BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL

UNDER THE	**RESOURCE MANAGEMENT ACT 1991**
IN THE MATTER OF	**Inclusionary Housing Proposed Variation to the Proposed Queenstown-Lakes District Plan**
AND	**OFFICE FOR MĀORI CROWN RELATIONS – TE ARAWHITI**
	Submitter

BRIEF OF EVIDENCE OF MONIQUE AHI KING

19 December 2023

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Introduction

1. My full name is Monique Ahi King.

2. I am employed as a Senior Adviser, Implementation, in the Office for Māori Crown Relations—Te Arawhiti (**Te Arawhiti**). Te Arawhiti is responsible for advising the Ministers for Treaty of Waitangi Negotiations and for Māori Crown Relations, and for supporting the Crown to meet its Treaty of Waitangi settlement commitments (amongst other roles to foster effective relationships with Māori across government).

3. The Land & Implementation Team within Te Arawhiti is responsible for the administration of the Hāwea/Wānaka SILNA Substitute Land generally known as Sticky Forest.

4. I report to the Manager - Land & Implementation within Te Arawhiti and am the lead advisor for Te Arawhiti responsibilities in relation to the implementation of the SILNA redress under Section 15 of the Ngāi Tahu Deed of Settlement entered in 1997 (**the Ngāi Tahu Deed**). I refer to the Ngāi Tahu Deed and the Ngāi Tahu Claims Settlement Act 1998 (**the Settlement Act**) together as the **Ngāi Tahu Settlement**.

5. I first started working for the Office of Treaty Settlements (whose roles are now subsumed within Te Arawhiti since its creation in 2018), in 2010. I have worked on Crown-iwi Treaty settlement negotiations and in the Policy team, before moving into the Implementation Team. I first encountered SILNA matters in the context of negotiations with the eight Te Tau Ihu o Te Waka-a-Maui (top of the South Island) iwi prior to their 2014 Treaty settlements, which I worked on.

6. I am familiar with the Crown's obligations in relation to, and management of, the Sticky Forest land while it is held by the Crown until it can be transferred to its intended owners (as I discuss below). I have visited the Sticky Forest land on a number of occasions, most recently in late March this year.

7. In this evidence I will refer to Sticky Forest as the **Hāwea/Wānaka SILNA Substitute Land.**

8. I am authorised to give this evidence on behalf of Te Arawhiti.

Te Arawhiti

9. Te Arawhiti is the Crown agency dedicated to fostering strong, ongoing and effective relationships with Māori across Government. The name, Te Arawhiti, means 'the bridge', symbolising the bridge between Māori and the Crown, the past and the future, and the journey from grievance to partnership. Te Arawhiti works to make the Crown a better Treaty partner, able to engage effectively with Māori on a range of issues and striving to build true and practical partnerships with Māori which will benefit all New Zealanders.

10. A key strand within the purpose of Te Arawhiti is ensuring that the commitments made in Treaty settlements endure, and the promise of the Treaty of Waitangi is realised.

11. Te Arawhiti encourages decision-making that takes account of Treaty settlement commitments, and which allows for future opportunities associated with Treaty settlements. Te Arawhiti does not determine how and in what form the opportunities from Treaty settlements are realised, as this is determined by the beneficiaries of these settlements. However, Te Arawhiti has a role in advocating for the protection of these opportunities.

Te Arawhiti interest in Inclusionary Housing Variation

12. Te Arawhiti administers the 50.6742 hectares, more or less,[1] Hāwea/Wānaka SILNA Substitute Land on behalf of the Crown. As I explain in more detail below, under the Ngāi Tahu Settlement the Crown holds this land until the process under Section 15 of the Ngāi Tahu Deed to effect transfer to the intended owners (including their identification) has been implemented.

