

SECTION 15: SOUTH ISLAND LANDLESS NATIVES ACT**PREAMBLE**

- A. In 1886-87, a Royal Commission presided over by Judge Alexander Mackay was appointed to review the outcomes for Ngāi Tahu of the Kemp, Murihiku and Ōtākou purchases. Commissioner Mackay found that as a result of these purchases and the other factors which were associated with the settlement of Te Waipounamu (the South Island) by Europeans, Ngāi Tahu as a tribe and as individuals had been left without a sufficient land base to sustain themselves.
- B. In 1891, Mackay was again appointed as a Commissioner to investigate the extent and effects of landlessness amongst Ngāi Tahu. At that time he reported that only 10% of the tribe had sufficient land to provide a living. In 1892, following the reports of these Royal Commissions, and as a result of findings of those reports the Crown agreed to make certain lands available to Māori in the South Island. Judge Mackay and the Surveyor General, Percy Smith, assisted by Tame Parata, were then appointed by the Crown to compile a list of landless Māori from throughout the South Island and to assign sections of land to them.
- C. By 1905, the Commissioners had allocated 142,463 acres to 4,064 Māori. Among the allocations listed in the Appendices to the Journals of the House of Representatives of New Zealand 1905 G-2 were 1,553 acres at Wanaka-Hawea to 57 persons, 1,600 acres at Whakapoai to 38 persons, 7,392 acres at Toitoi River on Rakiura (Stewart Island) to 181 persons and 9,340 acres at Port Adventure, Rakiura (Stewart Island) to 308 persons. Of these blocks, only Whakapoai was surveyed at that time.
- D. The South Island Landless Natives Act 1906 provided for land to be granted in accordance with Mackay and Smith's recommendations. However, that Act was then repealed by the Native Lands Act 1909 before all of the grants were fully implemented, and thereafter further implementation was barred.
- E. The Crown has accepted that there was an obligation on the Crown to complete these transactions and that the failure by the Crown to complete the transfer of those lands to the beneficial owners after 1906 was a breach of the principles of the Treaty of Waitangi. As a consequence the Crown has agreed to provide redress in respect of each of the following claims.

15.1 DEFINITIONS

In this *Section 15*:

Adjoining Land in relation to:

- (a) the Port Adventure Land, means Sections 8, 9 and 10, Block I Lords River Survey District, State Forest Block II, Lords River Survey District, Sections 3 and 4 Block IX, Paterson Survey District, Section 1 Block X Paterson Survey District and Section 23 Block XI Paterson Survey District; and
- (b) the Toitoti Land, means the land described as Crown Land Block III Lords River Survey District, Sections 1 in Blocks IV to VI, Lords River Survey District, State Forest Block X Pegasus Survey District and Section 18, Block IX, Lords River Survey District;

Market Value means the current market value of the relevant land at the time the question arises, determined by an independent registered valuer appointed by the Crown and approved by the Representatives of the Successors to a SILNA Land, or if they cannot agree on such appointment, the current market value determined by an independent registered valuer appointed by the President of the New Zealand Institute of Valuers (or his or her nominee), or the value otherwise determined in a manner agreed by the Representatives of the Successors to a SILNA Land and the Crown;

Minister means the Minister in Charge of Treaty of Waitangi Negotiations;

Original Beneficiaries means the persons listed in the Native Land Register compiled by Mackay and Smith and referred to in the Appendix to the Journals of the House of Representatives of New Zealand 1905, Volume III, G-2 in relation to the SILNA Lands, and, where the context requires, means the Original Beneficiaries of one of the SILNA Lands;

Recording Officer has the meaning given to it in regulation 2 of the Regulations;

Regulations means the Māori Assembled Owners Regulations 1995;

Representatives means those persons appointed as representatives by the Successors to the SILNA Lands in accordance with *clause 15.7.3*, and where the context requires, mean the Representatives of the Successors to one of the SILNA Lands;

SILNA Lands means:

- (a) the Hawea/Wanaka Land as defined in *clause 15.2.1*;
- (b) the Whakapoai Land as defined in *clause 15.3.1*;
- (c) the Port Adventure Land as defined in *clause 15.4.1*; and
- (d) the Toitoi Land as defined in *clause 15.5.1*,

and, where the context requires, *SILNA Land* means one of those blocks of land;

Successor means any person entitled to succeed, pursuant to *clause 15.6.2*, to the beneficial interest of an Original Beneficiary in a SILNA Land, and where the context requires, means the Successors to one of the SILNA Lands; and

Unallocated Land in relation to:

- (a) the Port Adventure Land, means the unallocated portion of that land, being 555 acres, more or less, which was set aside as a permanent reserve for landless Māori in the South Island, but never allocated; and
- (b) the Toitoi Land, means the unallocated portion of that land, being 365 acres, more or less, which was set aside as a permanent reserve for landless Māori in the South Island, but never allocated.

15.2 CLAIM 14 (HAWEA/WANAKA)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that around 1,658 acres of land, now known as the Hawea/Wanaka block, which was set aside at Manuhaea, or “the Neck”, between Lakes Wanaka and Hawea as a permanent reserve for 57 named individuals under the South Island Landless Natives Act 1906, was never in fact transferred to those owners.
- B. The Waitangi Tribunal found that:
 - (i) although the land was set aside in compliance with the South Island Landless Natives Act 1906, the land was not gazetted, never surveyed and the title was never transferred to the persons entitled to benefit from this allocation; and
 - (ii) this failure to allocate these lands served to exacerbate the earlier Crown failure to set aside sufficient lands within the purchase areas to give Ngāi Tahu an economic base and was therefore a further breach of the principles of the Treaty of Waitangi.

- C. As the Hawea/Wanaka Land is no longer available for allocation to the Successors, the Hawea/Wanaka Substitute Land is to be vested in those Successors by way of substitution.

15.2.1 Property Descriptions

In this *Section 15*:

Hawea/Wanaka Land means the area of land described in the Native Land Register compiled by Mackay and Smith referred to in the Appendix to the Journals of the House of Representatives of New Zealand 1905, Volume III, G-2 as "All that area containing by estimation 1658a, 2r, 22p situated in the Mid-Wanaka Survey District, being part of run 338a bounded on the south by run 338G, on the west by the brow of Lake Wanaka foreshore and on the north east and east by other parts of Run 338a"; and

Hawea/Wanaka Substitute Land means the land described as Otago Land District, Queenstown Lakes District Council, being Section 2 of 5, Block XIV, Lower Wanaka Survey District. Part CT 367/52 as shown hatched on *Allocation Plan AS 237 (SO 24734)*.

15.2.2 Transfer of Property

Te Rūnanga and the Crown agree that the form of redress for the Successors to the Hawea/Wanaka Land will be the vesting of the fee simple estate in the Hawea/Wanaka Substitute Land in those Successors pursuant to *clause 15.8.7*.

15.2.3 Revocation of Hawea/Wanaka Substitute Land's Current Reserve Status

The Crown agrees that the Settlement Legislation will provide for:

- (a) the vesting of the Hawea/Wanaka Substitute Land in the Queenstown Lakes District Council as a plantation reserve to be cancelled, notwithstanding section 27 of the Reserves Act 1977; and
- (b) the revocation of the reservation and the classification of the Hawea/Wanaka Substitute Land as a reserve for plantation purposes, notwithstanding section 24 of the Reserves Act 1977,

on the Settlement Date.

15.3 CLAIM 33 (WHAKAPOAI)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that around 1,600 acres of land, now known as the Whakapoai block, which was set aside at the southern end of the Heaphy Valley and the Gunner River Valley, east of the Iwituaroa

Range as a permanent reserve for 38 named individuals under the South Island Landless Natives Act 1906, was never in fact transferred to those owners.

B. The Waitangi Tribunal found that:

- (i) although the land was allocated and surveyed off into individual sections, it was not gazetted in compliance with the South Island Landless Natives Act 1906 and title was never transferred to the persons entitled to benefit from this allocation; and
- (ii) the Crown's failure to reserve and grant title to the allocated land was a breach of the principles of the Treaty of Waitangi.

15.3.1 Property Descriptions

In this *Section 15*:

Whakapoai Land means the land described as Nelson Land District, Buller District Council, 647.4974 hectares, more or less, being Sections 1-7, 9-17, 19-28 and 31-33, Block I and Sections 1-4, 8 and 10-13, Block V, Whakapoai Survey District (SO 6543). All New Zealand Gazette 1974 page 610 as shown on *Allocation Plan AS 214 (SO 15493)*; and

Whakapoai Substitute Land means the area, or areas, of land identified by the Crown and the Representatives of the Whakapoai Land in accordance with *clause 15.3.2(b)(i)* in order to provide redress for Claim 33 (Whakapoai).

