
Parties

TE RŪNANGA O NGĀI TAHU

HER MAJESTY THE QUEEN

in right of New Zealand

**DEED TO AMEND DEED OF
SETTLEMENT**

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THIS DEED is made on 26th November 1999

BETWEEN

- (1) TE RŪNANGA O NGĀI TAHU
- (2) HER MAJESTY THE QUEEN in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated 21 November 1997 (referred to in this Deed as the "Deed of Settlement").
- B Te Rūnanga and the Crown wish to amend the Deed of Settlement in the manner described in this Deed.

TE RŪNANGA AND THE CROWN AGREE:

1 DEFINITIONS AND INTERPRETATION

Except as expressly provided in this Deed, or unless the context otherwise requires:

- 1.1 Terms defined in the Deed of Settlement have the same meanings in this Deed;
- 1.2 The rules of interpretation set out in the Deed of Settlement apply in the interpretation of this Deed;
- 1.3 References to Attachments are to Attachments to the Deed of Settlement; and
- 1.4 References to Schedules are to Schedules to this Deed.

2 AMENDMENT TO SECTION 4: TRANSFER OF COMMERCIAL PROPERTIES – NOT SUBJECT TO DEFERRED SELECTION

Section 4 of the Deed of Settlement is amended by deleting from Attachment 4.1 the properties described in *Schedule 1*.

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3 AMENDMENTS TO SECTION 5: TRANSFER OF COMMERCIAL PROPERTIES – SUBJECT TO DEFERRED SELECTION

3.1 Addition of property to Attachment 5.1

- 3.1.1 Section 5 of the Deed of Settlement is amended by adding to Attachment 5.1 the properties described in *Schedule 1* as if they were together a single Property for all purposes of the Deed of Settlement.
- 3.1.2 Despite *clause 3.1.1*, Te Rūnanga agrees that the single Property constituted by that clause is deemed not to be included in the process set out in Section 5 of the Deed of Settlement for the purpose of the definition of “relevant land” in Section 48 of the Ngāi Tahu Claims Settlement Act 1998.

3.2 Valuation

For all the purposes of the Deed of Settlement, in respect of the single Property constituted by *clause 3.1.1*:

- 3.2.1 the Transfer Value has been agreed and is \$4,100,000;
- 3.2.2 the Crown is deemed to have satisfied its obligations under *clause 5.3.2* of the Deed of Settlement; and
- 3.2.3 valuation is deemed to have been validly carried out under Attachment 5.4 to the Deed of Settlement.

3.3 Wanaka Plantation

- 3.3.1 After the Transfer Value for the Property described with OTS No. 403 in Attachment 5.1 to the Deed of Settlement (“Wanaka Plantation”) was established, the Crown and Te Rūnanga discovered that that part of Wanaka Plantation (“Affected Part”) comprised in sections 100 and 106, Block XIV, Lower Wanaka Survey District is not suitable for residential subdivision, that being the assumption on which the part of the Transfer Value for Wanaka Plantation attributable to the Affected Part was established. The purpose of this *clause 3.3* is to resolve all issues between the Crown and Te Rūnanga relating to those facts.
- 3.3.2 If Te Rūnanga selects the Wanaka Plantation as a Settlement Property under *clause 5.5.1* of the Deed of Settlement the Crown shall:
- (a) raise a separate certificate of title for each of the 8 allotments referred to in the description of the Wanaka Plantation in Attachment 5.1 to the Deed of Settlement; and

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(b) on settlement of the transfer of the Wanaka Plantation, deliver those separate certificates of title to Te Rūnanga.

3.3.3 Te Rūnanga shall, on settlement of that transfer, immediately transfer the Affected Part to the Crown for reserve purposes for no consideration.

3.3.4 The Transfer Value for the Wanaka Plantation is reduced by \$285,000.00.

3.3.5 Te Rūnanga accepts the arrangements set out in this *clause* 3.3 in full and final settlement of all claims which it has or may have against the Crown in any way arising out of or relating to the issue described in *clause* 3.3.1.

4 AGREEMENTS IN RELATION TO SECTION 7: FORESTRY ASSETS

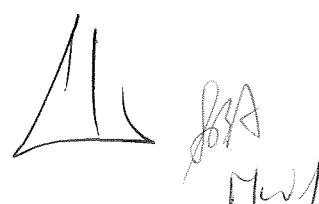
4.1 Background to issues relating to certain licensed land

4.1.1 The Initial Transfer Values for the Potential Forestry Assets described in paragraphs 3.26 (“North Westland Forest”) and 3.27 (“South Westland Forest”) of Attachment 7.1 to the Deed of Settlement (together “Relevant Licensed Land”) have been established by operation of paragraph 5 of Attachment 7.4 to the Deed of Settlement.

