

# Safeguarding Surplus Crown Land For Treaty Settlements

Recently, local iwi in Northland and Coromandel occupied Crown lands. Landcorp was intending to sell them, but iwi wanted them available for Treaty claim settlements.

The Government has now begun to review how it goes about disposing of surplus Crown lands. This will impact on the Office of Treaty Settlements (OTS) "landbanking" policy.

Maori wishing to safeguard lands for inclusion in Treaty settlements can apply to OTS to have those lands "landbanked".

## What Is a Landbank?

Landbanks are part of the Crown's "Protection Mechanism" process which is run by OTS and aims to protect assets for use in the settlement of Treaty of Waitangi claims.

The process enables Treaty claimants to:

- Identify surplus Crown lands they would like to receive in future Treaty settlements, and
- Apply for these to be placed in the regional landbank.

The landbanking process applies only to land the Crown declares surplus to its requirements.

## What Should I Do?

What can you do to safeguard lands declared surplus by the Crown within your rohe?

### 1. Keep an eye out

OTS advertises surplus Crown properties in national newspapers on the first Sunday of

every month. Treaty of Waitangi claimants or previous landbanking applicants should also be directly notified should land in their claim area become available.

### 2. Identify the location of the advertised land

If the advertised property is within your rohe, you will need to consider making an application to landbank the property.

### 3. Decide whether to landbank

Not all properties may be suitable for landbanking. Since the Crown places a financial cap on the total value of land that can be landbanked at any one time in each region, consideration should be given to what land should be included. Matters you should consider include the cultural or commercial significance of the property and whether or not there is an intended use for the site.

### 4. Make an application

You must apply for properties you want landbanked. Only persons with a registered Waitangi Tribunal claim or an endorsement from a registered claimant are entitled to apply. OTS or your lawyer can provide you with the landbanking application form. Each application must include details of:

- Your personal information and Treaty claim,
- Cultural/historical importance of the property,
- Intended future use of the property, and
- Uniqueness of the property.

### 5. Get advice

Landbanking a property is an important decision. If you are unsure whether or not to make an application, or in doubt about what to include in your application, seek professional advice.

### What Happens Once the Application is Made?

An Officials' Committee will consider your application in conjunction with other factors before making a recommendation to the various government Ministers, who will make the final decision. Each applicant should be notified of the Ministers' decision whether or not to landbank the property within four months of the initial application being made.

If your application is successful the Crown will continue to own and manage the property. When a Treaty Settlement is being negotiated, landbanked properties will then be added to the list of Crown assets that may be offered to settle your Treaty claim.

A list of land already banked is available on the OTS website: <http://www.ots.govt.nz/>

### Possible Fishhooks

Unfortunately, applicants may encounter fishhooks in the process. These can include: difficulties in presenting a sufficiently strong application, the effects of the regional financial cap, and more than one group seeking the same property.



Bryan Gilling

## Nau Mai Haere Mai

to the Hōtoke (Winter) edition of the Rainey Collins Maori Issues newsletter. In this edition we look at what you need to know about significant changes impacting upon Maori charitable organisations, preparing for Waitangi Tribunal hearings, file management, Trustee obligations and safeguarding surplus Crown lands for Treaty settlements.

These articles and others are available on our website [www.raineycollins.co.nz](http://www.raineycollins.co.nz)

You can download them or send them to others. If whanau, friends or others would like to receive their own complimentary copy then ask them to contact us (see details at foot of back page).

I trust that you find the information of use to you and your whanau.

Kia ora

Peter Johnston  
Partner



## The Charities Act: What You Need To Know

Many Maori organisations manage assets or provide social services. They need to be aware of significant law changes which may impact on their tax-exempt status.

From 1 July 2008, the benefits of being a charitable organisation (such as income and gift duty tax exemption) will only be available to charities that are registered with the new Charities Commission.

The register is now up and running, and you should register as soon as possible to avoid the "last minute rush" that will probably occur closer to the deadline. While registration is technically voluntary, failure to do so will deny you access to any privileges associated with being a charity, therefore it is essential to take this step.

The test for whether your organisation has a "charitable purpose" is whether it has a purpose that (in addition to being of benefit to the public):

- a Advances education;
- b Advances religion;
- c Relieves poverty; or
- d Is otherwise beneficial to the community.

While these requirements have not changed, the establishment of a Charities Commission, whose sole function is to oversee the charitable sector, will result in much more vigilance as to whether they are in fact met. This means that some previously charitable organisations may no longer be considered eligible.

This tougher approach to charities stems from a need to strengthen the public's confidence in the charitable sector by promoting transparency and accountability. Because these organisations rely on grants and donations from the public, it is now possible for anyone to search the register and ascertain for themselves that the charity is in fact genuine before donating.

