

# **Forests (West Coast Accord) Bill**

Government Bill

As reported from the Local Government and  
Environment Committee

## **Commentary**

### **Recommendation**

The Local Government and Environment Committee has examined the Forests (West Coast Accord) Bill and recommends by majority that it be passed with the amendments shown.

### **Summary**

By majority we recommend that the Forests (West Coast Accord) Bill (the bill) be passed, because it will enable the Government to implement its policy of ceasing as soon as possible the logging of indigenous forest on Crown-managed land.

We recommend that the bill be amended to provide for consultation prior to declarations about additions to national parks and allow for the addition of land to existing reserves. We also propose a number of amendments relating to the saving of existing encumbrances that were in force or under negotiation on 15 May 2000, such as:

- inclusion of a sunset clause for encumbrances with unspecified terms
- provision for minor variations to be made without requiring encumbrances to be exchanged for concessions
- inclusion of the power to grant easements required to implement the Ngāi Tahu Deed of Settlement.

## **Introduction**

### **Signing of West Coast Accord**

The West Coast Accord (the Accord) is an agreement entered into on 6 November 1986. It was signed by the then Minister for the Environment on behalf of the Government and by representatives of West Coast local government and of certain environmental and conservation groups, and also by signatories on behalf of the West Coast timber industry and workers' union.

The Government of the day brokered the Accord as part of the implementation of its policy of reducing the level of logging of indigenous forest on Crown-managed land and providing for a small-scale sustained yield beech scheme, while setting aside suitable land for reserves. This policy was to be reconciled with the need to maintain the sawmilling industry on the West Coast, subject to competitive market forces, during the period until exotic species became available in the region in sufficient quantity.

The signing of the Accord followed a process of consultation that culminated in the Final Report of the West Coast Forests Working Party on 31 October 1986. This process identified areas of Crown land to be gazetted as reserves and national parks, and provided for the overcutting (unsustainable harvesting) of other identified indigenous forests to continue for specified periods while exotic plantation forests came on stream. The Accord also provided for a continuing supply of indigenous timber in perpetuity from sustained yield logging.

Since the Accord was signed it has been the subject of litigation concerning its meaning and effect. In 1997, the Court of Appeal confirmed the contractual nature of parts of the Accord but found that the third recital, which refers to the overcutting of rimu from the Buller district until 2006, was not binding on the Crown.

### **Change in Government policy**

The new Government considers that much of the remaining Crown-managed indigenous forests on the West Coast, allocated for timber production under the Accord, has significant ecological importance and conservation value. (This is further discussed below with reference to the panel established to review the land.) The Government has determined that such forests should be closed to indigenous timber production as soon as practicable, and be transferred to the Department of Conservation. The Government also wishes to avoid

further litigation over the Accord. This bill is designed to assist in the implementation of these policy objectives.

### **Purpose and contents of the bill**

The bill seeks to cancel the West Coast Accord and provide for the change in status of West Coast indigenous production forest land.

### **Cancellation of West Coast Accord**

While the bill does not itself end logging in Crown-managed indigenous forests on the West Coast, it clears the way for the Government to implement its policy by consulting Timberlands West Coast Limited and issuing directions accordingly. The Government has already directed the company to remove references to the sustainable management of beech from its statement of corporate intent. The Government has also indicated its desire to consult the company's board about the proposal to cease all indigenous timber production (including both beech and rimu) on Crown-owned land by 31 March 2002.

Part 1 of the bill therefore cancels the Accord and sets out the effect of this cancellation (clauses 5 and 6). The cancellation of the Accord avoids potential litigation about whether covenants set out in the Accord could preclude such actions by the Government. Clause 7 provides that no compensation is payable by the Crown for loss or damage arising from the cancellation of the Accord.

### **Change of status of land**

On 24 July 2000 the Minister of Conservation announced that an independent panel had been established to review and make recommendations, about the land to which this bill relates, to an ad hoc committee of responsible Ministers chaired by the Minister for Land Information. The panel will use assessment criteria developed by the Nature Heritage Fund and other measures including the purposes set out in relevant conservation legislation. Using these criteria, the panel will consider whether areas of Crown-owned indigenous production forest should be brought into the existing conservation estate or have their status changed to unalienated Crown land under the Land Act 1948. The latter may be disposed of by the Crown, with first right of refusal given to Ngāi Tahu as required in terms of their Treaty settlement with the Crown.

Part 2 of the bill provides a mechanism for the status of Crown indigenous production forest land on the West Coast to be changed to conservation areas, reserves or additions to national parks. This would probably be in light of recommendations made by the panel. Provision is also made for land to be declared Crown land subject to the Land Act 1948. Schedule 1 identifies land that is subject to Part 2; this land is entirely Crown-owned indigenous production forest that is (prior to the enactment of this bill) subject to the Accord.

### **Existing encumbrances**

There are many encumbrances (such as leases, licences, permits or easements) that exist in respect of the indigenous production land managed by Timberlands West Coast Limited. Part 2 of the bill also sets out how such encumbrances should be dealt with following any declaration that changes the status of the land to which they relate. These provisions are found in clauses 13 to 18.

### **Tenor of submissions**

We received 229 submissions on the bill, of which 73 were presented orally during hearings held in Wellington, Christchurch and Hokitika.

### **Significant support for bill**

Submitters expressed support for the bill based on a philosophical objection to the logging of indigenous forests on Crown-managed land or out of regard for the aesthetic, ecological and landscape values of the forests concerned. Evidence was provided about the inherent value of the forests concerned, particularly in terms of biodiversity. Some submitters questioned the ecological viability of sustainable forest management practices. Submissions that supported the bill generally sought the transfer of the indigenous forests managed by Timberlands West Coast Limited to the Department of Conservation.

