Māori Freehold Land Registration Project

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In this edition of the Judges' Corner, I have decided to elaborate further on the Māori Freehold Land Registration Project that was substantively completed in 2010 with tidy up work still being completed. This was briefly mentioned in Chief Judge Wilson Isaac's contribution to this forum.

Background

Today, owners their whanau and hapu, the Māori Land Court staff and its judges have inherited a system of Māori land title that many have claimed to be inconsistent with Māori customary preferences. A particular criticism concerns the notion of individualisation, a matter that has resonated across three centuries. The early history of individualisation leading to land dispossession and alienation and the impact this system of tenure wrought on Māori society has been rehearsed time and time again before the Waitangi Tribunal. It has also been acknowledged by the Crown in deeds and legislation designed to settle such historical claims.

While individual titles according to shareholding remains the means by which Māori freehold land is administered under Te Ture Whenua Maori Act 1993, the Act has resulted in an improved approach to Māori aspirations for their land. But that does not mean we cannot continue to seek improvements, including an improved title system.

This is the reason why the Māori Freehold Land Registration project was so important. The project was a joint one involving the Māori Land Court administration, LINZ and a sector sometimes forgotten in the literature on the project, the Māori Land Court judiciary.

I understand that in 2004, when the Hon John Tamihere was Minister of Lands, Cabinet approved the investment of approximately $30m in the MFLRP. Its purpose was to register all outstanding Māori Land Court orders relating to Māori land ownership in LINZ. The project continued to receive support from the National Government to its completion.

The primary purpose of the project was to ensure that the title system of the Māori Land Court was reflected in the Torrens system administered by LINZ. In addition, there were requirements in Te Ture Whenua Maori Act 1993 and previous legislation for the transmittal of Māori Land Court orders as to title, which had not been consistently applied.

Much has been achieved by the project for Māori land owners, their whanau and hapu by giving greater certainty to title issues. The project has proven, simply by the volume of work completed and by the number of title anomalies uncovered, that both title systems were in a parlous and unsatisfactory state. In general, however, we can

be satisfied that the work completed has been of assistance to the majority of owners.

As a result of the project, registration of 97% of the 27,411 Māori land titles was completed. It has required hundreds of hours of human resource time, with a large percentage of that time derived from the Maori Land Court judges. It is they who had to sign the 80,970 orders and the hundreds of computed and complied plans that were transmitted to LINZ pursuant to the project.

Benefits beyond Registration

First, the project provided an opportunity to clean up Māori Land titles providing more certainty for owners keen to develop their lands, including improving their access to loan finance.

Second, the Ministry now has a large human resource pool with specialist knowledge of the Māori Land title system. That resource has not been lost and many project team members have been reintegrated back into the Māori Land Court administration.

Third, the project confirmed why it is important for the Māori Land Court to continue its current role given its historical and particular expertise in the administration of titles. While the project also threw up issues for improvement, generally I think we can be satisfied that the Māori Land Court is the most appropriate mechanism for administering Maori Land titles, so long as every order is reflected in the LINZ system.

Fourth, and one of the funnier issues that it has thrown up for improvement, involves the appellations chosen for land blocks. Judges and Registrars past, have tended to default to surveyors over the names of newly created titles following partitions, consolidations, amalgamations or aggregations of Māori land. So it was not uncommon on this project to have a block with an appellation such as this: Waerenga East No 2 B, Waerenga East No 1, Section 7 block 5 Rotoiti Survey District, Maungaroa Kaharoa No 12 block (Amalgamated) Lot C. The definitive description for demonstrating that we are only dealing with one block (derived from 3 blocks) being Lot C. Thus the project has highlighted this issue for staff and the judges.

Fifth, the project has also highlighted the need for the Māori Land Court to be more proactive in its identification and review of defunct trusts and incorporations due to circumstances such as the death of key trustee or management committee members. It is rarely the case that the Māori Land Court judges do not appoint people into these positions where selected by owners. The challenge is to initiate these meetings so that a defunct ahu whenua trust or incorporation can be reactivated.

Sixth, the issue of locating owners was also highlighted by the project and basics such as requirements as to notice cannot be complied with because Court staff cannot access proper addresses for owners. Judges are forever hearing the criticism

from owners that they were not notified of a hearing or meeting affecting their land or their interests. This is a fair point. What must also be borne in mind, however, is that ever since the whole concept of individualisation was originally imposed over Maori concepts of ownership, the necessary resourcing to keep lists of owners up to date has generally been inadequate. Added to that fact is the reality according to modern demographers that a large percentage of the Māori population is on the move. They are, in other words, living in short term accommodation. It would help if Māori land owners let the Court know their addresses when they move.

But, it is my experience that not all owners will participate even with notice. It is not uncommon for a block of 100-200 owners, for meetings to attract less than 10 owners – and that is on a good day. In such cases, the notion that absentee owners could be represented by their marae, hapu or iwi authority is an idea that could be explored. These efforts combined would, I believe, assist in ensuring as many owners, their whanau or hapu are kept informed, are consulted and are able to express their views as to the administration of their lands.

Conclusion

There are aspects of the current title system that will continue to challenge us, including:

(a) The transmission of Māori Land Court orders to LINZ;
(b) The state and quality of survey plans;
(c) Remedies for blocks with defunct administrative structures; and
(d) Owners without contact details.

What the Māori Freehold Land Registration Project has done has been to provide an invaluable updated base of knowledge for a new generation of policy makers keen to review and improve the manner in which owners, their whanau or hapu hold title. But the real challenge remains what it has always been for us all – the administration of Māori land and the delivery of services in accordance with the aspirations or rangatiratanga of Māori to retain, utilise and develop their land for the benefit of the owners, their whanau and hapu in accordance with their own cultural preferences.

C L Fox
DEPUTY CHIEF JUDGE