
Parties

TE RŪNANGA O NGĀI TAHU

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT
SECTION 14

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ATTACHMENT 14.1 ANCILLARY CLAIMS TRUST DEED

(Clause 14.3.1)

ATTACHMENT 14.2 PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES

(Clause 14.3.2(d))

ATTACHMENT 14.3 FORM OF FENTON ENTITLEMENT*(Clause 14.6.2(c))***ATTACHMENT 14.4 FORM OF CUSTOMARY FISHING ENTITLEMENT***(Clause 14.6.19)***ATTACHMENT 14.5 OPERATING EASEMENT OVER THE BUSHY POINT SITE***(Clause 14.11.2(a)(ii))***ATTACHMENT 14.6 NGĀ WHENUA RĀHUI KAWENATA OVER THE BUSHY POINT SITE***(Clause 14.11.2(a)(iv))***ATTACHMENT 14.7 NGĀ WHENUA RĀHUI KAWENATA OVER SITE B***(Clause 14.14.5(c))***ATTACHMENT 14.8 EASEMENT OVER THE BRUCE BAY SITE (NO. 1)***(Clause 14.15.2(a)(i))***ATTACHMENT 14.9 EASEMENT OVER THE BRUCE BAY SITE (NO. 3)***(Clause 14.15.2(a)(iii))***ATTACHMENT 14.10 CROWN LETTER TO THE DUNEDIN CITY COUNCIL CONCERNING THE KARITANE SITE***(Clause 14.17.2)***ATTACHMENT 14.11 EASEMENT FOR ACCESS TO THE TAUTUKU SITE***(Clause 14.19.2)***ATTACHMENT 14.12 LEASE TO BCL OF THE WAIMUMU SITE (NO. 3)***(Clause 14.22.3(c)(i))***ATTACHMENT 14.13 PŪRĀKAUNUI BLOCK INCORPORATION DEED OF COVENANT FOR EASEMENTS OVER THE ROAD SITE***(Clause 14.26.3)***ATTACHMENT 14.14 EASEMENT OVER THE ROAD SITE***(Clause 14.26.3)***ATTACHMENT 14.15 MANAGEMENT PROCEDURES AND AIMS FOR THE TAIAROA HEAD SITES***(Clauses 14.27.14(i) and 14.27.14(k))*

SECTION 14 : ANCILLARY CLAIMS

PREAMBLE

- A Ancillary Claims are the private claims of individual Ngāi Tahu beneficiaries or groups of beneficiaries. These claims arose out of Crown actions when dealing with the individual property rights of members of Ngāi Tahu Whānui in the years following the execution of the original purchase agreements between Ngāi Tahu and the Crown.
- B The majority of the Ancillary Claims were heard by the Waitangi Tribunal contemporaneously with the Tribunal claim and formed the basis of the Ngāi Tahu Ancillary Claims Report 1995. The Waitangi Tribunal found that “In failing to protect even the miserable resources which were reserved to the tribe from the purchase of their land, the Crown has acted in serious breach of the Treaty.”
- C Under this Deed of Settlement redress has been provided for all of the ancillary claims upheld by the Tribunal which relate to private property rights.
- D In addition, the Crown has agreed to provide redress for Waitangi Tribunal claim number Wai 348 which relates to land taken at Pūrākaunui from the owners of land now administered by the Pūrākaunui Block Incorporation.
- E The basis on which redress was sought by Ngāi Tahu for these private claims was to restore to the current beneficial owners of those claims either the land which had been taken by the Crown, or if this was not possible, land of approximately the same area and/or value as the land that had been lost.
- F Some other claims dealt with by the Waitangi Tribunal in the Ngāi Tahu Ancillary Claims Report 1995 were the basis of claims for tribal redress by Te Rūnanga. The redress provided in respect of those claims is included in the tribal redress in *Section 11* (Mahinga Kai: Transfer and Vesting of Properties).

14.1 DEFINITIONS

In this *Section 14*, unless the context requires otherwise:

Ancillary Claims means the claims for which redress is to be provided pursuant to this *Section 14*, and, for the purposes of *clause 14.3*, includes *clause 15.11* (Claim 16: South Westland);

Ancillary Claims Trust means the Trust to be established pursuant to *clause 14.3* to hold Claim Property which is to be vested in the Beneficiaries of Ancillary Claims on trust, pending the identification of those Beneficiaries;



Ancillary Claims Trustees means the trustees for the time being of the Ancillary Claims Trust;

Beneficiary means a person who suffered a loss giving rise to an Ancillary Claim or, in the event that any such person is deceased, the Successors of that person;

Claim Property means the land, interest in land, Fenton Entitlement or Customary Fishing Entitlement to be provided by the Crown as redress for an Ancillary Claim for which the Ancillary Claims Trustees are to find the Beneficiaries to and which will vest in the Ancillary Claims Trust on the date to be provided in the Settlement Legislation;

Customary Fishing Entitlement means an entitlement granted pursuant to *clause 14.7.1* to temporarily and exclusively occupy an area of the bed of a waterway for lawful fishing and gathering of natural resources, all in accordance with the requirements of *clause 14.7*;

Fenton Entitlement means an entitlement granted pursuant to *clause 14.6.2(c)* to temporarily occupy land close to waterways so as to allow access to those waterways for lawful fishing and gathering of other natural resources, all in accordance with the requirements of *clause 14.6*;

Māwhera Incorporation means the Proprietors of Māwhera constituted as a Māori incorporation under and subject to Part IV of the Māori Affairs Amendment Act 1967 by clause 3(1) of the Māwhera Incorporation Order 1976 and continued under section 357 of the Te Ture Whenua Māori Act 1993;

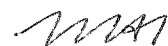
Successors means all persons entitled to succeed to the interest of any deceased Beneficiary, determined as if section 109 of the Te Ture Whenua Māori Act 1993 applied to the deceased Beneficiary, and to every Successor to the Beneficiary, upon his or her death (notwithstanding that he or she may not have died intestate and that the land to which the Ancillary Claim relates is not Māori freehold land), or where no person is primarily entitled to succeed to a Beneficiary, the persons determined as if section 114 of the Te Ture Whenua Māori Act 1993 applied to that Beneficiary, up until the determination of the Beneficiaries of the Ancillary Claim; and

Trust Deed means the Ancillary Claims Trust Deed set out in *Attachment 14.1*.

14.2 PROVISIONS FOR VESTING OF PROPERTIES

14.2.1 Property to be Vested Without Charge

The Crown agrees that, where a clause in this *Section 14* provides for a property or property interest to be vested or transferred, the vesting or transfer of the property



or property interest will be made, or provided for, by the Crown without charge to Te Rūnanga or any Ngāi Tahu Recipient.

14.2.2 Removal and Revocation of Status

Te Rūnanga and the Crown agree that, except where specific provision is made to the contrary in this *Section 14*, any conservation, reserve, legal road or other form of status to be removed from any property or property interest that is to be vested in or transferred to the Ancillary Claims Trustees, or to be placed upon any such property or property interest, pursuant to this *Section 14* will be removed or become effective 30 Business Days after the Settlement Date.

14.2.3 Vesting or Transfer of Property or Property Interests

Te Rūnanga and the Crown agree that, except where specific provision is made to the contrary in this *Section 14*, all properties or property interests to be vested in, or transferred to, the Ancillary Claims Trustees pursuant to this *Section 14* will be vested or transferred 30 Business Days after the Settlement Date.

14.2.4 Delayed Vesting of Certain Properties

The Crown agrees that the Settlement Legislation will provide that, notwithstanding *clauses 14.2.2, 14.2.3, 20.4.9 and 20.4.11*, each of:

- (a) the Kaikoura Town Section (as defined in *clause 14.4.1*);
- (b) the Kaikoura Suburban Site (as defined in *clause 14.4.1*);
- (c) the Arawhata Site (as defined in *clause 14.14.1*);
- (d) the Waimumu Site (No. 2) (as defined in *clause 14.22.1*);
- (e) the Waimumu Site (No. 3) (as defined in *clause 14.22.1*); and
- (f) the Invercargill Site (as defined in *clause 14.23.1*),

will be vested in the Ancillary Claims Trustees on the earlier of:

- (i) 30 Business Days after the Settlement Date (if the Crown has title to the site in question at that date);
- (ii) the Business Day following the date upon which the Crown acquires title to the site in question, not being later than six months after the Settlement Date; or

- (iii) if the Crown is unable to acquire title to the site in question in accordance with *clauses 14.2.2(i) or 14.2.2(ii)*, the Business Day following the completion of any procedure set out in the Settlement Legislation pursuant to *clause 17.3.3* which authorises the Crown to compulsorily acquire land from a Crown Agency in order to give effect to the Crown's obligations in respect of the Settlement Legislation pursuant to this Deed in relation to the site in question.

14.3 ANCILLARY CLAIMS TRUST

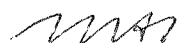
14.3.1 Ngāi Tahu Ancillary Claims Trust to be Established

The Crown agrees that it will establish a trust to be known as the Ngāi Tahu Ancillary Claims Trust on or before the date which is 25 Business Days after the Settlement Date. The terms of the Trust Deed pursuant to which the Ancillary Claims Trust is established will be those specified in *Attachment 14.1*.

14.3.2 Legislation Relating to the Ngāi Tahu Ancillary Claims Trust

The Crown agrees that the Settlement Legislation will provide:

- (a) for the establishment of the Ancillary Claims Trust by the Crown;
- (b) for the Claim Property offered by the Crown as redress for Ancillary Claims in respect of which a Claim Property is to be provided to the Ancillary Claims Trustees by the Crown to be vested in the Ancillary Claims Trustees and held subject to the terms of the Trust Deed;
- (c) for the funding of the Ancillary Claims Trust in accordance with the terms of the Trust Deed;
- (d) that the Ancillary Claims Trustees shall undertake the process described in *Attachment 14.2* (the process for the identification of Beneficiaries);
- (e) for the vesting of Claim Properties in the Beneficiaries of the relevant Ancillary Claim or an entity to hold it on their behalf (or in Te Rūnanga, if no Beneficiaries are found) once the prerequisites set out in *Attachment 14.2* for such vesting have been satisfied;
- (f) that, subsequent to the Māori Land Court making a vesting order pursuant to paragraph 21 of *Attachment 14.2*, any Beneficiary or a person who considers that he or she should have been included in a vesting order made by the Māori Land Court pursuant to paragraph 21 of *Attachment 14.2* may apply to the Māori Land Court pursuant to section 18 of the Te Ture Whenua Māori Act 1993 to be included in that vesting order, notwithstanding the fact that the Claim Property subject to the vesting order is not Māori freehold



land belonging to an estate to which Part IV of the Te Ture Whenua Māori Act 1993 applies;

- (g) for the Māori Land Court to be empowered to hear and determine an application made pursuant to *clause 14.3.2(f)* and, if it finds in favour of the applicant:
- (i) to make the applicant a party to the vesting order made in relation to the relevant Claim Property;
 - (ii) to entitle that applicant to share in the holding of the Claim Property in whatever form that may take;
 - (iii) to entitle that applicant to the share of the Claim Property which he or she ought to have received; and
 - (iv) for the interests of other relevant Beneficiaries in that Claim Property to be adjusted accordingly,

if the Māori Land Court considers it just and equitable to do so in the circumstances;

- (h) for the Māori Land Court and the Māori Appellate Court each to have jurisdiction to undertake its part in the processes described in *Attachment 14.2*, and for the modification of the existing jurisdiction of the Māori Land Court to ensure that such processes replace those which would otherwise apply under current legislation; and
- (i) for the Ancillary Claims Trust to be added to the list of bodies and statutory officers named or described in the Fourth Schedule to the Public Finance Act 1989 so that it is a “Crown entity” for the purposes of that Act.

14.4 CLAIM 1 (WAIHARAKEKE J AND OMIHI K); CLAIM 2 (MANGAMAUNU A)

Preamble

- A. The substance of the claims to the Waitangi Tribunal in respect of claims 1 and 2 was that:
- (i) the Crown had failed to provide reserves of adequate size and quality to the people of Kaikoura in the first instance;

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- (ii) these already inadequate reserves were further reduced by Crown actions in taking land under both the Public Works Act and Scenery Preservation Act for the purposes of roads, railway and scenic reserves; and
- (iii) the Crown failed to properly notify, consult with or to adequately compensate the Māori owners when taking the land, or to return any of the land when it was no longer required for the purpose for which it was taken.

B. The Tribunal found that:

- (i) the failure of the Crown to provide adequate reserves in Kaikoura was a breach of the Crown's obligations under the Treaty of Waitangi and that the subsequent loss of land from those reserves by Crown actions only served to exacerbate the original Treaty breach;
- (ii) in light of this the Crown's acquisition of land for roading was "excessive"; and
- (iii) the lack of consultation in acquiring the land constituted a further breach of the principles of the Treaty, as was the subsequent failure of the Crown to offer the land back once the scenic reserve status had been revoked.

C. The Waitangi Tribunal reserved its judgment on whether taking of the land for scenic purposes was of itself a breach of the Treaty and noted that where Māori owners wished to retain land the Crown wanted to acquire for scenic purposes, it would be preferable for the Crown to lease such lands from the owners.

14.4.1 Property Descriptions

In this *clause 14.4*:

Kaikoura Town Section means the land described as Marlborough Land District, Kaikoura District Council, 9930 square metres more or less, being Section 1, SO 6917. All CT 4D/1316 as shown on *Allocation Plan A 104 (SO 7320)*; and

Kaikoura Suburban Site means the land described as Marlborough Land District, Kaikoura District Council, 3.9090 hectares, more or less, being Section 1, SO 6949. All CT 4D/1424 as shown on *Allocation Plan A 105 (SO 7321)*.

14.4.2 Vesting of Properties

The Crown agrees that the Settlement Legislation will provide for the fee simple estate in the Kaikoura Town Section and the Kaikoura Suburban Site to be vested in the Ancillary Claims Trustees.



14.5 CLAIM 101 (KAIKOURA E)

Preamble

- A. There was no evidence presented to the Waitangi Tribunal on claim 101 and therefore there was no finding on this claim. Some of the original reserve area is now the site of the Takahanga Marae.

14.5.1 Property Descriptions

In this *clause 14.5*:

Takahanga Pa Site (No. 1) means the land described as Marlborough Land District, Kaikoura District Council, 2.3689 hectares, more or less, being Section 473, Town of Kaikoura (SO 5269). All New Zealand Gazette 1992 page 504, subject to New Zealand Gazette 1997 page 1207 subject to survey as shown on *Allocation Plan A 180 (SO 7324)*; and

Takahanga Pa Site (No. 2) means 0.0683 hectares, more or less, being Part Section 411, Town of Kaikoura (SO 4791). Subject to survey as shown on *Allocation Plan A 180 (SO 7324)*.

14.5.2 Acknowledgement of Status of Property

The Crown acknowledges that the Takahanga Pa Site (No. 1) now has the status of a Māori reservation pursuant to section 338 of the Te Ture Whenua Māori Act 1993 and The New Zealand Gazette 1992, page 504 and the Crown undertakes not to alter that status.

14.5.3 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the fee simple estate in the Takahanga Pa Site (No. 2) to be vested in the Trustees of the Takahanga Marae, and for the Takahanga Pa Site (No. 2) to be deemed to be, and deemed to have been declared to be, a Māori reservation pursuant to section 338(2) of the Te Ture Whenua Māori Act 1993, and the provisions of *clause 14.5.2* shall apply to the Takahanga Pa Site (No. 2).

14.6 CLAIM 3 (TAERUTU); CLAIM 4 (WAIMAIAIA); CLAIM 5 (TOROTOROA); CLAIM 6 (TE AKA AKA) AND CLAIM 10 (PUKATAHI AND TE HOURIRI) – FENTON ENTITLEMENTS

Preamble

- A. The substance of the claims to the Waitangi Tribunal in respect of these reserves was that:
- (i) the Crown had failed to provide reserves of adequate size and quality to Ngāi Tahu and in particular had failed to set aside Mahinga Kai reserves under the terms of the Kemp Deed;



- (ii) the fisheries easements awarded by Judge Fenton following the 1868 Native Land Court hearings were inadequate in terms of numbers, size and location to remedy the original breach; and
- (iii) as a result of activities such as the introduction of agriculture, Public Works Act takings and drainage and pollution, there has been degradation of the 'Fenton' fisheries easements with adverse consequences for the purpose for which they were set aside.

B. The Tribunal found that:

- (i) the Crown had a special duty to protect these fishery reserves so that Ngāi Tahu could continue to enjoy them; and
- (ii) this duty was not performed, and as a result Ngāi Tahu has been left bereft of a major food resource.

14.6.1 Definitions

In this *Section 14*:

Entitlement Land means a site over which a Fenton Entitlement is or has been created;

Fenton Reserves means the Taerutu, Waimaiaia, Torotoroa, Te Aka Aka, Pukatahi and Te Houriri reserves (claims 3 to 6, and 10 as set out in the Ngāi Tahu Ancillary Claims Report 1995);

Holder means the Beneficiaries of the Fenton Reserves, as determined by the Ancillary Claims Trustees in accordance with *clause 14.3*, entitled to a Fenton Entitlement, and, where the context requires, means the Holders of one of the Fenton Reserves;

Land Holding Agency means the Minister responsible for the department which manages the existing or proposed Entitlement Land or the Commissioner of Crown Lands, as the case may be;

Te Houriri Site means the land described as Canterbury Land District, Waimate District Council, 1 hectare, approximately, being legal road (Timaru Roll 12) adjoining Te Houiri Māori Reserve 906, as shown marked "Road" on *Allocation Plan A 425 (SO 19875)*; and



Waterway means a river (being a continually or intermittently flowing body of fresh water, and includes a stream and modified water course, but does not include any artificial water course (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) or a lake, being a body of fresh water which is entirely or nearly surrounded by land.

14.6.2 Creation of Fenton Entitlements

The Crown agrees that the Settlement Legislation will provide, on the terms set out in this *clause 14.6.2*:

- (a) for the creation by the Crown of Fenton Entitlements over Crown-owned land in the Ngāi Tahu Claim Area which meets the criteria set out in *clause 14.6.7*, other than land in a national park, a marginal strip, a nature reserve, an esplanade reserve, a scientific reserve or that part of a road reserve within 20 metres of a Waterway;
- (b) for Fenton Entitlements to be created for the purpose of permitting the Holders to temporarily occupy land close to the Waterways, so as to have access to the Waterways for lawful fishing and gathering of other natural resources;
- (c) for the grant of one Fenton Entitlement, in the form set out in *Attachment 14.3*, in favour of the Ancillary Claims Trustees for each of the Fenton Reserves, over the Entitlement Land as shown on *Allocation Plans A 421 and 422 (SO 19874), 423 and 424 (SO 19874), A 495 (SO 19888) and A 425 (SO 19875)*, no later than 5 Business Days after the completion of surveys of the Entitlement Land and approval by the Chief Surveyor, and in any event no later than 6 months after the Settlement Date;
- (d) unless suspended pursuant to *clause 14.6.15*, for the Fenton Entitlements to be perpetual;
- (e) that section 11 and Part X of the Resource Management Act 1991 shall not apply to the creation of a Fenton Entitlement; and
- (f) in order to give effect to *clause 14.6.3(f)*, for the stopping of the legal but unformed road on the Te Houriri Site on the Settlement Date, notwithstanding sections 116(2)(d), 117 and 118 of the Public Works Act 1981 and section 342 of the Local Government Act 1974.



14.6.3 Location of Fenton Entitlements

The areas of Entitlement Land over which the initial Fenton Entitlements are to be created have been determined by the Crown in agreement with Te Rūnanga as follows:

- (a) for the Waimaiaia reserve, the land described as Canterbury Land District, Waimakariri District Council, 1.7000 hectares approximately, being Part Section 4 Reserve 91 (SO 3033). Part New Zealand Gazette 1886 page 209. 3000 square metres approximately, being Part Section 3 Reserve 91 (SO 3033). Part New Zealand Gazette 1886 page 209. Subject to survey as shown on *Allocation Plan A 421 and 422 (SO 19874)*;
- (b) for the Torotoroa reserve, the land described as Canterbury Land District, Waimakariri District Council, 1.7000 hectares approximately, being Part Section 4 Reserve 91 (SO 3033). Part New Zealand Gazette 1886 page 209. 3000 square metres approximately, being Part Section 3 Reserve 91 (SO 3033). Part New Zealand Gazette 1886 page 209. Subject to survey as shown on *Allocation Plan A 421 and 422 (SO 19874)*;
- (c) for the Te Aka Aka reserve, the land described as Canterbury Land District, Waimakariri District Council, 2.0 hectares approximately, being Part Rural Section 41888 (SO 16200). Part New Zealand Gazette 1956 page 718. Subject to survey as shown on *Allocation Plan A 421, 422, 423 and 424 (SO 19874)*;
- (d) for the Taerutu reserve, the land described as Canterbury Land District, Waimakariri District Council, 2.0 hectares approximately, being Part Rural Section 41888 (SO 16200). Part New Zealand Gazette 1956 page 718. Subject to survey as shown on *Allocation Plan A 421, 422, 423 and 424 (SO 19874)*;
- (e) for the Pukatahi reserve, the land described as Canterbury Land District, Waimate District Council, 1.0 hectare, approximately, being Part bed of the Waihao River as marked "B" at the confluence with Buchanans Creek (opposite Lot 14, DP 1396). Subject to survey as shown on *Allocation Plan A 495 (SO 19888)*; and
- (f) for the Te Houiri reserve, the land described as Canterbury Land District, Waimate District Council, being 1 hectare, approximately, being legal Road (Timaru Roll 12) adjoining Te Houiri Maori Reserve 906 subject to survey as shown on *Allocation Plan A 425 (SO 19875)*.



14.6.4 Ancillary Claims Trustees to Identify Beneficiaries

The Ancillary Claims Trustees are to identify the Beneficiaries entitled to a Fenton Entitlement granted pursuant to *clause 14.6.2(c)*, and once the Ancillary Claims Trustees are satisfied that they have identified all such Beneficiaries, or that all appropriate steps have been taken to identify all of the Beneficiaries entitled to a Fenton Entitlement in accordance with *Attachment 14.2*, one renewable Fenton Entitlement will be granted in favour of the Beneficiaries of each of the Fenton Reserves, over the areas of Crown land as shown on *Allocation Plans A 421, 422, 423 & 424 (SO 19874), A 495 (SO 19888) and A 425 (SO 19875)* and granted to the Ancillary Claims Trustees pursuant to *clause 14.6.2(c)*.

14.6.5 Māori Land Court to Open and Maintain a Register

The Crown agrees that the Settlement Legislation will provide:

- (a) that, from the date of the vesting order made by the Māori Land Court pursuant to paragraph 21 of *Attachment 14.2*, the Māori Land Court shall open and maintain a register for each Fenton Entitlement of the Holders of that entitlement, together with the address of each (where known), and that this register shall constitute the official record of the Holders;
- (b) that, if there are more than 50 Holders, an accurate index of the names of the Holders containing a sufficient indication to enable the location of the entry in the register relating to each Holder shall be opened and maintained unless the register is in such form as to constitute in itself an index;
- (c) that the register shall, during office hours, be open to public inspection on payment of the fee (if any) prescribed in respect of such inspection; and
- (d) the Holders of each Fenton Entitlement shall nominate up to 10 Holders of that Fenton Entitlement to be recorded on the register at any one time as the representatives of the Holders of that Fenton Entitlement.

14.6.6 Early Use of Fenton Entitlement

Once the Ancillary Claims Trustees have identified any of the Beneficiaries entitled to a Fenton Entitlement, they shall allow those Beneficiaries to use that Fenton Entitlement in accordance with *clause 14.6.2(b)* until the Fenton Entitlement is granted to all of the identified Beneficiaries in accordance with *clause 14.6.4*.

14.6.7 Type of Land

The land over which the initial Fenton Entitlements are to be created has been determined by the Crown in agreement with Te Rūnanga and the Crown agrees that the Settlement Legislation will provide that, if necessary in the future, the

land over which replacement Fenton Entitlements will be created will be determined by the Land Holding Agency and the Minister of Māori Affairs in agreement with the Holders, and will be land:

- (a) already in Crown ownership;
- (b) of approximately 1 hectare in area, unless otherwise agreed, and suitable for temporary occupation;
- (c) situated sufficiently close to a Waterway to permit convenient access to the Waterway (normally land adjacent to the Marginal Strip or esplanade reserve or similar strip bordering the Waterway itself);
- (d) to which lawful access exists;
- (e) where the existing practices and patterns of public use at the time the Fenton Entitlement is to be created would not be unreasonably impaired by the creation of a Fenton Entitlement; and
- (f) the location of which shall not unreasonably exclude public access to any Waterway.

14.6.8 Rights Attaching to Fenton Entitlements

The Crown agrees that the Settlement Legislation will provide that:

- (a) the Holder will have the right to occupy temporarily the Entitlement Land to the exclusion of any other person (other than agents of the Crown or other persons empowered by statute undertaking their normal functions in relation to the land) for up to 210 days in any calendar year (such days to exclude any day from 1 May to 15 August inclusive);
- (b) the Holder will have the right to erect camping shelters or similar temporary dwellings during the period or periods that the right to occupy temporarily the Entitlement Land is being exercised, provided that the Holder shall be obliged to remove such camping shelters or temporary dwellings at any time that the right to occupy temporarily the Entitlement Land is not being exercised and to leave the Entitlement Land in substantially the same condition as it was prior to the period that the right to temporarily occupy was exercised, except for temporary effects normally associated with this type of occupation;
- (c) notwithstanding *clause 14.6.8(b)*, but subject to *clauses 14.6.8(d)* to *14.6.8(g)* and *14.6.9(c)*, the Holder may, with the consent of the Land

Holding Agency undertake such activities on the Entitlement Land which may be reasonably necessary to enable the Entitlement Land to be used for the purposes set out in *clause 14.6.2(b)*;


- (d) the giving of consent by the Land Holding Agency pursuant to *clause 14.6.8(c)* shall be completely at his or her discretion and subject to such conditions as he or she thinks fit;
- (e) where the Entitlement Land is land held under the Conservation Act 1987 or any Act in the First Schedule to that Act the Land Holding Agency may, in considering whether to give consent pursuant to *clause 14.6.8(c)*, require an environmental impact report in relation to the proposed activities, and an audit of that report at the Holders' expense, and impose reasonable conditions to avoid, remedy or mitigate any adverse effects of the activity on the Entitlement Land and the surrounding land or on any wildlife;
- (f) when applying for any consent under *clause 14.6.8(c)* the Holder shall provide to the Land Holding Agency details of the proposed activity including but not limited to:
 - (i) the effect of the activity on the Entitlement Land and, where the Entitlement Land is land held under the Conservation Act 1987 or any Act in the First Schedule to that Act, on the surrounding land and upon any wildlife; and
 - (ii) any proposed measures by the Holder to avoid, remedy or mitigate any adverse effects; and
- (g) provided that the Crown has complied with its obligations under the Fenton Entitlement, it shall not be obliged to compensate the Holder for any activities undertaken by the Holder pursuant to *clause 14.6.8(c)*, whether on suspension of the Fenton Entitlement or at any other time.

14.6.9 Obligations related to Fenton Entitlements

The Crown agrees that the Settlement Legislation will also provide that:

- (a) the existence and exercise of the Fenton Entitlements will not:
 - (i) impede public access along any Waterway; or
 - (ii) restrict the Crown's right to alienate either the Entitlement Land or land adjacent to the Entitlement Land or adjacent to the Waterway next to which the Entitlement Land is situated;

- (b) if the Crown alienates or amends the classification or status of land adjacent to the Entitlement Land with the result that lawful access to the Entitlement Land no longer exists, the Crown will, subject to its obligations to comply with any statutory or regulatory requirements, ensure that the Holders continue to have the same type of access to the Entitlement Land as existed prior to such alienation or change of classification or status, unless and until the Fenton Entitlement over that Entitlement Land is suspended pursuant to *clause 14.6.15*.
- (c) the Holder, and the activities carried on by the Holder on the Entitlement Land (including any work undertaken on the Entitlement Land pursuant to *clauses 14.6.8(c) to 14.6.8(g)*) will be subject to existing laws, bylaws and regulations and land and water management practices from time to time relating to the Entitlement Land;
- (d) in carrying out land and water management and practices relating to the Entitlement Land, the Land Holding Agency will have regard to the existence of the Fenton Entitlement and accordingly will notify the Holders of any activity which may affect the Holders and will avoid unreasonable disruption to the Holders;
- (e) subject to *clause 14.6.9(d)*, the Fenton Entitlement may be suspended at any time at the discretion of the Land Holding Agency, after consulting with the Holders and having particular regard to their views, if thought necessary for reasons of management in accordance with the purposes for which the land is held. If a Fenton Entitlement is suspended, the Holders may use the Entitlement Land outside the entitlement period described in *clause 14.6.8(a)* for a time equal to the period of suspension;
- (f) the Holders shall have rights of enforceability of the Fenton Entitlement against third parties (but not against the Crown) as if they were the owners of the Entitlement Land; and
- (g) Fenton Entitlements shall be subject to:
 - (i) such other special terms and conditions as the Crown may reasonably require to give effect to this *clause 14.6*; and
 - (ii) such variations as may be agreed by the Land Holding Agency and the Holders to the provisions of *clause 14.6.8*.



14.6.10 Boundaries of Entitlement Land

The Crown agrees that, for the purposes of *clause 14.6.2(c)*, the Settlement Legislation will provide for the definition of the boundaries of Entitlement Land by one or more of the following methods:

- (a) by references to any plan lodged in the Office of the Chief Surveyor and approved by the Chief Surveyor;
- (b) by reference to any existing survey plan; and/or
- (c) in accordance with standards agreed from time to time by the Land Holding Agency and the Chief Surveyor or Surveyor-General as the case may be.

14.6.11 Crown not Obligated to Enforce

Te Rūnanga and the Crown agree that the Crown shall not be obliged to enforce the rights of Holders under a Fenton Entitlement against third parties, on behalf of Holders.

14.6.12 Section 44 Reserves Act 1977 Not to Apply

The Crown agrees that the Settlement Legislation will provide that section 44 of the Reserves Act 1977 shall not apply to Fenton Entitlements which are created over land held under that Act.

