

# WAITUTU BLOCK SETTLEMENT BILL

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AS REPORTED FROM THE MĀORI AFFAIRS COMMITTEE

## COMMENTARY

### Recommendation

The Māori Affairs Committee has examined the Waitutu Block Settlement Bill and recommends that it be passed with the amendments shown in the bill.

### Conduct of the examination

The Waitutu Block Settlement Bill was introduced and referred to the Māori Affairs Committee on 27 August 1996. The closing date for submissions was 21 April 1997. The committee received and considered three submissions from the Royal Forest and Bird Protection Society of New Zealand Incorporated (the Society) and the Environment and Conservation Organisations of New Zealand Incorporated (ECO). A further submission was received from Koa Murdock and heard after the submission closing date. All three submissions were heard orally, with teleconferencing being utilised for the hearing of Koa Murdock's submission. The Proprietors of Waitutu Incorporation (the Incorporation) accepted our invitation to speak to the bill and were represented by their solicitors from Bell Gully Buddle Weir.

We would like to acknowledge the Minister of Conservation, Hon Nick Smith, for his briefing to the committee regarding the bill's background and its progress through to the select committee stage.

Advice was received from the Department of Conservation and drafting advice was received from the Parliamentary Counsel Office.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

### Background

The Waitutu Block consists of Māori land in a number of sections totalling 2171 hectares administered by the Incorporation. It is in south-western Southland on the south coast to the west of Te Waewae Bay, close to the Fiordland National Park. It is 32 kilometres from the nearest road end at Blue Cliffs.

The Waitutu Conservation Forest, and the adjacent forest owned by the Incorporation, is of important ecological value, containing extensive areas of tall podocarp and beech and also containing a rich birdlife (including the largest known population of South Island kaka). The marine terrace sequence is of great scientific interest, recording successive earth movement uplift over one million years.

### **Associated legislation**

Under the South Island Landless Maori Act 1906, ownership was given to certain individuals as Māori freehold title. The Incorporation was established as a Māori Incorporation under Part IV of the Maori Affairs Amendment Act 1967 and continued under Te Ture Whenua Maori Act 1993.

### **Purpose**

The bill obtains its historical context dating back to 1976 when the Crown sought to negotiate with the Waitutu Incorporation with a view to protecting the Waitutu forest. This came after Feltex (NZ) began negotiations with the Incorporation to secure long term cutting rights of the Waitutu Block. This proposal was unsuccessful and there was one further attempt to negotiate with the Incorporation. Subsequently the Incorporation sold rights to Lindsey and Dixon (Paynter Group) Ltd. The Crown then sought an accommodation with the Incorporation whereby ownership would remain with the Incorporation but the Crown would obtain the cutting rights thereby allowing the management of the Waitutu Block as a national park. This objective was achieved by way of two Deeds.

### **Deed of settlement**

The bill gives effect to a deed of settlement and a deed of covenant entered into by the Crown and the Proprietors of Waitutu Incorporation.

The deed of settlement provides for the continued ownership of the Waitutu Block by the Incorporation, but for the Crown to manage it in perpetuity as if a national park under the National Parks Act 1980; with certain exceptions for the benefit of the owners.

The deed also provides for a payment of compensation to the owners, and a transfer to them of cutting rights to specified Crown indigenous forests.

### **Deed of Covenant**

The deed of covenant between the Crown and the Incorporation provides details on ownership, management, and protection of the block. It also incorporates detail regarding access and use by the owners.

### **Consideration of issues**

There were a number of issues raised during the hearings of evidence. Some of the main issues we believe warrant comment as set out below.

### **Environmental Impact**

Both the Society and ECO raised concerns over the Crown's ability to manage the Waitutu Block as a national park while at the same time limiting the environmental impacts of activity by the Incorporation. Specifically, reference was made to the Incorporation's prerogative under its agreement with the Crown to build additional huts, which ECO felt would be inconsistent with any relevant conservation management strategy. The Society added that its concerns were related to issues of size, scale, colour and the terminology associated with the accommodation.

As stated earlier, the Waitutu Incorporation remains the owner of the block, and while the Incorporation has agreed to the Crown's management of the block as if it were a national park, this does not negate the Incorporation's rights to do, or carry out a number of activities on the land which are consistent with its legal interest in the land. The terminology used to describe accommodation in the deed of covenant as an 'accommodation hut' has been termed accordingly to allow for a certain amount of flexibility for the owners. However, the Incorporation like any owner is still subject to the requirements of the Resource Management Act 1991 and we are satisfied that these provide adequate safeguards for the assessment of any environmental impacts concerning the Waitutu Block.

A further point we note, is that any proposed changes to the provisions regarding accommodation, would require both parties to renegotiate the deed of covenant.

### **Public consultation**

The Society sought clarification of the consultation provisions agreed between the Crown and the Incorporation in the deed of covenant. Specifically, the Society sought to bind the Incorporation to the spirit of Part I, sections 4, 5 and 5A of the National Parks Act 1980. In addition the Society proposed that the Crown should not be required to act on any views of the Incorporation which conflict with the purposes of the bill, the deed of covenant, or certain provisions of the National Parks Act 1980.

