

DEED OF AGREEMENT AND ACCESS

DATED this *8th* day of *September* 200*8* *9*

PARTIES:

1. HER MAJESTY THE QUEEN acting by and through the DIRECTOR GENERAL OF CONSERVATION ("the Grantor"); and
2. MURIWHENUA INCORPORATION ("the Grantee")

BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor's land for the purpose of gaining access to and egress from the Grantee's land.
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor's land for the purpose of enabling the Grantee to gain access to and egress from the Grantee's land under the terms and conditions set out in this Deed.
- C. Section 53 (2) (i) of the Conservation Act 1987 provides that the Director-General of Conservation is empowered to enter into any agreement and arrangement necessary for exercising any of his powers, namely to enable the Department to perform its functions under the Act.
- D. The parties have agreed to enter into this Deed to record the rights and obligations of the Grantee to cross and recross the Grantor's land.

BY THIS DEED IT IS AGREED AND DECLARED as follows:

1. Interpretation

1.1 In this Deed unless the context otherwise requires:

"**Commencement Date**" means the date specified in paragraph 1 of the Schedule.

"**Deed**" means this Deed, the Background and the Schedule annexed hereto.

"**Grantee**" includes the employees, agents, contractors, licensees, invitees, successors and assigns of the Grantee.

“Grantee’s land” means the land described in paragraph 2 of the Schedule.

“Grantor” includes the employees, agents, contractors, licensees, invitees, successors and assigns of the Grantor.

“Grantor’s land” means the land described in paragraph 3 of the Schedule and includes any part thereof.

- 1.2 In this Deed, headings and sub-headings are included for convenience only, and do not affect the interpretation of this Deed.
- 1.3 Reference to clauses and the Schedule shall mean the corresponding clauses and the Schedule of this Deed.
- 1.4 In this Deed, any reference to a statute includes reference to regulations, orders, notices, or other statutory instruments made under, or pursuant to such statute and reference to a statute, regulation, instrument, or bylaw includes references to all amendments to that statute, or regulation, or bylaw whether by subsequent statute, or otherwise and a statute or regulation or bylaw passed in substitution for the statute, or regulation, or bylaw referred to.
- 1.5 In this Deed words importing the singular number shall include the plural, the masculine gender shall include the feminine, persons shall include companies and vice versa.

2. Grant of Access Rights

- 2.1 The Grantor hereby grants to the Grantee a right of way over the Grantor’s land on the terms and conditions set out in this Deed and as set out in the Fourth Schedule of the Land Transfer Regulations 2002 in respect of rights of way as if this Deed granted or created a right of way easement.
- 2.2 In consideration of the Grantor agreeing to enter into this Deed, the Grantee shall, upon execution of this Deed, pay the sum of \$1.00 to the Grantor (the receipt of which is hereby acknowledged by the Grantor’s execution of this Deed).

3. Term

- 3.1 This Deed shall commence on the Commencement Date specified in paragraph 1 of the Schedule and continue in full force and effect in perpetuity or as otherwise agreed in writing between the parties.

3.2 The Grantor shall meet with the Grantee annually, at a suitable time and place to be arranged and agreed upon between the parties prior to such meeting(s), in good faith to generally discuss and review mutual access arrangements and issues and the terms and conditions, and practical operation, of this Deed.

4. Obligations of the Grantee

4.1 The Grantee shall when passing or repassing over the Grantor's land in accordance with clause 2 of this Deed:

4.1.1 Wherever possible, remain on the roads and tracks constructed on the Grantor's land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

4.1.2 Not use or cause to be used any class of vehicle which has been reasonably prohibited by the Grantor;

4.1.3 Immediately after passing through any gates erected by the Grantor pursuant to clause 4.4 hereof, close such of them as were closed and lock such of them as were locked immediately before such passing through;

4.1.4 Take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease) either on the Grantor's land, or any surrounding or adjoining land, forest or water, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 4.1.4):

4.1.4.1 Comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and

4.1.4.2 Not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

4.2 The Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the roads, tracks, fences, drains, buildings or other structures which are damaged by the Grantee.

4.3 The Grantee shall annually pay to the Grantor a proportionate fee, to be mutually agreed upon between the parties on an annual basis, for the cost of maintenance of any of the roads or tracks on the Grantor's lands commensurate with the use made by the Grantee of such roads or tracks PROVIDED THAT the Grantee shall not be liable to contribute towards

the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that road or track.

- 4.4 The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage PROVIDED THAT the Grantor shall furnish at the expense of the Grantees, keys to any locks fitted to any of the said gates.
- 4.5 The Grantee shall not exhibit any notice or sign on the Grantor's land without the prior written consent of the Grantor (as to style, wording, size and location) PROVIDED THAT such consent shall not be unreasonably or arbitrarily withheld.
- 4.6 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its employees, agents, contractors, licensees, invitees, successors and assigns will not obstruct or hamper the Grantor or its employees, agents, contractors, licensees, invitees, successors and assigns, in their normal or reasonable use of the Grantor's land.
- 4.7 The Grantee will ensure at all times, and in the exercise of the rights set out in this Deed, that the public's right of access to the Grantor's land is maintained.

