IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20170005270
A20170005272
A20170005273

UNDER	Sections 133, 135, 137, 289 and 315, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Lot 1 DPS 65413 and Part Mangatawa Papamoa SO 452445 block
	MANAGEMENT COMMITTEE OF MANGATAWA PAPAMOA BLOCKS INCORPORATION Applicant

A20170005738
A20170005739
A20170005740
A20170005741

UNDER	Sections 133, 135, 137, 289 and 315, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Asher Block Lot E Block
	MANAGEMENT COMMITTEE OF MANGATAWA PAPAMOA BLOCKS INCORPORATION Applicant

Hearing:	16 November 2017 (153 Waikato Maniapoto MB 64-135) 17 November 2017 (153 Waikato Maniapoto MB 136-243) 26 January 2018 (156 Waikato Maniapoto MB 50-76) (Heard at Tauranga)
Appearances:	Ms L Burkhardt for the applicant
Judgment:	9 February 2018

JUDGMENT OF JUDGE S R CLARK

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Introduction

[1] The Mangatawa Papamoa Blocks Incorporation (Mangatawa) own various blocks of Māori freehold land in Papamoa and Te Maunga. Mangatawa is involved in a number of activities including farming, kiwifruit, leasing of lands and a retirement village. They have also developed a papakāinga.

[2] There are 786 shareholders in the incorporation who hold a combined shareholding of 38,810.0008 shares. For over a decade the Committee of Management of the Incorporation ("COM") have been exploring ways in which they can commercially develop their lands.

[3] The financial position of Mangatawa is very sound. Their net equity is conservatively estimated at $66,996,360.00 as at 31 March 2017.[1]

[4] Mangatawa have a significant interest in a retirement village called the Pacific Coast Village ("PCV"). The village is located on Māori freehold land owned by Mangatawa. Via a subsidiary, Mangatawa own 50 per cent of the village.

[5] The applications before the Court are broadly similar yet concern two separate blocks of land. One set of applications (A20170005738, A20170005739, A20170005740 and A20170005741) concern Asher Block Lot E.[2] That block comprises some 30.0574 hectares. Mangatawa propose to partition just over 17 hectares of the block and develop a second retirement village.

[6] The second tranche of applications (A20170005269, A20170005270, A20170005272 and A20170005273) concern Lot 1 DPS 65413 and Part Mangatawa Papamoa SO 452445 Block ("the Truman Lane applications).[3]. This block comprises four separate parcels of land totalling 217.7082 hectares. Mangatawa seek to partition some of the lands to create 13 new titles. They then intend to enter into industrial leases with commercial tenants.

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[1] Revenues earned during the most recent financial year was $3,540,580.00. After payment of all expenses, tax and distributions, there was a net profit of $69,831.00.
[2] CFR Identifier 735551 – South Auckland.
[3] CFR Identifier 699115 – South Auckland.

The Asher Block E Applications

Background

[7] Mangatawa originally owned a block of land in the Papamoa district, called the Asher Block. For some time, the COM have desired to commercially develop the Asher Block. Initially there was a proposal to sell it and use the proceeds to develop other lands they own. The COM spent considerable time in 2005-2006 seeking proposals for development of the Asher Block, they held shareholder engagement workshops and developed draft conceptual plans.

[8] In 2006, Mangatawa decided to pursue a joint venture arrangement for the development of a retirement village on the Asher Block. One of the first steps, insofar as the Court's involvement in that process was to partition an area of 8.0580 hectares. A partition order was granted on 9 August 2007 by Judge Milroy.[4] That block is known as Asher Block Lot A. The first stage of PCV was built on that block.

[9] In simple terms, the legal arrangements utilised were that Mangatawa entered into a long-term lease with their fully owned subsidiary, Mangatawa Retirement Village Limited ("MRVL"). MRVL and Retirement Assets (Pacific Coast) Limited ("RAPCo") then entered into a partnership for the creation of PCV.

[10] Site works did not commence until November 2009 with the first occupation right agreement issued on 1 April 2010. The development of the village was extremely slow in the early years hampered by the global financial crisis of late 2008. The uptake of enquiry and the purchase of occupation right agreements was sufficiently slow during the 2010-2014 period that there were real concerns about the ongoing viability of the village. That prompted Mangatawa to seek the partition of an adjacent site to develop a retirement village of sufficient size and scale to ensure its success.

[4] 90 Tauranga MB 25-40 (90 T 25-40).

[11] Thus in 2015 I heard a series of applications concerning a second partition and associated applications. I made an order for partition of a further 7.6205 hectares on 6 October 2015. That block is now known as Asher Block Lot C.[5]

[12] Recently, PCV has enjoyed considerable growth. As at 17 November 2017 over 220 units had been sold with 190 completely built. The partnership has also invested in a number of communal facilities including a summer house, swimming pool, bowling green, boardwalk and community centre. The partnership has recently completed a tender process for the construction of a 120 bed aged care facility, with completion expected in late 2019.

[13] The lease acquired by the partnership was valued in 2009 at $8,000,000.00. A loan of $8,000,000.00 was provided by Mangatawa and was secured by way of a second mortgage over the leasehold title. In 2012 part of the advance was converted to partnership capital.

[14] Repayments to Mangatawa were initially very slow. In 2009, 2010 and 2011, $300,000.00 was repaid each year. In 2012, 2013 and 2014, no payments were made. In the year ending 31 March 2015, $250,000.00 was repaid, increasing to $325,000.00 in 31 March 2016. In the 2017 financial year, $400,000.00 of principal repayments were made. It is anticipated that in the year ending 31 March 2018, repayments will increase to $600,000.00 with the expectation that Mangatawa will be repaid $1,000,000.00 in the year ending 31 March 2019.

[15] Evidence has been put before the Court that by the time all villas are completed towards the end of 2018, there will be no bank debt other than that secured to fund an aged care facility. By then it is expected that Mangatawa will have been repaid a total of over $3,000,000.00 of the original land advance and the villa component of the village will have a value of $54,000,000.00. It is expected that between 2019-2028 the loan and capital owing to Mangatawa and what was formerly known as RAPCo will be repaid.

[16] PCV have nearly sold all their villas and are receiving significant enquiries. It is against the recent success story of the PCV, that Mangatawa now bring the current applications before the Court seeking to develop a second retirement village.

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[5] 107 Waikato Maniapoto MB 290-337 (107 WMN 290-337).

The proposal

[17] Mangatawa seek to partition Asher Block Lot E into two lots. One to be called Asher Block Lot E1, will comprise just over 17 hectares and will be the land upon which a proposed second retirement village to be called Pacific Lakes Village (PLV), will be developed. That lot lies immediately to the south east of the PCV, separated by Grenada Street. The second block is to be called Asher Block Lot E2, comprising just over 13 hectares. Mangatawa propose to hold a series of hui and workshops with their shareholders as to gauge future aspirations for that block. That block has been identified for future possible home ownership by Mangatawa shareholders.

[18] The PLV proposal is that approximately 345 villas, 40 apartments and various community facilities will be built on Asher Block Lot E1, including potentially a dementia care facility.

[19] If the partition proceeds, the legal arrangements will broadly replicate that which have been utilised for PCV. Mangatawa propose to enter into a 99 year lease with a partnership comprising of Mangatawa Pacific Lakes Limited, (a wholly owned subsidiary of Mangatawa) and Generus Pacific Lakes Limited. Generus Pacific Lakes Limited is a subsidiary of the Generus Living Group Limited. Generus Living Group Limited is the new name for the company formerly known as RAPCo. Thus, there is continuity of parties for the proposed second retirement village.

[20] By entering into a long-term lease, a leasehold title can be issued in favour of the partnership whilst Mangatawa retains the underlying freehold of Asher Block Lot E1.

[21] In addition, a suite of accompanying easement orders are also sought. Mangatawa also seek to temporarily change the status of Asher Block Lot E1 to general land to enable the registration of a 99 year lease. Following registration, they then propose to change the status back to Māori freehold land. These steps are necessary, they say due to the difficulty they have in obtaining the necessary 50 per cent support to enter into a long-term lease as is required by s 150B of Te Ture Whenua Māori Act 1993 ("the Act").

[22] Mangatawa submit that the benefits of proceeding are:

(a) Interest in PCV continues to grow. Demand will outstrip supply;

(b) Generus (their partner) has gained considerable experience and reputation dealing with territorial and regional authorities, bankers, site development and construction companies. It has also established a strong marketing programme;

(c) The two villages will complement each other. When complete, they would be the largest retirement precinct in the Tauranga/Mount Maunganui area. The new village would be able to leverage the aged care facility (rest home and hospital) of PCV. Both villages would have planned memory care/dementia facilities;

(d) The land is zoned Residential A. Evidence suggests that the proposal is the highest and best use of the land as opposed to the sale of residential sections and/or leasehold sections;

(e) The proposal does not lead to the loss of any land. The underlying freehold is retained and the land developed;

(f) As the land is currently used for grazing which produces minimal income, it would be prudent for Mangatawa to take advantage of the opportunity that presents itself and leverage off the success of PCV;

(g) The shareholders' position does not change. They will remain shareholders in the partitioned block to the same extent they are in relation to the block prior to partition;

(h) From a financial perspective, the new partnership will be required to pay Mangatawa payments during the first 10 years starting at $100,000.00 and increasing by $100,000.00 per year. Thus, at the end of the first 10 years a minimum of $5.5 million will be paid to Mangatawa;

(i) Upon completion of PLV, it will have a capital valuation of between $70-75 million.

Procedure

[23] On or about 20 July 2017, Mangatawa filed an application pursuant to s 67 of the Act. Mangatawa explained that they were seeking to develop a second retirement village, they outlined the steps taken to inform their shareholders and sought directions about proposed resolutions to be presented at an AGM scheduled for 16 September 2017.

