

1

**GRANT OF CONSERVATION COVENANT TE
URENUI PĀ SITE**

BETWEEN

TE RUNANGA O NGĀTI MUTUNGA

AND

THE MINISTER OF CONSERVATION

(Pursuant to Clause 10.1.17 of the Deed of Settlement dated 31 July 2005 and Section 34 (3)
and (5) of the Ngāti Mutunga Claims Settlement Act 2006)

Handwritten signature and date
28/3/17

CONSERVATION COVENANT
(Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this 13TH day of DECEMBER 2006

BETWEEN THE TRUSTEES OF TE RUNANGA O NGĀTI MUTUNGA (the Owner)

AND

THE MINISTER OF CONSERVATION (the Minister)

BACKGROUND

- A. The Owner and the Crown are parties to a Deed of Settlement dated 31 July 2005 (the **Deed of Settlement**).
- B. Under the Deed of Settlement the Crown agreed to transfer the fee simple estate of the Te Urenui Pā Site to the Owner, subject to the grant of a Conservation Covenant pursuant to the Deed and Section 34 (3) of the Ngāti Mutunga Claims Settlement Act 2006.
- C. The Te Urenui Pā Site contains Natural Values worthy of protection.
- D. The Owner and the Crown agree that the Te Urenui Pā Site should be managed to preserve the Natural Values.
- E. The Owner has agreed to grant the Minister a Covenant over the Te Urenui Pā Site to preserve the Natural Values.

OPERATIVE PARTS

In accordance with section 77 of the Reserves Act 1977 and with the intent that the Covenant run with the Te Urenui Pā Site and bind all subsequent owners of the Te Urenui Pā Site, the Owner and the Minister agree as follows:

[Handwritten signatures and initials]

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“**Act**” means the Reserves Act 1977.

“**Covenant**” means this Deed of Covenant made under section 77 of the Act.

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

“**Fence**” includes a gate.

“**Fire Authority**” means the New Plymouth District Council or other fire authority as defined in the Forest and Rural Fires Act 1977.

“**Te Urenui Pā Site**” means the land described in **Schedule 1** and vested in fee simple in the Owner pursuant to Section 34 of the Ngāti Mutunga Claims Settlement Act 2006.

“**Minerals**” means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.

“**Minister**” means the Minister of Conservation.

“**Natural Values**” means any or all of the Te Urenui Pā Site’s natural environment, landscape amenity, wildlife or freshwater life values as 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 Te Urenui Pā Site.

“**Working Days**” means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Te Urenui Pā Site is located.

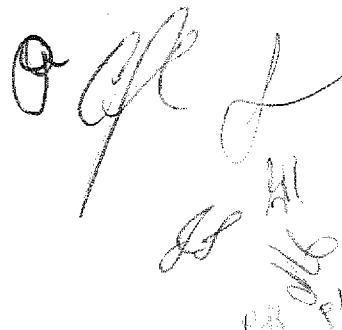
1.2 For avoidance of doubt:

1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;

1.2.2 references to clauses are references to clauses in this Covenant;

1.2.3 references to parties are references to the Owner and the Minister;

1.2.4 words importing the singular number include the plural and vice versa;

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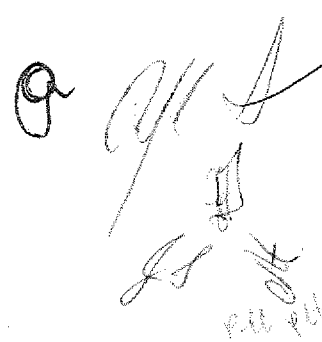
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVE OF THE COVENANT

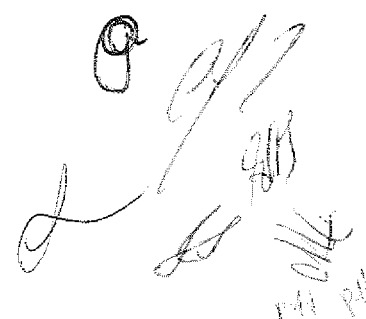
- 2.1 The Te Urenui Pā Site must be managed so as to preserve the Natural Values.

