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KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2180

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IN THE MATTER OF                      the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF                      THE TAIHAPE: RANGITĪKEI KI  
RANGIPŌ DISTRICT INQUIRY

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SUMMARY OF EVIDENCE OF  
MICHELLE PATEHEPA PAREWHEREO HIPPOLITE  
ON BEHALF OF TE PUNI KŌKIRI

25 February 2019

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<b>RECEIVED</b>
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Ministry of Justice WELLINGTON

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## **INTRODUCTION**

1. My full name is Michelle Patehepa Parewhero Hippolite. I am Chief Executive of Te Puni Kōkiri and responsible for all policy and operational aspects of the organisation.

## **SCOPE OF EVIDENCE**

2. The purpose of my brief of evidence is to provide information regarding the projects and policies relating to landlocked land that currently exist and are being developed by the Crown. In addition, I will address some issues raised about landlocked land by the claimants in the Taihape: Rangitikei ki Rangipō inquiry district.
3. The evidence provides the Tribunal with:
  - 3.1 details of the legislative scheme relating to landlocked Māori land and its impact on providing access to landlocked Māori land;
  - 3.2 some detail on the current options open to Māori seeking access;
  - 3.3 the workstreams in place to improve those options; and
  - 3.4 some detail on the particularly complex situation in Taihape.
4. Landlocked Māori land is a long-standing issue that is consistently raised by Māori landowners as severely limiting their options to access and use their land.
5. There is often not an easy answer to achieving access to landlocked Māori land. The process by which landowners can achieve access often requires negotiation with affected parties, technical and specialist knowledge, and often a substantial amount of money.

## **TE TURE WHENUA MAORI ACT 1993**

6. Te Ture Whenua reformed Māori land laws, with the dual objectives of retaining Māori land in Māori ownership, and enabling Māori land to be

developed and used for the benefit of its owners, their whānau, their hapū and their descendants.<sup>1</sup>

## 2002 Amendments

7. The access to landlocked land provisions in Te Ture Whenua were introduced by the Te Ture Whenua Maori Amendment Act 2002. These amendments relocation of powers previously exercised by the High Court to the Māori Land Court.<sup>2</sup>

## Impact of 2002 Amendments

8. Despite their potential to “unlock” landlocked Māori land, relatively few applications have been filed, or orders made under s 326B since 2002. Information from the Ministry of Justice indicates that there have been 27 applications made under s 326B (and one joinder application) since 2002.<sup>3</sup>
9. Of the 28 applications under s326B identified by the Ministry of Justice:
- 9.1 ten applications have been declined or dismissed (and an additional three applications dismissed or rejected by a Registrar);
  - 9.2 nine applications have been completed;
  - 9.3 nine applications remain active before the Court.
10. In addition, there have been a number of other orders identified as having been made by the Court under s 326B but where the application to the Court was made under other provisions.
11. There have been no appeals identified to the Māori Appellate Court or the High Court of any decisions under these provisions. The costs associated with potential appeal to the High Court, and the expectation of the High Court in

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<sup>1</sup> Te Ture Whenua Maori Act 1993, s 2(2) and Preamble. See also *Valuer-General v Mangatū Incorporated* [1997] 3 NZLR 641.

<sup>2</sup> Ruru, Jacinta; Crosbie, Anna --- “The key to unlocking landlocked Maori land: the extension of the Māori Land Court’s jurisdiction” [2004] Canterbury Law Review 13; (2004) 10 Canterbury Law Review 318.

<sup>3</sup> **Exhibit MH1:** letter from Ministry of Justice dated 19 November 2018 “Official Information Act 1982 request”; **Exhibit MH2** “Table: Applications lodged with the Māori Land Court under section 326B of Te Ture Whenua Maori Act 1993”.

such appeals would favour indefeasibility of title over access, have been cited as a factor in owners of landlocked not making applications to the Court.<sup>4</sup>

## **PRINCIPAL BARRIERS STOPPING OWNERS FROM ACHIEVING ACCESS**

12. The 2002 amendments have not been as successful as the Crown anticipated. There remain a number of barriers for owners seeking to gain access to their land.
13. The Crown considers, based on previous policy work, consultation, and Waitangi Tribunal reports, that the principal barriers faced by Māori landowners seeking to achieve access are:
  - 13.1 The substantial costs which can outweigh the expected benefits of achieving access.
  - 13.2 Difficulties in accessing capital for attaining access.
  - 13.3 A lack of capacity and expertise to navigate the steps.
  - 13.4 Difficulties gaining agreements with surrounding landowners.
  - 13.5 Neighbouring landowners may have economic or other incentives to continue restricting access.