The consultation provisions are a result of negotiations between the Crown and the Incorporation. Any proposal for change of these provisions would require both parties to re-negotiate the deed of covenant. Furthermore, while the duty to consult requires the Crown to take account of any relevant matters raised by the Incorporation, we do not consider that this prevents the Crown from discharging its responsibilities under relevant legislation or indeed the deed of covenant.

### **Te Ture Whenua Maori Act 1993/Maori Incorporations Constitution Regulations 1994**

A question of the right of the Incorporation's Committee of Management to enter into the deed of covenant was raised by Koa Murdock, a shareholder in the Incorporation. She argued that the Incorporation had not carried out the correct legal procedure in obtaining consent from shareholders and therefore had no authority to enter into agreement with the Crown. Her legal argument centred around the Maori Incorporations Constitution Regulations 1994 and Te Ture Whenua Maori Act 1993.

We took seriously the issues raised by Mrs Murdock, allowing further time for her submission to be heard. In addition, we sought assurances from the Incorporation via its solicitors and took advice on these matters from our advisers and the Crown Law Office.

Mrs Murdock's submission centred around Rule 4(1)(g) of the Maori Incorporations Constitution Regulations 1994 and expressed concern that if the bill were passed it would have the effect of restricting in **perpetuity** the powers of the Committee of Management. She argued that under Rule 4(1)(g) a special resolution was necessary before the Committee of Management could enter into any negotiations with the Crown.

From the advice received a majority of the committee is of the view that in entering into agreement with the Crown and in dealing with its shareholders the Incorporation has followed the correct procedures laid down in Te Ture Whenua Maori Act 1993 (sections 253 and 253A), the Maori Incorporations Constitution Regulations 1994 and the Committee of Management's Constitution. We are aware that there are instances where the Incorporation's powers may be

restricted and that this may be done through either a Maori Land Court order, or by shareholders resolution at a general meeting. However our advice is that no such restrictions applied to constrain the Incorporation in its negotiations with the Crown, in this instance.

The Incorporation, through its Committee of Management, has acted within its powers in the negotiations with the Crown

### **Amendments: Crown's right of first refusal (clauses 5 (4) and 5 (5))**

It was brought to our attention that the Crown's right of first refusal, as shown in clause 19 of the deed of covenant, was not incorporated in the main body of the bill, even though this was the understanding of both parties to the deed. This provision ensures that should the Incorporation decide to dispose of the block, the Crown must be given first right of refusal to make an offer for it.

While the deed of covenant (which details this provision) is contained in the Second Schedule of the bill, we believe that for consistency and clarity a clause identifying the Crown's rights upon any sale, disposal of, or lease of the land should be included in the main body of the bill.

This clause also reiterates that any change of ownership through sale or lease will not impact on the provisions contained in the deed of covenant. Specifically the Crown's responsibility to manage the block as if a national park will continue in the event of a change of ownership. Likewise, any concessions granted by the Minister of Conservation in respect of the block will continue to prevail over any rights of the Incorporation.

### **Taxation and clause 6 of the Deed of Settlement**

Concern was expressed by the Incorporation that clause 6 of the deed of settlement which deals with the matter of compensation to the Incorporation did not reflect the intention of the parties to the deed as evidenced in the Heads of Agreement and that this had tax liability implications. The Crown on entering into the deed acknowledged that the Incorporation should be compensated for the commercial loss that was incurred as a consequence of the Incorporation foregoing the right to cut, remove and sell timber from the Waitutu Block.

We understand that the Crown negotiator explained to the Incorporation and its advisers at the time of entering into the deed that the Crown could not guarantee the Incorporation any exemption from normal taxation liabilities. Nevertheless both parties understood the payments to the Incorporation to be of capital payments and the deed of settlement was supposed to reflect this. It does not. The Crown and the Incorporation have therefore agreed to vary the deed of settlement. A clause is also to be added to the bill reflecting that variation. This will enable the Incorporation to make its own case to the Inland Revenue Department on its tax liabilities.

### **Conclusion**

This bill has its historical impetus in the 1970s, and one of its primary purposes is to protect the Waitutu Block forest which has important ecological and natural value. This has been achieved by the agreement of the Waitutu Incorporation to allow the management of the block as if it were a national park.

The bill affirms the Incorporation's ownership of the land, and the responsibilities and benefits that attach to ownership. The bill allows (as set down in the deed of covenant) for the Incorporation to erect accommodation on the block, so long as it is consistent with relevant conservation management strategies. Provision is also

made for the Incorporation to hunt deer and collect traditional foods subject to the Wildlife Act 1953.