14.6.13 Rates

The Crown agrees that the Settlement Legislation will provide confirmation that the creation of the Fenton Entitlements shall not make the Entitlement Land fall within the meaning of section 4(1)(a) or (b) of the Rating Powers Act 1988.

14.6.14 Service Charges

Notwithstanding *clause 14.6.13*, Te Rūnanga and the Crown agree that the Settlement Legislation will provide that the Holders will be responsible for and pay any specified charges pursuant to the Rating Powers Act 1988 for services to the Entitlement Land provided by local authorities.

14.6.15 Suspension of Fenton Entitlements

Te Rūnanga and the Crown agree that the Settlement Legislation will provide that:

- (a) the Crown may suspend the Fenton Entitlement and terminate its application to an area of Entitlement Land if:
 - (i) the Crown alienates the Entitlement Land;



- (ii) the Entitlement Land is destroyed or permanently detrimentally affected by any natural cause;
 - (iii) it is a condition of the Fenton Entitlement pursuant to which the Entitlement is granted that the Entitlement Land is on reserve land which may be required for the specific purpose for which it was originally set apart as a reserve and it becomes so required;
 - (iv) subject to *clause 14.6.9(b)*, if lawful access to the Entitlement Land no longer exists; or
 - (v) the Customary Fishing Entitlement held by the Holders of the same Fenton Entitlement is suspended, or the application of the Customary Fishing Entitlement to the area of the bed of the Waterway over which the Customary Fishing Entitlement is created is terminated.
- (b) on suspension of a Fenton Entitlement pursuant to *clause 14.6.15(a)* and upon application by the Holders to the Minister of Māori Affairs, the Crown shall take reasonable steps to reinstate that Fenton Entitlement (varied, if necessary, by agreement) or grant a replacement area of Entitlement Land over another site meeting the criteria set out in *clauses 14.6.2(a), 14.6.7 and 14.6.9(a)* and identified pursuant to similar processes used by the parties for identification of Entitlement Land prior to entry into this Deed;
- (c) if the Holders of a Fenton Entitlement default in performing any of their obligations under the Fenton Entitlement, and such default is capable of remedy, the Crown may give written notice to the Holders specifying the default and the remedy which the Crown requires (which remedy shall be reasonable in the relevant circumstances);
- (d) unless within two calendar months after the giving of notice pursuant to *clause 14.6.15(c)* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given pursuant to *clause 14.6.15(c)* the Crown may immediately suspend the Fenton Entitlement by notice in writing to the Holders;
- (e) if the default is not one which is capable of remedy the Crown may immediately suspend the Fenton Entitlement by notice in writing to the Holders; and
- (f) on suspension of the Fenton Entitlement pursuant to *clause 14.16.15(d)* or *clause 14.16.15(e)* the Holders shall be entitled to apply to the Minister of



Māori Affairs for reinstatement of the Fenton Entitlement after the expiry of two years from the date of suspension of the Fenton Entitlement.

14.6.16 Purposes of Creation of Fenton Entitlements

The Crown agrees that the Settlement Legislation will provide that, without limiting *clauses 14.6.17* or *14.6.18*, the creation of the Fenton Entitlements pursuant to this *clause 14.6* will be for the sole purpose of permitting Holders to occupy temporarily land close to the Waterways, as provided in *clause 14.6.2(b)*.

14.6.17 Rights of Third Parties

The Crown agrees that the Settlement Legislation will provide that, unless expressly provided in this *clause 14.6*, the existence of the Fenton Entitlements will not affect the lawful rights or interests of any third party from time to time.

14.6.18 Limitation of Rights

The Crown agrees that the Settlement Legislation will provide that, unless expressly provided in this *clause 14.6*, the existence of the Fenton Entitlements will not of themselves have the effect of granting, creating or providing evidence of any estate or interest in or any rights of any kind whatsoever relating to the Entitlement Land.

14.6.19 Grant of Customary Fishing Entitlements

The Holders who are granted a Fenton Entitlement pursuant to *clause 14.6.4*, will also be granted a Customary Fishing Entitlement in the form set out in *Attachment 14.4*, pursuant to *clause 14.7*.

14.6.20 Succession to Fenton Entitlements

The Crown agrees that the Settlement Legislation will provide that a Holder of any Fenton Entitlement may not assign or grant a subentitlement to his or her rights under that entitlement, but, notwithstanding *clause 14.6.18*, his or her rights under the Fenton Entitlement shall be disposed of in accordance with section 108 and 109 of the Te Ture Whenua Māori Act 1993.

14.7 CLAIM 3 (TAERUTU); CLAIM 4 (WAIMAIAIA); CLAIM 5 (TOROTOROA); CLAIM 6 (TE AKA AKA); AND CLAIM 10 (PUKATAHI AND TE HOURIRI) - CUSTOMARY FISHING ENTITLEMENTS

14.7.1 Grant of Customary Fishing Entitlements


The Crown agrees that, in addition to the grant of Fenton Entitlements to Holders in accordance with *clause 14.6.4*, the Settlement Legislation will also provide for the grant of one renewable Customary Fishing Entitlement in the form set out in *Attachment 14.4* to the Holders of each Fenton Entitlement. The Customary Fishing Entitlement will grant the Holders, subject to *clause 14.7.3(c)*, an

entitlement to temporarily and exclusively occupy the bed of a Waterway as described in *clause 14.7.2*, or an area of the bed of a Waterway to be identified but having the characteristics described in *clause 14.7.3(a)*, for lawful fishing and gathering of natural resources.

14.7.2 Location of Customary Fishing Entitlements

The areas of the beds of Waterways over which the initial Customary Fishing Entitlements are to be created have been determined by the Crown in agreement with Te Rūnanga as follows:

- (a) for the Waimaiaia reserve, a 100 metre long length entitlement within the area marked “Customary Fishing Entitlement 1 & 2” as shown on *Allocation Plan A 421, 422, 423 & 424 (SO 19874)*, on the bed of the Saltwater Creek Waterway extending from the true right bank of that Waterway to the midstream of that Waterway;
- (b) for the Torotoroa reserve, a 100 metre long length entitlement within the area marked “Customary Fishing Entitlement 1 & 2” as shown on *Allocation Plan A 421, 422, 423 & 424 (SO 19874)*, on the bed of the Saltwater Creek Waterway extending from the true right bank of that Waterway to the midstream of that Waterway;
- (c) for the Te Aka Aka reserve, a 100 metre long length entitlement within the area marked “Customary Fishing Entitlement 3 & 4” as shown on *Allocation Plan A 421, 422, 423 & 424 (SO 19874)*, on the bed of the channel of the Ashley River Waterway extending from the true left bank of the channel of that Waterway to the midstream of that Waterway;
- (d) for the Taerutu reserve, a 100 metre long length entitlement within the area marked “Customary Fishing Entitlement 3 & 4” as shown on *Allocation Plan A 421, 424, 423 & 424 (SO 19874)*, on the bed of the channel of the Ashley River Waterway extending from the true left bank of the channel of that Waterway to the midstream of that Waterway;
- (e) for the Pukatahi reserve, the area marked “Customary Fishing Entitlement” as shown on *Allocation Plan A 495 (SO 19888)*, on the bed of the Waihao River Waterway extending from the true left bank of that Waterway to the midstream of that Waterway; and
- (f) for the Te Houriri reserve, the area marked “Customary Entitlement Fishing” as shown on *Allocation Plan A 425 (SO 19875)*, on the bed of the Te Houriri Waterway.



14.7.3 Characteristics of Customary Fishing Entitlements

Customary Fishing Entitlements will have the following characteristics:

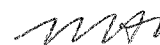
- (a) the area of the Customary Fishing Entitlement will be an area in the bed of a Waterway of up to 100 metres in length and having the width set out in *clause 14.7.2*, or the width otherwise agreed between the Land Holding Agency, the Minister of Māori Affairs and the Holders on a site by site basis, over which:
- (i) the Crown has ownership; and
 - (ii) if the area is not managed and/or controlled by the Crown, the consent of the managing and/or controlling body has been obtained,

and adjacent to which is land owned or managed by the Crown, or is an esplanade reserve, esplanade strip or road reserve, whether or not managed by the Crown. The area is to be conveniently accessible from, but not necessarily directly adjacent to, the area of the Fenton Entitlement granted to the same Holders;

- (b) subject to *clause 14.7.3(c)*, the Holders of the Customary Fishing Entitlement will be entitled, during any time that their rights as Holders under the Fenton Entitlement are being exercised, to the exclusive right to use the bed of the Waterway within the area of the Customary Fishing Entitlements for the purpose of lawfully fishing and the gathering of natural resources;
- (c) the Customary Fishing Entitlement will not prevent any person from lawfully passing through the area to which the Customary Fishing Entitlement relates, whether on foot, or by boat, or otherwise; and
- (d) in other respects the terms of the Customary Fishing Entitlement will reflect the terms of the Fenton Entitlement granted to the same Holders pursuant to *clause 14.6.4* (as far as those terms are applicable and not varied by this *clause 14.7*) including the term, the number of days that the Holders' rights may be exercised and the obligation to comply with all existing laws, bylaws and regulations and land and water management practices, and in applying this *clause 14.7.3(d)*, all references to a Fenton Entitlement in *clause 14.6* will be read as a reference to a Customary Fishing Entitlement.

14.7.4 No Guarantee as to Quality of Fisheries

Te Rūnanga and the Crown agree and acknowledge that, subject to *clause 14.6.15(a)* the Holders of a Customary Fishing Entitlement pursuant to this *clause*



14.7 accept the entitlement area in the form they receive it and that neither Te Rūnanga nor the Crown makes any guarantee or statement as to the nature, quality or quantity of the customary fisheries or other natural resources in the entitlement area.

14.8 CLAIM 7 (TE IHUTAI)

Preamble

- A. The substance of the claim to the Waitangi Tribunal in respect of this reserve was that:
- (i) although this land was proclaimed to be inalienable by sale, mortgage or lease for a period of over 21 years, in 1956 the Crown compulsorily acquired the ten acre reserve under Public Works Act procedures without consulting the owners; and
 - (ii) the compensation paid for this reserve was inadequate and that only the replacement of the land with a similar piece of land would satisfy this claim.
- B. The Tribunal made no specific finding in respect of this claim, but included it in its general criticism of the Crown for failing to protect the few mahinga kai areas which had been set aside.

14.8.1 Property Description

In this *clause 14.8*, *Te Ihutai Site* means the land described as Canterbury Land District, Waimakariri District Council, 4.0 hectares, approximately, being Sections 1, 2 and part Section 4, Reserve 91 (SO 3033). Part New Zealand Gazette 1886 page 209. Subject to survey as shown on *Allocation Plan A 200 (SO 19865)*.

14.8.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the revocation of the reservation of the Te Ihutai Site as a local purpose (river protection) reserve and the vesting of the fee simple estate in that site in the Ancillary Claims Trustees.

14.9 CLAIM 8 (AHURIRI)

Preamble

- A. The substance of the claim to the Waitangi Tribunal in respect of this fishing reserve was that the drainage of Te Waihora (Lake Ellesmere) has meant that the reserve that was granted to Ngāi Tahu at the Ahuriri Lagoon/Halswell River site no longer has access to the fisheries and can no longer be used for the purpose for which it was set aside.

- B. The Tribunal found that the Crown was duty-bound to protect Ahuriri Lagoon for the continued use and enjoyment of the tribe and that its failure to do so was in breach of the principles of the Treaty.

14.9.1 Property Description

In this *clause 14.9, Ahuriri - Te Waihora Site* means the land described as Canterbury Land District, Selwyn District Council, 2.0 hectares, approximately, being Part Reserve 959 (SO 8677 and SO 8678). Subject to survey as shown on *Allocation Plan A 198 (SO 19863)*.

14.9.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the removal of the status of conservation (stewardship) area managed for conservation purposes from the Ahuriri - Te Waihora Site, notwithstanding Part V of the Conservation Act 1987, and the vesting of the fee simple estate in that site in the Ancillary Claims Trustees.

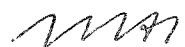
14.10 CLAIM 11 (WAINONO LAGOON)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
- (i) the Crown had failed to protect and safeguard the significant Ngāi Tahu mahinga kai interest in the Wainono Lagoon; and
 - (ii) drainage, pollution and the issuing of commercial fishing permits without adequate safeguards had led to the over-fishing of eels.
- B. The Waitangi Tribunal acknowledged that Wainono is a mahinga kai area of significant importance to Ngāi Tahu and commented on the need for there to be a greater involvement of Ngāi Tahu in the management of the area.
- C. The Tribunal also stated that Wainono should be developed in partnership with Ngāi Tahu of South Canterbury as a traditional fishing resource to compensate for the loss of other mahinga kai.

14.10.1 Property Description

In this *clause 14.10, Wainono Site* means the land described as Canterbury Land District, Waimate District Council, 1.6187 hectares more or less being Reserve 2688 (SO 4399). Part New Zealand Gazette 1886 page 209 as shown on *Allocation Plan A 199 (SO 19864)*.



14.10.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the revocation of the reservation of the Wainono Site as a river protection reserve and the vesting of the fee simple estate in that site in the Ancillary Claims Trustees.

14.11 CLAIM 14 (HAWEA/WANAKA)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
- (i) there were three reserves which should have been set aside at Lake Hawea including a 100 acre fishing reserve and a 540 acre reserve at Bushy Point;
 - (ii) the Bushy Point reserve was never set aside;
 - (iii) when the Crown took part of the 100 acre fishing reserve under the Public Works Act, it failed to consult with Ngāi Tahu, or to have regard, when setting the level of compensation, to the loss of the fishing reserve; and
 - (iv) the Crown alienated the balance of the fishing reserve without consultation with Ngāi Tahu.
- B. In the Tribunal's report:
- (i) both elements of the claim in respect of the fishing reserve were upheld; but
 - (ii) the claim in respect of the non-allocation of land at Bushy Point was not upheld.
- C. The Tribunal supported a proposal that 'compensation in land' should be given to Ngāi Tahu for the loss of its fishery reserve.

14.11.1 Property Descriptions

In this *clause 14.11*:

Bushy Point Site means the land described as Otago Land District, Queenstown Lakes District Council, an undefined area (subject to survey) being Part Recreation Reserve, Block I, Mid Hawea Survey District, (SO Plan 2289). Subject to survey as shown on *Allocation Plan A238 (SO 24696)*. Part New Zealand Gazette 1891 page 1049 subject to a proposed Ngā Whenua Rāhui kawenata, and an undefined area being Part Recreation Reserve, Block I, Mid Hawea Survey District (SO Plan 12464) subject to survey as shown on *Allocation Plan A238 (SO 24696)* Part Gazette Notice 267479 (New Zealand Gazette 1964, page 14) subject to a proposed Ngā Whenua Rāhui kawenata;

Lake Side Site (No. 1) means the land described as Otago Land District, Queenstown Lakes District Council, an undefined parcel being Part Run 798, Block I, Mid Wanaka Survey District (SO Plan 19256). Subject to survey as shown (D) on *Allocation Plan A 239 (SO 24708)*;

Lake Side Site (No. 2) means the land described as Otago Land District, Queenstown Lakes District Council, an undefined parcel being Part Run 798, Block I, Mid Wanaka Survey District (SO Plan 19256). Subject to survey as shown (I) on *Allocation Plan A 239 (SO 24708)*;

Lake Side Site (No. 3) means the land described as Otago Land District, Queenstown Lakes District Council, an undefined (subject to survey) being Parts Run 798, Block I, Mid Wanaka Survey District (SO Plan 19256). Subject to survey as shown (J) on *Allocation Plan A 239 (SO 24708)*; and

Remaining Lake Side Sites means the land described as Otago Land District, Queenstown Lakes District Council, an undefined area of Proposed Surplus Land being Part Run 579, (SO 965). Subject to survey as shown (A) on *Allocation Plan A 508 (SO 24677)*. Part proclamation 230822, (New Zealand Gazette 1960 page 750) (SO 12464). An undefined area of Proposed Surplus Land being Part Section 1, Block I Mid Wanaka Survey District (SO 8322). Subject to survey as shown (B) on *Allocation Plan A 508 (SO 24677)*. Part Gazette Notice 267479, (New Zealand Gazette 1964 page 14) (SO 12464). An undefined area of Proposed Surplus Land being Parts Run 430B, (SO 261). Subject to survey as shown (C & F) on *Allocation Plan A 508 (SO 24677)*. Parts Proclamation 230822, (New Zealand Gazette 1960 page 750) (SO 12464). An undefined area of Proposed Surplus Land being Part Closed Road, Block I, Mid Wanaka Survey District (SO 12464). Subject to survey as shown (E) on *Allocation Plan A 508 (SO 24677)*. Part Proclamation 245462, New Zealand Gazette 1962 page 463 (SO 12464). An undefined area of Proposed Surplus Land being Part Run 338a (SO 261). Subject to survey as shown (H) on *Allocation Plan A 508 (SO 24677)*. Part Proclamation 230822, (New Zealand Gazette 1960 page 750). (SO 12464).

14.11.2 Vesting of Properties

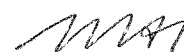
The Crown agrees that the Settlement Legislation will provide:

- (a) for the revocation of the reservation of the Bushy Point Site as a recreation reserve and the vesting of the fee simple estate in the Bushy Point Site in the Ancillary Claims Trustees, subject to:
 - (i) the reservation of a marginal strip of 20 metres wide extending along and abutting the landward margin of the bed of the river adjoining the



Bushy Point Site as if it had been reserved pursuant to section 24(1)(c) of the Conservation Act 1987;

- (ii) an operating easement to be granted by the Crown in favour of Contact Energy Limited over part of the Bushy Point Site in the form set out in *Attachment 14.5*, or in such other form agreed to by both the Crown and Contact Energy Limited, before the fee simple estate in the Bushy Point Site is vested in the Ancillary Claims Trustees;
 - (iii) an existing grazing licence dated 2 July 1996 between the Hunter Valley Station Limited and an officer designated as Commissioner by the Director-General of Conservation for the purposes of the Reserves Act 1977; and
 - (iv) the Ancillary Claims Trustees entering into and registering a Ngā Whenua Rāhui kawenata relating to the protection of the Bushy Point Site and access through the Bushy Point Site in the form set out in *Attachment 14.6* before the fee simple estate in the Bushy Point Site is vested in the appropriate Beneficiaries;
- (b) for the Ngā Whenua Rāhui kawenata referred to in *clause 14.11.2(a)(iv)* to be deemed to have been entered into pursuant to section 77A of the Reserves Act 1977, notwithstanding the fact that the Bushy Point Site is not Māori land;
- (c) for the Ngā Whenua Rāhui kawenata referred to in *clause 14.11.2(a)(iv)* to be in perpetuity subject to a condition that at agreed intervals of not less than 25 years the parties to the Ngā Whenua Rāhui kawenata shall review the objectives, conditions, and continuance of the Ngā Whenua Rāhui kawenata, and on such reviews the parties may mutually agree that the Ngā Whenua Rāhui kawenata shall be terminated and that the Crown shall have regard to the manawhenua of the owner of the Bushy Point Site, as provided for in section 77A(1)(b) of the Reserves Act 1977, but the owner of the Bushy Point Site may only terminate the Ngā Whenua Rāhui kawenata by agreement with the Minister of Conservation;
- (d) that the appropriate District Land Registrar shall register the Ngā Whenua Rāhui kawenata referred to in *clause 14.11.2(a)(iv)* as soon as it is duly executed and presented for registration by the Ancillary Claims Trustees; and
- (e) for the vesting of the fee simple estate in:



- (i) the Lake Side Site (No. 1);
 - (ii) the Lake Side Site (No. 2); and
 - (iii) the Lake Side Site (No. 3),
- in the Ancillary Claims Trustees.

14.11.3 Future Transfer of the Remaining Lake Side Sites

The Crown agrees that the Settlement Legislation will provide that, if the process set out in section 40 of the Public Works Act 1981 is invoked in relation to the Remaining Lake Side Sites and it is found that there are no persons from whom those sites were acquired, or successors of such persons, as those terms are used in section 40 of the Public Works Act 1981, then:

- (a) the Beneficiaries of claim 14 will be deemed to be the persons from whom the Remaining Lake Side Sites were acquired for the purposes of section 40 of the Public Works Act 1981; and
- (b) sections 40(2)(c) and 40(2)(d) shall not apply to the process set out in section 40 of the Public Works Act 1981 in its application to those Beneficiaries and the Remaining Lake Side Sites.

14.12 CLAIM 53 (LAKE TATAWAI)

Preamble

- A. The substance of the claim to the Waitangi Tribunal in respect of this reserve was that:
 - (i) despite the lake being reserved to Ngāi Tahu in 1902 as a fishing reserve, the Crown had failed to protect and safeguard the mahinga kai interest in Lake Tatawai;
 - (ii) the Crown passed the Taieri River Improvement Act 1920, which allowed for the lake to be drained without consulting with Ngāi Tahu; and
 - (iii) although this Act did allow for some compensation to be provided to Ngāi Tahu this never occurred.
- B. The Tribunal upheld all aspects of this claim. In particular the Tribunal found that:
 - (i) there was a duty on the Crown to protect those reserves that were specially set aside for Māori fishing purposes; and



- (ii) as a consequence there was a duty on the Crown to consult and provide alternative access to mahinga kai.

14.12.1 Property Description

In this *clause 14.12*, *Tatawai Replacement Site* means the land described as Otago Land District, Clutha District 56.5548 hectares, more or less, being Section 5, Block XXIII, Waiholo Survey District (SO Plan 1742). Part Certificate of Title 428/22 subject to Covenant under Section 22 Queen Elizabeth The Second National Trust Act 1977 registered as 651066 as shown marked "A" on *Allocation Plan A 500 (SO 24691)*.

14.12.2 Vesting of Property

Subject to *clauses 11.2.4 to 11.2.4B*, the Crown agrees that the Settlement Legislation will provide for the vesting of the fee simple estate in the Tatawai Replacement Site in the Ancillary Claims Trustees, subject to a covenant numbered 651066 entered into under section 22 of the Queen Elizabeth The Second National Trust Act 1977 on 4 December 1985 between Ducks Unlimited (N.Z.) Incorporated and the Queen Elizabeth the Second National Trust, and an unregistered agreement dated 13 July 1985 between Horace Alexander Sinclair and Ducks Unlimited (N.Z.) Incorporated (as described in *Attachment 11.3*).

14.13 CLAIM 55 (WAIKOUAITI LAGOON)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
 - (i) a fishery easement on the Matainaka (Hawksbury) Lagoon that was granted to Ngāi Tahu by Judge Fenton in 1868 is now designated as a wildlife reserve; and
 - (ii) the classification of the lagoon as a Government Purposes (Wildlife Management) Reserve means that Ngāi Tahu are no longer able to exercise the right to fish or hunt waterfowl within the lagoon without the written permission of the Minister of Conservation.
- B. The Tribunal considered this loss of access to mahinga kai to be a breach of both:
 - (i) the terms of the Kemp Purchase; and
 - (ii) the principles of the Treaty of Waitangi.

14.13.1 Property Description

In this *clause 14.13*, *Waikouaiti Lagoon* means the land also known as Hawksbury or Matainaka Lagoon and described as Otago Land District, Dunedin City, 6280

square metres, more or less, being Lot 14, DP Plan 22723. Subject to rights to drain stormwater created by T828881/16. All Gazette Notice 828881/15 (New Zealand Gazette 1993 page 1025). 61.4 hectares, more or less, being Section 32, Block VI, Hawksbury Survey District (SO Plan 18322). All Gazette Notice 595465 (New Zealand Gazette 1983 page 1494). 1.2 hectares, more or less, being Section 36, Block VI Hawksbury Survey District (SO Plan 21933). All Gazette Notice 749232/2 (New Zealand Gazette 1990 page 523). As shown on *Allocation Plan A 201 (SO 24695)*.

14.13.2 Beneficial Owners of Reserve Authorised to Catch Fish

The Crown agrees that the Settlement Legislation will confirm that, notwithstanding anything to the contrary in the Reserves Act 1977, the beneficial owners of the Matainaka 1N reserve continue to be entitled to catch fish from the Waikouaiti Lagoon and therefore the Settlement Legislation will deem them to be authorised pursuant to section 50 of the Reserves Act 1977 to harvest fish, including indigenous fish, from the Waikouaiti Lagoon.

14.14 CLAIM 17 (ARAWHATA MR 1)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
- (i) the Crown had taken land from the reserve under the Public Works Act; or alternatively
 - (ii) the Crown had failed to give title to the full area reserved for the owners under the Arahura Purchase.
- B. The Tribunal found that:
- (i) Ngāi Tahu did not receive land explicitly reserved to them under the terms of the Arahura Purchase Deed; and
 - (ii) this was a breach of both the terms of the deed and of the principle of the Treaty requiring the Crown to act towards its Treaty partner in good faith.
- C. The claim that the Crown had taken land from the reserve under the Public Works Act was not upheld.

14.14.1 Property Description

In this *clause 14.14*:

Arawhata Site means the land described as Westland Land District, Westland District Council, 20.4400 hectares, more or less, being Section 1, SO Plan 11836.

Part CT 8A/496. Subject to a right to convey water in gross created by Transfer 091679 as shown on *Allocation Plan A 206 (SO 12495)*; and

Site B means the land described as Westland Land District, Westland District Council, 20.4400 hectares approximately, being Parts Reserve 1692, Reserve 169 and Rural Section 561, subject to Section 62 Conservation Act 1987, Subject to Survey as shown marked “1” and “3” on *Allocation Plan A 496 (SO 12509)*.

14.14.2 Public Works Procedures apply to Arawhata Site

The Crown agrees that it will, as soon as practicable after the date of this Deed, request the Commissioner of Crown Lands to invoke the offer back procedure under Part III of the Public Works Act 1981 in relation to the Arawhata Site.

14.14.3 Process if Offer Back Accepted

If the offer back made under the procedure invoked pursuant to *clause 14.14.2* is accepted, the Commissioner of Crown Lands shall transfer the Arawhata Site to the persons who accepted the offer in accordance with Part III of the Public Works Act 1981 at the price determined by the Commissioner, and report these matters to the Minister in Charge of Treaty of Waitangi Negotiations. In that event, the Minister shall vest the fee simple estate in Site B in the Ancillary Claims Trustees by notice in the New Zealand Gazette.

14.14.4 Process if Offer Back Rejected

If the offer back made under the procedure invoked pursuant to *clause 14.14.2* is rejected, then the Commissioner of Crown Lands shall report this matter to the Minister in Charge of Treaty of Waitangi Negotiations, and the Minister shall then vest the fee simple estate in the Arawhata Site in the Ancillary Claims Trustees by notice in the New Zealand Gazette, subject to an existing easement in gross conferring the right to convey water over part of the Arawhata Site in favour of Okuru Enterprises Limited.

14.14.5 Removal of Conservation Status

The Crown agrees that the Settlement Legislation will provide:

- (a) that, if the Minister in Charge of Treaty of Waitangi Negotiations gives notice in the New Zealand Gazette that the fee simple estate in Site B is to be vested in the Ancillary Claims Trustees, then the status of conservation (stewardship) area managed for conservation purposes will be deemed to be removed from that site at the time such notice is given, notwithstanding Part V of the Conservation Act 1987;
- (b) such provisions as are required to empower and require the Minister in Charge of Treaty of Waitangi Negotiations and the Commissioner of Crown



Lands to undertake the processes outlined in *clauses 14.14.2 to 14.14.4* (inclusive) in relation to the Arawhata Site and Site B;

- (c) that if Site B is vested, such vesting in the Ancillary Claims Trustees pursuant to *clause 14.14.3* is to be subject to the Ancillary Claims Trustees entering into and registering a Ngā Whenua Rāhui kawenata relating to the protection of Site B in the form set out in *Attachment 14.7* before the fee simple estate in that site is vested in the appropriate Beneficiaries;
- (d) for the Ngā Whenua Rāhui kawenata referred to in *clause 14.14.5(c)* to be deemed to have been entered into pursuant to section 77A of the Reserves Act 1977, notwithstanding the fact that Site B is not Māori land;
- (e) for the Ngā Whenua Rāhui kawenata referred to in *clause 14.14.5(c)* to be in perpetuity subject to a condition that at agreed intervals of not less than 25 years the parties to the Ngā Whenua Rāhui kawenata shall review the objectives, conditions, and continuance of the Ngā Whenua Rāhui kawenata, and on such reviews the parties may mutually agree that the Ngā Whenua Rāhui kawenata shall be terminated and that the Crown shall have regard to the manawhenua of the owner of Site B, as provided for in section 77A(1)(b) of the Reserves Act 1977, but the owner of Site B may only terminate the Ngā Whenua Rāhui kawenata by agreement with the Minister of Conservation; and
- (f) that the appropriate District Land Registrar shall register the Ngā Whenua Rāhui kawenata referred to in *clause 14.14.5(c)* as soon as it is duly executed and presented for registration by the Ancillary Claims Trustees.

14.15 CLAIM 18 (BRUCE BAY MR 6)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
 - (i) the original reserve was reduced on three separate occasions when the Crown took land from the reserve under the Public Works Act;
 - (ii) an area of accretion was not taken into account when assessing the compensation due to the owners;
 - (iii) the Crown should have offered the owners alternative lands;
 - (iv) in only one of the three cases did the Crown make any attempt to notify the owners; and

- (v) areas of land no longer required for the purposes for which they were taken have not been returned.

B. The Tribunal found that:

- (i) the failure of the Crown to consult or notify Ngāi Tahu when seeking compulsory acquisition of Ngāi Tahu land under the Public Works Act was a breach of the principles of the Treaty; and
- (ii) this was another example where the small area reserved to Ngāi Tahu has been substantially reduced by the actions of the Crown.

