

**AHURIRI HAPŪ**  
**and**  
**THE TRUSTEES OF THE MANA AHURIRI TRUST**  
**and**  
**THE CROWN**

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**DEED OF SETTLEMENT SCHEDULE:**  
**DOCUMENTS**

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## 1 AHURIRI HAPŪ VALUES

The Ahuriri Hapū values are as follows:

- Kaitiakitanga: active protection of the site, the environment and knowledge.
- Kanohi ki te Kanohi: engagement and formal consultation.
- Manawhenua: recognition of the mana of Ahuriri Hapū and respect for the Ahuriri Hapū relationship with the sites.
- Tikanga: appropriate action.
- Rangatiratanga: leadership, integrity and ethical behaviour in all actions and decisions.

As Ahuriri Hapū develops its capacity, Ahuriri Hapū looks forward to the future and the time when they are fully engaged in upholding the principle of kaitiaki over Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve.

### 1 DESCRIPTION OF AREA

**Otatara Pa Historic Reserve** (as shown on deed plan OTS-206-04)

### 2 AHURIRI HAPŪ STATEMENT OF VALUES

Otatara Pa Historic Reserve is one of two sentinel pā that kept vigil over Te Whanganui-ā-Orotu: Heipipi at the northern end and Otatara at the southern end. The upper part of the southern pā was called Hikurangi and the lower part was called Otatara. Otatara was a name brought from the Hokianga by Ngāti Awa, an early tribal group from whom Ahuriri Hapū trace descent. After Ngāti Awa came and found relations at Heipipi, they joined together and pushed south, driving out other tribes at the Waiōhiki end of Te Whanganui-ā-Orotu, and built Otatara.

Ahuriri Hapū are descendants of the first people of the area who are linked to cosmos, to the land, and to the waters in the region. Māhu Tapoanui is regarded as the very beginning of our people. Orotu, who resided at Te Whanganui-ā-Orotu for at least part of his life, descended from Māhu Tapoanui. His son Whatumamoā was born at Te Whanganui-ā-Orotu. Whatumamoā was the eponymous ancestor of Ngāti Whatumamoā, one of the earliest tribal groups that settled the Ahuriri district and from whom Ahuriri Hapū trace descent. Finally Māhu Tapoanui's line descends to Turauwha, the principal Chief at Otatara Pa when Taraia I, son of Kahungunu, invaded and some say conquered Heretaunga 14 or 15 generations before 1850 (in about 1550). By this time there were other tribes, including Ngāti Awa, living side by side with Ngāti Whatumamoā. As the highest ranking Chief on the Ngāti Awa line, combined with the senior line of Ngāti Whatumamoā on his mother's side, Turauwha was a very important Ahuriri Chief. A key ancestor associated with Ngāti Tū is Tukapua I, a descendant of the Ngāti Awa ancestor Koaupari. Te Koaupari was the grandson of Awanuiarangi, a great grandson of Toi, and a key ancestor of Ngāti Matepū. Some traditions record Tukapua I as having built Otatara and lived there himself. Other traditions identify Koaupari as the builder of Otatara.

There are several different versions of the story of Otatara. Some say it was conquered by Taraia I and others say it was not. In 1888 and 1889 Wiramina Ngahuka, a tribal historian from Ngāti Hinepare and Ngāti Māhu, contended that Turauwha welcomed Taraia I, that

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### 1: AHURIRI HAPŪ VALUES

they both attacked the occupants of Otatara Pa, and that Taraia I only gained mana south of Ngaruroro. She said that Hikawera II, son of Te Whatuiāpiti and Te Huhuti (eldest daughter of Hineiao, the granddaughter of Turauwha, and Rangitaumaha) returned and lived at Otatara Pa. She further said that Te Uiraiwaho (the granddaughter of Kahutapere II) married Hikawera II and their family lived at Otatara and Waiōhiki.

#### 1 DESCRIPTION OF AREA

**Balls Clearing Scenic Reserve** (as shown on deed plan OTS-206-02)

#### 2 AHURIRI HAPŪ STATEMENT OF VALUES

Puketitiri Bush is a large stand of ancient forest. Balls Clearing Scenic Reserve is a remnant of the great forest that once covered several hundred acres. Ahuriri Hapū have connections to Puketitiri Bush extending back to their earliest tīpuna in Hawke's Bay, and have long treasured the forest as a food source of high significance. Turauwha and his Ngāti Whatumamoā people occupied and gathered resources from this area before the arrival of Taraia I. Subsequent to this, others who came with Taraia I also moved into the area. The Ngāti Tamawahine general Tāwhao and his brother Ruatekuri came to have interests from Wharerangi through to Puketitiri extending through to Te Ranga-a-Tāwhao, a pou marker situated on the Mohaka River. Tāwhao got kereru, tītī and eels from Puketitiri.

Extending from the south Ngāti Hinepare also have interests in the land between Wharerangi and Puketitiri. Ngāti Hinepare trace some of their lines of descent from Hikateko, Tāwhao and Ruatekuri, and became closely entwined with Ngāti Māhu and Ngāi Tāwhao. The interests of Ngāti Hinepare extended over the Puketitiri district including Hukanui, Patoka and the eastern slopes of the Kaweka Ranges. Other hapū came to the Puketitiri area during times of inter-kin conflict, and Ngāti Hinepare maintained their association with Puketitiri and Kaweka through these times.

## 2 PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

**Otatara Pa Historic Reserve** (as shown on deed plan OTS-206-04)

**Balls Clearing Scenic Reserve** (as shown on deed plan OTS-206-02)

### 1 Protection principles

The following protection principles are agreed by the Minister of Conservation and Ahuriri Hapū for the purposes of avoiding harm to, or the diminishing of Ahuriri Hapū values related to Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve.

- (a) protection of indigenous flora and fauna, natural resources and the wider environment within Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (b) recognition of the mana and Kaitiakitanga of Ahuriri Hapū for Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (c) respect for Ahuriri Hapū tikanga and kawa within Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (d) respect for the interests and relationships that Ahuriri Hapū have with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (e) encouragement of the respect for the association of Ahuriri Hapū with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (f) accurate portrayal of the association, interests and relationships of Ahuriri Hapū with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (g) recognition of the relationship of Ahuriri Hapū with the wāhi tapu and wāhi whakahirahira;
- (h) recognition of Ahuriri Hapū mahinga kai and the provision of cultural resources;
- (i) recognition of Ahuriri Hapū relationship with and the importance to Ahuriri Hapū of the ecosystems and life forms within Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (j) recognition of and respect for ngā tikanga o Ahuriri Hapū and its relevance to the protection of Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (k) recognition of and respect for Ngāti Paarau as ahikaa in respect of Otatara Pa Historic Reserve.

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### 2: PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

#### 2 **Actions by the Director-General of Conservation in relation to specific principles**

The Director-General and Ahuriri Hapū have determined that the following actions will be taken by the Department of Conservation (the Department) in relation to the specific principles:

- (a) the Department staff, volunteers, contractors, conservation board members, concessionaires and the public will be provided with information about Ahuriri Hapū values and the existence of the Overlay Classification and will be encouraged to recognise and respect Ahuriri Hapū association, interests and relationships with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve and its role as Kaitiaki;
- (b) Ahuriri Hapū associations, interests and relationships with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve will be accurately portrayed in all new Department information and educational material related to Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (c) Ahuriri Hapū will be consulted regarding the provision of all new Department public information or educational material, regarding Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve and where appropriate the content will reflect the significant relationship with Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (d) Ahuriri Hapū will be consulted regarding the content of such material to accurately reflect Ahuriri Hapū cultural and spiritual values and role as Kaitiaki;
- (e) the Department will only use Ahuriri Hapū cultural information with the consent of Ahuriri Hapū;
- (f) Department staff will consult Ahuriri Hapū over any proposed introduction or removal of indigenous species to and from Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (g) the importance of the ecosystems and life forms of Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve to Ahuriri Hapū will be recognised by the Department through measures to monitor the health of and threats to Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve by advocating sound and sustainable environmental planning principles and processes;
- (h) the Department will inform Ahuriri Hapū of all monitoring plans, activities and processes that are utilised to protect the indigenous flora and fauna to Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;
- (i) the Department will ensure that their management of Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve is not detrimental to, and where possible contributes to, the maintenance or enhancement of, the ecological health of Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve;

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### 2: PROTECTION PRINCIPLES AND DIRECTOR-GENERAL'S ACTIONS

- (j) the Department will work with Ahuriri Hapū on the design and location of any new signs to discourage inappropriate behaviour, including fossicking, the modification of wāhi tapu sites and disturbance of other taonga;
- (k) the public will be informed that the removal of all rubbish and wastes from Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve is required;
- (l) significant earthworks and disturbances of soil and/or vegetation will be avoided wherever possible;
- (m) where significant earthworks and disturbances of soil and/or vegetation cannot be avoided, Ahuriri Hapū will be consulted and particular regard will be had to their views, including those relating to koiwi (human remains) and archaeological sites;
- (n) any koiwi (human remains) or other taonga found or uncovered by the Department will be left untouched and Ahuriri Hapū informed as soon as possible to enable Ahuriri Hapū to deal with the koiwi or taonga in accordance with their tikanga, subject to any procedures required by law; and
- (o) the Department will foster a collaborative approach to work with Ahuriri Hapū in respect to the ongoing management of Otatara Pa Historic Reserve and Balls Clearing Scenic Reserve in all respects.

### 3 STATEMENTS OF ASSOCIATION

Ahuriri Hapū statements of association are set out below. These are statements of the particular cultural, spiritual, historical, and traditional association Ahuriri Hapū have with identified areas.

**Esk River and its tributaries** within the area of interest (as shown on deed plan OTS-206-18)

Ahuriri Hapū refer to Esk River as Te Hukawai-o-Hinganga, which is so named because in early times the river was narrow and deep and with the faster flow of water it produced a froth (hukawai) which often gathered along the riverbank or was seen floating by. The waterway is also known by the name Waiohinganga. Rising in the Esk valley, the river runs southwards until veering eastwards where it flows around the base of the Heipipi hills. Originally, the river flowed into the northern end of Te Whanganui-ā-Orotu. As a result of the 1931 earthquake, the river's lower course was altered and today it flows out to the sea at a point just to the north of Le Quesne Road.

Traditionally, Ngāti Tū are associated with the Esk valley through which Te Hukawai-o-Hinganga runs.

The area around the mouth of Te Hukawai-o-Hinganga was the focal point of settlement when Ngāti Matepū, Ngāi Te Ruruku and Ngāti Tū returned from Nukutaurua in the 1830s. Initially the hapū occupied Kapemaihi pā at the northern end of the Te Whanganui-ā-Orotu. By 1849, those occupying the pa had moved to Poraaia (later named Pētane) just north of the present-day mouth of the river. Living communally in the Pētane district brought close connections between Ngāi Te Ruruku, Ngāti Tū and Ngāti Matepū.

The lower reaches of Te Hukawai-o-Hinganga formed part of the northeastern boundary of the 1851 Ahuriri purchase block.



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### 3: STATEMENTS OF ASSOCIATION

#### **Fern Bird Bush Nature Reserve** (as shown on deed plan OTS-206-05)

Whatumamoa, a descendant of Māhu Tapoanui and Te Orotu, was the eponymous ancestor of Ngāti Whatumamoa, one of the earliest tribal groups that settled the Ahuriri district. Whatumamoa inherited interests from Māhu Tapoanui and Te Orotu in lands extending from Ahuriri through the Kaweka Ranges and onto Kaimanawa. Two lines of descent from Whatumamoa through Houruru and Tamahuroa maintained Whatumamoa interests east of the Ngaruroro River through the Kaweka Ranges and including the area now covered by Fern Bird Bush Nature Reserve.

From Houruru, descent extended down through Taiwiri down to Turauwha who was an important chief of Ngāti Māhu and Ngāti Whatumamoa. Turauwha identified his boundaries as extending from the Mohaka River in the north, down the Makino and Omarukokere waterways to join the Ngaruroro River down to the coast. The Fern Bird Bush Nature Reserve is located within that boundary. During his lifetime Turauwha subdivided his land between his children. His daughter Rakaitekura was given land extending from Omāhu up to the Ngaruroro River. Subsequently her daughter Hineiao inherited this land. Hineiao married Taraia I's son Rangitaumaha and although several of their children inherited Hineiao's land, it was Taraia II who became associated with the Kaweka lands.

From Whatumamoa's son Tamahuroa, descent extended down to Ruapirau, a near contemporary of Turauwha. Among Ruapirau's landholdings was the area later known as the Kohurau block within which Fern Bird Bush Nature Reserve is located today. At a battle named Whakatamarama, Ruapirau defended his lands from an external attack. According to this tradition, the place Kuripapango, which is near Fern Bird Bush Nature Reserve, was named after one of the enemy who was killed during this battle.

Ruapirau later gave an area named Raoraoroa, located to the north and east of Kuripapango, to his daughter Taporā. Ruapirau's other lands were given to his son Tutengara and his grandchildren including Rangipatahi.

At one time, there was a dispute between Taraia II and his Ngāti Ruapirau relations over eel fishing. Despite some fighting breaking out, peace was made and important marriages took place between the two groups. Tradition states that Ruapirau's mana descended to Tamataita, two of whose children married descendants of Turauwha. Ngāti Māhu are descended from the merging of these two lines.

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### 3: STATEMENTS OF ASSOCIATION

#### **Hutchinson Scenic Reserve** (as shown on deed plan OTS-206-06)

Hutchinson Scenic Reserve is located on the site of Puketitiri Bush, which was a large stand of ancient forest. Hutchinson Scenic Reserve is a remnant of an outstanding area of indigenous bush within Puketitiri. This area is significant to Ahuriri Hapū as one of the last remaining areas of indigenous bush within our borders. This great forest once covered several hundred acres. It provided an abundance of resources for rongoa. Food gathered in the forest included kererū, huhu kouka and eels.

The continuing significance of Puketitiri was reflected in the fact that it was identified by Ahuriri Hapū as a key place to reserve during the Ahuriri purchase of 1851.

Turauwha and his Ngāti Whatumamoā people used the Puketitiri area to gather resources through until the time of the arrival of Taraia I. Subsequent to this, others who came with Taraia moved into the area. The Ngāti Tamawahine general Tāwhao and his brother Ruatekuri came to hold interests from Wharerangi through to Puketitiri extending through to Te Ranga Tāwhao, a pou marker situated on the Mohaka River. Tāwhao got kererū, tītī and eels from Puketitiri.

Extending from the south, Ngāti Hinepare also have interests in the lands between Wharerangi and Puketitiri. Ngāti Hinepare trace some of their lines of descent from Hikateko, Tāwhao and Ruatekuri, and became closely intertwined with Ngāti Māhu and Ngāi Tāwhao. The interests of Ngāti Hinepare extended over the Puketitiri district including Hukanui, Patoka and the eastern slopes of the Kaweka Ranges. Other hapū came to the Puketitiri area during times of inter-kin conflict, and Ngāti Hinepare maintained their association with Puketitiri and Kaweka through these times.

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### 3: STATEMENTS OF ASSOCIATION

#### **Part of the Kaimanawa Forest Park** (as shown on deed plan OTS-206-07)

Ahuriri Hapū have a long connection with the Kaimanawa Ranges extending back to the earliest tipuna. The explorer Te Orotu, a direct descendant of Māhu Tapoanui, has been identified as having inhabited the Kaimanawa area. The interests of Te Orotu's son Whatumamoa, the eponymous ancestor of one of the earliest tribal groups to settle the Ahuriri district, were said to have extended from Ahuriri across to Mōkai-Pātea through to the Kaimanawa area.

Kaimanawa is also associated with the narrative of the waka Tākitimu. The traditional name for one of the peaks in the centre of the Kaimanawa Ranges is Tauwheke Tōhunga. Tauwheke, a man of great mana, was the tōhunga who came on the Tākitimu waka.

Whatumamoa's descendants continued to be associated with lands extending through to the Kaimanawa area. Tamakomako and Takotukutuku, the son and grandson of Whatumamoa, are recorded as coming into conflict with Ngāti Hotu, a group who are recorded as being resident in northern Mōkai-Pātea. Descendants of Whatumamoa, through his other son Houruru, also fought over successive generations with Ngāti Hotu down to the time of Taiwiri and Taipopoia. In addition, descendants from Whatumamoa through a third child, Tamahuroa, maintained ancestral claims. According to Ngāti Māhu tradition, Ruapirau, a near-contemporary of Turauwha, lay down the northern boundary between Ngāti Whatumamoa and iwi/hapū groups from the inland Tarawera-Taupō region.

When travelling inland from the coast, the hapū of Ahuriri journeyed through Kaimanawa on well-established trails.

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### 3: STATEMENTS OF ASSOCIATION

#### **Part of Kaweka Forest Conservation Area** (as shown on deed plan OTS-206-08)

Whatumamoa, a descendant of Māhu Tapoanui and Te Orotu, was the eponymous ancestor of Ngāti Whatumamoa, one of the earliest tribal groups that settled the Ahuriri district. Whatumamoa inherited interests from Māhu Tapoanui and Te Orotu in lands extending from Ahuriri through the Kaweka Ranges and onto Kaimanawa. Two lines of descent from Whatumamoa through Houruru and Tamahuroa maintained Whatumamoa interests east of the Ngaruroro River through the Kaweka Ranges and including the area now covered by Kaweka Forest Conservation Area.

From Houruru, descent extended down through Taiwiri down to Turauwha who was an important chief of Ngāti Māhu and Ngāti Whatumamoa. Turauwha identified his boundaries as extending from the Mohaka River in the north, down the Makino and Omarukokere waterways to join the Ngaruroro River down to the coast. Lands within that boundary, located in the northwestern part of the Ahuriri block, are today included in the Kaweka Forest Conservation Area. During his lifetime Turauwha subdivided his land between his children. His daughter Rakaitekura was given land extending from Omāhu up to the Ngaruroro River. Subsequently her daughter Hineiao came to have interests in this land. Hineiao married Taraia I's son Rangitaumaha and although several of their children inherited Hineiao's land, it was Taraia II who became associated with the Kaweka lands.

From Whatumamoa's son Tamahuroa, descent extended down to Ruapirau, a near contemporary of Turauwha. It was said that Ruapirau's interests extended across the lands that now form Kaweka Forest Conservation Area. At a battle named Whakatamarama, Ruapirau defended his lands from an external attack. According to this tradition, the place Kuripapango, which is near Kaweka Forest Conservation Area, was named after one of the enemy who was killed during this battle.

Ruapirau later gave an area named Raoraoroa, located to the north and east of Kuripapango, to his daughter Tapora. Ruapirau's other lands were given to his son Tutengara and his grandchildren including Rangipatahi.

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### 3: STATEMENTS OF ASSOCIATION

#### **Part of Kaweka State Forest Park (as shown on deed plan OTS-206-09)**

Whatumamoa, a descendant of Māhu Tapoanui and Te Orotu, was the eponymous ancestor of Ngāti Whatumamoa, one of the earliest tribal groups that settled the Ahuriri district. Whatumamoa inherited interests from Māhu Tapoanui and Te Orotu in lands extending from Ahuriri through the Kaweka Ranges and onto Kaimanawa. Two lines of descent from Whatumamoa through Houruru and Tamahuroa maintained Whatumamoa interests east of the Ngaruroro River through the Kaweka Ranges and within the area now covered by the Kaweka State Forest Park.

From Houruru, descent extended down through Taiwiri down to Turauwha who was an important chief of Ngāti Māhu and Ngāti Whatumamoa. Turauwha identified his boundaries as extending from the Mohaka River in the north, down the Makino and Omarukokere waterways to join the Ngaruroro River down to the coast. Lands within that boundary, located in the northwestern part of the Ahuriri block, are today included in the Kaweka State Forest Park. During his lifetime Turauwha subdivided his land between his children. His daughter Rakaitekura was given land extending from Omāhu up to the Ngaruroro River. Subsequently her daughter Hineiao inherited this land. Hineiao married Taraia I's son Rangitaumaha and although several of their children inherited Hineiao's land, it was Taraia II who became associated with the Kaweka lands.

From Whatumamoa's son Tamahuroa, descent extended down to Ruapirau, a near contemporary of Turauwha. It was said that Ruapirau's interest extended across the lands that now form Kaweka State Forest Park. At a battle named Whakatamarama, Ruapirau defended his lands from an external attack. According to this tradition, the place Kuripapango, which is near Kaweka State Forest Park, was named after one of the enemy who was killed during this battle.

Ruapirau later gave an area named Raoraoroa, located to the north and east of Kuripapango, to his daughter Taporā. Ruapirau's other lands were given to his son Tutengara and his grandchildren including Rangipatahi.

At one time, there was a dispute between Taraia II and his Ngāti Ruapirau relations over eel fishing. Despite some fighting breaking out, peace was made and important marriages took place between the two groups. Ruapirau's mana descended to Tamataita, two of whose children married descendants of Turauwha. Ngāti Māhu are descended from the merging of these two lines.

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### 3: STATEMENTS OF ASSOCIATION

#### **Kuripapango (DOC Field Base)** (as shown on deed plan OTS-206-10)

Whatumamoa, a descendant of Māhu Tapoanui and Te Orotu, was the eponymous ancestor of Ngāti Whatumamoa, one of the earliest tribal groups that settled the Ahuriri district. Whatumamoa inherited interests from Māhu Tapoanui and Te Orotu in lands extending from Ahuriri through the Kaweka Ranges and onto Kaimanawa. Two lines of descent from Whatumamoa through Houruru and Tamahuroa maintained Whatumamoa interests east of the Ngaruroro River through the Kaweka Ranges.

From Houruru, descent extended down through Taiwiri down to Turauwha who was an important chief of Ngāti Māhu and Ngāti Whatumamoa. Turauwha identified his boundaries as extending from the Mohaka River in the north, down the Makino and Omarukokere waterways to join the Ngaruroro River down to the coast. During his lifetime Turauwha subdivided his land between his children. His daughter Rakaitekura was given land extending from Omāhu up to the Ngaruroro River. Subsequently her daughter Hineiao came to hold this land. Hineiao married Taraia I's son Rangitaumaha and although several of their children inherited Hineiao's land, it was Taraia II who became associated with the Kaweka lands.

From Whatumamoa's son Tamahuroa, descent extended down to Ruapirau, a near contemporary of Turauwha. It was said that Ruapirau's interests extended across lands including Kuripapango. At a battle named Whakatamarama, Ruapirau defended his lands from an external attack. According to this tradition, the place Kuripapango was named after one of the enemy who was killed during this battle.

Ruapirau later gave an area named Raoraoroa, located around Kuripapango, to his daughter Tapura. Ruapirau's other lands were given to his son Tutengara and his grandchildren including Rangipatahi.

At one time, there was a dispute between Taraia II and his Ngāti Ruapirau relations over eel fishing. Despite some fighting breaking out, peace was made and important marriages took place between the two groups. Ruapirau's mana descended to Tamataita, two of whose children married descendants of Turauwha. Ngāti Māhu are descended from the merging of these two lines.

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### 3: STATEMENTS OF ASSOCIATION

**Mangaone River and its tributaries** within the area of interest (as shown on deed plan OTS-206-12)

The tributary streams of the Mangaone River rise to the southeast of the Puketitiri Bush and south of Te Pōhue. From here, the Mangaone River flows directly south until it meets the Tutaekuri River.

Stretches of the Mangaone River were significant as a boundary between the interests of several of the Ahuriri Hapū.

Ngāti Tū were associated with the fortified Motu-o-Rūrū pā located at the junction of the Mangaone River and Waikinakitangata Stream on a high promontory. The pā, associated with the chief Kohipipi, was of considerable importance to Ngāti Tū. Ngāti Tū interests are said to extend to the upper Mangaone catchment, from the summit of the Te Waka range, down through Rukumoana station to the old Glengarry station. The boundary with Ngāti Hinepare and Ngāti Māhu is the Mangaone River and the Waipuna Stream.

Ngāti Hinepare interests stretched between Wharerangi and Puketitiri. Ngāti Hinepare also had interests on both sides of the Mangaone River. Pā named Opou and Pawharawhara were located in this area. Pawharawhara was said to be sited beside the Mangarangiora Stream, a tributary of the Mangaone. A further pā, Te Korea, was beside the Mangahouhou Stream which also ran into the Mangaone. Ngāti Māhu are documented as occupying the lower Mangaone River on to Puketitiri.

With the areas of interest of the two hapū being located so close together, over time the whakapapa and land interests of Ngāti Hinepare and Ngāti Māhu became closely intertwined.

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### 3: STATEMENTS OF ASSOCIATION

**Mohaka River and its tributaries** within the area of interest (as shown on deed plan OTS-206-13)

The Mohaka River has long provided a route inland to the Kaimanawa district, an area occupied by Orotu, a descendant of Māhu Tapoanui, and subsequently by his son Whatumamoa. Whatumamoa was the eponymous ancestor of Ngāti Whatumamoa, one of the earliest tribal groups to settle the Ahuriri district. The Mohaka River was also used to provide access to the Rangitikei River and therefore to the west coast of the North Island. The upper Mohaka River contained renowned eeling grounds and Ahuriri Hapū established transient camps there during the eeling season.

The Mohaka River has been used as a significant boundary marker to define areas of interest. Turauwha, an important chief of Ngāti Māhu and Ngāti Whatumamoa, identified his boundaries as extending from the Ngaruroro River in the south northwards to the Mohaka River. Several generations later, it was Taraia II, Turauwha's descendant through Hineiao, who became associated with the Kaweka lands extending through to the Mohaka River.

The Mohaka River is also associated with the arrival of Taraia I's party into Ahuriri and Heretaunga. While Taraia took the coastal route south, a further party of Ngāti Kahungunu including Rakaihikuroa, Tikorua (his brother), Tangiahi (Tikorua's son) and probably Kahutapere II travelled south by an overland route via the Mohaka.

Subsequently, Kahutapere II married Hineterangi (a descendant of Koaupari). He therefore came to hold interests in the land between Te Whanganui-ā-Orotu and Mohaka and through to Tarawera. The descendants of Hineterangi and Kahutapere II were known as Ngāti Hineterangi and, later, Ngāti Matepū.

Another of those who arrived with Taraia I also came to be associated with lands in the vicinity of the Mohaka River. Tāwhao, a Ngāti Tamawahine chief, accompanied Taraia. Subsequently, Tāwhao's interests extended from Te Whanganui-ā-Orotu west through Wharerangi to Puketitiri and up to and across the Mohaka River to Pakaututu where Te Turuki, a descendant of Tāwhao, later held interests. To show the extent of the land he claimed, Tāwhao erected a post at a place then named Te Ranga a Tāwhao.

Passage 11 of the Moteatea Te Tangi a Rawiri Tareahi Mo Ahuriri refers:

<b>Kau ana au I taku awa o Mohaka ki Ranga a Tāwhao</b>	I travel upstream of the Mohaka River to Ranga a Tāwhao
<b>E takoto mai ra I te take o te taupae ki Kaweka</b>	Lying at the feet of the Kaweka Ranges
<b>Haere tonu atu ki Maharakeke</b>	And made my way to Maharakeke
<b>Ki te tahatika o Ngaruroro ko</b>	At the edge of the Ngaruroro River
<b>Tumataita ko Ngāti Ruapirau</b>	Is the pā of Tumataita of the Ngāti Ruapirau
<b>Te tunga o Kohurau o Umukiwi e.</b>	Where stands two more pou Kohurau and Umukiwi.

This place is on the southern side of the Mohaka River close to the junction with the Mangatutunui Stream. Further upriver are the Mangatutu hot springs. The interests of Ngāi Tāwhao are closely



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### 3: STATEMENTS OF ASSOCIATION

intertwined with those of other Ahuriri Hapū, including Ngāti Hinepare, Ngāti Māhu and Ngāti Matepū.

One of the tributaries of the Mohaka River is the Inangatahi stream which flows from Puketitiri bush northwards where it joins the Mohaka. This waterway was named after Tāwhao's travels in the Puketitiri area. On one such trip, Tāwhao had brought a supply of inanga to eat. The place where he stopped to eat the inanga was named Inangatahi.

Another tributary of the Mohaka is the Makahu River. From its origins in the Kaweka Ranges, the Makahu flows generally north until it reaches the Mohaka River in rough hill country. About half of the river's length is within Kaweka Forest Park.

The Mohaka River provided a significant northern boundary for the 1851 Ahuriri purchase.

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### 3: STATEMENTS OF ASSOCIATION

**Ngaruroro River and its tributaries** within the area of interest (as shown on deed plan OTS-206-14)

The Ngaruroro River was named in ancient times. When the deity tipuna Māhu Tapaonui was travelling up the river, his dog disturbed a shoal of upokororo. Māhu named the river after the disturbed ripples caused as the fish darted away. This incident occurred at Whakamarumarū.

The Ngaruroro River provided a significant route to travel inland and reach the west coast or to travel north deeper into the interior. The famous traveller Tamatea Pōkai Whenua, journeying from Tūranga to Mōkai-Pātea with his son Kahungunu, made his way up the Ngaruroro River as far as Kuripapango where there was a crossing.

Centuries later, it is recorded that Taraia I landed at the mouth of the river as he and his people made their way into Heretaunga.

The Ngaruroro River has been a significant marker of land interests from ancient times. The significant Ngāti Māhu and Ngāti Whatumamoā chief Turauwha was associated with lands that stretched from the Ngaruroro River in the south northwards to the Mohaka River. His daughter Rakaitekura was given land extending from Omāhu up along the Ngaruroro River. Taraia II inherited these associations with these same lands.

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### 3: STATEMENTS OF ASSOCIATION

#### **Puketitiri (Puketitiri Field Centre)** (as shown on deed plan OTS-206-17)

Puketitiri (Puketitiri Field Centre) is located on the site of Puketitiri Bush, which was a large stand of ancient forest. Hutchinson Scenic Reserve is a remnant of an outstanding area of indigenous bush within Puketitiri. This area is significant to Ahuriri Hapū as one of the last remaining areas of indigenous bush within our borders. This great forest once covered several hundred acres. It provided an abundance of resources for rongoa. Food gathered in the forest included kererū, huhu kouka and eels.

The continuing significance of Puketitiri was reflected in the fact that it was identified by Ahuriri Hapū as a key place to reserve during the Ahuriri purchase of 1851.

Turauwha and his Ngāti Whatumamoa people used the Puketitiri area to gather resources through until the time of the arrival of Taraia I. Subsequent to this, others who came with Taraia moved into the area. The Ngāti Tamawahine general Tāwhao and his brother Ruatekuri came to have interests from Wharerangi through to Puketitiri extending through to Te Ranga Tāwhao, a pou marker situated on the Mohaka River. Tāwhao got kererū, tītī and eels from Puketitiri.

Extending from the south, Ngāti Hinepare also have interests in the lands between Wharerangi and Puketitiri. Ngāti Hinepare trace some of their lines of descent from Hikateko, Tāwhao and Ruatekuri, and became closely intertwined with Ngāti Māhu and Ngāi Tāwhao. The interests of Ngāti Hinepare extended over the Puketitiri district including Hukanui, Patoka and the eastern slopes of the Kaweka Ranges. Other hapū came to the Puketitiri area during times of inter-kin conflict, and Ngāti Hinepare maintained their association with Puketitiri and Kaweka through these times.

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### 3: STATEMENTS OF ASSOCIATION

**Tutaekuri River and its tributaries** within the area of interest (as shown on deed plan OTS-206-19)

The Tutaekuri River flows out of the Kaweka Ranges in a south-easterly direction towards the coast. Originally, however, the river discharged into Te Whanganui-ā-Orotu. The course was subsequently changed by public works. Tutaekuri now flows out to sea through the lower course of the old Waitangi Stream.

Tutaekuri got its name from an incident occurring some 400 years ago. A party of Ngāti Kahungunu had trekked to obtain food on the coast at Porangahau but had been unsuccessful. They were starving when they reached the hills between Waiōhiki and Omāhu. Hikawera II, a key tipuna for Ngāti Paarau, was occupying the Oueroa Pā. He ordered 70 dogs (kurī) to be killed to help feed the travellers. The dogs were cooked at Te Umukuri. The offal (tūtae) was thrown into the river, hence the name.

Over time, many kāinga were established along the course of the Tutaekuri River. Following the arrival of Taraia I into Heretaunga, the Ngāti Tamawahine chiefs Tāwhao and his brother Ruatekuri built pā at Te Mingi on the south side of the Tutaekuri River. Turauwha of Ngāti Whatumamoā also retired to his pā Tuhirangi and Mataotao above Moteo on the Tutaekuri River where he lived with Taraia's nephew Rangituehu.

Pakikokiko was a kāinga occupied by Ngāti Māhu in former times. It is located on the south side of the Tutaekuri River opposite the Apley Road turn-off. Karuiro and Tutaeata lived there. Karuiro was the first to live there. Te Hinu and Te Mu were the last to live there.

When Ngāti Hinepare returned from Puketitiri in the aftermath of inter-kin conflict, their chief Pakepake built a significant pā at Puketapu located on an isolated hill where the Turirau swamp empties into the Tutaekuri River.

After the return from Nukutaurua in the 1830s and 1840s, several Ahuriri Hapū concentrated their permanent kāinga along the Tutaekuri River. In the late 1840s Ngāti Paarau were primarily living at Awatoto, between the coast and the point where the Tutaekuri River flowed into Te Whanganui-ā-Orotu. In addition, they also had a kāinga at Te Waitanoa and a stand of native timber further up the Tutaekuri River in the vicinity of Pakowhai. Their principal chief was Tāreha who was a direct descendant of Hikawera II. Tāreha eventually established a permanent residence at Pawhakaio, Waiōhiki by the mid-1850s. In the 1850s, Pāora Kaiwhata established a kāinga at Ōmarunui on the Tutaekuri River, and assumed leadership of Ngāti Māhu and a section of Ngāti Hinepare.

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### 3: STATEMENTS OF ASSOCIATION

#### **Ahuriri Hapū Coastal Marine Area** (as shown on deed plan OTS-206-20)

From Panepaoa to the mouth of the Ngaruroro River:

1. According to the traditions of Ahuriri Hapū, Moremore is the kaitiaki for this area of the coast. Moremore and his mother Pania, a mokopuna of Tangaroa, lived several generations before the visit of Tamatea Pōkai Whenua and his son Kahungunu to these shores. Pania was of the sea people (Te Iwi Ponaturi). Today she is lying face down in the bay.
2. Moremore often frequented the Ahuriri Heads, and was sighted on the morning of the 1931 earthquake. A characteristic of Moremore was his ability to appear in any guise. He was sometimes seen as a shark, on other occasions as a stingray and also as an octopus. Because of his descent from the sea taniwha Tangaroa he had command of the forces of the deep. In oral accounts he comes across as a guardian of the people occupying the shores of Te Whanganui-ā-Orotu who are his descendants.
3. Tunui, the powerful tohunga chief of Heipipi Pā, was a great grandson of Moremore and also possessed a mystical affinity with the sea. He could summon forces denied to others. His authority over the taniwha Ruamano, riding it out to sea, demonstrates his mastery of the forces of the deep.
4. Descent through Moremore is the probable origin of the hapū name NGĀI TANGAROA. This hapū name was still being used in the late nineteenth century.
5. TE AITANGA A TANGAROA was another hapū name of the early history of our people. Raniera Te Ahiko, an authority on the Māori history of Heretaunga who lived in the nineteenth century, refers: "Whatumamoa are descended from TANGAROA O TE KORE."
6. Ngāti Whatumamoa were our ancestors who settled in Ahuriri generations before the coming of Kahungunu.
7. A glance at the whakapapa showing Moremore's descent from Tangaroa and the continuation down to Tāreha and other hapū of Ahuriri demonstrates the long association Moremore's descendants have had with Te Whanganui-ā-Orotu, and indeed the coastline from Panepaoa to the mouth of the Ngaruroro River.
8. For generations, our hapū have fished in the area outside the Ahuriri Heads from Westshore along in the direction of the wharves. Keteketerau, as the opening to Te Whanganui-ā-Orotu, was used by our people extensively and while hapū fished and gathered kaimoana in areas where their ancestral lands bordered Te Whanganui-ā-Orotu and the coast, there were communal zones where all the hapū of Ahuriri appear to have felt free to fish and mahi kai.
9. Ngāti Hineterangi (now known as Ngāti Matepū) were based at the northern end of Te Whanganui-ā-Orotu around Pētane. In the 1820s northern tribes with their pū (guns) attacked Ngāti Hineterangi at Te Iho o Te Rei, an island at the northern end of Te Whanganui-ā-Orotu. Large numbers of Ngāti Hineterangi were killed and the hapū was almost wiped out. Among the many rangatira killed was Te Aitua o Te Rangī, whose descendant was Wi Pomana. After the battle Ngāti Hineterangi assumed the name "Ngāti Matepū," which was derived from Mate i te Pū.
10. Peggy Nelson, a Kuia of Ngāti Hinepare, spoke of our people entering the water at Panepaoa with flax-type water wings and being taken by the swift current across the bay to

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### 3: STATEMENTS OF ASSOCIATION

the Iron Pot, just inside the Ahuriri Heads. Prior to her passing she asked to be taken to Panepaoa to relate this story.

## 4 DEEDS OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Minister of Conservation and the Director General of Conservation

### 1 INTRODUCTION

1.1 The Crown has granted this deed as part of the redress under a deed of settlement with –

1.1.1 Ahuriri Hapū; and

1.1.2 The trustees of the Mana Ahuriri Trust (the governance entity).

1.2 In the deed of settlement, Ahuriri Hapū made statements of Ahuriri Hapū's particular cultural, spiritual, historical, and traditional association with the following areas (the statutory areas):

1.2.1 Esk River and its tributaries within the area of interest (as shown on deed plan OTS-206-18):

1.2.2 Fern Bird Bush Nature Reserve (as shown on deed plan OTS-206-05):

1.2.3 Hutchinson Scenic Reserve (as shown on deed plan OTS-206-06):

1.2.4 Part of Kaimanawa Forest Park (as shown on deed plan OTS-206-07):

1.2.5 Part of Kaweka Forest Conservation Area (as shown on deed plan OTS-206-08):

1.2.6 Part of Kaweka State Forest Park (as shown on deed plan OTS-206-09):

1.2.7 Kuripapango DOC Field Base (as shown on deed plan OTS-206-10):

1.2.8 Mangaone River and its tributaries within the area of interest (as shown on deed plan OTS-206-12):

1.2.9 Mohaka River and its tributaries within the area of interest (as shown on deed plan OTS-206-13):

1.2.10 Ngaruroro River and its tributaries within the area of interest (as shown on deed plan OTS-206-14):

1.2.11 Puketitiri (Puketitiri Field Centre) (as shown on deed plan OTS-206-17):

1.2.12 Tutaekuri River and its tributaries within the area of interest (as shown on deed plan OTS-206-19).

1.3 Those statements of association are –

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### 4: DEEDS OF RECOGNITION

1.3.1 in the documents schedule to the deed of settlement; and

1.3.2 copied, for ease of reference, in the schedule to this deed.

1.4 The Crown has acknowledged the statements of association in the Ahuriri Hapū Claims Settlement Act [**year**], being the settlement legislation that gives effect to the deed of settlement.

## 2 CONSULTATION

2.1 The Minister of Conservation and the Director-General of Conservation must, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning Ahuriri Hapū's association with that statutory area as described in a statement of association.

2.2 Clause 2.1 applies to each of the following activities (the identified activities):

2.2.1 preparing a conservation management strategy, or a conservation management plan, under the Conservation Act 1987 or the Reserves Act 1977:

2.2.2 preparing a national park management plan under the National Parks Act 1980:

2.2.3 preparing a non-statutory plan, strategy, programme, or survey in relation to a statutory area that is not a river for any of the following purposes:

(a) to identify and protect wildlife or indigenous plants:

(b) to eradicate pests, weeds, or introduced species:

(c) to assess current and future visitor activities:

(d) to identify the appropriate number and type of concessions:

2.2.4 preparing a non-statutory plan, strategy, or programme to protect and manage a statutory area that is a river:

2.2.5 locating or constructing structures, signs, or tracks.

2.3 The Minister and the Director-General of Conservation must, when consulting the governance entity under clause 2.1, provide the governance entity with sufficient information to make informed decisions.

## 3 LIMITS

3.1 This deed –

3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and



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### 4: DEEDS OF RECOGNITION

- 3.1.2 does not require the Crown to undertake, increase, or resume any identified activity; and
- 3.1.3 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
- 3.1.4 is subject to the settlement legislation.

#### 4 TERMINATION

- 4.1 This deed terminates in respect of a statutory area, or part of it, if –
  - 4.1.1 the governance entity, the Minister of Conservation, and the Director-General of Conservation agree in writing; or
  - 4.1.2 the relevant area is disposed of by the Crown; or
  - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Minister or the Director-General of Conservation to another Minister and/or Crown official.
- 4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into any identified activities in relation to the area with the new Minister and/or Crown official responsible for that activity.

#### 5 NOTICES

- 5.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 4 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is –

Conservation Partnerships Manager  
Department of Conservation  
[address]

#### 6 AMENDMENT

- 6.1 This deed may be amended only by written agreement signed by the governance entity and the Minister of Conservation and the Director-General of Conservation.

#### 7 NO ASSIGNMENT

- 7.1 The governance entity may not assign its rights under this deed.

#### 8 DEFINITIONS

- 8.1 In this deed –

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### 4: DEEDS OF RECOGNITION

**Ahuriri Hapū** has the meaning given to it by the deed of settlement; and

**Crown** has the meaning given to it by section 2(1) of the Public Finance Act 1989; and

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated [**date**] between Ahuriri Hapū, the governance entity, and the Crown; and

**Director-General of Conservation** has the same meaning as Director-General in section 2(1) of the Conservation Act 1987; and

**governance entity** has the meaning given to it by the deed of settlement; and

**identified activity** means each of the activities specified in clause 2.2; and

**Minister** means the Minister of Conservation; and

**settlement legislation** means the Act referred to in clause 1.4; and

**statement of association** means each statement of association in the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 1.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

**writing** means representation in a visible form on a tangible medium (such as print on paper).

## 9 INTERPRETATION

- 9.1 The provisions of this clause apply to this deed's interpretation, unless the context requires a different interpretation.
- 9.2 Headings do not affect the interpretation.
- 9.3 A term defined by –
- 9.3.1 this deed has that meaning; and
  - 9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, has that meanings where used in this deed.
- 9.4 All parts of speech and grammatical forms of a defined term have corresponding meanings.
- 9.5 The singular includes the plural and vice versa.

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**4: DEEDS OF RECOGNITION**

- 9.6 One gender includes the other genders.
- 9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.
- 9.8 A reference to –
- 9.8.1 this deed or any other document means this deed or that document as amended, novated, or replaced; and
- 9.8.2 legislation means that legislation as amended, consolidated, or substituted.
- 9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

**SIGNED** as a deed on [**date**]

**SIGNED** for and on behalf of  
**THE CROWN** by –

The Minister of Conservation in the  
presence of –

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

Name:

Occupation:

Address:

The Director-General of Conservation  
in the presence of –

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

Name:

Occupation:

Address:

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4: DEEDS OF RECOGNITION

Schedule

Copies of Statements of Association

**Esk River and its tributaries** within the area of interest (as shown on deed plan OTS-206-18)

*[statement of association]*

**Fern Bird Bush Nature Reserve** (as shown on deed plan OTS-206-05)

*[statement of association]*

**Hutchinson Scenic Reserve** (as shown on deed plan OTS-206-06)

*[statement of association]*

**Part of Kaimanawa Forest Park** (as shown on deed plan OTS-206-07)

*[statement of association]*

**Part of Kaweka Forest Conservation Area** (as shown on deed plan OTS-206-08)

*[statement of association]*

**Part of Kaweka State Forest Park** (as shown on deed plan OTS-206-09)

*[statement of association]*

**Kuripapango DOC Field Base** (as shown on deed plan OTS-206-10)

*[statement of association]*

**Mangaone River and its tributaries** within the area of interest (as shown on deed plan OTS-206-12)

*[statement of association]*

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### 4: DEEDS OF RECOGNITION

**Mohaka River and its tributaries** within the area of interest (as shown on deed plan OTS-206-13)

*[statement of association]*

**Ngaruroro River and its tributaries** within the area of interest (as shown on deed plan OTS-206-14)

*[statement of association]*

**Puketitiri (Puketitiri Field Centre)** (as shown on deed plan OTS-206-17)

*[statement of association]*

**Tutaekuri River and its tributaries** within the area of interest (as shown on deed plan OTS-206-19)

*[statement of association]*

**[Note: copies of the statements of association for the above statutory areas, as set out in part 3 of this documents schedule, will only be appended to the final version of the Deed of Recognition]**

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### 4: DEEDS OF RECOGNITION

**THIS DEED** is made by **THE CROWN** acting by the Commissioner of Crown Lands

#### 1 INTRODUCTION

- 1.1 The Crown has granted this deed as part of the redress under a deed of settlement with –
  - 1.1.1 Ahuriri Hapū; and
  - 1.1.2 The trustees of the Mana Ahuriri Trust (the governance entity).
- 1.2 In the deed of settlement, Ahuriri Hapū made statements of Ahuriri Hapū’s particular cultural, spiritual, historical, and traditional association with the following areas (the statutory areas):
  - 1.2.1 Esk River and its tributaries within the area of interest (as shown on deed plan OTS-206-18):
  - 1.2.2 Mangaone River and its tributaries within the area of interest (as shown on deed plan OTS-206-12):
  - 1.2.3 Mohaka River and its tributaries within the area of interest (as shown on deed plan OTS-206-13):
  - 1.2.4 Ngaruroro River and its tributaries within the area of interest (as shown on deed plan OTS-206-14):
  - 1.2.5 Tutaekuri River and its tributaries within the area of interest (as shown on deed plan OTS-206-19).
- 1.3 Those statements of association are –
  - 1.3.1 in the documents schedule to the deed of settlement; and
  - 1.3.2 copied, for ease of reference, in the schedule to this deed.
- 1.4 The Crown has acknowledged the statements of association in the Ahuriri Hapū Claims Settlement Act [**year**], being the settlement legislation that gives effect to the deed of settlement.

