payment until the Lessee has paid the overdue amount. The Lessor is entitled to recover this interest as if it were rent in arrears.

9 **Permitted Use of Land**

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

10 **Designation**

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

11 **Compliance with Law**

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

12 **Hazards**

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

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

13 **Damage or Destruction**

13.1 **Total Destruction**

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

13.2 **Partial Destruction**

(a) If the Land, or any portion of the Land, shall be damaged or destroyed but not so to render the Land or the Lessee's Improvements unfit for the Current Permitted Use then the Lessor shall, with all reasonable speed, repair such damage and reinstate

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule  
Insert instrument type

Page [ ] of [ ] Pages

Lease Instrument

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

13.3 Natural Disaster or Civil Defence Emergency

- (a) If there is a natural disaster or civil emergency and the Lessee is unable to gain access to all parts of the Land or to fully use the Land for its Current Permitted Use (for example, because the Land is situated within a prohibited or restricted access cordon or access to or occupation of the Land is not feasible as a result of the suspension or unavailability of services such as energy, water or sewerage) then the whole (or a fair proportion, having regard to the extent to which it can be put to its Current Permitted Use) of the Annual Rent and Lessee Outgoings shall cease to be payable for the period starting on the date when the Lessee became unable to gain access to the Land or to lawfully conduct the Current Permitted Use from the Land (as the case may be) and ending on the later date when:
  - (i) such inability ceases; or
  - (ii) (if clause 13.2 applies) the date when the repair and reinstatement of the Land have been completed.
- (b) Where either clause 13.2 or clause 13.3(a) applies, the Lessee may, at its sole option, terminate this Lease if:
  - (i) the relevant clause has applied for a period of 6 months or more; or

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

**Annexure Schedule**  
*Insert instrument type*

Page [ ] of [ ] Pages

Lease Instrument

- (ii) the Lessee can at any time establish with reasonable certainty that the relevant clause will apply for a period of 6 months or more.

13.4 Any termination pursuant to this clause 13 shall be without prejudice to the rights of either party against the other.

13.5 Notwithstanding anything to the contrary, no payment of Annual Rent or Lessee Outgoings by the Lessee at any time, nor any agreement by the Lessee as to an abatement of Annual Rent and/or Lessee Outgoings shall prejudice the Lessee's rights under this clause 13 to:

- (a) assert that this lease has terminated; or  
(b) claim an abatement or refund of Annual Rent and/or Lessee Outgoings.

**14 Contamination**

14.1 When this Lease ends the Lessee agrees to remedy any Contamination caused by the use of the Land by the Lessee or its agents during the Term of the Lease by restoring the Land to a standard reasonably fit for human habitation.

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

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

**15 Easements**

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

15.2 The Lessee agrees to take all steps necessary to remove at the Lessor's request at the end of the Lease any easement or other burden on the title which may have been granted after the Start Date of the Lease.

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule  
*Insert instrument type*

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Lease Instrument

16 **Lessee's Improvements**

- 16.1 The parties acknowledge that despite any rule of law or equity to the contrary, the intention of the parties as recorded in the Deed of Settlement is that ownership of improvements whether or not fixed to the land will remain unaffected by the transfer of the Land, so that throughout the Term of this Lease all Lessee's Improvements will remain the Lessee's property.
- 16.2 The Lessee or its agent or sub-lessee or licensee may build or alter Lessee's Improvements without the Lessor's consent where necessary for, or incidental to, the Permitted Use. For the avoidance of doubt, this clause extends to Lessee's Improvements owned (wholly or partly) or occupied by third parties provided that all necessary consents are obtained.
- 16.3 The Lessee acknowledges that the Lessor has no maintenance obligations for any Lessee's Improvements.
- 16.4 If any Lessee's Improvements are destroyed or damaged, the Lessee may decide whether or not to reinstate without consulting the Lessor and any insurance proceeds will be the Lessee's property.
- 16.5 If the Land is subject to any mortgage or other charge at the Start Date, the Lessor will give the Lessee written acknowledgment of all existing mortgagees or chargeholders in the form prescribed in Schedule A Item 10 and executed by the mortgagees or chargeholders. The Lessor acknowledges that the Lessee is not required to execute this Lease until the provisions of this subclause have been fully satisfied.
- 16.6 If the Lessor proposes to grant any mortgage or charge after the Start Date it must first have required any proposed mortgagee or chargeholder to execute the written acknowledgment prescribed in Schedule A Item 11. The Lessor agrees not to grant any mortgage or charge until the provisions of this clause have been satisfied and to deliver executed originals of those acknowledgments to the Lessee within three Business Days from the date of their receipt by the Lessor.
- 16.7 The Lessee may demolish or remove any Lessee's Improvements at any time during the Lease Term without the consent of the Lessor provided that the Lessee reinstates the Land to a tidy and safe condition which is free from Contamination in accordance with clause 14.
- 16.8 When this Lease ends the Lessee may remove any Lessee's Improvements from the Land without the Lessor's consent.
- 16.9 The Lessee agrees that it has no claim of any kind against the Lessor in respect of any Lessee's Improvements or other Lessee's property left on the Land after this Lease ends

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

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Lease Instrument

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

17 **Rubbish Removal**

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

18 **Signs**

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

19 **Insurance**

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

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

20 **Fencing**

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

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

21 **Quiet Enjoyment**

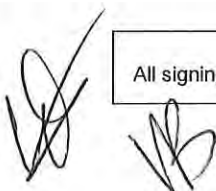
21.1 If the Lessee pays the Annual Rent and complies with all its obligations under this Lease, it may quietly enjoy the Land during the Lease Term without any interruption by the Lessor or any person claiming by, through or under the Lessor.