### **Bill opposed by many submitters**

A majority of submissions received from the West Coast region opposed the cancellation of the Accord, as did a number of submissions from other parts of the country. One of the primary concerns expressed in these submissions was that the cessation of harvesting from indigenous forests by Timberlands West Coast Limited would

result in the loss of jobs and a reduction in associated economic activity that would not be outweighed by potential benefits to the region from increased tourism.

We received a submission from the Furniture Association of New Zealand, which represents the interests of a number of furniture makers who make use of indigenous forest produce. The association considered that the Government's decision to overturn the Accord brings into jeopardy the continued viability and future growth of the industry, given its dependence on access to indigenous timbers to differentiate a product on the domestic and international markets. The industry will need to seek sources of alternative timbers, develop new processes and designs for different timber types and instigate a market programme to shift consumers from wanting rimu furniture to other types of timber. Finally, the association was concerned that indigenous forest produce from sustainable forest management on private land has not reached sufficient volume to maintain a viable market without the participation of Timberlands West Coast Limited.

Submissions opposing the policy intent of the bill also set out the following views:

- The bill enables the Government to break a contract and take away property rights without compensation or consultation. This is unconstitutional and not democratic.
- Forests can be sustainably managed, and indigenous production forests are an appropriate land use.
- The bill may lead to a significant increase in the importation of logs and timber into New Zealand (mainly from unsustainably managed forests).
- In seeking to pass the bill and halt sustainable forest management by Timberlands West Coast Limited, the Government is undermining the processes of the Resource Management Act 1991.
- Cancellation of the Accord by legislation may weaken confidence in other agreements or covenants entered into with the Crown.

### **Strong public feelings on this issue**

In addition to the above submissions, we received 3860 signed form letters, mainly from West Coast residents. These letters, which were

initiated by the Coast Action Network, opposed the Government's intentions to cancel the Accord through legislation.

On the day that we met in Hokitika to hear submissions on the bill, we observed a demonstration in which a significant number of local people expressed their opposition to the government policies that are associated with this bill.

A petition relating to the subject area of this bill is also before our committee. Petition 1999/0009 of Hon Pete Hodgson was presented and referred to us on 9 March 2000. The petition requests that the House of Representatives note that 45 795 people (number not verified) have signed a petition objecting to the logging of native forests on public land on the West Coast. This petition was presented by Mr Hodgson because the original petition was submitted in a form that did not comply with Standing Orders.

We recognise that there are strongly polarised views about the West Coast Accord and the logging of indigenous forests.

### **Majority recommendation that bill be passed**

The majority of our committee supports the policy intent of the Government to end the logging of indigenous forest on Crown land as soon as possible. It is not appropriate for trees to be harvested from tracts of publicly-owned indigenous forest with significant conservation and ecological values. This view is consistent with the Government's emphasis on implementing the New Zealand Biodiversity Strategy, which seeks to turn the tide on the loss of indigenous biodiversity—this country's most pervasive environmental issue. Where land included in Schedule 1 of this bill is found not to be of particular conservation value, it may eventually be disposed of by the Crown. In that case such areas of land, if no longer in public ownership, could ultimately become available for forestry or other development, subject to normal environmental constraints, if their owners choose that course.

We recognise that the cessation of logging of indigenous forest on Crown land will have an impact on economic activity on the West Coast arising from that industry. The Government has negotiated an economic assistance package with the region's local authorities. The majority of our committee considers that this package will provide good opportunities for the future development of the West Coast.

Opposition members of our committee from the National Party and ACT Party do not agree that the bill should be passed in its present

form. They are strongly of the view that Timberlands West Coast Limited should be permitted to proceed with its programme of sustainable forest management, subject to appropriate environmental controls. These members note that an application by Timberlands West Coast Limited to the Buller District Council for resource consent for sustainable beech management was withdrawn by the company prior to being considered, following a ministerial directive to remove beech harvesting from its statement of corporate intent. They assert that the relevant issues should have been tested under the Resource Management Act 1991. These members consider that, if a sustainable forest management scheme had been successfully established by Timberlands West Coast Limited, it might have provided a model to promote less damaging forestry practices in other parts of the world. Timberlands West Coast Limited efforts formed a considerable part of New Zealand's research base into sustainable forest management.

Opposition members also object on the basis that the Accord is a contract from which certain property rights may be derived, and that as such it should not be broken through legislation. They consider that, where contracts are cancelled, compensation rights should be available.

It is therefore by majority that we recommend that the bill be passed.

## **Provisions relating to cancellation of Accord**

### **Cancellation of Accord**

The Accord is cancelled by clause 5. The effect of cancelling the Accord (as set out in clause 6) is that, to the extent it remains unperformed, no party is obliged or entitled to perform it further. To the extent that the Accord has been performed, no party is divested of property transferred or money paid under it because of the cancellation.

The date at which this cancellation is to have taken effect is shown in the bill as introduced as 10 May 2000 (clauses 2 and 5). The reason why it was considered appropriate to "backdate" the cancellation of the Accord to five days prior to the introduction of the bill was that it would "give the Government the ability to demonstrate its intent should any litigation arise before the introduction of the bill". As litigation did not arise before the bill was introduced, we recommend an amendment that would place the cancellation of the Accord at the start of 15 May 2000, the actual date of this bill's introduction.

**Pike River coalfield**

The submission of Pike River Coal Company and New Zealand Oil and Gas Limited noted that the bill affects more than the forestry covenants of the Accord, including Covenant 2 that expressly provides for the Pike River coal development.