#### 2 CONSULTATION

- 2.1 The Commissioner of Crown Lands must, if undertaking an activity specified in clause 2.2 in relation to a statutory area, consult and have regard to the views of the governance entity concerning Ahuriri Hapū’s association with that statutory area as described in a statement of association.
- 2.2 Clause 2.1 applies to each of the following activities (the identified activities):

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### 4: DEEDS OF RECOGNITION

- 2.2.1 considering an application for a right of use or occupation (including renewing such a right):
  - 2.2.2 preparing a plan, strategy, or programme for protection and management:
  - 2.2.3 conducting a survey to identify the number and type of users that may be appropriate:
  - 2.2.4 preparing a programme to eradicate noxious flora and fauna.
- 2.3 The Commissioner of Crown Lands must, when consulting the governance entity under clause 2.1, –
- 2.3.1 provide the governance entity with sufficient information to make informed decisions, and
  - 2.3.2 inform the governance entity of an application referred to in clause 2.2.1, but may withhold commercially sensitive information and material included within, or relating to, the application.

### 3 LIMITS

- 3.1 This deed –
- 3.1.1 relates only to the part or parts of a statutory area owned and managed by the Crown; and
  - 3.1.2 if it relates to a river –
    - (a) it does not relate to the waters of the river; and
    - (b) it relates only to the part or parts of the bed of the river that –
      - (i) are owned and managed by the Crown; and
      - (ii) are not land that the waters of the river do not cover at its fullest flow without overlapping its banks; and
      - (iii) are not the bed of an artificial watercourse or tributary; and
  - 3.1.3 does not require the Crown to undertake, increase, or resume any identified activity; and
  - 3.1.4 does not prevent the Crown from not undertaking, or ceasing to undertake, any identified activity; and
  - 3.1.5 is subject to the settlement legislation; and

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### 4: DEEDS OF RECOGNITION

- 3.1.6 does not affect, and may not be taken into account by, any person exercising a power or performing a function or duty under legislation or a bylaw; and
- 3.1.7 does not affect the lawful rights or interests of any person; or
- 3.1.8 grant, create or provide evidence of an estate or interest in, or rights relating to, a statutory area; and
- 3.1.9 does not prevent the Crown from entering into a Deed of Recognition with a person or persons other than the governance entity in relation to a statutory area.

### 4 TERMINATION

- 4.1 This deed terminates in respect of a statutory area, or part of it, if –
  - 4.1.1 the governance entity and the Commissioner of Crown Lands agree in writing; or
  - 4.1.2 the relevant area is disposed of by the Crown; or
  - 4.1.3 responsibility for the identified activities in relation to the relevant area is transferred from the Commissioner of Crown Lands to another Crown official or Minister.
- 4.2 If this deed terminates under clause 4.1.3 in relation to an area, the Crown will take reasonable steps to ensure the governance entity continues to have input into any identified activities in relation to the area with the new Crown official or Minister responsible for that activity.

### 5 NOTICES

- 5.1 Notices to the governance entity and the Crown are to be given under this deed in accordance with part 4 of the general matters schedule to the deed of settlement, except that the Crown's address where notices are to be given is –

Commissioner of Crown Lands  
Level 7 Radio New Zealand House  
155 The Terrace  
Wellington

### 6 AMENDMENT

- 6.1 This deed may be amended only by written agreement signed by the governance entity and the Commissioner of Crown Lands.

### 7 NO ASSIGNMENT

- 7.1 The governance entity may not assign its rights under this deed.



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### 4: DEEDS OF RECOGNITION

#### 8 DEFINITIONS

##### 8.1 In this deed –

**Ahuriri Hapū** has the meaning given to it by the deed of settlement; and

**Commissioner of Crown Lands** means the Commissioner of Crown Lands appointed under section 24AA of the Land Act 1948; and

**Crown** means Her Majesty the Queen in right of New Zealand; and

**deed** means this deed of recognition as it may be amended from time to time; and

**deed of settlement** means the deed of settlement dated [**date**] between Ahuriri Hapū, the governance entity, and the Crown; and

**governance entity** has the meaning given to it by the deed of settlement; and

**identified activities** means the activities specified in clause 2.2; and

**settlement legislation** means the Act referred to in clause 1.4; and

**statement of association** means each statement of association in the documents schedule to the deed of settlement and which is copied, for ease of reference, in the schedule to this deed; and

**statutory area** means an area referred to in clause 1.2, the general location of which is indicated on the deed plan referred to in relation to that area, but which does not establish the precise boundaries of the statutory area; and

**writing** means representation in a visible form on a tangible medium (such as print on paper).

#### 9 INTERPRETATION

9.1 The provisions of this clause apply to this deed's interpretation unless the context requires a different interpretation.

9.2 Headings do not affect the interpretation.

9.3 A term defined by –

9.3.1 this deed has that meaning; and

9.3.2 the deed of settlement, or the settlement legislation, but not by this deed, has that meaning where used in this deed.

9.4 All parts of speech and grammatical forms of a defined term have corresponding meanings.

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### 4: DEEDS OF RECOGNITION

- 9.5 The singular includes the plural and vice versa.
- 9.6 One gender includes the other genders.
- 9.7 Something, that must or may be done on a day that is not a business day, must or may be done on the next business day.
- 9.8 A reference to –
- 9.8.1 this deed or any other document means this deed or that document as amended, novated, or replaced; and
  - 9.8.2 legislation means that legislation as amended, consolidated, or substituted.
- 9.9 If there is an inconsistency between this deed and the deed of settlement, the deed of settlement prevails.

**SIGNED** as a deed on [*date*]

**SIGNED** for and on behalf of  
**THE CROWN** by –

The Commissioner of Crown Lands in the  
presence of – \_\_\_\_\_

### WITNESS

\_\_\_\_\_

Name:

Occupation:

Address:

DOCUMENTS

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4: DEEDS OF RECOGNITION

Schedule

Copies of Statements of Association

**Esk River and its tributaries** within the area of interest (as shown on deed plan OTS-206-18)

*[statement of association]*

**Mangaone River and its tributaries** within the area of interest (as shown on deed plan OTS-206-12)

*[statement of association]*

**Mohaka River and its tributaries** within the area of interest (as shown on deed plan OTS-206-13)

*[statement of association]*

**Ngaruroro River and its tributaries** within the area of interest (as shown on deed plan OTS-206-14)

*[statement of association]*

**Tutaekuri River and its tributaries** within the area of interest (as shown on deed plan OTS-206-19)

*[statement of association]*

**[Note: copies of the statements of association for the above statutory areas, as set out in part 3 of this documents schedule, will only be appended to the final version of the Deed of Recognition]**

## 5 PROTOCOLS

## DOCUMENTS

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

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#### 5.1 Taonga Tūturu Protocol

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## DOCUMENTS

### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

#### TAONGA TŪTURU PROTOCOL

#### A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER FOR ARTS, CULTURE AND HERITAGE REGARDING INTERACTION WITH AHURIRI HAPŪ ON SPECIFIED ISSUES

## 1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated xx between the governance entity and the Crown (the “Deed of Settlement”), the Crown agreed that the Minister for Arts, Culture and Heritage (the “Minister”) would issue a protocol (the “Protocol”) setting out how the Minister and the Chief Executive for Manatū Taonga also known as the Ministry for Culture and Heritage (the “Chief Executive”) will interact with the governance entity on matters specified in the Protocol. These matters are:
- 1.1.1 Protocol Area – Part 2
  - 1.1.2 Terms of issue – Part 3
  - 1.1.3 Relationship Principles – Part 4
  - 1.1.4 Implementation and communication – Part 5
  - 1.1.5 The role of the Chief Executive under the Protected Objects Act 1975 – Part 6
  - 1.1.6 The role of the Minister under the Protected Objects Act 1975 – Part 7
  - 1.1.7 Effects on Ahuriri hapū interests in the Protocol Area – Part 8
  - 1.1.8 Registration as a collector of Ngā Taonga Tūturu – Part 9
  - 1.1.9 Board Appointments – Part 10
  - 1.1.10 National Monuments, War Graves and Historical Graves – Part 11
  - 1.1.11 History publications relating to Ahuriri hapū – Part 12
  - 1.1.12 Ahuriri Hapū Casualties Of The New Zealand Wars Buried On The Chatham Islands – Part 13
  - 1.1.13 Provision of Cultural and/or Spiritual Practices and professional services – Part 14
  - 1.1.14 Consultation – Part 15
  - 1.1.15 Changes to legislation affecting this Protocol – Part 16
  - 1.1.16 Definitions – Part 17
- 1.2 For the purposes of this Protocol the governance entity is the body representative of Ahuriri Hapū who have an interest in the matters covered under this Protocol. This derives from the

## DOCUMENTS

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

status of the governance entity as tangata whenua in the Protocol Area and is inextricably linked to whakapapa and has important cultural and spiritual dimensions.

- 1.3 Manatū Taonga also known as the Ministry (the Ministry) and the governance entity are seeking a relationship consistent with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/the Treaty of Waitangi provide the basis for the relationship between the parties to this Protocol, as set out in this Protocol.
- 1.4 The purpose of the Protected Objects Act 1975 (“the Act”) is to provide for the better protection of certain objects by, among other things, regulating the export of Taonga Tūturu, and by establishing and recording the ownership of Ngā Taonga Tūturu found after the commencement of the Act, namely 1 April 1976.
- 1.5 The Minister and Chief Executive have certain roles in terms of the matters mentioned in Clause 1.1. In exercising such roles, the Minister and Chief Executive will provide the governance entity with the opportunity for input, into matters set out in Clause 1.1, as set out in clauses 5 to 11 of this Protocol.

#### 2 PROTOCOL AREA

- 2.1 This Protocol applies across the Protocol Area which is identified in the map included in Attachment A of this Protocol together with adjacent waters (the “Protocol Area”).

#### 3 TERMS OF ISSUE

- 3.1 This Protocol is issued pursuant to section 27 of the xxx (“the Settlement Legislation”) that implements the Ahuriri Hapū Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 3.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

#### 4 RELATIONSHIP PRINCIPLES

- 4.1.1 In implementing the Relationship Agreement, the Minister, Chief Executive and the Governance Entity agree to act consistently with the following relationship principles;
- 4.1.2 Work consistently with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
- 4.1.3 Operate a ‘no surprises’ approach;
- 4.1.4 Work in a spirit of co-operation;
- 4.1.5 Acknowledge that the relationship is evolving, not prescribed;
- 4.1.6 Respect the independence of the parties and their individual mandates, roles and responsibilities; and
- 4.1.7 Recognise and acknowledge that the parties benefit from working together by sharing their vision, knowledge and expertise.

#### 5 IMPLEMENTATION AND COMMUNICATION

- 5.1 The Chief Executive will maintain effective communication with the governance entity by:

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

- 5.1.1 maintaining information provided by the governance entity on the office holders of the governance entity and their addresses and contact details;
- 5.1.2 discussing with the governance entity concerns and issues notified by the governance entity about this Protocol;
- 5.1.3 as far as reasonably practicable, providing opportunities for the governance entity to meet with relevant Ministry managers and staff;
- 5.1.4 meeting with the governance entity to review the implementation of this Protocol if requested by either party;
- 5.1.5 as far as reasonably practicable, training relevant employees within the Ministry on this Protocol to ensure that they are aware of the purpose, content and implications of this Protocol and of the obligations of the Chief Executive under it;
- 5.1.6 as far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Protocol and provide ongoing information; and
- 5.1.7 including a copy of the Protocol with the governance entity on the Ministry's website.

## 6 THE ROLE OF THE CHIEF EXECUTIVE UNDER THE ACT

### General

- 6.1 The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to the governance entity within the limits of the Act. From the date this Protocol is issued the Chief Executive will:
  - 6.1.1 notify the governance entity in writing of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand;
  - 6.1.2 provide for the care, recording and custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand;
  - 6.1.3 notify the governance entity in writing of its right to lodge a claim with the Chief Executive for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand;
  - 6.1.4 notify the governance entity in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu; and
  - 6.1.5 notify the governance entity in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand, or for any right, title, estate, or interest in any such Taonga Tūturu.



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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

#### **Ownership of Taonga Tūturu found in Protocol Area or identified as being of Ahuriri Hapū origin found elsewhere in New Zealand**

- 6.2 If the governance entity lodges a claim of ownership with the Chief Executive and there are no competing claims for any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand, the Chief Executive will, if satisfied that the claim is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 6.3 If there is a competing claim or claims lodged in conjunction with the governance entity's claim of ownership, the Chief Executive will consult with the governance entity for the purpose of resolving the competing claims, and if satisfied that a resolution has been agreed to, and is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the Taonga Tūturu.
- 6.4 If the competing claims for ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found anywhere else in New Zealand, cannot be resolved, the Chief Executive at the request of the governance entity may facilitate an application to the Māori Land Court for determination of ownership of the Taonga Tūturu.

#### **Custody of Taonga Tūturu found in Protocol Area or identified as being Ahuriri Hapū origin found elsewhere in New Zealand**

- 6.5 If the governance entity does not lodge a claim of ownership of any Taonga Tūturu found within the Protocol Area or identified as being of Ahuriri Hapū origin found elsewhere in New Zealand with the Chief Executive, and where there is an application for custody from any other person, the Chief Executive will:
- 6.5.1 consult the governance entity before a decision is made on who may have custody of the Taonga Tūturu; and
- 6.5.2 notify the governance entity in writing of the decision made by the Chief Executive on the custody of the Taonga Tūturu.

#### **Export Applications**

- 6.6 For the purpose of seeking an expert opinion from the governance entity on any export applications to remove any Taonga Tūturu of Ahuriri Hapū origin from New Zealand, the Chief Executive will register the governance entity on the Ministry for Culture and Heritage's Register of Expert Examiners.
- 6.7 Where the Chief Executive receives an export application to remove any Taonga Tūturu of Ahuriri Hapū origin from New Zealand, the Chief Executive will consult the governance entity as an Expert Examiner on that application, and notify the governance entity in writing of the Chief Executive's decision.

## **7 THE ROLE OF THE MINISTER UNDER THE ACT**

- 7.1 The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the governance entity within the limits of the Act. In circumstances where the Chief Executive originally consulted the governance entity as an Expert Examiner, the Minister may consult with the governance entity where a person appeals the decision of the Chief Executive to:

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

- 7.1.1 refuse permission to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand; or
- 7.1.2 impose conditions on the approval to export any Taonga Tūturu, or Ngā Taonga Tūturu, from New Zealand;
- 7.1.3 The Ministry will notify the governance entity in writing of the Minister's decision on an appeal in relation to an application to export any Taonga Tūturu where the governance entity was consulted as an Expert Examiner.

### 8 EFFECTS ON AHURIRI HAPŪ INTERESTS IN THE PROTOCOL AREA

- 8.1 The Chief Executive and governance entity shall discuss any policy and legislative development, which specifically affects Ahuriri Hapū interests in the Protocol Area.
- 8.2 The Chief Executive and governance entity shall discuss any of the Ministry's operational activities, which specifically affect Ahuriri Hapū interests in the Protocol Area.
- 8.3 Notwithstanding paragraphs 8.1 and 8.2 above the Chief Executive and governance entity shall meet to discuss Ahuriri Hapū interests in the Protocol Area as part of the meeting specified in clause 5.1.4.

### 9 REGISTRATION AS A COLLECTOR OF NGĀ TAONGA TŪTURU

- 9.1 The Chief Executive will register the governance entity as a Registered Collector of Taonga Tūturu.

### 10 BOARD APPOINTMENTS

- 10.1 The Chief Executive shall:
  - 10.1.1 notify the governance entity of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
  - 10.1.2 add the governance entity's nominees onto Manatū Taonga/Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
  - 10.1.3 notify the governance entity of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

### 11 NATIONAL MONUMENTS, WAR GRAVES AND HISTORIC GRAVES

- 11.1 The Chief Executive shall seek and consider the views of the governance entity on any proposed major works or changes to any national monument, war grave or historic grave, managed or administered by the Ministry, which specifically relates to Ahuriri Hapū interests in the Protocol Area. For the avoidance of any doubt, this does not include normal maintenance or cleaning.
- 11.2 Subject to government funding and government policy, the Chief Executive will provide for the marking and maintenance of any historic war grave identified by the governance entity, which the Chief Executive considers complies with the Ministry's War Graves Policy criteria; that is, a

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

casualty, whether a combatant or non-combatant, whose death was a result of the armed conflicts within New Zealand in the period 1840 to 1872 (the New Zealand Wars).

#### 12 HISTORY PUBLICATIONS RELATING TO AHURIRI HAPŪ

##### 12.1 The Chief Executive shall:

12.1.1 upon commencement of this protocol provide the governance entity with a list and copies of all history publications commissioned or undertaken by the Ministry that relates substantially to Ahuriri Hapū; and

12.1.2 where reasonably practicable, consult with the governance entity on any work the Ministry undertakes that relates substantially to Ahuriri Hapū:

- (a) from an early stage;
- (b) throughout the process of undertaking the work; and
- (c) before making the final decision on the material of a publication.

12.1.3 It is accepted that the author, after genuinely considering the submissions and/or views of, and confirming and correcting any factual mistakes identified by the governance entity, is entitled to make the final decision on the material of the historical publication.

#### 13 AHURIRI HAPŪ CASUALTIES OF THE NEW ZEALAND WARS BURIED ON THE CHATHAM ISLANDS

13.1 Specifically, the Chief Executive will work with the governance entity to develop and implement a plan within 12 months of the issue of the Protocol or as soon as reasonably practical thereafter to ensure:

13.2 that the graves of Ahuriri Hapū casualties of the New Zealand Wars, buried on the Chatham Islands, are marked and a whakawatea process performed to bless the area; and

13.3 that those casualties are returned to Ahuriri Hapū whether physically or spiritually; and

13.4 that a memorial is erected at Wharekauri (subject to the outcome of discussion about the proposed memorial with other iwi whose tupuna were detained on Wharekauri).

#### 14 PROVISION OF CULTURAL AND/OR SPIRITUAL PRACTICES AND PROFESSIONAL SERVICES

14.1 Where the Chief Executive requests cultural and/or spiritual practices to be undertaken by Ahuriri Hapū within the Protocol Area, the Chief Executive will make a contribution subject to prior mutual agreement, to the costs of undertaking such practices.

14.2 Where appropriate, the Chief Executive will consider using the governance entity as a provider of professional services relating to cultural advice, historical and commemorative services sought by the Chief Executive.

14.3 The procurement by the Chief Executive of any such services set out in Clauses 14.1 and 14.2 is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

#### 15 CONSULTATION

- 15.1 Where the Chief Executive is required to consult under this Protocol, the basic principles that will be followed in consulting with the governance entity in each case are:
- 15.1.1 ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
  - 15.1.2 providing the governance entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
  - 15.1.3 ensuring that sufficient time is given for the participation of the governance entity in the decision making process including the preparation of submissions by the governance entity in relation to any of the matters that are the subject of the consultation;
  - 15.1.4 ensuring that the Chief Executive will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity in relation to any of the matters that are the subject of the consultation; and
  - 15.1.5 report back to the governance entity, either in writing or in person, in regard to any decisions made that relate to that consultation.

#### 16 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

- 16.1 If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Protocol, the Chief Executive shall:
- 16.1.1 notify the governance entity of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
  - 16.1.2 make available to the governance entity the information provided to Māori as part of the consultation process referred to in this clause; and
  - 16.1.3 report back to the governance entity on the outcome of any such consultation.

#### 17 DEFINITIONS

- 17.1 In this Protocol:

**Ahuriri Hapū** has the meaning set out in clause 9.6 of the Deed of Settlement

**Chief Executive** means the Chief Executive of Manatū Taonga also known as the Ministry for Culture and Heritage and includes any authorised employee of Manatū Taonga also known as the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive

**Crown** means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement

## DOCUMENTS

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### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

**Expert Examiner** has the same meaning as in section 2 of the Act and means a body corporate or an association of persons

**Found** has the same meaning as in section 2 of the Act and means:

in relation to any Taonga Tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the Taonga Tūturu and which suggest that the Taonga Tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and ‘finding’ and ‘finds’ have corresponding meanings

**governance entity** has the meaning given to it by the Deed of Settlement

**Ngā Taonga Tūturu** has the same meaning as in section 2 of the Act and means two or more Taonga Tūturu

**Protocol** means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol

**Taonga Tūturu** has the same meaning as in section 2 of the Act and means an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
  - (i) manufactured or modified in New Zealand by Māori; or
  - (ii) brought into New Zealand by Māori; or
  - (iii) used by Māori; and
- (c) is more than 50 years old

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5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

**ISSUED** on

**SIGNED** for and on behalf of **THE SOVEREIGN** in right of New Zealand by the Minister for Arts, Culture and Heritage:

**WITNESS**

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Name:

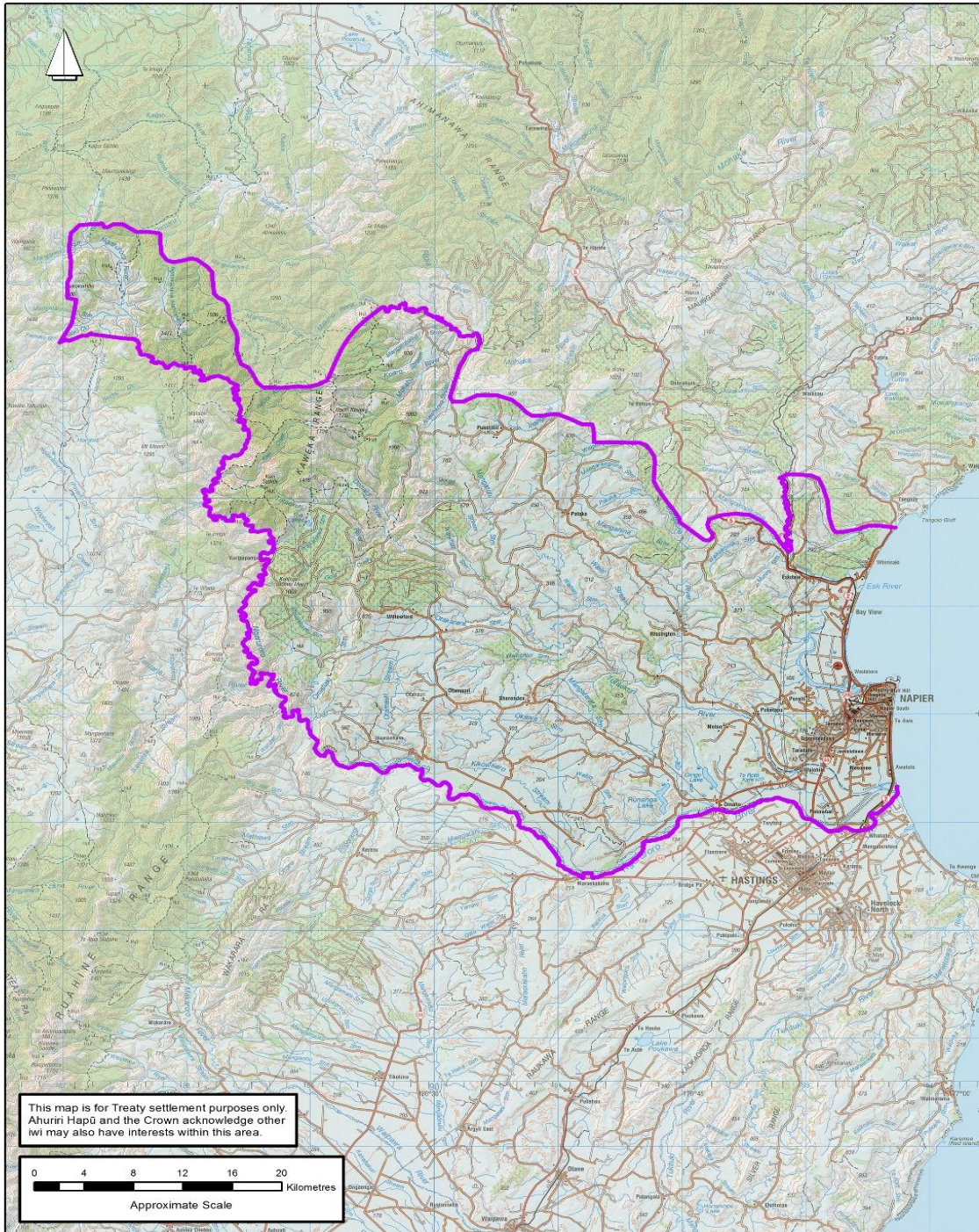
Occupation:

Address:

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5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

ATTACHMENT A  
TAONGA TŪTURU PROTOCOL AREA



## DOCUMENTS

### 5: PROTOCOLS: TAONGA TŪTURU PROTOCOL

#### ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

#### 1. Amendment and cancellation

- 1.1 The Minister may amend or cancel this Protocol, but only after consulting with the governance entity and having particular regard to its views (section 27).

#### 2. Limits

- 2.1 This Protocol does not –

2.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law and government policy, including:

(a) introducing legislation; or

(b) changing government policy; or

(c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapu, marae, whanau, or representative of tangata whenua (section 28); or

2.1.2 restrict the responsibilities of the Minister or the Ministry or the legal rights of Ahuriri Hapū (section 28); or

2.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to, taonga tuturu.

#### 3. Breach

- 3.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 29).

- 3.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 6.11).



**DOCUMENTS**

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**5: PROTOCOLS: CROWN MINERALS PROTOCOL**

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**5.2 Crown Minerals Protocol**

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## DOCUMENTS

### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

**PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF ENERGY AND RESOURCES REGARDING CONSULTATION WITH [AHURIRI HAPŪ] BY THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT ON THE ADMINISTRATION OF CROWN OWNED MINERALS**

#### 1 INTRODUCTION

- 1.1 Under the Deed of Settlement dated [] between the trustees of the Mana Ahuriri Trust (“**governance entity**”) and the Crown (the “**Deed of Settlement**”), the Crown agreed that the Minister of Energy and Resources (the “**Minister**”) would issue a Protocol (the “**Protocol**”) setting out how the Ministry of Business, Innovation and Employment (the “**Ministry**”) will consult with the governance entity on matters specified in the Protocol.
- 1.2 Both the Ministry and the governance entity are seeking a constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 Section 4 of the Crown Minerals Act 1991 (the “**Act**”) requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi. The minerals programmes set out how this requirement will be given effect to.
- 1.4 The Minister and the Ministry recognise that the governance entity is the governance entity of Ahuriri Hapū and represents Ahuriri Hapū.
- 1.5 Ahuriri Hapū assert mana whenua in the Protocol Area.
- 1.6 Ahuriri Hapū are tangata whenua and kaitiaki of the Protocol Area and have significant interests and responsibilities in relation to the preservation, protection and management of natural resources within the Protocol Area.

#### 2 PURPOSE OF THIS PROTOCOL

- 2.1 With the intent of creating a constructive relationship between the governance entity and the Ministry in relation to minerals administered in accordance with the Act in the Protocol Area, this Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this Protocol.
- 2.2 The governance entity will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this Protocol in accordance with the Act and the relevant minerals programmes issued under the Act.

#### 3 PROTOCOL AREA

- 3.1 This Protocol applies to the area shown on the map in Attachment A and does not go beyond the sovereign territory of New Zealand.

#### 4 TERMS OF ISSUE

- 4.1 This Protocol is issued pursuant to section 27 of the Ahuriri Hapū Claims Settlement Act xxxx (the “**Settlement Legislation**”) that implements clause 6.8 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

#### 5 RELATIONSHIP PRINCIPLES

- 5.1 In implementing the Relationship Agreement, the Minister, the Ministry and the governance entity agree to act consistently with the following relationship principles:
- (a) Work consistently with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
  - (b) Work in a spirit of Treaty partnership;
  - (c) Acknowledge that the relationship is evolving, not prescribed;
  - (d) Respect the independence of the parties and their individual mandates, roles and responsibilities; and
  - (e) Recognise and acknowledge that the parties benefit from working together by sharing their vision, knowledge and expertise.

#### 6 CONSULTATION

- 6.1 The Minister will ensure that the governance entity is consulted by the Ministry:

##### **New minerals programmes**

- (a) on the preparation of a draft minerals programme, or a proposed change to a minerals programme (unless the change is one to which section 16(3) of the Act applies), which relate, whether wholly or in part, to the Protocol Area;

##### **Petroleum exploration permit block offers**

- (b) on the planning of a competitive tender allocation of a permit block for petroleum exploration (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the Protocol Area. This will include outlining the proposals for holding the block offer, and consulting with the governance entity on these proposals over the consultation period set out in the relevant minerals programme;

##### **Other petroleum permit applications**

- (c) when any application for a petroleum permit is received, which relates, whether wholly or in part, to the Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 6.1(b);

##### **Amendments to petroleum permits**

- (d) when any application to amend a petroleum permit, by extending the land to which the permit relates, is received where the application relates, wholly or in part, to the Protocol Area;

##### **Permit block offers for Crown owned minerals other than petroleum**

- (e) on the planning of a competitive tender allocation of a permit block for Crown owned minerals other than petroleum (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and any relevant minerals programme) which relates, whether wholly or in part, to the Protocol Area;

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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

#### **Other permit applications for Crown owned minerals other than petroleum**

- (f) when any application for a permit in respect of Crown owned minerals other than petroleum is received, which relates, whether wholly or in part, to the Protocol Area, except where the application relates to a block offer over which consultation has already taken place under clause 6.1(e) or where the application relates to newly available acreage;

#### **Newly available acreage**

- (g) when the Secretary proposes to recommend that the Minister grant an application for a permit for newly available acreage in respect of minerals other than petroleum, which relates, whether wholly or in part, to the Protocol Area;

#### **Amendments to permits for Crown owned minerals other than petroleum**

- (h) when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit is received, where the application relates, wholly or in part, to the Protocol Area; and

#### **Gold fossicking areas**

- (i) when any request is received or proposal is made to designate lands as a gold fossicking area, which relates, whether wholly or in part, to the Protocol Area.

6.2 Each decision on a proposal referred to in clause 6.1 will be made having regard to any matters raised as a result of consultation with the governance entity, and having regard to the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi.

## **7 IMPLEMENTATION AND COMMUNICATION**

7.1 The Crown has an obligation under the Act to consult with parties whose interests may be affected by matters described in clause 6.1. The Ministry will consult with the governance entity in accordance with this Protocol if matters described in clause 6.1 of this Protocol may affect the interests of Ahuriri Hapū.

7.2 For the purposes of clause 7.1, the basic principles that will be followed by the Ministry in consulting with the governance entity in each case are:

- (a) ensuring that the governance entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues;
- (b) providing the governance entity with sufficient information to make informed decisions and submissions;
- (c) ensuring that sufficient time is given for the participation of the governance entity in the decision making process and to enable it to prepare its submissions; and
- (d) ensuring that the Ministry will approach the consultation with the governance entity with an open mind, and will genuinely consider the submissions of the governance entity.

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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

#### 8 DEFINITIONS

##### 8.1 In this Protocol:

**Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;

**Ahuriri Hapū** has the meaning set out in clause 9.6 of the Deed of Settlement;

**Chief Executive** means the Chief Executive of the Ministry of Business, Innovation and Employment;

**Crown** means the Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

**Crown owned minerals** means any mineral that is the property of the Crown;

**Deed of Settlement** means the Deed of Settlement dated [ ] between the Crown and the governance entity;

**governance entity** has the meaning given to it by the Deed of Settlement;

**mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945;

**Minister** means the Minister of Energy and Resources;

**Ministry** means the Ministry of Business, Innovation and Employment;

**newly available acreage** is a method for allocating permits for minerals (excluding petroleum) as set out in the Minerals Programme for Minerals (Excluding Petroleum) 2013;

**petroleum** means—

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of 1 or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and 1 or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide—

and, except in sections 10 and 11, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes; and

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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

**protocol** means a statement in writing, issued by the Crown through the Minister to the governance entity under the Settlement Legislation and the Deed of Settlement and includes this Protocol.

**ISSUED ON [ ]**

**SIGNED** for and on behalf of  
**THE SOVEREIGN**  
in right of New Zealand by  
the Minister of Energy and Resources.

**WITNESS**

Name \_\_\_\_\_

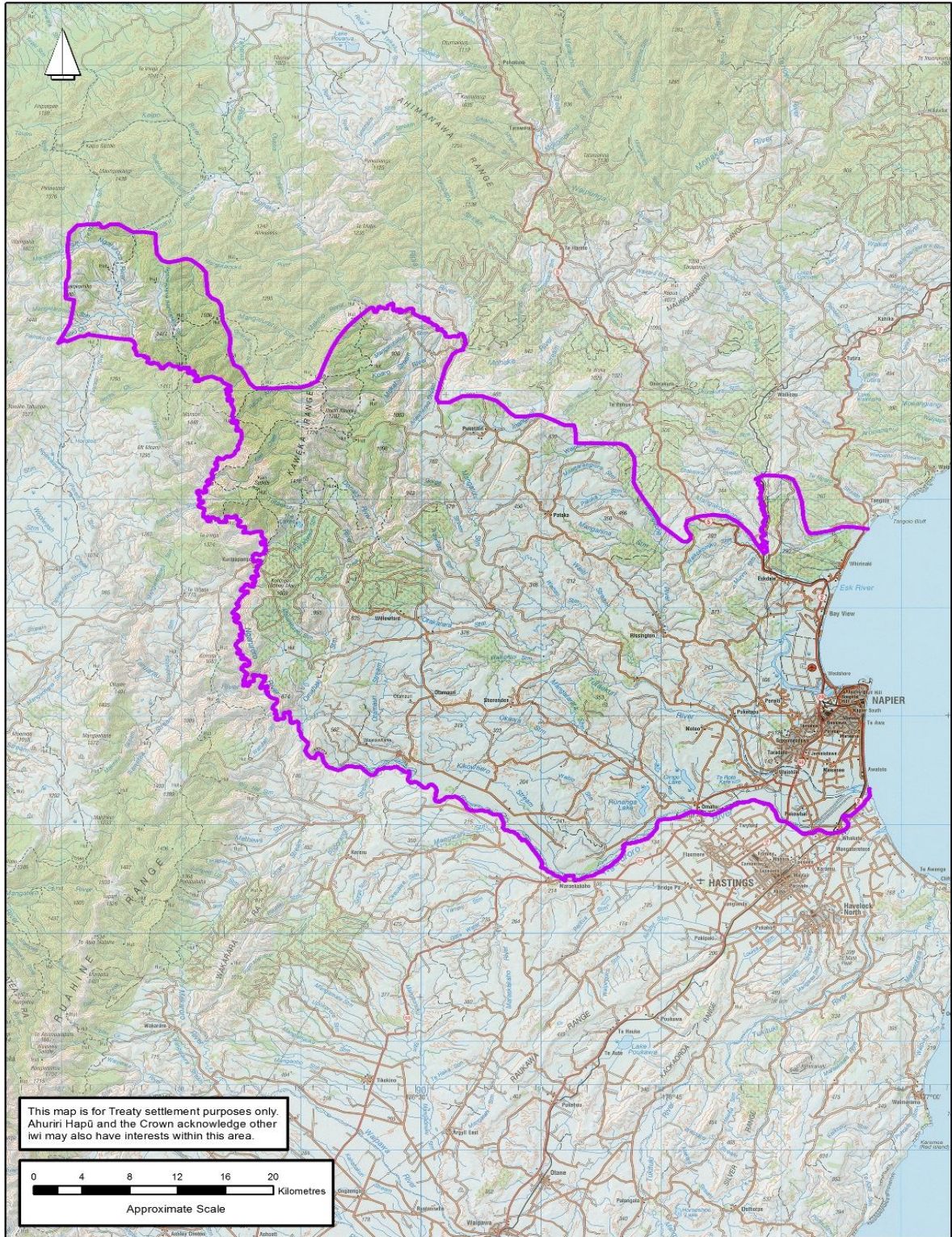
Occupation \_\_\_\_\_

Address \_\_\_\_\_

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5: PROTOCOLS: CROWN MINERALS PROTOCOL

ATTACHMENT A  
PROTOCOL AREA MAP



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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

#### ATTACHMENT B: SUMMARY OF THE TERMS OF ISSUE

This Protocol is subject to the Deed of Settlement and the Settlement Legislation. A summary of the relevant provisions is set out below.

#### 1. Amendment and cancellation

- 1.1 The Minister or the governance entity may cancel this Protocol.
- 1.2 The Protocol can only be amended by agreement in writing between the Minister and the governance entity.

#### 2. Noting

- 2.1 A summary of the terms of this Protocol must be added:
  - 2.1.1 in a register of protocols maintained by the chief executive; and
  - 2.1.2 in the minerals programme affecting the Protocol Area when those programmes are changed;but the addition:
  - 2.1.3 is for the purpose of public notice only; and
  - 2.1.4 does not change the minerals programmes for the purposes of the Crown Minerals Act 1991 (section 30).

#### 3. Limits

- 3.1 This Protocol does not –
  - 3.1.1 restrict the Crown from exercising its powers, and performing its functions and duties, in accordance with the law (including the Crown Minerals Act 1991) and government policy, including:
    - (a) introducing legislation; or
    - (b) changing government policy; or
    - (c) issuing a Protocol to, or interacting or consulting with anyone the Crown considers appropriate, including any iwi, hapū, marae, whānau, or representative of tāngata whenua (section 28); or
  - 3.1.2 restrict the responsibilities of the Minister or the Ministry under the Crown Minerals Act 1991 or the legal rights of Ahuriri Hapū or a representative entity (section 28); or
  - 3.1.3 grant, create, or provide evidence of an estate or interest in, or rights relating to Crown minerals (section 30).
- 3.2 In this summary of the Terms of Issue, “representative entity” has the same meaning as it has in the Deed of Settlement.

#### 4. Breach



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### 5: PROTOCOLS: CROWN MINERALS PROTOCOL

- 4.1 Subject to the Crown Proceedings Act 1950, the governance entity may enforce this Protocol if the Crown breaches it without good cause, but damages or monetary compensation will not be awarded (section 29).
- 4.2 A breach of this Protocol is not a breach of the Deed of Settlement (clause 6.11).

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6: TE KAWA O PAPA

**6 TE KAWA O PAPA**

DOCUMENTS

6: TE KAWA O PAPA

PARTNERSHIP AGREEMENT (TE KAWA O PAPA) WITH THE DEPARTMENT OF  
CONSERVATION

CONSERVATION PARTNERSHIP AGREEMENT (Te Kawa o Papa)

Agreed by

The Crown, through the Minister of Conservation and the Director-General of Conservation

And

The Trustees of the Mana Ahuriri Trust being the Ahuriri Hapū post-settlement governance  
entity through the Ahuriri Hapū Deed of Settlement

1. BACKGROUND

1.1 The Crown and the trustees of the Mana Ahuriri Trust (the **Governance Entity**) have agreed that the relationship redress offered by the Minister of Conservation will include a partnership agreement to be known as Te Kawa o Papa between the Governance Entity and the Department of Conservation (the Department).

1.2 Te Kawa o Papa will be based on and incorporate Te Kākano principles set out below:

**TE KĀKANO PRINCIPLES**

1.3 For Ahuriri Hapū, Tāngata (people) and Papatūānuku (land and resources) are the priority focus in the planning of any development.

1.4 Tikanga are the values that must be applied.

1.5 Kawa is the process that must be applied.

1.6 **Tāngata (People)**

1.6.1 In the evolution of mankind, according to Māori and at the creation of Hineahuone (the first human being) the value and priority of people survived in this proverb:

*“Me ka ui mai koe he aha te mea nui o te ao, māku e kii atu ki a koe, He tāngata, He tāngata, He tāngata.”* “If one should ask what is the most important thing in this world you would respond, it is people, it is people, it is people.”

1.7 **Papatūānuku (Our earth mother (Land and Resources))**

1.7.1 In the evolution of mankind, according to Māori, Hineahuone (the first human being) was created from the clay (te oneone o Papatūānuku) and from the breath of Tāne (our first hongī).

1.7.2 The special relationship to Papatūānuku is based upon:

- (a) Humanity was created from Papatūānuku - our whāea, our earth mother;

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### 6: TE KAWA O PAPA

- (b) During our lifetime we are responsible for her care and development;
- (c) Papatūānuku in turn acknowledges her responsibility to nourish and nurture us during our lifetime; and
- (d) At death Papatūānuku assumes her final role to care for our “kōiwi” body for eternity – “te oneone ki te oneone” – dust to dust.

#### 1.8 Tikanga (Values)

1.8.1 The core element of our tikanga is the spiritual significance of “tapu” and the need to acknowledge and value that “tapu” through the practice of “respect”.

1.8.2 As part of the creation of mankind, according to Māori, at the moment a mother conceives our creator implants his Wairua (spirit) in the womb of the mother. The baby and womb of the mother become “tapu”. This enactment is captured and has survived in two proverbs (whakatauaiki):

- (a) *Te whare tapu o te tangata* (the sacred birth place of generations); and
- (b) *Te tapu o te tangata* (the sanctity of people).

#### 1.9 Kawa (Protocol)

1.9.1 Kawa is an everyday practice agreed to by people and groups sharing values, aspirations, and beliefs in the development of Tāngata or Papatūānuku.

## 2. PURPOSE OF TE KAWA O PAPA

2.1 This Conservation Partnership Agreement (“Agreement”) sets out how the Department and the Governance Entity will work together in fulfilling the agreed strategic objectives across the Ahuriri Hapū Area of Interest as outlined on the map in Schedule 1 (the Area of Interest).

2.2 It reflects a commitment by the Department and the Ahuriri Hapū to enter into a new relationship based on partnership as set out in this Agreement. This includes:

- (a) operating a ‘no surprises’ approach;
- (b) working in a spirit of co-operation;
- (c) acknowledging that the relationship is evolving, not prescribed;
- (d) respecting the independence of the parties and their individual mandates, roles, responsibilities, capacity and resources; and
- (e) recognising and acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise.

2.3 It sets out how the Governance Entity and the Department will establish and maintain into the future a positive, collaborative and enduring partnership consistent with section 4 of the Conservation Act 1987 regarding the management of the Conservation Land.

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### 6: TE KAWA O PAPA

- 2.4 It provides a framework and mechanisms for the Governance Entity to have meaningful input into policy, planning and decision making processes in the Department's management of the Conservation Land and to advocate the conservation of natural and historic resources generally.
- 2.5 It is intended to improve the quality of conservation management decisions through each Partner obtaining a better understanding of the other Partner's perspectives and where possible seeking consensus on outcomes.
- 2.6 The Department considers that building a strong relationship based on partnership with the Ahuriri Hapū is fundamental to understanding their interests in the Conservation Land. To strengthen this partnership, the Department is committed to finding practical ways for involving the Governance Entity in the decision-making processes in accordance with this Agreement.
- 2.7 The terms of the Ahuriri Hapū Deed of Settlement apply to this Agreement and should be read as part of this Agreement.
- 2.8 This Agreement shall apply within the Area of Interest.

### 3. ROLES AND RESPONSIBILITIES

- 3.1 The Governance Entity, the Minister and the Director-General are committed to the restoration, protection and where possible the enhancement of the health and wellbeing of the Area of Interest for present and future generations.
- 3.2 The Ahuriri Hapū have cultural, spiritual, traditional and historic associations with the land, waters and indigenous flora and fauna within the Area of Interest, and accept a responsibility as kaitiaki under tikanga Māori to preserve, protect, and manage natural and historic resources.
- 3.3 The Department's functions include managing "for conservation purposes, all land, and all other natural and historic resources" under the Conservation Legislation. This must be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi, to the extent that those principles are consistent with the Conservation Legislation.