15.3.2 Forms of Redress Available

Te Rūnanga and the Crown agree that the Minister shall provide the proposed form of redress set out in *clause 15.3.2(a)* unless the Recording Officer of the meeting of the Successors to the Whakapoai Land held in accordance with *clause 15.7.1*, informs the Minister that those Successors have decided to adopt one of the alternative forms of redress set out in *clause 15.3.2(b)(i)* and *clause 15.3.2(b)(ii)*, in which case the Minister shall provide the agreed alternate redress:

- (a) the proposed form of redress is the vesting of the fee simple estate in the Whakapoai Land in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*, with a lease-back to the Minister of Conservation on the terms set out in *Attachment 15.1*, and with compensation to be paid to the Successors by the Crown. The amount of such compensation will be the amount derived by deducting the Market Value of the lessor's interest in the Whakapoai Land with the lease upon it, from the Market Value of the Whakapoai Land without the lease; or

- (b) the alternative forms of redress are either:
- (i) the vesting of the fee simple estate in the Whakapoai Substitute Land, being:
- a suitable area, or areas, of land identified by the Representatives and the Crown; and
 - accepted by a meeting of the Successors reconvened in accordance with *clause 15.7.4*,
- in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*; or
- (ii) the provision of an alternative form of redress to those set out above in *clauses 15.3.2(a)* and *15.3.2(b)(i)*, negotiated and agreed to by the Representatives and the Crown, having particular regard to the Market Value of the Whakapoai Land.

15.3.3 Determining the Suitability of the Whakapoai Substitute Land

Te Rūnanga and the Crown agree that in determining the suitability of an area, or areas, of land to be used as the Whakapoai Substitute Land in accordance with *clause 15.3.2(b)(i)*, the following matters will be taken into consideration:

- (a) the iwi of the Successors and their traditional rohe;
- (b) the location of the area, or areas, of land;
- (c) the nature of the access to the area, or areas, of land;
- (d) the available or potential uses to which the area, or areas, of land may be put;
- (e) any other matters which the Crown and the Representatives agree are relevant; and
- (f) the Market Value of the area, or areas, of land proposed for use as the Whakapoai Alternative Land should be approximately equal to the Market Value of the Whakapoai Land without the lease.

15.4 CLAIM 92 (PORT ADVENTURE)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that around 10,000 acres of land, now known as the Port Adventure block, which was set aside on Rakiura (Stewart Island) as a permanent reserve for named individuals from Marlborough under the South Island Landless Natives Act 1906, was never in fact transferred to those owners.
- B. The Waitangi Tribunal found that:
- (i) although the land was set aside and gazetted in compliance with the South Island Landless Natives Act 1906, the land was never surveyed and the title was never transferred to the persons entitled to benefit from this allocation; and
 - (ii) the Crown's failure to reserve and grant title to the allocated land was a breach of the principles of the Treaty of Waitangi.

15.4.1 Property Description

In this *Section 15*, *Port Adventure Land* means the land described as Southland Land District, Southland District Council, 4046.8564 hectares, more or less, being parts Blocks I and II Lords River and parts Blocks IX, X and XI Paterson Survey Districts (Gaz Map 49A). Comprised in part New Zealand Gazette 1908 page 151. Subject to unregistered allocations of beneficial entitlements made by Judges Smith and MacKay (South Island Landless Natives Act 1906). Subject to survey as shown on *Allocation Plan AS 195 (SO 12240)*.

15.4.2 Forms of Redress Available

Te Rūnanga and the Crown agree that the Minister shall provide the proposed form of redress set out in *clause 15.4.2(a)* unless the Recording Officer of the meeting of the Successors to the Port Adventure Land held in accordance with *clause 15.7.1*, informs the Minister that those Successors have decided to adopt one of the alternative forms of redress set out in *clause 15.4.2(b)(i)* and *clause 15.4.2(b)(ii)*, in which case the Minister shall provide the agreed alternate redress:

- (a) the proposed form of redress is the vesting of the fee simple estate in the Port Adventure Land in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*; or
- (b) the alternative forms of redress are either:
 - (i) the negotiation of alternative boundaries to the Port Adventure Land by the Representatives and the Crown so that:

- those boundaries fall along natural geographic lines so as to facilitate the raising of title to the land with as little impact on the environment as possible;
- the new boundaries make allowance for areas of high conservation value; and
- the alteration of the boundaries is not detrimental to the overall interests of either party,

and that, if the negotiated boundaries to the Port Adventure Land are accepted by a meeting of the Successors reconvened in accordance with *clause 15.7.4*, the Crown will:

- survey the redefined Port Adventure Land; and
 - vest the fee simple estate in the redefined and surveyed Port Adventure Land in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*; or
- (ii) the provision of an alternative form of redress to those set out above in *clauses 15.4.2(a)* and *15.4.2(b)(i)*, negotiated and agreed to by the Representatives and the Crown, having particular regard to the Market Value of the Port Adventure Land as if it were surveyed.

15.5 CLAIM 92 (TOITOI)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that around 7,000 acres of land, now known as the Toitoi block, which was set aside on Rakiura (Stewart Island) as a permanent reserve for named individuals from Kaikoura under the South Island Landless Natives Act 1906, was never in fact transferred to those owners.
- B. The Waitangi Tribunal found that:
- (i) although the land was set aside and gazetted in compliance with the South Island Landless Natives Act 1906, the land was never surveyed and the title was never transferred to the persons entitled to benefit from this allocation; and
 - (ii) the Crown's failure to reserve and grant title to the allocated land was a breach of the principles of the Treaty of Waitangi.

15.5.1 Property Description

In this *Section 15*, *Toitoti Land* means the land described as Southland Land District, Southland District Council, 2994.6738 hectares more or less, being parts Blocks IV, V, VI, VII and VIII, Lords River Survey District (Gaz Map 49A). Comprised in part New Zealand Gazette 1908 page 1514. Subject to unregistered allocations of beneficial entitlements made by Judges Smith and MacKay (South Island Landless Natives Act 1906). Subject to survey as shown on *Allocation Plan AS 225 (SO 12244)*.

15.5.2 Forms of Redress Available

Te Rūnanga and the Crown agree that the Minister shall provide the proposed form of redress set out in *clause 15.5.2(a)* unless the Recording Officer of the meeting of the Successors to the Toitoti Land held in accordance with *clause 15.7.1*, informs the Minister that those Successors have decided to adopt one of the alternative forms of redress set out in *clause 15.5.2(b)(i)* and *clause 15.5.2(b)(ii)*, in which case the Minister shall provide the agreed alternate redress:

- (a) the proposed form of redress is the vesting of the fee simple estate in the Toitoti Land in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*; or
- (b) the alternative forms of redress are either:
 - (i) the negotiation of alternative boundaries to the Toitoti Land by the Representatives and the Crown so that:
 - those boundaries fall along natural geographic lines so as to facilitate the raising of title to the land with as little impact on the environment as possible;
 - the new boundaries make allowance for areas of high conservation value; and
 - the alteration of the boundaries is not detrimental to the overall interests of either party,

and that, if the negotiated boundaries to the Toitoti Land are accepted by a meeting of the Successors reconvened in accordance with *clause 15.7.4*, the Crown will:

- survey the redefined Toitoti Land; and

- vest the fee simple estate in the redefined and surveyed Toitoti Land in the Successors in the manner and with the status decided upon by the Successors in accordance with *clause 15.7.5*; or
- (ii) the provision of an alternative form of redress to those set out above in *clauses 15.5.2(a)* and *15.5.2(b)(i)*, negotiated and agreed to by the Representatives and the Crown, having particular regard to the Market Value of the Toitoti Land as if it were surveyed.

15.6 IDENTIFICATION OF SUCCESSORS AND SUCCESSORS' INTERESTS IN THE SILNA LANDS

15.6.1 Māori Land Court to Identify Successors

Te Rūnanga and the Crown agree that, within 10 Business Days of the Settlement Date the Crown, through the Minister of Māori Affairs, in order to identify all Successors, will refer the matter to the Māori Land Court for inquiry and report pursuant to section 29 of the Te Ture Whenua Māori Act 1993.

