IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20140005712

UNDER	Section 308, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	An application for aggregation of TE AROHA BLK 3 SEC 1B and SECTIONS 2 AND 3 BLOCK III AROHA SD
BETWEEN	MĀORI TRUSTEE (TE TUMU PAEROA) Applicant

Hearing: 84 Waikato Maniapoto MB 19-32 dated 23 July 2014
(Heard at Thames)

Appearances: Maureen Tinkler for Māori Trustee (Te Tumu Paeroa)

Judgment: 21 April 2016

RESERVED JUDGMENT OF JUDGE S TE A MILROY

Introduction

[1] Before dealing with the substantive issues in this application some comment regarding the length of time it has taken for this judgment to issue is necessary. This application was heard on 23 July 2014.[1] At the hearing I indicated that I was inclined to make the aggregation order, but further action would be needed before the final order would issue, especially as it would involve a large number of calculations relating to aggregating the shareholding in the blocks, and preparation of the schedule of owners. The representative for the Māori Trustee agreed to undertake the preparation of a draft order, but a major restructuring of the Office of the Māori Trustee intervened. Despite a number of attempts by the Court to obtain answers to various queries, including a warning that the matter would not be progressed unless and until the Māori Trustee replied, the Court heard nothing from the Māori Trustee until 20 January 2016.

[2] At that time the Māori Trustee indicated that the land valuation presented in evidence to the Court was incorrect and requested that the Court complete the orders on the basis of the revised valuation, which took into account funds held in trust for each of the blocks. Given the length of time between the hearing and this new evidence I directed the Māori Trustee to file submissions supporting the revised application. These submissions were filed on 16 March 2016, and referred to me for decision on 23 March 2016.

[3] The reasons for granting the revised application are set out below.

Background

[4] Te Aroha Block 3 Section 1B ("Section 1B") is Māori freehold land comprising 162.026 hectares, with 1,633 owners. Sections 2 and 3 Block III Aroha Survey District ("Sections 2 and 3 block") comprises 323.5614 hectares with 2,420 owners. The blocks are held in trusts constituted by orders of the Court on 11 July 1989.[2] The Māori Trustee is the trustee for both blocks. The blocks are farmed together, with 185 hectares in dairying and a further 45 hectares in dry stock pasture. Half the land is contained within native bush, which has been fenced off under an agreement with Ngā Whenua Rahui. Both

[1] 84 Waikato Maniapoto MB 19-32 (84 WMN 19-32).
[2] 91 Hauraki MB 47-48 (91 H 47-48).

blocks are currently rented, with the profits being used for education grants for tertiary study and to fund land development.

[5] The history of the blocks is unique in that the land was gifted in the 1800's to Ngāti Tūhourangi after the Lake Tarawera eruption. In 1919 the Māori Land Court vested Section 1B in 197 individuals. Sections 2 and 3 were in a Crown grant and in 1956 the Māori Land Court vested this block in 636 individuals.

[6] In the 1950's the ownership list for both blocks would have been very similar. However, over time the ownership has grown exponentially and successions and family arrangements have seen a divergence in ownership.

[7] The Māori Trustee's calculations show that 76 per cent of the owners in Section 1B also have interests in Sections 2 and 3, while 50 per cent of the owners in Sections 2 and 3 also have interests in Section 1B. A majority of owners therefore have shares in both blocks.

[8] In 2009 the beneficial owners agreed to commence major land improvements. To complete the next stage of the development the Māori Trustee considered that the blocks should be aggregated to allow the completion of the development, which requires the combined resources of both blocks.

[9] The proposed development is to include the following:

a) Construction of a new herringbone cowshed located in a more central position on the farm. This involves additional tracking, power reticulation and a compliant effluent storage and disposal system;

b) Construction of a new three bedroom dwelling; and

c) New sheds for calf rearing and implements.

[10] The proposed developments are needed because the infrastructure on the blocks is dated and requires upgrading to comply with environmental requirements. The new cowshed and infrastructure will also generate improved rental returns and be a more attractive property for a sharemilker.

Relevant Law

[11] The Court has jurisdiction to make aggregation orders pursuant to s 308 of Te Ture Whenua Māori Act ("TTWMA"). Subsection 1 of s 308 states that the Court "may" make an aggregation order where it is satisfied that two or more areas of land could be more conveniently worked or dealt with if they were held in common, but there is no necessity to cancel the existing titles to the blocks. Thus the Court has a discretion whether to grant an application for aggregation. Section 309 states that the aggregation order must set out "the relative interests of the several owners" which are to be calculated by reference to the relative values of the interests to which the owners were entitled prior to the making of the order.