[24] A judicial conference was held on 15 August 2017.[6] During the course of the conference I was at pains to point out that I did not see it as the job of the Court to comment upon the merits of the application but simply to comment upon procedural aspects of the application including the appropriateness of wording for resolutions which were to be put before the shareholders at the AGM.

[25] Subsequent to the judicial conference, substantive applications were filed with the Court on 22 September 2017.

[26] They were initially set down to be heard on 16 November 2017. There was insufficient time to hear them on that day and they were substantively heard on 17 November 2017.[7]

[27] Owing to a concern by me that the Registrar had failed to provide express notification of the first hearing, I directed that the applications be recalled for a further hearing on 26 January 2018.

Partition application - A20170005738

Legal principles

[28] Sections 286-288 inclusive of the Act are relevant and I set those out in full:

> **286 Purpose of this Part**
>
> (1) The principal purpose of this Part 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.

[6] 146 Waikato Maniapoto MB 286-301 (146 WMN 286-301).
[7] 153 Waikato Maniapoto MB 136-243 (153 WMN 136-243).

(2) Where it is satisfied that to do so would achieve the principal purpose of this Part, the court may make partition orders, amalgamation orders, and aggregation orders, grant easements, and lay out roadways in accordance with the provisions of this Part.

287 Jurisdiction of courts

(1) Subject to subsection (3), the Maori Land Court shall have exclusive jurisdiction to make partition orders, amalgamation orders, aggregation orders, and exchange orders in respect of Maori land, and to grant easements and lay out roadways over Maori land.

(2) The jurisdiction conferred on the Maori Land Court by this Part 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.

(3) Nothing in this section shall apply in respect of any Maori reserve.

(4) Except as provided in subsection (1), nothing in this Part shall limit or affect the jurisdiction of the High Court.

288 Matters to be considered

(1) In addition to the requirements of subsections (2) to (4), in deciding whether or not to exercise its jurisdiction to make any partition order, amalgamation order, or aggregation order, the court shall have regard to—

(a) the opinion of the owners or shareholders as a whole; and

(b) the effect of the proposal on the interests of the owners of the land or the shareholders of the incorporation, as the case may be; and

(c) the best overall use and development of the land.

(2) The court shall not make any partition order, amalgamation order, or aggregation order affecting any land, other than land vested in a Maori incorporation, unless it is satisfied—

(a) that the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and

(b) that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.

(3) The court shall not make any partition order, amalgamation order, or aggregation order affecting any land vested in a Maori incorporation unless it is satisfied—

(a) that the shareholders of the incorporation to which the application relates have been given express notice of the application; and

(b) that the shareholders have passed a special resolution supporting the application.

(4) The court must not make a partition order unless it is satisfied that the partition order—

(a) is necessary to facilitate the effective operation, development, and utilisation of the land; or

(b) effects an alienation of land, by gift, to a member of the donor's whanau, being a member who is within the preferred classes of alienees.

[29] I also take into account the principles outlined in the following authorities: *Whaanga v Smith*; *Brown v Māori Appellate Court*; and the Māori Appellate Court case of *Hammond – Whangawehi 1B3H1*.[8]

Express notice of the application – s 288(3)(a)

[30] The shareholders have been made aware of the proposed partition by virtue of:

(a) A March 2016 shareholder pānui;

(b) A May 2017 shareholder pānui;

(c) A presentation at the June 2017 SGM;

(d) An AGM booklet distributed to shareholders on 21 August 2017. Reference to PLV appeared in: the notice of AGM; the agenda; a report; a power point presentation; and in proposed resolutions required to support the application;

(e) A resolution seeking approval of the partition was advertised in the Bay of Plenty Times on three occasions, and once in the Rotorua Post and the Whakatane Beacon respectively;

(f) A general pānui appeared on the Mangatawa website advising of the date of the first Court hearing on 16 November 2017 with the advice that a copy of the applications and supporting documents could be viewed at the Incorporation offices;

(g) Express notice advising of the 26 January 2018 hearing was sent to each of the shareholders in the form of a letter dated 20 December 2017.

[31] By virtue of the above I am satisfied that the shareholders have been aware for some time of the proposal to partition Asher Block E and have received express notice of this application.

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[8] *Whaanga v Smith* [2015] NZCA 121; *Brown v Māori Appellate Court* [2001] 1 NZLR 87 (HC); and *Hammond – Whangawehi 1B3H1* (2007) 34 Gisborne Appellate MB 185 (34 APGS 185).

Shareholders' resolutions supporting the application – s 288(3)(b)

[32] A resolution was put to the shareholders at the AGM on 16 September 2017. It reads as follows:[9]

> **Resolution 1.** "That the shareholders of **MANGATAWA PAPAMOA BLOCKS INCORPORATED** approve and endorse the Committee of Management:
>
> *(a)* Partitioning Asher Block E in two separate blocks as shown on plan 173571-110-SCH Rev C prepared by Lysaght, dated 17 July 2017; and
>
> *(b)* To make an application: to the Maori Land Court for partition of Asher Block E.

[33] The outcome of the resolution was that 36 shareholders holding 3,979.84164 shares voted in support of the resolution. Those in favour held 10.26 per cent of the total shareholding or 64.15 per cent of the votes of the attendees. 10 owners holding 2,140.8417 shares voted against the resolution. They hold 5.52 per cent of the total shareholding comprising 34.51 per cent of the attendees. Six abstained holding a total of 83.2499 shares. They represent 0.21 per cent of the total shareholding and 1.34 percent of the votes of the attendees.

[34] Notwithstanding the modest turnout at the AGM, I am not required, as I am in relation to s 288(2)(b), to weigh whether there is a sufficient degree of support in relation to this criteria. Rather, the test under this limb is that the shareholders have passed a resolution supporting the application. I am satisfied that the shareholders did pass a special resolution supporting the application for partition.

The opinion of the shareholders as a whole – s 288(1)(a)

[35] It is impossible to gather the views of the shareholders as a whole, particularly given the large number who did not participate at the recent AGM. The shareholders' opinion can only be gleaned from those who attend and participate at SGMs, AGMs and during the Court process. Based upon the AGM in particular, and also to a certain extent the hearings before the Court, the majority of those owners who have participated or responded to the application support it.

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[9] Brief of Evidence of Kevin Haua dated 3 November 2017 at Exhibit "J".

The effect of the proposal on the interests of the shareholders

[36] There is no real impact upon the interests of the shareholders. Prior to partition, by virtue of ss 250 and 260 of the Act, the owners were deemed to hold undivided interests in Asher Block Lot E. Nothing changes upon partition. The creation of a leasehold estate does not impact on the shareholders' interests. They will continue to hold interests in the underlying Māori freehold title of both blocks.

Best overall use and development of the land -s 288(1)(c)

[37] There was criticism by some shareholders that the initial promise of a quicker return on payments in relation to PCV were not materialised. PCV ran into some initial difficulty as a result of the global financial crisis of 2008 and the development was slower than expected. All the evidence now points to high demand. That demand has in turn led to PCV being virtually sold out. In turn this has enabled increased repayments to Mangatawa, which I discuss earlier at paragraphs [14] to [15].

[38] There was also a suggestion that Mangatawa has failed to consider alternatives. One shareholder queried whether Mangatawa should have considered a hotel development. As the land is zoned Residential A, that would necessitate a private plan change. Although there is no direct evidence on point, Mr Wilkinson, a principal in Generus Living Group Limited, Mr Cross a planner and Mr Hills a property consultant all gave evidence about the difficulty and expense of a private plan change.

[39] To the extent that alternatives have been considered, Mr Hills gave some evidence concerning a potential subdivision into leasehold residential sections. His evidence was that it was unlikely a developer would create leasehold sections due to the high cost of developing the land and limited income from leases. He also stated that it is unlikely that there would be much appetite on the open market for Māori leasehold sections.

[40] Wayne Williams, a financial executive gave evidence that due to the success of PCV, confidence by all external parties in the joint venture management, the projected returns from PLV and Mangatawa's desire to retain the freehold ownership, that there are no options for Mangatawa that come close to matching the benefits of a second retirement village.

[41] In answer to a question from the Bench, Mr Williams said:[10]

> I mean it's probably a very conservative view to say it's a prudent investment and say an opportunity that a man in the street should not pass by.

[42] The land is zoned Residential A. Absent any lengthy and expensive private plan change, which in all probability would need to be publicly notified, the proposal is in accordance with permitted planning rules. The proposal will also allow the freehold to be retained by Mangatawa whilst using a leasehold title for the development of a retirement village. That protection together with the projected financial returns persuades me that the proposal is in the best overall use and development of the land.

Is a partition necessary to facilitate the effective operation, development, and utilisation of the land – s 288(4)(a)

[43] I adopt the principle outlined in the *Brown* decision whereby "necessary" is to be properly construed as that which is reasonably necessary and not that "there is no other way".[11] Necessary means closer to that which is essential than that which is simply desirable or expedient.

[44] The proposed partition is not absolutely necessary. Mangatawa have developed a retirement village on Asher Blocks Lots A and C. The evidence is that it is successful, that it will be an increasingly valuable asset for Mangatawa and its partner, and will provide increased cashflow returns in the years to come.

[45] The success of PCV as a stand-alone retirement village seems assured. To that extent, it is not absolutely necessary for Mangatawa to develop a second retirement village. However, to interpret "necessary" in that way is to downplay the words which immediately follow in s 288(4)(a). The words which follow the word "necessary" provide relevant context. Sub-section 288(4)(a) reads as follows:

> (a) is necessary to **facilitate the effective operation, development, and utilisation of the land**; or…
>
> (emphasis added).

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[10] 153 Waikato Maniapoto MB 136-243 (153 WMN 136-243) at MB 145.
[11] *Brown v Māori Appellate Court* [2001] 1 NZLR 87 at [51].