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

22 **Assignment**

22.1 Provided that the Land continues to be used for Education Purposes, the Lessee has the right to assign its interest under the Lease without the Lessor's consent to:

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

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Lease Instrument

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

22.2 If the Lessee wishes to assign the Lease to any party for any Permitted Use which is not an Education Purpose it must first seek the Lessor's consent (which will not be unreasonably withheld).

22.3 Without limiting clause 22.1, the Lessor agrees that the Lessee has the right to nominate any Department to exercise for Education Purposes the rights and obligations in respect of the Lessee's interest under this Lease and that this will not be an assignment for the purposes of clause 22 or a subletting for the purposes of clause 23.

22.4 If following assignment the Land will no longer be used for Education Purposes the Lessor and new Lessee may renegotiate in good faith the provision setting the value of the land for rent review purposes, being clause 3.2 of this Lease.

**23 Subletting**

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

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

**24 Occupancy by School Board of Trustees**

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

24.2 The Lessor agrees that the covenant for quiet enjoyment contained in clause 21 extends to any board of trustees occupying the Land.

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

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Lease Instrument

25 **Lessee Break Option**

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

26 **Breach**

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

27 **Notice of Breach**

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

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

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

28 **Renewal**

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule  
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Lease Instrument

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

**29 Right of First Refusal for Lessor's Interest**

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

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

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

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

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

**[29A Single point of contact**

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

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

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



DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule  
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Lease Instrument

30 **Exclusion of Implied Provisions**

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

(a) Clause 11 – Power to inspect premises.

31 **Entire Agreement**

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

32 **Disputes**

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

33 **Service of Notices**

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

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

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

*[insert contact details]*

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

34 **Registration of Lease**

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

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

DOCUMENTS

6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR TAIRUA SCHOOL SITE (LAND ONLY)

Form F *continued*

Annexure Schedule

Page [ ] of [ ] Pages

*Insert instrument type*

Lease Instrument

35 **Costs**

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

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

Handwritten signatures and initials in the bottom left corner of the page.

*Initialling version for presentation to Ngāti Maru for ratification purposes.*

**DOCUMENTS**

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**6: LEASES FOR LEASEBACK PROPERTIES: LEASE FOR THAMES DISTRICT COURT (LAND ONLY)**

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**6.4 Lease for Thames District Court (land only)**

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**MINISTRY OF JUSTICE**

**LESSOR:**

**NGĀTI MARU RŪNANGA TRUST**

Correct for the purposes of the Land  
Transfer Act 1952

.....  
SOLICITOR FOR THE LESSEE

**LESSEE:**

**HER MAJESTY THE QUEEN**

acting by and through the Chief  
Executive of the Ministry of Justice

Particulars entered in  
the  
Register as shown  
herein  
on the date and at the  
time endorsed below

---

**MEMORANDUM OF LEASE**

---

---

**THE CHIEF EXECUTIVE  
MINISTRY OF JUSTICE  
WELLINGTON**





**SIGNED for and on behalf of HER** )  
**MAJESTY THE QUEEN as Lessee** )  
**by Fraser Gibbs** )  
(acting by and through the Chief )  
Executive of the Ministry of Justice) )

Handwritten signature of Fraser Gibbs, consisting of a stylized 'F' and 'G' followed by a vertical line and another stylized 'F'.

## SCHEDULE A

### ITEM 1 THE LAND

All that parcel of land being the Land previously specified.

### ITEM 2 THE COMMENCEMENT DATE

The commencement date of this Lease shall be the first [ ] day of [ ] 20[\_.]

### ITEM 3 ANNUAL RENTAL

[(Value in words) (\$0.00)]

per annum plus GST payable annually in advance on the first day of each year during the continuance of this lease with a first payment due on the [ ] day of

[ ] 20 [\_.]

### ITEM 4 TERM OF LEASE

#### 4.1 Initial term

[years] from the Commencement Date to determination on the [ ] day of [ ] 20 [ .]

#### 4.2 Subsequent terms

Perpetual rights of renewal of [years] each from the [ ] day of [ ] 20 [ ] and each [ ] anniversary after that date.

### ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes levied against the Lessor in respect of its interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.



**ITEM 6 PERMITTED USE**

- 6.1 For any Justice related purposes including (but not limited to) a courthouse and such other reasonable ancillary uses deemed necessary from time to time by the Lessee for the operation of a courthouse on the Land, or any other use which conforms with the local Code of Ordinances or District Plan applying to the premises.
- 6.2 Any secondary use for government works under the Public Works Act 1981 if a part of the land but not a significant part being more than half of the Land, is not required for Courthouse purposes. or
- 6.3 Any use of the Land or any part of the Land consented to by the Lessee as sub Lessor under clause 4.01 of this Lease where both the sub lease and the use of the Land comply with the requirements of clause 4.01.

**ITEM 7 RIGHTS OF RENEWAL**

Renewable as provided in Item 4.2 above.

**ITEM 8 RENT REVIEW DATES**

[ ] yearly from the Commencement Date of this Lease.

**ITEM 9 LESSOR'S PROPERTY**

Nil.

