REVIEW OF THE 2002 SILNA POLICY PACKAGE

A Report to the Ministry of Agriculture and Forestry

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Preface

In 2006 Cabinet directed the Ministry of Agriculture and Forestry (MAF), in consultation with Te Puni Kokiri, the Department of Conservation, the Ministry for the Environment, and the Treasury to undertake a review and report back to the Cabinet Policy Committee on the achievements of the South Island Landless Natives Act (SILNA) 2002 policy package, and future policy options, by March 2008 (POL Min (06) 5/6). At that time Cabinet also invited the Minister of Forestry to advise SILNA landowners that the Government will not consider any further extension to the moratorium, and that once the Nature Heritage Fund (NHF) had exhausted its remaining funds on high priority and non-high-priority areas the programme of conservation purchases will be complete.

This intended review did not however commence until August 2009. The terms of reference (Appendix I) include reviewing the performance of the policy against the objectives and future policy options. This review has been undertaken by John Ruru and Maggie Bayfield, appointed as an independent review panel by the Ministry of Agriculture and Forestry.

As part of this review process a discussion document was prepared by the Ministry of Agriculture and Forestry (MAF 2009) and submissions were received from SILNA landowners and interested organisations (summarised in Ministry of Agriculture and Forestry 2009). The review panel attended hui organised by MAF with assistance from Te Puni Kokiri in Invercargill, Dunedin, Christchurch, Nelson and Wellington, and also met with other interested parties. Minutes of the hui were sent to participants to ensure a true and correct record of the views expressed and a summary was prepared (Maximize Consultancy 2009).

The review panel gratefully acknowledges the time and effort of all of these people in bringing matters to our attention as well as the advice received from staff of Ministry of Agriculture and Forestry. However the panel is also cognisant of the fact that very few comments and submissions were received, and these represent a very small percentage of SILNA landowners. Hence the panel has concerns that the review has been based on limited views that may not be representative of all involved.

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Executive Summary

This report is based on submissions from a very small percent of South Island Landless Natives Act (SILNA) owners (including beneficiaries and shareholders) as well as government agencies and interested organisations.

The SILNA lands allocation to individual Māori in 1906 has been considered a 'cruel hoax' (Waitangi Tribunal 1991), as the lands allocated were mostly remote, rugged and far from the beneficiaries traditional kainga. They were not considered to be settlement by Ngai Tahu for iwi grievances.

In 1991 the Ngai Tahu Report of the Waitangi Tribunal found that the SILNA lands represented no contribution towards the settlement of their claims and has settled historical grievances in its Ngai Tahu Claims Settlement Act. The other iwi in the South Island have also had their claims heard and settlement is progressing. Many SILNA owners however still see their land as compensation to provide them with an economic base.

Of the 57,538 ha of land originally allocated, the 2002 SILNA policy package addressed the 17,300 ha that remained in indigenous forest (unlogged and logged, that is, both 'virgin' and secondary forest). This represents approximately 1.6 percent of remaining privately-owned indigenous forest in New Zealand.

The 17,300 ha is divided into approximately 400 blocks of SILNA land, with a variety of governance structures, each with multiple owners, with an estimated total of approximately 40,000 owners, some of whom are not known to trustees.

In 2001 Crown Law provided advice to the government that the SILNA lands were not compensatory and therefore not a special case. This view was rejected by SILNA owners.

The 2002 policy package was designed as a measure to assist SILNA landowners, over a period of seven years, to come under the framework of sustainable forest management in the Forests Act or to covenant the forests with Nature Heritage Fund.

The implementation of the 2002 policy package has not been as successful as anticipated. Since 2002 and after expenditure of $9.881 million (MAF 2009):

- 808 ha of land have been protected under seven conservation covenants- approximately 708 ha of high priority and 100 ha of other forest of high conservation value.

- A further 1318 ha of high priority forest and 1521 ha other high value forest is under negotiation for conservation protection with $8.128 million committed for these negotiations.

- 16 draft SFM plans (1900 ha) prepared (all for blocks administered by the Maori Trustee) but no decisions have been taken regarding commitment to SFM.

- Approx 240 ha high conservation forest have been selectively logged (unsustainably).

- Approx 130 ha logged with resource consent (one) from Southland District Council (SDC). This area did not have a sustainable forest management plan registered in accordance with Part IIIA Forests Act 1949.

The government provided advice that the moratorium payments would cease (September 2006) and that once Nature Heritage Funds had been exhausted the programme of conservation purchases would be complete.

In 2009 16,500 ha of SILNA land with indigenous forest remain with special status under the Forests Act i.e. they can be logged unsustainably for the domestic market. The Resource Management Act provides an additional test for sustainability through regional and district plan provisions as it does for all land throughout the country. Of these SILNA lands 2839 ha are under negotiation for conservation protection. Potential opportunities for SILNA forests were considered as part of the review.

The review panel considers there are key issues around governance and communication of information for many SILNA owners, beneficiaries and shareholders as there are for other owners of multiple owned Maori land. Poor information exists on landowners of blocks and subsequent poor governance is a major impediment to decisions on management of some of the lands. Assisting with the removal of this impediment would allow SILNA landowners to make more effective decisions about management of their lands.

In considering potential opportunities for the SILNA forests it was noted that the small area (hectares) of many of the blocks limits the potential use. Currently, for an economic return from sustainable forest management, coordination of blocks would be necessary.

Conservation protection has been progressing slowly which is to be expected given that covenants protect the land in perpetuity. If all SILNA lands were to be protected by covenant this would require significant additional funding.

The potential for land swaps or transfer of land use rights was raised by a range of submitters and deserves further investigation.

There has been a history of ineffective communication, both between government and SILNA owners, between government departments and between owners themselves. While acknowledging that the processes are difficult, any future policy options or decisions of government should be clearly communicated to SILNA owners.

1 Introduction

This report firstly provides a brief background to the issues regarding South Island Landless Natives (SILNA) land. The following review of the 2002 SILNA policy package includes the objectives and achievements of the package. A summary of the key issues raised during the hui and written submissions is provided. The report then includes discussion around the key issues, potential opportunities for SILNA forests and some future policy options for consideration by government.

2 Background

2.1 South Island Landless Natives Act 1906 (SILNA)

In 1906 special legislation (South Island Landless Natives Act) was drafted to permit the granting of title to land to individual landless Māori in the South Island. This followed more than 50 years of petitions and complaints that the Crown had failed to honour promises associated with land purchases to set aside land and other resources for Maori living in the areas involved.

The purpose of the Act was:
"s.3(1) For the purpose of providing land for landless Natives in the South Island…"
Landless Natives are defined as Maoris in the South Island who are not in possession of sufficient land to provide for their support and maintenance, and includes half-castes and their descendents"

Pursuant to the Act, 57,538 ha of land mainly located in Southland and on Stewart Island, were permanently reserved to 4,064 'landless natives' and their descendents. The land was remote and rugged – far from the beneficiaries' traditional kainga or present home. Maori did not receive the same advice and capital that was made available through the Advances to Settlers Scheme and so it was difficult for Maori owners to develop their land. Ngai Tahu did not accept the grants as a settlement of iwi grievances, rather as a compassionate gift. The allocation of this land has been described as 'a cruel hoax' (Waitangi Tribunal 1991).

In 1909 the Act was repealed and the land became Native (now Maori) freehold land, and after an amendment to the Native Land Act in 1914, has the same restrictions on alienation as any other Māori freehold land.

Despite the many disadvantages of the land, some owners did manage to harvest their forests and/or develop the land. While extremely isolated areas such as Waitutu and Lord's River (Rakiura) remained relatively untouched, West Rowallan, Waimumu, parts of East Rowallan and Alton areas were significantly cutover and some later clearfelled.

In 1990 the claim WAI 158 was lodged with the Waitangi Tribunal on behalf of owners of certain named SILNA land areas, claiming:
"prejudice by the Crown's National policy on indigenous forests which is depriving us of an economic base" and

"*further by actions of the Crown since 1906 in taking parts of our said lands without the consent of the owners and without compensation*". This claim has not yet been heard.

The Ngai Tahu claim (WAI 27) was lodged with the Waitangi Tribunal in 1987. The Ngai Tahu Report of the Waitangi Tribunal (1991) concurred that land given under SILNA was not an adequate remedy and represented no contribution towards the settlement of their claims. The Crown has settled historical claims relating to these grievances in its Ngai Tahu Claims Settlement Act 1998.

