

## C

**CONSERVATION COVENANT**  
 (Section 27, Conservation Act 1987; and  
 Section 77, Reserves Act 1977)

**COPY FOR YOUR  
 INFORMATION**

BETWEEN TE RUNANGA O NGATI POROU a Maori Trust Board pursuant to Te Runanga o Ngati Porou Act 1987; together with its successors, assigns servants and agents ("Ngati Porou")

AND HER MAJESTY THE QUEEN by and through the Minister of Conservation ("the Minister")

WHEREAS

- A. Ngati Porou is the legal beneficial owner of the land described in Schedule A ("the land") which was vested in Te Runanga o Ngati Porou on 18 January 1991 under the provisions of section 436, Maori Affairs Act 1953.
- B. The Land is part of the mountain known as Mt Hikurangi.
- C. To Ngati Porou, Mt Hikurangi is the maunga tapu / sacred mountain of the Ngati Porou people; Ngati Porou is the Kaitieki of the land on behalf of the Ngati Porou people; and Ngati Porou have an unique ongoing association with the Land.
- D. Ngati Porou and the Minister have treated and agreed pursuant to a Deed dated 3 November 1990 and subsequent Variation duly executed between the parties, to enter into a Conservation Covenant under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977 to preserve, enhance and maintain the Land for the purposes set out in clause 3 of this Covenant.

- E. The parties recognise that this Deed is between principals who have negotiated with authorised mandate, goodwill, and mana.
- F. Ngati Porou acknowledges that it is consistent with its ownership and mana to recognise obligations to conserve and protect the land in a manner set out in this Covenant.
- G. The parties recognise that the execution of this Covenant is without prejudice to the rights of Ngati Porou to make any claims relating to Treaty of Waitangi issues or otherwise.

**NOW THEREFORE THIS COVENANT WITNESSES** that in accordance with section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977, Ngati Porou and the Minister **MUTUALLY AGREE** as follows:

1. **INTERPRETATION**

1.1 In this Covenant unless the context otherwise requires:

“Act” means the Conservation Act 1987 and/or the Reserves Act 1977.

“Covenant” means this Deed of Covenant duly executed by the parties.

“Crown” means Her Majesty the Queen in right of New Zealand.

“Deed” means the principal Deed of Agreement between the parties dated 3 November 1990 and includes the variation of the Deed duly executed by the parties.

“Easement” means the Memorandum of Grant of Easement in gross for the purposes of the New Zealand Walkways Act 1990 duly executed by the parties to this Covenant.

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“**Land**” means the land described in Schedule A in this Covenant which was vested in Te Runanga o Ngati Porou on 18 January 1991 pursuant to section 436 of the Maori Affairs Act 1953.

“**Ngati Porou**” means Te Runanga o Ngati Porou being a Maori Trust Board pursuant to Te Runanga o Ngati Porou Act 1987; together with its, successors, assigns, servants and agents.

“**Recitals**” means the spiritual, cultural and historical statements of association to the Land by Ngati Porou which are incorporated into the Deed; and which form part of this Covenant between the parties.

1.2 For avoidance of doubt:

1.2.1 The reference to any Act in this Covenant extends to, and includes, any amendment to or substitution for that Act;

1.2.2 Clause and other headings are for ease of reference only and shall not be deemed to form any party of the context or to affect the interpretation of this Covenant;

1.2.3 Words importing the singular number shall include the plural and vice versa;

1.2.4 Reference to parties are references to parties to this Covenant;

1.2.5 References to clauses are references to clauses of this Covenant;

1.2.6 References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;



1.2.7 Expressions defined in the main body of this Covenant bear the defined meaning in the whole of this Covenant including the Recitals. Where the parties disagree over the interpretation of any thing contained in this Covenant, then in determining the issue the parties shall have regard to the matters contained in the Recitals;

1.2.8 Any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done;

1.2.9 Words importing one gender shall include the other gender; and

1.2.10 The agreements contained in this Covenant shall bind and benefit Ngati Porou and its heirs executors successors and assigns in perpetuity and shall bind any lessee of the Land for the term of any lease;

1.2.11 Where clauses of this Covenant require further agreement between the parties, then such agreement must not be unreasonably withheld.

1.3 Subject to the rights, obligations and agreements conferred by this Covenant and until surrender by the Crown, Ngati Porou may exercise all rights and obligations consistent with its ownership of the Land.

## 2 STATEMENT OF NGATI POROU

2.1 To Ngati Porou, the Land is tapu / sacred to Ngati Porou who have a long spiritual and historical association with the Land as set out in the Recitals. Ngati Porou, as the owner and Kaitieki of the Land on behalf of Ngati Porou, will manage the Land in accordance with Ngati Porou custom and in doing so has agreed to enter into this Covenant on the terms and conditions set out herein.