[46] If Mangatawa do nothing, Asher Block Lot E remains idle or at best, used for grazing. Undoubtedly, the rates on the block will be greater than any potential grazing fees.

[47] If Mangatawa wish to develop that land, steps have to be taken. In this case, partition provides a mechanism for the development of a commercial asset – a retirement village – which will, within 10 years, result in $5.5 million being paid to Mangatawa. Mangatawa will become the part-owner of a second retirement village, with strong cashflows. It will contribute to their already strong asset base. Put another way, unless a partition is granted, the retirement village will not happen. The best option which permits Mangatawa to develop and utilise Asher Block Lot E is a second retirement village. That can only be achieved if this Court grants a partition order.

[48] I am also satisfied that the legal arrangements to be put in place safeguard Mangatawa and the shareholders. Should disaster happen and the proposed village fail, whilst the leasehold estate is at risk the underlying freehold is not. To that extent, I consider that the proposed partition is reasonably necessary if Mangatawa are to realistically achieve their aspiration to commercially develop and utilise their lands.

Discretion – s 287(2)

[49] The Court may refuse to exercise its discretion if it is not satisfied that by granting a partition it would achieve the principal purpose of this part of the Act – s 287(2).

[50] The principal purpose of Part 14 of the Act is to "facilitate the use and occupation by the owners of land…by rationalising particular landholdings…" – s 286(1).

[51] In this case, there is no threat that the underlying Māori freehold land will be lost. Whilst the Court is hearing a partition application, in a sense it is more akin to a subdivision. In that sense, what is proposed is a true rationalisation or reorganisation of the underlying freehold so as to make Mangatawa more effective in its operation, development and utilisation of its lands.

[52] The Māori Land Court rightly takes a cautious approach to partition applications. This is due in part to the fact that historically, partition applications were a precursor to a sale or a change of status to general freehold land followed by sale. Thus, in recent times it has become difficult to achieve a partition. I should add that in those instances where I have granted a partition, on only one occasion has that led to a sale and in that instance to someone within the preferred class of alienees.

[53] I recognise that historic difficulty, however I consider that the case law which has developed in relation to partition not as nuanced as it could be.

[54] I hear multiple applications arising in the Tauranga District which are aimed at enabling people to live on Māori land. Most of the s 164 vesting applications that I hear are for the express purpose of transferees becoming owners in blocks of land or increasing their shareholding to support either occupation order applications or applications for a licence to occupy.

[55] I also hear large numbers of partition applications generated in the wider Tauranga District. In general terms, they fall into four different categories:

(a) An application by an owner in a multiply owned block, to partition with the intention to build;

(b) Applications where a block is owned by one or a small number of owners, typically two or three. In those instances the owners have agreed upon a partition as part of a whānau rationalisation;

(c) Applications as part of a papakāinga development. For example, in relation to Hairini 6D1B2, the trustees have obtained resource consent allowing for

up to 43 houses to be developed on their block. Depending on their circumstances, individual owners seek either a partition or a licence to occupy from the trustees. In this example, the trustees have developed a sophisticated allocation of section process, which is determined prior to an application being filed in Court;

(d) Applications for partition for commercial development of lands.

Generally speaking, the applications which fall into categories [55](b)-(d) above have had greater success before me than category [55](a).

[56] I am conscious that Tauranga is an extremely desirable and expensive place to live. Tauranga was recently ranked as New Zealand's most unaffordable city where residents must spend 8.9 times of their annual household income to purchase a house.[12]

[57] Many applicants that come before me seeking a partition state unequivocally that unless they are able to build on Māori freehold land, they have no chance of purchasing land or a house in the current Tauranga market. Added to that, are the requirements imposed by the relevant District Plan. In Tauranga, the relevant councils are: Tauranga City Council, Western Bay of Plenty District Council and the Bay of Plenty Regional Council. Their planning rules in relation to Māori freehold land are not identical. Many applicants that come before the Court are unaware of the necessity to comply with territorial and in some cases regional authority planning rules.

[58] Faced with those difficulties, many owners resort to self-help remedies. On many of the Māori land blocks, particularly in rural areas and on the offshore islands of the wider Tauranga District, there is a proliferation of what I call "informal" housing. Others would say it is illegal. The housing often takes the form of caravans, shipping containers and small dwellings which are erected or affixed to land without meeting council requirements or having obtained permission of owners/trustees or any orders from the Māori Land Court.

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[12] Felipe Carozzi, Paul Cheshire and Christian Hilber *14th Annual Demographia International Housing Affordability Survey* (2017: 3rd Quarter); See also Anne Gibson "Tauranga beats Auckland as NZ's least affordable for housing: Global study" *New Zealand Herald* (online ed, Auckland, 22 January 2018) Demographia's 14th International Housing and Affordability Survey.

On most site visits that I undertake I observe that the number of "informal" houses usually matches the number of those which are legally in place.

[59] At a broader level, housing is also a basic human right. Judicial notice can be taken of the fact that in recent years New Zealand has experienced a housing crisis with Māori being the ethnic group which experiences the second lowest percentage of housing ownership in New Zealand.[13] An approach which supports building on Māori freehold land is preferred by me to an approach which insists upon principle before people. That is not to say I grant partition applications easily or lightly. At all times, I take into account the effect on the wider body of ownership. However, these factors both local and national weigh with me when I consider partition applications.

[60] What also should not be lost sight of is that the Act places emphasis on not only retention but also on the development and utilisation of land. Examples appear in:

(a) The Preamble, where it refers to the facilitation of "the occupation, development, and utilisation of that land for the benefit of their owners, their whanau and their hapu";

(b) In s 2(2), where it provides that the Act shall be exercised in a manner that facilitates and promotes inter alia the "use, development, and control of Maori land…"

(c) Section 17(1)(b), which provides that one of the primary objectives of the Court shall be to promote and assist in "the effective use, management, and development, by or on behalf of the owners, of Maori land…"

(d) Section 288(4), when considering the necessity test, the Court must consider whether it is necessary in granting a partition to facilitate the "effective operation, development, and utilisation of the land."

[61] I have a sense that the above principles and objectives are overlooked, particularly when considering partition applications. These principles and objectives direct the Court to

[13] See *2013 Census* (Statistics New Zealand, 2014): Home ownership by individuals; Māori home ownership – 28.2 per cent; Pacific Peoples – 18.5 per cent.

consider where appropriate the commercial aspirations of an applicant. The applications brought in this case, and by Mangatawa previously, are an example of that. These are applications by a large Māori incorporation with commercial aspirations. They wish to develop their lands in order to obtain better returns and strengthen their economic base. In considering applications of that nature, it is, I consider an entirely valid approach by the Court to support those commercial aspirations particularly where the underlying freehold land is not at risk, shareholder rights are maintained and the lands are being utilised for a greater commercial return for the incorporation and its shareholders.

[62] That is not to say that I do not have some misgivings. This application comes on the back of the partition orders I made in 2015 which permitted an expansion of PCV. Mr Whitiora McLeod has been consistent in his view expressed then and now that Mangatawa have committed themselves to only one type of investment, a retirement village investment. There is some force in that statement.

[63] I also accept that there can be no guarantee of ultimate success. Whilst market conditions are good for retirement villages at the moment, between 2008 to 2012, PCV struggled to gain any headway. Market conditions may change.

[64] I have also posed the question of Mangatawa witnesses whether or not there would be any resentment factor on the part of the shareholders. There is no evidence that any shareholders have purchased a retirement villa in PCV. The units are priced out of their grasp. The concern I expressed is that shareholders, who may be struggling to obtain their own housing may be resentful of the fact that "outsiders", predominantly elderly middle-class pākehā, are living on their lands whilst they have little hope of purchasing a villa in PCV.

[65] For that reason, I closely questioned the Mangatawa witnesses in relation to proposals for housing their own. There is no point providing housing for non-owners and simply increasing the size of dividends to shareholders, if there is no thought given to meeting the housing aspirations of one's own. There is evidence now before me that a papakāinga has been established and at least 12 houses have been built. There is clearly a demand for more and I understand that in relation to the proposed Asher Block Lot E2 that workshops and hui will be held as to its possible use for housing. I also note the assurance

given by Mr Wilkinson that there is no appetite in relation to that block for a third retirement village.

[66] In summary, although I have some misgivings, when I assess the proposed application against all the statutory criteria, I am satisfied that the various tests are made out. I do so principally because the proposals allow Mangatawa to maintain the freehold, and at the same time utilise the lands for the development of a significant asset which will lead to long-term financial benefit for the Mangatawa shareholders.

Easement application – A20170005740

[67] Mangatawa seek easements for the following services:

(a) Storm water and sewage reticulation;

(b) Right to drain water;

(c) Right to drain sewage;

(d) Right to convey electricity.

[68] The proposed easements are set out in a partition/easement plan prepared by Lysaght Surveyors – drawing number 173571-110-SCH Rev C.

Legal principles

[69] Section 315 of the Act is relevant, I set that out in full:

> **315 Court may create easements**
>
> (1) The court may—
>
> (a) create easements over any land to which this Part applies for the purpose of being annexed to or used or enjoyed with any other land; or
>
> (b) create easements over any General land for the purpose of being annexed to or used or enjoyed with any land to which this Part applies; or

> (c) create easements in gross over any land to which this Part applies.
>
> (2) The grant of an easement under this section may be made subject to a condition for the payment of compensation in respect of the grant, or to any other conditions that the court may impose.
>
> (3) Where an easement is granted under this section for the purpose of providing access to any other land, the grant of the easement shall be made in accordance with the succeeding provisions of this Part.

[70] As to the question of the level of consent for the granting of easements, I adopt the principles outlined in *Smith v Courtney – Ohuirua No 2 Block*.[14] In that case the Māori Appellate Court held that there must be a sufficient degree of support for the application among the owners having regard to the nature and importance of the matter and having regard to the principles in the Preamble, ss 2 and 17 of the Act.

