

Te Tai Ōhanga – The Treasury

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Tēna koutou

## **Submission from Herenga ā Nuku to the proposal for partial cancellation of PAE in Hira Forest**

Our mandate comes from the Walking Access Act 2008. Herenga ā Nuku's role is negotiating, establishing, and improving outdoor access for New Zealanders. This also includes making people and organisations aware of locations of public access and ensuring that access endures over time.

Plantation forests often provide for public access rights and interests such as Walkways, Public Access Easements (PAE) created under the Crown Forest Assets Act, esplanade strips, and other public rights of way.

Plantation forestry is well suited for various recreational activities like walking, cycling, hunting, fishing and horse riding. Forestry roads are especially well suited for mountain bikers, especially in the winter when MTB tracks are wet, and riders cannot ride single tracks without damaging them. They also cater to those not wanting technical riding or cyclists who want off-highway riding. In recent years, there has been a significant increase in outdoor recreational use, with remote roads becoming increasingly popular as e-bikes enable people to go further distances. Another benefit of recreational access is the passive surveillance and positive community relations it can provide.

Herenga ā Nuku acknowledges Hira Forest is land settled to Ngāti Koata through the Treaty settlement process. We recognise the historic wrongs the Crown has exercised on Koata whenua, and we acknowledge Koata Limited's right to apply for cancellation of the Hira Forest easement under section 28 of the Crown Forest Asset Act 1989.

### **The purpose of a PAE**

PAE were created by the Crown Forest Assets Act 1989. The stated purpose of a PAE is "for the creation and protection of public access rights in or over the licensed land or any part of it."

## Hira Forest

Hira Forest, located near Nelson, is owned by Koata Limited, a wholly owned subsidiary of Ngāti Koata Trust. The Crown transferred Hira Forest to Ngāti Koata Trust in 2020 as part of the Treaty settlement with Ngāti Koata.

Herenga ā Nuku has received many queries and complaints from the public regarding access to Hira Forest. Tasman Pine Forests Limited, which manages the forest for Koata Limited, has historically prevented the public from accessing the PAE on this land. Because of this, the public has mostly not attempted to access the land.

## Recreational context

Hira Forest PAE starts less than 5km from the centre of Nelson, a city of nearly 60,000 people. Mountain bike riding is extremely popular with Nelson locals and visitors to the region, including from neighbouring Marlborough. The Nelson MTB Club promotes itself as “home to New Zealand’s greatest MTB parks and trails”.

The Hira Forest is a popular and heavily used mountain biking area. Most mountain biking takes place beyond the Maitai Valley and includes the Sharlands Trails, which traverse both Nelson City Council and Ngāti Koata land. In May 2024, the Council and Koata Limited announced they had reached a long-term agreement for recreational use of the Ngāti Koata whenua. We have requested details of this arrangement, but the council has not supplied them.

Tramping, trail running and hunting are also popular recreation activities in the region. The Nelson Trails brochure refers to the Central [road] and Teal Saddle Loop; a trail that relies on access along Central road. See here <https://www.nelson.govt.nz/assets/Leisure/Downloads/central-and-teal.pdf>

The Nelson Branch of the New Zealand Deerstalkers Association has a firing range on Ngāti Koata-owned land for which, we understand, it has an occupancy arrangement. There is no legal access to the range.

The Hira PAE connects with a mountain bike track through the Nelson City Council Waterworks Reserve off Maitai Valley Rd. The Central road PAE then connects access to Whangamoā Saddle and the road down into the Pelorus. It also provides an easy-to-ride or drive alternative back-country route from Whangamoā Saddle (the high point between Blenheim and Nelson) to Nelson. We understand these are popular routes, but they are not shown on Tasman Pine Forest Limited access maps.

[https://static1.squarespace.com/static/59db3c148fd4d21d6a6675a7/t/5d782213a139d05cb4b0f202/1568154157339/Recreational\\_A3\\_Overview200.pdf](https://static1.squarespace.com/static/59db3c148fd4d21d6a6675a7/t/5d782213a139d05cb4b0f202/1568154157339/Recreational_A3_Overview200.pdf)

## Reasons for the request to partially cancel the public access easements in Hira

- there are active forestry operations in Hira Forest, which pose significant health and safety risks to members of the public who access the area (eg, parts of the public access easement are used daily as main access routes for logging trucks and forestry vehicles)
- Koata Limited and Tasman Pine Forests Limited intend to change the type of forest plantation on the land, shifting to smaller crop sizes with annual harvesting. It is therefore expected that there will be

ongoing harvesting, maintenance and replanting operations, which will pose heightened health and safety risks to the public who access the area

- some members of the public have continued to access areas that have been restricted according to the terms and conditions of the public access easement, and
- it appears that certain areas of the public access easement are no longer being used by the public.

