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**BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL**

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<b>UNDER THE</b>	<b>RESOURCE MANAGEMENT ACT 1991</b>
<b>IN THE MATTER OF</b>	<b>Proposed Private Plan Change 54 to the Operative Queenstown-Lakes District Plan</b>
<b>BETWEEN</b>	<b>NORTHLAKE INVESTMENTS LIMITED</b>
	<b>Applicant</b>
<b>AND</b>	<b>OFFICE FOR MĀORI CROWN RELATIONS – TE ARAWHITI</b>
	<b>Submitter</b>

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**BRIEF OF EVIDENCE OF MONIQUE AHI KING**

**13 July 2023**

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**CROWN LAW**  
**TE TARI TURE O TE KARAUNA**  
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## Introduction

1. My full name is Monique Ahi King.
2. I am employed as a Senior Adviser, Implementation, in the Office for Māori Crown Relations—Te Arawhiti (**Te Arawhiti**). Te Arawhiti is responsible for advising the Ministers for Treaty of Waitangi Negotiations and for Māori Crown Relations, and for supporting the Crown to meet its Treaty of Waitangi settlement commitments (amongst other roles to foster effective relationships with Māori across government).
3. The Land & Implementation Team within Te Arawhiti is responsible for the administration of the Hāwea/Wānaka SILNA Substitute Land generally known as Sticky Forest.
4. I report to the Manager - Land & Implementation within Te Arawhiti and am the lead advisor for Te Arawhiti responsibilities in relation to the implementation of the SILNA redress under Section 15 of the Ngāi Tahu Deed of Settlement entered in 1997 (**the Ngāi Tahu Deed**). I refer to the Ngāi Tahu Deed and the Ngāi Tahu Claims Settlement Act 1998 (**the Settlement Act**) together as the **Ngāi Tahu Settlement**.
5. I first started working for the Office of Treaty Settlements (whose roles are now subsumed within Te Arawhiti since its creation in 2018), in 2010. I have worked on Crown-iwi Treaty settlement negotiations and in the Policy team, before moving into the Implementation Team. I first encountered SILNA matters in the context of negotiations with Te Tau Ihu o Te Waka-a-Maui (top of the South Island) iwi prior to their 2014 Treaty settlement, which I worked on.
6. I am familiar with the Crown's obligations in relation to, and management of, the Sticky Forest land while it is held by the Crown until it can be transferred to its intended owners (as I discuss below). I have visited the Sticky Forest land on a number of occasions, most recently in late March this year.
7. In this evidence I will refer to the Hāwea/Wānaka SILNA Substitute Land by its common name, Sticky Forest or the Sticky Forest land, other than

where the context requires otherwise.

8. I am authorised to give this evidence on behalf of Te Arawhiti.

**Scope of evidence**

9. My evidence addresses:
  - 9.1 The Crown's interest in Private Plan Change 54 (**PC54**).
  - 9.2 The Crown's obligations and the current status of the Sticky Forest land, the Ngāi Tahu Deed and the process required to effect transfer of the Sticky Forest land.
  - 9.3 Landlocking and the importance of providing legal access to the Sticky Forest land through PC54.
  - 9.4 Current Uses of the Sticky Forest land.
  - 9.5 Future Uses of the Sticky Forest land.

**Te Arawhiti**

10. Te Arawhiti is the Crown agency dedicated to fostering strong, ongoing and effective relationships with Māori across Government. The name, Te Arawhiti, means 'the bridge', symbolising the bridge between Māori and the Crown, the past and the future, and the journey from grievance to partnership. Te Arawhiti works to make the Crown a better Treaty partner, able to engage effectively with Māori on a range of issues and striving to build true and practical partnerships with Māori which will benefit all New Zealanders.
11. A key strand within the purpose of Te Arawhiti is ensuring that the commitments made in Treaty settlements endure, and the promise of the Treaty of Waitangi is realised.
12. Te Arawhiti encourages decision-making that takes account of Treaty settlement commitments, and which allows for future opportunities associated with Treaty settlements. Te Arawhiti does not determine how and in what form the opportunities from Treaty settlements are realised, as this is determined by the beneficiaries of these settlements. However,

Te Arawhiti has a role in advocating for the protection of these opportunities.