If you have registered under the Charities Act and do not now comply with it, the Commission can impose administrative penalties, and can even deregister your organisation if there have been repeated or serious failures to comply with the Act. On the other hand, if you have not registered but have held yourself out as being registered, you could be liable for a penalty of up to \$30,000.

We can provide advice and assistance on:

- Whether your organisation will continue to meet the new stricter test of the definition of "charitable purpose";
- Setting up a Charitable Trust or institution; and
- Avoiding difficulties with compliance or penalties under the new Act.

Please contact me on [jstevenson@raineycollins.co.nz](mailto:jstevenson@raineycollins.co.nz) or phone 0800 733 424.



Jane Stevenson

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## Waitangi Tribunal Hearings

- National Park closing submissions will be heard on 9-13 July 2007.
- Hearings for Whanganui begin on 6 August 2007. The Southern Cluster claims will be heard in a block of four hearing weeks.

For more information on Treaty claims and the Treaty settlement process, please check out our recent articles and news on the Rainey Collins website [www.raineycollins.co.nz](http://www.raineycollins.co.nz) or contact Peter Johnston on 04-473-6850 or email [pjohnston@raineycollins.co.nz](mailto:pjohnston@raineycollins.co.nz)

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# Waitangi Tribunal Hearings To Commence... Are You Ready?

The Waitangi Tribunal is progressing inquiries in several North Island districts.

Preparatory work has begun in the Northland, King Country, and Heretaunga-Tamatea / Southern Hawkes Bay districts. The Crown Forestry Rental Trust is either commissioning or completing historical research in these areas.

Claimants in these areas should already be getting ready for the Tribunal's inquiry process.

## Key Steps

Key steps to help ensure that you are prepared include:

1. **Decide early on what you want.** Do you want an opportunity to be heard? A full Tribunal inquiry? Or an efficient directly-negotiated settlement?
2. **Be aware of the processes** for both the Tribunal inquiry and direct negotiations and the implications of each for you and your claimant community.

3. **Get appropriate legal representation.** The Tribunal does not operate like a general court and dealing with historical issues (and historians), on marae (or even in tents), representing Maori groups, and helping kaumatua and kuia present traditional evidence all require special skills and sensitivity. An "LA Law" approach isn't likely to work!
4. **Excellent Historians.** Have early discussions with the Tribunal and the Crown Forestry Rental Trust to ensure the historians will be the best available. Meet with them in advance to make sure they "fit" with your group.
5. **Appoint the right people to your claims committee.** They will need leadership abilities and a mix of skills and ages.
6. **Develop communications strategies** to keep the claimant community in the loop. It is their claim too. Link with neighbouring groups to strengthen relationships and identify common issues.

7. **Claims against the Crown.** Treaty claims are against the Crown and its actions, not other Maori groups.
8. **Prepare for the long haul.** A Treaty claim hearing and negotiation process lasts at least 5-10 years. Successful claims need: people with stamina and commitment, claimant groups with positive and strong relationships, and everyone to focus on the key issues.

As claimants only get one shot at presenting their claim before the Tribunal, it is important that they begin now on planning their claim and how it will be prepared and presented. Following these steps will help ensure that your claim gets off to a good start and will help you achieve a successful outcome.



Campbell Duncan

# Too Much Paper! 5 Handy Tips To Keep On Top Of Claim File Management

It's a fact ... Waitangi Tribunal claims create vast amounts of paper! So how do you keep on top of it all?

Your lawyer will notify you of all documentation received and it is usual practice for copies also to be sent to you for your own records. As time progresses, the file starts to swell and the shelf (if you have one) starts to sag. Here are 5 handy tips to help you keep on top of managing your papers.

**System** - Devise a system that works from the start and stick with it. This includes having a dedicated bookshelf, area of the house or office where all claim documentation is stored. Also explain to others how the system works. This will ensure that everyone involved knows how it works and will keep the system going. The key is to choose a system that best suits you.

**Read it** - You must be vigilant and methodical. Read all documentation when

you receive it. This will not only make you aware of any deadlines or urgent matters but will also help to determine relevance. This also means you keep up to speed with how things are progressing and will make filing the document much easier.

**Sorting** - You will receive many different types of documents. Keeping folders with dividers (or separate folders) which separate these documents is the best approach. For example keep letters separate from research reports. Ensure the correspondence section is kept in date order. Reports and submissions are sometimes stored in the record of inquiry index number given by the Tribunal (found in the top right hand corner of the front page of the document). This will make referring to these documents when you have a query or need to discuss them much easier. Colour coded folders can also help as time progresses and the volume of documents increases.

**Index** - Keep and regularly update an index. This will help you keep track of what documents you have and where they can easily be found. This is also very important for others who may need to locate documents if you are not available.

**Update** - Update your files regularly. Some documents may need to be kept forever. Some may not. Always check with your lawyer when you are considering disposing of any claim documents.

