Ngāti Hāua Iwi Trust

FEEDBACK OF THE NGĀTI HĀUA IWI TRUST

Regarding proposed changes for Te Ture Whenua Māori

23 May 2025

1.0 SUMMARY OF FEEDBACK

1.1 Te Ture Whenua Māori Act 1993 (**Act**) is an omnibus statute that provides a nuanced legal regime for whenua Māori. The Preamble of the Act sets out the underline principles and conceptual framework of the Act, which the Courts (including the Senior Courts) have time and again confirmed as being a clear benchmark for the administration and interpretation of the Act generally. The key elements of the Preamble are the principles of retention, occupation, use and development of whenua Māori by landowners, beneficiaries, whānau, hapū and iwi. Conceptually, those principles are to be recognised within a clear legislative statement that whenua Māori is a taonga tuku iho, naturally drawing in the ideals related to collective land tenure.

1.2 This express benchmark sets the parameters for any changes to the Act and must remain at the forefront when making changes that veer away from the intended purpose of the above principles. In this sense, we raise concerns with many of the currently proposed changes to the Act, as they carry an underline theme of creating efficiencies for third parties (including the Government) and not for Māori landowners. We do see a number of areas that would be beneficial but have suggested some changes or additions to better safeguard the principles of the Act.

1.3 Our feedback can be summarised with respect of each of the consulted matters as follows:

Proposal	Position
Enable a central register of owners/trustees	Partially disagree
Expanding jurisdiction and clarifying status of land regarding Part 1/67 General land in TTWM Act	Partially agree
Improving governance practices for investigations into the affairs of Māori Incorporations	Disagree
Enabling the Registrar of the Court to be able to file for a review of Trusts	Disagree
Widen the scope of the types of land that the Court has jurisdiction to appoint agents to	Agree
Widen the purposes for which the Court may appoint agents	Disagree
Temporary governance on ungoverned whenua Māori in specific circumstances	Disagree
Provide the Court with a specific jurisdiction to determine ownership of a dwelling on Māori freehold land	Agree
Widen the powers of the Court regarding amalgamated land	Disagree
Enable, on application by a beneficiary under a will or under an intestacy (when an owner dies without a will), the Court to vest a freehold interest in General land in the beneficiary or the administrator	Disagree
Enable trustees of Māori Reservations to have more decision-making powers regarding leases on Māori Reservations	Partially disagree
Extend the period for which a long-term lease can be granted without Court approval from 52 years to 99 years	Disagree
Change the age of majority for kai tiaki trusts and for minors who hold interests in land vested in a Māori Incorporation to 18 years old	Agree
Create a default position where the name of the Trust or a tipuna is registered against the Land Information New Zealand (LINZ) title	Partially agree

Allow the Registrar to release certificates of confirmation issued in respect of mortgages of land with a sole owner (removing the current one-month sealing requirement for these certificates)	Agree
Enable Court Judges to correct simple errors to Court orders that are over 10 years old	Agree
Clarification of trustees' ability to seek Court direction	Agree

1.4 We have provided feedback on each of the above areas but have done so in a direct way rather than by answering the questions posed by Te Puni Kōkiri. We note that our feedback is limited to the consultation document. The positions stated in our feedback are subject to change as this process (and proposals) evolve.

2.0 KO WAI MĀTOU

Ko Ruapehu te maunga
Ko Whanganui te awa
E rere kau mai te awanui
Mai te Kahui Maunga ki Tangaroa
Ko te Awa ko au, Ko au te Awa

2.1 Ngā hapū o Ngāti Hāua all share common whakapapa descent from Ngā Tūpuna – Paerangi, Ruatupua Nui and Hāua. Ngāti Hāua have 26 affiliated hapū within our area of interest:[1]

- Ngāti Hāua
- Ngāti Hauaroa
- Ngāti Reremai
- Ngāti Tū
- Ngāti Hekeāwai
- Ngāti Keu*
- Ngāti Kura*
- Ngāti Whati
- Ngāti Onga
- Ngāti Te Awhitu
- Ngāti Wera
- Ngāti Hinewai*
- Ngāti Poutama*
- Ngāti Rangitengaue
- Ngāti Tama-o-Ngāti Hāua
- Ngāti Ruru
- Ngāti Hira
- Ngāti Rangitauwhata
- Ngāti Te Huaki
- Ngāti Whakairi
- Ngai Turi
- Ngāti Hinetakuao
- Ngāti Pareuira*
- Ngāti Pikikotuku
- Ngāti Tamakaitoa*
- Ngāti Pareteho*

2.2 Ngāti Hāua Iwi Trust (**NHIT**) was established in 2001, to advance and advocate for the interests of Ngāti Hāua iwi, hapū and whānau within our customary rohe. Since its inception, NHIT has represented Ngāti Hāua iwi, hapū and whānau in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 purposes, and with respect to Ngāti Hāua interests in the Whanganui River and Te Kāhui Maunga.

