I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU
In the Māori Land Court of New Zealand
Tākitimu District

A20210011202

WĀHANGA *Under*	Section 311, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Rakautatahi 1B2B1A
I WAENGA I A *Between*	MCCAW LEWIS TRUSTEE (NO 1) LIMITED AS TRUSTEE OF THE TUALA-WARREN FAMILY TRUST Ngā Kaitono *Applicant*

Nohoanga: *Hearing*	25 January 2022 (94 Tākitimu MB 226-233) 1 April 2022 (95 Tākitimu MB 124-128) (Heard at Wellington via Zoom)
Kanohi kitea: *Appearances*	K Katipo for Applicant
Whakataunga: *Judgment date*	29 July 2022

TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Copies to:
K Katipo, McCaw Lewis Lawyers, DX GP 20020 Hamilton 3204 kylee.katipo@mccawlewis.co.nz

Ngā kōrero tīmatanga
Introduction

[1] There is a house in Takapau that is in the wrong place. There is a simple fix. It involves an exchange of land. The exchange makes perfect sense. There is one potential problem. Te Ture Whenua Māori Act 1993 ("the Act") may not allow it.

Kōrero whānui
Background

[2] Rakautatahi 1B2B1A is a block of land on State Highway 2 near Takapau, comprising 0.3035ha. There is a house located on this block. The block is owned by the trustees of the Tuala-Warren Family Trust.[1] I refer to this block as the "house block". The neighbouring block is known as Rakautatahi 1B2B1B, comprising 1.2958ha. This block is Māori freehold land. It has 38 owners, each holding unequal shares as tenants in common. I refer to this block as the "farm block".

[3] The house on the house block is in the wrong place. The boundary between the house block and the farm block runs through the house. This diagram depicts the dilemma:

Figure 1: Boundary plan.

Source: Valuation Report, Andrew Chambers, Property Indepth dated 3 December 2021

[1] The trustees of the Tuala-Warren Family Trust are Justice Leilani Tuala-Warren, Judge Aidan Warren and McCaw Lewis Trustees (No 1) Limited. This Family Trust was established by trust deed dated 7 May 2014.

[4] To address this state of affairs, an exchange of land is proposed. This diagram shows the solution:

Figure 2: Boundary adjustment scheme plan.

Source: Valuation Report, Andrew Chambers, Property Indepth dated 3 December 2021

[5] The solution is elegant. It involves an exchange of land between the house block and the farm block. It adds land to the house block that has always been used as the side yard for the house. It adds the existing vehicle access way off State Highway 2 to the farm block, which will grant formal access to the farm block. A valuation dated 3 December 2021 confirms that the exchange is not detrimental to the interests of the Māori owners of the farm block. The interests to be exchanged are of equal value, so there is no impact on the underlying values of the house block or the farm block.

[6] The owners of the farm block have been notified of the proposed exchange. It is not opposed.

He aha ngā kōrero a te kaitono?
What does the applicant say?

[7] The applicant says that the exchange should be approved by the Court for the following reasons:

(a) The house block is General land. In particular, the house block is not General land owned by Māori because it is not beneficially owned by a Māori or a group of persons a majority of whom are Māori. The applicant relies on following reasons for this submission:

(i) The house block is legally owned by three trustees, only one of whom is Māori. A majority of the legal owners of the house block are not Māori.

(ii) The house block is beneficially owned in accordance with the provisions of the trust deed for the Tuala-Warren Family Trust. Although a majority of the discretionary beneficiaries of that family trust are Māori, the rule in *Hettig v ANZ* confirms that they do not have an interest in the trust property, including the house block.[2] Because the discretionary beneficiaries have no interests in the house block, it is not held for a beneficial estate by a Māori or a group of persons a majority of whom are Māori.

(iii) Moreover, the house block was declared as General land by status order made by the Registrar of the Court and recorded on the certificate of title on 3 June 1970. Section 129(3) provides that the house block continues to be General land unless and until it is changed in accordance with the Act. There has been no further status order issued by the Court for the house block since 1970. Accordingly, the house block continues to be General land.

