

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU**

*In the Māori Land Court of New Zealand
Tākitimu District*

A20210013627

WĀHANGA Sections 151, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Lot 15 Deposited Plan 15948
In the matter of

I WAENGA I A FIONA WHYTE
Between Te kaitono
Applicant

ME DAVID BOND AND MELANIE HOBBS
And Ngā Tangata Wahitake
Interested Parties

Nohoanga: 2 March 2022, 94 Tākitimu MB 195-202
Hearing (Heard at Hastings)

Kanohi kitea: C Faulknor for Applicant
Appearances T Pervan for Interested Parties

Whakataunga: 11 May 2022
Judgment date

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

He kōrero tīmatanga*Introduction*

[1] Fiona Whyte owns 8 Te Paerahi Road, Pōrangahau (“the property”).¹ It is Māori freehold land. She has signed an agreement dated 15 27 September 2021 to sell it to Melanie Hobbs and David Bond. She seeks Court confirmation of the sale per ss 151 and 158 of Te Ture Whenua Māori Act 1993 (“the Act”). I granted the order for confirmation on 5 May 2022, with reasons to follow.² I now set out my reasons.

I ahatia?*What has happened here?*

[2] Fiona Whyte purchased the property in 2019. At the same time, the status of the land was changed to Māori freehold land.³

[3] On 30 June 2021, Fiona Whyte listed the property for sale with Tremains. It was marketed as follows:

- (a) Signage was attached to the fence fronting Te Paerahi Road on 2 August 2021 and remained in place until 18 November 2021.
- (b) Advertisements were published on the Tremains website, TradeMe, homes.co.nz, YouTube and realestate.co.nz. Advertisements were also published in the Tremains exclusive online magazine on 6 August 2021, 1 October 2021, 29 October 2021, 12 November 2021, 26 November 2021, 10 December 2021, and 21 January 2022.
- (c) A link to the real estate listing for the property was published on the real estate agent’s Facebook page on 5 and 20 August 2021.
- (d) A link to the real estate listing was published on the *Whats on Pōrangahau* Facebook page (which has approximately 4,706 members) on 5 August 2021.

¹ The property is known as Lot 15 Deposited Plan 15948.

² 95 Tākitimu MB 262-263 (95 TTK 262-263).

³ 80 Tākitimu MB 230-233 (80 TTK 230-233).

- (e) A 1-page advertisement was published in the Property Guide magazine on 13 August 2021.
- (f) An advertisement was placed in the window of the Tremains office in Waipukurau, which has remained in place until 1 April 2022.

[4] Tenders for the property were received on 3 September 2021. On 7 September 2021, Fiona Whyte accepted and signed the tender submitted by Melanie Hobbs and David Bond. The agreement was conditional on obtaining Māori Land Court approval for the sale within 6 months. This timeframe has been extended by the parties to the agreement.

[5] To satisfy the condition relating to Court confirmation of the sale, the applicant filed this application on 4 November 2021. Because the property is Māori freehold land, the applicant was required to comply with section 147A of the Act, which provides a right of first refusal over the property to the members of the preferred classes of alienee (“the PCA”). The applicant gave public notice of the sale in the Hawke’s Bay Today newspaper on 15 and 22 January 2022.

[6] The application for confirmation was first heard on 2 March 2022. It was identified at the hearing that, due to recent amendments to the Act, the applicant had not complied with s 147A(4)(a) Act, which requires the applicant to make reasonable efforts to determine the physical or electronic addresses for members of the preferred classes of alienees and to send to the members for whom the applicant has physical or electronic addresses a notice per s 147A(3) of the Act. The application was adjourned to allow the applicant to give that notice.

[7] Following the 2 March 2022 hearing, the applicant took the following steps:⁴

- (a) She instructed her counsel to contact the law firm that acted for previous owners of the property to confirm whether they are members of the PCA and, if so, whether they could assist in providing addresses for those members. That law firm advised that one of the previous owners was not a member of the PCA. The applicant’s counsel corresponded directly with that owner, who did not respond.

⁴ As confirmed by affidavit dated 1 April 2022.