3 IMPLEMENTATION OF THE OBJECTIVE

- 3.1 Unless agreed in writing by the parties, the Owner must not carry out or permit on or in relation to the Te Urenui Pā Site:
 - 3.1.1 grazing of the Te Urenui Pā Site by livestock;
 - 3.1.2 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant, other than wind thrown exotic trees or trees whose roots are damaging urupa;
 - 3.1.3 the planting of any species of tree, shrub or other plant;
 - 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 any cultivation, earth works or other soil disturbances unless for the purpose of retrieving, burying or re-burying koiwi (human remains);
 - 3.1.7 any archaeological or other scientific research involving disturbance of the soil, and any consent will be subject to compliance with the Historic Places Act 1993;
 - 3.1.8 the damming, diverting or taking of Natural Water;



- 3.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Te Urenui Pā Site;
 - 3.1.10 any other activity which might have an adverse effect on the Natural 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 Te Urenui Pā Site;
 - 3.1.12 The erection of utility transmission lines across the Te Urenui Pā Site.
- 3.2 The Owner must:
- 3.2.1 eradicate or control all weeds and pests on the Te Urenui Pā Site to the extent required by any statute; and, in particular, comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
 - 3.2.2 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Te Urenui Pā Site;
 - 3.2.3 keep the Te Urenui Pā Site free from the spread of exotic tree species and as far as possible control any such species that may be already present on the Te Urenui Pā Site;
 - 3.2.4 keep the Te Urenui Pā Site free from rubbish or other unsightly or offensive material arising from the Owner's use of the Te Urenui Pā Site;
 - 3.2.5 subject to consultation between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Te Urenui Pā Site, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Te Urenui Pā Site, or to carry out protection or maintenance work on the Te Urenui Pā Site, or to ascertain whether the provisions of this Covenant are being observed;
 - 3.2.6 keep all Fences on the boundary of the Te Urenui Pā Site in good order and condition and, notwithstanding clause 3.1.4, must rebuild or replace all such Fences when reasonably required except as provided in clause 4.2;
 - 3.2.7 comply with all requisite statutes, regulations and bylaws in relation to the Te Urenui Pā Site.

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3.3 The Owner acknowledges that:

- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
- 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**4.1 The Minister must:**

- 4.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant;
- 4.1.2 repair and replace to its former condition any Fence or other improvement on the Te Urenui Pā Site or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

4.2 The Minister may:

- 4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objectives specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Te Urenui Pā Site to implement the objectives specified in clause 2.1.

5 JOINT OBLIGATIONS

- 5.1 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 objective set out in clause 2.1.

6 DURATION OF COVENANT

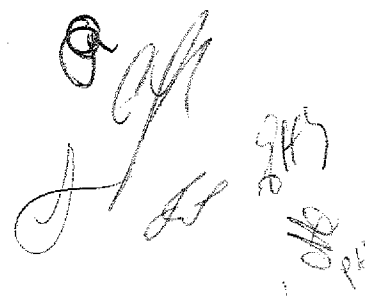
- 6.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

7 VARIATION OF COVENANT

- 7.1 This Covenant may be varied by mutual agreement in writing between the Owner and the Minister.

8 OBLIGATIONS ON SALE OF LAND

- 8.1 If the Owner sells, leases, or parts with possession of the Te Urenui Pā Site, 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 also include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a

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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 Te Urenui Pā Site in respect of which a breach occurs.

9 MISCELLANEOUS MATTERS

9.1 Rights

- 9.1.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

9.2 Trespass Act

- 9.2.1 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;

- 9.2.2 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.

9.3 Reserves Act

- 9.3.1 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 Te Urenui Pā Site as if the Te Urenui Pā Site were a reserve.

9.4 Title

- 9.4.1 This Covenant must be signed by both parties and registered against the computer freehold register for the Te Urenui Pā Site.

9.5 Acceptance of Covenant

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

9.6 Fire

- 9.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wildfire upon or threatening the Te Urenui Pā Site.

