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

HIS MAJESTY THE KING ACTING BY AND THROUGH THE COOK ISLANDS INVESTMENT CORPORATION AND INFRASTRUCTURE COOK ISLANDS

THIS ENDURING AGREEMENT is dated the 3 day of March 2023

BETWEEN

THE CUSTOMARY LANDOWNERS OF THE MANIHIKI AIRPORT LANDS, who act in each case by their representatives (those customary landowners, together with their descendants being referred to as "the Customary Owners")

AND **HIS MAJESTY THE KING** acting by and through the **COOK ISLANDS INVESTMENT CORPORATION ("CIIC")** being a statutory corporation of the Government and manager of Government assets that are owned by **COOK ISLANDS GOVERNMENT PROPERTY CORPORATION ("CIGPC")** and **INFRASTRUCTURE COOK ISLANDS ("ICI")**

TOGETHER the parties to this Enduring Agreement ("Agreement") are referred to as the "Parties" and each a "Party" while His Majesty's Executive Government established by Part II of the Constitution is referred to below as "the Crown".

BACKGROUND

A. In or around the mid 1980's, the customary owners of the lands on which the original Manihiki Airport was to be constructed, invited Yves Chen Pan and then Air Rarotonga and the Manihiki Island Council to enter, occupy and use parts of those lands to build an airstrip that would allow air travel to and from Manihiki, for the benefit of the people of Manihiki and Rakahanga, while retaining it as a private airstrip owned by the customary landowners who were entitled to the landing fees paid by the planes using the airstrip.

B. In or around the early 2000's, with the idea of allowing larger aircraft (making possible faster, more comfortable, accessible and cheaper flights), those customary owners (and those of further lands) agreed in principle that the original airstrip could be upgraded, sealed by the Crown, and leased to the Crown. For various reasons that has not happened over the past 20 or so years, and so the people of 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" comprising an estimated 184,929m2 – in other words, a list of all the lots/sections (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. survey diagram that shows the part of each lot/section that is needed for the Manihiki Airport.

E. Completion of the Upgrade Works will allow Air Rarotonga to operate its Saab SF340 aircraft, and, in due course, 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), along with potential alternative and cheaper air trade routes.

G. The Crown has negotiated, for some 24 months, with the Customary Owners, with a view to formalising 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 the 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) – are entitled to an alternative compensation sum that the Court determines, even if there was a formal agreement between Crown and only some of the Customary Owners, in which an agreed goodwill payment and compensation was agreed as full and final compensation.

H. As to the amount of any alternative compensation sum it has been valued by the Crown's valuer D. B. Eggelton of Frame Group Cook Islands Limited in its valuation report of 18 February 2023 to be $1,992,800 for 184,929m2 and by the Crown's valuer Samuel Brown of Miro Consultants Limited in its valuation

report of 14 January 2022 to be $27,730.00 per quarter acre (1,011.714m2 say 1,000m2) or $5,128,081.17 for 184,929m2.

I. 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 the on and 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 and war in the Ukraine)), would make the project cost-prohibitive. As such, when considering the parties desired outcomes an Enduring Agreement is now the preferred approach (parties recognising that in the first instance, its terms will form part of orders under sections 44 and 47 of the Infrastructure Act 2019 ("Act") made in the proceedings (OA 1028/2022) that the Crown has brought to give full effect to this Agreement).

J. 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 that has now been in place for almost 40 years.

K. Those Customary Owners under Manihiki custom, and their forbears have allowed Yves Chen Pan, Air Rarotonga, the Manihiki Island Council, and others to use their land as an airstrip, recognising its value to the people of Manihiki and Rakahanga.

L. 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, for now (this Agreement anticipating that, in due course, the Manihiki Airport Lands will be investigated and become native freehold lands) and enjoy only the more limited rights to compensation and other benefits that are set out in this Agreement.

M. 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.

N. The Customary Owners have agreed to this on the understanding that the Manihiki Airport Lands will be used for (and only for) the specific purpose of

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constructing and operating an airport and for its associated ancillary activities as detailed in Schedule 1 and subject to the limitations detailed in this Agreement.

O. The 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 Enua 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.

P. The parties now record the terms of the agreement reached by them; they also, for historical record, set out in **Schedule 3**, the course of the negotiations that have led to this Agreement.

THE PARTIES AGREE:

1) The Manihiki Airport land

a) The Manihiki Airport Land is the land shown in more of less as shown on the Certified Scheme Plan number A3 – 1/2023 to 3/2023 and the four aerial survey maps dated 5 February 2023 and produced by CIIC attached as Schedule 2 with an estimated size of 184,929m2 (subject to variation as detailed in clause 1 (b) ("the Manihiki Airport land"). The Crown must, at its cost, arrange for a certified survey plan of the Manihiki Airport Land to be prepared by a registered surveyor, after an onsite survey in Manihiki as detailed below, on the following bases:

i) The seaward boundary shall follow the coastline and not extend into the sea.

ii) Otherwise, the boundaries will follow the solid red lines on the aerial survey maps in Schedule 2.

iii) The boundaries of some of the Lots within the Manihiki Airport Land have been plotted as detailed on the certified survey plan dated 29 January 2008.

iv) The remainder of the traditional boundaries of the Lots shown on Certified Scheme Plan number A3 – 1/2023 to 3/2023 as Lots 19 and 19A and Lot 20 on the lagoon side of the Manihiki Airport road, which have not been plotted on the certified survey plan dated 29 January 2008, will be surveyed and pegged after consultation by the surveyor with the landowners to establish where the traditional boundaries are.