4.1.2 Te Rūnanga alleges that the Crown was obliged under the Deed of Settlement to disclose to Te Rūnanga, prior to the establishment of those Initial Transfer Values, the existence and content of an agreement between the Crown and Timberlands West Coast Limited relating to the basis of licence fee reviews under the relevant Crown Forestry Licence completed prior to the establishment of those Initial Transfer Values. The Crown denies the existence of such an agreement and denies that it was obliged to disclose any discussion or other arrangements which took place during the completion of a licence fee review prior to the establishment of those Initial Transfer Values.

4.1.3 Te Rūnanga and the Crown acknowledge that, if Te Rūnanga selects the Relevant Licensed Land, clause 7.9.3(c) of the Deed of Settlement shall apply. Te Rūnanga and the Crown have agreed to reduce the Initial Transfer Values for the Relevant Licensed Land prior to the Final Selection Date instead of adhering to the process under the Deed of Settlement to adjust the Initial Transfer Values after the Final Selection Date.

4.1.4 The purpose of *clause* 4.2 is to resolve all issues between the Crown and Te Rūnanga relating to matters described in *clauses* 4.1.1 to 4.1.3.

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4.2 Relevant Licensed Land

- 4.2.1 Te Rūnanga and the Crown agree that, if Te Rūnanga selects the Relevant Licensed Land under clause 7.3.11 of the Deed of Settlement, then paragraph 2.3.1 of Attachment 7.6 to the Deed of Settlement shall be taken to have been given effect to with the result that there shall be a reduction to the Purchase Price contemplated by the last sentence of that paragraph in the amount of \$2,597,000 for the North Westland Forest and in the amount of \$586,000 for the South Westland Forest.
- 4.2.2 Te Rūnanga accepts the reduction set out in *clause 4.2.1* in full and final settlement of all claims which it has or may have against the Crown in any way arising out of or relating to the matters described in *clause 4.1.1* to *4.1.3*.

4.3 Background to issues relating to formalising certain rights

- 4.3.1 In making disclosure under the Deed of Settlement, the Crown disclosed certain rights benefitting or affecting the Available Crown Forestry Assets ("Disclosure").
- 4.3.2 In a document entitled *Completion of Outstanding Matters*, delivered to Te Rūnanga on 23 November 1999, all of those rights are specified and the Crown has described the action (if any) ("Intended Action") it agrees to take in formalising the rights disclosed in Disclosure and in respect of certain other issues that have arisen since Disclosure.
- 4.3.3 The purpose of *clause 4.4* is to:
- (a) enable the Crown to take the Intended Action whilst maintaining the Crown's obligations under Section 4 of Attachment 7.6 to the Deed of Settlement;
 - (b) provide for compensation for Te Rūnanga if any Intended Action gives rise to an adverse result in comparison to the legal and physical state and condition of the relevant Available Crown Forestry Asset as assumed in establishing the Purchase Price for that asset.

4.4 Completion of outstanding matters relating to Forestry Assets

- 4.4.1 The Crown will, during the period of 5 years commencing on the Asset Transfer Date, complete, as soon as is reasonably practical, all Intended Actions and Te Rūnanga shall, at the cost of the Crown, sign (or procure any subsequent owner to sign) any document reasonably required to give effect to any Intended Action. Nothing in this clause implies consent by Te Rūnanga to any other rights or matters not disclosed in Disclosure or described or referred to in the document referred to in *clause 4.3.2*.

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4.4.2 *Clause 4.4.1* is subject to, and does not limit, the Crown's obligation under Section 4 of Attachment 7.6 to the Deed of Settlement.

4.4.3 If:

- (a) as a result of an Intended Action having been completed; or
- (b) as a result of an Intended Action not having been completed by the date of expiry of the period of 5 years commencing on the Asset Transfer Date,

there is an adverse effect on the market value of a Forestry Asset because the actual legal and physical characteristics of the Forestry Asset are different to those assumed for the purposes of establishing the Purchase Price for that Forestry Asset, then the Crown shall recognise that adverse effect in a manner that will provide reasonable compensation for Te Rūnanga but having regard to the extent to which the Crown may have been prevented or hindered from taking an Intended Action by Te Rūnanga or any subsequent owner of the Forestry Asset. If there is a dispute about this *clause 4.4.3* then, on application by either party to the President of the New Zealand Law Society, that dispute will be determined by a person nominated by that President and the person's decision shall be final and binding on the parties.

4.4.4 The benefit of *clause 4.4.3* is, in respect of each Forestry Asset, assignable to the owner for the time being of that Forestry Asset.

