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

BEFORE THE WAITANGI TRIBUNAL

WAI 2180

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

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

**SUPPLEMENTARY BRIEF OF EVIDENCE OF
RAHERA AROHA OHIA
ON BEHALF OF TE PUNI KŌKIRI**

7 October 2019



CROWN LAW
TE TARI TURE O TE KARAUNA
Pouaka Poutāpeta PO Box 2858
TE WHANGANUI-Ā-TARA WELLINGTON 6140
Waea Tel: 04 472 1719
Waea Whakaahua Fax: 04 473 3482

Whakapā mai: Contacts:

Cameron Tyson / Tessa Simpson
Cameron.Tyson@crownlaw.govt.nz / Tessa.Simpson@crownlaw.govt.nz

Barrister instructed:

Rachael Ennor

Introduction

1. My full name is Raheera Aroha Ohia.
2. I am Deputy Chief Executive of Policy Partnerships at Te Puni Kōkiri and am responsible for overseeing the policy functions of Te Puni Kōkiri.
3. Michelle Hippolite has previously provided a brief of evidence on behalf of Te Puni Kōkiri in this inquiry (Wai 2180, #M28, dated 18 February 2019) (“the first brief of evidence”).
4. Michelle Hippolite has subsequently vacated the position of Chief Executive of Te Puni Kōkiri. As such, I am the new witness for Te Puni Kōkiri.

Scope of evidence

5. This supplementary brief of evidence provides updated information in relation to work undertaken by Te Puni Kōkiri on matters relevant to this inquiry since the filing of the first brief of evidence, including:
 - 5.1 amendments to Te Ture Whenua Maori Act 1993;
 - 5.2 the Whenua Māori Programme;
 - 5.3 the Whenua Māori Fund;
 - 5.4 the Provincial Growth Fund and the Whenua Māori Allocation;
 - 5.5 research on landlocked lands in the Taihape inquiry district; and
 - 5.6 other updates.

Amendments to Te Ture Whenua Māori Act 1993

6. The first brief of evidence discusses the 2002 amendments to Te Ture Whenua Maori Act 1993 (“TTWMA”) and further attempts to reform it by way of the Te Ture Whenua Maori Bill, which was ultimately withdrawn in December 2017.
7. Te Puni Kōkiri has since been working on targeted legislative amendments to TTWMA.¹ Te Ture Whenua Maori (Succession, Dispute Resolution and

¹ These amendments were signalled in the first brief of evidence at [36]-[39].

Related Matters) Amendment Bill (the Bill) was introduced into the House on 19 September 2019. The Bill advances some practical and technical changes to the legislation which will make it easier for Māori land owners to engage with the Māori land tenure system. The key features of the Bill include amendments to:

- 7.1 enable simple and uncontested succession applications to be received, confirmed and recorded by a Registrar of the Māori Land Court, instead of going through a full court hearing process;
 - 7.2 establish a voluntary dispute resolution process that allows people to resolve disputes about Māori land (discussed below);
 - 7.3 extend the jurisdiction of the Māori Land Court, expand the remedies available to the Māori Land Court, and improve the way the Māori Land Court functions (such as the ability to appoint experts in tikanga Māori to assist in cases);
 - 7.4 improve the alignment of rules for governing bodies of Māori land with the rules for other governing bodies;
 - 7.5 improve protection for Māori land; and
 - 7.6 enhance the landlocked land provisions (discussed below).
8. The clauses of the Bill most relevant to landlocked land are provided for ease of reference as **Exhibits A and B** to this brief.² It is anticipated that the Bill will be enacted by mid to late 2020.

Landlocked land provisions³

9. With regard to landlocked Māori land, the Bill broadens the factors the Māori Land Court must have regard to when considering an application for reasonable access to landlocked land. Once enacted, the Court will be required to also have regard to:

- 9.1 the relationship that the applicant has with the landlocked land and with any water, site, place of cultural or traditional significance, or

² The Bill in its entirety can be located at:
<http://legislation.govt.nz/bill/government/2019/0179/latest/LMS154434.html>.

³ See **Exhibit A**.

other taonga associated with the land (Clause 55 – amendment to section 326B of TTWMA); and

9.2 the culture and traditions of the applicant with respect to the landlocked land (Clause 55 - amendment to section 326B of TTWMA).

10. The Bill also:

10.1 Replaces the definition of reasonable access with “*reasonable access means physical access to land for persons or services that is of a nature and quality that are reasonably necessary to enable the owner or occupier to use and enjoy the land*” (Clause 54).

10.2 Repeals the requirement that appeals regarding landlocked land need to be heard in the High Court (this takes advantage of the Māori Appellate Court’s expertise and reduces the costs associated with appealing a decision relating to landlocked land) (Clause 56(2)).

11. It is expected that these changes will improve the likelihood that applications for the granting of reasonable access will succeed.