The Government has been advised that Covenant 2 could be considered a policy statement of the Crown in relation to the land, and therefore a matter the Minister of Conservation would have regard to when considering an access arrangement application under the Crown Minerals Act 1991. The Government has also been advised that the wording of the covenant does not provide a strong endorsement of the development, and in particular does not imply any lessening of the environmental procedures that would need to be followed.

The bill makes no specific reference to the Pike River issue. We note that, following the bill's introduction, the Minister of Forestry wrote to Pike River Coal Company Limited. The Minister advised that the Government continues to support the concept of the Pike River coal development provided that it is of low environmental impact and complies with all relevant conservation management planning documents. Also, the Minister drew the company's attention to clause 11 of the bill, which enables the draft West Coast Conservation Management Strategy to be reviewed or amended (see below). This would give the Pike River Coal Company Limited the opportunity to make submissions on access and other mining-related issues.

We note the complexity of the issues surrounding the proposed Pike River coalfield. We invite the parties involved in the development of the draft strategy to pay particular attention to the history of the issue.

**No compensation**

Clause 7 rules out compensation being paid by the Crown to any person for any loss or damage arising from cancelling the Accord. By majority, we recommend that clause 7 remain in the bill, without amendment.

**Supply of exotic sawlogs to West Coast sawmillers**

The submission of the West Coast Timber Association asked that the bill proceed only on the basis that adequate provision is made to

ensure that the Crown's exotic West Coast sawlogs are made available to West Coast-based forest processors and millers, through a first right of refusal mechanism. The West Coast Timber Association considers that a substantial proportion of exotic timber harvested by Timberlands West Coast Limited is sold to processors in other regions, in spite of fair prices offered by West Coast sawmillers.

In light of the suggestion made by the West Coast Timber Association, we have considered the inclusion of a possible clause to oblige Timberlands West Coast Limited to offer, on a competitive basis, all plantation-grown forest produce so that all West Coast sawmills have a reasonable opportunity to participate in the tender process on equivalent terms to other sawmills. However, we are unable to recommend such an amendment, as it is outside the scope of the bill as introduced.

Officials have advised us that in May the Deputy Prime Minister and Minister of Finance wrote to the West Coast Mayors informing them that shareholding Ministers would discuss with Timberlands West Coast Limited the Government's preference that as much wood as possible continue to be placed on the West Coast for processing. The letter also signalled that the future supply for the West Coast industry should reflect the increased radiata pine volumes coming on stream over the next few years, but noted that the Ministers were unable to give any further assurances on this matter.

West Coast sawmills are already heavily reliant on the supply of exotic sawlogs (predominantly pine) from Timberlands West Coast Limited. We understand that the bulk of the company's supply contracts are on an annual basis.

Given the rapid increase expected in the volume of pine produced by Timberlands West Coast Limited, we would like to be sure that the percentage of the total supply being placed on the West Coast by the company will remain at least as high in future as that achieved in the last financial year (72%). Accordingly, we invite the Minister responsible for Timberlands West Coast Limited to explore with the company its future tendering regime with a view to ensuring that as much exotic plantation timber as practicable is processed on the West Coast.

## **Change of status of land**

Clause 8 allows responsible Ministers to declare jointly, by notice in the *Gazette*, any land identified in Schedule 1 (West Coast indigenous production forest land) to be held for conservation or reserve purposes, added to an existing national park, or Crown land subject to the Land Act 1948.

## **Land covered by this bill**

Concern was expressed by submitters that clause 19, which allows the Governor-General to add to, omit from, or change the descriptions of, land in Schedule 1 on the recommendation of the responsible Ministers, does not restrict that power to land previously covered by the Accord. We therefore recommend an amendment to clarify that land to be added can be only West Coast indigenous production forest land owned by the Crówn and managed by Timberlands West Coast Limited as at the commencement of the Act. We also recommend the removal of the power to omit land from Schedule 1, although the ability to correct the descriptions of land or parts of land in this schedule should be retained.

Schedule 1 is itself to be amended to include three further areas of indigenous forest land managed by Timberlands West Coast Limited for which survey plans have been approved by the Chief Surveyor since the introduction of the bill.

## **Additions to national parks and reserves**

Many submitters supported the mechanism set out in clause 8 for the change in status of land. However, a number were concerned that the clause overrides the normal statutory procedures for establishing national parks, reserves or conservation areas, or ignores the statutory processes in the relevant conservation legislation allowing for consultation.

We agree that a process of consultation should be set out prior to the addition of land to a national park. We recommend the addition of a new subclause providing that the responsible Ministers must not make a declaration, in respect to additions to national parks, unless the Minister of Conservation has recommended they do so. Further, we propose that the Minister of Conservation must not be able to make such a recommendation except on the recommendation of the New Zealand Conservation Authority made after consultation with

the appropriate Conservation Board. The New Zealand Conservation Authority may investigate the proposal to add the land to a national park under section 8 of the National Parks Act 1980.

We also recommend that clause 8(1)(b) be amended to include a reference to adding land to an existing reserve.

### **Effect on relevant planning documents**

Conservation management strategies are prepared by the Department of Conservation under the Conservation Act 1987 to implement general policies and establish objectives for the integrated management of land held by the department. The strategies are developed in consultation with applicable Conservation Boards, go through a public consultation process, and are finally approved by the New Zealand Conservation Authority. The Act provides that the Director-General of Conservation may, after consulting the relevant Conservation Board, initiate the review or amendment of a conservation management strategy. Clause 11 clarifies that such a review or amendment may also be initiated in respect of a draft conservation management strategy.

