IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20010005596

UNDER	Sections 289, 298, 328 and 18(1)(a) of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Taiharuru 4C3C – Partition Order, Occupation and Determination of ownership of a dwelling
	REVELL NEAL Applicant

Hearing: 92 Whangārei MB 221-222 dated 31 August 2001
93 Whangārei MB 74-75 & 76-77 dated 27 November 2001
66 Taitokerau MB 113-114 dated 18 September 2013
68 Taitokerau MB 278-302 dated 22 October 2013
68 Taitokerau MB 250-252 dated 23 October 2013
74 Taitokerau MB 194-225 dated 24 February 2014
82 Taitokerau MB 118-120 dated 27 June 2014
93 Taitokerau MB 263 dated 23 December 2014
100 Taitokerau MB 128-155 dated 12 March 2015
127 Taitokerau MB 1-25 dated 19 February 2016
(Heard at Whangārei)

Appearances: W Coutts for the applicant

Judgment: 29 June 2016

RESERVED JUDGMENT OF JUDGE M J DOOGAN

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[1] Revell Neal has a significant shareholding in a 1.38 hectare coastal block of Māori freehold land in Northland. There are 14 owners.[1]

[2] A number of owners, including Mr Neal, have structures or caravans on the land which they use for holiday accommodation. There is a history of disagreement amongst the owners about where they can build or occupy. Nonetheless, at a meeting in 1995, an agreement was reached as to the areas for each whānau to occupy.

[3] In 2001 Mr Neal commenced this application to partition out his interests. The area he seeks to partition forms the higher part of the block. This is consistent with the area identified by the owners for his interests in 1995.

[4] The application has followed a winding path. Its progress was considerably delayed by an application to the Chief Judge challenging a share transfer to Mr Neal. It has now reached the point where the sole issue to decide is whether the partition should be granted. Mr Neal agreed to my proposal to amend the application to include, as an alternative, an occupation order and a declaration as to the ownership of the house he has built.

[5] There are three statutory requirements that must be met before I can consider granting a partition application. I must be satisfied that: [2]

a) the owners have had sufficient notice of the application and sufficient opportunity to discuss and consider it;

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; and

c) that the partition is necessary to facilitate the effective operation, development and utilisation of the land.

[6] I am satisfied that these threshold requirements have been met. This means I must also have regard to certain mandatory considerations. I must have regard to the opinion of the owners as a whole, the effect of the proposal on the interests of the owners and the best overall use and development of the land.[3]

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[1] Taiharuru 4C3C block, CFR Register 489517. Mr Neal owns 16 of the 40 shares in the block.
[2] Sections 288(2)(a) and (b) and 288(4)(a), Te Ture Whenua Māori Act 1993, see *Hammond – Whangawehi 1B3H1* (2007) 34 Gisborne Appellate MB 185 (34 APGS 185).
[3] Sections 288(1)(a)-(c), Te Ture Whenua Māori Act 1993.

[7] Finally, even if I am satisfied as to all these matters before exercising discretion to grant the application, I must be satisfied that to do so would be consistent with the purpose of Part 14 of Te Ture Whenua Māori Act 1993 ("the Act"), which is:[4]

> … to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access to additional; or improved access to the land.

The threshold requirements

1. Have the owners had sufficient notice of the application and sufficient opportunity to consider it?

[8] The owners have had sufficient notice and opportunity to consider Mr Neal's application. This is clear from the procedural history.

[9] Mr Neal lodged his application in 2001. The location of the proposed partition has not changed although the area has reduced in size from 8360m^2 to 5600m^2. There were hearings and a site visit in 2001.[5] Owners and their whānau were well represented at that time.

[10] Matters were then considerably delayed by the s 45 application. It was lodged in 2001 by Rhona Welsh. She sought to overturn a transfer of shares from her father (Milton Welsh) to Mr Neal. A decision did not issue until September 2012. This had the effect of cancelling a transfer of five shares from Milton Welsh to Mr Neal.

