

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

OA

1028/2022

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

ORDERS PURSUANT TO SECTIONS 44 AND 47 OF THE INFRASTRUCTURE ACT
2019

Before His Honour the Chief Justice, Patrick Keane
this day, the 27th day of February 2023

UPON READING the Application filed in these proceedings;

AND NOTING the subsequent compliance with directions issued by the Court as to
notification of the Application and to ensuring appropriate representation of customary
landowners of the affected land;

AND HEARING both Counsel for the Applicant and those acting for customary
landowners, and from such of those owners choosing to appear in person

AND NOTING the position of agreement reached in the joint memorandum of counsel
filed

AND NOTING the appearance of Mr Arnold for the Applicant with authority to bind
Infrastructure Cook Islands and of Mr Herman for Cook Islands Investment Corporation
with authority to bind that Corporation

AND BEING SATISFIED



- a. the construction of the new infrastructure is reasonably necessary and given that the affected lands currently host and adjoin the existing runway, the use of alternative land would involve the Applicant in unreasonable costs or technical difficulties; and
- b. as the affected lands are customary land it is not feasible to identify and communicate with all possible owners of the lands
- c. the Applicant has taken all reasonable steps to obtain the consent of all owners required to be served and has complied with other relevant requirements of this Act;
- d. the conditions of the order sought are fair and reasonable to all parties;
- e. given the public interest in a prompt and accurate determination of the respective rights and interests of customary owners, and their wish to have freehold orders made for their individual lands, provision should be made for a prompt judicial determination of those matters; and
- f. generally, as to the circumstances of the case

NOW ORDERS THAT:

- A. Under the powers of the Court conferred by sections 44(2) and 47 of the Infrastructure Act 2019 ("the Act"), on the terms detailed in the Enduring Agreement attached to this Order, the Applicant may now proceed with the construction of new infrastructure on the island of Manihiki, namely, the proposed, substantial, upgrade and rebuilding of the Manihiki Airport.
- B. That work is to be carried out in accordance with the approvals obtained under the Environment Act 2003;
- C. The Crown must ensure that at all times during the construction period, either the airstrip itself is available, or failing that, one or other of the side clearance zones, are available to enable a Bandierante aircraft (or similar) to land and depart the airport, to carry out, safely and lawfully, any necessary emergency flight.
- D. That Enduring Agreement may, at any time after due incorporation of landowners of all the lands to which this order applies, be executed by that Incorporation and the Crown must, in that circumstance, likewise execute that Enduring Agreement; parties have leave to apply to this Court to resolve any dispute as to changes to that draft Enduring Agreement rendered necessary by any change of law occurring between the date of this order and the date of the execution of the Enduring Agreement.
- E. For so long as that Enduring Agreement remains unexecuted by the incorporation, the rights of the Applicant will be those conferred by the Act and those rights are to be exercised in accordance with the Act and with this Order.
- F. Upon full execution of the Enduring Agreement, its terms will supersede those of this Order, and the relationship between the parties will be governed, except



insofar as inconsistent with the terms of the Act, by that Enduring Agreement. Nothing in this paragraph affects the validity or effect of anything done in reliance upon this Order, nor to affect any accrued rights or liabilities of parties under this Order.

- G. The Crown having undertaken to fund the necessary special session of the Land Division of the High Court, sitting in Manihiki, directly after the airstrip is complete and open for regular air services by Saab aircraft, the Registrar of the High Court is to schedule such a sitting at the earliest practicable opportunity on the basis:
- 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
- H. The Crown will meet the reasonable legal costs of both Mrs Browne and Mr Holmes in connection both with this application and their appearances in Manihiki as detailed in the Enduring Agreement, or failing agreement as determined by the Court.
- I. Leave is reserved for any party presently before the Court to apply for further orders and directions, these proceedings to lie in the Court for the duration of the construction and the holding of the anticipated Land Division session, for that limited purpose.

DATED at Rarotonga this 3 day of March 2023

BY THE COURT

(Deputy) Registrar of the High Court



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

OA

1028 /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

**ORDERS PURSUANT TO SECTIONS 44 AND 47 OF THE
INFRASTRUCTURE ACT 2019**

TIM ARNOLD P.C
Solicitors
Avarua
Rarotonga