The Crown, in this settlement, was dealing with an iwi, whereas the allocation of lands to 'landless natives' had been on an individual basis. Many SILNA owners (including part-owners, beneficiaries of Maori Trusts or shareholders in Maori Incorporations) do not feel that the Ngai Tahu claim has addressed their grievances (particularly those who feel they are Ngati Mamoe or Waitaha who were included with the Ngai Tahu claim). Other treaty claims by the eight iwi at the top of the South Island (Rangitane, Ngati Apa, Ngati Koata, Ngati Rarua, Te Atiawa, Ngati Tama, Ngati Kuia) have been heard and agreements are being reached with the Crown as to redress.

After many years of viewing the SILNA land grants as compensation or a political attempt at an interim settlement of the Ngai Tahu claim, in 2001 Crown Law opinion reviewed the history of SILNA lands. The revised view was that these lands were not compensatory and therefore not a special case. This view was rejected by SILNA owners after further historical research for Te Puni Kokiri and Rau Murihiku Whenua Māori by Dr Jim McAloon (McAloon undated).

WAI 158 remains as a contemporary claim about the Crown's indigenous forest policy. There is a view amongst some SILNA owners that the government should provide funds to progress this and other claims relating to the SILNA lands before any policy review.

While the 2001 Crown Law opinion apparently concluded that the SILNA lands are not a special case, the 2002 SILNA policy package provided special treatment and funding for these lands.

2.2 Indigenous Forests

Government controls on natural forest clearance (deforestation) were first imposed in the late nineteenth century, but continuing demand for timber and agricultural land resulted in further forest clearance. The Forests Act 1949 provided an initial framework for forest management.

By the 1970s, growing public concern led to stronger government conservation measures. Large-scale clearance of natural forest for agricultural land ceased and New Zealand's domestic timber supply came largely from mature planted forests. Further government administrative changes in 1987 resulted in reservation of about five million hectares (18 precent of New Zealand's total land area) of publicly-owned natural forests.

The Resource Management Act (RMA) introduced in 1991 provided a framework for the sustainable management of natural and physical resources, principally implemented by local government via regional and district plans. The SILNA lands are not exempt from the

provisions of this Act, and therefore must comply with policies and rules contained within regional and district plans.

In 1993 an amendment to the Forests Act 1949 introduced a new Part IIIA that among other things controlled the milling and export of produce from indigenous forests. There was a phase-in transitional period to comply with this new regime. It also required that timber production be sustainably managed on the basis of an approved management plan or permit. The SILNA forests were the only privately-owned forest exempt from all the provisions relating to sustainable management as were the West Coast publicly-owned indigenous forests outside of the conservation estate. This was in recognition of the view (at that time) that SILNA lands were a special 'compensatory case' of land. Further government controls resulted in the cessation of logging of the West Coast publicly-owned forests in March 2002.

Less than 0.1 precent of New Zealand's total forest production is now harvested from natural forests. New Zealand's wood needs are now almost exclusively met from planted production forests. No timber is harvested from New Zealand's publicly-owned natural forests.

The remaining SILNA forests (approximately 17,300 ha) make up 1.6 percent of all privately-owned indigenous forest in New Zealand, and account for approximately 4 percent of Maori-owned indigenous forest (MAF 2009).

In May 1999 the government introduced a system of goodwill payments in exchange for a voluntary moratorium on logging SILNA forests. The initiative was an interim measure to protect high priority forests from clearfelling/unsustainable logging while longer term measures could be discussed to align the management of these forests with other privately-owned indigenous forests. Approximately 10,500 ha (60 percent) of the remaining SILNA forests were covered by moratorium payments.

3 The 2002 SILNA Policy Package

In January 2002 Cabinet Business Committee considered options for a policy approach to address unsustainable management of forests allocated to some Māori under the South Island Landless Natives Act 1906 (SILNA).

SILNA forests were the only privately owned indigenous forests in New Zealand that were exempt from the sustainable management requirements under the Forests Act 1949, although they were subject to the provisions of the Resource Management Act 1991. A small proportion was continuing to be clear-felled or selectively logged (very approximately 100 ha/yr, Muldrew pers comm 2009). This attracted adverse comments from environmental groups, particularly where SILNA forests were of high conservation value or close to protected areas such as national parks. The absence of logging controls on these forests was inconsistent with the Government's overall approach to indigenous forest management as expressed by Part IIIA of the Forests Amendment Act which covers all other indigenous forests in the closure of all logging of Crown indigenous forests managed by Timberland West Coast Limited.

Of the approximately 57,000 ha originally reserved, approximately 17,300 ha still remained in forest cover with some trees that could be potentially merchantable. Of that area, about 8,300 ha remained unlogged, and 9,000 ha had been modified to varying degrees by logging. About 5,000 ha of the lands had been identified by the Crown as priority areas for conservation protection (MAF 1999).

On 17 April 2002 the Cabinet Policy Committee confirmed the SILNA policy package (POL Min (02) 8/6), including:

- high priority conservation purchases - through Nature Heritage Fund (NHF) and set the price per ha based on the Rakiura settlement per ha price;
- assistance to SILNA forest owners for sustainable forest management plans (SFM plans);
- improving the application and enforcement of the Resource Management Act 1991;
- extension of the voluntary moratorium for a further three years to March 2005;
- voluntary inclusion of SILNA sections under Part IIIA of the Forests Act 1949;
- controls on exports from SILNA forests; and
- a consultation and communication programme.

The government allocated $19.691 million (incl GST) over seven years to implement the policy package. Cabinet also invited the Minister of Forestry to advise SILNA landowners that the Government will not consider any further extension to the moratorium, and that once the Nature Heritage Fund has exhausted its remaining funds on high priority and non-high-priority areas the programme of conservation purchases will be complete.

In announcing the policy package Jim Anderton (13 May 2002) stated:
"The government accepts that SILNA owners have a very firm view of their ownership rights. This view has been reinforced by the approach that central government has taken to the SILNA issue over a number of years. It is clear that SILNA owners will not accept any legislative measures that make no distinction between SILNA forests and other privately owned forests. The government has taken this view into account in designing the policy package."

Moratorium payments were later extended until September 2006. Cabinet agreed (CAB Min (08) 12/3C) to carry forward the SILNA policy package funding beyond 2007/08 and funding has currently been extended until 30 June 2010 by way of expense transfer. There is no limitation on the carry forward of the commitment by the Cabinet Minute.

4 Review of Policy Package

4.1 Objectives of Policy

Given the change in view by the government (Crown Law 2001) that the SILNA Lands did not have special status, and the differing view of SILNA forest owners, the policy package was an attempt to provide transitional funding and support to bring the SILNA forests in line with the provisions of legislation which applied to other Māori owned indigenous forests in New Zealand. The policy package was voluntary based, developed following consultation with Rau Murihiku Whenua Maori, an overarching group representing many SILNA forest

owners, the then Member of Parliament for Te Tai Tonga, SILNA owners and other affected parties.

However, the Crown had begun negotiations with SILNA owners in the 1990s on the basis that their lands were a special case; a compensatory award, which created an expectation that they would receive compensation as a result of a negotiated settlement. The 2002 policy, while taking into account the views of SILNA owners and past history, fell short of this expectation of many SILNA owners and therefore was likely to be difficult to achieve.

The policy package was to run for seven years with a finite time of funding for moratorium payments and budget for Nature Heritage Fund. The objectives were to bring SILNA lands under the same legislation as other Maori owned indigenous forest ie sustainable management or conservation. Given that the land is multiple owned Māori land with differing governance structures and that there are issues around who the owners are, this was an optimistic time frame.

The 2002 SILNA Forests Implementation Package included a consultation and communications programme (April 17 2002, POL Min (02) 8/6).

Given that the policy fell short of expectations, was based on a changed view of the status of SILNA lands and that it was dealing with multiple owned Māori land, and had a relatively short time constraint in which to operate, communication with SILNA owners was an important part of the package.