**ITEM 10 LESSEE'S IMPROVEMENTS**

All buildings and other improvements together with foundations, sub-soil works and services now or hereafter constructed on the Land by the Lessee or any agent or permitted occupier of the Lessee including, without limitation, the court house building, paving areas and courtyards and asphalted carpark and all fixtures, fittings and chattels therein contained.

**ITEM 11 CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE**

To: [The Lessor]  
(hereafter called "**the Lessor**")

And to: [The Lessee]  
(hereafter called "**the Lessee**")





From: [Mortgagee / Chargeholder]  
(hereafter called "**the Lender**")

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, the Lender acknowledges that:

- (i) It has notice of the provisions of clause 3.04(b) and (c) of the said Lease; and
- (ii) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease (hereafter collectively called "**the relevant period**");
- (iii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective 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.

.....

(LENDER EXECUTION)

/ / 20

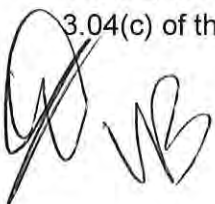
**ITEM 12 CLAUSE 3.04(c) CHARGEHOLDER'S NOTICE**

To: [The Lessor]  
(hereafter called "**the Lessor**")

And to: [The Lessee]  
(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder]  
(hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of clause 3.04(c) of the Lease of the Land and that in particular it agrees that notwithstanding any



provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (ii) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease.

**ITEM 13 ADDRESS FOR SERVICE**

Lessor: **NGĀTI MARU RŪNANGA TRUST**

[City/Town]

Attn: General Manager

Facsimile:

Lessee: Chief Executive  
Ministry of Justice  
Level 3  
Justice Centre  
Aitken Street  
WELLINGTON (SX 10088, WELLINGTON)

Facsimile: (04) 918 8820

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## SCHEDULE B

### PART I - PRELIMINARY

#### 1.00 DEFINITIONS AND INTERPRETATION

##### 1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
- (i) the persons executing this lease as Lessor; and
  - (ii) any Lessor for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.

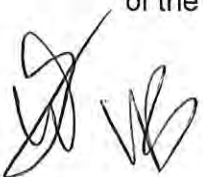
- (b) The expression "**the Lessee**" shall include and bind:
- (i) the person executing this lease as Lessee;
  - (ii) all the Lessees for the time being under it; and
  - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall include the Lessee's agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

**1.02 "Goods and Services Tax" or "GST"** means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.

**1.03 "Government Work"** means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.

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- 1.04** “**Lease**” means, unless the context otherwise requires, this lease and any further or renewal term thereof.
- 1.05** “**Lessee’s Improvements**” shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude “Lessor’s Property”.
- 1.06** “**Lessee’s Outgoings**” means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.07** “**Lessor’s Property**” means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this Lease.
- 1.08** “**Value of the Land**” means the market value of the freehold interest in the Land as at the relevant rent review date, as vacant land in an unsubdivided state assessed in accordance with its then current underlying zoning or a courthouse, whichever is the greater, LESS a discount of twenty percent (20%) to reflect the terms and conditions of this Lease while the Ministry of Justice remains the Lessee.
- 1.09** “**The Land**”, “**The Commencement Date**”, “**Annual Rental**”, “**Term of the Lease**” and “**Permitted Use**” shall have the meanings ascribed to them in Schedule A.
- 1.10** The term “**to sublet**” shall include the granting of a licence to occupy the Land or part thereof and “subletting” and “sublease” shall be construed accordingly.
- 1.11** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.12** A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.13** Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.



## **PART II - LESSEE'S COVENANTS**

### **2.00 LESSEE'S COVENANTS**

#### **2.01 ANNUAL RENT**

- (a) Throughout the term of this Lease, including following the exercise of any rights of renewal by the Lessee, the Lessee shall pay rental as assessed in accordance with Schedule C for the Land which shall be adjusted on each rent review date and shall be assessed in accordance with clause 4.05 and Schedule C noting that for so long as the Lessee is Her Majesty the Queen acting by and through the Chief Executive of the Ministry of Justice and for so long as the Lessee is using the land for the purpose of a Courthouse, the rent payable shall reflect the terms of this Lease and the use to which the Lessee is putting the Land, as a Courthouse.
- (b) The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 3 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.

#### **2.02 PAYMENT OF LESSEE OUTGOINGS**

- (a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

#### **2.03 USE OF LAND**

The Lessee shall not, without the prior written consent of the Lessor first had and obtained, use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A which consent may be given or withheld at the absolute discretion in all things of the Lessor. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor.

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## **2.04 COMPLIANCE WITH LAW**

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

## **2.05 AVOIDANCE OF DANGER**

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) Promptly remedy any danger or hazard that may arise on the Land;
- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

## **2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS**

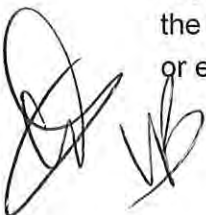
The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

## **2.07 NO LESSOR MAINTENANCE**

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

## **2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS**

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

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## 2.09 SIGNAGE

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

## 2.10 INSURANCE

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at any rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of the original term of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of this clause shall be of no application whilst the Lessee is **HER MAJESTY THE QUEEN.**

## 2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS

The Lessee acknowledges:

- (a) That the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.



## **2.12 GST**

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

## **2.13 LESSEE'S ACKNOWLEDGEMENT**

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

## **PART III**

### **3.00 LESSOR'S COVENANTS**

#### **3.01 QUIET ENJOYMENT**

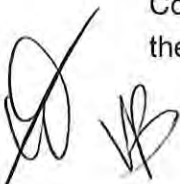
Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

#### **3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS**

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land and such consent shall not be unreasonably or arbitrarily withheld.