#### **Te Arawhiti interest in PC54**

13. Te Arawhiti administers the 50.6742 hectares, more or less,<sup>1</sup> known as Sticky Forest, on behalf of the Crown. As I explain in more detail below, under the Ngāi Tahu Settlement the Crown holds this land until the process under Section 15 of the Ngāi Tahu Deed to effect transfer to the intended owners (including their identification) has been implemented.
14. Accordingly, Te Arawhiti is interested in PC54 because it is the branch of government administering this redress land for the Crown until its transfer.
15. Te Arawhiti supports the proposed plan change. Sticky Forest is landlocked. That means, it is without legal access. Establishing the proposed road and infrastructure access to the Sticky Forest land through PC54 will resolve the landlocking of this land.

#### **Crown obligations and process required by the Ngāi Tahu Settlement**

16. Sticky Forest has a complex status as substitute South Island Landless Natives Act 1906 (**SILNA**) land.

#### ***Background to SILNA***

17. In the second half of the nineteenth century, Ngāi Tahu rangatira asserted that the Crown had failed to fulfil its promises of Māori reserves made during its Te Waipounamu (the South Island) land purchases in the 1840s and 1850s. Commissioners appointed in the 1880s and 1890s to investigate reported that as a result of extensive land purchases in the 1840s and 1850s and other factors associated with the settlement of Te Waipounamu by Europeans:
  - Ngāi Tahu as a tribe and as individuals had been left without sufficient land to sustain themselves; and
  - Only 10% of the tribe had sufficient land to provide a living.<sup>2</sup>

<sup>1</sup> Being Section 2 of 5 Block XIV, Lower Wānaka Survey District (S0963). Balance certificate of title 367/52.

<sup>2</sup> See Waitangi Tribunal 'The Ngāi Tahu Report 1991', Volume 3 Chapter 20, and 'The Waimumu Trust (SILNA) Report' 2005.

***Setting aside and transfer of SILNA land***

18. In 1892, the Native Minister met with Ngāi Tahu representatives and indicated that the Crown would make land available.
19. It was decided that Crown land at ‘the Neck’ between lakes Wānaka and Hāwea – the Hāwea/Wānaka SILNA land – was to be transferred to individual Māori who were identified as being without “sufficient land to provide for their support and maintenance”.<sup>3</sup> (Other land was identified for other beneficiaries).
20. The SILNA was enacted to authorise transfer of the land blocks allocated. However, SILNA was repealed in 1909 without the Hāwea/Wānaka SILNA Land having been transferred.

***Acknowledgement of breach by the Crown in relation to Hāwea/Wānaka***

21. In the Ngāi Tahu Deed the Crown accepted that the failure by the Crown to transfer the Hāwea/Wānaka SILNA Land to the intended beneficiaries after 1906 was a breach of the principles of the Treaty of Waitangi and that there is an obligation on the Crown to complete the transfer.

***Hāwea/Wānaka SILNA Substitute Land committed in substitution***

22. The original land at ‘the Neck’ (the Hāwea/Wānaka SILNA Land) was not available at the time of the Ngāi Tahu negotiations (as it was subject to a pastoral lease) and the Crown agreed to provide the Sticky Forest land (the Hāwea/Wānaka SILNA Substitute Land) in substitution.
23. The Sticky Forest land vested in the Crown pursuant to the Settlement Act and is held pending implementation of the process in Section 15 of the Ngāi Tahu Deed to effect transfer to the intended owners. The intended owners are the successors to the individuals allocated the original Hāwea/Wānaka SILNA land.
24. It was substituted for the land which was originally committed to the intended owners under SILNA by way of the Treaty settlement process and so cannot be substituted again. The Crown must transfer the Sticky Forest land to the intended owners (the successors). Further, because the

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<sup>3</sup> South Island Landless Natives Act 1906.

intended owners are being identified through a post-settlement Māori Land Court process (rather than being an existing large natural grouping, for example, an iwi), there is no automatic representative body to speak for the interests of the intended owners as a collective.