2.3 On 29 March 2025 NHIT signed a Deed of Settlement with the Crown. The proposals touch on an important and central kaupapa that underpins the lives of our people/iwi. Therefore, we have provided this feedback to represent general views and to hold the Crown accountable. To this end we are guided by our Pou Tikanga.

[1] We acknowledge hapū that have shared interests with other iwi as marked with an asterisk.

3.0 COURT PROCESSES

Proposal 5.1.1: Enable a central register of owners/trustees

3.1 We do not agree that a central register of owners or individual trustees is appropriate. We do agree that Trust contacts details should be available through Pātaka Whenua (Māori Land Online).

3.2 The availability of contact details of owners and individual trustees raises serious privacy issues and could increase the potential for owners and trustees' to be susceptible to abuse or adverse contact. Even where there was an opt in or out option, this would make any register ineffective and possibly futile.

3.3 We note that the purpose of the proposed register is to make it easier for trustees to notify owners of meetings and/or other activities. Similarly, it is proposed it would improve access to trustees by owners. We consider this issue of accessibility to owners and trustees already provided for through the notice requirements already established under the Act. The proposal to allow Trusts to seek directions from the Court (like that in s 113 Trust Act 2019), enhances certainty for Trusts/Incorporations who seek the Courts advice about those notice requirements.

3.4 The access issue that the proposal is trying to address could be improved by:

(a) Providing access to funding out of the Special Aid Fund, for Trusts, Incorporations and owners to access for the purposes of undertaking notice in a local or national paper; or

(b) Create a central online notice hub for Māori Land notices. Owners should then be provided an opportunity to subscribe to a hard copy version of the notice hub.

3.5 Finally, Trusts and Incorporations should be required to provide a central contact email address that can be registered to Pātaka Whenua. Providing a central email also ensures continuity and avoid the privacy concerns.

Proposal 5.1.2: Expanding jurisdiction and clarifying status: changes to include Part 1/67 General land in TTWM Act

3.6 The proposals to extend the Courts power regarding Part 1/67 General Land owned by Māori is not entirely clear. Although there are benefits to providing the power to clarify the lands status or issue injunctions, the full impact of bringing this type of whenua under the jurisdiction of the Court is not spelled out. For instance, it is not clear if the Court will be able to appoint agents over this type of land.

3.7 We also have concerns that other proposed changes have not fully been described where those relate to Part 1/67 General Land owned by Māori.

3.8 We suggest this issue be consulted on independently of the other proposals. We say this because the increased jurisdiction of the Court under other pieces of legislation (Property Law Act and Limitations Act) as well as the general increase over such land, make this issue overly complex. The consultation document has not dealt with this complexity in sufficient detail.

Proposal 5.1.3: Improving governance practices for investigations into the affairs of Māori Incorporations

3.9 We disagree with the proposed increase in investigative powers of the Court with respect of Māori Incorporations.

3.10 Māori Incorporations are set up to operate as commercially focused entities nuanced by the fact that they do so for Māori landowners. We consider the proposal to be overly parental in nature and not in line with why Māori Incorporation structures are set up by Māori landowners.

3.11 We do note that the Court currently holds like powers of investigation under section 281, and then section 280. It is unclear how the current operation of section 281 and 280 together do not already provide a process for the Court to investigate the affairs of a Māori Incorporation. We consider these provisions sufficient in this context.

Proposal 5.1.4: Enabling the Registrar of the Court to be able to file for a review of trusts

3.12 We disagree with the proposal to enable registrars to file or instigate a review of Trust every three (3) years. Not only is such a requirement overly onerous on the Court (which currently has a back log of proceedings), but such congestion in the Court could have the exact effect the proposal seeks to resolve.

3.13 The proposal is also overly parental. The inherent jurisdiction of the Court can be triggered on any application made with respect of a Trust outside of just section 231. The key element is that there is a need for an application in both cases. We note the application requirement to be more in line with the principle of autonomy by Māori landowners over whenua Māori.

3.14 One work around could be to set up a notification system that alerts Trusts and the Court that a Trust is up for review as prescribed by their respective Trust order. The registrar could be provided powers that are triggered by non-compliance with the review clause in a Trust order, either where it is not done at all or where it is partially undertaken but not to a sufficient degree.