[11] The matter was referred to me in 2013. Mr Neal confirmed that he still wished to proceed with the partition application.

[12] A site inspection, judicial conference, and preliminary hearing took place on 22 October 2013.[6] There were seven owners in attendance representing approximately 34 of the 40 shares. In this (and subsequent) calculations I have included Rhona Welsh who, while not herself an owner, said at the hearing that she was advocating on behalf of her father's five shares.

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[4] Sections 286(1) and 287(2).
[5] 92 Whangārei MB 221-222 (92 WH 221); 93 Whangārei MB 74-75 and 76-77 (93 WH 74).
[6] 68 Taitokerau MB 278-302 (68 TTK 278).

[13] At this hearing Mr Neal said that his application was consistent with an agreement reached by the owners in 1995. In that agreement the owners recorded a wish that future generations cease to make claims or dispute the agreed boundaries from that time forward. The roadway on to the land was to be private and for the sole purpose of providing access to the families of the owners.

[14] Nonetheless, some owners said that the 1995 plan was no longer relevant as it did not reflect developments on the land. The outcome of the s 45 application also meant that the area initially sought to be partitioned by Mr Neal would need to be adjusted. Questions were raised about financial contributions to various improvements undertaken on the land in terms of access and levelling. I adjourned the application and directed the Principal Liaison Officer to convene a meeting of owners to see if agreement could be reached on all outstanding matters concerning Mr Neal's application and the 1995 agreement of owners from which it originates.[7]

[15] The meeting took place on 14 February 2014. Eight of the 14 owners were present. Their combined shareholding represents approximately 37 of the 40 shares in the block. Some former owners and non-owners were also present. Unfortunately the meeting did not complete the scheduled agenda due to disagreement and disruption amongst some of those present. A revised plan was discussed. There was broad agreement to establishing areas of whānau occupation. Establishing a trust over the land was not widely supported.

[16] The matter then came back before me on 24 February 2014.[8] Six owners were present or represented at that hearing. Their combined shareholding represented approximately 34 of the 40 shares.

[17] At this hearing Mr Neal explained that changes in shareholding since the 1995 agreement did not alter the location of the area he sought to partition, although the actual size would need to be adjusted according to his current shareholding. In 1995 Mr Neal owned 15 shares. Mr Neal explained that some of the shares that he now held, he had acquired since 1995 out of his mother's interests. His mother's shareholding had, under the 1995 agreement, been allocated to a portion of the block lower down the hill from the area at the top of the block allocated to Mr Neal in 1995. He now owns 16 shares. Other owners present were supportive of further dialogue in order to try and reach agreement over areas of

[7] 68 Taitokerau MB 250-252 (68 TTK 250).
[8] 74 Taitokerau MB 194-225 (74 TTK 194).

whānau occupation, but less supportive of establishing a trust over the land. A number opposed the partition.

[18] During the February 2014 hearing, a significant point of difference arose between Mr Neal and Rhona Welsh as to the appropriate area for Milton Welsh's five shares (which had been returned to Mr Welsh pursuant to the s 45 order). Milton Welsh suffers a disability. Rhona Welsh informed the Court that she held power of attorney. I directed her to file a copy of the power of attorney. This was not received until 18 July 2014. The power of attorney is also dated 18 July 2014.

[19] At the hearing on 24 February 2014, Rhona Welsh expressed a preference for an area of occupation towards the top of the block. This is a relatively flat area adjacent to, or within, Mr Neal's proposed partition area, and is close to the area where Mr Neal has built a house. However, Mr Neal proposed that Mr Welsh's shareholding be allocated an area further down the hill and offered to pay for the creation of the necessary access.

[20] Mr Neal and Rhona Welsh agreed to without prejudice discussions which I facilitated. I met with them on-site on 10 March 2014. Both of the areas under discussion were suitable for housing. For the area lower down the hill, some further access and levelling work would be required.

