

**CONSERVATION COVENANT**

(Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this 21<sup>st</sup> day of July 2015

**BETWEEN** TE ROROA MANAWHENUA CUSTODIAN LIMITED (the Owner)

**AND** MINISTER OF CONSERVATION (the Minister)

**BACKGROUND**

- A. Section 77 of the Reserves Act 1977 provides that the Minister may enter into a covenant with the owner of any land to provide for management of that land's Reserve Values.
- B. The Owner is the registered proprietor of the Land.
- C. The Land contains Reserve Values.
- D. The parties agree that:
- (i) the Land should be managed so as to preserve the Reserve Values; and
  - (ii) such purpose can be achieved without the Minister acquiring a fee simple or leasehold interest in the Land.
- E. The Owner has agreed to grant the Minister a Covenant over the Land to preserve the Reserve Values.

**OPERATIVE PARTS**

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

**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 a fire authority as defined in the Forest and Rural Fires Act 1977.

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<b>"Land"</b>	means the land described in Schedule 1.
<b>"Minerals"</b>	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
<b>"Minister"</b>	means the Minister of Conservation.
<b>"Natural Water"</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>"Owner"</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>"Reserve Values"</b>	means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
<b>"Working Days"</b>	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land 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;
- 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.

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## **2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Reserve Values existing at the date of this covenant.

## **3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
- 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.4 the planting of any species of exotic tree, shrub or other plant;
- 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.6 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;
- 3.1.7 any cultivation, earth works or other soil disturbances;
- 3.1.8 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 Land;
- 3.1.9 any other activity which might have an adverse effect on the Reserve Values;
- 3.1.10 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 3.1.11 subject to clause 3.2.7, the erection of utility transmission lines across the Land.

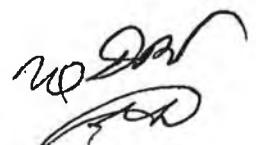
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land 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 Land;
- 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;

- 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) 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 Land, to examine and record the condition of the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition;
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 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.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- (a) the repair or maintenance of fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
  - (b) the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
    - (i) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
    - (ii) the Minister has first approved the work (which approval is not to be withheld unreasonably).

#### **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 Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted 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:



## **SCHEDULE 1**

### **Description of Land:**

18.7100 ha, more or less, over Part Section 2 SO 434487 as shown A on SO 434487 (North Auckland Land District)

### **Reserve Values of Land to be Protected:**

The natural values represented by the coastal sand dune landscape, characterised by steeply sloping vegetated and non vegetated consolidated and shifting sand dunes and cliffs. This coastal area is important habitat for several significant wildlife species including the little blue penguin and native lizards. The New Zealand Dotterel breeds along this coast. Banded dotterel, variable oyster catchers and caspian tern as well as more common species such as pied shag, southern black backed gull, red billed gull, pied stilt, and kingfisher frequent this area.

The historic values represented by the historical and archaeological sites on the land:

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 Land 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 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objectives specified in clause 2.

## **6 DURATION OF COVENANT**

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

## **7 CONSENTS**

7.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

## **8 MISCELLANEOUS MATTERS**

### **8.1 Rights**

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

### **8.2 Trespass Act:**

8.2.1 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;

8.2.2 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.

### **8.3 Reserves Act**

8.3.1 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 Land as if the Land were a reserve.

**8.4 Title**

8.4.1 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

**8.5 Acceptance of Covenant**

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

**8.6 Fire**

8.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

8.6.2 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.6.2.1 requested to do so; or

8.6.2.2 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.

8.6.3 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).

**9 DEFAULT**

9.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

9.1.1 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

9.1.2 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.

9.2 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:

9.3 Advise the defaulting party of the default.

9.3.1 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

9.3.2 state a reasonable period within which the defaulting party must take action to remedy the default.

## **10 DISPUTE RESOLUTION PROCESSES**

10.1 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.

### **10.2 Mediation**

10.2.1 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;

10.2.2 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

### **10.3 Failure of Mediation**

10.3.1 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;

10.3.2 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 Land is situated;

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

## **11 NOTICES**

11.1 A 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

11.2 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.

11.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

## **12 SPECIAL CONDITIONS**


12.1 Special conditions relating to this Covenant are set out in Schedule 3.

12.2 The standard conditions contained in this Covenant must be read subject to any special conditions.



Executed as a Deed

Signed for and on behalf of **Te Roroa Manawhenua Custodian Limited** in the presence of:


)   
) Alan Nesbit

Witness: TERESA LOMAS

Address: 20 WAKAREKA RD, WAIMANAKU

Occupation: ACCOUNTANT

Signed for and on behalf of **Te Roroa Manawhenua Custodian Limited** in the presence of:

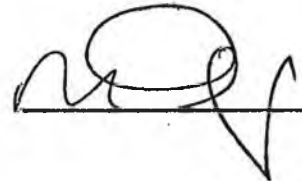
)   
) DAVID REWITI NAERA

Witness: TAOHU TRANE

Address: 148 AWAKINO ROAD, DARGAVILLE

Occupation: INTERIM OPERATIONS MANAGER

Signed by **Nicola Marie Douglas**, Director, Conservation Partnerships, Northern North Island Region under a written delegation from the Minister of Conservation and exercising his powers under section 117 of the Reserves Act 1977 as Commissioner in the presence of:

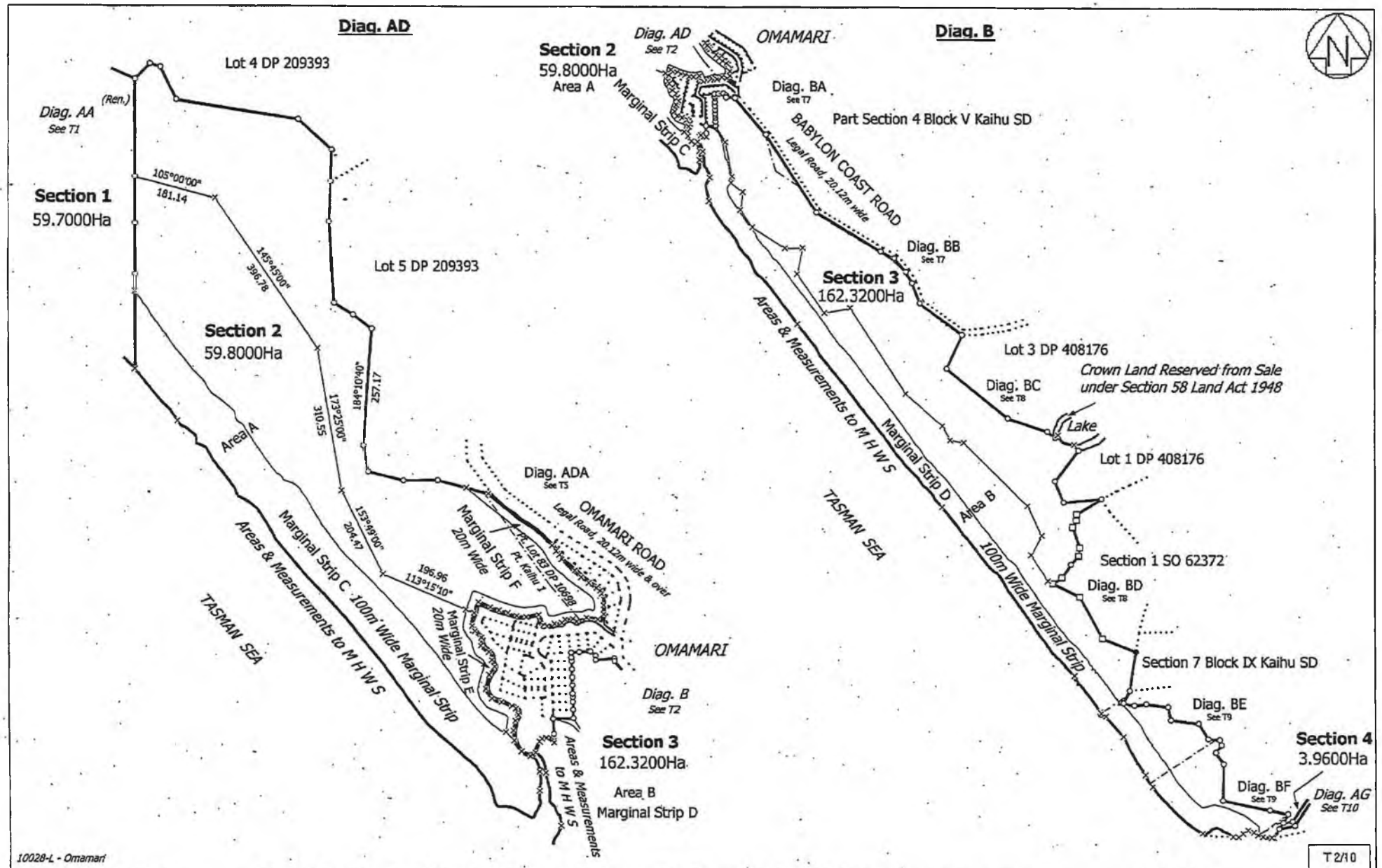
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Witness: Emy Lamb

Address: 73 Rostrevor St, Hamilton

Occupation: Resord Assistant





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Land District North Auckland  
Digitally Generated Plan  
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Plan of Sections 1 - 4, Marginal Strips and Conservation Covenants formerly being  
Pt Kaihu 1, Pt Kaihu 3 and Pt Kaihu 4 and Pts Lot 83 DP 10698

Surveyor: Trevor James Shaw  
Firm: Simpson Shaw Surveyors

Title Plan  
SO 434487  
Approved on: 1/06/2011

**SCHEDULE 2<sup>1</sup>**

**Address for Service**

The address for service of the Owner is:

Te Roroa Manawhenua Custodian Limited  
1 Waipoua River Road  
Waipoua Forest  
PO Box 317  
Dargaville

The address for service of the Minister is:

Director of Conservation Partnerships  
Department of Conservation  
Level 4  
73 Rostrevor Street,  
Private Bag 3072  
HAMILTON 3240  
Facsimile: (07) 8581001

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*DM*  
*DP* *no*

### **SCHEDULE 3**

#### **Special Conditions**

The Owner may carry out minor disturbances of earth and minor clearance of vegetation for the purposes of managing the historic and archaeological sites on the Land.

The Owner may undertake minor clearances of vegetation for the purpose of access for pest, plant or animal control.

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**GRANT** of

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 77 of the  
Reserves Act 1977

**TE ROROA MANAWHENUA CUSTODIAN LIMITED**

to

**MINISTER OF CONSERVATION**

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Legal Services  
Department of Conservation

A handwritten signature in black ink, appearing to be 'M. J. [unclear]', located in the bottom right corner of the page.

