
**ENDURING AGREEMENT TO CONFIRM THE CROWN'S CONTINUING
RIGHTS TO USE LAND FOR THE PURPOSES OF THE MANIHIKI
AIRPORT AND TO RECORD ARRANGEMENTS FOR ITS UPGRADE,
THEN MANAGEMENT AND OPERATION**

Between

THE CUSTOMARY LANDOWNERS OF THE MANIHIKI AIRPORT LANDS

and

**HER MAJESTY THE QUEEN ACTING BY AND THROUGH THE COOK ISLANDS
INVESTMENT CORPORATION AND INFRASTRUCTURE COOK ISLANDS**

This is the document "A" referred to in
the annexed Affidavit of John Mouti Nmeti Nmeti

Sworn at Avarua, Rarotonga

This 25th day of August 2022
before me.

B. G. L. L.
Solicitor of the High Court of New Zealand
and the High Court of the Cook Islands.

B. G. L. L.
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Manihiki and Rakahanga have continued to be served, largely, by Bandierante aircraft with the costs and operational limitations associated with those aircraft.

- C. The Crown now has secured funding that will allow it to speedily achieve, an extensive upgrade of the airstrip and its facilities, the broad details of the upgrade are set out in **Schedule 1** and are referred to in this Agreement as “the Upgrade Works”.
- D. Attached as **Schedule 2** is a list of “the Manihiki Airport Lands” – in other words, a list of all the lands (each an “Airport Land”) that is still uninvestigated, for the purposes of the Upgrade Works and the ongoing operation of the Manihiki Airport, will be needed; the list also includes:
 - a. the names of the landowner representatives of each of those lands; and
 - b. a survey diagram that shows the part of each land that is needed for the Manihiki Airport.
- E. Completion of the Upgrade Works will allow Air Rarotonga to operate its Saab SF340 aircraft, and larger ATR72 and Dash 8-400 to Manihiki, resulting in lower operating costs and providing an opportunity to reduce airfares and improve service levels.
- F. Completion of the Upgrade Works will also provide an opportunity for other aircraft operators to use the Manihiki Airport more easily, leading to greater benefits for the Customary Owners, the islands of Manihiki and Rakahanga and its people for example, by way of increased competition (lower airfares), potential alternative and cheaper air trade routes.
- G. The Crown has negotiated, for some 24 months, with the Customary Owners, with a view to formalise tenure of the Manihiki Airport Lands. This in principle, has been agreed to by the on-island Customary Owners since early in the negotiation. Should Crown secure tenure by way of warrant, the lands would then belong to the Crown; however, the Customary Owners – all of them (on and off-island) – could potentially be entitled to an alternative compensation sum that the Court determines, despite there being a formal agreement between Crown and Landowners, where an agreed goodwill payment and compensation was agreed as full and final compensation. Should the Court



determine an alternative compensation sum it is estimated at worst several million dollars.

- H. Taken together, the considerable delays and uncertainty with Court proceedings and likely cost of the compensation payable to the on and off-island Customary Owners (in the likely event of objections being filed and pursued by off-island Customary Owners) if taken by warrant, when added to the considerable cost of the Upgrade Works (constructions materials, contractors and freight due to current global impacts (COVID 19 & War in the Ukraine)), would make the project cost-prohibitive. As such, when considering the parties desired outcomes that an Enduring Deed is now the preferred approach.
- I. The Customary Owners want the Upgrade Works to proceed; they see no reason why the Crown cannot continue the satisfactory use and occupation of the Manihiki Airport by the Crown that has now been in place for almost 40 years.
- J. Those Customary Owners under Manihiki custom, they and their forbears have allowed the Crown, Air Rarotonga, Yves Chen Pan and others to use their land as an airstrip, recognising its value to the people of Manihiki and Rakahanga.
- K. Accordingly those Customary Owners have invited the Crown to continue those satisfactory arrangements into the future, on the basis that Customary Owners retain their customary ownership and enjoy only the more limited rights to compensation and other benefits that are set out in this Agreement.
- L. Specifically, the Customary Owners now agree, under Manihiki custom, to confirm their existing customary grant and to enter into this Agreement so that the Crown and others can use the Manihiki Airport Lands on the terms and conditions of this Agreement.
- M. The Customary Owners have agreed to this customary grant on the understanding that the Manihiki Airport Lands will be used for (and only for) the specific purpose of constructing and operating an airport and for its associated ancillary activities.
- N. Crown for its part has established via a Memorandum Of Understanding, a Project Steering Group ("PSG") with its members being the ICI, CIIC, the Airport Authority Cook Islands ("AACI"), the Office of the Prime Minister ("OPM")- Pa Enea Division and the Manihiki Island Government ("MIG") to ensure the quality



and success of the Airport upgrade and the operation and maintenance of the Airport.

- O. The parties now record the terms of that customary grant; they also, for historical record, set out in **Schedule 3**, the course of the negotiations that have led to this Agreement.
- P. This Agreement is signed within the meaning of section 8 of the Infrastructure Act 2019 ("Act").

THE PARTIES AGREE:

1) AGREEMENT IS ONE OF CUSTOMARY EFFECT AS MODIFIED BY THE INFRASTRUCTURE ACT 2019

- a) The Parties make this Agreement in reliance upon Article 66A (3) of the Constitution that provides "*... Custom and usage shall have effect as part of the law of the Cook Islands, provided that this subclause shall not apply in respect of any custom, tradition, usage or value that is, and to the extent that it is, inconsistent with a provision of this Constitution or of any enactment.*"
- b) The Parties note, across the Cook Islands, a wide range of situations in which non-owners use and enjoy land that is either customary land or a deemed customary interest in land. They note, specifically, the long-standing use and enjoyment of the airports of Mangaia, Mitiaro, Manihiki and Pukapuka in that way.
- c) The Parties acknowledge that while a customary grant does not give rise to the legally enforceable rights of an "alienation" under the Cook Islands Act 1915:
 - i) where the Crown, with the knowledge, consent and approval of customary owners spends large sums of public money to improve that customary land:
 - (1) Manihiki custom would not allow any unjust enrichment, by any Customary Owner; and
 - (2) Even if any Manihiki custom did allow for that, the Constitution would override that Custom, and the Courts would act to prevent that unjust enrichment.
 - ii) The aviation laws of the Cook Islands, governing operational, safety and security matters, are all laws that take effect despite any inconsistent Manihiki custom so they offer the Crown and users of the Manihiki Airport, assurance around the use,



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operation and enjoyment of the Manihiki Airport, within the framework of this customary law grant.

- iii) Further, the Act offers further protections for *all* Customary Owners and for the Crown and for persons using the Manihiki Airport as “infrastructure”.
- d) The representatives of the Customary Owners are each, under Manihiki custom, recognised as having power to enter into this Agreement for and on behalf of the customary owners of the relevant Airport Land, that is to say of all customary owners of the Relevant Land, whether residing on the island of Manihiki or not.
- e) The Parties recognise that:
 - i) as this Agreement is intended to be interpreted within the meaning of the Act, customary rights must be read subject to that Act; and so:
 - ii) any person who is, or claims to be, a Customary Owner, is entitled to have their status as owner, and that of those who sign this Agreement, determined by the High Court which has jurisdiction to do so by reason of section 7(1)(d) of that Act and of section 422 of the Cook Islands Act 1915.
- f) The representatives of the Customary Owners who sign this Agreement each declare that he or she is, in respect of the particular Airport Land, satisfied after due enquiry and consultation that:
 - i) they are unaware of any substantial opposition from persons (overseas or in-country) who are or may be entitled to assert, rights to that Airport Land, or to the Airport Upgrade; and
 - ii) there is consensus among Customary Owners of that Airport Land that the Airport Upgrade should proceed:
- g) as a matter of Manihiki custom, he or she appropriately signifies the assent of the Customary Owners of the relevant land to the terms of this Agreement by signing it on their behalf.