15.6.2 Manner of Identifying Successors and Their Interest in the SILNA Lands

Te Rūnanga and the Crown agree that the Crown, through the Minister of Māori Affairs, will request the Māori Land Court, pursuant to section 29 of the Te Ture Whenua Māori Act 1993, to identify all of the Successors and their relative beneficial interest in the SILNA Lands by identifying all persons entitled to succeed to the interest of an Original Beneficiary in the SILNA Lands as if section 109 of the Te Ture Whenua Māori Act 1993 applied to the Original Beneficiary, and to every Successor to the Original Beneficiary, upon his or her death (notwithstanding that he or she may not have died intestate and that the SILNA Lands are not Māori freehold land) up until the date of the Māori Land Court's determination in accordance with this *clause 15.6.2*.

15.6.3 Further Manner of Identifying Successors

Te Rūnanga and the Crown agree that the Crown, through the Minister of Māori Affairs, will request the Māori Land Court, pursuant to section 29 of the Te Ture Whenua Māori Act 1993, to identify all of the Successors to the SILNA Lands in accordance with section 114 of the Te Ture Whenua Māori Act 1993 if, in respect of an Original Beneficiary, the Court is of the opinion that no person is primarily entitled to succeed to that Original Beneficiary's interest in a SILNA Land in accordance with *clause 15.6.2*.

15.6.4 Further Calculation of the Successors' Interests in SILNA Lands

Te Rūnanga and the Crown agree that, in relation to the Port Adventure Land and the Toitoti Land, each Successor to those lands will have a beneficial interest in the relevant Unallocated Land in proportion to each Successor's beneficial interest in the Port Adventure Land or the Toitoti Land as determined in accordance with

clause 15.6.2. The Crown, through the Minister of Māori Affairs, will request the Māori Land Court, pursuant to section 29 of the Te Ture Whenua Māori Act 1993, to calculate the beneficial interest of each Successor to the Port Adventure Land and the Toitoi Land in the relevant Unallocated Land.

15.6.5 Māori Land Court to Report to the Minister and Te Rūnanga

Te Rūnanga and the Crown agree that the Crown, through the Minister of Māori Affairs, will request the Māori Land Court to report its findings on the matters set out in *clauses 15.6.1 to 15.6.4* to both the Minister of Māori Affairs and Te Rūnanga.

15.7 SUCCESSORS TO DECIDE REDRESS OPTIONS

15.7.1 Crown to Apply for a Meeting of Successors

Te Rūnanga and the Crown agree that, within 25 Business Days of the Māori Land Court reporting to Te Rūnanga and the Minister of Māori Affairs that it is satisfied that it has identified all of the Successors to the Original Beneficiaries of a SILNA Land, or that all appropriate steps have been taken to identify all of the Successors in accordance with *clause 15.6.1*, the Minister of Māori Affairs will make a formal application to the Māori Land Court, as an interested person pursuant to section 173 of the Te Ture Whenua Māori Act 1993, for the Māori Land Court to call a meeting of the Successors to that SILNA Land. The meeting is to be convened in accordance with Part IX of the Te Ture Whenua Māori Act 1993 and is to be held as soon as practicable after the Crown's application to the Māori Land Court.

15.7.2 Meeting of Successors to Consider Alternative Redress Options

Te Rūnanga and the Crown agree that the Crown, through the Minister, will put each of the forms of redress noted in *clauses 15.3, 15.4 and 15.5* to the meeting of the Successors to the SILNA Land to which the forms of redress relate, convened in accordance with *clause 15.7.1*, for the Successors' consideration and decision as to which form of redress to adopt, pursuant to the procedures set out in the Regulations.

15.7.3 Appointment of Representatives to Negotiate Alternative Redress

Te Rūnanga and the Crown agree that, if, at a meeting of Successors held pursuant to *clause 15.7.1*, the Successors decide to investigate one of the alternative forms of redress available under *clauses 15.3.2, 15.4.2 or 15.5.2*, then those Successors shall appoint Representatives (not exceeding 10 in number) in accordance with the procedures set out in the Regulations to negotiate, on behalf of the Successors of the relevant SILNA Land, the terms of that redress with representatives of the Crown.

15.7.4 Reconvened Meeting to Decide Whether to Adopt Alternative Redress

Te Rūnanga and the Crown agree that, as soon as practicable after the Representatives and the Crown have agreed on the terms of an alternative form of redress for a SILNA Land in accordance with *clause 15.7.3*, a meeting of all of the Successors of that SILNA Land will be reconvened in accordance with Part IX of the Te Ture Whenua Māori Act 1993 in order for those Successors to determine, in accordance with the procedures set out in the Regulations, whether to adopt the negotiated alternative form of redress or one of the other forms of redress listed for that SILNA Land in this *Section 15*.

15.7.5 Status of Land and Manner of Vesting of Land to be Determined

Te Rūnanga and the Crown agree that, provided that the Successors to a SILNA Land decide, at their meeting convened in accordance with *clause 15.7.1* or reconvened in accordance with *clause 15.7.4*, to adopt a form of redress which involves the vesting or transfer of the fee simple estate in land, those Successors at that meeting will consider and decide, pursuant to the procedures set out in the Regulations:

- (a) the status of the land to be vested in them (or the entity to hold the land on their behalf) by deciding whether the land is to be vested as:
 - (i) Māori freehold land; or
 - (ii) General land,as those terms are defined in section 129 of the Te Ture Whenua Māori Act 1993; and
- (b) the manner in which their land will be held by them by deciding whether the land is to be vested in:
 - (i) the Successors as tenants in common with an undivided share in proportion to each Successor's share of his or her Original Beneficiaries interest determined in accordance with *clauses 15.6.2, 15.6.3 and 15.6.4*;
 - (ii) a Māori Incorporation established under Part XIII of the Te Ture Whenua Māori Act 1993;
 - (iii) an ahu whenua trust constituted under section 215 of the Te Ture Whenua Māori Act 1993; or
 - (iv) any other manner the Successors of the land in question decide upon.

15.8 LEGISLATION TO GIVE EFFECT TO SILNA REDRESS

The Crown agrees that the Settlement Legislation will provide:

- 15.8.1 for the Minister to be empowered to provide any of the forms of redress set out in *clauses 15.2.2, 15.3.2, 15.4.2 and 15.5.2* and to take any further steps required to give effect to this *Section 15*;
- 15.8.2 for the Minister of Māori Affairs and the Māori Land Court to be empowered to undertake any actions prescribed for them in this *Section 15*, notwithstanding the fact that the SILNA Lands, or land being dealt with in substitution for a SILNA Land, are not Māori freehold land;
- 15.8.3 for the Māori Land Court to be empowered to give notice in the Panui of every Māori Land Court District, and in such other way as the Māori Land Court deems appropriate, in order to identify the Successors to the SILNA Lands pursuant to *clauses 15.6.2 and 15.6.3*;
- 15.8.4 for the Successors to be deemed to be “owners”, as that term is defined in section 170 of the Te Ture Whenua Maori Act 1993 and regulation 2 of the Regulations;
- 15.8.5 that, if the Successors to a SILNA Land do not make a decision in accordance with the procedures set out in the Regulations to adopt any one of the options listed above in *clause 15.7.5*, they will be deemed to have chosen the option which received the most votes in accordance with those procedures;
- 15.8.6 for the Recording Officer of each meeting of the Successors to a SILNA Land to report, pursuant to the procedure set out in regulation 48 of the Regulations, the decisions of the Successors made pursuant to *clause 15.7.2, or clause 15.7.4, and clause 15.7.5* to the Minister;
- 15.8.7 for any land to be vested pursuant to this *Section 15*, to be vested by the Minister by notice in The New Zealand Gazette in the Successors to the relevant SILNA Land determined by the Māori Land Court pursuant to *clauses 15.6.2 or 15.6.3*, in the form, manner and status determined by the Successors pursuant to *clause 15.7* as soon as practicable after the Recording Officer of the meeting of the Successors to the relevant piece of land has formally notified the Crown of the Successors’ decisions made pursuant to *clause 15.7.2, or clause 15.7.4, and clause 15.7.5*, and in the case of *clause 15.3.2(a)*, such vesting shall be subject to the lease in *Attachment 15.1*;