### 4. COMMUNICATION, STRATEGIC COLLABORATION AND SPECIFIC PROJECTS

- 4.1 As soon as is practicable after the signing of this Agreement the parties will meet to agree long-term strategic objectives for their relationship.
- 4.2 Thereafter, the Governance Entity will meet with senior staff of the Department within the Area of Interest at least once a year. At these meetings, the parties will determine whether meetings involving senior managers of the Department and the Governance Entity are required on particular issues. The Governance Entity may also advise the Department that meetings with specific hapū are required on particular issues.
- 4.3 The Governance Entity and the Department undertake separate business planning processes prior to the beginning of each new financial year. These business planning processes determine the Governance Entity's and the Department's work priorities and commitments for the year. For the Department, business planning processes largely sit with the District Managers. The relevant District Managers and representatives of the Governance Entity will meet at an early stage in their annual business planning processes to:
  - (a) discuss priorities and commitments for the new financial year;

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### 6: TE KAWA O PAPA

- (b) discuss timeframes for the development of annual work programmes; and
  - (c) identify potential specific projects to be undertaken together or separately which are consistent with the strategic objectives for the relationship.
- 4.4 As part of the above process, the Governance Entity will identify for discussion any proposed or existing projects that offer an opportunity for the Department to provide assistance or support, and the form that assistance or support might potentially take.
- 4.5 If a specific project is undertaken, the Department and the Governance Entity will determine the nature of their collaboration on that project which may include finalising a work plan for that project. If a specific project is not undertaken, the parties will advise one another of the reason(s) for this.
- 4.6 As part of annual discussions, and as part of ongoing dialogue, the parties will advise each other of:
- (a) any significant changes that have occurred or are proposed (including structural, legislative, policy or administrative changes) regarding how either party is working in the Area of Interest;
  - (b) potential opportunities for applying for funding for conservation purposes from external sources (either jointly or individually with the support of the other party); and
  - (c) potential opportunities for applying for funding for conservation purposes from Vote: Conservation, either jointly or individually with the support of the other party.
- 4.7 Each year, the parties will provide a letter or similar form of written advice to the other that describes the work that party has carried out in that financial year to achieve the strategic objectives for this partnership.

#### *Planning documents*

- 4.8 The Department and the Governance Entity will meet to identify and seek to address issues affecting the Ahuriri Hapū at an early stage (before public consultation, if any, and throughout the process) in the preparation, review or amendment of any Conservation Planning Document within the Area of Interest.
- 4.9 The Department will obtain the Governance Entity's agreement to any statements proposed to be included in any such Conservation Planning Document that relate to the cultural, spiritual and/or historic relationship of Ahuriri Hapū with any place within the Area of Interest.
- 4.10 The Governance Entity and the Department will meet to identify and discuss opportunities for them to further strengthen their partnership at an early stage in the preparation, review or amendment of any statutory or non statutory plans the Governance Entity is developing for the Area of Interest.

## 5. PRIORITY AREAS

- 5.1 The parties agree there will be a partnership approach in relation to the management of Priority Areas. This means:

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### 6: TE KAWA O PAPA

- (a) the parties will use best endeavours to jointly agree conservation priorities and projects for these Priority Areas;
- (b) if despite best endeavours, consensus is not reached within an agreed timeframe, the Department may exercise its decision making power and functions in relation to such conservation priorities and projects; and
- (c) where the Department has made a decision under 5.1.(b) it will promptly advise the Governance Entity of that decision and where the decision is contrary to the Governance Entity's wishes the Department will inform the Governance Entity of the factors it took into account in making that decision.

#### 6. FRESHWATER FISHERIES AND HABITAT

- 6.1 The parties share aspirations for conservation of freshwater fisheries and habitat within the Area of Interest.
- 6.2 The Department's statutory functions include the preservation, as far as practicable, of all indigenous freshwater fisheries, and the protection of recreational freshwater fisheries and their habitats. The Department is responsible for the regulation of whitebait fishing under the Whitebait Regulations. Its work also focuses on national priority fisheries and habitats that are located on public conservation land, national priority species and biosecurity issues. In all other areas, advocacy for the conservation of freshwater fisheries is undertaken primarily through Resource Management Act processes.
- 6.3 The parties will co-operate in the conservation of freshwater fisheries and freshwater habitats. Establishing freshwater aims in the strategic objectives for the relationship will ensure that actions towards these are integrated into the annual business planning processes. These actions may include areas for co-operation in the protection, restoration and enhancement of riparian vegetation and habitats; and the development or implementation of research and monitoring programmes.
- 6.4 The parties will work together to ensure that the relevant staff of the Department are aware of relevant tikanga relating to freshwater fisheries, habitat and species.

#### 7. MARINE MAMMALS

- 7.1 All species of marine mammal occurring within New Zealand and New Zealand's fisheries waters are absolutely protected under the Marine Mammals Protection Act 1978. The Department has responsibilities for the protection, conservation and management of all marine mammals, including their disposal and the health and safety of its staff and any volunteers under its control, and the public.
- 7.2 The Department will advise the Governance Entity of marine mammal strandings within the Area of Interest. A co-operative approach will be adopted between the Department and the Governance Entity to managing stranding events, including recovery of bone (including teeth and baleen) for cultural purposes and burial of marine mammals. The Department will make reasonable efforts to inform the Governance Entity before any decision is made to euthanase a marine mammal or gather scientific information.
- 7.3 Both the Department and the Governance Entity acknowledge the scientific importance of information gathered at strandings. Decisions concerning the exact nature of the scientific samples required and the subsequent disposal of the remains including their availability to the Governance Entity will depend on the species.

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### 6: TE KAWA O PAPA

- 7.4 If the Governance Entity does not wish to recover bone or otherwise participate the Governance Entity will notify the Department whereupon the Department will take responsibility for disposing of the remains.
- 7.5 Subject to the prior agreement of the relevant District Manager, where disposal of a dead stranded marine mammal is carried out by disposal teams trained by the Governance Entity the Department will meet the reasonable costs incurred up to the estimated costs which would otherwise be incurred by the Department to carry out the disposal.
- 7.6 The Department and the Governance Entity will advise each other of authorised key contact people who will be available at short notice to consult on whether the Governance Entity wishes to be involved in a marine mammal stranding. The persons authorised by the Governance Entity will be authorised to make decisions on whether the Governance Entity will be involved in a marine mammal stranding.
- 7.7 The Department and the Governance Entity will discuss burial sites as part of the disposal process.
- 7.8 Where practicable the Department and the Governance Entity will develop a list of sites that may be used and a list of sites that may not be used for disposing of remains to meet health and safety requirements and avoid the possible violation of tikanga of the Ahuriri Hapū.

### 8. STATUTORY AUTHORISATIONS

- 8.1 The strategic objectives for the relationship will guide the parties to determine appropriate engagement on Statutory Authorisations within the Area of Interest.
- 8.2 As part of these strategic objectives, the Governance Entity and the Department will identify categories of statutory authorisations that may impact on the cultural, traditional and/or historic values of the Ahuriri Hapū. These categories will be reviewed on a continuing basis. In the identified categories the Department will advise and encourage all prospective applicants within the Area of Interest to consult with the Governance Entity before filing their application. The Department will also consult the Governance Entity at an early stage on such categories of authorisations or renewal of authorisations within the Area of Interest.
- 8.3 As the Department works within time limits to process statutory authorisations applications, at the earliest opportunity it will notify the Governance Entity (as part of the meetings referred to in paragraph 4.2) of the time frames for providing advice on impacts on the cultural, spiritual and historic values of the Ahuriri Hapū.
- 8.4 When issuing or renewing statutory authorisations that give authority for other parties to manage land administered by the Department, the Department will:
- (a) require the third parties to manage the land according to the standards of conservation best practice; and
  - (b) encourage third parties to consult with the Governance Entity before using cultural information of the Ahuriri Hapū.
- 8.5 It is expected that the strategic objectives for the relationship will guide the parties to determine potential opportunities for the Governance Entity to obtain statutory authorisations on public conservation land within the Area of Interest. To assist this, wherever possible, the



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### 6: TE KAWA O PAPA

Governance Entity will provide early notice to the Department of where it may seek to obtain a statutory authorisation.

#### 9. STATUTORY LAND MANAGEMENT

- 9.1 The strategic objectives for the relationship will guide the parties' engagement on statutory land management activities within the Area of Interest. The Ahuriri Hapū have an ongoing interest in the range of statutory land management activities that are occurring within the Area of Interest.
- 9.2 The Department and the Governance Entity will identify the categories of statutory land management activities that have potential to affect the cultural, spiritual, historic values and sites of significance of the Ahuriri Hapū, and where consultation is appropriate. This includes when: the Minister is considering vestings or management appointments for reserves held under the Reserves Act 1977; other management arrangements with third parties; changing reserve classifications; or land disposal.
- 9.3 Before vesting or making an appointment to control and manage a reserve under the Reserves Act for a site of significance to the Ahuriri Hapū, the Department will discuss with the Governance Entity whether it wishes to be given such a vesting or appointment subject to agreed conditions (if any).
- 9.4 The Governance Entity will also provide early notice to the Department if it is interested in becoming an administering body of any reserves administered by the Department or the statutory manager of any marginal strips.
- 9.5 As early as possible, the Department will consult with the Governance Entity if it is considering disposing of Public Conservation Land within the Area of Interest.

#### 10. CULTURAL MATERIALS

- 10.1 The Department and the Governance Entity will develop and agree a Cultural Materials plan which will provide for the Governance Entity to enable members of the Ahuriri Hapū to take and use plants and plant materials in accordance with the plan.
- 10.2 The plan will:
- (a) prescribe streamlined authorisation processes (including multi-site and multi-take permits) for members of the Ahuriri Hapū to take Cultural Materials from public conservation land in the Area of Interest to the extent permitted by the Conservation Legislation; and
  - (b) identify sites, methods, conditions and quantities relating to the multi-site and multi take permits set out in the plan.
- 10.3 When the Department and the Governance Entity agree on the taking of Cultural Materials under the plan, the Department should issue the required authorisations to the Governance Entity as provided for in the plan.
- 10.4 Appropriate Department experts and experts in mātauranga Māori from the Ahuriri Hapū will take part in developing the Cultural Materials Plan.

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### 6: TE KAWA O PAPA

- 10.5 The Governance Entity may propose that new species are included in the Cultural Materials Plan on an incremental basis and the Department will consult with the Governance Entity on the feasibility of the proposal.
- 10.6 The Department will consult with the Governance Entity to amend the Cultural Materials Plan:
- (a) if an unforeseen event (such as a fire) takes place that affects sites included in the plan;
  - (b) if, through monitoring, it is found that the impacts of a harvest under the plan is having a significant negative impact on the values for which the conservation land is held; or
  - (c) if there is a change in the status of a species under the plan (including if it is classified as threatened or at risk).
- 10.7 The Cultural Materials Plan will be reviewed at least once every five years, but will continue to confer on the Governance Entity the ability to enable members of the Ahuriri Hapū to gather plants and plant materials as contemplated in clause 10.2.
- 10.8 The Department will consult the Governance Entity before undertaking any activity which may affect the ability of members of the Ahuriri Hapū to collect plants or plant materials under the plan.
- 10.9 The Department will:
- (a) consult with the Governance Entity whenever there are requests from other persons to take plants and plant materials from the Area of Interest;
  - (b) if requested by the Governance Entity, assist as far as reasonably practicable, the members of the Ahuriri Hapū to obtain plants for propagation;
  - (c) provide, as far as reasonably practicable, ongoing advice to the Governance Entity on the establishment of its own cultivation areas, and managing and propagating plants; and
  - (d) waive any authorisation costs for plants or plant materials applications made by the Ahuriri Hapū or their members.
- 10.10 The Department will, as far as reasonably practicable, provide the Governance Entity with access to Cultural Materials, which become available as a result of Department operations such as track maintenance or clearance, or culling of species, or where materials become available as a result of accidental death, through natural causes or otherwise.

## 11. SITES OF SIGNIFICANCE

- 11.1 Both parties recognise that there are wāhi tapu and sites of significance to the Ahuriri Hapū on lands managed under Conservation Legislation.
- 11.2 The Department will work with the Governance Entity to respect the values, tikanga and kaitiakitanga attached to wāhi tapu of the Ahuriri Hapū and other places of significance to the Ahuriri Hapū that have been identified in accordance with clause 11.3 on lands administered by the Department within the Area of Interest by:

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- (a) discussing with the Governance Entity practical ways in which the Ahuriri Hapū can exercise kaitiakitanga over ancestral lands, natural and historic resources and other taonga managed by the Department within the Area of Interest;
  - (b) managing, in co-operation with the Governance Entity, sites of historic significance to the Ahuriri Hapū according to standards of conservation practice which care for places of cultural heritage value, their structures, materials and cultural meaning as outlined in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 1983;
  - (c) informing the Governance Entity if koiwi or taonga tūturu are found within the Area of Interest; and
  - (d) assisting in recording and protecting wāhi tapu and other places of cultural significance to the Ahuriri Hapū and seeking to ensure they are not desecrated or damaged.
- 11.3 The Parties will develop a process for advising one another of sites of significance and wāhi tapu. Information relating to sites of significance to the Ahuriri Hapū will be treated in confidence by the Department in order to preserve the wāhi tapu nature of places, unless otherwise agreed by the Governance Entity but subject to the Official Information Act 1981 and other relevant Acts.
- 11.4 The parties will consult each other in relation to recommendations for public conservation lands containing sites of significance that are identified under 11.3 above in the Area of Interest.

### 12. SPECIES AND HABITAT PROTECTION

- 12.1 The parties share aspirations of protecting ecosystems and indigenous flora and fauna within the Area of Interest. These aspirations will be reflected in the strategic objectives for the relationship.
- 12.2 The Department aims to conserve the full range of New Zealand's ecosystems, maintain or restore the ecological integrity of managed sites, and ensure the survival of threatened species, in particular those most at risk of extinction. This work involves a number of national programmes.
- 12.3 In recognition of the cultural, historic and traditional association of the Ahuriri Hapū with indigenous flora and fauna within the Area of Interest for which the Department has responsibility, the Department will inform the Governance Entity of the national sites and species programmes on which the Department will be actively working, and provide opportunities for the Ahuriri Hapū to participate in these programmes.

### 13. PEST CONTROL

- 13.1 Preventing, managing and controlling threats to natural, historic and cultural values from animal and weed pests is an integral part of protecting the unique biodiversity of New Zealand. This is done in a way that maximises the value from limited resources available to do this work.
- 13.2 It is envisaged that the strategic objectives for the relationship will determine the strategic outcomes sought from pest control programmes within the Area of Interest, including:

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- (a) monitoring and assessment of programmes;
- (b) early consultation with the Governance Entity on pest control activities particularly the use of pesticides within the Area of Interest;
- (c) co-ordination of pest control where the Governance Entity or representative organisations of the Ahuriri Hapū are the adjoining landowner; and
- (d) provision of information by the Department to the Governance Entity on potential contracting opportunities.

13.3 Through the annual business planning process, the parties will create actions to progress these strategic objectives.

#### 14. VISITOR AND PUBLIC INFORMATION

14.1 The Department and the Governance Entity wish to share knowledge about natural and historic heritage within the Area of Interest with visitors and the general public. This is important to increase enjoyment and understanding of this heritage, and to develop awareness of the need for its conservation.

14.2 The parties also wish to encourage respect for and awareness of the cultural, spiritual, traditional and historic association of the Ahuriri Hapū with the land, waters and indigenous flora and fauna within the Area of Interest, and their responsibility as kaitiaki under tikanga Māori to preserve, protect and manage the natural and historic resources within that area.

14.3 The parties will do this by:

- (a) raising public awareness of positive conservation relationships developed between the parties;
- (b) the Governance Entity discussing, as part of the annual business planning process, potential projects involving the placement of Pou on public conservation land;
- (c) consulting with each other in the development of other forms of visitor and public information published by either party that relates to the values of the Ahuriri Hapū in land and resources managed under Conservation Legislation, particularly where that information relates to sites of significance and aspirations to the land of the Ahuriri Hapū;
- (d) the Department obtaining from the Governance Entity an assurance that information relating to the Governance Entity to be contained in a publication of the Department is accurate and appropriate;
- (e) the Department obtaining the consent of the Governance Entity for the disclosure of information received from the Governance Entity relating to values of the Ahuriri Hapū but subject to the Official Information Act 1981 and other relevant Acts; and
- (f) consulting with the Governance Entity prior to the use of information about values of the Ahuriri Hapū for new interpretation panels, signs and other visitor publications.

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### 6: TE KAWA O PAPA

#### 15. CONSERVATION ADVOCACY

- 15.1 From time to time, the Governance Entity and the Department will each have concerns with the effects of activities controlled and managed under the Resource Management Act 1991 and other legislation. The Department's advocacy role includes matters of concern to it under the Resource Management Act. Areas of common concern include:
- (a) protection of coastal and marine areas;
  - (b) protection and maintenance of wetland areas and reserves;
  - (c) management of rivers, streams and waterways; and
  - (d) the effects of activities on biodiversity.
- 15.2 From time to time the parties will seek to identify further issues of likely mutual interest and/or concern for discussion. It is recognised that the Department and the Governance Entity can continue to make separate submissions in any Resource Management Act processes.

#### 16. CROSS-ORGANISATIONAL OPPORTUNITIES

- 16.1 As part of the annual business planning process, the parties will discuss:
- (a) opportunities and processes to share scientific and cultural resource and information, including data and research material (including to assist the Governance Entity to exercise their role under the Deed and as kaitiaki);
  - (b) opportunities for developing mutual understanding and developing relationships, with respect to conservation, environmental and cultural matters within the Area of Interest. Options may include wānanga, education, training, development and secondments;
  - (c) opportunities to be involved or to nominate individuals to take part in relevant training initiatives run by both parties, including potential opportunities for full time positions, holiday employment or student research projects which may arise within the Area of Interest. The Governance Entity may propose candidates for these roles or opportunities; and
  - (d) opportunities for the Department to assist the Governance Entity to build and strengthen their capacity to participate in the annual planning process or other planning processes undertaken by either party; and
  - (e) staff changes and key contacts in each organisation.
- 16.2 Where appropriate, the Department will consider using individuals from, or entities of, the Ahuriri Hapū as providers of professional services (such as oral history and interpretation projects). Normal conflict of interest processes will be implemented to avoid a perceived or actual conflict of interest.

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### 6: TE KAWA O PAPA

#### 17. DISPUTE RESOLUTION

- 17.1 If a dispute arises in connection with this Agreement, every effort will be made in good faith to resolve matters at a local level within a reasonable timeframe to endeavour to find a resolution to the matter.
- 17.2 If this process is not successful, the matter may be escalated to a meeting of the Department's relevant Director of Partnerships and a nominated representative of the Governance Entity who will meet within a reasonable timeframe.
- 17.3 If following the process in clause 17.2 the parties cannot reach a negotiated outcome, they may agree to refer the dispute to an independent and mutually agreed mediator. The costs of mediation are to be split equally between the parties.
- 17.4 If the dispute is not resolved following mediation, and the parties agree that the matter is of such significance that it requires the attention of the Governance Entity and the Minister of Conservation, then that matter will be escalated to a meeting between a nominated representative of the Governance Entity and the Minister (or their nominees). The parties acknowledge this measure will be a means of last resort.

#### 18. REVIEW AND AMENDMENT

- 18.1 The parties agree that this Agreement is a living document that should be updated and adapted to take account of future developments and additional co-management opportunities. If requested by either party, the first review of this Agreement will take place no later than three years after the date this Agreement is signed, and if requested by either party will be reviewed every three years thereafter.

#### 19. TERMS OF AGREEMENT

- 19.1 This Agreement is entered into pursuant to sections 21 to 25 of the [x] Act (the Settlement Legislation) and clauses 6.12 and 6.13 of the Deed of Settlement. The Agreement does not restrict:
- (a) the ability of the Crown to exercise its power and perform its functions and duties in accordance with the law and Government policy, for example, the ability:
    - (i) to introduce legislation and change Government policy; and
    - (ii) to interact with or consult a person the Crown considers appropriate, including any iwi, hapū, marae, whanau or other representative of tangata whenua; or
  - (b) the functions, duties or powers of the Minister of Conservation or the Director-General; or
  - (c) the legal rights of the Governance Entity or Ahuriri Hapū (section 24).
- 19.2 The Agreement does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to:
- (a) land or any other resource held, managed or administered under the Conservation Legislation;
  - (b) flora or fauna managed or administered under Conservation Legislation; or

## DOCUMENTS

### 6: TE KAWA O PAPA

- (c) rights relating to the common marine and coastal areas defined in section 9(1) of the Marine and Coastal Areas (Takutai Moana) Act 2011 (section 24).

19.3 A breach of this Agreement is not a breach of the Deed of Settlement.

19.4 If the Crown breaches this Agreement without good cause, the Governance Entity may:

- (a) seek a public law remedy, including judicial review; or
- (b) subject to the Crown Proceedings Act 1950, seek to enforce the Agreement but damages or compensation (with the exception of court costs) may not be awarded.

19.5 Clause 19.4 does not apply to any contract entered into between the Department and the Governance Entity, including any independent contract for service or a concession.

19.6 A summary of Te Kawa o Papa must be noted on every Conservation Planning Document affecting the Area of Interest (section 23).

19.7 The noting of the summary, referred to in clause 19.6, -

- (a) is for the purpose of public notice only; and
- (b) does not amend a Conservation Planning Document for the purposes of the Conservation Act 1987.

## 20. CONSULTATION

20.1 Where consultation is required under this Agreement, the Department will:

- (a) ensure that the Governance Entity is consulted as soon as reasonably practicable following the identification of the proposal or issues to be the subject of the consultation;
- (b) provide the Governance Entity with sufficient information and time to make informed comments and/or submissions in relation to any of the matters that are subject of the consultation;
- (c) approach the consultation with an open mind and genuinely consider any views and/or concerns that the Governance Entity may have in relation to any of the matters that are subject to the consultation;
- (d) use reasonable endeavours to identify a mutually acceptable solution and if requested meet with the Governance Entity to discuss possible options for resolution of the relevant matter and seek a consensus on a preferred option. Any solution must be consistent with the applicable Conservation Legislation and the Conservation Planning Documents;
- (e) if consensus is not reached within a reasonable timeframe the Department may exercise its decision making powers in relation to any of the matters that are the subject of the consultation; and

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### 6: TE KAWA O PAPA

- (f) report back to the Governance Entity on any decision that is made and where the decision is contrary to the Governance Entity's comments and/ or submissions, set out the factors taken into account in reaching that decision.

## 21. DEFINITIONS

### 21.1 In this document:

**Ahuriri Hapū** has the meaning set out in the Deed of Settlement;

**Ahuriri Hapū Area of Interest** is described in Schedule 1 to this Agreement;

**Conservation Legislation** means the Conservation Act 1987 and the statutes in the First Schedule of the Act;

**Conservation Planning Document** means a conservation management strategy or conservation management plan, national park management plan, or freshwater fisheries management plan;

**Crown** has the meaning given to it in section 2(1) of the Public Finance Act 1989;

**Cultural materials** means plants, plant materials, dead protected wildlife or parts thereof for which the Department is responsible within the Area of Interest and which are important to Ahuriri Hapū in maintaining and expressing their cultural values and practices;

**Department** means the Minister of Conservation, the Director-General and the Departmental managers to whom the Minister of Conservation's and the Director-General's decision-making powers can be delegated;

**Kaitiaki** means guardian in accordance with tikanga Māori;

**Priority Areas** means the Conservation Land within the Area of Interest:

- (a) specified as a Priority Area in Schedule 2; or
- (b) as the Governance Entity may subsequently notify in writing to the Department for inclusion in the Agreement at any time the Agreement is reviewed;

**Statutory Authorisations** means an authorisation granted under the Conservation Legislation including a Concession granted under Part 3B of the Conservation Act 1987; and

**Tikanga Māori** refers to Māori traditional customs.



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**6: TE KAWA O PAPA**

**AGREED** on [ ]

**SIGNED** for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister of Conservation:

**WITNESS:**

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED** for and on behalf of **THE TRUSTEES OF THE MANA AHURIRI TRUST** by [the Chair]:

**WITNESS:**

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

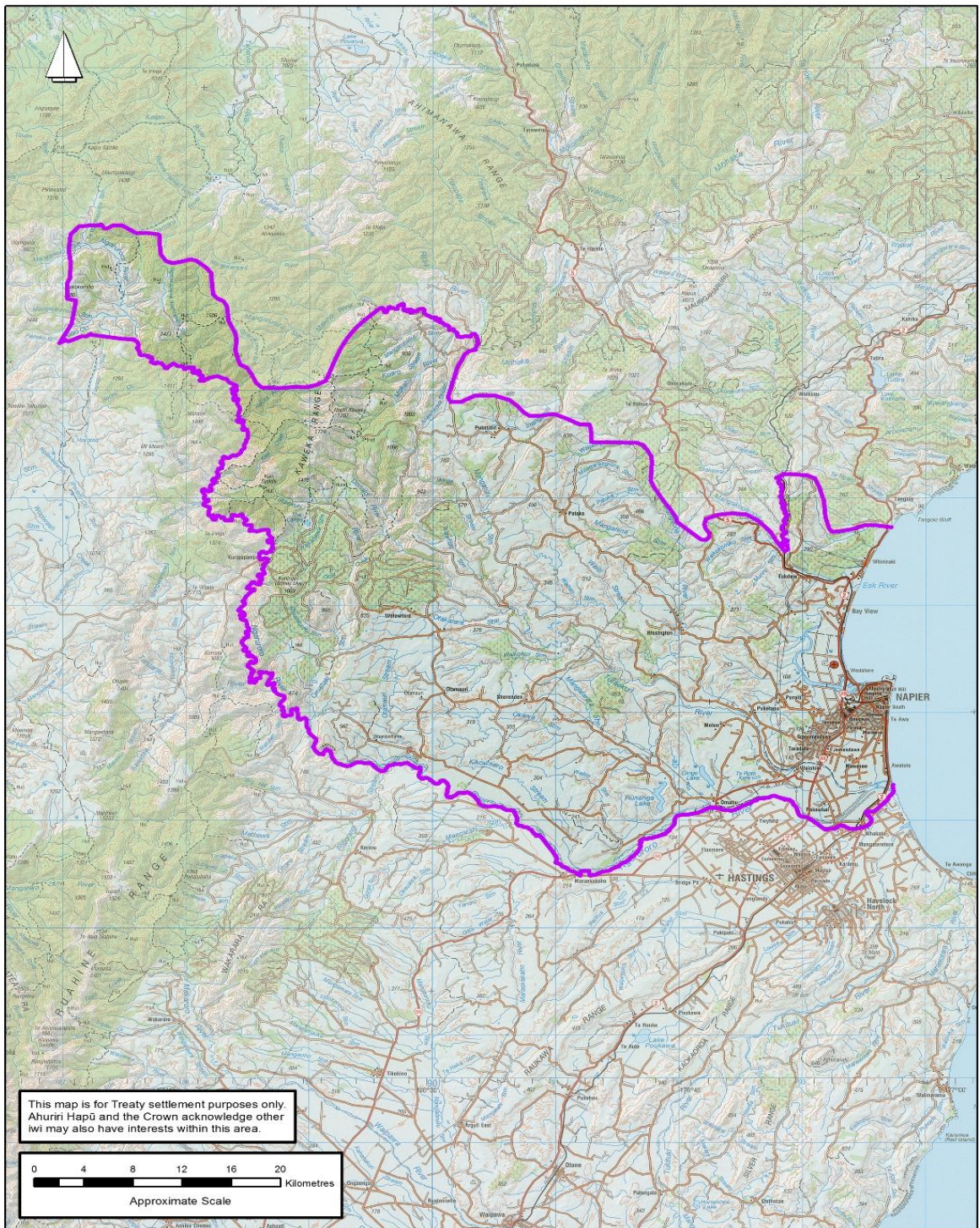
Address: \_\_\_\_\_

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6: TE KAWA O PAPA

SCHEDULE 1

AHURIRI HAPŪ AREA OF INTEREST



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**6: TE KAWA O PAPA**

**SCHEDULE 2**

**PRIORITY AREAS**

Part of Kaweka State Forest Park	OTS-206-09
Part of Kaweka Forest Conservation Area	OTS-206-08
Kuripapango DOC Field Base	OTS-206-10
Hutchinson Scenic Reserve	OTS-206-06
Puketitiri (Puketitiri Field Centre)	OTS-206-17
Mangatutu Hot Springs	As set out in the plan at Schedule 3

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6: TE KAWA O PAPA

SCHEDULE 3

MANGATUTU HOT SPRINGS

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, AeroGRID, IGN, SIA, Swire, and the GIS User Community

Created By: dcamlon

NZ GD 2000 New Zealand Transverse Mercator  
 Projection: Transverse Mercator  
 Datum: NZ GD 2000  
 Crown Copyright Reserved

Department of Conservation  
 Te Papa Kaitiaki

Date: 18/09/2016  
[www.mangatatuhotspings.com](http://www.mangatatuhotspings.com)

Mangatutu Hot Springs

0.076 Km

## 7 LETTER OF COMMITMENT

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### 7: LETTER OF COMMITMENT

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#### AHURIRI HAPŪ and THE DEPARTMENT OF INTERNAL AFFAIRS

##### The Parties

1. The parties to this Letter of Commitment (Letter) are:
  - Ahuriri Hapū as represented by the mandated Authority of the trustees of the Mana Ahuriri Trust (the PSGE);
  - The Department of Internal Affairs Te Tari Taiwhenua (the Department)

##### Context

2. On [XX 20XX] the PSGE and the Crown signed a Deed of Settlement (Deed), settling the historical claims of Ahuriri Hapū.
3. As part of the Treaty settlement, and as recorded in clause 6.16 of the Deed, the Crown acknowledges and supports the desire of the PSGE to provide for the enhanced well-being, revitalisation and protection of its members.
4. This Letter is intended to give greater definition to how the parties intend to collaborate on matters related to the care and management, use, development and revitalisation of, and access to, Ahuriri Hapū taonga.

##### Purpose

5. The parties are seeking an ongoing and enduring relationship which:
  - facilitates the care and management, use, development and revitalisation of, and access to, Ahuriri Hapū taonga; whether held by Ahuriri Hapū or the Department (Archives New Zealand or the National Library of New Zealand)
  - facilitates engagement around areas of mutual interest to support access to, and the development and maintenance of, Ahuriri Hapū birth, death, marriage, civil union and name change information (Registrar-General of Births Deaths and Marriages)

##### Relationship Principles

6. The parties acknowledge the following relationship principles that will guide the implementation of this Letter:
  - Working consistently with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
  - Operating a 'no surprises' approach;
  - Working in a spirit of co-operation;
  - Acknowledging that the relationship is evolving, not prescribed;
  - Respecting the independence of the parties and their individual mandates, roles and responsibilities; and

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### 7: LETTER OF COMMITMENT

- Recognising and acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise.

#### **Vision**

7. The Department recognises and respects the vision of Ahuriri Hapū that Culture and Heritage relationships will enable [Mana Ahuriri] to develop specific infrastructure which will significantly contribute to the following:
  - Ahuriri Hapū decision making is enabled to bring forward future proofed decisions that are just and honourable as they are prudent and astute.
  - Wisdom bearing capability is enabled to provide a powerhouse of capability allied to Ahuriri Hapū research libraries and archives of past strategies bringing consistency to present day solutions.
  - Leadership is Ahuriri Hapū centred, historically astute, globally aware and ideas focussed on growing Ahuriri Hapū self-reliance ensuring the continuity of Ahuriri Hapū culture, language and identity – our greatest asset and source of our worth, honour and prosperity.

#### **Mutual benefits and outcomes**

8. The parties (specifically the PSGE and Archives New Zealand and the National Library of New Zealand) are seeking mutual benefits and outcomes relating to Ahuriri Hapū taonga. These include, but are not limited to:
  - The availability of accurate information;
  - Improved access; and
  - Improved people capability.

#### **Effect**

9. The parties acknowledge that this Letter is not intended to constitute a contract between the Parties or to be enforceable at law.
10. Resourcing of activities under this Letter will be within existing resource limits and align with the Government priorities of the day.
11. The PSGE acknowledges that all agreements and commitments contained in this Letter are subject to legislative rights and obligations under which the Department operate and the terms upon which specific taonga are held by the Department.
12. Nothing in this Letter derogates from the legal responsibilities of the parties to ensure that all Ahuriri Hapū related births, deaths, marriages and civil unions (and if applicable, name changes) are registered and maintained and access provided in accordance with the provisions of the Births, Deaths, Marriages and Relationships Registration Act 1995 (the BDMRR Act).
13. The parties acknowledge that iwi affiliation information recorded and held by the Registrar-General is limited in terms of the periods for which it was collected and recorded, the manner in which it was collected and recorded, and potentially the accuracy of the information recorded.

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### 7: LETTER OF COMMITMENT

#### Development of Work Plans

14. The Department will confirm an action plan with the PSGE in relation to matters consistent with the purposes of this letter within a timeframe to be mutually agreed by the parties.
15. Final topics for the work plans will be mutually agreed by Ahuriri Hapū and the Department and will reflect the priorities, resources and the specific functions and duties of the parties. Work plan topics may include, but are not limited to, the topics identified below:

#### *Archives New Zealand and the National Library of New Zealand*

- 15.1 Collaborative Care and Management of Ahuriri Hapū taonga held by the Department of Internal Affairs:

- a) To work collaboratively with the PSGE, as far as reasonably practicable, to develop and maintain inventories for Ahuriri Hapū taonga.
- b) To work collaboratively with the PSGE to research Ahuriri Hapū taonga.
- c) To work collaboratively with the PSGE, as far as reasonably practicable, to ascertain and confirm the provenance of Ahuriri Hapū taonga.
- d) To work with the PSGE to develop protocols concerning the use of and access to material relating to Ahuriri Hapū taonga.

- 15.2 Sharing knowledge and expertise associated with Ahuriri Hapū taonga:

- a) To work collaboratively with the PSGE to develop appropriate descriptions (metadata) for Ahuriri Hapū taonga.

- 15.3 To broker relationships with New Zealand and international agencies relating to Ahuriri Hapū taonga Opportunities for increased learning and capacity building relating to Ahuriri Hapū taonga through:

- a) Conservation and training on taonga preservation.
- b) Collection management systems.
- c) Advice relating to establishing and operating whare taonga.

#### *Registrar-General of Births, Deaths and Marriages*

- 15.4 Collaborative development and maintenance of, Ahuriri Hapū birth, death, marriage, civil union and name change information through:

- a) Facilitating access by the PSGE to registered birth, death and marriage information so that it can identify Ahuriri Hapū births, deaths, marriages, civil unions and name changes for the purposes of historical, demographic and/or health research relating to Ahuriri Hapū.
- b) The timely and accurate registration of Ahuriri Hapū births, deaths, marriages and civil unions on the Registers held and administered by the Registrar-General, in accordance with the provisions of the BDMRR Act.



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### 7: LETTER OF COMMITMENT

- c) The collaborative establishment of Ahuriri Hapū birth, death, marriage and civil union registers that will be controlled and administered by the PSGE, and which are in addition to the official Registers maintained and administered by the Registrar-General pursuant to the BDMRR Act; and
- d) Working collaboratively to ensure Ahuriri Hapū birth, death, marriage and civil union information is accurate and correct, whether held by the PSGE or the Department.

#### **Ongoing Relationships**

- 16. The Department and the PSGE are committed to establishing, maintaining and strengthening positive, co-operative and enduring relationships.
- 17. The parties agree to meet annually upon request from either party (hui of the parties), at a date to be mutually agreed to reflect on and discuss the achievements of the previous 12 month period and identify new priorities for the next 12 month period.
- 18. The parties will jointly take responsibility for confirming the date, time and location of the annual hui and the hui agenda.
- 19. Each party will meet its own cost of attending the annual hui.

#### **Communication**

- 20. The parties commit to maintain effective communication with one another on any concerns and issues arising from this Letter and its implementation.

#### **Changes to Policy and Legislation Affecting this Letter**

- 21. In addition to the specific commitments in this Letter, the Department will consult, wherever practicable, with the PSGE on legislative and policy development or review which potentially affects Ahuriri Hapū taonga and provide for opportunities for the PSGE to contribute to such developments.

#### **Dispute Resolution**

- 22. In the event that the parties cannot agree on the implementation of this Letter, or agree revised terms following a five yearly review of the Letter, then a meeting will be convened between the PSGE and the Chief Executive after either party gives at least one month's notice of request for a meeting.

#### **Review Provision**

- 23. This Letter will be reviewed by the parties every five years or earlier by mutual agreement where there is a change or a proposed change that has the potential to affect the matters covered by this Letter. This review will take place at a hui convened by the parties, to ensure that the commitments entered into remain relevant and continue to capture the purpose of the Letter.
- 24. The parties will negotiate any amendments to provisions at this time and may sign a new Letter which will take effect upon signing.

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### 7: LETTER OF COMMITMENT

#### Definitions

**“National Library”** includes the Alexander Turnbull Library.

**“Taonga”** Taonga includes but is not limited to artefacts, heirlooms, human remains, manuscripts, archives, records, information and data, including multi-media formats such as sound, still and moving images.

**“Inventories”** means list of information

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7: LETTER OF COMMITMENT

Name  
Chairperson on behalf of  
**The Trustees of the  
Mana Ahuriri Trust**

Colin MacDonald  
Chief Executive  
**Department of Internal Affairs  
Te Tari Taiwhenua**

**Date:**

**Date:**

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### 7: LETTER OF COMMITMENT

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#### **Appendix One: Summary of the Role and Functions of each of the Parties to this Letter of Commitment**

##### **Department of Internal Affairs (Te Tari Taiwhenua)**

1. The Department of Internal Affairs (the Department) is the oldest government department and has been part of the fabric of New Zealand's Public Service since the signing of the Treaty of Waitangi.
2. The Department serves and connects people, communities and government to build a safe, prosperous and respected nation. The Department is responsible to six Ministers administering one Vote across six portfolios. Our portfolios include Internal Affairs, Ministerial Services, Ethnic Affairs, Racing, Local Government and the Community and Voluntary sector.
3. The Minister of Internal Affairs oversees the Government's ownership interests in the Department which encompass its strategy, capability, integrity and financial performance. The Department:
  - a. provides direct services to people, communities and government;
  - b. provides policy advice to government;
  - c. regulates peoples activity, encourages compliance and enforces the law;
  - d. monitors performance; and
  - e. currently employs just over 2000 staff in 21 cities and towns in New Zealand, Sydney and London.
4. Following the integration of the National Library and Archives New Zealand into the Department, the National Library and Archives New Zealand ceased to be departments in their own right. The Chief Executive of the Department is responsible and accountable for the implementation of, and commitments set out in, this Letter. The Chief Executive will also have an important role in managing the overall relationship with Mana Ahuriri

##### **National Library of New Zealand (Te Puna Matauranga o Aotearoa)**

5. The National Library of New Zealand is set up under the National Library of New Zealand (Te Puna Matauranga o Aotearoa) Act 2003. Under section 7 of the Act, the purpose of the National Library is to enrich the cultural and economic life of New Zealand and its interchanges with other nations by, as appropriate
  - a. collecting, preserving, and protecting documents, particularly those relating to New Zealand, and making them accessible for all the people of New Zealand, in a manner consistent with their status as documentary heritage and taonga; and
  - b. supplementing and furthering the work of other libraries in New Zealand; and
  - c. working collaboratively with other institutions having similar purposes, including those forming part of the international library community.
6. The Alexander Turnbull Library forms part of the National Library. Under section 12 of the Act, the purposes of the Alexander Turnbull Library are:

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### 7: LETTER OF COMMITMENT

- a. To preserve, protect, develop, and make accessible for all the people of New Zealand the collections of that library in perpetuity and in a manner consistent with their status as documentary heritage and taonga; and
- b. to develop the research collections and the services of the Alexander Turnbull Library, particularly in the fields of New Zealand and Pacific studies and rare books; and
- c. to develop and maintain a comprehensive collection of documents relating to New Zealand and the people of New Zealand

#### **Archives New Zealand (Te Rua Mahara o Te Kawanatanga)**

7. Archives New Zealand leads in advising on and monitoring the public record, and in the preservation of public records of long-term value. Archives New Zealand administers the Public Records Act 2005 which sets the functions the department is required to provide and the powers necessary to carry out these functions
8. Archives New Zealand works to achieve the following outcomes:
  - a. Full and accurate records are kept by public sector agencies;
  - b. Public archives are preserved and well-managed;
  - c. Public archives are accessible and used; and
  - d. The archiving community is coordinated and well led
9. Archives New Zealand has a leadership and regulatory role in shaping, and intervening where necessary, in the information management practices of public sector agencies. This includes developing standards for information creation and maintenance, and providing advice and training for those implementing these standards.
10. Records of long-term value are transferred to the public archive on the authority of the Chief Archivist who has the statutory responsibility to determine whether to keep or dispose of information. These records form the record of each government administration.
11. Archives New Zealand ensures that public archives are preserved and well managed, while making those in the public arena accessible. The majority of the public archive is held in Archives New Zealand's repositories in Auckland, Wellington, Christchurch and Dunedin.
12. Access to the public archive is promoted through customer assistance and support in each of Archives New Zealand's four reading rooms across the country, our remote enquiries service, along with an increasing online digital presence.
13. Archives New Zealand has a responsibility to provide leadership and support for archival activities across New Zealand including the safekeeping of private and community records. Maintaining a presence and working within the wider community, including Maori, iwi and hapu is important to the department's role and responsibility. The regional offices provide local communities with access to records of local significance. Together we support government recordkeeping and community organisations, Maori, iwi and hapu with the care and management of archives.

#### **Births, Deaths, Marriages, Citizenship, Authentications and Translations (Mauri o te Tangata)**

14. Births, Deaths, Marriages Citizenship, Authentications and Translations (BDMCAT) registers and maintains records for key life events. The also issue certificates and other documents to help New Zealanders access services in new Zealand and abroad.

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### 7: LETTER OF COMMITMENT

#### *Recording life events:*

- register and maintain New Zealand birth, death, marriage and civil union information
- administer New Zealand citizenship, as set out in the Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982
- record approx 160,000 life event registrations annually, including:
  - 60,000 births
  - 40,000 new citizens
  - 30,000 relationships
  - 30,000 deaths.
- appoint marriage and civil union celebrants
- register change of name by statutory declaration
- citizenship ceremonies and congratulatory messages.

#### *Issuing certificates:*

- provide access to life event information by issuing up to 310,000 certificates and 30,000 printouts including
  - Birth
  - Death
  - Marriage
  - Civil Union
  - Name Change
  - Certificate of no impediment
  - Citizenship Certificates (including denials and confirmations)
  - Authentication certificates and e-apostiles
- produce certified translations.

#### *Facilitating access internationally:*

- issue certificates of no impediment for people who wish to marry overseas
- advise on the authentication and apostille processes
- maintain the register of government and notarial signatures
- translation services to other government agencies, organisations and the public, including design of foreign language web and paper publications.

## **8 LETTER OF RECOGNITION**

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8: LETTER OF RECOGNITION

Date

Name  
Address  
Address  
City

Tēnā koe [*name*]

### **AHURIRI HAPŪ FISHERIES LETTER OF RECOGNITION**

This letter sets out how the Ministry for Primary Industries (the Ministry) and Ahuriri Hapū will work constructively together to fully implement the Crown's obligations arising from the 1992 Fisheries Deed of Settlement and the Deed of Settlement signed between the Crown and Ahuriri Hapū and the trustees of the Mana Ahuriri Trust (the governance entity) on [*date*].

#### **Tangata whenua input and participation**

The Fisheries Act 1996 provides for the input and participation of tangata whenua, being iwi and hapū, into certain sustainability matters and decisions that concern fish stocks and the effects of fishing on the aquatic environment. The Fisheries Act 1996 also provides that the responsible Minister, the Minister for Primary Industries (the Minister), must have particular regard to kaitiakitanga when making decisions on those matters.

#### **Recognition of Ahuriri Hapū as tangata whenua**

The Ministry will recognise Ahuriri Hapū as tangata whenua within their Area of Interest, and acknowledge that Ahuriri Hapū have a special relationship with, and an interest in, the sustainable utilisation of all species of fish, aquatic life, and seaweed administered under the Fisheries Act 1996, within their Area of Interest.

The Ministry will also acknowledge that Ahuriri Hapū also have a customary, non-commercial interest in all species of fish, aquatic life, and seaweed administered under the Fisheries Act 1996, within their Area of Interest.