[21] Rhona Welsh requested time to consult with her whānau and to submit her views in writing. I agreed and provided Mr Neal with an opportunity to respond once Rhona's correspondence had been received. Following that exchange of correspondence I issued directions on 27 June 2014 recording that while there had been constructive discussions, no agreement had been reached. I brought the facilitated discussions to an end. No objection was raised to my continuing to deal with the matter despite my involvement in those discussions. With Mr Neal's agreement, I directed that an application for an occupation order and an order determining ownership of a dwelling be added to the application. I directed Mr Neal to undertake a number of steps, and the matter was set down for hearing on 12 March 2015.[9] At that hearing, Mr Coutts appeared for Mr Neal. Five owners or owner representatives were present, including Rhona Welsh. The total shareholding represented by those present consisted of approximately 31 of the 40 shares in the land.[10]

[9] 82 Taitokerau MB 118-120 (82 TTK 118).
[10] 100 Taitokerau MB 128-155 (100 TTK 128).

[22] Mr Coutts outlined Mr Neal's position and confirmed that it remained his client's objective to:[11]

> (a) acquire sole ownership of the area sought to be partitioned ("the partitioned area");
>
> (b) mortgage the partitioned area to provide funds to build on the partitioned area;
>
> (c) reside permanently in the house to be built on the partitioned area with his family in a secure and safe environment and with no outside interference;
>
> and as by products of these:
>
> (d) be liable only for rates struck in respect of the partitioned area and not for the rating obligations of all of the owners in respect of the block;
>
> (e) free himself and his children in the future from the constant bickering that beset firstly his mother and thence himself and the other owners with respect to the block;
>
> (f) enable the applicant to obtain from the Whangārei District Council, without reliance upon other or other owners:
>
> i. a Certificate of Acceptance in respect to the existing building on the partitioned area;
>
> ii. a Building Consent with respect to the dwelling proposed to be erected by the applicant.

[23] Given the time and cost already expended by Mr Neal, Mr Coutts sought an indication as to whether there was a sufficient basis to carry on. In response, I gave a preliminary indication that I was satisfied that it appeared his client had a reasonable case in terms of the threshold requirements for a partition. I said that the Court would be assisted by the provision of further evidence, particularly valuation and banking evidence, clarification of the proposed access, and updated information on District Council rates liability.

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[11] Memorandum of Counsel, 12 March 2015 at [6].

[24] By memorandum dated 16 October 2015, Mr Coutts provided a revised plan of the proposed partition showing proposed access off Taiharuru Road. Mr Coutts also provided a copy of a valuation dated 2 October 2014, an update on the District Council rates liability, and correspondence with Westpac New Zealand.

[25] I directed Mr Coutts to serve his memorandum and evidence on all owners and attendees at previous hearings. Those parties had 15 working days to provide written submissions in response.[12]

[26] No responses were received, and by directions dated 7 December 2015 I set the matter down for a final hearing.[13] That hearing took place on 19 February 2016. In attendance were Mr Neal and his whānau. No other owners attended. However, on the day of that hearing, Milton Welsh filed a letter dated 19 February 2016 explaining that he wished to do things by himself. The letter was addressed to Rhona Welsh and was in relation to the current application to partition Taiharuru 4C3C. Included was a letter dated 27 January 2016 from Mr Welsh's doctor. The doctor confirms that Mr Welsh suffers from a mental health ailment but is stable under treatment. While his thought processes can appear a little disjointed at times, the doctor states that he believes Mr Welsh is capable of making decisions properly and of expressing them.

2. Is there a sufficient degree of support for the application among the owners?

[27] In his memorandum of 12 March 2015, Mr Coutts helpfully summarises the level of support and opposition for the application. I adopt his table.

Support	
Charles Neal	3.000
Melody Neal	3.000
Revell Neal	16.000
Leonie Pou	5.833
	27.833 shares

Opposed	
Cynthia Pou	0.833
Heather Pou	0.833
Te Aroha Pou	0.833

[12] 115 Taitokerau MB 61 (115 TTK 61).
[13] 115 Taitokerau MB 32 (115 TTK 32).