- 9.6.2 If the Minister is not the appropriate Fire Authority for the Te Urenui Pā Site, the Minister will render assistance to the Fire Authority in suppressing the fire if:

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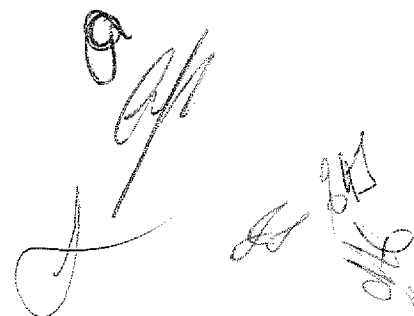
- 9.6.2.1 requested to do so; or
- 9.6.2.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.
- 9.6.3 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

10 DEFAULT

- 10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:
- 10.1.1 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
- 10.1.2 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.
- 10.2 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:
- 10.2.1 advise the defaulting party of the default;
- 10.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 10.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

11 DISPUTE RESOLUTION PROCESSES

- 11.1 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.
- 11.2 **Mediation**
- 11.2.1 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;

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11.2.2 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Te Urenui Pā Site is situated is to appoint the mediator.

11.3 Failure of Mediation

11.3.1 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;

11.3.2 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 for the time being of the District Law Society in the region in which the Te Urenui Pā Site is located;

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

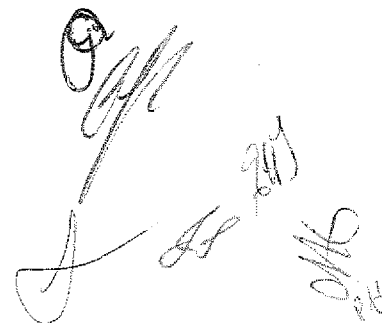
12 NOTICES

12.1 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, or by facsimile addressed to the receiving party at the address or facsimile number set out in **Schedule 2**.

12.2 A notice given in accordance with clause 12.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of pre-paid post, on the third working day after posting;
- (c) in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.


12.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Te Urenui Pā Site and must supply the Minister with the name and address of the new owner or person in control.



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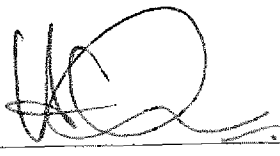
Executed as a Deed

Signed by THE TRUSTEES OF TE RUNANGA O NGĀTI MUTUNGA (as Owner)

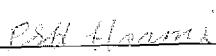


Jamie Grant Daniel Tuuta

In the presence of:

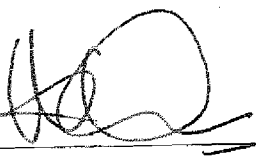
Witness 

Name ~~Matanuku Kihirini Mahuika~~
Occupation Solicitor
Address WELLINGTON

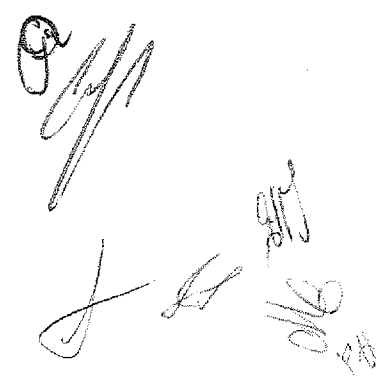


Patricia Sharon Hurimoana
Haami

In the presence of:


Witness 

Name ~~Matanuku Kihirini Mahuika~~
Occupation Solicitor
Address WELLINGTON




Miriama Evans


Miriama Evans

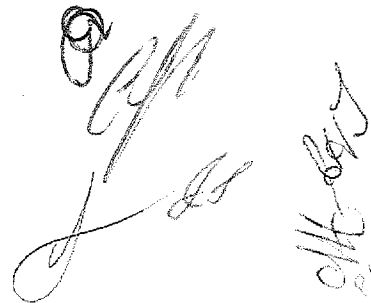
In the presence of: 
 Witness _____
 Name Matanuku Kihirini Mahuika
 Occupation Solicitor
WELLINGTON
 Address _____

Ewai Hannah Tuuta
Ewai Hannah Tuuta

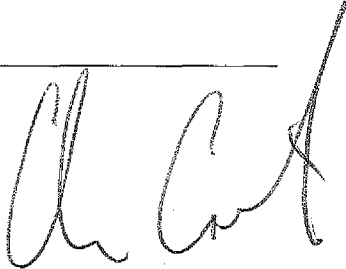
In the presence of: 
 Witness _____
 Name Matanuku Kihirini Mahuika
 Occupation Solicitor
WELLINGTON
 Address _____

