

## WAITUTU BLOCK SETTLEMENT BILL

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### EXPLANATORY NOTE

#### GENERAL POLICY STATEMENT

THE Waitutu Block is Maori owned land on the south-western corner of the South Island of New Zealand. Except where it borders the sea, the Waitutu Block is surrounded by land administered under the Conservation Act 1987 and is in close proximity to the Fiordland National Park.

The land is owned by the Proprietors of Waitutu Incorporated, a Maori Incorporation constituted under Part IV of the Maori Affairs Amendment Act 1967 and continued under Te Ture Whenua Maori Act 1993.

The Waitutu Block contains virgin indigenous forest and other vegetation and wildlife of very high natural values.

For a number of years the Crown has endeavoured to acquire or otherwise protect the Waitutu Block and its high value indigenous resources.

The land is exempted from the provisions of the Forest Amendment Act 1993, being land affected by the South Island Landless Maoris Act 1906.

In 1994, the Incorporation entered into an agreement for valuable consideration for the cutting, removal, and sale of virgin rimu and other indigenous timber on the Block.

The Crown has negotiated with the Incorporation for the preservation and protection of the Waitutu Block in perpetuity and has agreed to provide recompense to the Incorporation for the financial loss arising from foregoing the right to cut, remove, and sell the timber.

A Deed of Settlement was entered into between the Crown and the Incorporation on 8 March 1996 in which it was agreed that:

- (a) The Incorporation would continue to be the registered proprietor of the land:
- (b) The land would be managed by the Crown as if it were a national park subject to exceptions that will allow members of the Incorporation to continue to have access to the land to hunt, fish, and build an accommodation hut on the land:
- (c) The Incorporation will be consulted in the management of the land:
- (d) The Incorporation will receive financial and other recompense for foregoing its contracts:

- (e) The land will be protected in perpetuity and no indigenous trees or vegetation may be cut or removed from the land.

Subsequent to the Deed of Settlement, a Deed of Covenant was entered into by the Crown and the Incorporation on 29 March 1996 in which it was mutually agreed and covenanted that the Crown would manage the land in perpetuity in accordance with the terms of the covenant to preserve its flora and fauna in perpetuity for its intrinsic worth and for the benefit, use, and enjoyment of the owners of the land and the wider public of New Zealand as if the land were a national park held and administered under the National Parks Act 1980 and the provisions of that Act would apply to the land.

This Bill gives effect to the Deed of Covenant and applies the provisions of the National Parks Act 1980 to the Waitutu Block.

#### CLAUSE BY CLAUSE ANALYSIS

*Clause 1* relates to the Short Title.

*Clause 2* provides that the Bill is to be interpreted in a manner that best furthers the agreements contained in the deed of settlement and the deed of covenant.

*Clause 3* defines terms used in the Bill.

*Clause 4* provides that the Bill binds the Crown.

*Clause 5* relates to the application of the National Parks Act 1980 to the Waitutu Block.

*Subclause (1)* applies the National Parks Act 1980 to the Waitutu Block as if it were a national park.

*Subclause (2)* makes the application of that Act subject to the deed of covenant and the specific provisions in *subclause (2)*.

*Subclause (3)* provides that the Minister of Conservation, the Director-General of Conservation, and the Department of Conservation, in exercising powers under that Act, must not act in a manner that is contrary to or inconsistent with the deed of covenant.

*Subclause (4)* provides that the power of the Minister to grant concessions in respect of the land under section 49 of that Act is not affected by any lease of the land granted by the Incorporation.

*Subclause (5)* provides that in the event of the Incorporation ceasing to be the owner of the land or granting a lease of the land to any other person, that Act shall continue to apply in the manner specified in the clause as if the land were a national park.

*Clause 6* provides that if the Crown becomes the owner or lessee of the Waitutu Block, the National Parks Act 1980 shall continue to apply to it as if it were a national park but in the event that the land becomes a national park under that Act, the Bill will cease to apply.

*Clause 7* requires the Minister, the Director-General of Conservation, and the Department of Conservation to consult with and have regard to the views of the Incorporation and any subsequent owner of the land in exercising powers under the National Parks Act 1980 and in managing the land and preparing management plans for the land under that Act.

*Clause 8* requires the Director-General to consult with and have regard to the views of the Incorporation and any subsequent owner of the land in preparing, reviewing, and initiating amendments to any conservation management strategy or conservation management plan under the Conservation Act 1987 that relates

to or affects the land. This requirement will, in practice, require consultation in the case of strategies and plans for conservation land, other than the Waitutu Block, which may impact on the Waitutu Block.

*Clause 9* gives effect to clause 8 of the deed of covenant and provides that any obligation on the Crown to consult with the Incorporation is satisfied if that consultation takes place with the management committee of the Incorporation.

*Clause 10* provides for registration of the deed of covenant against the separate titles to the land.

*Clause 11* provides that, for the purposes of the Land Transfer Act 1952, references in any document registered under that Act or in any register kept under that Act to the Proprietors of Waitutu are to be read as references to the Incorporation. The certificates of title to the Waitutu Block are in the name of the Proprietors of Waitutu as registered proprietor of the land. The purpose of this clause is to remove any doubt concerning the registered title to the land of the Incorporation.