#### **3.03 LESSOR'S PROPERTY**

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's

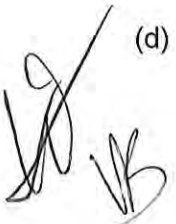




Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

### **3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS**

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
- (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
  - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
  - (iii) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.
- (b) Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;
- (d) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior

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written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

### 3.05 LESSOR CONSENT TO GROUND WORKS

- (a) Notwithstanding anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:
- (i) Make any excavation of the Land; or
  - (ii) Conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
  - (iii) Remove any boundary-fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference;
  - (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision

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shall be final and binding on the parties. The engineer's costs shall be met in equal shares by the parties unless the engineer otherwise so determines.

### **3.06 DESIGNATION**

The Lessor covenants that it consents to the Lessee maintaining a designation for courthouse purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.

### **3.07 PROVISION OF CERTAIN NOTICES TO THE LESSEES**

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

### **3.08 FIRST RIGHT OF REFUSAL TO PURCHASE**

3.08.1 If, at any time during the term of this Lease or any renewal thereof the Lessor shall desire to sell the Land the Lessor shall give to the Lessee notice in writing of the Lessor's intention to sell the Land, the price fixed by the Lessor for such purchase, and other terms and conditions proposed by the Lessor ("the Lessor's Notice").

3.08.2 The Lessor's Notice must be accompanied by a signed registered valuer's certificate substantiating the price fixed by the Lessor for such purpose, failing which the Lessor's Notice shall be null and void.

3.08.3 The Lessee shall have thirty (30) Working Days from the date of receipt of the Lessor's notice within which to elect by notice in writing to the Lessor ("the Lessee's Notice") to purchase the Land at the price and on the terms and conditions specified in the Lessor's Notice.

3.08.4 Upon the Lessee having exercised the Lessee's option to purchase by serving the Lessee's Notice pursuant to clause 3.08.3 the parties will be deemed to have entered into a contract for the sale and purchase of the Land on the terms of the agreement at the date of the exercise of the right then in use by the New Zealand Law Society in association with the Real Estate Institute of New Zealand.

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- 3.08.5 The Lessee shall within eighty (80) Working Days of receipt by the Lessor of the Lessee's Notice complete the purchase by making payment to the Lessor of the purchase price specified in the Lessor's Notice plus GST (if any) and all rent, outgoings and other amounts payable and due or accruing due under the Lease up to the date of settlement. Upon such payment being made by the Lessee to the Lessor the Lessor will transfer the Land to the Lessee for an estate in fee simple free of any mortgage, charge or encumbrance.
- 3.08.6 If the Lessee declines to elect to purchase the Land or does not give notice within the said period of thirty (30) Working Days after receipt of the Lessor's Notice then the Lessor will be at liberty to sell the Land on the open market, PROVIDED THAT the Lessor may not offer to sell the Land to any other party at a price lower than that first offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser than those specified in the Lessor's Notice without first reoffering the Land by notice in writing to the Lessee for purchase at such lower price and on such terms and conditions. In such case the Lessee shall have fourteen (14) Working Days after receipt of such notice in writing within which to elect to purchase the Land at such lower price or on such more favourable terms and conditions and shall complete such purchase in the manner hereinbefore provided within eighty (80) Working Days of receiving the Lessor's amended notice.
- 3.08.7 The provisions of clause 3.08.6 shall apply each time the Lessor wishes to sell the Land to any other party at a price lower than that offered by the Lessor in the Lessor's Notice or on terms and conditions more favourable to a purchaser than those specified in the Lessor's Notice where such offer has been declined by the Tenant in accordance with the provisions of clause 3.08.6.
- 3.08.8 The Lessor agrees that this section 3.08 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest by way of the first right of refusal to purchase created by this section 3.08 at any time after the date of this Deed.
- 3.08.9 For the purposes of the section 3.08 the term "sale" means:
- a) A sale, transfer, vesting or other disposition of the Lessor's registered estate and interest in the Land;



- b) The entering into by the Lessor of a superior lease in respect of the Land;
- c) Where the Lessor is a company, the only asset of which is the Land (or the Land together with other Land leased to the Lessee), any change or rearrangement in the beneficial ownership of the shareholding of the Lessor having the effect of altering the effective control of the Lessor

and the word "sell" shall have a corresponding meaning.

### **3.09 DISPOSAL OF LESSOR'S INTEREST**

3.09.1 Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided that:

3.09.1.1 the Lessor has first complied with the provisions of clause 3.08 herein; and

3.09.1.2 any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and

3.09.1.3 for so long as the Lessee is a Government Agency the following further provisions shall apply:

- (1) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
- (2) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
  - (a) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or
  - (b) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within ten (10) working days of receiving the Lessor's advice pursuant to clause 3.09.1.2(1) above, notify the Lessor in writing of its objection to the proposed Assignee



and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (3) If the Lessor does not receive written notice from the Lessee pursuant to clause 3.09.1.2(2)(a) or 3.09.1.2(2)(b) above together with grounds to substantiate its reasonable apprehension within ten (10) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (4) If the Lessee objects to the proposed Assignee in accordance with clause 3.09.1.2(2)(a) or 3.09.1.2(2)(b) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (5) The Lessor agrees that this section 3.09 creates a caveatable interest in the Land in favour of the Lessee. The Lessee shall be entitled to lodge (at the Lessee's cost) a caveat against the title to the Land to secure the Lessee's interest in preventing the disposal of the Lessor's interest in the Land to a party to whom the Lessee has any reasonable objection in terms of clause 3.09.1.2(2) at any time after the date of this Deed. Such caveat shall ensure that any prospective purchaser of the Lessor's interest in the Land is aware of the provisions of this clause section 3.09 and shall prevent the Lessor disposing of its interest in the Land without first complying with the requirements of this section 3.09.

