

OPERATIVE PARTS

In accordance with section 27 of the Conservation Act 1987 and 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 Minister agree as follows.

1. INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

“Conservation Purposes”	means the preservation and protection of natural and historic resources including conservation values on the Land for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
“Conservation Values”	means the preservation and protection of natural and historic resources on the Land; and includes any or all of the following: plants and animals; the air, water and soil in or on which a plant or animal lives or may live; landscape and landform; geological features; systems of interacting living organisms and their environment; and any historic place (including building) on the Land which form or forms part of the historical and cultural heritage of New Zealand.
“Covenant”	means this Deed of Covenant made under section 27 of the Conservation Act 1987 and section 77 of the Reserves Act 1977.
“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.
“Land”	means the Land described in Schedule 1.
“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 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 Land and, where that proprietor is an incorporated company or Trust, includes those who, by reason of their association with that company or Trust, have a beneficial interest in the Land.

“Reserve Values”	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values.
“Working Days”	means the period between any one midnight and the next excluding Saturdays, Sundays and statutory holidays in the place where the Land is situated.

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.

2. CONSIDERATION AND OTHER MATTERS

- 2.1 The Minister must pay to the Owner the sum specified in Schedule 1 as consideration for the grant of this Covenant.
- 2.2 The Crown agrees that any money paid to the Owner under this Covenant is to be exempt income for purposes of the Income Tax Act 1994.
- 2.3 For purposes of clause 2.2 the Crown agrees to put in place legislation to give effect to such exemption.

3. MINISTER’S ACKNOWLEDGEMENT

- 3.1 The Minister acknowledges that, except as agreed in this Covenant, the Owner is and continues to be the registered proprietor of the Land and has and continues to have full rights of ownership, possession and use of the Land.

4. OBJECTIVES OF THE COVENANT

- 4.1 The Land must be managed:
 - 4.1.1 for Conservation Purposes;

- 4.1.2 so as to preserve the Reserves Values;
- 4.1.3 to provide, subject to this Covenant, freedom of access to the public for the appreciation and recreational enjoyment of the Land.

5. JOINT OBLIGATIONS

5.1 Unless agreed in writing by the parties, the Owner must not carry out or permit in relation to or on the Land:

- 5.1.1 grazing of the Land by livestock;
- 5.1.2 subject to clause 6.2, felling, removal or damage of any tree, shrub or other plant on the Land;
- 5.1.3 the planting of any species of tree, shrub or other plant;
- 5.1.4 the erection of any building, structure or other improvement whether for the purposes of the Owner or the Minister or other private or public purpose except as provided for in schedule 3(2.0);
- 5.1.5 any burning, use of chemicals (whether for spraying or otherwise), top dressing or sowing of seed except where the use of chemicals is reasonably necessary to control weeds and pests;
- 5.1.6 any cultivation, earth works or other soil disturbances except as provided for in schedule 3(2.0);
- 5.1.7 any archaeological or other scientific research involving disturbance of the soil;
- 5.1.8 the damming, diverting or taking of Natural Water;
- 5.1.9 any action which will cause deterioration in the natural flow, supply, quantity, or quality of the water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 5.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
- 5.1.11 any prospecting or mining for Minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
- 5.1.12 the erection of utility transmission lines across the Land.

5.2 The Owner must:

- 5.2.1 if it is safe to do so, assist the Fire Authority to extinguish any wildfire upon or threatening the Land;
- 5.2.2 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 on to the Land, with or without motor vehicles, machinery, and implements of any kind, to examine and record the condition of the Land, or to carry out protection, fire suppression, or maintenance work on the Land, or to

provide assistance and support to the Owner as requested by the Owner, or to ascertain whether the provisions of this Covenant are being observed.