2) EXISTING CUSTOMARY USE CONFIRMED; AIRPORT UPGRADE REQUESTED AND AGREED

- a) The Customary Owners, both as a matter of the Manihiki custom and by way of this Agreement, now confirm the continuing rights of the Crown to use the Manihiki Airport for general aviation purposes as set out within the Civil Aviation Act 2002.

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- b) the Crown now promises that it will use the Manihiki Airport Lands only for the following purposes (the "Specified Purposes"):
- i) continuing, for now, to operate the Manihiki Airport in the usual way; and
 - ii) acting by and through ICI in partnership with CIIC and its contractors to go on to the Manihiki Airport Lands to extend and upgrade the Manihiki Airport by way of the Upgrade Works
 - iii) thereafter and with the lead of AACI, Crown at its own costs will manage and operate the Manihiki Airport as a public airport just as they do with the Rarotonga and Aitutaki Airports serving the general public in the provision of air services to and from the island of Manihiki, and allowing for its use by other aircraft operators for such purposes that include, but are not limited to, tourism, fishing, deep sea exploration and mining, maritime reconnaissance, surveillance and search and rescue.
- c) The Customary Owners agree that the Crown may have others on its behalf come on to the Manihiki Airport Lands to:
- i) build, service, repair and maintain the airstrip, airport facilities and other plant and equipment that will belong, at law, to Crown primarily via CIIC in conjunction with AACI ; and
 - ii) operate aircraft and carry on the activities of passenger and freight handling, aircraft refuelling, maintenance and servicing, and all ancillary activities necessarily or conveniently carried out on the Manihiki Airport Lands.
 - iii) Set up, approve and commence necessary or appropriate commercial activities in and around the Airport Terminal complex, such as, but not limited to airport transfers and/or shops. This however is conditional on AACI consulting and receiving an agreement from the formalised on-island Customary Owners Committee or the equivalent. Currently there is a somewhat loosely held Landowners Airport Committee.
- d) For the purposes of the Act, it is agreed and declared that ICI in partnership with CIIC is to be regarded, for all purposes as "the infrastructure manager" for the Manihiki Airport upgrade and operation project
- e) The Customary Owners of the Airport Land agree that, in addition to whatever rights it may have under the Act, as a matter of Manihiki custom, Crown will continue to enjoy

A handwritten signature in blue ink, followed by the initials 'GSM' written in blue ink below it.

the same degree of possession and enjoyment of the Manihiki Airport Lands in the future as it, and users of the Manihiki Airport have enjoyed in the past, and to do so without any interruption by the Customary Owners or any person claiming under the Customary Owners until the grant is terminated in accordance with the terms of this Agreement.

- f) The Customary Owners:
 - i) promise that the Land is their entitlement; and
 - ii) agree to defend its entitlement from any claims and demands from other persons who may claim rights over or entitlement to the Land; and
 - iii) agree that they will support Crown in enforcing their rights to access and use of the Airport land as set out within this Agreement.
- g) The Crown must (and may through ICI, CIIC, AACI and or any other agency of the Crown):
 - i) keep the Manihiki Airport Lands in a neat and tidy condition and free from all noxious weeds and growths; and
 - ii) comply with the laws for the time being in force in Manihiki that relate to noxious weeds and growths; and
 - iii) keep all installations and utilities on the Manihiki Airport Lands safe and secure so that the risk of injury or death is minimised;
- h) The Crown will not be held liable for any act or omission by the Customary Owners which causes injury or death in relation to the operations of the Manihiki Airport or in breach of the terms and conditions as set out within this Agreement.

3) **MONETARY PAYMENTS**

- a) In return for this customary grant Crown will pay the Customary Owners **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as a form of goodwill and commitment to serving the greater public good.**
- b) The Customary Owners understand that if the Manihiki Airport Lands were taken by warrant they would each be entitled to be compensated for the loss of their land under the Warrant pursuant to section 359 of the Cook Islands Act 1915.


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- c) The Customary Owners, acknowledging that right, declare that in all the circumstances they believe this customary grant should avoid the need for them to lose title to their lands and instead allow them an ongoing association with important public infrastructure for Manihiki and they warmly embrace that association between themselves and the Crown.
- d) In these circumstances, they believe the \$100,000 is sufficient and fair as full and final compensation payment, when taken together with the additional promises of the Crown under this Agreement (above), including but not limited to, the following:
- i) The Crown will be responsible for:
 - (1) the safe and continuing operation and management of the Airport and any costs associated with the same including repairs and maintenance; and
 - (2) all reasonable legal costs incurred by the Landowners that are associated with this Agreement.
 - ii) The Crown will charge landing fees for all commercial operators (but not for maritime reconnaissance and surveillance flights or for dedicated mercy or search and rescue flights) and will account fully for and pay to the Customary Owners, all those fees (nett of VAT).
- e) The Parties record that as a customary grant, and because of the money paid and the promised use of the Manihiki Airport Lands, they seek no other ongoing payment.

4) FORMALITIES OF RECORD

- a) Crown the Customary Owners of each Airport Land a Memorandum in the form set out in **Schedule 4** to this Agreement, granting Crown the use of the Land (Memorandum) and this Agreement will become fully effective only when each of those Memoranda is returned, executed, to Crown.
- b) Crown will deposit a signed copy of this Agreement along with each executed Memorandum with the Registrar of the Land Division of the High Court of the Cook Islands at Rarotonga for the public record.

5) PROHIBITION ON FUTURE TRANSFER

The Crown agrees that:



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- a) this Agreement is entered into, and the existing customary grant continued, only for the Specified Purpose; and
- b) While those using the Manihiki Airport's facilities may come on to the Manihiki Airport Lands for the purpose of their travel, or airport business that is within the Specified Purpose, the Crown cannot pass the customary right granted to anyone else except to some other person or organisation that is either part of the Government of the Cook Islands or is (and remains) fully owned and controlled by the Crown; and
- c) The Crown cannot use the Land for any other purpose.

6) NO LIABILITY AS OWNERS

- a) This Agreement simply confirms the grant of customary rights as the Crown moves to place new infrastructure. It does not evidence or imply any sort of partnership or joint venture between the parties.
- b) The Customary Owners, as landowners will therefore not be liable for:
 - i) repair or maintenance which Crown via the relevant agency is liable to undertake;
 - ii) any loss or inconvenience suffered by the Crown or any user of the Manihiki Airport by reason of any defect, want of repair, malfunction or breakdown of that infrastructure on the Manihiki Airport Lands;
- c) the Crown occupies and uses the Manihiki Airport at the Crown's sole risk and releases to the full extent permitted by law the Customary Owners, their employees, agents and contractors from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or on any part of the Manihiki Airport Lands.
- d) Without limiting the previous clause, the Crown must, in that respect, indemnify and keep indemnified the Customary Owners, and their employees, agents and contractors from and against any:
 - i) liability which they or any of them may suffer or incur or for which they or any of them may become liable;
 - ii) loss, damage, cost, expense or charge reasonably incurred or sustained at any time by them or any of them;



iii) proceeding, action, claim, demand or other process in any jurisdiction against them or any of them

arising, as a result of any person's use and enjoyment of the Manihiki Airport Lands or the Manihiki Airport or arising in any way from the actions or omissions of any of the Crown or its invitees, employees, contractors and/or agents.

e) Again, without limiting clause 6(c), the Crown agrees this indemnity extends to loss or damage suffered, whether directly or indirectly from:

i) the negligent use, waste or abuse by the Crown of any infrastructure on the Manihiki Airport Lands, or of any faulty infrastructure of the Crown;

ii) the loss, damage or injury from any cause to property or persons caused or contributed to by the use or misuse of the Manihiki Airport Lands and infrastructure or any part of them;

iii) the loss, damage or injury from any cause to property or persons in or on the Manihiki Airport Lands caused or contributed to by any act, omission, neglect, breach or default of any of the Crown or its invitees, employees, contractors and/or agents.;

iv) any failure by the Crown to comply with any obligation imposed on the Crown under this Agreement or by law;

v) the condition of the Manihiki Airport Lands;

vi) any decision of any territorial, regulatory or other authority or court including any order, injunction or award made in respect of any cause of action relating to any part of the Manihiki Airport Lands, under any environmental, health or safety legislation or under any action for personal injury;

vii) any contaminant on, under or above any part of the Manihiki Airport Lands, or any claim relating to any contaminant under any environmental, health or safety legislation; or

viii) any abatement notice or enforcement order under any applicable environmental law in respect of any act or omission of the Crown; or

ix) any claim for loss to property or personal injury or death; or

- x) any failure by the Crown in complying with any obligation imposed on the Crown or any breach by the Crown of any warranty under or in connection with this Agreement.