14.15.1 Property Descriptions

In this *clause 14.15*:

Bruce Bay Site (No. 1) means the land described as Westland Land District, Westland District Council, 1.0 hectare, approximately, being Legal Road adjoining Reserve 2113 and Section 1 SO Plan 12347. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507)*;

Bruce Bay Site (No. 2) means the land described as Westland Land District, Westland District Council, 0.1500 hectares, more or less, being Part Reserve 2113 (SO 5201). Part New Zealand Gazette 1986 page 4859. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507)*, that is not used for hall purposes;

Bruce Bay Site (No. 3) means the land described as Westland Land District, Westland District Council, 0.4100 hectares, more or less, being Section 1 SO Plan 12347. Subject to the Land Act 1948. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507)*;

Bruce Bay Site (No. 4) means the land described as Westland Land District, Westland District Council, 21.50 hectares, approximately, being Legal Road adjoining State Highway No. 6 and Makatata Stream. Subject to survey as shown on *Allocation Plan A 483 & 485 (SO 12508)* and bounded on one side by the track marked RP 670/10.2;

Bruce Bay Site (No. 5) means the land described as Westland Land District, Westland District Council, 3.0 hectares, approximately, being Legal Road adjoining State Highway 6 and Rural Section 5736, Section 1, SO 12348 and Makatata Stream. Subject to survey as shown on *Allocation Plan A 484 (SO 12501)*; and

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Bruce Bay Site (No. 6) means the land described as Westland Land District, Westland District Council, 35.5086 hectares, approximately, being Reserve 1219 (SO 3364), subject to Section 62, Conservation Act 1987. Subject to survey as shown on *Allocation Plan A 483 & 485 (SO 12508)*.

14.15.2 Vesting of Properties

The Crown agrees that the Settlement Legislation will provide for:

- (a) the stopping of the legal but unformed road on the Bruce Bay Site (No. 1) the Bruce Bay Site (No. 3), and the Bruce Bay Site (No. 4), notwithstanding sections 116(2)(d), 117 and 118 of the Public Works Act 1981 and section 342 of the Local Government Act 1974, and the vesting of the fee simple estate in the Bruce Bay Site (No. 1) the Bruce Bay Site (No. 3), and the Bruce Bay Site (No. 4) in the Ancillary Claims Trustees, subject to:
 - (i) the Ancillary Claims Trustees granting an easement over the Bruce Bay Site (No. 1) providing access from the state highway to the river and to Bruce Bay Site (No. 2) and Bruce Bay Site (No. 3) in favour of the occupiers of those sites and Transit New Zealand in the form set out in *Attachment 14.8* before the fee simple estate in the Bruce Bay Site (No. 1) is vested in the appropriate Beneficiaries;
 - (ii) an existing encroachment agreement dated 5 October 1993 between Transit New Zealand and Brian David Ronald Titheridge allowing the encroaching party to construct and maintain a residence, shed and workshop on the Bruce Bay Site (No. 3);
 - (iii) the Ancillary Claims Trustee granting an easement over the Bruce Bay Site (No. 3) providing access from the structures on that site to the Bruce Bay Site (No. 1) in favour of the occupiers of the Bruce Bay Site (No. 3) in the form set out in *Attachment 14.9* before the fee simple in that site is vested in the appropriate Beneficiaries;
- (b) the revocation of the reservation of the Bruce Bay Site (No. 2) as a local purpose (site for a public hall) reserve on the Settlement Date and the vesting of the fee simple estate in the Bruce Bay Site (No. 2) in the Ancillary Claims Trustees, subject to the Ancillary Claims Trustees offering formal licences or leases for a period of not less than 5 years to the present occupiers of the Bruce Bay Site (No. 2) within one year of the vesting of that site, but before the fee simple estate in that site is vested in the appropriate Beneficiaries;



- (c) the stopping of the legal but unformed road on all of the Bruce Bay Site (No. 5) except the 20 metre wide strip through this site as shown on *Allocation Plan A 484 (SO 12501)*, notwithstanding sections 116(2)(d), 117 and 118 of the Public Works Act 1981 and section 342 of the Local Government Act 1974, and the vesting of the fee simple estate in the Bruce Bay Site (No. 5) in the Ancillary Claims Trustees; and
- (d) the removal of the status of conservation (stewardship) area managed for conservation purposes from the Bruce Bay Site (No. 6), notwithstanding Part V of the Conservation Act 1987, and the vesting of the fee simple estate in the Bruce Bay Site (No. 6) in the Ancillary Claims Trustees, subject to an existing grazing licence, dated 4 April 1994 between the Minister of Conservation and Bannock Brae Farms Limited.

14.15.3 Status Quo Retained Until Leases Issued

Te Rūnanga and the Crown agree that as a condition of *clause 14.15.2(b)*, the Crown may require the Ancillary Claims Trustees, as a Ngāi Tahu Recipient, to duly execute a deed of covenant in the form set out in *Attachment 20.3* in accordance with *clause 20.10* (Ngāi Tahu Recipients Bound by Deed) whereby the Ancillary Claims Trustees will agree that until leases are offered to the present occupiers of the Bruce Bay Site (No. 2) in accordance with *clause 14.15.2(b)*, their occupation of the land will not be interfered with or altered by the Ancillary Claims Trustees.

14.16 CLAIM 27 (WATARĀKAU MR 45); CLAIM 41 (MĀWHERANUI); CLAIM 42 (WHAKAPOAI); CLAIM 43 (WESTPORT SECTIONS 721 AND 732); CLAIM 44 (KOTUKUWHAKAOHO MR 34) AND CLAIM 46 (ARAHURA MR 30)

Preamble

- A. The Māwhera Claims as numbered above contained a variety of alleged breaches of the Treaty of Waitangi. In general terms the substance of the claims to the Waitangi Tribunal was that:
 - (i) the Crown failed to set aside all of the lands it contracted to reserve under the Arahura Purchase Deed;
 - (ii) the Crown took land from a number of reserves under the Public Works Act;
 - (iii) the application of a statutory scheme (Māori Reserved Lands Act) administered by the Māori Trustee to Māori lands removed these lands from the control and management of the Māori owners; and



(iv) in dealing with these reserves the Māori Trustee was under no statutory obligation to consult with the Māori owners.

B. The Tribunal found that:

- (i) the Crown failed to set aside some of the lands it had undertaken to reserve under the purchase agreement;
- (ii) the provisions of the Public Works Act which allowed for the taking of Māori land without notifying or consulting the owners was a breach of the principles of the Treaty of Waitangi;
- (iii) by placing Māori land under statutory schemes, Māori were unable to exercise rangatiratanga over their lands, which was in direct contravention of the guarantees of Article 2 of the Treaty; and
- (iv) the lack of a provision for consultation with the owners on decisions affecting lands administered by the Māori Trustee was a further breach of the principles of the Treaty of Waitangi.

14.16.1 Property Descriptions

In this *clause 14.16*:

Greymouth Railway Land means the land described as Westland Land District, Grey District Council, (A) 0.3433 hectares approximately, being Sections 312 and 132, Part Sections 133 and 134, Block IX and Part Section 311, Block X, Māori Reserve 31 (SOs 4869 and 7830). Balance Certificate of Title 3A/490. (B) 0.1659 hectares approximately, being Part Mount Street (SO 5280). All New Zealand Gazette Notice 1973 page 1127 (Document GN 43976). (C) 1.2000 hectares approximately, being Part Reserve 804 (SO 7830). Part Certificate of Title 2D/1212. (D) 0.2188 hectares approximately, being Part Sections 284B, 284C, 284D, 284E, 284F, and Sections 284I, 284J, 284K, Block 8, Māori Reserve 31 and Part of Mount Street (SO 2318). Part New Zealand Gazette 1924 page 113 (Proclamation 184). (E) 0.0020 hectares approximately, being Part Section 284G, Block 8, Māori Reserve 31 (SO 5280). Part New Zealand Gazette 1970 page 886 (Document GN 38774). (F) 0.0300 hectares approximately, being Part Block 8, Māori Reserve 31 (SO 5036). Part Certificate of Title 3A/489. Subject to survey as shown on *Allocation Plan A 436 (SO 12500)*;

Lake Kanieri Site means the land described as Westland Land District, Westland District Council, 1775 square metres, more or less, being Section 1, SO 12072. All CT 8A/1279. As shown on *Allocation Plan A 501 (SO 12503)*; and



Māwhera Chambers means the land described as Westland Land District, Grey District Council, 0.1661 hectares, more or less, being Lot 1, DP 2696, and Section 1, SO Plan 11689. All Certificate of Title 8B/300 as shown on *Allocation Plan A 212 (SO 12498)*;

Rapahoe Site means the land described as Westland Land District, Grey District Council, 3.5190 hectares, more or less, being Sections 1 and 2 SO Plan 12138. Subject to the Land Act 1948 as shown on *Allocation Plan A 211 (SO 12497)*.

14.16.2 Application of Section 40 of the Public Works Act 1981

The Crown acknowledges that the Māwhera Incorporation is interested in certain Maori Land Court proceedings (more fully described in *clause 14.16.3(c)*) relating to the application of the offer back procedure for the Māwhera Chambers, and that similar considerations would apply to the Greymouth Railway Land. In view of the fact that the likely outcome of those proceedings would have been that the Court would have vested the Māwhera Chambers in the Māwhera Incorporation, the Crown agrees that it is appropriate not to require the completion of the offer back procedure in section 40 of the Public Works Act 1981 for the Māwhera Chambers or the Greymouth Railway Land.

14.16.3 Settlement Legislation : Greymouth Properties

The Crown agrees that the Settlement Legislation will provide:

- (a) for the fee simple estate in the Māwhera Chambers to be vested in the Māwhera Incorporation, subject to an existing lease dated 14 September 1994 between GPS Properties Limited and Challenge Developments Limited, such lease having been assigned to Grey District Youth and Community Centre Incorporated by Deed of Assignment of Lease dated 4 June 1997;
- (b) for the fee simple estate in the Greymouth Railway Land to be vested in the Māwhera Incorporation, subject to:
 - (i) an easement to be granted in favour of Her Majesty the Queen for railway purposes, for the purposes of using and maintaining the pedestrian over-bridge on the Greymouth Railway Land, in a form reasonably satisfactory to both Te Rūnanga and Her Majesty the Queen; and
 - (ii) two easements to drain stormwater and sewerage to be granted in favour of the Grey District Council in a form reasonably satisfactory to both Te Rūnanga and the Grey District Council; and

- (c) that Part III of the Public Works Act 1981 will not apply in respect of a Greymouth Property.

14.16.4 Settlement Legislation : Other Properties

The Crown agrees that the Settlement Legislation will provide:

- (a) for the fee simple estate in the Lake Kaniere Site to be vested in the Māwhera Incorporation, subject to an existing Residential Tenancy Agreement dated 5 October 1995 between Knight Frank NZ Limited as agent for the Department of Survey and Land Information and Michael Kevin Milne and Ngaire Rae Clark;
- (b) for the fee simple estate in the Rapahoe Site to be vested in the Māwhera Incorporation, subject to an existing coal mining licence dated 2 December 1993 between Greymouth Coal Limited and the Minister of Energy pursuant to section 41 of the Coal Mines Act 1979; and
- (c) for the Māori Land Court proceedings in relation to the Māwhera Incorporation, being Case 16359 (Lot 1 DP 2696 and Section 1, SO Plan 11689 Block XII Greymouth SD) reported in 77 South Island Minute Book 341 to be discontinued.

14.17 CLAIM 50 (KARITANE)

Preamble

- A. The substance of the claim before the Waitangi Tribunal was that an area of land adjacent to an urupa site on the foreshore had been removed from the ownership, control and management of the Māori owners and the trustees appointed to look after the reserve. The claim also concerned the maintenance and ownership of the area of land on the foreshore claimed as accretion by the owners and trustees of the adjacent reserve.
- B. The Tribunal found that the Crown representatives dealing with the Waikouaiti Māori Foreshore Trust Board fell short of the duty of the Crown to act in good faith and to protect Ngāi Tahu rangatiratanga as guaranteed by the Treaty; and
- C. The Tribunal recommended that the entire question of whether the land in question is accretion or reclamation be re-examined.

14.17.1 Property Description

In this *clause 14.17*, *Karitane Site* means the land described as Otago Land District, Dunedin City, 3465 square metres, more or less, being Section 26, Block XXV, Town of Waikouaiti, (SO Plan 16569) subject to survey as shown on

Allocation Plan A 187 (SO 24697). Part Gazette Notice 334219 (New Zealand Gazette 1968 page 2038).

14.17.2 Crown to Write to the Dunedin City Council

The Crown will write to the Dunedin City Council in the form set out in *Attachment 14.10*, to encourage it to reach a mutually satisfactory agreement with the Waikouaiti Māori Foreshore Trust Board as to the status and ownership of the disputed part of the Karitane Site.


14.17.3 Ngāi Tahu May Seek Order From Māori Land Court

The Crown acknowledges that if the Dunedin City Council and the Waikouaiti Māori Foreshore Trust Board fail to reach a mutually satisfactory agreement as to the status and ownership of the disputed part of the Karitane Site, the Waikouaiti Māori Foreshore Trust Board, or members of Ngāi Tahu Whānui, may apply to the Māori Land Court under section 131 of the Te Ture Whenua Māori Act 1993 for the exercise of the Māori Land Court's jurisdiction to determine and declare, by a status order, the particular status, and the boundaries dividing any land of different status, of the Karitane Site.

14.18 CLAIM 52 (HARINGTON POINT)

Preamble

- A. The substance of the claim before the Waitangi Tribunal was that:
- (i) land was taken at Harington Point for defence purposes in 1890;
 - (ii) the land had not been returned to the owners even though it was many years since the Crown indicated that it was no longer required for this purpose; and
 - (iii) no compensation was paid for the Crown's acquisition of the land.
- B. The Tribunal found that the Crown had breached the principles of the Treaty by failing to consult the descendants of the original owners regarding the fact that since 1958 the land has not been required for defence purposes.
- C. The Tribunal commended the fact that prior to the time of the hearing the Crown had taken steps to vest the land in the descendants of Wiremu Potiki.
- D. The Tribunal did not uphold the claim that the owners were not compensated for the original acquisition.



14.18.1 Property Description

In this *clause 14.18*, *Harington Point Site* means the land described as Otago Land District, Dunedin City, 2.063 hectare, more or less, being Part Section 75, Block II, Portobello Survey District, (SO 21449) as shown on *Allocation Plan A 189 (SO 24703)*. Exclusive of such mines and minerals as are held in CT 3C/219: All Gazette Notice 677975 (New Zealand Gazette 1987 page 1695) and Gazette Notice 241301 (New Zealand Gazette 1961 page 1700).

14.18.2 Previous Vesting of Property

Te Rūnanga and the Crown note that the fee simple estate in the Harington Point Site was vested in Wiremu Potiki by a Māori Land Court order of 26 February 1997 and that Wiremu Potiki's successors were appointed as trustees of the Harington Point Site. The Crown agrees that in order to fulfil the terms of the vesting made by the Māori Land Court, and to provide redress for the Harington Point Site, it will pay the offer back price of \$4,500 for the Harington Point Site as set by the Māori Land Court to the appropriate Crown Body on the Settlement Date.

14.19 CLAIM 112 (TAUTUKU)

Preamble

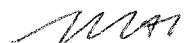
- A. There was no evidence presented to the Tribunal on this claim. However, subsequent investigation showed that some areas of this reserve had been sold to the Crown for the purposes of establishing scenic reserves. These areas were sold on the understanding that the Crown would provide for legal access to the land behind those scenic reserves.
- B. Because there was no evidence presented, the Tribunal made no finding on this claim.

14.19.1 Property Descriptions

In this *clause 14.19*:

Tautuku Land means the area of land described as being in the Tautuku Survey District in The New Zealand Gazette 1908, page 2576 and described as the Tautuku Block in The New Zealand Gazette 1916, page 3818 as shown on *Allocation Plan A 223, sheet 1 of 2 (SO 24737)*; and

Tautuku Site means the 88.2063 hectares, more or less, being Section 2, Block XIII Tautuku District, as described in CT 168/263 (Otago Registry) and as shown on *Allocation Plan A 223, sheet 2 of 2 (SO 24737)*.



14.19.2 Access to be Provided to Tautuku Site

The Crown agrees that in order to provide access to the Tautuku Site it will, upon application by the owners or trustees, as appropriate, grant an easement in accordance with section 59A of the Reserves Act 1977, notwithstanding sections 17S to 17W, 17Y(1)(a), 17Y(1)(2) and 17Z(3) of the Conservation Act 1987, in the form set out in *Attachment 14.11*, in favour of those owners or trustees and their invitees over an undefined area being part Section 1, Block XIII Tautuku Survey District, [(ML Plan 239)]. Subject to survey as shown on *Allocation Plan A223, Sheet 2 of 2 (SO 24737)*. [Part Gazette Notice 529733 (New Zealand Gazette 1979 page 3308)].

14.19.3 Crown's Obligation in Relation to Access

The Crown agrees that it will take reasonable steps, notwithstanding section 129B of the Property Law Act 1952 but otherwise in accordance with existing legislation, to provide legal access to any section within the Tautuku Land if the owners of the piece of land to which access is sought can establish that:

- (a) the Crown's past purchase, acquisition or dealing with part of the Tautuku Land resulted in access being unavailable to the land in question;
- (b) at the time of the Crown's purchase, acquisition or dealing with that part of the Tautuku Land the Crown made an undertaking to provide access to the land in question; and
- (c) the Crown still retains ownership and control of the Tautuku Land which was subject to the Crown's purchase, acquisition or dealing and resulted in access becoming unavailable to the land in question.

14.19.4 Limit of the Crown's Commitment

Te Rūnanga and the Crown agree that the Crown's commitment in *clause 14.19.3* does not of itself extend to forming, or providing funding for the forming of any physical access to the Tautuku Land.

14.20 CLAIM 56 (MARANUKU)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that in 1909, despite the fact that the land was said to be inalienable, the Crown took 122 acres of land from the reserve under the Public Works Act without notifying the owners of the land.
- B. The Tribunal found that the taking of Māori land under the Public Works Act without notification given to the owners of Section 48 to be a breach of Article II of the Treaty.



14.20.1 Property Description

In this *clause 14.20*, *Substitute Maranuku Site* means the land described as Otago Land District, Clutha District Council, 78.9488 hectares, approximately being: Section 2 of 8 Block II Glenomaru Survey District (SO Plan 521). All of Certificates of Title 27/130. Part Section 7 Block II Glenomaru Survey District, (SO Plans 521, 16842 and Deposited Plan 2651). Balance of Certificate of Title 205/280. Lot 1 DP 18286. All of Certificate of Title 9C/1209, appurtenant hereto is a right of way over Part Section 15 Block II Glenomaru Survey District (CT 9C/1210) shown marked "ROW A" on DP 18286 created by Transfer 615987/2. Subject to survey as shown on *Allocation Plan A 510 (SO 24717)*.

14.20.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the vesting of the fee simple estate in the Substitute Maranuku Site in the Ancillary Claims Trustees.

14.21 CLAIM 57 (MARANUKU)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that in 1909, despite the fact that the land was said to be inalienable, the Crown took a further 5 acres of land from the reserve under the Public Works Act without adequately consulting with the owners of the land.
- B. The Tribunal found that the lack of consultation or negotiation with the Ngāi Tahu owners of the block constituted a breach of the principles of the Treaty.
- C. At the time of the hearing, the Tribunal noted the Crown's recent efforts to negotiate with the descendants of the former owners for the return of the land and commended this course of action.

14.21.1 Property Description

In this *clause 14.21*, *Maranuku Site* means the land described as Otago Land District, Clutha District Council, 9500 square metres, more or less, being Section 4, SO Plan 22413. Subject to survey as shown on *Allocation Plan A 191 (SO 24694)*. Part Gazette 423175 (New Zealand Gazette 1974 page 869), and 1.0 hectares, more or less, being Section 1, SO Plan 22413. As shown on *Allocation Plan A 191 (SO 24694)*. Part Gazette 423175 (New Zealand Gazette 1974 page 869).

14.21.2 Public Works Act

Te Rūnanga and the Crown agree that the procedure for identification of Beneficiaries set out in *Attachment 14.2* will be modified in respect of the Maranuku Site to reflect the fact that Part III of the Public Works Act 1981 applies

to any disposal of that property by the Crown. Accordingly, in order to preserve the rights of any persons entitled to have the Maranuku Site offered back to them, the following process shall be followed:

- (a) as soon as practicable after the date on which the Ancillary Claims Trust is established, the Ancillary Claims Trustees shall make such inquiries as are necessary to establish the persons from whom the Maranuku Site was taken, and shall report on the outcome of those inquiries to the Commissioner of Crown Lands;
- (b) on receipt of the report of the Ancillary Claims Trustees, the Commissioner of Crown Lands shall determine whether he or she agrees with the findings of the Ancillary Claims Trustees. If:
 - (i) the Commissioner of Crown Lands agrees with those findings, then the Ancillary Claims Trustees shall undertake the procedure outlined in *Attachment 14.2*, except that they shall identify the persons who would be entitled to have the Maranuku Site offered back to them if Part III of the Public Works Act 1981 were invoked in relation to that property, and such persons shall be deemed to be the Beneficiaries for the purposes of that Attachment;
 - (ii) the Commissioner of Crown Lands does not agree with those findings, then the Commissioner shall invoke the offer back procedure under Part III of the Public Works Act 1981;
- (c) if *clause 14.21.2(b)(ii)* applies, and the offer back made by the Commissioner of Crown Lands under Part III of the Public Works Act 1981 is accepted, the Commissioner of Crown Lands shall give notice to that effect to the Ancillary Claims Trustees, and the Ancillary Claims Trustees shall transfer the Maranuku Site to the persons who accepted the offer in accordance with Part III of the Public Works Act 1981 without charge and otherwise in such manner as is specified in the Commissioner's notice;
- (d) if *clause 14.21.2(b)(ii)* applies, and the offer back made by the Commissioner of Crown Lands under Part III of the Public Works Act 1981 is not accepted, then the Ancillary Claims Trustees shall undertake the procedure outlined in *Attachment 14.2*.



14.21.3 Settlement Legislation

The Crown agrees that the Settlement Legislation will:

- (a) provide for the fee simple estate in the Maranuku Site to be vested in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981; and
- (b) include such provisions as are required to empower and require the Ancillary Claims Trustees and the Commissioner of Crown Lands to undertake the processes outlined in this *clause 14.21*.

14.22 CLAIM 61 (WAIMUMU)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
 - (i) the Crown acquisition of this land in 1964 under the Public Works Act was done without adequate consultation with the owners;
 - (ii) the area of land taken was well in excess of the Crown's requirements;
 - (iii) Ngāi Tahu had requested the return of the "surplus" lands but the Crown had failed to return that area; and
 - (iv) there was no evidence that the owners had received any compensation from the Crown.
- B. In upholding this claim the Tribunal found that:
 - (i) although the Crown had attempted to notify owners of the proposed taking, too little time was allowed Māori owners to respond to the proposal;
 - (ii) the claimants were "justified in claiming that the 'national interest' has simply trampled over the rights of Māori owners"; and furthermore
 - (iii) there would be an ongoing breach of the principles of the Treaty of Waitangi until such time as the 'surplus' land was returned and the issue of compensation determined.

14.22.1 Property Descriptions and Other Definitions

In this *clause 14.22*:

BCL means Broadcast Communications Limited;



Waimumu Site (No. 1) means the land described as Southland Land District, Southland District Council, 226.8996 hectares, more or less, being Lots 1, 3 and 4 DP 8310, being all the land in Certificate of Title 5A/563, Southland Registry. Appurtenant is a Right of Way and Right to Convey Telephone and Electric Power created by Transfer 270531. Subject to a restrictive covenant created by Transfer 000369.1 as shown on *Allocation Plan A 192 (SO 12237)*;

Waimumu Site (No. 2) means the land described as Southland Land District, Southland District Council, 13.8040 hectares, more or less, being Lot 2 DP 8310, being all the land in Certificate of Title 5A/398. Appurtenant hereto is a Right of Way and Right to Convey Telephone and Electric Power created by Transfer 270531. Subject to a restrictive covenant created by Transfer 000369.1. Subject to Section 27B of the State Owned Enterprises Act 1986. Subject to Part IVA Conservation Act 1987. Minerals existing in their natural condition in the within land are owned by the Crown pursuant to Section 86 of the Crown Minerals Act 1991 as shown as "Site 2" on *Allocation Plan A 215 (SO 12241)*;

Waimumu Site (No. 3) means the part of the Waimumu Site (No. 2) shown as "Site 3" on *Allocation Plan A 215 (SO 12241)*;

Waimumu Sites in relation to *clauses 14.22.2* means Waimumu Site (No. 1), Waimumu Site (No. 2) and, if required, Waimumu Site (No. 3).

14.22.2 Public Works Act

Te Rūnanga and the Crown agree that the procedure for the identification of Beneficiaries set out in *Attachment 14.2* will be modified in respect of the Waimumu Sites to reflect the fact that Part III of the Public Works Act 1981 applies to any disposal of these properties by the Crown. Accordingly, in order to preserve the rights of any persons entitled to have any of the Waimumu Sites offered back to them, the Ancillary Claims Trustees and the Commissioner of Crown Lands shall undertake the processes outlined in *clause 14.21.2*, and that clause will apply to each of the Waimumu Sites as if that Waimumu Site were referred to in that clause instead of the Maranuku Site.

14.22.3 Settlement Legislation

The Crown agrees that the Settlement Legislation will:

- (a) provide for the fee simple estate in the Waimumu Site (No. 1) to be vested in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981, subject to:



- (i) a right of way and right to convey telephone and electric power over Part Section 16, Block II Waimumu Hundred CTA2/578 created by Transfer 270531; and
 - (ii) a restrictive covenant appurtenant to Lot 2, DP 8310 CT5A/398 created by Transfer 000369.1;
- (b) provide for the fee simple estate in the Waimumu Site (No. 2) to be vested in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981, subject to:
- (i) the land having no frontage to a legal road;
 - (ii) a right of way and right to convey telephone and electric power over Part Section 16, Block II Waimumu Hundred, CTA2/578 created by Transfer 270531;
 - (iii) a restrictive covenant created by Transfer 00369.1;
 - (iv) an existing grazing lease over part of Waimumu Site (No. 2) dated 30 June 1989 between Broadcast Communications, a division of Television New Zealand Limited and Christopher Robin Aynsley;
- (c) provide for the fee simple estate in the Waimumu Site (No. 3) to be vested in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981, subject to:
- (i) a lease of the Waimumu Site (No. 3) to be granted by the Crown in favour of BCL in the form set out in *Attachment 14.12* before the fee simple estate in that site is vested in the Ancillary Claims Trustees with a commencement date which will be the day upon which the fee simple estate in that site is vested in the Ancillary Claims Trustees;
 - (ii) the land having no frontage to a legal road;
 - (iii) a right of way and right to convey telephone and electric power over Part Section 16, Block II Waimumu Hundred, CTA2/578 created by Transfer 270531;
 - (iv) a restrictive covenant created by Transfer 00369.1;

- (v) an existing grazing lease over part of Waimumu Site (No. 3) dated 30 June 1989 between Broadcast Communications, a division of Television New Zealand Limited and Christopher Robin Aynsley;
 - (vi) the grant of a Transmission Line easement in favour of PowerNet Limited to convey electricity through overhead lines and underground cables, in a form reasonably satisfactory to both Te Rūnanga and PowerNet Limited;
 - (vii) the grant of a Substation easement in favour of PowerNet Limited to convey electricity through a transformer and radio repeater in a form reasonably satisfactory to both Te Rūnanga and PowerNet Limited;
- (d) include such provisions as are required to empower and require the Ancillary Claims Trustees and the Commissioner of Crown Lands to undertake the processes outlined in *clause 14.22.2*.

14.23 CLAIM 66 (INVERCARGILL)

Preamble

- A. The substance of the claim to the Waitangi Tribunal was that:
- (i) the Crown had not only failed to protect Māori land from alienation, but that section 34 of the Māori Affairs Act 1950 gave the Crown the power to sell Māori land considered to be unproductive;
 - (ii) that there was no equivalent legislative provision in respect of general land that would allow the Crown to alienate 'unproductive' land; and
 - (iii) as a result of an application to the Māori Land Court, Section 73, Block II, Invercargill Hundred was sold by the Māori Trustee in 1964 without notification being given to the owners.
- B. The Tribunal found that:
- (i) the failure to consult with and notify the owners was a breach of Article II of the Treaty; and
 - (ii) the fact that there was no legislative provision comparable to section 34 of the Māori Affairs Act in respect of land held in general title was a breach of Article III of the Treaty.



14.23.1 Property Description

In this *clause 14.23*, *Invercargill Site* means the land described as Southland Land District, Invercargill City Council, 2.5000 hectares, more or less, being part Section 1, SO 11705. Being part of the land held in Certificate of Title 10A/53. Subject to survey as shown on *Allocation Plan A 216 (SO 12242)*.

14.23.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the fee simple estate in the Invercargill Site to be vested in the Ancillary Claims Trustees, subject to:

- (a) an existing grazing licence dated 2 October 1992 between Landcorp Management Services Limited and Patrick William Peter Langford and Lynley Gay Langford; and
- (b) the grant of a Transmission Line easement in favour of PowerNet Limited to convey electricity through aerial power lines in a form reasonably satisfactory to both Te Rūnanga and PowerNet Limited.

14.24 CLAIM 67 (APARIMA)

Preamble

- A. The substance of this claim to the Waitangi Tribunal was that:
 - (i) in 1913 the Crown took some 27 acres of land from the reserve under the Public Works Act for the purposes of a rifle range without adequate notice or consultation; and
 - (ii) when the land was no longer required for that purpose the Crown failed to return it to the beneficial owners.
- B. The Tribunal found that:
 - (i) the Crown's original action in taking land under the Public Works Act without consulting the owners was a breach of the principles of the Treaty; and
 - (ii) the subsequent failure of the Crown to notify and consult with the owners when the land was no longer required, and instead to sell the land to the Riverton Borough Council when it was no longer required, was a further breach of Article II of the Treaty.

14.24.1 Property Description

In this *clause 14.24, Aparima Site (No. 1)* means the land described as Southland Land District, Southland District Council, 10.90 hectares, approximately, being Part Section 44, Block I Jacobs River Hundred (SO 374). Comprised in part Certificate of Title 135/46 (Limited as to Parcels) subject to a grant of drainage rights and rights incidental thereto (in gross) marked 'B' on DP 9001 by Transfer 006921.1 (Southland Registry). Subject to survey as shown on *Allocation Plan A 217 (SO 12243)*.

14.24.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the fee simple estate in the Aparima Site (No. 1) to be vested in the Ancillary Claims Trustees, subject to an existing grazing right between Her Majesty the Queen and Graeme Thomas Guise and Margaret Fay Guise to graze the 8 hectares that are deer fenced until 31 March 1998 created by an Agreement for Sale of Purchase between the abovementioned parties dated 1 July 1997.