4.2 Achievements and Expenditure against Budget

Table 1: Allocation of SILNA funding, targets and achievements (as at 11 May 2009) (MAF 2009)

Policy component	Amount initially allocated[1] (in $mil)	Target	Expenditure/achievement		Remaining funding available[3] (in $mil)
			Financial (in $mil)	Physical	
Moratorium payment	1.577[2]		2.291	Approximately 10 000 ha annually until September 2006	0.000
High-priority conservation protection (including "non-high-priority" areas)	16.414[2]	5 000 ha of high-priority forests plus other areas if funding available	7.166 (NHF is currently negotiating with some SILNA owners - $8.128 million has been committed for these negotiations)	808 ha In negotiation – 1318 ha (of high priority) 1521 ha (other)	1.436[3]
SFM plans	1.500	5 plans per year	0.383	16 plans covering an area of 1900 ha, none registered	0.179[3]
Application and enforcement of the Resource Management Act 1991	0.200		0.041		0.000
Forests Act amendments		Introduction of - voluntary inclusion; and - export controls provisions for SILNA forests in the Forests Act		The Forests Amendment Act 2004 provides for voluntary inclusion; SILNA forests subject to Part IIIA export controls	

[1]does not include subsequent fiscally neutral expense transfers but includes GST where applicable
[2]includes establishment costs
[3]includes subsequent expense transfers

Funds remain (or were returned) for all objectives except for the moratorium payments which ended in 2006.

4.3 Moratorium Payments

The continuation of moratorium payments (started in 1999) to approximately 10,500 ha of the 17,300 ha remaining SILNA forests ($34/ha while no logging occurred), was to continue to provide some funding to allow SILNA landowners the opportunity to determine management of their lands – in particular the negotiation of a conservation covenant with NHF or the development of a sustainable forest management plan with MAF. Approximately 60 percent of SILNA lands were covered by moratorium payments.

In 2009 assessment of the forests remaining indicates that the only known unsustainable logging has been of forests in the Tautuku-Waikawa blocks – approx 240 ha of high priority conservation value forest was logged after the package was introduced. Therefore there has been logging of approximately 5 percent of high conservation value SILNA forests or 1.5 percent of all remaining SILNA forests, all within one block.

Anecdotal evidence would suggest that in the years prior to the 2002 policy package there was about 300 ha of forest sustainably logged with resource consent in the Southland District but that there may have been illegal logging/clearance without resource consent as this was not monitored (Bruce Halligan, SDC pers comm). Similarly no information regarding logging is available in Clutha District where consent to log is not required in the rural zone of the District. Graeme Muldrew (pers comm) suggests that there may have been in the order of 80-100 ha/yr of SILNA forest (all districts) logged between 1993 and 2002.

Since April 2002, four moratorium recipients have signed conservation covenants. A further three covenants were signed with owners not participating in the moratorium.

In comparison to previous years and with regard to the objective of the 2002 policy to address unsustainable logging, moratorium payments have not stopped unsustainable logging, although it is difficult to assess the extent to which it may have been reduced. Approximately 240 ha were unsustainably logged soon after the implementation of the 2002 policy package, compared with approximately 80-100 ha/year previously. This is however, a small percentage of the SILNA forests. Conservation covenants have been negotiated with SILNA owners not receiving the payments as well as those receiving moratorium payments. Moratorium payments therefore may have been helpful for some SILNA owners (60 percent uptake) but have not had a major impact in assisting to address the issues.

4.4 Sustainable Forest Management (SFM) Plans

SFM Plans provide for long-term management of indigenous forests. They must be based on a forest inventory and provide for harvests of timber on a perpetual, sustainable basis while maintaining the forest's flora, fauna, soil and water quality, natural and amenity values and protecting the forest from pests, weeds and fire. SFM Plans must generally be registered against title to the land for a minimum of 50 years.

If the target of 5 plans per year since 2002 was reached there would now be 35 SFM plans. Only 16 plans have been prepared (all of these for blocks administered by the Maori Trustee) and none of these have been registered to date. Plans were able to be produced more cost effectively than anticipated (at about half the cost), such that expenditure has been low. Draft plans were prepared at no cost if the draft plans were adopted and owners relinquished the sustainable forest management 'exemption' under the Act. If not adopted the owners reimburse the cost of the plan unless it can be shown the management of the forest is uneconomic.

4.5 Forests Act Amendments

The Forests Act was amended in 2004 to allow the voluntary inclusion of SILNA land within Part IIIA of the Act, thus giving up their exemption from controls with regard to sustainable

harvest for the domestic market under this Act. No SILNA landowners have taken up this option.

In 2004 the Forests Act was also amended to partially remove the exemption granted to SILNA forests. SILNA owners can still harvest their forests without an approved sustainable management plan or permit and sell the resulting timber in the domestic market, but not export it.

The beneficiaries of the Waimumu Trust (SILNA), which administers an area of 4440 ha of indigenous forested land claimed to the Waitangi Tribunal that this amendment to the Act removed their right to export unsustainably logged timber (without compensation), and would lead to a loss of some $25million in potential earnings. The Waitangi Tribunal released the Waimumu Trust (SILNA) WAI 1090 in May 2005. The Tribunal found that there had been no breach of the principles of the Treaty and no prejudice to the claimants.

4.6 Conservation Protection

Prior to the 2002 package, protection of indigenous forest on Rakiura and Waitutu blocks had been achieved by negotiation with SILNA owners using NHF funding and new money. In addition a block adjoining the Wairaurahiri River in West Rowallan (approx 155 ha) had been protected by Nga Whenua Rahui. The 3103 hectare Tautuku /Waikawa block was leased by the Crown for a period to protect conservation values and provide for public access. The NHF paid for the lease and other associated costs.

The target for conservation outcomes was initially the 5000 ha of high priority forests with other areas if funding was available once this was achieved. This was later altered in 2003 to allow negotiation of any areas with willing landowners.

To date NHF has protected 808 ha, approx 708 ha of high priority forest and 100 ha of other forest with high conservation value (Allan McKenzie pers comm.). A further 1318 ha of high priority forest and 1521 ha of other forest is under negotiation. A total of 2026 ha of high priority forest, and a further 1621 ha of other forest, is therefore either protected or under negotiation.

Progress with conservation protection has been slow and has fallen well short of the target. NHF has expended $7.166 million, and achieved protection of 808 ha based on per hectare prices for unlogged and logged forests. A further $8.128 million has been committed for negotiations in process (1318 ha high priority, 1521 ha other forest with high conservation values). This leaves only $1.436 million for protection of 2974 ha of high priority forest if landowners wish to pursue this process. Negotiation and protection of land by conservation covenants has been more costly than anticipated and with current funding will not be able to achieve the target set by the 2002 policy.

4.7 Improving the Application and Enforcement of the RMA

Funds allocated to the Ministry for the Environment under this objective were used to assist Clutha District with an Environment Court case (ENV C41/04) in 2004 with regard to the boundary between the coastal resource area and the rural resource area. Tautuku trustees had

applied to the court as they considered that the Clutha District Council had included part of their land within the coastal resource area which was not in the coastal resource area, and this was restricting the use of their land. Under the provisions of the Clutha District Plan, resource consent (discretionary) was required for logging in the coastal zone, whereas it was argued that it was a permitted activity in the rural zone (although there are provisions relating to the presence of threatened species).

The Environment Court had previously considered an appeal against an abatement notice relating to the felling of podocarp timber on this land. In Decision A41/97 the Court concluded that logging, particularly clearfelling was causing an adverse effect on the indigenous vegetation but accepted that milling of timber on that land was an existing use and therefore could continue notwithstanding the Proposed Plan.

The Environment Court found (Decision C107/2004) that the coastal resource area boundary was too far inland in the vicinity of the Tautuku Trust block, recommended the council consider a variation to the plan, that pending the variation consider the waiving of fees with regard to consent applications in relation to those lands not part of the coastal environment and that where an application contravenes only the provisions of the coastal resource area and not the rural resource area in an area outside the coastal environment the council consider dealing with the matter on a non-notified basis.

A stage one Protected Natural Areas Survey was also completed for Southland and Clutha Districts by Boffa Miskell Consultants.

Only about 20 percent of the allocated funds were spent and the remaining allocation was returned to the government.

4.8 Consultation and Communication Programme

There was no formal communication plan associated with the 2002 policy package, so instead each agency communicated with SILNA owners independently. Comments were received by the Panel that indicated that there was some political sensitivity around the package and communications were limited.