The bill gives the Crown management of the block (as if a national park) in perpetuity. In the event of the Incorporation ever wishing to sell the block in the future, the Crown is guaranteed first right of refusal. In the event of any sale the Crown's management of the block as a national park continues as do any concessions that exist.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*Hon. Nick Smith*

## WAITUTU BLOCK SETTLEMENT

### ANALYSIS

Title	11. References to Incorporation in documents and registers under Land Transfer Act 1952
Preamble	12. No further inquiries into claim by Incorporation to Waitangi Tribunal
1. Short Title	13. Waitutu Block deemed not to be rateable property for purposes of Rating Powers Act 1988
2. Interpretation of Act generally	14. Validity of deed of settlement and deed of covenant
3. Interpretation	14A. Deed of settlement varied
4. Act to bind the Crown	15. Validity of certain actions of the Crown and Incorporation prior to commencement of this Act
5. Application of National Parks Act 1980 to Waitutu Block	16. Amendment to Conservation Act 1987
5A. Sale, lease, or other disposition of Waitutu Block	
6. Purchase or lease of Waitutu Block by the Crown	
7. Incorporation to be consulted about management of Waitutu Block	
8. Incorporation to be consulted about conservation management strategies and conservation management plans under Conservation Act 1987	
9. How consultation with Incorporation to be effected	
10. Registration of deed of covenant	

### SCHEDULES

First Schedule  
Waitutu Block Land

Second Schedule  
Deed of Covenant

### A BILL INTITULED

#### An Act—

- 5 (a) To give effect to certain provisions of a Deed of Settlement dated 8 March 1996 and entered into by The Proprietors of Waitutu Incorporated as owner of the Waitutu Block and the Crown and to a Deed of Covenant dated 29 March 1996 and entered into by The Proprietors of Waitutu Incorporated and the Crown; and
- 10 (b) By so doing, to provide for the Waitutu Block to be administered as a national park under the National Parks Act 1980 so as to preserve the natural flora and fauna for its intrinsic worth and for the benefit, use, and enjoyment of the

**owners of the land and the public of New Zealand; and**

**(c) To provide for related matters**

WHEREAS:

- A. The Proprietors of Waitutu Incorporated (“the Incorporation”) is a Maori Incorporation duly constituted under Part IV of the Maori Affairs Amendment Act 1967 and continued by section 357 of Te Ture Whenua Maori Act 1993: 5
- B. The Incorporation is, under the name Proprietors of Waitutu, the registered proprietor of the land described in the First Schedule (“the Waitutu Block”): 10
- C. The Waitutu Block is close to the Fiordland National Park which is administered by the Minister of Conservation under the National Parks Act 1980 and is next to conservation areas managed under the Conservation Act 1987 by that Minister: 15
- D. The Crown and the Incorporation have agreed that the Waitutu Block contains virgin indigenous timber and other indigenous vegetation and wildlife which it is in the interest of both the Incorporation and the wider public of New Zealand to preserve and protect in perpetuity: 20
- E. The Incorporation had entered into a contract for valuable consideration for the cutting, removal, and sale of indigenous timber on the Waitutu Block:
- F. The Crown has negotiated with the Incorporation for the preservation and protection of the Waitutu Block in perpetuity and to recompense the Incorporation for the financial loss arising from foregoing the right to cut, remove, and sell the timber on the Waitutu Block: 25
- G. By a deed of settlement dated 8 March 1996, the Crown and the Incorporation have agreed, among other things,— 30
- (a) That the Incorporation will continue to be the registered proprietor of the Waitutu Block; and
  - (b) That the Waitutu Block shall be managed by the Crown as if it were a national park subject to the exceptions set out in the deed of covenant referred to in paragraph (f) of this recital; and 35
  - (c) That, except as provided in the deed of covenant, neither the Crown nor the Incorporation shall cut or permit to be cut, or remove, indigenous trees or indigenous vegetation on the Waitutu Block; and 40



- (d) For the provision of recompense by the Crown to the Incorporation as set out in the deed of settlement; and
- 5 (e) To the granting by the Crown to the Incorporation of rights to cut and remove indigenous trees on other land belonging to the Crown:
- (f) To enter into a deed of covenant relating to the management of the Waitutu Block and an agreement granting to the Incorporation cutting rights over 10 other lands belonging to the Crown, both the deed of covenant and the Agreement being in the form annexed to the deed of settlement:

15 H. The Crown and the Incorporation entered into a deed of covenant dated 29 March 1996 (a copy of which is set out in the **Second** Schedule) whereby the Crown and the Incorporation mutually agreed and covenanted that the Crown would manage the Waitutu Block in perpetuity in accordance with the terms of the deed of covenant to preserve its flora and fauna in perpetuity for its intrinsic worth and for the benefit, use, and 20 enjoyment of the owners of the land and the wider public of New Zealand as if it were a national park held and administered under the National Parks Act 1980, and that the provisions of that Act would apply to the Waitutu Block:

25 BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Waitutu Block Settlement Act 1996.

30 **2. Interpretation of Act generally**—It is the intention of Parliament that the provisions of this Act are interpreted in a manner that best furthers the agreements expressed in the deed of settlement and the deed of covenant.