3.15 Any power conferred on a registrar, should be constrained by criteria to exercise such powers, including a process to follow before review applications are submitted by the registrar to the Court. This would also ease the administrative pressure that comes with filing and conducting Court proceedings where those lay with the registrar alone.

4.0 APPOINTED AGENTS

Proposal 5.2.1: Widen the scope of the types of land that the Court has jurisdiction to appoint agents to

4.1 We agree with this but note our position below that any appointment over additional types of land should be constrained to the current agency provisions in the Act.

Proposal 5.2.2: Widen the purposes for which the Court may appoint agents

4.2 We disagree that the Court should be provided additional purposes for appointing agents over land.

4.3 Firstly, the need for agency over whenua Māori arises where there is no governance structure, the owners cannot agree to representation generally, or owners are difficult to communicate with due to dispersal or a lack of contact details. However, the scope in section 185 reflects the reality that agents are not owners or not appointed representatives by Māori landowners. That limited scope is crucial to ensure that no one takes advantage of the dispersal of Māori landowners or of a dispute between owners, and subsequently benefit from those circumstances. There are matters that can be included in the scope that aligns with the current scope, i.e. appointment for purposes related to leases could be extended to include licenses to occupy and/or occupation orders.

4.4 Second, the proposal seems to try and resolve an issue faced by third party developers seeking affected party consent or by the Crown who seek to use land for certain purposes, including public works.

4.5 Overall, the widening of purposes for which an agent can be appointed and any corresponding additional powers (particularly related to alienation) conflict with the principles and conceptual frameworks outlined in the preamble. We consider that the purposes currently provided for are sufficient to uphold the retention principle and reflect that land is a taonga tuku iho to landowners, beneficiaries, whānau, hapū and iwi, **NOT** agents.

4.6 As an aside, it is unclear from the consultation document, who could be appointed an agent in addition to the list in section 222(1)(b)-(f). We suggest including section 222(1)(a) as persons who can be an agent under section 185 of the Act but this should require that particular individual to have a connection to the land and/or landowners either by direct whakapapa or by affiliation with the hapū associated with the land/s in question. This type of requirement ensures a level of accountability by the agent to their whānau, hapū and iwi, ultimately triggering tikanga based regulation of that agents conduct.

Proposal 5.2.3: Temporary governance on ungoverned whenua Māori in specific circumstances

4.7 We disagree with this proposal. The Court making decisions as to governance over whenua Māori, even in specific circumstances, takes away the rangatiratanga of Māori landowner over their whenua.

4.8 Instead, law reform needs to provide the Court with resources (including additional personnel) for use in investigating, locating and bringing together, Māori landowners to either establish a governance structure or determine representation. Again, we are critical of the proposal because it has been described as resolving an issue faced by third parties including the Government, and not an issue broadly experienced by the Māori landowners in question.

5.0 HOUSING

Proposal 5.3.1: Provide the Court with a specific jurisdiction to determine ownership of a dwelling on Māori freehold land

5.1 We agree. Particularly, the determination of chattels in addition to fixtures will make the jurisdiction of the Court easier to apply. Currently, the Court must determine if

something is a chattel or fixture before it has jurisdiction to make orders as to ownership of a fixture under section 18(1)(a).

5.2 That said, any reform should squarely relate to specific structures, not every chattel within a dwelling. We also suggest that the dispute resolution process be utilised before the Court makes ownership orders.

Proposal 5.3.2: Widen the powers of the Court regarding amalgamated land

5.3 We disagree with this proposal. The proposal seeks to exacerbate the fragmentation of whenua Māori. Making de-amalgamation easier does not align with the retention principles nor does it align with the collective nature of land tenure that Māori traditionally held.

5.4 We also note the partition process is still highly flawed in terms of interest allocation as a result of a proposed partition. We envisage similar issues with de-amalgamation because although the land may revert to its pre-amalgamation title, there will be assets such as forestry, roads and buildings that sit across multiple pre-amalgamation title areas. The allocation of interests in those assets raises similar complexities to that in a partition process and may result in extensive disadvantages for Māori landowners.

5.5 The Court is also not resourced enough to undertake such a process of de-amalgamation. The time it would take to process an application would severely impact the continued use of amalgamated whenua Māori, cause Court congestion, and increase the likelihood of disputes between Māori landowners.