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v) The red boundary lines not plotted on the certified survey plan dated 29 January 2008 will be surveyed and pegged.

vi) The surveyor will detail on the plan the areas of each of the Lots which are included in the Manihiki Airport Land.

b) All measurements and areas are subject to any variation which may be found necessary (for surveying reasons only) upon checking by the Crown's surveyor, and by the Chief Surveyor of the Land Administration division of the Ministry of Justice. The Final Survey Plan will be lodged in the High Court after it has been signed and sealed by the Chief Surveyor.

c) Save as detailed in clause 1 (b) the Manihiki Airport Lands boundaries will not be amended by the Crown again without the written consent of the Customary Owners.

2) PENDING THE MAKING OF FREEHOLD ORDERS, AGREEMENT IS ONE OF CUSTOMARY EFFECT AS MODIFIED BY THE ACT

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) The Orders referred to in Recital I give the necessary legal effect, binding on all Customary Owners to the terms of this Agreement:

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, 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".

3) **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.

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, the Crown at its own cost will manage and operate the Manihiki Airport as a public airport just as it does 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, the airport terminal and other plant and equipment that will belong, at law, to the 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 as detailed In Schedule 1 and subject to the restrictions detailed in clause 3 c) iii); and

iii) Changes of use from those expressly authorised by subclauses (i) and (ii) are only possible with the Customary Owners' written agreement, and, if appropriate, compensation. Without limiting this restriction, the parties agree that it applies to

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and includes any commercial activity apart from those expressly authorised, including but not limited to shops, solar farms, housing and tourist accommodation.

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, the Crown will continue to enjoy 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 the Crown in enforcing its 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.

4) MONETARY PAYMENTS

a) In return for this customary grant the Crown will pay the Customary Owners:

i) The sum of **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)** as a form of goodwill and commitment to serving the greater public good ("the goodwill payment") to be paid to the Ministry of Justice within 15 working days of the making of the Court order in the proceedings referred to in Recital I.

ii) The parties note and acknowledge:

(1) the Customary Owners have, historically, charged and received landing fees from all commercial operators (but not for maritime reconnaissance and surveillance flights or for dedicated mercy or search and rescue flights) and that will continue to be the case until the date of completion and commissioning of the new Manihiki Airport;

(2) the Crown will most likely discharge its obligations with regard to the operation, management and maintenance of the upgraded Manihiki Airport through AACI, so that landing charges will be levied by and paid to that entity;

(3) landing fees for all commercial operators are currently charged at $100.00 per plane landing. They will continue to be paid at that rate by Air Rarotonga to the Customary Owners until the date of completion and commissioning of the new Manihiki Airport runway;

(4) landing fees charged at the Aitutaki airport by, and retained by, AACI are, in respect of Saab aircraft, currently charged at $213.00.

iii) In light of the significant compromise of their rights in respect of the goodwill payment and noting that AACI will manage the upgraded Manihiki Airport and charge landing fees in the usual way, the Customary Owners wish to receive an annual payment direct from the Crown that equates, in broad terms, to landing fees that would otherwise be receivable by them.

iv) It has been agreed by the parties, that for the sake of simplicity the annual sum will, on and from the date of completion and commissioning of the new Manihiki Airport runway be charged at an annual rate of $15,000.00 (plus VAT if any), that figure to be increased annually on 1 January commencing on 1 January 2024 by the amount of the annual increase (if any) in the Cook Islands Consumer Price Index for the proceeding 12-month period ending on 31 December in each year.

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v) The Customary Owners having agreed to a significant compromise of their rights to allow the general public of Manihiki and Rakahanga to take the benefit of lowered airfares, landing fees will be charged at no more than the higher of the following:

(1) The amount needed to recoup to the Crown sums paid to the Customary Owners under this clause:

(2) Landing fees charged by AACI for the Aitutaki airport.

vi) Sums payable under this clause will be made annually in advance (together with the necessary commission) to the Ministry of Justice.

vii) 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.

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.

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) By way of clarification, the revised and updated report by Frame Group dated 18 February 2023 assessed the total value of the Manihiki Airport Land at $1,992,800. This would normally be the amount that the Crown would compensate the Customary Owners for the taking or acquisition of the Manihiki Airport Land. The Customary Owners however recognise that the upgrade of the Manihiki Airport will benefit the public and especially the people of Manihiki. For that reason the Customary Owners have entered into this Agreement and are prepared to make a reduction because of that public benefit and accept compensation referred to above, in addition to payment of the Landing Fees detailed in clauses 4 a) iii and iv,

e) In these circumstances, they believe the goodwill payment and the annual payment in lieu of landing fees are 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:

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(1) the safe and continuing operation and management of the Airport and any costs associated with the same including repairs and maintenance; and

(2) payment of all reasonable costs of counsel Tina Browne and Ross Holmes incurred in respect of their having acted in Originating Application 1028/2022 from 1 December 2022 onwards to the conclusion of those proceedings, payment to be made within 15 working days of receipt of their invoices unless there is any dispute as to the quantum of those costs, which dispute will be referred to the Chief Justice for determination.