14.25 CLAIM 73 (APARIMA)

Preamble

- A. The substance of this claim to the Waitangi Tribunal was that:
- (i) the original reserves set aside for Ngāi Tahu were inadequate;
 - (ii) this reserve and other Ngāi Tahu reserves were decimated as an inevitable consequence of the Crown policy to individualise titles; and
 - (iii) some of the sections from this reserve were compulsorily acquired and in some cases without compensation.
- B. The Tribunal did not make specific findings in respect of this claim but reiterated the point that:
- (i) following the execution of the purchase agreements the Crown failed miserably in respect of its duty to provide Ngāi Tahu with sufficient tribal land; and
 - (ii) it also failed to ensure that the small areas of tribal land that were set aside were maintained in Ngāi Tahu ownership.

14.25.1 Property Description

In this *clause 14.25, Aparima Site (No. 2)* means the land described as Southland Land District, Southland District Council, 1.20 hectares, approximately, being Part Section 45, Block I Jacobs River Hundred. Comprised in Certificate of Title

135/29 (Limited as to Parcels) subject to grant of drainage rights and rights incidental thereto (in gross) marked "A" on DP 9001 by Transfer 006921.1 and subject to lease 006921.2 (Southland Registry) over Lot 1 DP 9001 to Southland District Council. Subject to survey as shown on *Allocation Plan A 217 (SO 12243)*.

14.25.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the fee simple estate in the Aparima Site (No. 2) to be vested in the Ancillary Claims Trustees.

14.26 WAI 348 (PŪRĀKAUNUI)

Preamble

- A This claim was lodged by R J McLachlan on behalf of the Pūrākaunui Block Incorporation on or about 17 February 1993. The essence of the statement of claim is that the taking of the 85 acres from the reserve for railway purposes between 1864 and 1874 was an action by the Crown which prejudicially affected the owners of the Block.
- B Further to that statement of claim, the Proprietors of the Pūrākaunui Block Incorporation have sought via the Māori Land Court, the return of an area of land set off from the reserve prior to 1891 as a road. The claim to the Court was that the land for the road was taken by the Crown without notice to the owners or the payment of compensation.
- C On 9 June 1993 Judge Smith found that although the land was Crown land for the purposes of the application before the Court, the land was originally Māori land which had been acquired for a specific public purpose, and that as the Crown no longer required the land for that purpose the Crown should either return the land, or pay compensation to the Māori owners for the loss of the land, the loss of the use of the land, and the loss of the right to apply for accretion of that land between the road and the sea.
- D After consultation with the Pūrākaunui Block Incorporation the Crown has agreed to provide the following redress as settlement of these two claims.

14.26.1 Property Description

In this *clause 14.26*:

Pūrākaunui Block Incorporation means the Proprietors of Pūrākanui Block, being an incorporation of owners of land incorporated under section 29 of the Māori Affairs Amendment Act 1967;

Pūrākaunui Site means the land described as Otago Land District, Dunedin City, 12.0 hectares, more or less, being Part Section 81, Block IV, North Harbour and Blueskin Survey District (SO Plan 18224). Subject to survey as shown on *Allocation Plan A 224 (SO 24702)*. Part Gazette Notice 526541 (New Zealand Gazette 1979 page 3079), and 24.0 hectares, more or less, being Section 80, Block IV, North Harbour and Blueskin Survey District (SO Plan 18224) subject to survey as shown on *Allocation Plan A 224 (SO 24702)*. Part Gazette Notice 52641 (New Zealand Gazette 1979 page 3079).

Road Site means the land described as Otago Land District, Dunedin City, an undefined area being road adjoining Pūrākaunui Sections 69, 79 and 80 situated in Block IV North Harbour and Blueskin Survey District. Subject to survey as shown on *Allocation Plan A224 (SO 24702)*.

14.26.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide:

- (a) for the revocation of the reservation of the Pūrākaunui Site as a recreation reserve and the vesting of the fee simple estate in the Pūrākaunui Site in the Pūrākaunui Block Incorporation, subject to the reservation of a marginal strip of 100 metres wide, or to the landward margin of the Pūrākaunui Site, whichever is the lesser, extending along and abutting the landward margin of the foreshore of the Pūrākaunui Site as if it had been reserved pursuant to section 24AA of the Conservation Act 1987; and
- (b) for the stopping of the legal but unformed road on the Road Site, notwithstanding sections 116(2)(d), 117 and 118 of the Public Works Act 1981 and section 342 of the Local Government Act 1974, and, subject to *clause 14.26.3*, the vesting of the fee simple estate in the Road Site in the Pūrākaunui Block Incorporation.

14.26.3 Easement Over the Road Site

Te Rūnanga and the Crown agree that as a precondition to *clause 14.26.2(b)*, the Pūrākaunui Block Incorporation, as a Ngāi Tahu Recipient, will be required to duly execute a deed of covenant in the form set out in *Attachment 14.13*, or in such other form as agreed by the Pūrākaunui Block Incorporation and the trustees of the land described as South Island Native Land Court District called or known as Pūrākaunui Subdivision 69 of Section 50, Block IV, North Harbour and Blueskin District, in accordance with *clause 20.10* (Ngāi Tahu Recipients Bound by Deed) prior to the Settlement Date whereby the Pūrākaunui Block Incorporation will agree to duly execute the easement to allow vehicular and other access along the Road Site in the form set out in *Attachment 14.14*, or amended as

noted above, and present that registration at the Land Titles Office within 50 Business Days of the Settlement Date.

14.26.4 Crown to Construct a Fence

The Crown agrees that it will, at its own cost, construct a fence to the standard set out for a rural 7 or 8 wire fence in the Second Schedule to the Fencing Act 1978 along the surveyed boundary of the Pūrākaunui Site bordering the public access track to the foreshore at the western end of the Pūrākaunui Site to discourage the public from passing over the Pūrākaunui Site when using the public access track, and the Crown and Te Rūnanga agree that after the initial construction of the fence, the provisions of the Fencing Act 1978 shall apply to that fence.

14.27 WAI 324 AND WAI 27, CLAIM 51 (TAIAROA HEAD)

Preamble

- A. The substance of the claim before the Waitangi Tribunal was that:
- (i) the land which was of great cultural and spiritual significance to the descendants of Korako Karetai was taken for defence purposes in 1888;
 - (ii) this reserve was reduced in size by two Public Works Act acquisitions; and
 - (iii) this land was not returned to the original owners or their descendants when it was no longer required for the purpose for which it was taken.
- B. The Tribunal found that:
- (i) the provisions of the Public Works Act which allowed for the taking of Māori land without notifying or consulting the owners was a breach of the principles of the Treaty;
 - (ii) the fact that this legislation applied only to Māori land and not to general land was a breach of Article III of the Treaty; and
 - (iii) “the Crown’s action in changing the use of the old defence land without consulting the descendants of the original owners is a breach of Treaty principles”.
- C. The Tribunal recommended that “ownership in Crown land taken from Korako Karetai be returned to his descendants, and that the land at Taiaroa Heads which formed part of the Ōtākou purchase be returned to Ngāi Tahu ki Ōtākou”.



- D. The Tribunal also supported the return by the Dunedin City Council of land originally taken from Korako Karetai to his descendants, as well as the return of the lighthouse reserve to Ngāi Tahu ki Ōtākou.
- E. The Tribunal considered that “the management of the Taiaroa Head Reserves should be shared evenly in a tripartite arrangement between Ngāi Tahu, the Department of Conservation, and the Dunedin City Council”, with the descendants of Korako Karetai represented in any management structure.
- F. Finally, the Tribunal emphasised that “the interests and activities of the Otago Peninsula Trust at the headland must remain unaffected”.

14.27.1 Property Descriptions and Other Definitions

In this *clause 14.27*:

Joint Management Body means the body to be established pursuant to *clause 14.27.12* for the joint administration and management of some or all of the Taiaroa Head Sites as reserves and which is to consist, subject to *clause 14.27.13*, of representatives of the Successors to Korako Karetai, Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council;

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

Regulations means the Māori Assembled Owners Regulations 1995;

Successors to Korako Karetai means any person determined to be a successor to Korako Karetai by the Ancillary Claims Trustees in accordance with *clause 14.27.4*, notwithstanding the definition of “Successors” in *clause 14.1*;

Taiaroa Head Site (No. 1) means the land described as Otago Land District, Dunedin City, 152 square metres, more or less being Section 71, Block II, Portobello Survey District (SO Plan 16512). Subject to survey as shown on *Allocation Plan A 188 (SO 24692)*. Exclusive of such mines and minerals as were not taken by Proclamation 842. Subject to Wildlife Act 1953. All Gazette Notice 571905 (New Zealand Gazette 1982 page 530) and 4087 square metres, more or less being Ōtākou Māori Reserve, Block A3, Part Section 54, situated in Block II Portobello Survey District. Subject to survey as shown on Site 1 on *Allocation Plan A 188 (SO 24692)*. Part Document 265921. Exclusive of such mines and minerals as were not taken by Proclamation 842. Part Gazette Notice 265921 (New Zealand Gazette 1963 page 1877);

Taiaroa Head Site (No. 2) means the land described as Otago Land District, Dunedin City, 4.1642 hectares, more or less being Ōtākou Māori Reserve, Block

A3, part Section 54, situated in Block II Portobello Survey District (SO 13287). Subject to survey as shown Site 2 on *Allocation Plan A 188 (SO 24692)*. Part Section 54 is exclusive of such mines and minerals as were not taken by Proclamation 842. Part Gazette Notice 265921 (New Zealand Gazette 1963 page 1877) and 7100 square metres more or less being Ōtākou Māori Reserve, Block A3, Section 55, situated in Block II Portobello Survey District (SO 18367). Subject to survey as shown on *Allocation Plan A 188 (SO 24692)*. All Gazette Notice 457756/1 (New Zealand Gazette 1976 page 762);

Taiaroa Head Site (No. 3) means the land described as Otago Land District, Dunedin City, 3.9153 hectares, more or less, being Sections 72 and 73 Block II, Portobello Survey District, (SO 16512). As shown as Site 3 on *Allocation Plan A 188 (SO 24692)*. All CT 10C/1310. Subject to the right of way easement created by T670560. Gazette Notice 579134 (New Zealand Gazette 1982, page 1948). Subject to Water Supply Easement registered as Proclamation 6915 (New Zealand Gazette 1956 page 5) and 2430 square metres, more or less being Section 4, S.O. Plan 22583. As shown as Site 3 on *Allocation Plan A 188 (SO 24692)*. Part Gazette Notice 265923 (New Zealand Gazette 1963 page 1877);

Taiaroa Head Site (No. 4) means the land described as Otago Land District, Dunedin City, 3.4332 hectares, more or less being Sections 1, 2 and 3, S.O. Plan 22583. As shown as Site 4 on *Allocation Plan A 188 (SO 24692)*. Part Gazette Notice 265921 (New Zealand Gazette 1869 page 588) and subject to a lease between the Dunedin City Council and the Otago Peninsula Trust over Sections 1 and 2 SO 22583 commencing on 1 July 1991 for an initial term of 33 years and with two rights of renewal for a further term of 33 years each;

Taiaroa Head Sites means the Taiaroa Head Site (No. 1), Taiaroa Head Site (No. 2), Taiaroa Head Site (No. 3) and Taiaroa Head Site (No. 4); and

Wildlife Sanctuary means the land described as Otago Land District, Dunedin City, 7,400 square metres, more or less, being Section 74, Block II Portobello Survey District (SO Plan 18782). As shown on *Allocation Plan A 188 (SO 24692)*. Subject to the Wildlife Act 1953. Proclamation 519375 (Statutory Regulation 1979 Number 146).

14.27.2 Purpose of Vesting in Ancillary Claims Trustees

Te Rūnanga and the Crown agree that the Crown:

- (a) shall revoke the reserve status of, and vest the fee simple estate in, the Taiaroa Head Site (No. 1) in the Ancillary Claims Trustees in order for the Ancillary Claims Trustees to vest the fee simple estate in the Taiaroa Head



Site (No. 1), subject to it being administered by the Joint Management Body as if it were a Nature Reserve, in the Successors to Korako Karetai; and

- (b) shall vest the Taiaroa Head Site (No. 2) in Te Rūnanga Ōtākou with its existing reserve status at the date of this Deed, subject to it being administered by the Joint Management Body as a Nature Reserve,

in order to follow the recommendations of the Waitangi Tribunal noted in the preamble to this *clause 14.27*.

14.27.3 Crown to Approach Dunedin City Council

To further the objectives set out in *clause 14.27.2*, the Crown agrees that it will, through the Minister in Charge of Treaty of Waitangi Negotiations, discuss with the Dunedin City Council the desirability of the Dunedin City Council agreeing to:

- (a) either:
 - (i) the revocation of the reserve status of the Taiaroa Head Site (No. 3) and the vesting of the fee simple estate in that site in the Successors to Korako Karetai, subject to it being administered by the Joint Management Body as a reserve with its existing status at the date of such vesting; and
 - (ii) the cancellation of the vesting of the Taiaroa Head Site (No. 4) in the Dunedin City Council and vesting of this site in Te Rūnanga Ōtākou with its existing reserve status at the date of such vesting, subject to it being administered by the Joint Management Body;
- (b) or:
 - (i) the Joint Management Body administering the Taiaroa Head Site (No. 3) and the Taiaroa Head Site (No. 4) on behalf of the Dunedin City Council; and
 - (ii) the Dunedin City Council's participation in a management plan for the Taiaroa Head Sites.

14.27.4 Public Works Act

Te Rūnanga and the Crown agree that the procedure for the identification of Beneficiaries set out in *Attachment 14.2* will be modified in respect of the Taiaroa Head Site (No. 1) to reflect the fact that Part III of the Public Works Act 1981 applies to any disposal of that property by the Crown and that the Successors to Korako Karetai are the persons who would be entitled to have the Taiaroa Head

Site (No. 1) offered back to them if Part III of the Public Works Act 1981 were invoked in relation to that property. Accordingly, the Ancillary Claims Trustees shall undertake the procedure outlined in *Attachment 14.2*, except that they shall identify the Successors to Korako Karetai who would be entitled to have the Taiaroa Head Site (No. 1) offered back to them if Part III of the Public Works Act 1981 were invoked, and such persons shall be deemed to be the Beneficiaries for the purposes of that Attachment.

14.27.5 Settlement Legislation

The Crown agrees that the Settlement Legislation will provide:

- (a) for the revocation of the reservation of the Taiaroa Head Site (No. 1) as a Nature Reserve and the vesting of the fee simple estate in the Taiaroa Head Site (No. 1) in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981, but subject to:
 - (i) an access permit dated 8 February 1990 granted by and on behalf of the Minister of Conservation by an officer pursuant to a designation given to him by the Director General of Conservation pursuant to Section 53 of the Wildlife Act 1953 and Sections 49 and 57 of the Reserves Act 1977 for Dean Nelson and Chris Lalas of the Department of Conservation to access Taiaroa Head Site (No. 1); and
 - (ii) an access permit dated 4 August 1995 granted by and on behalf of the Minister of Conservation by an officer pursuant to a designation given to him by the Director General of Conservation pursuant to Section 57 of the Reserves Act 1977 for George R Chance to access Taiaroa Head Site (No. 1);
- (b) that, notwithstanding *clause 14.27.5(a)* and any Act or rule of law, the assets that are fixed to, or are under or over the Taiaroa Head Site (No. 1) will not be vested in the Ancillary Claims Trustees, even though the interest in that land is being vested, but will remain in the ownership of the party owning that asset at the date of this Deed, and the assets and the Taiaroa Head Site (No. 1) shall be regarded as separate assets, each capable of separate ownership;
- (c) for the Minister of Conservation, notwithstanding *clause 14.27.5(a)*, to administer the Taiaroa Head Site (No. 1) as if it were a Nature Reserve and expend monies thereon for the purposes of its classification as if it were a Nature Reserve, pursuant to the Reserves Act 1977 up until the Business Day which is 25 Business Days after the establishment and naming of the Joint Management Body in accordance with *clause 14.27.12*;



- (d) for the Reserves Act 1977 to apply to the Taiaroa Head Site (No. 1) and to the Minister of Conservation in his or her administration of that site, notwithstanding *clause 14.27.5(a)*; and
- (e) that the Ancillary Claims Trustees shall, notwithstanding paragraphs 18 to 21 of *Attachment 14.2*, report to the Minister of Māori Affairs and the Minister in Charge of Treaty of Waitangi Negotiations when they have taken all appropriate steps to identify all of the Successors to Korako Karetai in accordance with *Attachment 14.2* and the Māori Land Court has confirmed the list of Beneficiaries to the Taiaroa Head Site (No. 1).

14.27.6 Crown to Apply for a Meeting of Successors

Te Rūnanga and the Crown agree that within 25 Business Days of the Ancillary Claims Trustees reporting to the Minister of Māori Affairs and the Minister in Charge of Treaty of Waitangi Negotiations in accordance with *clause 14.27.5(e)*, the Minister of Māori Affairs will make a formal application to the Māori Land Court as an interested person pursuant to section 173 of the Te Ture Whenua Māori 1993, for the Māori Land Court to call a meeting of the Successors to Korako Karetai. The meeting is to be convened in accordance with Part IX of the Te Ture Whenua Māori Act 1993 and is to be held as soon as practicable after the Minister's application to the Māori Land Court.

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

Te Rūnanga and the Crown agree that at the meeting held pursuant to *clause 14.27.6*, the Successors to Korako Karetai are to consider and decide, pursuant to the procedures set out in the Regulations:

- (a) notwithstanding the fact that the Taiaroa Head Site (No. 1) will continue to be administered as if it were a Nature Reserve, the status with which the Taiaroa Head Site (No. 1) is to be vested in them (or the entity to hold that land on their behalf) by deciding whether the land is to be vested as:
 - (i) Māori freehold land; or
 - (ii) General land,as those terms are defined in section 129 of the Te Ture Whenua Māori Act 1993; and
- (b) notwithstanding the fact that the Taiaroa Head Site (No. 1) will continue to be administered as if it were a Nature Reserve, the manner in which the Taiaroa Head Site (No. 1) is to be held by them by deciding whether the land is to be vested in:

- (i) the Successors to Korako Karetai as tenants in common with an undivided share;
- (ii) a Māori incorporation established under Part XIII of the Te Ture Whenua Māori Act 1993;
- (iii) an ahu whenua trust constituted under section 215 of the Te Ture Whenua Māori Act 1993;
- (iv) Korako Karetai as the eponymous ancestor; or
- (v) any other manner the Successors to Korako Karetai decide upon.

14.27.8 Appointment of Representatives of Successors to Korako Karetai

Te Rūnanga and the Crown agree that at the meeting held pursuant to *clause 14.27.6*, the Successors to Korako Karetai determined by the Ancillary Claims Trustees shall appoint representatives (not exceeding 10 in number) in accordance with the procedures set out in the Regulations, to negotiate, on behalf of the Successors to Korako Karetai, with representatives of Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council, the form the Joint Management Body will take and the name it is to be given.

14.27.9 Crown to Assist With Negotiations

Te Rūnanga and the Crown agree that the Minister in Charge of Treaty of Waitangi Negotiations will hold meetings with the representatives of the Successors to Korako Karetai, Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council, in order to assist and facilitate negotiations between these parties in order for an agreement to be reached between them for the establishment of the Joint Management Body and a name for that body.

14.27.10 Agreement of All Parties

Te Rūnanga and the Crown agree that if all parties reach agreement in accordance with *clause 14.27.9*, then the Joint Management Body agreed to by the parties shall be established and named in accordance with *clause 14.27.12*, and the Minister in Charge of Treaty of Waitangi Negotiations shall provide a copy of the agreement of the parties to the Ancillary Claims Trustees. If the parties are unable to reach an agreement within four years of the Settlement Date, the Minister in Charge of Treaty of Waitangi Negotiations must give notice to each of the parties and the Minister of Māori Affairs stating that as the parties have been unable to reach an agreement, the Crown will proceed to take the steps set out in *clause 14.27.11*.

14.27.11 Meeting to be Reconvened

Te Rūnanga and the Crown agree that if the Minister in Charge of Treaty of Waitangi Negotiations gives a notice in accordance with *clause 14.27.10* stating that the representatives of the Successors to Korako Karetai, Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council have been unable to reach agreement as to the form and name of the Joint Management Body to be established for the administration of the Taiaroa Head Sites, then a meeting of all of those parties will be convened in accordance with Part IX of the Te Ture Whenua Māori Act 1993 in order for them to determine, in accordance with the procedures set out in the Regulations, which of the following forms the Joint Management Body shall take:

- (a) a specially established body consisting of two representatives of the Successors to Korako Karetai, and two representatives of each of Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council and given a name by those representatives;
- (b) a charitable trust;
- (c) an incorporated society; or
- (d) any other form the parties decide upon.

14.27.12 Establishment of Body for Joint Management of the Taiaroa Head Sites

Te Rūnanga and the Crown agree that the body for the joint management of the Taiaroa Head Sites must be established and given a name within 50 Business Days of a decision made pursuant to *clauses 14.27.10, 14.27.11 or 14.27.14(h)*.

14.27.13 Agreement of Dunedin City Council

If the Dunedin City Council does not agree to either of the proposals set out in *clause 14.27.3*, the Joint Management Body shall only consist of representatives of the Successors to Korako Karetai, Te Rūnanga Ōtākou and the Minister of Conservation.

14.27.14 Settlement Legislation

The Crown agrees that the Settlement Legislation will provide:

- (a) for the Successors to Korako Karetai to be deemed to be “owners”, as that term is defined in section 170 of the Te Ture Whenua Māori Act 1993 and regulation 2 of the Regulations, in relation to the Taiaroa Head Site (No. 1);
- (b) that if the Successors to Korako Karetai do not make a decision in accordance with the procedures set out in the Regulations to adopt any one

option from each of the list of options set out above in *clause 14.27.7*, they will be deemed to have chosen the option which received the most votes in accordance with those procedures, or, if no votes are cast, the first option from each list of options set out in *clause 14.27.7*;

- (c) for the Recording Officers of the meetings held pursuant to *clauses 14.27.6, 14.27.9 and 14.27.11* to report, pursuant to the procedure set out in regulation 42 of the Regulations, the decisions of the Successors to Korako Karetai made pursuant to *clause 14.27.7*, and the decisions of the Successors to Korako Karetai, Te Rūnanga Ōtākou, the Minister of Conservation and the Dunedin City Council made pursuant to *clause 14.27.9* or *clause 14.27.11*, to the Minister in Charge of Treaty of Waitangi Negotiations and the Ancillary Claims Trustees;
- (d) for paragraphs 18 to 21 of *Attachment 14.2* not to apply to the Ancillary Claims Trustees in the exercise of their duties under that Attachment in relation to the Taiaroa Head Site (No. 1);
- (e) for the fee simple estate in the Taiaroa Head Site (No. 1) to be vested, subject to *clause 14.27.14(i)* and the separate ownership of assets that are fixed to, or are under or over that site pursuant to *clause 14.27.5(b)*, in the Successors of Korako Karetai with the status and in the manner determined by those Successors pursuant to *clause 14.27.7* on the Business Day which is 25 Business Days after the establishment and naming of the Joint Management Body in accordance with *clause 14.27.12*;
- (f) for the Taiaroa Head Site (No. 1) to be deemed to have the status of Māori freehold land as if it had acquired that status pursuant to section 130 of the Te Ture Whenua Māori Act 1993 from the date of its vesting by the Ancillary Claims Trustees if the Successors to Korako Karetai decide, pursuant to *clause 14.27.7*, that that land is to have that status;
- (g) for a mechanism which permits the Successors to Korako Karetai to hold the Taiaroa Head Site (No. 1) in the name of Korako Karetai as an eponymous ancestor from the date of its transfer by the Ancillary Claims Trustees if the Successors to Korako Karetai decide, pursuant to *clause 14.27.7*, that the land is to be held in that manner;
- (h) that if the representatives of the Successors to Korako Karetai, Te Rūnanga Ōtākou, the Dunedin City Council and the Minister of Conservation do not make a decision at their meeting held pursuant to *clause 14.27.11* to adopt any one of the options listed above in that clause, they will be deemed to have chosen the option which received the support of the majority of the

parties, or if there is no majority support for any one option, the option set out in *clause 14.27.11(a)*;

- (i) for the Taiaroa Head Site (No. 1) to be administered by the Joint Management Body as if it were a Nature Reserve subject to section 20 of the Reserves Act 1977 that had been vested pursuant to section 26 of the Reserves Act 1977, and subject to the conditions and restrictions set out in *Attachment 14.15*;
- (j) for the Reserves Act 1977 to apply to the Taiaroa Head Site (No. 1) and to the Joint Management Body in its administration of that site, notwithstanding *clause 14.27.14(e)*;
- (k) for the Taiaroa Head Site (No. 2) to be vested in Te Rūnanga Ōtākou on the Business Day which is 25 Business Days after the establishment and naming of the Joint Management Body in accordance with *clause 14.27.12* as if vested pursuant to section 26 of the Reserves Act 1977, as a Nature Reserve subject to section 20 of that Act, and subject to the conditions and restrictions imposed pursuant to section 26(2) of that Act and set out in *Attachment 14.15*;
- (l) that, notwithstanding *clause 14.27.14(k)* or Act or rule of law, the assets that are fixed to, or are under or over the Taiaroa Head Site (No. 2) will not be vested in Te Rūnanga Ōtākou, even though the interest in that land is being vested as a reserve pursuant to section 26 of the Reserves Act 1977, but will remain in the ownership of the party owning that asset at the date of the vesting of that site, and the assets and the Taiaroa Head Site (No. 2) shall be regarded as separate assets, each capable of separate ownership;
- (m) for the Joint Management Body to be deemed to be an administering body for the purposes of the Reserves Act 1977 in relation to the Taiaroa Head Sites and for the definition of “Administering body” in section 2 of the Reserves Act 1977 to include Te Rūnanga Ōtākou for the sole purpose of Te Rūnanga Ōtākou holding, but not administering, the Taiaroa Head Site (No. 2);
- (n) for the Taiaroa Head Site (No. 1) and the Taiaroa Head Site (No. 2), together with the Taiaroa Head Site (No. 3) and the Taiaroa Head Site (No. 4) if included by the Dunedin City Council, to be administered by the Joint Management Body in accordance with their relevant reserve status, or as if they were a reserve of the relevant status, subject to the Reserves Act 1977, from the Business Day which is 25 Business Days after its establishment pursuant to *clause 14.27.12* and for the administration of the Taiaroa Head

Site (No. 1) (pursuant to *clause 14.27.5(c)*) and the Taiaroa Head Site (No. 2) by the Minister of Conservation, and the administration of the Taiaroa Head Site (No. 3) and the Taiaroa Head Site (No. 4) by the Dunedin City Council, to cease on that date;

- (o) for the Taiaroa Head Site (No. 1) and the Taiaroa Head Site (No. 2) to be administered by the Joint Management Body in accordance with the conditions and restrictions set out in *Attachment 14.15*, and the Joint Management Body shall, in the exercise of its functions, comply with those terms and conditions;
- (p) that the conditions and restrictions set out in *Attachment 14.15* will be quoted in a schedule to the Settlement Legislation as a matter of record only;
- (q) that quoting the conditions and restrictions referred to in *clause 14.27.14(p)* in a schedule to the Settlement Legislation shall not have the effect of giving them any greater force or effect than they have as special conditions and restrictions of vesting land pursuant to section 26(2) of the Reserves Act 1977;
- (r) that the Minister of Conservation may decide, at his or her sole discretion, that the Wildlife Sanctuary is to be administered with the Taiaroa Head Sites by the Joint Management Body as if it were a Nature Reserve and is to be included in any management plan prepared for those sites;
- (t) that Part IVA of the Conservation Act 1987 will not apply to the vesting of the Taiaroa Head Site (No. 1) for as long as it continues to be a Nature Reserve; and
- (u) the management plan prepared by the Joint Management Body may:
 - (i) include the Wildlife Sanctuary if the Minister of Conservation agrees;
 - (ii) subject to the agreement of the Dunedin City Council, include Taiaroa Head Site (No. 3) and Taiaroa Head Site (No. 4) if the Dunedin City Council retains these sites and does not agree to their administration by the Joint Management Body.

14.27.15 Inclusion of Taiaroa Head Site (No. 3) and Taiaroa Head Site (No. 4)

The Crown agrees that the Settlement Legislation will provide that if at any time in the future the Dunedin City Council agrees to the revocation of the reserve status of the Taiaroa Head Site (No. 3) and/or agrees to the cancellation of the vesting in it of the Taiaroa Head Site (No. 4) in accordance with *clause 14.27.3*:

- (a) those sites will be administered by the Joint Management Body from the date of vesting of those sites;
- (b) the Taiaroa Head Site (No. 3) will be held in the same manner as the Taiaroa Head Site (No. 1) from the date of transfer of that site;
- (c) the Taiaroa Head Site (No. 4) will be held in the same manner as the Taiaroa Head Site (No. 2) from the date of transfer of that site;
- (d) Part IVA of the Conservation Act 1987 will not apply to the vesting of the Taiaroa Head Site (No. 3) for as long as it continues to be administered as a reserve; and
- (e) notwithstanding *clause 14.27.15(b)*, the assets that are fixed to, or are under or over the Taiaroa Head Site (No. 4) will not be vested in Te Rūnanga Ōtākou, even though the interest in that land is being vested, but will remain in the ownership of the party owning that asset at the date of transfer of that site, and the assets and the Taiaroa Head Site (No. 4) shall be regarded as separate assets, each capable of separate ownership.

ANCILLARY CLAIMS TRUST DEED

ATTACHMENT 14.1
ANCILLARY CLAIMS TRUST DEED
(Clause 14.3.1)

Date: 1997

PARTIES

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (“the Settlor”)
- (2) [*Names of Initial Trustees*] (“the Trustees”)

BACKGROUND

- A** By a deed of settlement dated [] between Her Majesty the Queen and Te Rūnanga o Ngāi Tahu it was agreed (inter alia) that the Crown would establish a trust in which certain property and property interests, offered by the Crown as redress for each of the Ancillary Claims, would vest prior to the identification of the Beneficiaries, and the subsequent vesting of the property in those Beneficiaries.
- B** On signing this deed the Settlor has paid \$100 to the Trustees to be held upon the trusts and with the powers set out in this deed.
- C** It is intended that the trust established by this deed will be a Crown Entity for the purposes of the Public Finance Act 1989.