[12] In determining whether to grant an aggregation order pursuant to s 308 of TTWMA, the Court must be satisfied of the matters set out in s 288. Thus pursuant to s 288(2) the Court must be satisfied that the owners have had sufficient notice and sufficient opportunity to discuss and consider the matter, and that there is sufficient support for the proposal "having regard to the nature and importance of the matter." The Court must also consider the opinions 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: s 228(1).

Grounds for application

[13] The Māori Trustee applied for aggregation of the two blocks pursuant to s 308 of TTWMA. Apart from the desirability of further development taking place, the Māori Trustee was of the view that it would simplify the administration of the trusts and be more cost effective if both blocks were consolidated through aggregation.

Notice and opportunity to consider aggregation

[14] The Māori Trustee called a meeting of owners on 16 March 2014 to report on the proposal to complete the programme of development and to obtain the owners' support for an aggregation of the blocks. The notice was posted to 1,250 owners for whom the Māori Trustee held a current address. A separate response form was also enclosed with the notice, so as to provide the owners who were unable to attend with an opportunity to state their views. Cyclone Lusi affected the weather on the day of the meeting, so that the turnout was disappointing – 25 owners attended. However, the Māori Trustee also received written responses from 70 owners. The outcome of the meeting was that a resolution for aggregation of the blocks was carried. The vast majority of the written responses received were also in support of the Māori Trustee's proposal to aggregate the blocks and to complete the further development.

[15] The application to aggregate the blocks was filed with the Māori Land Court on 23 April 2014. The Māori Trustee was then directed to give notice of the application by publishing a notice in the New Zealand Herald giving the time, date and place of the hearing and the nature of the application. The Māori Trustee also sent letters to those owners who had not responded to the mail-out, which was sent with the notice of the meeting of owners on 16 March 2014, to give them a further opportunity to make their views known in regard to the application.

[16] The matter was heard on 23 July 2014. No one appeared to oppose the application. None of the written responses from the owners received by the Māori Trustee and filed with the Court opposed the aggregation either.

[17] Those who attended the meeting in March 2014 represented 0.15 per cent of the owners at that time in regard to the Sections 2 and 3 Block, and 0.02 per cent of the shareholding at that time in the Section 1B Block. In terms of the written responses the shareholding in support of the application was 1.05 per cent for Sections 2 and 3, and 0.58 per cent in relation to Section 1B Block.

[18] Despite the low percentage of owners who responded to the aggregation proposal, both at the meeting of owners or in writing, I am satisfied pursuant to s 288(2)(a) of

TTWMA that sufficient notice was given to the owners of the application and that they had a sufficient opportunity to consider the matter and make their views known.

Support for aggregation

[19] In summary, the Māori Trustee's submissions in favour of the aggregation were based on the need to complete the development improvement programme to comply with legal requirements, to increase the efficiency and cost effectiveness of the administration of the trusts, and to improve returns and attract better lessees or sharemilkers. The Māori Trustee explained that funds were held in the two trusts, but that these would not be sufficient to complete the development, and that borrowing would be necessary. The new infrastructure would be placed on Sections 2 and 3, although the owners in the 1B block would benefit from that development because the land is worked together. Accordingly, if the aggregation was not granted, Sections 2 and 3 would need to borrow more, taking more of the risk of the development. Additionally, rental for the lease of the land had been apportioned between the two blocks, and the Māori Trustee would be unable to use Section 1B's funds to make the improvements since they would be built on Sections 2 and 3. Without the 1B funds the Māori Trustee would have to borrow more, with consequently greater risk.

[20] George Skudder, one of the advisory trustees for the blocks and a beneficiary of the George Rupuha Skudder Whānau Trust, an owner in the land, emphasised that the land had always been worked as one for the benefit of the Tūhourangi owners. He supported the application as a way to carry out the development, as he considered that it was for the benefit of future generations.

[21] I am persuaded by the Māori Trustee's submissions and evidence that the development proposal is both desirable and, so far as fulfilment of environmental requirements is concerned, necessary. Given the lack of opposition, the large percentage of common owners in the blocks, the fact that the blocks have always been worked together, and that the Māori Trustee considers that administration and development of the blocks would be enhanced by aggregating the blocks, I am satisfied pursuant to s 288(2)(b) that there is sufficient support for the application given the nature and importance of the matter.