Willie Pou	0.833
Tania Rua	3.000
Milton Welsh	5.000
	11.332 shares

Unknown	
Darian Brownlee	0.208
Dave Brownlee	0.209
Ricky Brownlee	0.209
Stephanie Brownlee	0.209
	0.835 shares

[28] Four owners representing 69.5 per cent of the total shareholding support the application. Six owners representing 28.5 per cent of the total shareholding oppose the application and the views of four owners representing two per cent of the total shareholding are unknown.

[29] For the purpose of this calculation I have included Milton Welsh's shares with those opposed. His view on the application is not entirely clear in light of his letter to the Court on the day of the last hearing which appears to record an intention to revoke the power of attorney conferred on Rhona in July 2014.

[30] What amounts to a sufficient degree of support is not simply a matter of arithmetic. Sufficiency of support is to be assessed on a case by case basis having regard to the nature and importance of the matter.

[31] The Māori Appellate Court in the *Reid* case concluded that:[14]

> Just what amounts to "sufficient" support for the proposal is in the end a matter for case by case analysis (see Brown at page 97). In some cases, partition may be the only means of overcoming intractable differences between owners and their whanau even though those in support of the partition are only in the minority in number or shareholding. In other cases a clear majority in support will be required.

[32] There are only 14 owners in this block. A substantial majority by shareholding support the application. By number, there are four owners in support and six in opposition. The

[14] *Reid v Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* (2006) 34 Gisborne Appellate MB 168 (34 APGS 168).

actual extent of opposition is unclear given uncertainty over the position of Milton Welsh and the fact that no owners apart from Mr Neal attended the final hearing or filed any submissions in opposition to Mr Coutts' memorandum and evidence of 16 October 2015.

[33] This is not a large block in area. Its primary utility is for holiday or residential accommodation. While there is some opposition, there is clear support from just under 70 per cent of the total shareholding. As shareholding is a proxy for relative interest, I accord this some weight.

[34] There has been a history of disagreement amongst owners over the land and its enjoyment. Mr Neal's application is consistent with an agreement reached by owners in 1995 as to areas of occupation. These remaining disputes appear to have become intractable and appear to lie between Mr Neal and a small number of owners (and others). Having regard to all these matters, and the importance of bringing an end to the division, I am satisfied there is a sufficient degree of support for the application.

3. Is the partition necessary to facilitate the effective operation, development, and utilisation of the land?

[35] The cases make it clear that the reference to "necessary" means reasonably necessary, and is closer to that which is essential than that which is simply desirable or expedient.[15]

[36] In order to consider whether the partition is necessary I must also consider whether there are reasonable alternatives to partition. Such alternatives could include an occupation order or a trust order defining areas of use and occupation.[16]

[37] Both of these alternatives have been addressed during the course of the hearings. Owners of an adjacent block of Māori freehold land with similar characteristics and of similar size have recently established a trust with defined areas of whānau occupation. Mr Coutts acted for one of the parties in that matter (the *Heta* case).[17]

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[15] *Brown v Māori Appellate Court* [2001] 1 NZLR 87 (HC) at [51].
[16] *Reid v Trustees of Kaiwaitau 1 Trust*, above n 14.
[17] *Heta – Taiharuru 4C3B* (2010) 13 Taitokerau MB 203 (13 TTK 203), *Heta – Taiharuru 4C3B* (2014) 88 Taitokerau MB 136 (88 TTK 136), *Heta – Taiharuru 4C3B* (2015) 99 Taitokerau MB 164 (99 TTK 164).

[38] I have reviewed the decisions issued by Judge Ambler in the *Heta* case and agree with Mr Coutts that the approach taken there would not work in this case because there is insufficient unity of purpose or support for establishment of a trust amongst the owners.

