Crown Law

Crown closing submissions: Taihape landlocked lands post-1975

Wai 2180, #3.3.044(d) Tranche 2 closing submissions

Wai 2180, #3.3.44(e) Presentation Summary

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1 Apr 21
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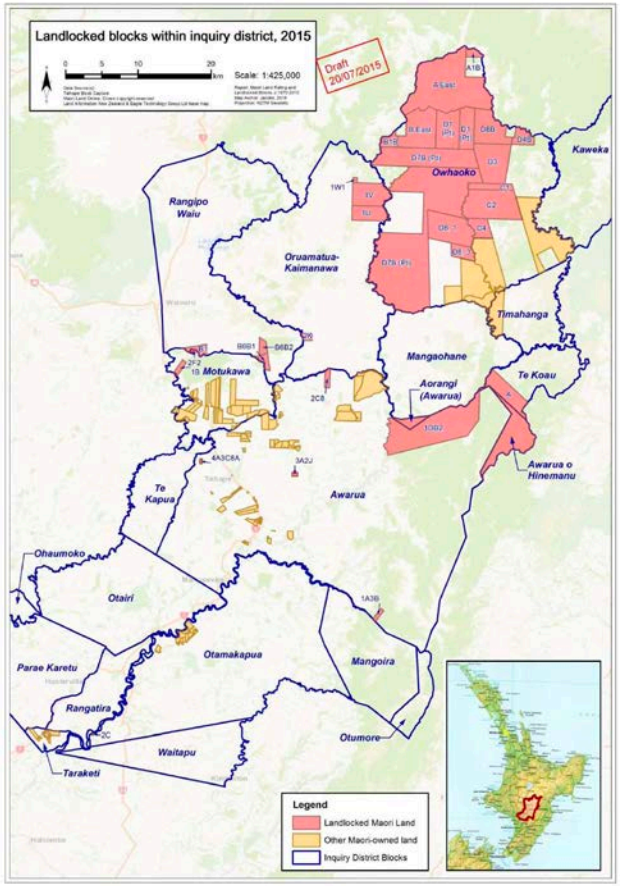
WELLINGTON



Map 11: Maori landlocked land within Taihape Inquiry District

Woodley Wai 2180, #M37 at 533

Context

Aspects of native land laws

Pre 1975 legislation

Akin to being landless

Broader context

11. In the context of Taihape, where the proportion of retained lands that are landlocked is so high as to be akin for Taihape Māori to being landless, the duty of active protection requires a responsible Crown to take reasonable measures to ensure its direct actions do not further compound or exacerbate prejudice arising from breaches of the Tiriti/Treaty. The application of this duty within Taihape is discussed below (in Part Four below).

Historical legislation

Access provisions from 1886
Consent requirements from 1912
Consent no longer required from 1922

… Except for lands that ceased to be Māori land prior to 1913.

1975 consent removed entirely

Legislation since 1975

Same as general lands since 1975

Same is not equal [para 11/19]

Increasing provision for Māori lands

28 applications

1/3 granted
1/3 dismissed or withdrawn
1/3 still under consideration

Taihape lands

3 applications
None gone to hearing

Problems

The substantial costs (legal, survey, compensating neighbours, fencing, forming access), which can outweigh the expected benefits of achieving access.

Difficulties in accessing capital for attaining access (legal, land acquisition, fencing and forming access).

A lack of capacity and expertise to navigate the steps, including specialist advice on available options.

Difficulties gaining agreements with surrounding landowners.

Neighbouring landowners may have economic or other incentive to continue restricting access to the landlocked Maori land.

Increased distinction for Māori lands

1975 Consent not required

2002 Te Ture Whenua Māori

2020: Appeal to Māori Appellate Court
Clarification/broadening terms & criteria
Dispute resolution improved
Sits within package of measures

Policy responses

Dispute resolution
Regional services
Whenua Māori Fund
Other funds/processes: PGF; MPI

No silver bullets
Work in progress

Direct Crown Action: NZDF

1973 Ōruamatua Kaimanawa

PWA taking – with access implications

Crown failed to consult – breach

58. In reaching its decisions to acquire the land in 1973 and to retain the land as defence lands in 1976, the Crown did not appear to adequately consider:

58.1 alternatives to taking all of Ōruamatua Kaimanawa 4;

58.2 the views of the Māori owners (as acknowledged directly above, all owners were not notified prior to the 1973 decision);

58.3 the Crown's Treaty obligation to actively protect lands that Māori wish to retain (particularly in the context where the proportion of land subject to access restrictions is sufficient to be akin to landlessness); and

58.4 (or for the 1976 decision) the relevance of the failure to consult the owners of Ōruamatua Kaimanawa 4 prior to the original decision

59. The available evidence suggests that the Crown was motivated to acquire the land quickly due to the efforts of competing interests, and then to determine what the land might be used for later. The statements of Crown officials cited above demonstrate that it was debateable whether all of Ōruamatua Kaimanawa 4 was in fact necessary at the time it was taken.

60. The absence in 1973 of a sufficiently detailed plan to demonstrate how the land would be used further suggests that insufficient consideration was given to how much land was actually necessary for the stated purpose. The majority of discussions about how the land would be used occurred after the taking.

Concession of Treaty breach:

The Crown therefore further concedes that:

> its decision to take all of Ōruamatua Kaimanawa 4 without first adequately assessing how much land was in fact required for military training purposes meant that it took more of the block than was reasonably necessary.

1990 Ohinewairua land exchange

65. The Crown concedes that:

65.1 it failed to consult with or actively protect the interests of the owners of the Ōruamatua Kaimanawa 1V and Ōruamatua Kaimanawa 1U blocks when it negotiated a land exchange with private interests in 1990. This failure exacerbated access issues to the blocks and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

DOC

Te Koau A and Awarua o Hinemanu

Map 3.2.59(a)

Access over private lands required
#A37 p 473 Te Koau A
#A37 p 436 Awarua o Hinemanu

Impact on access

In that context and in those circumstances (where such a high proportion of land is landlocked so as to be akin to being landless), the Crown should ensure its actions do not further exacerbate access difficulties for Taihape Māori, subject to the standard of reasonableness.

Decisions do not exacerbate access difficulties to Te Koau A and Awarua o Hinemanu – but neither do they progress matters significantly

Prejudice

Access difficulties were a factor contributing to the sale of the following lands during the 1912 to 1975 period totalling 9,348 hectares:

104.1 Awarua 2C12A2A in 1953; 4C13B in 1953; 2C4 in 1954; 1A3C in 1965; 4C15F1H2 and 4C151H1 in 1966; 1A3A in 1968;

104.2 Ōruamatua Kaimanawa 1K and 2F in 1962;

104.3 Rangipō Waiu B5 in1927 and 1928; B6C2 in 1929; B6C1 in 1946; B4 in 1950, B2 and B3 in 1966;

104.4 Mōtukawa 2E2 in 1951; and

104.5 Ōwhaoko D5 section 2 in 1953.

Post 1975 Ōwhaoko D6(3)

Economic prejudice

Prejudice to cultural relationships, knowledge and obligations

Remedies

Improved legislative measures

“Pipeline of support”

Whenua Māori Fund $56.1 M 2017
Other funds – some applicable
Litigation – legal aid

No dedicated funding for compensation; costs of construction or maintenance

Remedies to be reasonable, practical, and future focused

More, but limited, room to move:

Existing legal remedies (including 2020 amendments)

Dispute resolution assistance with neighbours

Agencies working on solutions – but limited options directly within Crown control