25. The work of the Māori Land Court to identify the intended owners/successors has been challenging. Research is now complete in relation to the 50 original beneficiaries assigned the Hāwea/Wānaka SILNA land and the Māori Land Court has made determinations in relation to 49 of the 50 original beneficiaries. As at 18 May 2023, the Māori Land Court had identified 1,994 successors.<sup>4</sup>
26. Sticky Forest (the Hāwea/Wānaka SILNA Substitute Land) was a reserve. Pursuant to the Settlement Act, the status of the land as a reserve was revoked (s 448) and the land vested in the Crown (s 20(9)).

#### **The landlocking of Sticky Forest**

27. Sticky Forest became landlocked on 22 October 1998 when it vested in the Crown.
28. Until 22 October 1998 (the 'settlement date' in the Settlement Act) the Sticky Forest land was vested in Queenstown Lakes District Council (QLDC) as plantation reserve as part of a larger 115.4988 hectare contiguous piece of land recorded on the same title (identifier OT18C/473). Until the settlement date, legal and physical access was achieved via the contiguous piece of land owned by QLDC having frontage to Rata Street and Aubrey Road. QLDC, as the owner of this larger block, did not need separate access to the portion which became the standalone Hāwea/Wānaka SILNA Substitute land (Sticky Forest).
29. On the settlement date when the 50.67-hectare Sticky Forest (the Hāwea/Wānaka SILNA Substitute Land) statutorily vested in the Crown, the rest of the land on title (OT18C/473) remained vested in QLDC as plantation reserve. From the point Sticky Forest vested in the Crown

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<sup>4</sup> I understand that if identified successors die before the land transfers, the Māori Land Court will continue to process incoming succession applications received, or to update the list of successors using existing owner records in relation to other land in the Court record.

there was no legal access as the Crown did not own the adjoining land with frontage onto Rata Street and Aubrey Road.

30. Twenty-six years have passed since the signing of the Ngāi Tahu Deed when this land was committed. The remnant plantation reserve has been sold <sup>5</sup> and subdivided and built on. The greater surrounding area has changed rapidly from rural to intensive urbanisation since 1997. The changed environment surrounding Sticky Forest is illustrated by the aerial images from 1997 and 2022 (attached as **Appendices A and B**). As a result, what was an unrecognised legal problem has become a practical one as Sticky Forest is enclosed by mainly single residential lots in cul-de-sac configurations.
31. Current recreational users (whose use I discuss below) are entering the land by foot or bike, frequently from adjoining reserve. Access over reserve is subject to the administration of such land under the Reserves Act 1977. Access for the owner of Sticky Forest, or permitted users of Sticky Forest, is not guaranteed under these circumstances, nor is there any legal vehicle access right.

**Importance of providing legal access to the Hāwea / Wānaka SILNA Substitute Land through PC54**

32. Te Arawhiti is concerned to ensure that the intended owners will be in a position to access and use their land upon transfer. Meaningful use options for the future owners depend on there being access both for vehicles and infrastructure.
33. The Northlake block is the last piece of appropriate undeveloped land surrounding Sticky Forest and is the obvious means of effecting permanent access. For that reason, the Minister for Treaty of Waitangi Negotiations wrote to the expert consenting panel considering resource consents sought to build a retirement village and subdivide land owned by Northlake Investments Ltd under the COVID-19 Recovery (Fast-track Consenting) Act 2020 asking that they give consideration to the need for

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<sup>5</sup> the Kirimoko Block.

legal access to the adjoining land in their assessment of the application. Those consents were granted by the expert consenting panel on conditions, including that a request for a private plan change was to be lodged with QLDC providing for a legal route for road access (and for other infrastructure services) to the land accompanied by an access deed to secure and implement that access. This is discussed further in the s 42A Report.<sup>6</sup>