[39] An occupation order was seen as less desirable by Mr Neal because his ultimate goal was to build a permanent dwelling on the partitioned area which he could live in and leave for his children to enjoy. Mr Coutts also pointed to the position of the bank and difficulties said to arise with the raising of finance on the strength of an occupation order even if combined with an order determining ownership of a dwelling. Mr Coutts referred to a letter from Westpac dated 28 September 2015 in which the bank confirmed that it would lend on the security of a first registered mortgage over Māori freehold land, but would not lend in circumstances where an applicant holds only an occupation order in respect of a housing site on multiply owned Māori land.

[40] Mr Coutts submits that it is clear that Westpac would lend to the applicant if the partition was granted (all other things being equal) because its loan could be secured by way of a first registered mortgage over the partitioned area. While an occupation order vests exclusive use and occupation of the site in the grantee, it does not vest the underlying fee simple title. The right of a grantee under an occupation order is overlaid on the fee simple interest, and rights under an occupation order remain limited and personal to the grantee. From a legal perspective, an occupation order would not provide security for a bank in the form of a first registered mortgage over a fee simple interest in Māori freehold land capable of being separately and freely realised by that bank in the event of default.

[41] I accept that there are credible arguments that an occupation order raises impediments to what the applicant is trying to achieve. I do not see Mr Neal's preference to proceed with a partition application as unreasonable or capricious.

[42] In terms of the effective operation, development and utilisation of the land, the following points emerge. First, given its size, location and the number of owners, its primary utility is for holiday or residential accommodation. From the perspective of the applicant, the proposed partition is said to be necessary to facilitate his effective development and utilisation of the land because it will enable him to secure finance to build a permanent residence on the partitioned area. It will also enable him to seek compliance with respect to the dwelling he has already placed upon the land (this is not possible presently as agreement from all owners is needed to apply for a Certificate of Acceptance). Furthermore, Mr Neal considers that partition is necessary to free him from a history of division with some of the

owners. It will also enable appropriate apportionment and settlement of rates liabilities. Set against this is the fact that Mr Neal pushed on regardless and, around 2004, began building a house on the land. At the same time, I must acknowledge that this application has been far too long in the Court system through no fault of Mr Neal's.

[43] It is also necessary to consider the effect of the proposed partition on the development and utilisation of the residue land by the remaining owners. There are no obvious impediments to their use or enjoyment of the balance of the land. There is existing formed access onto the block that would not be affected by the proposed partition. Mr Neal proposes to form a separate access on to the partitioned area. I am aware from site visits that outside of the area for the proposed partition there remain a number of suitable building sites, some of which are already occupied by temporary structures or caravans. The valuation provided by Mr Neal apportions the block into four value categories. First, an area of 0.820 hectares described as prime coastal land containing at least 10 potential house sites. Second, an area of 0.230 hectares west-facing slope having rural and estuary views only. Third, a flat area of 0.100 hectares, with minimal views but level building site, and 0.238 hectares of sliding land which is unsuitable for building upon. An overall market value of the block is assessed at $1.233 million. Mr Neal's shareholding apportioned across all value categories pro rata is valued at $489,125 and represents an area of 0.560 hectares.

[44] Outside of the proposed partition area, I would estimate there are at least a further six sites suitable for building. If the partition were granted, the owners of the residue would be able to develop, use and occupy the land in accordance with the 1995 agreement, or a variation of it.[18]

[45] While there are now 14 owners, the 1995 agreement was entered into between six owners who together owned all 40 shares when the Taiharuru 4C3C block was created by partition order in 1996.[19] I infer from what I have heard that one source of tension around this application arises from the fact that Mr Neal has pushed ahead with building and development on the land. In the absence of a trust or governance structure, he has done so at his own risk. It appears that this has led to some resentment, coupled perhaps with a fear of being left behind.

[18] This would of course be subject to compliance with relevant building and local authority planning requirements. I did not receive evidence or submissions on these matters.
[19] 82 Whangarei MB 289 (82 WH 289).