13. While the Crown holds this land under the Ngāi Tahu Settlement, effectively on trust, Te Arawhiti is concerned that the Inclusionary Housing Variation not add further barriers to use for the intended

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[1] Being Section 2 of 5 Block XIV, Lower Wānaka Survey District (SO963). Balance certificate of title 367/52.

owners, noting: the passage of time since the original SILNA allocation; the intention of the SILNA to address landlessness of Māori; the identified barriers to use of collectively owned Māori land; the intention of Treaty settlements; and the lack of Māori land remaining in Te Waipounamu. This brief will expand on these subjects.

The land as Treaty settlement redress and in fulfilment of SILNA obligations

14. The Hāwea/Wānaka SILNA Substitute Land has a complex status as substitute South Island Landless Natives Act 1906 (**SILNA**) land.

15. I refer to, and defer to, the more substantive coverage of the SILNA history in the evidence of Ms Tanya Stevens for Te Runanga o Ngāi Tahu, and to the 2022 brief of evidence of Dr Terry Ryan attached to the evidence of Theo Bunker and Lorraine Rouse, but below provide a brief summary.

Background to SILNA

16. In the second half of the nineteenth century, Ngāi Tahu rangatira asserted that the Crown had failed to fulfil its promises of Māori reserves made during its Te Waipounamu (the South Island) land purchases in the 1840s and 1850s. Commissioner Alexander Mackay appointed in the 1880s and 1890s to investigate reported that as a result of extensive land purchases in the 1840s and 1850s and other factors associated with the settlement of Te Waipounamu by Europeans:

    - Ngāi Tahu as a tribe and as individuals had been left without sufficient land to sustain themselves; and
    - Only 10% of the tribe had sufficient land to provide a living.[2]

Setting aside and transfer of SILNA land

17. In 1892, the Native Minister met with Ngāi Tahu representatives and indicated that the Crown would make land available. Between 1893-1905, Commissioners appointed by the Crown, with the assistance of Ngāi Tahu rangatira, compiled lists of South Island Māori who were identified as being landless or without sufficient land and assigned sections of

[2] See Waitangi Tribunal 'The Ngāi Tahu Report 1991', Volume 3 Chapter 20, and 'The Waimumu Trust (SILNA) Report' 2005.

Crown land to them. This allocation work was extended to all landless Māori in the South Island, not only members of Ngāi Tahu.

18. Approximately 57,652 hectares[3] of land on Te Waipounamu and Rakiura/Stewart Island were allocated to 4,064 Māori.

19. The South Island Landless Natives Act was enacted in 1906 to authorise transfer of the land blocks allocated. The SILNA defined the recipients of the land for transfer as those without "sufficient land to provide for their support and maintenance".[4]

Allocation of land between Lakes Hāwea and Wānaka

20. As part of the above response to Māori landless in the South Island, Crown land at 'the Neck' between lakes Wānaka and Hāwea – the Hāwea/Wānaka SILNA land – was allocated to specified individuals. However, SILNA was repealed in 1909 without the Hāwea/Wānaka SILNA Land having been transferred to them.

Acknowledgement of breach by the Crown in relation to Hāwea/Wānaka

21. In the Ngāi Tahu Deed the Crown accepted that the failure by the Crown to transfer the Hāwea/Wānaka SILNA Land to the intended beneficiaries after 1906 was a breach of the principles of the Treaty of Waitangi and that there is an obligation on the Crown to complete the transfer.

Hāwea/Wānaka SILNA Substitute Land committed in substitution

22. The original land at 'the Neck' (the Hāwea/Wānaka SILNA Land) was not available at the time of the Ngāi Tahu negotiations as it was subject to a pastoral lease. The Crown and Ngāi Tahu agreed that the Crown would commit the Hāwea/Wānaka SILNA Substitute Land (the Sticky Forest land) in substitution.

23. The Hāwea/Wānaka SILNA Substitute Land vested in the Crown pursuant to the Settlement Act and is held pending implementation of the process in Section 15 of the Ngāi Tahu Deed to effect transfer to the intended owners. The intended owners are the successors to the individuals

[3] Total identified in 1914 Commission of Inquiry by Gilfedder and Haszard into the status of SILNA lands was 142,463 acres, or 57,652 hectares.