Following a suggestion made by the New Zealand Conservation Authority, we recommend that clause 11 be amended to specify that the draft conservation management strategy to be reviewed or amended must be the most recent draft.

### **Capacity of Department of Conservation to manage land**

A number of submissions called into question the capacity of the Department of Conservation to manage extra land that is to be transferred to it under this bill. They were particularly concerned about whether the department would be in a position to direct greater resources or expertise to pest control than are currently applied by Timberlands West Coast Limited.

As part of our consideration of the 2000/01 Estimates for Vote Conservation, we sought assurances that pest control on lands to be allocated to the department would be managed at least as well as and possibly better than under the management of Timberlands West Coast Limited. The Minister of Conservation stated that she would “have difficulty accepting anything to the contrary”. The department informed us that “the lands allocated to the Department of Conservation will be managed to the same standards as other West Coast land managed by the department, and have been budgeted for

in the new year's funding allocation. Presently Timberlands West Coast allocates \$54,400 a year to its predator and pest control programmes. The department has budgeted \$138,700 per year (excluding GST)."

We intend to pay particular attention to such issues when we conduct the next financial reviews of the Department of Conservation.

### **Access for mining**

The New Zealand Minerals Industry Association and Pike River Coal Company Limited were concerned that the bill does not provide for Crown land subject to a status change to remain open to mining. The association sought a provision clarifying that land should be available for access to ascertain its mineral potential, and that the land's status could be revoked if the economic value of that land outweighs its conservation value.

We note that access to land for mining purposes will still be possible after a change in the land's status occurs. A prospective miner will still need to apply for an access arrangement. Unless the Fourth Schedule of the Crown Minerals Act 1991 is amended to include this land (which would close it to mining), the access arrangement will be dealt with under the Crown Minerals Act 1991 in the usual way. We do not recommend that any provision be made in relation to this issue in addition to that currently set out in legislation. We note the suggestion by the New Zealand Minerals Industry Association that the Conservation Act 1987 and other Acts should be amended to introduce social and economic factors into the matters that should be considered, along with the objectives of the Acts under which the land is held, when considering whether to grant access. Such an amendment would not be within the scope of the bill as referred to us.

### **Saving of existing encumbrances**

#### **Only encumbrances that pre-date this bill to be saved**

There are many encumbrances relating to the land dealt with by this bill. Some are well-documented, through leases, licences, easements or similar contracts entered into with Timberlands West Coast Limited or its predecessors. Normally these documents will include clear conditions and an expiry date. Other rights may have been granted in a less formal manner, without fixed duration or clear conditions. The bill as introduced seeks to deal fairly with these

encumbrances, but will allow progressive attention to the problem of undocumented rights. It is normal practice for the Government to preserve existing rights, subject to their original terms and conditions, when land management arrangements are altered.

Existing encumbrances will continue in force after a declaration changes the status of the land to which they relate. Such existing encumbrances will remain in force until they expire, are terminated, or are cancelled in accordance with their terms. An existing encumbrance continues to be saved if it is renewed for a further term under a right of renewal granted by it.

However, we do not consider that encumbrances for which negotiations have commenced after the introduction of this bill should be saved in this way. This approach differs from that set out in the bill as introduced, which saves encumbrances in force immediately before a declaration under clause 8 takes effect. We do not wish to encourage applications for encumbrances lodged in anticipation of the making of a declaration. We therefore recommend that clause 13 be amended to save only encumbrances that were in force on 15 May 2000 or for which negotiations were entered into before that date, on the terms in force or being negotiated at that date.

### **Minor variations to encumbrances allowed**

As introduced, clause 14 excludes variations made to existing encumbrances after a declaration takes effect. A person wishing to vary an encumbrance on land that had been transferred to the management of the Department of Conservation would need to seek a concession under the Conservation Act 1987. We recommend that this clause be amended to allow a variation to be made to an encumbrance without triggering the requirement to apply for a concession as long as the variation is minor and technical or does not materially increase the adverse effects or the term or location of the authorised activity or the variation reduces the adverse effects or term of the activity. We also propose that the clause be changed to allow for transfers of encumbrances to new holders.

### **Sunset clause for encumbrances with unspecified terms**

As noted above, a number of encumbrances have been made informally and without the specification of terms. We recommend that a sunset clause be inserted, placing a time limit of 10 years (from the

date of an applicable declaration under clause 8) on existing encumbrances that are in force for an unspecified period. This will apply only when it is not specified when the right would otherwise expire, and it will allow a reasonable period for right-holders to be informed of the potential expiry of their encumbrances and to apply for concessions accordingly. We do not intend that this sunset provision should apply to encumbrances granted in perpetuity or statutory licences (for example, activities carried out under telecommunications or electricity legislation that provide important community services).

### **Access to landlocked Ngāi Tahu properties**

Timberlands West Coast Limited and Te Runanga O Ngāi Tahu have raised the issue of access over Crown-owned West Coast indigenous production forest land to Ngāi Tahu land on which the company manages exotic plantations for Ngāi Tahu. The company wishes to preserve access rights over land that it currently manages but that may be transferred into the control of the Minister of Conservation or the Minister for Land Information.

We recommend the insertion of a provision (proposed new clause 12A) to enable the new Minister to grant easements in the form of access rights to Ngāi Tahu. Any such easement would be in perpetuity and would be provided free of charge subject to Ngāi Tahu paying its share of maintenance and repair or upgrading costs. The Department of Conservation has already negotiated easements with Ngāi Tahu under a similar provision in the Ngāi Tahu Claims Settlement Act 1998.