7) INSURANCE

During the term (refer to Termination clause below), as is usual obligations for Government assets and users of of these assets, the Crown via its agents, AACI and CIIC must maintain usual public liability (personal and property) insurance for all users of the Airport (as they do in Rarotonga and Aitutaki) including the respective rights and interests of the Crown and the Customary Owners. It is noted that Aircraft Operators as part of any licences issued are obligated to carry and maintain their own insurance for any personal and property insurance.

8) TERMINATION AND AMENDMENT

- a) This Agreement may be terminated by the Crown giving the Customary Owners not less than **12 month's notice** in writing of its intention to terminate this Agreement.
- b) the Crown promises that if the Manihiki Airport Lands are no longer needed for the purposes of flight operations, so there is no longer any valuable public interest in it using or retaining the Manihiki Airport Lands for that purpose, the Crown will give notice of abandonment to the Customary Owners.
- c) Unless as otherwise agreed in writing Crown promises **that within 24 months of giving notice of abandonment to the Customary Owners,** it will remove its infrastructure apparatus and installations that it (or any third party with its knowledge and consent) has brought on to the Manihiki Airport Lands and will leave the lands clean and tidy.
- d) If the Crown's infrastructure is **not removed within 24 months after giving that notice of abandonment,** then, at the option of the Customary Owners, the Customary Owners may either:
 - i) remove the infrastructure and recover the costs of removal from Crown without being liable for any damage caused; or
 - ii) retain the infrastructure either on the relevant Airport Land or elsewhere as their own property, absolutely.



9) GENERAL

- a) This Agreement may be amended at any time by agreement between the parties and must be in writing
- b) This Agreement may be executed in any number of counterparts (including PDF, JPEG or other format files) all of which, when taken together, will be treated as constituting a single document. A party may enter into this Agreement by executing any counterpart.

10) DISPUTE RESOLUTION

- a) If a dispute arises between the Customary Owners and Crown about the meaning of this Agreement or its performance by either Party, the Parties agree to resolve the dispute using any of the following procedures:
 - i) By negotiation between the Parties; and if not resolved within 28 days; then
 - ii) By mediation with a mediator appointed by agreement between the Parties; if there is no agreement as to the mediator, the parties will accept the appointment of a mediator by Tauranga 'Aka 'Au (Mediation Centre Inc) and if not resolved within 60 days; then
 - iii) By arbitration under the Arbitration Act 2014 and its amendments, that arbitration to be conducted at Rarotonga and can include participation via telephone or video conference.
- b) Nothing in this clause prevents either Party from seeking urgent injunctive relief from the High Court of the Cook Islands.
- c) Nothing in this clause prevents any Customary Owner applying to the High Court (Land Division) for the purposes indicated in clause 1(e)(ii).

SIGNED BOTH AS AN AGREEMENT in accordance with the native customs and usages of the people of Manihiki and understanding that this Agreement has customary effect **AND** by the Crown as a Deed *with the intention that it bind the Crown on and from the time contemplated by clause 4 so that every Customary Owner, whether or not signing this Deed, may rely on and enforce its terms.*




SIGNED BY TAMARII TUTANGATA AS SECRETARY of)
INFRASTRUCTURE COOK ISLANDS for and on behalf)
of the Crown in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

SIGNED BY ALLAN JENSEN AS CHIEF EXECUTIVE of the)
COOK ISLANDS INVESTMENT CORPORATION for and on behalf)
of the Crown in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

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SCHEDULE 1

Broad Overview of the Upgrade Works Airport Works

Phase 1:

- Construct airport runway based on the existing length and width using on-island and imported materials
- Applying three-coat chip seal runway surfacing

Phase 2:

- Extend the runway towards the south
- Construct parking apron to accommodate more than one aircraft

Phase 3:

- Construct coastal protection wall
- Construct airport security fence, access road and aircraft taxiway

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SCHEDULE 2
PARTICULARS OF THE MANIHIKI AIRPORT LANDS

[Survey Plans/Lists of landowners/Lists of representative owners]




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SCHEDULE 3

MEMORANDUM GRANTING USE OF LAND

AT _____, COOK ISLANDS, this _____ day of _____ 2022

Handwritten initials

Handwritten initials

1.0 BY an Enduring Agreement dated the _____ day of _____ 2022, granting customary rights to use land attached at **Schedule 2**, we, the undersigned, for and on behalf of the Customary Owners under the native customs and usages of Manihiki, **NOW GRANT THE RIGHT TO USE** forming part of the total parcel of land containing approximately two hundred and six thousand, nine hundred and fifteen square metres (206,915m²) situated on Manihiki of which we are the customary owners and more particularly described in the survey diagram numbered D3960 attached at the **Second Part** to this Memorandum ("Land").

2.0 The grant:

- 2.1 is in favour of the Crown, acting by and through CIIC;
- 2.2 takes effect from the date of the execution of this Memorandum;
- 2.3 is made for the limited public purposes set out in the Agreement; and
- 2.4 is made on the terms and conditions of the attached Agreement.

3.0 **We, the undersigned** recognize and acknowledge the rights afforded all persons who regard themselves as customary owners to exercise their rights to have that fact confirmed by the High Court as contemplated by clause 1(e)(ii) of the attached Agreement

IN WITNESS HEREOF We now subscribe our names this _____ day of _____ 2022

SIGNED by the abovenamed _____, in the presence of

[Signature]

[Name, Occupation, Address]

FIRST PART

[Executed Agreement]



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SECOND PART

[Survey Plan]

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THIRD PART

Interpretation

In this Agreement unless the context indicates otherwise:

1.1 Definitions:

"Agreement" means this Agreement including its attached Schedules;

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“consideration” means all the promises made by CIGPC to the Customary Owners that are set out in this Agreement;

“Land” means the land defined in Recital B above;

“Manihiki Custom” means the ancient custom and usage of the Polynesian people of Manihiki.

“Specified Purpose” means the purpose defined in [Clause 2(b)] above; and

1.2 Defined Expressions: expressions defined in the main body of this Agreement have that defined meaning in the whole of this Agreement, including the Background.

1.3 Headings: section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Agreement’s interpretation;

1.4 Interpretation: In the interpretation of this Agreement or any part of it, no rule of construction shall apply to the disadvantage of any party on the basis that that party:

- (a) Prepared this Agreement or any part of it; or
- (b) Seeks to rely on this Agreement or any part of it.