(b) As General land, the house block can be exchanged for Māori freehold land per s 311(1).

(c) The exchange is not detrimental to the interests of the Māori owners of the farm block. The value of the land areas to be exchanged are equal, so there is no reduction in value for the Māori owners of the farm block. In fact, the

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2 *Hettig v ANZ Bank of New Zealand Limited – Lot 1 DP 158328* (2014) 93 Taitokerau MB 238 (93 TTK 238) at [18].

exchange will mean that the farm block has formal access directly to State Highway 2, which will benefit its Māori owners.

(d) The Māori owners of the farm block have had sufficient notice of the exchange and there is sufficient support for it. There is no opposition to it.

(e) The exchange is consistent with the purpose of Part 14 of the Act and the objectives and kaupapa of the Act generally.

Ngā take
Issues

[8] The issues to determine are:

(a) What is the land status of the house block?

(b) Can land within the house block be exchanged for land within the farm block?

(c) Is the exchange detrimental to the interests of the Māori owners of the farm block?

(d) Is there sufficient support for the exchange among the Māori owners of the farm block?

(e) Is the exchange consistent with the purposes of the Act?

Te Ture
The Law

[9] Section 310(1) allows the Court to make exchange orders in accordance with ss 311 to 314 of the Act.

[10] Section 311 of the Act sets out the land and interests that can be exchanged. It provides:

> **311 Land and interests that may be exchanged**
>
> (1) Any Maori freehold land, or any interest in any such land, may be exchanged by means of an exchange order for any other Maori freehold land or General land, or for any other interest in any such land.
>
> (2) Any General land owned by Maori, or any interest in any such land, may be exchanged under this Part for any other General land, or for any other interest in General land, whether or not owned by Maori.
>
> (3) Any Maori freehold land, or any interest in any such land, may be exchanged under this Part for any Crown land that is subject to Part 2 of the Maori Affairs Restructuring Act 1989, or for any interest in any such land.

[11] An observation must be made here. Section 311(1) allows exchanges between Māori freehold land and other Māori freehold land or General land. Section 311(2) allows exchanges between General land owned by Māori and General land (whether or not owned by Māori). Section 311(3) allows exchanges between Māori freehold land and Crown land. Interestingly, s 311 does not expressly permit an exchange between General land owned by Māori and Māori freehold land. This is a potential gap in the Act. It is relevant because, if the gap exists and the house block is General land owned by Māori, a part of it cannot be exchanged for a part of the farm block.

[12] What constitutes General land owned by Māori is therefore relevant. The phrase is defined in s 4 and described in s 129(2)(c):

> **4 Interpretation**
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> In this Act, unless the context otherwise requires,—
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> …
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> **General land owned by Maori** means General land that is owned for a beneficial estate in fee simple by a Maori or by a group of persons of whom a majority are Maori.
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> **129 All land to have particular status for purposes of Act**
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> …
>
> (2) For the purposes of this Act,—
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> …
>
> (c) land (other than Maori freehold land) that has been alienated from the Crown for a subsisting estate in fee simple shall, while that estate is beneficially owned by a Maori or by a group of persons of whom a majority are Maori, have the status of General land owned by Maori:
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> …

[13] Section 129(3) is also relevant. It provides:

> (3) Notwithstanding anything in subsection (2), where any land had, immediately before the commencement of this Act, any particular status (being a status referred to in subsection (1)) by virtue of any provision of any enactment or of any order made or any thing done in accordance with any such provision, that land shall continue to have that particular status unless and until it is changed in accordance with this Act.