### 3. PURPOSES OF COVENANT

3.1 To protect conservation values in relation to the Land, Ngati Porou shall manage the land with the following purposes:

3.1.1 Preserve the natural character of the Land with particular regard to the natural functioning of the ecosystem and to the native flora and fauna in their diverse and natural communities;

3.1.2 Protect and enhance the spiritual, cultural and historical integrity and values of the Land and its associated water bodies;

3.1.3 Preserve the Land as an outstanding area representative of a significant part of the natural ecological character of the Motu Ecological District;

3.1.4 Preserve the landscape amenity values of the Land;

3.1.5 Provide for the public's recreational use and enjoyment of the Land, to the extent consistent with the preceding purposes, and in accordance with clause 5 of this Covenant;

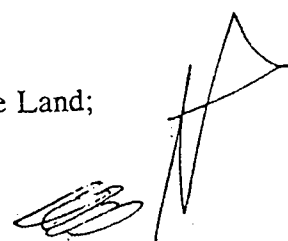
### 4. MANAGEMENT

4.1 Unless agreed in writing by the parties, Ngati Porou shall not carry out or permit in relation to the Land:

4.1.1 The grazing of the Land by livestock;

4.1.2 The felling, removal or damage of any indigenous tree shrub or other plant on the Land;

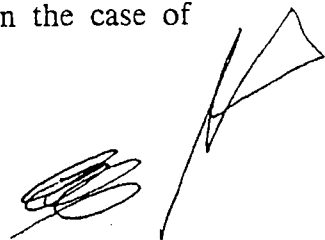
4.1.3 The planting of any species of tree shrub or other plant on the Land;



- 4.1.4 The erection of any fence, building, structure or other improvements on the Land whether for Ngati Porou purposes or for other private or public purpose;
  - 4.1.5 Any burning, topdressing or the sowing of seed on the Land;
  - 4.1.6 Any cultivation, earthworks or other soil disturbance on the Land;
  - 4.1.7 Any archaeological or other scientific research involving disturbance of the soil.
- 4.2 The parties shall have regard to the purposes of this Covenant contained in clause 2 when considering any agreement under this clause. Such agreement as between the parties must not be unreasonably withheld.

## 5. PUBLIC ACCESS

- 5.1 Subject to the terms and conditions contained in this Covenant, Ngati Porou shall allow members of the public free and unimpeded access on foot at all times throughout the Land consistent with the purposes of this Covenant.
- 5.2 Ngati Porou may prohibit or restrict public access to the Land for the express purpose of spiritual, cultural, traditional or religious events or reasons, for a maximum, of 14 days per year. In such event, the means of effecting the public access restriction shall be discussed and notified in writing to the Minister. Any such closure will coincide with public access restriction provided by clause 4.1.1 of the Easement.
- 5.3 In the case of death or serious accident on or associated with Mount Hikurangi, Ngati Porou may without prejudice to the rights contained in clause 5.2, declare a Rahui / spiritual prohibition according to Ngati Porou tikanga. In the case of declaring a Rahui, clause 5.4 shall also apply.



- 5.4 Prior to any closure or restriction of public access to the Land, Ngati Porou where reasonably practicable and at its own expense, shall advertise such restriction in the local newspaper; and notify the restriction on prominent notices placed on the Land in appropriate places to notify the public.
- 5.5 Public access to the land shall be limited to those rights of access for the public to pass and repass over the Land on foot and shall be subject to Ngati Porou rights as owner and Kaitieki. For the avoidance of doubt, it is agreed that the following activities are expressly prohibited unless consent is first obtained in writing from Ngati Porou:
- 5.5.1 **Camping:** camping on or adjacent to the Land;
  - 5.5.2 **Horses and Animals:** passage on or through the Land by horses or any other animal used for transportation purposes;
  - 5.5.3 **Dogs or Pets:** dogs or pets of any description, whether retained on a leash or otherwise;
  - 5.5.4 **Vehicles:** passage by motorcycle, bicycle or any other means of locomotion, mechanical, electrical or otherwise.
  - 5.5.5 **Firearms:** carrying and discharge of a firearm and/or other weapons.
- 5.6 The Minister will use best endeavours to ensure that users of the Raukumara Forest Park adjacent to the Land, notify Ngati Porou when and if they intend gaining access to the Land from any entry point other than through the Easement. The Minister will meet this requirement by reference in maps, department publications and general advice to forest park users.