FOURTH PART

History leading up to this Agreement


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- A. On or about 18, 19 and 20 February 2021 meetings were held in Manihiki between representatives of Crown, specifically ICI with members of Cabinet and the Manihiki Island Government, the on-island Landowners and their lawyer Mrs Browne . At the conclusion of these discussions it was noted specifically for Crown to acquire the land required for the Manihiki Airport Upgrade by Warrant and in exchange an offer of \$100,000 payment (goodwill) to the landowners was made as a form of full and final compensation for that acquisition. In addition Crown would be responsible for the Airport's operation and management and any costs associated with the same including repairs and maintenance. Furthermore the landowners would continue to retain all landing fees. Agreements to the above proposal were reached in principle between the Crown, the on-island Landowners and Mrs Browne.
- B. On or about April 2021 a further charter was organised by ICI to Manihiki to allow amongst other matters the Landowners further opportunity to meet with Mrs Browne. Following the same the above noted Agreement was confirmed and acknowledgment that the lawyers for the on-island Landowners would be working towards finalising as much as possible the allocation of landowners (entitlement) to each lot of land (total of 48-50 lots) at the cost of the Crown. The on-island Landowners agreed in principle to the Crown acquisition of the land by warrant and to the payment offered by the Crown.
- C. On or about mid October 2021 a further charter was organised by CIIC wherein the Agreement noted above was again confirmed in a public forum at the Tukao CMC building, without Mrs Browne's attendance.
- D. The parties acknowledge that, given determinations made by the Court in recent years with regards to the value of land per square meter in Manihiki for Solar Farm Land , the Agreement reached was full or final compensation of \$100,000 to the Landowners, whilst acknowledging that this is likely to be much lower than what will be deemed fair compensation by any competent Court for the land to be taken by Warrant for the Airport. In light of recently completed and certified survey plans by the Chief Surveyor in Rarotonga, the total land to be Warranted is 206,915m² ("Warranted land")The parties are mindful of the compensation determined by the Court in respect of the Manihiki solar lands. To that end the Crown has obtained a recent valuation report dated 14 January 2022 by Miro Consultants Limited whose assessment

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is \$27.73 per m² which when calculated against the Warranted land equates to \$5,737,752.95 for total potential compensation. E. In recent weeks the on-island landowners and Crown have acknowledged that the agreement reached (above) at Manihiki may be challenged by other landowners (off-island) who were not at the meetings. As such, when noting recent and current increased costs for constructions (materials and contractors) and all associated logistical and freighting costs Crown was concerned that if Warranting the land Crown was potentially at risk of needing to secure substantially more funding than what was secured if Compensation was determined to be much higher than what was agreed (currently \$100,000). Added to this concern is the likelihood that Court determination of compensation could take many more months than hoped or even years, thereby worsening any concerns for increased costs for the Airport upgrade project.

- F. As a consequence, Crown has proposed very recently a change of tact whereby the on-island landowners would with Crown enter into an **Enduring Agreement** with a view to essentially formalising the desired and above agreed outcomes for both parties all the while avoiding Court proceedings for Compensation where the outcome would likely be uncertain in terms of time (delays) and financial liability where then the implementation and completion of the project would be placed at significant risk.



MEETING WITH AIRPORT LANDOWNERS

DATE: 3rd May 2022
VENUE: Vainga, Te Marae
TIME: 2.30pm

PRESENT:

DPM	Robert Tapaitau
MP	Akaiti Puna
CIIC Legal	Henry Herman
CIIC	Sally Hosking
MAMA MAYOR	Ngamata Napara
COUNCILLOR	Trainee Samson
COUNCILLOR	Mareta Elipata
COUNCILLOR	Carol Tepano
COUNCILLOR	Wireless Pupuke
COUNCILLOR	John Mcleod
EX O	Nimeti Nimeti
GR	Toka Makira
MINUTE WRITER	Justine William

This is the document "B" referred to in the annexed Affidavit of Jean-Mary Nimeti Nimeti

Sworn at Avarua, Rarotonga

This 25th day of August 2022 before me.

B. M. Williams
Solicitor of the High Court of New Zealand and the High Court of the Cook Islands.

LAND OWNERS

Helen McKenzie	Tuatoru Tuatoru	Tupou Tahiri
Luka Tobia	John Napara	Tani Mussel
Ruhau Tamaunu	Ka Kaitara	Toumiti Katuke
Jean Marie Williams	Umurua Tuhe	Rua Samson
John Matangaro	Puna Tahiri	Jemina Tangi
Party Johnson	Kamuta Ioane	Here Kaina
Paninga Tamata	Mayor John	Emma Kaitara
Arii Makita	Nikau Mii	Tereapii Nikoro
Vaine Makita	Tumukau Saitu	Kairenga Uea
Ricaldo William	Agnes George	Junior Napara
Tangi Napara	Veru Toka	Toka Charlie
Dora Charlie	Boaza Kaina	Tarau Kaina
Tepania Tepania		

Opening prayer : Reverend Tumukau
Welcome speech Councillor Trainee Samson (Chairman of Airport Committee)

Henry Herman

Introduces himself and his ties to Manihiki.

The agenda for today is about providing information and an update for the Manihiki Community and in particular the landowners (atu enua) for the airport.

Its is important to hear from the Govt that the same spirit that you all showed in our last few meetings in 2021 hasn't changed and has shown us that this project will be a benefit for all of us and for the island of Rakahanga

In 2021 we talked about the warranting of the land and you all had agreed to it. But after much discussions about the warrant, we found that it would not be right or best for us in this project, there could still be a lot of issues with for example overseas owners and delays with compensation proceedings. And so, the govt has changed its views on this, and agrees with the change recommended by the lawyers.

In summary - what we discussed and agreed in 2021 about the goodwill payment (\$100k), payment of the landing fees will still come to you and the costs for upgrading and sealing airport, operation and maintenance of the airport, will still come under us (Govt).

The only change that we propose is to change from the warrant to an enduring agreement.

We have the draft papers here (drawn up recently for this agreement) and has been provided to Tina who as I understand is currnelty busy with Court.

The only thing that we are asking is if we can leave those papers here so you can all go through it and with your lawyer if you wish.

The govt is ready, the papers are ready. All you have to do is go through the agreement with your lawyer and consider whether you will sign.

We are asking if all the landowners can work with us and if all agreed then we can sign as soon as possible so that the work we have and are planning for can go ahead. After all we have been waiting a very long time to upgrade the airport.

We will leave the papers here as we leave tomorrow, and the Ex O and the Mayor can if you wish, witness the signing by the land owners when after getting advice you are ready.

Mayor

This document, does it relate to the last meeting?

Robert Tapaiau

Greetings to you all.

The lawyer has explained to you all about the project, and about the enduring agreement.

The govt wants to have an agreement with the landowners and the CIIC (Govt).

The warrant that we discussed before meant that we take the land forever.

If we were to do the warrant, then the Compensation could take years and will go through the courts.

The enduring agreement ensures that we will only work on your lands to complete the project.

That's the main difference between this warrant and the agreement.

All the discussions that we had in the past; nothing has changed except for this type of agreement.

Its past March now and nothing has been done. We have been waiting for too long to get this project started.

The lawyers for Govt all looked at this and this for us is the best avenue to follow to allow us to carry on with this project in the right spirit. But this decision is yours – the only change is the form and type of agreement.

Luka Tobia

Greetings to you all.

All of us are talking about our blood rights on all these lands, we are all blood related.

Our lawyers are the ones that guided us from the beginning and we cut all our trees, because they recommended that. You are correct, it's our land and we have rights too.

We are part of all of this, part of the government.

Our Descendants have all ready given their decree for the airport lands to be freely given and we are going to honour that decision.

Give us the agreement papers to sign.

Pikitika Tapaano

We have all given our answer to this already in the past meetings and we will stick to that decision.

I want this to happen because our ancestors already gave that land.

I agree for this agreement to go ahead.

Toka Toka

This evening, I am surprised that you have all come back for this same decision. We have already agreed on this decision from our ancestors for the benefit for all our children and their children.

Our love for our people is why we have all agreed and so why wait any longer when we know what we want. I totally agree that we should all sign this, and this evening.

Ruhau Tamaunu

Kia Orana and greetings

I would like to pass a resolution to pass these papers out right now for us to sign.

Paniga Tamata

Kia Orana to you all

I say that this will be our last meeting, share out the papers right now so we can sign.

Thank you for bringing this back to us, Kia Orana to everyone

Party Johnson

Handwritten blue ink signatures and initials. There are two distinct signatures, one above the other, and the initials 'BM' written to the right of the second signature.

Kia Orana and greetings to you all

In our last meeting that we had with the Prime Minister I had already given my support for our Airport, we have waited for a long time for this project to go ahead.

So just listening to this subject come up again, I am surprised.

I strongly support this agreement to go ahead.

Jean Marie Williams

Kia Orana

I already told you to not come back until you send our money into our account.

Like what was said previously, please share the papers out and let us all sign the papers.

