Ngāti Koroki Kahukura

Submission to the Māori Affairs Select Committee on

Te Ture Whenua Māori Bill

June 2016

Submission From: Ngāti Koroki Kahukura Trust, Taumata Wiiwii Trust, Pōhara Pā, Maungatautari Marae, Pōhara Station Trust, Heketanga Whānau Trust (the Trusts)

Contact Address:

Contact Person:

Ko Maungatautari te maunga, ko Waikato te awa tupuna,
ko Ngāti Korokī Kahukura mātou; ko Maungatautari, ko Pōhara ngā marae.

Our mountain is Maungatautari; our ancestral river is Waikato; we are Ngāti Korokī Kahukura and our marae are Maungatautari and Pōhara.

General Position of the Trusts on Te Ture Whenua Māori Reforms

1. The Trusts that make this collective submission represent over 3000 whānau members and **support** the fundamental principles of the reforms:
    a. Taonga tuku iho: ensuring land is retained for the benefit of future generations
    b. Mana motuhake – more autonomy for landowners to make more decisions affecting our lands and our people
    c. Whakawhanake – better support for landowners to develop our lands if that is our wish.
2. The Trusts set out more detailed comments below.
3. The Trusts **do wish to be heard** in support of this submission. As there are six trusts making these collective submissions, we seek half an hour.

Background of the trusts

1. The people of **Ngāti Koroki Kahukura** descend from the ancestors of Tainui waka. According to historian, Erik Olsen,

    ' …there can be no doubt that the combined impact of confiscation and the Native Land Court stripped from Ngati Koroki Kahukura the land necessary to sustain their people. The development of European farming, which involved both draining most of the region's wetlands and the gradual silting of its rivers, compounded the effect, by destroying traditional food sources. The later decision of government to use the Waikato River for generating hydro-electricity only worsened the plight of Ngati Koroki Kahukura. What had once been a prosperous and flourishing community became a remnant.

    One can only salute the courage and ingenuity with which that remnant sustained an on-going presence and more recently set about restoring Ngati Koroki Kahukura's mana in their ancestral rohe.'[1]

[1] Report on the historical account of the relationship between the Crown and Ngati Koroki Kahukura by Emeritus Professor Erik Olssen, ONZM, FRSNZ, FNZAH, and PhD (Duke), 15 September 2011

2. The **Ngāti Koroki Kahukura Trust** represents the people of Ngāti Koroki Kahukura on certain social, environmental, economic, political and cultural issues. At the time of our Treaty Settlement mandating process, we had 3388 registered whānau members[2] who affiliated to our two Marae: Maungatautari 1984, and Pōhara 1404. Together with the Taumata Wiiwii Trust, the Ngāti Koroki Kahukura Trust has been formally mandated by the people of Ngāti Koroki Kahukura to make this submission on the Te Ture Whenua Māori Bill on their behalf.
3. Ngāti Koroki Kahukura are included in the Waikato-Tainui Raupatu Settlement arrangements through Ngāti Koroki. The **Taumata Wiiwii Trust** is the entity mandated to negotiate and settle the outstanding historical non-raupatu Treaty of Waitangi Claims on behalf of Ngāti Koroki Kahukura. It is the post settlement governance entity that received and now manages settlement assets for and on behalf of Ngāti Koroki Kahukura. Redress includes more than 100 ha of lands (in addition to the scenic reserve lands in our maunga returned in community title). We did not consider that there was any incentive for us to have these lands returned as Māori Freehold land. In addition, this trust also owns 122ha of dairy farmland which we farm ourselves. These also have General Land status. We are watching the reforms closely, particularly in relation to the principle of whakawhanake to see whether there is incentive for us to bring any of these lands under the umbrella of Te Ture Whenua.
4. The **Pōhara Station Trust** is an Ahuwhenua Trust who represents landowners of certain named descendants and operates dairy farms on lands that consist of the relatively small part of the Ngāti Koroki Kahukura estate that survived confiscation and the processes of the Native Land Court. Their long term mission is to successfully and sustainably use and develop their land in order to regain our lands that were taken from us. (277 ha Māori Freehold Land, 1023 owners, many not succeeded to – check whether this includes Westlea).
5. The **Heketanga Whānau Trust** is an Ahuwhenua Trust who represents descendants of ancestor Heketanga Matekohi, of Ngāti Koroki Kahukura descent. The farm has General Land status. There are 17 owners listed on the title to the farm, but only six (6) are living. The remaining 11 are deceased and no succession has been completed for their interests. Despite opposition to the Public Works Act process, the farm is constrained by the operations of Transpower New Zealand Limited who required an easement over the farm for a new overhead electricity line that runs from Whakamaru to South Auckland. We are watching the reforms closely, and will consider whether to seek to change the status of the land to Māori Freehold Land. [insert size of farm]

[2] We try to avoid the term beneficiary.