Discussion

[71] In May 2017, all shareholders were sent a pānui notifying them of a SGM to be held on 17 June 2017. That pānui made express reference to the fact that there would be a presentation on the PLV at the special general meeting.[15]

[72] The SGM took place on 17 June 2017. The minutes of that record that there was a presentation on the proposed PLV.[16]

[73] An information booklet was sent to shareholders in August 2017, prior to the scheduled September AGM. That material, which appears as Exhibit "H" to a brief of evidence of Mr Haua included material concerning PLV. It also included a proposed resolution concerning infrastructure with a specific reference to the need for easements to be obtained relating to inter alia storm water, potable water, electricity, communications.[17]

[74] Notice of the AGM was made publicly available by way of advertisements which appeared in the Bay of Plenty Times on three occasions in August and early September 2017, the Rotorua Daily Post and the Whakatane Beacon on 2 September 2017. The advertisements also included the proposed resolutions.

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[14] *Smith v Courtney – Ohuirua No 2 Block* [2011] Māori Appellate Court MB 284 (2011 APPEAL 284).
[15] Brief of evidence of Kevin Haua dated 3 November 2017 at Exhibit "F".
[16] Ibid at Exhibit "G".
[17] Ibid at Exhibit "H".

[75] A resolution was put to the owners at the AGM which reads as follows:[18]

> "That, the shareholders [of] **MANGATAWA PAPAMOA BLOCKS INCORPORATED** approves and endorses the **Committee of Management to:**
>
> *(a)* Construct the required infrastructure on the proposed Asher Block Lot E1, approximately 17.4 hectares, as shown on Plan 173571-110-SCH Rev C prepared by Lysaght (the land) including but not limited to roads, footpaths, storm water and potable water, electricity; telecommunications and street lighting to service the proposed Pacific Lakes Village, a retirement village on the land and to meet all local authority regulations and requirements including the granting of rights of way, easements, encumbrances, covenants and consent notices where necessary; and
>
> *(b)* Make an application to the Māori Land Court seeking orders in relation to all and any necessary easement

[76] At the AGM, 36 owners voted for the resolution they holding 3,979.84164 shares. That shareholding represents 10.26 per cent of the total shareholding or 64.15 per cent of the votes of the attendees. 10 owners voted against the easements holding 2,140.8417 shares. That shareholding represents 5.52 per cent of the total shareholding or 34.51 per cent of the votes of the attendees. Six owners abstained holding 83.2499 shares. That shareholding represents 0.21 per cent of the total shareholding or 1.34 per cent of the votes of the attendees.

[77] In summary, I accept that:

(a) The shareholders were made aware throughout 2017 of the proposal to proceed with a new retirement village;

(b) They were advised that easements would be sought as part of that process;

(c) They were provided, in advance of an AGM, with an express resolution to consider;

(d) That a majority of those who attended the AGM supported the proposed easements.

[18] Ibid at Exhibit "J".

[78] Concern has been expressed by the applicant that although a scheme plan has been prepared, the exact nature and location of the easements may change. I understand that there are existing easements in place on the block relating to water storage and drainage. One of the proposals is to turn those water storage facilities into landscaped lakes. Discussions are ongoing with Tauranga City Council who may also require resource consents and easements in relation to that proposal.

[79] I understand that the scheme plan that is currently before the Court is not a final plan and any orders made will be subject to a final ML Plan being provided. I accept that what Mangatawa have done is advise their shareholders of the need for easements and they have gained the support of shareholders in principle for them. I accept the need for flexibility in this situation in that the precise nature and location of the easements is not yet finalised but will have to be when the ML plan approved as to survey is filed. What the Court would be concerned with is if, at that stage, a whole new suite of easements are sought which bear little or no relation to the material that was before the Court and the owners at the time the resolutions were passed.

Approval of a long-term lease application – A20170005741

[80] As part of the overall structure of PLV, Mangatawa propose to grant the Mangatawa Pacific Lakes Limited/Generus Pacific Lakes Limited partnership a long-term lease of 99 years. A Māori Incorporation cannot grant a long-term lease, of more than 52 years unless the Court in its discretion approves it and the long-term lease is authorised by resolution passed by 50 per cent or more of the shareholders – s 150B(1)(b) of the Act.

[81] A resolution seeking the approval of 50 per cent of the shareholders was sought at the 2017 AGM. Although a majority of those shareholders in attendance supported a long-term lease, the 50 per cent threshold was not reached. Therefore, this application will be dismissed.

Change of status application – A20170005739

[82] Having failed to obtain the required level of support, the COM sought the support of the owners to temporarily change the status of proposed Asher Block Lot E1 from Māori

land to general land to enable the registration of a long-term lease. Following registration, Mangatawa then propose that the status of that block revert to Māori freehold land.

[83] These type of arrangements, are not new for Mangatawa. Similar applications were made and granted by me in relation to Asher Block Lot C.[19] Judge Coxhead also made similar orders in relation to two industrial sections owned by Mangatawa in the Truman Lane area in 2012 and 2013.[20]

[84] A resolution seeking approval of the change of status applications was also provided in the material distributed to the shareholders prior to the 2017 AGM. The resolutions also appeared in the newspaper advertisements I have referred to earlier.

[85] The resolution presented to the shareholders at the 2017 AGM, reads as follows:[21]

> "If less than 50 percent of the shareholders of **MANGATAWA PAPAMOA BLOCKS INCORPORATED** authorize by resolution a long-term lease to Mangatawa Pacific Lakes Limited, the shareholders of **MANGATAWA PAPAMOA BLOCKS INCORPORATED** approve and endorse the Committee of Management:
>
> *(a)* To make an application to the Maori Land Court seeking a temporary change of status of the proposed Asher Block Lot E1, being approximately 17.4 hectares, as shown on Plan 173571-110-SCH Rev C, from Maori Freehold Land to General Land, for the purpose of registering a long-term lease over that block;
>
> *(b)* Following registration of the long-term lease the shareholders approve and endorse the Committee of Management to then file a change of status application with the Maori Land Court, changing status of that block from General Land back to Maori Freehold Land.

[86] The resolution was passed by a majority of the shareholders who attended. 35 shareholders in attendance holding 3,885.50644 shares voted in favour of the change of status application. They represented 10.01 per cent of the total shareholding or 62.64 per cent of the votes of those who attended. 12 owners holding 2,278.6327 of the shares voted against the resolution. They hold 5.87 per cent of the total shareholding or 36.73 per cent of the attendees. Five owners abstained holding 39.7941 shares. That shareholding represents 0.1 per cent of the total shareholding or 0.64 per cent of the votes of the attendees.

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[19] 107 Waikato Maniapoto MB 290-337 (107 WMN 290-337).
[20] 47 Waikato Maniapoto MB 110-133 (47 WMN 110-133) and 50 Waikato Maniapoto MB 221-224 (50 WMN 221-224).
[21] Brief of Evidence of Kevin Haua dated 3 November 2017 at Exhibit "J".

[87] Mangatawa rely upon s 137 of the Act. The relevant part is s 137(1) which reads as follows:

> **137 Power to change status of Maori land**
>
> (1) The Maori Land Court may make a status order under section 135(1) where it is satisfied that—
>
> (a) the legal estate in fee simple in the land is vested in a Maori incorporation or the trustees of a trust constituted under Part 12; and
>
> (b) the title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered; and
>
> (c) the alienation of the land is clearly desirable for the purpose of a rationalisation of the land base or of any commercial operation of the Maori incorporation in which or the trustees in whom the legal estate in fee simple in the land is vested; and
>
> (d) the rationalisation referred to in paragraph (c) will involve the acquisition of other land by the Maori incorporation in which or the trustees in whom the legal estate in fee simple in the land is vested; and
>
> (e) the quorum and voting requirements imposed by regulations made under this Act in relation to the resolution necessary to authorise the alienation referred to in paragraph (c) are impractical.

[88] Mangatawa place particular emphasis upon sub-sections 137(1)(c) and (e). They submit that the alienation of the land (the proposed long-term lease) is clearly desirable in order to develop Asher Block Lot E1 as a retirement village. They also point to the difficulty in obtaining 50 per cent support from the shareholders for a long-term lease as required by s 150B(1)(b) of the Act.

Section 137 – discussion

[89] The five requirements of s 137(1)(a)-(e) are cumulative. In this case the land is vested in a Māori incorporation and the title to the land is registered under the Land Transfer Act 1952. Thus, I am satisfied of the requirements of s 137(1)(a) and (b).

[90] Section 137(1)(c) requires two matters to be considered, they being that:

(a) The alienation of the land is clearly desirable;

(b) For the purpose of a rationalisation or of any commercial operation of the Māori incorporation.

[91] The words "clearly", "desirable" and "rationalisation" have been considered by Chief Judge Williams, as he then was, in a decision of *Karena v Karena – Whangaruru Whakaturia 1D6B9A, B, C and D*.[22]

[92] Chief Judge Williams, relying upon the Collins English Dictionary definition, defined "desirable" as "worthy of desire or recommendation". He defined "clearly" as meaning "obviously or unquestionably". He defined "rationalise" as meaning "to eliminate unnecessary equipment, personnel or process from (a group of businesses, factory, et cetera) to make it more efficient."[23]

[93] In that case, he interpreted s 137(1)(c) to mean:[24]

> … that sale of the land in question must be an option that obviously recommends itself to a reasonable and objective trustee of Māori land as a strategy for the elimination of unnecessary assets in order to render the land holdings of the trust or its business operation more efficient.

[94] I agree with the definitions proposed by Chief Judge Williams, in relation to the words "clearly", "desirable" and "rationalisation".