(3) Organising a Court sitting for the Orders on the Investigation of Title proceedings for all of the Manihiki Airport Lands, with reasonable legal costs for that work to be paid by the Crown and to be capped at $50,000 plus VAT, it being expressly agreed:

(a) that sitting will be for no less than five sitting days; and

(b) the business of the Court will have, as its priority, the applications for the making of freehold orders for the Manihiki Airport land; and

(c) Subject to the cap referred to above, the reasonable costs and airfares of the landowners' lawyers, Tina Browne and Ross Holmes will be paid for by the Crown. Those costs will be as agreed, or failing agreement will be as determined by the Court, but under no circumstances will the Crown have liability for legal costs occasioned by reason of disputes between or among landowners themselves.

f) The Customary Owners 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.

5) PROHIBITION ON FUTURE TRANSFER

The Crown agrees that:

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

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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.

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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.

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7) INSURANCE

During the term (refer to Termination clause below), as is usual obligations for Government assets and users 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) 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

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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) or the like 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).

SCHEDULE 1

BROAD OVERVIEW OF THE AIRPORT WORKS

Phase 1:

- Relocate power and phone services to allow clearance of trees and install new road utilising local materials
- Form emergency airstrip and construct new runway utilising local materials
- Complete total new runway and drainage utilising local materials
- Apply 2 coat chip seal utilising imported materials
- Install fencing and runway safety furniture

Phase 2:

- Form and construct runway apron and taxiway utilising local materials
- Apply 2 coat chip seal utilising imported materials

Phase 3:

- Form and construct seawall protection utilising local materials

SCHEDULE 2

PARTICULARS OF THE MANIHIKI AIRPORT LANDS

184,929m2 more of less as shown on the attached Certified Scheme Plan number A3 1/2023 to 3/2023 and the 4 attached aerial survey maps dated 5 February 2023 produced by CIIC

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SCHEDULE 3

HISTORY LEADING UP TO THIS AGREEMENT

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 Customary Owners 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 Customary Owners and Mrs Browne.

B. On or about April 2021 a further charter was organised by ICI to Manihiki to allow amongst other matters the Customary Owners 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 Customary Owners 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 Customary Owners 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 Customary Owners, whilst acknowledging that this is 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 184,645m2 ("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 18 February 2023 by Frame Group Cook Islands Limited whose assessment is $1,992,800.00 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 (on and off-island). 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 liklihood that Court detrmination 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 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.

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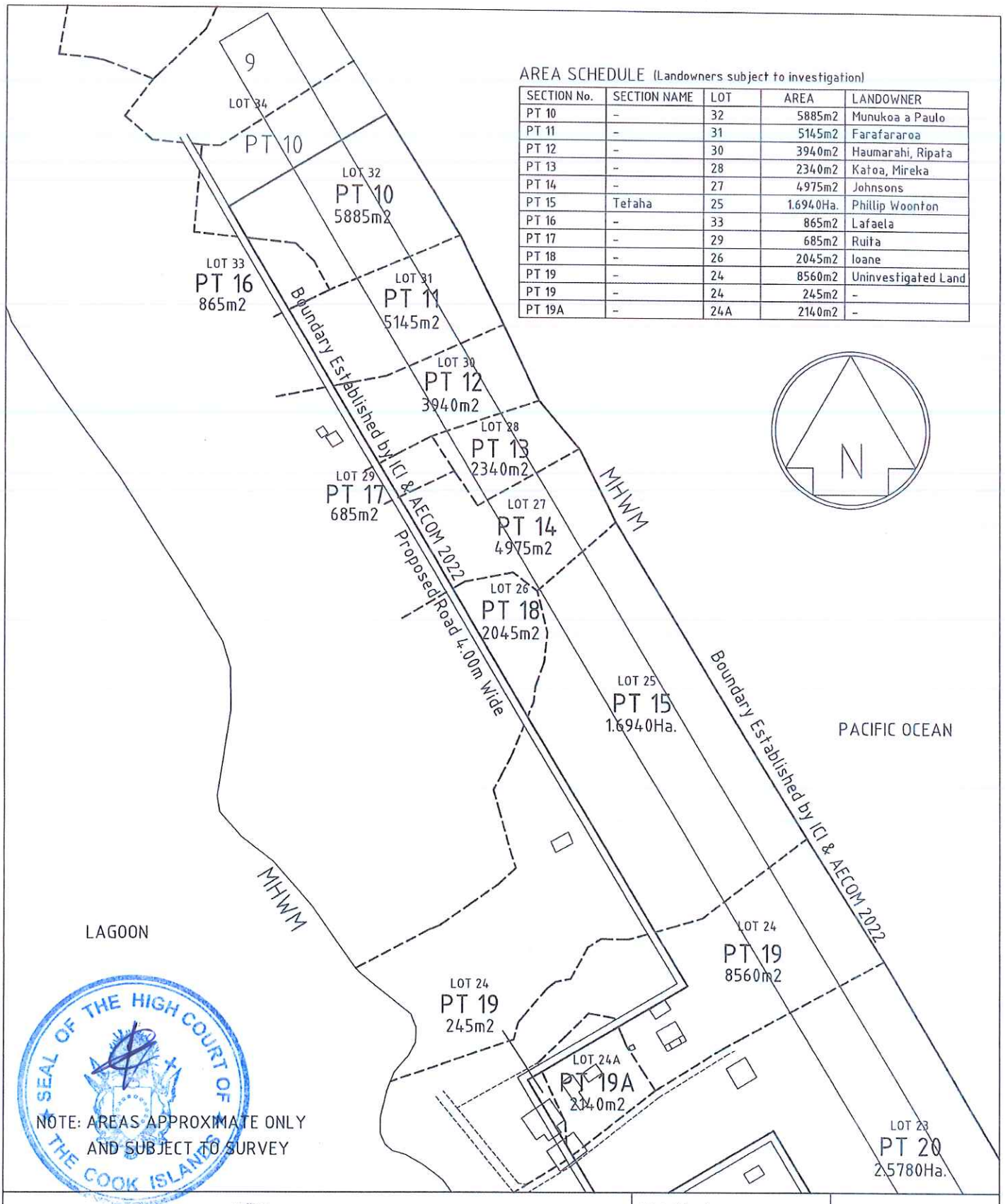