[14] Section 312 sets out the conditions that must be satisfied for the Court to grant an exchange order. It provides:

> **312 Conditions precedent to making of exchange orders**
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> (1) The court shall not make an exchange order unless it is satisfied in respect of the following matters:
>
> (a) that the exchange is not detrimental to the interests of the Maori owners affected by the exchange:
>
> (b) that, if the interests to be exchanged are unequal in value, a sufficient sum of money by way of equality of exchange has been actually paid or sufficient security for its payment has been given:
>
> (c) that the Maori owners of the land affected by the exchange have had sufficient notice of the application for an exchange order and sufficient opportunity to discuss and consider it, and that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.
>
> (2) Notwithstanding anything in subsection (1)(b), in any case to which that provision applies the court may waive the requirement to pay a sum of money by way of equality of exchange if it is satisfied that the exchange is in the nature of a family arrangement and that, apart from the inequality of the exchange, no party to it is adversely affected.

[15] Sections 286(1) and 287(2) of the Act are also relevant. The exchange order provisions are contained in Part 14 of the Act (ss 285 to 326D). Section 286(1) sets out the purpose of Part 14:

> **286 Purpose of this Part**
>
> (1) The principal purpose of this Part of this Act is to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular landholdings and providing access or additional or improved access to the land.

[16] Section 287(2) provides:

> **287 Jurisdiction of Courts**
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> ...
>
> (2) The jurisdiction conferred on the Maori Land Court by this Part of this Act shall be discretionary, and, without limiting that discretion, the Court may refuse to exercise that discretion in any case if it is not satisfied that to do so in the manner sought would achieve the principal purpose of this Part of this Act.
>
> ...

[17] As with any exercise of discretion under the Act, the Court is required to have regard to the Preamble to the Act together with ss 2 and 17.

[18] Finally, if the house block is General land owned by Māori, a degree of statutory interpretation must be undertaken to determine whether s 311 permits an exchange between Māori freehold land and General land owned by Māori. Section 10 of the Legislation Act 2019 sets out the general principles of statutory interpretation and provides that the meaning of legislation must be ascertained from its text and in light of its purpose and context.[3]

[19] In *Commerce Commission v Fonterra Co-operative Group Ltd*, the Supreme Court made the following comments about statutory interpretation:[4]

> [22] It is necessary to bear in mind that s 5 of the Interpretation Act 1999 makes text and purpose the key drivers of statutory interpretation. The meaning of an enactment must be ascertained from its text and in the light of its purpose. Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5. In determining purpose the court must obviously have regard to both the immediate and the general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

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3 Section 10 of the Legislation Act 2019 replaced s 5 of the Interpretation Act 1999, which was repealed on 28 October 2021 by s 6 of the Legislation (Repeals and Amendments) Act 2019.

4 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36 (footnotes omitted). Although this decision deals with s 5 of the Interpretation Act 1999, it continues to be a leading authority on s 10 of the Legislation Act 2019. See, for example, *Paul v Mead* [2021] NZCA 649; *Borrowdale v Director-General of Health* [2021] NZCA 520.

Kōrerorero
Discussion

What is the status of the house block?

[20] As discussed above, the house block is held in trust. The Māori Appellate Court in *Moke v Trustees of Ngāti Tarāwhai Iwi Trust* made the following observation regarding determining whether such land is General land owned by Māori:[5]

> The relevant words from the definition of 'general land owned by Māori' are 'owned for a beneficial estate in fee simple'. Because the term "beneficial estate" is defined as excluding an estate vested in any person by way of trust **it is necessary to look beyond the trustees to the underlying beneficial ownership, in order to determine whether ownership resides with a Māori or group of persons that [sic] majority of whom are Māori.** While not a live issue in this case, the underlying question is an important one as it is conceivable that there may be circumstances where a majority of trustees who are not Māori nonetheless hold the fee simple title on behalf of beneficial owners the majority of whom are Māori.
>
> (Emphasis added)

[21] The underlying beneficial ownership of the house block is to be determined by reference to the trust deed for the Tuala-Warren Family Trust. There are two classes of beneficiaries of this trust: the discretionary beneficiaries and the residual beneficiaries. As is common with most family trusts, the discretionary beneficiaries are the settlors and their children, and the residual beneficiaries are the settlors' children. A majority of both classes of beneficiaries are Māori.