34. I am advised that there are other legal avenues for forcing access such as through the Property Law Act. However, this plan change provides a simple additional short piece of road off an already consented and constructed road<sup>7</sup> and which NIL has volunteered to solve the problem.
35. Finally, I note that the Commissioners who heard the rezoning submission by future owner Mr Beresford (whose position has been taken by Mr Bunker and Ms Rouse on Mr Beresford's death) considered the lack of access the bar to the rezoning. That rezoning is now on appeal to the Environment Court (with other issues the focus) but Te Arawhiti wishes to ensure that the access obstacle is removed.

### **Current use of the Hāwea / Wānaka SILNA Substitute Land**

#### ***Plantation Forest***

36. The Sticky Forest land (as its name suggests) is planted in plantation forest. The forest on the land is approximately 42 hectares in size. It is estimated (based on aerial mapping over time) that most of the forest was planted circa 1987 (approximately 82%) or circa 2000 (approximately 18%).
37. The forestry trees are exotic species: largely Douglas Fir (approximately 34.32 ha), some Radiata pine (approximately 6.88 ha), and a small area of larch (approximately 0.91 ha).
38. PF Olsen Ltd has been engaged since 2008 to maintain the forest.

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<sup>6</sup> At 4.29

<sup>7</sup> Refer Fig 3 in the s 42A Report.



39. I am advised that Radiata pine has a limited life and that tree stability can start to reduce beyond 40 years of age. This can raise the risk of windthrow and become a health and safety risk for users of the land. Te Arawhiti has been advised by PF Olsen that the Radiata pine are now at a size where they could be harvested, while the Douglas Fir is about 10 years off harvesting age.
40. The forest requires periodic maintenance. In 2009 PF Olsen advised that to maximise value, waste thinning of the Douglas Fir trees would need to be undertaken. Thinning took place in 2009 of 26.7 hectares of the Douglas Fir. Vehicle access was negotiated with an adjoining owner across private land for this purpose.

***Recreational use***

41. The land has been (and is currently) used by the community as an area for mountain biking and walking, the tracks being among the trees. While the Crown has held the land pending the Section 15 process to effect transfer, the public have been able to access the land for recreation. There is no public right to access this land, and no public right to expect access in the future. The Crown has allowed the land to be used with the proviso that public access is revocable and that this use in the meantime does not bind the future owners. This has been conveyed in ministerial briefs and to members of the public upon inquiry. It is also made clear in signs that are erected on Sticky Forest trails, such as:



42. Sometimes inspections of the land have identified that members of the public have built unlawful structures on the land. PF Olsen or Te Arawhiti officials have had to notify Bike Wanaka that the structures are to be removed, and request that they notify their members.
43. Nevertheless, an expectation seems to have developed within the community that public access should continue indefinitely.<sup>8</sup> It is up to the owners upon transfer to decide whether they wish to continue to allow this type of access to their land. When the land is transferred it will be private freehold land (either Māori freehold land or general land, depending on what the owners decide).

### **Future Use of Sticky Forest**

#### ***Rezoning of Sticky Forest and status of appeal in the Environment Court***

44. Mr Mike Beresford submitted on the QLDC Proposed Plan in favour of a change of zoning for Sticky Forest from rural to allow for some residential

<sup>8</sup> Reflected in some of the submissions that would wish to see access denied in PC54 as a means of preventing future land use change (e.g. those listed at fn 36 s 42A Report).

development by the intended owners when they acquired Sticky Forest. That proposal is now on appeal to the Environment Court with Ms Rouse and Mr Bunker (also identified future owners) taking over the appeal on Mr Beresford's death, as noted. Evidence has been filed, joint witness conferences have been held (on planning and landscape issues) and the matter is now awaiting hearing later in the year.