AREA SCHEDULE (Landowners subject to investigation)

SECTION No.	SECTION NAME	LOT	AREA	LANDOWNER
PT 10	-	32	5885m2	Munukoa a Paulo
PT 11	-	31	5145m2	Farafararoa
PT 12	-	30	3940m2	Haumarahi, Ripata
PT 13	-	28	2340m2	Katoa, Mireka
PT 14	-	27	4975m2	Johnsons
PT 15	Tetaha	25	1.6940Ha.	Phillip Woonton
PT 16	-	33	865m2	Lafaela
PT 17	-	29	685m2	Ruita
PT 18	-	26	2045m2	Ioane
PT 19	-	24	8560m2	Uninvestigated Land
PT 19	-	24	245m2	-
PT 19A	-	24A	2140m2	-

SEAL OF THE HIGH COURT OF THE COOK ISLANDS

NOTE: AREAS APPROXIMATE ONLY AND SUBJECT TO SURVEY

Approved: 22/02/2023
CHIEF SURVEYOR

Field Book:.....p.....
Ref Plans: .....
.....
.....
Job Ref: .....

Scale: 1:2000

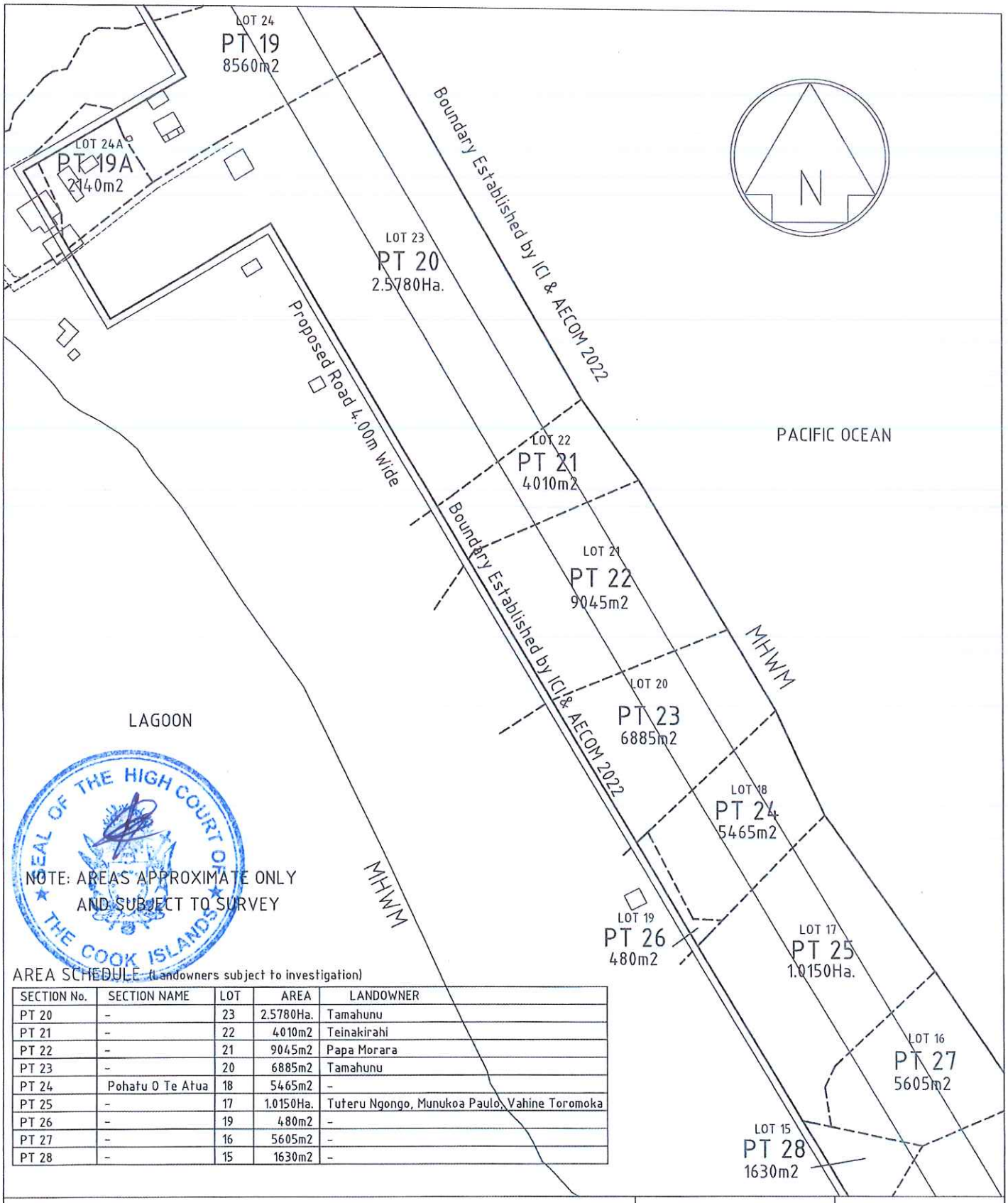
Scheme Plan No.
A3 — 1/2023

Land: SEVERAL
Tapere: .....
District: TUKAO
Island: MANIHIKI

Purpose: PROPOSED CROWN LAND ACQUISITION OF MANIHIKI AIRPORT
Cook Islands Investment Corporation
Applicant: .....

Surveyed: Compiled 00/02/23
Schemed: ..../../..
Drawn: L ANDREW 20/2/2023
Checked: [illegible] 22/2/23

DEPARTMENT OF SURVEY Rarotonga, Cook Islands



NOTE: AREAS APPROXIMATE ONLY AND SUBJECT TO SURVEY

AREA SCHEDULE (Landowners subject to investigation)

SECTION No.	SECTION NAME	LOT	AREA	LANDOWNER
PT 20	-	23	2.5780Ha.	Tamahunu
PT 21	-	22	4010m2	Teinakirahi
PT 22	-	21	9045m2	Papa Morara
PT 23	-	20	6885m2	Tamahunu
PT 24	Pohatu O Te Atua	18	5465m2	-
PT 25	-	17	1.0150Ha.	Tuteru Ngongo, Munukoa Paulo, Vahine Toromoka
PT 26	-	19	480m2	-
PT 27	-	16	5605m2	-
PT 28	-	15	1630m2	-

Approved: 22/02/2023
CHIEF SURVEYOR

Field Book:.....p.....
Ref Plans: .....
.....
.....
Job Ref: .....