[95] Chief Judge Williams then went on to analyse ss 137(1)(d) and (e). He reached the conclusion that s 137 was intended to provide for exceptional cases and was drafted in precise and narrow terms for that reason. At paragraph [25] he opined that:[25]

> …It is to be applied only where there is a clear business case for sale of the land in order to make the business or land management operation of the trust more efficient; other land will be purchased in its stead; and the usual route of putting a sale resolution to the owners is not practical. This would usually be because the number of owners is so great, their contact details so out of date or the history of participation in land matters so poor that achieving a quorum at a meeting of owners to discuss

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[22] *Karena v Karena – Whangaruru Whakaturia 1D6B9A, B, C and D* (2005) 102 Whangarei MB 259 (102 WH 259).
[23] Ibid at [20].
[24] Ibid at [21].
[25] Ibid at [25].

> sale is highly unlikely. Impractical is clearly not intended to mean that the owners would vote it down.

[96] I agree with Chief Judge Williams' analysis of s 137, insofar as it applied to the facts of the case before him. In that case, there was a clear plan on the behalf of the applicants to seek a change of status to general land and then sell the lands concerned. That is not the case before me. In the *Karena* case, the applicants also came up against the provisions of s 137(1)(d) which required that the rationalisation (the proposed sale) must lead to the acquisition of other lands. In that case, there was no intention to acquire other lands simply to sell.

[97] The facts of this case are quite different. The alienation is a lease not a sale. The alienation is intended to develop Mangatawa lands and strengthen their commercial basis.

[98] Section 137(1)(c) refers to "a rationalisation of the land base *or* of any commercial operation of the Maori incorporation." Clearly the inclusion of the word "or" indicates that the words "rationalisation" and "commercial operation" should be read disjunctively not conjunctively.

[99] The logical extension of that interpretation is that the necessity to acquire additional lands as required by s 137(1)(d), only applies when the rationalisation involved is a sale, which is clearly not the case here.

[100] For the reasons I have discussed earlier, I accept that the proposed alienation is clearly desirable to enable Mangatawa's commercial operations.

[101] Finally, s 137 can only be utilised if the requirements of s 137(1)(e) are met. That refers to the quorum and voting requirements imposed by *regulations* made under this Act are impracticable.

[102] There are no quorum and voting requirements set out on the Māori Incorporations Constitution Regulations 1994. There is certainly a number of quorum and voting requirements set out in the Māori Assembled Owners Regulations 1995. For example, in relation to a lease of 42 years or more, that requires a 75 per cent quorum – regulation 34. In contrast, s 150B(1)(b) provides that for a Māori incorporation resolution, must be

supported by shareholders holding 50 per cent or more of the total shares in the incorporation.

[103] I do not consider that Part 9 of the Act or the Māori Assembled Owners Regulations 1995 have any application. Although s 169(2) of the Act provides that Part 9 shall extend and apply to land that is vested in a trustee in the same way as it applies to land vested in the beneficial owners, there is no mention of meetings of shareholders of a Māori incorporation. Second, no meeting of owners was ever directed by the Court in accordance with Part 9. Third, the voting process in relation to the shareholders for this Incorporation is set out in the constitution for Mangatawa.

[104] More importantly, the Act itself contains an express provision relating to alienations by a Māori incorporation – s 150B. The provisions of the Māori Assembled Owners Regulations 1995 cannot override the provisions set out in the Act. The Act must trump the regulations. I reach the conclusion that there is in fact no quorum and voting requirements imposed by regulations that apply in this case.

[105] One should adopt a purposive approach to the interpretation of s 137(1)(e). Clearly the drafters of the legislation were referring to quorum and voting requirements. Such requirements may be set out in regulations or in the Act itself. I take the view that the reference to the quorum and voting requirements include those imposed by s 150B of the Act. The real question is whether it is impracticable to achieve that 50 per cent level of support.

[106] There are 786 shareholders who hold 38,810.0008 shares. Mangatawa have a complete shareholding list. Of that there are 107 instances of shareholders who are deceased with no succession having yet taken place. The total number of shares held by those estates is 9,051.70498, or 23.32 per cent of the total shareholding in Mangatawa. In addition, there are 213 shareholders for whom no contact details exist. The total number of shares held by those shareholders is 3,057.91842 being 7.87 per cent of the total shares in Mangatawa. In summary, Mangatawa have no contact with 320 out of 781 shareholders holding 31.19 per cent of the shareholding.

[107] In recent years, Mangatawa has taken a number of steps to address this issue including employing a fulltime researcher between 4 May 2009 to 2 August 2010 whose job it was to locate relatives of inactive shareholders and maintain and update the shareholding register. Mangatawa also employ a secretary whose job it is to maintain the shareholder register including making lists of unclaimed dividends, requesting contact details of inactive shareholders or possible successors and regularly sending out shareholder mailout requests for information about inactive or deceased shareholders.

[108] Mangatawa submit that if the shares of the unsettled estates and shareholders with no known addresses are excluded from the total shareholding, then that reduces the known shareholding to 26,700.3774 shares being 68.9 per cent of the total shares issued. Even if that approach is a valid one, the number of votes cast in favour of the long-term lease do not come anywhere near 50 per cent being 3,863.824 votes or 9.96 per cent of the shareholding.

[109] Mangatawa's attempts to obtain 50 per cent support of the shareholders for a long-term lease are not new. They have attempted to do so on a number of previous occasions.

[110] The results of those voting patterns are set out in the evidence of Mr Haua.[26] They demonstrate that on only one occasion, at the SGM in 2006, have Mangatawa achieved 50 per cent of shareholder support for a long-term lease. On that occasion, 148 shareholders holding 19,769 shares representing 50.95 percent of the shareholding voted in favour of a long-term lease.

[111] Since then, in relation to four separate proposals for a long-term lease the 50 per cent requirement has not been achieved, details being:

(a) At the 2012 SGM, in relation to the Tui long-term lease 12.61 per cent of the shareholding voted in favour of a long-term lease;

(b) At the 2015 AGM, in relation to the PCV extension, a proposal for a long-term lease was supported by 21.08 per cent of the shareholding;

[26] Brief of evidence of Kevin Haua dated 3 November 2017, Exhibit "K".

(c) At the 2017 SGM, in relation to the Truman Lane applications, 13.83 per cent of the shareholding voted in support of a long-term lease;

(d) At the 2017 AGM, in relation to the PLV long-term lease, 9.96 per cent of the shareholding voted in support of a proposed long-term lease.

[112] Mangatawa point to a downward trend of support for a long-term lease. Since 2007 the total shareholding in the Incorporation has increased from 545 shareholders to the current number of 786. With an increasing number of shareholders, they submit that it is increasingly impractical to achieve 50 per cent support for a long-term lease.

[113] I accept that it is impracticable to reach the 50 per cent threshold. Although Mangatawa did on one occasion in 2006 achieve that threshold, since then they have been unable to do so. That is contributed to in part by unsettled estates and owners for whom they have no contact details which in spite of their efforts is a growing problem. The issue has become exacerbated by the fact that the number of shareholders has rapidly increased since 2007. Mangatawa face a situation, not uncommon to many incorporations and trusts that as time passes the ability to meet voting thresholds set out in the Act or regulations will become increasingly difficult. I reach the view that the 50 per cent support required by s 150B(1)(b) is impracticable to obtain.

[114] I propose to grant a change of status order in relation to Asher Block Lot E1. I will also impose orders that following registration of the long-term lease that the block revert to Māori freehold land status.

Orders

[115] I make the following orders pursuant to Te Ture Whenua Māori Act 1993:

Partition application A20170005738:

(a) section 289 partition Asher Block Lot E shown on the Lysaght Plan 173571-110-SCH Rev C as follows:

(i) an area comprising 7.6205 hectares more or less is awarded in the name of the Proprietors of Mangatawa Papamoa Blocks and is named Asher Block Lot E1, subject to approval of the Chief Surveyor and is determined Māori freehold land pursuant to section 131;

(ii) an area comprising 13.04 hectares more or less is awarded in the name of the Proprietors of Mangatawa Papamoa Blocks and is named Asher Block Lot E2, subject to approval of the Chief Surveyor and is determined Māori freehold land pursuant to section 131.

(b) section 304 is imposed against each partitioned area and a restriction on alienation applies as the partitions are by way of hapū partition.

Condition

The orders are conditional, under section 73 of Te Ture Whenua Māori Act 1993, upon completion and receipt of a ML Plan approved as to survey by Land Information New Zealand within twelve (12) months of the date of these orders. The boundaries are to be monumented.

Easement application A20170005740

(c) section 315 creating those easements as shown on the Lysaght Plan 173571-110-SCH Rev C.

Condition

The orders are conditional, under section 73 of Te Ture Whenua Māori Act 1993, upon completion and receipt of a ML Plan approved as to survey by Land Information New Zealand within twelve (12) months of the date of these orders.

Approval of a long-term lease application A20170005741

(d) the application is dismissed.

Change of status application A20170005739

(e) Orders relating to Asher Block Lot E1:

(i) section 137 changing the status of a new lot to be created by partition order to be known as Asher Block Lot E1 from Māori freehold land to general land by status order;

(ii) section 133 making an order changing the status of Asher Block Lot E1 from general land to Māori freehold land following the registration of a long-term lease in favour of Mangatawa Pacific Lakes Limited and Generus Pacific Lakes Limited.

Conditions

The above orders are to lie in Court and not to be forwarded for registration with Land Information New Zealand until such time that the long-term lease to Mangatawa Pacific Lakes Limited and Generus Pacific Lakes Limited has been noted by the Court in accordance with s 150B(3)(b)(ii). The orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

The Truman Lane applications

Background

[116] The Truman Lane applications concern Lot 1 DPS 65413 and Part Mangatawa Papamoa Block. It comprises four parcels of land totalling 215.7082.[27]

[27] CFR 699115 – South Auckland.