Dispute resolution provisions⁴

12. The Bill also includes provisions to establish a dispute resolution process. This will be a tikanga-focussed alternative to court proceedings. The dispute resolution process will be inserted as a new Part 3A and is found in new sections 98H to 98S (Clause 19 of the Bill). Section 98I provides the purpose of the new Part 3A as follows:

The purpose of this Part is to assist the parties to a dispute (including owners of Maori land) to quickly and effectively resolve any disputed issues—

- (a) between themselves; and
- (b) in accordance with the law; and
- (c) as far as possible, in accordance with the relevant tikanga of the whanau or hapu with whom they are affiliated, for both the process and the substance of the resolution.

⁴ See **Exhibit B**.

13. The process will be accessible to everyone who has a dispute that falls within the jurisdiction of the Maori Land Court. This will include those who have disputes with their neighbours regarding access to landlocked land.

Whenua Māori Programme

14. The Government has committed \$56.1 million over four years to help Māori land owners navigate the Māori land tenure system (the Whenua Māori Programme). This funding will support:

- 14.1 targeted amendments to TTWMA (described above);
- 14.2 regional whenua advisory services;
- 14.3 a Whenua Knowledge Hub and website; and
- 14.4 new and enhanced Māori Land Court technology.

Regional whenua advisory services

15. The new service provides dedicated staff across Te Tai Tokerau, Wairariki, and Te Tairāwhiti.
16. The role of the service is to provide specialised and customised support that empowers Māori landowners to move forward on their development journey. For example, assisting whānau to develop an appropriate governance structure to represent their collective interests when vacant land comes into use and assisting landowners to invest in more profitable and active investments on their land.

Whenua Knowledge Hub and website

17. The Whenua Knowledge Hub contains a comprehensive suite of digital tools with trusted and up-to-date land information to support whenua investment, planning and landowner aspirations.
18. The Whenua Knowledge Hub have developed a Māori freehold land Accessibility Web Application to assist TPK Regional and Whenua Maori Advisors to engage with landowners on landlocked land issues. TPK advisors can use aerial imagery to assess possible access to landlocked land blocks non-legal roads or farm tracks to see potential access points through surrounding land.

New and enhanced Māori Land Court technology

19. Delivery of a new Māori Land Court Information System to replace the existing Information System that holds the official court records. The new technology will support future legislative changes and greater online functionality.

Whenua Māori Fund

20. The Whenua Māori Fund is currently supporting (or is likely to support) the following initiatives with regard to landlocked Māori land.
- 20.1 The Matuaokore Trust (Ikaroa-Rāwhiti) – This project applies to three contiguous blocks. The main portion of the funding has been for research and evidence of how the whenua became landlocked and negotiation costs for mediation with general land owners to gain access. However, the negotiations have not been successful and the matter is now before the Māori Land Court.
- 20.2 Wybrow Whānau Tautoko Lands Trust (Te Waipounamu) – This project seeks to develop a strategic plan aimed at improving land use practice and productivity and overcoming impediments to more productive use of land. This includes investigating how to overcome access issues due to the landlocked nature of the block, and ultimately of neighbouring blocks. Funding has yet to be granted in respect of this project.
- 20.3 Horohoro A32 (Waiariki District) – Funding was provided to undertake a site assessment to identify appropriate bridge and access route options and to produce a forestry assessment.
- 20.4 Owhaoko B and D block (Aotea District) – Following the withdrawal of an original application for these blocks in 2017, I understand a new application is currently being prepared for these blocks.
21. The funding through the Whenua Māori Fund outlined above was provided on the basis that strong applications were received that met the requisite criteria for funding support from these groups.

22. To help raise awareness that the Whenua Māori Fund can be used for landlocked Māori land, the guidance and application form document states that applications can be made with respect to overcoming impediments to more productive use of land, such as landlocked land.

Provincial Growth Fund Whenua Māori Allocation

23. The Government has allocated \$100 million from the Provincial Growth Fund (PGF) to provide financial capital (via loans and grants) for investment-ready projects that will lift the productivity of Māori-owned land.
24. In the case of applications for funding to establish access to landlocked Māori land, the current criteria for the Whenua Māori allocation of the PGF allows funding to be provided for the construction of physical access (such as roads and fencing).
25. It should be noted that the application would need to be part of a wider plan for development of the land, given the current scope and purpose of the PGF (most importantly regional development and job creation). It should also be noted that all consents and other legal requirements (such as the provision of legal access by the Māori Land Court) must be settled before funding can be considered. Funding would not be considered if legal access had not been established.
26. I understand to date there have been no applications to the fund by owners of landlocked Māori land. Te Puni Kōkiri is committed to working with the Provincial Development Unit to inform owners of landlocked Māori land about the potential use of this allocation to help to achieve access.

Research on Landlocked Lands in the Taihape Region

27. The final step of the research methodology has not yet been undertaken in Taihape, given the other priorities in advancing the wider whenua Māori work programme. The final step of the research methodology will be interaction with landowners to discuss the preliminary access assessment.⁵

⁵ See first brief of evidence (Wai 2180, #M28) at [53].

