

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

OA

/2022

IN THE MATTER OF the Infrastructure Act 2019

AND

IN THE MATTER OF certain lands that comprise and adjoin the
Manihiki Airport

AND

IN THE MATTER OF the need for an order of the Court to allow
the construction of new infrastructure on
those lands

AN APPLICATION BY **NIMETI NIMETI**, as Executive Officer of
the Manihiki Island Government acting as
Infrastructure Manager

Applicant

**AFFIDAVIT OF JOHN-MARY NIMETI
NIMETI IN SUPPORT OF APPLICATION**

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AN APPLICATION BY

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NIMETI, as Executive
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AFFIDAVIT OF JOHN-MARY NIMETI NIMETI IN SUPPORT OF APPLICATION

JOHN-MARY NIMETI NIMETI, commonly known as Nimeti Nimeti, **MAKE OATH** and say as follows that:

1. I am the Executive Officer of the Island Government of Manihiki and I make this affidavit in support of the application for Orders under the Infrastructure Act 2019 ("the Act") and more specifically, for directions as to service and, more generally, as to the merits of this application.
2. I should begin by confirming my role under the Act in a case, such as the present, where infrastructure works take place in the Pa Enuu.
3. Specifically, while the Island Government of Manihiki is the "infrastructure manager" for the island under section 24 of the Act, section 2 makes it clear that the Island Government acts through myself for these purposes.
4. I confirm that in terms of section 26 of the Act the Island Government has requested assistance from Infrastructure Cook Islands ("ICI"); that section provides:



(1) *The Secretary must, on request by an Island Government, provide that Government with*

(a) *planning, design, and technical support in relation to—*

(i) *any existing or proposed reticulated service; and*

(ii) *the construction, installation, maintenance, or alteration of infrastructure:*

(b) *asset management and infrastructure planning support in Pa Enea.*

5. Further, in a case such as the present where the investment of public moneys is considerable, and the logistical and other challenges could reasonably be expected to be beyond the capabilities of an island Government, the Act sets out the roles to be played by my Island Government and Infrastructure Cook Islands respectively, in these terms:

25 Pa Enea capital works

(1) *If Parliament appropriates money to be spent on capital works in the Pa Enea, then, as a condition of the release of that money for those purposes, the relevant Island Government must*

(a) *enter into a service contract with another infrastructure manager under section 63(1)(b) of the Island Government Act 2012-2013 under which that infrastructure manager has overall project control and management (those services to be provided without cost to the Island Government); or*

(2)[sic] *enter into a project management contract with a project manager with international experience and qualifications reasonably acceptable to the Financial Secretary, acting on the advice of the Secretary and any third party donor or stakeholder in the project (with the Island Government assuming responsibility for the payment for those services). The terms of any contract referred to in subsection (1) and the manner in which that contract is performed by the Island Government must enable the prudent management of the fiscal risks facing the Crown in the design, construction, installation, and future maintenance of those capital works.*

6. I am a Cook Islander, born in Auckland, New Zealand, of Manihiki/Rakahanga/Pukapukan heritage. I have lived and worked in the Cook Islands now for over 20 years, returning to live in 1996. Initially I worked for the Meteorological Service in Rarotonga, before deciding to return to Manihiki to establish a family pearl farm. When that did not work out, due to family issues, I instead worked for Cook Islands Pearls (Yves Chen Pan).
7. I joined Government back in 2012, working for the National Environment Service as the Environment Officer for Manihiki. I spent eight years in that position and being

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active in NGO's in Manihiki, I had an increasingly broad involvement in Manihiki community life, undertaking financial administration, drafting funding proposals etc.

8. It was because of my experience of this sort, and helping out the previous executive officer that I was invited to apply for the job of Executive Officer, taking up that position in 2020.
9. Both as a Manihiki resident and in my role as Executive Officer, I have had extensive exposure to the ongoing promises and saga of the Manihiki Airport. For many years I have been watching from the outside; I am one of the customary owners of the affected land. More recently I have been actively involved from within the Island Government as the Crown makes efforts to deliver on its promise to improve air services to the Northern Group and, in particular, to substantially upgrade the Manihiki airport.
10. It is probably unnecessary for me to outline the history of this matter, for both the recitals to the draft Enduring Agreement and its Schedule set out facts and circumstances with which I am familiar (and I confirm those summaries to be materially correct to the best of my knowledge and belief). Annexed hereto and marked with the letter "A" is copy of the draft Enduring Agreement, which was presented by Crown to the on-island customary landowners during an information session on 3 May 2022.
11. I can recall at least during this meeting on 3 May 2022 with Customary Landowners in Manihiki, it seemed unanimous that all customary landowners wanted Crown to get on with the Infrastructure works as soon as possible. This was reflected by the fact that the customary landowners had impressed on the Crown delegation that they wished to sign the Enduring Agreement then and there, even despite the fact that Mrs Browne was not present or available to advise them all and that the Enduring Agreement tabled had a draft watermark.
12. Annexed hereto and marked with the letter "B" is copy of the signed minutes from this meeting on 3 May 2022 which has been signed off (as I understand with the support of all on-island landowners) by the Chairman (Mr Trainee Sampson) of the long established Manihiki Airport Committee. The Committee since about 2015, has managed and coordinated on behalf of the customary landowners (49 lots that comprises the Airport lands) dealings with Crown (and its agents) and Mrs Browne. Importantly it manages and distributes landing fees collected.
13. I think it is more than fair for me to say that this is a much-needed project, and that it is long overdue. There is as set out the annexure A (draft Enduring Agreement) since a charter in late February 2021 a real appetite on the part of the Crown, those on the island, landowners (of whom I am one), and perhaps most importantly the New Zealand Government as funding partner, to make this a reality. Annexed hereto and marked with the letter "C" is a copy of the summary outcomes following a Crown led charter to Manihiki from 18-20 February 2021, which was circulated by the then on-island landowners lawyer, Mrs Tina Browne. Mrs Browne as I understand is no longer acting since shortly of the last Crown led charter to Manihiki on 3-4 May 2022.
14. We believe this is vital to the continued sustainability of the Manihiki island economy and also to hopefully help draw our people back; for now it is cheaper for some of them to travel from their homes to Europe and back than it is for them to travel, return, to Manihiki.