When you all go back to Rarotonga, please send the money into our account.

Pikitika Tapaano

The money is not the main thing here tonight, the main thing is that the work goes ahead.

Trainee Samson

I think that everyone has spoken up about this, Ill hand it back to the Deputy Prime Minister.

Robert Tapaitau

For some of you to say that we should not have another meeting, I just need to explain that there is a need because we are changing from a warrant to an agreement.

I am very humbled and overwhelmed to hear all the support for this agreement to go ahead.

Helen McKenzie

I give my full support for this but I also think that we should vote on this.

Trainee Samson

Mama Uneke wants to have a vote and that the vote is counted.

I am moving the motion in support for this agreement

Moved by Mama Uneke

Second by Toka Toka and all the landowners and all present voted in favour. No objections noted.

Luka Tobia

There are 2 kopu's that I would like to have a quick meeting so that we decide who will sign the papers.

Jean Marie Williams

That's how it always has been done, all reps on those lots are identified and have their reps.

Mama Mayor

Just a word of encouragement to all the landowners, some of them are not here to sign this document.

I think that if you know who is in your Kopu, then why don't you all sign? to have all your names on the agreement so that there is no problems in the future.

Robert Tapaitau

Our lawyer cannot witness the signatures, but the Ex O and the Mayor could do this.

The lawyer works for us (Govt) and cannot and does not work for both sides and you have Tina.

Ruhau Tamaunu

I think that with all of us here today, we can sign on behalf of those landowners who are not here.

Luka Tobia

During the time when the Solar lands were done, some landowners received some money and they were not identified as landowners who signed the papers here. That's why I think that each family should have a meeting and pick their reps to sign the document.

All these families, especially the big ones, should meet and discuss this properly.



Trainee Samson

For those who would like to sign the documents now, they can do so. The other families can have time to have a meeting to pick their reps and get further advice (legal) if they wish.

Mama Mayor

We can print some papers out and leave it here, for those who want to sign them now, We can do that while we are all here.

Robert Tapaitau

However you want to get this done, that's on you all. If you want to get it done now, that's up to you. We are just here to inform, update and facilitate this meeting

Toka Toka

I like that point. I think that we should use the Mayor and the Ex O while they are still here to get these papers signed.

Mayor


We just have to print out some more copies



Trainee

For those of us in Tukao who want to sign now, please do so and then our boat will return when we are ready.

Closing Prayer:

Reverend Tumukau Saitu


TRAINEE Samson
CHAIRMAN ATU HENUA.
17/8/22.


 BM

Browne Harvey & Associates P.C.

Barristers, Solicitors & Notary Public
A Professional Corporation

Principals:

Tina Pupuke Browne LLB Notary Public
Karen Jane Harvey LLB

To: Diane Charlie-Puna
Secretary, Infrastructure Cook Islands (ICI)

From: Tina Browne and Hinano Ellingham
Browne Harvey & Associates PC

Subject: Manihiki Airport Runway Upgrade – summary of trip to Manihiki 18 February to
20 February 2021

Date: 26 February 2021

This is the document ^C referred to in
the annexed Affidavit of John-Mary Nimehi Nimehi

Sworn at Avarua, Rarotonga

This 25th day of August 2021
before me.

B. M. Willie
Solicitor of the High Court of New Zealand
and the High Court of the Cook Islands.

Introduction

1. Following our successful trip to Manihiki to engage with customary landowners on the proposed Manihiki Airport Runway Upgrade (the **Project**), we thought it would be useful to summarise the key points of discussion at the various meetings held in Tukao, Manihiki. This memorandum summarises the discussions from the following meetings:
 - (i) Meeting with Manihiki Island Council (the **Council**) at (approximately) 12:15 p.m. on Thursday 18 February 2021 held at the Tukao Cyclone Shelter (the **First Meeting**), attended by:
 - a. Eight members of the Council;
 - b. Deputy Prime Minister and Minister of Infrastructure, the Honourable Robert Tapaïtau (**DPM**);
 - c. Member of Parliament for Manihiki, the Honourable Henry Puna (**MP Puna**);
 - d. Diane Charlie-Puna (ICI Secretary, **Diane**) and Maruia Willie, Project Manager (also from ICI, **Maruia**); and
 - e. Tina Browne (**Tina**) and Hinano Ellingham from our office;
 - (ii) Meeting with customary landowners and members of the Manihiki public, held immediately after the First Meeting, at approximately 1:15 p.m. on Thursday 18 February 2021 (the **Second Meeting**), also held at the Tukao Cyclone Shelter with all those from the First Meeting also in attendance;
 - (iii) A follow up meeting with the Council at the end of the Second Meeting (**Follow up Third Meeting**);

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- (iv) An informal meeting between the DPM, MP Puna, Diane, Maruia, Tina and Hinano, after the Follow Up Third Meeting on Thursday, followed by a quick meeting on Friday morning ahead of the Final Meeting (**Project Team Meeting**); and
- (v) Meeting with customary landowners and members of the Manihiki public, held at 11:40 a.m. on Friday 19 February 2021 at the Tukao School grounds with all those from the First Meeting also in attendance (the **Final Meeting**).

Summary

- 2. There was unanimous support from those present at the meetings for the work to proceed. The overall feeling from those in Manihiki was that the Airport lands had already been gifted to the Government for the purposes of the Airport, and so the Project should proceed without having to formally identify the owners and re-seek the consent of present-day landowners to the Project. Further, rather than paying the owners compensation at a rate comparable to that paid to owners for the lands acquired for the solar farms at Tukao and Tauhunu in Manihiki, token compensation at a rate of \$100,000 up front was offered to and accepted by those members of the Manihiki public who were present at the Final Meeting.

3. **The First Meeting**

3.1. The first speaker was Diane who noted that:

- a) there had been two previous scoping trips;
- b) the current runway is 1.7km long by 30m wide;
- c) Ministry of Transport regulations require the length to be at least 1.7km long and 90m wide for day operations, in order for bigger planes to land in Manihiki. That would require at least an extra 30m on either side of the width of the runway. It was also noted that night operations would require a width of 150m; and
- d) So as not to disrupt or have to cause too many existing buildings to be moved, there is a suggestion to move the end of the runway 200m back away from the main Tukao town centre where there will likely be less houses and buildings affected.

3.2. Trainee Samson (**Trainee**), a member of the Council and also the Chairman of the Committee of Landowners (the **Committee**) that collects the landing fees from the Airport, along with Joe Hiro, the Deputy Mayor for Manihiki and a Council member, noted that


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there are three houses on the 'tua' side of the runway that would be affected even by the 200m length move, but they noted the houses were abandoned. It was noted that these three houses belonged to Rua Merota, Pati Johnson and Tau Hiro.¹

3.3. Tina then spoke and noted that:

- a) The land titles needed to be investigated to confirm owners.
- b) Landowners should consider incorporating so that there is "one party" dealing with the Government on behalf of the owners of the approximately 46 – 48 lots comprised in the Airport.

3.4. Trainee noted that there are 49 lots now collecting money from Manihiki airport operations. So those now collecting the funds should be the "owners" that go on the Register of Title for each lot.

3.5. It was noted that the 200m shift of the end of the runway would be from Lot 34 and 34A to Lot 30.

3.6. Tina noted there would be a similar meeting of owners residing in Rarotonga once the owners who reside in Manihiki are satisfied.

3.7. In terms of "process", it was noted that there was a need to highlight the benefits that will result from the Project to expand the airport.

3.8. The DPM was the last to speak at the First Meeting. He noted that Manihiki should not "throw this opportunity away like what happened in 2008". He also noted that the Project would benefit not just Manihiki, but also Rakahanga and Penrhyn.

3.9. The First Meeting finished at about 1pm.

4. **The Second Meeting**

4.1. Tina led the discussion at the Second Meeting.

- a) There is a Committee of landowners.
- b) Keeping the Airport as is will affect existing houses and buildings.