Cf. 1995, No. 58, s.2

**3. Interpretation**—In this Act, unless context otherwise requires,—

35 “Conservation management plan” means a conservation management plan approved under section 17G of the Conservation Act 1987:

40 “Conservation management strategy” means a conservation management strategy approved under section 17F of the Conservation Act 1987:

- “Deed of covenant” means the deed of covenant dated 29 March 1996 and entered into by the Incorporation and the Crown, a copy of which is set out in the **Second** Schedule; and includes that deed as amended from time to time: 5
- “Deed of settlement” means the deed of settlement dated 8 March 1996 and entered into by the Crown and the Incorporation; and includes that deed as amended from time to time:
- “Department” means the Department of Conservation: 10
- “Director-General” means the Director-General of Conservation:
- “District Land Registrar” means the District Land Registrar of the Southland Land Registration District:
- “Incorporation” means the Proprietors of Waitutu Incorporated, a Maori Incorporation duly constituted under Part IV of the Maori Affairs Amendment Act 1967 and continued under section 357 of Te Ture Whenua Maori Act 1993: 15
- “Management plan” means a management plan approved under section 48 of the National Parks Act 1980: 20
- “Minister” means the Minister of Conservation:
- “National park” means a national park constituted under the National Parks Act 1980:
- “Owners” means the shareholders in the Incorporation: 25
- “Waitutu Block” means the land owned by the Incorporation and described in the **First** Schedule.

**4. Act to bind the Crown**—This Act binds the Crown.

- 5. Application of National Parks Act 1980 to Waitutu Block**—(1) The National Parks Act 1980 applies to the Waitutu Block as if the Waitutu Block were a national park. 30
- (2) The application of the National Parks Act 1980 to the Waitutu Block is subject to the provisions of the deed of covenant and to the following particular provisions—
- (a) Nothing in that Act limits or affects the rights conferred on the Incorporation and the owners by clause 3 of the deed of covenant: 35
- (b) Nothing in that Act limits or affects the rights of Susan Judith Clyma referred to in clause 9 of the deed of covenant: 40
- (c) Sections 8 and 51 of that Act do not apply.

(3) The powers conferred by the National Parks Act 1980 on the Minister, the Director-General, or the Department, as the case may be, must not be exercised in a manner that is contrary to or inconsistent with the deed of covenant.

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*Struck Out (Unanimous)*

(4) The granting by the Incorporation of a lease of the Waitutu Block does not limit or affect the power of the Minister to grant a concession in respect of the Block under section 49 of the National Parks Act 1980.

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(5) Subject to **section 6** of this Act, the National Parks Act 1980 shall continue to apply to the Waitutu Block in the manner specified in this section even if the Incorporation ceases to be the registered proprietor of the whole or any part of the Block or grants to any person a lease, or the right to possession, of the whole or any part of the Block, as the case may be.

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*New (Unanimous)*

**5A. Sale, lease, or other disposition of Waitutu Block—**

(1) The Incorporation may sell, lease, otherwise dispose of, or grant rights in respect of, the Waitutu Block or any part of the Block.

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(2) Before the Incorporation does any of the things specified in **subsection (1)**, the Incorporation must give the Crown—

(a) Notice of its intention to do so; and

25

(b) Reasonable time to make an offer to the Incorporation for the Waitutu Block under clause 20 of the deed of covenant.

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(3) If the Crown does not make an offer for the Waitutu Block or the Crown makes an offer that is not accepted by the Incorporation, the Incorporation may do the thing of which it gave notice.

(4) Before the Incorporation does the thing of which it gave notice, the Incorporation must obtain the binding agreement of the other party to the transaction that the other party will comply with the deed of covenant.

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(5) The doing of any of the things specified in **subsection (1)** does not limit or affect the power of the Minister to grant a concession in respect of the Waitutu Block under section 49 of the National Parks Act 1980.

*New (Unanimous)*

(6) Any concession granted by the Minister in respect of the Waitutu Block under section 49 of the National Parks Act 1980 prevails over any of the things specified in **subsection (1)** done before or after the granting of the concession. 5

(7) Subject to **section 6**, the National Parks Act 1980 continues to apply to the Waitutu Block even if the Incorporation does any of the things specified in **subsection (1)**.

(8) In this section, the term “Incorporation” includes any other person deriving (directly or indirectly) from the Incorporation the right to do any of the things specified in **subsection (1)**. 10

**6. Purchase or lease of Waitutu Block by the Crown—**

(1) If the Crown becomes the owner or lessee of the Waitutu Block or any part of the Block, the National Parks Act 1980 applies to the Block or to that part of the Block as if it were a national park. 15

(2) If the Waitutu Block or any part of the Block becomes a national park subject to the National Parks Act 1980, this Act ceases to apply to the Block or to such part of it, as the case may be. 20

**7. Incorporation to be consulted about management of Waitutu Block—**The Minister, the Director-General, and the Department, as the case may require, must consult with and have regard to the views of the Incorporation and any subsequent owner of the Waitutu Block in exercising powers under the National Parks Act 1980 and, in particular,— 25