[22] It is well established that discretionary beneficiaries do not have interests in a trust.[6] Accordingly, the house block is not beneficially owned by the discretionary beneficiaries of the Tuala-Warren Family Trust, and to determine whether the house block is General land owned by Māori I must instead consider the position of the residual beneficiaries.

[23] In considering whether the interests of residual beneficiaries constitute a "future interest" for the purposes of s 21(2) of the Limitation Act 1950, the Court of Appeal has noted:[7]

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5 *Moke v Trustees of Ngāti Tarāwhai Iwi Trust* [2019] Māori Appellate Court MB 265 (2019 APPEAL 265) at [74].
6 *Hettig v ANZ*, above n 2 at [18]; *Hunt v Muollo* [2003] 2 NZLR 322 (CA) at [11].
7 *Johns v Johns* [2004] 3 NZLR 202 at [45], [46], [47] and [49].

> **The first question is whether the plaintiff's residual interest amounts to a future interest in the trust property. The answer to that must be in the affirmative. The plaintiff has an interest in the trust property. The fact that it is contingent on survival to the date of distribution and that there being trust property available for distribution at that time does not prevent it from being an interest: see *Re Pauling's Settlement Trusts* [1962] 1 WLR 86 …**
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> In general terms future interests, [that is,] those which have not yet fallen into possession, can be of three kinds: (1) interests which are indefeasibly vested but of which possession is postponed to let in an intermediate interest; (2) interests which are vested subject to divesting in favour of a substituted interest; and (3) interests which are contingent.
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> …
>
> A contingent interest is one in respect of which both vesting and possession depend upon whether the contingency is or is not fulfilled. The element of futurity is implicit in the contingency. It would be highly anomalous if the question whether such an interest as this was or was not a future interest … depended upon whether the contingency was fulfilled. If that were the case no one would know whether the interest qualified as a future interest until it was known whether the contingency had been fulfilled.
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> …
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> **The crucial difference between contingent and vested interests on the one hand and discretionary interests on the other is that possession of the former interests, if enjoyed at all, is enjoyed as of right; whereas discretionary interests are never enjoyed as of right; their enjoyment is always subject to the discretion of the trustees.**
>
> (Emphasis added)

[24] Relying on the Court of Appeal's analysis of the interests of residual beneficiaries, the High Court has also determined that the interest of a residual beneficiary is "property" for the purposes of s 101 of the Insolvency Act 2006.[8]

[25] The residual beneficiaries of the Tuala-Warren Family Trust have interests in the trust property. Those interests are contingent on survival to the date of distribution and that there is trust property available for distribution at that date. They are future interests. They constitute property. But do these interests mean the residual beneficiaries beneficially own the estate in fee simple of the house block?

[26] I consider that the residual beneficiaries of the Tuala-Warren Family Trust are the beneficial owners of the house block. They will receive the assets of the trust on the distribution date. It is true that they must be alive at that date to receive those assets and it is possible that the assets could be distributed to the discretionary beneficiaries before that

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8 *Erceg v Erceg* [2015] NZHC 594.

date. But the fact remains that, as of right, the residual beneficiaries enjoy contingent interests in the house block.

[27] But what about the status declaration for the house block registered on 3 June 1970 declaring it to be General land? Section 129(3) of the Act deems the house block to continue to have that status, unless and until it is changed in accordance with the Act. Because the house block was declared as General land before the commencement of the Act, *prima facie* it is General land. The question is whether that status has changed in accordance with the Act. To answer this question, it is necessary to consider how General land changes to General land owned by Māori in accordance with the Act.

[28] Sections 131A to 137 set out a comprehensive regime to change the status of land. The following changes are expressly provided for:

(a) A change by status order from Crown land to Māori customary land (s 131A).