[117] These lands are zoned Industrial. They are located in close proximity to the port of Tauranga and transportation networks in the form of rail and State Highway 2. The block is currently used for grazing which provides minimal return.[28]

[118] The COM have for some time wanted to develop these lands and realise their value. At a 2005 AGM, the COM presented a conceptual development plan to shareholders which included a number of ideas for the development of the Truman Lane lands. That plan was developed after a series of workshops and consultation with shareholders and obtaining professional advice.

[119] In 2012 and 2013, Mangatawa obtained various orders from the Māori Land Court in relation to their Truman Lane lands which has enabled them to develop two industrial sections.[29] As part of that process, Mangatawa obtained two orders for partition, associated easement orders, and change of status orders.

[120] Two titles were created as a result of the partition orders, they being Lots 1 and 2 ML Plan 459184.[30] Both lots are subject to 99 year leases. They are leased respectively to Tui Products Limited at an annual rental of $101,636.00 plus GST and by way of a 50 year sublease to Stadium Storage 09 Limited at an annual rental of $87,750.00 plus GST.

The proposal

[121] Mangatawa are seeking to create 13 new titles by way of partition orders. Eleven lots will be available for industrial leases. One lot is intended as an access lot for the proposed development. The new lots will comprise 10.08 hectares. It is proposed that the balance of the lands, 205.1382 hectares, is held in a new title.

[122] Along with partition orders, Mangatawa seek a suite of easement orders. Similar to what previously happened in 2012 and 2013, they seek to enter into long-term leases with prospective tenants, with leases registered against the leasehold estate.

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[28] Affidavit of Kevin Haua dated 6 December 2017 at [3(a)].
[29] 47 Waikato Maniapoto MB 110-133 (47 WMN 110-133) dated 25 September 2012 and 50 Waikato Maniapoto MB 221-224 (50 WMN 221-224) dated 16 January 2013.
[30] CFR 612518 and CFR 612519 – South Auckland.

[123] Mangatawa intend to carry out all the necessary infrastructure work themselves, which they estimate to cost $4 million. Mangatawa has sought subdivision consent from Tauranga City Council, which was approved on 13 October 2017.

[124] Mangatawa submit that there are good reasons as to why these applications should be granted, some of which are:

(a) The land is zoned industrial. The creation of lots for an intended industrial use is in accordance with the permitted activities of the District Plan;

(b) The location is in close proximity to Tauranga port and transportation networks. There is a shortage of industrial sites in that area. They are currently fielding a number of strong enquiries as to whether or not land will become available for industrial leases;

(c) Currently the land is grazed. The returns from that is minimal. By contrast, expert evidence has been commissioned which estimates the annual rental to be achieved from the leases to be in the order of $1 million per annum;[31]

(d) There would be a net capital gain in Mangatawa's assets of $8,492,000.00;[32]

(e) The proposals are low risk. Mangatawa will not construct industrial buildings on site. That cost will be borne by the lessees. Mangatawa will continue to own the underlying freehold. Leasehold estates will be created and there is little or no risk to Mangatawa;

(f) There are no better alternative uses for the site;

(g) That Mangatawa will be able to leverage employment opportunities with various lessees. To that extent, they point to clauses contained within a template lease which require the lessor and lessees to explore opportunities to upskill and employ Mangatawa shareholders.

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[31] Brief of evidence of Peter Cross dated 23 August 2017 at [20].
[32] Ibid at [23].

Opposition

[125] Opposition was raised by some shareholders who attended Court on 16 November 2017. Concerns were raised about:

(a) The low turnout of shareholders in support for the proposals;

(b) The length of the leases;

(c) Not enough information being provided to shareholders;

(d) The proposals are complex and difficult to understand;

(e) That Mangatawa is selling itself short by simply entering into leases, rather, it should be looking to build commercial buildings themselves and seek greater returns;

(f) That the Court should only grant two or three partitions in the first instance which will provide an economic base to enable Mangatawa to build commercial buildings themselves;

(g) The alienation protections contained within the Act are there for a reason. The Court should be slow and or reluctant to sidestep those requirements.[33]

Procedure

[126] The applications were filed with the Court on or about 1 September 2017.

[127] On 11 September 2017, I made directions that all matters were to be set down for hearing on 16 November 2017.

[128] On the question of notice, I directed that the Registrar send notice to all owners for whom it had address details in accordance with rule 13.2 of the Māori Land Court Rules

[33] 153 Waikato Maniapoto MB 108-116 (153 WMN 108-116).

2011. To that end, I directed the Registrar to contact Mangatawa to obtain address details for its shareholders.

[129] In September 2017, Mangatawa forwarded to the Court its current list of shareholders.

[130] Unfortunately, despite the express direction, the Registrar did not send out fixture notices in a timely fashion. I was not alerted to that fact until shortly before Court. I reiterated to the Registrar that fixture notices needed to be sent out as directed. That did not take place until 8 November 2017.

[131] Notwithstanding that, a number of shareholders attended Court on 16 November 2017.

[132] Having heard the evidence of the applicant and shareholders on 16 November 2017, I initially indicated that I would reserve my decision. On subsequently reviewing the information and evidence provided, I provided a further direction on 19 December 2017 indicating that although express notice had been provided to the shareholders, I was concerned that it was belated. Some shareholders who appeared before me rightly complained of that fact.

[133] Thus, I directed that a further hearing be convened for 26 January 2018. I also directed Mangatawa to provide notice of the reconvened fixture to their shareholders. They did so by letter dated 20 December 2017.

[134] At the reconvened hearing held on 26 January 2018, all shareholders who attended bar one, supported these applications and those in relation to Asher Block Lot E.

[135] In passing I note that in contrast to the Asher Block Lot E applications, a section 67 judicial conference was not sought in advance. Given the complexity of the applications I consider it would have been prudent to have done so in advance of formally filing the applications.

Partition application – A20170005269

[136] I adopt the legal principles set out earlier in this decision at paragraphs [28] – [29] inclusive.

Notice – s 288(3)(a)

[137] I am satisfied that the shareholders of the Incorporation received express notice of the application in two ways, they being:

(a) By fixture notice sent out by the Court on 8 November 2017;

(b) By letter sent out by Mangatawa on 20 December 2017.

[138] The shareholders were also made aware of the proposed development of the Truman Lane lands by virtue of:[34]

(a) A pānui was sent to shareholders for whom Mangatawa holds addresses on 24 and 25 May 2017. That pānui informed shareholders of an SGM scheduled for 17 June 2017 and the intention of Mangatawa to seek resolutions to support those proposals. The pānui included a formal notice of the agenda, a background to the proposal and the resolutions which would be put to the SGM;

(b) Public notices of the SGM and resolutions to be sought were included in newspaper advertisements which appeared in the Bay of Plenty Times on 27 May 2017 and 3 June 2017, in the Rotorua Daily Post on 27 May 2017 and in the Whakatane Beacon on 30 May 2017;

(c) Copies of the advertisements and resolutions also appeared online on the Mangatawa website from 15 June 2017;

(d) Further public notices appeared in the Bay of Plenty Times on 10 June 2017, the Rotorua Daily Post on 10 June 2017 and the Whakatane Beacon on 9 June

[34] For details of the notices given refer to affidavit of Kevin Haua dated 6 December 2017.

> 2017. This tranche of advertisements were by way of correction. The earlier advertisements had incorrectly referred to a proposed partition of 9.5 hectares. The error lay with the fact that one lot was omitted in the calculations.

[139] Furthermore, in the lead up to the SGM, Mangatawa staff attempted to phone shareholders for whom they had contact telephone numbers. They managed to speak to 280 shareholders.[35]

[140] The minutes of the SGM of Saturday, 17 June 2017 also refer to the Truman Lane proposals being presented by Mr Peter Cross. Then various resolutions were proposed, to which I will return later.

[141] I am satisfied that the shareholders not only had express notice of the applications filed in Court but in addition Mangatawa took steps to inform the shareholders of their proposals concerning the Truman Lane block.

Shareholders' resolution supporting the application – s 288(3)(b)

[142] A resolution was put to the shareholders at the SGM on 17 June 2017. It reads as follows:

> **Resolution 1.**
>
> That the shareholders of **MANGATAWA PAPAMOA BLOCKS INCORPORATED** approve the partition and sub division of 11 lots totalling an area of approximately 9.5 ha as shown on the attached Plan No. 631073-T-P-D001 Sheet No. OS Issue B ("the Lots"), being all of the land zoned industrial within the Mangatawa Papamoa Blocks and adjacent to Truman Lane and endorse any applications by the Committee of Management to:
>
> - The Maori Land Court to partition the Lots from the balance of the land contained in certificate of Title 699115; and
>
> - The relevant local authorities for the sub division of the Lots."

[143] The outcome of the resolution was that 44 shareholders holding 5,990.10527 shares voted in support of the resolution. Those owners hold 15.43 per cent of the shareholding,

[35] Brief of evidence of Kevin Haua dated 23 August 2017 at [31].

representing 84.92 per cent of those in attendance.[36] Thirteen owners voted against the resolution holding 1,063.97515 shares. They represented 2.74 per cent of the total shareholding or 15.08 per cent of those in attendance.

[144] I am satisfied that the shareholders passed a special resolution supporting the application for partition.

The opinion of the shareholders as a whole – s 288(1)(a)

[145] As I expressed earlier, it is impossible to gauge the views of the shareholders as a whole, particularly given the large number, many of whom are deceased or inactive. Some theories were postulated during the hearing that silence could be construed as support for the general thrust of recent work by the COM. One cannot second guess why shareholders do not participate. However, insofar as I can glean from those who have participated in the process the majority support the application.

The effect of the proposal on the interests of the shareholders – s 288(1)(b)

[146] There is no legal impact upon the interests of the shareholders. They remain shareholders in the Incorporation and thus are deemed to hold interests in any blocks Mangatawa own including new ones created by partition. Fundamentally their position does not change.