### 3.10 HEALTH AND SAFETY

The Lessor shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from the Lessor's ownership of the Land;
- (b) Take all reasonable steps to ensure that any obligations placed on the Lessor as a Person Conducting a Business or Undertaking as that term is defined in the Health and Safety at Work Act 2015 by virtue of the Lessor's ownership of the Land, are met;
- (c) At all material times keep in place appropriate rules and procedures in order to comply with Health and Safety at Work requirements which the Lessor is obliged by law to comply with.



## PART IV – MUTUAL COVENANTS

### 4.00 MUTUAL COVENANTS

#### 4.01 ASSIGNMENT AND SUBLETTING

- (a) The Lessee will not without the previous consent in writing of the Lessor assign, transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee, transferee or sublessee.
- (b) Notwithstanding subclause (a), where the Crown (as that term is defined in section 7 (1) of the Crown Entities Act 2004) remains as the Lessee under this Lease and in occupation of the Land no such consent shall be required from the Lessor except that on each occasion that a different Crown entity (as defined in section 2 of the Public Finance Act 1989) or any other Crown body or State Owned Enterprise assumes the role and obligations of the Lessee under this Lease, the Lessee shall notify the Lessor in writing of that change.
- (c) In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange the Lessor may require the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lease such guarantee to be in a form acceptable to the Lessor.
- (d) This clause 4.01 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- (e) For the purpose of this clause 4.01, any proposed change in the shareholding of the Lessee or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 4.01(f).
- (f) For the purposes of clause 4.01(a), a proposed change in the effective control of any Lessee that is a Crown entity as that term is defined in section 7 (1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a

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proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease including contingent liabilities. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.

- (g) Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, in a form prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.
- (h) Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any Sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (i) Notwithstanding any rule of law to the contrary it is specifically agreed that in the event of an assignment or transfer of this Lease by Her Majesty the Queen ("**the Crown**"), the following provisions shall apply:
  - (i) in the event of an assignment or transfer during the initial Term of the Lease the liability of the Crown shall cease at the expiration date of the initial Term of the Lease or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of the initial Term of the Lease;
  - (ii) in the event of an assignment or transfer during any renewed Term of the Lease, the liability of the Crown shall cease and determine as from the expiration of that renewed term or of any licence period granted pursuant to clause 4.03, whichever is the later, but without releasing the Crown in respect of any liability arising in relation to any breach of the provisions of the Lease or any other act or omission before the expiration date of such renewed term.

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- (j) Where the Assignee is a party which is not a Crown entity, the Lessee will at the Lessee's own expense procure the execution by the Assignee of a variation of this Lease whereby the Lease will cease to be perpetually renewable and the number of further terms will be reduced to four (4) terms of five (5) years each so that the Lease will have a final expiry date if all rights of renewal are exercised at the date of expiration of a period of twenty (20) years following the expiration of the term of the Lease during which the assignment is effected.

#### **4.02 LESSOR MAY REMEDY LESSEE DEFAULT**

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) Any notice served under the provisions of clause 4.02(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.

#### **4.03 LESSEE'S IMPROVEMENTS**

- (a) If at any time during the Term of the Lease the Lessee declares that the Lessee's Improvements is surplus to the requirements of the Crown and the Lessee decides to sell the Lessee's Improvements, then the Lessee will first give the Lessor notice in writing of the Lessee's intention to sell, the price fixed by the Lessee for such purposes, the timeframe for exercising the option to purchase (which shall be no less than 15 working days) and other terms and conditions proposed by the Lessee ("The Lessee's Notice"). If the Lessor does not exercise its right to purchase as specified in the Lessee's Notice, then the Lessee will be at liberty to sell the Lessee's Improvements on the open market provided the Lessee will not offer the Lessee's Improvements to any other party at a price lower than the first offered by the Lessee or more favourable terms and conditions than those specified in the Lessee's Notice.



- (b) Subject to clause 4.03(a), the parties acknowledge that:
- (i) The Lessee not being in breach of the Lease may, either prior to or on the expiry of this Lease, remove all or any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a period of six months from the expiration or sooner determination of the within Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until this time and that no prior written consent or any other consent of the Lessor shall be required in respect of any such removal elected by the Lessee. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee a Licence to enter the Land for a period of six (6) months subsequent to the expiration of this Lease and remove Lessee's Improvements and further that this provision shall ensure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
  - (ii) In the event the Lessee removes its Lessee's Improvements from the Land as aforesaid, it shall make good any damage to the Land and restore the Land to a neat, tidy and safe condition subsequent to any such removal;
  - (iii) The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the expiration or sooner determination of the Lease or within six months after this time and notwithstanding any rule of law or equity to the contrary;
  - (iv) In any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental;
  - (v) Notwithstanding the generality of the provisions of clause 4.03(b)(i), the Lessee shall not remove any boundary fencing or any sub-soil drainage or reticulated sub-soil service(s) or any retaining walls on the Land without the prior written consent of the Lessor, which may be given or withheld at the discretion in all things of the Lessor.