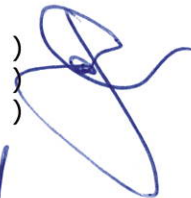
15. I understand the economies resulting from an airport into which Air Rarotonga can operate its Saab aircraft will lead to immediate and substantial reductions in airfares and greatly improve air services for Manihiki and consequently Rakahanga.
16. I am aware, from my time in Government there is a feeling on the part of landowners that land should not be taken by warrant by the Crown unless absolutely necessary.
17. Until recent months, it had been thought that the impracticality of having the Land Division of the High Court sit in Manihiki to determine ownership of these airport lands, meant the taking of the land by warrant was inevitable.
18. However, I understand that since the passing of the Act, landowners on Rarotonga have been enthusiastic about the concept of enduring agreements as substitutes for the more extreme step of a taking of land by warrant.
19. Once it became clear, that we could, in effect, negotiate an Enduring Agreement with customary owners and obtain the necessary security around use and enjoyment of the completed facility by seeking a Court order under the Act, we wasted little time in embracing that approach. With reference to annexures "B" and "C", it appears at least that the on-island customary landowners have also embraced this approach so that they would retain their underlying ownership of their land all the while providing security for Crown to have access to use and occupy the land to complete the necessary infrastructure works (Airport sealing and upgrade) on the required lands, before then operating and managing the Airport. Annexed hereto and marked with the letter "D" is a copy of the certified survey plans for the required airport lands.
20. Just as Crown does with the Rarotonga (international) Airport, it is proposed that the Airport Authority Cook Islands ("AACI") will manage and operate the Manihiki Airport. A project steering group of Crown Agents has been established, of which I am one, with the Manihiki Island Government, and with ICI, AACI, Office of the Prime Minister (Pa Enea Division) and Cook Islands Investment Corporation.
21. This is to better ensure the long term success of this project and the commitment of Crown to serving and doing right by the customary landowners and wider community in Manihiki and the neighbouring islands in the Northern Cook Islands.
22. Despite the informal signing of the Enduring Agreement (with draft watermark) by on islands customary landowners in May 2022, Crown accepts (and as a landowner myself I understand) that this is anything other than a show of enthusiasm and support by those owners. As Applicant, I understand that we must now embark on giving this agreement legal effect, utilising the mechanisms that are set out in the Act.
23. As the Court will be aware, there is a large Cook Islands diaspora, principally in New Zealand and Australia. As Applicant I and the ICI team recognise, in respect of these lands, held by way of customary ownership, that there are individuals off island and out of the country who might well regard themselves as owners in these lands.
24. We recognise, too, that those individuals, necessarily, should have an opportunity to participate in these proceedings and make their views known should they wish.
25. After discussing the matter with and the ICI team, we believe that the following notifications would be appropriate in all the circumstances:


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- a. that copies of the substantive application, this affidavit, and the draft Enduring Agreement (specifically, a copy of that informally executed) be held at Island Administration Office (Corporate Services) office in the village of Tauhunu and at Island Administration Office (Corporate Services) office in the village of Tukao, available for public viewing during normal office hours in each case.
- b. That there be public notice in the Cook Islands News, Cook Islands Herald, and on Cook Islands Television (on three separate occasions at least five days apart) notifying customary owners and others having an interest in the lands, an opportunity to view the materials either in hard copy at the Avarua Courthouse during normal working hours or by accessing PDF copies on the website of Infrastructure Cook Islands at <http://ici.gov.ck>
- c. That the notice also be passed to the moderators of the following Facebook and other social media sites with a request that it be posted in order to bring it to the attention of those who are, or may believe themselves to be customary owners of the land or otherwise affected by the making of an order:
 - i. Facebook- Manihiki Whanau; and
 - ii. Facebook- Manihiki Henua Queensland Inc'; and
 - iii. Facebook/Messenger- Principal G Nehemia (President of Manihiki Association in Auckland, New Zealand); and
 - iv. Facebook/Messenger- Terry Tuhe (President of the Manihiki Community in Sydney, New South Wales, Australia).

SWORN by the said **JOHN-MARY NIMETI NIMETI** at Rarotonga this ^{25th} day of August 2022 before me:

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Ben Marshall LLB
BARRISTER & SOLICITOR
 Avarua
 Rarotonga
 Cook Islands