## **Herenga ā Nuku comments on the reasons for the proposed closure**

- there are active forestry operations in Hira Forest, which pose significant health and safety risks to members of the public who access the area (eg, parts of the public access easement are used daily as main access routes for logging trucks and forestry vehicles)

The health and safety risks of forest operations in Hira Forest are no greater than any other forest in Aotearoa, New Zealand. Tasman Pine Forests Limited can and should be able to meet the Health and Safety at Work Act 2015 (HSWA) PCBU obligations in Hira Forest while complying with the Crown Forests Act 1989 and Easement Certificate obligations “to permit and allow access by the public over and across the Access Areas on foot or on horseback or on bicycle or on motorcycle or in light motor vehicles”.

Temporary closures or restrictions are possible for stipulated reasons, including health and safety, providing the forest managers follow the correct procedures. Numerous forest managers throughout Aotearoa New Zealand have successfully incorporated public access interests and recreational activities with HSWA duties and responsibilities. Worksafe’s policy guidelines state:

*“The HSWA only applies to recreational access when the land is affected by a PCBU’s work activities or is part of a workplace. This means a PCBU whose land is being accessed for recreation is only responsible for risks arising from the work or workplace and is not responsible for the risks associated with the recreational activities. PCBUs can usually meet their duties to recreational visitors in simple ways (e.g., using signs, emails, or verbal warnings to let people know about work hazards). These duties apply whether the recreational activities are commercial or not.*

*Visitors have responsibilities too, regardless of whether there’s a legal right of access. Anyone accessing land for recreation needs to follow any reasonable health and safety instructions the PCBU gives them regarding the work or workplace and other reasonable requests (e.g., shutting farm gates and not frightening stock during lambing). HSWA doesn’t cover injuries sustained by someone who’s accessed land for recreation and hurts themselves as a result of the recreational activity.”*

Risks to the public and fire risks could be managed by following the correct procedures for temporary closure.

Additionally, the public access rights contained in the PAEs were in place before the forestry developments upgraded the forestry roads into main forestry highways. As such, any upgrades should have taken the existing public access rights into account. The company should have designed the upgrades to allow the existing public access to continue safely.

The northern end of Central road PAE exits Hira Forest across public conservation land managed by the Department of Conservation (DOC) before reaching Whangamoā Road at the Whangamoā Saddle. When logging trucks use their easement rights over this DOC land, they need to operate safely in conjunction with

the public access rights over this land. The safety rules they need to apply to this access can apply equally to the PAE.

- Koata Limited and Tasman Pine Forests Limited intend to change the type of forest plantation on the land, shifting to smaller crop sizes with annual harvesting. It is therefore expected that there will be ongoing harvesting, maintenance and replanting operations, which will pose heightened health and safety risks to the public who access the area

The company has supplied no detail of smaller crop size operations with annual harvesting. An internet search also did not yield any insight. We welcome a change in forest practice where this provides environmental and recreation benefits and are keen to learn more about this proposed practice. We accept that, whatever forest management the company practices, public access will be disrupted during harvest. This can be managed, as it is now, under the Crown Forest Assets Act. The impacts of the proposed change and how it will pose heightened health and safety risks are not clear, and we welcome more details on this.

Despite any proposed changes to harvesting over a longer period, forestry practices may change again in the future. Potentially no forest may exist there in years to come. Cancelling the PAE due to current practices, which can be managed under the existing PAE conditions, will result in the permanent loss of important access rights for future generations.

- some members of the public have continued to access areas that have been restricted according to the terms and conditions of the public access easement

When members of the public do not respect landowner rights, corrective actions are available through warnings and trespass notices. This is the same remedy for any business when a law is broken. We do not close roads when lawbreakers speed, and shops do not close when goods are shoplifted. Ironically, the continued use of the PAE, despite closure, lays to rest the claim there is no demand for public access. The alleged illegal use suggests there is demand and, likely, a degree of frustration in the recreating public.