### **Exchange of encumbrances for concessions**

As introduced, clause 16 enables a person to exchange an existing encumbrance for a concession during the life of an existing encumbrance, by providing exemptions from the regime under the Conservation Act 1987 for persons applying for concessions. When a concession is granted, the existing encumbrance would be cancelled. Under clause 17, the exemptions apply only if the application for the concession is made before the existing encumbrance expires, or is terminated or cancelled; and if the activity to be authorised by the concession is the activity already authorised by the existing encumbrance. The exemptions do not apply if there is an application to renew an existing encumbrance or to an application to vary an existing encumbrance.

We agree with the establishment of a transitional regime that may encourage right-holders to exchange existing encumbrances for concessions. However, we have concerns about the extent to which clause 16(2)(a), (b) and (c) as introduced restrict the matters the Minister must have regard to and information given to the Minister when considering applications to exchange encumbrances for concessions.

We propose that clause 16 be amended so that the Minister of Conservation, in considering an application by the holder of an existing encumbrance to exchange it for a concession, should have regard to the nature of the activity and its effects and seek further relevant information to enable her or him to assess effects. It is proposed that the Minister cannot decline to grant the concession if it is contrary to the provisions of conservation legislation or the purposes for which the land is held, or if it is inconsistent with a conservation management strategy or plan. The Minister may impose conditions to offset any adverse effects.

## **Appendix**

### **Committee process**

The Forests (West Coast Accord) Bill is a Government bill in the name of Hon Pete Hodgson, Minister of Forestry. It was introduced on 15 May 2000 and referred to the Local Government and Environment Committee on 18 May 2000. The closing date for submissions was 19 June 2000. We received 229 submissions from interested groups and individuals, and 73 of the submissions were supported by oral evidence at meetings held in Wellington, Christchurch and Hokitika. This hearing of evidence took 18 hours and 27 minutes. Consideration, including time spent in discussion with advisers from the Ministry of Agriculture and Forestry and the Department of Conservation, took a further 12 hours and 10 minutes.

### **Committee membership**

Jeanette Fitzsimons (Chairperson)  
Martin Gallagher (Deputy Chairperson)  
David Benson-Pope  
Georgina Beyer  
Ann Hartley  
Joe Hawke  
Owen Jennings  
Hon Murray McCully  
Eric Roy  
Richard Worth

Damien O'Connor and Hon Ken Shirley participated as temporary replacement members.

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**Key to symbols used in reprinted bill****As reported from a select committee****Struck out (majority)**

**[** Subject to this Act, **]**

Text struck out by a majority

**New (majority)**

**[** Subject to this Act, **]**

Text inserted by a majority

*<Subject to this Act,>*

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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*Hon Pete Hodgson*

## **Forests (West Coast Accord) Bill**

### **Government Bill**

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Forests (West Coast Accord) Act **2000**.
- 2 Commencement**
  - (1) Except as provided in **subsection (2)**, this Act comes into force on the day after the date on which it receives the Royal assent.
  - (2) **Part 1** is deemed to have come into force on **<10 May 2000>** **<15 May 2000>**.

**3 Interpretation**

In this Act, unless the context otherwise requires,—

**concession, Conservation Board, and conservation management strategy** have the same meanings as in section 2(1) of the Conservation Act 1987

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**existing encumbrance** means an easement, licence, lease, permit, or other right or authority for the time being in force

**new Minister** means the Minister responsible for the administration of the Act to which the land is subject as a result of a declaration under **section 8(1)**

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**responsible Ministers** has the same meaning as in section 2(1) of the Crown Forest Assets Act 1989

**West Coast Accord** means—

- (a) the agreement dated 6 November 1986 and executed by the Minister for the Environment on behalf of the Crown and by the West Coast United Council, Native Forests Action Council, Royal Forest and Bird Protection Society of New Zealand, Federated Mountain Clubs of New Zealand, West Coast Timber Association, and Westland Timber Workers' Union; and
- (b) any express or implied term in the agreement; and
- (c) any amendment to the agreement.

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**4 Act to bind the Crown**

This Act binds the Crown.

**Part 1**

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**Cancellation of West Coast Accord****5 Cancellation of West Coast Accord**

The West Coast Accord is cancelled *<at the close of 10 May 2000>* <on 15 May 2000>.

**6 Effect of cancellation**

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The effect of cancelling the West Coast Accord is that, on and from the cancellation,—

- (a) to the extent that the West Coast Accord remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further; and
- (b) to the extent that the West Coast Accord has already been performed at the time of the cancellation, no party

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is, merely because of the cancellation, to be divested of any property transferred or money paid under it.

**7 No compensation**

No compensation is payable by the Crown to any person for any loss or damage arising from the enactment or operation of this Part. 5

**Part 2**

**Enabling change of status of West Coast indigenous production forest land**

**8 Land status may be changed by declaration 10**

- (1) The responsible Ministers may jointly, by notice in the *Gazette* describing the relevant land, declare any land (or part of land) identified in **Schedule 1** to be—
- (a) held under the Conservation Act 1987 for conservation purposes and any other purposes specified in the notice; 15  
or
  - (b) set apart as a reserve<, or added to an existing reserve,> and classified under the Reserves Act 1977 for any purposes specified in the notice; or
  - (c) added to a national park under the National Parks Act 1980; or 20
  - (d) Crown land subject to the Land Act 1948.
- (2) Before making a declaration under **subsection (1)**, the responsible Ministers must consult with the Minister of Conservation, the Minister of Forestry, and the Minister for Land 25  
Information.