For the avoidance of doubt, nothing herein shall obligate the Lessee to remove the property referred to in this clause 4.03(b)(v), should



the Lessee decide to abandon such property to the Lessor upon the expiration of this Lease;

- (vi) The Lessee shall pay a licence fee equal to the rental payable immediately before the determination of the Lease for the six month period, or such lesser period as the Lessee requires to remove Lessee's Improvements from the Land;
- (vii) The provisions of this clause shall not merge upon the expiration or sooner determination of this Lease but shall ensure for the benefit of the party entitled until completely performed;
- (viii) All Lessee's Improvements remaining upon the Land after the expiration of the six month period provided in subclause 4.03(b)(i) shall vest in and become the property of the Lessor. No compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor.

#### 4.04 RENEWAL

- (a) The Lessee, not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term of any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in Schedule One from the date of expiry of the initial term of any subsequent term as follows:
  - (i) The Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 4.05 as though the commencement date of the renewed term were a Rent Review Date.
  - (ii) The renewed Lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.
- (b) No earlier than 24 months prior to the expiration to the initial term or any subsequent term, the Lessor shall give written notice to the Lessee specifying that the term of the Lease is due to expire and that if the Lessee fails to exercise the right of renewal referred to in clause 4.04(a) within six (6) months from the date of receipt of notice from the Lessor (time being of the essence) then the Lessee shall be deemed to have irrevocably waived its right to renew the Lease. The parties acknowledge and agree that the earlier state by which the Lessee can be required to give notice of renewal as a



result of the operation of this clause 4.04(b) is the date which falls 18 months prior to the expiration of the relevant term.

- (c) In the event that the Lessor does not give notice to the Lessee pursuant to clause 4.04(b), the Lessee shall be entitled to renew this Lease by notice in writing to that effect given to the Lessor at any time up until the expiry date.
- (d) The annual rent for the first term of any renewal shall be agreed upon or, failing agreement, shall be determined in accordance with clause 4.05 which shall apply with such modifications as may be necessary.
- (e) Otherwise, the renewed Lease shall be upon the same terms and conditions as are expressed or implied in this Lease.

#### **4.05 RENT REVIEW**

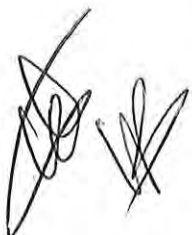
- (a) The Annual Rental payable as from each review date shall be determined as follows:
  - (i) Either party may not earlier than three (3) months prior to review date and not later than one (1) year after any review date (time being of the essence) give written notice to the other party specifying the annual rent proposed as the current annual rent as at the relevant review date, which shall be equal to X percent (X%) of the Value of the Land as defined in clause 1.08.
  - (ii) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within twenty (20) Working Days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the recipient as the current annual rent, then the new rent shall be determined in accordance with clause 4.05(b);
  - (iii) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
  - (iv) The Annual Rental agreed, determined or imposed pursuant to this clause shall be the annual rental payable as from the relevant rent review date, or the date of service of the Initiator's notice if such



notice is served later than 6 months after the relevant rent review date but subject to clause (c) and (d).

- (v) The rent review at the option of either party may be recorded in a Deed.
  
- (b) Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current annual rent for the Land, but if agreement is not reached within twenty (20) working days then the same may be determined either:
  - (i) By one party giving written notice to the other requiring the current annual rent for the Land to be determined by arbitration; or
  - (ii) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
    - (aa) Each party shall appoint a valuer and give written notice of the appointment to the other party within twenty (20) working days of the parties agreeing to so determine the new rent;
    - (bb) If the party receiving a notice fails to appoint a valuer within the twenty (20) working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
    - (cc) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer;
    - (dd) The valuers appointed by the parties shall determine the current annual rent for the Land but if they fail to agree then the rent shall be determined by the third expert;
    - (ee) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any such representations but not be bound thereby.

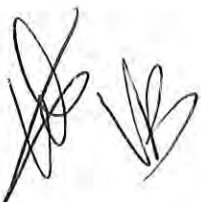
In ascertaining the new annual rental to apply from a review date:

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- (ff) The value of any building or improvements then existing upon the Land shall not be taken into consideration; and
- (gg) For so long as the Lessee is a Government Agency, the parties and their valuers shall take into account the contents of Schedule C in determining the rent

When the new rent has been determined, the person or persons determining the same shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and which provision shall be binding on the parties.

- (c) The annual rent so determined or accepted:
  - (i) Shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payable at the commencement of such subsequent term; and
  - (ii) Shall be the Annual Rental from the Rent Review Date, or the date of the initiated notice if such notice is given later than six (6) months after the Rent Review Date.
- (d) For the avoidance of doubt, where the rent review date coincides with the commencement of a renewed or subsequent terms, the annual rent shall be the current annual rent payable by the Lessee as agreed or determined as at that date in accordance with the foregoing provisions, and no minimum rent shall apply.
- (e) Pending determination of the current annual rent for the Land, the Lessee if it is a Government Agency shall from the relevant review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current annual rent,, pay an interim rent equivalent to that prior to the review date, however if the Lessee is not a Government Agency it will pay an interim rent as follows:
  - (i) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or

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- (ii) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
  - (iii) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant review date.
- (f) Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

#### **4.06 LESSEE'S RIGHT OF EARLY TERMINATION**

- (a) Notwithstanding anything to the contrary herein contained or implied it is agreed that the Lessee may at any time in its sole discretion and without being required to give any reason, terminate this Lease by providing to the Lessor not less than twelve (12) months notice in writing to that effect PROVIDED THAT no such notice may be given so as to effect termination of this Lease within the first two (2) years of the initial term or the first two (2) years of any renewed term of this Lease.
- (b) The parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.