[4] South Island Landless Natives Act 1906.

allocated the original Hāwea/Wānaka SILNA land.

24. The Hāwea/Wānaka SILNA Substitute Land was substituted, by way of the Treaty settlement process, for the land which was originally committed to the intended owners' ancestors under SILNA, and so cannot be substituted again.

Representation for the intended owners

25. Under Section 15 of the Ngāi Tahu Deed, the Māori Land Court must identify the successors to the individuals allocated the original Hāwea/Wānaka SILNA land. This task has proven to be more challenging than was likely anticipated in 1997. Officers of the Māori Land Court indicate they have now exhausted research options in relation to the 50 original individuals assigned the Hāwea/Wānaka SILNA land and the Māori Land Court has made determinations in relation to 49 of the 50 original beneficiaries. As of mid-2023, the Māori Land Court had identified 2,070 successors.[5]

26. Because the intended owners are being identified through a post-settlement Māori Land Court process (rather than being an existing large natural grouping, for example, an iwi), there is no automatic representative body to speak for the interests of the intended owners as a collective. Te Arawhiti and Te Puni Kōkiri are currently running a process through which a representative body will be formed to speak for the interests of the successors, including to explore how best to receive and hold the Hāwea/Wānaka SILNA Substitute Land. At the time of preparing this evidence, successor votes have been counted as to the five preferred candidates to form that body, but it is not yet formed.

Current use of the Hāwea / Wānaka SILNA Substitute Land

Plantation Forest

27. The land was first gazetted for plantation purposes in 1892. The Hāwea/Wānaka SILNA Substitute Land was a reserve. Pursuant to the Settlement Act, the status of the land as a reserve was revoked (s 448)

5 I understand that if identified successors die before the land transfers, the Māori Land Court will continue to process incoming succession applications received, or to update the list of successors using existing owner records

and the land vested in the Crown (s 20(9)).

28. The Sticky Forest land (as its name suggests) is planted in plantation forest and is currently zoned rural. Te Uru Rakau has deemed 42.69 hectares on the land to be pre-1990 exotic forest, comprised of 35.42 hectares of Douglas fir and 7.27 hectares of Radiata pine.

29. PF Olsen Ltd has been engaged since 2008 to maintain the forest. PF Olsen Ltd have advised Te Arawhiti that the costs to harvest the current crop on the land would exceed any return.

Recreational use

30. The land has been (and is currently) used by the community as an area for mountain biking and walking, the tracks being among the trees. While the Crown has held the land pending the Section 15 process to effect transfer, the public have been able to access the land for recreation. There is no public right to access this land, and no public right to expect access in the future. The Crown has allowed the land to be used with the proviso that public access is revocable and that this use in the meantime does not bind the future owners. This has been conveyed in ministerial briefs and to members of the public upon inquiry. It is also made clear in signs that are erected on Sticky Forest trails, such as:

in relation to other land in the Court record.

31. Sometimes inspections of the land have identified that members of the public have built unlawful structures on the land. PF Olsen or Te Arawhiti officials have had to notify Bike Wanaka that the structures are to be removed, and request that they notify their members.

32. It is up to the owners upon transfer to decide whether they wish to continue to allow this type of access to their land.

Future Use of Sticky Forest

33. When the Hāwea/Wānaka SILNA Substitute Land is transferred it will be private freehold land. The successors have the choice of receiving the land either as Māori freehold land under Te Ture Whenua Māori Act 1993, or as general freehold land. If it is received as general freehold land, I understand that it will qualify as “general land owned by Māori” for the purposes of Te Ture Whenua Māori Act.

Rezoning of Sticky Forest and status of appeal in the Environment Court

34. Mr Michael Beresford submitted on the QLDC Proposed Plan in favour of a change of zoning for Sticky Forest from rural to allow for some

residential development by the intended owners when they acquired Sticky Forest. That proposal is now on appeal to the Environment Court with Ms Rouse and Mr Bunker (also identified future owners) taking over the appeal on Mr Beresford's death.