45. The parameters of any future residential development on the Sticky Forest land are now clear. The appellants seek to rezone land that could be subdivided into approximately 150 lots in a mix of density patterns including low density residential and large lot residential (accessed by the proposed road from Northlake) with no development within the identified ONL (approximately 50 per cent of the Sticky Forest land). What Council, and the only s 274 party in opposition (Kirimoko No.3 Limited Partnership), consider acceptable development at Sticky Forest is also known. There are three options before the Environment Court whose effects it can assess. I therefore disagree with the statement in the s 42A Report that in terms of traffic effects from Sticky Forest in future on the Northlake network of roads "there is no clear basis to predict what it is that should be future proofed or to what extent"<sup>9</sup> or "... there is at this time no way of knowing what might come to be proposed within Sticky Forest".<sup>10</sup>
46. Mr Tony Penny for the appellants in the rezoning appeal provided traffic effects analysis of their proposed development (which, on the available options, is a worst-case traffic scenario). I understand that he will provide evidence for this hearing. Ms Ellis provides planning evidence for Te Arawhiti on the provisions that Mr Munro proposes to address what he sees as uncertain traffic effects from access to Sticky Forest being secured.<sup>11</sup>

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<sup>9</sup> At 10.23

<sup>10</sup> At 1.4. The full paragraph reads: "Because there is at this time no way of knowing what might come to be proposed within Sticky Forest, it is not possible to ascertain to any meaningful level of certainty what traffic and transportation impacts might result from the use and development of Sticky Forest within the NSZ as a result of potential future traffic generated within Sticky Forest seeking to use the NSZ road network to access Aubrey Road and elsewhere."

<sup>11</sup> At 10.30 ff.

### ***Tree removal***

47. As already noted, Sticky Forest is a plantation forest and safe management involves removal of trees. The fact that some harvesting at least is necessary at some stage (and that there is a need for a roading connection to enable this) has not been recognised by Council to date. Mr Munro refers to the premise in the Wānaka Structure Plan development in 2007-8 that Sticky Forest's long-term future would be as the town's "plantation"<sup>12</sup> but at the same time there seems not to have been recognition that exotic plantations are not static.
48. The question of traffic effects from logging in and from Sticky Forest has been raised in this hearing. I understand that the evidence of Mr Tony Penny will address this. Ms Ellis also discusses the proposed new rules. However, for the Panel's information, Te Arawhiti has been exploring the potential for access routes, other than through Northlake, that are appropriate for logging traffic.
49. In any case, part of Sticky Forest is proposed to be developed for residential use. What development the parties seek, or would accept, by way of rezoning is before the Environment Court. It is my understanding that appropriate controls to address logging will be dealt with in that context.

### **Submissions**

50. Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) has submitted proposing a revised name for Sticky Forest in order to recognise its history. Ms Rouse and Mr Bunker and Te Arawhiti and Te Rūnanga have discussed this. This is a matter for the future owners and Te Rūnanga. Te Arawhiti supports the insertion of Hāwea-Wānaka before Sticky Forest if that is their wish as we understand it is. At an appropriate point I assume this could become a global change in the Proposed Plan.