Scale: 1:2000

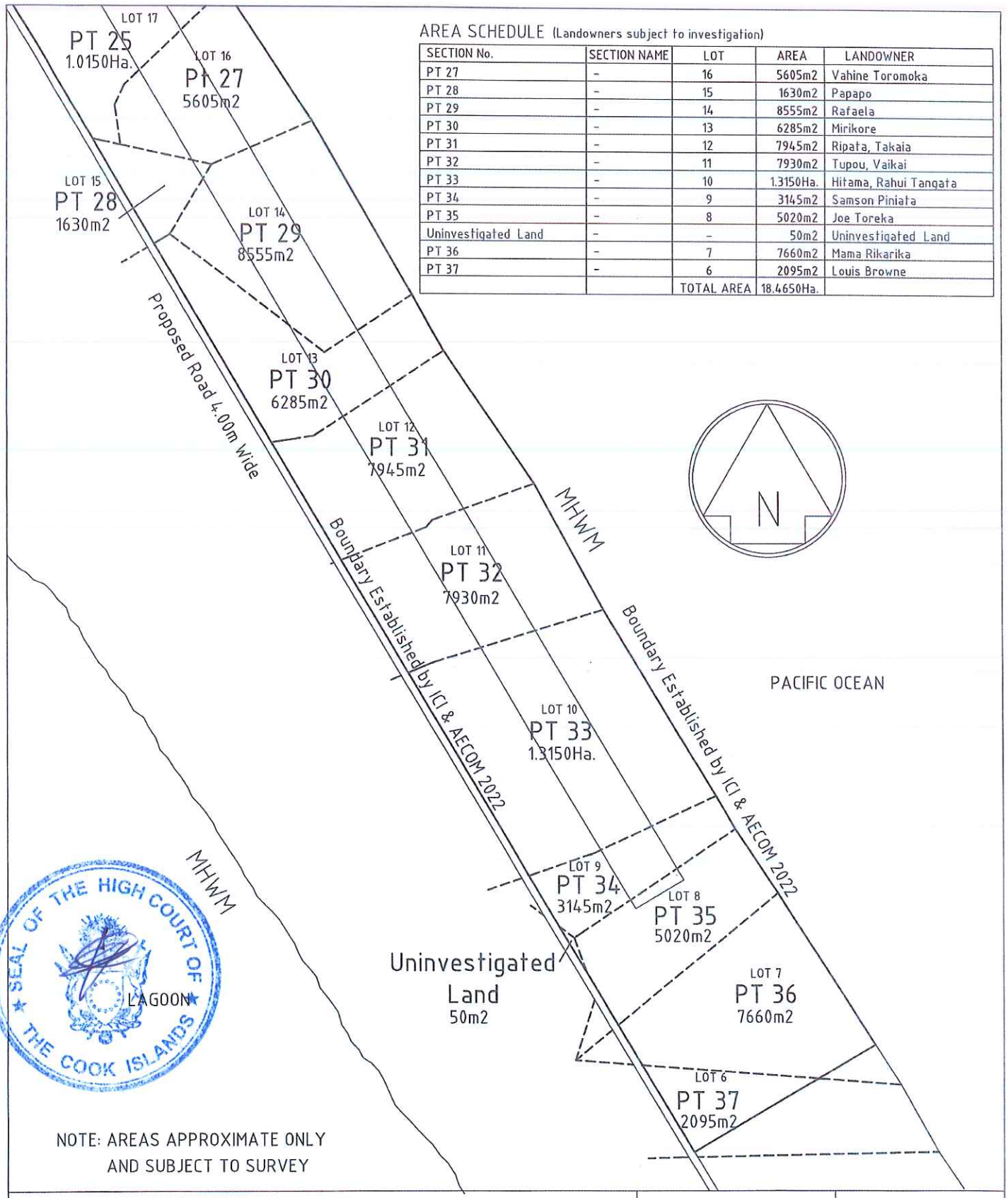
Scheme Plan No.
A3 — 2/2023

Land: SEVERAL
Tapere: .....
District: TUKAO
Island: MANIHIKI

Purpose: PROPOSED CROWN LAND ACQUISITION OF MANIHIKI AIRPORT
Applicant: Cook Islands Investment Corporation

Surveyed: Compiled 00/02/23
Schemed: ..../..../....
Drawn: L ANDREW 20/2/2023
Checked: 22/2/23

DEPARTMENT OF SURVEY Rarotonga, Cook Islands



AREA SCHEDULE (Landowners subject to investigation)

SECTION No.	SECTION NAME	LOT	AREA	LANDOWNER
PT 27	-	16	5605m2	Vahine Toromoka
PT 28	-	15	1630m2	Papapo
PT 29	-	14	8555m2	Rafaela
PT 30	-	13	6285m2	Mirikore
PT 31	-	12	7945m2	Ripata, Takaia
PT 32	-	11	7930m2	Tupou, Vaikai
PT 33	-	10	1.3150Ha.	Hitama, Rahui Tangata
PT 34	-	9	3145m2	Samson Piniata
PT 35	-	8	5020m2	Joe Toreka
Uninvestigated Land	-	-	50m2	Uninvestigated Land
PT 36	-	7	7660m2	Mama Rikarika
PT 37	-	6	2095m2	Louis Browne
		TOTAL AREA	18.4650Ha.	

NOTE: AREAS APPROXIMATE ONLY AND SUBJECT TO SURVEY

Approved: ..... 22/02/2023.
CHIEF SURVEYOR

Field Book:.....p.....
Ref Plans: .....
.....
.....
Job Ref: .....