The following actions were taken to communicate the 2002 policy:

- George McMillan, the then Crown Negotiator, negotiated moratorium payments with SILNA owners and canvassed the policy and available options with SILNA trustees.
- Ministerial letters (MAF) were sent to SILNA Trusts who were receiving moratorium payments, offering them the moratorium extension and explained the options available to the owners of SILNA forests.
- A Q&A sheet was also developed for SILNA owners (MAF)
- NHF wrote individual letters to the Trusts who administered high conservation value forests and to some a number of times. The process of engagement is ongoing. NHF helped trusts and owners to inspect sites and get together for meetings to discuss all the options including forestry.
- The Indigenous Forest Unit (IFU) of MAF was also in contact with some SILNA owners canvassing the policy in general and the SFM option in particular.
- In 2006 the Minister coordinating SILNA policy informed the Trustees involved with the moratorium payment about the government's decision to end moratorium payment.

Given the issues around governance and owners' knowledge of their interests this approach, while a logical approach, may have been insufficient.

It would appear therefore that the communications and consultation about the 2002 SILNA was not effective.

4.9 Efficacy of Implementation

Working with multiple owned Maori land can be a slow process. The SILNA lands have a variety of governance structures with some voluntary, some under the Māori Trustee, whanau trusts or incorporations. Some appear to be more effective than others for a variety of reasons. In some cases it appears that the process of succession to interests in SILNA land has been interrupted or not continued such that there are owners who do not know their interests in SILNA land and trustees who do not know all the owners. It is noted that the only SFM plans prepared have all been for lands administered by the Maori Trustee.

There is difficulty for all trusts in getting large numbers of owners together to discuss options, and decide on a course of action. This can be a major hurdle to good governance and decision making.

The implementation of the 2002 policy with regard to negotiations for conservation covenants or sustainable forest management plans was never going to be an easy or speedy process.

4.10 Administrative Processes and Resources

While it appears that the negotiation of conservation covenants is more costly than anticipated, there are still negotiations in process (with funding allocated) and further unallocated funds remaining. Lack of resources is therefore not considered the cause of slow progress.

Similarly there are funds remaining for the preparation of SFM plans, so this has not been the reason that this option has not met the target.

Given the nature of the negotiations it is difficult to say whether a more proactive process on behalf of Crown agencies – i.e. more time/resources committed to administration and communication with SILNA owners would have achieved more. More likely it may have achieved less if the Crown agencies were seen as too 'pushy'. Time is required for relationships and trust to be established to allow progress to be made.

One key issue that has arisen throughout this process is that communication at all levels, including communication between Crown agencies and Trustees has not been as effective as potentially possible. A greater emphasis on communication may have assisted the process.

5 Key Issues Raised during the Consultation Process

A summary of oral submissions and discussion at the hui has been collated and summarised (Maximize Consultancy 2009), and written submissions collated and summarised (Ministry of Agriculture and Forestry 2009). These reports have provided the basis for the following key comments, which are presented without comment from the review panel.

5.1 Poor Consultation

At every hui one of the key issues raised at the start was the lack of advertising and short notice of the hui – many felt that others would not have not known about it or been unable to come at short notice. There is continuing and ongoing poor consultation between agencies and landowners and trustees and landowners.

5.2 Original Purpose of Lands

Many attendees at the hui expressed a desire for a policy direction that returns and gives effect to, or at least acknowledges the original intent of the 1906 Act to provide for and support landowners. It was suggested that this be noted in the preamble to the policy.

5.3 Conservation Covenants

Most written submissions and attendees at the hui recognised the importance of the conservation protection initiative. However, most owners stated they would not enter their land into a conservation covenant. The reasons given were:

- SILNA lands were given with the intent to provide harvest,
- The rights of future generations would be removed,
- Only one generation would be compensated,
- Poor communication between trustees and land owners made it difficult to organise
- The consideration payments for negotiation were being based on conservation value, not timber value or opportunity costs and reflected the Rakiura settlement adjusted where the forest was already cutover.

Suggested alternatives/ additions to conservation covenants were:

- Swap SILNA forests with state forests or farm land,
- Pay an annual forest rental to compensate current and future generations,
- Renegotiate covenants every 25 years to retain the rights of future generations,
- Purchase SILNA forests back off landowners and enter them into the conservation estate,
- Purchase SILNA forests and turn into a permanent memorial for original landowners,
- Spend more money on communication and engagement with stakeholders,
- Fund owners to come together and discuss options. Owners will come back and negotiate practical solutions with the Crown.

5.4 Sustainable Forest Management Plans

There were mixed views about sustainable forest management plans. Some submissions supported them, some were against, and some did not know what they were. All submissions acknowledged that sustainable forest management plans were not used by SILNA owners.
The reasons given were:

- Costly and time consuming resource consent approvals due to disabling legislation,
- Poor communication between trustees and landowners,
- Reluctance to surrender clear fell rights,
- Economic return too low to cover harvesting costs.

Alternatives suggested to sustainable forest management plans were:

- Allow access to SFM plans without surrendering clear fell rights,
- Award Forest Stewardship Council (FSC) certification to forests under sustainable management plans,
- Amend the Resource Management Act to recognise the history and status of SILNA land and ensure permissive harvest of forests with SFM plans,
- Stop sustainable forest management plans and allow harvesting under the Resource Management Act only.

5.5 Moratorium Payments

Written submissions that commented on moratorium payments regarded them as not helpful to landowners.
The reasons given were:

- Payments did not reach landowners,
- The money offered did not consider the large number of owners involved.

5.6 Application and Enforcement of the RMA

This was a major issue for a number of submitters (both oral and written). Most submissions indicated that SILNA forests should be excluded from the provisions of the RMA. Reasons for this include:

- A time consuming and expensive consent process;
- The legislation removes SILNA landowners rights to clear fell;
- The legislation is too broad to provide high level and long term protection; or
- Discrepancies between authority boundaries.

Local Councils agree that it is more appropriate for central government to consider and resolve SILNA issues, rather than at local or regional level.

Southland District Council "*considers that the SILNA needs specific legislative recognition under the RMA to create a clearer and easier path forward for SILNA owners who wish to undertake sustainable forest management.*"

Alternatives suggested to the current RMA regulations were:

- An amendment to recognise the status and history of SILNA lands to ensure permissive harvesting if a sustainable forest management plan is administered,
- Exempt SILNA forests from the RMA.

A one-stop shop was discussed at the Invercargill hui with respect to getting a SFM plan and resource consent – to ease the burden of compliance and to provide easier access to agencies.

However in contrast, one submission noted that the RMA achieved better conservation outcomes than sustainable forest management plans. It stated that the RMA was more transparent because the public has the opportunity to submit on consent applications.

5.7 General Comments

5.71 Communication

All submissions made by landowners stated communication as an issue. This included communication between:

- Landowners and trustees (both ways)
- MAF and landowners/trustees
- Government departments
- Government departments and Ngai Tahu

Some submissions noted that communication between landowners and trustees was not a MAF issue.

5.72 Lack of information/knowledge

Some submissions noted that they did not know enough about policy options (such as sustainable forest management plans) to comment in their submission.

5.73 Lands remote from their rohe

Comments were made that the land given was far away from where they lived, not in their rohe and therefore they were whakamaa or embarrassed to go there. .

5.74 Leadership from key government agencies

Some submissions stated that Māori Land Court and Te Puni Kokiri should be taking more of a leadership role.

5.75 Not interested in development

There was also the view expressed that the owners may not want to sell or benefit from the sale of the family jewels. There are other ways to benefit as well as an economic benefit. Some landowners are simply not interested in the 2002 policy and are biding their time until something more attractive comes along.

6 Discussion

6.1 Moratorium payments

The moratorium payments did not stop unsustainable logging. They only covered approximately 60 percent of SILNA lands. There has been a very low level of logging activity in SILNA lands both prior to, and after the implementation of the 2002 SILNA policy package. They were not well regarded by those SILNA owners who participated in this review and have come to an end. Therefore the review panel does not consider it worthwhile in further consideration of moratorium payments.

