

KINNOULL CONSERVATION COVENANT

(Section 77 Reserves Act 1977)

THIS DEED of COVENANT is made this day of 2009

BETWEEN

NEW ZEALAND FORESTRY GROUP LIMITED (the Owner)

AND

WELLINGTON CITY COUNCIL (WCC)

BACKGROUND

- A. The Owner is the registered proprietor of the Land.
- B. The Land contains Reserve Values.
- C. The parties agree that:
 - (i) the Land should be managed so as to preserve the Reserve Values; and
 - (ii) such purpose can be achieved without the WCC acquiring a fee simple or leasehold interest in the Land.
- D. The Owner has agreed to grant the WCC a Covenant over the Land to preserve the Reserve Values.

OPERATIVE PARTS

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

1 INTERPRETATION

1.1 In this Covenant unless the context otherwise requires:

"Act"	means the Reserves Act 1977.
"Building Envelope"	means those areas marked on the survey plan inside which a building may be erected.
"Covenant"	means this Deed of Covenant made under section 77 of the Act.
"Fence"	includes a gate.

"Fire Authority"	means a fire authority as defined in the Forest and Rural Fires Act 1977.
"Land"	means the Land described in Schedule 1.
"Minerals"	means any mineral that is not a Crown-owned mineral under section 2 of the Crown Minerals Act 1991.
"Natural Water"	includes water contained in streams the banks of which have, from time to time, been re-aligned.
"Owner"	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
"Reserve Values"	means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
"Working Days"	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this **Covenant** extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this **Covenant**;
- 1.2.3 references to parties are references to the **Owner** and the WCC;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this **Covenant** including the Background. Where the parties disagree over the interpretation of anything contained in this **Covenant** and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this **Covenant** bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.9 where clauses in this **Covenant** require further agreement between the parties such agreement must not be unreasonably withheld.

2 OBJECTIVE OF THE COVENANT

- 2.1 The Land must be managed so as to preserve the Reserve Values.

3 IMPLEMENTATION OF OBJECTIVE

- 3.1 Unless agreed in writing by the parties without compromising the Reserve Values, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 removal or damage of any tree, shrub or other plant (other than pruning of trees to the extent that they block sea views from a house within a building envelope), subject to clause 3.3.1;
- 3.1.2 the erection of any Fence, building, structure or other improvement for any purpose, with the exception of:
 - (a) Fences around natural springs or water holding tanks; and
 - (b) The erection of power and telephone poles that blend in as far as possible with the landscape; and
 - (c) Any buildings or structures for which the required consents are granted;
- 3.1.3 any burning, topdressing or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds, pests, exotic plants, and plants not indigenous to the area;
- 3.1.4 any cultivation, earth works or other soil ground disturbances, except
 - (a) to allow for the establishment and maintenance of a limited number of low impact minor walking tracks; and
 - (b) the maintenance of existing walking tracks; and
 - (c) the construction of access roads to building sites which are being used as such, provided that there shall be only one access road to each building site; and
 - (d) the construction and maintenance of the roads within the Rights of Way through the Land; and
 - (e) where required for the purposes for the erection of any Fence, building, structure or other improvement in terms of clause 3.1.2; and
 - (f) where required for the construction and maintenance of fire dams;
- 3.1.5 any prospecting, mining or quarrying for Minerals, coal or other deposit or moving or removal or marking, defacing or blasting of rock of any kind on or under the Land;

- 3.1.6 any action resulting in a deterioration in the natural flow, supply, quantity or quality of any stream, wetland, pond or other natural water resource except where used for fire dams or the reasonable water supply of residences and paua farm.

3.2 The **Owner** must **not** carry out or permit on or in relation to the **Land**:

- 3.2.1 grazing of the **Land** by livestock;
- 3.2.2 cats, mustelids, goats, horses, sheep, cattle, pigs, deer, ostriches, emus or other grazing animals with the exception of allowing for horse trekking provided those horses are grazed on properties on South Makara Road and are not grazed on the **Land**.
- 3.2.3 plant, sow or scatter any trees, shrubs or plants or seeds or spores or part thereof, except for indigenous species which:
- (a) For Lots 10-12 occur naturally on the site and are sourced from the North Island part of the Cook Strait Ecological District.
 - (b) For Lots 2 to 9 (inclusive) and Lot 16 occur naturally on the site and are sourced from within the Wellington Ecological District or North Island part of Cook Strait Ecological District.

Provided that:

- (c) Subject to (a) and (b) above, the plant material and seeds of all native plants anywhere on the site must be sourced from the nearest practicable naturally growing populations of the ecotypes naturally growing on the site (including populations already on the site) within the genetic ranges of those ecotypes.
- (d) The following species may be planted on the **Land** notwithstanding that they may no longer be naturally growing on the **Land** at the date of this covenant; Indigenous Podocarp species which occur naturally in the Wellington Ecological District and are ecologically sourced from naturally growing trees within that Ecological District.