NOW THIS DEED RECORDS:**1 DEFINITIONS AND CONSTRUCTION****1.1 Defined Terms**

In this deed (including the *Schedule*), unless the context requires otherwise:

Ancillary Claim means the claims for which a Claim Property is to be provided to the Trustees by the Crown pursuant to Section 14 and clause 15.11 of the Deed of Settlement to hold on trust pending the identification of the Beneficiaries of that claim;

Balance Date means 30 June;

Beneficiary means a person who suffered a loss giving rise to an Ancillary Claim or, in the event that any such person is deceased, the Successors of that person, to

ANCILLARY CLAIMS TRUST DEED

be identified by the Trustees in accordance with the procedure set out in Attachment 14.2 of the Deed of Settlement;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year, and ending on 5 January in the following year and shall be deemed to commence at 9.00am and to terminate at 5.00pm;

Claim Property means the land, interest in land, Fenton Entitlement or Customary Fishing Entitlement to be provided by the Settlor as redress for an Ancillary Claim and which will vest in this Trust on the date to be provided in the Settlement Legislation as described in the Deed of Settlement;

Claim Property Income means any income received by the Trustees which is derived from a particular Claim Property;

Customary Fishing Entitlement means an entitlement granted pursuant to clause 14.7.1 of the Deed of Settlement to temporarily and exclusively occupy an area of the bed of a waterway for lawful fishing and gathering of natural resources, all in accordance with the requirements of clause 14.7 of the Deed of Settlement;

Deed of Settlement means the deed referred to in *Recital A*;

Fenton Entitlement means an entitlement granted pursuant to clause 14.6.2(c) of the Deed of Settlement to temporarily occupy land close to waterways so as to allow access to those waterways for lawful fishing and gathering of other natural resources, all in accordance with the requirements of clause 14.6 of the Deed of Settlement;

Income Year means any year or other accounting period ending on a Balance Date;

Related Person for the purposes of *clause 9.5* and in relation to any business to which section CB(1)(e) of the Income Tax Act 1994 applies, means a person specified in paragraphs (i) to (iv) of the second proviso to that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on; or
 - (b) a shareholder or director of the company by which the business is carried on;
- or



ANCILLARY CLAIMS TRUST DEED

- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) that person, where he or she and the settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purposes of the Income Tax Act 1994;

Settlor Funding means any money provided by the Settlor to the Trustees under *clause 6*;

Teleconference Meeting for the purposes of *rule 17* in the *Schedule* means a meeting where the participants are contemporaneously linked by telephone or some other means of instant audio or audio and visual communication;

Termination Date means the date 5 years from the date of this deed unless extended by the Trustees pursuant to *clause 9.10*;

Te Rūnanga means Te Rūnanga o Ngāi Tahu;

Trust means the trust created by this deed;

Trust Deed when appearing in the rules set out in the *Schedule*, means this deed; and

Trust Fund means the sum of \$100 referred to in *Recital B* and includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees after this deed has been signed, including the Claim Properties, with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed.

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

- 1.2.1 a reference to "Trustees" is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted;
- 1.2.2 a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- 1.2.3 a reference to the *Schedule* is a reference to the schedule forming part of this deed;

ANCILLARY CLAIMS TRUST DEED

- 1.2.4 headings appear as a matter of convenience and shall not affect the construction of this deed;
- 1.2.5 notwithstanding clause 1.3.2 of the Deed of Settlement, words or phrases defined differently in this deed to Section 14 of the Deed of Settlement have the meaning given to them in this deed;
- 1.2.6 if there is a conflict between the rules set out in the *Schedule* and the other provisions of this deed the other provisions of this deed shall prevail.

2 CREATION OF THE TRUST

2.1 Declaration of Trust

The Settlor directs, and the Trustees acknowledge, that the Trustees shall hold the Trust Fund upon the trusts and with the powers set out in this deed.

2.2 Name of Trust

The trust created by this deed is to be known as the “Ngāi Tahu Ancillary Claims Trust”.

3 PURPOSES

The Trust is established for the following purposes:

3.1 Hold Claim Properties

To hold each Claim Property until the Beneficiaries are identified and located by the Trustees, in the manner set out in Attachment 14.2 of the Deed of Settlement, and the relevant Claim Properties are vested in the Beneficiaries of each Ancillary Claim or in an entity which will hold the property on their behalf in accordance with the wishes of the Beneficiaries;

3.2 Manage and Maintain Claim Properties

To manage and maintain or procure management and maintenance of the Claim Properties until the time of such vesting;

3.3 Use Claim Property Income

To use any Claim Property Income to meet the costs of holding that Claim Property;

3.4 Transfer Capital on Termination

To transfer the capital of the Trust in the manner provided for in *clause 5.2* on the termination of the Trust.

4 INCOME TRUSTS

The Trustees shall deal with all Claim Property Income and Trust income arising from the Trust Fund in an Income Year in accordance with the provisions of this *clause 4*.

4.1 Claim Property Income

The Trustees shall ensure that any Claim Property Income the Trustees receive is paid or applied for or in respect of only the Claim Property from which it is derived.

4.2 Administration of Trust

The Trustees shall first pay from any Claim Property Income the costs of administering the Trust which are attributable to that Claim Property. Costs incurred in relation to a specific Claim Property may be paid out of the Claim Property Income from that Claim Property but not out of the Claim Property Income from any other Claim Property.

4.3 Power to Pay, Apply or Appropriate Income

The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the Claim Property Income as they think fit for or towards one or more of the purposes of the Trust and in accordance with the objects of the Trust. For the avoidance of doubt, this power specifically:

4.3.1 includes the right to apply any Claim Property Income to the costs of managing and maintaining the Claim Property to which it relates and to payment of any tax on the Claim Property Income; and

4.3.2 excludes the right to apply any Claim Property Income to the costs arising from the process of identifying, locating and meeting with the Beneficiaries of that Claim Property.

The Trustees may not pay, apply or appropriate Claim Property Income attributable to a Claim Property in respect of another Claim Property.

4.4 Powers to Retain or Accumulate Income

4.4.1 The Trustees may retain or decide to retain part of the Claim Property Income arising from the Trust Fund in an Income Year to establish or augment any reserve fund which may be used at any later time for any purpose for which the Claim Property Income may be used.

4.4.2 The Trustees may accumulate or decide to accumulate all or part of the Claim Property Income arising from each of the Claim Properties in an Income Year. The accumulated income shall be added to the fund allocated

to the relevant Claim Property, so that it becomes part of the Trust Fund and is held on the same trusts and with the same powers. But the Trustees may still resort to the accumulated Claim Property Income at any time and pay, apply or appropriate all or part of it as if it were Claim Property Income.

5 CAPITAL TRUSTS

5.1 Vesting of Claim Properties in Beneficiaries

Upon identification of the Beneficiaries in the manner set out in Attachment 14.2 of the Deed of Settlement, the Trustees will arrange for the vesting of the relevant Claim Property, including any capital or Claim Property Income derived from that Claim Property held by the Trustees, in the Beneficiaries of the Ancillary Claim in accordance with the method set out in Attachment 14.2 of the Deed of Settlement.

5.2 Vesting in Te Rūnanga on Termination Date

If, on the Termination Date, the Trustees have been unable to identify and locate any of the Beneficiaries for a particular Claim Property, the Trustees will arrange for the vesting of that Claim Property, including any capital or Claim Property Income derived from that Claim Property, in Te Rūnanga.

6 FUNDING AND FEES

6.1 Funding From Settlor

The Settlor agrees to provide funding to the Trustees in the manner prescribed in this *clause 6* for the purposes of carrying out their functions and duties under this deed. For the avoidance of doubt, the Trustees may apply Settlor Funding to meet expenses which would otherwise be met out of Claim Property Income under *clause 4.3.1* if no Claim Property Income is available to meet that expense.

6.2 Agreed Budget

Such funding shall be provided in accordance with agreed annual budgets submitted to the Settlor by the Trustees and approved by the Settlor.

6.3 Submission of Draft Budget

The Trustees shall, no later than 5 months prior to the commencement of a financial year, provide to the Director of the Office of Treaty Settlements (on behalf of the Settlor) a draft budget of expenditure for the financial year to which it relates, which shall also include indicative estimates of expenditures for the following three years. In the case of the period immediately following the date of the establishment of the Trust, the draft budget shall be submitted as soon as reasonably practicable after the date of the establishment of the Trust. If required by the Director, the Trustees will provide any further details relating to the Budget as may reasonably be required by the Director.

6.4 Provision of Funding

Once the Settlor has approved the budget (with or without any amendments), the Settlor will provide to the Trustees the amount shown in the approved budget (less any surplus remaining from the previous year's budget, if any) in such manner and at such times as the Settlor and the Trustees agree.

6.5 Refund on Termination Date

If, at the Termination Date, any amount provided to the Trustees under *clause 6* has not been spent, such amount shall be forthwith refunded to the Settlor.

6.6 Trustee's Fees

In addition, the Settlor will pay to each Trustee such trustee's fees as may be determined from time to time by the Settlor. Such fees shall be at the same level for each Trustee, apart from the chairperson of Trustees for whom the level of fees may be greater than that for the other Trustees to reflect the more onerous duties of the chairperson of Trustees.

6.7 Provision of Information

The Trustees shall provide to the Settlor, upon request, any information concerning all or any of the following:

- 6.7.1 the expenditure of the Trust during any period specified in the request (and a comparison of actual expenditure against budgeted expenditure);
- 6.7.2 any Claim Property Income received during any period specified in the request;
- 6.7.3 any contracts or similar arrangements entered into by the Trust during any period specified in the request; and
- 6.7.4 the progress made by the Trustees in identifying the Beneficiaries of each Ancillary Claim and transferring the relevant Claim Property to them;

and any other information relating to the administration of the Trust and the conduct of the process of identifying, locating and meeting with the Beneficiaries of the Ancillary Claims as may be required for the Minister responsible for the Trust to answer any Parliamentary question.

7 FINANCIAL STATEMENTS

7.1 Full and Correct Accounts

The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets, liabilities, and funds are kept. These

accounts shall identify and show separately the Claim Property Income and expenditure attributable to each of the Claim Properties.

7.2 Distributions

The financial statements shall show separately the distributions made for the purposes of the Trust during the financial year. The name of each recipient and the amount given to each shall be shown.

7.3 True and Fair View

The Trustees shall, after the end of each financial year, have prepared financial statements including a balance sheet and income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the Trust for the financial year.

7.4 Auditing of Financial Statements

The financial statements shall be audited by an auditor appointed for the purpose, being a person qualified for appointment as auditor of a company under the Companies Act 1993 and not being a trustee, employee or agent of the Trust, and if required by the Public Finance Act 1989, such auditor shall be the audit office.

7.5 Auditor's Certificate

The auditor shall certify whether the financial statements are properly drawn up and give a true and fair view of the financial affairs of the Trust for the financial year.

8 RULES

The rules (with any valid alterations) set out in the *Schedule* which govern the appointment, retirement and proceedings of the Trustees subject to the provisions of this deed, will bind the Trustees.

9 GENERAL PROVISIONS

9.1 Appointment of New Trustees

9.1.1 There shall be 5 Trustees;

9.1.2 At all times 3 of the Trustees shall be appointed by the Settlor with the other 2 Trustees being appointed by Te Rūnanga. One of the Trustees appointed by the Settlor shall be appointed by the Settlor as the chairperson of Trustees. Notice in writing shall be given promptly by the Settlor to Te Rūnanga and by Te Rūnanga to the Settlor, as appropriate, of any appointment of a Trustee and/or the appointment of chairperson of Trustees.

9.1.3 The statutory power of appointment of new Trustees shall be vested in the Settlor and Te Rūnanga in the proportion set out in *clause 9.1.2*.

9.2 Alterations to Deed

- 9.2.1 This deed may be altered only by a resolution of all the Trustees present and voting at a duly convened and conducted meeting of the Trustees and no such resolution shall be of any effect unless both the Settlor and Te Rūnanga have given prior written notice to the Trustees that they consent to the proposed alteration to this deed.
- 9.2.2 The secretary of the Trust shall give each Trustee written notice of any proposed resolution for the alteration of this deed at least 10 Business Days (or such lesser period as the Trustees agree) before the date of the meeting at which it is to be considered. Such written notice shall be accompanied by evidence that the approval of the Settlor and Te Rūnanga has been given.

9.3 Advice of Counsel

If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister or solicitor of the High Court of New Zealand of at least 7 years' standing without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with that opinion. This right to obtain and act upon a barrister's or solicitor's opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

9.4 Dealing With "Interested" Trustees

Each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to the Beneficiaries of the Trust Fund.

9.5 Prohibition of Benefit or Advantage

In the carrying on of any business under this deed, no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

- 9.5.1 the nature or amount of that benefit, advantage or income; or
- 9.5.2 the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

9.6 Liability of Trustees

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

9.7 Indemnity

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust against:

- 9.7.1 any liability which he or she incurs in successfully defending any criminal proceedings issued because of his or her actions in relation to the Trust (other than any Claim Property); and
- 9.7.2 any liability of the Trustee or officer or employee of the Trust for any act done or omission made in the Trustee's capacity as a Trustee or in the course of the officer's or employee's carrying out his or her functions as an officer or employee of the Trust (other than any criminal liability, any liability of the kind described in *clause 9.6* or any liability for breach of fiduciary duty), including all costs the Trustee incurs in defending or settling any claim or proceedings relating to such liability.

In the event that liability is incurred in respect of a particular Claim Property then the Trustee, officer or employee shall, to the extent that sufficient funds are available, be indemnified out of the relevant Claim Property Income.

9.8 Reimbursement for Out of Pocket Expenditure

The Trustees shall also be entitled to be reimbursed for out of pocket expenditure properly incurred by the Trustees on behalf of the Trust in the course of the Trustee's duties including reasonable travelling and accommodation expenses.

9.9 Charges

If any of the Trustees is engaged in a profession or business that Trustee may charge fees for work done by the Trustee or that Trustee's firm (whether or not the work is of a professional or business nature) on the same basis as if that Trustee were not one of the Trustees but employed to carry out the work on their behalf.

9.10 Winding up of the Trust

This Trust shall terminate on the Termination Date unless extended for a further period or periods up to a maximum aggregate period of 5 years. Any extension shall be effected by a resolution of all the Trustees present and voting at a duly

convened and conducted meeting of the Trustees and only with the prior written agreement of the Settlor.

9.11 Winding up in Respect of Some Ancillary Claims

In the event that the process outlined in Attachment 14.2 to the Deed of Settlement remains unfinished at the Termination Date or at the end of any period of extension under *clause 9.10* in respect of any Ancillary Claim or Ancillary Claims:

9.11.1 the Trustees may extend the operation of this Trust in respect of that Ancillary Claim or those Ancillary Claims for such period as is required to allow for the completion of the process. Any such extension shall be effected by a resolution of all the Trustees present and voting at a duly convened and conducted meeting of the Trustees and only with the prior written agreement of the Settlor; and

9.11.2 the Trustees may extend the operation of this Trust in respect of that Ancillary Claim or those Ancillary Claims only to the extent necessary to undertake the steps required to vest the Claim Property in the Beneficiaries then known to the Trustees, such vesting to be subject to clause 14.3.2 of the Deed of Settlement.

10 GENERAL POWERS

The Trustees may exercise the powers, authorities and discretions conferred by this deed in addition to, and not so as to limit, the powers, authorities and discretions conferred upon trustees generally by the Trustee Act 1956.

11 POWERS

The Trustees shall have the following powers and may exercise them either alone or with any other person(s):

11.1 To Invest

To invest the Trust Fund and the income from it in any form of investment, in accordance with the Trustee Act 1956 and to vary any such investment from time to time and to keep separate accounting records for the income from each of the Claim Properties. Where, for the time being, there is more than one person acting as a trustee of the Trust Fund, and one or more, but not all, of them is or are engaged in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that trustee or those trustees (as the case may be) shall, in terms of section 13D(1) of the Trustee Act 1956, not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that trustee

or those trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

11.2 To Borrow

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. The Trustees may not give security for repayment over the entire Trust Fund or any part of it.

11.3 To Maintain Claim Properties

To maintain and manage the Claim Properties, in whatever manner the Trustees think fit including the engagement of any contractors or agents to undertake the maintenance and management of the Claim Properties. For those purposes, the Trustees may pay and apply any of the income of the Trust Fund as they think fit, subject to *clause 4.1*.

11.4 Capital, Income and Blended Funds

Subject to *clause 4* and *clause 6*, to determine whether any money is to be considered as capital or income, and which expenses should be paid out of capital and out of income respectively, and also to apportion blended funds. Each determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund.

11.5 Depreciation or Replacement Funds

Subject to *clause 4* and *clause 6*, to set up and maintain any depreciation or replacement funds for any purpose the Trustees may consider advisable, and in this regard to determine in their discretion:

11.5.1 the amount of income to be credited from time to time to any of those funds; and

11.5.2 whether those funds are income or capital.

11.6 Bank Accounts

To open any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), and to overdraw any such account without giving security. The Trustees may also make arrangements with any bank for any one or more of the following persons to operate on any of the Trustees' accounts at that bank:

11.6.1 the Trustees; and

11.6.2 any delegate(s) named in writing by all the Trustees.

11.7 To Insure

To insure any building or other insurable property forming part of the Claims Properties to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against destruction or damage by fire, earthquake, fire following earthquake and such other risks as the Trustees think fit. The Trustees may pay the premiums out of income as they think fit, subject to *clause 4.1*.

11.8 To Waive Debts

Without being liable for loss, to waive any debts due to the Trust Fund, either absolutely or on such terms as the Trustees think expedient.

11.9 To Deposit Funds

To deposit all or part of the Trust Fund in any currency in a savings or other interest or non-interest bearing account with any bank, trust, company or other financial or investment institution in any jurisdiction in the world. In making any deposit the Trustees shall not be liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

11.10 To Hold the Trust Fund Uninvested

To hold any part of the Trust Fund uninvested and in any currency for as long as the Trustees think fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

11.11 To Protect or Enhance Assets

To enter into any type of contract whatever to protect, maintain or enhance the value of any assets acquired or held by the Trustees or which they have the right to acquire or hold.

11.12 To Pay Taxes, Rates and Other Expenses

To pay all rates, taxes and assessments (including Goods and Services Tax) charged upon the Claim Properties and any income tax payable in respect of any Claim Property Income.

11.13 To Apply for and Accept New Leases and Licences

To apply for and accept new leases and licences, and amalgamate, surrender, convert and change tenures of leases and licences, and in particular, to duly execute and register all leases and licences prescribed for execution and registration by the Trustees in the Deed of Settlement.

11.14 To Execute and Register Encumbrances

To create, execute and register new covenants, easements and other encumbrances, and in particular, to duly execute and register all covenants,

easements and other encumbrances prescribed for execution and registration by the Trustees in the Deed of Settlement.

11.15 To Identify Beneficiaries

To carry out all the procedures set out in Attachment 14.2 of the Deed of Settlement for the purpose of identifying Beneficiaries.

11.16 To Consult With Beneficiaries

To consult on the preferable method of vesting or transferring the Claims Properties to be provided as redress for the relevant Ancillary Claims and ensure that such properties are transferred to or vested in the Beneficiaries.

11.17 To Allow Use of Fenton Entitlements

To allow persons who have been identified as Beneficiaries entitled to a Fenton Entitlement and Customary Fishing Entitlement to use the relevant Fenton Entitlement and Customary Fishing Entitlement until the granting of the relevant Fenton Entitlement and Customary Fishing Entitlement to the Beneficiaries under clause 14.6.3 of the Deed of Settlement.

11.18 To Delegate or Contract With Te Rūnanga or Any Other Person

To delegate to, or contract with Te Rūnanga or any other person the actual process of advertising and arranging for the necessary searching of the records of the Whakapapa unit of Te Rūnanga and the records of the Māori Land Court by the respective custodians of those records or by parties approved by the custodians for the purpose.

12 INDEMNITY BY SETTLOR

The Settlor agrees that, in the event that any Trustee, officer or employee of the Trust incurs a liability for which that person is entitled to be indemnified under *clause 9.7* but cannot be indemnified or fully indemnified under that clause because the assets or funds available to meet such indemnity are not sufficient to do so, the Settlor will indemnify the Trustee against the liability (or so much of it as is not indemnified under *clause 9.7*). As a condition of the provision of such indemnity, the Trustee shall:

- 12.1 notify the Settlor immediately the Trustee becomes aware of any actual or threatened actions, proceedings, claims or demands, or any facts or circumstances likely to give rise to a claim against the Trustee for which the Trustee may be entitled to the indemnity under this *clause 12*;
- 12.2 fully consult with the Settlor on the steps to be taken, if any, in defending such actions, proceedings, claims or demands;

ANCILLARY CLAIMS TRUST DEED

- 12.3 give the Settlor and its representatives (including legal representatives) such information and assistance and co-operation as may reasonably be required, having regard to the interests of the Trustee and the Settlor;
- 12.4 if required by the Settlor, ensure that the proceedings are conducted in a manner approved by the Settlor; and
- 12.5 obtain the Settlor's written consent, which consent will not be unreasonably withheld before incurring any defence costs or making any settlement or compromise.

13 COMPLIANCE WITH PUBLIC FINANCE ACT 1989

For so long as the Trust is a Crown Entity as defined in the Public Finance Act 1989, the Trustees shall ensure that the Trust complies with the requirements of that Act and of the Official Information Act 1982.

[Execution provisions to come.]



**SCHEDULE : RULES GOVERNING THE APPOINTMENT,
RETIREMENT AND PROCEEDINGS OF THE TRUSTEES**

PART I - CONSTITUTION OF THE TRUSTEES

1 The Trustees

The first Trustees shall be [Names x 5]. [Names x 3] will be deemed to have been appointed by the Settlor pursuant to *clause 9.1* of the Trust Deed and [Names x 2] will be deemed to have been appointed by Te Rūnanga pursuant to *clause 9.1* of the Trust Deed. [Name] will be deemed to have been appointed as chairperson of Trustees by the Settlor pursuant to *clause 9.1* of the Trust Deed.

2 Term of Office

A Trustee shall hold office for a term expiring on the Termination Date, unless he or she ceases to hold office under *rule 4*.

3 Quorum

Four Trustees shall constitute a quorum at meetings of the Trustees.

4 Termination of Office

A Trustee shall cease to hold office if he or she:

- 4.1 retires from office by giving written notice to the Trustees or the secretary of the Trust;
- 4.2 is removed from office by the person who appointed him or her;
- 4.3 completes his or her term of office;
- 4.4 refuses to act;
- 4.5 is absent without leave from 3 consecutive ordinary meetings of the Trustees;
- 4.6 becomes physically or mentally incapacitated to the extent that in the opinion of the other Trustees, expressed in a resolution, he or she is unable to perform the duties of a Trustee properly;
- 4.7 becomes bankrupt or makes any composition or arrangement with his or her creditors;
- 4.8 is convicted of an indictable offence; or

4.9 in the opinion of the other Trustees, expressed in a resolution, is for any other reason unfit to carry out the duties of a Trustee.

5 Record of Changes of Trustees

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.

6 Validity of Proceedings

Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he was present as a Trustee or committee member) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

7 Appointment of Secretary and Others

The Trustees may appoint a secretary and any other officers or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

8 Do all Other Necessary or Desirable Things

The Trustees may, subject to *clause 11* of the Trust Deed, do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

PART II - ADMINISTRATIVE PROVISIONS

9 Ordinary Meetings

The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least twice in each Income Year.

10 Special Meetings

A special meeting may be called at any time by 1 or more Trustees.

11 Notice of Meetings

11.1 Written notice of every ordinary or special meeting, shall be either hand-delivered, posted or sent by facsimile to each Trustee at least 5 Business Days before the date of the meeting. The secretary or some other person acting under the direction of the Trustees or, in the case of a special meeting, acting under the direction of the Trustee(s) calling the meeting, shall give the notice of the meeting. No notice

shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.

- 11.2 Every notice of a meeting shall state the place, day and time of the meeting, and in the case of a notice of a special meeting, shall also state the subject-matter of the meeting.
- 11.3 The requirement for notice of a meeting may be waived if all of those Trustees who are for the time being in New Zealand give their written consent to such a waiver.

12 Chairperson

The chairperson of Trustees shall take the chair at all the meetings of the Trustees and shall have a casting as well as a deliberative vote. If the chairperson cannot be present, or is not present within 10 minutes of the time appointed for any meeting, the Trustees present shall elect one of their number to be chairperson of the meeting.

13 Adjournment

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

14 Committees

The Trustees may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. Subject to these rules and to any directions that the Trustees might give, each committee may regulate its own procedure.

15 Resolutions

- 15.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by a simple majority of those present and voting at a duly convened and conducted meeting of the Trustees or of a committee (as the case may be).
- 15.2 The Trustees may vary or cancel any resolution at an ordinary or special meeting.
- 15.3 A written resolution signed by all the Trustees or by all the members of a committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees or of that committee (as the case

may be). Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees or members of the committee (as the case may be).

16 Minutes

- 16.1 The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.
- 16.2 Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting shall be evidence of those proceedings.
- 16.3 Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

17 Teleconference Meetings

For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum, together with the secretary or another person acting as a secretary, shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

- 17.1 All of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
- 17.2 Throughout the Teleconference Meeting each participant and the secretary or person acting as a secretary shall be able to hear each of the other participants taking part;
- 17.3 At the beginning of the Teleconference Meeting each participant shall acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- 17.4 A participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of

ANCILLARY CLAIMS TRUST DEED

the quorum at all times during the Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent;

17.5 Where any resolution is put to the Teleconference Meeting, the Chairperson shall require that each participant individually exercise his or her vote by saying whether he or she votes for or against the resolution or abstains from voting; and

17.6 A minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting and by the secretary or person acting as a secretary.

18 Reimbursement of Expenses

Each Trustee or committee member shall be entitled to be reimbursed out of the assets of the Trust for all reasonable expenses which he or she properly incurs in administering the Trust.

19 Annual Report and Financial Statements

At their first ordinary meeting in each Income Year (other than the first Income Year) the Trustees shall present a report dealing with the affairs of the Trust, supported by a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year. A copy of such report shall be provided to the Settlor.

20 Control of Funds

All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a Bank or Banks selected from time to time by the Trustees. All cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.

PART III - ALTERATIONS TO RULES

21 Alterations to Parts I and III

Notwithstanding anything to the contrary in *clause 9.2* of the Trust Deed, Parts I, and III of these rules may be altered only by a resolution of at least 75% of the Trustees present and voting at a duly convened and constituted meeting of the Trustees, in respect of which at least one Trustee appointed by the Settlor and at least one Trustee appointed by Te Rūnanga has voted in favour.



22 Alterations to Part II

Notwithstanding anything to the contrary in *clause 9.2* of the Trust Deed, Part II of these rules may be altered by a resolution of the Trustees.

23 Restraints on Alteration

A resolution for the alteration of any Part of these rules shall be effective only if:

23.1 each Trustee was given written notice of the proposed resolution at least 10 Business Days before the date of the meeting at which it was to be considered;

23.2 the alteration does not conflict with the provisions of the Trust Deed.

ATTACHMENT 14.2
PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES
(Clause 14.3.2(d))

Except where this Deed provides otherwise, the Ancillary Claims Trustees shall undertake the procedures set out in this *Attachment 14.2* in relation to each Ancillary Claim in respect of which a Claim Property has been provided to the Ancillary Claims Trustees by the Crown. Terms beginning with a capital letter are defined terms and where they are used in this *Attachment 14.2* they have the same meanings as are given to them in the Deed of Settlement.

1 Notice

Preparation of a notice (in both English and Māori) which:

- 1.1 specifies the Ancillary Claim in respect of which a Claim Property has been provided to the Ancillary Claims Trustees by the Crown;
- 1.2 gives details of the Claim Property involved (including, where appropriate, its legal description and any traditional name of the area involved);
- 1.3 sets out any relevant information about the Ancillary Claim (such as any particular observations made by the Waitangi Tribunal in relation to it);
- 1.4 sets out any generic description of the Beneficiaries (for example, the descendants of particular named people) which is known to the Ancillary Claims Trustees;
- 1.5 describes how any person believing he or she is a Beneficiary in relation to the Ancillary Claim should make an application to the Ancillary Claims Trustees to be listed as a Beneficiary;
- 1.6 specifies what evidence will be required by the Ancillary Claims Trustees to support an application to be listed as a Beneficiary;
- 1.7 specifies how any potential Beneficiary can obtain further information about the Ancillary Claim and their possible right to be listed as a Beneficiary in respect of it;
- 1.8 specifies an address to which applications to be listed as a Beneficiary and requests for further information may be sent; and

PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES

1.9 specifies a date by which applications to be listed as a Beneficiary shall be made, which shall be not less than 125 Business Days after the last publication of the notice.

2 Publication of Notice

Publish the notice prepared in accordance with *paragraph 1* in:

2.1 at least two major newspapers circulating nationally and one daily newspaper circulating in each of Auckland, Wellington, Christchurch and Dunedin. Such publication shall be repeated a fortnight after the first such publication occurs;

2.2 the *Gazette*; and

2.3 any local newspaper circulating in the area in which the Claim Property referred to in the notice is situated.

3 Sending Notice

The notice prepared in accordance with *paragraph 1* shall also be sent to:

3.1 Te Rūnanga;

3.2 the Papatipu Rūnanga for the area in which the Claim Property referred to in the notice is situated;

3.3 all people whose names and addresses appear on the *Panui* mailing lists in the Māori Land Court registries in the South Island; and

3.4 to any person whom the Ancillary Claims Trustees reasonably believe to be a Beneficiary in respect of the Ancillary Claim, and for whom the Ancillary Claims Trustees have a mailing address.

4 Advertising

In addition, the Ancillary Claims Trustees may advertise in any other way that they believe is necessary to bring the notice to the attention of people who may be potential Beneficiaries of the relevant Ancillary Claim.