6.2 Communication and Consultation

While a communications and consultation strategy was included in the cabinet paper for the 2002 policy package, it seems that an overall strategy was not developed, rather individual agencies communicated with owners as to their respective roles. Nature Heritage Fund (NHF) communicated with trustees on behalf of owners of forests with high conservation values, MAF with those receiving moratorium payments and wanting Sustainable Forest Management Plans, and Rau Murihiku Whenua Maori with their members. While each of these may have been effective in their own regard, there were also generic press releases (eg Jim Anderton 13 May 2002), and George MacMillan as Crown negotiator talked to many landowners, it seems that today there are still some landowners who do not know the options available to them under the 2002 policy. Given that there may be in the order of up to 40,000 part-owners, shareholders in Maori Incorporations, beneficiaries of Maori Trusts and potential successors to ownership interests with an interest in SILNA sections (MAF estimate 2009) it would be an extremely difficult task to ensure information is received by everyone and therefore the process of communicating with Trustees, responsible for the governance of the blocks, seems sensible. It is unclear if all Trustees or representatives of all blocks received information about the 2002 policy package. Further it is unclear how well the information was communicated to owners by the Trustees but this is beyond the influence of the government.

Poor consultation was raised as an issue at all of the hui, with comments around time frames and not getting information out to all owners, including for the present review. Only 20 written submissions were received, many of those from people who had attended hui or agencies with whom the panel met. An additional potential reason for the low engagement is the very small number of shares or parcels of land owned by individual SILNA owners and therefore low level of interest in management of the land.

As discussed above, this is an extremely difficult task, however it causes owners to believe that they are not going to be listened to, that the government has a hidden agenda, has already decided a course of action, and that they as SILNA owners will be hard done by again.

6.3 Governance Issues

The SILNA lands are Maori Land under Te Ture Whenua Act. They are relatively small blocks with multiple owners. Often there are many owners with only a very small interest in

the land. Because it is such a small interest in the land some owners do not take an active interest in the management of the lands and then they do not pass on information to family so that they can succeed to the title. Therefore it is likely that there are owners who are not necessarily aware of the interests they have in land.

Trustee relationships/communications do not always appear to be effective. Some owners expressed concern that they never hear from their trustees. The review panel recognises the difficulties in communication and governance with regard to multiple owned Maori land.

Trustees expressed concerns around the difficulties of knowing who all the owners are, keeping up with changes and the difficulties/costs associated with communicating with owners. This will become increasingly difficult for some blocks as ownership passes down through the generations. The need for majority of owners' agreement at a meeting regarding decisions meant that contacting owners and getting them together and getting decisions was slow and difficult. The Maori Trustee has responsibility for 56 out of the 400 sections of SILNA land.

The Māori Land Court is progressing with the work to find all the owners of SILNA blocks recently allocated under the Ngai Tahu Settlement Act. A new role of Community Liaison Officer has been created to help owners become aware of the prospects for each site.

Regional offices of the Maori Land Court currently provide owners with advice regarding any interests they have in land. Records and databases are however incomplete but being upgraded.

The governance issue is not peculiar to SILNA lands. Sixteen thousand Maori land titles in New Zealand have no land management structure. A lot of that land is either in indigenous forests, or is marginal land.

Te Puni Kokiri provides advice on governance through a website and publications. Regional personnel also provide advice to individual enquiries. Te Puni Kokiri could have a greater role with SILNA owners in facilitating provision of advice as to the opportunities available for their land.

A new NZQA qualification currently going through the certification process, which will be provided free through wananga and open polytechnic, will provide the skills necessary for the trustee role of Māori entities such as marae trusts, ahu whenua corporations. If all trustees of such trusts complete this type of training it should contribute to better governance.

6.4 Treaty Issues/Original Purpose of Lands

There still seems to be a lot of concern amongst landowners that the land was given as compensation and was intended to provide an economic base (they do not agree with Crown Law2001 view 2001), and that this position of an economic base has been eroded away under successive legislation. Ngai Tahu has however, always maintained that the land was not compensation, rather a compassionate gift. The inadequacy of the land given as compensation in 1906 has been recognised through the Ngai Tahu settlement process. All other iwi in the South Island have also negotiated settlements with the Crown.

The Ngai Tahu settlement (1998) however excludes the claim to the Waitangi Tribunal designated Wai 158, but this exclusion does not apply to any part of WAI 158 that might relate to the original allocation of land under the South Island Landless Natives Act 1906. Therefore WAI 158 is a contemporary claim against changes to legislation as was the Waimumu Claim and there was strong feeling at some of the hui that the policy should not progress until all Treaty claims had been heard.

In 2005 The Waitangi Tribunal found during the Waimumu (Claim WAI 1090) that the Crown's actions in the 1990s created a legitimate expectation that they would receive compensation as a result of a negotiated settlement, but the Crown abandoned negotiations for compensation without the concurrence of the Waimumu Trust and offered voluntary conservation packages under the Nature Heritage Fund. These payments are calculated on the formulae approved by Cabinet for SILNA negotiations rather than individual site valuations. The Tribunal concluded that the Crown's change of policy has been unfair to the Waimumu Trust and has breached the principles of the Treaty of Waitangi. Despite this the claimants have not yet suffered any prejudice. The Tribunal concluded that "*there is opportunity for the Crown to review the basis on which the NHF will provide a monetary payment (including the cap on such a payment) and to therefore arrive at a settlement with the Waimumu Trust that will retrieve the situation and ensure its compliance with the Treaty".*

Land was given to individuals rather than hapu. This was contrary to the way that Maori traditionally 'owned' land. The following is an excerpt from The Ngai Tahu Land Report (Waitangi Tribunal 1991):

Professor Atholl Anderson, himself of Ngai Tahu descent, presented the relationship between the different parts of the tribe to the Tribunal:

If I have understood this matter correctly then it can be inferred that the land and its resources was perceived in three ways: as a tribal territory, that is, the area for which the tribe would fight; as land in common ownership excepting those tenured pieces, or rights of access to resources, which were inherited through hapu and could be located at any point in the tribal territory; and as a series of annual ranges (weakly combined into districts), which were the areas customarily ranged over by the members of the residential communities in the course of their yearly economic activities.

This amounts, in turn, to an economic system in which common ownership was not congruent with management. The tribe owned the land in common but did not manage it economically. Hapu owned property or access rights but did not manage them at hapu level. Communities owned neither land nor resources but, were, nevertheless, the operationally-effective economic managers through their organisation of activity schedules and labour. (H1:73)

While the Ngai Tahu tribe was an entity in itself, it was comprised of many hapu which were the major units of social organisation above the whanau or family at the local level. The tribe as a corporate unit was more evident in relation to warfare, when the resources of the various [sic] hapu in the South Island under the control of chiefs of differing rank might be combined to take collective action against others, such as Te Rauparaha and his invaders in the 19th Century. (S2:236).

Therefore the 'settlement' or compensation to 'landless natives' in the South Island by the government in 1906 by allocation of allotments to individuals was a foreign concept – in addition to the lands being uneconomic and far from where they were living. This 'foreign concept' created by SILNA in 1906 continues to create the legacy seen today.

The Toi Toi and Port Adventure SILNA Blocks have not been considered in this review as they are outside the 2002 policy. It will be up to the owners (once the lands have been allocated) as to whether they wish to pursue a conservation outcome with government.

6.5 Conservation Package

Progress with negotiation of conservation covenants between NHF and SILNA landowners has been considered slow by some (such as Forest and Bird). However, given the nature of multiple owned Māori land, the history of distrust of the Crown and differing expectations of the parties, it is not surprising that progress is slow.

Many owners have expressed reluctance at signing away future decisions about the land by means of covenants in perpetuity. Nga Whenua Rahui (NWR) kawenta, with in perpetuity intent and 25 year reviews of terms and conditions, may seem more acceptable to many SILNA landowners. However this option was not included by Ministers in the 2002 package and therefore did not receive specific funding for SILNA lands. The Crown, in negotiating payments, wants final settlement, such that there is not a review and therefore potential financial and policy liability in 25 years. Funding in the 2002 policy package was therefore specifically directed to non-reviewable covenants in perpetuity and administered by the NHF to avoid policy conflict with NWR or QEII National Trust.

Some submissions have commented that NHF is under resourced – in terms of staff to carry out the negotiations. The NHF does not consider this a factor. While this may be a factor, there has also been comment that it is the lack of resources of the trustees and owners with which to get together and consider options that impedes progress.

Government policy provided a fiscal baseline for NHF negotiations that is not acceptable to some landowners. Landowners believe that the payments being offered are too low as they have been based on conservation values rather than the value of timber/opportunity cost. The previous Waitutu settlement raised expectations about the value of the timber. However the government has determined the approach, including $/ha payments (payments up to $3,100/ha GST incl. depending on the condition of the forest and its conservation values (POL Min (0) 8/6). This reflects the level of payment in the Lords River deal.