*Clause 12* prevents any further inquiry into the Incorporation's parts of the claims to the Waitangi Tribunal made by Tariana Nilsen (the Wai 27 claim) and by Robert Kenneth McAnergney (the Wai 158 claim). Clause 20 of the deed of settlement requires the Incorporation to withdraw its part of these claims.

*Clause 13* provides that the Waitutu Block is deemed to be land forming part of a national park within the meaning of the National Parks Act 1980 for the purposes of Part I of the First Schedule to the Rating Powers Act 1988. This means that the Waitutu Block will, except for certain rates, be treated as non-rateable property.

*Clause 14* validates the deed of settlement and the deed of covenant.

*Clause 15* validates the actions of the Crown and the Incorporation prior to the commencement of the Bill.

*Clause 16* inserts a reference to the Bill in the list of Acts administered by the Department of Conservation that is set out in the First Schedule to the Conservation Act 1987.

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*Hon. Simon Upton*

## WAITUTU BLOCK SETTLEMENT

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### ANALYSIS

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

### A BILL INTITULED

#### An Act—

- 5           (a) To give effect to certain provisions of a Deed of Settlement dated the 8th day of 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 the 29th day of 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
- 15           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 to this Act ("the Waitutu Block");

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: 10

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: 15

E. The Incorporation had entered into a contract for valuable consideration for the cutting, removal, and sale of indigenous timber on the Waitutu Block: 20

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 the 8th day of March 1996, the Crown and the Incorporation have agreed, among other things,—

(a) That the Incorporation will continue to be the registered proprietor of the Waitutu Block; and 30

(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

(d) For the provision of recompense by the Crown to the Incorporation as set out in the deed of settlement; and 40

- (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:
- 5 (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 other lands belonging to the Crown, both the deed of covenant and the Agreement being in the form annexed to the deed of settlement:
- 10 H. The Crown and the Incorporation entered into a deed of covenant dated the 29th day of March 1996 (a copy of which is set out in the **Second** Schedule to this Act) whereby the Crown and the Incorporation mutually agreed and covenanted that
- 15 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 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
- 20 that the provisions of that Act would apply to the Waitutu Block.

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

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

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

30 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:

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

40 “Deed of covenant” means the deed of covenant dated the 29th day of March 1996 and entered into by the Incorporation and the Crown, a copy of which is set

out in the **Second** Schedule to this Act; and includes that deed as amended from time to time:

“Deed of settlement” means the deed of settlement dated the 8th day of March 1996 and entered into by the Crown and the Incorporation; and includes that deed as amended from time to time: 5

“Department” means the Department of Conservation:

“Director-General” means the Director-General of Conservation:

“District Land Registrar” means the District Land Registrar of the Southland Land Registration District: 10

“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:

“Minister” means the Minister of Conservation: 20

“National park” means a national park constituted under the National Parks Act 1980:

“Owners” means the shareholders in the Incorporation:

“Waitutu Block” means the land owned by the Incorporation and described in the **First** Schedule to this Act. 25

#### **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:

(c) Sections 8 and 51 of that Act shall not apply. 40

(3) The powers conferred by the National Parks Act 1980 on the Minister, the Director-General, or the Department, as the

case may be, shall not be exercised in a manner that is contrary to or inconsistent with the deed of covenant.

(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.

(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.

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

(1) Subject to **subsection (2)** of this section, if the Crown becomes the owner or lessee of the Waitutu Block or any part of the Block, the National Parks Act 1980 shall apply to the Block or to that part of the Block as if it were a national park.

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

**7. Incorporation to be consulted about management of Waitutu Block—**

The Minister, the Director-General, and the Department, as the case may require, shall 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,—

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

(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

(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 shall apply subject to this section.



**8. Incorporation to be consulted about conservation management strategies and conservation management plans under Conservation Act 1987**—The Director-General shall consult with and have regard to the views of the Incorporation and any subsequent owner of the Waitutu Block in— 5

- (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 10
- (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 15
- (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,— 20

and the provisions of that Act shall 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. 25 30

**10. Registration of deed of covenant**—(1) The District Land Registrar shall, 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 to this Act, the deed of covenant and any amendment to that deed 35

(2) Every covenant contained in the deed of covenant shall run with and bind the land that is subject to that covenant and shall be deemed to be an interest in the land for the purposes of the Land Transfer Act 1952. 40

5      **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 shall be read as a reference to the Incorporation.

10      **12. No further inquiries into claim by Incorporation to Waitangi Tribunal**—(1) Notwithstanding any other enactment or rule of law, no court or tribunal shall have 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:

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

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

25      (2) Notwithstanding any other enactment or rule of law, no court or tribunal shall have 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) of this section that are attributable to the Incorporation.

30      **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 to the Rating Powers Act 1988, the Waitutu Block shall be deemed to be land forming a National Park within the meaning of the National Parks Act 1980.

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

**15. Validity of certain actions of Crown and Incorporation prior to commencement of this Act—**

Notwithstanding 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, shall be deemed to be and to have always been lawful. 5

**16. Amendment to Conservation Act 1987—**The First Schedule to the Conservation Act 1987 is hereby amended by inserting, in its appropriate alphabetical order, the item “The Waitutu Block Settlement Act 1996”. 10

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## SCHEDULES

## FIRST SCHEDULE

Preamble,  
recital B

## WAITUTU BLOCK LAND

## Section 3

*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

## Section 3

## DEED OF COVENANT

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 therefor.
  - 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

[L.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