6.0 SUCCESSION

Proposal 5.4.1: Enable, on application by a beneficiary under a will or under an intestacy (when an owner dies without a will), the Court to vest a freehold interest in General land in the beneficiary or the administrator

6.1 We do not agree with this proposal as it is currently described.

6.2 Our main concern is that where a will states an executor/administrator, the ability for a beneficiary to initiate succession of their own accord over top of the executor/administrator, would conflict with the intention of the appointment of an executor/administrator in the will by the testator.

6.3 That said, executors/administrator should be required to deal with the estate within a certain timeframe. Non-compliance with that timeframe should then allow a beneficiary to apply to the Court for administration/succession.

6.4 As an aside, it will also need to be made clear that challenging the contents of a will is different to applying for succession, and that the proposal here would only relate to named beneficiaries in a will or those beneficiaries entitled to succeed under the Act or in general law.

7.0 LEASES

Proposal 5.5.1: Enable trustees of Māori Reservations to have more decision-making powers regarding leases on Māori Reservations

7.1 We partially disagree with this proposal.

7.2 We suggest that Māori Reservations be provided discretion to grant leases for a period of 5 years or less without the need to seek the Courts approval. Anything over this should be burdened by the approval requirements. We say this because, Māori Reservations are a special class of land holding, normally being urupa, marae or papakainga. Leasing these lands would conflict with the reserve status over it.

7.3 We also note that seeking the Courts approval for a short-term lease (5 or more years) could be delegated to a registrar where such a lease is uncontentious. Criteria to meet the uncontentious threshold could include minutes of a meeting of owners or beneficial class supporting the short-term lease.

7.4 In any case, the current option to lease Māori Reservation land remains available.

Proposal 5.5.2: Extend the period for which a long-term lease can be granted without Court approval from 52 years to 99 years

7.5 We do not agree with this. Again, the proposal seems to benefit the Government or infrastructure developers rather than Māori landowners. 99-year leases, that could be entered into adversely, would alienate multiple generations from their whenua or exacerbate currently experienced disconnection by Māori landowners from their whenua.

7.6 The reality that this proposal does not reflect, is that some Trust/Incorporations lands or land that are ungoverned, are managed by a small number of owners or have long standing disputes currently unresolved as to the lands management. It is likely that extending the discretion for long term lease approvals to leases over 99 years long, would create disputes rather than resolve any actual issue.

8.0 MINOR PROPOSED CHANGES (MISCELLANEOUS)

Proposal 5.6.1: Change the age of majority for kai tiaki trusts and for minors who hold interests in land vested in a Māori Incorporation to 18 years old

8.1 We agree with this as it aligns with the general legal position of autonomy at the age of 18 years.

Proposal 5.6.2: Create a default position where the name of the trust or a tipuna is registered against the Land Information New Zealand (LINZ) title

8.2 We agree. However, the default should be to name the Trust if there is one, as this makes allocating land held by a Trust easier.

Proposal 5.6.3: Allow the Registrar to release certificates of confirmation issued in respect of mortgages of land with a sole owner (removing the current one-month sealing requirement for these certificates)

8.3 We agree. This also provides efficiencies for a sole owner of whenua Māori.

Proposal 5.6.4: Enable Court Judges to correct simple errors to Court orders that are over 10 years old

8.4 We agree. The current section 45 process is long winded and complex. Minor errors should be available for correction by any judge of the Court, but the Act will need to provide a set of criteria for what constitutes a minor error.

8.5 A Court hearing should be required for these types of issues in all cases. Alternatively, the proceedings could be conducted by any judge of the Court, but that judge may only make findings. The findings could then be transmitted to the Chief/Deputy Chief Judges offices for confirmation.

8.6 We have suggested the above to safeguard the use of a minor corrections process, given it is outside of the section 45 ambit.

Proposal 5.6.5: Clarification of trustees' ability to seek Court direction

8.7 We agree. Such a provision also creates certainty for trustees who cannot afford legal advice. We see this change as enhancing access to justice in a whenua Māori context.

9.0 Conclusion

9.1 Our feedback has been provided based solely on the limited detail in the consultation documentation. Therefore, we suggest further work and detail is required for each proposal, so that it is clear what options may or may not be available and what legal but also practical effect such proposals might have.

9.2 As such, although we have outlined some agreement to specific proposals, this must be caveated by the fact that we are not privy to the full detail behind the proposal nor had the ability to seek legal advice in the time provided.

9.3 As always, we will endeavor to review our position/s as more information becomes available.

Dated 23 May 2025

"**Unuunu te puru o Tūhua mā ringirngi te wai o puta**"

'If you withdraw the plug of Tūhua, you will be overwhelmed by the flooding hordes of the North'
'If you withdraw the plug of Tūhua, you empty the Whanganui River'