#### **Appointment as an advisory committee to the Minister for Primary Industries**

The Minister will appoint the governance entity as an advisory committee under section 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995. Appointing the governance entity will require the Minister to consider written advice from the committee when making decisions relating to changes in the management regime for areas of special significance identified by tangata whenua. The areas of special significance will need to be identified by the governance entity and agreed to by the Ministry of Primary Industries prior to the appointment of the governance entity as an advisory committee.

#### **National Fisheries Plans**

The management of New Zealand's fisheries is guided by National Fisheries Plans that describe the objectives the Ministry will work towards to manage fisheries. To provide for effective input and participation of tangata whenua into fisheries management decisions, the Ministry has developed the Forum Fisheries Plans (FFP) strategy.

A central element of this strategy is the establishment of integrated Fisheries Management Area (FMA) forums and the development of FFPs. This will help iwi bring together their commercial, non-commercial, and other fisheries goals at a forum level.

#### **Ahuriri Hapū involvement in Iwi Fisheries Plans and National Fisheries Plans**

The Ministry can ensure that the governance entity has the opportunity to contribute to the development of an Iwi Fisheries Plan and FFP, which the Ministry may assist in developing. This



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### 8: LETTER OF RECOGNITION

will ensure that Ahuriri Hapū fisheries management objectives and priorities are given visibility and appropriate consideration in the development of any relevant FFP.

The Ministry can also ensure that the governance entity has an opportunity to participate in and contribute to any future engagement process, which may be developed at a regional level or national level, provided that these processes are adopted to allow for the input and participation of tangata whenua into fisheries processes, within the Ahuriri Hapū Area of Interest.

#### **Rāhui**

The Ministry recognises that rāhui is a traditional use and management practice of Ahuriri Hapū, and may be put in place within the Area of Interest by the governance entity

The Ministry and Ahuriri Hapū acknowledge that a traditional rāhui placed by the governance entity over their customary fisheries has no force in law, cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice. Ahuriri Hapū undertake to inform the Ministry of the placing and the lifting of a rāhui by the governance entity over their customary fisheries, and the reasons for the rāhui.

The Ministry undertakes to inform a representative of any fishery stakeholder group that fishes in the area to which the rāhui has been applied (to the extent that such groups exist), of the placing and the lifting of a rāhui by the governance entity over their customary fisheries.

Naku noa na,

#### **Scott Gallacher**

Deputy Director-General Regulation and Assurance  
Ministry for Primary Industries

## 9 RELATIONSHIP AGREEMENTS

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

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#### 9.1 Museum of New Zealand Te Papa Tongarewa Relationship Agreement

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

#### **Relationship Agreement between Ahuriri Hapū – the Trustees of the Mana Ahuriri Trust and Te Papa relating to Ahuriri Hapū culture and heritage.**

#### **The Parties**

The parties to this Relationship Agreement (Agreement) are:

- The Trustees of the Mana Ahuriri Trust (governance entity);
- The Museum of New Zealand Te Papa Tongarewa (Te Papa).

A summary of the role and functions of Te Papa is provided in Annex A.

#### **Introduction**

- A Under the Deed of Settlement dated [ ] between the governance entity and the Crown (the “Deed of Settlement”), the governance entity and Te Papa agreed to the development of a Relationship Agreement to develop an enduring relationship regarding Ahuriri Hapū taonga, culture and identity.
- B Te Papa will work with the governance entity in accordance with the principles outlined in the Treaty of Waitangi.
- C Te Papa and the governance entity wish to record in this Agreement their commitment to the development of an enduring relationship regarding Ahuriri Hapū cultural aspirations and heritage initiatives.
- D The governance entity and Te Papa have entered into this Agreement in good faith and agree to act in good faith and work fairly, reasonably and honourably towards each other with respect to the commitments identified in this Agreement.

#### **Purpose**

1. The parties are seeking an ongoing relationship which facilitates the care and management, use, development, revitalisation of, and access to, Ahuriri Hapū taonga; whether held by Ahuriri Hapū and their whanau or Te Papa.
2. The parties recognise the following, which will guide them in giving effect to the purpose of this Agreement:
  - 2.1. the significance of Ahuriri Hapū taonga to the maintenance and development of Ahuriri Hapū cultural revitalisation in keeping the culture alive and permanent;
  - 2.2. that Ahuriri Hapū taonga is cared for no matter [its custodian];

#### **Relationship Principles**

3. In implementing the Agreement, Te Papa and the governance entity agree to act consistently with the following relationship principles:
  - 3.1. Work consistently with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
  - 3.2. Operate a ‘no surprises’ approach;

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

- 3.3. Work in a spirit of co-operation;
- 3.4. Acknowledge that the relationship is evolving, not prescribed;
- 3.5. Respect the independence of the parties and their individual mandates, roles and responsibilities; and
- 3.6. Recognise and acknowledge that the parties benefit from working together by sharing their vision, knowledge and expertise.

#### **Mana Taonga Principle**

4. In implementing the Agreement, Te Papa and the governance entity agree to act consistently with the principle of Mana Taonga which:
  - 4.1. recognises the whakapapa relationships that exist between taonga and their descendant kin communities (iwi, hapū, whanau);
  - 4.2. recognises those whakapapa relationships and their special connection to the Te Papa marae – Rongomaraeroa;
  - 4.3. seeks the input of communities for guidance on how their taonga should be managed, cared for, exhibited, or represented; and
  - 4.4. shapes and informs a broad range of the museum's activities and services.

#### **Effect**

5. The parties acknowledge that this Agreement is not intended to constitute a contract between the parties that is enforceable at law.
6. Resourcing of activities under this Agreement will be within the existing resource limits and align with the government priorities of the day.
7. The governance entity acknowledges that all agreements and commitments contained in this Agreement are subject to legislative rights and obligations under which the respective Crown parties operate and the terms upon which specific taonga are held by the Crown parties.

#### **Development of Work Plans**

8. The parties will work collaboratively to develop work plans of mutual interest.
9. Any work plans developed will provide for annual priorities and may:
  - 9.1. Set out a timetable and milestones for delivering on any agreed commitments;
  - 9.2. Provide for progress monitoring between the parties;
  - 9.3. Confirm the responsibilities for the various parties in meeting the agreed commitments;

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

- 9.4. Identify key contact persons for the parties;
  - 9.5. Provide for mutually agreed outcomes; and
  - 9.6. Provide for the work plans to be reviewed at the annual meeting.
10. Any work plans will be mutually agreed by the governance entity and Te Papa and will reflect the priorities, resources and the specific functions and duties of the parties.

#### Work plan topics

11. Potential topics may include, but are not limited to, the topics identified below.
- 11.1. Collaborative Care and Management of Ahuriri Hapū taonga held by Te Papa:
- a) To provide access, advice and guidance on taonga and cultural heritage issues.
  - b) To work collaboratively with the governance entity, as far as reasonably practicable, to develop and maintain inventories for Ahuriri Hapū taonga held at Te Papa.
  - c) To work collaboratively with the governance entity to research Ahuriri Hapū taonga.
  - d) To work with Ahuriri Hapū to recognise Ahuriri Hapū tikanga, values and understanding regarding Ahuriri Hapū taonga.
  - e) To work collaboratively with Ahuriri Hapū on taonga care, management, and storage.
  - f) To develop mutually beneficial research projects that enhance the understanding of Ahuriri Hapū taonga and Ahuriri Hapū culture.
  - g) To work with the governance entity to develop cultural heritage initiatives.
  - h) To work collaboratively with the governance entity to research and access Ahuriri Hapū archives and records held at Te Papa.
- 11.2. Sharing knowledge and expertise associated with Ahuriri Hapū cultural heritage:
- a) To recognise the governance entity as the Hapū authority for Ahuriri Hapū in relation to taonga issues, notwithstanding taonga management arrangements that may already be in place which recognise whakapapa relationships.
  - b) To provide the governance entity the opportunity to share their matauranga and expertise across key activities and events at Te Papa.
  - c) To consult with the governance entity, and provide the governance entity with the opportunity to acquire, Ahuriri Hapū taonga that may be deaccessioned by Te Papa.
  - d) To share access to databases and/or catalogues specific to collections and taonga, subject to licence and contractual arrangements concerning the databases and/or catalogues.

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

- e) To share information on database use and research methodologies specific to, or that can be applied towards, Ahuriri Hapū taonga.
- f) To share knowledge and expertise on exhibition planning processes, and related activities specific to Ahuriri Hapū taonga and culture.
- g) To seek advice from the governance entity regarding specific policy and tikanga guidance as it relates to Ahuriri Hapū taonga.
- h) To advise the governance entity on legislation (e.g. the Protected Objects Act), museum policies and practices.
- i) To advise the governance entity on Visitor Market Research & Evaluation methodology and data.
- j) To share information on Ahuriri Hapū taonga held overseas.
- k) To actively facilitate, where possible Ahuriri Hapū relationships with New Zealand and international museums, galleries and heritage organisations.
- l) To actively facilitate, where possible, opportunities for access and reconnection of Ahuriri Hapū taonga through the relationships stated in 11.2.k.

#### 11.3. Opportunities for increased learning and capacity building relating to Ahuriri Hapū taonga through:

- a) Conservation and training in taonga preservation.
- b) Collection management systems.
- c) Digitisation initiatives.
- d) Training and development, with possible internships.
- e) Advice and assistance in the planning and development of the Ahuriri Hapū cultural initiatives.

#### 11.4. Te Papa: Future Aspirations

In the future Te Papa and the governance entity may work together on:

- a) The New Zealand Museum Standards Scheme.
- b) Advice on cultural education initiatives.
- c) Commercial Initiatives – publications.
- d) Hapū Exhibition partnerships.
- e) Contributing to a central portal – web links.

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

#### Communication

12. The parties commit to:
  - 12.1. Maintain effective communication with one another on any concerns and issues arising from this Agreement and its implementation;
  - 12.2. As far as reasonably practicable, provide opportunities for meetings of relevant management and staff;
  - 12.3. As far as reasonably practicable, train relevant employees of the parties to ensure that they are made aware of this Agreement and the practical tasks which flow from it;
  - 12.4. As far as reasonably practicable, inform other organisations with whom it works, central government agencies and stakeholders about this Agreement and future amendments; and
  - 12.5. Include a copy of the signed Agreement on the Te Papa website.
13. It is agreed by the parties that any issue of interpretation in this Agreement shall be resolved after taking into account the Ahuriri Hapū relationship principles.

#### Ongoing Relationships

14. The parties agree to meet on a mutually agreed schedule (hui of the parties) for the purpose of reviewing and regulating this Agreement.
15. The parties will jointly take responsibility for confirming hui and the agenda.
16. Each party will meet its own cost of attending hui.

#### Changes to Policy and Legislation Affecting this Agreement

17. In addition to the specific commitments in this Agreement, Te Papa will consult, wherever practicable, with the governance entity on legislative and policy development or review which potentially affects Ahuriri Hapū taonga, and provide for opportunities for the governance entity to contribute to such developments.
18. If Te Papa consults with the public or with Māori generally on policy development or any proposed legislative amendment to the statutes under which Te Papa operates, and which impacts on the purpose of this Agreement, Te Papa shall:
  - 18.1. Notify the governance entity of the proposed policy development or proposed legislative amendment upon which consultation will be occurring;
  - 18.2. Make available to the governance entity the information provided to Māori as part of the consultation process referred to in this paragraph; and
  - 18.3. Advise the governance entity of the final outcome of any such consultation.



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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

#### Review Provision

19. This Agreement will be reviewed by the parties every five years or earlier where there is a change or a proposed change to the legislation or policy relevant to Te Papa that has the potential to affect the matters covered by this Agreement. This review will take place at the annual hui of the parties, to ensure that the commitments entered into in the Agreement remain relevant and continue to capture the purpose of the Agreement.
20. The parties will negotiate any amendments to provisions at this time and may sign a new Agreement which will take effect upon signing.

#### Dispute resolution

21. The following provisions apply to any dispute between the parties.
  - 21.1. The parties acknowledge and agree that they:
    - a) Wish to minimise and promptly settle any dispute which may arise;
    - b) Must make active efforts in good faith to resolve that dispute in accordance with the Relationship Principles; and
    - c) Will give the other party written notice of the dispute including a description of the main issues.
  - 21.2. The following process shall be undertaken once notice is received by a party to this Agreement:
    - a) Within 15 working days of being given written notice, the relevant contact person from Te Papa and the governance entity will meet to work in good faith to resolve the issue.
    - b) If the dispute has not been resolved within 20 working days of receipt of the notice referred to in clause 21.1(c), the Kaihautū and Chief Executive of Te Papa, and the [Hapū representative], of the governance entity will meet to work in good faith to resolve the issue.
  - 21.3. Where the dispute has not been resolved within a reasonable period of time in accordance with clause 21.2(b), then either party may require the dispute to be referred to mediation as follows:
    - a) The party requiring the dispute to be referred to mediation must provide written notice to the other party.
    - b) The parties will seek to agree a mediator or mediators, (maximum of two) and, failing agreement within 15 working days of the date of the notice described in paragraph 21.3(a) above, a mediator or mediators (maximum of two) will be appointed by the President for the time being of the NZ Law Society. The skills and expertise of the mediator or mediators will include being familiar with:

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

- i. Ahuriri Hapū tikanga; and
  - ii. tikanga based dispute resolution.
- c) The mediator or mediators will be independent of the dispute.
- d) The mediator or mediators will not have the power to determine the dispute, but may offer advice of a non-binding nature; and
- e) The costs of the mediator or mediators will be met jointly by the parties.

21.4. Each party will bear its own costs in every other respect.

#### Definitions

- “Agreement”** means Relationship Agreement
- “Deaccessioned”** the permanent removal of an item from the collections of Te Papa
- “Inventories”** means list of information
- “Parties”** means the governance entity and Museum of New Zealand Te Papa Tongarewa
- “Settlement Date”** has the same meaning as in the Deed of Settlement
- “Taonga”** Taonga as defined by Te Papa includes but is not limited to artefacts, modified human remains, manuscripts, archives, records, information and data, including multi-media formats such as sound, still and moving images

[Issued on [ ]]

Dr Arapata Hakiwai  
Kaihautū  
**Museum of New Zealand Te Papa Tongarewa**

Date:

Rick Ellis  
Chief Executive  
**Museum of New Zealand Te Papa Tongarewa**

Date:

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9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA  
RELATIONSHIP AGREEMENT

**SIGNED** by the governance entity in the presence of:

**WITNESS**

\_\_\_\_\_  
[ Chairperson/Deputy chairperson ]

\_\_\_\_\_

\_\_\_\_\_  
[ ]

Name:

\_\_\_\_\_  
[ ]

Occupation:

Address:

Date:

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

#### **Annex A: Summary of the Role and Functions of the Museum of New Zealand Te Papa Tongarewa (Te Papa)**

##### **Museum of New Zealand Te Papa Tongarewa Act 1992**

Museum of New Zealand Te Papa Tongarewa (Te Papa) is an autonomous Crown Entity under the Crown Entities Act 2004 and was established by the Museum of New Zealand Te Papa Tongarewa Act 1992.

The Museum of New Zealand Te Papa Tongarewa Act defines Te Papa's functions as to:

- collect works of art and items relating to history and the natural environment
- be an accessible national depository for collections of art and items relating to history and the natural environment
- develop, conserve and house securely the collections of art and items relating to history and the natural environment
- exhibit, or make available for exhibition by other public art galleries, museums, and allied organisations, such material from its collections as the Board determines
- conduct research into matters relating to the collections or associated areas of interest and to assist others in such research
- provide an education service in connection with its collections
- disseminate information relating to its collections, and to any other matters relating to the Museum and its functions
- co-operate with and assist other New Zealand museums in establishing a national service, and in providing appropriate support to other institutions and organisations holding objects or collections of national importance
- co-operate with other institutions and organisations having objectives similar to those of Te Papa
- make best use of the collections in the national interest
- design, construct and commission any building or structure required by the Museum.

In performing its functions Te Papa must:

- have regard to the ethnic and cultural diversity of the people of New Zealand, and the contributions they have made and continue to make to New Zealand's cultural life and the fabric of New Zealand society
- endeavour to ensure that the Museum expresses and recognises the mana and significance of Māori, European and other major traditions and cultural heritages and that the Museum provides the means for every such culture to contribute effectively to the Museum as a statement of New Zealand's identity
- endeavour to ensure that the Museum is a source of pride for all New Zealanders.

##### **Mission Statement**

1. Te Papa is a forum for the nation to present, explore, and preserve the heritage of its cultures and knowledge of the natural environment in order to better understand and treasure the past, enrich the present, and meet the challenges of the future.

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### 9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT

#### Core Values

2. Te Papa is guided by the following core values:

- Kaitiakitanga as guardian of the nation's collections;
- Manaakitanga in caring for our communities;
- Mātauranga through seeking and sharing knowledge and learning;
- Whanaungatanga in caring for each other; and
- Hiranga in aspiring to excellence.

#### Strategic Direction

3. Te Papa's vision for the future is e huri ngākau ana - changing hearts, e huri whakaaro ana - changing minds, and e huri oranga ana - changing lives. The Museum's role is to act as a forum for change in Aotearoa New Zealand. It is to help people form ideas about the world, through experiencing and sharing different perspectives, so that they can take action from an informed position.
4. At the heart of the Te Papa vision and long-term strategy are the philosophies of, Mana Taonga, Museology and Learning.

#### Mana Taonga

- Mana Taonga encapsulates the relationship between people, taonga and narratives. It enables Te Papa to design and disseminate models of collaboration and co-creation that shares authority and control with iwi, whilst recognising, embracing and representing the changing demographics of Aotearoa New Zealand.

#### Museology

- Te Papa works in collaboration with communities and individuals to deliver experiences that are current, fast moving, impactful, meaningful and relevant nationally and globally.

#### Learning

- Te Papa encourages experimentation that allows us to try new ideas and generate new knowledge, upon which we reflect and adapt our beliefs and actions, change behaviours and enhance our performance.
5. The aim is that all experiences in Te Papa engage and inspire people, and help them to learn how they can have a positive impact on Aotearoa New Zealand and the world.
6. In developing the vision and long-term strategy, Te Papa recognises that it is operating in a dynamic and diverse country. All Te Papa's activities are informed by an awareness of the value and significance of Tangata Whenua and all other peoples who have made Aotearoa New Zealand home.
7. The strategic priorities outlined below present the greatest opportunity for effecting change. They also identify how Te Papa itself will develop and change in order to achieve its vision.

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### **9: RELATIONSHIP AGREEMENTS: MUSEUM OF NEW ZEALAND TE PAPA TONGAREWA RELATIONSHIP AGREEMENT**

#### *Strategic priorities*

Te Papa is in the process of developing new strategic priorities that will align to Te Papa's vision and the principles outlined above.

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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

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#### 9.2 Ministry for the Environment Relationship Agreement

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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

#### RELATIONSHIP AGREEMENT BETWEEN THE MINISTRY FOR THE ENVIRONMENT AND AHURIRI HAPŪ

##### 1 PURPOSE

- 1.1 This agreement (the “**Relationship Agreement**”) formalises the relationship between the Ministry for the Environment (the “**Ministry**”) and the trustees of the Mana Ahuriri Trust (the “**Governance Entity**”) and establishes a framework to enable the parties to maintain a positive and enduring working relationship.

##### 2 RELATIONSHIP PRINCIPLES

- 2.1 In implementing the Relationship Agreement, the Secretary for the Environment (the “**Secretary**”) and the Governance Entity agree to act consistently with the following relationship principles:
- a Work consistently with Te Tiriti o Waitangi/the Treaty of Waitangi and its principles;
  - b Operate a ‘no surprises’ approach;
  - c Work in a spirit of co-operation;
  - d Acknowledge that the relationship is evolving, not prescribed;
  - e Respect the independence of the parties and their individual mandates, roles and responsibilities; and
  - f Recognise and acknowledge that the parties benefit from working together by sharing their vision, knowledge and expertise.
- 2.2 This Relationship Agreement is intended to further enhance the existing relationships between the Ministry and the Governance Entity. Nothing in this agreement displaces existing arrangements between the parties.
- 2.3 The commitments of the Ministry under this Relationship Agreement are limited to the extent that they are within the capability, resources and mandated work programme of the Ministry and the priorities of the government of the day.

##### 3 TE KĀKANO

- 3.1 Both the Ministry and the Governance Entity will wherever possible endeavour to conduct this relationship in a manner consistent with the approaches set out in Te Kākano attached in Appendix 1.

##### 4 SCOPE

- 4.1 The Relationship Agreement applies to all functions, powers, responsibilities and actions of the Secretary for the Environment that are exercised in relation to managing the use, development and protection of natural and physical resources within, or that affect, the Ahuriri Hapū Area of Interest as defined in the Ahuriri Hapū Deed of Settlement.



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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

- 4.2 The Relationship Agreement does not extend to the Secretary's role in appointing officials and statutory officers, and their roles and responsibilities.

#### 5 COMMUNICATION

- 5.1 The Ministry will seek to establish and maintain effective and efficient communication with the Governance Entity on a continuing basis through:
- a relationship meetings held in accordance with clause 6;
  - b maintaining information on the Governance Entity's office holders, and their addresses and contact details;
  - c providing a primary Ministry contact for the Governance Entity who will act as a liaison person with other Ministry staff;
  - d providing reasonable opportunities for the Governance Entity to meet with senior Ministry staff to discuss and (if possible) resolve any issues that may arise; and
  - e informing relevant Ministry staff of the contents of this Relationship Agreement and their responsibilities and roles under it.

#### 6 RELATIONSHIP MEETINGS

- 6.1 The parties agree that senior representatives of the Governance Entity and the Ministry will participate in an annual relationship meeting.
- 6.2 Before each relationship meeting held in accordance with clause 6.1, representatives of the Governance Entity and the Ministry will agree administrative arrangements for the meeting.
- 6.3 The agenda for each relationship meeting will be agreed between the parties no later than ten working days before the relationship meeting. Agenda items could include:
- a any legislative or policy developments of interest to Ahuriri Hapū, including but not limited to reform of the Resource Management Act 1991 ("RMA"), freshwater issues, climate change, the Emissions Trading Scheme, exclusive economic zone issues, and development of new resource management tools (in particular, national policy statements and national environmental standards);
  - b the management of Te Whanganui-ā-Orotu, including Ahuriri Hapū exercise of kaitiakitanga and their participation in resource management planning processes;
  - c the progress of Te Komiti Muriwai o Te Whanga;
  - d local authority performance in the Ahuriri Hapū Area of Interest in implementing Te Tiriti o Waitangi/the Treaty of Waitangi provisions in the RMA consistent with clause 10 below; and
  - e any other matters of mutual interest.
- 6.4 Each party will meet the costs and expenses of its representatives attending relationship meetings.

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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

6.5 The first relationship meeting will take place within 3 months of a written request by the Governance Entity.

#### 7 BIENNIAL REGIONAL FORA

7.1 The Ministry will establish a Biennial Regional Forum in the Hawke's Bay region to enable the Governance Entity and the mandated representatives of the other iwi/hapū of the Hawke's Bay region to meet the Minister for the Environment (subject to the Minister's availability) and a Deputy Secretary from the Ministry.

7.2 The purpose of the Biennial Regional Forum will be to discuss environmental issues affecting the region, including the development of any new policy and legislation. To facilitate that purpose, the Ministry will coordinate invitations to senior representatives of other government agencies with an interest in natural resources to attend the Biennial Regional Forum where relevant, or where the Governance Entity so requests.

7.3 The timing of the Biennial Regional Forum and annual relationship meeting referred to in clause 6 will be coordinated to fall on consecutive days insofar as is reasonably practicable.

7.4 Prior to the Biennial Regional Forum, the Ministry will seek input from the Governance Entity and the mandated representatives of the other iwi/hapū of the Hawke's Bay region on the following:

- a potential dates for the Regional Forum;
- b agenda items; and
- c other invitees (for example, other agencies or local authorities) to all or part of the Forum.

#### 8 TE MURIWAI O TE WHANGA

8.1 Should the Governance Entity wish to develop a hapū management plan in relation to Te Muriwai o Te Whanga and/or the wider Ahuriri Hapū rohe, the Ministry for the Environment will support its development through providing advice, information and review upon request.

8.2 Upon request of the Governance Entity the Ministry for the Environment will where possible provide information and advice to support the development of the Te Muriwai o Te Whanga Plan.

8.3 Support provided by the Ministry will be technical in nature, and does not include financial support.

8.4 The Ministry administers a number of contestable funds that the Governance Entity may be interested in applying for to complete projects on and around Te Muriwai o Te Whanga. The Ministry will provide the Governance Entity with up to date information on funding rounds and funding criteria on request.

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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

#### 9 CAPACITY BUILDING AND TRAINING

- 9.1 The Ministry and the Governance Entity will seek opportunities to provide each other with training and other capacity building activities in their respective areas of responsibility and expertise. Topics that training and capacity building may cover include:
- a Legislation that is administered by the Ministry including the Resource Management Act, Exclusive Economic Zone Act and Climate Change Response Act including areas of responsibility under those Acts;
  - b Te Kāhano; and
  - c Ahuriri Hapū values, practices and objectives.
- 9.2 The Ministry and the Governance Entity will seek opportunities for secondments and internships between the parties.

#### 10 LOCAL AUTHORITY PERFORMANCE

- 10.1 The Minister for the Environment (the “**Minister**”) has the function of monitoring the effect and implementation of the RMA (refer section 24). The Minister also has the power to require local authorities (and others) to supply information about the exercise of their functions, powers, or duties (refer section 27).
- 10.2 The way in which these functions and powers are exercised varies from time to time. At the date of execution of this Relationship Agreement, the Ministry, on behalf of the Minister, surveys all New Zealand local authorities every two years about their processes under the RMA. The survey includes questions relating to Māori participation.
- 10.3 The Ministry also separately collects information on environmental outcomes through state of the environment monitoring.
- 10.4 Before each relationship meeting held under clause 6.1, the Ministry will provide the Governance Entity with:
- a the most recent published information from any survey referred to in clause 10.2; and
  - b details of any current or completed state of the environment monitoring as it relates to the Ahuriri Hapū Area of Interest, subject to any constraints on information sharing, including under the Official Information Act 1982 (“**OIA**”) and the Privacy Act 1993.
- 10.5 The Ministry will also receive and consider any information or comment that the Governance Entity would like to make on the effect and implementation of the RMA, including local government performance.
- 10.6 Nothing in this agreement limits the rights of the Governance Entity to pursue complaints regarding local government performance to the Minister or other agencies with investigative functions.

#### 11 OFFICIAL INFORMATION

- 11.1 The Ministry is subject to the requirements of the OIA.

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### **9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT**

- 11.2 The Ministry and the Minister may be required in accordance with the OIA to disclose information that it holds relating to this Relationship Agreement (e.g. relationship meeting minutes).
- 11.3 The Ministry will notify the Governance Entity and seek its views before releasing any information relating to this Relationship Agreement. To avoid doubt, any comments the Governance Entity wishes to make must be provided to the Ministry in a timely fashion, so that the Ministry is able to meet the statutory timeframes for responding to the relevant request for information.

### **12 AMENDMENT**

- 12.1 The parties may agree in writing to vary or terminate the provisions of this Relationship Agreement.

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9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

**SIGNED** for and on behalf of the Ministry for the Environment by the Secretary for Environment in the presence of:

\_\_\_\_\_

**WITNESS**

\_\_\_\_\_

\_\_\_\_\_

Name:

\_\_\_\_\_

Occupation:

Address:

\_\_\_\_\_

**SIGNED** by the Governance Entity in the presence of:

\_\_\_\_\_  
[ Chairperson/Deputy Chairperson ]

**WITNESS**

\_\_\_\_\_

\_\_\_\_\_  
[ ]

Name:

Occupation:

Address:

\_\_\_\_\_  
[ ]

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### 9: RELATIONSHIP AGREEMENTS: MINISTRY FOR THE ENVIRONMENT RELATIONSHIP AGREEMENT

#### APPENDIX 1 - TE KĀKANO MODEL

Te Kakāno model is a management model based on Māori practices and principles. It is a tikanga based process (agreed everyday practice) of research, development, of performance indicators, evaluation, assessment, analysis, and stakeholder communication. Te Kākano model is provided by Mana Ahuriri Incorporated with the approval of the Over the Top Partnership.

- The process is tikanga based, (an agreed every day practice) has a kawa (the process that drives the agreed every day practice) and requires the evaluation of the total stakeholder environment.
- The process demands a standard of excellence and quality assurance.
- The process relies on the total environment for its development.
- The process ensures that it has the ability to repeat itself in the new year.
- No phase was entered into until the current phase had been evaluated and any identified issues had been resolved.
- Through the evaluation of each phase, the process maintains focus on the “Kākano” (seed or business purpose).
- The process refines disciplines, provides for resource management and development and highlights the importance of quality assurance.
- Mandatory communication in each phase ensures total transparency throughout the process.

**10 LEASE FOR CONSERVATION HOUSE, NAPIER**

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10: LEASE FOR CONSERVATION HOUSE, NAPIER

**Deed of Lease**

59 Marine Parade, NAPIER, 4110

Between

**The Trustees of the Mana Ahuriri Trust**

**Landlord**

and

**Director-General of the Department of Conservation**

**Tenant**



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**10: LEASE FOR CONSERVATION HOUSE, NAPIER**

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

**Deed** dated

TBC

#### **Parties**

**The Trustees of the Mana Ahuriri Trust (the Landlord)**

**The Director-General of the Department of Conservation**

#### **Background**

- A The Landlord leases to the Tenant and the Tenant takes on lease the Premises and the Carparks (if any) described in Schedule 1 for the term, from the commencement date and at the annual rent (subject to review if applicable) as set out in Schedule 1.
- B The Landlord and the Tenant covenant as set out in the schedules of this lease.

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10: LEASE FOR CONSERVATION HOUSE, NAPIER

**Execution**

Signed by and on behalf of the Trustees of the Mana Ahuriri Trust  
as **Landlord** by:

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

\_\_\_\_\_  
*[name to be inserted]*

**[Attestation to be completed with all Trustees' names]**

Witness  
signature \_\_\_\_\_

Full name \_\_\_\_\_

Occupation \_\_\_\_\_

City/Town \_\_\_\_\_

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10: LEASE FOR CONSERVATION HOUSE, NAPIER

Signed by and on behalf of **the Director-General of the Department of Conservation**  
:

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Authorised signatory's signature

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Authorised signatory's signature

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Authorised signatory's name and  
title

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Authorised signatory's name and title

Witness signature

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Full name

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Occupation

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City/Town

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**DOCUMENTS**

**10: LEASE FOR CONSERVATION HOUSE, NAPIER**

<b>Schedule 1</b>	<b>Lease Details</b>			
<b>1</b>	<b>Land</b>	All that parcel of land situate at 59 Marine Parade, Napier, 4110, being Section 1 SO2726.		
<b>2</b>	<b>Building</b>	The building situate on the Land and known as [ <i>Ahuriri/ Napier District Office</i> ] as at the date of this lease.		
<b>3</b>	<b>Premises</b>	Those parts of the Building comprising a total rentable area of 850m <sup>2</sup> and as shown on the plans attached as Schedule 5.		
<b>4</b>	<b>Carparks</b>	5 allocated, non-stacked, non-tandem, carparks located at Ahuriri/ Napier District Office and as shown on the plans attached as Schedule 5.		
<b>5</b>	<b>Term</b>	Two years		
<b>6</b>	<b>Commencement Date</b>	On and including the date the land is vested in the Landlord.		
<b>7</b>	<b>Further Terms</b>	N/A		
<b>8</b>	<b>Renewal Dates</b>	N/A		
<b>9</b>	<b>Final Expiry Date (including all renewals)</b>	2 years upon the date the Ahuriri Hapu Settlement Legislation is given effect.		
<b>10</b>	<b>Gross Annual Rent</b>			
	<b>a Premises</b>	<b>Total Premises rent</b>	<b>850m<sup>2</sup></b>	<b>= \$92,200</b> plus GST per annum.
	<b>b Carparks</b>	Carparks	five	<b>@ \$1,560</b> plus GST per annum (being \$ 30 plus GST per carpark per week).
	<b>c</b>	Total Carpark rent	five	<b>= \$7,800</b> plus GST per annum
	<b>d Total Annual Rent</b>	<b>= \$100,000</b> plus GST per annum		

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

11	<b>Monthly Payments of Rent</b>	\$ 8,333.33 per calendar month plus GST
12	<b>Rent Commencement Date</b>	As per item 6
13	<b>Rent Payment Dates</b>	The first day of each month commencing on the date the lease commences.
14	<b>Default Interest Rate</b>	3% per annum above the 90 day bank bill buy rate disclosed on Reuters screen page BKBM (or its successor page) at 11.00am on the date of commencement of the default.
15	<b>Business Use</b>	<ul style="list-style-type: none"><li>a <b>Permitted use:</b> Any use permitted pursuant to the District Plan of the territorial Authority having jurisdiction in respect of the Premises.</li><li>b <b>Actual Crown use:</b> Commercial offices for the provision of government or professional services, storage and carparks.</li></ul>
16	<b>Insurance</b>	Cover on the basis set out in clause 22.1 or clause 22.2 if applicable against a comprehensive range of risks including, without limitation, loss, damage or destruction by fire or flood unless caused by the tenant's wilful or negligent act or omission, explosion, lightning, storm, earthquake, volcanic activity and such other risks as the parties may agree.
17	<b>Addresses for service of notices</b>	<ul style="list-style-type: none"><li>a <b>Landlord:</b> C/- 170A Waghorne Street, Napier Email: [to be confirmed upon settlement date]</li><li>b <b>Tenant:</b> C/- 18-32 Manners Street, Wellington 6011 Email: enquires@doc.govt.nz</li></ul>
18	<b>Schedules</b>	<ul style="list-style-type: none"><li>a Schedule 1 Lease details</li><li>b Schedule 2 Covenants</li><li>c Schedule 3 Fixtures and Fittings</li><li>d Schedule 4 Premises Condition Report</li><li>e Schedule 5 Plans</li></ul>

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### **Schedule 2      Covenants**

##### **1      Rent**

- 1.1 The Tenant will pay the annual rent by equal monthly payments in advance on the rent payment dates. The first monthly payment (together with annual rent calculated on a daily basis for any period from the rent commencement date to the first rent payment date) will be payable on the first rent payment date.
- 1.2 All annual rent will be paid by direct payment to the Landlord or as the Landlord may reasonably direct.

##### **2      Rent Review**

- 2.1 No rent review during term.

##### **3      Tenant's other payments**

###### **Consumables**

- 3.1 The Tenant will promptly pay the costs of all properly and reasonably incurred charges for the Tenant's consumables used by the Tenant in the Premises, including:
  - a electricity;
  - b energy actually consumed by the Building Services;
  - c telephones;
  - d cable or satellite services including wireless networks supplied to and used in the Premises by the Tenant, including but not limited to the supply of broadband;
  - e cleaning of the interior of the Premises, including the interior face of any exterior windows;
  - f hygiene supplies;
  - g security call-outs; and
  - h the collection of rubbish and recycling from the Premises.
- 3.2 The Tenant may, at the Tenant's sole option, select and use the supplier of any services which are paid for by the Tenant pursuant to clause 3.1, including energy suppliers, and the Landlord will not object to or obstruct the selection of supplier of the Tenant or require the Tenant to purchase any services from or through the Landlord.
- 3.3 Appropriate consumable adjustments will be made promptly in respect of periods current at the commencement and the expiration, or sooner determination, of the term.
- 3.4 The Tenant will not be liable for any Outgoings or consumables where any Outgoings or consumables are caused by, result from, or are attributable to, the wilful or negligent act or



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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

omission of the Landlord, its employees, contractors or agents or for any breach of the Landlord's obligations under this lease.

- 3.5 Notwithstanding clause 3.1, the Tenant will not be liable to pay for any increase in consumables which the Tenant is liable for under this lease to the extent the increase is as a result of any of the following matters and the Tenant will not be liable for any additional consumables as a result of any of the following matters:
- a any inherent defect in the Building Services;
  - b damage to the Building Services caused by flooding (except to the extent that the same is caused or contributed to by the wilful or negligent act or omission by the Tenant), land subsidence or seismic activity;
  - c in respect of the Building Services, faulty design, faulty construction and faulty workmanship undertaken by, or a failure to repair by, the Landlord or persons under the control of the Landlord except to the extent that the same is caused or contributed to by the wilful or negligent act or omission by the Tenant; or
  - d where and to the extent any consumables are caused by, result from, are attributable to, or increased by the wilful or negligent act or omission of the Landlord, its employees, contractors or agents or for any breach of the Landlord's obligations under this lease.
- 3.6 The Tenant will not be liable to perform any maintenance, repair or replacement obligations, to pay for any Outgoings or consumables under this lease, or to pay for any other costs where the same are necessary as a result of or are occasioned by, arise from or are in any way attributable to any of the following matters:
- a inherent defect in the Building or the Premises;
  - b Flooding, unless it is caused by the Tenant through wilful or a negligent act or omission, land subsidence or seismic activity; or
  - c faulty design, construction, workmanship, repair or fault in the Premises or the Building (including the Building Services).
- 3.7 The tenant will not be liable for any charges in relation to the Building Services owned by the Landlord.

#### **4 Goods and Services Tax**

- 4.1 The Tenant will pay to the Landlord or as the Landlord directs, or as is otherwise required, the GST payable by the Landlord in respect of the annual rent and any other payments which are the Tenant's responsibility under this lease.
- 4.2 The Tenant will pay the GST payable in respect of the consumables payable by the Tenant in accordance with clause 4.1 directly to the supplier of such supplies and services, if appropriate in the circumstances.
- 4.3 The GST in respect of the annual rent will be payable on each occasion when any annual rent payment falls due for payment. The GST in respect of any other payment to the

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

Landlord, which is the Tenant's responsibility under this lease, will be payable by the Tenant upon the receipt of an appropriate GST invoice.

- 4.4 If the Tenant defaults in the payment of the annual rent or any other moneys payable under this lease and the Landlord becomes liable to pay Default GST, then the Tenant will on demand pay to the Landlord the Default GST.
- 4.5 The Landlord will provide to the Tenant one scheduled multiple tax invoice in respect of the annual rent payable detailing;
- a such separate supply made identified as follows;
    - i the annual rent payable for the Premises;
    - ii the annual rent payable for the Carparks;
  - b the due date for payment for each such supply; and
  - c the GST inclusive amount payable in respect of each such supply.

## 5 Interest on unpaid money

- 5.1 If the Landlord or the Tenant defaults in the payment or the repayment of any annual rent or any other moneys payable or reimbursable under this lease for 20 Working Days (or for such lesser period as may be specified in this lease) after such payment or repayment becomes due, then the Landlord or the Tenant (as applicable) will pay on demand interest to the other party at the default interest rate on the unpaid moneys from the due date for payment until the date of actual payment.

## 6 Costs

- 6.1 Each party will pay its own costs of and incidental to the negotiation and preparation of this lease and the preparation or review of any rent review, renewal, variation, or surrender relating to this lease.
- 6.2 The Tenant will pay the Landlord's reasonable legal costs (as between solicitor and client) which directly result from the enforcement or attempted enforcement of the Landlord's rights and remedies under this lease. Such legal costs will only be recoverable should the need for enforcement, or attempted enforcement, directly arise from the wilful or negligent act or omission of the Tenant or through the Tenant otherwise failing to observe and perform the Tenant's obligations under this lease.
- 6.3 The Landlord will pay the Tenant's reasonable legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Tenant's rights and remedies under this lease. Such legal costs will only be recoverable should the need for enforcement, or attempted enforcement, arise from the wilful or negligent act or omission of the Landlord or through the Landlord otherwise failing to observe and perform the Landlord's obligations under this lease.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### **7 Landlord to pay outgoings**

- 7.1 The Landlord will pay all outgoings and costs in respect of the Premises, the Building (including the Building Services) and the Land other than the consumables payable by the Tenant directly to the supplier in accordance with clause 3.

#### **8 Tenant's maintenance and care of Premises**

- 8.1 The Tenant will keep and maintain the interior of the Premises in good, clean, order, repair and condition having regard to the condition of the Premises as set out in the Premises Condition Report. The Tenant will at the end or sooner determination of the term yield up the same in good, clean, order, repair and condition but having regard to the age of the Premises at the end or sooner determination of the term.
- 8.2 The obligations of the Tenant detailed in clauses 8.1, 8.4 and 8.5 do not include responsibility for:
- a fair wear and tear;
  - b any damage caused by fire, flood or explosion unless caused by the Tenant's wilful or negligent act or omission, lightning, storm, earthquake, or volcanic activity or the occurrence of any other peril;
  - c inherent defects, faulty design, construction, workmanship, repair or any other fault in the Premises or the Building (including the Building Services and dirty or stained ceiling tiles), unless such defects or faults are attributable to a negligent act or omission of the Tenant;
  - d maintenance, repair, and replacement of the whole or any part of the Building Services, unless the provisions of clauses 8.3a and 8.3b apply;
  - e cleaning the Landlord's ceiling tiles and any equipment of the Landlord which is located in the underside of the ceiling of the Premises, including the Landlord's air-conditioning diffusers (if any) and the Landlord's lighting equipment (except those items referred to in clause 8.3c), all of which are the responsibility of the Landlord. Notwithstanding that the Tenant has no responsibility for cleaning the items referred to in this subclause, the Tenant may at its sole option clean those items.
- 8.3 The Tenant will:
- a repair all breakage or damage to all doors, glass, windows, light fittings and the power points of the Premises which is directly and clearly caused by the Tenant or persons under the control of the Tenant;
  - b repair any damage which is directly caused by any abnormal, improper or careless use of the Building, including the Building Services and the Premises, by the Tenant or persons under the control of the Tenant; and
  - c after the first anniversary of the commencement date, replace all damaged or non-operative light bulbs, globes and tubes in the Premises;

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

provided that the provisions of this clause 8.3 will not apply if such damage is covered by the Landlord's insurance policy. Prior to the first anniversary of the commencement date, the Landlord will, at its cost, replace all damaged or non-operative light bulbs, globes and tubes in the Premises.

#### 8.4 Redecoration:

- a For so long as the Tenant is the Crown or a Crown Organisation, the Tenant will have no obligation to redecorate the Premises but may paint and decorate to a reasonable standard those parts of the interior of the Premises which have previously been painted and decorated, as and when considered desirable by the Tenant, at the Tenant's sole discretion;
- b If the Tenant is not the Crown or a Crown Organisation, then the Tenant will paint and redecorate those parts of the interior of the Premises which have previously been painted and decorated when reasonably necessary and to a specification approved by the Landlord. The Landlord will not unreasonably withhold its approval to a specification which is no less than the specification which applied as at the Commencement Dates.

8.5 The Tenant will keep all floor coverings in the Premises clean and tidy, excepting fair wear and tear. Notwithstanding anything to the contrary, the Tenant is not obligated to replace the Landlord's floor coverings.

8.6 The toilets, sinks and drains will only be used by the Tenant for their designed purposes.

8.7 The Tenant will keep the Premises free of rubbish and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at its expense remove all of the Tenant's trade waste, boxes and any other goods or rubbish not removable in the ordinary course by the relevant territorial Authority.

## 9 Landlord's maintenance and care of the Building and the Premises

### Maintenance of roof and exterior

9.1 The Landlord will, at its cost, during the term and any renewal term keep and maintain the exterior of the Building, (including the exterior fabric, the roof, the exterior doors and the external windows) watertight, weather tight, clean, in good, order, repair and condition.

#### 9.2 Water damage:

- a If any goods, merchandise or property of any kind which may be in the Premises during the term or any renewal term are damaged or destroyed by water or otherwise, or through inflow or leakage of water, then subject to clause 9.2b the Landlord will be liable in respect thereof.
- b The Landlord will not be liable under this clause 9.2 where:
  - i the Tenant was aware of any defect in the roof or exterior of the Building liable to cause such damage and did not give prior notice to the Landlord of such defect; or

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- ii the Tenant becomes aware of the defect when it is too late to prevent such damage occurring, but does not give the Landlord notice of the defect as soon as reasonably practicable following becoming aware of such defect; or
- iii want of repair or damage caused to the Premises has been caused by or contributed to or results from any act or default or negligence of the Tenant or any persons under the control of the Tenant.

#### **Structural maintenance, repair and replacement**

- 9.3 The Landlord is responsible for all structural maintenance, structural repairs and structural replacements (including any roofing repairs) required in respect of the Building and the Premises except where such work is:
- a required by reason of any change of use or alteration to the Premises (not ordinarily associated with the business use) initiated by the Tenant for its own convenience; or
  - b the number or sex of the persons employed on the Premises by the Tenant; or
  - c the express responsibility of the Tenant under this lease.