5 Whakapapa Unit and Māori Land Court Enquiries

The Ancillary Claims Trustees shall also arrange for the searching of the records of the Whakapapa unit of Te Rūnanga and the records of the Māori Land Court by the respective custodians of those records or parties approved by the custodians for the purpose to establish from those records who the Beneficiaries are, and the Ancillary Claims Trustees shall send to any person identified through that process

PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES

as a potential Beneficiary a copy of the notice referred to in *paragraph 1*, and provide any such person with not less than 60 Business Days to apply to be listed as a Beneficiary.

6 Determination of Beneficiaries

The Ancillary Claims Trustees shall identify the Beneficiaries to each Ancillary Claim and their relative beneficial interests in the relevant Claim Property and the proportionate share of that loss suffered by each such person. Where any Beneficiary is deceased, his or her Successors shall succeed to his or her interest.

7 Date of Determination of Beneficiaries

Beneficiaries shall be determined as at the date of the final list prepared by the Ancillary Claims Trustees in accordance with *paragraph 12* and in the event that any Beneficiary dies after that date but before the relevant Claim Property has been vested, his or her interest shall pass to his or her heirs as if the vesting of the relevant Claim Property in accordance with *paragraph 21* had occurred on the day before that Beneficiary's death.

8 Determination of Beneficiaries' Interests

The interest of a Beneficiary in any Claim Property shall be equal to his or her share of the loss which gave rise to the Ancillary Claim. Where a Claim Property is a Fenton Entitlement or Customary Fishing Entitlement, the interest of each Beneficiary (whether he or she is one of the persons who suffered the loss giving rise to the Trust Property Claim or a Successor of such a person) shall be equal.

9 Compilation of Provisional List of Potential Beneficiaries

Once any time period specified in any notice published or sent under *paragraphs 2 to 5* has expired, the Ancillary Claims Trustees shall undertake such inquiries as they believe are necessary to verify any applications and shall then compile a provisional list of potential Beneficiaries for the relevant Ancillary Claim indicating the proportionate interests of each potential Beneficiary and how those proportionate interests were determined.

10 Notice to Potential Beneficiaries

The Ancillary Claims Trustees shall give notice to those people who are included in the provisional list. Such notice shall state that a copy of the list is available to those named on the list upon request, and shall specify an address to which requests for a copy of the list may be sent.

11 Notification of Rejection of Applications

Where any application is rejected by the Ancillary Claims Trustees, they shall notify the applicant, giving reasons for the rejection and give the applicant a further period of 25 Business Days to provide further evidence in support of his or

her application. Any further evidence provided by the applicant within the 25 Business Day period shall be considered by the Ancillary Claims Trustees. The Ancillary Claims Trustees may then either accept the application or confirm their rejection of it and shall give notice to the applicant of their decision.

12 Compilation of Final List of Beneficiaries

Once the Ancillary Claims Trustees have considered new evidence provided by any applicants within the 25 Business Day period, they shall compile their final list of potential Beneficiaries for the relevant Ancillary Claim, indicating the proportionate interests of each potential Beneficiary and how those proportionate interests were determined.

13 Application to Court to Confirm Beneficiaries

When the Ancillary Claims Trustees have prepared their final list of Beneficiaries for any Ancillary Claim, they shall make an application to the Māori Land Court at Christchurch for confirmation of the list. Such application shall be accompanied by an affidavit sworn by a person authorised by the Ancillary Claims Trustees to swear the affidavit on their behalf confirming that the Beneficiaries of the relevant Ancillary Claim have been identified and their respective beneficial interests in the relevant Claim Property have been determined after the process referred to in *paragraphs 1 to 9* has been properly undertaken.

14 Publication of Further Notice

At the time of making the application to the Māori Land Court at Christchurch the Ancillary Claims Trustees shall publish a notice, in the same manner as required under *paragraph 2*, which gives details of the Ancillary Claim, specifies how a copy of the final list of Beneficiaries referred to in *paragraph 12* may be obtained and states that any person wishing to dispute the findings of the Ancillary Claims Trustees shall object to the Māori Land Court at Christchurch within 25 Business Days.

15 Determining Beneficiaries if no Objection

If no objection is filed with the Māori Land Court at Christchurch within the period prescribed under *paragraph 14*, the Beneficiaries referred to in the application made under *paragraph 13* will be the Beneficiaries in respect of the relevant Ancillary Claim for the purposes of this Deed.

16 Determining Beneficiaries if Objection Made

If any party files a notice of objection within the period prescribed under *paragraph 14*, the Māori Land Court shall determine whether the party to whom the objection relates is a Beneficiary, after having provided an opportunity for the Ancillary Claims Trustees and the party who filed the objection (and, where

applicable, the party to whom the objection relates) to be heard and otherwise in accordance with the rules of the Māori Land Court.

17 Notice of Objection

Any notice of objection shall be served on the Ancillary Claims Trustees. If, having considered the objection, the Ancillary Claims Trustees determine that the objection is well founded, they may file an application with the Māori Land Court at Christchurch requesting an appropriate amendment to the final list of Beneficiaries.

18 Meeting of Beneficiaries

As soon as practicable after the date on which the period for filing objections under *paragraph 14* expires (or, if any objection is filed, the date that the Māori Land Court or the Māori Appellate Court determines the Beneficiaries of any Ancillary Claim and their respective interests in any Claim Property and any period for the exercise of any appeal right has expired) the Ancillary Claims Trustees shall make a formal application to the Maori Land Court as an interested person pursuant to section 173 of the Te Ture Whenua Maori Act 1993, for the Maori Land Court to call a meeting of the Beneficiaries of an Ancillary Claim. Such meeting shall be convened in accordance with Part IX of the Te Ture Whenua Maori Act 1993 and shall be held as soon as practicable after the Ancillary Claims Trustees' application to the Maori Land Court. The Ancillary Claims Trustees shall ensure that the notice of meeting is accompanied by explanatory material explaining the background to the matters to be determined at the meeting.

19 Resolutions to be considered at Meeting

At the meeting referred to in *paragraph 18*, the following matters shall be put forward for consideration and resolution by the Beneficiaries in accordance with the procedures set out in the Māori Assembled Owners Regulations 1995:

- 19.1 where the Deed of Settlement provides for more than one option for redress for that Ancillary Claim, the options from which the Beneficiaries may choose;
- 19.2 whether any land to be vested in the Beneficiaries (or the entity to hold it on their behalf) is to be vested as Māori freehold land or general land, as those terms are defined in section 129 of the Te Ture Whenua Maori Act 1993;

PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES

19.3 whether any land to be vested in the Beneficiaries is to be vested in:

- (a) the Beneficiaries as tenants in common with each Beneficiary having an undivided interest equal to his or her proportionate interest as shown on the list approved by the Māori Land Court;
- (b) an ahu whenua trust constituted under section 215 of the Te Ture Whenua Māori Act 1993;
- (c) a Māori incorporation established under Part XIII of the Te Ture Whenua Māori Act 1993; or
- (d) such other manner as the Beneficiaries decide; and

19.4 such other matters as the Ancillary Claims Trustees wish to put to the meeting to assist them in the discharge of their functions.

20 Majority Decision if no Outcome Reached

If the Beneficiaries do not make a decision in accordance with the procedures set out in the Maori Assembled Owners Regulations 1995 to adopt any one of the options listed above in *paragraph 19*, they will be deemed to have chosen the option which received the most votes in accordance with those procedures.

21 Application to Court to Vest Property

As soon as practicable after the meeting referred to in *paragraph 18* has been held and a decision has been made (and, where the meeting decides the Claim Property is to be vested in a trust or incorporation, after the Ancillary Claims Trustees have received notice from the Beneficiaries that such entity has been established), the Ancillary Claims Trustees shall make an application to the Māori Land Court for an order vesting the Claim Property (or, where more than one option is offered, the property chosen by the Beneficiaries at the meeting) in the relevant Beneficiaries in the manner and with the status chosen by those Beneficiaries at their meeting. Such application shall be accompanied by an affidavit sworn by the Recording Officer of the meeting confirming that the meeting referred to in *paragraphs 18 and 19* was duly called and held, summarising the matters resolved at the meeting, and confirming that the vesting order sought from the Māori Land Court is consistent with the resolutions passed at the meeting. The Māori Land Court may make such a vesting order notwithstanding that the land to be vested is not Māori freehold land, and notwithstanding section 18 of the Te Ture Whenua Māori Act 1993.

PROCEDURE FOR IDENTIFICATION OF BENEFICIARIES

22 End of Ancillary Claims Trustees' Duties

Once the Māori Land Court has made the vesting order in respect of a Claim Property, the functions of the Ancillary Claims Trustees in respect of that Claim Property and the Ancillary Claim to which it relates will be at an end.

23 Privacy

The Ancillary Claims Trustees will endeavour to keep private any information provided to them by Beneficiaries or applicants to be Beneficiaries to the extent that this is consistent with their obligations under this *Attachment 14.2*.

FORM OF FENTON ENTITLEMENT

ATTACHMENT 14.3
FORM OF FENTON ENTITLEMENT
(Clause 14.6.2(c))

Created on [*insert date*]

PARTIES

- (1) **THE HOLDERS OF A FENTON ENTITLEMENT** (*the Holders*)
- (2) **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by the [*Land Holding Minister*] and the Minister of Māori Affairs (*the Crown*).

BACKGROUND

- A. On 21 November 1997 the Crown and Te Rūnanga entered into a Deed of Settlement (the “Deed of Settlement”) recording the matters required to give effect to a settlement of all the historical claims of Ngāi Tahu Whānui.
- B. Pursuant to the provisions of the Deed of Settlement on [*insert date*] Settlement Legislation came into force which provided for the creation of Fenton Entitlements on the terms set out in the Deed of Settlement.

THE PARTIES agree as follows:

1 INTERPRETATION

- 1.1 Terms defined in the Deed of Settlement and Settlement Legislation will have the same meaning in this Entitlement.
- 1.2 [*Insert other definitions as required by specific Entitlement*].

2 ENTITLEMENT LAND

The area which is the subject of this Entitlement is [*insert description of site and/or attach plans/map*] (the “entitlement land”) being adjacent to [*insert name of lake/river*] (the “Waterway”).

3 CREATION OF ENTITLEMENT

The Crown hereby creates in favour of the Holders an entitlement to temporarily and exclusively occupy the entitlement land for the purposes of permitting the Holders to have access to the Waterway for lawful fishing and gathering of other natural resources, on the terms and conditions set out in this Entitlement.

4 TERMS OF ENTITLEMENT

4.1 Length of Entitlement

Unless suspended pursuant to *clause 5*, this Entitlement shall be perpetual.

4.2 Entitlement Period

The Holders may occupy the entitlement land to the exclusion of any other person (other than agents of the Crown or other persons empowered by statute undertaking their normal functions in relation to the entitlement land) for an aggregate of up to 210 days in any calendar year (such days to exclude any day from 1 May to 15 August inclusive).

4.3 Temporary camping shelters

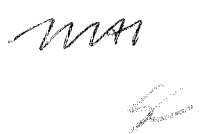
The Holders may erect camping shelters or similar temporary dwellings during the period or periods that the right to occupy temporarily the entitlement land under *clause 4.2* is being exercised, provided that the Holders shall be obliged to:

- 4.3.1 remove such camping shelters or temporary dwellings at any time that the right to temporarily occupy the entitlement land is not being exercised; and
- 4.3.2 leave the entitlement land in substantially the same condition as it was prior to the period that the right to temporarily occupy was exercised, except for temporary effects normally associated with this type of occupation.

4.4 Activities on Entitlement Land

Notwithstanding *clause 4.3*, but subject to *clauses 4.4.1* to *4.4.4* and *4.6*, the Holders may, with the consent of the Landholding Minister, undertake such activities on the entitlement land which may be reasonably necessary to enable the entitlement land to be used for the purposes set out in *clause 3*, provided that:

- 4.4.1 the giving of consent by the Landholding Minister pursuant to this *clause 4.4* shall be completely at his or her discretion and subject to such conditions as he or she thinks fit;
- 4.4.2 where the entitlement land is land held under the Conservation Act 1987 or any Act in the First Schedule to that Act the Landholding Minister may, in considering whether to give consent pursuant to this *clause 4.4*, require an environmental impact report in relation to the proposed activities, and an audit of that report at the Holders' expense, and impose reasonable conditions to avoid, remedy or mitigate any adverse effects of the activity on the entitlement land and the surrounding land or on any wildlife;



FORM OF FENTON ENTITLEMENT

- 4.4.3 when applying for any consent under this *clause 4.4* the Holders shall provide to the Landholding Minister details of the proposed activity including but not limited to:
- (a) the effect of the activity on the entitlement land and, where the entitlement land is land held under the Conservation Act 1978 or any Act in the First Schedule to that Act, on the surrounding land and upon any wildlife;
 - (b) any proposed measures by the Holders to avoid, remedy or mitigate any adverse effects;
- 4.4.4 provided that the Crown has complied with its obligations under this Entitlement, it shall not be obliged to compensate the Holders for any activities undertaken by the Holders pursuant to this *clause 4.4*, whether on suspension of this Entitlement or at any other time.

4.5 Continuing Public Access

The creation by the Crown and exercise by the Holders of this Entitlement shall not impede public access along the Waterway.

4.6 Compliance with laws

The Holders, and any activity carried on by the Holders on the entitlement land (including any work undertaken on the entitlement land pursuant to *clause 4.4*), will be subject to existing laws, bylaws and regulations and land and water management practices from time to time relating to the entitlement land.

4.7 Notification of Activities

In carrying out land and water management and practices relating to the entitlement land, the responsible Crown Agency will have regard to the existence of this Entitlement and accordingly will notify the Holders of any activity which may affect the Holders, and will avoid unreasonable disruption to the Holders.

4.8 Entitlement is not Assignable

The Holders may not assign or grant a subentitlement to their rights under this Entitlement, but, notwithstanding *clause 7*, the rights of any Holder under this Entitlement shall be disposed of in accordance with section 108 and 109 of the Te Ture Whenua Māori Act 1993.

4.9 Enforceability

- 4.9.1 During the term of this Entitlement and while any of the Holders are occupying the entitlement land pursuant to the terms of this Entitlement, it shall be

enforceable, subject to *clause 4.5*, by the Holders against third parties (but not against the Crown) as if they were the owner of the entitlement land.

- 4.9.2 The Crown is not obliged to enforce the rights of the Holders under this Entitlement against third parties on behalf of the Holders.

4.10 Right to Alienate Adjacent Land

The existence and exercise of this Entitlement will not restrict the Crown's right to alienate either the entitlement land or land adjacent to the entitlement land or adjacent to the Waterway next to which the entitlement land is situated.

4.11 Access Ensured

If the Crown alienates or amends the classification or status of land adjacent to the entitlement land with the result that lawful access to the entitlement land no longer exists, the Crown will, subject to its obligations to comply with any statutory or regulatory requirements, ensure that the Holders continue to have the same type of access to the entitlement land as existed prior to such alienation or change of classification or status, unless and until this Entitlement is suspended pursuant to *clause 5*.

4.12 Suspension of Entitlement for Reasons of Management

Subject to *clause 4.7*, this Entitlement may be suspended at any time at the discretion of the Crown Agency administering or responsible for the entitlement land, after consulting with the Holders and having particular regard to their views, if thought necessary for reasons of management in accordance with the purposes for which the land is held. Notwithstanding *clause 4.2*, if this Entitlement is suspended, the Holders may use the entitlement land outside the entitlement period described in *clause 4.2* for a time equal to the period of suspension.

5 SUSPENSION

5.1 Breach of Terms of Entitlement

- 5.1.1 Subject to *clause 5.1.4* below, if the Holders default in performing any of their obligations under this Entitlement, and such default is capable of remedy, the Crown may give written notice to the Holders specifying the default and the remedy which the Crown requires (which remedy must be reasonable in the relevant circumstances).
- 5.1.2 Unless within two calendar months after the giving of notice pursuant to *clause 5.1.1* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given pursuant to *clause 5.1.1* the Crown may immediately suspend this Entitlement by notice in writing to the Holders.

5.1.3 If the default is not one which is capable of remedy the Crown may immediately suspend this Entitlement by notice in writing to the Holders.

5.1.4 On suspension of this Entitlement pursuant to *clauses 5.1.2 or 5.1.3*, the Holders shall be entitled to apply to the Minister of Māori Affairs for reinstatement of the Entitlement after the expiry of two years from the date of suspension of this Entitlement.

This *clause 5.1.4* shall survive the suspension of this Entitlement.

5.2 Suspension for other reasons

The Crown may suspend this Entitlement and terminate its application to the entitlement land if:

- (a) the Crown alienates the entitlement land;
- (b) the entitlement land is destroyed or permanently detrimentally affected by any natural cause;
- (c) it is a condition of this Entitlement set out in *clause 8* that the entitlement land is on reserve land which may be required by the Crown for the specific purpose for which it was originally set apart as a reserve and it becomes so required;
- (d) subject to *clause 4.11*, if lawful access to the entitlement land no longer exists; or
- (e) the Customary Fishing Entitlement held by the Holder of this Entitlement is suspended, or the application of the Customary Fishing Entitlement to the entitlement area is terminated.

5.3 Reinstatement or Replacement of an Entitlement

On suspension of this Entitlement pursuant to *clause 5.2* and upon application by the Holders to the Minister of Māori Affairs, the Crown will take reasonable steps to reinstate this Entitlement (varied, if necessary, by agreement) or grant a replacement area of entitlement land.

6 RIGHTS OF THIRD PARTIES

Unless expressly provided in this Entitlement, the existence of this Entitlement will not affect the lawful rights or interests of any third party from time to time.

FORM OF FENTON ENTITLEMENT

7 LIMITATION OF RIGHTS

Unless expressly provided in this Entitlement, the existence of this Entitlement will not of itself have the effect of granting, creating or providing evidence of any estate or interest in or any rights of any kind whatsoever relating to the entitlement area.

8 SPECIAL CONDITIONS

[including special purpose specification]

[Execution provisions to be inserted]

MAI

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ATTACHMENT 14.4
FORM OF CUSTOMARY FISHING ENTITLEMENT
(Clause 14.6.19)

Created on [*insert date*]

PARTIES

- (1) **THE HOLDERS OF A CUSTOMARY FISHING ENTITLEMENT** (*the Holders*)
- (2) **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by the [*Land Holding Minister*] and the Minister of Māori Affairs (*the Crown*).

BACKGROUND

- A. On 21 November 1997 the Crown and Te Rūnanga entered into a Deed of Settlement (the “Deed of Settlement”) recording the matters required to give effect to a settlement of all the historical claims of Ngāi Tahu Whānui.
- B. Pursuant to the provisions of the Deed of Settlement on [*insert date*] Settlement Legislation came into force which provided for the creation of Customary Fishing Entitlements on the terms set out in the Deed of Settlement.

THE PARTIES agree as follows:

1 INTERPRETATION

- 1.1 Terms defined in the Deed of Settlement and Settlement Legislation will have the same meaning in this Entitlement.
- 1.2 [*Insert other definitions as required by specific Entitlement*].

2 ENTITLEMENT AREA

The area which is the subject of this Entitlement is [*insert description of bed of Waterway and/or attach plans/map*] on the bed of the [*insert name of lake/river*] (the “Waterway”) (the “entitlement area”).

3 CREATION OF ENTITLEMENT

The Crown hereby creates in favour of the Holders, subject to *clause 4.5*, an entitlement to temporarily and exclusively occupy the entitlement area for the purposes of permitting the Holders to lawfully fish and gather natural resources, on the terms and conditions set out in this Entitlement.

4 TERMS OF ENTITLEMENT

4.1 Length of Entitlement

Unless suspended pursuant to *clause 5*, this Entitlement shall be perpetual.

4.2 Entitlement Period

Subject to *clause 4.5*, the Holders may occupy the entitlement area to the exclusion of any other person (other than agents of the Crown or other persons empowered by statute undertaking their normal functions in relation to the entitlement area) for an aggregate of up to 210 days in any calendar year (such days to exclude any day from 1 May to 15 August inclusive).

4.3 Condition of entitlement area after use

The Holders shall be obliged to leave the entitlement area in substantially the same condition as it was prior to the period that the right to temporarily occupy was exercised.

4.4 Activities on Entitlement Area

Notwithstanding *clause 4.3*, but subject to *clauses 4.4.1 to 4.4.4* and *4.6*, the Holders may, with the consent of the Landholding Minister undertake such activities on the entitlement area which may be reasonably necessary to enable the entitlement area to be used for the purposes set out in *clause 3*, provided that:

4.4.1 the giving of consent by the Landholding Minister pursuant to this *clause 4.4* shall be completely at his or her discretion and subject to such conditions as he or she thinks fit;

4.4.2 where the entitlement area is land held under the Conservation Act 1987 or any Act in the First Schedule to that Act the Landholding Minister may, in considering whether to give consent pursuant to this *clause 4.4*, require an environmental impact report in relation to the proposed activities, and an audit of that report at the Holders' expense, and impose reasonable conditions to avoid, remedy or mitigate any adverse effects of the activity on the entitlement area and the surrounding Waterway or land or on any wildlife or fish species;

4.4.3 when applying for any consent under this *clause 4.4* the Holders shall provide to the Landholding Minister details of the proposed activity including but not limited to:

- (a) the effect of the activity on the entitlement area and, where the entitlement area is land held under the Conservation Act 1978 or any Act in the First Schedule to that Act, on the surrounding Waterway or land and upon any wildlife or fish species;

- (b) any proposed measures by the Holders to avoid, remedy or mitigate any adverse effects;

4.4.4 provided that the Crown has complied with its obligations under this Entitlement, it shall not be obliged to compensate the Holders for any activities undertaken by the Holders pursuant to this *clause 4.4*, whether on suspension of this Entitlement or at any other time.

4.5 Continuing Public Access

The creation by the Crown and exercise by the Holders of this Entitlement shall not prevent any person from lawfully passing through the entitlement area, whether on foot, or by boat, or otherwise.

4.6 Compliance with laws

The Holders, and any activity carried on by the Holders on the entitlement area (including any work undertaken on the entitlement area pursuant to *clause 4.4*), will be subject to existing laws, bylaws and regulations and land and water management practices from time to time relating to the entitlement area.

4.7 Notification of Activities

In carrying out land and water management and practices relating to the entitlement area, the responsible Crown Agency will have regard to the existence of this Entitlement and accordingly will notify the Holders of any activity which may affect the Holders, and will avoid unreasonable disruption to the Holders.

4.8 Entitlement is not Assignable

The Holders may not assign or grant a subentitlement to their rights under this Entitlement, but, notwithstanding *clause 7*, the rights of any Holder under this Entitlement shall be disposed of in accordance with section 108 and 109 of the Te Ture Whenua Māori Act 1993.

4.9 Enforceability

4.9.1 During the term of this Entitlement and while any of the Holders are occupying the entitlement area pursuant to the terms of this Entitlement, it shall be enforceable by the Holders against third parties (but not against the Crown) as if they were the owner of the entitlement area.

4.9.2 The Crown is not obliged to enforce the rights of the Holders under this Entitlement against third parties on behalf of the Holders.

4.10 Right to Alienate Adjacent Land or Waterway

The existence and exercise of this Entitlement will not restrict the Crown's right to alienate either the entitlement area or land or part of the Waterway adjacent to the entitlement area.

4.11 Access Ensured

If the Crown alienates or amends the classification or status of land adjacent to the entitlement area with the result that lawful access to the entitlement area no longer exists, the Crown will, subject to its obligations to comply with any statutory or regulatory requirements, ensure that the Holders continue to have the same type of access to the entitlement area as existed prior to such alienation or change of classification or status, unless and until this Entitlement is suspended pursuant to *clause 5*.

4.12 Suspension of Entitlement for reasons of management

Subject to *clause 4.7*, this Entitlement may be suspended at any time at the discretion of the Crown Agency administering or responsible for the entitlement area, after consulting with the Holders and having particular regard to its views, if thought necessary for reasons of management in accordance with the purposes for which the area is held. Notwithstanding *clause 4.2*, if this Entitlement is suspended, the Holders may use the entitlement area outside the entitlement period described in *clause 4.2* for a time equal to the period of suspension.

5 SUSPENSION

5.1 Breach of Terms of Entitlement

5.1.1 Subject to *clause 5.1.4* below, if the Holders default in performing any of their obligations under this Entitlement, and such default is capable of remedy, the Crown may give written notice to the Holders specifying the default and the remedy which the Crown requires (which remedy must be reasonable in the relevant circumstances).

5.1.2 Unless within two calendar months after the giving of notice pursuant to *clause 5.1.1* the default specified in the notice has been remedied or appropriate action has been taken to remedy the default as required in the notice given pursuant to *clause 5.1.1* the Crown may immediately suspend this Entitlement by notice in writing to the Holders.

5.1.3 If the default is not one which is capable of remedy the Crown may immediately suspend this Entitlement by notice in writing to the Holders.

5.1.4 On suspension of this Entitlement pursuant to *clauses 5.1.2* or *5.1.3*, the Holders shall be entitled to apply to the Minister of Māori Affairs for reinstatement of the

Entitlement after the expiry of two years from the date of suspension of this Entitlement.

This *clause 5.1.4* shall survive the suspension of this Entitlement.

5.2 Suspension for other reasons

The Crown may suspend this Entitlement and terminate its application to the entitlement land if:

- (a) the Crown alienates the entitlement area;
- (b) the entitlement area is destroyed or permanently detrimentally affected by any natural cause;
- (c) it is a condition of this Entitlement set out in *clause 8* that the entitlement area is part of reserve land which may be required by the Crown for the specific purpose for which it was originally set apart as a reserve and it becomes so required;
- (d) subject to *clause 4.11*, if lawful access to the entitlement area no longer exists; or
- (e) the Fenton Entitlement held by the Holders of this Entitlement is suspended, or the application of the Fenton Entitlement to the entitlement land is terminated.

5.3 Reinstatement or Replacement of an Entitlement

On suspension of this Entitlement pursuant to *clause 5.2* and upon application by the Holders to the Minister of Māori Affairs, the Crown will take reasonable steps to reinstate this Entitlement (varied, if necessary, by agreement) or grant a replacement entitlement area.

6 RIGHTS OF THIRD PARTIES

Unless expressly provided in this Entitlement, the existence of this Entitlement will not affect the lawful rights or interests of any third party from time to time.

7 LIMITATION OF RIGHTS

Unless expressly provided in this Entitlement, the existence of this Entitlement will not of itself have the effect of granting, creating or providing evidence of any estate or interest in or any rights of any kind whatsoever relating to the entitlement area.

8 SPECIAL CONDITIONS

[including special purpose specification]

[Execution provisions to be inserted]

MAN

[Handwritten mark]

ATTACHMENT 14.5
OPERATING EASEMENT OVER THE BUSHY POINT SITE
(Clause 14.11.2(a)(ii))

Entered in the Register Book as
 Volume folio
 (Registry) this
 day of 19
 at o'clock

For District Land Registrar

DEED OF GRANT OF EASEMENT
 (Pursuant to Section 60 Land Act 1948)

RIGHT TO STORE WATER

THIS DEED made this day of 199

BETWEEN **HER MAJESTY THE QUEEN** acting by and through the
 Commissioner of Crown Lands appointed under Section
 12A(1) of the Survey Act 1986 (hereinafter with Her
 successors and assigns referred to as "the Grantor")

AND **CONTACT ENERGY LIMITED** at Wellington (with its
 successors, assigns and subsidiaries together with its servants,
 agents, workers, tenants, licensees, invitees, employees,
 engineers, surveyors and contractors referred to as "the
 Grantee")

A. **THE** Grantor is the owner pursuant to the Land Act 1960 of that parcel
 of land described as Otago Land District, Queenstown Lakes District
 Council, an undefined area (subject to survey) being Part Recreation
 Reserve, Block I, Mid Hawea Survey District, (SO Plan 2289). Subject
 to survey as shown on *Allocation Plan A238 (SO 24696)*. Part New
 Zealand Gazette 1891 page 1049 subject to a proposed Ngā Whenua
 Rāhui kawenata, and an undefined area being Part Recreation Reserve,
 Block I, Mid Hawea Survey District (SO Plan 12464) subject to survey as
 shown on *Allocation Plan A238 (SO 24696)* Part Gazette Notice 267479
 (New Zealand Gazette 1964, page 14) ("the Easement Land").

OPERATING EASEMENT OVER THE BUSHY POINT SITE

- B.** **THE** Grantee is the owner of that parcel of land described as [] ("the Dominant Land") upon which it operates a power station.
- C.** **THE** Ministers of Finance and State Owned Enterprises and the Grantee by a Deed of Operating Easement dated 16 April 1993 agreed inter alia that the beds of lakes and rivers would not be transferred to the Grantee and that to enable the Grantee to carry out the electricity generation business operated by it from time to time certain operating easements would be granted.
- D.** **THE** Grantee is desirous of an easement to Store Water from time to time over parts of the Easement Land.
- E.** **THE** Commissioner of Crown Lands has agreed pursuant to Section 60 of the Land Act 1948 to the grant of a Right to Store Water over the Easement Land together with the ancillary rights attaching thereto upon the terms and conditions contained in this Deed.

IT IS AGREED that pursuant to the premises contained in this Deed and the said agreement, the Grantor pursuant to Section 60 of the Land Act 1948 **CONVEYS AND GRANTS** to the Grantee as an easement appurtenant to the Dominant Land the right to store water from time to time on or about the Easement Land, the right to maintain the Easement Land in such a manner to store water and when required by the Grantee to release from time to time that water in such quantities as it shall determine on the terms and conditions contained in this Deed as follows:

1. The water may be stored and retained on or about the Easement Land up to the operating levels determined from time to time by the Grantee in its sole discretion for the dams or structures from time to time on or adjacent to the Easement Land or situated elsewhere but in respect of which the Grantee is exercising its rights under this easement ("the Dams or Structures") and in accordance with any resource consents or other statutory or regulatory consents or approvals held by the Grantee from time to time. In the event of unusually heavy rainfall or unusually heavy inflow of water which impacts on the water levels on or about the Easement Land or any other cause beyond the reasonable control of the Grantee then the Grantee may store and retain water on or about the Easement Land up to the designed flood level of the Dams or Structures. If lawfully directed or requested so to do by a civil defence authority or if required in any other case beyond the reasonable control of the Grantee then the storage of water may be beyond the designed flood level.
2. Where the Easement Land or any part of it forms the bed of a natural waterway the Grantee shall have the right to from time to time discharge water into that

OPERATING EASEMENT OVER THE BUSHY POINT SITE

waterway in accordance with resource consents or other statutory or regulatory consents or approvals held by the Grantee from time to time. If lawfully directed or requested to do so by a civil defence authority or if required in any other case beyond the reasonable control of the Grantee then the discharge of water to that waterway or to the Easement Land may be made beyond the levels authorised by such consents or approvals.