¹ A scoping trip conducted by Maruia in the afternoon of Friday 19 February 2021, which Hinano also attended, suggested that the house designated as belonging to Pati Johnson was actually occupied.



- c) The proposed shift of the end of the runway by about 240m south will lessen the number of buildings affected by the Project.
- d) 48 lots were designated in 2008.
- e) There is a need to widen the existing runway by about 30m each side.
- f) There was not any opposition in 2008 to the airport upgrade itself. The opposition arose in relation to identifying the correct owners of certain lots.
 - (i) The Court could not confirm owners.
 - (ii) Owners could not meet to decide to lease the land to Government.
 - (iii) Court could not confirm a lease between owners and Government.
- g) There is a Committee of Management for the Airport that collects and distributes funds to owners. Perhaps they can assist with identifying owners from their records.

4.2. A landowner asked whether the additional 30m each side of the runway had been surveyed.

4.3. Diane answered the question, advising that Nama Benson (a surveyor from Rarotonga) came over in November 2019 (or was it November 2020?) to survey the land for Project purposes but not for land survey purposes. It was also noted that the surveyor would need to return to Manihiki to re-survey the land to show the additional areas required from each affected lot.

4.4. Another member of the public expressed concerns that the expansion of the runway, with the additional regulatory requirements of 90m width, would mean half of Tukao would be lost for use by the people because they would not be able to building the protected areas.

4.5. It was clarified that the Ministry of Transport regulations have certain requirements for bigger aircraft that Manihiki people want to fly to Manihiki. Diane clarified as to why the 30m extension (each side) is on the table, noting that it was not something that ICI just came up with. Diane also noted that the existing runway could be resealed in its current measurements, but that the size of incoming aircraft would not change as a result.

4.6. Another papa from the audience said that he thought some people were already collecting money from within the proposed 30m x 30m proposed extension. It was then clarified


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(perhaps by Trainee) that those on the runway and those in the clearance areas collect their money on the same basis.

4.7. The DPM then addressed the audience and asked what it is that they want? He said he can make that decision there and then, and that he was looking to "future proof us".

4.8. Diane noted that:

- a) The tender for the design of the Project closes at the end of March 2021, and that whoever wins the tender will be given the design job.
- b) The tender for construction would go out in April / May 2021.
- c) ICI business plan for funding was due Friday 19 February 2021.
- d) A similar meeting will be held in Rarotonga of Manihiki owners residing in Rarotonga, to ensure there is no opposition or differing views from Manihikians residing in Rarotonga.
- e) Once the land side / ownership issues are sorted, ICI can commence construction which will likely commence in the next financial year (2021/2022).

5. The Follow up Third Meeting

5.1. Following the end of the Second Meeting, there was another meeting with the Island Council (with all those present at the First Meeting in attendance).

- a) Tina noted that she thought it would be best to proceed with the work now rather than try to determine the correct owners, because that may take too long and could stall the Project. She also said it would be good to survey the additional area now that would be noted on the old plan from 2008.
- b) Tina also noted that she thought that the Court would be concerned more with the thoughts of those living on the island versus those Manihikians that do not live in Manihiki.
- c) The Lot 49 lots are all in agreement.
- b) Maruia noted the height restrictions in the clearance area are 7m : 1m at the edge of the runway, and that the restriction lessens the further you get from the edge of the runway.




- d) Someone from the Council noted that the three houses to be affected within the 240m extension proposed area are OK with the land being acquired for the Airport, subject to compensation.
- e) Another person from the Council asked who would pay the landowners' legal costs to investigate the lands? Tina replied that the landowners would give the land to the Crown by warrant, and in exchange the Government would pay the landowners' legal costs to investigate the titles.

6. The Project Team Meeting

- 6.1. At the end of the Follow Up Third Meeting, Tina had a quick discussion with the DPM, MP Puna and Diane (with Maruia and Hinano also in attendance). The options for formal legal acquisition of the additional lands required for the expanded runway were discussed. Tina suggested that the lands be taken by warrant. There was a concern from Puna as to payment of compensation. Tina was of the view that given the mood of the meeting and the statements made by the owners a "token" compensation might be acceptable to the owners. All agreed to acquire the land by warrant, whereby the land would be "gifted" by the people of Manihiki to the Government (rather than the Government taking the land).
- 6.2. On the morning of Friday 19 February 2021, there was another informal Project Team Meeting where compensation payable to landowners was discussed. Compensation to the Tukao and Tauhunu solar farm landowners was paid at a rate of about \$25 per square metre. It was noted that such a level of compensation was appropriate for that project, as the total area of land acquired for the solar project was quite small in comparison to the land required for the Project. If compensation was to be paid to airport landowners at a similar rate, total compensation would exceed \$5 million. MP Puna put forward that a nominal compensation of about \$100,000 should be paid to airport landowners, which was agreed to by the DPM, Tina and Diane.

7. The Final Meeting

- 7.1. MP Puna led the discussions at the Final Meeting. He noted that, in essence, we are now trying to "correct" the gift (of land from the pa metua) so that it fits with present legal requirements. He also noted the need to gift the land "kia tau ki te vauerua oranga".
 - a) MP Puna mentioned the solar lands, in that when the warrant expires, the land would go back to owners even though they have already been compensated.
 - b) He also noted that compensation would likely exceed \$20 million if compensation for the Airport land was to follow the solar lands model.


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- c) Compensation would be payable for the coconut trees that would need to be removed for the Project.
- d) The Government would maintain the Airport, at no extra cost to owners.
- e) A "tuanga atinga" would be given to owners, in the form of \$100,000 up front.

7.2. Tina noted that:

- a) Owners would need to be clarified.
- b) ICI had acknowledged that legal costs would be borne by ICI for investigating ownership. There are a number of outstanding applications in the Land Court to be confirmed. This will require the land areas (of the approximately 49 lots) to be surveyed and the owners to be confirmed, all at ICI cost.

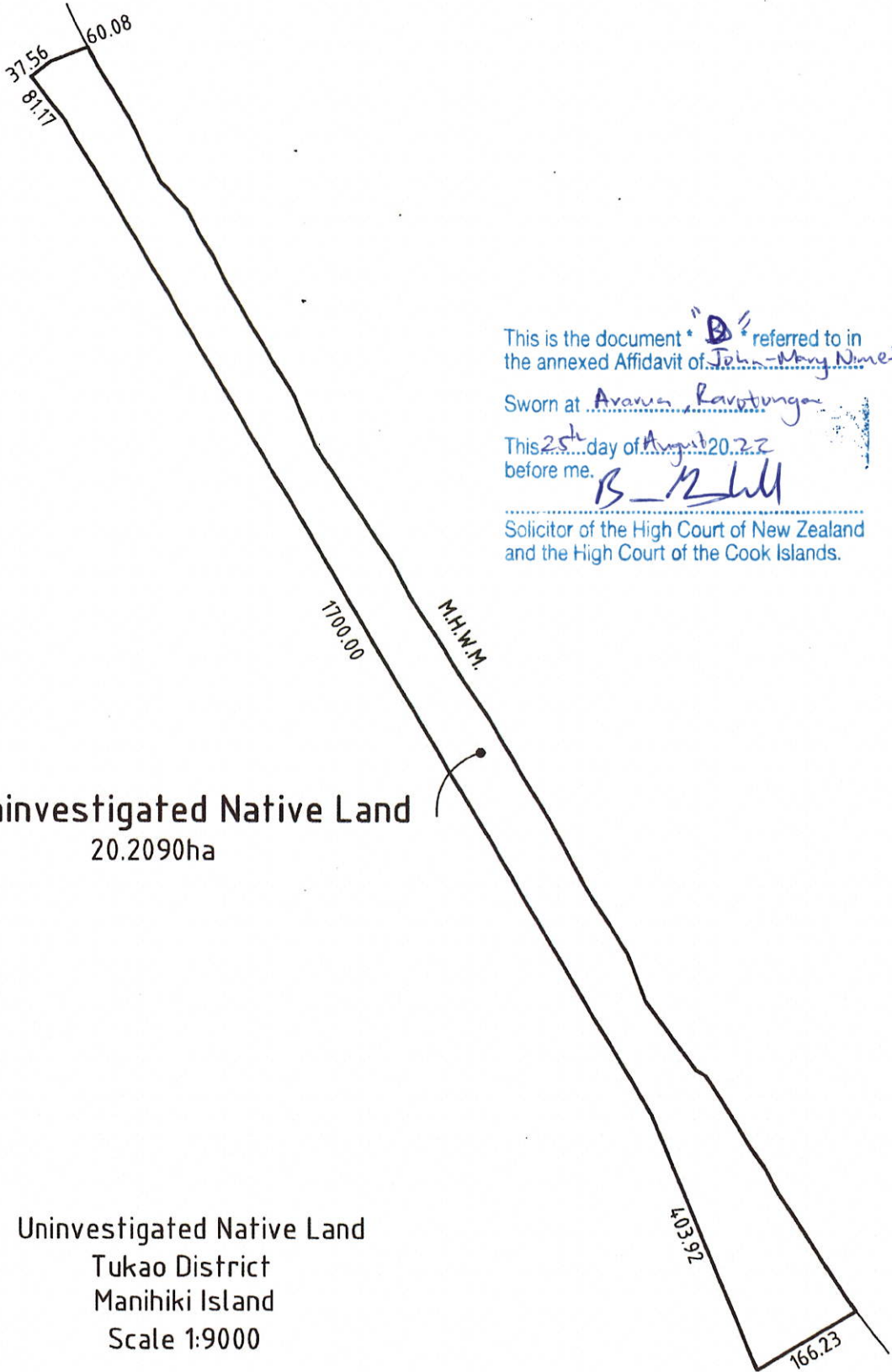
7.3. Papa Pikitika put forward a motion that the work should push forward. This was supported by Mama Helen Uneke McKenzie. She noted that the work should go ahead, and that the smaller issues, such as ownership, could be sorted out along the way and should not hold up the work.

