

**MEMORANDUM OF GRANT OF EASEMENT IN GROSS FOR THE
PURPOSES OF THE NEW ZEALAND WALKWAYS ACT 1990**

**COPY FOR YOUR
INFORMATION**

RECITALS

- A. **TE RUNANGA O NGATI POROU** (“Ngati Porou”) is the registered proprietor of an estate in fee simple in all that piece of land situated in the Gisborne Land District containing 6989 acres, more or less, being part of the Tapuaeroa No.2B Block and section 2D and part of section 2C of the Tapuaeroa Block and being all the land comprised and described in Certificates of Title Volume 109 Folio 185 and Volume 109 folio 184, Gisborne Land Registry (“the Land”).
- B. The Land is part of Pakihiroa Station which itself is part of the mountain known as Hikurangi.
- C. The East Coast Conservation Board (“the Board), after consultation with Ngati Porou, considers that part of the land should be made available for use by the public as a Walkway for the purposes of the New Zealand Walkways Act 1990.
- D. The Board, pursuant to the power conferred in that behalf by subsection (1) of section 8 of the New Zealand Walkways Act 1990, has requested the Director-General of Conservation to treat and agree in the name and on behalf of HER MAJESTY THE QUEEN for the grant of an Easement over the Land on the conditions contained herein.
- E. 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.
- F. Ngati Porou and the Crown have negotiated and agreed to the grant of this Easement providing access rights over the Land.



- G. Ngati Porou has agreed to grant an Easement together with the additional rights hereinafter appearing for the purpose of allowing convenient foot access to the public from the public road in Tapuaeroa Valley to that part of Hikurangi that is subject to a Conservation Covenant duly executed between the parties.
- H. The parties recognise that this Easement is between principals who have negotiated with authorised mandate, goodwill, and mana.
- I. The parties recognise that the execution of this Easement is without prejudice to the rights of Ngati Porou to make any claims relating to Treaty of Waitangi issues or otherwise.

GRANT OF EASEMENT

In consideration of the premises, Ngati Porou TRANSFERS AND GRANTS TO THE CROWN as an easement in gross on the terms and conditions set out herein for all time from and including the 21st day of August, 1999, full, free, uninterrupted and unrestricted right liberty and privilege from time to time and at all times for any member of the public at his or her will and pleasure to go pass and repass on foot over and along the Walkway to the end and intent that the Walkway shall be used for the purposes of the New Zealand Walkways Act 1990.

AGREEMENTS:

Ngati Porou and the Crown agree as follows:

1. INTERPRETATION

1.1 Unless the context otherwise requires:

“Act” means the New Zealand Walkways Act 1990.



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“**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.

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

“**Land**” means the land described in Recital A of this Easement.

“**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 Easement between the parties.

“**Walkway**” means the right of way shown depicted in the scheme plan attached to this Easement.

1.2 For avoidance of doubt:

1.2.1 The reference to any Act in this Easement 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 part of the context or to affect the interpretation of this Easement;

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 Easement;



- 1.2.5 References to clauses are references to clauses of this Easement;
- 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 Easement bear the defined meaning in the whole of this Easement including the Recitals. Where the parties disagree over the interpretation of any thing contained in this Easement, 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 Easement 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 Easement require further agreement between the parties, then such agreement must not be unreasonably withheld.
- 1.3 Subject to the Walkway and rights, obligations and agreements set out in this Easement and until its surrender by the Crown, Ngati Porou may exercise all rights and obligations consistent with its ownership of the Land.
- 1.4 In the exercise of any statutory powers and/or discretions, the Minister shall do so in a manner consistent with the provisions of this Easement and the rights and obligations contained herein.

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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 grant an Easement on the terms and conditions set out herein.

3. PROHIBITED FORMS OF ACCESS

- 3.1 The Walkway shall be limited to those rights of access for the public to pass and repass over the Land on foot and shall be subject always to Ngati Porou's rights as owner and Kaitieki. For the avoidance of doubt, and without affecting the limited nature of the Walkway, it is agreed that the following activities are expressly prohibited unless consent is first obtained in writing from Ngati Porou:
- 3.1.1 **Camping:** camping on or adjacent to the Land;
 - 3.1.2 **Horses and Animals:** passage on or through the Land by horses or any other animal used for transportation purposes;
 - 3.1.3 **Dogs or Pets:** dogs or pets of any description, whether retained on a leash or otherwise;
 - 3.1.4 **Vehicles:** passage by motorcycle, bicycle or any other means of locomotion, mechanical, electrical or otherwise;
 - 3.1.5 **Firearms:** carrying and discharge of a firearm and/or other weapons.