- 15.8.8 for any land referred to in this *Section 15* that is to be vested in the Successors as Māori freehold land to be deemed to have the status of Māori freehold land as if it had acquired that status pursuant to section 130 of the Te Ture Whenua Māori Act 1993 from the date on which it is vested;
- 15.8.9 for the Minister of Conservation to be empowered, in his or her discretion, to change the classification or purpose of the whole or part of the Adjoining Land, or revoke the reservation of the whole or part of that land as a Nature Reserve or Scenic Reserve, or remove the status of conservation (stewardship) area managed for conservation purposes from the whole or part of that land, by notice in the New Zealand Gazette, in order to allow for the creation of alternative boundaries to the Port Adventure Land and/or the Toitōi Land in accordance with *clauses 15.4.2(b)(i) and 15.5.2(b)(i)*, notwithstanding section 24 of the Reserves Act 1977 or Part V of the Conservation Act 1987;
- 15.8.10 that the Crown may lease back the Whakapoai Land on the basis outlined in *clause 15.3.2(a)* notwithstanding anything to the contrary in the Land Act 1948 or any other statutory provisions governing the transfer of Crown land and the entry by the Crown into a lease of land;
- 15.8.11 that section 11 and Part X of the Resource Management Act 1991 will not apply to the lease back of the Whakapoai Land;
- 15.8.12 that, if the Successors to the Whakapoai Land decide to adopt the redress set out in *clauses 15.3.2(b)(i) or 15.3.2(b)(ii)*, the Whakapoai Land will be deemed to be part of the Kahurangi National Park as if it were constituted a National Park under the National Parks Act 1980, notwithstanding section 8 of the National Parks Act 1980;
- 15.8.13 that, if the Successors to the Whakapoai Land decide to adopt the redress set out in *clause 15.3.2(a)*, the Governor-General will be empowered to declare the Whakapoai Land to be a National Park subject to the National Parks Act 1980 in accordance with section 7 of that Act as if it were constituted a National Park under the National Parks Act 1980, notwithstanding anything to the contrary in the National Parks Act 1980;
- 15.8.14 that, if the Successors to the Whakapoai Land decide to adopt the redress set out in *clause 15.3.2(a)*, the Whakapoai Land will be managed by the Crown as part of the Kahurangi National Park as if it were constituted a National Park under the National Parks Act 1980;

15.8.15 for the appropriate District Land Registrars to be empowered and required, upon instruction from the Minister, to take such steps as are necessary to give effect to this *Section 15*; and

15.8.16 that, if the Successors to the Whakapoai Land decide to adopt the redress set out in *clause 15.3.2(a)*, section 147(2) and section 151(1)(f) of the Te Ture Whenua Māori Act 1993 and regulation 43 of the Regulations will not apply to the alienation of that land in accordance with that *clause 15.3.2(a)*.

15.9 MINISTER TO REPORT TO TE RŪNANGA

Te Rūnanga and the Crown agree that the Minister will report any action he or she takes under *clauses 15.8.1* or *15.8.7* to Te Rūnanga.

15.10 GENERAL MATTERS CONCERNING THE VESTING OF LAND

15.10.1 Crown to Pay All Costs of Survey

The Crown agrees to pay the costs of all and any surveys of land required in order to give effect to the redress proposed in this *Section 15*.

15.10.2 Valuation of Properties Being Vested

The Crown agrees that, to the extent that the Crown's interest in land being vested pursuant to *clauses 15.8.7* and *15.11.3* has any value, the vesting of that interest in the Ancillary Claims Trustees and/or the transfer of that interest to the Successors will be without charge to Te Rūnanga and will be without cost to the Successors (provided that any costs of establishing any entity in which the land is to be vested will be to the account of the Successors, not the Crown).

15.11 CLAIM 16 (SOUTH WESTLAND)

Preamble

A. The substance of the claim to the Waitangi Tribunal was that:

- (i) the original reserves set aside by the Crown for Ngāi Tahu in South Westland were too few in number, small in size and poor in quality to sustain the people of South Westland;
- (ii) the requests in 1894 by Te Koeti Turanga on behalf of his people to provide further reserves for mahinga kai purposes were not satisfied by the allocation of three 50 acre reserves under the South Island Landless Natives Act 1906;
- (iii) some of the reserves which were permanently set aside under this legislation were not only placed in inappropriate locations, but the Crown also failed to

allocate the reserves to individual owners or to transfer the title to Ngāi Tahu; and

- (iv) by the operation of legislation, including the Māori Purposes Act 1966, some parts of the reserves became Crown land and one reserve has since been alienated.

B. The Tribunal found that:

- (i) the Crown had failed to set aside adequate reserves for Ngāi Tahu in South Westland;
- (ii) the three mahinga kai reserves agreed to in principle by the Crown were in fact never transferred to Ngāi Tahu; and
- (iii) the Crown's failure to carry out its promises made in 1892 to Te Koeti Turanga to reserve tribal areas for mahinga kai was in breach of the principles of good faith.

C. The fee simple estate in the South Westland Substitute Land is to be vested in the Successors to the Original South Westland Reserves in substitution for the Original South Westland Reserves.

15.11.1 Interpretation

The provisions of *clause 14.3* relating to the Ancillary Claims Trust shall apply to this *clause 15.11*, and *clauses 15.6, 15.7 and 15.8* shall not apply to this *clause 15.11*.

15.11.2 Property Descriptions

In this *clause 15.11*:

Awarua Site means the land described as Westland Land District, Westland District Council, 40.4686 hectares, more or less, being Rural Section 881 (SO 5650). All Certificate of Title 8B/514. Subject to Timber Rights and rights incidental thereto created by Transfer 28366. Subject to Caveat 28671 by Robert Patrick Nolan, Desmond Joseph Nolan and Kevin Nolan. Together with a Deed of Grant of Easement of Right of Way embodied in Register Book 8B/839 (Westland Land Registry) as shown on *Allocation Plan AS 509 (SO 12518)*;

Okahu Site (No. 1) means the land described as Westland Land District, Westland District Council, 8.5300 hectares, more or less, being Section 2, SO 11836. Part Certificate of Title 8A/496. Part subject to survey as shown on *Allocation Plan AS 205 (SO 12494)*;

Okahu Site (No. 2) means the land described as Westland Land District, Westland District Council, 3.0000 hectares, approximately being Part Rural Section 537 (SO 6013), subject to Section 62, Conservation Act 1987. Part subject to survey as shown on *Allocation Plan AS 205 (SO 12494)*;

Okahu Site (No. 3) means the land described as Westland Land District, Westland District Council, 3.0000 hectares, approximately being Part Rural Section 538 (SO 6013), subject to Section 62, Conservation Act 1987. Part subject to survey as shown on *Allocation Plan AS 205 (SO 12494)*;

Okahu Site (No. 4) means the land described as Westland Land District, Westland District Council 4.0581 hectares, more or less, being Rural Section 5523 (SO 9683). All Gazette 1993 page 1031 as shown on *Allocation Plan AS 210 (SO 12496)*;

Original South Westland Reserves means Māori Reserve 318A, Block V, Abbey Rocks Survey District, Rural Section 319, Block III, Abbey Rocks Survey District and Rural Section 865, Block XVI, Gillespies Survey District;

Paringa River Site means the land described as Westland Land District, Westland District Council, 20.2342 hectares, approximately, being Part Rural Section 660, subject to Section 62, Conservation Act 1987. Subject to survey as shown on *Allocation Plan AS 203 (SO 12492)*;

Site A means the 14.5000 hectares, approximately, to be selected from within the land described as part of Westland Land District, Westland District Council, being Parts Reserve 1692, Reserve 169 and Rural Section 561, subject to Section 62 Conservation Act 1987, Subject to survey and as shown marked "4", "5", "6" and part of area "2" on *Allocation Plan A 496 (SO 12509)*;

South Westland Substitute Land means the Awarua Site, Okahu Site (No. 4), Paringa River Site, Whakapohai Site and either Okahu Site (No. 1), Okahu Site (No. 2) and Okahu Site (No. 3) or Site A; and

Whakapohai Site means the land described as Westland Land District, Westland District Council, 0.7200 hectares, approximately, being Part Rural Section 6161, adjoining Sections 1 and 2 SO 11845. Subject to Section 62, Conservation Act 1987. Subject to survey as shown on *Allocation Plan AS 493 (SO 12502)*.

15.11.3 Transfer of Properties

The Crown agrees that the Settlement Legislation will provide:

- (a) for the fee simple estate in the:
 - (i) Awarua Site;
 - (ii) Okahu Site (No. 4); and
 - (iii) Whakapohai Site,to be vested in the Ancillary Claims Trustees;
- (b) for the removal of the status of conservation (stewardship) area managed for conservation purposes from the Paringa River Site 30 Business Days after the Settlement Date, notwithstanding Part V of the Conservation Act 1987;
- (c) for the vesting of the fee simple estate in the Paringa River Site in the Ancillary Claims Trustees, subject to the Ancillary Claims Trustees entering into and registering a Ngā Whenua Rāhui kawenata relating to the protection of the Paringa River Site in the form set out in *Attachment 15.2* before the fee simple estate in the Paringa River Site is vested in the appropriate Beneficiaries;
- (d) for the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.3(e)* to be deemed to have been entered into pursuant to section 77A of the Reserves Act 1977, notwithstanding the fact that the Paringa River Site is not Māori land;
- (e) for the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.3(e)* to be in perpetuity subject to a condition that at agreed intervals of not less than 25 years the parties to the Ngā Whenua Rāhui kawenata shall review the objectives, conditions, and continuance of the Ngā Whenua Rāhui kawenata, and on such review the parties may mutually agree that the Ngā Whenua Rāhui kawenata shall be terminated and that the Crown shall have regard to the manawhenua of the owner of the Paringa River Site, as provided for in section 77A(1)(b) of the Reserves Act 1977, but the owner of the Paringa River Site may only terminate the Ngā Whenua Rāhui kawenata by agreement with the Minister of Conservation; and
- (f) that the appropriate District Land Registrar shall register the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.3(e)* as soon as it is duly executed and presented for registration by the Ancillary Claims Trustees.