5.3 The Owner must comply with all requisite statutes, regulations and bylaws in relation to the Land.

5.4 The Owner acknowledges that this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977.

5.5 The Owner is entitled to exercise Maori traditional rights in respect of the Land and indigenous vegetation.

6. MANAGEMENT

6.1 Except as otherwise provided in clause 6.2, if requested by the Owner, the Minister may provide the Owner with assistance and support in management of the Land and in meeting the Owner's obligations under clause 5 subject to any financial, statutory, or other constraints which may apply to the Minister from time to time.

6.2 Nothing in this Covenant limits or affects the right of the Crown as far as practicable:

(a) to keep the Land free from plant pests and in particular to comply with the provisions of any notices given under the Hazardous Substance and New Organisms Act 1996 or Biosecurity Act 1993 or any provisions of any pest management strategy;

(b) to keep the Land free from any exotic tree species;

(c) to keep the Land free from animal pests and wild animals and in particular comply with the provisions of and any notices given under the Biosecurity Act 1993 or any provisions of any pest management strategy or:

(d) to keep the Land free from rubbish or other unsightly or offensive material;

(e) to manage, protect and maintain the Conservation Values and Reserve Values on the Land provided that the Crown shall not act in a manner inconsistent with the Treaty of Waitangi.

6.3 The Owner acknowledges that the Minister has statutory powers, obligations and duties with which the Minister must comply.

7. PUBLIC ACCESS

7.1 The Owner must permit the public to enter upon the Land.

8. MINISTER'S OBLIGATIONS

8.1 The Minister must repair and replace to its former condition any Fence or other improvement on the Land or on its boundary which may have been damaged in the course of the Minister, the Director-General's employees or contractors, or any member of the public exercising any of the rights conferred by this covenant.

8.2 Except in the case of an emergency and subject to clause 5.2.2, the Minister must give reasonable notice to the Owner of an intention to enter the Land and, in all circumstances, advise the Owner when entry has taken place.

9. OBLIGATIONS ON SALE OF LAND

- 9.1 The Owner must not sell, lease, or otherwise part with possession of the Land without first informing the Minister of such intention and inviting the Minister, on behalf of the Crown, to make an offer to purchase the Land.
- 9.2 On being informed of the Owner's desire to sell, lease, or otherwise dispose of the Land, the Minister, on behalf of the Crown, may make an offer for the Land.
- 9.3 If the Minister does not, within a reasonable time, make an offer under clause 9.2 for the Land, or if any offer by the Minister is not accepted by the Owner, and if the Owner sells, leases, or parts with possession of the Land, the Owner must obtain the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 9.4 Such agreement must include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, a subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 9.5 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 Land in respect of which a breach occurs.

10. DURATION OF COVENANT

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

11. CONSENTS

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

12. MISCELLANEOUS MATTERS

12.1 Rights

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

12.2 Trespass Act:

- 12.2.1 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;

- 12.2.2 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.

12.3 Reserves Act

- 12.3.1 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.

12.4 Titles

- 12.4.1 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.
- 12.5 Acceptance of Covenant
- 12.5.1 The parties agree to be bound by the provisions of the Covenant including during the period prior to the Covenant's registration.
- 12.6 Fire
- 12.6.1 The Owner must notify, as soon as practicable, the appropriate Fire Authority and the Minister in the event of wildfire upon or threatening the Land;
- 12.6.2 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:
- 12.6.2.1 requested to do so; or
- 12.6.2.2 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;
13. NOTICES
- 13.1 Subject to clause 13.4, 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.
- 13.2 A notice given in accordance with clause 13.1 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.
- 13.3 The Owner must notify the Minister of any change of ownership or control or all or any part of the Land and must supply the Minister with the name and address of the new owner or person in control.
- 13.4 Where a party changes its address for service that party must notify the other party in writing of its new address for service.
- 13.5 On receipt of that notification (which will be deemed to have been received in accordance with the times of delivery set out in clause 13.2) any notice given under this Covenant must be forwarded to the new address for service.
- 13.6 The details of the new address for service are to be annexed to this Covenant.
14. DEFAULT
- 14.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:
- 14.1.1 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