#### **4.07 RE-ENTRY**

- (a) The Lessor may re-enter the Land where:
  - (i) rental is in arrears for a period exceeding thirty (30) days after any rent payment date;
  - (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
  - (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
  - (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;



and the term of this Lease shall terminate on such re-entry and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.

- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The Default Notice notwithstanding anything to the contrary contained in clause 4.07(a) above shall specify that:
  - (i) the Lessee must within thirty (30) days of receipt of such notice remedy the default specified; and
  - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.07.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.07(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.07(b) shall be null and void ab initio.

#### **4.08 INSURANCE**

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land.
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land.
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of





theirs) whether to effect reinstatement or not and the other party shall abide by this decision whatever it may be.

#### **4.09 RATING ASSESSMENTS**

The parties agree that the Lessee may at any time make application to the Valuation Department for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

#### **4.10 ENTIRE AGREEMENT**

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

#### **4.11 DIFFERENCES AND DISPUTES**

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the District Law Society of the District within which the Land is situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies prescribed in clauses 4.06 and 4.07 hereof.
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(b)(ii).

#### **4.12 SERVICE OF NOTICES**

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by



facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party by registered post addressed to the registered office or principal place of business of the party intended to be served; and any notice or other document given or served shall be deemed to have been given or served and received by the other party two days after the date of posting.

#### **4.13 REGISTRATION OF LEASE**

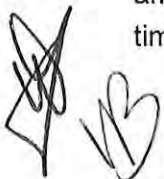
The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

#### **4.14 COSTS**

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

#### **4.15 INTEREST**

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear 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 or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

#### **4.16 ESSENTIAL TERMS**

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Assignment and Sub Leasing:***

The provisions dealing with assignment and sub leasing; or

(c) ***Use of Land:***

The provisions restricting the use of the Land.

#### **4.17 WAIVER**

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

#### **4.18 RENT MORATORIUM**

If any moratorium or other law, act or regulation that (notwithstanding clause 4.06 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

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#### **4.19 ARTEFACTS OR FOSSILS**

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

#### **4.20 EXCLUSION OF IMPLIED CONDITIONS**

The parties agree that following covenants, conditions, and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 shall not apply to this Lease:

- (i) Part 2, Clause 5;
- (ii) Part 2, Clause 10;
- (iii) Part 2, Clause 11; and
- (iv) Part 3, Clause 13.

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## SCHEDULE C

### Establishing Rental on Rent Reviews

1. The parties acknowledge and agree that in establishing the annual rental payable from the commencement date of this Lease, the rental was determined by assessing the current market value of the Land and applying an appropriate adjustment to reflect the designation and associated use of the Land as a Courthouse by the Lessee.
2. The parties acknowledge the importance of maintaining consistency between the approach taken on setting the commencement rental and the approach to be taken in setting the rent payable by the Lessee while the Land remains designated as a Courthouse and used by the Lessee as a Courthouse.
3. In order to maintain consistency, the parties shall ensure that on each rent review, the respective valuers are instructed to assess the rent payable by the Ministry of Justice by assessing the rent based on the designation and use of the Land as a Courthouse, on the same basis as which the commencement rental was established at the outset of the Lease, as articulated in Schedule C Paragraph 1.

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DOCUMENTS

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## 7 LETTER OF FACILITATION

[Date]

[Contact details: Mayor of local authority]

Tēnā koe

### Ngāti Maru – Letter of facilitation

On [date] the Crown signed a deed of settlement with Ngāti Maru to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On [date] the Ngāti Maru Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngāti Maru has suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngāti Maru expressed interest in strengthening their existing relationship with local authorities that [reason for relationship], including [local authority]. As tangata whenua of [council] area Ngāti Maru are particularly interested in enhancing their involvement with [relationship objective].

In the Deed of Settlement, the Crown agreed to write letters encouraging a co-operative ongoing relationship between Ngāti Maru and [local authority] in their area of interest (refer to the Area of Interest map attached). Accordingly, I am writing to introduce you to the trustees of the Ngāti Maru Rūnanga Trust as the post-settlement governance entity of Ngāti Maru and to suggest that your [local authority] makes contact with Ngāti Maru to foster a co-operative relationship and to discuss matters of common interest.

Ngāti Maru is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau deed was signed on 7 June 2012. The Hauraki Collective deed was signed on [date]. The Marutūāhu Collective deed was signed on [date]. These documents, and the Ngāti Maru Deed of Settlement, can be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite [local authority] to contact the trustees of Ngāti Maru Rūnanga Trust directly in relation to the matters raised in this letter. Their contact details are:

[contact details]; and

[contact details].

I hope that [local authority] and Ngāti Maru will continue to build an effective relationship based on mutual trust, respect and co-operation for the benefit of all people within the [local authority] area of responsibility.



*Initialling version for presentation to Ngāti Maru for ratification purposes.*

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7: LETTER OF FACILITATION

If you have any further questions please contact [**contact person**] at the Office of Treaty Settlements at [**email address**] or [**number**].