- it appears that certain areas of the public access easement are no longer being used by the public.

Current use cannot be an indicator of potential use, particularly as access to Hira Forest has been subject to extended closure, including Sharlands MTB Trails. If the public is no longer using parts of the PAE, we would suggest this is due not to a lack of interest but because the public has been actively discouraged by:

- Notices that do not identify PAE and conditions of use or reasons for restricted access/closure
- Extended closure of PAE
- Forest maps downloadable from the Tasman Pine Forests Limited website that do not show PAEs for Hira Forest. See [https://static1.squarespace.com/static/59db3c148fd4d21d6a6675a7/t/5d782213a139d05cb4b0f202/1568154157339/Recreational\\_A3\\_Overview200.pdf](https://static1.squarespace.com/static/59db3c148fd4d21d6a6675a7/t/5d782213a139d05cb4b0f202/1568154157339/Recreational_A3_Overview200.pdf)
- The Whangamoia Saddle entrance off SH 6 being blocked with rocks and gates and signage that is not compliant with the PAE conditions – there is no mention this is a PAE or reasons for closure.
- Gates blocking the Maitai entrances with non-compliant signs forbidding access or requiring Nelson MTB membership/temporary permits, with no mention this is a PAE or reasons for closure.

## **The Herenga ā Nuku position on the proposed partial cancellation of Hira Forest PAE**

Herenga ā Nuku opposes the proposed partial cancellation of Sharlands road PAE and the full cancellation of Central road. PAE are a key legal avenue in our access landscape. There are hundreds of PAE on plantation forests throughout Aotearoa New Zealand. Koata Limited and Tasman Pine Forest Limited are no different from the many landowners and forest management companies throughout the country that uphold the public's right to pass over PAE.

The region relies heavily on access over plantation forest to adjoining public conservation land and recreation opportunities. Cancelling this PAE would set a dangerous and unwelcome precedent, threatening recreation access over PAE throughout the entire country.

Section 28 of the Crown Forest Assets Act allows Māori owners who initially receive land under their relevant Treaty Settlement Act to request a review of PAE on the land. Analysing the wording in the legislation, it appears this right would also apply to subsequent licensors of the land, as nothing limits the legislation to only applying to the initial transfer. If a precedent is set, subsequent licensors will likely take advantage of the opportunity to limit public access rights.

The maps provided with the public consultation information on the proposed cancellation of the PAE did not show how the PAE link directly with existing public access rights on adjoining public conservation land and legal roads. PAE (such as Area D) provide practical links into parts of public conservation land not easily accessible otherwise. Increasing access for hunters to public conservation land is a priority of the Minister of Hunting and Fishing.

This PAE's significance is magnified by its location within a forest with a long history of public access close to Nelson City, where there is a strong interest in recreational biking and a network of tracks enjoyed by locals and visitors.

Hira Forest is not a unique risk management proposition—its management challenges are no different from those of the many hundreds of other plantation forests in New Zealand, and it does not warrant cancellation (partial or otherwise) of PAE.

The proposal for Sharlands road PAE is to cancel the section beyond the MTB trail network (Area A). While this may be acceptable to mountain bikers, it will not work for other recreational users who seek access on forestry roads, and the potential this may provide to connect to access outside Koata Limited's land in the future.

The Hira Forest PAE has a history of recreation use and a growing demand for access. The PAE would provide access opportunities for people preferring to ride roads rather than downhill trails and should also be available for the driving access it was intended to provide.

Several recreation groups, along with Nelson Council, have commercial arrangements in place that require ongoing relationships with Ngāti Koata. These access arrangements are time-limited. Herenga ā Nuku is concerned that free and enduring public access is being diminished in favour of commercial arrangements.

In summary, Herenga ā Nuku strongly objects to the proposed partial cancellation of the Hira Forest PAE. Cancelling these PAE would set a dangerous precedent and threaten the recreational enjoyment of the 60,000 Nelson residents and visitors to the region who enjoy the current array of trails. No details have been released on the arrangement with Nelson City Council, and no alternative access opportunities have been proposed.

Should this proposal proceed, it would result in a significant and irreplaceable loss of public access and recreational enjoyment in the region. Herenga ā Nuku does not believe it is necessary or warranted.

Herenga ā Nuku would like to appear in support of this submission at any hearing.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Ric Cullinane', with a stylized flourish at the end.

Ric Cullinane

Tumuaki | Chief Executive