**New (majority)**

- (3) The following provisions apply in relation to a proposal to add land to a national park under **subsection (1)(c)**:
- (a) the responsible Ministers must not make a declaration under that provision unless the Minister of Conservation recommends that they do so: 30
  - (b) the Minister of Conservation must not make a recommendation under **paragraph (a)** except on the recommendation of the New Zealand Conservation Authority

**New (majority)**

made after consultation with the appropriate Conservation Board:

- (c) an investigation of the proposal may occur under section 8 of the National Parks Act 1980 as if it were a proposal to add land to a national park under section 7(1)(b) of that Act: 5
- (d) during an investigation (if any) under section 8 of the National Parks Act 1980, a declaration may be made under **subsection (1)(a) or (b)** of this section, and the proposal may continue to be dealt with under sections 7(1)(b), 7(2), and 8 of the National Parks Act 1980. 10

**9 Effect of declaration under section 8(1)**

- (1) On the day after the date on which it is published in the *Gazette* or on any later date specified in the notice,—
  - (a) a declaration under **section 8(1)(a)** has effect as if it were made by notice in the *Gazette* under section 7 of the Conservation Act 1987 and, if other purposes are specified in the notice, section 18 of that Act; and 15
  - (b) a declaration under **section 8(1)(b)** has effect as a reservation and classification under the Reserves Act 1977 for the purposes specified in the notice as if it were made by notice in the *Gazette* under section 16 of that Act; and 20
  - (c) a declaration under **section 8(1)(c)** has effect to add the land to a national park under the National Parks Act 1980 as if it were added by an Order in Council made by the Governor-General under section 7 of that Act; and 25
  - (d) a declaration under **section 8(1)(d)** has effect to make the land Crown land subject to the Land Act 1948.

**Struck out (majority)**

- (2) On a declaration taking effect, the land described in the notice ceases to be Crown forest land within the meaning of section 2(1) of the Crown Forest Assets Act 1989. 30

**New (majority)**

- |     |   |   |
|-----|---|---|
| (2) | On a declaration taking effect,—  |   |
|     | (a) the land described in the notice ceases to be Crown forest land within the meaning of section 2(1) of the Crown Forest Assets Act 1989; and |   |
|     | (b) <b>section 8(1)</b> ceases to apply to that land.   | 5 |
- 
- 10 Change of status of land to be noted**  
The Registrar-General of Land or the Chief Surveyor, as the case requires, must register a copy of a notice of a declaration under **section 8(1)** changing the status of land against the relevant title or record and do anything else needed to record the change of status, on receipt of a copy of the notice from either of the responsible Ministers. 10
- 11 Effect of change of status of land on draft West Coast conservation management strategy**
- (1) If the West Coast conservation management strategy is in draft when a declaration is made under **section 8(1)(a), (b), or (c)** changing the status of land, the Director-General of Conservation may, after consulting with the West Coast Conservation Board, initiate a review of, or an amendment to, all or part of the most recent draft conservation management strategy. 15  
20
- (2) The review or amendment of the draft conservation management strategy must be carried out as if the conservation management strategy had been approved under section 17F(p) of the Conservation Act 1987. Section 17H or section 17I of that Act, as the case requires, applies with all necessary modifications to the review or amendment. 25
- 12 Effect of change of status of land on North Westland regional management plan**
- (1) The North Westland regional management plan (which has effect under section 65(12) of the Conservation Act 1987) does not apply to land that has its status changed by a declaration under **section 8(1)**. 30
- (2) If a draft conservation management strategy is approved under section 17F(p) of the Conservation Act 1987 in relation to land that has had its status changed by a declaration under 35

**section 8(1)**, the North Westland regional management plan must be treated as having been withdrawn and ceases to have any effect.

#### New (majority)

- |            |  |    |
|------------|--|----|
| <b>12A</b> | <b>New Minister may grant easements required to comply with Ngāi Tahu deed of settlement</b>   | 5  |
| (1)        | The new Minister may grant any easement relating to access over land identified in <b>Schedule 1</b> that the new Minister is required to grant to enable the Crown to comply with clauses 4.5 to 4.8 of attachment 7.6 of the deed of settlement (as defined in section 8 of the Ngāi Tahu Claims Settlement Act 1998). | 10 |
| (2)        | An easement granted under <b>subsection (1)</b> is enforceable in accordance with its terms despite Part IIIB of the Conservation Act 1987, section 59A of the Reserves Act 1977, and section 49 of the National Parks Act 1980.   | 15 |

#### Struck out (majority)

- |           |   |    |
|-----------|---|----|
| <b>13</b> | <b>Saving of existing encumbrances</b>  |    |
| (1)       | If an existing encumbrance relating to land is in force immediately before a declaration under <b>section 8(1)</b> takes effect, the existing encumbrance continues in force on its terms after the declaration changes the status of the land, until the existing encumbrance expires or is terminated or cancelled. | 20 |
| (2)       | Part IIIB of the Conservation Act 1987, section 59A of the Reserves Act 1977, and section 49 of the National Parks Act 1980 do not affect the existing encumbrance.   |    |
| (3)       | This section is subject to <b>sections 14 to 18</b> .   | 25 |
| <b>14</b> | <b>When saving provision applies</b>  |    |
| (1)       | <b>Section 13</b> continues to apply to an existing encumbrance if it is renewed for a further term under a right of renewal conferred by the existing encumbrance.   |    |
| (2)       | <b>Section 13</b> does not apply to a variation of an existing encumbrance if the variation is made after the declaration under <b>section 8(1)</b> takes effect.   | 30 |