7.4. Ruhau said that greed had set in when talks commenced about paying landowners compensation. Then difficulties arose because people began arguing about who owns the land and who should be entitled to payment. He thought that owners should follow the "gift" of the forefathers when the Airport land was initially gifted to the Government for airport use and any talk of compensation payments should be disregarded.

7.5. MP Puna clarified that compensation would be paid for coconut trees and houses and buildings that would be affected. In addition, airport landing fees would be payable.

7.6. The DPM stated that the surveyor would return in two to three weeks' time.

7.7. Jean Marie Williams asked if two seats could be kept available on future flights for sick passengers that needed to be brought to Rarotonga. He stated that, apparently when the land was initially gifted for airport purposes, a promise was made by the Government of the day that there would always be a seat available on flights bound for Rarotonga for sick Manihikians trying to get to Rarotonga, but that over the years that "promise" had been forgotten. He asked if it could be considered as part of the Project. No firm commitment or comment was made to this by MP Puna, the DPM, the ICI team or by Tina.



Uninvestigated Native Land
20.2090ha

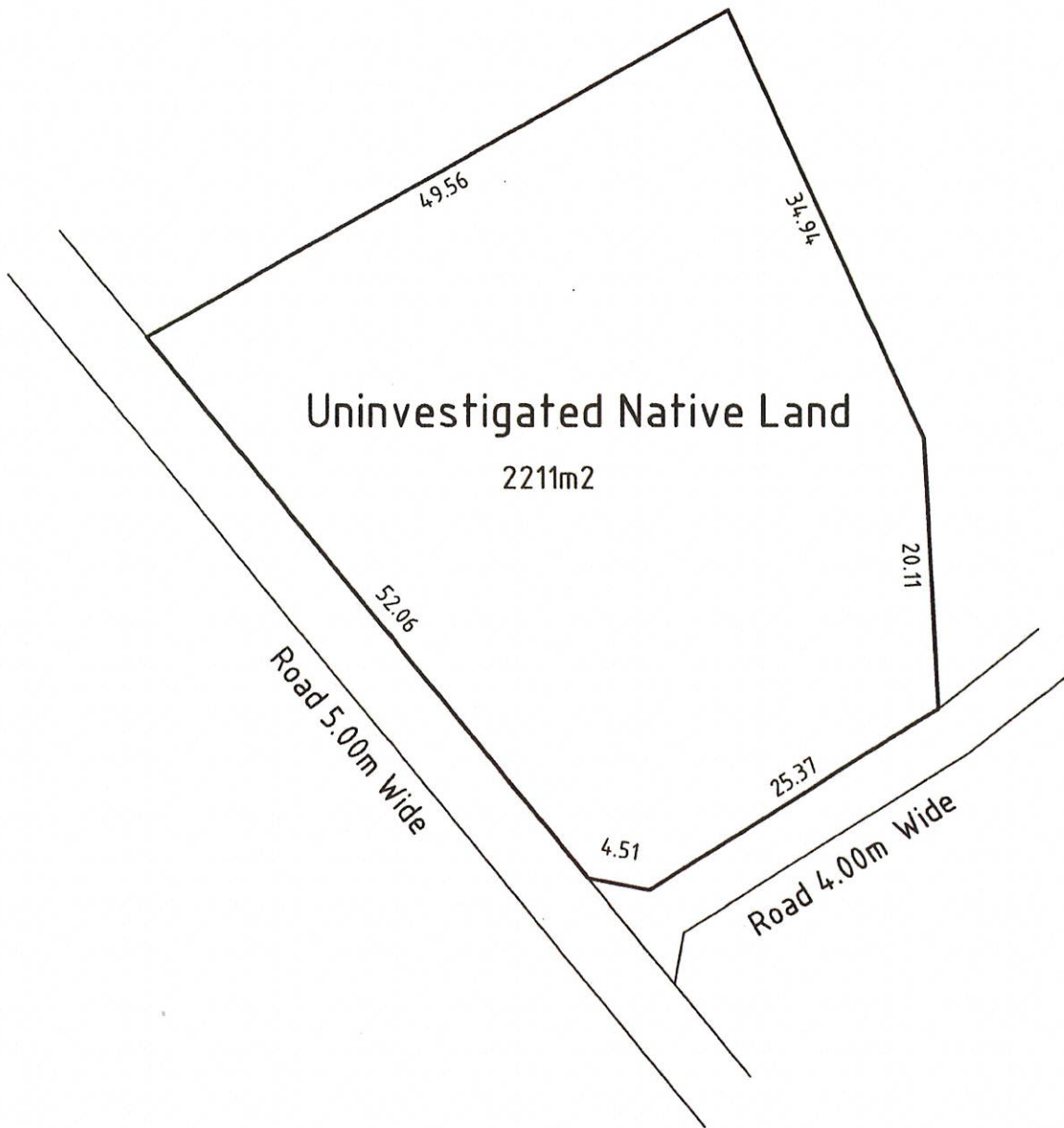
Uninvestigated Native Land
Tukao District
Manihiki Island
Scale 1:9000

This is the document "B" referred to in
the annexed Affidavit of John-Mary Nimehi Nimehi
Sworn at Aravaia, Rarotonga
This 25th day of August 2022
before me. B. M. Hill
Solicitor of the High Court of New Zealand
and the High Court of the Cook Islands.