6. **Maungatautari Marae** is situated on Hicks Road on the northern side of Maungatautari.
7. **Pōhara Pā** is situated at the base of Maungatautari. Its long term mission is to maintain mana whenua in accordance with the tongikura of King Tawhiao: Kia mau ki te whenua, hei papakāinga mo ake tonu. (Hold fast to your lands to that you will always have somewhere to call home). There is a papakāinga situated on the reserved lands that make up the 9 ha Pā, with an urupā – separate title, of 0.4 ha nearby. We are looking closely at the option of collective ownership offered by the new regime.

Specific comments on Te Ture Whenua Māori Bill

1. Aronga me ngā matāpono (Purpose and principles)

We strongly support:

- the aronga and matāpono as they are expressed in te reo Māori, and the principle that the Māori version prevails over the English version
- the principle of autonomy
- the importance of whakapapa in determining beneficiaries and recipients of lands, whether by sale or gift
- the principle of retention
- reference to Te Tiriti o Waitangi rather than the Treaty of Waitangi in the English text. Whilst Potatau Te Wherowhero, first Māori King, did not sign te Tiriti, we have come to expect the Crown to honour the promises in Te Tiriti in respect of te tino rangatiratanga o ō mātou whenua, wai, reo, me ngā taonga katoa
- the inclusion of a tikanga based dispute resolution service that is well-designed and well-resourced will be an excellent and overdue inclusion to the Māori land regime
- the right to develop our lands if we wish, and the right to leave our lands covered in native flora if we wish, as is the case for many of our land blocks, in and around Maungatautari.

2. Governance of Māori freehold land

We support the move from a regime of trusts and incorporations appointed by the court to a regime of owner appointed governance bodies operating under owner approved governance agreements. We support shifting the Court's role from one that is now too discretionary and uncertain, to one which focuses on compliance and ensuring that appointment processes are fair and transparent.

3. Existing trusts and incorporations

We support the provisions that allow existing ahu whenua trusts to transition as they are, if they wish, with the terms of their existing trust orders or constitutions preserved. We appreciate that a lot of thought has gone into ensuring that we, as existing trusts, are able to transition as simply as possible without disrupting our ongoing operations.

4. Option to become a rangatōpu

We support the development of rangatōpū, a new type of governance body, and will carefully consider whether we might wish to establish rangatōpu under the new regime. Key features that are attractive are that a rangatōpu is a body corporate with perpetual succession and (with exceptions of course) may do anything that a natural person of full age and capacity may do, and that the asset base vests in the governance body rather than in the individual trustees.

We urge the Crown to provide education and support for existing trusts such as ourselves to consider the options that the Bill provides at no cost to us.

5. Governance agreements

We support the idea that we can custom-design our governance agreements (trust deeds) to suit our own particular needs, such as not having an Annual General meeting every year that a certain percentage of kaitiaki must reside in Aotearoa.

We urge the Crown to provide education and support for existing trusts such as ourselves, and owners of Māori land generally, to understand fully the new provisions in relation to governance agreements, and a range of example templates for us to consider, at no cost to us.

6. Preferred recipients

We support the differences in the way the Bill defines "preferred recipients" when compared with Te Ture Whenua Maori Act 1993. In particular, no-one can be a preferred recipient under the Bill unless they have an association with the relevant Māori freehold land in accordance with tikanga Māori. The design of the Māori Land Service and the dispute resolution regime will be crucial to the success of the new regime in relation to who is an eligible recipient. We understand that the consequences of this change is that any person whether they be whāngai, legally adopted, or biological children of people who do not have a whakapapa connection may not be entitled to succeed to Māori land, if that is what the tikanga of the particular iwi/hapū/whanau dictates.

7. Accountability

In terms of accountability, the Bill continues to provide the Māori Land Court with jurisdiction to investigate governance bodies within prescribed parameters. We support the court's new

power to disqualify individual governors, referred to as kaitiaki, from holding such a position on any governance body. That power can be exercised in specified circumstances, such as fraudulent, reckless or incompetent performance, and we like that this is consistent with similar powers under the Companies Act 1993 relating to the disqualification of company directors.