## **SUPPORTING LANDOWNERS TO ACCESS LANDLOCKED LAND**

14. In recent years, Te Puni Kōkiri has led or been involved in a number of initiatives intended to support Māori landowners to access landlocked land.

### **Review of Te Ture Whenua**

15. In 2012 the former government began a review of Te Ture Whenua. This review led to the Te Ture Whenua Māori Bill (the **Bill**) being introduced in April 2016. The Bill included specific provisions dealing with landlocked land, including importing particular sections of the Property Law Act 2007 into the scheme. The Bill was withdrawn in December 2017.

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<sup>4</sup> See Report of the Ministerial Advisory Group on the Te Ture Whenua Reform, 13 May 2015, attached to John Grant affidavit Wai 2478, #A5(a), at 125. See also Woodley, Wai 2180, #A37, at 524-525, cited in the Waitangi Tribunal's "preliminary views" memorandum directions, Wai 2180, #2.6.65, at [18].

**Whenua Māori Fund**

16. As part of Budget 2015 the Whenua Māori Fund was established to support Māori landowners and trustees of Māori freehold land to increase productivity of their whenua.
17. The Whenua Māori Fund was allocated \$12.8 million over four years (or \$3.2 million per annum) to improve the productivity of Māori land through the purchase of tools, interventions (such as expert advice), and research.
18. The Whenua Māori Fund is targeted at supporting and assisting pre-commercial activities such as, education and training, confirming landowner vision/aspirations, confirming land-use capability, land development options, business planning, working up value-added opportunities, and overcoming constraints to Māori land development.
19. In March 2017 Cabinet noted that in order to better facilitate access to landlocked Māori land, the Minister for Māori Development would broaden the scope of the Whenua Māori Fund to support owners of landlocked Māori land (within the scope of the existing appropriation).
20. This was implemented and the Whenua Māori Fund application form was amended in October 2017 to explicitly state that applications can be made with respect to addressing impediments to land development, including addressing landlocked Māori land.
21. In terms of the principal barriers to accessing landlocked Māori land (see above [13]) the Whenua Māori Fund may be used, for example, to address possible lack of capacity and expertise, including specialist advice on options for access or access arrangements.
22. To date very few applications to the Whenua Māori Fund have been received from owners of landlocked land or those seeking to address landlocked land issues. An application to the Whenua Māori Fund was received from the owners of Owhaoko B and D block, which was identified as landlocked in

Woodley's evidence,<sup>5</sup> in August 2017. However this application was withdrawn shortly afterwards (November 2017).

23. The Aorangi Awarua Trust administers Aorangi (Awarua) and Awarua 1DB2. Both of these blocks are identified as landlocked by Ms Woodley.<sup>6</sup> On 15 June 2017, the Aorangi Awarua Trust was approved funding (through the Whenua Māori Fund) to undertake a feasibility study to explore opportunities and potential for niche crops and products and growing requirements.

### **On-going Policy Work**

24. The current government is re-assessing the approach to Māori land matters.<sup>7</sup> This includes consideration of targeted legislative amendments to Te Ture Whenua and other legislation that impacts on Māori land, and consideration of other support to owners of Māori land. This work is being informed by previous and current consultation with Māori landowners, and the Waitangi Tribunal's previous reports and recommendations, including those concerning landlocked land.<sup>8</sup>
25. The following options should be read with the knowledge that the policy process is not yet complete and may be subject to change.

#### *2018 Policy Decisions*

26. In December 2018 Cabinet agreed to certain specific and targeted amendments to Te Ture Whenua subject to the Parliamentary process. These amendments concerning landlocked lands are as follows.
27. The factors the Māori Land Court must take into account when considering applications for access to landlocked land under s 326B are to be modified. These modifications are summarised as follows:

- 27.1 Under s 326B(4)(a) the Court must consider the nature and quality of the access that existed to the landlocked land (if any) at the time when the applicant purchase or otherwise acquired the land, this will be modified so that the access that existed when the applicant acquired

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<sup>5</sup> Wai 2180, #A37(m) at 2, table 19.

<sup>6</sup> Wai 2180, #A37(m) at 2, table 19.

<sup>7</sup> **Exhibit MH3.**

<sup>8</sup> **Exhibit MH4.**

the land will only be relevant if the applicant purchased or acquired the land by exchange (i.e. not if the applicant succeeded to the land).

27.2 If the landlocked land or the land over which access is sought is Māori land, the court must have regard to:

27.2.1 the relationship that the beneficial owners of that land have with the land and with any water, sites, wāhi tapu, wāhi tūpuna, or other taonga associated with the land; and

27.2.2 the culture and traditions of those beneficial owners with respect to that land.