## New (majority)

- 13 Saving of existing encumbrances in force or being negotiated at 15 May 2000**
- (1) Land that has its status changed by a declaration under **section 8(1)** continues to be subject to an existing encumbrance that relates to that land until the existing encumbrance expires, or is terminated or cancelled, if— 5
- (a) the existing encumbrance was in force on **15 May 2000** or negotiations for the existing encumbrance were entered into on or before that date; and
- (b) the existing encumbrance is still in force immediately before the declaration takes effect. 10
- (2) The terms of an existing encumbrance saved by **subsection (1)** are enforceable despite Part IIIB of the Conservation Act 1987, section 59A of the Reserves Act 1977, and section 49 of the National Parks Act 1980. 15
- (3) This section is subject to **sections 14 to 18**.
- 14 When saving provision applies**
- (1) **Section 13** applies only to the terms of the existing encumbrance as at **15 May 2000** or the date on which the existing encumbrance first came into force (whichever is later), and to any variation of those terms— 20
- (a) that is of a minor and technical nature; or
- (b) that does not materially increase the adverse effects of the activity authorised by the existing encumbrance on that date or materially increase the duration of that activity or materially change the location of that activity; or 25
- (c) that will result in a reduction of the adverse effects or the duration of that activity; or
- (d) negotiations for which were entered into on or before **15 May 2000**. 30
- (2) **Section 13** continues to apply to—
- (a) an existing encumbrance that is renewed for a further term under a right of renewal conferred by the existing encumbrance: 35
- (b) an existing encumbrance that is transferred to another person.

## New (majority)

**14A Time limit on saving of existing encumbrances**

- (1) On the expiry of the period of 10 years after the status of land is changed by a declaration under **section 8(1)**,—
- (a) **section 13** ceases to apply to an existing encumbrance that is in force for an unspecified period in relation to that land; and 5
- (b) that existing encumbrance is cancelled.
- (2) To avoid doubt, if an existing encumbrance is granted in perpetuity, it is not in force for an unspecified period.
- (3) This section does not apply to existing encumbrances granted by an enactment or by the exercise of a power contained in an enactment. 10

**15 Powers under existing encumbrances to be exercised by new Minister**

If, before a declaration under **section 8(1)** takes effect, an existing encumbrance conferred a power on a responsible Minister or on any person appointed by the Crown to manage the land,— 15

- (a) the power may be exercised by the new Minister after the declaration takes effect; and 20
- (b) the new Minister may take all necessary proceedings to enforce the existing encumbrance, or relating to breaches of, or any act or omission contrary to, the existing encumbrance.

**16 Exemptions if existing encumbrances exchanged for concessions** 25

- (1) The purpose of this section is to provide exemptions from the concession regime under the Conservation Act 1987 for conservation areas, reserves, or national parks, so as to enable a person to exchange an existing encumbrance <saved by section 13> for a concession during the life of the existing encumbrance. 30

**Struck out (majority)**

- (2) If a person applies to the Minister of Conservation for a concession under the Conservation Act 1987, the Reserves Act 1977, or the National Parks Act 1980 in exchange for an existing encumbrance, then—
- (a) section 17T(4) and (5) of the Conservation Act 1987 (public notice) does not apply; and 5
  - (b) section 17U of the Conservation Act 1987 (matters to be considered by Minister) does not apply; and
  - (c) section 17W of the Conservation Act 1987 (relationship between concessions and conservation management strategies and plans) does not apply; and 10
  - (d) the requirements under section 17S of the Conservation Act 1987 (contents of the application) and section 17T of that Act (process for complete application) are modified accordingly; and 15
  - (e) to avoid doubt, those sections of the Conservation Act 1987 are modified also for the purposes of the Reserves Act 1977 and the National Parks Act 1980.

**New (majority)**

- (2) If a person applies to the Minister of Conservation for a concession under the Conservation Act 1987, the Reserves Act 1977, or the National Parks Act 1980 in exchange for an existing encumbrance saved by **section 13**, the following provisions apply in relation to that application: 20
- (a) section 17T(4) and (5) of the Conservation Act 1987 (public notice) does not apply: 25
  - (b) section 17U(1)(f) of the Conservation Act 1987 (Minister to have regard to submissions) and section 17U(3) of that Act (Minister to not grant application contrary to Act or purposes for which land held) do not apply:
  - (c) section 17W of the Conservation Act 1987 (relationship between concessions and conservation management strategies and plans) does not apply: 30
  - (d) section 17T(2) of the Conservation Act 1987 (Minister to decline application within 20 working days) does not



**Struck out (majority)**

**19 Power to amend Schedule 1**

The Governor-General may, by Order in Council, on the recommendation of the responsible Ministers, amend **Schedule 1** to add land to, omit land from, or change the descriptions of land in, that schedule.

5

**New (majority)**

**19 Power to amend Schedule 1**

The Governor-General may, by Order in Council, on the recommendation of the responsible Ministers, amend **Schedule 1**—

- (a) to add descriptions of West Coast indigenous production forest land owned by the Crown and managed by Timberlands West Coast Limited at the commencement of this section: 10
- (b) to correct descriptions of land (or parts of land).

**20 Consequential amendments to other Acts**

15

The Acts specified in **Schedule 2** are amended in the manner indicated in that schedule.