8. Powers, duties and responsibilities of kaitiaki

We support that these duties are actually spelled out in the Bill, and are intended to be consistent with the powers, duties and responsibilities of other types of governance roles. We strongly support that kaitiaki are not, by reason only of being a kaitiaki, personally liable for obligations of the governance body.

9. New decision making regime

Whilst we are in general support of the ideas behind the new decision making regime, the participation thresholds and quorum requirements should be set out more clearly, *in one place*. For ease of reference, we strongly support the inclusion in the Bill of a *table or diagram* that sets out the different thresholds and quorum requirements.

We strongly support that, under the Bill, the role of the Māori Land Court changes from having final discretion over a range of decisions to one of ensuring due process and legal requirements are complied with, and that the Bill provides greater autonomy for owners of Māori land and their own entities to make final decisions about their land.

We strongly support that the Bill provides that owners may participate in decision-making using postal or email voting forms or by using an electronic voting system and may attend meetings of owners in person, via a nominated representative, or via telephone or internet based technology. It is simply too expensive to have to advertise hui in newspapers. The reality for our whanau is that we are able to keep them informed using new technology such as social media and email networks.

10. Decisions that require a percentage of all owners

We support that decisions to sell land ought to have the highest threshold, 75% of all owners and that owners can make that threshold higher if we like.

We do not share the view that decisions to convert to collective ownership should be subject to the same threshold. This option ought to be easier to achieve as it aligns more closely to traditional views. We recommend that it have a threshold of 75 % of participating owners.

11. Decisions that may be made by a percentage of 'participating owners'

We strongly support that decisions that allow owners to more effectively manage and utilise land be made by "participating owners" rather than all owners to address the practical difficulties associated with owner decision-making for parcels of Māori freehold land. This also aligns, in our view, with the concept of ahi kaa.

12. Thresholds and the Second Chance Mechanism

We support that prescribed thresholds are included in the Bill rather than subjective criteria such as "a sufficient degree of support" or "no meritorious objection" used in Te Ture Whenua Maori Act 1993. Our experience is that the 1993 Act is uncertain and unclear. The Bill provides a framework with clear decision-making criteria so as to facilitate final decision-making by the owners themselves rather than having the final decision dependent on a subjective assessment by the court.

For decisions that can be made by "participating owners" the Bill provides a graduated set of participation thresholds. These are quite difficult to achieve from our experience, but the second chance mechanism may provide some reprieve. This mechanism allows, where the applicable participation threshold is not met, that the decision making process can be re-run without the required threshold requirement provided the second process is commenced within 20 working days and is notified to the owners in a way that clearly explains that the resulting decision will be valid if it is agreed to by the required majority of the participating owners, irrespective of how many owners participate in making the decision.

13. Māori land register

Historically, details about Māori freehold land title and ownership have been held in the records of the Māori Land Court. The Bill establishes a formal Māori land register of Māori land title, ownership, and governance. The establishment of the Māori land register is important because, under the Bill, many of the dealings affecting Māori land title, ownership, and governance will be transacted by the owners themselves and their governance bodies without requiring Māori Land Court orders so they will not be recorded in the records of the court.

The Māori land register will record both legal and beneficial interests in Māori freehold land. Māori freehold land will continue to be subject to, and registered under, the Land Transfer Act 1952. Legal interests in Māori freehold land will be recorded in the land transfer system as well as in the Māori land register.

We urge the Crown to consider carefully the care of the Māori Land Court record which we see as a taonga. For this regime to be a success, the Māori Land Service needs to be designed by Māori for Māori.

14. Status of Land – General Land Owned by Māori

The intention to exclude General Land Owned by Māori and the impacts of ahu whenua trusts established under the 1993 Act such land is an issue that was not generally talked about in the consultation and engagement process. This is a concern to trusts such as the Heketanga Whānau Trust. We urge the Crown to produce explanatory material on this point as a matter of urgency.

15. Dispute resolution

We strongly support the establishment of a new dispute resolution mechanism for disputes about Māori land, and that the approach to dispute resolution is based on a concept of mātauranga takawaenga, which is a process to assist people and groups to resolve disagreements and conflicts in accordance with the tikanga, values, and kawa of the relevant hapū or whanau both as to process and in substance.