[46] Having regard to all these matters, I conclude that the partition is necessary to facilitate the effective operation, development and utilisation of the land by the owners. From the perspective of the applicant, it will consolidate his interests and enable him to utilise a defined portion of the land free from the disagreement and stalemate which has been a feature of his relationship with some owners for a considerable period of time. The owners of the residue area are likewise able to continue to utilise that land or to come to arrangements amongst themselves as to future occupation without Mr Neal's involvement.

The mandatory considerations

1. What is the opinion of the owners or shareholders as a whole?

[47] Several features stand out. It is clear that owners as a whole support use of the land for occupation and enjoyment by whānau. Since the agreement amongst the owners in 1995, some progress has been made towards improving access onto the land. A number of owners have structures or caravans on the land, and others have signalled an intention to do so in the future. There is a reasonably high level of agreement about areas for the various owners to occupy, although as matters stand there is no apparent agreement over an area for Milton Welsh's five shares. If this application is granted, and having regard to the arrangements and agreements already in place, it seems the remaining options for Milton Welsh's shareholding would be towards the eastern boundary below the pohutukawa tree and the area Heather Pou and whānau have claimed, and below and to the left of Tania Rua's area. There is also potentially an option to use flat land at the bottom of the property.

[48] While there is support for owner occupation and use, opinion is divided over this application. Mr Neal and those who support him clearly believe that partition is the optimum solution. As outlined above, there are a number of practical benefits that are said to arise if partition is granted. Partition is also favoured as the best way to free Mr Neal and his whānau from a cycle of conflict with some of the other owners and/or former owners and whānau members. There have been disputes over sharing of costs for access and improvements and rates. There has been conflict over particular developments. I was told that a caravan had been removed by persons unknown and that foundation poles erected by Tania Rua had been cut off, also by persons unknown. Complaints were lodged with the District Council when Mr Neal began erecting his existing dwelling on the land.

[49] Opposition to Mr Neal's application expressed at the hearing and site visits tended to focus on these issues and the location of an area reflecting Milton Welsh's shareholding.

Concerns about a partition possibly leading to future alienation by way of sale has not been raised as an issue. It appears to me that it is Mr Neal's genuine desire to occupy and use the land, and to ensure that his descendants have that opportunity also. I see nothing in the evidence before me to suggest otherwise.

2. What is the effect of the proposed partition on the interests of the owners of the land?

[50] Starting from the premise that the best use and development of the land is occupation by the owners, I see the effect of the proposed partition as largely neutral. A revised plan of partition has been prepared by Mr Neal's valuer. The area to be partitioned has been revised to reflect a reduced area proportionate to Mr Neal's shareholding of 16 shares. His sister Melody's three shares are no longer included in the proposed partition and the area has been reduced accordingly. The total area to be partitioned is approximately 5,600m^2. The plan lodged with the application in 2001 was based on partition of an area of 8360m^2.

[51] The original plan lodged with the application also showed a relatively wide frontage for the partitioned area onto Taiharuru Road. This is now being narrowed and is confined to the point of entry off Taiharuru Road for the existing access onto the block. This access is also a shared point of entry for access to the neighbouring (Heta) block. Mr Neal proposes to create a separate access from this point onto the partitioned area. Aside from the shared entry point from Taiharuru Road, the existing formed access onto the proposed residue land now falls entirely outside of the proposed partition area.

[52] It is not a situation where the application is to partition the best parts of the block leaving residue owners with inferior land or options. There are good building sites on the residue area that enjoy views to the harbour and estuary. While the area Mr Neal proposes to partition is relatively large, a significant portion (perhaps one quarter to a third) consists of the north-western corner of the block which slopes towards Taiharuru Road. This area does not enjoy coastal or estuary views.