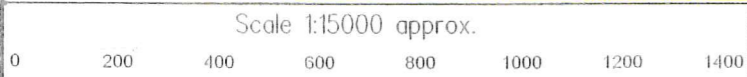
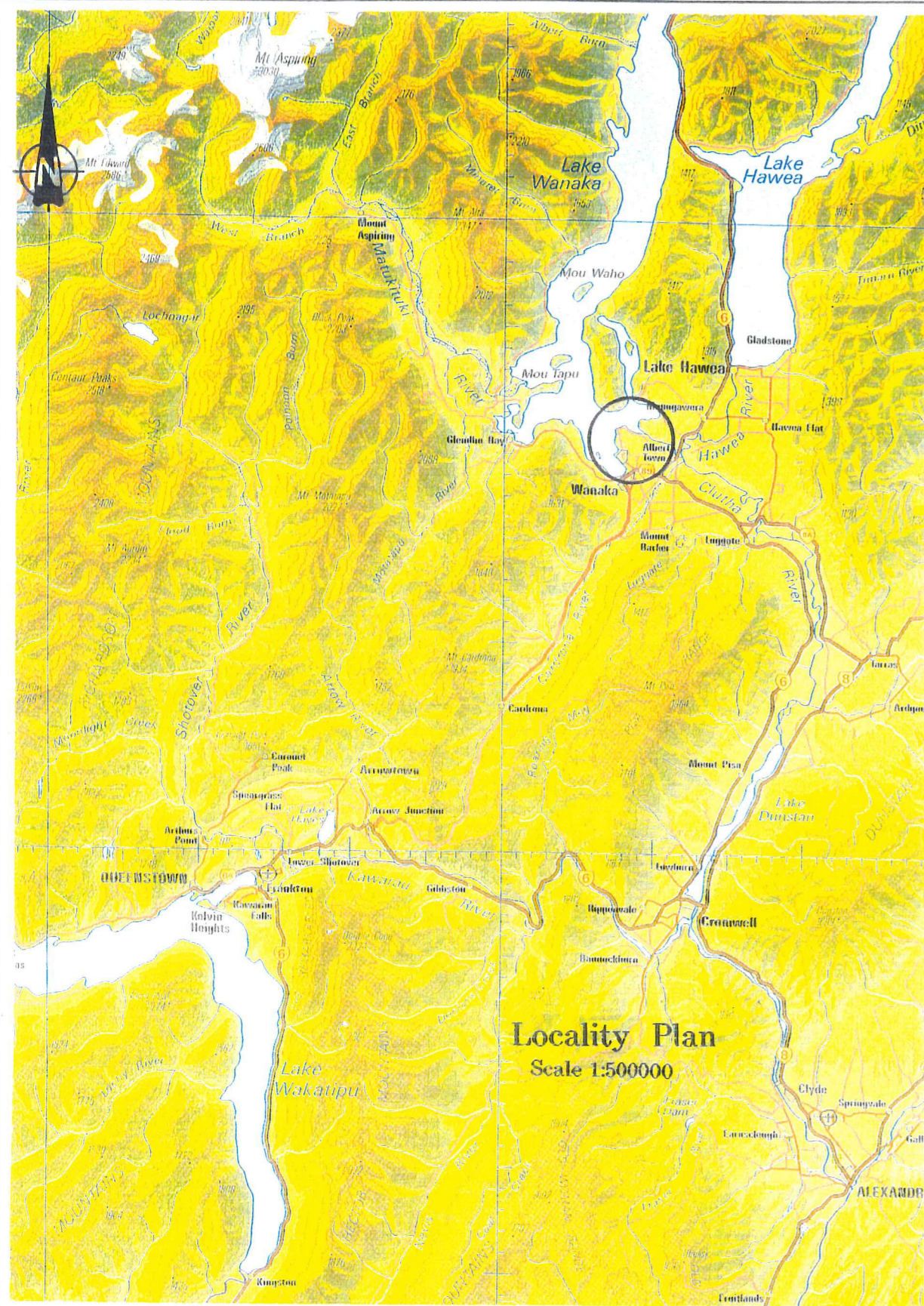
**Monique King**  
**13 July 2023**

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<sup>12</sup> At 4.24.

## **Appendix A**

### **Sticky Forest and surrounding areas, 1997**



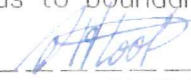

Otago Land District  
Territorial Authority: Queenstown Lakes Dist

**Terralink NZ Ltd**  
Survey Services  
Dunedin



# Wanaka Plantation Reserve

Areas referred to in the Deed of Settlement for the  
Ngāi Tahu Claim

Approved as to boundaries:  
 21/11/97  
 for Te Rūnanga o Ngāi Tahu  
 21/11/97  
 on behalf of the Crown

AS 237

SO 24734

## **Appendix B**

### **Sticky Forest and surrounding areas, 2022**

# Sticky Forest

and surrounding development



Sticky Forest

Google Earth

Image © 2022 CNES / Airbus

1 km