Certified Correct and conforms to

D3960 A. Hosking
for Chief Surveyor 10.2.22

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BY



Uninvestigated Native Land
Tukao District
Manihiki Island
Scale 1:500

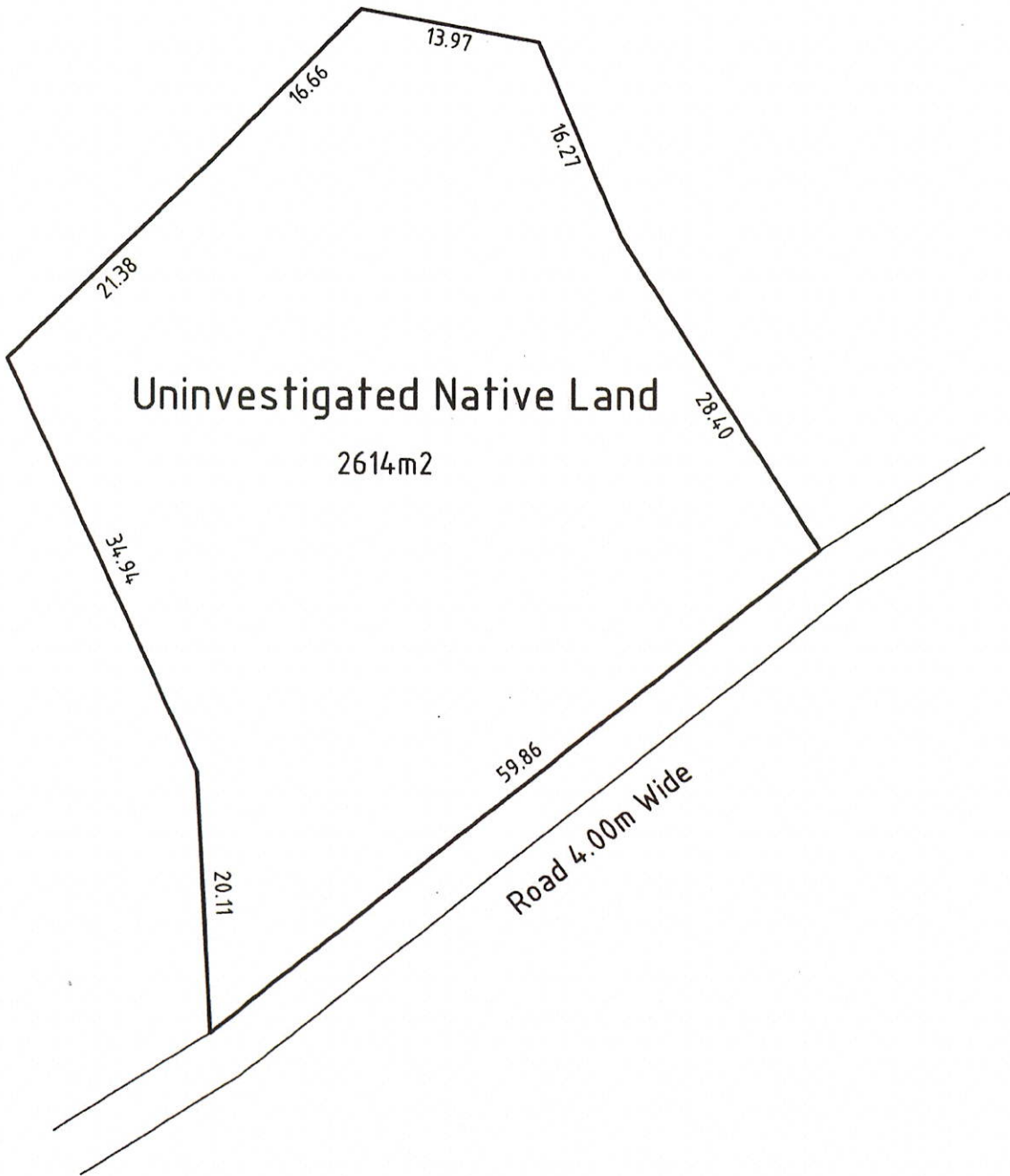
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for Chief Surveyor 10.2.22

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Uninvestigated Native Land
Tukao District
Manihiki Island
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for Chief Surveyor 10.2.22

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DEPARTMENT OF SURVEY

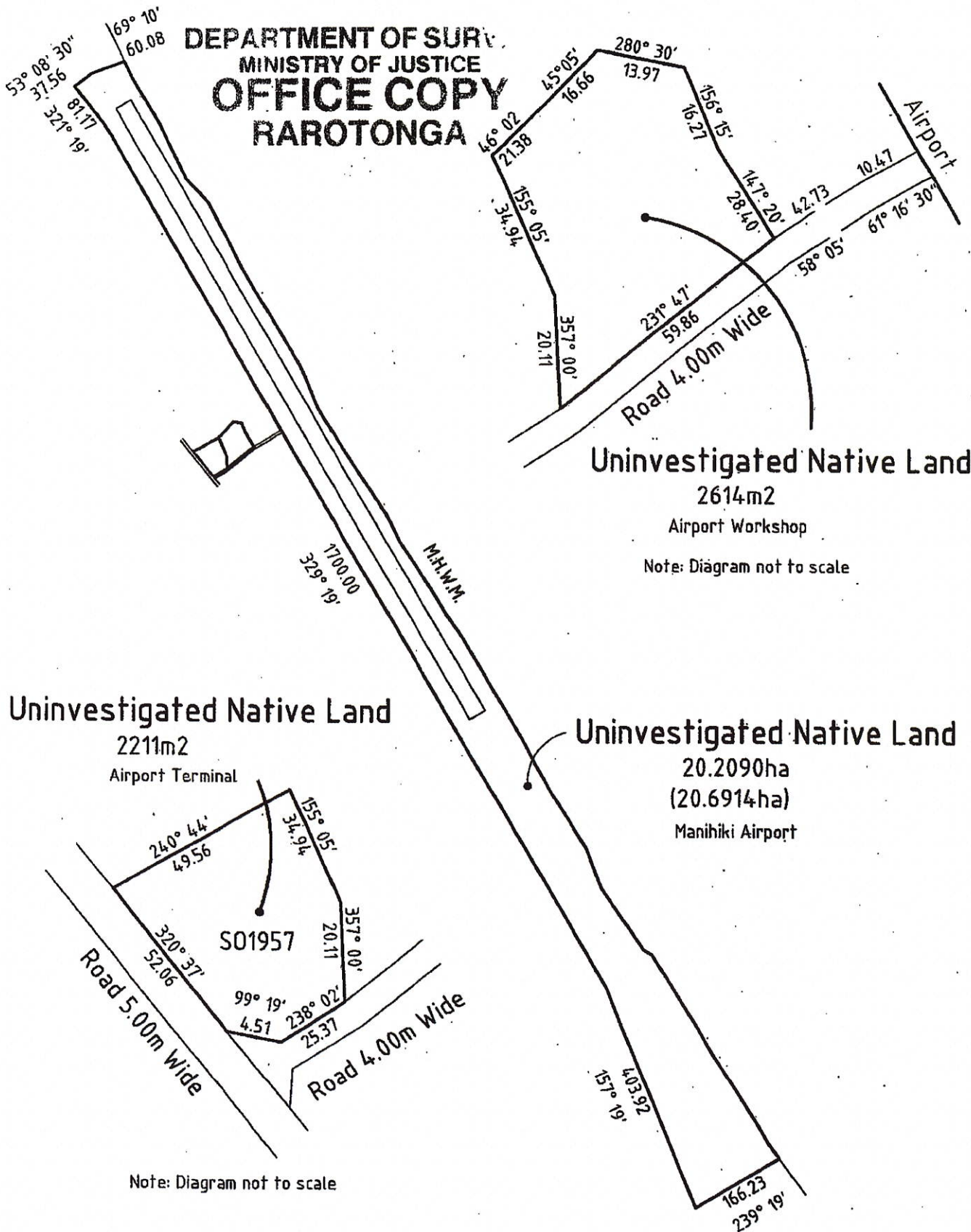
Land... Uninvestigated Native Land...

DIAGRAM No: 3960

Tapere..... District Tukao

Island: Manihiki

DEPARTMENT OF SURVEY
MINISTRY OF JUSTICE
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RAROTONGA



Uninvestigated Native Land
2614m2
Airport Workshop
Note: Diagram not to scale

Uninvestigated Native Land
2211m2
Airport Terminal

Uninvestigated Native Land
20.2090ha
(20.6914ha)
Manihiki Airport

Note: Diagram not to scale

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 Checked and Recorded: [Signature] Draughtsman Date 10.2.22
 Approved as to Survey: [Signature] Chief Surveyor Date 10.02.2022

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