(b) A change by status order from Māori customary land to Māori freehold land (s 132).

(c) A change by status order from General land or General land owned by Māori to Māori freehold land (s 133).

(d) A change by vesting order from various land statuses (other than Māori freehold land) to Māori freehold land (s 134).[9]

(e) A change by status order from Māori land to General land (ss 135, 136 and 137).

[29] Despite this comprehensive regime, there is no express provision that enables the Court, by status or vesting order, to change the status of General land to General land owned by Māori.

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[9] Section 134 provides for a change by vesting order from various land statuses (other than Māori freehold land) to Māori freehold land, including any land other than Māori freehold land for certain purposes, land acquired by the Crown no longer required for public works, Crown land, and Crown land reserved for Māori.

[30] Instead, General land becomes General land owned by Māori by operation of law and not by status or vesting order. This is because:

(a) As noted, there is no express provision of the Act that enables the Court to make a status or vesting order changing the status of General land to General land owned by Māori.

(b) General land owned by Māori is defined in s 4 as General land that is owned for a beneficial estate in fee simple by a Māori or by a group of persons of whom a majority are Māori. The definition is based on how the land is owned, not whether it is declared or determined as such by status or vesting order.

(c) Section 129(2)(c) describes in further detail what constitutes General land owned by Māori. It provides that land, *while* the estate is beneficially owned by a Māori or by a group of persons of whom a majority are Māori, shall have the status of General land owned by Māori. Again, it is how the land is owned that determines its status. Moreover, land is General land owned by Māori *only* while it is owned by a Māori or by a group of persons of whom a majority are Māori. The use of the word "while" in this context indicates that land may move in and out of this status with changes to its ownership. No status or vesting order is required.

[31] Counsel for the applicant properly pointed to *Baker v Trustees of the Thomas Baker Whānau Trust*, in which this Court commented on the effect of s 129(3).[10] Counsel contended that the central issue in this case was whether the relevant land was General land or General land owned by Māori. I do not read the decision that way. The central issue was whether the relevant land was Māori freehold land so that the Court could invoke its jurisdiction per s 18(1)(a). It is true that the Court concluded that the relevant land was General land per s 129(3).[11] But it was determined to be General land at the point in time when the Act came into force. This decision does not otherwise deal with how General land can change to General land owned by Māori after the Act came into force.

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10 *Baker v The Trustees of the Thomas Baker Whānau Trust – Part Lot 1 DP 13787* (2015) 41 Tākitimu MB 281 (41 TTK 281).

11 At [27].

[32] Accordingly, despite the status order registered on the certificate of title on 3 June 1970, the house block is General land owned by Māori by operation of law if it is currently beneficially owned by a group of persons of whom a majority are Māori. I have already concluded that to be the case based on the interests of the residual beneficiaries pursuant to the Tuala-Warren Family Trust Deed. Because of its current beneficial ownership, the house site has become General land owned by Māori by operation of law and in accordance with the Act.

Can land within the house block be exchanged for land within the farm block?

[33] As noted, s 311 does not expressly permit General land owned by Māori to be exchanged for Māori freehold land. It instead sets out that Māori freehold land may be exchanged for any other Māori freehold land or General land (s 311(1)); that General land owned by Māori may be exchanged for other General land, "whether or not owned by Māori" (s 311(2); and Māori freehold land may be exchanged for certain Crown land (s 311(3)). Is the absence of an explicit provision allowing Māori freehold land to be exchanged for General land owned by Māori a gap in the Act, or is the phrase "General land" in s 311(1) intended to include General land owned by Māori?

[34] We must start by ascertaining the meaning of s 311 from its text. There are three textual reasons that suggest that Māori freehold land cannot be exchanged for General land owned by Māori:

(a) As noted, there is no express text that permits such an exchange.