28. I note that one of the suggestions made in the research report commissioned by the Crown Forestry Rental Trust⁶ was that the Crown investigate the establishment of a dedicated agency to support owners to investigate their circumstances, arrange negotiating hui and channel Crown financial contributions.
29. Given the significant barriers faced by landowners and the difficulties in navigating the costly and complex process to achieve access, a proposal of this nature may be worth exploring in the future. It may be that, over time, the support provided through the Whenua Māori Programme has a specific dedicated function of supporting owners of landlocked Māori land.

Other updates

Consideration of Waitangi Tribunal's preliminary views

30. With regard to the Waitangi Tribunal's preliminary views on landlocked lands in the Taihape Inquiry district expressed in its memorandum dated 14 August 2018:⁷

Contestable Fund

- 30.1 The establishment of a contestable fund dedicated to assisting owners of landlocked Māori land has not been progressed by Te Puni Kōkiri, but it may be considered in the future. As noted above, while it is not dedicated to addressing landlocked land issues, some funding is available through the Whenua Māori Fund and the Provincial Growth Fund.

Amendments to Te Ture Whenua Māori Act 1993

- 30.2 I consider that the proposed amendments to Te Ture Whenua Māori Act 1993 (recently introduced to Parliament) go some way to address the suggestions made by the Tribunal. Expanding the factors which the Māori Land Court can take into account in deciding whether to grant access to landlocked land will improve the likelihood that applications will be granted. This will explicitly enable judges to take into account cultural factors in addition to

⁶ Wai 2180, #N1.

⁷ Wai 2180, #2.6.65 'Memorandum-directions concerning landlocked Māori land in the Taihape Inquiry District' dated 14 October 2018.

practical considerations such as the potential need for vehicular access.

Crown Agency Agreement

31. We are prioritising discussions with the New Zealand Defence Force and the Department of Conservation to advance a Crown Agency Agreement⁸ regarding the use of Crown administered land to provide access to landlocked Māori land. This is particularly because we consider that land administered by these agencies is most likely to be able to be used to address landlocked land issues in the inquiry district area.
32. These agencies have expressed a willingness to engage in discussions and we expect it to be finalised and signed in the coming months.

Review of the Walking Access Act 2008

33. The Ministry for Primary Industries recently led a review of the Walking Access Act 2008. As a result, Hon Damien O'Connor recently presented a report to the House of Representatives containing the findings of the review.
34. Feedback from Māori during the review highlighted the importance of accessing wāhi tapu and other culturally significant sites, including on landlocked Māori land. Recommendation 19 of the review report suggests that amendments be made to the Walking Access Act 2008 to include “a new access mechanism that allows access to sites of cultural significance for Māori to be limited to relevant Māori groups”.
35. The Ministry for Primary Industries intends to undertake a formal policy process to test the review’s findings and will provide further information during 2020.

Summary of pipeline support for owners of landlocked Māori land

36. In summary, from the existing or planned initiatives outlined in this brief of evidence, the pipeline support that is (or will be available) to owners of landlocked Māori land is as follows:

⁸ See first brief of evidence (Wai 2180, #M28) at [45.4]-[45.7].

- 36.1 Whenua Māori Knowledge Hub and website: Landowners can get better information about their landlocked land to inform decision making.
- 36.2 Whenua Māori Fund: Landowners can apply for funding to undertake feasibility studies for their landlocked land.
- 36.3 Regional Advisory Services: To assist landowners to develop an appropriate governance structure and assist landowners to invest in more profitable and active investments on their land.
- 36.4 Improved Māori Land Court services: Specifically access to a dispute resolution service with the aim of settling disputes about access outside of court.
- 36.5 Provincial Growth Fund: Landowners can apply to the Whenua Māori allocation of the Provincial Growth Fund to assist with the construction of access (as part of a wider land development plan).
37. I note that many of these work-streams are at an early stage (or have not yet been implemented) and as such an assessment of how they can specifically assist owners of landlocked Māori land is premature. I also note that these initiatives are more focussed on land development objectives rather than to facilitate cultural connection to the land. I consider that access to sites of cultural significance is also an important issue for owners of landlocked Māori land, and my officials will work with the Ministry for Primary Industries on the review of the Walking Access Act 2008.

Conclusions

38. As previously stated in our earlier brief of evidence, landlocked Māori land is a long-standing and difficult problem faced by many Māori landowners. I believe that the current initiatives outlined in my brief of evidence should, over time, help Māori landowners achieve access to their whenua.
39. I also believe there is an opportunity to better utilise funding that has been allocated for whenua Māori for the purposes of landlocked land and my officials will work with other government agencies to promote existing

available funding and assess whether existing funding criteria appropriately provide for applications regarding landlocked land.

Signed: _____

Date: _____