

Topic	1990 Deed	1999 Variation	Comment
COVENANTED LAND			
Duration	Shall bind NP and its heirs in perpetuity	Covenant binds parties until the covenant is varied and/or terminated by mutual agreement or in the event of 'material failure' by the Crown. Parties may review purposes, objectives, agreements and operation of covenant and walkway at 25-year intervals, having regard to changed circumstance, performance and any other relevant matters. Crown shall not assign or otherwise dispose of its interest in the covenant.	Major loss of security. Now no assurance of permanency.
Treaty of Waitangi	NP and Minister wish to enter a partnership in kaitiakitanga, "embodying in a practical working partnership"	The parties acknowledge that the covenant is not entered into in recognition of any claim (whether present or future) made by NP or any other person in respect of any alleged breach by the Crown under the T of W. Covenant is without prejudice to the rights of NP to make any claims relating to T of W issues or otherwise.	Major change. Denis Marshall's failed 'partnership' / joint management regime has been dumped. Nick Smith has the effrontery to attack Hugh Barr for his opposition to 'partnership' !
Public as third party	Contains no reference to Contracts (Privity) Act, therefore no limitations on use by public against parties if public rights are breached	The covenant between NP and the Crown is not intended to be a promise conferring benefits on any third party which sustain a right of enforcement under the Contracts (Privity) Act 1982	Leaves public with no legal recourse if contractual public 'rights' breached.
Costs		All costs associated with survey, raising title, Maori land Court, registration, LTO to be paid by Minister	

Management Committee	3 NP & 3 DOC	Deleted	Major change
Functions	Prepare management plan, oversee implementation, decide on matters non adequately expressed in plan, review plan	N.A.	
Committee conduct	Decisions by consensus, implementation of plan to the mutual satisfaction of Minister and NP, invite public comment on plan prep and review "but not obliged to have regard to any or all comments received"	N.A.	
Management plan	Prepared by joint management committee	N.A.	
Commercial operations	NP shall obtain Minister of Conservation's consent on covenant area, to ensure protection of conservation values	NP shall have prime responsibility for licensing of any trade, business or occupation subject to prior consent from Minister. NP only requires Minister's consent for commercial agreements that are inconsistent with purposes of covenant, in which case limited to protecting conservation values	Major change. It will be NP's judgement as to what is inconsistent with covenant's purposes.
Wild animals	Minister's responsibility on covenant area by any practical means. Any nett income to NP	Minister shall, with NP agreement, use any practical means, to low pop. Consistent with covenant purposes. Any nett income to NP.	No effective change
Weed control	Minister's primary responsibility, but NP shall assist over former grazing lands if threat to adjoining pastoral land held by NP	Minister shall, with the agreement of NP, eradicate or control noxious weeds, if these pose a threat to adjoining NP land. NP shall assist on former grazing lands if threat to adjoining land held by NP. Minister may eradicate or control weeds on covenant area if the parties agree.	Weaker provision. All Ministerial actions now require NP consent.

Recreation purposes	"Providing for the public's recreational use and enjoyment of Hikurangi, consistent with other objectives". Subject to protection of sacred places, "NP shall allow members of the public free and unimpeded access on foot at all times" "The summit of Hikurangi maunga shall not be a wahi tapu, and public foot access to the summit shall be freely available at all times"	"Providing for the public's recreational use and enjoyment of the land, consistent with purposes and in accordance with Clause 5 (powers of closure) Subject to the terms and conditions of the covenant, NP was allow members of the public free and unimpeded access on foot at all times throughout the land consistent with the covenant purposes. "Public access to the land shall be limited to those rights of access for the public to pass and repass over the land on foot and shall be subject to NP rights as owner and Kaitieki.	Now very constrained provision. Confined to rights of passage, rather than general rights of recreational use. "Pass and repass" has narrow meaning, akin to a Right of Way.
Use prohibitions	Public shall have access to and freedom of movement apart from certain sacred places. If NP wishes to restrict access to wahi tapu, means to be agreed with Minister beforehand.	No camping "on <u>or adjacent to</u> the land". No horses and animals. No dogs or pets. No vehicles, including bicycles. No firearms or other weapons (carrying or discharge)	'No camping' in this part of the (former) Forest Park, confirms fundamental change in status of area. No longer a 'public' area. Also introduces a camping ban over an undefined area of adjacent remaining Forest Park.
Trespass	No reference to trespass	Nothing in covenant in any way diminishes or affects the rights of NP to exercise rights of a landowner under the Trespass Act These rights may be exercised if NP reasonably believes that a person/s is in breach of the rights/or restrictions of access conferred by the covenant.	Now at NP discretion as to who is trespassing. Serious implications for public use, which could result in criminal convictions. Reinforces reality of private character of area.
Use of Forest Park		The Minister will use his best endeavours to ensure that users of the Raukumara Forest park adjacent to the covenant land notify NP when and if they intend gaining access to the land from any entry point other than via the walkway.	New provision. What is the intention? Potential for discouragement or harassment of visitors.