35. The hearing of the rezoning appeal occurred between 29 November and 7 December 2023. If successful, the Hāwea/Wānaka SILNA Substitute land will be partially rezoned to a residential zoning. It will be up to the intended owners to decide whether and how to pursue use and development of the land.

36. The Attorney-General is a party to these proceedings noting that rezoning would provide a use option to the intended owners not otherwise available to them.

Barriers to use of collectively owned Māori land

37. I understand that the Council's planning officer has acknowledged there could be costs from the provisions that are proposed in this Inclusionary Housing variation which include additional transaction and consenting costs, and the possibility of some housing developments being delayed, not proceeding or having to be sold at a higher price to off-set increased costs.[6] Those costs would be imposed on the Hāwea/Wānaka SILNA Substitute Land in addition to existing difficulties with utilisation of collectively-owned land, which I discuss below.

38. As noted in paragraph 33, the 2,070 successors[7] can elect to receive the Hāwea/Wānaka SILNA Substitute Land as Māori freehold land or general freehold land, and they must also determine whether to form an entity (such as, for example, a trust) to hold and administer the land on their behalf.

39. It has been identified through various studies that there are pervasive barriers to utilisation of collectively owned Māori land, including but not

[6] Council s42A Report, 14 November 2023, at [4.19].

[7] This is the number of successors identified by the Māori Land Court as of mid-2023. But the number of identified successors can be expected to increase before the land transfers to them.

limited to, access to financing for development.[8]

40. The nature of collectively owned land is that, with succession over time, there is a proliferation of owners. Ownership of collectively owned Māori land is generally diverse and dispersed. Succession fractionation occurs with increasingly large numbers of owners individually holding a small interest. This means administration and transaction costs and complexity in decision-making are high, even if the land is legally owned and administered by a trust. It can be difficult with a large number of owners to be flexible and to obtain agreement around use and development of land.

41. Alienation of Māori freehold land is constrained by Te Ture Whenua Māori Act 1993 and as consequence, Māori landowners report ongoing challenges in accessing finance for development or utilisation of their land.[9]

42. Such barriers associated with collective ownership and decision-making will be a reality for the future owners who receive the Hāwea/Wānaka SILNA Substitute Land under the Ngāi Tahu Settlement. There may also be barriers to obtaining finance for any use or development particularly if the land is Māori freehold land. As a newly forming collective (in the process of being identified by the Māori Land Court), the owners of the Hāwea/Wānaka SILNA Substitute Land do not have pre-existing collective assets against which they might leverage for the use and development of this land. The Hāwea/Wānaka SILNA Substitute Land will be the first asset the successors come to own and hold as a collective.

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[8] Māori Land and Development Finance, C.Linkhorn, Discussion paper No. 284/2006, ISSN 1036 1774; ISBN 0 7315 5659 3; 'Financing Māori land development: The difficulties faced by owners of Māori land in accessing finance for development and the framework for the solution", Joshua Hitchcock Auckland University Law Review (2008) 14 Auckland U L Rev 217; 'Owners' Aspirations Regarding the Utilisation of Māori Land', Te Puni Kōkiri (2011); 'Barriers to the Development of Maori Freehold Land' Prepared by Antoine Coffin for the CSG Māori Land Sub-Group 2016, (CSG being the Collaborative Stakeholder Group formed to inform the development of the Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments), sourced from www.waikatoregion.govt.nz. See also Judge Milroy "Judges Corner" (2007) 36 Te Pouwhenua 3, in which the Judge says: "*We all know how difficult it has been in the past to borrow on the security of Māori land. That difficulty has been one of the main stumbling blocks to development of Māori land, and been a perennial complaint voiced by Māori in the Māori Land Court and elsewhere*."

[9] 'Owners' Aspirations Regarding the Utilisation of Māori Land', Te Puni Kōkiri (2011)

Wider context of land loss in Te Waipounamu

43. The well-identified and "perennial"[10] barriers to the utilisation of collectively-owned Māori land generally should be considered in the context of the extensive loss of Māori land in Te Waipounamu (the South Island) and Treaty settlements designed to provide redress for that loss.