We support that the dispute resolution process recognises that the parties will often be connected with one another in an ongoing relationship and mitigating the risk of relationship damage is important. The process is designed to reflect the principle of rangatiratanga and to empower parties to achieve their own solutions and outcomes rather than having to accept an outcome imposed on them by a court.

We support that the Bill makes it mandatory for certain disputes to be referred to dispute resolution before the court has jurisdiction to consider them on a litigated basis, such as disputes over whether a person is a whāngai or whāngai descendant.

We support that the Bill provides Judges of the Māori Land Court with a previously unavailable power to hold judicial settlement conferences in which the Judge is able to assist parties to negotiate their own settlement.

16. Māori Land Court

We support that the Māori Land Court remains a key institution for the determination of matters relating to Māori land. Both the Māori Land Court and the Māori Appellate Court are continued under the Bill. We also support that the Special Legal Aid fund be continued.

17. *Whenua Māori Enablers*

The Bill makes changes to the way in which Māori land is valued for rating purposes, and that it makes it easier for local councils to remove rates arrears on unoccupied and unused Māori land where there is a demonstrable commitment to use or occupy land in the future. It also makes it easier for local councils to make unoccupied and unused Māori land non-rateable. The Bill removes the arbitrary limit of two hectares on the non-rating of marae and urupā bringing them into line with churches and cemeteries which are non-rateable, regardless of their size, and that the Bill also makes Ngā Whenua Rāhui (conservation land) non-rateable which brings it into line with QEII covenanted land, and clarifies that land set aside as a reservation cannot be taken for any reason by anyone, including the Crown for public works, and the purposes for setting land aside as a reservation are now wider.

We are of the view that the Bill needs to go further.

We recommend that

1. Access *to finance* for landowners be addressed a matter of urgent attention.
2. That papakāinga be rate free and that all rates arrears on Māori land be waived, that unutilised and unoccupied Māori land be exempt from rates. Precedent wording for rating exemption can be found in Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016, Schedule 5 which states that land that is part of the Whanganui River and vested in or acquired by Te Awa Tupua is 'fully non-rateable for the purposes of the Local Government (Rating) Act 2002.'
3. That no more Māori land (not just reservations) be taken for public works – enough has been given. As an absolute last resort (i.e no other options are available), a leasing regime may be put in place, where the landowners retain ownership of the land and the Crown leases the land needed for public works, as suggested during the engagement round by Sir E.T. Durie.
4. That a specific fund be set aside for the purpose of enabling the 'unlocking' of landlocked land.

We urge the Crown to adopt a collaborative approach with Iwi in continuing work on the enablers workstream.

18. Māori Land Service (MLS)

We are aware that work continues on the design of the MLS. We strongly encourage the Crown to set out clearly what services are going to be delivered by the MLS, who will deliver those services, and the timetable for the delivery of those services. We seek that those services be delivered at no cost for Māori land owners.

We urge the Crown to work collaboratively with Iwi to co-design the operation of the MLS, by Māori for Māori.

19. Impacts of the reforms on administering Marae

There are significant changes in the way that Marae Reservations (Whenua Tāpui) are to be administered – bringing them in line with other types of reserves. There has been insufficient consultation and engagement on the impacts of the reforms on Marae.

Summary of key recommendations and concerns

1. We urge the Crown to provide education and support for owners of Māori land and potential owners of Maōri land to understand fully the opportunities and risks posed by the reforms, including the impact on trusts established over General Land owned by Māori. This education and support should be provided in a number of ways (not just in brochures/booklets) and be free of charge.