While it might be considered by some submitters that an increase in the price offered for these covenants would speed up the process and be more effective, this would create an inequity with those blocks that have already negotiated covenants and could create further grievance. Further, in negotiating conservation covenants elsewhere in the country, the government does not pay a per hectare value. Neither does QE II National Trust. The conservation covenant package for SILNA landowners would appear to be more attractive than any conservation package for other landowners.

6.6 Sustainable Forest Management Plans

All of the SFM plans prepared following the 2002 package have been for blocks administered by the Maori Trustee. None of these draft SFM Plans have been submitted to MAF for process to registration nor to the Southland District Council for resource consent (Alan Griffiths pers comm).

Governance issues as described above in 5.2 are central to impeding the ability of owners to make decisions about the management or utilisation of their land. Many of the blocks are small and therefore sustainable management is not considered an economic option at this time. The Maori Trustee sought advice on the economics of implementation of the 16 SFM plans prepared for blocks under their governance and noted that the economics were not hugely favourable in the current market and some blocks were too small to be economic.

The additional requirements of needing consent under the Resource Management Act have stopped some SILNA blocks from going down this track as many see it is costly and time consuming (particularly in the current market conditions for timber). For SILNA owners (at least until June 2010) the costs of preparation of a SFM plan have been borne by the Ministry of Agriculture and Forestry. Therefore the costs relate only to the resource consent process. Length of time to go through two processes however may be a contributing factor. Memoranda of Understanding between MAF, Department of Conservation, district and regional councils may assist in streamlining this process.

Clearly the SFM plans have not been a favoured option for SILNA landowners, despite the greater financial support than for other owners of indigenous forest.

6.7 Resource Management Act

The environmental aspects of felling indigenous timber are subject to the Resource Management Act (RMA). All land, even when subject to a sustainable forest management plan or permit, is subject to the Resource Management Act. There could well be circumstances where a sustainable forest management plan is consented to under the Forests Act but consent to log is withheld under the Resource Management Act because of other factors such as water and soil values, the significance of the indigenous vegetation or adverse effects on indigenous fauna habitat. The environmental requirements of the Forests Act are considerably less strenuous than the RMA. The Forests Act does not provide for appeal rights to the Environment Court. The Environment Court decision (A39/01 Minister of Conservation vs Southland District Council) confirms that the RMA applies to SILNA land.

Some SILNA landowners feel cheated that provisions of the RMA prevent them from carrying out what they are allowed to do under the Forests Act. They consider that SILNA land has special status and therefore should not be subject to the provisions of the RMA. Southland and Clutha District Councils consider that the SILNA lands should be dealt with by the Crown as a central government issue rather than at a local level and suggest amendment to the RMA to exclude SILNA lands. Such an amendment to the RMA to exclude those remaining SILNA lands that have indigenous forest (approx 16,500 ha) is not considered by the review panel to be likely to succeed given the anticipated opposition by conservation groups during the consultative process.

This view, that the RMA is depriving landowners of their rights to utilise land as they might wish, is not dissimilar to the many landowners (including Maori) around New Zealand who have faced restrictions in regional or district plans on the use of part of their property which is deemed to be a significant natural area. Controls in plans vary around the country but some effectively prohibit the use of the land, except for conservation. Many landowners have objected to the various restrictive provisions in their respective district plans through the planning process, whereas groups like Forest and Bird have advocated strict controls on land clearance and use. These matters of divergent community opinion have often been referred to the Environment Court for a decision. Restrictions in regional or district plans on the use of significant natural areas have generally been upheld or promoted by the Court. No compensation is paid.

There are varying provisions between the different district plans that cover indigenous forest (including SILNA forests). In Southland District logging or clearance of indigenous vegetation is a non complying activity unless it has a sustainable forest management plan, when it becomes a controlled activity. Southland District Council has had six resource consent applications for logging since 2002, one of which was on SILNA land, and all received consent with additional conditions negotiated with submitters. The application for consent for logging of the SILNA block was publicly notified and went to a hearing, and therefore was a costly process.

The dual process of having a SFM plan under the Forests Act and resource consent under the RMA is considered onerous by SILNA owners. However the two processes have different purposes and to date the SFM plan has been free for SILNA owners. The owners of the SILNA land that applied for consent to Southland District Council did not have a SFM plan prepared by MAF. Consent applications that are publicly notified can become expensive processes as this means that the public, including conservation organisations, and have the opportunity to provide submissions on the applications which may go to a hearing.

In the rural zone of the Clutha District the clearance of five or more hectares of indigenous forest within one certificate of title or clearance from any site recommended for protection by the Protected Natural Areas programme is a discretionary activity. Selective harvest outside these specific sites is not regulated unless there is presence of a threatened species. SILNA forests make up only 25 percent of the private indigenous forests in the Clutha District (Clutha District Plan 2005). The overlap of consents required (and therefore increased costs) under the RMA and Forests Act has been considered by MAF (MAF 2009a):

'In 2001 the Environment Court (Decision No. A039/01) found that there were no inconsistencies between the Acts with respect to their purposes and definitions of sustainable management, concluding "…although there is some overlap of issues between the two enactments, they are capable of being construed so that they stand together, each having its effect without creating conflict between them".

A recent Environment Court decision (026/2009) reflects on this issue of overlap and states that "While it is laudable that there is an attempt to dovetail the operation of the two approvals, it must be remembered that the RMA takes a broader approach. The consent should therefore not rely on processes and requirements under the SFMP and the Forests Act." One of the key concerns of the Court was that the Forests Act allows MAF to amend a SFM plan (or permit) at any time by agreement with the owner.

The Environment Court has described the subject matter of the 'regulation' imposed by Part 3A of the Forests Act as the export and milling of certain forest products. In contrast, the Court has concluded that the subject matter of the 'regulation' imposed under the RMA is the use of all natural and physical resources of land, water, and air, including all forms of plants. The Court has noted that the 'control' over the felling and harvesting of indigenous timber lies within the scope of RMA, not the Forests Act. The stated purposes of both Acts refer to sustainable management, but the Forests Act is only concerned with the sustainable management of the forest within the designated plan or permit boundary, not the effects of the use of all natural and physical resources (which are addressed by the RMA).

Given the scope of the issues MAF recommended that non legislative options be pursued: Memoranda of Understanding (MOUs) with key district councils (of which Southland is one) and updating a MOU with DOC on how sustainable forest management under the Forests Act should be accommodated in district plans.

MAF has been developing a memorandum of understanding (MOU) with the Southland District Council. The MOU seeks to:

- *Ensure the Council is well informed about SFM;*
- *Establish an efficient working relationship with MAF, including access to MAF expertise where assistance is required with SFM related auditing;*
- *Identify MAF's desire to take an active part in the review of the district plan with respect to SFM matters.*

In 1995 the (then) Ministry of Forestry (MOF) and Department of Conservation (DOC) prepared a MOU that accepted that where district plans had adequately addressed RMA section 6c matters, SFM under the Forests Act should be provided for as:

- *a permitted activity in those areas not identified as significant with respect to section 6c; and*
- *considered on a case by case basis through a resource consent in areas that were identified as significant.*

MAF considers that it would be useful to update the MOU with DOC to re-establish an agreed position on SFM and section 6c. This would improve the consistency between the approaches of departments in relation to the review of district plans.

MAF is investigating further non-legislative and legislative options for addressing interface issues between the Forests Act and RMA with an initial report due to Cabinet on potential policy areas scheduled for late February 2010.

The review panel therefore considers that there has been significant progress in investigating options to streamline the dual process of the Forests Act and RMA, and notes that this work is continuing.

7 Potential Opportunities for SILNA Forests

7.1 Present Resource

- Approximately 16,500 ha of SILNA land with unprotected indigenous forest 7,500 ha unlogged (4300 ha considered to be high priority for conservation) and 9000 ha of second growth or cutover forests.
- Located in remote areas, mostly at the bottom of the South Island.
- The land is in approximately 400 separate blocks with a variety of governance structures and an estimated total of approximately 40,000 part-owners, shareholders in Maori Incorporations, beneficiaries of Maori Trusts and potential successors to ownership interests with an interest in SILNA sections (MAF estimate 2009). It appears that many potential beneficial owners have not succeeded to title, do not know their interest in the land or are not interested because the share is so small (and diminishing with each generation). Under Te Ture Whenua Māori Act 1993/Māori Land Act 1993 this makes it difficult for trustees to get decisions about the management of the land. In addition the small area (hectares) of many of the blocks limits the potential use.