Scale: 1:2000

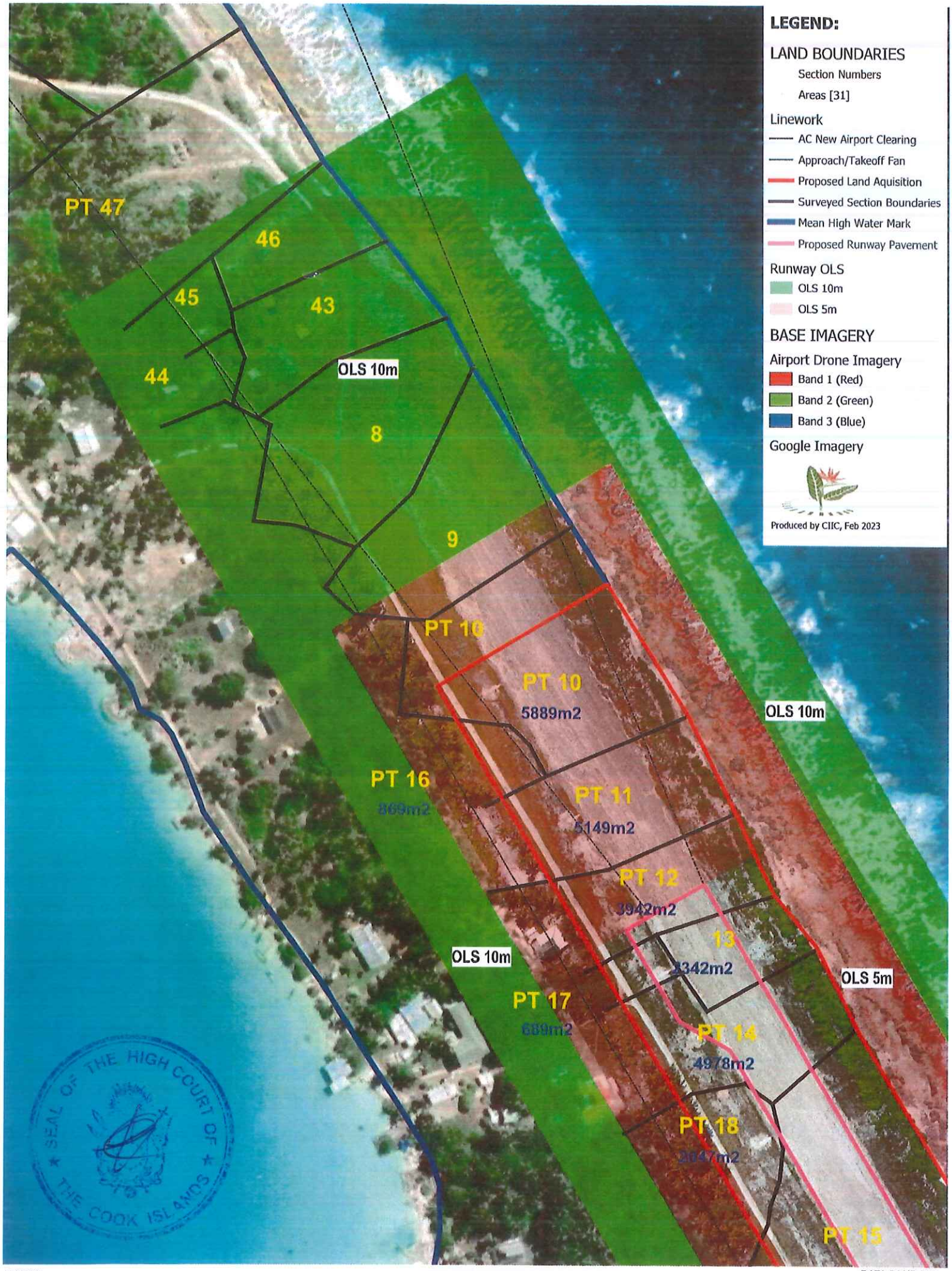
Scheme Plan No.
A3 — 3/2023

Land: SEVERAL
Tapere: .....
District: TUKAO
Island: MANIHIKI

Purpose: PROPOSED CROWN LAND ACQUISITION OF MANIHIKI AIRPORT
Applicant: Cook Islands Investment Corporation

Surveyed: Compiled 00/02/23
Schemed: ..../..../....
Drawn: L ANDREW 20/2/2023
Checked: 22/2/23

DEPARTMENT OF SURVEY Rarotonga, Cook Islands



NOTES:
1. All land areas are approximate only and subject to survey.
2. Proposed Crown Acquisition is indicated by all the land enclosed by the thick-solid red line.
3. The Crown aquisition includes a 4m Wide Roadway running along the lagoon-side of the runway.

MANIHIKI AIRPORT UPGRADE PROJECT
Crown Land Aquisition Proposal

0 50 100 m

DATA SOURCES:
Survey Land Boundaries, MoJ
Proposed Runway Upgrade, ICI, AECOM
Proposed Land Aquisition Boundary, CIIC
Drone Imagery, ICI

NOTES:
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MANIHIKI AIRPORT UPGRADE PROJECT
Crown Land Aquisition
0 50 100 m

DATA SOURCES:
Survey Land Boundaries, MoJ
Proposed Runway Upgrade, ICI, AECOM
Proposed Land Aquisition Boundary, CIIC
Drone Imagery, ICI