Section 288(1) Considerations

[22] Pursuant to s 288(1)(a) the view of the active owners is clearly in favour of the aggregation. No doubt that is partly because of the desirability of the development, but also because, as Mr Skudder submitted, the blocks have always been treated as one unit. The aggregation may well be seen as formalising the de facto situation on the ground.

[23] Section 288(1)(b) requires the Court to consider the effect of the proposal on the interests of the owners. There is tangible benefit to be obtained in aggregating the titles. Administration costs will be lessened, and completion of the development will allow the Māori Trustee to seek higher rental returns for the property. The farm will also comply with environmental requirements, which is a benefit to the owners as it will mean they may avoid litigation and enhance the environment on the blocks, as well as surrounding areas. Thus, provided that there is a sound valuation of the relative interests of the owners on which to base the calculations for the aggregated shareholding, I am satisfied that there will be a beneficial effect on the owners if the application is granted.

[24] From what I have already said it is clear that I consider that the best overall use and development of the land involves the development proposal outlined by the Māori Trustee. I therefore consider that the aggregation application should be granted, but that a sound valuation of the blocks is required to complete the orders.

Valuation of the blocks

[25] The main concern for the Court in relation to the aggregation proposal is the fair and equitable allocation of shares to the aggregated owners. This is dependent on obtaining sound valuations of the blocks.

[26] Section 309 of the Act states:

> **309 Orders to specify relative interests of owners**
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> (1) Every amalgamation order and every aggregation order shall set forth the relative interests of the several owners of the land, which, subject to subsection (3), shall be calculated by reference to the relative values of the interests to which they were entitled before the making of the order.

> (2) For the purposes of calculating those relative values, the court may, if it thinks it equitable to do so, adopt values, whether capital or land values, other than those appearing in the district valuation roll for the time being in force under the Rating Valuations Act 1998.
>
> (3) Instead of calculating the relative interests of the owners by reference to the relative values of the interests to which they were entitled before the making of the order, the court may calculate the relative interests in accordance with any understanding or arrangement between the several groups of owners as to a basis of amalgamation otherwise than as specified in subsection (2), if it is satisfied that the basis is, in all the circumstances, equitable.

[27] These provisions mean that the Court has a discretion as to how to set the relative values of each owner's interests, subject to the principles set out in the Preamble and s 2, and to the purposes of Part 14 of TTWMA.

[28] At the hearing the Māori Trustee presented evidence as to the valuation of the blocks. Two different methods were used to value the blocks. At current market value, Section 1B was assessed at $2,450,000.00 (including improvements), while Sections 2 and 3 block was assessed at $3,900,000.00 (including improvements). The total value of the blocks is $6,350,000.00, and if this valuation method was used 61.4 per cent of the value would be attributed to the owners in Sections 2 and 3, while 38.6 per cent would be attributed to the owners in Section 1B.

[29] The other valuation method was based on the income earned by each block, which I will call the "income production value". This was assessed at $233,000.00 by the Māori Trustees' valuer, who apportioned the income as to $165,000.00 to Sections 2 and 3 and $68,000.00 to Section 1B. This would mean that the percentage value to be attributed to Sections 2 and 3 would be 70.8 per cent, and 29.2 per cent to Section 1B.

[30] In a letter dated 20 January 2016, the Māori Trustee asked the Court to include cash sums held by each trust and also the sums owed by creditors in the valuations for the blocks. Thus for Section 1B the valuation including cash and creditors increased to $2,655,961. For Sections 2 and 3 Block the valuation was increased to $4,242,729. Thus the percentage of the total value of the blocks for the Section 1B Trust decreased to 38.5 per cent of the total value, and for Sections 2 and 3 Block the percentage increased to 61.5 per cent of the total value. I therefore asked the Māori Trustee to make legal submissions supporting the inclusion of cash and creditors in the valuation of the blocks.

[31] In submissions dated 16 March 2016, the Māori Trustee referred the Court to dicta of the High Court in *Brown v Māori Appellate Court*, where it says: [3]

> [35] All Judges in the Maori Appellate Court were of the view that Part XIV of the Act is not a code. A contrary opinion had been expressed in the course of the litigation in the 1996 Maori Appellate Court decision. It is therefore necessary to say that there is no basis for any conclusion that Part XIV is a self-contained code. It is an integral part of the scheme of the Act. It is to be construed and applied in the context of the Act as a whole, including the important directions contained in s 2 (and the principles in the preamble to which it refers) and s 17. These provisions are central to the Act and the exercise by the Court of its jurisdiction.