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6. THE MINISTER'S OBLIGATIONS

- 6.1 Subject to clause 7, the Minister shall with the agreement of Ngati Porou eradicate or control noxious, troublesome or adventitious plants or trees on the Land to the extent that such weeds pose a threat to the adjoining land owned by Ngati Porou or are required to be controlled under any enactment.
- 6.2 The Minister may eradicate or control weeds if the parties agree that they pose a threat to the management objectives of either party having regard to the purposes of this Covenant contained in clause 3.
- 6.3 The Minister shall with the agreement of Ngati Porou, use any practical means and be responsible for the control of wild animals as defined in the Wild Animal Control Act 1977; and other animal pests on the Land, at a low level consistent with and having regard to the purposes of this Covenant contained in clause 3. Subject to the Conservation Act 1987 and the Public Finance Act 1989, the Minister will pay to Ngati Porou any net income received from wild animal control activities on the Land after first deducting all costs connected with those activities.
- 6.4 The Minister shall in the event of wildfire upon or threatening the Land, render assistance to Ngati Porou in suppressing the fire.
- 6.5 Any assistance by the Minister under clause 6.4 shall be at no cost to Ngati Porou unless Ngati Porou was responsible for the wildfire through wilful action or negligence, including the case where the wildfire was caused by the escape of a permitted fire due to non-adherence to conditions of a requisite permit.
- 6.6 Ngati Porou shall notify the Minister as soon as practicable in the event of wildfire threatening the Land.
- 6.7 The Minister shall reimburse Ngati Porou for the proportion of any local authority rates levied on the Land; and any other reasonable costs associated with compliance with requisite statutes, regulations and bylaws in relation to the Land. The parties





agree that the formula for proportioning rates in respect of the Land shall be as follows:

$$\text{Rates amount levied} \div \text{total land area} \times \text{covenanted land area}$$

6.8 Ngati Porou with the assistance of the Minister, will take all reasonable steps as a responsible landowner to minimise local authority rates.

## 7. JOINT OBLIGATIONS

7.1 Notwithstanding clause 6.1, Ngati Porou shall assist the Minister in the eradication or control of weeds associated with former grazing lands within the Land to the extent that such weeds pose a threat to the adjoining land held by Ngati Porou.

7.2 The Minister and Ngati Porou shall be jointly and equally responsible for the maintenance in a stockproof condition of fences between the Land and the adjoining lands. Provided where any party is responsible for damage to fences, then that party shall be solely responsible for reinstating fencing. The Minister shall be solely responsible for damage caused by the public.

## 8. DURATION OF COVENANT

8.1 This Covenant shall bind the parties to the rights and obligations contained within it until the Covenant is varied and/or terminated by mutual agreement by both parties, or in the event of termination under clause 12.2.

## 9. WITHOUT PREJUDICE TO TREATY CLAIMS

9.1 The parties acknowledge that this Covenant is not entered into in recognition of any claim (whether present or future) made by Ngati Porou or any other person in respect of any alleged breach by the Crown of its obligations under the Treaty of Waitangi or as a fiduciary or otherwise. The agreements in this Covenant are accordingly without prejudice to the rights of the parties in respect of any claims under the Treaty of Waitangi or as a fiduciary or otherwise and it is expressly

acknowledged that this Covenant does not evidence any acceptance or otherwise of any such claims by the Crown.

## 10. MISCELLANEOUS MATTERS

- 10.1 The rights hereby granted are expressly declared to be in the nature of a Covenant but the Crown shall not assign or otherwise dispose of its interest under this Covenant.
- 10.2 Nothing in this Covenant in any way diminishes or affects the rights of Ngati Porou to exercise rights of a landowner under the Trespass Act 1908, any other statute or generally at law or otherwise. For the avoidance of doubt, these rights may be exercised if Ngati Porou reasonably believes a person/s is in breach of the rights and/or restrictions of access conferred by this Covenant.
- 10.3 The provisions of the Act shall apply except where the Act is specifically excluded in the body of this Covenant as having application.
- 10.4 Subject to clause 1.2.10 the parties acknowledge the agreements contained in this Covenant are between Ngati Porou and the Crown and, are not intended to be a promise conferring benefits on any third party which support or sustain any right of enforcement by any third party pursuant to the terms of section 4 of the Contracts (Privity) Act 1982.

## 11. NOTICES

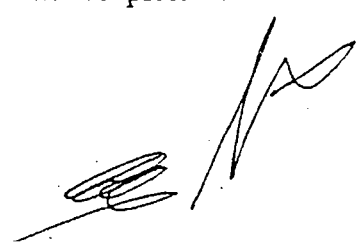
- 11.1 Any notice required to be given in terms of this Covenant shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952 and shall be sufficiently given if actually received by the party to whom it is addressed or that party's solicitor.



