

*5th day of October*

**BETWEEN** Dr Hugh Barr of Wellington, Business Consultant (“Dr Barr”)

**AND** Public Access New Zealand Incorporated, a charitable trust incorporated under the Charitable Trusts Act 1957 (“PANZ”)

**AND** Minister of Conservation (“the Minister”)

**AND** Te Runanga o Ngati Porou, a body corporate constituted by the Te Runanga o Ngati Porou Act 1987 (“TRONP”)

**BACKGROUND**

1. On 3 November 1990, the Minister and TRONP entered into an agreement whereby the Minister would arrange the re-vesting of Mt Hikurangi in TRONP (“The 1990 Deed”). The 1990 Deed was conditional upon the grant of an easement over Pakihiroa Station and the execution of a conservation covenant. A copy of the 1990 Deed is attached and marked with the letter “A”. Approximately two-fifths of Mt Hikurangi was within the boundaries of Pakihiroa Station which had been purchased by the Crown on behalf of Ngati Porou and administered by the Iwi Transition Authority under Part XXIV of the Maori Affairs Act 1953 with the intent that subject to agreement on price and terms it be vested in Ngati Porou. The remainder of Mt Hikurangi lay within part of the Raukumara Forest Park which was administered by the Department of Conservation under the Conservation Act 1987.
2. At a hearing on 18 January 1991 the Maori Land Court made orders vesting Mt Hikurangi in TRONP. Pakihiroa Station was vested under s 437 of the Maori Affairs Act 1953 and the Raukumara Forest Park land was vested under s 436 of that Act. These orders were confirmed at a rehearing on 27 March 1991. The vesting orders were made subject to conditions arising from the 1990 Deed that a

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JHB.  
M.P.  
SA

covenant and easement be entered into. The sealed orders, however, did not specifically refer to the easement and covenant.

3. Issues arose in respect of the terms of the 1990 Deed, covenant and easement. These issues were only resolved after lengthy negotiation culminating in the execution of a Deed of Variation on 29 August 1999 (“Deed of Variation”) by the Minister and TRONP. The Deed of Variation provided for new forms of covenant and easement (“the Covenant” and “the Easement”). Copies of the Deed of Variation, Easement and Covenant are attached and marked with the letters, B, C and D respectively.
4. In September 1999, Dr Barr and PANZ commenced a judicial review proceeding against the Minister of Conservation, the Minister of Lands, TRONP and the Maori Land Court (*Barr and PANZ v Minister of Conservation & Others* – CP 229/99).
5. The judicial review is concerned with *inter alia* –
  - (i) the vesting of that part of Mt Hikurangi comprising part of the Raukumara Forest Park in TRONP in 1990 under s 436 of the Maori Affairs Act 1953;
  - (ii) the Deed of Variation, the Covenant and Easement.
6. Section 436 of the Maori Affairs Act was repealed by the Te Ture Whenua Maori Act 1993 (“the 1993 Act”). Section 134 of the 1993 Act contains a provision similar to s 436. It provides relevantly –
 

“(1) This section applies to –

  - (c) Any Maori land or general land owned by Maori that has at any time been acquired by the Crown or by any local authority or public body for a public work or other public purpose and is no longer required for a public work or other public purpose;

...

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- (2) The Maori Land Court shall have jurisdiction in accordance with the succeeding provisions of this section to make a vesting order in respect of any land to which this section applies and to declare in that order that the land shall become Maori freehold land.
- (3) An application to the Court for the exercise of its jurisdiction under this section shall be made, -

...

- (c) In any case to which subsection (1)(c) of this section applies, by or on behalf of -
- (i) The Minister of the Crown under whose control the land is held or administered; or
  - (ii) The Chief Executive of the Department within the meaning of section 2 of the Survey Act 1986;

...

- (5) An application may be made to the Court, and the Court may exercise its jurisdiction, under this section notwithstanding the provisions of any Act to which the land is subject, and notwithstanding any terms and conditions imposed by the Act on the sale or other disposition of the land.

...

- (6) On an application under this section the Court may make an order vesting the land in -
- (b) Maori incorporation or Maori Trust Board or trustees for and on behalf of such person or persons, and on such terms of trust, as the Court may specify in the order.”