#### **Building and its equipment**

- 9.4 The Landlord will, at its cost:
- a maintain the Building in Good Operational Repair; and
  - b make good design defects, construction defects, workmanship defects and repair defects in the Building;
- as soon as reasonably possible.

#### **Sundry exterior Landlord obligations**

- 9.5 The Landlord will at its cost:
- a promptly remove graffiti from the exterior of the Building;
  - b clean the exterior of the Building, (including the roof, any exterior spandrels, solar shading and the exterior doors) as and when reasonably necessary;
  - c clean and remove any pigeon, other bird, animal, rodent, and pest effluent and detritus from the exterior of the Building;
  - d clean the exterior windows of the Building on a regular basis and as and when reasonably necessary;
  - e clean the gutters and down pipes of the Building as and when reasonably necessary; and
  - f keep the Land (including fences, internal and external landscaping and paved areas (if any)) and the Building clean, tidy, free from rubbish and weeds and in good order, repair and decorative condition.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### Landlord alterations and Common Areas

- 9.6 The Landlord will not alter the entrance foyer(s), the directory signage of the Building or the colour of the exterior of the Building without having first obtained the prior written consent of the Tenant, not to be arbitrarily or unreasonably withheld.

#### Seismic rating

- 9.7 The Landlord warrants that as at the commencement date, the Building will perform to 85% or more of the new building seismic standard in NZS1170.5:2004 (or any replacement standard) assuming Building Importance Level 2 detailed in clause A3 of the New Zealand Building Code (or any equivalent replacement) (**NBS**).
- 9.8 For the purposes of clauses 9.8 to 9.13:
- a **Evaluation** means a detailed engineering evaluation of the Building which is obtained pursuant to clause 9.10.
  - b **Minimum Standard** means 70% of the then current equivalent of NBS at the time an Evaluation is obtained pursuant to clause 9.11 or if NBS is discontinued and not replaced, the nearest equivalent to NBS as agreed by the parties or failing agreement, as determined by the Expert Engineer.
  - c **NBS** means the new building seismic standard in NZS1170.5:2004.
  - d **Required Standard** means the standard required in accordance with clause 9.7.
  - e **Structural Works** means the works (if any) required to the Building in accordance with clause 9.12.
  - f Napier **City** means all the land within the district of which the Napier City Council (as constituted as at the date of this agreement) is the territorial authority as at the date of this agreement.
- 9.9 The Landlord will ensure that at all times during the term the Building complies with any other applicable requirements of any Authority in relation to seismic rating.
- 9.10 The Tenant may obtain a detailed engineering evaluation of the Building (**Evaluation**) at any time after:
- a an earthquake which:
    - i measures MM7 or higher on the New Zealand Modified Mercalli Intensity Scale (or any equivalent standard); or
    - ii is classified as 'severe' or greater than 'severe' by GNS Science GeoNet;
  - b any changes to the Building Act 2004 or the building code made under the Building Act 2004 in relation to the seismic resistance of buildings.
- 9.11 If the Tenant elects to obtain an Evaluation pursuant to clause 9.10:
- a the Tenant will provide the Landlord with prior written notice;

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- b the Landlord will promptly and fully cooperate with the Tenant and its consultants in relation to the obtaining of the Evaluation including providing the Tenant and its consultants with access to those parts of the Building not comprising the Premises as reasonably required and subject to the provisions of any applicable leases and in accordance with the Landlord's reasonable requirements;
  - c the parties will each meet half of the cost of obtaining the Evaluation; and
  - d the Tenant will provide the Landlord with a copy of the Evaluation.
- 9.12 If an Evaluation establishes that the Building will perform to less than 70 % of the NBS, then the Tenant may at its sole discretion terminate this lease by giving written notice to the Landlord advising the date on which this lease will terminate.

#### 10 Notification of defects

- 10.1 The Tenant will give the Landlord notice of any damage to or defect in the Building (including the Building Services and the Premises) which the Tenant becomes aware of.

#### 11 Landlord's rights of access

- 11.1 The Landlord is entitled to enter the Premises, at all reasonable times during business hours:
- a to view the condition of the Premises;
  - b to carry out inspections and repairs to the Premises or to the Building and to install, inspect, repair, renew or replace any part of the Building (including the Building Services) where the same are not the responsibility of the Tenant; and
  - c for re-letting or sale purposes;
- in accordance with the provisions of this clause 11.
- 11.2 Prior to exercising the Landlord's right to enter the Premises pursuant to clause 11.1, the Landlord must give the Tenant prior written notice which should be at least 48 hours' prior written notice except in the case of an emergency or if a longer period is specified in this lease.
- 11.3 The Landlord must give the Tenant at least 72 hours' prior written notice to exercise its right to enter the Premises for re-letting or sale purposes pursuant to clause 11.1c and the Landlord may only enter the Premises for re-letting purposes during the six month period which immediately precedes the expiration of the term.
- 11.4 For the purposes of this clause 11, the Landlord may authorise the following persons to enter the Premises:
- a employees, contractors and agents for the purposes of viewing the condition of the Premises;
  - b employees, any building certifier, independent person or any contractor for the purposes referred to in clause 11.1b; and

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- c duly authorised agents, prospective tenants of the Premises or prospective purchasers of the Building or the Land.

If required by the Tenant, such persons must be accompanied by a representative of the Tenant (at the Tenant's sole discretion), be accompanied by a representative of the Landlord, and hold written authorisations from the Landlord to enter the Premises for the relevant purpose.

- 11.5 If required by the Tenant, the Landlord will immediately replace any persons undertaking any matters requiring access to the Premises for or on behalf of the Landlord with persons acceptable to the Tenant.
- 11.6 The Landlord and any persons accessing the Premises, the Building (including the Building Services and the Common Areas) and the Land and carrying out any works pursuant to this clause 11 must do so with the least possible inconvenience to the Tenant.
- 11.7 If the Tenant's use and enjoyment of the Premises is materially disrupted because of any works carried out in accordance with this clause 11, then during the period from when the works are commenced until the works are completed and all disruption has ceased a fair proportion of the annual rent will cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligations under this lease.
- 11.8 The Landlord and any persons accessing or carrying out any works in accordance with this clause 11:
  - a will comply with the Tenant's reasonable security requirements and protocols;
  - b will comply with the Tenant's reasonable confidentially requirements; and
  - c without limitation will not access, use, retain or disclose to any person or organisation any information on the Premises (including confidential information) relating to the Tenant's clients or their identity, and the Tenant's or other person's business.

## 12 Parties rights to remedy default

### Tenant's compliance

- 12.1 If the Landlord gives the Tenant written notice of any failure by the Tenant to comply with any of the Tenant's obligations under this lease then the Tenant will comply with all reasonable speed.
- 12.2 If:
  - a the Tenant defaults in the due and punctual compliance with any notice given pursuant to clause 12.1; or
  - b any repairs which are the Tenant's responsibility are required to be undertaken as a matter of urgency;

### (Tenant's Outstanding Works)



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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

then without prejudice to the Landlord's other rights and remedies, the Landlord may, subject to clause 11, enter the Premises, with all necessary equipment and materials, to execute the Tenant's Outstanding Works. The Tenant's Outstanding Works must be carried out with the least possible inconvenience to the Tenant.

- 12.3 The Landlord will be entitled to recover from the Tenant all actual costs incurred by the Landlord in executing the Tenant's Outstanding Works (including any legal and other consultant's costs) and the Tenant will pay all such costs 10 working Days after the date that the Landlord provides the Tenant with a tax invoice. If the Tenant fails to pay the costs within the 10 Working Day period the Tenant will pay interest on such costs, or the balance thereof which remains outstanding, at the default interest rate from the due date for payment to the date of payment.

#### **Tenant's right to remedy Landlord's default**

- 12.4 Where there is a failure of:

- a any of the Building Services to meet, operate or perform in accordance with the relevant Building Performance Specification; or
- b the Landlord to otherwise comply with its repair, maintenance or replacement obligations under this lease;

then, without prejudice to the Tenant's other rights and remedies, the Tenant may give the Landlord written notice specifying the failure and requiring the Landlord to remedy the failure (**Tenant's Failure Notice**).

- 12.5 If the Landlord fails to remedy any failure set out in a Tenant's Failure Notice (and in the case of a recurring failure fails to permanently remedy the failure) within a reasonable time after receipt of the Tenant's Failure Notice (having regard to the nature, extent and urgency of the failure in any particular case), then after giving the Landlord 5 Working Days' notice of its intention to do so, the Tenant may enter such parts of the Building or the Land as are reasonably necessary to effect such works as are required to remedy the failure.

- 12.6 In the event of an emergency or the Landlord being unwilling or unable to urgently undertake emergency repairs or replacements that are the Landlord's obligations under this lease, then the Tenant will not be required to give the Landlord the periods of notice set out in clauses 12.4 and 12.5 prior to carrying out such works as are required to remedy the failure in accordance with clauses 12.4 to 12.10.

- 12.7 If:

- a the Tenant elects not to exercise its right to effect works pursuant to clause 12.5; and
- b the Landlord has not remedied any failure set out in a Tenant's Failure Notice;

then a fair proportion of the annual rent will abate according to the nature and extent of the failure (having regard to the part of the Premises adversely affected by the failure). The abatement will apply for each and every day (or part day) from the applicable date of any such failure until the date that:

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- c such failure has been made good by the Landlord to the Tenant's reasonable satisfaction; and
- d the Building (including the Building Services, the Common Areas and the Premises) is again meeting, operating and performing in accordance with the Building Performance Specification.

The Tenant in carrying out such work will, when reasonably possible, not do anything which may render void any warranties or guarantees obtained by the Landlord in respect of the Building or the Land (provided that the Tenant has first been provided with a copy of the Landlord's warranties and guarantees).

- 12.8 Any action by the Tenant pursuant to clause 12.5, will not release the Landlord from any liability in respect of the breach or non-observance by the Landlord of any of the Landlord's express or implied obligations under this lease.
- 12.9 The Tenant will be entitled to recover from the Landlord all actual costs incurred by the Tenant in rectifying the failure (including any legal and other consultant's costs). The Landlord will pay all costs 10 Working Days after the date that the Tenant provides the Landlord with a tax invoice (**Due Date**). If the Landlord fails to pay all costs on the Due Date, then the Landlord will pay interest on such amount at the default interest rate from the Due Date until the date of payment.
- 12.10 If the Landlord fails to reimburse the Tenant for the costs by the Due Date, the Tenant may (at the Tenant's sole option and without prejudice to the Tenant's other rights and remedies against the Landlord or any previous Landlord) set-off the costs and interest against future rent payments due under this lease provided that the Tenant will first give the Landlord 10 Working Days' notice of its intention to do so.
- 12.11 The Landlord will reimburse the Tenant for all damage or loss to the Tenant directly resulting from a negligent act or omission of or a breach of this lease by the Landlord or persons under the control of the Landlord. The Landlord will be liable to reimburse the Tenant only to the extent that the Tenant is not fully reimbursed under any insurance policy.

### 13 Use of Premises

#### Business use

- 13.1 The Tenant will not, without the prior written consent of the Landlord, use or permit the whole or any part of the Premises to be used for any use other than the business use. The Landlord's consent will be given for any proposed use which is:
  - a not in substantial competition with the business of any other occupant of the Building which might be unreasonably affected by the use;
  - b reasonably suitable for the Premises; and
  - c compliant with the Resource Management Act 1991 or any other statutory provision relating to resource management.

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- 13.2 For so long as the Crown is the Tenant under this lease, nothing in clause 13.1 will prevent the Tenant from operating its normal business activities at the Premises.
- 13.3 If any change in use by the Tenant renders any increased or extra premium payable in respect of any insurance policy on the Building then the Landlord as a condition of granting any consent may require the Tenant to pay the increased or extra premium.
- 13.4 The Tenant will pay the Landlord's reasonable and proper costs in respect of any request by the Tenant for a change of the business use provided that the Landlord will not demand payment of any fine, or payment in the nature of a fine, in relation to such consent.

#### **No noxious use or nuisance**

- 13.5 The Tenant will not:
- a bring upon or store within the Premises, or allow to be brought upon or stored within the Premises, any machinery, goods or things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Building, the Premises or to any surfaced area of the Land;
  - b use the Premises, or allow them to be used, for any noxious, illegal or offensive trade or business;
  - c cause or permit Contamination to the Building or the Land (as defined in clause 13.7);  
or
  - d allow any act or thing to be done which may be, or become, a nuisance, disturbance or annoyance to the Landlord or other tenants of the Building.
- 13.6 The carrying on by the Tenant of the actual Crown use recorded in Schedule 1, 16b or any other use of the Premises to which the Landlord has consented will not be deemed to be a breach of clause 13.5.

#### **Removal of Contaminants**

- 13.7 Contamination means any change to the physical, chemical, biological or other condition of the Land or the Building by a 'contaminant', as that word is defined in section 2 of the Resource Management Act 1991, and includes any other illegal, detrimental, dangerous, combustible or unhealthy substance.
- 13.8 The Tenant may require the Landlord to promptly, at the Landlord's cost and risk, undertake all works necessary to remove any Contamination from the Land or the Building immediately upon becoming aware of the same.
- 13.9 The Landlord will indemnify and keep the Tenant indemnified against all direct and indirect costs, losses and expenses of the Tenant which may arise as a result of any Contamination (including those arising in the event that the Tenant, at the Tenant's sole option, temporarily relocates its operations to another site until the Land and the Building are free of all Contaminants to the Tenant's reasonable satisfaction).
- 13.10 Clauses 13.8 and 13.9 do not apply to any Contamination caused directly by the Tenant who will at its cost promptly remove any such Contamination from the Land or the Building;

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nor do these clauses apply to Contamination that was present when the Lease commenced.

#### 14 Use of Building by Landlord and other tenants

- 14.1 This tenancy will only relate to the Premises, the Carparks and the Common Areas and will include the Tenant's unimpeded ingress and egress rights (with or without cars, as applicable) to the Building, including its Common areas, the Premises and the Carparks.
- 14.2 The Landlord will not, without the Tenant's prior written consent (which may be withheld at the Tenant's sole discretion), use or permit the whole or any part of the remainder of the Building or the Land to be used for any use which is:
- a inconsistent, incompatible or in conflict with, or likely to have a detrimental effect on, the Tenant's:
    - i corporate or public image;
    - ii the business use and, for so long as the Crown is the Tenant under this lease, the Tenant's normal business activities at the Premises; or
    - iii use and enjoyment of the Premises, the Building and the Land (including the safety of the Tenant's employees and visitors);
  - b not reasonably suitable for the Building or the Land and is of a nature which is likely to cause disturbance to the Tenant (including noise, dust, vibration or any other interference); or
  - c for:
    - i medical or educational services (except for routine onsite educational training carried out by and for the occupiers of the Building);
    - ii consulates or embassies;
    - iii the supply of sexual services or adult entertainment;
    - iv the preparation or the sale of party pills;
    - v the preparation and/or sale of food or beverages (including licenced premises)
    - vi gambling operations and/or nightclubs;
    - vii video and parlour games;
    - viii pet stores and supplies;
    - ix funeral directors and suppliers;
    - x dangerous goods and supplies; and
    - xi industrial manufacturing purposes.
- 14.3 These uses set out in clause 14.2c and any uses of a similar nature which are noisome, illegal or offensive, are strictly prohibited in the Building and on the Land.

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14.4 When the Landlord seeks the Tenant's prior written consent in accordance with clause 14.2 will provide the Tenant with details as to the business use and the restriction or limitations that relate to that business use (if any) to ensure that the provisions of subclauses 14.2ci to 14.2cxi will be complied with.

#### 15 Neglect of other tenant

15.1 Except as otherwise provided in this lease, the Landlord will not be responsible to the Tenant for any act default or neglect of any other tenant, licensee or occupier of the Building or the Land. However, the Landlord will not enter into any lease or licence or other occupancy agreement of the Building or the Land which by doing so breaches this lease.

#### 16 Signage rights

16.1 The Tenant will not affix, paint or exhibit any sign, nameplate, signboard or advertising device of any description on or to the exterior of the Building without the prior written approval of the Landlord.

16.2 The Tenant's signage will be installed in:

- a accordance with the requirements of all competent territorial Authorities;
- b a substantial and proper manner and so as to cause no unreasonable damage to the Building or any unreasonable interference to any tenant or other occupant of the Building.

16.3 The Tenant will at the determination of the term remove the Tenant's signage and make good any damage caused by such removal.

16.4 The Landlord will not without the Tenant's prior written consent:

- a permit any other third party to erect any sign, name plate, signboard or advertising device of any description on or to the exterior of the Building or on the Land; or
- b grant naming rights entitling any other tenant or occupier of the Building or any other third party to name the Building.

The Tenant will not unreasonably or arbitrarily withhold its consent where such sign, name plates, signboard or advertising device, and/or the name of the Building, does not:

- c conflict with the signage of the Tenant; and
- d have or is not likely to have a detrimental effect on or be inconsistent with or incompatible with the public image of the Tenant or the Tenant's use and enjoyment of the Premises and the Building.

#### 17 Tenant's aerials, microwave dishes and transmitters

17.1 For the purposes of clause 17 and 18 'Equipment':

- a means aerials, microwave dishes, electronics, and telecommunications and other equipment, installed by the Tenant on the roof; and

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- b includes associated wires, ducts and cabling installed by the Tenant on the roof or in the walls of the Building for the purposes of operating the Equipment.
- 17.2 The Tenant will, at no cost to the Tenant, have the rights to access and the use of those parts of the Building (including the roof and walls of the Building) and the Land which the Tenant needs in order for the Tenant to locate any Equipment in or on the Building so as to enable the Tenant to undertake its business use and enjoy the Tenant's rights under this lease.
- 17.3 The Tenant will not be liable to pay rent for its rights pursuant to this clause 17 nor will these rights be treated as an enhancement for rent review purposes.
- 17.4 The Tenant will at its cost:
- a provide the Landlord with a plan for cabling required in relation to installing the Equipment;
  - b obtain the Landlord's approval to the plan and to the size, specifications and locations of the Equipment; and
  - c obtain and maintain any consents required by any Authority for the Equipment.
- 17.5 The Tenant will at its cost:
- a comply with all laws in relation to the installation and operation of the Equipment;
  - b make good any resulting damage to the Building as a result of the installation of the Equipment;
  - c access the location of the Equipment by the route approved by the Landlord; and
  - d maintain the Equipment in good, proper and safe order and condition.

## 18 Electromagnetic and harmonic interference

- 18.1 For the purposes of this clause 18:

**'Interference'** means any disturbance or interference by electromagnetic, microwave, electronic, harmonic, radio or other transmissions or emissions that interferes with the operation of the Tenant's electronic or other equipment in the Premises (including but not limited to the Equipment).

- 18.2 Without limitation to the Building Performance Specification, the Landlord acknowledges that it is essential to the Tenant that there is no Interference with the Tenant's use of the Premises and the Tenant's operations and equipment in the Premises and the Building (including the Equipment).
- 18.3 The Landlord will ensure that there is no Interference (including any electromagnetic, microwave, electronic, harmonic, radio or other transmissions or emissions) from the Building or the Land which may in any way impair or disturb the Tenant's operations in the Premises.

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- 18.4 The Landlord will not permit, without the prior written consent of the Tenant (which may be withheld at the Tenant's sole option), any licensee or other person to locate or operate any Equipment on the roof or the interior or the exterior of the Building on the Land which may cause any Interference or which may in any way impair or disturb the Tenant's operations in the Premises.
- 18.5 Notwithstanding any consent given by the Tenant pursuant to clause 18.4, the Landlord will remain responsible for, and will fully indemnify the Tenant from and against, all damage, loss, disturbance, costs, changes to expenses of whatever nature and how so ever arising which are suffered or incurred by the Tenant in consequence of, or arising from, the Landlord permitting any person to carry out any of the activities detailed in clause 18.4.

### 19 Tenant additions and alterations

- 19.1 The Tenant will not make any alterations or additions to the Premises without first supplying the Landlord with plans and specifications of the proposed alterations or additions to the Landlord for consent (such consent to be at the Landlord's cost).
- 19.2 The Landlord will not, as a term of the Landlord's consent required pursuant to clause 19.1, require the Tenant's compliance with any redecoration, make good, or any other reinstatement obligations to the Premises, other than the Tenant's compliance with the provisions of clauses 20.1 to 20.3 (as applicable). The provisions of clauses 20.1 to 20.3 will not be deemed to be a valid reason for the Landlord to withhold its consent pursuant to clause 19.1.
- 19.3 Where the Tenant carries out any building work (either as part of its fitout or in the course of making alterations to the Premises or the Building), then the Tenant will at all times comply with the requirements of the Building Act 2004, the then current building code pursuant to that Act and the provisions of any building consent issued under that Act. Such compliance will only be required in so far as any legislative or other requirements relate specifically to the Tenant's actual fitout or alterations to the Premises (**Actual Tenant's Works**).
- 19.4 Notwithstanding anything to the contrary, if any work is required to the Premises or to the Building in order to ensure that on completion of the Actual Tenant's Works the Premises or the Building meet, or will meet, the requirements of the Building Act 2004 then:
- a to the extent that the work required is as a direct result of the Actual Tenant's Works, then the Tenant will at its cost carry out such work to the Premises; and
  - b to the extent that the required work relates to parts of the Building and the Land other than the Premises, then the Landlord will at its cost carry out such work;
- 19.5 Where the use of the Building or alterations to the Building including the Premises by the Landlord or by any previous tenant, licensee or other occupier did not comply with the requirements of the Building Act 2004 or the then current building code pursuant to that Act, and as a result of such non-compliance the Tenant incurs additional costs, losses and expenses in carrying out the Actual Tenant's Works, then the Landlord will reimburse the Tenant for such additional costs, losses and expenses.

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#### **20 Removal of Tenant's fixtures, fittings and chattels**

- 20.1 Notwithstanding anything to the contrary, prior to the expiration of the term or within a reasonable period following any earlier determination of the term (including any date(s) of partial surrender or relinquishment provided for in this lease), the Tenant may, at the Tenant's sole option, but will not be required by the Landlord to:
- a leave all or part (as applicable) of the Premises and the Building (including its services) as they then are and in a clean and tidy condition;
  - b leave all or part of the Tenant's partitions, alterations, equipment, wiring, chattels, fixtures, fittings and improvements then in, on or attached to the Premises, or any surrendered part of the Premises (as applicable) in their then existing condition; or
  - c remove all or part of the Tenant's (or any prior tenant's) partitions, alterations, equipment, wiring, chattels, fixtures, fittings and improvements in, on or attached to all or part of the Premises in which event the Tenant will make good any damage caused to any parts of the Premises affected by any such removal (except where clause 23.10 applies).
- 20.2 Any of the Tenant's (or any prior tenant's) property left in, on or attached to the Premises or any part of the Premises (as applicable) pursuant to clause 20.1:
- a for more than 10 Working Days; or
  - b following the expiration of a reasonable period where clause 23.10 applies;
- after the expiration or any earlier or partial determination of the term (if and as applicable) will be deemed to have become the property of the Landlord, at no cost to the Landlord.
- 20.3 The Landlord will have no further claim whether at law, in equity or otherwise against the Tenant for any matter arising from any such removal, leaving, non-redecoration or abandonment of the Tenant's partitions, alterations, equipment, wiring, chattels, fixtures, fittings, improvements and the Premises provided that the Tenant complies with clause 20.1.
- 20.4 Notwithstanding anything to the contrary, at the expiry of the term or any earlier surrender, partial surrender or other date of relinquishment of all or part of the Premises, the Tenant is not obligated to paint or redecorate or replace floor coverings in any part of the interior of the Premises.

#### **21 Compliance with legislation**

##### **Landlord's compliance obligations**

- 21.1 The Landlord will, at its cost, comply with all statutes, ordinances, regulations, bylaws, requisitions, notices and the requirements of all competent Authorities relating to the Building or the Premises including any notice or requisition issued under the Resource Management Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or any regulation or code made under any of those Acts or like legislation except in those cases where this lease expressly places the responsibility and costs for such works on the



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Tenant. The Tenant will also comply with the reasonable requirements of the Landlord's building health and safety plan (if provided).

#### **Tenant's compliance obligations**

21.2 The Tenant will comply with:

- a the provisions of all statutes, ordinances, regulations and by-laws; and
- b the provisions of all licences, requisitions and notices which are issued by any competent Authority or person;

in respect of the use of the Premises by the Tenant except as is otherwise provided in this clause 21 and this lease.

21.3 Notwithstanding anything to the contrary, the Tenant will not be required to make any structural repairs or alterations or any other alterations or repairs to the Premises or the Building (including the Building Services and the Landlord's fixtures and fittings) other than those required by reason of:

- a any change of use of, or alteration to, the Premises which is initiated by the Tenant; or
- b the number or sex of the persons employed on the Premises by the Tenant.

#### **Smoke Free Environments Act 1990**

21.4 Each party will comply with the provisions of the Smoke Free Environments Act 1990 and:

- a the Landlord will use its best endeavours to designate the Building a smoke free area and will use all reasonable endeavours to enforce such smoke free status; and
- b the Tenant will use all reasonable endeavours to ensure that its employees comply with the smoke free status of the Building and only smoke in areas that are designated by the Landlord as smoking areas (if any).

## **22 Insurance**

#### **Landlord will insure**

22.1 The Landlord will at all times during the term keep and maintain the Building insured for the cover set out in Schedule 1, 17 on a full replacement and reinstatement (including loss, damage or destruction of windows and other glass) or on a indemnity basis except where clause 22.2 applies.

22.2 If at any time the Landlord is unable to obtain insurance on a full replacement and reinstatement basis for any or all of the risks set out in Schedule 1, 16 because such insurance:

- a is not available for the Building; or
- b is only available at a cost or on terms that are unacceptable to the Landlord;

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then the Landlord will keep and maintain the Building insured for the cover set out in Schedule 1, 16. The Landlord will provide the Tenant with evidence that the Landlord is unable to insure the Building in accordance with clause 22.1.

- 22.3 At each anniversary of the commencement date, or at any time upon the receipt of a written request from the Tenant, the Landlord will promptly supply the Tenant with:
- a evidence, including a certificate as to currency furnished by the Landlord's insurer, that the current insurance cover required by this clause 22 is held by the Landlord; and
  - b confirmation that all insurance premiums due have been paid by the Landlord.

#### **Tenant will insure**

- 22.4 The Tenant will keep current at all times during the term a public liability insurance policy applicable to the Premises and the business carried on from the Premises for an amount not less than \$10 million (being the amount which may be paid out arising out of any one single accident or event).
- 22.5 The Tenant will, if requested by the Landlord from time to time, supply the Landlord with the certificate of currency for that policy.

#### **Tenant not to void insurances**

- 22.6 The Tenant will not carry on or allow upon the Premises any trade or occupation or allow to be done any act or thing which the Tenant knows:
- a will make void or voidable any policy of insurance on the Building and the Land; or
  - b may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable, the Tenant will have first obtained the consent of the Landlord and paid the Landlord the amount of any such increased or extra premium as may be payable.
- 22.7 The carrying on by the Tenant in a reasonable manner of the business use, or of any use to which the Landlord has consented, will be deemed not to be a breach of clause 22.6.

#### **When Tenant to have benefit of Landlord's insurance**

- 22.8 Sections 268 to 272 of the Property Law Act 2007 apply to this lease. Accordingly, where the Premises, the Building or the Land are damaged or destroyed by one or more of the following events:
- a fire, flood, explosion, lightning, storm, earthquake or volcanic activity; or
  - b the occurrence of any other peril against the risk of which the Landlord is insured or has covenanted with the Tenant to be insured;

then except as provided for in clause 22.10:

- c the Landlord must not require the Tenant to:
  - i meet the cost of making good the destruction or damage; or

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- ii indemnify the Landlord against the cost of making good the destruction or damage;  
or
    - iii pay damages in respect of the destruction or damage; and
  - d the Landlord must indemnify the Tenant against the cost of carrying out any works to make good the destruction or damage if the Tenant is obliged by the terms of this lease to carry out those works.
- 22.9 Clause 22.8 applies even though an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the Tenant or a person for whose acts or omissions the Tenant is responsible (**Tenant's Agent**), subject always to the Landlord's rights under section 270 of the Property Law Act 2007.
- 22.10 Clause 22.8c does not excuse the Tenant from any liability to which the Tenant would otherwise be subject, and the Landlord does not have to indemnify the Tenant under clause 22.8d, if and to the extent that:
- a the destruction or damage was intentionally done or caused by the Tenant or the Tenant's Agent; or
  - b the destruction or damage was the result of an act or omission by the Tenant or the Tenant's Agent that:
    - i occurred on or about the Premises or on or about the whole or any part of the Land; and
    - ii constitutes an imprisonable offence within the meaning of the Summary Proceedings Act 1957; or
  - c any insurance moneys that would otherwise have been payable to the Landlord for the destruction or damage are irrecoverable as a direct result of an act or omission of the Tenant or the Tenant's Agent.

## 23 Damage to or destruction of Premises

### Total destruction

- 23.1 If the Premises or any portion of the Building is destroyed or so damaged as to render the Premises untenable then the term will at once terminate from the date of destruction or damage.

### Partial destruction

- 23.2 Subject to clause 23.5, if the Premises or any portion of the Building is damaged but not so as to render the Premises untenable then the Landlord will with all reasonable speed expend all of the insurance moneys received by the Landlord in respect of the damage towards repairing such damage or reinstating the Building and the Premises.
- 23.3 Any repair or reinstatement may be carried out by the Landlord using such materials, form of construction and according to such plans as the Landlord thinks reasonably fit subject to the Tenant's consent (not to be unreasonably or arbitrarily withheld). Any such repair or

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reinstatement will be sufficient so long as it is reasonably adequate for the Tenant's use, enjoyment and occupation of the Building and the Premises provided that the repaired and reinstated Building, Building Services and the Premises will be of no lesser quality, standard and usefulness to the Tenant than existed prior to being damaged.

23.4 The whole (or a fair proportion, having regard to the nature and extent of the damage and the extent to which the Tenant can lawfully conduct its business from the Premises) of the rent shall cease to be payable for the period starting on the date of the damage and ending on the date when the repairs and reinstatement have been completed and the Tenant can lawfully occupy all the Premises.

23.5 If:

- a any necessary permit or consent is not obtainable; or
- b the insurance moneys received by the Landlord, through no fault of the Landlord, will be inadequate for the repair or reinstatement of the Building and the Premises and the Landlord elects not to provide the requisite additional funding; or
- c the Landlord has not, or the Tenant can at any time establish with reasonable certainty that the Landlord will not have, repaired or reinstated the Building and the Premises in accordance with clause 23.2 within 6 months or more of the date of damage;

then either party may at any time thereafter by notice in writing to the other party terminate this Lease. The term shall terminate upon service of such notice on that other party.

23.6 For the purposes of this clause 23, the term '**insurance moneys received**' means the insurance moneys paid out or agreed to be paid out by the Landlord's insurer (whether to the Landlord, the Landlord's mortgagee or any other party) plus an amount equal to the applicable excess.

#### **Emergency**

23.7 If as a result of an Emergency the Tenant is unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises (for example) because:

- a access to the Premises, or their use, is not feasible or suitable for health and safety reasons or because of physical impediments to access;
- b the Premises are situated within a prohibited or restricted access cordon;
- c the Premises are unable to be used pending the assessment or completion of structural engineering or other reports and appropriate certifications that the Premises are fit for use;
- d access to or occupation of the Premises is prohibited or restricted by civil defence, national, territorial, defence, police or other emergency authorities; or
- e access to or occupation of the Premises is not feasible as a result of the suspension, dislocation or unavailability of services such as energy, water, sewerage or air conditioning;

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then the Tenant's obligations under this lease will be suspended and the whole (or a fair portion, having regard to the extent to which the Tenant can lawfully conduct its business from the Premises) of the annual rent will cease to be payable for the period starting on the date when the Tenant became unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises (as the case may be) and ending on the date when such inability ceases. This clause shall apply regardless of whether or not the Premises or the Building are damaged.

- 23.8 If as a result of an Emergency the Tenant is, or can at any time establish with reasonable certainty that the Tenant will be, unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises for a period of more than 6 months from the date of the Emergency, the Tenant may by notice in writing to the Landlord terminate this Lease. The Lease shall terminate upon service of such notice on the Landlord.

#### **Termination**

- 23.9 Any termination pursuant to this clause 23 will be without prejudice to the rights of either party against the other in relation to any breach prior to the date of damage or destruction.
- 23.10 If the lease is terminated pursuant to this clause 23:
- a the annual rent shall cease to be payable as from the date of such damage or destruction; and
  - b any annual rent which the Tenant has paid past the date of such damage or destruction shall be promptly refunded by the Landlord to the Tenant.
- 23.11 Notwithstanding any termination of this lease pursuant to this clause 23:
- a the Tenant will be entitled to remove all or any of its fixtures, fittings and chattels from the Premises within a reasonable period following such termination;
  - b if required by the Tenant, the Landlord will provide with Tenant with all reasonable assistance to do so including gaining access to the Premises; and
  - c the Tenant will be relieved of any obligations pursuant to clause 20.1c to make good any damage caused by the removal of its fixtures, fittings and chattels from the Premises.
- 23.12 Notwithstanding anything to the contrary, no payment of the annual rent by the Tenant at any time or any agreement by the Tenant as to an abatement of the annual rent will prejudice the Tenant's rights, pursuant to this clause 23, to:
- a assert that this lease has terminated;
  - b exercise a right of termination or cancellation;
  - c claim an abatement of the annual rent; or
  - d claim a refund of any annual rent paid for any period beyond a termination or in respect of which an abatement applies or should, by the terms of this lease, have applied.

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#### **24 Re-entry**

- 24.1 Subject to clause 24.2 and Part 4 Subpart 6 of the Property Law Act 2007, the Landlord may re-enter the Premises at the time or at any time thereafter if:
- a the annual rent is in arrears 10 Working Days after any of the rent payment dates; or
  - b the Tenant breaches any covenant or agreement on the Tenant's part expressed or implied in this lease and has not remedied it within a reasonable time after the Landlord has given written notice to the Tenant requiring that breach to be remedied.

The term will terminate on such re-entry, but without prejudice to the rights of either party against the other arising prior to such re-entry.

- 24.2 For so long as a Crown Organisation is the Tenant in possession then the Landlord will not re-enter the Premises.

#### **25 Arrears of annual rent**

- 25.1 The acceptance by the Landlord of arrears of annual rent will not constitute a waiver of the Tenant's continuing obligation to pay the annual rent.

#### **26 Quiet enjoyment**

- 26.1 The Tenant will be entitled to quietly and peaceably hold and enjoy the Premises throughout the term without any interruption by the Landlord, persons under the control of the Landlord or any person claiming under the Landlord.

#### **27 Assignment or subletting**

- 27.1 The Tenant will not assign, sublet or otherwise part with the possession of the Premises, or any part of the Premises, or all or any of the Carparks without first obtaining the written consent of the Landlord. The landlord will not unreasonably withhold consent but consent is not unreasonably withheld if the other tenant in the Building remains in the Building. The Landlord will give its consent if the following conditions are fulfilled:
- a The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (or in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable, responsible and has (or have) the financial resources to meet the Tenant's obligations under this lease or in the case of a sublease, the subtenant's obligations under the sublease;
  - b All annual rent and other moneys payable have been paid;
  - c There is no significant subsisting breach of any of the Tenant's obligations under this lease;
  - d In the case of an assignment, a deed of covenant in the customary form approved or prepared by the Landlord is duly executed by the Tenant and delivered to the Landlord;
  - e The Tenant will pay the Landlord's reasonable and proper costs in respect of the approval or preparation of any deed of covenant or guarantee, and all reasonable fees

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and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee, subtenant or guarantor. These costs will only be payable by the Tenant if the proposed assignment or subletting proceeds.

- 27.2 The Landlord will not demand payment of any fine or sum of money in the nature of a fine in relation to such consent.
- 27.3 Where the Landlord consents to a subletting the consent will extend only to the subletting. Notwithstanding anything contained or implied in such sublease, the Landlord's consent will not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 27.4 Where the Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of any of its shares or the issue of new capital where in either case there is a change in the effective management or control of the company, will require the Landlord's consent.
- 27.5 Notwithstanding clauses 27.1 to 27.4, where the Tenant is a Crown Organisation the Tenant may:
- a assign or sublet or otherwise part with possession of all or any part of the Premises or the Carparks to any other Crown Organisation; or
  - b share possession of the Premises or the Carparks with any other Crown Organisation;
- without the consent of the Landlord (unless the consent of the Landlord is required pursuant to clause 13.1) provided that the Tenant gives at least 10 Working Days prior notice to the Landlord.
- 27.6 In the event that the Tenant being a Crown Organisation assigns the Tenant's interest under this lease, then the Tenant will not be liable under the lease beyond the effective date of such assignment, but without prejudice to the Landlord's rights for any prior breach by the Crown as the Tenant.

### 28 Unit titling

- 28.1 The Landlord warrants that as at the commencement date the Land and the Building does not comprise all or part of a unit or strata title.
- 28.2 Notwithstanding anything to the contrary, the Landlord (and any successor or assigns of the Landlord, mortgagee in possession or a purchaser of the Landlord's interest in the Land, the Building or this lease) undertakes to the Tenant that, so long as the Tenant is the Crown, or a Crown organisation, it will not create separate unit or strata titles (whether leasehold or freehold) including under the Unit Titles Act 2012 for any level or part of the Premises, the Building and the Land.

### 29 Carparks

- 29.1 The Landlord agrees that:
- a each of the Carparks will be a single fixed bay and easily accessible; and

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- b the location of the Carparks will remain unvaried during the term.
- 29.2 The Tenant and those for whom the Tenant is responsible may use the Carparks 24 hours a day, 7 days a week, 365 days a year.
- 29.3 The Tenant and those for whom the Tenant is responsible will have all reasonable means of ingress to and egress from the Carparks.
- 29.4 The Tenant grants to the Landlord and the other tenants and licensees of the Building and the Land a licence to pass and repass over the Carparks when they are not in use by the Tenant.
- 29.5 The Landlord grants to the Tenant access to all designated parts of the Building and the Land which are required to enable the Tenant to have vehicular and pedestrian access to and from the Carparks.
- 29.6 The Landlord will ensure that the Carparks are numbered or named in accordance with the Tenant's requirements.
- 29.7 The Landlord will be responsible to maintain adequate lighting for the Carparks and will be responsible for the removal of rubbish and graffiti from the areas on which the Carparks are situated.
- 29.8 The Landlord will keep and maintain the surface of the Carparks sealed and free of potholes and will reseal the surface as reasonably required by the Tenant from time to time.

### 30 Holding over

- 30.1 If the Landlord permits the Tenant to remain in occupation of the Premises after the expiration or sooner determination of the term, then such occupation will be:
  - a a monthly tenancy only;
  - b terminable by 20 Working Days' written notice by either party; and
  - c at the same annual rent payable immediately prior to the expiration or sooner determination of this lease and otherwise on the same terms and conditions (in so far as they are applicable to a monthly tenancy) as are expressed or implied in this lease.

### 31 Suitability

- 31.1 The Landlord warrants as essential terms of this lease that the Building (including the Building Services, the Common Areas and the Premises) is at the commencement date and will for the term remain:
  - a actively maintained by the Landlord, operating and performing properly, reflecting its condition at the lease commencement date;
  - b weatherproof and watertight in all respects, free of contaminants and noxious materials and substances which are a threat to health and safety, and free from any inherent or potential defect;



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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- c watertight, free of any polychlorinated biphenyls, ODP (zero levels), or refrigerant emissions and any other Contamination; and
- d fully compliant with all legislative, competent territorial authority and any other competent person's requirements, including that:
  - i the use of the Premises by the Tenant will comply with the by-laws, ordinances or other requirements of any Authority; and
  - ii a current building warrant of fitness and current compliance schedule(s) pursuant to sections 108 and 110 of the Building Act 2004 (or any equivalent sections) are, and will be, currently held by the Landlord.

#### **Asbestos**

31.2 The Landlord warrants as an essential term of this lease that:

- a the Premises and the Building have no asbestos content; or
- b if the Premises or the Building have any asbestos content, then the Landlord will, at the Landlord's cost in all things, remove or fully encapsulate any asbestos within 20 Working Days of being requested to do so in writing by the Tenant or by such later date as may be agreed between the parties (time being of the essence in all things).

31.3 If the Tenant elects to relocate part or all of its operations from the Premises during the carrying out of any work required pursuant to clause 31.2, the Landlord will pay:

- a the rent for the temporary premises selected by the Tenant;
- b all costs associated with the Tenant's temporary relocation to and from the temporary premises; and
- c any other Tenant costs reasonably incidental to the foregoing;

and the Tenant will continue to pay the annual rent payable under this lease.

31.4 The Landlord acknowledges that the Tenant will not be obliged to reoccupy the Premises until they are certified (to the reasonable satisfaction of the Tenant) by an asbestos testing laboratory to be completely free of all asbestos products and to have an asbestos free air content.

#### **32 No waiver**

32.1 Unless the parties both agree in writing, no condition of this lease will be deemed to have been waived and no breach, delay or detail of this lease will be construed as having been excused. No waiver or failure to act by:

- a the Landlord in respect of any breach of this lease by the Tenant; and
- b the Tenant in respect of any breach of this lease by the Landlord;

will operate as a waiver of another breach.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### 33 Land transfer title and mortgagee's consent

- 33.1 If the Tenant requires this lease to be registered the Landlord will be required to do all acts or things necessary to enable this lease to be registered provided that the Tenant meets the costs of the registration.
- 33.2 The Landlord will supply to the Tenant a copy of the written consent of all mortgagees of the Building or the Land to the terms and existence of this lease.

#### 34 Notices

- 34.1 All notices must be in writing and must be served by one of the following means:
- a in the manner prescribed by sections 354 to 361 of the Property Law Act 2007; or
  - b in all other cases by:
    - i personal delivery;
    - ii posting by registered or ordinary mail;
    - iii email; or
    - iv receipted courier pack.
- 34.2 In respect of the means of service specified in clause 34.1b, a notice will be deemed to have been served:
- a in the case of personal delivery, when received by the addressee;
  - b in the case of posting by mail, on the second Working Day following the date of posting to the addressee's last known address in New Zealand;
  - c in the case of email, when acknowledged by the addressee by return email or otherwise in writing except that return emails generated automatically will not constitute an acknowledgement.
- 34.3 The parties' addresses for the service of notices are as set out in Schedule 1, 18. A party may from time to time, advise the other party in writing of a different physical, postal or email address for the service of notices.
- 34.4 If either party is unaware of the other party's last known address in New Zealand, then any notice placed conspicuously on any part of the premises at the last known address of the other party, will be deemed to have been served on the other party on the day on which it is affixed.
- 34.5 A notice will be valid if given by any authorised representative of the party giving the notice.
- 34.6 Notices served after 5:00pm on a Working Day, or served on a day which is not a Working Day, will be deemed to have been served on the next succeeding Working Day.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### 35 Resolution of disputes

##### Avoiding disputes

- 35.1 The parties acknowledge and declare the importance to each of them that differences in respect of this lease should be avoided or minimised. The parties agree that in the event of any differences arising each party will discuss them fully and openly and will meaningfully negotiate with the other party with a view to a speedy resolution of such differences.

##### Mediation

- 35.2 Failing satisfactory resolution of such differences within 20 Working Days of the difference or dispute arising any difference or dispute between the parties arising out of this lease may be referred for settlement by mediation by the service of notice in writing to the other party. Such mediation will be based upon a joint written statement setting out the areas at issue.
- 35.3 The mediator will be agreed by the parties or failing agreement will be appointed, at the request of either party, by the President of the Arbitrators and Mediator's Institute of New Zealand as follows:
- a the President will provide the parties with three possible mediators;
  - b the parties may advise the President of any objections or preferences which the parties may have in respect of the mediators; and
  - c the President will have regard to any such objections or preferences when appointing the mediator.
- 35.4 The mediation will be carried out in accordance with guidance and instructions issued by the appointed mediator.
- Acceptance in writing by both parties will be deemed to be the full and final settlement of any dispute or difference between the parties.
- 35.5 The costs of any mediation proceedings will be borne equally between the parties.
- 35.6 If agreement is not reached by mediation then the dispute will be referred to arbitration in accordance with clause 35.7.

##### Arbitration

- 35.7 Any dispute, difference or question arising between the parties:
- a as to the construction of this lease; or
  - b concerning anything contained in or arising out of this lease; or
  - c as to the rights, liabilities or duties of the parties pursuant to this lease; or
  - d as to any other matter touching upon the relationship of the parties in respect of this lease (including claims in tort as well as in contract);

## DOCUMENTS

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

which is not resolved by mediation in accordance with the preceding clauses then the dispute, difference or question will be submitted to the arbitration of one arbitrator who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996.