28. In addition, it has been agreed that appeals of decisions under s 326B will be to the Māori Appellate Court rather than the High Court as it is currently in respect of decisions that affect General land (see s 326D(3)). This change is proposed to reduce potential costs for Māori landowners.<sup>9</sup>

29. Cabinet also agreed that Te Ture Whenua should include provisions to establish a process to enable Māori landowners to resolve disputes about their land, including disputes about landlocked Māori land.

*Provincial Growth Fund Whenua Māori Allocation*

30. The Government recently announced that \$100 million from the Provincial Growth Fund (PGF) will be used to provide financial capital (via loans and some grants) for investment-ready projects that will lift the productivity of Māori-owned land.<sup>10</sup>

31. My officials will work with the Provincial Development Unit and the Ministry for Primary Industries to clarify whether and how this allocation could be used for owners of landlocked Māori land.

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<sup>9</sup> See for example, Wai 2180, #A37(m) at 3, in relation to Awarua o Hinemanu, and at 4, in relation Owhaoko B & D Trust, referring to the potential costs of an appeal to the High Court (available to owners of general land whose land had been affected by orders under s 326B or s 326C of Te Ture Whenua) was cited. See also Wai 2180, #G13, at 6–7 and #A37, at 265–266.

<sup>10</sup> <https://www.beehive.govt.nz/release/100-million-investment-support-m%C4%81ori-landowners-and-drive-regional-growth>

*Further policy initiatives*

32. As part of future work, officials will also be considering opportunities to address any further suggestions raised by the Waitangi Tribunal's preliminary views<sup>11</sup> and in its priority report on landlocked Māori land.
33. Further proposals being considered to try to address the issue of landlocked Māori land include the following:

Legislation

33.1 A revised definition of 'reasonable access' to:

- 33.1.1 explicitly recognise topography as a relevant factor; and
- 33.1.2 recognise that owners in different circumstances or seeking access for different purposes may seek different types of access (e.g. pedestrian, private vehicle, industrial).

Funding

33.2 Other potential funding to address the significant costs that can be associated with obtaining access to landlocked Māori land.

Support

33.3 Consideration of how the planned regional advisory services (as part of Whenua Māori Programme)<sup>12</sup> can assist owners of landlocked Māori land.

Crown Agency Agreement

33.4 The development of an agreement between several Crown agencies with significant land holdings namely:

- 33.4.1 Department of Conservation;
- 33.4.2 New Zealand Transport Agency;
- 33.4.3 New Zealand Defence Force; and

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<sup>11</sup> Wai 2180, #2.6.65.

<sup>12</sup> <https://www.beehive.govt.nz/release/reform-whenua-m%C4%81ori>



- 33.4.4 KiwiRail.
- 33.5 Land Information New Zealand and the Commissioner of Crown Lands are likely to be involved in the implementation of the agreement at the level of contributing data and expertise.
- 33.6 The intention of the agreement is to:
- 33.6.1 establish guiding principles for agencies to consider;
  - 33.6.2 describe the issues with respect to each type of Crown land holding that the parties administer;
  - 33.6.3 provide a framework for how these agencies respond in instances where Crown land might be used to provide access to landlocked Māori land;
  - 33.6.4 provide stronger guidance to agencies on the options they have where Crown owned land could be used to provide access; and
  - 33.6.5 result in land holding agencies more proactively resolving instances of landlocked Māori land.
- 33.7 It is anticipated that this agreement will be finalised and signed within the next 3-6 months.

## **LANDLOCKED LAND IN TAIHAPE: RANGITĪKEI KI RANGIPŌ**

34. I will now provide a summary of some of the work Te Puni Kōkiri is undertaking concerning landlocked land within the Taihape: Rangitīkei ki Rangipō inquiry district, and how current and future policy initiatives might assist owners of landlocked land within the inquiry district to access their land.

### **Te Puni Kōkiri Taihape Landlocked Land Research**

#### *Introduction*

35. Te Puni Kōkiri has recently commenced a pilot study researching landlocked land in the Taihape: Rangitīkei ki Rangipō inquiry district. The purpose of this study is to test and validate a methodology that officials have devised to

identify landlocked land. Subject to budget, Te Puni Kōkiri plans to use this methodology for a broader nationwide project on landlocked Māori land.

36. Details of the methodology and the preliminary results in Taihape are attached to my evidence (**Exhibit MH5**).

*Working definition and methodology*

37. In order to assess whether blocks are likely to be landlocked, Te Puni Kōkiri has adopted a working definition of landlocked land for the purposes of its research. Under that definition, a block is considered landlocked if it:

37.1 does not have direct contact (i.e. zero metres) with the boundaries of a legal or formed road; and

37.2 has no easement providing legal access.