7. The Minister and TRONP deny all liability in respect of the judicial review proceeding CP229/99 but the parties have agreed in good faith to settle the proceeding on the terms set out below.

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**THIS DEED WITNESSES:****PART A : ACKNOWLEDGEMENTS AND UNDERTAKINGS****Vesting under s 134 of the 1993 Act of lands administered under the Conservation Act**

1. Without prejudice to the actions of the Crown in respect of Mt Hikurangi, the Minister acknowledges that the use of s 134 of the 1993 Act would only occur after a full consideration of the purposes and provisions of the Conservation Act 1987 and would not be suitable where there are public values (in addition to any Maori cultural values) in respect of the land, eg recreational values, public access, natural and historic values, and will in any decision in which s 134 is being considered, take the protection of such values into account. Section 134 of the 1993 Act may be used, however, after a proper decision has been reached pursuant to the Conservation Act that the land is no longer required to be held under that Act, to enable the Maori Land Court to vest the land.
  
2. The Minister undertakes not to apply under s 134 of the 1993 Act to vest any land held under Part IV of the Conservation Act 1987 as a "specially protected area" without first seeking advice from the relevant Conservation Board and the New Zealand Conservation Authority and considering the desirability of undertaking public consultation.

**Acknowledgements by TRONP**

3. TRONP acknowledges:
  - 3.1 The 1990 Deed as varied by the Deed of Variation, the Covenant and the Easement are binding on it; and
  - 3.2 It intends to comply with the terms of these Deeds, including clause 1(m) of the 1990 Deed (as inserted by the Deed of Variation) and those provisions relating to public access and closure.

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## Enforceability

4. The acknowledgements in paragraph 3 do not confer upon Dr Barr or PANZ any separate or individual right by virtue of being parties hereto to enforce in any Court the observance by TRONP of the terms of the 1990 Deed, as varied by the Deed of Variation, the Covenant and Easement, which is different from that of any member of the public claiming to have been affected by failure by TRONP to observe the provisions of those deeds.
5. The Minister and TRONP acknowledge:
  - 5.1 That the Easement and Covenant grant to members of the public free and unimpeded foot access over Mt Hikurangi subject to the conditions set out in the Easement and Covenant;
  - 5.2 That for the removal of doubt about the interpretation of clause 5.5.1 of Annex 1 of the Deed of Variation, the expression “adjacent to the land” does not include remaining conservation areas in the Raukumara Forest Park not vested in TRONP.
6. The Minister and TRONP acknowledge that:
  - (a) Section 9 of the New Zealand Walkways Act 1990 applies to the Easement and provides:
 

**“Rights of public in respect of walkways**  
Subject to the provisions of this Act and of any Regulations made under this Act, and subject to any conditions specified under section 8(7) of this Act, every member of the public may without charge at any time pass or re-pass on foot over any walkway.”
  - (b) The Covenant is intended, subject to its express terms, to provide a similar right of public access within the Covenant area.
7. The Minister and TRONP acknowledge that clause 10.4 of the Covenant and clause 8.4 of the Easement are not intended to preclude proceedings based on any rights of

access arising under the Easement and the Covenant other than proceedings by third parties for breach of contract.

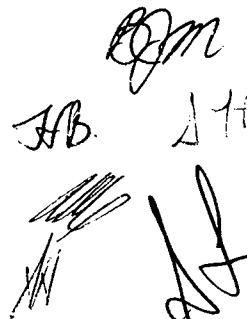
8. For the avoidance of doubt, the acknowledgements in clauses 3, 5, 6 and 7 are declaratory only. Except as so clarified the rights of members of the public to enjoy access to Mt Hikurangi under the provisions of the Easement and the Covenant are not extended. Dr Barr and PANZ contend that there are rights of access under such documents which an affected member of the public could (in an appropriate case) enforce in a Court of competent jurisdiction (except as excluded by clause 10.4 of the Covenant and clause 8.4 of the Easement). TRONP does not concede that any such ability to enforce exists.
9. The Minister acknowledges that if a member of the public advises the Minister of an alleged breach or continuing breach of the Covenant or Easement, and the Minister is satisfied that a breach has occurred or is continuing, the Minister shall take steps to have the breaching party remedy the breach.