4. CLOSURE OF THE WALKWAY

4.1 Ngati Porou may prohibit or restrict public access to the Walkway for up to a maximum of 50 days in each calendar year as follows:

4.1.1 Spiritual, cultural, traditional or religious events or reasons, for a maximum of 14 days per year.

4.1.2 To avoid potential adverse effects on activities carried out by Ngati Porou on adjoining land to protect Ngati Porou's farming operations and/or lambing activities for a maximum of 21 consecutive days.

4.2 In such event, the means of effecting the public access restriction shall be discussed and notified in writing to the Minister.

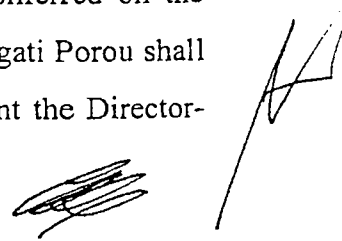
4.3 In the case of death or serious accident on or associated with Mount Hikurangi, Ngati Porou may without prejudice to the rights contained in clause 4.1, declare a Rahui / spiritual prohibition according to Ngati Porou tikanga. In the case of declaring a Rahui, clause 4.4 shall also apply.

4.4 Prior to any closure or restriction of the Walkway, Ngati Porou where reasonably practicable and at its own cost, shall advertise such closure or restrictions in the local newspaper; and notify the closure or restrictions on prominent notices placed at the Walkway entrance and/or appropriate places to notify the public.

5. RESPONSIBILITIES OF THE DIRECTOR-GENERAL

5.1 The Director-General shall:

5.1.1 Repair all damage that may be caused by the negligent or improper exercise of the Walkway or the exercise of any right or power conferred on the Crown by this Easement. For the purposes of this clause, Ngati Porou shall reasonably co-operate with the Director-General in the event the Director-



General seeks to bring action against third parties to recover any loss suffered by the Director-General under this clause. Such co-operation may include allowing the Director-General to exercise rights of subrogation provided Ngati Porou is satisfied such action will not be contrary to Ngati Porou's interests;

- 5.1.2 Improve and maintain the Walkway, in agreement with Ngati Porou, to facilitate the safe use of the Walkway, provided that such improvement shall not interfere with farming operations of Ngati Porou or cause damage to the Land or adjacent land in any way. The Director-General shall have no responsibility to maintain the Walkway for vehicle use. Except as provided for in clause 5.1.1, improvement or maintenance of the Walkway shall not include any obligation to repair damage done by other than foot access by the public.
- 5.1.3 In agreement with Ngati Porou, erect and display suitable signs and warning notices requiring the public to do all things necessary for the safety and protection of both the public, the Walkway and adjoining land.
- 5.1.4 In agreement with Ngati Porou, erect and display appropriate signage regarding Ngati Porou's spiritual, cultural, traditional and historical association to Hikurangi and the Walkway.

6. POWERS OF DIRECTOR-GENERAL

- 6.1 All powers, rights and authorities vested in the Crown by this Easement may be exercised by the East Coast/Hawkes Bay Conservator or the Director-General of Conservation, or such other party as the Director-General may nominate in writing.

7. WITHOUT PREJUDICE TO TREATY CLAIMS

- 7.1 The parties acknowledge that this Easement is not entered into in recognition of any claim (whether present or future) made by Ngati Porou or any other person in respect of



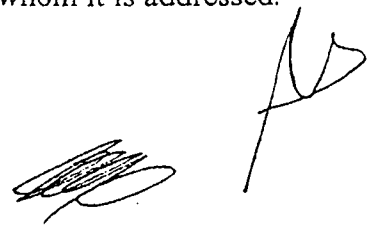
any alleged breach by the Crown of its obligations under the Treaty of Waitangi or as a fiduciary or otherwise. The agreements in this Easement are accordingly without prejudice to the rights of the parties in respect of any claims under the Treaty of Waitangi or as a fiduciary or otherwise and it is expressly acknowledged that this Easement does not evidence any acceptance or otherwise of any such claims by the Crown.

8. MISCELLANEOUS MATTERS

- 8.1 The rights hereby granted are expressly declared to be in the nature of an Easement but the Crown shall not assign or otherwise dispose of its interest under this Easement.
- 8.2 Nothing in this Easement 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 Easement.
- 8.3 The provisions of the Act shall apply except where the Act is specifically excluded in the body of this Easement as having application.
- 8.4 Subject to clause 1.2.10 the parties acknowledge the agreements contained in this Easement 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.

9. NOTICES

- 9.1 Any notice required to be given in terms of this Easement 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.