3. The Grantee may from time to time if it sees fit install and maintain booms and other floating equipment on any lake or reservoir on the Easement Land used for the storage of water and shall have the right to anchor such equipment on the Easement Land. The Grantee may if it sees fit from time to time install and maintain monitoring and measuring equipment and structures, safety devices and similar equipment on the Easement Land. Except in the case of emergency, the installation of such devices and equipment shall not be undertaken without the Grantee first having obtained the consent of the Grantor. All booms, floating equipment, monitoring and measuring equipment, structures, safety devices and similar equipment existing at the Date of this Deed shall be deemed to be installed with the Grantor's consent.
4. The Grantee may from time to time undertake works and/or carry out planting of vegetation on or about the Easement Land with a view to limiting or minimising erosion, land subsidence, land slippage, landslides or flooding. The Grantee shall use reasonable endeavours when carrying out such works and plantings to so far as practicable carry out the same in keeping with the character of the Operating Easement Land and the Grantee shall use reasonable endeavours to reduce erosion, land subsidence, land slippage and landslides on the Easement Land by available practical and economic means as determined by the Grantee in its reasonable opinion. Nothing in this clause shall be taken to restrict or hinder the Grantee from raising or lowering the level of the water situated from time to time on or about the Easement Land during the course of carrying on from time to time the Grantee's electricity generation business. The Grantee may from time to time remove from any water on or about the Easement Land or remove from any part of the Easement Land and/or redistribute or relocate, whether on the Easement Land or elsewhere, any sediment or other material or any vegetation which in the opinion of the Grantee is impeding or likely to impede the efficient generation of electricity by the Grantee or to cause danger, injury or damage to persons or property on or about the Easement Land. In all such cases work carried out under this clause shall (except in the case of an emergency) first have the consent of the Grantor.
5. The Grantee may from time to time erect structures and do works on the Easement Land for the purpose of the exercise of any of the Grantee's rights under this Deed **PROVIDED THAT** this right shall not be exercised without the consent of the

OPERATING EASEMENT OVER THE BUSHY POINT SITE

Grantor. All structures and works existing at the Date of this Deed shall be deemed to have been erected with the Grantor's consent.

6. The Grantee may from time to time deposit sediment or other material on or about the Easement Land **PROVIDED THAT** where the appearance or use of the Easement Land is or may be thereby adversely affected, as agreed by both parties in consultation with each other, the Grantee shall carry out reasonable landscaping of the affected area in a manner approved by the Grantor.
7. The Grantee may from time to time store goods and materials of all kinds on or about the Easement Land **PROVIDED THAT** this right shall not be exercised without the consent of the Grantor and **PROVIDED FURTHER THAT** should permanent storage be required in the reasonable opinion of the Grantee then the Grantee shall purchase that part of the Easement Land at the then current market value to be determined in the manner provided in clause 22 of this Deed. All goods and materials stored on or about the Easement Land at the Date of this Deed shall be deemed to have been stored with the Grantor's consent.
8. The Grantee shall at all times for the purpose of exercising any of the rights granted under this Deed have the right to operate upon any area of water on the Easement Land, any vessel, plant or equipment and in connection therewith from time to time to establish and maintain jetties, wharves, landing places and slipways **PROVIDED THAT** no such jetties, wharves, landing places and slipways shall be established after the Date of this Deed without the consent of the Grantor. All jetties, wharves, landing places and slipways existing at the Date of this Deed shall be deemed to have been established with the Grantor's consent.
9. The Grantee may from time to time if it considers that there is an emergency situation involving public safety or the security of electricity generation temporarily exclude entry by any persons to all or any parts of the Easement Land. In cases where there is no emergency the Grantee may also with the Grantor's prior approval temporarily or permanently and/or from time to time exclude persons from all or any parts of the Easement Land. Where entry is excluded the Grantor will not authorise or permit entry thereon except after giving notice to the Grantee and for the purpose of inspecting the condition of the Easement Land or doing any act required to be done by it under this Deed. Where permanent exclusion is warranted in the reasonable opinion of the Grantee then the Grantee shall with the prior approval of the Grantor purchase the Easement Land or part or parts thereof at the then current market value to be determined in the manner provided in clause 22 of this Deed.

OPERATING EASEMENT OVER THE BUSHY POINT SITE

10. The Grantee may take such measures as it reasonably thinks necessary for the safety of persons or property on or about the Easement Land including without limitation the right to erect signs and notices warning of any danger.
11. The Grantee shall have the right from time to time to do all such acts and things as are reasonably necessary for the better enjoyment of the rights granted by this Deed of Grant of Easement or consequential thereto.
12. In all cases where the consent or approval of the Grantor is required under this Deed such consent or approval shall be deemed granted for the day to day or other activities of the Grantee properly and reasonably required for the carrying on of its electricity generation business from time to time and in the event that the consent or approval is not deemed granted, such consent or approval shall not be unreasonably withheld or granted upon unreasonable conditions, or granted subject to the payment of money or other consideration.
13. The Grantee shall be entitled from time to time to apply for any resource consents and any other statutory consents required for the purpose of the exercise of any of the Grantee's rights under this Deed in the same manner as if it were the registered proprietor of the Easement Land **PROVIDED THAT** it shall at the time of making the relevant application forward a copy to the Grantor **AND** the Grantor shall provide upon written request from the Grantee, at the reasonable cost of the Grantee, a reasonable degree of support, co-operation and/or assistance (including written submissions in support) in respect of such application(s).
14. All structures, plant and equipment made or installed by the Grantee on the Easement Land shall remain the property of the Grantee and may at any time be removed by it **PROVIDED THAT** any substantial damage caused by such removal shall immediately be remedied by the Grantee at its cost.
15. The Grantee shall use all reasonable endeavours to cause as little disturbance and disruption to the carrying on of the normal business operations of the Grantor although the Grantor accepts that this provision shall not prevent, restrict or hinder the Grantee from carrying out its business in a normal manner consistent with the rights granted to it in this Deed.
16. The Grantee shall not be required to fence any of the Easement Land unless it is required as a condition of the Grantor's consent when granting any consent hereunder where that condition would be reasonable.
17. The parties to this Deed accept and acknowledge that all improvements connected with the use rights contained in this Deed shall remain in the ownership of the Grantee until they are removed by the Grantee or upon this Deed ceasing or being



OPERATING EASEMENT OVER THE BUSHY POINT SITE

surrendered whereupon ownership shall vest and pass to the Grantor except where such improvements are in the process of being removed by the Grantee at the time of this Deed ceasing or being surrendered. The Grantee shall not be entitled to any compensation or damages for any improvements to the Easement Land effected by it.

18. The Grantor undertakes to give the Grantee not less than 6 months notice of any intention to sell, lease or otherwise dispose of any part of the Easement Land or carrying out or permitting any development or change of use thereof and shall (before, or contemporaneously with, agreeing any contract or agreement for any such sale, transfer or other disposal with a third party) consult with the Grantee and procure that that third party enter into a Deed of Covenant pursuant to clause 19 of this Deed.
19.
 - (i) The Grantor agrees to procure a Deed of Covenant (in such form as the Grantee may reasonably require) from any contemplated successor in title to any or all of the Easement Land that that successor in title will be bound by the terms of this Deed.
 - (ii) Until such time as any successor in title to the Easement Land executes a deed of covenant in accordance with paragraph 19 (i), such successor in title shall be deemed to be bound by the terms of this Deed.
20. The Grantor shall, whenever called upon by the Grantee and at the cost of the Grantee, execute such further deeds and assurances such as registrable Easements and/or Encumbrances at a nominal rent charge in perpetuity and arrange for any titles to be produced if required by the Grantee as may be necessary to give full and proper effect to the rights granted in favour of the Grantee rising out of and from this Deed and to enable those rights to be registered against any gazette notice or title which issues in respect of the Easement Land.
21. The Grantee shall be entitled at any time to surrender at its own cost all or any part of the easement interest granted to it pursuant to this Deed. The Grantor shall execute any deed of surrender upon request by the Grantee pursuant to clause 20 above.
22. For the purpose of clause 7 of this Deed the current market value of the relevant land shall be determined by a registered valuer appointed by each party and if they cannot agree to be determined by an umpire to be appointed by those valuers prior to their entering into the determination of the matter.
23. The Grantee shall be entitled to transfer or assign its rights and obligations under this Deed as to the whole or any parts of the Easement Land. In any such case

upon the assignee or transferee becoming liable under this Deed or notifying the Grantor that it has assumed the relevant obligations of the Grantee under this Deed, the provisions of this Deed shall cease to be binding upon the assignor or transferor in respect of the relevant parts of the Easement Land (or if applicable, the whole of the Easement Land) but without prejudice to the assignor's or transferor's liability for any antecedent breach of covenant under this Deed.

24. (i) In the event of any dispute arising between the parties in respect of or in connection with this Agreement, the parties shall, without prejudice to any other right or entitlement they may have under this Agreement or otherwise, explore whether the dispute can be resolved by use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the parties or as recommended by the New Zealand Law Society or as selected by the Chairman of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (ii) In the event the dispute is not resolved within twenty eight days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration under the provisions of the Arbitration Act 1996 or any amendment or re-enactment of it. The arbitrator shall be agreed between the parties within 10 days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the New Zealand Law Society. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
25. (i) All notices and communications under this Deed shall be deemed to have been received when delivered personally, sent by prepaid post or by facsimile to such address as either party shall notify to the other from time to time.
- (ii) All consents approvals or other matters of whatsoever kind or nature to be given or received by the Grantor shall be given or received by the Commissioner of Crown Lands and shall be given or received by him on behalf of the Grantor and shall be binding and effectual upon the parties to this Deed.
26. The Grantor shall not at any time do permit or suffer to be done any act whereby the rights powers licences and liberties granted to the Grantee may be interfered with or affected in any way.

OPERATING EASEMENT OVER THE BUSHY POINT SITE

27. Except as otherwise specifically provided for in this Deed, where the Grantor shall permit any third party to enter the Easement Land the Grantor shall indemnify the Grantee against any action or claim by that third party arising out of loss or injury suffered by that party by reason of any action or claim by that third party arising out of loss or injury suffered by that party by reason of any act or omission of the Grantee in the exercise of its rights and privileges under this Deed **PROVIDED THAT** this indemnity shall be void and of no effect in the case of negligence by the Grantee being the direct cause of the loss or injury.

EXECUTED as a Deed

SIGNED for and on behalf of)
Her Majesty the Queen by the)
Commissioner of Crown Lands)
in the presence of:)

COMMISSIONER OF CROWN LANDS

Witness Name:

Occupation:

Address:

SIGNED for and on behalf of)
[])

Name of Director

Signature of Director

Name of Director

Signature of Director

MM
SC

SCHEDULE ONE

INTERPRETATION

For the purpose of the interpretation or construction of this Deed and the Background recitals unless the context permits otherwise or a contrary intention is express:

- (a) “this Deed” means this Deed of Grant of Easement and includes any Schedule and any annexure to this Deed;
- (b) “Date of this Deed” means the date upon which this Deed was executed;
- (c) a “person” shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, province, territorial authority or agency of a province in each case whether or not having separate legal personality;
- (d) “writing” shall include words visibly represented or reproduced;
- (e) words importing the masculine gender shall include the feminine or neuter gender;
- (f) words importing the singular shall include the plural and vice versa;
- (g) references to clauses are references to clauses in this Deed and references to parties and the Schedules are references to the parties and the Schedules in this Deed unless expressly stated otherwise;
- (h) any reference in this Deed to any statute or Rules is deemed to include all amendments revisions substitutions or consolidations made from time to time to that statute or Rules;
- (i) derivations of defined terms have similar meanings; and
- (j) headings shall be ignored.

SCHEDULE TWO

Plan of Operating Easement Land

ATTACHMENT 14.6
NGĀ WHENUA RĀHUI KAWENATA OVER THE BUSHY POINT SITE
(Clause 14.11.2(a)(iv))

NGA WHENUA RAHUI KAWENATA - BUSHY POINT

(Section 77A Reserves Act 1977)

THIS DEED made the _____ day of _____ 199....

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

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

WHEREAS

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

NGĀ WHENUĀ KAWENATA OVER THE BUSHY POINT SITE

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

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

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

CONDITIONS**1 MANAGEMENT OBLIGATIONS**

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

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

- 1.4. Unless required to do so pursuant to statute, neither the Landowners nor the Minister shall carry out or allow to be carried out without the prior approval of the other party to this Deed:
- (a) the taking of any native plants, shrubs, trees or animals PROVIDED that the Landowners may authorise the removal of certain native plants, shrubs and plant material from the land for traditional Māori purposes on a sustainable basis;
 - (b) any burning, topdressing or the sowing of exotic seed on the land;
 - (c) any significant cultivation, earthworks or other soil disturbance on the land;

NGĀ WHENUĀ KAWENATA OVER THE BUSHY POINT SITE

- (d) any replanting programme on the land except the planting of indigenous species characteristic of the district in which the land is situated;
- (e) the erection of any fence, building, structure or other improvements on the land; and
- (f) any activity on the balance of the Landowners' land which will adversely affect the land or the objectives of this Deed.

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

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

2 PUBLIC ACCESS

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

3 ACCESS FOR MINISTER

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

4 PAYMENT OF COSTS/PROVISION OF ADVICE OR ASSISTANCE

4.1 The Minister may in the Ministers discretion pay to the Landowners a proportionate share of the following:

- (a) the cost of new fences or the repair and maintenance of existing fences upon the land if such work has first been approved by the Minister;

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

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

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

5 REVIEW OF KAWENATA

- 5.1 The covenants contained in this Deed shall bind the Minister and the Landowners successors and assigns and shall bind any lessee for the term of any lease and, subject to the terms of any review in terms of this clause, are intended to continue in perpetuity.
- 5.2 The Landowners and the Minister, while recognising their mutual intention that this Deed shall continue in perpetuity, shall review the objectives, conditions and continuance of this Deed at successive intervals of twenty-five (25) years from the date of execution.

- 5.3 On any review of this Deed the parties may mutually agree to vary any clause or clauses in this Deed except this clause 5.
- 5.4 The parties agree that in reviewing the objectives, conditions and continuance of this Deed under clause 5.2, the Minister shall have regard to the manawhenua of the Landowners.
- 5.5 The parties agree that the Deed may not be terminated except with the agreement of both parties.

6 MISCELLANEOUS

6.1 For the avoidance of doubt:

- (a) only if the Landowners first ensure that, in the case of a lessee, or in the case of a purchaser of the land or transferor or other successor-in-title to the land entering into a Deed to abide by the terms of this Deed will the Landowners not be personally liable in damages for any breach of covenant committed after the Landowners have parted with all interest in the land in respect of which such a breach occurs;
- (b) where there is more than one owner of the leasehold of, or fee simple title to, the land, the covenants contained in this Deed shall bind each owner jointly and severally;
- (c) where the Landowners are a company the covenants contained in this Deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Landowners are a natural person this Deed shall bind the Official Assignee. In either case this Deed binds a mortgagee in possession; and
- (d) the reference to any Act in this Deed extends to and includes any amendment to, or re-enactment or consolidation of that Act, or any Act passed in substitution for that Act.

7 NOTICE

- 7.1 Any notice required to be given to the Landowners in terms of this Deed shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952 and shall be sufficiently given if sent by post or delivered to the residential address of the Landowners or the Landowners' solicitor.

ATTACHMENT 14.7
NGĀ WHENUA RĀHUI KAWENATA OVER SITE B
(Clause 14.14.5(c))

NGĀ WHENUA RĀHUI KAWENATA - SITE B

(Section 77A Reserves Act 1977)

THIS DEED made the _____ day of _____ 199

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

AND THE MINISTER OF CONSERVATION (“the Minister”).

WHEREAS

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

NGĀ WHENUĀ KAWENATA OVER SITE B

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

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

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

CONDITIONS

1 MANAGEMENT OBLIGATIONS

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

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

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

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

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

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

2 PUBLIC ACCESS

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

3 ACCESS FOR MINISTER

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

4 PAYMENT OF COSTS/PROVISION OF ADVICE OR ASSISTANCE

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

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

- 4.3. The Minister may:
- (a) provide to the Landowners from time to time, and at any time upon request by the Landowners, such technical advice or assistance as may be necessary or desirable to assist in meeting the objectives set out in this Deed; and

- (b) prepare, in consultation with the Landowners, a joint plan for the management of the land designed to implement the objectives of this Deed to the mutual satisfaction of the parties.

5 REVIEW OF KAWENATA

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

6 MISCELLANEOUS

- 6.1 For the avoidance of doubt:
- (a) only if the Landowners first ensure that, in the case of a lessee, or in the case of a purchaser of the land or transferor or other successor-in-title to the land entering into a Deed to abide by the terms of this Deed will the Landowners not be personally liable in damages for any breach of covenant committed after the Landowners have parted with all interest in the land in respect of which such a breach occurs;
- (b) where there is more than one owner of the leasehold of, or fee simple title to, the land, the covenants contained in this Deed shall bind each owner jointly and severally;

- (c) where the Landowners are a company the covenants contained in this Deed shall bind a receiver, liquidator, statutory manager or statutory receiver. Where the Landowners are a natural person this Deed shall bind the Official Assignee. In either case this Deed binds a mortgagee in possession; and
- (d) the reference to any Act in this Deed extends to and includes any amendment to, or re-enactment or consolidation of that Act, or any Act passed in substitution for that Act;

7 NOTICE

7.1 Any notice required to be given to the Landowners in terms of this Deed shall be sufficiently given if made in writing and served as provided in section 152 of the Property Law Act 1952 and shall be sufficiently given if sent by post or delivered to the residential address of the Landowners or the Landowners' solicitor.

7.2 Any notice required to be given by the Minister shall be sufficiently given if it is signed by the Manager, Forest Funds, Department of Conservation. Any notice required to be served upon the Minister shall be sufficiently served if delivered to the office for the time being of the Director-General, Attention: Manager Forest Funds, Department of Conservation.

8 DISPUTE RESOLUTION

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

ATTACHMENT 14.8
EASEMENT OVER THE BRUCE BAY SITE (NO. 1)
(Clause 14.15.2(a)(i))

MEMORANDUM OF TRANSFER GRANTING RIGHT OF WAY

Recitals

- A The Ancillary Claims Trustees (*the Grantor*) are registered as proprietor of an estate in fee simple in all that parcel of land described as Westland Land District, Westland District Council, 1.0 hectare, approximately, being Legal Road adjoining Reserve 2113 and Section 1 SO Plan 12347. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507) (the Servient Land)*.
- B *[Names, addresses and occupations of persons to whom the easement is to be granted in favour of to come] (the Grantee)* is registered as proprietor of an estate in fee simple in all that parcel of land described as Westland Land District, Westland District Council, 0.1500 hectares, more or less, being Part Reserve 2113 (SO 5201). Part New Zealand Gazette 1986 page 4859. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507)* and the land described as Westland Land District, Westland District Council, 0.4100 hectares, more or less, being Section 1 SO Plan 12347. Subject to the Land Act 1948. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507) (the Dominant Land)*.

1 Grant Of Easement

In consideration of the terms of the vesting of the Servient Land in the Grantor by the Crown pursuant to the Ngāi Tahu Deed of Settlement, the Grantor transfers and grants to the Grantee, to be connected to the Dominant Land for all time, the full, free, uninterrupted, and unrestricted right, liberty, and privilege for the Grantee, the Grantee's servants, tenants, agents, workers, licensees and invitees (in common with the Grantor, the Grantor's tenants, and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go, pass and repass, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind, over and along that part of the Servient Land marked ["A"] on the plan deposited in the Westland Land Titles Office under No. *[To come]* for all purposes connected with the use and enjoyment of the Dominant Land, but not for any other purpose.

2 Covenants

The Grantor and the Grantee agree as follows:

- 2.1 No power is implied for the Grantor to determine this right of way for any breach of covenant or condition (express or implied) or for any other cause

EASEMENT OVER THE BRUCE BAY SITE (NO. 1)

whatever. It is the intention of the parties that this right of way shall subsist forever or until it is duly surrendered.

- 2.2 All disputes arising between the parties concerning the interpretation of this grant, or the rights and obligations of the parties, shall be referred to arbitration in accordance with the Arbitration Act 1996 and the substantive laws of New Zealand. The arbitration shall be conducted by a sole arbitrator to be agreed upon by the parties or, failing agreement, to be appointed by the then President of the New Zealand Law Society. The award in the arbitration shall be final and binding on the parties.

Dated the _____ day of _____ 1997

SIGNED by the
ANCILLARY CLAIMS TRUSTEES
by:

[Details of execution provision to come]

Signed by [GRANTEE'S NAME]

in the presence of:

Name:

Occupation:

Address:

Correct for the purposes of the Land Transfer Act

Solicitor for the Grantee

ATTACHMENT 14.9
EASEMENT OVER THE BRUCE BAY SITE (NO. 3)
(Clause 14.15.2(a)(iii))

MEMORANDUM OF TRANSFER GRANTING RIGHT OF WAY

Recitals

- A The Ancillary Claims Trustees (*the Grantor*) are registered as proprietor of an estate in fee simple in all that parcel of land described as Westland Land District, Westland District Council, 0.4100 hectares, more or less, being Section 1 SO Plan 12347. Subject to the Land Act 1948. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507) (the Servient Land)*.
- B [*Names, address' and occupations of persons to whom the easement is to be granted in favour of to come*] (*the Grantee*) is registered as proprietor of an estate in fee simple in all that parcel of land described as Westland Land District, Westland District Council, 1.0 hectare, approximately, being Legal Road adjoining Reserve 2113 and Section 1 SO Plan 12347. Subject to survey as shown on *Allocation Plan A 480, 481 & 482 (SO 12507) (the Dominant Land)*.

1 Grant Of Easement

In consideration of the terms of the vesting of the Servient Land in the Grantor by the Crown pursuant to the Ngāi Tahu Deed of Settlement, the Grantor transfers and grants to the Grantee, to be connected to the Dominant Land for all time, the full, free, uninterrupted, and unrestricted right, liberty, and privilege for the Grantee, the Grantee's servants, tenants, agents, workers, licencees and invitees (in common with the Grantor, the Grantor's tenants, and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go, pass and repass, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind, over and along that part of the Servient Land marked ["A"] on the plan deposited in the Westland Land Titles Office under No. [*To come*] for all purposes connected with the use and enjoyment of the Dominant Land, but not for any other purpose.

2 Covenants

The Grantor and the Grantee agree as follows:

- 2.1 No power is implied for the Grantor to determine this right of way for any breach of covenant or condition (express or implied) or for any other cause whatever. It is the intention of the parties that this right of way shall subsist forever or until it is duly surrendered.

2.2 All disputes arising between the parties concerning the interpretation of this grant, or the rights and obligations of the parties, shall be referred to arbitration in accordance with the Arbitration Act 1996 and the substantive laws of New Zealand. The arbitration shall be conducted by a sole arbitrator to be agreed upon by the parties or, failing agreement, to be appointed by the then President of the New Zealand Law Society. The award in the arbitration shall be final and binding on the parties.

Dated the _____ day of _____ 1997

SIGNED by the
ANCILLARY CLAIMS TRUSTEES
by:

[Details of execution provision to come.]

Signed by **[GRANTEE'S NAME]**

in the presence of:

Name:

Occupation:

Address:

Correct for the purposes of the Land Transfer Act

Solicitor for the Grantee

ATTACHMENT 14.10
CROWN LETTER TO THE DUNEDIN CITY COUNCIL CONCERNING
THE KARITANE SITE
(Clause 14.17.2)

*[Letterhead of the Office of the Minister in Charge of Treaty of Waitangi
Negotiations]*

The Mayor and Councillors
Dunedin City Council
PO Box 5045
DUNEDIN

Dear Mayor and Councillors

Ngāi Tahu Settlement: Karitane ancillary claim

As you will be aware, the Crown and Ngāi Tahu have recently signed a Deed of Settlement for all of Ngāi Tahu's historical Treaty of Waitangi claims against the Crown.

As part of the Settlement, I have agreed to write to you regarding one of the Ancillary claims involved in the Settlement: claim no. 50, Karitane.

The claim relates to land associated with reserves at Waikouaiti set aside by Walter Mantell in 1848. The reserve was subsequently partitioned by order of the native Land Court, with a 20 acre block at Karitane marked off, and surveyed in 1888 into 54 township sections. A strip of land along the Karitane foreshore formed part blocks 25 and 26, an area of 1 acre 2 roods 10 perches, which was unallocated. In 1929 the Native Land Court found that the strip of land between the township blocks and mean high water mark was still Native land, and part was a burial round. In 1937, on application to the Native Land Court, the land was declared a native reserve for burial purposes, a landing place, meeting place and recreation ground, and the Native Trustee was appointed trustee of the reserve.

Over the years the land was generally used by the public. In 1962 the Māori Trustee relinquished ownership and control over the reserve. It was vested in trustees appointed by the tribal committee, the Waikouaiti Māori Foreshore Trust Board. The Trust Board did work on the reserve, to form an amenity and parking area. This area was built up on a strip of beach either left by accretion as the high water mark receded, or it was reclaimed from the foreshore.

During the 1960's the Marine Department became concerned that an illegal reclamation encroached on the foreshore and could be transferred to private ownership. The Minister of Lands declined to transfer control of the reclamation to the Waikouaiti Maori Foreshore Trust Board. In 1966 the Marine Department determined to deal with the matter under the Harbours Act 1950 by validating the reclamation by Order in Council, and vesting the land in the Council. It was suggested that otherwise the trustees of the adjacent reserve would be required to remove the reclamation.

Subsequently, the Trust Board agreed to lease the reserve to the County Council. The County Council agreed to validate the reclamation and have it vested in the Council's control, and the Domain Board agreed to transfer its control over the foreshore and adjoined land to the Council. The reclamation was declared a recreation reserve and vested in the council in trust for that purpose: *New Zealand Gazette 1968/2038*. No title has been issued for the reclamation area. The area of the subject land was gazetted as being 3 roods 17 perches. The Dunedin City Council now has that interest.

To summarise, the grievance alleged is that the work done by the claimants to improve their land has been used to claim that same land for public ownership as a reclamation. The claimants state that the work they did was on natural accretion, and the land should have remained in their ownership.

As the Crown does not own the disputed area, it is unable to take steps to remedy the grievance in this case. I am aware that this dispute could potentially be resolved by an application to the Māori Land Court under s 131 of Te Ture Whenua Māori Act, which gives the Court the jurisdiction to determine and declare the particular status of any land. However, I am hopeful that a solution might be reached between the Dunedin City Council and the Trustees, which would avoid such a costly and lengthy process.

I am conscious of the support the Council has given to other aspects of the Settlement, in particular the difficult and complex situation at Taiaroa Heads. I urge you to take advantage of the opportunity provided by the Settlement to reach an agreement over the issue at Karitane. Please feel free to contact Margaret Dugdale (04 494 9857) at the Office of Treaty Settlements if there is any further information that might assist you.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

ATTACHMENT 14.11
EASEMENT FOR ACCESS TO THE TAUTUKU SITE
(Clause 14.19.2)

MEMORANDUM OF TRANSFER GRANTING EASEMENT

THIS DEED made the _____ day of _____ 1997
between the **MINISTER OF CONSERVATION** (together with his successors
and assigns, the *Grantor*; and

[NAME OF GRANTEE] (hereinafter together with its successors and assigns,
the *Grantee*.

BACKGROUND

- 1 Her Majesty the Queen is the owner, subject to the Reserves Act 1977, of all that parcel of land an undefined area being part Section 1, Block XIII Tautuku Survey District, [(ML Plan 239)]. Subject to survey as shown on *Allocation Plan A223, Sheet 2 of 2 (SO 24737)*. [Part Gazette Notice 529733 (New Zealand Gazette 1979 page 3308)] (hereinafter called “the servient tenement”); and
- 2 The Grantee is registered as proprietor of an estate in fee simple subject however to such encumbrances liens and interests as are notified by memorandum underwritten or endorsed hereon in all that piece of land containing the land described as 88.2063 hectares, more or less, being Section 2, Block XIII Tautuku District, as described in CT 168/263 (Otago Registry) and as shown on *Allocation Plan A 223, sheet 2 of 2 (SO 24737)* (hereinafter called “the dominant tenement”); and
- 3 The Grantor in pursuance of the powers conferred on him by section 59A of the Reserves Act 1977 has agreed to convey and grant to the Grantee the easement hereby created subject to the terms and conditions contained in this Memorandum.

NOW THEREFORE THIS DEED WITNESSES that in pursuance of the premises the Grantor hereby conveys and grants to the Grantee the full, free, uninterrupted and unrestricted right, liberty and privilege for the Grantee its servants, tenants, agents, workers, licensees and invitees (in common with the Grantor his tenants and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go pass and repass with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery and implements of any kind over and along that part of the servient tenement shown marked with the letter “A” on S.O. Plan []

TO THE INTENT that the easement hereby created shall forever be appurtenant to the dominant tenement

AND IT IS HEREBY AGREED AND DECLARED by and between the Grantor and the Grantee:

- 1 The Grantee shall as soon as practicable metal the right of way and maintain it at all times to a standard acceptable to the Grantor.
- 2 The Grantee shall as soon as practicable install a locked gate at the road entrance to the right of way.
- 3 The rights implied in paragraph 2(c) in easements of vehicular right of way by the ninth schedule to the Property Law Act 1952 are hereby expressly negated insofar as they apply to Her Majesty the Queen.

EXECUTED on

SIGNED for and on behalf of the
MINISTER OF CONSERVATION
by Jeff Connell, Regional Conservator,
Otago Conservancy, pursuant to a delegation
given to him by the Minister of Conservation
and dated the 27th day of June 1996 in the
presence of:

Witness:

Occupation:

Address:

SIGNED for and on behalf of the
GRANTEE by:

Witness:

Occupation:

Address:



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IN WITNESS WHEREOF these presents have been executed this _____ day of 1998.