(a) In exercising the powers conferred by section 43 of that Act (which relates to the administration of national parks); and 30

(b) In preparing, under sections 45 and 47 of that Act, any management plan that relates to or affects the Waitutu Block; and

(c) In amending or reviewing, under sections 46 and 47 of that Act, any management plan that relates to or affects the Waitutu Block; and 35

(d) In respect of any development or management (including public access) that may interfere with wahi tapu areas in the Waitutu Block,—

and the provisions of that Act apply subject to this section. 40

**8. Incorporation to be consulted about conservation management strategies and conservation management plans under Conservation Act 1987**—The Director-General must consult with and have regard to the views of the Incorporation and any subsequent owner of the Waitutu Block in—

- (a) Preparing, under sections 17D and 17F of the Conservation Act 1987, any conservation management strategy that affects or relates to the Waitutu Block; and
- (b) Preparing, under sections 17E and 17G of that Act, any conservation management plan that relates to or affects the Waitutu Block; and
- (c) Reviewing, under section 17H of that Act, any conservation management strategy or conservation management plan that relates to or affects the Waitutu Block; and
- (d) Initiating, under section 17I of that Act, any amendment of a conservation management strategy or conservation management plan that relates to or affects the Waitutu Block or any part of any such strategy or plan,—

and the provisions of that Act apply subject to this section.

**9. How consultation with Incorporation to be effected**—Any obligation imposed by this Act or by the deed of covenant on the Minister or the Director-General or the Department, as the case may be, to consult with the Incorporation is discharged if the Minister or the Director-General or the Department consults with the persons who comprise the management committee of the Incorporation.

**10. Registration of deed of covenant**—(1) The District Land Registrar must, without fee, on the application of any person authorised in writing by the Minister, register against each certificate of title referred to in the **First** Schedule, the deed of covenant and any amendment to that deed.

(2) Every covenant contained in the deed of covenant runs with and binds the land that is subject to that covenant and is deemed to be an interest in the land for the purposes of the Land Transfer Act 1952.

**11. References to Incorporation in documents and registers under Land Transfer Act 1952**—For the purposes of the Land Transfer Act 1952, a reference to the Proprietors

of Waitutu in a document registered under that Act or in a register kept under that Act must be read as a reference to the Incorporation.

**12. No further inquiries into claim by Incorporation to Waitangi Tribunal**—(1) Despite any other enactment or rule of law, no court or tribunal has jurisdiction to inquire or further inquire into or to make any finding or recommendation in respect of those parts of the following claims made to the Waitangi Tribunal that are attributable to the Incorporation: 5

(a) The Wai 27 Claim made by Tariana Nilsen on behalf of the Incorporation concerning Wairaurahiri land: 10

(b) The Wai 158 claim made by Robert Kenneth McAnergney as a member of the Murihiku negotiating team and others.

(2) Despite any other enactment or rule of law, no court or tribunal has jurisdiction to inquire or further inquire into or to make any finding or recommendation in respect of any claim made to the Waitangi Tribunal by the Incorporation or by any owner, whether before or after the coming into force of this Act, if the claim is the same as, or similar in substance to, any of those parts of the claims made to that Tribunal referred to in paragraph (a) or paragraph (b) of subsection (1) that are attributable to the Incorporation. 15 20

**13. Waitutu Block deemed not to be rateable property for purposes of Rating Powers Act 1988**—For the purposes of clause 3 of Part I of the First Schedule of the Rating Powers Act 1988, the Waitutu Block is deemed to be land forming a National Park within the meaning of the National Parks Act 1980. 25

**14. Validity of deed of settlement and deed of covenant**—Despite any other enactment or rule of law, the deed of settlement and the deed of covenant are deemed to be and to have always been valid and effective according to their terms. 30

*New (Unanimous)*

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**14A. Deed of settlement varied**—The deed of settlement is varied, with effect on and from the date of the deed of settlement, by omitting clause 6, and substituting the following clause:

*New (Unanimous)*

5 “6. In consideration for the Incorporation forbearing any right to cut, remove, and sell timber from the Waitutu Block, and as compensation for costs, the Crown shall pay or transfer to the Incorporation the monies and other rights set out in the Fourth Schedule.”

10 **15. Validity of certain actions of the Crown and Incorporation prior to commencement of this Act—** Despite any other enactment or rule of law, anything done by the Crown or the Incorporation before the coming into force of this Act that would, if this Act had then been in force, have been lawful, is deemed to be and to have always been lawful.

15 **16. Amendment to Conservation Act 1987—**The First Schedule of the Conservation Act 1987 is amended by inserting, in its appropriate alphabetical order, the item “The Waitutu Block Settlement Act 1996”.