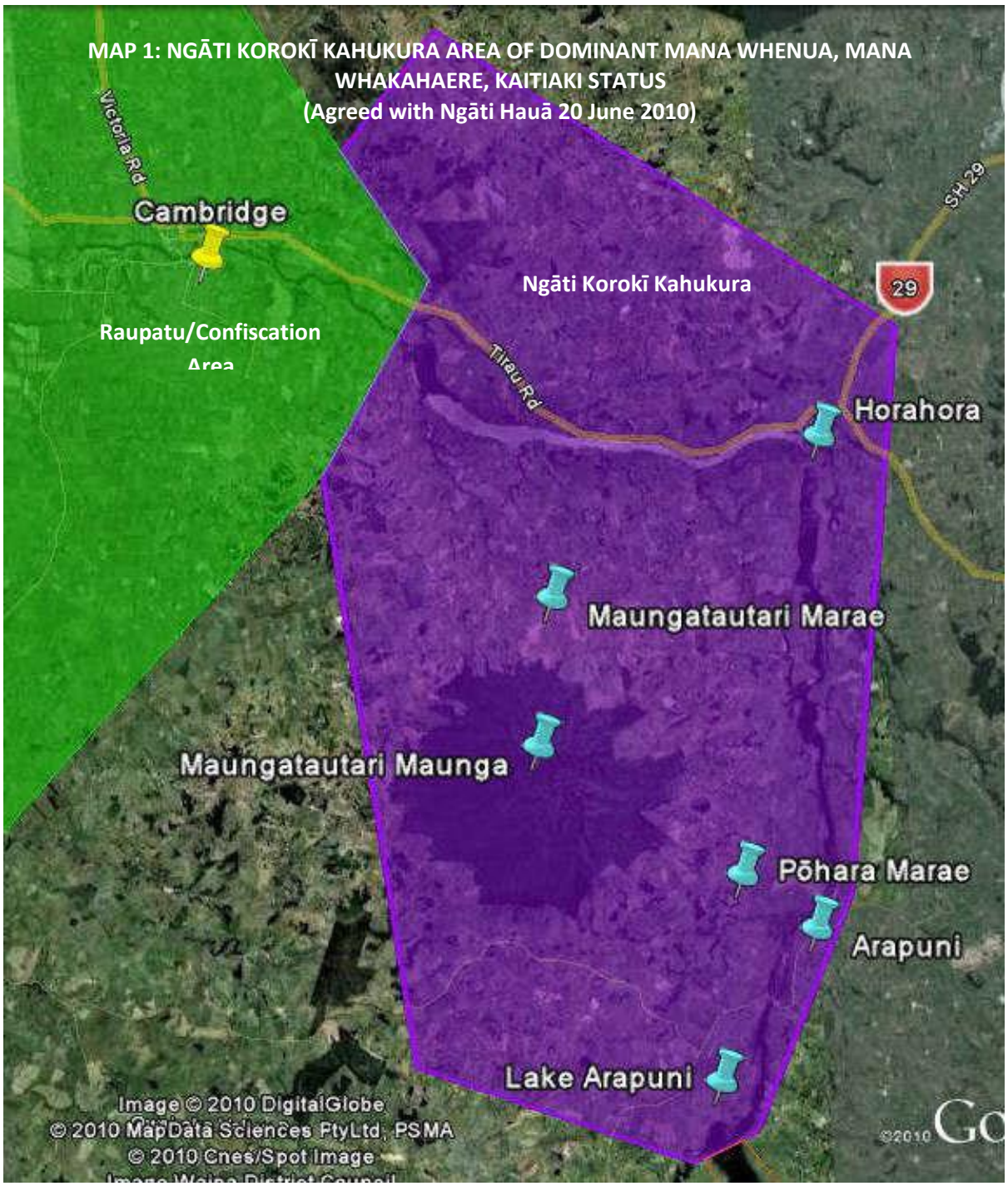
2. We do not share the view that decisions to convert to collective ownership should be subject to the same threshold as sale. This option ought to be easier to achieve as it aligns more closely to traditional views. We recommend that it have a threshold of 75 % of *participating* owners.

3. The participation thresholds and quorum requirements need to be set out more clearly, in one place. We strongly support the inclusion in the Bill of a table or diagram that sets out the different thresholds and quorum requirements.

4. We support the development of an alternative dispute resolution regime (ADR), and recommend that a flow chart diagram be included in the Bill to illustrate how and when the ADR will be triggered.

5. We urge the Crown to adopt a collaborative approach with Iwi Leaders in continuing work on the 'enablers workstream'. The provisions in the Bill relating to rating and valuation, landlocked land, Public Works Act are appreciated, but do not go far enough.
6. We urge the Crown to consider carefully the care of the Māori Land Court record which we see as a taonga.

7. For this regime to be a success, the Māori Land Service needs to be well-designed and well-resourced. We urge the Crown to work collaboratively with Iwi to co-design the operation of the MLS, by Māori for Māori.


MAP 1: NGĀTI KOROKĪ KAHUKURA AREA OF DOMINANT MANA WHENUA, MANA WHAKAHAERE, KAITIAKI STATUS
(Agreed with Ngāti Hauā 20 June 2010)
Victoria Rd
Cambridge
Raupatu/Confiscation Area
Ngāti Korokī Kahukura
Tirau Rd
SH 29
29
Horahora
Maungatautari Marae
Maungatautari Maunga
Pōhara Marae
Arapuni
Lake Arapuni
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