5. Obligations of the Grantor

The Grantor shall use the fee specified in clause 4.3 hereof for the purposes of maintenance of the roads or tracks on the Grantor's land used by the Grantee in accordance with this Deed.

6. Costs

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

7. Indemnities and Insurance

Liability of the Grantee

- 7.1 The Grantee is to indemnify and keep indemnified the Grantor from and against all actions, claims, demands, losses, damages, costs, expenses and liabilities which the Grantor may suffer or incur, or from which the Grantor may become liable in respect of or arising from:

- 7.1.1 Loss, damage, or injury from any cause to property or persons caused or contributed to by any act, omission, neglect, breach, or default on the part of the Grantee in connection with this Deed or as a direct or indirect result of the Grantee's exercise of its rights under this Deed;
- 7.1.2 Any failure by the Grantee to comply with any obligation imposed on the Grantee under this Deed or by law.
- 7.2 This indemnity is to continue after the determination (if any) of this Deed in respect of those acts or omissions occurring or arising before its determination.
- 7.3 The Grantee, at the Grantee's own cost, shall make good any errors, omissions, damages, defects or faults in connection with this Deed or as a direct or indirect result of the Grantee's exercise of its rights under this Deed of which the Grantor notifies the Grantee in writing.

Limitation of Grantee's Liability

- 7.4 The Grantee is to have no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor.

Insurance

- 7.5 Without prejudice to or in any way limiting its liability under clauses 7.1 to 7.3 hereof the Grantee if required in writing by the Grantor shall take out and keep in force during the Term:
 - 7.5.1 A policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of the Grantee's use of the Grantor's land or its conduct in connection with this Deed or as a direct result of the Grantee's exercise of its rights under this Deed and covering:
 - 7.5.1.1 General indemnity for an amount no less than the amount specified in paragraph 4 of the Schedule; and
 - 7.5.1.2 Forest and Rural Fires Act suppression insurance for an amount not less than the amount specified in paragraph 4 of the Schedule; and
 - 7.5.1.3 Such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in paragraph 4 of the Schedule.

- 7.6 A breach by the Grantee of any of the provisions of clause 7.5 hereof will entitle the Grantor immediately to cancel this Deed.

8. Dispute Resolution and Arbitration

- 8.1 No party to this Deed is to commence any court or arbitration proceedings relating to any dispute arising out of this Deed (including any dispute as to the validity, breach, or termination of this Deed or as to any claim in tort, equity or under any statute) unless that party has complied with the following paragraphs of this clause

8.2 Negotiation

- 8.2.1 If either party claims that a dispute has arisen under or in relation to this Deed that party must give written notice to the other party specifying the nature of the dispute.

- 8.2.2 Upon receipt of such notice by the other party, both parties to this Deed must:

8.2.2.1 Co-operate and use their best endeavours to resolve the dispute expeditiously; and, in particular,

8.2.2.2 Submit, within fourteen (14) days of receipt of such notice, the dispute to a facilitator who will have responsibility for overseeing the negotiations between the parties and holding documentation relevant to the negotiations.

- 8.2.3 The facilitator is to be appointed by the parties and, in the event of disagreement, the appointing authority is to be the Chair for the time being of LEADR New Zealand Inc.

- 8.2.4 The costs of the facilitator are to be shared equally between the parties.

- 8.2.5 If the parties are unable to resolve the dispute by negotiation within fourteen (14) days of submission to a facilitator the matter is to be referred to mediation on five (5) days notice by either party.

8.3 Mediation

- 8.3.1 The mediation is to be conducted in terms of the LEADR New Zealand Inc standard mediation agreement.

- 8.3.2 The mediation is to be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator is to

be selected and the mediator's fee is to be determined by the Chair for the time being of LEADR New Zealand Inc.

8.3.3 Any costs of the mediation are to be shared equally.

8.3.4 The mediator is not to be the same person as the facilitator.

8.4 Urgent Interlocutory Relief

A party who seeks urgent interlocutory relief may, by written notice to the other party to the dispute, elect not to comply with the provisions of clauses 8.1 to 8.3 hereof but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, the provisions of clauses 8.1 to 8.3 inclusive are once again to take effect.

8.5 Arbitration

8.5.1 In the event that the dispute has not been settled within forty-two (42) days or such other period as agreed to in writing between the parties after the appointment of the mediator the dispute must be submitted to arbitration in accordance with the Arbitration Act 1996.