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## SCHEDULES

## FIRST SCHEDULE

Preamble,  
recital B

## Section 3

## WAITUTU BLOCK LAND

*The following pieces of land situated in the Southland Land District*

Description of Land	Certificate of Title Reference
Waitutu Survey District Block XII Section 6 ...	88/221
Waitutu Survey District Block XII Section 8A ...	88/216
Waitutu Survey District Block XII Section 8B ...	88/216
Waitutu Survey District Block XII Section 9 ...	88/280
Waitutu Survey District Block XIII Section 1 ...	6C/850
Waitutu Survey District Block XIII Section 2 ...	88/218
Waitutu Survey District Block XIII Section 3 ...	88/222
Waitutu Survey District Block XIII Section 5 ...	88/159
Waitutu Survey District Block XIII Section 7 ...	6C/852
Waitutu Survey District Block XIII Sections 8 & 9 ...	88/281
Waitutu Survey District Block XIII Section 10 ...	88/224
Waitutu Survey District Block XIII Section 11 ...	88/225
Waitutu Survey District Block XIII Section 12 ...	88/217
Waitutu Survey District Block XIII Section 13 ...	88/215
Waitutu Survey District Block XIII Section 14 ...	6C/849
Waitutu Survey District Block XIV Section 4 ...	88/219
Waitutu Survey District Block XIV Section 5 ...	6C/851
Waitutu Survey District Block XIV Section 7 ...	88/286
Waitutu Survey District Block XIV Section 8 ...	88/285
Waitutu Survey District Block XIV Section 9 ...	88/223
Waitutu Survey District Block XIV Section 10 ...	88/282
Waitutu Survey District Block XIV Section 12 ...	88/220
Waitutu Survey District Block XIV Section 13 ...	88/284



SECOND SCHEDULE

Preamble,  
recital H

DEED OF COVENANT

Section 3

THIS DEED OF COVENANT is made this 29th day of March 1996  
BETWEEN THE PROPRIETORS OF WAITUTU INCORPORATED  
hereinafter called the Incorporation of the one part AND HER MAJESTY  
THE QUEEN acting by and through her MINISTER OF CONSERVATION  
(hereinafter called the Crown) of the other party.

WHEREAS:

- A. The Incorporation is a Maori Incorporation duly constituted under Part IV of the Maori Affairs Amendment Act 1967 and continued by the Te Ture Whenua Maori Act 1993.
- B. The Incorporation is the registered proprietor of the land more particularly described in the First Schedule hereto (the Waitutu Block).
- C. The parties are agreed that the Waitutu Block contains virgin indigenous timber and other indigenous vegetation and wildlife, scenery of such distinctive quality, ecological systems, natural features so beautiful, unique or scientifically important that its preservation in perpetuity is in the interest of both the owners and the nation.
- D. The parties acknowledge that the Waitutu Block has significant cultural and historic value and is taonga to the owners.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES

1. In this Deed of Covenant the term owners means the beneficial owners of the Incorporation.
2. Subject to clause 3 the Incorporation and the Crown hereby mutually covenant and agree that henceforth and in perpetuity the Waitutu Block shall be managed in accordance with the following terms and conditions:
  - i) The Minister of Conservation (the Minister) on behalf of the Crown shall in accordance with the terms of this Deed of Covenant manage the Waitutu Block on behalf of the Incorporation to preserve its flora and fauna in perpetuity for its intrinsic worth and for the benefit use and enjoyment of the owners and as a consequence the public of New Zealand as if it were a national park held and administered under the National Parks Act 1980 or any enactment in substitution thereof.
  - ii) As far as is permissible in law the provisions of the National Parks Act shall apply to the Waitutu Block.
3. Notwithstanding clause 2 the following provisions shall apply to the management of the Waitutu Block:
  - i) The Incorporation may erect an accommodation hut for the use of the owners and their guests on the true right hand bank of the Wairaurahiri River near the mouth of the river as marked on the plan attached hereto as the Second Schedule.

SECOND SCHEDULE—*continued*DEED OF COVENANT—*continued*

- ii) The Incorporation may remove such vegetation as may be necessary for the purpose of building the hut and providing for its surround.
  - iii) If the Incorporation at any time desires to build any additional huts for its owners' use the Incorporation shall obtain the consent of the Crown who shall not unreasonably withhold such consent provided that the erection of any hut is not inconsistent with any relevant Conservation Management Strategy or Conservation Management Plan or Management Plan for the Waitutu Block.
  - iv) The Incorporation may construct a helicopter landing site on open land on the true right bank close to the mouth of the Wairaurahiri River as shown on the said plan.
  - v) The Incorporation may place boat mooring poles in the Wairaurahiri River in the vicinity of the hut referred to in paragraph (i) above.
  - vi) In exercising its rights under paragraphs (i), (ii), (iii), (iv) and (v) the Incorporation shall obtain all necessary resource consents, building consents and comply with all other obligations statutory or otherwise which may apply at the time.
  - vii) Subject to the Wild Animal Control Act 1977 owners of the Incorporation may undertake deer hunting.
  - viii) Subject to the Wildlife Act 1953, owners of the Incorporation may take traditional foods from the Waitutu Block.
  - ix) The owners of the Incorporation may take vegetative material for customary medicinal use from the Waitutu Block.
  - x) The owners of the Incorporation may erect smoking racks for eels but shall not erect any other buildings or structures apart from those authorised in paragraphs (i), (iii), (iv) and (v) above.
  - xi) Before exercising any right under paragraphs (vii), (viii), (ix), and (x) the owners shall notify the Minister.
  - xii) The owners of the Incorporation may enter onto the Waitutu Block at any time.
4. The Crown shall consult with and have regard to the views of the Incorporation in respect of any proposed changes to the National Parks Act 1980 which may affect the Waitutu Block.
  5. The Crown shall consult with and have regard to the views of the Incorporation in respect of the preparation of any Conservation Management Strategy or Conservation Management Plan or Management Plan which affects or relates to the Waitutu Block.
  6. The Crown shall consult with and have regard to the views of the Incorporation on all matters involving management or changes to management of the Waitutu Block.