(b) The Act distinguishes between General land and General land owned by Māori. Ordinarily, a reference to the former does not include the latter. Section 311 refers to both General land and General land owned by Māori, suggesting that one does not include the other. For s 311 to allow an exchange between Māori freehold land and General land, the reference to General land in s 311(1) would need to be read to include General land owned by Māori. An interpretation of s 311(1) that merges these distinct land statuses would be unusual.

(c) Section 311(1) is not the only section in which General land owned by Māori would have to be "read in" to a reference to General land. Section 313(2) sets out the effect when General land is exchanged for Māori freehold land. To maintain an interpretation that General land, as it appears in s 311(1), includes (by inference) General land owned by Māori, the same inference would need to be drawn in relation to s 313(2). Put another way, inferring that the references to General land in ss 311(1) *and* 313(2) are intended by the legislature to include General land owned by Māori would mean that Parliament failed to expressly refer to General land owned by Māori in two separate provisions.

[35] There are two textual reasons that suggest that Māori freehold land can be exchanged for General land owned by Māori:

(a) Section 311(1) expressly permits an exchange between Māori freehold land and General land. General land is not land to which Part 14 applies, yet it can be exchanged for Māori freehold land. If s 311(1) expressly permits an exchange with land to which Part 14 does not apply, surely it must permit an exchange with land to which Part 14 applies? This suggests that the phrase "General land" in section 311(1) must include General land owned by Māori.

(b) Section 311(2) uses the phrase "General land, whether or not owned by Māori". This suggests that, for the purposes of the exchange provisions of the Act, General land includes General land owned by Māori.

[36] The plain text of s 311 can support interpretations that both allow and prevent an exchange between Māori freehold land and General land owned by Māori. Ultimately, the meaning of s 311 must be ascertained from its text and in light of its purpose and its context. A cross-check against this purpose and context is required.

[37] The exchange provisions fall within Part 14 of the Act. Section 285 defines the land to which Part 14 applies as Māori land (being Māori customary land and Māori freehold land), General land owned by Māori and other land that is for the time being subject to Part 2 of the Māori Affairs Restructuring Act 1989. Two observations can be made here:

(a) Part 14 clearly applies to General land owned by Māori.

(b) General land is excluded from the ambit of the phrase "land to which [Part 14] applies". Thus, Part 14 is not directed at General land. This makes sense, as it prevents owners of General land from invoking the title reconstruction and improvement provisions in Part 14 of the Act. These provisions are properly reserved for Māori-owned land. That is not to say that General land cannot be affected by the provisions in Part 14 of the Act. There are numerous provisions in Part 14 that refer to General land, including s 311. But, in general, those provisions contemplate that General land may be affected in some way by title reconstruction and improvement for the land to which Part 14 applies, which excludes General land.

[38] Section 286 sets out the principal purpose of Part 14 of the Act, being to facilitate the use and occupation by the owners of land owned by Māori by rationalising landholdings and providing access or additional or improved access to the land. For reasons that I will come to, the exchange is clearly consistent with these purposes. In terms of assessing whether there is a gap in the Act, it is contrary to the principal purpose of Part 14 to interpret the exchange provisions in ss 310 – 314 to not permit an exchange between Māori freehold land and General land owned by Māori. Not only are both of these land statuses land to which Part 14 expressly applies per s 285, they also are "land owned by Māori" to which section 286 is directed.

[39] Section 311 must be interpreted in light of the principal purpose of Part 14 of the Act and this broader context, including the wider kaupapa of the Act per the Preamble and ss 2 and 17. Both the purpose of Part 14 and the kaupapa of the Act suggest that s 311 should be interpreted so as to allow exchanges of Māori freehold land and General land owned by Māori.