3.3 The **Owner** must:

- 3.3.1 eradicate or control all weeds and pests on the **Land** to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993 or any subsequent legislation;
- 3.3.2 take reasonable steps where practicable to eradicate any exotic plants or non-local indigenous plants which may become established on the **Land**;
- 3.3.3 comply with the provisions of the Wild Animal Control Act 1977;
- 3.3.4 if it is safe to do so, assist the **Fire Authority** to extinguish any wildfire upon or threatening the **Land**;
- 3.3.5 keep the **Land** free from rubbish or other unsightly or offensive material;
- 3.3.6 comply with all requisite statutes, regulations and bylaws in relation to the **Land**.

4 DURATION OF COVENANT

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

5 OBLIGATIONS ON SALE OF LAND

- 5.1 The parties agree that this covenant is intended to be given effect to only in the event that the Owner uplifts and gives effect to the subdivision consent currently given by WCC.
- 5.2 If the Owner sells, leases, or parts with possession of the Land, the Owner must ensure that the Owner obtains the agreement of the purchaser, lessee, or assignee to comply with the terms of this Covenant.
- 5.3 Such agreement must also include an agreement by the purchaser, lessee, or assignee to ensure that on a subsequent sale, lease, or assignment, the subsequent purchaser, lessee, or assignee will comply with the terms of this Covenant including this clause.
- 5.4 If, for any reason, this Covenant remains unregistered and the Owner fails to obtain the agreement of a purchaser, lessee, or assignee to comply with the terms of this Covenant, the Owner will continue to be liable in damages to the WCC for any breach of the Covenant committed after the Owner has parted with all interest in the Land in respect of which a breach occurs.

6 MISCELLANEOUS MATTERS

6.1 Rights

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

6.2 Trespass Act:

- 6.2.1 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 6.2.2 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

6.3 Reserves Act

- 6.3.1 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

6.4 Title

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

6.5 Acceptance of Covenant

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

6.6 Fire

- 6.6.1 The **Owner** must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forests and Rural Fires Act 1977) and the WCC in the event of wildfire upon or threatening the **Land**.

7 DEFAULT

- 7.1 Where either the **Owner** or the WCC breaches any of the terms and conditions contained in this **Covenant** the other party:

7.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

7.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

- 7.2 Should either the **Owner** or the WCC become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this **Covenant** then that party (notifying party) may, by written notice, advise the defaulting party of the default.

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

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

8 NOTICES

- 8.1 A notice to be given under this **Covenant** by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party.

- 8.2 A notice given in accordance with clause 7.1 will be deemed to have been received:

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

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

9 SPECIAL CONDITIONS

- 9.1 Special conditions relating to this Covenant are set out in Schedule 1.
- 9.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executive as a Deed

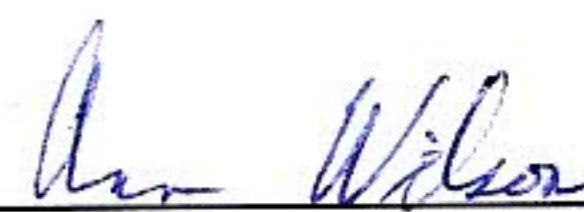
Signed by:



Wesley Thomas GARRATT
Director
New Zealand Forestry Group Limited

in the presence of:

Witness signature:



Witness name (print)

ANN WILSON

Address:

ROYAL OAK, AUCKLAND

Occupation:

SECRETARY

Signed

For Wellington City Council
P O Box 2199
Wellington

the common seal of
WELLINGTON CITY
COUNCIL was affixed
in the presence of:

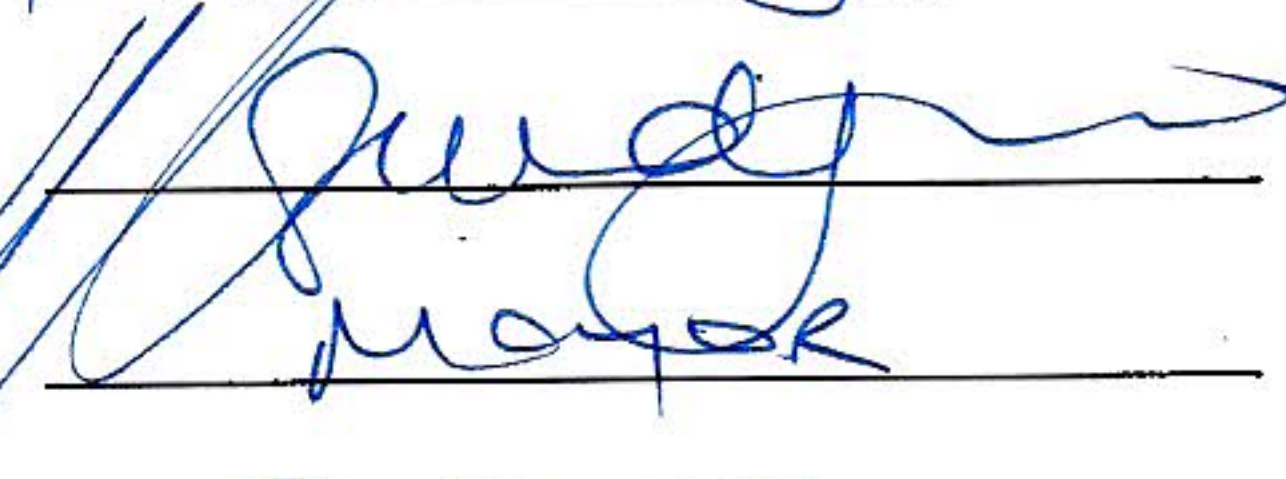


Name:

K. Pendergast

Signature:

Occupation:



Date:

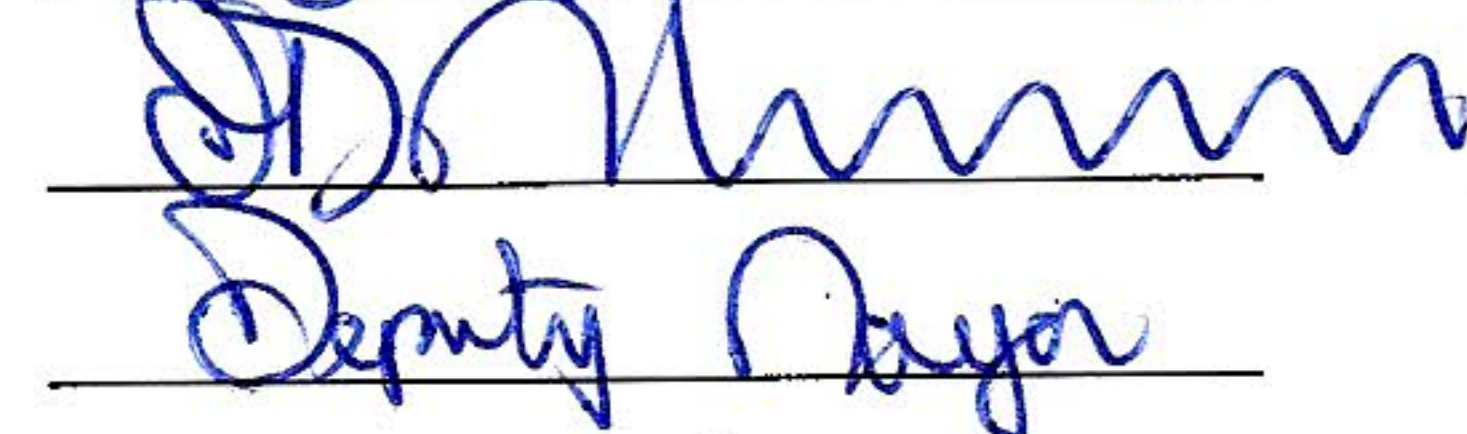
12.01.10

Name:

L.D. McInnes

Signature:

Occupation:



Date:

18.01.10

SCHEDULE 1**Description of Land:**

- (a) Area marked 3C Deposited Plan 425554 as comprised in Certificate of Title 500772
- (b) Area marked 4C and 4D Deposited Plan 425554 as comprised in Certificate of Title 500773
- (c) Area marked 5C Deposited Plan 425554 as comprised in Certificate of Title 500774
- (d) Area marked 6C and 6D Deposited Plan 425554 as comprised in Certificate of Title 500775
- (e) Area marked 7C Deposited Plan 425554 as comprised in Certificate of Title 500776
- (f) Area marked 8C Deposited Plan 425554 as comprised in Certificate of Title 500777
- (g) Area marked 9C and 9D Deposited Plan 425554 as comprised in Certificate of Title 500778
- (h) Area marked 10C and 10D Deposited Plan 425554 as comprised in Certificate of Title 500779
- (i) Area marked 11C and 11D Deposited Plan 425554 as comprised in Certificate of Title 500780
- (j) Area marked 12C Deposited Plan 425554 as comprised in Certificate of Title 500781

Reserve Values of Land to be Protected:

- (i) To ensure, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, that occurs in their natural communities and habitats on the Land.
- (ii) To protect the historic, archaeological and educational values associated with the Land and its related water bodies.

Special Conditions:

1. This conservation covenant shall not be taken into account by any consent authority when determining whether or not to grant consent for the erection of any wind turbine(s) on the Land.
2. In the event of consent being granted for the erection of any wind turbine(s) on the Land, the terms of this conservation covenant shall be subject to any conditions of such consent.