SECOND SCHEDULE—*continued*

DEED OF COVENANT—*continued*

7. No development or management (including any public access) which will interfere with wahi tapu areas shall be undertaken by the Crown without consultation with and regard for the views of the Incorporation.
8. Any obligation by the Crown to consult with the Incorporation or any of the matters referred to in clauses 4, 5, 6 and 7 hereof shall be sufficiently discharged by the Crown if the consultation takes place with those persons comprising the Management Committee of the Incorporation.
9. Subject to the rights of Susan Judith Clyma under a sphagnum moss recovery licence which expires on or before June 2003 and subject to this Deed of Covenant, neither the Crown nor the Incorporation shall permit any damage or destruction or removal or cutting of any indigenous vegetation for commercial reward or gain.
10. Nothing herein contains limits or affects the right of the Crown as far as practical:
  - i) to keep the Waitutu Block free from plant pests and in particular to comply with the provisions of any notices given under the Noxious Plants Act 1978 or any provisions of any pest management strategy
  - ii) to keep the Waitutu Block free from any exotic tree species
  - iii) to keep the Waitutu Block free from animal pests and wild animals and in particular comply with the provisions of and any notices given under the Agriculture Pests Destruction Act 1967 or any provisions of any pest management strategy or
  - iv) to keep the Waitutu Block free from rubbish or other unsightly or offensive material
  - v) to manage, protect and maintain any scenic, historic, archaeological, biological, geological and scientific features present on the Waitutu Block its soil, water and forests provided that the Crown shall not act in a manner inconsistent with the principles of the Treaty of Waitangi.
11. Neither party shall permit any stock to graze upon the Waitutu Block.
12. Unless required to do so by statute or permitted by this Deed of Covenant or any relevant Conservation Management Strategy, Conservation Management Plan or Management Plan neither party shall carry out or allow to be carried out
  - i) Any removal of indigenous plants, shrubs, trees or animals
  - ii) Any burning, topdressing or sowing of seed on the Waitutu Block
  - iii) Any cultivation, earthworks or other soil disturbance on the Waitutu Block
  - iv) Any erection of utility transmission lines across the Waitutu Block

SECOND SCHEDULE—*continued*DEED OF COVENANT—*continued*

- v) Any replanting programme on the Waitutu Block except for planting indigenous species
  - vi) The erection of any fence, building, structure or other improvements on the Waitutu Block for the purposes of either the Crown or the Incorporation or for other private or public purposes
13. Except as otherwise provided in this Deed of Covenant members of the public may have access to and entry onto the Waitutu Block for purposes consistent with the National Parks Act 1980. The Crown may specify conditions of entry and may decline entry in order to achieve the principles and purposes of the National Parks Act 1980. Nothing herein contained shall interfere with any right of the Incorporation's owners as set out in clause 3 hereof.
  14. The Incorporation grants the Crown and any officer or duly authorised agent of the Crown in perpetuity access without notice to the Waitutu Block for purposes of managing and administering the Waitutu Block or for carrying out protection or maintenance work in or on the Waitutu Block consistent with the principles of the National Parks Act 1980.
  15. Subject to the Crown complying with its obligations under this Covenant the Incorporation shall not impede or otherwise interfere with any action of the Crown in managing the Waitutu Block.
  16. If the Incorporation becomes aware of a fire or in the event of wildfire threatening the Waitutu Block it shall notify the proper fire authority or the Minister.
  17. If the Minister is not the fire authority for any part of the Waitutu Block under threat from fire the Minister may render assistance to the fire authority in suppressing the fire if requested to do so in terms of a formalised agreement under section 14 of the Forests and Rural Fires Act 1977 in place between the Minister and the Fire Authority.
  18. Unless the Incorporation is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire through non observance of the permit) the Crown shall be responsible for the costs relating to fire suppression.
  19. The Incorporation shall not sell, lease or otherwise part with possession of the Waitutu Block without first informing the Crown of such intention and inviting the Crown to make an offer to purchase the Waitutu Block.
  20. On being informed of the Incorporation's desire to sell, lease or otherwise dispose of the Waitutu Block the Crown may make an offer for the Waitutu Block.
  21. If either the Crown does not within a reasonable time make an offer pursuant to clause 20 for the Waitutu Block or if any offer by the Crown is not accepted by the Incorporation, the Incorporation shall ensure that the agreement of the purchaser, lessee or assignee to

SECOND SCHEDULE—*continued*

DEED OF COVENANT—*continued*

comply with the terms of this covenant is obtained including an agreement by the purchaser or assignee to ensure on any subsequent sale or assignment (whether by sale, lease or otherwise) that any subsequent purchaser, lessee or assignee shall also comply with the terms of this Deed of Covenant.