15.11.4 Vesting of Property or Property Interests

The Crown and Te Rūnanga agree that all properties or property interests to be vested pursuant to *clause 15.11.3* will be vested 30 Business Days after the Settlement Date.

15.11.5 Access to the Awarua Site

Te Rūnanga and the Crown note that access to the Awarua Site is currently obtained over a right of way. The Crown agrees:

- (a) that if the right of way which currently provides access to the Awarua Site becomes unusable due to reasons outside the control of the Ancillary Claims Trustees, or the relevant Beneficiaries, as appropriate, the Crown will provide a suitable alternative right of way to the Awarua Site after consultation with the Ancillary Claims Trustees or the relevant Beneficiaries, and having regard to the conservation values of the land over which the alternative right of way is proposed to be granted; and
- (b) to continue discussions with Te Rūnanga in order to agree on a suitable alternative right of way.

15.11.6 Public Works Act 1981 Procedures apply to Okahu Site (No. 1)

The Crown agrees that it will, as soon as practicable after the date of this Deed, request the Commissioner of Crown Lands to invoke the offer back procedure under Part III of the Public Works Act 1981 in relation to the Okahu Site (No. 1).

15.11.7 Process if Offer Back Accepted

If the offer back made under the procedure invoked pursuant to *clause 15.11.6* is accepted, the Commissioner of Crown Lands shall transfer the Okahu Site (No. 1) to the persons who accepted the offer in accordance with Part III of the Public Works Act 1981 at the price determined by the Commissioner, and report these matters to the Minister in Charge of Treaty of Waitangi Negotiations. In that event, the Minister shall vest the fee simple estate in Site A in the Ancillary Claims Trustees by notice in the New Zealand Gazette, notwithstanding Part V of the Conservation Act 1987.

15.11.8 Process if Offer Back Rejected

If the offer back made under the procedure invoked pursuant to *clause 15.11.6* is rejected, then the Commissioner of Crown Lands shall report this matter to the Minister in Charge of Treaty of Waitangi Negotiations, and the Minister shall then vest the fee simple estate in the Okahu Site (No. 1), Okahu Site (No. 2) and the Okahu Site (No. 3) in the Ancillary Claims Trustees by notice in the New Zealand Gazette, notwithstanding Part V of the Conservation Act 1987.

15.11.9 Removal of Conservation Status and General Matters

The Crown agrees that the Settlement Legislation will provide:

- (a) that, if the Minister in Charge of Treaty of Waitangi Negotiations gives notice in the New Zealand Gazette that the fee simple estate in either Site A, Okahu Site (No. 2) or Okahu Site (No. 3) is to be vested in the Ancillary Claims Trustees, then the status of conservation (stewardship) area managed for conservation purposes will be deemed to be removed from the relevant site or sites at the time such notice is given, notwithstanding Part V of the Conservation Act 1987;
- (b) such provisions as are required to empower and require the Minister in Charge of Treaty of Waitangi Negotiations and the Commission of Crown Lands to undertake the process outlined in *clauses 15.11.6 to 15.11.8* (inclusive) in relation to the Okahu Site (No. 1), Okahu Site (No. 2), Okahu Site (No. 3) and Site A;
- (c) that if Site A is vested in the Ancillary Claims Trustees pursuant to *clause 15.11.7*, such vesting is to be subject to the Ancillary Claims Trustees entering into and registering a Ngā Whenua Rāhui kawenata relating to the protection of Site A in the form set out in *Attachment 15.3* before the fee simple estate in that site is vested in the appropriate Beneficiaries;
- (d) for the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.9(c)* to be deemed to have been entered into pursuant to section 77A of the Reserves Act 1977, notwithstanding the fact that Site A is not Māori land;
- (e) for the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.9(c)* to be in perpetuity subject to a condition that at agreed intervals of not less than 25 years the parties to the Ngā Whenua Rāhui kawenata shall review the objectives, conditions, and continuance of the Ngā Whenua Rāhui kawenata, and on such reviews the parties may mutually agree that the Ngā Whenua Rāhui kawenata shall be terminated and that the Crown shall have regard to the manawhenua of the owner of Site A as provided for in section 77A(1)(b) of the Reserves Act 1977, but the owner of Site A may only terminate the Ngā Whenua Rāhui kawenata by agreement with the Minister of Conservation; and
- (f) that the appropriate District Land Registrar shall register the Ngā Whenua Rāhui kawenata referred to in *clause 15.11.9(c)* as soon as it is duly executed and presented for registration by the Ancillary Claims Trustees.

LEASE OF WHAKAPOAI LAND

ATTACHMENT 15.1
LEASE OF WHAKAPOAI LAND
(Clause 15.3.2(a))

MEMORANDUM OF LEASE*Date:***BETWEEN**

- (1) **THE SUCCESSORS TO THE WHAKAPOAI LAND** (*the Lessor*) being registered as the proprietor of an estate in fee simple subject to such encumbrances, liens and interests as are notified by memoranda underwritten or endorsed on this Lease in all that parcel of land situated in the Whakapoai Survey District, more particularly described in the Schedule of Land.
- (2) **HER MAJESTY THE QUEEN** in Right of New Zealand acting by and through the Minister of Conservation (*the Lessee*)

SCHEDULE OF LAND

Estate		Fee Simple
C.T.	Area	Lot & D.P. No. or other legal description, or Document No.
	647.4974 hectares, more or less	Nelson Land District, Buller District Council, 647.4974 hectares, more or less, being Sections 1-7, 9-17, 19-28 and 31-33, Block I and Sections 1-4, 8 and 10-13, Block V, Whakapoai Survey District (SO 6543). All New Zealand Gazette 1974 page 610 as shown on <i>Allocation Plan AS 214 (SO 15493)</i> and attached to the Deed of Settlement referred to in <i>Recital A</i> .
Encumbrances, Liens & Interests		
Together with		

BACKGROUND

- A The Lessee and Te Rūnanga are parties to a Deed of Settlement dated 21 November 1997.

LEASE OF WHAKAPOAI LAND

- B Pursuant to that Deed, provision was made for the Lessee to transfer the Land to the Lessor subject to the Lessor granting to the Lessee a lease in perpetuity of the Land at a peppercorn rental and upon the terms and conditions set out in this Lease, if the Lessor decided to adopt this course of action.
- C The Lessor has decided to adopt the course of action set out in *Recital B*.
- D Subject to the Lessor having first decided to adopt the course of action set out in *Recital B*, section [] of the Ngāi Tahu Claims Settlement Act 1997 empowers the Governor-General to declare the Land to be a National Park subject to the Act in accordance with section 7 of the Act and section [] of the Ngāi Tahu Claims Settlement Act 1997 provides for the Land to be managed by the Crown as if it were part of the Kahurangi National Park.
- E The parties have agreed that the leasehold interest in the Land shall be acquired by the Lessee so that the Governor-General may declare the Land to be a National Park subject to the Act and so that the Lessee can manage the Land as if it were part of the Kahurangi National Park.

NOW THEREFORE THE LESSOR HEREBY LEASES TO THE LESSEE and THE LESSEE HEREBY TAKES ON LEASE the Land described in the Schedule of Land for the term and at the rent set out in this Lease and otherwise subject to the covenants, conditions, agreements and restrictions set out in this Lease which includes the Schedule of Land and the Schedule of Terms.