- 35.8 The arbitrator will be agreed on by the parties or failing agreement within 10 Working Days of the dispute, difference or question being referred to arbitration will be appointed, at the request of either party, by the President of the *Hawke's Bay* Branch of the New Zealand Law Society or the President of the New Zealand Law Society as follows:
- a the President will provide the parties with three possible arbitrators;
  - b the parties may advise the President of any objections or preferences which the parties may have in respect of the arbitrators; and
  - c the President will have regard to any such objections or preferences when appointing the arbitrator.

#### **Exemptions**

- 35.9 The procedures prescribed in the foregoing provisions of this clause 35 will not prevent the Landlord or the Tenant from:
- a taking proceedings for the recovery of any annual rent or any other moneys payable or repayable under this lease which remain outstanding; or
  - b from exercising the rights and remedies (if any), in the event of any default or consequence described in this lease.

### **36 No implied terms**

- 36.1 The covenants, conditions and powers implied in leases by virtue of the Property Law Act 2007 (whether pursuant to Schedule 3 of that Act or otherwise) will not apply to and are excluded from this lease, to the extent legally permissible.
- 36.2 Sections 224 and 266(1)(b) of the Property Law Act 2007 will not apply to and are excluded from this lease. This clause does not affect the operation of sections 225 to 229 of the Property Law Act 2007.

### **37 Interpretation and definitions**

#### **Interpretation**

- 37.1 In this lease:
- a If any provision on strict interpretation is found to be invalid, void, illegal or unenforceable then that provision may be construed in such a reasonable manner as may be necessary to ensure that, for the purposes of this lease, it is not invalid, void, illegal or unenforceable. In the event that any such provision, or part of such provision, cannot be so construed then such provision will be deemed to be void and severable and the remaining provisions of this lease will not be affected or impaired by such a provision.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- b Any reference in this lease to any **Statute** or **Regulation** will be deemed to include all codes, regulations, amendments, revisions, consolidations and replacements made from time to time to, or under, that statute or regulation and any statute or regulation made in substitution.
- c A **person** and a **competent person** will include (as the context requires or admits) any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, or authority, in each case whether or not having a separate legal personality.
- d The clause, subclause, section and the sub-section headings and the contents page appear only for the sake of convenience and will not affect the construction of this lease, but with the exception of:
  - i clause and subclause numbering which will (if the context requires or admits) affect the construction of this lease; and
  - ii if a clause heading in this lease is marked **Not Applicable**, then such clause is not applicable to this lease.
- e Whenever words or terms appear in this lease that also appear in Schedule 1, then those words or terms will mean and include the details supplied after them in Schedule 1.
- f All covenants will be joint and several between multiple parties included within the same definition.
- g Any obligations in this lease not to do something, includes an obligation not to allow or to cause that thing to be done.
- h The **Schedules** of this lease are deemed to form part of this lease.
- i Unless otherwise stated, references to clauses and subclauses are references to clauses and subclauses within the Schedule of this lease in which they appear.
- j Where the context requires or admits, words importing the singular will import the plural, and vice versa. Words importing one gender include the other gender, as the case may require.
- k **Landlord's consent** or **Landlord's approval**:
  - i Where the Landlord's consent or the Landlord's approval is required pursuant to any provisions of this lease, such consent or approval will be promptly given and will not be arbitrarily or unreasonably withheld or delayed or given subject to unreasonable conditions.
  - ii The Landlord must, promptly after its consent or approval has been requested, give the Tenant written notice advising that the Landlord's consent or approval is granted or withheld.

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

- iii The Landlord's consent or approval will be required for each separate occasion, despite any prior consent or approval obtained for any similar purpose on a prior occasion.
- l Where the words **at the Tenant's sole option** or **at the Tenant's sole discretion**, or similar, appear in this lease then such sole option or sole discretion (as applicable) of the Tenant will be construed as being absolute, unfettered, unchallengeable and completely binding on the Landlord.
- m Where the words **including** or **include** appear in this lease then they will be construed without limitation to their generality, as the context requires or admits.
- n The rule of the interpretation known as 'contra proferentum' will not apply to the interpretation of this lease.

#### Definitions

37.2 In this lease, unless a contrary intention appears:

- a **Authority** means any local, regional, territorial, government, statutory or other competent authority having jurisdiction or authority in respect of the Land, the Building, including the Building Services, the Premises, the Common Areas or their use.
- b **Building** (if appropriate and the context admits) means the building(s) referred to in Schedule 1, 2 and includes (whether or not referred to or detailed in full or in part(s) in this lease as applicable):
  - i the Landlord's fixtures and fittings set out in Schedule 3, 1;
  - ii the Building Services;
  - iii any other equipment provided by the Landlord to service the Building and the Premises; and
  - iv any subsequent extensions or additions to the Building by the Landlord which comprise or contain the Premises.
- c **Not used**
- d **Building Services** means the following items located in the Building and any items installed in replacement of or in addition to any such item:
  - i fire detection or protection systems;
  - ii security systems;
  - iii heating ventilation and air conditioning (HVAC) systems;
  - iv water, gas, mechanical, electrical, plumbing and drainage systems;
  - v power generator equipment, switchboards and distribution boards;
  - vi any other systems and services in, on, or to the Premises, the Building or the Land; and

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

all associated plant and equipment including pipework, controls, sensors, monitors, speed drives, valves, strainers, insulation, dampers, associated measuring devices, interconnecting wiring, distributed controllers, and heating/cooling coils. **Building Services** or **services** excludes any services which may be installed or provided by the Tenant in, on or serving the Premises.

- e **Carparks** means the carparks specified in Schedule 1, 4 and also includes motorcycle parking and bicycle parking spaces.
- f **Crown** means the Sovereign in right of New Zealand including all ministers of the Crown, government departments, offices of Parliament, Crown entities (as defined in section 7(1) of the Crown Entities Act 2004) and state enterprises (as defined in the State-owned Enterprises Act 1986).
- g **Crown Organisation** means the Crown and includes but is not limited to all instruments of the Sovereign in right of New Zealand and includes, but is not limited to:
  - i the Executive Government of New Zealand and all Ministers of the Crown;
  - ii the Departments of the Public Service, as set out in Schedule 1 of the State Sector Act 1988;
  - iii all non-public service Departments;
  - iv the Reserve Bank of New Zealand, as continued under section 5 of the Reserve Bank of New Zealand Act 1989;
  - v the entities listed in Schedule 4 to the Public Finance Act 1989; and
  - vi the entities listed in Schedule 1 and Schedule 2 to the Crown Entities Act 2004, together with their subsidiaries under section 8(2) of the Crown Entities Act 2004.
- h **Default GST:**
  - i means any additional GST, penalty, interest, or other sum imposed on the Landlord under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease.
  - ii does not include any sum levied against the Landlord by reason of a default or delay by the Landlord after payment by the Tenant to the Landlord of the GST.
- i **Emergency** means a situation that:
  - i is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic (including any pandemic), failure of or disruption to an emergency service, war, invasion, rebellion, act of terrorism, national emergency; or
  - ii any extraordinary occurrence which may cause loss of life or serious injury, illness or seriously endanger the safety of people or property;

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

and the situation is not caused by any act or omission of the Tenant.

- j **GST** means goods and services tax charged under the Goods and Services Act 1985 and includes any similar tax charged in substitution for that tax.
- k **Land** means the land described in Schedule 1, 1.
- l The **Landlord** and the **Tenant** means (where the context admits and as applicable) the executors, administrators, successors, permitted assigns and any duly authorised employees, agents, contractors and representatives of the Landlord and the Tenant. References to the **parties** will be construed accordingly.
- m **Month** and **monthly** respectively mean calendar month and calendar monthly.
- n **persons under the control of the Tenant** means the Tenant's authorised subtenants and licensees, employees and contractors and any person on the Premises at the request or invitation of the Tenant.
- o **persons under the control of the Landlord** includes the Landlord's employees and contractors and the Landlord's other tenants and licensees in the Building or on the Land and any person in the Building or on the Land at the request or invitation or with the authority of the Landlord or its other tenants.
- p **Premises** means the premises described in Schedule 1, 3 and includes the Landlord's fixtures and fittings set out in Schedule 3, 1.
- q **Premises Condition Report** means the report attached as Schedule 4.
- r **Working Day** means any day of the week except for:
  - i Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day, and the provincial anniversary day as observed at the place where the Premises are situated; and
  - ii any day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year.

### 38 Trustee Limitation

- 38.1 The persons named as trustees of Mana Ahuriri Trust enter into this Deed of Lease only in their capacity as trustees and they have no personal liability under it, and their liability at all times will be limited to the Trust assets, except where their right to indemnity from the Trust assets has been lost or impaired, and in such case that Trustee's liability will be limited to the actual amount which is irrevocable from Trust assets or any other person as a consequence.



**DOCUMENTS**

**10: LEASE FOR CONSERVATION HOUSE, NAPIER**

**Schedule 3      Fixtures and Fittings**

**1      Inventory of Landlord's fixtures and fittings**

<b>Item</b>	<b>Brand / model</b>	<b>Specifications</b>	<b>Other comments</b>
Curtains			
Blinds			
Carpets (and extra carpet squares left over after installation)			
Heat pumps			
Heaters in reception area on wall			
Fixed seating in reception and conference rooms			
Sprinkler system			
Security Alarm system			

**2      Inventory of Tenant's fixtures and fittings**

All fixtures and fittings located in the Premises except for the Landlord's fixtures and fittings detailed in Schedule 3, 1 and includes as at the date of this lease:

<b>Item</b>	<b>Brand / model</b>	<b>Specifications</b>	<b>Other comments</b>
Department of Conservation IT network (incl PABX)			
DOC Furniture			

**3      Inventory of Tenant's items that can pass to Landlord's schedule if required**

<b>Item</b>	<b>Brand / model</b>	<b>Specifications</b>	<b>Other comments</b>
Conference room tables x 2 (1 x large and 1 x small)			
Library room x 2 freestanding long tables			
Reception room x 1 freestanding table and 3 x chairs			
Photocopier room x 1 freestanding long table			

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**10: LEASE FOR CONSERVATION HOUSE, NAPIER**

Stationery cupboard freestanding wooden shelving units			
Fire extinguishers			
Double door cabinet with glass front in upstairs room			
OSPRI's fit-out			

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### 10: LEASE FOR CONSERVATION HOUSE, NAPIER

#### **Schedule 4      Premises Condition Report**

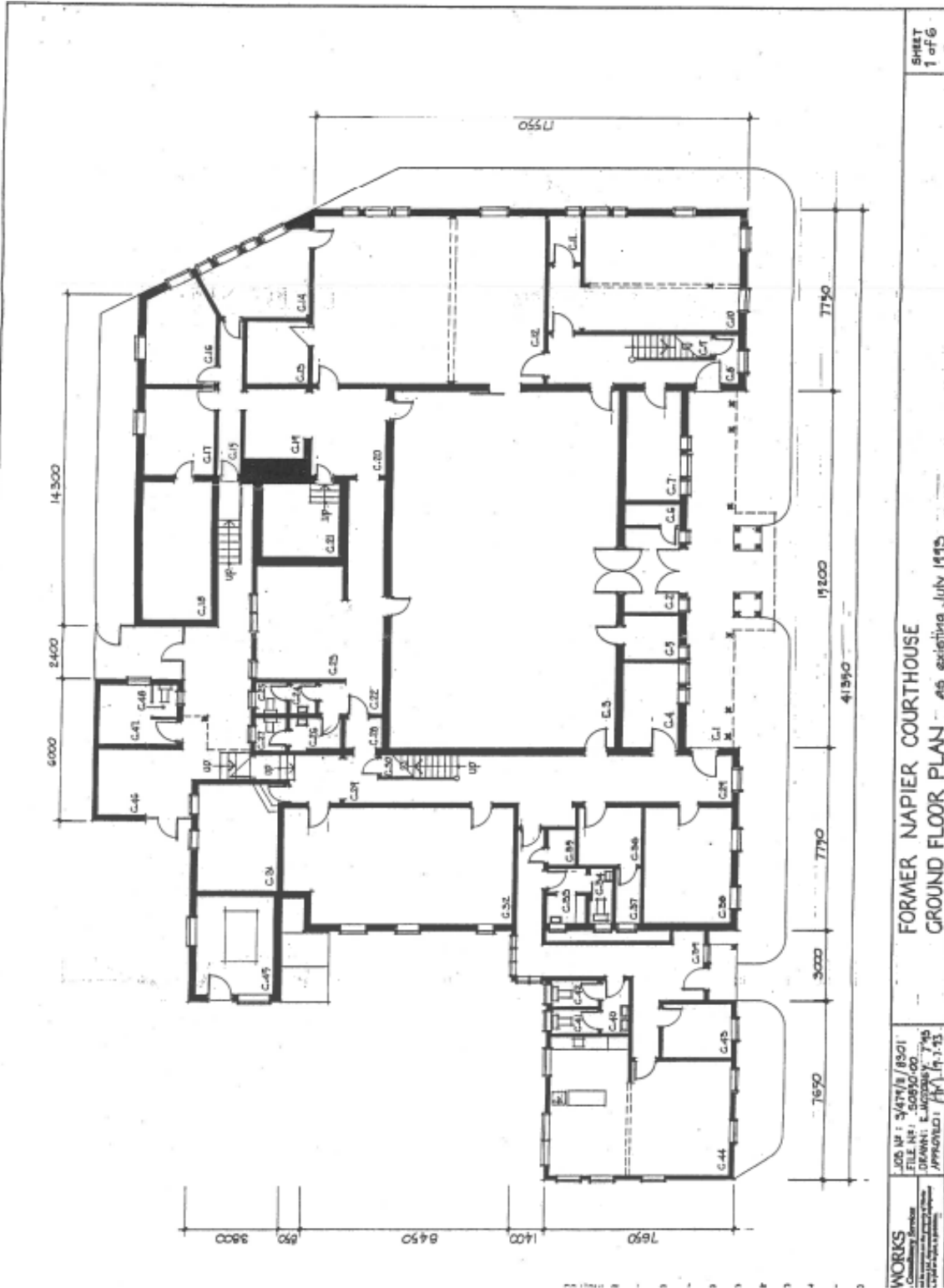
Provided in disclosure information. Updated disclosure information will be provided upon the commencement of the lease.

DOCUMENTS

10: LEASE FOR CONSERVATION HOUSE, NAPIER

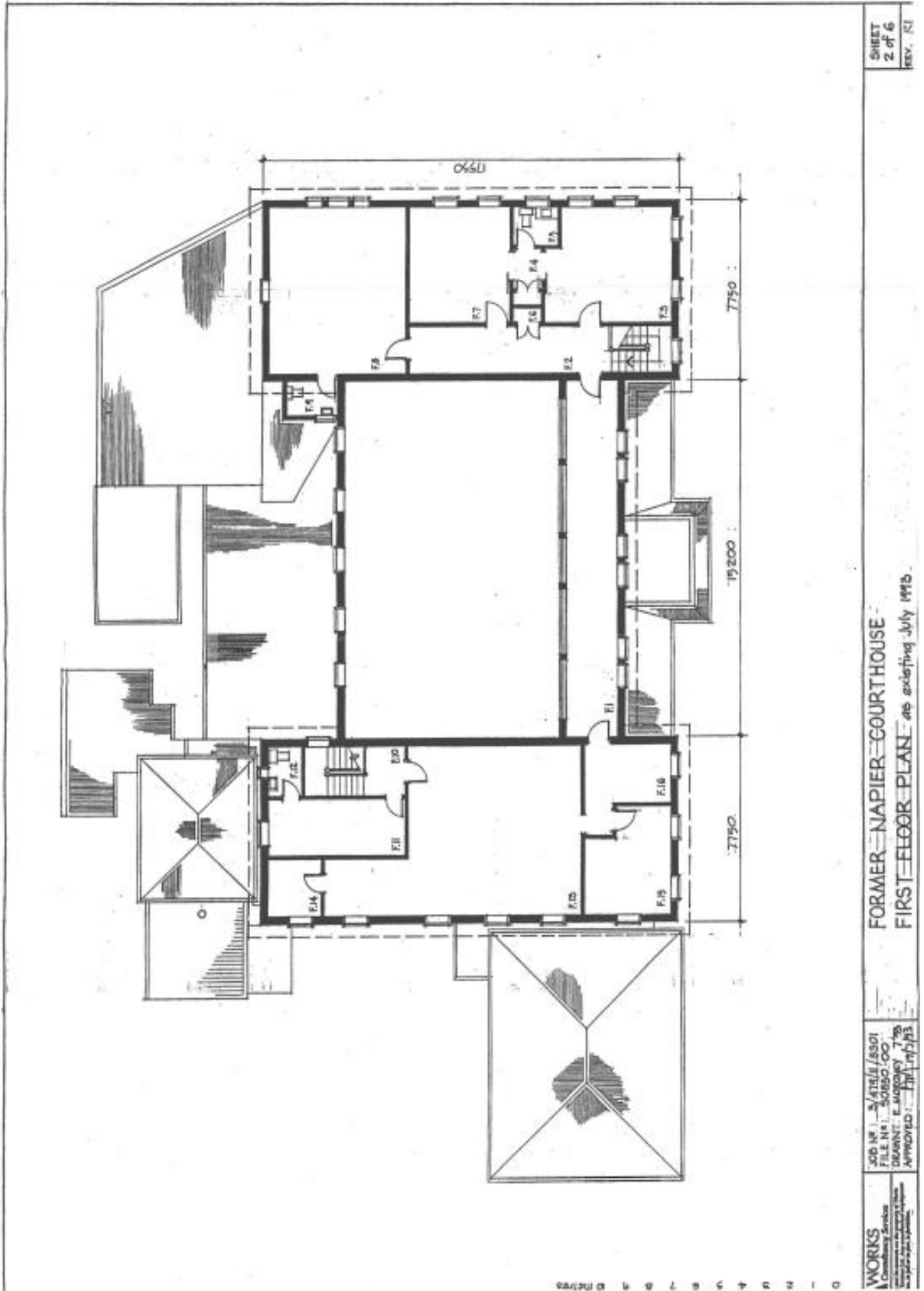
Schedule 5 Plans

Premises plans



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10: LEASE FOR CONSERVATION HOUSE, NAPIER



SHEET  
2 of 6  
REV. R1

FORMER NAPIER COURTHOUSE  
FIRST FLOOR PLAN as existing July 1915

JOB NO. 1-5/4151/1/5301  
FILE NO. 50850-00  
DRAWN: E. MORSEY  
APPROVED: H. J. J. J. J.

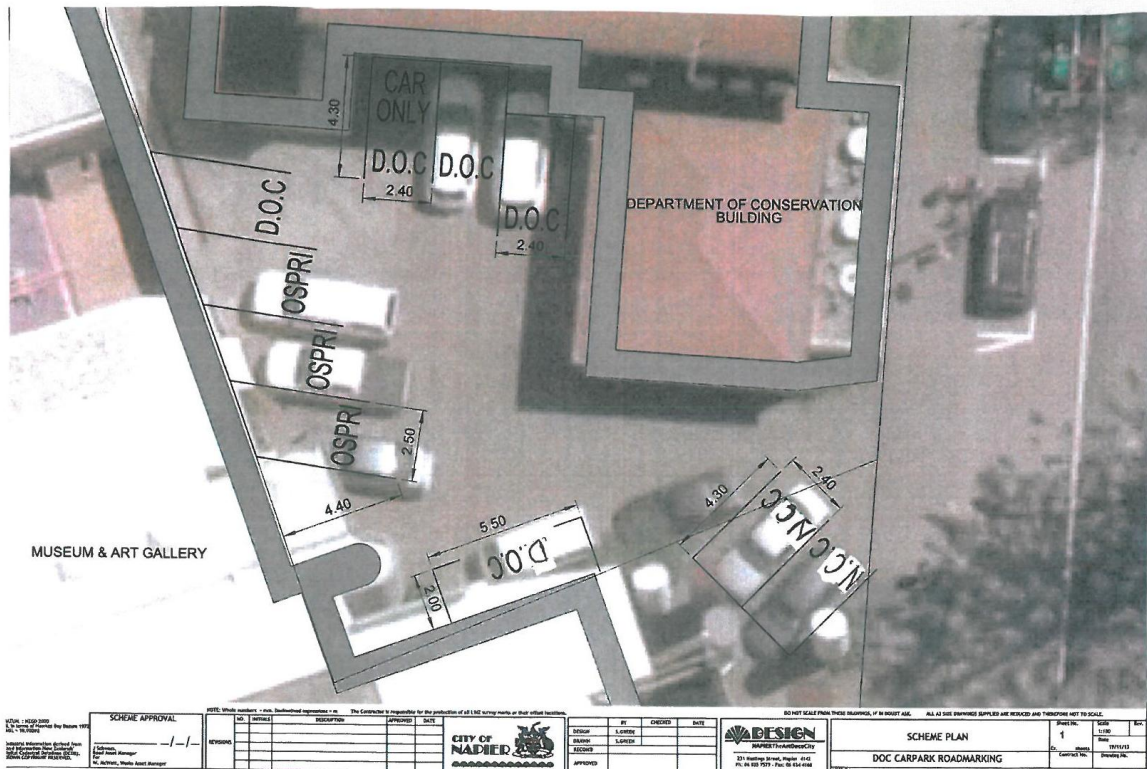
WORKS  
A Consulting Service  
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0 1 2 3 4 5 6 7 8 9 10 meters

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10: LEASE FOR CONSERVATION HOUSE, NAPIER

Carpark plans



## 11 ENCUMBRANCES FOR LICENSED LAND

**DOCUMENTS**

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**11: ENCUMBRANCES: TYPE A ENCUMBRANCE**

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**11.1 Type A Encumbrance**

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DOCUMENTS

11: ENCUMBRANCES: TYPE A ENCUMBRANCE

Approved by Registrar-General of Land under No. 2007/6225

**Annexure Schedule 1**



Easement Instrument Dated  Page  of  pages

**Schedule A**

(Continue in additional Annexure Schedule if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
Right of Way	[to be inserted]	[to be inserted]	In gross

**Easements or profits à prendre rights and powers (including terms, covenants, and conditions)**

Delete phrases in [ ] and insert memorandum number as required.  
Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.

The implied rights and powers are [varied] ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]~~

~~[the provisions set out in Annexure Schedule 2].~~

**Covenant provisions**

Delete phrases in [ ] and insert memorandum number as required.  
Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

[Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952]

[Annexure Schedule 2].

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

## DOCUMENTS

### 11: ENCUMBRANCES: TYPE A ENCUMBRANCE

Approved by the Registrar-General of Land under number 2003/5041

#### Annexure Schedule

Insert type of Instrument

Easement – Type A

Dated

Page

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Continue in additional Annexure Schedule, if required.

#### 1 DEFINITIONS AND CONSTRUCTION

##### 1.1 Definitions:

In this Easement Instrument, unless the context otherwise requires:

["Crown Forestry Licence" means a Crown forestry licence granted under section 14 of the Crown Forest Assets Act 1989;

"Crown Forestry Licensee" means the Licensee under a Crown Forestry Licence over the Grantor's Land and includes the successors and assigns of the Crown Forestry Licensee;]

*[These definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

"Her Majesty the Queen in right of New Zealand acting by and through the Minister of Conservation" includes the servants, tenants, agents, workmen, licensees and invitees of the Minister but does not include members of the general public.

##### 1.2 Construction

In the construction of this Easement Instrument unless the context otherwise requires:

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Easement Instrument;

1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and

1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

#### 2 GRANT OF ACCESS RIGHTS

2.1 The Grantor hereby grants to the Grantee a right of way in gross over that part of the Grantor's Land shown marked [insert details] together with the rights and powers set out in Schedule Four

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

DOCUMENTS

11: ENCUMBRANCES: TYPE A ENCUMBRANCE

Approved by the Registrar-General of Land under number 2003/5041

**Annexure Schedule**

Insert type of Instrument

Easement – Type A

Dated

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*Continue in additional Annexure Schedule, if required.*

of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Easement Instrument.

- 2.2 In consideration of the Grantor agreeing to enter into this Easement Instrument the Grantee shall duly observe the obligations imposed on it under this Easement Instrument.

**3 OBLIGATIONS OF THE GRANTEE**

The rights and powers conferred under clause 2 are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or re-passing over the Grantor's Land:

3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor;

3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any forest produce on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):

- (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or Initial in this box.

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11: ENCUMBRANCES: TYPE A ENCUMBRANCE

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(b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.

- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks PROVIDED THAT the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Easement Instrument that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
- 3.7.2 alter the location of the road; or

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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3.7.3 alter the way in which the run-off from the road is disposed of; or

3.7.4 change the nature of the road surface; or

3.7.5 park or store equipment or material on the Grantor's Land,

without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.

3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.

3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any forest produce on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any forest produce without the prior written approval of the Grantor.

3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

3.11 The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Easement Instrument.

**4 GRANTOR'S RIGHTS**

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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#### 5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the preparation, registration and enforcement of any provision in this Easement Instrument.

#### 6 LICENCE *[this clause will be omitted if there is no crown forestry licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantor's Land and this Easement Instrument is entered into subject to, and does not override the terms of, the Crown Forestry Licence as at the date of this Easement Instrument.

#### 7 ASSIGNMENT

7.1 The Grantee may assign its rights and obligations under this Easement Instrument to any one of the following who acquires land for an estate or interest in land from the Grantee and requires rights under this Easement Instrument as the means of providing reasonable access to that land:

7.1.1 any Crown entity as defined in section 2(1) of the Public Finance Act 1989;

7.1.2 any State enterprise as defined in section 2 of the State-Owned Enterprises Act 1986;

7.1.3 any person who holds the land in trust for the Grantee; or

7.1.4 any other person with the prior consent of the Grantor, which shall not be unreasonably withheld.

7.2 As from the date of assignment the Grantee shall cease to have any liability whatsoever in respect of this Easement Instrument and the Grantor agrees to release the Grantee from all obligations under this Easement Instrument from that date, but only if the assignee enters into a deed of covenant with the Grantor agreeing to be bound by the terms of this Easement Instrument from the date of release of the Grantee.

#### 8 DELEGATION

All rights, benefits, and obligations of a party to this Easement Instrument arising under this Easement Instrument may be exercised by a person duly appointed by that party PROVIDED

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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**THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Easement Instrument.

**9 NOTICES**

9.1 Any notices to be given by one party under this Easement Instrument to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party at:

9.1.1 the Grantor's address as set out in paragraph 1 of the First Schedule; and

9.1.2 the Grantee's address as set out in paragraph 2 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement Instrument which shall remain in full force.

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or Initial in this box.



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Continuation of "Attestation"

Signed for and on behalf of **KAWEKA  
GWAVAS FORESTRY COMPANY  
LIMITED** as Grantor by:

*In the presence of:*

[name of signatory]

Name:

[name of signatory]

Occupation:

Address:

Signed for and on behalf of **HER  
MAJESTY THE QUEEN** as Grantee  
by

**Conservation Services Manager  
(Napier)** acting for the Minister of  
Conservation under delegated  
authority pursuant to sections 57 and  
58 of the Conservation Act 1987 and  
section 41 of the State Sector Act  
1988

*In the presence of:*

Name:

Occupation:

Address:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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SCHEDULE

1 GRANTOR'S ADDRESS:

Kaweka Gwawas Forestry Company Limited  
[insert address details]

2 GRANTEE'S ADDRESS:

Department of Conservation  
[insert address details]

If this Annexure Schedule is used as an expansion of an Instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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**11: ENCUMBRANCES: TYPE B ENCUMBRANCE**

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**11.2 Type B Encumbrance**

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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

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#### PARTIES

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation (the “**Grantor**”)
- 2 **KAWEKA GWAVAS FORESTRY COMPANY LIMITED** (the “**Grantee**”)

#### BACKGROUND

- A. The Grantee wishes to enter upon and cross the Grantor’s Land for the purpose of gaining access to and egress from the Grantee’s Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor’s Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee’s Land on the terms and conditions set out in this Deed.

**BY THIS DEED IT IS AGREED AND DECLARED** as follows:

#### 1 DEFINITIONS AND CONSTRUCTION

##### 1.1 Definitions

In this Deed, unless the context otherwise requires:

“**Commencement Date**” means the date first written above;

“**Deed**” means this deed, the Background and the Schedule annexed hereto;

“**Grantee**” also includes the registered proprietors of the Grantee’s Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

“**Grantor**” also includes the other registered proprietors from time to time of the Grantor’s Land;

“**Grantee’s Land**” means the land described in paragraph 3 of the First Schedule;

“**Grantor’s Land**” means the land described in paragraph 1 of the First Schedule and includes any part thereof;

*[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

["**Crown Forestry Licence**"] means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantee's Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

#### 1.2 Construction

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to clauses and the Schedule are to the clauses and the Schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

#### 2 GRANT OF ACCESS RIGHTS

- 2.1 Pursuant to section [***enter appropriate section and title of settlement legislation***] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor's Land shown marked [ ] on DP [ ] together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.
- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

#### 3 OBLIGATIONS OF THE GRANTEE

The rights and powers conferred under clause 2 of this Deed are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:

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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

- 3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;
- 3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);
- 3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;
- 3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;
- 3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this clause 3.1.5):
  - (a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and
  - (b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames.
- 3.2 Subject to clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee.
- 3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road.
- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational

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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the New Zealand Transport Agency and must be removed when the operation has been completed.

- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land.
- 3.6 Subject to clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee.
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land,
- without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor.
- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor.

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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the Conservation Act 1987 and the Acts in its First Schedule where relevant, and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. Provided that pursuant to section [***enter appropriate section and title of settlement legislation***], this easement will be enforceable in accordance with its terms, notwithstanding Part 3B of the Conservation Act 1987.

#### 4 GRANTOR'S RIGHTS

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

#### 5 COSTS

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

#### 6 LICENCE

*[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

#### 7 REGISTRATION

The parties shall take and do all such acts and things necessary to ensure that this Deed (or an Easement Instrument Grant of Right of Way on substantially the same terms) is registered as soon as the Registrar-General of Land confirms that this Deed, or such an easement instrument, can be registered against the Grantor's Land.

#### 8 DELEGATION

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.



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### 11: ENCUMBRANCES: TYPE B ENCUMBRANCE

#### 9 NOTICES

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

#### 10 SEVERABILITY

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

#### 11 DISPUTES RESOLUTION

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the New Zealand Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;

11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;

11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

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11: ENCUMBRANCES: TYPE B ENCUMBRANCE

**IN WITNESS WHEREOF** this Deed has been duly executed on the date first written above.

*Signed* for and on behalf of **HER MAJESTY THE QUEEN** as Grantor by

\_\_\_\_\_  
**Conservation Services Manager (Napier)** acting for the Minister of Conservation under delegated authority pursuant to sections 57 and 58 of the Conservation Act 1987 and section 41 of the State Sector Act 1988

*In the presence of:*

\_\_\_\_\_  
*Name:*

*Occupation:*

*Address:*

*Signed* for and on behalf of **KAWEKA GWAVAS FORESTRY COMPANY LIMITED** as Grantee by:

\_\_\_\_\_  
*in the presence of:*

\_\_\_\_\_  
[name of signatory]

\_\_\_\_\_  
*Name:*

\_\_\_\_\_  
[name of signatory]

*Occupation:*

*Address:*

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11: ENCUMBRANCES: TYPE B ENCUMBRANCE

FIRST SCHEDULE

1. **GRANTOR'S LAND:**

*[enter details]*

2. **GRANTOR'S ADDRESS:**

Department of Conservation  
*[insert address details]*

3. **GRANTEE'S LAND:**

*[enter details]*

4. **GRANTEE'S ADDRESS:**

Kaweka Gwavas Forestry Company Limited  
*[insert address details]*

**12 DEED OF GRANT OF RIGHT OF FIRST REFUSAL**

## DEED OF GRANT OF RIGHT OF FIRST REFUSAL

*Date:*

### BETWEEN

- 1) **THE TRUSTEES OF THE MANA AHURIRI TRUST** (*PSGE*)
- 2) **HER MAJESTY THE QUEEN** in right of New Zealand by and through the Minister of Finance and the Minister for State Owned Enterprises (*the Crown Shareholder*)

### BACKGROUND

- A PSGE and the Crown are parties to a Deed of Settlement dated [                      ].
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to PSGE a right of first refusal over the Specified Shares.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

**NOW THEREFORE** the parties agree as follows:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the context requires otherwise:

*Acceptance Date* means the date specified in a Disposal Offer, by which PSGE shall accept the Disposal Offer;

*Actual Indication Date* means the date on which PSGE gives a notice under *clause 5.2.2*;

*Assessor* means an independent third party appointed for the purposes of *clause 12*;

*Benchmark Offer* means:

- (a) the Disposal Offer; or
- (b) any written offer subsequently made by PSGE to acquire the Specified Shares in the period referred to in *clause 7.1* (or, where PSGE has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

*Business Day* means a day that is not –

- (a) a Saturday or a Sunday; or
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; or
- (c) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of –
  - (i) Wellington; or
  - (ii) Hawke's Bay;

*Change of Control*, in relation to the Crown Shareholder, means:

- (a) any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the Crown Shareholder; or
- (b) any arrangement entered into by the Crown Shareholder (other than an arrangement between the shareholders of the Company in circumstances where the Crown Shareholder does not have majority control) pursuant to which the Crown Shareholder grants the right to manage, or otherwise to have effective control of the management of, the assets of the Company to a person other than the Company, the Crown Shareholder or another Crown Body,

but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Shareholder;

*Company* means Hawke's Bay Airport Limited;

*Constitution* means the constitution of Hawke's Bay Airport Limited as registered on the companies office from time to time;

*Crown Body* means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Crown Entity Act 2004) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

*Deed of Settlement* means the deed referred to in *Recital A*;

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

*Dispose* means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

*Disposal Notice* means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares given under *clause 4*;

*Disposal Offer* means an offer to sell the Specified Shares to PSGE complying with *clause 5.1*, except that, in the case of an offer provided under *clause 15.1* or *15.2*, the terms and conditions (including price) are to be determined under *clause 15.5*;

*Due Diligence Process* means a process pursuant to which the Crown Shareholder facilitates access to, and inspection of, information about the Company and documentation relating to its activities by prospective purchasers of the Specified Shares;

*Effective Control*, in relation to the Crown Shareholder means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the Crown Shareholder or of any holding company of the Crown Shareholder which:
  - (i) amount to more than 50 percent of the issued shares of the Crown Shareholder (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
  - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the Crown Shareholder; or
  - (iii) enable that person to control the composition of the board of directors of the Crown Shareholder; or
  - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the Crown Shareholder, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the Crown Shareholder for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

*Encumbrance* includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Specified Shares;

*Indication Date* means the date specified in the Disposal Notice by which PSGE is required to respond to the Disposal Notice under *clause 5.2*;

*Mana Ahuriri Participant* means PSGE or any party associated with PSGE or any consortium in which PSGE or any party associated with PSGE is a participant;

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*More Favourable Terms* has the meaning given to it in *clause 1.2*;

*Permitted Change of Control* means Change of Control of the Crown Shareholder or of any holding company of the Crown Shareholder where PSGE has given its prior written approval to the Change of Control;

*Preliminary Disposal Notice* means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares, given under *clause 3*;

*Preliminary Information Package* means:

- (a) in a case where the Crown Shareholder intends to attempt to Dispose of any or all of the Specified Shares pursuant to *clause 4.2*, information which the Crown Shareholder intends to provide to other prospective bidders for the Specified Shares; or
- (b) in a case where the Crown Shareholder does not intend to attempt to Dispose of any or all of the Specified Shares pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (d)*, subject to *clause 4.3.3*;

*Settlement Date* means the date which is 20 Business Days after:

- (a) in the case where PSGE accepts a Disposal Offer or otherwise agrees to purchase the Specified Shares under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Specified Shares;
- (b) in a case where *clause 13.2* applies, the date on which PSGE gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:
  - (i) the date on which PSGE and the Crown Shareholder agree on a price for the Specified Shares under *clause 15.5.1*; and
  - (ii) the date on which the price of the Specified Shares is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Shareholder and PSGE agree;

*Specified Shares* means, subject to *clause 22*, all of the Crown Shareholder's shares in the Company.

#### 1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the 'first-mentioned offer') being on More Favourable Terms than any other Disposal terms, contract or offer (the 'second mentioned offer') means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser's point of view



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than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

#### 1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between PSGE and the Crown Shareholder.

## 2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

### 2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Shareholder shall not Dispose of any or all of the Specified Shares until the requirements in this Deed have been complied with.

### 2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Shareholder of all (but not less than all) of its Specified Shares to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Specified Shares are Disposed takes the Specified Shares subject to the terms of this Deed and first

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enters into a deed of covenant at the Crown Shareholder's expense in favour of PSGE to that effect;

- 2.2.2 any person, if the person to whom the Specified Shares are to be Disposed or the agreement effecting the Disposal is first approved in writing by PSGE or if PSGE has waived its rights under this Deed by notice to the Crown Shareholder;
- 2.2.3 the Company, pursuant to any offer made by the Company to acquire its own shares on a pro rata basis.

### 3 PRELIMINARY DISPOSAL NOTICE

#### 3.1 Crown Shareholder shall give Preliminary Disposal Notice

If the Crown Shareholder decides to attempt to Dispose of any or all of the Specified Shares or otherwise takes any action that indicates that it has formed an intention to Dispose of any or all of the Specified Shares, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to PSGE.

#### 3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Crown Shareholder's intention to Dispose of the Specified Shares; and
- 3.2.3 be accompanied by, or include, an offer to provide to PSGE the Preliminary Information Package, upon receipt by the Crown Shareholder of such confidentiality undertaking from PSGE as may reasonably be required by the Crown Shareholder and the Company to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to PSGE by the Crown Shareholder or the Company in the course of the Crown Shareholder's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
  - (a) preclude disclosure by PSGE of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as PSGE's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Shareholder wishes in good faith to exclude from any sales process relating to the Specified Shares and the Crown Shareholder has given notice to that effect to PSGE and prohibits disclosure to that party by other prospective purchasers; and
  - (b) impose more onerous obligations on PSGE than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Specified Shares.

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#### 3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by PSGE, the Crown Shareholder shall provide the Preliminary Information Package to PSGE.

#### 4 DISPOSAL NOTICE

##### 4.1 Crown Shareholder shall give Disposal Notice

4.1.1 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of any or all of the Specified Shares without compliance with this clause, the Crown Shareholder shall give a Disposal Notice to PSGE. The Disposal Notice shall:

- (a) be in writing;
- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to PSGE a copy of any information which it has provided to any other prospective purchaser of any or all of the Specified Shares and which is not included in the Preliminary Information Package.

##### 4.2 Crown Shareholder may market Specified Shares

4.2.1 Nothing in *clause 4.1* prevents the Crown Shareholder from attempting to Dispose of any or all of the Specified Shares to any person but the Crown Shareholder shall not:

- (a) effect a Disposal of any or all of the Specified Shares to a person other than PSGE except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of any or all of the Specified Shares to a person other than PSGE, unless such contract is conditional upon the Crown Shareholder first complying with this Deed and becoming entitled to Dispose of any or all of the Specified Shares to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of any or all of the Specified Shares means any of:

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- (a) making an offer to Dispose of any or all of the Specified Shares to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, any or all of the Specified Shares; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to any or all of the Specified Shares.

#### 4.3 Information Package

- 4.3.1 If the Crown Shareholder has attempted to dispose of any or all of the Specified Shares pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to PSGE on or before the date of the Disposal Notice the same package of information that was provided to other prospective purchasers of any or all of the Specified Shares.
- 4.3.2 Subject to *clause 4.3.3*, if the Crown Shareholder has not attempted to dispose of any or all of the Specified Shares pursuant to *clause 4.2*, it shall provide to PSGE with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:
  - (a) the financial statements of the Company for its three most recent financial reporting periods;
  - (b) summaries of, or copies of, contracts to which the Company is a party which are material to an assessment of the business of the Company by a prospective purchaser;
  - (c) a description of the major physical assets of the Company; and
  - (d) a description of the Company's business.
- 4.3.3 Nothing in *clause 4.3.2* requires the Crown Shareholder to disclose to PSGE any confidential information which the Crown Shareholder is not entitled to disclose to PSGE or which is not in the Crown Shareholder's possession. However, the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) to PSGE the information referred to in *clause 4.3.2* in a timely manner.
- 4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Shareholder shall:
  - (a) if *clause 4.3.1* applies, provide to PSGE any information which it provides to the other prospective purchasers of any or all of the Specified Shares at or about the same time as it provides it to such other prospective purchasers.

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Nothing in this clause requires the disclosure to PSGE of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or

- (b) if *clause 4.3.2* applies, provide to PSGE such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to PSGE current and up to date.

#### 4.4 Access to Information

The Crown Shareholder may, instead of providing information to PSGE, provide for PSGE to have reasonable access to that information. Where the Crown Shareholder provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Crown Shareholder's obligations under *clause 6*.

## 5 DISPOSAL OFFER

### 5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Shareholder to PSGE to Dispose of the Specified Shares to PSGE, which shall be capable of acceptance by PSGE upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 50 Business Days after the date on which the Disposal Notice was given.

### 5.2 PSGE's Response

PSGE may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Shareholder that it does not wish to purchase the Specified Shares, in which case the Disposal Offer will lapse at the time at which PSGE gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Shareholder that it may wish to purchase the Specified Shares, in which case the Crown Shareholder shall not Dispose of any or all of the Specified Shares to any person other than PSGE unless and until it has complied with the requirements of this Deed.

### 5.3 No Response

If PSGE gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.1* at 5.00pm on the Indication Date.

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#### 6 DUE DILIGENCE PROCESS

##### 6.1 Arrangements for Due Diligence

If PSGE has given a notice under *clause 5.2.2*, the Crown Shareholder shall forthwith make arrangements to permit PSGE to undertake a Due Diligence Process relating to the Company during the period between the Actual Indication Date and the Acceptance Date.

##### 6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 If the Crown Shareholder has attempted to Dispose of any or all of the Specified Shares pursuant to *clause 4.2*, the Due Diligence Process in which PSGE will be permitted to participate will be no more restrictive and no less comprehensive than the process permitted for any other prospective purchasers of any or all of the Specified Shares; or

6.2.2 If the Crown Shareholder has not attempted to Dispose of any or all of the Specified Shares under *clause 4.2*, the Due Diligence Process in which PSGE will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Shareholder intends to permit for other potential purchasers of any or all of the Specified Shares, and will in any event provide for PSGE to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Specified Shares for the purposes of formulating an offer to purchase the Specified Shares.

##### 6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Shareholder to disclose to PSGE information which is not legally entitled to disclose or which is not in the Crown Shareholder's possession, but the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) in a timely manner to PSGE any information which is in the Company's possession that is reasonably required by PSGE for the purposes of formulating an offer to purchase the Specified Shares.

#### 7 NEGOTIATION

##### 7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Shareholder and PSGE shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Specified Shares to PSGE.

##### 7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

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- 7.2.1 Shall not be taken as implying an obligation on:
- (a) PSGE to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
  - (b) the Crown Shareholder to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Shareholder, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Shareholder from any other person; and
- 7.2.2 Shall not require the Crown Shareholder or PSGE to act in a manner which is, respectively, inconsistent with its own commercial interest.

### 7.3 **No obligation to make offer**

Nothing in this Deed imposes an obligation on PSGE to make a counter-offer to the Crown Shareholder in response to a Disposal Offer.

## 8 **ACCEPTANCE OF DISPOSAL OFFER**

- 8.1 If PSGE accepts the Disposal Offer or otherwise agrees to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00pm on the Acceptance Date, then the sale of the Specified Shares shall be completed on the Settlement Date.
- 8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Shareholder. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

## 9 **NON-ACCEPTANCE OF OFFER**

- 9.1 If:
- 9.1.1 PSGE does not accept the Disposal Offer or otherwise agree to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00pm on the Acceptance Date; or
  - 9.1.2 PSGE gives notice to the Crown Shareholder that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which PSGE gave notice declining the Disposal Offer; and
- (b) 5.00pm on the Acceptance Date.

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#### 10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 The Crown Shareholder will be free to Dispose of any or all of the Specified Shares to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of any or all of the Specified Shares is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 The Crown Shareholder may not Dispose of any or all of the Specified Shares:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period,

without again complying with this Deed in full.

#### 11 NOTICE OF TERMS

##### 11.1 Notice of Disposal to third party

If the Crown Shareholder wishes to Dispose of any or all of the Specified Shares pursuant to *clause 10.1*, it shall give notice to PSGE of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Shareholder's compliance with the Deed;

11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to PSGE not less than 20 Business Days before the later of:

(a) the proposed date of execution of the contract relating to the proposed Disposal; and

(b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Shareholder's compliance with this Deed.