Best overall use and development of the land – s 288(1)(c)

[147] The Truman Lane lands are currently used for grazing purposes which provide a minimal return. The land is not suitable for kiwifruit development. The lands are zoned

[36] Post the 16 November 2017 hearing, I reviewed the evidence concerning resolutions passed at the June 2017 SGM. I noted that there were a number of discrepancies in the material that was provided to me and I sought clarification of that by way of direction dated 21 December 2017. The Court received a sworn affidavit by Paula Werohia-Lloyd, the Operations Manager for Mangatawa dated 25 January 2018. When this matter was called before me on 26 January 2018, Ms Werohia-Lloyd confirmed the contents of that affidavit. Ms Werohia-Lloyd deposed that she supervised a recount by Mangatawa staff of all the resolutions proposed in relation to the Truman Lane properties. A number of discrepancies were discovered which meant that information provided by Mr Haua, the Chairperson of the COM in his affidavit dated 23 August 2017 was incorrect. In recording the resolutions made in relation to the Truman Lane properties, I have relied upon the evidence of the most recent evidence of Ms Werohia-Lloyd. For the sake of completeness, I record that Mr Haua accepted that Ms Werohia-Lloyd's evidence was accurate whereby his, in relation to these resolutions, was not. I indicated to counsel this was not a matter which went to the credibility of Mr Haua, rather it appeared to be simply a series of arithmetical and calculation errors.

Industrial but are not used for that purpose. If the proposals proceed, the expert valuation information indicates an annual income of approximately $1 million can be achieved if all 11 lots are leased, with the net equity position of Mangatawa increasing by $8,492,000.00.

[148] Mr Cookson, an accountant, has provided evidence that Mangatawa are in a strong financial position, they will be able to carry out the infrastructural work themselves, that the proposal is low risk and a prudent one to undertake.

[149] Whilst I note the concerns of some shareholders that Mangatawa should build the commercial buildings themselves, estimates given before me by Mr Peter Cross, an experienced commercial property developer, is that it would cost in the order of $20 to $35 million to construct commercial buildings of the size and type anticipated to be built.[37]

[150] I am satisfied that the proposal fits within the general planning framework, is low risk, involves only a portion of the lands in the block and is a prudent one to undertake. Building on the initial success of the Tui Products Limited and Stadium Storage 09 Limited leases, when the project comes to fruition Mangatawa will have a sizeable industrial development complex with projected cashflows in excess of $1 million per annum.

[151] Of course, an economic perspective is only one matter to take into account. In answer to questions from me, representatives of Mangatawa indicated that in order for the various cultural, social and housing initiatives that Mangatawa are embarking upon to be achieved, they need an economic base to do so. To that end, I note the evidence provided, particularly by Ms Paula Werohia-Lloyd about papakāinga initiatives. In addition, there is a strong prospect that Mangatawa will be able to leverage with their lessees to employ, train and upskill shareholders.

[152] In summary, I am satisfied that the proposal meets a number of objectives, not only economic for Mangatawa and are in the best overall use and development of the land.

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[37] 153 Waikato Maniapoto MB 64-135 (153 WMN 64-135) at MB 90.

Is a partition necessary to facilitate the effective operation, development, and utilisation of the land – s 288(4)(a)

[153] I adopt the comments I made earlier at paragraph [43] about what is meant by "necessary".

[154] Clearly Mangatawa could do nothing. They could continue to graze the block, which will be to the benefit of no one other than to the cattle grazing on it. Mangatawa have a plan which has steadily progressed since 2006 to develop the Asher block lands and their Truman Lane lands. There are various restrictions in the Act which provide impediments to the development of industrial lands which general land owners would not face, for example, the restrictions imposed upon sale and long-term lease set out in the Act.

[155] I also asked Mangatawa witnesses whether or not they could simply proceed to lease in any case without first obtaining partition orders. Clearly that is a possibility, however I accept the evidence, particularly of Mr Cross, that banks would be reluctant to lend to commercial/industrial developers who in seeking to spend considerable sums of money to build commercial facilities, need to offer security. A 99 year lease and an accompanying leasehold estate is a far more attractive proposition to lenders than a simple lease of Māori freehold land.[38] The partition orders to create those separate lots are the first step in that direction. They are necessary if Mangatawa is to develop these industrial lands, the alternative is that they are used for cattle grazing at best.

[156] I am satisfied that not only does Mangatawa meet the various tests set out in s 288, the proposal also satisfies ss 287, 286(2) and the Preamble. They are low risk propositions which within a very short period of time will realise a significant income flow for Mangatawa and a corresponding increase in their asset base.

Easement application – A20170005270

[157] Accompanying the partition application, Mangatawa seek an extensive range of easements. The easement plan was prepared by Stratum Consultants – reference 631073-T-P-D001-Sheet 5-Issue D. This plan has been approved as part of the subdivisional consent process by Tauranga City Council.

[38] Ibid at MB 89.

[158] The easements relate to the following types of services.

(a) Storm water and sewage reticulation;

(b) Potable water for drinking and industrial use and water supply for fire-fighting purposes;

(c) Electricity and gas;

(d) Telecommunications and computer media.

[159] I adopt my earlier discussion of the relevant legal principles at paragraphs [69] to [70].

[160] I have earlier, at paragraph [138] discussed the material that was sent out to the shareholders in advance of the SGM and various public advertisements which were made.

[161] Accompanying those materials was a copy of the proposed resolutions and the then version of the scheme plan. The resolution concerned proposed easements reads as follows:

> **RESOLUTION 3**
>
> That, the shareholders **MANGATAWA PAPAMOA BLOCKS INCORPORATED** approve the Committee of Management:
>
> - Constructing the required infrastructure (electrical, gas and telecommunications, reticulation, storm water drainage, sewage infrastructure and the like) to service the 11 proposed [Lots] identified on the attached Plan No. 631073-T-P-D001 Sheet No. OS Issue B ("the Plan"), and to meet all local authority regulations and requirements including the granting of rights of way, easements, encumbrances, covenants and consent notices where necessary; and
>
> - Applying for an order creating the following easements, pursuant to section 315 of the Te Ture Whenua Maori Act 1993:
>
> a. Right of Way and Right to Convey Water, Electricity, Telecommunications, Computer Media, Gas, Right to Drain Water and Sewage over the areas shown "JA", "AB" and "AC" on the Plan over Lot 100 in favour of Lots 1 – 5 and Lots 7 – 11;
>
> b. Right of Way and Right to Convey Water, Electricity, Telecommunications, Computer Media, Gas, Right to Drain Water and

Sewage over the area shown "AA" on the Plan over Lot 100 in favour of Lots 1, 2, 7 & 8;

c. Right of Way and Right to Convey Water, Electricity, Telecommunications, Computer Media, Gas, Right to Drain Water and Sewage over the area shown "AD" on the Plan over Lot 100 in favour of Lots 3 – 5 & 9 – 11;

d. Right to drain water over the area shown "JB" on the Plan over Lot 8 in favour of Lots 1 – 11, Lot 102 and Lot 100;

e. Right to drain water over the area shown "SA" on the Plan over Lot 101 in favour of Lots 7 & 8;

f. Right to drain water over the area shown "SB" on the Plan over Lot 101 in favour of Lots 6 – 9 and Lot 102;

g. Right to drain water over the area shown "SC" over Lot 11 on the Plan in favour of Lots 6 & 102;

h. Right to drain water over the area shown "SD" over Lot 102 on the Plan in favour of Lot 6;

i. Right to convey water over the areas shown "JA", "AA", "AB", "AC" and "AD" on the Plan over Lot 100 in favour of Tauranga City Council as an easement in gross;

j. Right to drain water over the area shown "SB" on the Plan over Lot 101 in favour of Tauranga City Council as an easement in gross;

k. Right to drain water over the area shown "SC" on the Plan over Lot 11 in favour of Tauranga City Council as an easement in gross;

l. Right to drain water over the area shown "SD" on the Plan over Lot 102 in favour of Tauranga City Council as an easement in gross;

m. Right to convey telecommunications and computer media over the areas show "JA", "AA", "AB", "AC", "AD" on the Plan over Lot 100 in favour of the Chorus New Zealand Ltd (or similar telecommunications provider) as an easement in gross;

n. Right to convey electricity over the areas show "JA", "AA", "AB", "AC", "AD" on the Plan over Lot 100 in favour of the Powerco Ltd (or similar power provider) as an easement in gross;

o. Right to convey gas over the areas show "JA", "AA", "AB", "AC", "AD" on the Plan over Lot 100 in favour of First Gas Ltd (or similar gas provider) as an easement in gross.

[162] The outcome of the voting was that 42 owners holding 6,044.3521 shares voted in favour of the resolutions. That shareholding represents 15.57 per cent of the total shareholding or 85.69 per cent of those in attendance. Nine shareholders voted against the resolution holding 666.10515 shares. That represented 1.72 per cent of the total

shareholding or 9.44 per cent of those in attendance. Six owners abstained holding 343.62317 shares. That shareholding represents 0.89 per cent of the total shareholding or 4.87 per cent of the owners in attendance.

[163] The owners did not get an opportunity to vote on three additional easements now sought by Tauranga City Council as an outcome of the subdivisional consent process. I believe that any concern is met by the fact that Mangatawa has taken steps to clearly inform the shareholders of its proposals that infrastructure work would be necessary and that easement orders would need to be obtained. The first part of the resolution clearly identifies that to be the case.

[164] In an ideal world, what would have been preferable is for Mangatawa to include a sentence in the resolution to the effect that the plan that was put before the shareholders may change as part of the resource consent process and/or in discussions with Tauranga City Council or indeed as a result of the Court process.

[165] In general terms however, I am satisfied that the shareholders were informed of the necessity for easements in principle, the nature of the easements that would be sought and were given an opportunity to vote in support or against those easements. Thus, whilst the detail of the easements may finally differ slightly compared to what was before the shareholders at the SGM, that does not concern me.

