

APPENDIX 15

(FAKALAH I 15)

ROYAL LAND COMMISSION

Present : Baron Fielakepa GCQS
Lord Tupou KC KGCQS
Kahungunu Barron-Afeaki SC CRH

Secretary : Gloria Pole'o MRH

In Re : **Freehold land**

Held at : Conference Room, Nuku'alofa

Date : Monday 3rd May 2010

ADVICE

Having considered the Royal Command made by Your Majesty in Audience on the 25th February 2010 to consider giving the status of freehold land to reclaimed land and the Wish of Your Majesty to put this into effect before the new elections for the Legislative Assembly later this year:

Having deliberated thereon:

We, the Commissioners of the Royal Land Commission, respectfully offer the following advice to Your Majesty:

1. It is Your Majesty's Wish that we consider both new reclaimed land and those areas that have been reclaimed previously from swampy or wet land.
2. New reclaimed land would include land reclaimed from the sea along the foreshore and any land reclaimed from internal waters and lagoons. Old reclaimed land would include land that were reclaimed from swamps and wet land prior to this move.
3. Reclaiming in this context would mean the filling in of a wet area, albeit water, sea or swamp, to form a solid land block on which a building can be constructed or for other uses normally made of dry land.

4. New reclaimed land along the waterfront is easy to identify. For example, the land reclaimed beside Vuna Wharf and Queen Salote Wharf and the Naval Base in Nuku'alofa are new reclaimed lands that are not formerly part of the land that forms part of the adjoining estate holder land.
5. With the help of the Government Survey Department we were able to see the oldest map they have of the land mass of Tongatapu made in or about 1910 in order to identify the areas that are subject to be part of that belonging to an estate holder. With the help of satellite images we were able to identify pockets of land that have been added through reclamation from the sea and the lagoon areas. Some of the images also showed wet land within the old boundaries that have been subdivided and allocated by the estate holder. Likewise, swamp lands were also part of the "land" within the boundaries of estate holders. Similar mapping work has not yet been completed but, will be done throughout the remaining islands of Tonga.
6. At a meeting with some of the nobles during the first phase of our Royal Commission work, some of them expressed the view that reclaimed land that is made along the border of their estate should become part of their estate. We have not considered or formed a view on this yet but for the sake of this exercise we may exclude that claim and consider this aspect in more detail in the upcoming phase three on our Inquiries – general public consultations (see point 7 below). Nobles may have stronger grounds with regard to swampy land that have been reclaimed within their estate as shown by the old map and this may need to be reconsidered.
7. The views of the general public on the move to establish freehold land have not been gathered within the time frame given. The next stage of our work (phase three) is to hold public consultations throughout Tonga and overseas to gather the views of Tongans on all land related matters they wish to bring before us. Phase three would include such consultations with the nobles also. At this stage we will be asking for their views on freehold land in Tonga which will be included in our report with possible recommended changes to our land laws to reflect such views.
8. This advice is therefore made without the wide public consultation on freehold land that such a new innovation for Tonga deserves. We are confident however that the advice we give is within the present Laws of Tonga.
9. Your Majesty revealed at the Audience that it was Your Wish that the new freehold land would be owned by the new City Council that is to be set up, initially being the Nuku'alofa

City Council and the Neiafu City Council in order to generate a source of income for them to carry out all the duties that are normally carried out by city councils for the benefit of that city. These City Councils have not yet been established. The Government can therefore be the owner of such land until the relevant City Councils have been established.

10. There are many matters to be taken into account with the establishment of freehold land and titles. For the environment, there is the requirement of full Environment Impact Assessment (EIA) when making reclamation from the sea and other water areas including the impact on the natural resources and fauna that inhabit such areas. The right of access to the sea which is now protected by the foreshore belonging to the Government with restricted buildings to wharf, jetty or store and the beach front areas under the Constitution and the Land Act.
11. It should also be noted that the Crown Law's current view of all inland/lagoon areas (covered in waters or not) are in fact 'land' under the Land Act. Being so, this land will prima facie be held by the Crown and being so, any new reclaimed lands on the edges of the internal lagoon could be declared freehold with the appropriate supporting legislation.
12. Given time constraints, it has not been possible to discuss the above raised issue in depth with Crown Law and that this issue would again be the subject of phase three of the Royal Commissions inquiries. Even if the Crown Law view is accepted, this land will belong to the Crown. Reclaiming of land along the lagoon would require the approval of Government. All land already reclaimed from the lagoon may be converted to freehold at an appropriate cost payable to the Government until the City Council is established. Should the owner refuse to pay for the conversion then his lease from Government will continue at an appropriate rent.
13. Separately, there is no impediment to have all new reclaimed land on coastal areas (foreshore) as freehold land that can eventually be owned by the relevant City Councils. This would of course, again be subject to the legal advisers to Government in drafting such legislation to consider and take into account all the matters we have referred to in this Advice.
14. The sale of such freehold land and the use that they can be put to will also have to be considered. The value of such freehold land will have to be decided and this could be left to a special committee with expertise in land valuation. The guarantee of title to a freehold land will also need to be established and this aspect can come under the recommendations

we have already presented in the first part of our Royal Commission work – the interim report on phase one of our inquiries - the Ministry of Lands and its working procedures.

15. Taking the above into account and with the set up of the Nuku'alofa and Neiafu City Councils, we can see no impediment to the Government introducing legislation now to implement Your Majesty's Wish to have all new reclaimed land designated as freehold land that are owned by the relevant City Councils. Reclaimed land along the foreshore and the lagoon already made and privately leased can be converted to freehold at an appropriate price payable to the Government. Should the owner not agree then he can continue with his lease at an appropriate yearly rent. The legal advisers to Government in drafting such legislation will of course need to consider and take into account all the matters we have referred to in this Advice.

16. This will have the effect of creating limited pockets of freehold land in relation to those that have been and are to be reclaimed from the sea and lagoon area. All areas within the boundary of hereditary estates, albeit swamp or wet land, that have been reclaimed may need further consideration in order to declare them freehold land.

WE, THE ROYAL LAND COMMISSIONERS, THEREFORE ADVISE YOUR MAJESTY:

That Your Majesty's Government be directed to draft and promulgate legislation to be tabled in the current session of the Legislative Assembly giving the status of freehold land to all land that has been or are to be reclaimed from the sea or lagoon area (subject to option for a private owner to convert to freehold at a cost payable to the Government or remain a leasehold relating to land reclaimed prior to the coming into force of the legislation) and the owner of such freehold land shall be the private person in relation to land reclaimed before the legislation is in effect or the Government until the relevant City Councils have been established when ownership shall be transferred to that City Council.


Baron Fielakepa



Lord Tupou



Kahungunu Barron-Afeaki