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9.2 Any notice required to be given by the Director-General shall be sufficiently given if it is signed by the East Coast/Hawkes Bay Conservator, Department of Conservation, Gisborne. Any notice required to be served on the Director-General shall be sufficiently served if delivered to the office for the time being of the Conservator East Coast/Hawkes Bay Conservator, Department of Conservation, Gisborne.

9.3 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).

10. DEFAULT

10.1 Where there is any breach of any agreement contained in this Easement by either party, then the other party 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.

10.2 If the breach was a material failure on the part of the Crown under the terms of this Easement, then Ngai Porou may, by notice in writing, terminate this Easement but without prejudice to the rights of Ngati Porou to sue for damages for acts or omissions prior to the date of termination.


10.3 If the breach was a material failure on the part of Ngati Porou under the terms of this Easement, then the Crown's actions are without prejudice to the rights of the Crown to sue for damages for such breach.

10.4 Should either party to this Easement 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 Easement, then that party shall by written notice prior to taking any remedial action:

- 10.4.1 Advise the defaulting party of the default;
- 10.4.2 State the action reasonably required of the defaulting party to perform in accordance with this Easement; and
- 10.4.3 State a reasonable timeframe within which the defaulting party is to take such action to remedy the breach.

11. DISPUTE RESOLUTION PROCESSES

- 11.1 In the event the defaulting party fails to take the requisite action/s required within the time given in the notice under clause 10.4; or if the defaulting party disputes the notice or any aspect of it; or if any other dispute arises in connection with this Easement and the rights and obligations contained herein, then the parties agree to first make efforts to resolve the issue/s through negotiation between representatives with managerial responsibility on behalf of each party.
- 11.2 In the event a resolution is not agreed within one (1) month of the date given in clause 10.4.3, then the matter will be referred directly to the Chairperson of Ngati Porou and the Minister of Conservation for the time being for negotiation and/or resolution.
- 11.3 In the event a resolution contemplated by the process provided in clause 11.2 is not agreed within three (3) months of the date given in clause 10.4.3, 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.
- 11.4 In the event that the matter is not resolved by mediation with nine (9) months of the date referred to in clause 10.4.3, 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.

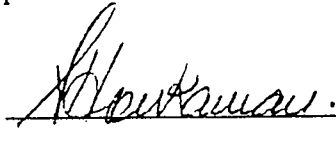
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THE CROWN does hereby accept this Easement and acknowledges that the rights and obligations herein granted shall be held for the purposes of the New Zealand Walkways 1990 and subject to the conditions, restrictions and agreements set forth above.

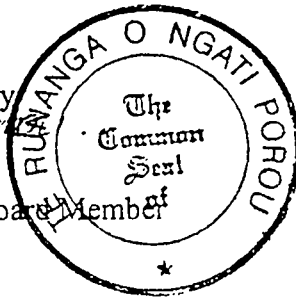
IN WITNESS WHEREOF these presents have been executed this day 29th of August 1999.

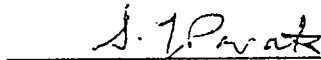
THE COMMON SEAL of)
TE RUNANGA O NGATI POROU)
was hereunto fixed pursuant to a)
resolution of the Runanga and in the)
presence of:)


Chairperson


Secretary

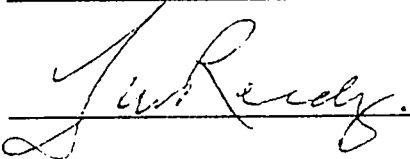
Andere Kuaraka




Trust Board Member

Trust Board Member

SELWYN TANETA PARATA

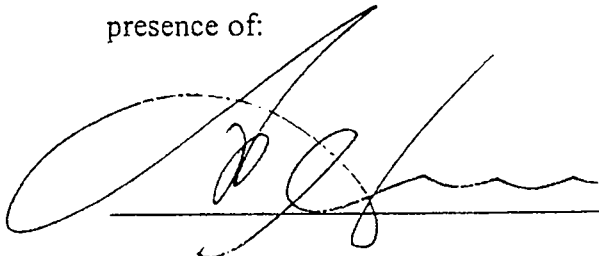

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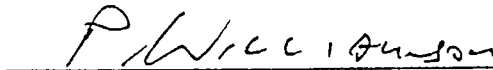
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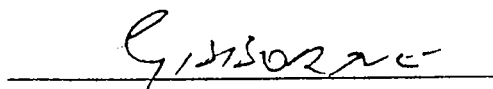
TAMATI WREEDY

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




Witness


Name


Address