- 14.1.2 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.
- 14.2 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:
- 14.2.1 advise the defaulting party of the default;
- 14.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 14.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.
15. DISPUTE RESOLUTION PROCESSES
- 15.1 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.
- 15.2 Mediation
- 15.2.1 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 them;
- 15.2.2 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is located is to appoint the mediator.
- 15.3 Failure of Mediation
- 15.3.1 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;
- 15.3.2 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 located;
- 15.3.3 The parties further agree that the results of arbitration are to be binding upon the parties.
16. SPECIAL CONDITIONS
- 16.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 16.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by _____ as Owner) _____
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ as Owner) _____
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by _____ as Owner) _____
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

Signed by HON _____) _____
MINISTER OF CONSERVATION)
in the presence of : _____)

Witness: _____

Address : _____

Occupation: _____

SCHEDULE 1

Description of Land:

BLOCK SECTION consisting of an area of hectares more or less in the
Survey District.

Consideration:

\$ _____ (+ GST if payable)

SCHEDULE 2

Address for Service¹

The address for service of the Owner is:

The address for service of the Minister is:

The Conservator
Conservancy
Department of Conservation

¹ Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

SCHEDULE 3**Special Conditions**

- 1.0 The Owner retains all rights and interests in any income generated from commercial uses of the land including tourism operations which shall be in accordance with the purposes and objectives of this Deed. All money by way of rent, royalty or otherwise in respect of any dealing with the land shall vest with the Owner.
- 2.0 Despite anything else in the Covenant but subject to special condition 4.0 the Owner may erect any structure on the Land provided the Owner:
 - (a) gives three month's notice to the Minister of the size and location of the area needed;
 - (b) obtains all requisite consents, including resource consents;
 - (c) limits the size of the area to be affected by that structure to 1 hectare or less;
 - (d) does not damage any of the Conservation Values and/or Reserve Values outside the affected area when erecting the structure.
- 3.0 For the avoidance of doubt the area referred to in special condition 2.0 in respect of all structures must not exceed 1.0 hectares of the total Land.
- 4.0 The Owner must obtain the written consent of the Minister as to the location of all structures within the 1 hectare area. The Minister must not withhold consent unreasonably and in deciding whether or not to consent must have regard to the quality of the Conservation Values and/or Reserve Values in the affected area.
- 5.0 For the avoidance of doubt, the acknowledgment of the matters referred to in clause 3.1 of the standard conditions includes an acknowledgment that the Owner has the right to hunt deer, pigs and other non-indigenous fauna on the Land in a manner which does not create a danger to any member of the public having permitted access to the Land.
- 6.0 Despite clause 5.1.2 of the standard conditions the Owner or party authorised by the Owner may collect seed from any species of tree, shrub, or other plant on the Land.
- 7.0 The Owner may conduct or allow to be conducted any form of research on the Land provided it is not incompatible with the objectives of the Covenant.
- 8.0 Nothing in this Covenant shall affect any benefit which may accrue to the Owner, whether by way of carbon credits or otherwise, or any obligations of the Owner arising from the Kyoto Protocol.
- 9.0 Despite anything in standard clause 5 but subject to special condition 10.0, the Owner may:
 - (a) take wind thrown timber from the Land to be used as firewood in any structure erected on the Land in accordance with special condition 2.0;
 - (b) take timber from the 1 hectare area referred to in special condition 2.0 to be used as building material for any structure which may be erected on that 1 hectare area;

10.0 The owner must obtain:

- (a) the written consent of the Minister to take wind thrown timber or standing timber for the purposes set out in special condition 9. The Minister must not withhold consent unreasonably and in deciding whether or not to consent must have regard to the quality of the Conservation Values and/or Reserve Values in the affected areas;
- (b) obtain all requisite consents, including resource consents;

GRANT of

Correct for the purposes of the
Land Transfer Act 1952

CONSERVATION COVENANT

Solicitor for the Minister

Under Section 27 of the
Conservation Act 1987
and section 77 of the Reserves Act 1977

to

MINISTER OF CONSERVATION

**Solicitor
Department of Conservation**