7.2 The Opportunities

7.2.1 Sustainable forest management

Currently SILNA owners can obtain a SFM plan from MAF at no cost. This will however no longer be the case after June 2010. The approximate cost of a plan is $20-25,000, which must be factored in to the potential returns for sustainable forest management after June 2010 unless they are continued to be provided at no cost to SILNA owners.

Research initiated in 1996 by Dr. Nora Devoe of the School of Forestry (Devoe 1998) focused on managing beech forests to achieve sustainability and on expanding market opportunities for beech wood products found that FSC certification is viewed as a key product attribute for market access. In addition the need for a branding strategy to remove confusion with European beech and to avoid equivalent pricing (lower prices) was a key conclusion. Lindsay and Dixon have been marketing beech timber as “maple beech” for the American market and there has been some manufacturing of high value end products (such as handles for tools).

A Sustainable Farming Fund Project of the Indigenous Forestry Section - NZ Farm Forestry Association and SILNA (Office of the Maori Trustee) which began in 2007 is investigating expanding the economic viability and sustainably managed indigenous beech forest industry (Donnelly 2008).

Some blocks that have been clearfelled in the past and now have young regrowth forest have the potential for sustainable management with a tending regime. However, for economy of scale, it would seem necessary for owners/blocks to coordinate to achieve this potential. Entering into forestry rights with others for the first rotation may provide owners with enough capital to continue sustainable management in the long term. This potential is also market dependent.

In the current market for merchantable timber, the economic benefit of sustainable management is limited with potential returns to landowners of low value. Opportunities for economic sustainable harvest are also limited by the small scale of individual blocks. There would be greater potential for sustainable management if there was a coordinated approach between individual blocks. SFM plans for larger areas would be able to provide some economic returns to owners. However, given the consultation issues a coordinated approach is unlikely to either be achieved or succeed.

7.2.2 Clearfelling for exotic forestry or pasture

Clearfelling, while not restricted under the Forests Act for SILNA forests is restricted by the RMA to varying degrees by the different provisions in the various district plans and requires resource consent. The Panel considers that this option is not viable for SILNA landowners.

7.2.3 Unsustainable harvest

Felling for personal use - on the application of a SILNA trust as for any owner of any area of land not subject to a SFM plan or permit, MAF may, in consultation with the Department of Conservation approve the harvesting and milling, for the Trust's personal use, of not more than 50 cubic metres of indigenous timber (being roundwood) in any 10-year period and define the area from which the timber may be harvested and milled. This does not provide any economic return.

In addition under the Forests Act SILNA owners are able to log forests without a SFM plan and sell the timber on the domestic market.

This option is however limited by district plan provisions as discussed above with the exception of the rural zone of the Clutha District where this activity is not controlled.

Both the Southland and Clutha District Plans are currently under review as is the Southland Regional Policy Statement. Given the competing nature of interests in the region and districts (DOC, Forest and Bird and others as advocates for conservation and sustainable management) it is unlikely that the provisions in the plans will be more permissive but may become more restrictive.

7.2.4 Carbon farming

The South Island Landless Natives Act (SILNA) forests are pre 1990 forests and are therefore outside the Kyoto Protocol. This is of particular concern to SILNA forest owners as they think that the Protocol is a further blow to SILNA, following the perceived action to bring SILNA forest under the sustainable management regime (Ministerial Group on Climate Change 2001).

There may be potential in the grey market (Weaver, 2008) to account for increased carbon accumulated by second growth forests. However this is uncertain. There may be potential to combine any potential future gain from this market with either conservation or sustainable management and therefore owners should ensure that the option of gaining carbon credits in the future is valid. However, as with sustainable forestry management it is likely that the blocks will be too small to afford transaction costs and get a return. The opportunity to coordinate blocks, as discussed previously is unlikely to succeed.

7.2.5 Conservation

Funds are still available in the 2002 package and some SILNA lands are still in current negotiations for conservation covenants. There is however insufficient funding to covenant all remaining high priority conservation SILNA land.

Other options for conservation exist, as they do for all other Maori owned indigenous forest including Nga Whenua Rahui kawenata and QE II National Trust covenants and kawenata. Kawenata have a protection period of 25 years at which time they are reviewed. QE II National Trust covenants are in perpetuity, as are conservation covenants negotiated with the Department of Conservation and do not provide for a per hectare payment, but rather pay for part of actual costs (such as fencing, legal costs, pest control). Therefore they are less attractive than the current option for SILNA owners through NHF.

It is acknowledged that some owners may have chosen to conserve their blocks without formal covenanting and payment.

The move to conservation is strongly resisted by those SILNA owners who hold that SILNA land was provided for their "support and maintenance" i.e. an economic base as this option provides them insufficient funds.

7.2.6 Tourism

The SILNA lands mostly lie in remote areas of New Zealand. There may be potential in tourism (both domestic and international) e.g. tramping opportunities such as the Hump Ridge Track, or accommodation or other activities such as historical guided tours.

For example the South Coast Track that follows the approximate line of unformed legal road through the West Rowallan Block has some historic significance – it was constructed in 1896 to provide access to the gold fields at Preservation Inlet, and was later the route for the telephone line (1908) between Orepuki and Puysegur Point lighthouse (Begg 1973).

Viaducts spanning the Francis Burn, Edwin Burn, and Percy Burn were constructed early this century to support the bush tramway used during logging of West Rowallan forest. The Percy Burn viaduct is the largest wooden structure of this type in the Southern Hemisphere and is regarded as an important historic site (Department of Conservation 1998).

The feasibility of any venture would need to be assessed by landowners or groups of landowners on an individual basis and likely to be limited to a few of the 400 blocks.

8 Future policy options

8.1 End of package in June 2010

The 2002 policy package comes to an end on 30 June 2010 although the NHF is enabled to roll over crown commitments through the March baseline update as clarified in the 2008 decision. In 2006 the Minister of Forestry advised SILNA trustees that the government will

not consider any further extension to the moratorium, and that once the Nature Heritage Fund has exhausted its remaining funds on high priority and non-high-priority areas the programme of conservation purchases will be complete. A letter was sent to the Trustees of those blocks with moratorium payments in 2006 (MAF 2006). The funds have not all been spent and the funding has been extended until June 2010.

It could therefore be considered that once the 2002 policy package comes to an end in June 2010, that the government has taken all reasonable steps to assist SILNA landowners in the transition to sustainable management. Despite the Crown Law view that SILNA lands do not have special status, in developing the 2002 policy package the government continued to treat the SILNA lands as a special case. SILNA owners will continue to have an expectation of the special status of their lands and grievance at the limitations on their ability to provide an economic base.

While the SILNA land remains outside Part IIIA of the Forests Act, and therefore potentially able to be logged unsustainably for the domestic market, the lands are subject to the RMA which requires sustainable management of resources and therefore controls clearfelling or unsustainable harvest through provisions in district and regional plans. There is likely to be limited loss of indigenous forest. The Clutha and Southland District plans and the Southland Regional Policy Statement are all currently under review.

8.2 Information

A key issue raised in most of the submissions is one of lack of information. Some of this was around trustees getting information out to landowners but also more generally landowners not knowing what blocks they had interest in or Trustees not knowing who all the landowners are. This is likely to get worse with successive generations and more owners. The lack of information creates issues around getting agreement on management of the land.

To assist with this information gap of SILNA landownership, the government could provide additional assistance to the Maori Land Court to establish/update SILNA landowner databases. This would assist trustees of SILNA blocks in obtaining knowledge of who all the owners of blocks are, as well as owners or beneficiaries knowing what blocks they have an interest in.

The likely effect of this could be for owners to get clarity around their land holdings, processes but also provide an effective vehicle to assist information transfer. This would provide a more effective basis for trustees and government agencies to consult with SILNA landowners, as well as trustees being able to ensure more owners have input to a robust making process.

Financial implications: additional funding for Māori Land Court would be required.

8.3 Governance Assistance

For many of the SILNA blocks it appeared that there were governance issues (noting that this review only received submissions from a very small percent of the owners). The lack of

effective governance and management structures of Maori land titles, the alienation provisions of the Ture Whenua Maori Act, and the resulting impacts on Maori development are not unique to SILNA lands. They have been raised in many consultation processes. There is a clear need for assistance in this area.