Approval of a long-term lease application – A20170005273

[166] A resolution seeking the approval of 50 per cent of the shareholders was sought at the SGM on 17 June 2017. A resolution to that effect had been notified to the shareholders in the information sent to them prior to the SGM and by way of the public advertisements as discussed earlier.

[167] Although the resolution was passed by a majority of shareholders in attendance at the AGM, it fell well short of obtaining 50 per cent of the shareholder approval as is required by s 150B(1)(b) of the Act. Only 37 owners voted in favour of the long-term lease. Those owners held 5,332.71257 shares or 13.74 per cent of the total shareholding. That application will therefore be dismissed.

Change of status application – A20170005272

[168] At the SGM, Mangatawa sought the support of owners to temporarily change the status of any lots to be partitioned to general land to enable the registration of a long-term lease. Following registration, Mangatawa also seek orders changing the status back to Māori freehold land. This is a similar process to that which was approved by Judge Coxhead in 2012 and 2013.

[169] Notice of a resolution to that effect was provided to the shareholders in the material distributed to shareholders in May 2017. As discussed earlier, specific notice of that resolution also was publicly advertised on a number of occasions in various newspapers circulating in the Bay of Plenty area.

[170] The resolution that was put reads as follows:

> **RESOLUTION 4.**
>
> That the shareholders o[f] **MANGATAWA PAPAMOA BLOCKS INCORPORATED** hereby resolve:
>
> - That there be a temporary change in status of the land required to create the 11 proposed lots identified on the attached Plan No. 631073-T-P-D001 Sheet No. 05 Issue B ("the Plan"), from Maori Freehold Land to General Land, for the purpose of creating 11 individual titles, registering a long-term lease on each of the 11 newly created titles and then changing the status of each title back to Maori Freehold Land.
>
> - To endorse the Committee of Management making an application to the Maori Land Court to effect the two changes of status.

[171] 40 shareholders voted for the resolution holding 5,769.2011 shares. The shareholding they held represents 14.87 per cent of the total shareholding or 81.79 per cent of the shareholders in attendance at the SGM. 11 shareholders voted against the proposition holding 941.25615 shares. Their shareholding represents 2.42 per cent of the total shareholding or 13.34 per cent of the shareholders in attendance at the SGM. Six owners abstained holding 343.62317 shares. That represents 0.89 per cent of the total shareholding, or 4.87 per cent of the shareholders in attendance.

[172] Once again, Mangatawa rely upon s 137 of the Act. Earlier in this decision at paragraphs [109] to [113] I set out Mangatawa's attempts to obtain 50 per cent shareholder

support for long-term leases. I adopt that discussion. What is clear is that apart from the one occasion at the 2006 SGM, at no other time since then has Mangatawa managed to achieve the 50 per cent threshold.

[173] Earlier in this decision at paragraphs [89] to [113] I have discussed my interpretation of what is required by s 137. I adopt that earlier discussion.

[174] With respect to the Truman Lane properties, Mangatawa has yet to agree terms with any lessees. The evidence before the Court simply is that there are a number of expressions of interest should the titles be created. What Mangatawa propose is a three-step process being:

(a) Registration of the partition orders, easements and the issue of new titles;

(b) Finalising leases with tenants, and forwarding that to the Court for approval as and when they are executed;

(c) Registration of a change of status order changing the status of a lot from Māori freehold to general land, registration of a long-term lease, issue of a leasehold title followed by registration of a status order reverting status back to Māori freehold land.

[175] One area that causes me a little concern is that in contrast to the orders made by Judge Coxhead in 2013, no leases have yet been agreed between Mangatawa and any prospective lessees. In that case, Judge Coxhead had before him leases in relation to Tui Products Limited and Mangatawa Developments Limited. In the case of the partition of Asher Block Lot C, I had before me a lease which had been entered into between Mangatawa and its fully owned subsidiary Mangatawa Retirement Village Limited. In the applications I discussed earlier involving Asher Block Lot E1, a draft lease between Mangatawa and Mangatawa Pacific Lakes Limited and Generus Pacific Lakes Limited, is included in the materials attached to the brief of evidence of Kevin Haua dated 3 November 2017.

[176] The danger in this case is there are no leases in place. Should orders be made now changing the status of newly created titles from Māori freehold to general land, depending

upon the timeframes for the lease negotiations, the newly created lots may have general land status for some time. We simply do not know how long that process might take.

[177] I have reviewed the template lease and the parameters provided by Mangatawa. They look to be in order, however they are of course not the final form of any lease to be entered into. I understand Mangatawa's desire not to have to return to the Court in relation to each lease it negotiates and obtain separate status orders in relation to individual lots. I understand the practicality of what is being sought.

[178] What I propose to do is to grant the various change of status orders, however I will direct that they lie in Court and are not to be released for registration purposes until the Court has noted the leases as required by s150B(3)(b)(ii). There would be a danger for orders to be made now with no indication as to when leases have been executed and are ready for registration.

[179] That concern and the necessity to provide some safeguards in that respect are reflected in the orders that I subsequently make.

Orders

[180] The Court makes orders pursuant to Te Ture Whenua Māori Act 1993 as follows:

Partition application – A20170005269

(a) section 289 partitioning Lot 1 DPS 65413 and Part Mangatawa Papamoa SO 452445 as follows:

(i) An area comprising 1.01 hectares more or less shown as Lot 1 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and

(ii) **An area comprising 1.00 hectare more or less shown as Lot 2 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(iii) **An area comprising 0.70 hectares more or less shown as Lot 3 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(iv) **An area comprising 0.69 hectares more or less shown as Lot 4 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(v) **An area comprising 1.10 hectares more or less shown as Lot 5 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(vi) **An area comprising 0.60 hectares more or less shown as Lot 6 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(vii) **An area comprising 1.33 hectares more or less shown as Lot 7 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(viii) **An area comprising 1.45 hectares more or less shown as Lot 8 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and**

(ix) An area comprising 0.59 hectares more or less shown as Lot 9 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and

(x) An area comprising 0.61 hectares more or less shown as Lot 10 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and

(xi) An area comprising 1.00 hectares more or less shown as Lot 11 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and

(xii) An area comprising 0.49 hectares more or less shown as Lot 100 on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand; and

(xiii) An area comprising the residue area, is awarded to the Proprietors of Mangatawa Papamoa and to be known as Lot 101 comprising 171.23 hectares and Lot 102 comprising 0.68 hectares together with Part Mangatawa Papamoa and Lot 1 DPS 65413 as shown on the Stratum Consultants Plan – Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D and to be known as the appellation ascribed to it by Land Information New Zealand.

(b) section 304 is imposed against each partitioned area and a restriction on alienation applies as the partitions are by way of hapū partition.

Condition

The Orders are conditional, under section 73 of Te Ture Whenua Māori Act 1993, upon completion and receipt of a ML Plan approved as to survey by Land Information New Zealand within twelve (12) months of the date of these orders. The boundaries are to be monumented.

Easements application – A20170005270

(c) section 315 creating those easements as shown on the Stratum Consultants Plan Drawing No. 631073-T-P-D001-Sheet No. 5 – Issue D.

Condition

The orders are conditional, under section 73 of Te Ture Whenua Māori Act 1993, upon completion and receipt of a ML Plan approved as to survey by Land Information New Zealand within twelve (12) months of the date of these orders.

Approval of a long-term lease application – A20170005273

(d) This application is dismissed.

Change of status application – A20170005272

(e) Orders relating to Lot 1:

(i) section 137 changing the status of Lot 1 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 1 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(f) Orders relating to Lot 2:

(ii) section 137 changing the status of Lot 2 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 2 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(g) Orders relating to Lot 3:

(i) section 137 changing the status of Lot 3 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 3 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(h) Orders relating to Lot 4:

(i) section 137 changing the status of Lot 4 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 4 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has noted by the Court in accordance with s 150B(3)(b)(ii). These orders are to be filed in one dealing with Land Information New Zealand.

(i) Orders relating to Lot 5:

(i) section 137 changing the status of Lot 5 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 5 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(j) Orders relating to Lot 6:

(i) section 137 changing the status of Lot 6 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 6 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(k) Orders relating to Lot 7:

(i) section 137 changing the status of Lot 7 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 7 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(l) Orders relating to Lot 8:

(i) section 137 changing the status of Lot 8 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 8 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(m) Orders relating to Lot 9:

(i) section 137 changing the status of Lot 9 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 9 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(n) Orders relating to Lot 10:

(i) section 137 changing the status of Lot 10 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 10 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

(o) Orders relating to Lot 11:

(i) section 137 changing the status of Lot 11 created by the above partition order from Māori freehold land to general land.

(ii) section 133 changing the status of Lot 11 from general land to Māori freehold land following the registration of a long-term lease.

Conditions

The above orders are to lie in Court and not be forwarded for registration with Land Information New Zealand until such time that an executed long-term lease has been noted by the Court in accordance with s 150B(3)(b)(ii). These orders along with the approved long-term lease are to be filed in one dealing with Land Information New Zealand.

Directions concerning the drawing of orders

[181] During the course of the hearings, it was proposed that if I granted orders in favour of Mangatawa, their solicitors could assist in the drawing and registration of any orders. Given the large number of orders to be drafted, I have no difficulty in principle with the Mangatawa solicitors assisting that process by providing draft orders to the Registrar for their consideration. However, any orders that are put before me for signing and the registration process, must be carried out by the Registrar of the Māori Land Court. Having said that, I am conscious that there are a large number of somewhat complex orders to be drafted and registered. To that end I grant leave to the solicitors for Mangatawa to seek any further direction from the Court should that be necessary concerning the form of the orders and/or any issues that may arise during the registration process.

Pronounced in open Court at 3.35pm in Hamilton on the 9th day of February 2018.

S R Clark
JUDGE