NOTES:
1. All land areas are approximate only and subject to survey.
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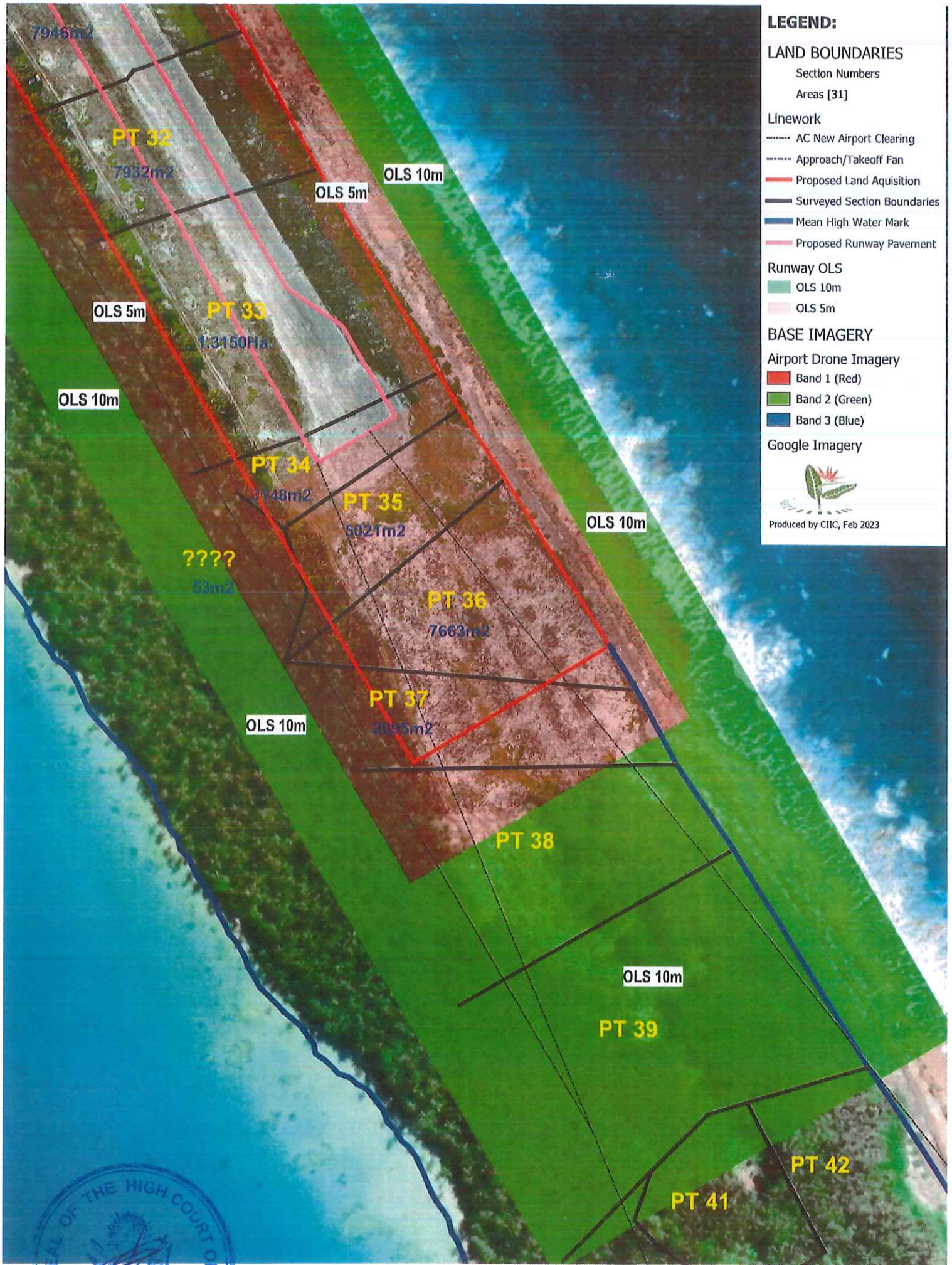
MANIHIKI AIRPORT UPGRADE PROJECT
Crown Land Aquisition
0 50 100 m

DATA SOURCES:
Survey Land Boundaries, MoJ
Proposed Runway Upgrade, ICI, AECOM
Proposed Land Aquisition Boundary, CIIC
Drone Imagery, ICI



NOTES:
1. All land areas are approximate only and subject to survey.
2. Proposed Crown Acquisition is indicated by all the land enclosed by the thick-solid red line.
3. The Crown aquisition includes a 4m Wide Readway running along the lagoon-side of the runway.

MANIHIKI AIRPORT UPGRADE PROJECT
Crown Land Aquisition
0 50 100 m

DATA SOURCES:
Survey Land Boundaries, MoJ
Proposed Runway Upgrade, ICI, AECOM
Proposed Land Aquisition Boundary, CIIC
Drone Imagery, ICI

MANIHIKI AIRPORT UPGRADE
PROPOSED LAND ACQUISITION
05/02/2023

ITEM	SECTION NUMBER	SECTION NAME	LOT	AIRPORT	LANDOWNER(s)
1	**10**	-	32	5,889m2	Munukoa a Paulo
2	**11**	-	31	5,149m2	Farafararoa