##### 11.2 Non-disclosure of terms

11.2.1 The Crown Shareholder may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to PSGE's evaluation of those



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terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.

- 11.2.2 If the Crown Shareholder exercises its right under *clause 11.2.1* it shall give notice to that effect to PSGE at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 PSGE may by notice in writing to the Crown Shareholder, which shall be given not more than 3 Business Days after the Crown Shareholder has given the notice referred to in *clause 11.2.2*, require that the Crown Shareholder refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Shareholder are material.
- 11.2.4 If PSGE gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Shareholder are material, the Crown Shareholder shall disclose those terms and conditions to PSGE forthwith, and the fees and costs of the Assessor shall be borne by the Crown Shareholder. Otherwise, the fees and costs of the Assessor shall be borne by PSGE.

## 12 REFERENCE TO ASSESSOR

### 12.1 Appointment of Assessor

- 12.1.1 If requested by PSGE within 5 Business Days after the notice referred to in *clause 11.1* has been given to PSGE, the Crown Shareholder shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.
- 12.1.2 Subject to *clause 12.6*, PSGE's request under *clause 12.1.1* shall be made by giving notice to the Crown Shareholder of the request, and such notice shall include the name of the person whom PSGE proposes should be the Assessor.
- 12.1.3 If the Crown Shareholder accepts that the person whom PSGE proposes should be the Assessor or the Crown Shareholder and PSGE agree on an alternative, the Crown Shareholder shall forthwith appoint the person nominated by PSGE or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Crown Shareholder does not wish that the person nominated by PSGE be appointed as Assessor, and PSGE and the Crown Shareholder cannot agree on an alternative within 3 Business Days after PSGE's notice has been given to the Crown Shareholder, then:

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- (a) if the Crown Shareholder and PSGE agree on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by that third party; or
- (b) if the Crown Shareholder and PSGE have not agreed on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

#### 12.2 Appointment and Conduct of Assessor

12.2.1 The terms of appointment of the Assessor shall include requirements that:

- (a) the Assessor determines the matters within 5 Business Days after the date of his or her appointment;
- (b) the Assessor shall immediately notify the parties of his or her determination; and
- (c) the Assessor shall keep all confidential information provided to him or her by the Crown Shareholder or PSGE confidential.

12.2.2 The Crown Shareholder shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.

12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in the Assessor's opinion have the effect of extending the 5 Business Day period referred to above.

#### 12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:

- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Shareholder lapsed; and
- (b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

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#### 12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by PSGE if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Shareholder if the Assessor makes a determination under *clause 12.3.2*.

#### 12.5 Binding Decision

Both the Crown Shareholder and PSGE agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

#### 12.6 Appointment of Assessor

The Crown Shareholder or PSGE may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or

12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

### 13 DISPOSAL OF SPECIFIED SHARES TO PARTY OTHER THAN PSGE

#### 13.1 Disposal to third party

If:

13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to PSGE, PSGE has not made a request under *clause 12.1*; or

13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Shareholder may Dispose of any or all of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

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#### 13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, PSGE may, at any time within 5 Business Days after the Assessor has given notice to PSGE of such determination, give a notice to the Crown Shareholder stating that it wishes to acquire the Specified Shares on the terms (including price) referred to in the notice given under *clause 11.1*. If PSGE gives such a notice, then the Crown Shareholder shall be deemed to have entered into a contract with PSGE on the terms referred to in the notice given under *clause 11.1*. PSGE will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Specified Shares on such terms.

#### 13.3 Disposal of Specified Shares if PSGE does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but PSGE does not give notice under *clause 13.2*, then the Crown Shareholder may Dispose of any or all of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

#### 14 WITHDRAWAL BY CROWN SHAREHOLDER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Shareholder from withdrawing a Preliminary Disposal Notice or a Disposal Notice at any time before acceptance by PSGE of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to Dispose of any or all of the Specified Shares again.

#### 15 CHANGE OF CONTROL OF CROWN SHAREHOLDER

##### 15.1 Notice requirement where there is Change of Control

If a Change of Control of the Crown Shareholder occurs then, on becoming aware of that Change of Control, the Crown Shareholder shall immediately give PSGE:

- 15.1.1 notice of the Change of Control;
- 15.1.2 an irrevocable Disposal Offer for the Specified Shares on such terms and conditions (including price) to be determined under *clause 15.5*; and
- 15.1.3 an offer to provide such information as would be included in a Preliminary Information Package if the Crown Shareholder were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

##### 15.2 Consequence of failure to give Disposal Notice

If the Crown Shareholder defaults in giving notice of the Change of Control or a Disposal Offer under *clause 15.1*, PSGE, acting on behalf of the Crown Shareholder, no later than 20 Business Days after the date on which PSGE became aware of the change of control, may prepare a Disposal Offer and give a copy to the Crown Shareholder as if it were prepared and provided by the Crown, which offers to sell the Crown Shareholder's Specified Shares

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to PSGE. Such a Disposal Offer prepared by PSGE shall be unconditional and shall be for all of the Crown Shareholder's Specified Shares on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1.3*.

#### 15.3 Deemed Approval

If PSGE fails to prepare a Disposal Offer and give a copy to the Crown Shareholder within the time limit specified in *clause 15.2*, it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

#### 15.4 Provision of Information and Negotiation

Once PSGE has provided the confidentiality undertaking referred to in *clause 15.1.3*, *clauses 3.3, 4.3.2, 4.3.4(b), 4.4, 6* and *7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1.3* and the period referred to in *clauses 6* and *7* were the period between the date of receipt of the confidentiality undertaking referred to in *clause 15.1.3* and the date on which the Crown Shareholder and PSGE agree on the terms and conditions (including price) under *clause 15.5.1* or PSGE refers the matter to arbitration under *clause 15.5.2(a)*.

#### 15.5 Transfer of Specified Shares

- 15.5.1 If the Crown Shareholder and PSGE agree on all terms and conditions (including price) within 40 Business Days of the date on which PSGE received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the Crown Shareholder under *clause 15.2*, then the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Specified Shares to PSGE on such terms and conditions on the Settlement Date.
- 15.5.2 If the Crown Shareholder and PSGE cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, PSGE may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
  - (b) once the terms and conditions (including price) have been determined by arbitration, PSGE shall, if it wishes to accept the Disposal Offer, give notice to the Crown Shareholder of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after the notice of the determination of the arbitrator has been given to PSGE.
- 15.5.3 If PSGE gives such a notice of acceptance to the Crown Shareholder, the Crown Shareholder shall, subject to the satisfaction of any conditions referred in such terms and conditions, transfer the Specified Shares to PSGE in accordance with those terms and conditions (including price) on the Settlement Date.

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

15.5.4 If:

- (a) at the end of the 5 Business Days period referred to in *clause 15.5.2(a)*, the Crown Shareholder and PSGE have not agreed on all the terms and conditions (including price) under *clause 15.2.1* and PSGE has not referred the matter to arbitration under *clause 15.5.2(a)*; or
- (b) at the end of the 5 Business Days period referred to in *clause 15.5.2(b)*, PSGE has not notified acceptance under *clause 15.5.2(b)*,

PSGE will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Specified Shares by the Crown Shareholder.

## 16 ARBITRATION

### 16.1 Reference to Arbitration

If the parties cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. PSGE may commence the arbitration by giving notice to the Crown Shareholder.

### 16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the Crown Shareholder and PSGE can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the Crown Shareholder and one to be appointed by PSGE. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator, to determine any matter where the two arbitrators do not agree, before they begin to consider the dispute.

### 16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Specified Shares incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

#### 16.4 Parties bound by Award

PSGE and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of PSGE in *clause 15.5.2(b)*.

### 17 PARTICIPATION IN SALES PROCESS

#### 17.1 Mana Ahuriri Participant may participate in sales process

Nothing in this Deed prevents any Mana Ahuriri Participant participating in any sales process relating to the Specified Shares independently of the right of first refusal granted by this Deed.

#### 17.2 Notice

PSGE shall give notice to the Crown Shareholder if any Mana Ahuriri Participant intends to participate in any such sales process. If the Crown Shareholder believes a participant in any such sales process is a Mana Ahuriri Participant, it shall give notice to that effect to PSGE, and PSGE shall, within 5 Business Days of receipt of such notice, advise the Crown Shareholder that the participant is not a Mana Ahuriri Participant. If no such advice is given, the Crown Shareholder may treat the participant as a Mana Ahuriri Participant until it receives a notice from PSGE advising that the participant is not a Mana Ahuriri Participant.

#### 17.3 Modification of right of first refusal

If a Mana Ahuriri Participant in respect of which a notice has been given under *clause 17.2* participates in such a sales process, then:

17.3.1 the Crown Shareholder may enter into a contract to Dispose of the Specified Shares to the Mana Ahuriri Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Mana Ahuriri Participant, the requirements of this Deed will apply to any Disposal by the Crown Shareholder of any or all of the Specified Shares; and

17.3.2 any provision of information to, or the granting of access to information to, the Mana Ahuriri Participant will satisfy the Crown Shareholder's obligation under this Deed to give such information or access to PSGE.

### 18 NO PREJUDICE

If the Crown Shareholder wishes to Dispose of any or all of the Specified Shares pursuant to *clause 10.1* after a sales process in which a Mana Ahuriri Participant has participated, the fact that the Mana Ahuriri Participant has participated in the sales process will not prejudice or affect the Crown Shareholder's obligation under this Deed except as provided in *clause 17*.

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

#### 19 NOMINATION

##### 19.1 PSGE may Nominate

PSGE may nominate:

- 19.1.1 any company or other entity which is directly or indirectly wholly owned by PSGE to take a transfer of the Specified Shares which are to be transferred to PSGE in accordance with this Deed; or
- 19.1.2 either or both of the Napier City Council and the Hastings District Council to a transfer of some (but not all) of the Specified Shares which are to be transferred to PSGE in accordance with this Deed.

##### 19.2 Time Limit for Notice

Any notice given by PSGE to the Crown Shareholder under this *clause 19* shall be given not later than 10 Business Days before the date on which the Specified Shares are to be transferred to PSGE.

##### 19.3 Conditions of Nomination

Any nomination by PSGE under this *clause 19* will be subject to the following conditions:

- 19.3.1 PSGE shall procure that each nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;
- 19.3.2 the nomination will not apply to any of the Specified Shares that are Kiwi shares (as that term is defined in the Constitution);
- 19.3.3 there must be compliance with the Constitution; and
- 19.3.4 in the case of a nomination under *clause 19.1.1*, each of the Napier City Council and the Hastings District Council must agree to the nomination.

##### 19.4 Consequences of nomination

If a nomination is made by PSGE in compliance with the conditions in this *clause 19*:

- 19.4.1 the nominee will be bound by all the terms and conditions on which the Specified Shares are to be transferred, and entitled to the benefit of the Crown Shareholder's obligations to PSGE in respect of the Specified Shares (in both cases, with any amendments as may be reasonably required by the Crown Shareholder to ensure the Crown Shareholder is not made worse off by virtue of the nomination); and



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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

19.4.2 PSGE will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Specified Shares.

#### 20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Shareholder and PSGE under this Deed. However, such time limits may be extended if the Crown Shareholder and PSGE agree in writing to do so.

#### 21 NOT OBLIGED TO TRANSFER A LESSER NUMBER

Nothing in this Deed shall require the Crown Shareholder to transfer less than the number of Specified Shares.

#### 22 CHANGES TO SPECIFIED SHARES

##### 22.1 Subdivision or Consolidation

In the event of a subdivision or consolidation of the Specified Shares, this Deed shall apply to the subdivided or consolidated shares.

##### 22.2 Bonus Issue

In the event that a bonus issue of shares is made in respect of the Specified Shares, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the bonus issue.

##### 22.3 Cash Issue

In the event that the Company makes a pro rata cash issue to its shareholders, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the cash issue.

#### 23 CONSTITUTION

23.1 Any transfer of Specified Shares pursuant to this Deed must be made in accordance with the Constitution.

23.2 The Crown Shareholder will not instigate or support any change to the Constitution of the Company which prejudices the right of first refusal granted under this Deed.

#### 24 NOTICES

##### 24.1 Written Notice

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be:

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

- 24.1.1 in writing; and
- 24.1.2 signed by –
- (a) the person giving it; or
  - (b) in the case of an entity, the authorised signatories for the time being of that entity; and
- 24.1.3 addressed to that party at the street address, postal address, fax number, or electronic address from time to time notified by that party in writing to the other party.
- 24.1.4 Until any other street address, postal address, fax number, or electronic address of a party is notified, they will be as follows:

[CROWN SHAREHOLDER AND PSGE DETAILS]

#### 24.2 **Delivery**

Delivery may be effected by hand, by post with postage prepaid, by facsimile, or by electronic means such as email.

#### 24.3 **Delivered Notice**

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

#### 24.4 **Posted Notice**

A notice or other communication delivered by pre-paid post will be deemed to have been received on the third Business Day after posting.

#### 24.5 **Facsimile Notice**

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

#### 24.6 **Electronic Notice**

A notice or other communication may be sent by electronic means as long as the notice is given with an electronic signature that satisfies section 22(1)(a) and (b) of the Electronic Transactions Act 2002. A notice or other communication sent by electronic means will be

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

#### 25 TERMINATION

25.1 The obligation of the Crown Owner under this Deed in respect of the Specified Shares shall terminate on a Disposal of the Specified Shares:

25.1.1 to PSGE; or

25.1.2 in accordance with *clauses 2.2, 10.1, 12.3.1, 13.1 or 13.3.*

25.2 This Deed will terminate and be of no effect if the PSGE (or the PSGE and its nominee or nominees) elects to purchase the Specified Shares under the deferred purchase right given to the PSGE under the Deed of Settlement.

#### 26 NO ASSIGNMENT

Subject to *clause 2.2.1* and *clause 19.1*, neither party may transfer or assign any rights or obligations in this Deed.

#### 27 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

#### 28 TRUSTEE EXECUTION

Any natural person entering into this Deed as a trustee of PSGE enters into this Deed only in their capacity as trustee of the trust and has no personal liability under this Deed, except to the extent of the assets of the trust or to the extent their right to indemnity from the assets of the trust has been lost or impaired due to their own wilful act or omission.

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12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

**EXECUTED** as a deed on [*date*]

**SIGNED** by  
**THE TRUSTEES OF THE  
MANA AHURIRI TRUST**  
in the presence of -

\_\_\_\_\_  
[*name*]

\_\_\_\_\_  
[*name*]

[*Names of all trustees to be inserted*]

**WITNESS**

\_\_\_\_\_

Name:

Occupation:

Address:

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12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

**SIGNED** for and on behalf of **THE CROWN** by -

The Minister of Finance  
in the presence of -

\_\_\_\_\_  
Hon Simon William English

**WITNESS**

\_\_\_\_\_  
Name:

Occupation:

Address

The Minister for State Owned Enterprises  
in the presence of -

\_\_\_\_\_  
Hon Todd McClay

**WITNESS**

\_\_\_\_\_  
Name:

Occupation:

Address:

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

#### ATTACHMENT NOMINATION DEED (Clause 19)

Date:

#### PARTIES

- 1) [Name of nominee] (the Nominee)
- 2) [CROWN SHAREHOLDER] (the Crown Shareholder)
- 3) THE TRUSTEES OF THE MANA AHURIRI TRUST (PSGE)

#### BACKGROUND

- A The Crown Shareholder and PSGE are parties to a Deed of Grant of Right of First Refusal dated [ ].
- B PSGE has nominated the Nominee to take a transfer of any or all of the Specified Shares, as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Shareholder as set out in this Deed.

**NOW THE NOMINEE AGREES** with the Crown Shareholder and PSGE as follows:

#### 1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

*RFR Deed* means the deed referred to in *Recital A*;

*Specified Shares* means [details to be inserted].

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

#### 2 NOMINEE'S COVENANT

The Nominee covenants with each of PSGE and the Crown Shareholder that it will observe and perform the obligations of PSGE under the RFR Deed and any agreement between the Crown Shareholder and PSGE in respect of the relevant Specified Shares and will be

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### 12: DEED OF GRANT OF RIGHT OF FIRST REFUSAL

bound by the terms of the RFR Deed and such agreement, as if it had been executed by them.

#### 3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notice is: *[Details to be inserted]*

#### 4 WARRANTY

The Nominee and PSGE warrant to the Crown Shareholder that the Nominee is [directly/indirectly] wholly-owned by [PSGE].

#### 5 TRUSTEE EXECUTION

Any natural person entering into this Deed as a trustee of PSGE enters into this Deed only in their capacity as trustee of the trust and has no personal liability under this Deed, except to the extent of the assets of the trust or to the extent their right to indemnity from the assets of the trust has been lost or impaired due to their own wilful act or omission.

**EXECUTED** as a deed on the date first written above.

*[Execution provisions]*

**13 DEED OF COVENANT**



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**13: DEED OF COVENANT**

**KAWEKA GWAVAS FORESTRY COMPANY LIMITED**  
**and**  
**THE CROWN**

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**DEED OF COVENANT**

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**[Date]**

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**13: DEED OF COVENANT**

**DEED OF COVENANT**

**THIS DEED** is made

**BETWEEN**

**KAWEKA GWAVAS FORESTRY COMPANY LIMITED ("KGFC")**

**AND**

**THE CROWN**

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### 13: DEED OF COVENANT

#### BACKGROUND

- A. Under a deed of settlement dated [ ] between Ahuriri Hapū, [AH PSGE] and the Crown (the “**deed of settlement**”), the parties agreed, subject to the terms and conditions specified in the deed of settlement, that the Crown would transfer the licensed land described as Kaweka and Gwavas in the property redress schedule of the deed of settlement to KGFC.
- B. As required by clause 7.10 of the deed of settlement, KGFC enters into this deed with the Crown.

**IT IS AGREED** as follows:

#### 1. COVENANT

- 1.1 KGFC covenants with the Crown that, from the date of this deed, KGFC:
- 1.1.1 is a party to the deed of settlement as if it had been named as a party to the deed of settlement and had signed it;
  - 1.1.2 must comply with all the obligations of KGFC as the licensed land entity under the deed of settlement; and
  - 1.1.3 is bound by the terms of the deed of settlement to that extent.

#### 2. INTERPRETATION

- 2.1 Unless the context requires otherwise:
- 2.1.1 terms or expressions defined in the deed of settlement have the same meanings in this deed; and
  - 2.1.2 the rules of interpretation in the deed of settlement apply (with all appropriate changes) to this deed.

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13: DEED OF COVENANT

**SIGNED** as a deed on

**SIGNED** for and on behalf of **KAWEKA  
GWAVAS FORESTRY COMPANY LIMITED**  
by two directors in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**SIGNED** for and on behalf of **THE CROWN** in  
right of New Zealand by the Minister for Treaty  
of Waitangi Negotiations in the presence of:

\_\_\_\_\_  
Honourable Christopher Finlayson

**WITNESS**

\_\_\_\_\_  
Name:

Occupation:

Address:

**14 CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY  
LIMITED**

# Constitution

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Kaweka Gwavas Forestry Company Limited

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**14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED**

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**14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED**

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

Date:

#### CONSTITUTION OF KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

*Act* means the Companies Act 1993;

*Alternate Director* means a person appointed to be the alternate of a Director pursuant to clause 18.1;

*Board* means Directors who number not less than the required quorum acting together as the board of directors of the Company;

*Business Day* means a day (other than a Saturday or Sunday) on which banks are open for business in Hawkes Bay;

*Class* means a class of Shares having attached to them identical rights, privileges, limitations and conditions;

*Company* means Kaweka Gwavas Forestry Company Limited;

*Constitution* means this constitution, as altered from time to time;

*Director* means a person appointed as a director of the Company;

*Interested* has the meaning set out in section 139 of the Act (and *Interest* shall be interpreted accordingly);

*Ordinary Resolution* means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

*Personal Representative* means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act;

*Representative* means a person appointed as a proxy or representative under clause 14 or a Personal Representative;

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

*Share* means a share issued, or to be issued, by the Company;

*Shareholder* means a person whose name is entered in the Share register as the holder for the time being of one or more Shares;

*Shareholders' Agreement and Trust Deed* means the deed of that name entered into on or about the time of incorporation of the Company between the Shareholders at that time and the Company;

*Special Resolution* means a resolution passed by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the resolution; and

*Unanimous Resolution* means a resolution passed by the affirmative vote of all of the Shareholders.

#### 1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words *written* and *writing* include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word *person* includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (g) words or expressions defined in the Act have the same meaning in this Constitution.

## 2 GENERAL

### 2.1 Shareholders' Agreement and Trust Deed Prevails

This Constitution is subject to the provisions of the Shareholders' Agreement and Trust Deed and, except to the extent that there would be a breach of the Act, the Shareholders' Agreement and Trust Deed overrides this Constitution in the event of any inconsistency between the two.

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 2.2 Companies Act 1993

The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by the Constitution.

#### 3 RIGHTS ATTACHING TO SHARES

The Shares held by a Shareholder confer on the holder the right to:

- (a) vote on a poll at a meeting of the Shareholders on any resolution, including any resolution to:
  - (i) appoint or remove a Director or auditor;
  - (ii) adopt a constitution;
  - (iii) alter the Company's constitution;
  - (iv) approve a major transaction;
  - (v) approve an amalgamation of the Company under section 221 of the Act; or
  - (vi) put the Company into liquidation;
- (b) a share in dividends authorised by the Board equal to the share of each other Shareholder in the dividends;
- (c) a share in the distribution of the surplus assets of the Company equal to the share of each other Shareholder in the surplus assets; and
- (d) receive notice of and attend every meeting of Shareholders.

#### 4 ISSUE, CONSOLIDATION, SUBDIVISION AND REPURCHASE OF SHARES

##### 4.1 Issue of New Shares

Subject to the approval of a Unanimous Resolution, the Board may issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares;
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited or conditional voting rights;
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act.

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 4.2 Consolidation and Subdivision of Shares

The Board may:

- (a) consolidate and divide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

#### 4.3 Bonus issues

The Board may resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
  - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
  - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in paragraph (a)(i),

or partly in one way and partly in the other.

#### 4.4 Shares in lieu of dividends

The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

#### 4.5 Share repurchases

The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

### 5 ALTERATION OF SHAREHOLDERS' RIGHTS

Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which the Shares were issued, must be approved by a Unanimous Resolution.

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 6 SHARE CERTIFICATES

##### 6.1 Issue of Share certificates

The Company may issue Share certificates in respect of all or any Shares and must, within 20 Business Days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act.

##### 6.2 Replacement Share certificates

The Company:

(a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and

(b) shall issue a replacement Share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

#### 7 TRANSFER OF SHARES

##### 7.1 Approval of Unanimous Resolution

A Shareholder can only transfer any or all of its Shares with the approval of a Unanimous Resolution.

##### 7.2 Transferor to remain holder until registration

The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share register.

##### 7.3 Form of transfer

Every instrument of transfer of Shares shall comply with the following provisions:

(a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;

(b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and

(c) where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

##### 7.4 Power to refuse to register

The Board may decline to register any transfer of Shares where:

(a) the Company has a lien on any of the Shares;

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- (b) the Shares are not fully paid up;
- (c) the transfer is in breach of the Shareholders' Agreement and Trust Deed; or
- (d) the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer,

provided that the Board resolves to exercise its powers under this clause within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the Board.

#### 7.5 Registration of transfers

Every instrument of transfer shall be delivered to the Company's Share register, together with the Share certificate (if any) for the Shares to be transferred. If there is no Share certificate for those Shares or if the Share certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

#### 7.6 Power to divide Share register

The Share register may be divided into two or more registers kept in different places.

#### 7.7 Transfer of securities other than Shares

This clause 7 shall also apply to transfers of securities of the Company other than Shares with any necessary modifications.

### 8 EXERCISE OF POWERS OF SHAREHOLDERS

#### 8.1 Methods of holding meetings

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### 8.2 Exercise of power by meeting or written resolution

A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

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#### 8.3 Powers of Shareholders

Unless otherwise specified in the Act or this Constitution any power reserved to Shareholders may be exercised and any approval of Shareholders may be given by Ordinary Resolution.

## 9 MEETINGS OF SHAREHOLDERS

### 9.1 Annual meetings

Subject to clause 9.3, the Company shall hold an annual meeting not later than:

- (a) six months after the balance date of the Company or, if the Company is an *exempt company* (as that term is defined in the Financial Reporting Act 1993) and all the Shareholders agree, ten months after the balance date of the Company; and
- (b) fifteen months after the previous annual meeting.

### 9.2 Time and place of annual meeting

Each annual meeting shall be held at such time and place as the Board appoints.

### 9.3 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

### 9.4 Special meetings

All meetings other than annual meetings shall be called special meetings.

### 9.5 Calling of special meetings

A special meeting:

- (a) may be called by the Board at any time; and
- (b) shall be called by the Board on the written request of a Shareholder.

## 10 NOTICE OF MEETINGS OF SHAREHOLDERS

### 10.1 Written notice

Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company (if any) not less than 10 Business Days before the meeting.

### 10.2 Contents of notice

The notice must state:

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- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Special Resolution or Unanimous Resolution to be submitted to the meeting.

#### 10.3 Irregularity in notice

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

#### 10.4 Adjourned meetings

If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

### 11 CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

#### 11.1 Chairperson of the Board to act

If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that Director must chair the meeting.

#### 11.2 Other chairperson

If no chairperson of the Board has been elected or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairperson.

#### 11.3 Adjourned meetings

The chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.

#### 11.4 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

#### 11.5 No casting vote

The chairperson does not have a casting vote.



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**12 QUORUM FOR MEETINGS OF SHAREHOLDERS**

**12.1 Quorum required**

Subject to clause 12.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.

**12.2 Size of quorum**

A quorum for a meeting of Shareholders is present if two or more Shareholders, or their Representatives, are present.

**12.3 Lack of quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders under section 121(b) of the Act, the meeting is dissolved; or
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the meeting will be adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint until such time as there is a quorum.

**13 VOTING AT MEETINGS OF SHAREHOLDERS**

**13.1 Meetings in one place**

In the case of a meeting of Shareholders held under clause (a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

- (a) voting by voice; or
- (b) voting by show of hands.

**13.2 Audio-visual meetings**

In the case of a meeting of Shareholders held under clause (b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

**13.3 Postal votes**

Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.

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#### 13.4 Number of votes

- (a) Where voting is by voice or a show of hands, every Shareholder present in person or by Representative has one vote.
- (b) On a poll, every Shareholder present in person or by Representative has one vote.

#### 13.5 Declaration of chairperson conclusive

A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 13.6.

#### 13.6 Right to demand poll

At a meeting of Shareholders a poll may be demanded by:

- (a) a Shareholder; or
- (b) the chairperson.

For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

#### 13.7 Time of demand for poll

A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

#### 13.8 Timing of poll

The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

#### 13.9 Counting of votes on poll

If a poll is taken, votes must be counted according to each Shareholder present in person or by Representative and voting.

#### 13.10 Votes of joint holders

Where two or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

#### 13.11 Validity of votes

In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

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#### 13.12 No vote if amounts unpaid

No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other money are due and unpaid.

#### 14 PROXIES AND CORPORATE REPRESENTATIVES

##### 14.1 Proxies permitted

A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

##### 14.2 Form of proxy

A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

##### 14.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is produced before the start of the meeting.

##### 14.4 Validity of proxy vote

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

##### 14.5 Corporate representatives

A body corporate which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A corporate Representative shall have the same rights and powers as if the Representative were a proxy.

#### 15 MINUTES OF SHAREHOLDER MEETINGS

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

#### 16 SHAREHOLDER PROPOSALS

##### 16.1 Notice to the Board

A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

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**16.2 Notice to Shareholders at Company's expense**

If the notice is received by the Board not less than 20 Business Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

**16.3 Notice to Shareholders at proposing Shareholder's expense**

If the notice is received by the Board not less than five Business Days and not more than 20 Business Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

**16.4 Late notice**

If the notice is received by the Board less than five Business Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

**16.5 Proposing Shareholder's right to give written statement**

If the Directors intend that Shareholders may vote on the proposal they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

**16.6 Defamatory, frivolous or vexatious statements**

The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

**16.7 Deposit of costs by proposing Shareholder**

Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

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**17 APPOINTMENT AND REMOVAL OF DIRECTORS**

**17.1 Number**

The number of Directors is three.

**17.2 Initial Directors**

On incorporation of the Company the persons named in the Application for Registration of the Company as the first Directors of the Company shall be deemed to have been appointed pursuant to this Constitution.

**17.3 Appointment and removal**

Each Shareholder may by notice in writing to the Company:

- (a) appoint such number of Directors as is specified in the Shareholders' Agreement and Trust Deed; and
- (b) remove and replace any Director appointed by that Shareholder.

**17.4 Vacation of office**

A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) becomes disqualified from being a Director pursuant to section 151 of the Act;
- (c) resigns from office by notice in writing to the Company; or
- (d) is removed from office pursuant to this Constitution or the Act.

**18 ALTERNATE DIRECTORS**

**18.1 Appointment**

Each Director may from time to time appoint any person to be the Director's Alternate Director. No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

**18.2 Form of appointment and removal**

Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director and countersigned by or on behalf of the Shareholder who appointed the relevant Director.

**18.3 Rights of Alternate Director**

Each Alternate Director will be entitled to:

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- (a) receive notices of all meetings of the Board if the Alternate Director is in New Zealand and the Director for whom the Alternate Director is alternate is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director for whom the Alternate Director is alternate is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

#### 18.4 Remuneration and expenses

Each Alternate Director's:

- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

#### 18.5 Cessation of appointment

An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a director or revokes the appointment; or
- (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director.

## 19 POWERS OF DIRECTORS

### 19.1 Management of Company

The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

### 19.2 Exercise of powers by Board

The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

### 19.3 Delegation of powers

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

### 19.4 Appointment of attorney

The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of

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attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

#### 19.5 Ratification by Shareholders

Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## 20 PROCEEDINGS OF THE BOARD

### 20.1 Methods of holding meetings

A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### 20.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) every Director who is in New Zealand; and
- (b) any Alternate Director who is in New Zealand who is an alternate of a Director who is known to be either outside of New Zealand or otherwise unavailable to attend the meeting.

### 20.3 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

### 20.4 Quorum

A quorum for a meeting of the Board requires at least one Director appointed by each Shareholder to be present.

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#### 20.5 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body, but if and for so long as a Shareholder has no Director appointed by them, the continuing Directors may act for the purpose of summoning a meeting of Shareholders, but for no other purpose.

#### 20.6 Chairperson

The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. If the chairperson cannot attend any particular meeting, the chairperson may designate another person (who must be a Director or an Alternate Director) to act in the chairperson's place. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting and the chairperson has not designated another person to act in his or her place, the Directors present may choose one of their number to be chairperson of the meeting.

#### 20.7 Votes

Every Director has one vote. In the case of an equality of votes, the chairperson will not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution. A Director may exercise a vote for any absent Director appointed by the same Shareholder.

#### 20.8 Resolutions in writing

A resolution in writing, signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors.

#### 20.9 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

#### 20.10 Rights of and representative for Heretaunga Tamatea PSGE

- (a) The provisions of this clause 20.10 apply while the Crown is a Shareholder, despite anything in the preceding subclauses of this clause 20.
- (b) Unless and until the Heretaunga Tamatea PSGE is entitled as a Shareholder to appoint a Director:
  - (i) the Heretaunga Tamatea PSGE must be given the same notice of the meeting or the proposal to pass the resolution as is given to each Director; and



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- (ii) the Heretaunga Tamatea PSGE is to be given the opportunity, through a representative, to attend and speak at the meeting or comment on the resolution before it is passed (but not vote); and
  - (iii) unless the Heretaunga Tamatea PSGE has consented in writing, no irregularity in notice of the meeting can be waived.
- (c) In this clause 20.10, Heretaunga Tamatea PSGE means the post-settlement governance entity for Heretaunga Tamatea.

#### 20.11 Other procedures

Except as set out in this clause 20, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

### 21 DIRECTORS' INTERESTS

#### 21.1 Disclosure of Interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of Interest of directors) but failure to comply with that section does not affect the operation of clause 21.2.

#### 21.2 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a Director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

#### 21.3 Interested Directors may vote

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

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- (a) vote on any matter relating to the transaction;
- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not Interested in the transaction.

## 22 DIRECTORS' REMUNERATION AND OTHER BENEFITS

### 22.1 Remuneration and benefits

The Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

### 22.2 Expenses

Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

## 23 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

### 23.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

### 23.2 Indemnities and insurance

In addition to the indemnity set out in clause 23.1, the Company may:

- (a) indemnify a Director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a Director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a Director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

### 23.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause.

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**24 DIVIDENDS**

**24.1 Power to authorise**

The Board may, subject to the Act and this Constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything which is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

**24.2 Method of payment**

Any dividend or other money payable to a Shareholder may be paid by cheque sent through the post to the registered address of the Shareholder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint Shareholders, cheques may be sent to the registered address of the person first named on the register.

**24.3 Deductions**

The Board may deduct from dividends payable to any Shareholder in respect of any Shares any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

**24.4 Entitlement date**

Dividends and other distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

**24.5 Unclaimed dividends**

Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

**25 NOTICES**

**25.1 Method of service**

All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

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#### 25.2 Joint holders

A notice may be given by the Company to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.

#### 26 INSPECTION OF RECORDS

Except as provided in the Act or unless the Board determines otherwise in any particular case, no Shareholder shall be entitled to:

- (a) inspect any records, books, papers, correspondence or documents of the Company; or
- (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

#### 27 LIQUIDATION

##### 27.1 Distribution of surplus

Subject to the rights of any Shareholders and to clauses 27.2 and 27.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed pro rata among the Shareholders. If any Shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

##### 27.2 Distribution in kind

With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers appropriate; and
- (b) determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.

##### 27.3 Trusts

With the approval of the Shareholders by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

#### 28 METHOD OF CONTRACTING

##### 28.1 Deeds

A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) two or more attorneys appointed by the Company.

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#### 28.2 Other written contracts

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

#### 28.3 Other obligations

Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

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### 14: CONSTITUTION FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### SCHEDULE 1 – CERTIFICATION OPTIONS

This document is the Constitution of Kaweka Gwavas Forestry Company Limited as adopted by the Company by Special Resolution passed on the [ ] day of [ ] 20[ ].

Certified as the Constitution of the Company.

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Authorised Person

**15 SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA  
GWAVAS FORESTRY COMPANY LIMITED**

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15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS  
FORESTRY COMPANY LIMITED

# Shareholders' Agreement and Trust Deed

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Her Majesty the Queen in right of New Zealand

Kaweka Gwavas Forestry Company Limited

The Trustees of the Mana Ahuriri Trust



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**15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS  
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Date:

#### PARTIES

Her Majesty the Queen in right of New Zealand by the Minister for Treaty of Waitangi Negotiations and the Minister for Maori Development (*Crown*)

Kaweka Gwavas Forestry Company Limited (*Company Trustee*)

The Trustees of the Mana Ahuriri Trust, established by trust deed dated [*date*] (*Ahuriri Hapū PSGE*)

#### BACKGROUND

- A The Company Trustee has been established by the Crown and the Ahuriri Hapū PSGE to act as the corporate trustee of a trust holding the Kaweka Forest and Gwavas Forest (and related property) for the benefit of the Beneficiaries on the terms and conditions set out in this Deed.
- B The Crown, the Company Trustee, and the Ahuriri Hapū PSGE wish to record the terms and conditions under which the Trust is constituted and is to be administered.
- C The Crown and the Ahuriri Hapū PSGE also wish to record in this Deed certain agreed terms relating to the management of the Trust, the Trust's property and the Company Trustee.

#### OPERATIVE PART

##### 1 INTERPRETATION

##### 1.2 Defined terms - generally

In this Deed, unless the context otherwise requires:

*Accumulated Rentals* means accumulated rentals relating to the Kaweka Forest Land and Gwavas Forest Land held, prior to settlement on this Trust, under the terms of the forestry rental trust referred to in section 34 of the Crown Forest Assets Act 1989.

*Asset* means each Settlement Asset and any other security, money, property (whether tangible or intangible), right or income of the Trust.

*Auditor* means the Person for the time being holding the office of auditor of the Trust.

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*Authorised Investment* means any of the Settlement Assets and any other property of any nature whatsoever, whether in New Zealand or elsewhere.

*Beneficial Interest* means a percentage share in the total beneficial entitlement of all Beneficiaries in the Trust, being:

- (a) at Settlement, one of the Initial Beneficial Interests; and
- (b) during the Crown Initial Period, subject to adjustment of the Crown's Beneficial Interest under paragraph 6 of Schedule 1 in the event of transfer, to the Heretaunga Tamatea PSGE, of part or all of the Crown Beneficial Interest; and
- (c) from the earlier of the end of the Crown Initial Period and the date upon which the Crown ceases to be a Beneficiary, one of the Beneficial Interests recorded in the Beneficial Interest Register.

*Beneficial Interest Register* means the register of Beneficiaries in the Trust maintained pursuant to clause 11.

*Beneficiary* means each Person for the time being registered in the Beneficial Interest Register under the provisions of this Deed as the holder of a Beneficial Interest and:

- (a) as at the date of this Deed, means the Ahuriri Hapū PSGE and the Crown to whom the Initial Beneficial Interests are issued under clause 6 and 7; and
- (b) includes Persons jointly registered.

*Borrow* means borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments or otherwise howsoever in any currency, and *Borrowing* and *Borrowed* have a corresponding meaning.

*Business Day* has the same meaning as in the Deed of Settlement.

*Crown Beneficial Interest* means the Initial Beneficial Interest issued to the Crown on the Settlement provided that:

- (a) on transfer of part or all of the Crown Beneficial Interest in accordance with paragraph 6 of Schedule 1, that part or all (as the case may be) will cease to be Crown Beneficial Interest and will become an ordinary Beneficial Interest; and
- (b) on redemption of any residue of the Crown Initial Beneficial Interest in accordance with paragraph 8 of Schedule 1, that residue Beneficial Interest will cease to exist.

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*Crown Forestry Licence* has the meaning given to it in section 2 of the Crown Forest Assets Act 1989.

*Crown Initial Period* means the period of 8 years beginning on the Settlement Date.

*Date of Termination* means the date of termination of the Trust determined in accordance with clause 25.

*Deed* means this Shareholders' Agreement and Trust Deed.

*Deed of Settlement* means the deed dated [**date**] between the Crown and the Ahuriri Hapū PSGE in relation to the settlement of certain historical claims.

*Distribution* means, in relation to a Beneficial Interest, the amount of capital or income to be distributed from the Trust Fund to a Beneficiary in respect of such Beneficial Interest.

*Extraordinary Resolution* has the meaning given to it in clause 22.2(b).

*Financial Year* means a period of 12 months ending on 31 March (or such other date as the Company Trustee determines) in each year (or the Date of Termination of the Trust, if earlier) and includes the period commencing on the date of this Deed and ending on the succeeding 31 March.

*Future Treaty Settlement* means a future settlement of historical claims relating to the Treaty of Waitangi between an iwi or group of iwi and the Crown.

*Gross Asset Value* means such sum as is ascertained and fixed by the Company Trustee being the aggregate of:

- (a) the Market Value of the Assets of the Trust;
- (b) any income accrued or payable in respect of the Assets of the Trust but not included in such Market Value.

*Gwavas Forest Land* means the property described as Gwavas in Part 3 of the Property Redress Schedule of the Deed of Settlement.

*Heretaunga Tamatea PSGE* means the post-settlement governance entity for Heretaunga Tamatea.

*Initial Beneficial Interests* means the Beneficial Interests to be created in accordance with clause 6 and 7.

*Kaweka Forest Land* means the property described as Kaweka in Part 3 of the Property Redress Schedule of the Deed of Settlement.

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*Liability* means each liability of the Company Trustee in respect of the Trust (other than to Beneficiaries in their capacity as Beneficiaries under this Deed) which would be classified as such by NZ GAAP but does not include a contingent liability except to the extent that the Company Trustee decides it is appropriate to make an allowance for such contingent liability.

*Major Transaction* means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the Gross Asset Value of the Trust before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets the value of which is more than half the Gross Asset Value of the Trust before the disposition; or
- (c) a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the Gross Asset Value of the Trust before the transaction.

provided that nothing in paragraph (b) or paragraph (c) of the definition of Major Transaction applies to:

- (a) the entry into this Trust Deed or the Settlement; or
- (b) by reason only of the Trust giving, or entering into an agreement to give, a charge secured over Assets of the Trust the value of which is more than half the value of the Assets of the Trust for the purpose of securing the repayment of money or the performance of an obligation.

(In assessing the value of any contingent liability for the purposes of paragraph (c) of this definition of Major Transaction:

- (a) regard must be had to all circumstances that the Company Trustee knows, or ought to know, affect, or may affect, the value of the contingent liability;
- (b) reliance may be placed on estimates of the contingent liability that are reasonable in the circumstances; and
- (c) account may be taken of:
  - (i) the likelihood of the contingency occurring; and
  - (ii) any claim the Company Trustee is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.)

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*Market Value* means the fair market value of any Asset as determined by the Company Trustee.

*New Zealand unit* has the meaning given in section 4(1) of the Climate Change Response Act 2002.

*NZ GAAP* means generally accepted accounting practice as defined in Section 3 of the Financial Reporting Act 1993.

*Person* includes a natural person, a company, a corporation, a corporation sole, a firm, a unit trust, a government or a body of persons (whether corporate or unincorporate).

*Settlement* means the settlement on the Company Trustee on the terms of this Trust described in clause 3.2.

*Settlement Asset* means each item of property that is the subject of the Settlement.

*Settlement Date* has the same meaning as in the Deed of Settlement.

*Settlement Legislation* has the same meaning as in the Deed of Settlement.

*Trust* means the trusts created by this Deed, which will bear the name Kaweka and Gwavas Forest Trust or such other name as is chosen by Unanimous Resolution of the Beneficiaries.

*Trust Fund* means the property for the time being held by the Company Trustee under the Trust and includes, for the time being following the Settlement, the Settlement Assets.

*Unanimous Resolution* has the meaning given to it in clause 22.2(a).

#### 1.2 **Defined terms relating to Crown Beneficial Interest and Crown Initial Period**

Certain defined terms relating to Crown Beneficial Interest and Crown Initial Period are defined in paragraph 1.1 of Schedule 1.

#### 1.3 **Interpretation**

In this Deed, unless the context otherwise requires, references to:

- (a) clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Deed;
- (b) any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;

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- (c) the singular includes the plural and vice versa;
- (d) a person that comprises the trustees of a trust or members of another single collective body means those trustees or members acting jointly and treated as if a single person; and
- (e) parties to this Deed includes their successors and permitted assigns.

The Table of Contents to and headings in this Deed are used for convenience only and do not affect its interpretation in any way.

## 2 ESTABLISHMENT OF COMPANY TRUSTEE AND SHAREHOLDERS' AGREEMENT

### 2.1 Establishment of Company Trustee

The Crown and the Ahuriri Hapū PSGE have established the Company Trustee to acquire and hold the Kaweka Forest Land and Gwavas Forest Land as trustee of the Trust.

### 2.2 Role of Trustee Company

Unless the Beneficiaries decide otherwise by Unanimous Resolution, the Company Trustee cannot undertake any activities other than acting as trustee of the Trust in accordance with this Deed.

### 2.3 Restrictions during Crown Initial Period

During the Crown Initial Period, the consent of the Crown is required under paragraph 9 of Schedule 1 before the Company Trustee takes certain actions.

### 2.4 Agreement of shareholders of Company Trustee

As shareholders of the Company Trustee, the Beneficiaries agree that:

- (a) each shareholder has one vote per share held by the shareholder on any shareholder resolution; and
- (b) the Ahuriri Hapū PSGE has the right to appoint one director and the Crown (or the Heretaunga Tamatea PSGE if the Crown has transferred its Beneficial Interest to the Heretaunga Tamatea PSGE) has the right to appoint two directors; and
- (c) no shareholder can transfer their shares in the Company Trustee except –
  - (i) in the case of a transfer by the Crown to the Heretaunga Tamatea PSGE; and



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- (ii) where required by paragraph 1 of Schedule 2; or
  - (iii) with the unanimous consent of the other shareholders and subject to such conditions as the other shareholders may impose, including the execution by the transferee of a deed under which the transferee binds itself to compliance with the terms of this Deed; and
- (d) except with the unanimous approval of the shareholders (and without prejudice to the Crown's rights under clause 2.3 and paragraph 9 of Schedule 1) –
- (i) the Company Trustee cannot undertake any activities other than acting as trustee of the Trust; and
  - (ii) the Company Trustee cannot issue any shares or options over shares; and
  - (iii) the constitution of the Company Trustee cannot be amended; and
- (e) during the Crown Initial Period, the Heretaunga Tamatea PSGE will, except to the extent entitled as a shareholder to appoint a director, have the right to have a representative to receive notice of and attend and speak, but not vote, at any meeting of directors of the Company Trustee.