- (b) Understanding that the hapū associated with the land is Ngāti Kere, she instructed her lawyers to contact the chairperson of the Ngāti Kere Hapū Authority. Then followed communications between her lawyers and the chairperson.
- (c) She instructed her counsel to liaise with Rongomaraeroa Marae to seek assistance in determining contact addresses for members of the PCA. Her lawyers communicated with representatives of Rongomaraeroa Marae for that purpose.
- (d) Based on these efforts, she obtained the electronic address for the chairpersons of both Rongomaraeroa Marae and the Ngāti Kere Hapū Authority. She also had obtained email addresses for a member of the PCA that had attended the initial open homes during the period in which the property was publicly marketed for sale. She sent private notices to those electronic addresses.
- (e) Subsequently, the chairperson of the Ngāti Kere Hapū Authority posted the private notice he had received on the *Whats on Pōrangahau* Facebook page on 23 March 2022.

[8] As at 1 April 2022, no member of the PCA had responded to any of the private or public notices to express an interest in exercising the right of first refusal per s 147A of the Act.

He aha ngā kaupapa ture mo tēnei take?

What legal principles apply?

[9] As Māori freehold land, a sale of the property requires confirmation of the Court per s 151 of the Act. I must be satisfied of the matters set out in s 152(1), which provides as follows:

152 Court to grant confirmation if satisfied of certain matters

- (1) The court must grant confirmation of an alienation of Maori freehold land if it is satisfied—

- (a) that,—
 - (i) in the case of an instrument of alienation, the instrument has been executed and attested in the manner required by the rules of court; or
 - (ii) in the case of a resolution of assembled owners, the resolution was passed in accordance with this Act or regulations made under this Act; and
- (b) that the alienation is not in breach of any trust to which the land is subject; and
- (c) that the value of all buildings, all fixtures attached to the land, all things growing on the land, all minerals in the land, and all other assets or funds relating to the land, has been properly taken into account in assessing the consideration payable; and
- (d) that, having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate; and
- (e) that the purchase money (if any) has been paid to, or secured to the satisfaction of, the Māori Trustee or court appointed agent or trustees in accordance with section 159; and
- (f) that, if section 147A applies to the alienation, the alienating owners have discharged the obligations in that section.

[10] Section 147A of the Act applies. It grants a right of first refusal over the property in favour of the PCA. It provides:

147A Right of first refusal for sale or gift

- (1) A person referred to in section 147 who seeks to alienate any Maori freehold land by sale or gift must give the right of first refusal to prospective purchasers or donees who belong to 1 or more of the preferred classes of alienees, ahead of those who do not belong to any of those classes.
- (2) A right of first refusal must be given in accordance with the rest of this section, unless the proposed sale or gift is to a member of a preferred class of alienees.
- (3) The seller or donor must give a written notice that—
 - (a) describes the land to be alienated, including—
 - (i) the name and area of the block; and
 - (ii) the street address, if applicable; and
 - (iii) the Maori Land Court district that the land is within; and

- (b) requests tenders to buy the land (for a sale), or expressions of interest in being gifted the land (for a gift), only from members of the preferred classes of alienees.
- (4) The notice must be—
- (a) sent to every member of the preferred classes of alienees whose physical or electronic address for notices is known to the seller or donor after the seller or donor has made reasonable efforts to determine the addresses; and
 - (b) published as follows and so as to ensure that members of the preferred classes of alienees are reasonably likely to learn of the proposed alienation:
 - (i) in a newspaper that circulates in the Maori Land Court district that the land is within, and in any other newspaper or newspapers; and
 - (ii) on an Internet site to which the members have access free of charge.
- (5) The notice must specify a deadline for receiving tenders or expressions of interest that is—
- (a) reasonable; and
 - (b) no less than 15 working days after the day on which the notice is first published.
- (6) For a sale,—
- (a) the notice must specify the terms of sale but need not disclose the minimum sale price set for the land; but
 - (b) any of the terms of sale may instead be specified in a document located at a place or on an Internet site described in the notice.
- (7) The seller or donor may apply to the court for a direction about what is required to satisfy their obligations under this section, and the court may give a direction on those matters.

[11] Section 158 of the Act requires an application for confirmation to be supported by a special valuation unless the Court otherwise orders.

Kua whakatūtatakihia ngā kaupapa ture?

Are the legal principles satisfied?

[12] The sale and purchase agreement is signed in accordance with the Māori Land Court Rules 2011. There is no trust in respect of the property. The value of the property has been properly taken into account in assessing the purchase price set out in the sale and purchase

agreement dated 7 September 2021. The purchase price is adequate. Section 152(1)(e) of the Act does not apply, because the applicant is the sole owner of the property. Accordingly, the criteria in s 152(1)(a)-(e) are satisfied.