3	**12**	-	30	3,942m2	Haumarahi, Ripata
4	**13**	-	28	2,342m2	Katoa, Mireka
5	**14**	-	27	4,978m2	Johnsons
6	**15**	Tetaha	25	16,943m2	Philip Woonton
7	**16**	-	33	869m2	Lafaela
8	**17**	-	29	689m2	Ruita
9	**18**	-	26	2,047m2	Ioane
10	**19**		24	8,678m2	Uninvestigated land
11	**19**		24	246m2	
12	**19A**		24A	2,141m2	
13	**20**	-	23	25,780m2	Tamahunu
14	**21**	-	22	4,011m2	Teinakirahi
15	**22**	-	21	9,047m2	Papa Morara
16	**23**	-	20	6,888m2	Tamahunu
17	**24**	Pohatu O Te Atua	18	5,466m2	-
18	**25**	-	17	10,150m2	Tuteru Ngongo, Munukoa Paulo, Vahine Toromoka
19	**26**	-	19	584m2	-
20	**27**	-	16	5,606m2	Vahine Toromoka
21	**28**	-	15	1,633m2	Papapo
22	**29**	-	14	8,554m2	Rafaela
23	**30**	-	13	6,289m2	Mirikore
24	**31**	-	12	7,946m2	Ripata, Takaia
25	**32**	-	11	7,932m2	Tupou, Vakai
26	**33**	-	10	13,150m2	Hitama, Rahui Tangata
27	**34**	-	9	3,148m2	Samson Piniata
28	**35**	-	8	5,021m2	Joe Toreka
29	**???**		???	53m2	
30	**36**	-	7	7,663m2	Mama Rikarika
31	**37**	-	6	2,095m2	Louis Browne
				184,929m2	