DATED 199

[*Execution provisions to come*]

SCHEDULE OF TERMS

THE LESSOR AND THE LESSEE COVENANT AND AGREE as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Lease, unless the context otherwise requires:

the Act means the National Parks Act 1980;

the Land means the land described as Nelson Land District, Buller District Council, 647.4974 hectares, more or less, being Sections 1-7, 9-17, 19-28 and 31-33, Block I and Sections 1-4, 8 and 10-13, Block V, Whakapoai Survey District (SO 6543). All New Zealand Gazette 1974 page 610 as shown on *Allocation Plan*

LEASE OF WHAKAPOAI LAND

AS 214 (SO 15493) and attached to the Deed of Settlement referred to in *Recital A*;

the Rent means an annual rental of \$1.00 per annum including GST;

the Successors to the Whakapoai Land means the persons determined by the Maori Land Court pursuant to clause 15.6.2 of the Deed of Settlement referred to in *Recital A* to be entitled to succeed to the beneficial interest of an Original Beneficiary (as that term is defined in clause 15.1 of the Deed of Settlement referred to in *Recital A*) in the Land; and

Te Rūnanga means Te Rūnanga o Ngāi Tahu, established under section 6 of the Te Rūnanga o Ngāi Tahu Act 1976.

- 1.2 In the interpretation of this Lease, unless the context otherwise requires:
- 1.2.1 headings appear as a matter of convenience and are not to affect the interpretation of this Lease;
 - 1.2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;
 - 1.2.3 a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations but this provision shall be read subject to clause 1.3 of this Lease; and
 - 1.2.4 a reference to a party to this Lease or any other document or agreement includes that party's successors, heirs, executors and assigns.
- 1.3 The parties agree that the rule of interpretation referred to in *clause 1.2.3* of this Lease is intended only to facilitate interpretation of this Lease in circumstances where legislative changes make statutory references in this Lease obsolete. It is not intended to indicate, and should not be interpreted as indicating, any consent by the Lessor to, or acquiescence by the Lessor in, the introduction to Parliament by the Crown of any proposed statutory amendment which would adversely affect the redress provided by the Crown pursuant to the Deed of Settlement referred to in *Recital A* or the ability of either party to fulfil its obligations expressed in this Lease or in that Deed of Settlement.

LEASE OF WHAKAPOAI LAND

2 LEASE IN PERPETUITY

The Lessor leases the Land to the Lessee in perpetuity and the Lessee takes on lease the Land in perpetuity subject to the terms and conditions set out in this Lease.

3 THE RENT

The Lessee shall pay the Rent to the Lessor on demand by the Lessor.

4 LEASE CHARGES

In addition to the rent payable under the Lease, the Lessee shall, subject to any agreement to the contrary between the Lessee and the Lessor, pay all rates, grants in lieu of rates, and other local authority charges which may be charged, levied or reasonably assessed or which may become payable in relation to the Land and all costs, expenses and charges of any nature incurred by the Lessee or the Lessor (in which case they shall be reimbursed by the Lessee to the Lessor upon demand) in relation to the ownership, management, occupation and use of the Land under *clause 5* of this Lease.

5 PERMITTED USE

The Lessee shall manage the Land as part of the Kahurangi National Park for the purposes set out in section 4 of the National Parks Act 1980 and subject to all provisions of that Act.

6 NO ASSIGNMENT

The Lessee shall not assign, sublet or otherwise part with possession of the Land or its estate or interest in the Land or any part or parts of the Land without the prior consent of the Lessor. Nothing in this clause prevents the Lessee from granting a concession (as that term is defined in section 2 of the Act) in compliance with the Act and this Lease.

7 QUIET ENJOYMENT

The Lessee, while paying the Rent and performing and observing the terms and conditions of this Lease shall peaceably hold and enjoy the Land without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the determination of this Lease.

LEASE OF WHAKAPOAI LAND

8 TERMINATION

8.1 The Lessor may terminate this Lease by 90 days notice in writing to the Lessee if:

- 8.1.1 the Rent or any other money payable to the Lessor under this Lease is in arrears and unpaid for 28 days after any of the days appointed for payment (which, in the case of the Rent, is the date of demand); or
- 8.1.2 the Lessee breaches any terms of this Lease, the Lessor has notified the Lessee in writing of the breach, and the Lessee does not rectify the breach within 90 days of receiving notification.

8.2 If the Lessor terminates the Lease under this *clause 8* all rights of the Lessee shall absolutely cease but the Lessee shall not be released from any liability to pay the Rent or other money payable by the Lessee up to the date of termination or for any breach of any term up to the date of termination.

8.3 The Lessor may exercise its right under this clause to terminate the Lease notwithstanding any prior waiver or failure to take action by the Lessor or any indulgence granted by the Lessor for any matter or default.

8.4 The Lessee shall pay the costs of the Lessor in enforcing or attempting to enforce its rights and powers under this Lease if the Lessee is in default.

9 ACCESS

9.1 Members of the public may have access to and entry on the Land subject to any controls on entry imposed by the Lessee pursuant to the Act and subject to the terms of this Lease.

9.2 The Lessor may have free access to and entry on the Land at any time.

10 INDEMNITY

The Lessee will indemnify the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall become liable arising from loss or damage to the property of, or death or injury to, any member of the public on any part of the Land in accordance with the right of access given the *clause 9* of this Lease unless such loss, damage, death or injury is caused or contributed to by any act, omission, neglect or breach of this Lease on the part of the Lessor or any employee, contractor or agent of the Lessor.

11 DISPUTE RESOLUTION AND ARBITRATION

11.1 If any dispute arises between the parties in connection with this Lease, the parties shall without prejudice to any other rights attempt to resolve the dispute by

LEASE OF WHAKAPOAI LAND

negotiation or other informal dispute resolution techniques agreed to by the parties.

- 11.2 If the parties are unable to resolve the dispute by negotiation or other informal means within 21 days of written notice by one party to the other of the dispute (or such further period as the parties agree in writing) either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996.

12 NOTICES

- 12.1 All notices under this Lease shall be in writing. They shall be delivered personally or by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in *clause 12.2*. A notice given in accordance with this clause shall be deemed to have been received:

12.1.1 in the case of personal delivery, on the date of delivery;

12.1.2 in the case of a letter, on the third working day after posting; and

12.1.3 in the case of facsimile, on the date of dispatch.

- 12.2 The address for notice of the parties are:

12.2.1 Lessor:

12.2.2 Lessee: Conservator West Coast Conservancy
Sewell Street
HOKITIKA

Facsimile: (03) 755 8425,

or such other address as may be notified in writing to the Minister of Conservation by the Lessor from time to time.

13 REGISTRATION OF THIS LEASE

The Lessor shall at the cost of the Lessee in all respects, register this Lease under the provisions of the Land Transfer Act 1952.

EXECUTED as a deed on the date first written above.

[Execution provisions to come]

ATTACHMENT 15.2
NGĀ WHENUA RĀHUI KAWENATA OVER THE PARINGA RIVER SITE
(Clause 15.11.3(c))

NGĀ WHENUA RĀHUI KAWENATA - PARINGA RIVER SITE
(Section 77A Reserves Act 1977)

THIS DEED made the _____ day of _____ 199

BETWEEN **THE ANCILLARY CLAIMS TRUSTEES** [*names of initial trustees to be inserted here*] on behalf of the Beneficial Owners ("the Landowners")

AND **THE MINISTER OF CONSERVATION** ("the Minister").

WHEREAS

- A. The Landowners are the registered proprietors of the land described in Schedule B ("the land") and shown on the attached map.
- B. The Minister is satisfied that the land should be managed so as to preserve and protect the natural environment, wildlife habitat, or historical value of the land and the spiritual and cultural values which tāngata whenua associate with the land.
- C. The Minister and the landowners have agreed to execute a Ngā Whenua Rāhui kawenata ("the Kawenata") to provide for the management of the land in a manner that will achieve the purposes described in recital B above.
- D. The parties have agreed that the land be managed with the following objectives:
- (i) protecting and enhancing the natural character of the land with particular regard to the indigenous native flora and fauna, their diverse communities and their interactions with the environment that supports them;
 - (ii) protecting the land as an area representative of a significant part of the natural ecological character of its ecological district;
 - (iii) protecting and enhancing the cultural and spiritual values associated with the land and its related water bodies;

NGĀ WHENUA RĀHUI KAWENATA OVER THE PARINGA RIVER SITE

- (iv) embodying the principles of a working relationship between the Crown and the tāngata whenua emphasising the manawhenua of the Landowners;
- (v) protecting the historic, archaeological and educational values associated with the land and its related water bodies; and
- (vi) providing for the Landowners and, subject to clause 2, public's enjoyment of the land to the extent consistent with the above objectives.

E. The Kawenata is entered into by the parties in pursuance of the Deed of Settlement between Her Majesty the Queen and Te Rūnanga o Ngāi Tahu.