- 11.2 Any notice required to be given by the Minister shall be sufficiently given if it is signed by the Conservator East Coast/Hawkes Bay Conservancy, Department of Conservation, Gisborne. Any notice required to be served upon the Minister shall be sufficiently served if delivered to the office for the time being of the Conservator East Coast/Hawkes Bay Conservancy, Department of Conservation, Gisborne.
- 11.3 Any notice required to be given by Ngati Porou shall be sufficiently given if it is signed by a duly authorised officer or Trustee of Ngati Porou. Any notice required to be served on Ngati Porou shall be sufficiently served if delivered to the Head Office for the time being of Ngati Porou (currently at Ruatoria).

## 12. DEFAULT

- 12.1 Where there is any breach of any agreement contained in this Covenant by either party, then the other party (subject to clause 6) shall be entitled to take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and shall also be entitled to recover from the party responsible for the breach as a debt due, all costs incurred by the other party as a result of remedying such breach or preventing further damage.
- 12.2 If the breach was a material failure on the part of the Minister under the terms of this Covenant, then Ngai Porou may, by notice in writing, terminate this Covenant but without prejudice to the rights of Ngati Porou to sue for damages for acts or omissions prior to the date of termination.
- 12.3 If the breach was a material failure on the part of Ngati Porou under the terms of this Covenant, then the Minister's actions are without prejudice to the rights of the Minister to sue for damages for such breach.
- 12.4 Should either party to this Covenant be of the reasonable view that the other ("the defaulting party") has defaulted in the performance or observance of any of its obligations under this Covenant, then that party shall by written notice prior to taking any remedial action:



12.4.1 Advise the defaulting party of the default;

12.4.2 State the action reasonably required of the defaulting party to perform in accordance with this Covenant; and

12.4.3 State a reasonable timeframe within which the defaulting party is to take such action to remedy the breach.

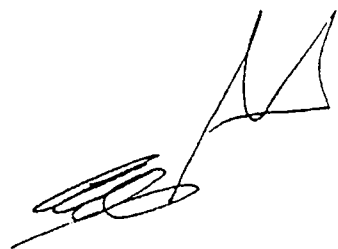
### 13. DISPUTE RESOLUTION PROCESSES

13.1 In the event the defaulting party fails to take the requisite action/s required within the time given in the notice under clause 12.4; or if the defaulting party disputes the notice or any aspect of it; or if any other dispute arises in connection with this Covenant and the rights and obligations contained herein; then the parties agree to first make efforts to resolve the issues through negotiation between representatives with managerial responsibility on behalf of each party.

13.2 In the event a resolution is not agreed within one (1) month of the date given in clause 12.4.3, then the matter will be referred directly to the Chairperson of Ngati Porou and the Minister for the time being for negotiation and/or resolution.

13.3 In the event a resolution contemplated by the process provided in clause 13.2 is not agreed within three (3) months of the date given in clause 12.4.3, then the matter will be referred to formal mediation by the parties with a mediator agreed between them. Failing agreement between the parties as to an agreed mediator, then such will be appointed by the President of the New Zealand Law Society.

13.4 In the event that the matter is not resolved by mediation with nine (9) months of the date referred to in clause 12.4.3, then the parties agree that the provisions of the Arbitration Act 1996 shall apply. The parties further agree that the outcome of arbitration shall be binding on the parties.

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SCHEDULE A

[Land appellation to be included]

IN WITNESS OF WHICH THIS COVENANT HAS BEEN EXECUTED, this 29<sup>th</sup> day of August 1999

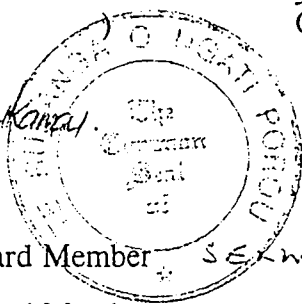
THE COMMON SEAL OF )  
TE RUNANGA O NGATI POROU )  
was hereunto fixed pursuant to a )  
resolution of the Runanga and in the )  
presence of:

*[Handwritten Signature]*

Chairperson

*[Handwritten Signature]*

*Amakare Haukama*  
Secretary



*[Handwritten Signature]*  
*[Handwritten Signature]*

Trust Board Member

SEKWHYI TANETA HARATA

Trust Board Member

TAMATI KUTURANGI REEGLY

SIGNED by the Hon Dr Nick Smith, )  
MINISTER OF CONSERVATION on )  
behalf of the Crown and in the presence of: )

*[Handwritten Signature]*

*[Handwritten Signature]*  
Witness

*P. Williamson* Name

*152022* Address

00725

# ANNEX 2