[13] Section 152(1)(f) of the Act requires the applicant to have discharged the obligations in s 147A. For present purposes, there are five main obligations:

- (a) The applicant is required to have given notice of the details set out in s 147A(3). These details describe the land being sold. The notice must also request tenders from members of the PCA to buy the land.
- (b) The applicant is required to make reasonable efforts to determine the physical or electronic address for notice for every member of the PCA.
- (c) The notice must then be given to every member of the PCA whose physical or electronic address is known to the applicant.
- (d) The notice must also be published publicly.
- (e) The applicant must specify a reasonable deadline for receiving tenders from members of the PCA, which must be no less than 15 working days after the notice to the members of the PCA is first published.

[14] As I recently observed in *Logan v Logan*, the provisions of s 147A conflict with rr 11.3 to 11.7 of the Māori Land Court Rules 2011 (“the Rules”).⁵ The short point is that these inconsistencies create some uncertainty regarding the process to be followed to offer the right of first refusal to the PCA. I have taken the same approach to these inconsistencies as I did in *Logan v Logan*, as follows:⁶

- (a) Where there is an inconsistency between the Act and the Rules, the Act prevails.

⁵ *Logan v Logan - Patangata 2F Section 2B* (2022) 95 Tākitimu MB 52 (95 TKT 52).

⁶ At [34].

- (b) If it is reasonable to comply with the Rules despite any inconsistency with the Act, I have required compliance with the Rules.
- (c) If it is oppressive or otherwise inappropriate to comply with the Rules, I have excused compliance per r 2.4(2) of the Rules.

Did the notices set out the required information?

[15] The applicant has given notice of the sale of the property on various occasions. In terms of the notices required per s 147A and the Rules, I am satisfied that the notices included the details proscribed by s 147A(3). I note that the language used in the public notices published on 15 and 22 January 2022 in the Hawke's Bay Today newspaper call for expressions of interest from members of the PCA, rather than tenders. Technically, the notice ought to have requested tenders. However, no member of the PCA filed an expression of interest or a tender, so the point is moot. The important point is that the public notice offered a right of first refusal to the members of the PCA, which was not taken up.

Did the applicant make reasonable efforts to determine contact details for members of the PCA?

[16] The requirement to give private notice to members of the PCA is satisfied as a result of the steps that the applicant took after the 2 March 2022 hearing to obtain contact details for members of the PCA. Having no direct relationship with members of the PCA, she took a number of steps to find those contact details. She contacted the former owners and the law firm who acted for them. She contacted the chairperson of the Ngāti Kere Hapū Authority to seek contact details for members of the PCA. She contacted the chairperson of Rongomaraeroa Marae to seek contact details for the members of the PCA. I consider these steps to constitute reasonable efforts for the purposes of s 147A(4)(a).

Was proper private notice given by the applicant?

[17] The applicant gave private notice to those members of the PCA for whom she obtained physical or contact details through the process she followed after the 2 March 2022 hearing. I am satisfied that she gave private notice per s 147A(4)(a).

Was proper public notice given by the applicant?

[18] The requirement to give public notice is also satisfied. As noted, the applicant published notice in the Hawke's Bay Today newspaper on 15 and 22 January 2022.

Was the deadline to submit tenders reasonable and no less than 15 working days?

[19] The first public notices dated 15 January 2022 asked any member of the PCA who wished to pursue the right of first refusal to notify the Court of that intention by 16 February 2022. I am satisfied that the timeframe specified in the notice is reasonable. The timeframe is more than 15 working days from the date of the first notice.

Conclusion

[20] Accordingly, I am satisfied that the applicant has discharged the obligations in s 147A of the Act.

Ngā ōta

Orders

[21] The need for a special valuation of the property per s 158 of the Act is dispensed with.

[22] The alienation of the property by Fiona Whyte to Melanie Hobbs and David Bond is confirmed per s 151 of the Act.

[23] To avoid doubt, the property remains Māori freehold land.

I whakapuaki i te 11.00 am i Te Whanganui-a-Tara, tekau mā tahi o ngā rā o Haratua te tau 2022.

D H Stone
JUDGE