4.4.5 The Crown and Te Rūnanga shall each act in good faith to each other in relation to the Intended Actions and, in particular:

- (a) the Crown shall, in taking the Intended Actions, continue to act in the interests of the owner for the time being of the relevant Forestry Asset;
- (b) Te Rūnanga shall not do anything which prevents or hinders an Intended Action from being taken.

4.4.6 Where it has become apparent that an Intended Action is impractical to undertake, Te Rūnanga and the Crown may agree that no further action is required but *clause 4.4.3* will still apply in respect of that Intended Action.

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5 AGREEMENTS IN RELATION TO SECTION 10: HIGH COUNTRY STATIONS

5.1 Early Possession

The Crown and Te Rūnanga agree that even though transfer of the legal title to Station Areas, the Gift Areas and the Leaseback Conservation Areas has not yet been effected, Te Rūnanga took possession of those areas on 1 November 1999 but without limiting the parties' liabilities and obligations under the Deed of Settlement.

5.2 Livestock, plant and chattels

5.2.1 The Crown and Te Rūnanga have reached agreement through correspondence and a course of dealing in relation to the valuation, transfer and payment for stock, plant and chattels referred to in paragraphs 9 and 10 of Attachment 10.20 to the Deed of Settlement and have implemented that agreement.

5.2.2 Even though the agreement referred to in *clause 5.2.1* is not consistent with the process set out in paragraphs 9 and 10 of Attachment 10.20 to the Deed of Settlement, the Crown and Te Rūnanga are both deemed to have complied with all their respective obligations under those paragraphs.

6 AMENDMENTS TO CERTAIN DATES

6.1 Final Selection Date

6.1.1 Subject to *clause 6.1.2*, the "Final Selection Date" for the purpose of clause 5.1, 6.1 and 7.1 of the Deed of Settlement is 1 December 1999.

6.1.2 The Final Selection Date for the single Property constituted by *clause 3.1.1* was 31 October 1999 and, in respect of that Property, Te Rūnanga is deemed to have given a notice under clause 5.5.1 of the Deed of Settlement by that date.

6.2 Completion Date

6.2.1 The "Completion Date" for the purposes of clause 5.1 of the Deed of Settlement and the "Final Transfer Date" for the purpose of clause 7.1 of the Deed of Settlement is 25 February 2000.

6.2.2 The "Completion Date" for the purposes of clause 6.1 of the Deed of Settlement is 30 June 2000.

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7 RATIFICATION OF PROCEDURES

7.1 Transfer Values Agreed

The Crown and Te Rūnanga acknowledge that all Transfer Values have been agreed or determined (except for those Transfer Values for the Potential Forestry Assets described in paragraph 3.18 and 3.24 of Attachment 7.1 to the Deed of Settlement where instead a mechanism for subsequently establishing Transfer Values has been agreed) and are specified in correspondence between the Crown and Te Rūnanga and their respective authorised representatives and consultants or set out in the determination of an Arbitrator or Independent Expert.

7.2 Ratification

The Crown and Te Rūnanga each ratify all actions or omissions by each other that amounted to variations from the Deed of Settlement in agreeing or having determined the Transfer Values.

8 COUNTERPARTS

This Deed may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

Signed for and on behalf of **HER
MAJESTY THE QUEEN** in right of
New Zealand by **THE MINISTER IN
CHARGE OF TREATY OF
WAITANGI NEGOTIATIONS** in the
presence of:

)
)
)
)



Sir Douglas Arthur Montrose Graham

Witness:

P. S. Barker

Signature

Deputy Director, Office of Treaty Settlements

Occupation

P O Box 919

Address

Wellington

The Seal of
TE RŪNANGA O NGĀI TAHU
was affixed to this document in the
presence of:



Kaiwhakahaere



Secretary





SCHEDULE 1

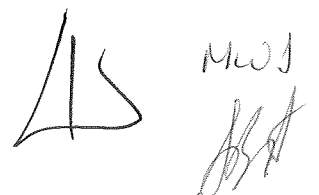
PROPERTIES

(Clauses 2 and 3 Definition of Certain Properties)

Certificate of Title	Street Address	Land District	Vendor Agency
32F/311, ¹ 32F/312, 32F/313, 32F/314	Old Post Building, Cathedral Square and site in Hereford Street	Christchurch	Telecom South Limited
15C/613 ²	Ballarat Street	Queenstown	Telecom South Limited

¹ The Property is only part of the land comprised in these certificates of title. It comprises the 2 lots shown as lots 1 and 2 and edged red on the proposed subdivision plan, being Deed Map C1.

² The Property is only part of the land comprised in this certificate of title. It comprises the lot shown as lot 2 and edged red on the proposed subdivision plan, being Deed Map C2.

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