8.5.2 The arbitrator is not to be the same person as the mediator and, in the event of disagreement:

8.5.2.1 The appointing authority is to be the President of the New Zealand Law Society;

8.5.2.2 The number of arbitrators is to be one;

8.5.2.3 The place of arbitration is New Zealand.

8.5.3 Any costs of the arbitration are to be shared equally unless the arbitrator determines otherwise.

9. Power to Remedy Default

9.1 The Grantor may elect to remedy at any time, after giving notice, if practicable, any default by the Grantee under this Deed.

9.2 All reasonable costs and expenses, including legal costs and expenses as between solicitor and client incurred by the Grantor in remedying or attempting to remedy such default shall be paid by the Grantee to the Grantor on demand.

10. Notices

- 10.1 Any notice to be given under this Deed by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in paragraph 5 of the Schedule.
- 10.2 Any notice given in accordance with clause 10.1 will be deemed to have been received:
- 10.2.1 In the case of personal delivery, on the date of delivery;
- 10.2.2 In the case of a letter, on the third working day after posting;
- 10.2.3 In the case of facsimile, on the date of dispatch.

11. Assignment

The Grantee shall not transfer, assign, sub-licence, create any encumbrance over or deal in any manner with the benefit or burden of this Deed, without obtaining the Grantor's prior written approval.

12. Duration of Obligations

The obligations of the parties under this Deed will continue in full force and effect whilst and so long as this Deed remains in force.

13. Entire Agreement

Except as provided by legislation, this Deed and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Deed and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Deed.

14. Variations

The parties agree that this Deed can only be modified or varied in writing. It is acknowledged that where there are changes in Government policy which affect the purpose and function of this Deed, each party agrees to inform the other of those changes at the earliest possible time thereafter and agrees to renegotiate, if necessary, any aspect of this Deed.

15. Waiver

Failure or neglect by the Grantor to enforce at any time any of the provisions of this Deed is not to be construed or deemed to be a waiver of the Grantor's rights

under it; and is not to affect in any way the validity of the whole or any part of it or prejudice the Grantor's rights to take subsequent action.

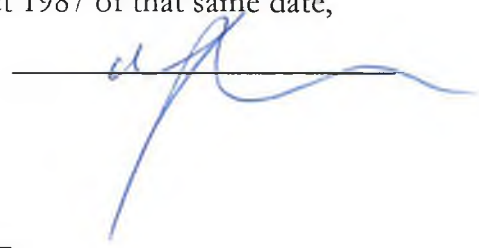
16. Severability

Any illegality, or invalidity or unenforceability of any provision in this Deed is not to affect the legality, validity or enforceability of any other provisions.

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

SIGNED by CHRISTOPHER MICHAEL JENKINS,

Conservator of the Northland Conservancy of the Department of Conservation, pursuant to section 58 of the Conservation Act 1987 and an instrument of sub delegation from the Director General dated 29 October 1997, following on from an instrument of delegation from the Minister of Conservation to the Director General under section 57 of the Conservation Act 1987 of that same date, in the presence of:

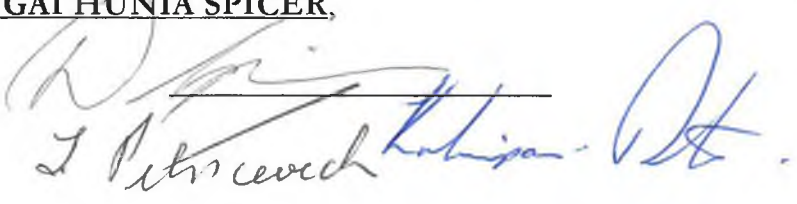


Witness: J Marshall

Occupation: Area Manager

Address: 24 Mathews Ave
Kaitiaki

SIGNED for and on behalf of MURIWHENUA INCORPORATION by TOM PETRICEVICH, DAVID NGAI HUNIA SPICER, and KAHUIPANI PETERA in the presence of:



Witness: Jodie Hoess

Occupation: Linesman Top Energy

Address: 11 Waipapakauri Domain
Northland

SCHEDULE

1. **Commencement Date:** The day of 2003.
2. **Grantee's Land:** Pakohu, Pakohu 2B & Muriwhenuatika 1B Blocks.
3. **Grantor's Land:** Part Te Paki Recreation Reserve marked red on the attached map and labelled "C".
4. **Insurance (to be obtained by the Grantee):**
 - (i) Types and amounts:

Public Liability Insurance for:

 - (a) general liability for an amount no less than \$ 500,000.00; and
 - (b) Forest and Rural Fires Act fire suppression insurance for an amount no less than \$ 250,000.00.

Other Policies and amounts: N/A
5. **Notices:**
 - (a) Grantor's Address:

Department of Conservation
Northland Conservancy
P.O. Box 842,
149-151 Bank Street,
WHANGAREI
Telephone: (09) 430-2470,
Facsimile: (09) 430-2479,
DX AP24559
 - (b) Grantees Address:

Muriwhenua Incorporation
@ Te Manawa O Ngati Kuri
5399 Ngataki,
R.D.4
KAITAIA
Telephone: (09) 409-8253
Facsimile: (09) 409-8245