## 3 THE TRUST

### 3.1 Appointment of Company Trustee

The Company Trustee is appointed as the trustee of the Trust and agrees to act as trustee for the Beneficiaries to acquire and hold the Assets of the Trust in trust for the Beneficiaries upon and subject to the terms and conditions contained in this Deed.

### 3.2 Kaweka Forest Land, Gwavas Forest Land and Accumulated Rentals

In accordance with the Deed of Settlement, the Crown will settle on the Company Trustee on the terms of the Trust:

- (a) the Kaweka Forest Land; and
- (b) the Gwavas Forest Land; and
- (c) the Accumulated Rentals relating to each of the Kaweka Forest Land and Gwavas Forest Land.

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#### 3.3 Conditional on Settlement Legislation

This Deed and the establishment of the Trust are conditional on the Settlement Legislation coming into force.

#### 3.4 Performance of Deed of Settlement

The Company Trustee will comply with any obligations on the part of the Company Trustee that are referred to in the Deed of Settlement.

### 4 AUTHORISED INVESTMENTS

#### 4.1 Investment in Authorised Investments

The Trust Fund must be invested only in Authorised Investments.

#### 4.2 Settlement Assets

The Company Trustee must place the Accumulated Rentals, upon receipt, in a deposit account with a registered bank and withdraw the deposit only to make the distributions required by clause 8.2.

#### 4.3 Statement of investment policies and objectives

- (a) Subject to clause 4.2, the Company Trustee must invest the Trust Fund in accordance with a statement of investment policy and objectives.
- (b) The Company Trustee must develop, and review annually, such statement.

#### 4.4 Investments for Beneficiaries' benefit

All investments made on behalf of the Trust shall be held by the Company Trustee as the exclusive property of the Trust, and held exclusively for the benefit of Beneficiaries of the Trust, in accordance with the terms of this Deed.

#### 4.5 Company Trustee not holding special skill

Section 13C of the Trustee Act 1956 does not apply to the exercise by the Company Trustee of its powers of investment under this Deed.

### 5 NATURE OF BENEFICIAL INTERESTS

#### 5.1 Beneficial Interests in the Trust

The beneficial entitlement of all Beneficiaries in the Trust is divided into, and except as otherwise provided in this Deed the Company Trustee will hold the Assets of the Trust for the Beneficiaries on the basis of, the percentage Beneficial Interests.

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#### 5.2 **No interests in specific Assets**

A Beneficial Interest does not confer any interest in any particular Asset of the Trust and no Beneficiary is entitled to require the transfer to such Beneficiary of any of the Assets of the Trust, subject to the rights of the Beneficiaries to distribution of Accumulated Rentals under clause 8.2.

#### 5.3 **No interference in Company Trustee exercise of powers**

Subject to the rights of Beneficiaries created by this Deed and by law, no Beneficiary is entitled to interfere with or question the exercise or non-exercise by the Company Trustee of the powers, authorities or discretions conferred upon the Company Trustee by this Deed or in respect of the Trust.

### 6 **CROWN BENEFICIAL INTEREST AND CROWN INITIAL PERIOD**

#### 6.1 **Crown Beneficial Interest**

The Crown will be issued an Initial Beneficial Interest of 66.66% on the Settlement.

#### 6.2 **Application of Schedule 1**

The provisions of Schedule 1 will apply in respect of the Crown Beneficial Interest, the beneficial entitlement of the Crown to Assets of the Trust and the Crown Initial Period notwithstanding any other provision in this Deed.

### 7 **AHURIRI HAPŪ PSGE BENEFICIAL INTEREST**

The Ahuriri Hapū PSGE will be issued with an Initial Beneficial Interest of 33.34% on the Settlement.

### 8 **DISTRIBUTIONS OF CAPITAL AND INCOME**

#### 8.1 **Allocation and distribution**

- (a) Subject to the following provisions of this clause 8 and other terms of this Deed, the Company Trustee will determine the amount of each Distribution (whether capital or income).
- (b) Distributions may be made in cash or by the transfer of an Asset.

#### 8.2 **Distribution of Accumulated Rentals**

- (a) The Company Trustee will distribute the Ahuriri Hapū PSGE's 33.34% share of the Accumulated Rentals, upon receipt, to the Ahuriri Hapū PSGE.
- (b) Under Schedule 1 during the Crown Initial Period, the Crown as holder of the Crown Beneficial Interest is entitled to the remaining 66.66% of

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the Accumulated Rentals, subject to investment and Distribution as specified in Schedule 1.

#### 8.3 Distributions of subsequent net income

- (a) Distributions to Beneficiaries of subsequent amounts of net income will be made in accordance with their respective percentage Beneficial Interests.
- (b) Notwithstanding clause 8.3(a), under Schedule 1 during the Crown Initial Period, the Crown as holder of the Crown Beneficial Interest is entitled to (and only to) the percentage of the net income that reflects the then-level of the Crown's Beneficial Interest, subject to retention in the Trust, adjustment down and Distribution as specified in Schedule 1.

#### 8.4 Distributions of New Zealand units

- (a) Distributions to Beneficiaries of New Zealand units will be made in accordance with their respective percentage Beneficial Interests.
- (b) The Company Trustee will determine the timing and amount of any Distribution of New Zealand units.
- (c) Notwithstanding clause 8.4(a) and (b):
  - (i) under Schedule 1 during the Crown Initial Period the Crown as holder of the Crown Beneficial Interest is entitled to (and only to) the percentage of the 66.66% of the New Zealand units, subject to retention in the Trust, adjustment down and Distribution as specified in Schedule 1; and
  - (ii) no Distribution of New Zealand units will be made while the Crown is a Beneficiary.

#### 8.5 Distribution of capital

- (a) Distributions to Beneficiaries of amounts of capital will be made in accordance with their respective percentage Beneficial Interests.
- (b) Notwithstanding clause 8.5(a), under Schedule 1 during the Crown Initial Period, the Crown as holder of the Crown Beneficial Interest is entitled to 66.66% of the Kaweka Forest Land and Gwavas Forest Land, subject to retention in the Trust, adjustment and Distribution as specified in Schedule 1.

#### 8.6 Taxation status of Distributions

- (a) The Company Trustee will determine:

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- (i) the extent to which any Distribution is or is not a taxable Maori authority distribution; and
  - (ii) the extent to which Maori authority tax credits are attached to any taxable Maori authority distributions.
- (b) The Company Trustee, in exercising its powers under paragraph (a), must endeavour to achieve a fair allocation, between Beneficiaries, of taxable and non-taxable amounts and of credits, reflecting the extent to which each Distribution is sourced from taxable income of the Trust.

#### 8.7 Disclosure of information to tax authorities

The Company Trustee is authorised to make such disclosure as may be required by the Inland Revenue Department of the details of Beneficiaries, any Distributions of Beneficiaries or any other details or information arising out of the Trust.

### 9 TRANSFER OF BENEFICIAL INTERESTS

#### 9.1 Transfer requires Unanimous Resolution approval

A Beneficial Interest in the Trust may only be transferred or charged with the approval of a Unanimous Resolution.

#### 9.2 Schedule 2 procedure

The provisions of Schedule 2 apply to any transfer.

### 10 REGISTERED HOLDER ABSOLUTE OWNER

Except as otherwise provided in this Deed, the Company Trustee is entitled to treat the registered Beneficiary of a Beneficial Interest as its absolute owner and accordingly, except as ordered by a court of competent jurisdiction or as required by statute, is not bound to recognise (even upon notice) any equitable or other claim to or interest in the Beneficial Interest on the part of any other Person.

### 11 BENEFICIAL INTEREST REGISTER

#### 11.1 The Register

- (a) A Beneficial Interest Register of Beneficiaries must be kept by the Company Trustee in a form and manner approved by the Company Trustee.
- (b) The Company Trustee may appoint a person to keep the Beneficial Interest Register on its behalf.

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- (c) Such Beneficial Interest Register may take the form of a computer printout or any other computer based information storage and retrieval system compiled in a manner approved by the Company Trustee and such approved printout or system is deemed to be the Beneficial Interest Register.

#### 11.2 **Details to be entered into Register**

There must be entered in the Beneficial Interest Register:

- (a) the names and addresses of the Beneficiaries;
- (b) the amount of the Beneficial Interest held by each Beneficiary; and
- (c) the date on which each amount of Beneficial Interest was acquired by the relevant Beneficiary.

#### 11.3 **Reliance upon the Register**

The Company Trustee is entitled to rely upon entries in the Beneficial Interest Register as being correct.

#### 11.4 **Inspection**

The Beneficial Interest Register must be open for inspection by any Beneficiary during the business hours of the Beneficial Interest Registrar.

#### 11.5 **No recognition of trusts**

Except as required by law, the Company Trustee shall not be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any of the Beneficial Interests or any interest therein are or may be subject, or to recognise any Person as having any interest in any Beneficial Interest except for the Person recorded in the relevant Beneficial Interest Register as the Beneficiary, and accordingly no notice of any trust (whether express, implied or constructive), charge, pledge or equity shall be entered upon the Beneficial Interest Register.

### 12 **MANAGEMENT**

#### 12.1 **Company Trustee's duties**

Subject to the provisions of this Deed (including in particular clause 12.2 and Schedule 1), the Trust is to be managed and administered by the Company Trustee and without limiting the generality of the foregoing the Company Trustee must:

- (a) manage the Trust Fund and make all decisions relating to the Assets of the Trust including the investment, reinvestment or realisation of any

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Asset of the Trust and the exercise of any voting rights associated with any Asset of the Trust;

- (b) make all decisions relating to Borrowing, the terms of such Borrowing and any securities relating thereto;
- (c) determine the terms of all contracts, rights and other matters relating to Assets or Liabilities of the Trust;
- (d) appoint and engage solicitors and other consultants and advisers on such terms as the Company Trustee determines;
- (e) use its best endeavours and skill to ensure that the affairs of the Trust are conducted in a proper and efficient manner;
- (f) use due diligence and vigilance in the exercise and performance of its functions, powers, and duties as Company Trustee;
- (g) account to the Beneficiaries for all money that the Company Trustee receives on behalf of the Trust;
- (h) not pay out, invest, or apply any money belonging to the Trust for any purpose that is not directed by, or authorised in, this Deed; and
- (i) comply with all tax rules applying to the Trust.

#### 12.2 Land management arrangements

The Company Trustee will enter into a land management contract or other appropriate arrangement with an appropriate management entity (which could be a wholly-owned subsidiary of the Company Trustee), which will provide that:

- (a) the management entity will prudently manage the Kaweka Forest Land and Gwavas Forest Land; and
- (b) the management entity will manage the relationships with licensees under Crown Forestry Licences (including the management of licence fee reviews).
- (c) nothing can be done that will materially and adversely affect the Crown Beneficial Interest, without the Crown's prior written consent (which may be withheld by the Crown having reasonable regard to the nature of the Crown's beneficial interest in the Trust Fund).

#### 12.3 Delegation by Company Trustee

Notwithstanding clause 12.1, all or any of the powers, authorities, functions and discretions exercisable by the Company Trustee under this Deed may be delegated by the Company Trustee to its officers and employees or to any

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other Person (including the management entity managing the Kaweka Forest Land and Gwavas Forest Land) nominated by the Company Trustee (other than the Company Trustee) but the Company Trustee remains liable for the acts and omissions of any such officer, employee or Person whether or not the delegate is acting within the terms of its delegated authority.

#### 12.4 **Advisers**

- (a) The Company Trustee may, by resolution in writing, appoint any person as an advisory trustee of the Trust. The advisory trustee shall have the status and powers conferred on advisory trustees by the Trustee Act 1956. The advisory trustee may be removed by the Company Trustee, by resolution in writing, without needing to give a reason.
- (b) In relation to the purchase, sale and other dealings with any Authorised Investments by the Company Trustee, the Company Trustee may determine the time and mode and the consultants, agents, brokers and professional advisers (if any) for the purchase, sale and other dealing.
- (c) Any fee payable to an advisory trustee or other adviser will be determined by the Company Trustee.

#### 12.5 **Major Transactions**

Notwithstanding any other provision in this Deed, the Company Trustee shall not enter into a Major Transaction on behalf of the Trust, unless the transaction is:

- (a) approved by an Extraordinary Resolution of Beneficiaries; or
- (b) contingent on approval by an Extraordinary Resolution of Beneficiaries.

#### 12.6 **Assets in Company Trustee's name**

The Company Trustee shall cause the Assets of the Trust to be vested in the Company Trustee and to be registered in the name of the Company Trustee as soon as reasonably practicable after receipt of the necessary documents and must deliver all certificates or other documents of title for safe custody as directed by the Company Trustee.

#### 12.7 **Company Trustee's right to limit liability**

The Company Trustee may, before entering into any transaction, security or liability of the Trust require that its liability is restricted or limited to its satisfaction to the Assets of the Trust for the time being.

#### 12.8 **Company Trustee's settlement powers**

The Company Trustee shall have the power to settle and complete all transactions in respect of the Trust. Subject to the provisions in this Deed



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and the powers, rights and discretions given to the Company Trustee under this Deed, the Company Trustee shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of the Trust and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this Deed.

#### 12.9 Waivers

The Company Trustee may, whenever it thinks expedient in the interests of the Beneficiaries, waive at any time and on any terms or conditions any breach of the covenants or obligations binding on the Company Trustee under this Deed where such waiver will not, in the opinion of the Company Trustee, be materially prejudicial to the interests of the Beneficiaries.

#### 12.10 Custodians

- (a) The Company Trustee may, by resolution in writing, employ a custodian, (including a custodian trustee) or nominee to hold any Asset on such terms as the Company Trustee may determine provided that no such appointment will absolve the Company Trustee from any of its obligations relating to the Assets of the Trust under this Deed or at law.
- (b) The Company Trustee shall cause any such custodian or nominee to comply with all the relevant covenants and obligations on the part of the Company Trustee expressed or implied in this Deed.
- (c) Any fees payable to the custodian or nominee will be determined by the Company Trustee.
- (d) The Company Trustee may remove any custodian or nominee by resolution in writing, without needing to give any reason.
- (e) The provisions of the Trustee Act 1956 applying to custodian trustees will apply to the custodian or nominee as if the custodian or nominee were a custodian trustee, except as modified or extended as follows:
  - (i) all or any of the Trust Fund may be vested in the custodian or nominee as if the custodian or nominee were sole trustee; and
  - (ii) the portion of that Trust Fund that is from time to time vested in the custodian or nominee is the custodial trust fund, and the provisions of section 50 of the Trustee Act 1956 shall apply as if references in it to the trust property were references to the custodial trust fund.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 12.11 Extent of Company Trustee's powers

The Company Trustee shall have all powers, authorities, and discretions necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this Deed.

#### 12.12 Voting rights on assets of the Trust

Except as otherwise expressly provided in this Deed and subject to the provisions of the Trustee Act 1956, all rights of voting conferred by the Assets of the Trust or any of them are to be exercised in such manner as the Company Trustee may determine.

#### 12.13 Company Trustee's covenants

Without limiting any duty or obligation of the Company Trustee elsewhere in this Deed, the Company Trustee covenants with the Crown and the Beneficiaries that:

- (a) the Company Trustee will ensure that the Trust is carried on in a proper and efficient manner and in accordance with the provisions of this Deed and will exercise the degree of diligence in carrying out its functions and duties hereunder as may be required under relevant law; and
- (b) the Company Trustee will prepare or cause to be prepared all distributions, cheques, payment instructions or authorities and notices which are to be paid, issued or given pursuant to this Deed; and
- (c) the Company Trustee will make available its records to the Auditor.

### 13 BORROWING

- (a) The Company Trustee may at any time, and from time to time, if the Company Trustee considers it necessary or desirable to do so, Borrow on behalf of the Trust and to secure such Borrowing upon all or any part or parts of the Trust in such manner as the Company Trustee thinks fit.
- (b) The Company Trustee may at any time, and from time to time, if the Company Trustee considers it desirable, enter into guarantees on behalf of the Trust and to secure such guarantees upon all or any part or parts of the Trust in such manner as the Company Trustee thinks fit.
- (c) Notwithstanding the preceding provisions of this clause 13, no Borrowing may be entered into or guarantee given without the approval of a unanimous resolution of the directors of the Company Trustee.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 14 **BANK ACCOUNTS**

A bank account or accounts must be opened and maintained for the Trust. All moneys belonging to the Trust and coming into the hands of the Company Trustee must be paid to the credit of such bank account. The Company Trustee shall determine the Persons authorised to operate such bank accounts.

#### 15 **ASSET RECORDS**

The Company Trustee must keep complete, accurate and separate records of all Assets of the Trust.

#### 16 **REIMBURSEMENT OF EXPENSES**

The Company Trustee is entitled to be reimbursed out of the Trust Fund (whether from income or capital or both) for and in respect of the following items if properly incurred:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of the Trust, the preparation and registration of any offer document, the acquisition, registration, custody, disposal of or other dealing with Assets of the Trust, including bank charges, and the expenses of any agents or custodian of the Company Trustee;
- (b) the fees and expenses of the Auditor relating to the audit of the Trust;
- (c) all taxes, duties and imposts charged to or payable by the Company Trustee (whether by any taxing authority or any other Person) in connection with the Trust or the Assets of the Trust on any account whatsoever;
- (d) interest and other expenses relating to Borrowing and discounts and acceptance and other fees in respect of bill facilities;
- (e) the costs of convening and holding any meeting of Beneficiaries;
- (f) the fees and expenses of any solicitor, barrister, valuer, accountant or other Person from time to time engaged by the Company Trustee in the discharge of its duties under this Deed; or
- (g) any other expenses properly and reasonably incurred by the Company Trustee in connection with carrying out its respective duties under this Deed.

#### 17 **COMPANY TRUSTEE'S DISCRETION AND AUTHORITY**

Except insofar as is otherwise expressly provided in this Deed, the Company Trustee has the absolute and uncontrolled discretion regarding the exercise

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

(and the timing, mode, and manner of exercise) of the powers, authorities and discretions, as regards the Trust, vested in it by this Deed.

#### 18 BENEFICIARIES BOUND BY THIS DEED

The terms and conditions of this Deed are for the benefit of and binding on the Crown, the Company Trustee and each Beneficiary and all Persons claiming through them respectively and as if each Beneficiary had been party to and had executed this Deed.

#### 19 LIMITATION OF LIABILITY OF BENEFICIARIES

- (a) Except as expressly provided by this Deed no Beneficiary is, by reason alone of being a Beneficiary or by reason alone of the relationship hereby created with the Company Trustee, under any personal obligation to indemnify the Company Trustee or any creditor of the Company Trustee in the event of there being any deficiency of Assets of the Trust as compared with the Liabilities to be met therefrom.
- (b) The rights (if any) of the Company Trustee or of any creditor to seek indemnity are limited to having recourse to the Trust and do not extend to a Beneficiary personally in such Person's capacity as a Beneficiary.
- (c) On a winding-up of the Trust, no Beneficiary has any liability to contribute to any shortfall in the Trust if the Liabilities of the Trust exceed the Gross Asset Value of the Trust.

#### 20 ACCOUNTS AND REPORTS

##### 20.1 Accounting records

The Company Trustee must:

- (a) keep or cause to be kept proper records of or relating to the Trust including records of all sales, purchases and other transactions relating to the Assets of the Trust, and the Liabilities of the Trust and issue or transfer of Beneficial Interests;
- (b) keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Trust;
- (c) prepare annual consolidated financial statements for the Trust and arrange for the annual financial statements to be audited by the Auditor and filed in accordance with relevant law; and
- (d) send the annual audited consolidated financial statements for the Trust to Beneficiaries not later than five months after the close of the Financial Year together with all documents and reports required by

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

the Financial Reporting Act 1993 to be annexed to or to accompany such accounts.

#### 20.2 **Company Trustee records**

The Company Trustee must also keep or cause to be kept proper records of or relating to the Company Trustee, including financial statements for the Company Trustee and all records required to be maintained in respect of the Company Trustee under company or securities law.

#### 20.3 **Inspection by the Auditor**

The accounting and other records of the Company Trustee in respect of the Trust are open to the inspection of the Auditor. The Auditor is entitled to require from the Company Trustee such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

### 21 **AUDITOR**

#### 21.1 **Appointment and remuneration**

A Person or firm of chartered accountants selected by the Company Trustee must be appointed Auditor of the Trust. The Company Trustee must determine the services to be performed by the Auditor and their scope. The remuneration of the Auditor shall be determined by the Company Trustee on an arm's length basis.

#### 21.2 **Removal/retirement**

The Auditor may at any time and from time to time be removed by the Company Trustee. The Auditor may retire upon giving the Company Trustee 6 months' notice in writing.

#### 21.3 **New appointment**

Any vacancy in the office of Auditor must be filled by the Company Trustee appointing a Person or firm of chartered accountants to be Auditor qualified under section 461E of the Financial Markets Conduct Act 2013.

### 22 **MEETINGS OF BENEFICIARIES AND DIRECTIONS TO COMPANY TRUSTEE**

#### 22.1 **Meetings**

- (a) The Company Trustee or any Beneficiary can convene a meeting of the Beneficiaries by giving notice to all the Beneficiaries and the Company Trustee.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

- (b) During the Crown Initial Period, the Heretaunga Tamatea PSGE will, except to the extent entitled as a Beneficiary to attend, have the right to have a representative receive notice of and attend and speak, but not vote, at any meeting of Beneficiaries.

#### 22.2 Unanimous and Extraordinary Resolutions

- (a) The expression "Unanimous Resolution" means a resolution passed at a meeting duly convened and carried at such meeting, upon a show of hands or, if a poll is duly demanded upon a poll, by an affirmative vote of all of the Beneficiaries.
- (b) The expression "Extraordinary Resolution" means a resolution passed at a meeting duly convened and carried by a majority of not less than 75% of the Beneficiaries voting at such meeting upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 75% of the votes given on such poll.

#### 22.3 Powers exercisable by Unanimous Resolution

A meeting of Beneficiaries has the following powers exercisable by Unanimous Resolution:

- (a) to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Beneficiaries howsoever such rights arise;
- (b) to assent to any alteration, modification of, variation, or addition to the provisions contained in this Deed or any deed supplemental thereto or the conditions attaching to the Beneficial Interests and to authorise the Company Trustee to concur in and execute any supplemental Deed or other document embodying any such alteration or addition;
- (c) to give any sanction, assent, release or waiver of any breach or default by the Company Trustee under any of the provisions of this Deed;
- (d) to discharge, release or exonerate the Company Trustee from all liability in respect of any act of commission or omission for which the Company Trustee has or may become responsible under this Deed;
- (e) to appoint a new Company Trustee if a vacancy arises in the office of Company Trustee;
- (f) to sanction any variation to the Authorised Investments of the Trust;
- (g) to give such directions to the Company Trustee as they think proper concerning the Trust being directions that are consistent with this Deed; and

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

- (h) to direct the removal of the Company Trustee of the Trust.

#### 22.4 Resolutions bind all Beneficiaries

- (a) An Extraordinary Resolution or Unanimous Resolution passed at a meeting of the Beneficiaries duly convened is binding upon all Beneficiaries present or not present at the meeting. Each of the Beneficiaries and the Company Trustee is bound to give effect to such Extraordinary or Unanimous Resolution accordingly.
- (b) The passing of any such resolution shall as between the Company Trustee and the Beneficiaries be conclusive evidence that the circumstances justify the passing of the resolution, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.

#### 22.5 Written resolutions

- (a) A resolution in writing signed by not less than 75% of Beneficiaries who together hold not less than 75% of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of Beneficiaries. However, for the avoidance of doubt, a resolution in writing cannot be a Unanimous Resolution unless signed by all the Beneficiaries.
- (b) Any resolution in writing under this clause may consist of one or more documents in similar form (including letters, facsimiles, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Beneficiaries referred to in clause 22.5(a).
- (c) Within five Business Days of a resolution in writing being passed under this clause 22.5, the Company Trustee must send a copy of the resolution to every Beneficiary who did not sign the resolution or on whose behalf the resolution was not signed.

### 23 NOTICES TO BENEFICIARIES

#### 23.1 Notice of meetings

A minimum 14 days' notice of every meeting of Beneficiaries must be given to every Beneficiary (and the Heretaunga Tamatea PSGE's representative (if eligible under clause 22.1(b) to attend)) by sending it addressed to the Beneficiary (or representative) at their registered address by ordinary, prepaid post or airmail.

#### 23.2 Other notices

In any other case a notice may be given under this Deed to any Beneficiary personally by leaving it at the Beneficiary's registered address or by sending

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

it addressed to the Beneficiary at the Beneficiary's registered address by ordinary, prepaid post, airmail or facsimile, or by advertisement with the prior written approval of the Company Trustee. A Beneficiary must notify the Company Trustee of any change of the Beneficiary's registered address and the Beneficial Interest Register shall be altered accordingly.

#### 23.3 Manner of notice

Any notice sent by post will be deemed to have been given at the expiration of 48 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted.

#### 23.4 Signature of notice

The signature to any notice to be given by the Company Trustee may be written or printed.

#### 23.5 Calculation of notice periods

Where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.

#### 23.6 Binding nature of notice

Every Person who by operation of law, by transfer or other means whatsoever becomes entitled to any Beneficial Interest is bound by every notice which, prior to such Person's name and address being entered in the Beneficial Interest Register in respect of the Beneficial Interest, has been given to the Person from whom such Person derives the title to the Beneficial Interest.

#### 23.7 Receipt of notice

Any notice or document delivered or sent by post to or left at the registered address for service of any Beneficiary in pursuance of the provisions of this Deed will (notwithstanding that the Beneficiary is then dissolved and whether or not the Company Trustee has notice of such Beneficiary's dissolution) be deemed to have been duly given in respect of such Beneficiary's Beneficial Interest, whether held by such Beneficiary solely or jointly with another Person or Persons, until some other Person is registered in the place of the Beneficiary as the new Beneficiary or joint Beneficiary.



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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 24 AMENDMENT TO DEED

##### 24.1 Power to change the Deed

The Company Trustee may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a deed executed by the Company Trustee) in any of the following cases:

- (a) if in the opinion of the Company Trustee the change is made to correct a manifest error or is of a formal or technical nature;
- (b) if in the opinion of the Company Trustee the change:
  - (i) is necessary or desirable for the more convenient, economical or advantageous working, management or administration of the Trust or for safeguarding or enhancing the interests of the Trust or Beneficiaries; and
  - (ii) is not or not likely to become materially prejudicial to the general interests of all Beneficiaries of the Trust;
- (c) the change is authorised by a Unanimous Resolution of all Beneficiaries, at a meeting of Beneficiaries duly convened; or
- (d) if, after a change in any law affecting trusts, a change to this Deed is necessary to make any provision of this Deed consistent with such law.

##### 24.2 Notice of amendment

If any amendment is made to this Deed under clause 24.1, the Company Trustee must send a summary of the amendment to the Beneficiaries at the same time as the accounts of the Trust are forwarded to those Beneficiaries.

#### 25 PERIOD OF THE TRUST

- (a) The Trust commences on the date of its creation and will continue until whichever of the following occurs first (the *Date of Termination*):
  - (i) the date on which the Beneficiaries determine to terminate the Trust by Unanimous Resolution; and
  - (ii) seventy-eight years from the date of this Deed less one day.
- (b) The period of eighty years from the date of this Deed is the perpetuity period for the purpose of section 6 of the Perpetuities Act 1964.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 26 PROCEDURE ON WINDING UP

##### 26.1 Realisation of Assets

From and after the Date of Termination and subject to clause 8.5, the Company Trustee must realise the Assets of the Trust as soon as practicable, provided however that the Company Trustee may postpone realisation of all of the Assets of the Trust if it reasonably considers it is in the interests of Beneficiaries to do so. In this circumstance, until such realisation of the Assets of the Trust, the terms of the Trust will continue to apply with such changes as the context may require.

##### 26.2 Retentions by Company Trustee

The Company Trustee is entitled to retain out of the Trust such amount that the Company Trustee considers necessary or appropriate to meet all claims and Liabilities (including for this purpose contingent Liabilities) in connection with the Trust or arising out of the liquidation of the Trust including the fees of any agents, solicitors, bankers, accountants, auditors or other Persons whom the Company Trustee may employ in connection with the winding up of the Trust. The Company Trustee is entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Company Trustee.

##### 26.3 Application of realisation

Subject to the retention of any moneys as provided in clause 26.2, the net proceeds of realisation of the Assets of the Trust shall be applied by the Company Trustee as follows:

- (a) first, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Company Trustee and payable from the Trust; and
- (b) secondly, in payment to the Beneficiaries pro rata to the Beneficial Interests held by them in the Trust.

##### 26.4 Interim distributions

If in the opinion of the Company Trustee it is expedient to do so the Company Trustee may make interim payments on account of the moneys to be distributed in accordance with clause 26.3.

##### 26.5 Receipts

Each payment can be made only against delivery to the Company Trustee of such form of receipt and discharge as may be required by the Company Trustee.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 26.6 In specie distributions

- (a) Notwithstanding the preceding subclauses of this clause 26, the Company Trustee may, instead of realising an Asset, transfer the Asset, or shares in the Asset, in specie to one or more of the Beneficiaries (whether separately or as tenants in common in specified shares).
- (b) In particular, the Company Trustee may distribute Assets in specie to the Beneficiaries in accordance with their Beneficial Interests (except to the extent there was a Unanimous Resolution of the Beneficiaries to some other basis of allocation) but on the basis that the Beneficiaries by deed will collectively settle the Assets on a replacement trust to this Trust or transfer the assets to a company the shareholding in which is held by the Beneficiaries in proportion to their respective holdings of Beneficial Interests.
- (c) Each reference in this clause 26 to payment will be interpreted as including reference to such transfer.

#### 27 RESETTLEMENT

Subject to clause 8.5, the Company Trustee has the power in its discretion to settle or resettle any or all of the Trust Fund upon trust for the advancement or benefit of the Beneficiaries as the Company Trustee decides, but the settlement or resettlement must not breach the rule against perpetuities.

#### 28 PAYMENTS TO BENEFICIARIES

- (a) Any moneys payable by the Company Trustee to a Beneficiary under the provisions of this Deed may be paid by cheque that is crossed "non transferable" and made payable to the Beneficiary or their respective agents or other authorised Persons, or may be credited electronically to any bank account nominated by the Beneficiary.
- (b) If paid by cheque, the moneys may be given or sent through the post to the Beneficiary or their respective agents or other authorised Persons.
- (c) Payment of every cheque, if duly presented and paid, and in respect of direct credits, the giving by the Company Trustee of the encoded payment instructions to the paying bank, will be due satisfaction of the moneys payable and will be good discharge to the Company Trustee.
- (d) If any amount has been deducted on behalf of taxes from a payment to a Beneficiary, details of such deduction shall be provided to the Beneficiary when the relevant payment is made.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 29 WITHHOLDING TAXES

If the Company Trustee is obliged by law to make any deduction or withholding on account of taxes from any payment to be made to a Beneficiary, the Company Trustee shall make such deduction or withholding and pay such amount to the Commissioner of Inland Revenue or other taxing authority. On payment of the net amount to the relevant Beneficiary and the amount deducted or withheld to the tax authorities, the full amount payable to the relevant Beneficiary shall be deemed to have been duly paid and satisfied.

#### 30 LAW APPLICABLE

This Deed is governed by the law of New Zealand.

#### 31 EXECUTION AND EFFECTIVE DATE

##### 31.1 Counterparts

This Deed may be executed in any number of counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. A party may enter into this Deed by signing any counterpart.

##### 31.2 Effective date

This Deed will come into effect on the Settlement Date.

##### 31.3 Trustee execution

Any natural person entering into this Deed as a trustee of the Ahuriri Hapū PSGE enters into this Deed only in their capacity as trustee of the trust and has no personal liability under this Deed, except to the extent of the assets of the trust or to the extent their right to indemnity from the assets of the trust has been lost or impaired due to their own wilful act or omission.

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15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

EXECUTION

**Signed by Her Majesty the Queen in right of New Zealand** by the Minister for Treaty of Waitangi Negotiations in the presence of:

.....  
Honourable Christopher Finlayson

.....  
Witness signature

.....  
Full name (please print)

.....  
Occupation (please print)

.....  
Address (please print)

**Signed by Her Majesty the Queen in right of New Zealand** by the Minister for Maori Development in the presence of:

.....  
Honourable Te Ururoa Flavell

.....  
Witness signature

.....  
Full name (please print)

.....  
Occupation (please print)

.....  
Address (please print)

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15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

**Signed** for and on behalf of **Kaweka Gwavas Forestry Company Limited** by:

.....  
Director

.....  
Full name (please print)

.....  
Director

.....  
Full name (please print)

.....  
Director

.....  
Full name (please print)

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15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS  
FORESTRY COMPANY LIMITED

**Signed by the Trustees of the Mana  
Ahuriri Trust** in the presence of:

.....  
Trustees

WITNESS

\_\_\_\_\_  
Name:

Occupation:

Address:

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### SCHEDULE 1 – TERMS RELATING TO CROWN BENEFICIAL INTEREST AND CROWN INITIAL PERIOD

##### 1 INTERPRETATION

- 1.1 In this Schedule 1, *Crown Deposit Account* means the interest-bearing account, or accounts, approved in writing by the Crown, into which the Crown's beneficial entitlement to Accumulated Rentals and to any Distribution of net income from the Kaweka Forest Land and Gwavas Forest Land is deposited under clause 8.2(b) and 8.3(b).
- 1.2 References to clauses are to clauses in this Deed.

##### 2 NATURE OF BENEFICIAL INTERESTS GENERALLY

Notwithstanding clause 5.2:

- (a) the rights conferred on Beneficiaries by their Beneficial Interests are subject to the special rights of the Crown while a Beneficiary set out in this Schedule;
- (b) the Crown Beneficial Interest confers a beneficial interest in particular Assets held subject to the Trust and, to the extent set out in this Schedule, entitles the Crown to require the Distribution to the Crown or its nominee of specific Assets of the Trust.

##### 3 NATURE OF CROWN BENEFICIAL INTEREST

The Crown Beneficial Interest will confer upon the Crown:

- (a) the beneficial entitlement to 66.66% of the Kaweka Forest Land and Gwavas Forest Land; and
- (b) the beneficial entitlement to 66.66% of the Accumulated Rentals; and
- (c) the beneficial entitlement to 66.66% of the New Zealand units derived from ownership of the Kaweka Forest Land and Gwavas Forest Land; and
- (d) the beneficial entitlement to 66.66% of the net income derived from the Kaweka Forest Land and Gwavas Forest Land,

provided that in the event of the transfer of part or all of the Crown Beneficial Interest in accordance with paragraph 6 of this Schedule or redemption of part or all of the Crown Beneficial Interest in accordance with paragraph 8 of this Schedule, the 66.66% figure will be reduced by the same proportion as the transfer or redemption reduces the amount of the Crown Beneficial Interest.



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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### 4 INVESTMENT OF CROWN'S ENTITLEMENT

- (a) The Company Trustee will ensure that, to the extent of the Crown's beneficial entitlement as holder of the Crown Beneficial Interest:
  - (i) the Accumulated Rentals and New Zealand units are at all times held separate and apart from any other assets of the Trust and exclusively for the benefit of the Crown; and
  - (ii) the Accumulated Rentals are invested in the Crown Deposit Account;
  - (iii) in the case of any Distribution of net income from the Trust, the net income is invested in the Crown Deposit Account; and
  - (iv) all interest earned on the Crown Deposit Account is reinvested in the Crown Deposit Account; and
  - (v) the Accumulated Rentals, the New Zealand units and the Crown Deposit Account are not disposed of, pledged or charged in any way, except under this Schedule.
- (b) The Crown may, in its discretion, make payments to the Company Trustee to meet certain costs and expenses of administration of the Trust, during the Crown Initial Period.

#### 5 NO TRANSFERS WHILE CROWN BENEFICIAL INTEREST EXISTS

Subject to paragraph 6, no Beneficial Interest may be transferred or transmitted, in whole or in part, while the Crown still holds the Crown Beneficial Interest except with the Crown's prior written consent.

#### 6 TRANSFER OF CROWN BENEFICIAL INTEREST

- (a) The Crown will only be entitled to transfer a part or all of the Crown Beneficial Interest in accordance with this paragraph 6.
- (b) The Crown may at any time transfer, under the procedure set out in Schedule 2, any part or all of the Crown Beneficial Interest to:
  - (i) the Heretaunga Tamatea PSGE; or
  - (ii) any representative of the Heretaunga Tamatea PSGE; or
  - (iii) any part of the Heretaunga Tamatea PSGE,as part of a Future Treaty Settlement.
- (c) In the event of such a transfer, the Company Trustee will:

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

- (i) withdraw from the Crown Deposit Account that proportion (the transfer proportion) of the balance in the account that the transferred amount of the Crown Initial Beneficial Interest represents of the whole of the Crown Initial Beneficial Interest prior to the transfer and pay it in cash or cleared funds to the transferee;
- (ii) transfer to the transferee the transfer proportion of the New Zealand units held by the Company Trustee on account of the Crown Beneficial Interest; and
- (iii) transfer to the transferee the transfer proportion of the shares held by the Crown in the Company Trustee.

#### 7 NO REDEMPTIONS WHILE CROWN BENEFICIAL INTEREST EXISTS

No Beneficial Interest may be redeemed, in whole or in part, while the Crown still holds a Crown Beneficial Interest except with the Crown's prior written consent.

#### 8 FINAL REDEMPTION OF RESIDUAL CROWN BENEFICIAL INTEREST

- (a) On the day before the last day of the Crown Initial Period, the Company Trustee must redeem all of the Crown Beneficial Interest then outstanding (if any) by transferring to the Crown:
  - (i) land to the extent of the Crown Beneficial Interest in the Kaweka Forest Land and Gwavas Forest Land;
  - (ii) the balance in the Crown Deposit Account;
  - (iii) New Zealand units to the extent of the Crown's Beneficial Entitlement to New Zealand units; and
  - (iv) cash to the value of the Crown's beneficial entitlement to any net income from the Kaweka Forest Land and Gwavas Forest Land still retained in the Trust.
- (b) The Crown must:
  - (i) use any land returned for other Treaty of Waitangi settlement purposes; and
  - (ii) transfer any New Zealand units returned to the transferee of the land; and
  - (iii) use any other property returned to settle a trust for the benefit of the Heretaunga Tamatea PSGE.

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

- (c) The Crown will consent to the repurchase by the Company Trustee, for a nominal consideration of \$1, of the Crown's shares in the Company Trustee.

#### 9 CONSTRAINTS WHILE CROWN BENEFICIAL INTEREST EXISTS

Notwithstanding any other provision of this Deed, until the Crown Beneficial Interest ceases entirely to exist (by transfer or redemption, in accordance with this Deed), without the Crown's written consent (which consent may be indicated by a written request from the Crown for the constrained action to occur):

- (a) a Beneficial Interest cannot be transferred or transmitted, except under paragraph 6;
- (b) a share in the Company Trustee cannot be transferred or transmitted, except if such transfer would be allowed under paragraph 6 if it were the transfer of a Beneficial Interest;
- (c) a part or all of the Kaweka Forest Land and Gwavas Forest Land cannot be disposed of, leased, licensed (other than under a Crown Forestry Licence) or otherwise subjected to a right of exclusive possession;
- (d) a charge or other security interest cannot be created over:
  - (i) a part or all of the Kaweka Forest Land and Gwavas Forest Land; or
  - (ii) a Beneficial Interest; or
  - (iii) a share in the Company Trustee;
- (e) a Major Transaction cannot be entered into;
- (f) a Beneficial Interest cannot be issued;
- (g) a share in the Company Trustee cannot be issued;
- (h) a Beneficial Interest cannot be redeemed;
- (i) a share in the Company Trustee cannot be redeemed, or cancelled;
- (j) a distribution of capital or income from the Trust cannot be made, except in compliance with clause 8 and (to the extent applicable) paragraph 10;
- (k) the Company Trustee and the Trust cannot undertake any activities other than:

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- (i) holding the Settlement Assets; and
  - (ii) receiving revenue from those Settlement Assets; and
  - (iii) making distributions permitted under clause 8 and (to the extent applicable) paragraph 10; and
  - (iv) entering into the land management arrangements described in clause 12.2.
- (l) this Deed cannot be amended under clause 24;
  - (m) an Extraordinary Resolution of Beneficiaries or a written resolution under clause 22.2 cannot validly be passed;
  - (n) a quorum (that does not include the Crown) cannot exist at a meeting of Beneficiaries;
  - (o) a custodian or custodian Company Trustee cannot hold any of the Trust Fund; and
  - (p) a resettlement cannot occur under clause 27.

#### 10 DISTRIBUTIONS WHILE CROWN BENEFICIAL INTEREST EXISTS

Without the Crown's written consent, no Distribution of capital or income may be made while the Crown Beneficial Interest exists:

- (a) if the Distribution involves any distribution in kind of any part or all of the Kaweka Forest Land and Gwavas Forest Land; or
- (b) except to the Crown, if the Distribution involves any of the Crown's beneficial entitlement to the Trust Fund, referred to in paragraph 3 of this Schedule 1; or
- (c) if the Distribution would leave the Company Trustee or the Trust with insufficient liquid or other Assets to enable the retention in full and effective management of the Kaweka Forest Land or Gwavas Forest Land.

#### 11 CROWN CONSENT

Any reference in this Deed to the Crown's consent to any matter is to be interpreted as meaning that the Crown may grant or withhold its consent in its discretion having reasonable regard to the Crown's entitlements as a Beneficiary of the Trust and Trust Fund as holder of the Crown Beneficial Interest.

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#### 12 REPORTS TO CROWN

- (a) In addition to providing to the Crown as a Beneficiary a copy of the annual audited consolidated accounts under clause 20, the Company Trustee will provide to the Crown such other reports relating to the affairs of the Trust as the Crown may reasonably request.
- (b) If the Crown is required by law to obtain or provide any particular type of information relating to affairs of the Trust, the Company Trustee will, subject to reimbursement by the Crown of reasonable out-of-pocket expenses, take such steps as the Crown may reasonably request to enable the Crown to comply with that law (including appointing the Auditor-General as Auditor of the Trust).

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### 15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED

#### SCHEDULE 2 – TRANSFER OF BENEFICIAL INTERESTS

##### 1      **TRANSFER ALSO OF COMPANY TRUSTEE SHARES**

If a Beneficiary holds shares in the Company Trustee, the Beneficiary wishing to transfer part or all of their Beneficial Interest must transfer to the same transferee a combined parcel of Beneficial Interest and shares being in each case the same proportion of the Beneficial Interest and shares initially held by the transferor, failing which the transfer of the part or all (as the case may be) of the Beneficial Interest will be ineffective.

##### 2      **FORM OF INSTRUMENT OF TRANSFER**

The instrument of transfer of part or all of a Beneficial Interest must:

- (a) be in writing in any usual or common form which the Company Trustee approves from time to time; and
- (b) if the Company Trustee so requests, include a deed under which the transferee binds itself to compliance with the terms of this Deed.

##### 3      **REGISTRATION OF INSTRUMENT OF TRANSFER**

- (a) Every instrument of transfer of part or all of a Beneficial Interest must be delivered for registration to the Company Trustee at its registered office.
- (b) The transferor is deemed to remain the Beneficiary in respect of the transferred amount until the transfer of such part or all of the Beneficial Interest is entered in the Beneficial Interest Register.
- (c) Subject to paragraph 4 of this Schedule, the Company Trustee shall forthwith register each transfer delivered to it in accordance with this clause and enter the relevant details in the Beneficial Interest Register.

##### 4      **PAYMENT OF SUMS OWED AS A CONDITION TO TRANSFER**

No transfer of any part or all of an Beneficial Interest can be registered unless the Beneficiary has paid all duties, taxes (including goods and services tax) and other commissions and charges (in cleared funds) in respect of the transfer.

##### 5      **RETENTION OF INSTRUMENT OF TRANSFER**

Every instrument of transfer of part or all of an Beneficial Interest which is registered must be retained by the Company Trustee for such period as the Company Trustee may determine, after which (subject to the provisions of any law or this Deed to the contrary) the Company Trustee may destroy it.

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### **15: SHAREHOLDERS' AGREEMENT AND TRUST DEED FOR KAWEKA GWAVAS FORESTRY COMPANY LIMITED**

#### **6 TRANSMISSION BY OPERATION OF LAW**

Any Person becoming entitled to an Beneficial Interest in consequence of insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of creditors or scheme of arrangement of any Beneficiary may be registered as the Beneficiary in respect of the Beneficial Interest or may validly transfer the Beneficial Interest (subject to the provisions of this Deed as to transfers).