44. By 1865, 152,500 square kilometres of Land had been acquired from Māori in Te Waipounamu equating to 99.7% of the total land.[11] Using 1999 data, it was estimated that only 0.5% of Māori customary land was left in Māori ownership, compared with 12.7% of Māori land in the North Island.[12]

45. In the Ngāi Tahu settlement, the Crown acknowledged that its failure to honour its obligations to Ngāi Tahu to set aside adequate lands for the tribe's use under the 19th century deeds of purchase whereby it acquired the Ngāi Tahu lands, and acknowledged that this caused harmful effects and hardship, and that, in breach of the Treaty of Waitangi, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.[13]

46. SILNA in 1906 was an attempt to address the resulting landlessness and the insufficiency of land to provide "support and maintenance".[14] And now, on the back of the Ngāi Tahu settlement, the Hāwea/Wānaka SILNA Substitute Land is a commitment to fulfil SILNA obligations.

The intention of land as redress

47. In addition to be being land committed in fulfilment of SILNA obligations, it is also redress for the historical claim (see paragraph 21).

48. Section 15 of the Ngāi Tahu Deed records that the Waitangi Tribunal found that the failure to transfer the Hāwea/Wānaka SILNA land served

[10] Māori Land Court Judge Milroy "Judges Corner" (2007) 36 Te Pouwhenua 3

[11] It is assumed the total figure of 153,000 includes Rakiura/Stewart Island and the Chatham Islands. Māori Land and Development Finance, C.Linkhorn, Discussion paper No. 284/2006, ISSN 1036 1774; ISBN 0 7315 5659 3, page 3.

[12] 'Ka tika ā muri, ka tika ā mua — Healing the past, building a future — A Guide to Treaty of Waitangi Claims and Negotiations with the Crown', referred to as The Red Book, www.tearawhiti.govt.nz/assets/Treaty-Settlements/The-Red-Book/The-Red-Book-2018.pdf, pages 11-12

[13] S6(2); s6(3), s6(6), Ngāi Tahu Claims Settlement Act 1998.

[14] South Island Landless Natives Act 1906.

to exacerbate the earlier failure to set aside sufficient lands within the purchase areas to give Ngāi Tahu an economic base.

49. The Crown has accepted that excessive land loss has had a harmful effect on Māori social and economic development in general. As a result, Māori have lost most of their land as an economic resource and tūrangawaewae.[15] The Crown hopes that the use and distribution of settlement redress should help improve the social and economic status of Māori, although noting that it is for the recipients to determine the way they wish to use and develop their land.[16]

Submissions

50. Te Arawhiti acknowledges the submissions and evidence provided by Te Runanga o Ngai Tahu (TRONT), Aukaha Ltd and Te Ao Marama Inc for papatipu rūnanga and Ngāi Tahu, some of which relates to the Hāwea/Wānaka SILNA Substitute Land, particularly as to the enablement of redress land use by mana whenua and themes of the Te Tiriti o Waitangi relationship between mana whenua and the Crown.

51. Te Arawhiti also acknowledges the submission and evidence of Mr Bunker and Ms Rouse on this Variation. Te Arawhiti, Mr Bunker and Ms Rouse, and TRONT and papatipu rūnanga are aligned in our desire to ensure that the special context of the Hāwea/Wānaka SILNA Substitute land is appropriately recognised in the district plan and that the planning regime which applies to this land allows the future owners to utilise their land once it is returned to them.

Monique King
19 December 2023

[15] The-Red-Book, www.tearawhiti.govt.nz/assets/Treaty-Settlements/The-Red-Book/The-Red-Book-2018.pdf, page 13

[16] The-Red-Book, www.tearawhiti.govt.nz/assets/Treaty-Settlements/The-Red-Book/The-Red-Book-2018.pdf, page 69.