[53] As I understand it, Mr Neal contributed to creation of the existing access onto the block and the residue owners will continue to have the benefit of that. Tania Rua has raised an issue about earthworks that she had undertaken which are within, and adjacent to, the area of Mr Neal's proposed partition. Those works were stopped at Mr Neal's request. If there remains issue about Mr Neal obtaining the benefit of those works at Ms Rua's expense, then I leave it as a matter to be addressed between the parties. While Mr Neal's sometimes forthright approach to establishing a place for his whānau on the land appears to have

irritated some of the owners it is also clear that he has been willing to undertake work and apply funds for the benefit of all owners. In the course of these hearings he has offered to construct additional access for levelling and has attempted to try and resolve outstanding issues. If issues of this kind remain I encourage the parties to resolve them in that spirit.

3. What is the best overall use and development of the land?

[54] It is not in dispute that the best overall use and development of the land is for occupation and enjoyment by the owners. It is in a prime coastal location. To the extent the block is currently utilised, it is for the purpose of holiday/bach accommodation. It is Mr Neal's intention to continue to use the land in this way and to also build a new and more permanent dwelling to which he intends to retire. The remaining owners also wish to use and occupy the land in the future. The proposed partition is not an impediment to that objective.

Discretion

[55] The Act makes it clear that even if all the threshold requirements are met, the Court's jurisdiction to make a partition order is discretionary. The Court may refuse to exercise its discretion if it is not satisfied that it would achieve the principal purpose of Part 14 of the Act which is:[20]

> … to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access or additional or improved access to the land.

Decision

[56] I conclude that it is an appropriate case for the exercise of discretion to grant the partition. I am satisfied that to do so is consistent with, and would advance, the purpose of Part 14. Rationalising Mr Neal's shareholding and area of interest will facilitate his use and occupation of the land. Owners of the residue area will be able to use and occupy that land free from conflict with Mr Neal which has been a feature of some relationships for a considerable period. Additional or improved access will be provided by Mr Neal to the partitioned area and suitable access is already in place for the residue area. The application for partition is granted. The alternate applications for an occupation order and determination of ownership of a dwelling are dismissed.

[20] Sections 286(1) and 287(2).

Orders

[57] The Court makes orders pursuant to ss 73, 131 and 289 of Te Ture Whenua Māori Act partitioning Taiharuru 4C3C, (LINZ reference 489517), as follows:

(a) An area of 5600m^2 is awarded to Revell William Anthony Neal being the area shown on the plan attached to the valuation (Telfer Young) dated 2 October 2014, subject to the approval of the Surveyor General and the lot is determined to be Māori freehold land under s 131.

(b) The residue area is awarded to the shareholders of Taiharuru 4C3C other than Revell William Anthony Neal and is to be known as the Taiharuru 4C3CB block, subject to the approval of the Surveyor General, and the land is determined to be Māori freehold land under s 131.

[58] Pursuant to s 73 of the Act, these orders are conditional on:

(a) completion and receipt of a ML plan approved as to survey by Land Information New Zealand, undertaken at the cost of the applicant, so that titles may issue in accordance with the Land Transfer Act 1952 within 12 months of the date of these orders;

(b) the applicant producing proof of compliance with any resource consent conditions;

(c) the applicant upgrading, at his cost, the entry from Taiharuru Road to the residue block where it leaves the partition area by way of undertaking such reshaping and metalling as may be necessary on that part of the entryway measured approximately five metres from Taiharuru Road and erecting a fence between the two points of entry to a length of four metres or thereabouts;

(d) the applicant constructing, at his cost, a separate vehicle access from the existing entry from Taiharuru Road onto the partitioned area; and

(e) the current rates liability owing by the owners to the Whangārei District Council being apportioned according to land area as between the partition and the residue area. The applicant is to pay his share of any outstanding rates within six months of

the date of these orders and will thereafter be responsible for rates levied upon the partitioned area.

[59] The orders above are not subject to restrictions under s 304 of the Act.

Pronounced at 3.35 pm in Wellington the 29th day of June 2016.

M J Doogan
JUDGE