NOW THEREFORE, THE MINISTER AND THE LANDOWNERS, pursuant to section 77A of the Reserves Act 1977, agree that land shall be managed in accordance with the terms and conditions set out in this Deed so as to achieve the purposes and objectives listed in recitals B and D above:

CONDITIONS

1 MANAGEMENT OBLIGATIONS

- 1.1 The Landowners shall manage and protect any scenic, historic, archaeological, spiritual, cultural, biological, and geological features present on the land in accordance with the objectives set out in this Deed. Its soil, water and forest conservation values shall be maintained by the Landowners to the extent compatible with the objectives set out in this Kawenata.
- 1.2 The Landowners shall not permit stock to graze the land nor pass through the land unless the area to be grazed or the passage way is adequately fenced. Subject to clause 4 the Landowners shall maintain all boundary and internal fences on the land in a good and stockproof condition in order to facilitate proper protection for the land.
- 1.3 The Landowners shall, so far as is practicable:
 - (a) keep the land free from plant pests;
 - (b) keep the land free from exotic plant and tree species;
 - (c) keep the land free from any animal pests and wild animals; and
 - (d) keep the land free from rubbish or other unsightly or offensive material,

HOWEVER, the Landowners may request assistance from the Minister (who may assist them in his or her discretion) in meeting these obligations if they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Deed, or as otherwise agreed under clause 4.

1.4. Unless required to do so pursuant to statute, neither the Landowners nor the Minister shall carry out or allow to be carried out without the prior approval of the other party to this Deed:

- (a) the taking of any native plants, shrubs, trees or animals PROVIDED that the Landowners may authorise the removal of certain native plants, shrubs and plant material from the land for traditional Māori purposes on a sustainable basis;
- (b) any burning, topdressing or the sowing of exotic seed on the land;
- (c) any significant cultivation, earthworks or other soil disturbance on the land;
- (d) any replanting programme on the land except the planting of indigenous species characteristic of the district in which the land is situated;
- (e) the erection of any fence, building, structure or other improvements on the land, provided that whitebaiter type huts may be erected by the Landowners in places where their effect on the land in relation to the objectives and purposes of this Deed would be minimal and subject to first obtaining any statutory or other consents; and
- (f) any activity on the balance (if any) of the Landowners' land which will adversely affect the land or the objectives of this Deed.

1.5 The Minister shall have regard to the objectives of this Deed when considering any request for approval under this clause and shall not unreasonably decline approval.

1.6 The Landowners shall be responsible for protection of wāhi tapu and other sites of particular cultural importance to the tāngata whenua on the land, excepting that the Minister may if requested provide practical assistance where necessary and reasonable.

2 PUBLIC ACCESS

- 2.1 The Landowners may permit members of the public access to and entry on the land for purposes consistent with the objectives of this Deed on first being given reasonable notice. Such access and entry may be on such reasonable conditions as the Landowners may specify, however consent will not be unreasonably withheld. The Landowners may decline access and/or entry where closure is reasonably required for the conservation of natural or historic values or the spiritual or cultural values which Māori associate with the land, or for public safety or emergency.

3 ACCESS FOR MINISTER

- 3.1 The Landowners grant to the Minister and any officer or duly authorised agent of the Minister a right of access on to the land for the purposes of examining and recording the condition of the land or for carrying out protection or maintenance work on the land consistent with the objectives set out in this Deed. In exercising this right, the Minister and officers or agents of the Minister shall consult with the Landowners in advance and have regard to the views of the Landowners.

4 PAYMENT OF COSTS/PROVISION OF ADVICE OR ASSISTANCE

- 4.1 The Minister may in the Minister's discretion pay to the Landowners a proportionate share of the following:
- (a) the cost of new fences or the repair and maintenance of existing fences upon the land if such work has first been approved by the Minister; and
 - (b) the cost of a programme for the eradication or control of plants, pests or exotic tree species or animal pests or wild animals under clause 1.4(a), (b) or (c) if such programme has first been approved by the Minister.
- 4.2 The proportionate share payable by the Minister under this clause shall be calculated having regard to the purpose of any expenditure, with the intent that:
- (a) expenditure essentially for conservation purposes only shall be borne by the Minister; and
 - (b) where the expenditure is partly for the purposes of conservation and partly for farming purposes then the expenditure shall be borne by the parties equally or in such other proportion as they may agree and failing agreement as may be determined by mediation or arbitration as provided for under clause 8,

PROVIDED ALWAYS if such expenditure is required as a result of the negligence or default of the Landowners or the Minister, or their respective agents, servants, contractors or workmen then the Landowners or the Minister shall be liable for the expenditure to the extent necessary to remedy such negligence or default.

4.3. The Minister may:

- (a) provide to the Landowners from time to time, and at any time upon request by the Landowners, such technical advice or assistance as may be necessary or desirable to assist in meeting the objectives set out in this Deed; and
- (b) prepare, in consultation with the Landowners, a joint plan for the management of the land designed to implement the objectives of this Deed to the mutual satisfaction of the parties.

5 REVIEW OF KAWENATA

- 5.1 The covenants contained in this Deed shall bind the Minister and the Landowners' successors and assigns and shall bind any lessee for the term of any lease and, subject to the terms of any review in terms of this clause, are intended to continue in perpetuity.
- 5.2 The Landowners and the Minister, while recognising their mutual intention that this Deed shall continue in perpetuity, shall review the objectives, conditions and continuance of this Deed at successive intervals of twenty-five (25) years from the date of execution.
- 5.3 On any review of this Deed the parties may mutually agree to vary any clause or clauses in this Deed except this clause 5.
- 5.4 The parties agree that in reviewing the objectives, conditions and continuance of this Deed under clause 5.2, the Minister shall have regard to the manawhenua of the Landowners.
- 5.5 The parties agree that the Deed may not be terminated except with the agreement of both parties.

6 MISCELLANEOUS

- 6.1 For the avoidance of doubt:
 - (a) Only if the Landowners first ensure that, in the case of a lessee, or in the case of a purchaser of the land or transferor or other successor-in-title to the land entering

into a deed to abide by the terms of this Deed will the Landowners not be personally liable in damages for any breach of covenant committed after the Landowners have parted with all interest in the land in respect of which such a breach occurs;

- (b) where there is more than one owner of the leasehold of, or fee simple title to, the land, the covenants contained in this Deed shall bind each owner jointly and severally;
- (c) where the Landowners are a company the covenants contained in this Deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Landowners are a natural person this Deed shall bind the Official Assignee. In either case this Deed binds a mortgagee in possession; and
- (d) the reference to any Act in this Deed extends to and includes any amendment to, or re-enactment or consolidation of that Act, or any Act passed in substitution for that Act.

7 NOTICE

- 7.1 Any notice required to be given to the Landowners in terms of this Deed shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952 and shall be sufficiently given if sent by post or delivered to the residential address of the Landowners or the Landowners' solicitor.
- 7.2 Any notice required to be given by the Minister shall be sufficiently given if it is signed by the Manager, Forest Funds, Department of Conservation. Any notice required to be served upon the Minister shall be sufficiently served if delivered to the office for the time being of the Director-General, Attention: Manager Forest Funds, Department of Conservation.

8 DISPUTE RESOLUTION

- 8.1 Any dispute which arises between the Landowners and the Minister in any way relating to this Deed may be resolved by referring the dispute to an agreed third party for decision or by arbitration under the provisions of the Arbitration Act 1996.

SCHEDULE B

'THE LAND'

Means the land described as Westland Land District, Westland District Council, 20.2342 hectares, approximately, being Part Rural Section 660, subject to Section 62, Conservation Act 1987. Subject to survey as shown on *Allocation Plan AS 203 (SO 12492)*.



ATTACHMENT 15.3
NGĀ WHENUA RĀHUI KAWENATA OVER SITE A
(Clause 15.11.9(c))

NGĀ WHENUA RĀHUI KAWENATA - SITE A
(Section 77A Reserves Act 1977)

THIS DEED made the _____ day of _____ 199

BETWEEN **THE ANCILLARY CLAIMS TRUSTEES** [*names of initial trustees to be inserted here*] on behalf of the **Beneficial Owners** ("the Landowners")

AND **THE MINISTER OF CONSERVATION** ("the Minister").