SIGNED for and on)	_____
behalf of)	Director
[)	
by:)	_____
in the presence of:)	Director/Secretary

Signature

Witness

Occupation

Address

SIGNED for and on)	_____
behalf of)	Director
BROADCAST)	
COMMUNICATIONS LIMITED)	
by:)	_____
in the presence of:)	Director/Secretary

Signature

Witness

Occupation

Address

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THE REFERENCE SCHEDULE

ITEM 1: LESSOR PARTICULARS:

Name:
Address:
Fax:
Telephone:
Contact person:

ITEM 2: LESSEE PARTICULARS:

Name: Broadcast Communications Limited
Address:
Fax:
Telephone:
Contact person:

ITEM 3: LAND:

All the Lessor's land more particularly outlined in red on the plan attached and marked "A", being [insert new legal description].

ITEM 4: TERM:

20 years

ITEM 5: DATE OF COMMENCEMENT:

[]

ITEM 6: FURTHER TERM:

Subject to the Lessee exercising the right of renewal provided in clause 3, one further term of 20 years

ITEM 7: RENEWAL DATE:

[]

SCHEDULE OF TERMS**INTERPRETATION AND DEFINITIONS**

1. For the purpose of the interpretation or construction of this Lease, unless the context provides otherwise:
 - 1.1 Words importing any gender include all other genders.
 - 1.2 Words importing the singular include the plural and vice versa.
 - 1.3 Headings are for sake of reference only and do not in any way limit or govern the construction of the terms of this Lease.
 - 1.4 References to:
 - (a) schedules are references to schedules in this Lease;
 - (b) clauses are references to clauses in this Lease; and
 - (c) parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under Clause 13),unless expressly stated otherwise.
 - 1.5 Any reference in this Lease to any statute includes all amendments, revisions, substitutions or consolidations made from time to time to that statute.
 - 1.6 A "person" includes any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation or trust, in each case whether or not having separate legal personality.
 - 1.7 "writing" includes words visibly represented or reproduced.
 - 1.8 Where approvals or consents are required in this Lease, they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent. All approvals or consents shall be required for each separate occasion, notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.

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- 1.9 Any consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will not be construed as a consent or waiver to or of any other breach of any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights, or any of them, in respect of that breach.
- 1.10 Nothing in this Lease shall be construed to any trust, commercial partnership or joint venture between the parties.
- 1.11 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision of this Lease.
- 1.12 The parties acknowledge and agree that certain covenants set out in this Lease (in particular provisions relating to the treatment of Improvements on termination or sooner determination of this Lease) shall continue beyond expiry or sooner determination of this Lease for the benefit of the parties notwithstanding such expiry or sooner determination.
- 1.13 Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- 1.14 Any reference in this Lease to "month" or "monthly" shall mean, respectively, calendar month and calendar monthly.
- 1.15 "Authority" means any Government authority, whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Improvements.
- 1.16 "business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday (in the Southland District).
- 1.17 "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- 1.18 "Improvements" means all improvements, of any nature, whether constructed or installed on or in the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), and, without limitation, include any building, transmitters, masts, pylons, or other structure on or fixed to the Land and all roads, paving, sealing, mechanical services, plant, machinery, equipment, fixtures and fittings.

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- 1.19 “Land” means the land described in the Schedule of Land, and, unless expressly stated, excludes the Improvements.
- 1.20 The expressions “Lessor” and “Lessee” include where the context permits the Lessee’s sublessees and other lawful occupiers of the Land and, respectively, the Lessor’s and the Lessee’s contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessor and the Lessee, as the case may be).
- 1.21 “Reference Schedule” means the schedule preceding this Schedule of Terms, described as such and forming part of this Lease.
- 1.22 “Regional Plan” and “District Plan” shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and “Regional and District Plans” shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having the relevant jurisdiction.
- 1.23 “Road” means the road and road area outlined in green on the plan attached marked “A”.
- 1.24 “Schedule of Land” means the schedule preceding the Reference Schedule, described as such and forming part of this Lease.
- 1.25 “Schedule of Terms” means this schedule, described as such and forming part of this Lease.

2. TERM

- 2.1 The term of this Lease shall commence on the Date of Commencement and shall be for the period specified in Item 4 of the Reference Schedule.

3. RIGHT OF RENEWAL OF LEASE

- 3.1 If the Lessee has not been in breach of this Lease and has given to the Lessor written notice to renew this Lease at least three months before the end of the Term, then the Lessor will, at the cost of the Lessee, renew this Lease for a further term of 20 years from the Renewal Date, as specified in the Reference Schedule, as follows:
- (a) The annual rent shall be agreed upon or failing agreement shall be determined in accordance with clause 5 but such annual rent shall not be less than the rent payable during the period of twelve (12) months immediately preceding the Renewal Date;

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- (b) Such annual rent shall be subject to review during the further term on the review dates or if no dates are specified then after the lapse of the equivalent periods of time as are provided in the Lease for rent reviews and on the same basis as set out in clause 5;
 - (c) The renewed lease shall otherwise be upon and subject to the covenants and agreements expressed and implied in this Lease, except that the term of this Lease, including such further term, shall expire on or before the Final Expiry Date specified in the Reference Schedule.
 - (d) Pending the determination of the annual rent in accordance with clause 3.1(a), the Lessee shall pay the rent proposed by the Lessor in accordance with the application of clause 5. Upon determination an appropriate adjustment shall be made.
- 3.2 The Lessor shall prepare a memorandum of renewal recording the basis on which the Lease has been renewed in accordance with clause 3.1 and the Lessee will forthwith enter into and execute such memorandum which will then be executed by the Lessor (with the Lessee paying the Lessor's reasonable legal and other costs in relation to the preparation; negotiation, completion, stamping and registration of the document).
4. **RENT**
- 4.1 The Lessee shall pay the annual rent specified in Item 9 of the Reference Schedule from the Date of Commencement until the rent is increased under Clause 5, at which time the Lessee will pay the annual rent at the increased rate.
- 4.2 Rent shall be paid on the first day of each month by equal monthly payments in advance, but the first payment shall be on the Date of Commencement (which will be paid on a proportionate basis for any broken period running until the first day of the next month).
- 4.3 All rent shall be paid without any deduction or set-off whatsoever, by direct automatic bank payment to the Lessor, or as the Lessor may otherwise direct.
5. **RENT REVIEW PROVISIONS**
- 5.1 The annual rent shall be reviewed by the Lessor on the dates specified in Item 10 of the Reference Schedule. At any time not earlier than four months prior to each relevant date (each such date being the "review date"), the Lessor may give notice in writing to the Lessee ("Notice") of

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the Lessor's assessment of the current market rent for the Land, which the Lessor proposes shall be the annual rent of the Land to apply from that particular review date. If the Lessor does not provide such notice to the Lessee by the relevant review date then the annual rent of the Land to apply from that date shall be the annual rent referred to in clause 5.4(a), which rent shall be calculated and agreed between the Lessor and the Lessee as soon as possible following that date.

- 5.2 Following receipt by the Lessee of the Notice the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within fourteen (14) days then the new rent may be determined either:
- (a) by one party giving written notice to the other requiring the new rent to be determined by arbitration; or
 - (b) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen (14) days of the parties agreeing to so determine the new rent;
 - (ii) if the party receiving a notice fails to appoint a valuer within the fourteen (14) day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
 - (iii) The valuers appointed before commencing their determination shall appoint an umpire who need not be a registered valuer;
 - (iv) the valuers shall determine the current market rent of the Land and if they fail to agree then the rent shall be determined by the umpire;
 - (v) each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and they shall have regard to any such representations but not be bound thereby,

when the current market rent has been determined, the arbitrators or the valuers shall give written notice thereof to the parties the notice shall

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provide as to how the costs of determination shall be borne and the notice shall be binding on the parties.

- 5.3 In determining the current market rent, the valuers and any umpire shall, in addition to other relevant factors disregard:
- (a) any deleterious condition of the Land, if such condition results from any breach of this Lease by the Lessee;
 - (b) the value of any goodwill attributable to the Lessee's business;
 - (c) all Improvements; and
 - (d) the Lessor's rights of access and to conduct its farming operations, as permitted in clause 26.2.
- 5.4 Notwithstanding the foregoing provisions of this clause, following each review date the increase in the annual rent payable by the Lessee for the next three years (ie until the next review date), shall be the greater of:
- (a) the aggregate of:
 - (i) the annual rent payable by the Lessee for the 12 month period immediately preceding the relevant review date; plus
 - (ii) a percentage of that rent equal to the sum of the percentage increase in the Consumer Price Index (All Groups) ("CPI") for each year during the three year period from the Commencement Date, or the immediately preceding review date, as the case may be. (If the CPI is not in force at any time during that period, an appropriate formula shall be agreed as to the proper calculation of what the CPI figure would be at that time, as if the CPI was then in force. If the parties cannot agree upon a proper calculation, then the matter will be referred to arbitration in accordance with the provisions of this Lease and the determination of the arbitrator or arbitrators shall be conclusive and binding upon the Lessor and Lessee); and
 - (b) the current market rent for the premises.

- 5.5 Notwithstanding clause 5.4:

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- (a) the “greater than” calculation in clause 5.4 shall only apply where the Lessor has given the Notice to the Lessee in accordance with clause 5.1; and
 - (b) under no circumstances will the new annual rent of the Land be less than the annual rent payable during the period of twelve (12) months immediately preceding the relevant review date; and
 - (c) any variation in the annual rent resulting from the application of this clause 5 shall take effect on and from that particular review date.
- 5.6 Where a review, pursuant to this Clause 5, is completed after the relevant review date, then:
- (a) pending completion of the review, annual rent shall be paid at the rate specified in the Notice; and
 - (b) on completion of the review, any overpayment of annual rent paid as from the review date shall be paid by the Lessor to the Lessee.
- 5.7 If any moratorium or other law Act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at the review date, then if and whenever such moratorium is lifted or the law, Act or regulation is repealed or amended so as to permit the annual rent to be reviewed, then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, Act or regulation is repealed or amended. This is to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed review date, but any subsequent rent review shall take place on the next following review date fixed in accordance with this Clause 5.
- 5.8 Immediately upon the parties agreeing to pay a revised annual rent or on determination under this Clause 5 the Lessee shall enter into an appropriate registrable memorandum of variation of lease prepared by the Lessor’s solicitors recording such revised annual rent prepared by the Lessor (with the Lessee paying the Lessor’s reasonable legal and other costs in relation to the preparation, negotiation, completion, stamping and registration of that document).
6. **CHARGES**
- The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements

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including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.

7. **PAYMENT OF RATES AND IMPOSITIONS**

The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor, which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term of this Lease or the renewal term shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.

8. **GOODS AND SERVICES TAX**

The Lessee shall pay to the Lessor, upon demand, any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefor including all amendments and any enactments in substitution of that Act, or otherwise in respect of any payments made by the Lessee under this Lease (including the payment of annual rent) or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

9. **INTEREST ON OVERDUE RENT OR OTHER MONEY**

Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment (whether any formal or legal demand therefor shall have been made or not) then such unpaid amounts shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such amounts at a rate being 300 basis points above the average 90 day bank bill buy rate (described as the BID rate) at 10:45am on the date the payment was due as shown on page BKBM (or its successor page) on the Reuters screen or at a rate based on any successor screen or if there is none at a rate equal to 2% above the bank overdraft rate of the Lessor's bank (in respect of the Lessor's current account) at the time of any default and such interest shall be recoverable in the same manner as rent in arrears.

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10. USE OF THE LAND AND IMPROVEMENTS AND MAINTENANCE

- 10.1 The Lessee shall be permitted the right to carry out any activity specified in Item 11 of the Reference Schedule.
- 10.2 Should any of the uses of the Land and any Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee, including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.
- 10.3 Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any use permitted under this Lease and is not in any material breach at any time in the future of any terms and conditions of this Lease.
- 10.4 The Lessor does not warrant:
- (a) that the Land is or will remain suitable or adequate for any of the purposes of the Lessee; or
 - (b) that the relevant Regional or District Plans permit the use specified in Item 11 of the Reference Schedule or any other use.
- 10.5 The Lessee accepts the Land as being satisfactory in all respects and with full knowledge of and subject to any prohibitions or restrictions on the use of the Land.
- 10.6 During the term and, if applicable, the renewal term, the Lessee shall:
- (a) maintain the Land in the same condition as at Commencement Date, fair wear and tear excepted; and
 - (b) keep the Land reasonably free of all noxious weeds and pests and, generally, care for the Land in a good and husbandlike manner.

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11. NO FENCING

- 11.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any land owned or occupied by the Lessor but nothing in this Lease shall be deemed to limit any liability imposed by statute upon any present or future lessee of the Lessor of any adjoining land.

12. STATUTORY REQUIREMENTS

- 12.1 The Lessee must comply with all statutes, Regional and District Plans, bylaws, regulations and statutes which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any person having any lawful authority and will, in particular, but without limitation:

- (a) ensure that a warrant of fitness is obtained each year in respect of any Improvements, if required under the Building Act 1991;
- (b) comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
- (c) ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992,

and will keep the Lessor indemnified in respect of any non-compliance by the Lessees of all such Plans, bylaws, regulations, statutes and regulations.

- 12.2 The Lessee, having had the land which is the subject of the Lease designated for broadcasting and telecommunications purposes will, on the final expiry or sooner termination of the Lease, at its cost immediately advise the local authority that the designation is withdrawn pursuant to Section 182 of the Resource Management Act 1991.

13. ASSIGNMENT

- 13.1 The Lessee will not without the previous consent in writing of the Lessor assign or transfer or sublease this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed without some good cause assigned having regard to the solvency or respectability of the proposed assignee or transferee or sublessee.

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- 13.2 In the case of an assignment where the proposed assignee or transferee is a company not listed by the New Zealand Stock Exchange or a person under Clause 13.5 the Lessor may require the directors and/or the controlling shareholders of such company to enter into a deed guaranteeing the performance by that company of the terms of this Lessee, such guarantee to be in a form acceptable to the Lessor and the costs incurred by the Lessor in the preparation and execution of such guarantee shall be paid by the Lessee.
- 13.3 This clause 13 also applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- 13.4 For the purposes of Clause 13.1 any proposed change in the shareholding of the Lessee or any amalgamation under Section 209 of the Companies Act 1955 or Section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless:
- (a) such deemed assignment involves a change of effective control to any of the entities mentioned in Clause 13.5; or
 - (b) such deemed assignment involves a change in the shareholding or an amalgamation under the Companies Act 1955 or Companies Act 1993 where Her Majesty the Queen will remain the beneficial owner of all the shares in the Lessee.
- 13.5 In the case of the Lessee wishing to assign this Lease to any person or entity then the following shall apply:
- (a) The Lessee shall not assign this Lease without first offering the Land by way of surrender of this Lease to the Lessor by notice in writing specifying the price and terms on which the Lessee proposes to make that surrender.
 - (b) The Lessor will give the Lessee notice that it accepts or declines such offer within 20 business days of receipt of it.
 - (c) If the Lessor shall have declined any offer to surrender this Lease, then the Lessee shall not offer or agree to assign this Lease to any other person at a lower price or on terms more favourable to the assignee than the price and terms offered to the Lessor in relation to the proposed surrender of the Lease, without first reoffering to

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surrender the Lease to the Lessor, at such lower price or on such more favourable terms and otherwise in accordance with clauses 13.5(a) and 13.5(b) (but the time period will be 10 business days instead of 20 business days).

- (d) In the event of the Lessor not accepting any such offer, the Lessee may, assign this Lease, at a price and on terms no more favourable to the assignee than the price and terms on which the Lessee offered to surrender this Lease to the Lessor as set out above. Clauses 13.1 to 13.4 shall apply to that assignment.

- 13.6 Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor, prepared by the Lessor at the Lessee's expense, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such covenant shall not release the Lessee from the Lessee's obligations under this Lease.

14. **LESSEE'S ACKNOWLEDGMENT OF RISK**

The Lessee agrees to occupy and use the Land and any Improvements at the Lessee's risk and releases to the full extent permitted by law the Lessor its employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any damage or injury occurring to any person or property in or about the Land and any Improvements except where the Lessor is at fault or negligent through its own acts or omissions.

15. **INDEMNITY BY LESSEE**

The Lessee will indemnify and hold harmless the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses arising from the Lessee's use of the Land.

16. **QUIET ENJOYMENT**

Provided the Lessee performs and observes the covenants, provisos, conditions and agreements contained in this Lease, the Lessee shall peaceably hold and enjoy the Land without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor, until the expiration or sooner determination of this Lease.

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17. REGISTRATION

17.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 1952.

17.2 The Lessee will be responsible for registration and other costs incurred in obtaining registration of this Lease.

18. IMPROVEMENTS DURING LEASE

18.1 Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee, unless the Lessor and the Lessee otherwise agree in writing.

18.2 Throughout the term of this Lease and during the renewal term the Lessee shall have the right to alter, construct, replace or remove any Improvements without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Improvements are satisfied and the Lessee advises the Lessor promptly in writing of any such alterations, constructions or replacement of Improvements as a matter of record.

19. IMPROVEMENTS ON TERMINATION OF LEASE

19.1 On termination of this Lease (whether by expiry of time or otherwise) the Lessee shall remove all Improvements within 60 business days of such termination and make good all damage caused to the Land in effecting such removal.

19.2 If the Lessee does not remove the Improvements within the timeframe specified in clause 19.1, then the Improvements remaining on the Land shall become the property of the Lessor without any compensation or other payment whatsoever to the Lessee and the Lessee shall fully indemnify the Lessor for the costs of and incidental for, at the Lessor's election, removing the Improvements and for restoring the Land to the same condition as it was at the Commencement Date.

20. INSURANCE, DESTRUCTION AND REDEVELOPMENT

20.1 The Lessee shall be entitled to carry out repairs, demolition, relocation, additions, reinstatement or redevelopment to any Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to alter, construct, replace or remove any Improvements on the Land, provided the following conditions are or will be satisfied:

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- (a) any alteration, construction, replacement or removal shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
- (b) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;

and upon satisfaction of such conditions the Lessee shall alter, construct, replace or remove any Improvements or such part of Improvements requiring such work in accordance with the conditions set out above.

- 20.2 In the event that the Lessee is prevented or unable to reinstate or rebuild in the event of total or partial destruction it may (and at the request of the Lessor shall) forthwith demolish the Improvements and clear and restore the Land.

21. **NOTICES**

- 21.1 All notices including requests, demands and other communications under this Lease, to be given by a party to any other party may be given by personal delivery or sent by an accepted means of electronic transmission to the other party. Any notices shall be deemed given when personally delivered or if sent by electronic transmission in the manner set out above shall be deemed given on the first business day following the day of sending of the electronic transmission.
- 21.2 Any notice shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number from time to time designated by that party in writing to any other party. Until any other designation is given, the address and facsimile number of each party shall be those set out in the Reference Schedule.
- 21.3 It shall be the obligation of each party to advise the other in writing of any change in the particulars set in the Reference Schedule and any failure to advise such change shall not invalidate any notice, request, demand or other communication if given to the former designation by the party not in default.

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22. DEFAULT BY LESSEE

22.1 If at any time:

- (a) the annual rent is in arrears for 15 business days after the Lessor gives written notice to the Lessee specifying that breach; or
- (b) any other material breach of this Lease remains unremedied for 30 business days after the Lessor gives written notice to the Lessee specifying that breach; or
- (c) the Lessee (if an individual) is declared bankrupt or insolvent according to law; or
- (d) any assignment is made of the Lessee's property for the benefit of creditors or if the Lessee compounds with the Lessee's creditors; or
- (e) the interests of the Lessee in or under this Lease or in the Improvements and/or the Land are attached or taken in execution or under any legal process; or
- (f) the Lessee (if a company) has a resolution passed or an order is made by a court for the winding up of the Lessee (except for the purposes of reconstruction approved by the Lessor, not to be unreasonably or arbitrarily withheld) or if the Lessee is placed in receivership or under official or statutory management; or
- (g) a notice of intention to remove from the register the Lessee (if a company) under section 294 of the Companies Act 1955 or under section 319 of the Companies Act 1993 is issued,

the Lessor may:

- (h) immediately or on expiry of any specified notice period (as the case may be) and without any notice or demand where no notice is required to re-enter (forcibly if necessary) the Land and Improvements or any part of the Land and Improvements;
- (i) by such action determine the Lessee's estate and interest in the Land; and
- (j) expel and remove the Lessee and the effects of the Lessee and those claiming under the Lessee without being guilty of any manner of trespass or conversion.

LEASE TO BCL OF THE WAIMUMU SITE (NO. 3)

Upon such event this Lease shall cease and determine but without releasing the Lessee from liability in respect of any breach of this Lease.

- 22.2 The Lessor reserves to itself the right to sue for recovery of any cost, expense, loss or liability imposed on the Lessor or incurred by the Lessor and to otherwise seek damages arising out of or from a breach of any obligation required of the Lessee expressed or implied under this Lease and to otherwise take whatever other lawful measures that are available to the Lessor at law in enforcing the covenants, agreements and obligations of the Lessee arising out of and from this Lease.

23. **DISPUTE RESOLUTION**

- 23.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- 23.2 If the parties cannot resolve a dispute or difference within 15 business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing such technique, if adopted, will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).
- 23.3 If the parties cannot agree on any dispute resolution technique within a further 15 business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 23.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996.
- 23.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

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24. COSTS

- 24.1 Each party shall pay their own solicitor's cost for the preparation, negotiation and finalisation of this Lease. The Lessee shall, however, pay the Lessor's costs for preparing and finalising any deed of renewal or variation of this Lease.
- 24.2 Subject to Clause 17.2 the Lessee shall be responsible for payment of all registration fees including agency charges imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.
- 24.3 The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.

25. LESSOR'S RIGHT TO INSPECT AND DISPLAY SIGNS

- 25.1 The Lessor will have the right to inspect the Land no more than two times each year during the term and, if applicable, the renewal term with valuers or other experts and consultants provided such inspections are carried out in accordance with the Lessee's reasonable security, health and safety requirements and where prior written notice has been given to the Lessee and the Lessee shall have the right to change any suggested time to a mutually convenient time and, if the Lessee desires, escort the Lessor and those persons lawfully inspecting, for the duration of any such inspection.
- 25.2 The Lessee will at all reasonable times permit the Lessor to exhibit the Land to prospective tenants or purchasers and will during the period of this Lease allow the Lessor to affix to the Land and the Improvements appropriate sale or reletting notices.

26. LESSOR'S ACCESS AND FARMING OPERATIONS

- 26.1 During the term of this Lease and the renewal term the Lessee shall keep and maintain the Road Area in good repair and condition. On the termination or sooner determination of this Lease the Lessee shall yield up the Road Area in at least the same state of repair and condition that it was in as at the Commencement Date.
- 26.2 The Lessee acknowledges that notwithstanding any other provision in this Lease, during the term of this Lease and, if applicable, the renewal term the Lessor shall have:

LEASE TO BCL OF THE WAIMUMU SITE (NO. 3)

- (a) the right of ingress and egress over the Road Area for usual farming purposes; and
- (b) the right to graze its stock on the Land and carry out usual farming operations on the Land provided that such use does not interfere with the Permitted Use. This shall not, however, diminish the Lessee's right to insist on exclusive use of the Land at any time and to separate the Land from the Lessor's adjoining land by constructing a stockproof fence at the Lessee's cost.

LEASE TO BCL OF THE WAIMUMU SITE (NO. 3)

LEASE OF FREEHOLD

Correct for the purposes
of the Land Transfer Act
1952

Solicitor for the Lessee

[]

Lessor

Broadcast Communications
Limited

Lessee

Particulars entered in the
Register on the date and at the
time recorded below

District Land Registrar Assistant
of the South Auckland
Land Registry

ATTACHMENT 14.13
PŪRĀKAUNUI BLOCK INCORPORATION DEED OF COVENANT FOR
EASEMENTS OVER THE ROAD SITE
(Clause 14.26.3)

Date:

PARTIES

- (1) **PŪRĀKAUNUI BLOCK INCORPORATION** *(the Recipient)*
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand *(the Crown)*

BACKGROUND

- A Pursuant to a Deed of Settlement dated 21 November 1997 between the Crown and Te Rūnanga, the Crown agreed to vest the Road Site in the Recipient, subject to certain terms and conditions specified in the Deed of Settlement.
- B As required by clause 20.10 of the Deed of Settlement, the Recipient covenants with the Crown as set out in this Deed.

NOW THE RECIPIENT AGREES with the Crown as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

Deed of Settlement means the deed referred to in Recital A;

the Pūrākaunui Block Incorporation means the Proprietors of Pūrākanui Block, being an incorporation of owners of land incorporated under section 29 of the Māori Affairs Amendment Act 1967;

the Property means the land described as South Island Native Land Court District called or known as Pūrākaunui Subdivision 69 of Section 50, Block IV, North Harbour and Blueskin District;

the Road Site means the land described as Otago Land District, Dunedin City, an undefined area being road adjoining Pūrākaunui Sections 69, 79 and 80 situated in Block IV North Harbour and Blueskin Survey District. Subject to survey as shown on *Allocation Plan A224 (SO 24702)*; and

Te Rūnanga means Te Rūnanga o Ngāi Tahu.

PŪRĀKAUNUI BLOCK INCORPORATION DEED OF COVENANT FOR EASEMENTS OVER THE ROAD SITE

- 1.2 Terms defined in the Deed of Settlement have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the Deed of Settlement apply in the interpretation of this Deed.

2 RECIPIENT'S COVENANT

- 2.1 The Recipient covenants with the Crown that the Recipient will observe and perform its obligations under clause 14.26.3 of the Deed of Settlement and will be bound by the terms of the Deed of Settlement in so far as they relate to the Property as if the Recipient had executed the Deed of Settlement.
- 2.2 Without limiting paragraph 2.1 of this Deed, the Recipient covenants with the Crown that the Recipient will duly execute the easement to maintain vehicular and other access over the Road Site to the Property in the form set out in *Attachment 14.15* of the Deed of Settlement, or in such other form as agreed by the Purakaunui Block Incorporation and the trustees of the Property, and present that easement for registration at the Land Titles Office within 50 Business Days of the Settlement Date.

3 NOTICES

Any notice to the Recipient may be given in the same manner as is specified in the Deed of Settlement. The Recipient's address for notices is: *[Details to come]*

EXECUTED as a deed on the date first written above.

SIGNED for and on behalf of)
HER MAJESTY THE QUEEN)
in right of New Zealand by)
[]) _____
in the presence of:) []

Witness:

Signature

Occupation

Address

PŪRĀKAUNUI BLOCK INCORPORATION DEED OF COVENANT FOR EASEMENTS OVER THE ROAD SITE

SIGNED by the)
PŪRĀKAUNUI BLOCK INCORPORATION)
by:)

[Details of execution provisions to come.]



EASEMENT OVER THE ROAD SITE

ATTACHMENT 14.14
EASEMENT OVER THE ROAD SITE*(Clause 14.26.3)***MEMORANDUM OF TRANSFER GRANTING RIGHT OF WAY****Recitals**

- A The Pūrākaunui Block Incorporation, of Christchurch (*the Grantor*) is registered as proprietor of an estate in fee simple in all that parcel of land described as Otago Land District, Dunedin City, an undefined area being road adjoining Pūrākaunui Sections 69, 79 and 80 situated in Block IV North Harbour and Blueskin Survey District. Subject to survey as shown on *Allocation Plan A224 (SO 24702) (the Servient Land)*.
- B *[Names, address' and occupations of persons to whom the easement is to be granted in favour of to come] (the Grantee)* are the trustees of the land described as South Island Native Land Court District called or known as Pūrākaunui Subdivision 69 of Section 50, Block IV, North Harbour and Blueskin District (*the Dominant Land*).

1 Grant Of Easement

In consideration of the terms of the vesting of the Servient Land in the Grantor by the Crown pursuant to the Ngāi Tahu Deed of Settlement, the Grantor transfers and grants to the Grantee, to be connected to the Dominant Land for all time, the full, free, uninterrupted, and unrestricted right, liberty, and privilege for the Grantee, the Grantee's servants, tenants, agents, workers, licensees and invitees (in common with the Grantor, the Grantor's tenants, and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go, pass and repossess, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind, over and along that part of the Servient Land marked ["A"] on the plan deposited in the *[To come]* Land Titles Office under No. *[To come]* for all purposes connected with the use and enjoyment of the Dominant Land, but not for any other purpose.

2 Covenants

The Grantor and the Grantee agree as follows:

- 2.1 No power is implied for the Grantor to determine this right of way for any breach of covenant or condition (express or implied) or for any other cause whatever. It is the intention of the parties that this right of way shall subsist forever or until it is duly surrendered.

EASEMENT OVER THE ROAD SITE

- 2.2 All arising between the parties concerning the interpretation of this grant, or the rights and obligations of the parties, shall be referred to arbitration in accordance with the Arbitration Act 1996 and the substantive laws of New Zealand. The arbitration shall be conducted by a sole arbitrator to be agreed upon by the parties or, failing agreement, to be appointed by the then President of the New Zealand Law Society. The award in the arbitration shall be final and binding on the parties.

Dated the day of 1997

[Execution provisions to come]

ATTACHMENT 14.15
MANAGEMENT PROCEDURES AND AIMS FOR THE TAIAROA
HEAD SITES

(Clauses 14.27.14(i) and 14.27.14(k))

- 1 The vesting of the Taiaroa Head Site (No. 1) and the Taiaroa Head Site (No. 2) and the administration of the Taiaroa Head Sites by the Joint Management Body for the purposes of a Nature Reserve, shall be subject to the following conditions and restrictions upon the sites:
- (a) the protection and enhancement of the native wildlife and their habitats;
 - (b) the protection and enhancement of the scenic qualities, ecological associations and other features of the natural environment;
 - (c) the protection and conservation of wahi tapu, wahi taonga, traditional, archaeological and other historic sites (or places);
 - (d) the recognition of the needs of shipping control services required for the safe operation of Otago Harbour;
 - (e) provision for public appreciation and understanding of the wildlife at Taiaroa Head, and of the need for habitat protection, by way of viewing facilities and interpretative services;
 - (f) the recognition of the mana of Ngāi Tahu and in particular the descendants of Korako Karetai, including provision for the creation of physical markers on the land; and
 - (g) provision for public recreation to the extent and in locations that it is not inconsistent with other aims.