If you are just commencing a claim, we recommend that you get underway with a good filing system. If your claim has been progressing for some time, if you have not done so already, you will need to start sorting, indexing and updating without delay.



Jo-Ella Sarich

# How To Avoid Being Sacked As A Trustee

Recently the High Court sacked a number of trustees from a Maori trust board and barred them from ever again becoming trustees without the Court's permission.

The Court found that they had tried to use their position as trustees to feather their own nests, by having themselves paid large sums, and trying to create business deals which would have provided some with luxury vehicles.

Trustees are committed by law and ethics to serve others, not themselves. The basic principle is: trustees hold office in order to work for the beneficiaries of the trust.

Trustees' general responsibilities are set out in the terms of the trust deed (or Court order for Maori land trusts), the Maori Trust Boards Act 1955 and the Trustee Act 1956. Trustees of Maori land trusts have additional responsibilities under Maori land legislation.

Even if trustees do not deliberately take advantage of their position as trustees to do something as blatant as purchase expensive cars with trust assets, they can still be held responsible if they do not properly fulfill their duties as trustees in other ways.

Bearing the following tips in mind will help ensure that you do not lose your trustee position, or end up having to reimburse the trust out of your own pocket.

## 1. Always act prudently and carefully

You act on behalf of the trust's beneficiaries. Therefore, you must act with the good judgment expected of a businessperson managing the affairs of others. For example, you must invest trust funds wisely and collect rentals promptly.

## 2. Always act impartially towards beneficiaries

You must not favour – or seem to favour - one class of beneficiaries over another. If

you have discretion as to how much each beneficiary is to receive, ensure that each beneficiary receives a fair amount in relation to the others. This will be determined by their particular needs, assuming meeting those needs falls within the objects of the trust or, if a Maori land trust, by their interests as determined by the Court.

## 3. Make sure you only pay who you are supposed to pay

If you are a trustee under a Maori land trust, the beneficiaries will be set out in the trust order. For other types of trust, the beneficiaries will be set out in the trust deed. Only these people may be paid out of trust funds. An exception is where the trust order of a Maori land trust permits income to be applied for Maori community purposes.

## 4. Keep beneficiaries informed

Beneficiaries are entitled to ensure that the trustees are managing the trust properly. Proper accounts must be kept and made available if asked for. Don't hide possible problems. If allowing the beneficiaries to see accounts might compromise the privacy of another person, discuss this with your lawyer.

## 5. Delegation of responsibilities

Trustees can only delegate their responsibilities by power of attorney, unless the trust deed or Court order (for a Maori land trust) clearly allows otherwise. If you are likely to be unable to act at times because of sickness or absence from the country, talk to your lawyer about preparing a power of attorney. Trustees of land that has been set apart as a Maori reservation are not permitted to delegate their powers.

## 6. Consult with the other trustees

Each trustee is separately responsible for the trust. So that 'the right hand knows what the left hand is doing', hold regular meetings. Discuss fully all matters relating

to the trust, fully inform all trustees, and approve all expenses in advance. Minutes should be kept of all decisions of the trustees and stored securely for safekeeping.

## 7. Declare conflicts of interest

Avoid any situation where your own personal interest may conflict with the interests of the beneficiaries under the trust. Where this situation cannot be avoided, you must declare your personal interest to the other trustees and the beneficiaries. For example, you would need to declare your personal interest and refrain from participating in decision-making concerning a lease of trust land to yourself personally.

## 8. Keep accounts

Become familiar with all the trust property, and keep full accounts. For a Maori land trust, the Court order will set out how the accounts are to be kept and filed and also how they are to be audited and inspected.

## 9. Take only the remuneration you are entitled to

The Court order or trust deed may permit the trustees to be paid for the work they do as trustees. If the order or deed provides for "reasonable remuneration", and you are unsure what is reasonable, discuss this with the other trustees and with your lawyer. You must not take more than what is permitted by the order or deed.

## 10. Be familiar with the trust order or the trust deed

Any additional trustee responsibilities will be in the Court order or trust deed. It is up to you to be familiar with your responsibilities. If you are in doubt, talk to your lawyer.



James Johnston

# Northern South Island Report Released

The Tribunal recently released its preliminary report on the northern South Island (Te Tau Ihu o Te Waka a Maui). The Tribunal found that the Crown failed to properly inquire into the customary rights of Te Tau Ihu Maori before purchasing land, resulting in serious social and cultural prejudice. For more information check out the Tribunal's website [www.waitangi-tribunal.govt.nz](http://www.waitangi-tribunal.govt.nz) and refer to Wai 785.

## Did You Know ...

A recent bereavement has drawn to our attention that Air New Zealand offers a bereavement refund service where urgent travel has to be undertaken to attend a funeral or tangi. This service enables you to obtain a refund for the difference between the usually very expensive last minute fare that you actually paid and a much cheaper fare. Special conditions apply, but ask for a Bereavement Refund form when making your booking.