Nāku noa, nā

[Hon Christopher Finlayson]  
**Minister for Treaty of Waitangi Negotiations**



DOCUMENTS

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## 8 LETTER OF INTRODUCTION

[Date]

[Contact details: Chief Executive of Crown agency]

Tēnā koe

### Ngāti Maru – Letter of Introduction

On [date] the Crown signed a deed of settlement with Ngāti Maru to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On [date] the Ngāti Maru Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngāti Maru has suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngāti Maru expressed interest in enhancing their relationships with entities that [reason for relationship], including [Crown agency]. The essence of the request relates to [relationship objective].

In the Deed of Settlement, the Crown agreed to write letters encouraging a co-operative ongoing relationship between Ngāti Maru and [Crown agency] in their area of interest (refer to the Area of Interest map attached). Accordingly, I am writing to introduce you to the trustees of the Ngāti Maru Rūnanga Trust as the post-settlement governance entity of Ngāti Maru and to suggest that your [Crown agency] makes contact with Ngāti Maru to foster a co-operative relationship and to discuss matters of common interest.

Ngāti Maru is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau deed was signed on 7 June 2012. The Hauraki Collective deed was signed on [date]. The Marutūāhu Collective deed was signed on [date]. These documents, and the Ngāti Maru Deed of Settlement, can be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite [Crown agency] to contact the trustees of the Ngāti Maru Rūnanga Trust directly in relation to the matters raised in this letter. Their contact details are:

[contact details]; and

[contact details].

If you have any further questions please contact [contact person] at the Office of Treaty Settlements at [email address] or [number].

Nāku noa, nā

[Director's name]  
Director, Office of Treaty Settlements





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## 9 LETTER TO MUSEUMS

**[Contact details of director of museum]**

Tēnā koe

### **Ngāti Maru – Letter of Introduction**

On **[date]** the Crown signed a deed of settlement with Ngāti Maru to settle their historical Te Tiriti o Waitangi / the Treaty of Waitangi claims. On **[date]** the Ngāti Maru Claims Settlement Act was passed to implement the settlement.

The Deed of Settlement is comprised of both cultural and commercial redress to remedy historical grievances Ngāti Maru have suffered as a result of Crown breaches of the Treaty of Waitangi. Cultural redress includes access to cultural resources and relationship agreements.

In the course of negotiations with the Crown, Ngāti Maru sought the opportunity to have greater management and control over their tāonga. Ngāti Maru specifically expressed an interest in enhancing their relationships with **[museum name]** to engage with you regarding this tāonga. The essence of the request relates to **[relationship objective]**.

**[Iwi background summary and with an area of interest map]**.

Ngāti Maru is a member of Ngā Mana Whenua o Tāmaki Makaurau, the Hauraki Collective and the Marutūāhu Collective. The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act was enacted in 2014. The Hauraki Collective deed was signed on **[date]**. The Marutūāhu Collective deed was signed on **[date]**. These documents, and the Ngāti Maru deed of settlement can all be viewed on the Office of Treaty Settlements website: [www.govt.nz](http://www.govt.nz).

I invite **[entity name]** to contact the Ngāti Maru Rūnanga Trust Chairperson directly in relation to the matters raised in this letter. Their contact details are:

**[contact details]**; and  
**[contact details]**.

If you have any further questions please contact **[contact person]** at the Office of Treaty Settlements at **[email address]** or 04 **[number]**.

Nāku noa, nā

[Hon Christopher Finlayson]  
**Minister for Treaty of Waitangi Negotiations**



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## 10 DEED OF COVENANT FOR THE GOVERNANCE ENTITY

**THIS DEED** is made

**BETWEEN**

**THE TRUSTEES OF THE NGĀTI MARU RŪNANGA TRUST ("governance entity")**

**AND**

**THE CROWN**

### **BACKGROUND**

- A. The Deed of Settlement of the Historical Claims of Ngāti Maru between Ngāti Maru and the Crown ("**deed of settlement**") will provide certain redress to the governance entity, subject to the terms and conditions specified in the deed of settlement.
- B. The governance entity was established, by a deed of trust dated 15 October 2013, as the entity to receive the redress to be provided to the governance entity under the deed of settlement.
- C. The governance entity is not a signatory to the deed of settlement but is referred to as a party and the deed of settlement confers rights and obligations on the governance entity as if it were a party.
- D. The governance entity enters into this deed with the Crown to become effectively a party to the deed of settlement.

**IT IS AGREED** as follows:

### **1 COVENANT**

- 1.1 The governance entity covenants with the Crown that, from the date of this deed the governance entity -
  - 1.1.1 will be a party to the deed of settlement as if it were named as a party to that deed and had signed it;
  - 1.1.2 must comply with all the obligations of the governance entity under the deed of settlement; and
  - 1.1.3 will be bound by the terms of the deed of settlement.

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

- 2.1 The governance entity ratifies and confirms -

- 2.1.1 any acknowledgement or agreement that Ngāti Maru may make in the deed of settlement; and

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10: DEED OF COVENANT FOR THE GOVERNANCE ENTITY

2.1.2 any right or power that Ngāti Maru may exercise, any waiver Ngāti Maru may give, any amendment Ngāti Maru may agree to, and any other action Ngāti Maru may take in relation to the deed of settlement, and agrees to be bound by them.

3 INTERPRETATION

3.1 Unless the context requires otherwise:

3.1.1 terms or expressions defined in the deed of settlement have the same meanings in this deed; and

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

**SIGNED** as a deed on [ ]

*[Insert appropriate signing provisions for the governance entity]*

WITNESS

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

Occupation:

Address:

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

\_\_\_\_\_  
Hon Christopher Finlayson

WITNESS

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

Occupation:

Address:

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