[32] Pursuant to s 17(2)(e) the Court must "ensure fairness in dealings with the owners of any land in multiple ownership…". The concept of fairness is repeated in s 309(2) and (3) by the use of the word "equitable".

[33] At the hearing on 23 July 2014 I indicated that the valuation for the purposes of aggregation would be on the basis of capital value (land and improvements), rather than income production. My reasons for preferring capital value as a means to determine the shares of owners to be held in aggregated blocks are as follows:

a) This land has a unique history in which it was gifted to the Tūhourangi owners to assist them after the eruption of Tarawera. That was a significant event in the history of both the iwi and New Zealand and the gift can be seen as commemorating that event. Thus the land has a significance far beyond its income production value;

b) While the valuer has apportioned income to each block, in truth the blocks are managed together and the farming operations are shared across both blocks. There is a degree of artificiality in any apportionment of income in such a situation and I therefore consider that it is not as sound a basis for apportionment as capital value;

c) The terms of s 308 do not specifically state that the valuation of the blocks for the purposes of aggregation is to be on capital value. However, assistance may be gained from the terms of s 308(4) and (5) which state that on the cancellation of an aggregation order the Court shall apply provisions

[3] *Brown v Māori Appellate Court* [2001] 1 NZLR 87, at [35].

relating to partition, with any necessary modifications. That includes the Court's power to award compensation for improvements. While these provisions do not relate directly to the current situation, nevertheless the reference to partition strongly suggests that the basis for valuation should be the same as for partitions. That basis is capital value (with allowances to be made for improvements), not income production value;

d) The Preamble of TTWMA refers to land as a taonga tuku iho of special significance to Māori owners, while s 2 refers not only to the development principle but also to the retention principle, both of which need to be applied in considering applications relating to Māori land. I interpret the Preamble and s 2 in the situation of aggregation to mean that the Court must not only take into account the income producing capacity of land but also the wider significance of land to the Māori owners. The income production value of the land does not reflect those wider considerations. Nor does the income production value reflect the fact that land that may have no economic value as a productive unit, but may nevertheless have immense spiritual, environmental and cultural value to the owners. While an orthodox land valuation may not capture all these factors, it is still closer to the mark than using the income production value; and

e) Finally, considering all these factors together, the allocation of shares based on capital value seems to be more fair and equitable than that based on income production value.

[34] The Māori Trustee submitted that only s 309(2) speaks of "land values" whereas ss 309(1) and (3) speak in terms of "relative interests" of the owners, and "relative values" of those interests. Further, that neither subsection limits those interests to land, and the plain meaning of s 309(1) is that the Court is to consider all the interests of the owners relating to the land, including net cash held as at 3 April 2014 when the application was made.

[35] The Māori Trustee advised that the cash has not been distributed to the owners, but since the hearing the cash held by Sections 2 and 3 block has been used to increase the capital value of the block, and it was always the intention of the two trusts that the cash held by Section 1B would be applied to help fund the new infrastructure.

[36] The Māori Trustee further submitted that the only fair way to value the relative interests in the aggregation in these circumstances is to consider the cash holdings of both trusts prior to commencement of the infrastructure development as the development was commenced with the intention of both trusts contributing their cash to it.

[37] I agree with the Māori Trustee that in these circumstances, where it was always intended that cash held by the trusts would be used to fund the development, that it is fair and equitable to include the sums in the capital value of the blocks. If the aggregation is cancelled at a later time the Court has the jurisdiction pursuant to s 308 to adjust the equities between the owners of the blocks.

[38] I note that the advisory trustees are also supportive of the approach recommended by the Māori Trustee in its memorandum of 16 March 2016.

[39] Lastly, I note that the changes to the valuations of each block brought about by the inclusion of the cash element are marginal in any case.

[40] The aggregation order is to be prepared on the basis that the percentage value for Section 1B shares is 38.5 per cent and for Sections 2 and 3 Block shares is 61.5 per cent in the aggregated trust. The Registrar is directed to make the necessary calculations for preparation of the schedule of owners, and once that is done to prepare a minute and order for finalisation of the aggregation.

Pronounced in open Court at 4.10 pm in Hamilton on the 21st day of April 2016.

S Te A Milroy
JUDGE