[40] Turning then to the assessment of the text of s 311 in light of purpose, I must be mindful of the inherent tension between applying a purposive, fair and liberal interpretation to a provision and not stretching the text of the provision beyond breaking point. In

Clearspan Property Assets Limited v Spark New Zealand Trading Limited, Palmer J put it this way:[12]

> But there are limits to the capacity of a purposive approach to expand on the text of law. Meaning is ascertained "from" its text and only "in light of" its purpose. I agree that "purpose is there to help ascertain the meaning of text and not to override or dominate it". The Supreme Court emphasises the starting point is the text. A court's view of Parliament's purpose is a cross-check. That can lead to ambiguity being interpreted in line with Parliament's purpose. But it cannot change the text itself and does not, in my view, justify judicial interpretation that is inconsistent with the text. The rule of law must still stand for the proposition that it is the law that rules, not those who make the law or apply the law or interpret the law. The law is the text. In the search for certainty of meaning the statutory text cannot be stretched beyond breaking point.

[41] I consider a purposive, fair and liberal interpretation of s 311 allows an exchange between Māori freehold land and General land owned by Māori. Such an interpretation does not stretch the text of s 311 beyond breaking point, because it is an interpretation that the text can support. There is no gap in the Act. Māori freehold land can be exchanged for General land owned by Māori.

Is the exchange detrimental to the interests of the Māori owners of the farm block?

[42] The exchange is not detrimental to the interests of the Māori owners of the farm block for the following reasons:

(a) The valuation report dated 3 December 2021 confirms that the land to be exchanged is of equal value, and the respective land blocks have the same values before and after the exchange.

(b) Presently, the access way off State Highway 2 that is used to access both the house and farm blocks is located within the house block. This means that, technically, there is no formal access from State Highway 2 to the farm block. If this access way is vested in the farm block by exchange order, access to the farm block will be formalised. This is a benefit to the Māori owners of the farm block.

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12 *Clearspan Property Assets Ltd v Spark New Zealand Trading Ltd* [2017] NZHC 277 at [55] (footnotes omitted).

Is there sufficient support for the exchange among the Māori owners of the farm block?

[43] The Māori owners of the farm block have had sufficient notice of the exchange, and sufficient opportunity to discuss and consider it, for the following reasons:

(a) Twenty owners were sent details of the proposed exchange. Of those, 15 owners responded.[13] All of those who responded support the exchange. Together they hold 49.9 per cent of the shares in the farm block.

(b) Eighteen owners were not able to be contacted because the applicant did not have contact details or the owner is deceased.

[44] There is a sufficient degree of support for the exchange among the owners, having regard to the nature and importance of the matter. All of the owners who responded to the exchange proposal support it. There is no opposition to it.

Is the exchange consistent with the purposes of the Act?

[45] As foreshadowed, the exchange is consistent with the purposes of Part 14 of the Act, and the purpose and kaupapa of the Act generally, for the following reasons:

(a) The exchange will facilitate the use and occupation of both the house block and the farm block by rationalising the land holdings and providing access to the farm block.

(b) The jurisdiction in Part 14 of the Act is discretionary. The Court may refuse to exercise this discretion if it is not satisfied that to do so in the matter sought would achieve the principal purpose of Part 14. I see no reason why the Court would refuse to exercise its jurisdiction to approve of the exchange.

(c) The exchange is consistent with the Preamble and ss 2 and 17 of the Act, including because it facilitates and promotes the retention, use, development, and control of Māori land as taonga tuku iho. Among other things, it enables

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[13] Some of the owners are deceased, but in some instances their successors have provided responses.

the house block to be used by its owners (for whom the land is taonga tuku iho) and the owners of the farm block to access and use the farm block.

Whakataunga
Decision

[46] For these reasons, the application is granted.

Ngā Ōta
Orders

[47] Pursuant to s 311(1) of Te Ture Whenua Māori Act 1993, the Court makes an order for the exchange of 557 m² (more or less) of land between Rakautatahi 1B2B1A and Rakautatahi 1B2B1B, as depicted in the boundary adjustment scheme plan filed with the application.

I whakapuaki i te 4.00 pm i Te Whanganui-a-Tara, tekau mā iwa o ngā rā o Hōngongoi i te tau 2022.

D H Stone
JUDGE