Hon Tama Potaka

Minister of Conservation
Minister for Māori Crown Relations
Minister for Māori Development
Minister for Whānau Ora
Associate Minister of Housing

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Duncan Campbell
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Tēnā koe Mr Campbell

Thank you for your further correspondence regarding the Five Mile Bay Scenic and Recreation Reserves and for the careful consideration you have given to the accountability arrangements applying to those reserves.

I have reviewed the matters raised in your letter and the advice provided by the Department of Conservation.

As you note, Parliament established a particular statutory framework for these reserves through the Ngāti Tūwharetoa Claims Settlement Act 2018, while retaining their status as reserves administered under the Reserves Act 1977. The result is that these reserves are not subject to all of the same administrative arrangements that apply to reserves vested under the ordinary provisions of the Reserves Act.

In response to your questions:

1. Do you agree that the circumstances described by DOC disclose a gap in the effective statutory accountability arrangements applying to these reserves?

I acknowledge the concern you raise and accept that the ordinary mechanism available under section 27 of the Reserves Act does not apply in isolation in this case. Parliament established a different accountability framework when it vested the reserves through Treaty settlement legislation and confirmed the administering body through that legislation.

That framework differs from the ordinary Reserves Act model, but it remains the framework enacted by Parliament and within which the Minister and the Department must operate.

2. If not, what existing statutory mechanism provides an effective means of securing compliance where TKNT fails to perform a mandatory obligation under the Reserves Act?

The primary accountability mechanism is that the administering body's decisions and performance of statutory functions remain subject to New Zealand public law.

Where it is alleged that a statutory body has failed to perform a mandatory statutory duty, the courts may be asked to review that conduct through established judicial review processes.

In addition, statutory duties imposed by the Reserves Act remain legally binding upon the administering body notwithstanding the different vesting arrangements established through the settlement legislation.

3. If no equivalent enforcement mechanism presently exists, do you consider it satisfactory that enforcement may ultimately depend upon an individual member of the public initiating and funding proceedings in the High Court?

Judicial review and access to the courts remains an important safeguard where questions arise concerning the performance of statutory duties and the lawfulness of public decision-making. Accordingly, I recognise the practical concern you raise while also recognising that judicial review is a legitimate and established component of the accountability framework created by Parliament.

4. If you do not consider that satisfactory, do you consider that there should be an equivalent and effective statutory accountability mechanism where the ordinary section 27 mechanism cannot operate?

Questions regarding whether additional statutory powers or enforcement mechanisms ought to exist are matters of legislative policy. As Minister, my role is to administer and operate within the legislative framework enacted by Parliament rather than to prejudge future policy or legislative proposals.

5. Should the Minister of Conservation have responsibility for initiating and pursuing enforcement of mandatory Reserves Act obligations in such circumstances, rather than leaving that responsibility effectively to individual members of the public?

At present, Parliament has not conferred upon the Minister of Conservation a general enforcement power of the type you describe in respect of reserves administered under these arrangements.

Whether such a power should be conferred in future would require careful consideration of several matters, including the relationship between Ministers and independent administering bodies, the treatment of reserves vested through Treaty settlement legislation, the role of the courts, and the wider constitutional implications of Ministerial intervention.

Those are matters for Parliament rather than for determination by the Minister acting under the current legislation.

The fact that the section 27 mechanism is only available in parallel with the settlement legislation does not remove the statutory obligations imposed upon the administering body. Those obligations remain in force and administering bodies are expected to comply with them. I also note that the Department continues to engage with administering bodies regarding their responsibilities under the Reserves Act and to provide advice, guidance and assistance where appropriate. The legislation expressly recognises such a role for the Minister and the Department.

Thank you again for your thoughtful correspondence and your ongoing interest in the management of public reserves.

I appreciate your concern and thank you for taking the time to write.

Mauriora



Hon Tama Potaka

Minister of Conservation