Access closures	No provisions	NP may prohibit or restrict public access to the land for the express purpose of spiritual, cultural, traditional or religious events or reasons, for a max of 14 days per year. The means of effecting the public access restriction "shall be discussed and notified to the Minister". Closure to coincide with closure of walkway. In the case of death or serious accident "on or associated with" Mt Hikurangi, NP may, with out prejudice to the (above) rights declare a Rahui / spiritual prohibition. In the case of a Rahui, NP to give prior public notice	Major degradation of the public interest, and of the public 'benefit' from this agreement. Creates wide discretion for closure, which, because of imprecise wording, may create opportunity for lengthy closures in excess of 50 days per year.
Huts	NP <u>accepts presence of</u> a hut administered by the Minister providing limited accommodation to the public at a nominal fee and further accepts the principle of similar accommodation remaining on Hikurangi in perpetuity unless the management committee decides otherwise	NP <u>acknowledges this is hut erected by</u> Gisborne C&T Club. NT shall continue to provide, administer, manage and maintain a public accommodation facility at that general locality equiv. to DOC 'BCA' standard. NP shall be entitled to charge, at their discretion, fee comparable to DOC for this standard of facility.	Loss of commitment to Club hut's continued existence and availability for public use. NP will have monopoly on public accommodation.
Natural character	"protecting and enhancing"	"preserve" the natural character	Stronger
Ecological character	"protecting as an outstanding area"	"preserve" as an outstanding area	Stronger
Landscape amenity	"maintaining"	"preserve"	Stronger
Spiritual, cultural, historical integrity	"protecting and enhancing"	"protect and enhance"	No change
Grazing	NP will not graze	None, unless agreed with Minister	Weaker
Minister's prior approval (shall not unreasonably decline)	Felling, removing or damaging indigenous plants	None, unless agreed with Minister	No effective change
	Planting	None, unless agreed with Minister	No effective change
	Erection of fences, buildings, structures or other improvements	None, unless agreed with Minister	No effective change

	Burning, topdressing, sowing	None, unless agreed with Minister	No effective change
	Prospecting, exploring or mining	Nothing specified	Major change - mining now regarded as NP property right
	Cultivation, earthworks, soil disturbance	None, unless agreed with Minister	No effective change
Breaches of covenant	Minister may remedy and prevent further damage and recover costs	Subject to prior notice for remedy... Either party may remedy breach and recover costs. If breach of 'material failure' by Minister, NP may terminate the covenant and, without prejudice, may sue for damages. If breach of 'material failure' by NP then Minister may sue for damages.	Major weakening. NP can breach covenant and retain land ownership. If Minister breaches covenant, he can lose all conservation and public access provisions, resulting in complete loss of Crown interest.
Disputes	Arbitration by agreed third party	If any dispute over the above, first efforts towards resolution through negotiation, then formal mediation, then binding outcome through Arbitration Act.	More elaborate provisions
Fire	Minister will assist NP	Minister will assist NP	No change
Fencing	Joint maintenance responsibility	Joint maintenance responsibility	No change

WALKWAY	NT "transfers and grant unto the Crown a full, free, uninterrupted right, liberty and privilege from time to time and at all times for any member of the public at their will and pleasure to go, pass and repass on foot over and along the right of way" Camping prohibited on or adjacent to the walkway	Purpose of allowing convenient foot access to the public from the public road in Tapuaeroa Valley to the covenant area. Limited to rights to pass and repass on foot, subject always to NP rights as landowner and Kaitieki. No camping on or adjacent. No horses or other animals. No dogs or pets. No vehicles, cycles. No firearms or other weapons.	A significant reduction of public rights: now confined to passage. Camping ban reasonable. Other restrictions reflect provisions of Walkways Act. In the absence of alternative access, hunting is effectively banned from Forest Park
Closure	No provisions	NP may restrict or prohibit public access for max 50 days per year as follows: 14 days per year for spiritual, cultural, religious events or reasons. Max of 21 consecutive days for farming/lambing In case of death or serious accident on or associated with Mt Hikurangi NP may declare a Rahui / spiritual prohibition.	A major loss of public rights. Creates wide discretion for closure, with scope for lengthy closures in excess of 50 days per year.
Nature of easement	Easement in gross	Easement in gross	
Registration	"access to Hikurangi from Tapuaeroa Road shall be legalised by an easement to be registered contemporaneously with this Deed"	The parties acknowledge that the covenant and Walkway are subject only to completion of survey and inclusion of legal descriptions in titles.	
Determination	If Crown in default then NP can determine grant, without prejudice to right to damages	As for covenant	
Repair	Crown will repair damage caused by public	Crown will repair damage caused by public	No change
Development	Crown has right to improve and erect signs etc	Crown shall improve and maintain and erect signs, in agreement with NP	Weaker
Assignment	Crown cannot assign or dispose without NP consent	Crown shall not assign or otherwise dispose	