There is also a need to clearly communicate any future policy decisions taken by government that affects SILNA landowners. This has not been effective in the past discussed above for a number of reasons. With better information and governance, communication between Trustees and landowners and also other agencies and Trustees should improve. This is essential to moving forward on SILNA issues.

Financial implications: Maori Land Court and Te Puni Kokiri will require additional funding for the provision of governance training, advice and communication around future decisions/policy regarding SILNA lands.

8.4 Continued assistance for conservation protection

Currently allocated funds to NHF could be retained beyond June 2010 (i.e. rolled over to subsequent years) to continue negotiations for conservation covenants, some of which are already in process and therefore should be continued. This extended time frame recognises the difficulties of this process for multiple owned Maori land and may achieve further protection by conservation covenant of some high conservation priority SILNA blocks. There would still not, however, be sufficient funds in the present allocation, to protect all SILNA land of high conservation priority. If the remaining 2974 ha of high priority forests for conservation protection were covenanted at $3100/ha, approximately $10 million additional funding would be required by NHF. If all remaining SILNA forests were covenanted at this price/hectare, approximately $45 million would be required.

However many SILNA landowners argue that the price offered by NHF is too low and does not take into account the loss of opportunity afforded by clearfelling or logging the timber and so the likely uptake of conservation covenants may still be low. Also, many landowners were concerned at the covenants being in perpetuity and favoured a kawenata with Nga Whenua Rahui. The option of Nga Whenua Rahui kawenata should also be offered to landowners on the same basis as they are to other Maori landowners in New Zealand. This would allow landowners the opportunity to consider and compare the value of the shorter term (renegotiated) kawenata with the conservation package offered under the NHF 2002 Policy Package.

Financial implications: Funds remain with NHF to allow further negotiation of conservation covenants. Nga Whenua Rahui may receive additional requests for assistance. Consideration should be given to providing further funding to NHF and Nga Whenua Rahui if there is demand.

8.5 Sustainable Forest Management Plans

MAF could continue to provide SFM plans at no cost to landowners. These can be prepared at relatively low cost and provide landowners a basis on which to assess likely income from

this option. As discussed above, although difficult, if blocks could coordinate this might be a more effective scale for SFM management. Sustainable management of forests allows access to the international market.

Increasingly Forest Stewardship Council (FSC) certification specifies timber products from well managed forests and provides forest owners greater access to markets (Devoe 1996). Certification is a very expensive process but SFM plans would assist in this process. The review panel considers that MAF are best placed to provide advice to trustees about the advantage of FSC certification and the economic benefits of a coordinated approach between individual blocks.

A major issue to date in progressing the registration of SFM plans is the subsequent inclusion of the affected land within Part IIIA of the Forests Act i.e. the relinquishment of the provision to sell unsustainably logged timber on the domestic market. However, increasingly the domestic market will also be requiring proof that the timber has come from a sustainable forest and the provisions of the RMA mean that in most districts only sustainable harvest can be carried out. Therefore the review panel considers this inclusion in the Forests Act to be a perceived loss by owners rather than a real one.

It is unlikely that this option would be used by many SILNA landowners in the short term for the reasons already cited at hui – the costs of the processes including the RMA and low economic returns.

The review panel also considers that priority should be given to progressing Memoranda of Understanding between district councils, regional councils, Department of Conservation and MAF with regard to the overlap between consents required for sustainable harvest. This process is already underway but could be finalised within the timeframe of the current review of the Southland and Clutha District Plans and Regional Policy Statement. This would assist applicants and submitters in the resource consent process.

Financial implication: Additional funding would be required by MAF, however this is likely to be limited until such time as governance and ownership issues are progressed and the market for beech timber improves.

8.6 Further Amendment to the Forests Act

Currently SILNA land is exempt from the Part IIIA provisions of the Forests Act for domestic sales. Given the Crown Law view (2001) that SILNA land does not have special status it could seem appropriate to remove this last legislative exemption and bring SILNA land into line with other Maori owned indigenous forests. There is political risk attached to this option, given that SILNA owners consider their lands have special status. It is also uncertain whether the government accepts the view of Crown Law, given the 2002 policy package which treats the SILNA lands as a special case.

As the lands are inevitably subject to the RMA, the special provision in the Forests Act raises false expectations about what options are available for the use of the land as clearfelling and unsustainable logging are constrained by that Act and perhaps unnecessarily implicates the RMA process.

Further amendment of the Forests Act is considered by the Panel to have little practical benefit and high risk of adverse reaction by SILNA owners and so is not recommended at this time.

8.7 Land Swap/Purchase

A number of submissions and comments at the hui considered one of the best options available might be swapping the current SILNA land which has low economic potential for more productive land, and preferably land closer to the owner's rohe. This view was supported by some conservation groups as well as owners. The Waitutu settlement which included cutting rights to sections of Crown land is seen as a precedent. The Crown-managed Rowallan-Dean Forests have been suggested (Muldrew pers comm) as a potential for this swap, given that they were originally zoned for production management under the NZ Forest Service. Logging would be carried out under a SFM plan.

It is likely that any land that may have potential to be swapped for SILNA land would first have to be offered to Ngai Tahu under the terms of their treaty settlement.

While this has some attraction for SILNA owners it is likely to raise concern about the inequities it would cause. If a land swap option was to be implemented there is a risk that those owners who have already protected their blocks by conservation covenants may feel they have received a lesser 'deal', as perhaps would other SILNA landowners who have previously developed their marginal land (and no longer have indigenous forest).

It is likely that any land swap would be based on value for value not hectare for hectare, rather than as described by some submitters and therefore might not meet their expectations. Market value for any particular block should be obtained as a basis for negotiation and consideration could also be given to outright purchase (recognising the difficulties associated with purchase of Maori land requiring agreement of 75 percent of the owners under Te Ture Whenua Act). Land swap on an individual basis is likely to still result in small blocks that may not have economic use because of economies of scale.

There may be potential in swapping the rights of harvest to other land (a transferable development right) – rights could be allocated to part of a larger block, thus allowing coordination and economy of scale for sustainable management.

The review panel considers that while there are many issues around this option, it was supported by a wide range of submitters, including conservation groups and owners and therefore deserves further investigation.

9 Recommendations

The Panel recommends that consideration be given to the following:

1 Recognise that the government and SILNA owners may have differing views of the current status of the lands with respect to Treaty issues.

2 Note that poor information about the owners and beneficiaries of SILNA lands and difficulties with governance are major impediments to progressing management of SILNA land.

3 Provide the Maori Land Court with the resources necessary to assist in the confirmation and provision of information on ownership/beneficiaries of SILNA lands.

4 Provide resources to allow Te Puni Kokiri to assist in governance training for all trustees of Māori land.

5 Note that while the Forests Act does not restrict unsustainable harvest on SILNA land for the domestic market, the provisions of the RMA ensure sustainable management.

6 Retain the unallocated and committed funds in Nature Heritage Fund's budget to allow the continued negotiation of conservation covenants; and consider further funding to Nature Heritage Fund and Nga Whenua Rahui for protection of SILNA lands by covenant or kawenata.

7 Investigate the potential of land swaps or transfer of land use rights for SILNA land.

8 Provide MAF with additional resources to continue to provide SFM plans at no cost to SILNA lands, to provide advice on the economic benefits of a coordinated approach between individual blocks, and the advantage of Forest Stewardship Council certification.

9 Acknowledge that there has been a history of ineffective communication, both between government and SILNA owners, between government departments and between owners themselves. Develop a clear communications strategy at the end of the 2002 policy package in June 2010, with regard to future policy and the implications/options available for SILNA land.

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APPENDIX 1

Terms of Reference for 2002 SILNA Policy Review

The independent reviewers will:

- critically examine performance of the 2002 SILNA policy against its objectives set by Cabinet;

- identify the strengths and weaknesses of the initiatives set out in the 2002 policy implementation package including, reviewing

  - the objectives of the policy implementation package;
  - the efficiency and effectiveness of the policy implementation package including expenditure against budget and its achievements;
  - the efficacy of the current implementation arrangement; and
  - the administrative processes and resources;

- document key issues raised by SILNA forest owners during the engagement process, and identify their expectations and priorities;

- take appropriate account of the cultural, environmental and economic significance of the SILNA forests for the current and future owners;

- assess wider opportunities for SILNA forests; and

- recommend future policy options for SILNA forests.