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ss 8(1), 12A, 19

## Schedule 1

### West Coast indigenous production forest land

| Land District | Forest                 | Description   |
|---------------|------------------------|---|
| Nelson        | Mokihinui              | sections 1, 2, 3, and 4 SO 15021, sections 1, 2, 3, 4, 5, and 6 SO 15149, and sections 1 and 2 SO 15150   |
|               | North Karamea          | section 1 SO 15020  |
|               | Orikaka                | section 1 SO 15014  |
|               | Te Wharau and Ohikanui | sections 1, 2, 3, 4, and 5 SO 15024, section 1 SO 15025, and sections 1 and 2 SO 15181  |
|               | Victoria               | section 1 SO 14981, <section 1 SO 14989,> sections 1, 2, and 3 SO 14992, sections 1 and 2 SO 15008, <sections 1, 2, 3, and 4 SO 15012,> section 1 SO 15015, sections 1 and 2 SO 15016, <sections 1 and 2 SO 15018,> sections 1 and 2 SO 15022, section 1 SO 15023, sections 1, 2, 3, 4, and 5 SO 15048, section 1 SO 15051, sections 1, 2, 3, and 4 SO 15133, and sections 1, 2, and 3 SO 15148 |
|               | Westland               | Granville   |
|               | Hochstetter            | sections 1, 2, 3, 4, and 5 SO 12149   |
|               | Hohonu                 | sections 1, 2, and 3 SO 12048 and sections 1, 2, and 3 SO 12049   |
|               | Ianthe                 | section 1 SO 12160, section 1 SO 12161, section 1 SO 12162, and section 1 SO 12245  |
|               | Kakapotahi             | sections 1 and 2 SO 12090   |
|               | Kaniere                | section 1 SO 12042, section 1 SO 12043, and sections 1, 2, 3, 4, and 5 SO 12055   |
|               | Kawhaka                | sections 1 and 2 SO 12023, section 1 SO 12024, sections 1 and 2 SO 12025, and section 1 SO 12151  |
|               | Kumara                 | R1980 on SO 4351  |
|               | Mawhera                | section 1 SO 12112 and sections 1, 2, 3, 4, 5, and 6 SO 12170   |
|               | Mikonui                | section 1 SO 12027, section 1 SO 12032, section 1 SO 12094, section 1 SO 12102, section 1 SO 12117, and sections 1, 2, 3, and 4 SO 12167  |

| <b>Land District</b> | <b>Forest</b> | <b>Description</b>  |
|----------------------|---------------|---|
|                      | Nemona        | sections 1, 2, 3, 4, 5, 6, and 7 SO 12140 and sections 1, 2, 3, and 4 SO 12141  |
|                      | Okarito       | section 1 SO 12103 and sections 1 and 2 SO 12168  |
|                      | Omoto         | sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 SO 12145   |
|                      | Otira-Kopara  | sections 1 and 2 SO 12109 and section 1 SO 12143  |
|                      | Paparoa       | section 1 SO 12150, section 1 SO 12158, section 1 SO 12242, and RS 6256   |
|                      | Poerua        | sections 1, 2, and 3 SO 12135, section 1 SO 12148, sections 1, 2, 3, 4, 5, 6, and 7 SO 12169, and section 1 SO 12243              |
|                      | Saltwater     | section 1 SO 12113  |
|                      | Toarooha      | sections 1 and 2 SO 12030 and section 1 SO 12146  |
|                      | Totara        | sections 1 and 2 SO 12041, section 1 SO 12133, sections 1, 2, 3, and 4 SO 12165, and sections 1 and 2 SO 12241                    |
|                      | Tutaekuri     | sections 1, 2, 3, and 4 SO 12159  |
|                      | Waimea        | sections 1 and 2 SO 12035 and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 SO 12171 |
|                      | Wanganui      | sections 1, 2, and 3 SO 12166   |

s 20

## Schedule 2 Consequential amendments to other Acts

### Conservation Act 1987 (1987 No 65)

Add to section 170:

- “(7) This Part is subject to **Part 2** of the **Forests (West Coast Accord) Act 2000**, in relation to land that is a conservation area as a result of a declaration under **section 8(1)** of that Act.” 5

#### Struck out (majority)

Repeal the heading to the Fourth Schedule and substitute:

- “Fourth Schedule  
“Land that is protected and is subject to section  
61(7) of Crown Minerals Act 1991”.** 10

#### New (majority)

Repeal the heading to the Fourth Schedule and substitute:

- “Fourth Schedule  
Land that may be protected area”.**

### Crown Minerals Act 1991 (1991 No 70)

Omit from section 61(7) the words “the West Coast Accord as set out in”. 15

### National Parks Act 1980 (1980 No 66)

Add to section 49:

- “(7) This section is subject to **Part 2** of the **Forests (West Coast Accord) Act 2000**, in relation to land that is added to a national park as a result of a declaration under **section 8(1)** of that Act.” 20

### Reserves Act 1977 (1977 No 66)

#### Struck out (majority)

Add to section 59A:

- “(9) This section is subject to **Part 2** of the **Forests (West Coast Accord) Act 2000**, in relation to land that is a reserve as a result of a declaration under **section 8(1)** of that Act.” 25

**Reserves Act 1977 (1977 No 66)—continued****New (majority)**

Add to section 59A:

“(9) This section is subject to **Part 2** of the **Forests (West Coast Accord) Act 2000**, in relation to land that is a reserve, or added to an existing reserve, as a result of a declaration under **section 8(1)** of that Act.”

5

**Struck out (majority)**

Repeal the heading to the Fourth Schedule and substitute:

**“Fourth Schedule  
“Land that is protected and is subject to section  
61(7) of Crown Minerals Act 1991”.**

10

**New (majority)**

Repeal the heading to the Fourth Schedule and substitute:

**“Fourth Schedule  
Land that may be held as reserve”.**

## Legislative history

15 May 2000

Introduction (Bill 26-1)

18 May 2000

First reading and referral to Local Government and Environment Committee

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