22. If for any reason this Deed of Covenant is unregistered and the Incorporation fails to obtain the agreement of any purchaser, lessee or assignee to comply with the terms of this Deed of Covenant as set out in clause 21 hereof the Incorporation shall continue to be liable in damages for any breach of covenant committed after it has parted with all interest in the Waitutu Block in respect of which such breach has occurred.
23. The Crown shall at its cost carry out any survey work necessary for this Deed of Covenant to be registered against the Certificates of Title for the Waitutu Block.
24. This Deed of Covenant shall be signed by both parties and the Incorporation shall undertake all reasonable endeavours to make available to the Minister the Certificates of Title to the Waitutu Block. If the Incorporation cannot produce any Certificate of Title it shall at its expense obtain a duplicate of such Certificate of Title. The Crown shall then at its expense register this Deed of Covenant on the Certificates of Title to the Waitutu Block.
25. The parties acknowledge that legislation is necessary to enable the provisions of this Deed of Covenant to be registered and to enable the Waitutu Block to become subject to the National Parks Act 1980.
26. The Crown in consultation with the Incorporation shall promote legislation to give effect to the terms of this Deed of Covenant.
27.
  - i) Notwithstanding any other provision of this Deed of Covenant the Crown or the Minister may institute proceedings against the Incorporation to enforce compliance with this Deed of Covenant by the Incorporation.
  - ii) Notwithstanding any other provision of this Deed of Covenant the Incorporation may institute proceedings against the Crown or the Minister to enforce compliance by the Crown with this Deed of Covenant.
28. The Crown shall at all times indemnify and save harmless the Incorporation from and against:
  - i) Any and all actions claims demands awards and proceedings of every nature and kind made, brought or prosecuted against the Incorporation; and
  - ii) Any and all loss damage cost or expense suffered or incurred by the Incorporation which are based upon, or arise out of or are connected with any act, commission, neglect, breach or default

SECOND SCHEDULE—*continued*DEED OF COVENANT—*continued*

on the part of the Crown and any visitors or licensees of the Crown.

29. The Crown shall, during the term of this Deed of Covenant, duly and punctually pay all general, water, special and other rates and all taxes (including land tax if any) and assessments levied upon or payable in respect of the Waitutu Block irrespective of the ownership thereof but excluding income tax or any tax or rents or licence fees or other tax assessed in respect of Waitutu Block.
30. The reference to any Act in this Deed of Covenant extends and includes any amendment to or re-enactment of that Act.
31. Any notice required to be given to the Incorporation in terms of the Deed of Covenant shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952.
32. Any notice required to be given by the Crown or Minister shall be sufficiently given if it is signed by the Regional Conservator of the Department of Conservation Southland Conservancy. Any notice required to be served upon the Crown shall be sufficiently served and delivered to the office for the time being of the Regional Conservator Department of Conservation, Southland Conservancy, Invercargill P O Box 743 Invercargill.
33. Any dispute which may arise between the Incorporation and the Crown or Minister in any way relating to this Deed of Covenant may be resolved by referring the dispute to an agreed party for a decision or by arbitration under the provisions of the Arbitration Act 1908.
34. Until this Deed of Covenant is registered in accordance with clause 24, and until the legislation referred to in clauses 25 and 26 is enacted the parties agree to be bound by the provisions of this Deed of Covenant.

IN WITNESS whereof the parties have hereto set their hands on the day and year aforementioned.

SIGNED on behalf of	)	
<u>HER MAJESTY THE QUEEN</u>	)	
by <u>DENIS WILLIAM ANSON</u>	)	
<u>MARSHALL</u> Minister of	)	Denis Marshall
Conservation in the	)	
presence of	)	

Witness	T. K. Mansfield
Address	Wellington
Occupation	Office Solicitor

SIGNED BY THE PROPRIETORS OF  
WAITUTU INCORPORATED BY

J E E Southerwood  
Chairman

[i.s.]

L Gale

SECOND SCHEDULE—*continued*

DEED OF COVENANT—*continued*

FIRST SCHEDULE—WAITUTU BLOCK

*[The First Schedule to the Deed of Covenant has been omitted. That Schedule contains a description of the land comprising the Waitutu Block. A description of that land is set out in the First Schedule to this Act.]*

SECOND SCHEDULE—continued

DEED OF COVENANT—continued

SECOND SCHEDULE