Lewis David Parekura Callaghan
Lewis David Parekura Callaghan

In the presence of: 
 Witness _____
 Name Matanuku Kihirini Mahuika
 Occupation Solicitor
WELLINGTON
 Address _____

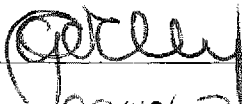


Signed by Hon Chris Carter
Minister of Conservation



In the presence of:

Witness

_____ 

Name

_____ Gavin Rodley

Occupation

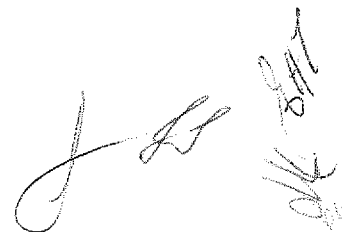
_____ Private Secretary

Address

_____ Wellington

Correct for the Purposes of the Land Transfer Act 1952

Solicitor for the Minister of Conservation



JLB
11.10.17

SCHEDULE 1

Description of Te Urenui Pā Site:

2.8834 hectares, more or less, being Urenui 2B1. All Proclamation W.2854.
(All Computer Register)

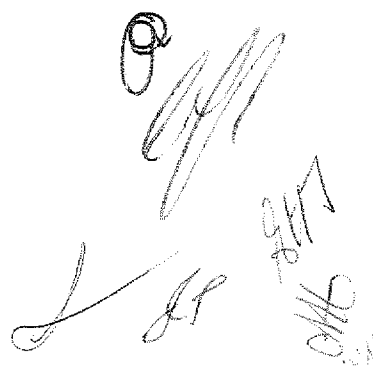
Natural Values

The natural environment of a remnant area of secondary indigenous regenerating semi coastal forest which was formerly planted in macrocarpa and radiata pine exotics in the 1930s which have since been largely removed to allow native forest regeneration dominated by kohekohe, kowhai, karaka and mamaku with an under story of kawakawa, rangiora, toi toi, lacebark, flax and other indigenous species.

The natural landscape amenity including a scenic hill top, typical geological features of the Taranaki Volcanic Region and the water and soil values associated with boundary of the area abutting the Urenui River estuary.

The wildlife habitat and indigenous fauna including native birds such as piwakawaka/fantail, riroriro/grey warbler, tui, korimako/bellbird and kererū/wood pigeon.

The historical values including the archaeological, cultural and spiritual value of a preserved pā site comprising ditches, banks, terraces, middens, rua and urupā sites (with many burials in terraces) where the last recorded burial took place in 1942. Identified as New Zealand Archaeological Site Q19 /8 (formerly N99/8).

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SCHEDULE 2**Address for Service**

The address for service of the Owner is:

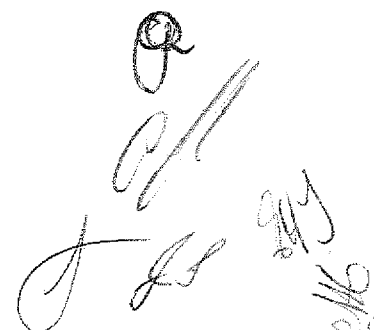
**Te Runanga o Ngāti Mutunga
6 Ngakoti Street
PDC Box 32
URENUI**

Phone (06) 752 3247
Facsimile (06) 752 3347

The address for service of the Minister is:

**The Conservator
Department of Conservation
74 Ingestre Street
Private Bag 3016
WANGANUI**

Phone (06) 348 8475
Facsimile (06) 348 8095

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GRANT OF CONSERVATION COVENANT

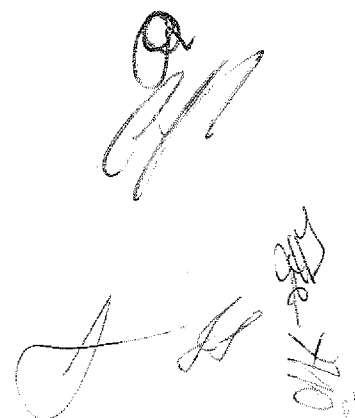
Under Section 77 of the Reserves Act 1977

TE RUNANGA O NGĀTI MUTUNGA

TO

MINISTER OF CONSERVATION

Legal Services
Department of Conservation



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