WHEREAS

- A. The Landowners are the registered proprietors of the land described in Schedule B ("the land") and shown on the attached map.
- B. The Minister is satisfied that the land should be managed so as to preserve and protect the natural environment, wildlife habitat, or historical value of the land and the spiritual and cultural values which tāngata whenua associate with the land.
- C. The Minister and the Landowners have agreed to execute a Ngā Whenua Rāhui Kawenata ("the Kawenata") to provide for the management of the land in a manner that will achieve the purposes described in recital B above.
- D. The parties have agreed that the land be managed with the following objectives:
- (i) protecting and enhancing the natural character of the land with particular regard to the indigenous native flora and fauna, their diverse communities and their interactions with the environment that supports them;
 - (ii) protecting the land as an area representative of a significant part of the natural ecological character of its ecological district;

- (iii) protecting and enhancing the cultural and spiritual values associated with the land and its related water bodies;
- (iv) embodying the principles of a working relationship between the Crown and the tāngata whenua emphasising the manawhenua of the Landowners;
- (v) protecting the historic, archaeological and educational values associated with the land and its related water bodies; and
- (vi) providing for the Landowners and, subject to clause 2, public's enjoyment of the land to the extent consistent with the above objectives.

E. The Kawenata is entered into by the parties in pursuance of the Deed of Settlement between Her Majesty the Queen and Te Rūnanga o Ngāi Tahu.

NOW THEREFORE, THE MINISTER AND THE LANDOWNERS, pursuant to section 77A of the Reserves Act 1977, agree that land shall be managed in accordance with the terms and conditions set out in this Deed so as to achieve the purposes and objectives listed in recitals B and D above:

CONDITIONS

1 MANAGEMENT OBLIGATIONS

- 1.1 The Landowners shall manage and protect any scenic, historic, archaeological, spiritual, cultural, biological, and geological features present on the land in accordance with the objectives set out in this Deed. Its soil, water and forest conservation values shall be maintained by the Landowners to the extent compatible with the objectives set out in this Kawenata.
- 1.2 The Landowners shall not permit stock to graze the land nor pass through the land unless the area to be grazed or the passage way is adequately fenced. Subject to clause 4 the Landowners shall maintain all boundary and internal fences on the land in a good and stockproof condition in order to facilitate proper protection for the land.
- 1.3 The Landowners shall, so far as is practicable:
 - (a) keep the land free from plant pests;
 - (b) keep the land free from exotic plant and tree species;
 - (c) keep the land free from any animal pests and wild animals; and

(d) keep the land free from rubbish or other unsightly or offensive material,

HOWEVER, the Landowners may request assistance from the Minister (who may assist them in his or her discretion) in meeting these obligations if they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Deed, or as otherwise agreed under clause 4.

1.4. Unless required to do so pursuant to statute, neither the Landowners nor the Minister shall carry out or allow to be carried out without the prior approval of the other party to this Deed:

- (a) the taking of any native plants, shrubs, trees or animals
PROVIDED that the Landowners may authorise the removal of certain native plants, shrubs and plant material from the land for traditional Māori purposes on a sustainable basis;
- (b) any burning, topdressing or the sowing of exotic seed on the land;
- (c) any significant cultivation, earthworks or other soil disturbance on the land;
- (d) any replanting programme on the land except the planting of indigenous species characteristic of the district in which the land is situated;
- (e) the erection of any fence, building, structure or other improvements on the land; and
- (f) any activity on the balance (if any) of the Landowners' land which will adversely affect the land or the objectives of this Deed.

1.5 The Minister shall have regard to the objectives of this Deed when considering any request for approval under this clause and shall not unreasonably decline approval.

1.6 The Landowners shall be responsible for protection of wāhi tapu and other sites of particular cultural importance to the tāngata whenua on the land, excepting that the Minister may if requested provide practical assistance where necessary and reasonable.

2 PUBLIC ACCESS

- 2.1 The Landowners may permit members of the public access to and entry on the land for purposes consistent with the objectives of this Deed on first being given reasonable notice. Such access and entry may be on such reasonable conditions as the Landowners may specify, however, consent will not be unreasonably withheld. The Landowners may decline access and/or entry where closure is reasonably required for the conservation of natural or historic values or the spiritual or cultural values which Māori associate with the land, or for public safety or emergency.

3 ACCESS FOR MINISTER

- 3.1 The Landowners grant to the Minister and any officer or duly authorised agent of the Minister a right of access on to the land for the purposes of examining and recording the condition of the land or for carrying out protection or maintenance work on the land consistent with the objectives set out in this Deed. In exercising this right, the Minister and officers or agents of the Minister shall consult with the Landowners in advance and have regard to the views of the Landowners.

4 PAYMENT OF COSTS/PROVISION OF ADVICE OR ASSISTANCE

- 4.1 The Minister may in the Minister's discretion pay to the Landowners a proportionate share of the following:
- (a) the cost of new fences or the repair and maintenance of existing fences upon the land if such work has first been approved by the Minister; and
 - (b) the cost of a programme for the eradication or control of plants, pests or exotic tree species or animal pests or wild animals under clause 1.4(a), (b) or (c) if such programme has first been approved by the Minister.
- 4.2 The proportionate share payable by the Minister under this clause shall be calculated having regard to the purpose of any expenditure, with the intent that:
- (a) expenditure essentially for conservation purposes only shall be borne by the Minister; and
 - (b) where the expenditure is partly for the purposes of conservation and partly for farming purposes then the expenditure shall be borne by the parties equally or in such other proportion as they may agree and failing agreement as may be determined by mediation or arbitration as provided for under clause 8,

PROVIDED ALWAYS if such expenditure is required as a result of the negligence or default of the Landowners or the Minister, or their respective agents, servants, contractors or workmen then the Landowners or the Minister shall be liable for the expenditure to the extent necessary to remedy such negligence or default.

4.3. The Minister may:

- (a) provide to the Landowners from time to time, and at any time upon request by the Landowners, such technical advice or assistance as may be necessary or desirable to assist in meeting the objectives set out in this Deed; and
- (b) prepare, in consultation with the Landowners, a joint plan for the management of the land designed to implement the objectives of this Deed to the mutual satisfaction of the parties.

5 REVIEW OF KAWENATA

- 5.1 The covenants contained in this Deed shall bind the Minister and the Landowners' successors and assigns and shall bind any lessee for the term of any lease and, subject to the terms of any review in terms of this clause, are intended to continue in perpetuity.
- 5.2 The Landowners and the Minister, while recognising their mutual intention that this Deed shall continue in perpetuity, shall review the objectives, conditions and continuance of this Deed at successive intervals of twenty-five (25) years from the date of execution.
- 5.3 On any review of this Deed the parties may mutually agree to vary any clause or clauses in this Deed except this clause 5.
- 5.4 The parties agree that in reviewing the objectives, conditions and continuance of this Deed under clause 5.2, the Minister shall have regard to the manawhenua of the Landowners.
- 5.5 The parties agree that the Deed may not be terminated except with the agreement of both parties.

6 MISCELLANEOUS

6.1 For the avoidance of doubt:

- (a) only if the Landowners first ensure that, in the case of a lessee, or in the case of a purchaser of the land or transferor or other successor-in-

title to the land entering into a deed to abide by the terms of this Deed, will the Landowners not be personally liable in damages for any breach of covenant committed after the Landowners have parted with all interest in the land in respect of which such a breach occurs;

- (b) where there is more than one owner of the leasehold of, or fee simple title to, the land, the covenants contained in this Deed shall bind each owner jointly and severally;
- (c) where the Landowners are a company the covenants contained in this Deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Landowners are a natural person this Deed shall bind the Official Assignee. In either case this Deed binds a mortgagee in possession; and
- (d) the reference to any Act in this Deed extends to and includes any amendment to, or re-enactment or consolidation of that Act, or any Act passed in substitution for that Act.

7 NOTICE

- 7.1 Any notice required to be given to the Landowners in terms of this Deed shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952 and shall be sufficiently given if sent by post or delivered to the residential address of the Landowners or the Landowners' solicitor.
- 7.2 Any notice required to be given by the Minister shall be sufficiently given if it is signed by the Manager, Forest Funds, Department of Conservation. Any notice required to be served upon the Minister shall be sufficiently served if delivered to the office for the time being of the Director-General, Attention: Manager Forest Funds, Department of Conservation.

8 DISPUTE RESOLUTION

- 8.1 Any dispute which arises between the Landowners and the Minister in any way relating to this Deed may be resolved by referring the dispute to an agreed third party for decision or by arbitration under the provisions of the Arbitration Act 1996.

SCHEDULE B**'THE LAND'*****EXACT AREAS OF LAND STILL TO BE ASCERTAINED - SUBJECT TO AGREEMENT***

To come from 14.5000 hectares, approximately, to be selected from within the land described as part of Westland Land District, Westland District Council, being Parts Reserve 1692, Reserve 169 and Rural Section 561, subject to Section 62 Conservation Act 1987, subject to survey and as shown marked "4", "5", "6" and part of area "2" on *Allocation Plan A 496 (SO 12509)*.