### Closure

10. The Minister and TRONP acknowledge that no provisions of the Covenant and Easement preclude any member of the public asking TRONP for access during any period of closure of the Covenant or Easement.

### Miscellaneous

11. Without prejudice to their rights to terminate the Easement and Covenant by mutual agreement the Minister and TRONP acknowledge that, clause 8.1 of the Deed of Variation is not intended to include a review of the term of the Covenant and Easement.
12. The Minister and TRONP acknowledge that clause 10.2 of the covenant and clause 8.2 of the Easement are declaratory only and are not intended to confer any greater rights on TRONP than already exist in law.


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13. TRONP confirms that the liaison persons for TRONP in respect of Mt Hikurangi are the Chairperson and the Chief Executive from time to time of TRONP. Any information regarding access or closures of Hikurangi may be obtained from them.
14. The Minister in consultation with TRONP, will by 30 June of the years 2001, 2002, and 2003, and thereafter if requested by either Dr Barr or PANZ, prepare and publish a short report about –
  - a. the operation of the Covenant and Easement for the previous year; and
  - b. how TRONP has discharged its responsibilities under condition (m) of the 1990 Deed (as inserted by the Deed of Variation) during the previous year.
15. The Minister agrees to upon request provide any members of the public with a copy of the report referred to in clause 14.
16. Dr Barr and PANZ acknowledge that the certificates of title comprising Pakihiroa Station have now registered on them a memorial which records that they are subject to Part IVA of the Conservation Act 1987.
17. In entering into this Deed the parties acknowledge that there has been no admission by the Minister or TRONP as to liability or as to the truth or accuracy of any allegation made by Dr Barr and PANZ in CP 229/99.

#### **PART B : DISCONTINUANCE**

18. Dr Barr and PANZ release the Minister, the Minister of Lands, TRONP and the Maori Land Court from all claims in judicial review or otherwise, arising out of the vesting of Mt Hikurangi in TRONP.
19. Dr Barr and PANZ must discontinue the judicial review proceedings CP 229/99 within one week of signing this Deed.

BEM
   
JB ATP
   
[scribbled signatures]

- 20. The undertakings provided by the Minister and TRONP not to lodge further documents for registration with the District Land Registrar in respect of the land the subject of the proceeding CP229/99, are withdrawn.
- 21. It is recorded that the Easement and Covenant have been executed as separate documents by both the Minister and TRONP and, whether or not registered, are immediately operational and effective subject only to such limitations (if any) as may arise by operation of law until their registration at the Land Transfer Office. The parties acknowledge that the Minister and TRONP shall as soon as practicable take steps to have the documents filed with the Maori Land Court and use their best endeavours to have them registered in the Land Transfer Office but in any case shall ensure that any order of the Maori Land Court vesting the former portion of the Raukumara Forest Park in TRONP shall not be registered without the Easement and Covenant being registered at the same time.

Signed by **Hugh Barr** in the presence of:

Witness  T.G.G. EVANS

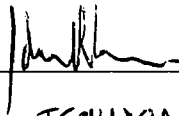
Occupation Electrician

Address 14B Bloomfield Terrace,  
Lower Hutt.



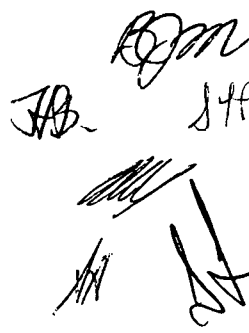
Signed for and on behalf of **PUBLIC ACCESS NEW ZEALAND Inc.** 

by **Bruce Mason** in the presence of:

Witness  J.P. ROBINSON

Occupation TECHNICIAN

Address MANAHERIKIA ROAD, ALEXANDRIA.





Signed for and on behalf of the **Minister of Conservation**  
in the presence of:

*Sanhafee*

Witness *[Signature]*

Occupation *Conservation Advisor*

Address *Wellington*

The Common Seal of **Te Runanga o Ngati Porou**  
was fixed pursuant to a resolution of the Runanga and  
in the presence of:

Secretary *[Signature]*

Trust Board Member *[Signature]*

Trust Board Member *A. Parata*



*RJM.*  
*JPB.* *SIP*  
*[Signature]* *[Signature]*