38. This definition differs from the legal definition provided by Te Ture Whenua, which is concerned with whether a block has “reasonable access” (as defined by the factors listed by the Māori Land Court in *Huata*).

39. The first four steps of the methodology are desktop-based and consist of:

39.1 utilising GIS data to identify blocks that do not have direct contact with the boundaries of a legal or formed road;

39.2 checking certificates of title to verify if there are any legal roads or easements registered against the titles of the blocks;

39.3 checking Māori Land Online to verify if the blocks are administered by a governance entity or if the blocks have been aggregated;<sup>13</sup> and

39.4 checking Satellite and Google Street View imagery to verify if any legal access appears to be formed, or if other access is evident.

40. The final step of the methodology is interaction with landowners to discuss the preliminary access assessment. This will involve:

40.1 contacting landowners to verify the access situation to their land; and

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<sup>13</sup> To check whether practical access is provided by some other mechanism, e.g. being managed under a land trust that has other access adjoining the land.

40.2 conducting drone surveys of boundaries and terrain.

41. This final step has not yet been undertaken in Taihape because it is one of the projects within our wider Māori land mahi and robust desktop research is required to prioritise landowner interactions.

*Independent review and limitations of methodology*

42. An independent review of Te Puni Kōkiri's methodology and the preliminary results in Taihape has been conducted. That review found the methodology and preliminary results to be generally sound, but noted some limitations, particularly around the quality of the underlying roading and land block GIS data.

*Preliminary results in Taihape: Rangitikei ki Rangipō*

43. In summary, the preliminary results of Te Puni Kōkiri's research about landlocked land in Taihape are:

<b>Access Assessment</b>	<b>Number of Blocks</b>	<b>Area (ha)</b>
<i>Landlocked</i>	32	51,017
<i>Not Landlocked</i>	8	2,263
<i>Needs Investigation</i>	16	804
<b>Total</b>	<b>56</b>	<b>54,084</b>

44. Whilst these results are preliminary it is evident that there are some very large landlocked blocks in Taihape that present unique geographical challenges. The topography of these lands appears to present a significant hurdle to access.

*Comparison with Woodley*

45. Te Puni Kōkiri is using evidence produced for the purposes of the Tribunal's inquiry – including Woodley's report and claimant evidence – to augment its own research and gain a better understanding of access issues in the inquiry district.
46. In her research, Woodley identified 32 blocks comprising 52,780 hectares within the inquiry district as being landlocked.<sup>14</sup> While these high-level figures are similar to the preliminary results produced by Te Puni Kōkiri, there are some discrepancies at the level of individual blocks.

<sup>14</sup> Wai 2180, #A37(m), at 1–2.

47. Officials are working to understand the reasons for these discrepancies and to evaluate whether it is necessary to adjust our methodology.

### **Unlocking Landlocked Land in Taihape: Rangitikei ki Rangipō**

48. The 2002 amendments have not resulted in any successful applications for access to landlocked land in the Taihape: Rangitikei ki Rangipō inquiry district.
49. Te Puni Kōkiri acknowledges that the potential costs of an appeal to the High Court by a general landowner have been seen as a barrier by some landowners in Taihape seeking to gain access to their landlocked land under the existing legislative provisions.<sup>15</sup> It is intended that the proposed changes to Te Ture Whenua agreed by Cabinet in December 2018, empowering the Māori Appellate Court to hear all appeals concerning access orders made under the landlocked land provisions, will encourage more Māori landowners to pursue access applications through the court.
50. Similarly, it is intended that the proposed introduction of a dispute resolution mechanism will provide an avenue for owners of landlocked land and the owners of adjoining land to come to agreements for access outside of the court.
51. In addition, funding via the Whenua Māori Fund or the Provincial Growth Fund could also be accessed to help landowners meet the high costs associated with achieving access to their whenua.

### **CONCLUSIONS**

52. Landlocked Māori land is a long standing and difficult problem faced by many Māori landowners. There are limited options available to owners of landlocked Māori land, and the steps required to achieve access are often long, complex and costly. Previous Crown attempts to address this issue have not proven to be effective. In order to make any meaningful change, I believe a comprehensive package of support and funding is required.
53. Te Puni Kōkiri and the Government has had, and continues to have, an programme of work aimed at enabling Māori landowners to achieve their aspirations.

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<sup>15</sup> Wai 2180, #G13, at 6–7.

54. This includes an active programme of work aimed at addressing issues associated with landlocked Māori land. This work includes enhancements to legislation, detailed research on the nature and extent of the issue, development of dispute resolution and advisory services, potential agreements amongst Crown land holding agencies, and consideration of funding assistance for owners of landlocked Māori land.
55. I believe that these initiatives should, over time, help Māori landowners achieve access to their whenua.