IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20130001016

UNDER	Section 326B, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Te Touwai B19A1
BETWEEN	LAVINIA LISA ROBERTS Applicant

Hearing: 23 October 2013
15 August 2014
2 February 2015
(Heard at Kaikohe)

Judgment: 15 October 2015

RESERVED JUDGMENT OF JUDGES D J AMBLER AND M P ARMSTRONG

TABLE OF CONTENTS

Introduction

[1] Lavinia Lisa Roberts applies, on behalf of the Whare and Mautini Roberts Whānau Trust, for an order providing reasonable access to Te Touwai B19A1 on the basis that the land is landlocked pursuant to s 326B of Te Ture Whenua Māori Act 1993.

[2] The issue in this case is whether an order for access should be granted.

Background

[3] Te Touwai B19A1 ("B19A1") is a block of Māori freehold land located near the Whangaroa Harbour in Kaeo. B19A1 is 0.2023 hectares in size. The block is solely owned by the trustees of the Whare and Mautini Roberts Whānau Trust ("the whānau trust"). The trustees are William Burgoyne, Fiona Dawson, Ritihia Gillespie, Lavinia Roberts and Melanie Dawson.[1] The applicant, Lisa Roberts, is a beneficiary of the trust. The applicant currently resides in the family homestead located on B19A1. The application is supported by the trustees and other beneficiaries of the whānau trust.

[4] B19A1 is bounded to the north, west and east by Te Touwai B19A2 ("B19A2"). B19A1 is bounded to the south by the Te Touwai River.

[5] In around 1969 an access way was formed providing access to B19A1 ("the existing access"). The existing access starts at Wainui Road and travels in a westerly direction crossing Te Touwai B16 ("B16") and B19A2 before reaching B19A1. The existing access was never formalised. The applicant now seeks an order per s 326B of Te Ture Whenua Maori Act ("the Act") to formalise the existing access.

[6] Mr Hockley appeared as counsel for the applicant. Letters in support of the application were filed from five owners in B16. Clem Simich is a son of Mere Urlich, a deceased owner in B16, and appeared in person in opposition to the application. Mr Simich also filed letters of opposition from five other owners in B16.

---

1 99 Taitokerau MB 18 – 24 (99 TTK 18 – 24).

[7] The whānau trust is one of the larger shareholders in B19A2. The other owners in B19A2 did not participate in the proceeding and their position is not known.

[8] It is apparent that there are a number of blocks adjoining B16 and B19A1 which also appear to be landlocked. That includes Te Touwai B19B2, B19B1 and B19A2. It would have been preferable to consider an application per s 326B of the Act seeking access to all of these blocks. This would have allowed a wider approach to be applied seeking to unlock all of the relevant land blocks in the area. However, there was no such application before us and the owners of those other blocks did not participate to any degree in this proceeding. Furthermore, any order granting access may include conditions such as the cost of forming and maintaining the access way and payment of compensation. It would be inappropriate to impose an order affecting those other blocks without first hearing from those owners.

[9] Accordingly we have proceeded on the basis of the application before us which only seeks access for B19A1.

Procedural history

[10] The issue of access to B19A1 has been the subject of various applications in recent years.

[11] In 2002 an application was filed by Walter Roberts seeking an order to lay out a roadway per s 316 of the Act along the existing access. [2] Judge Spencer conducted a site visit on 3 March 2003. Mr Simich appeared in opposition to that application. Mr Simich argued that the Roberts whānau should have access but that they should consider alternative access using an existing paper road located on the south bank of the Te Touwai River. Mr Roberts confirmed that he wished to pursue the alternative access and so on 25 May 2005 that application was dismissed by consent.[3]

[12] On 10 June 2009 the Roberts whānau obtained an engineer's report from Bill Haigh. That report considered that access along the existing paper road was not suitable

---

2 A20020006330.
3 31 Auckland MB 165 - 166 (31 AT 165 - 166).

given river erosion and the flood-prone nature of that area.[4] The report also considered alternative access routes and recommended that the existing access is the only route which provides practical access to B19A1.

[13] On 7 November 2009 the Roberts whānau called a meeting at Karangahape Marae, Te Touwai, to discuss the report. Isabella Urlich attended the meeting. Mrs Urlich is not an owner in B16 but claimed to represent Alex Simich. Alex is Clem Simich's brother. Alex is not an owner in B16 either although his deceased mother is. Mrs Urlich, on behalf of Alex Simich, strongly opposed any access across B16. The minutes for that meeting record heated discussions taking place.

[14] This dispute came to the fore when Alex Simich instructed Mrs Urlich's husband, Tim Hemi, to block the existing access across B16 with logs and landfill.[5]

[15] Consequently, on 10 November 2009, Marjorie Te Rehu filed an application seeking an injunction per s 19 of the Act preventing the existing access from being blocked.[6] Ms Te Rehu is a sister to Mrs Urlich and an owner in B16.

[16] On 11 November 2009 Margaret Martin filed a separate application per s 316 of the Act.[7] This application once again sought an order to lay out a roadway along the existing access.

[17] Judge Spencer conducted a site visit with the parties on 23 November 2009 in relation to the injunction application. During that site visit an agreement was reached between the parties. The logs and landfill were removed so that access could resume across the existing access and the injunction application was dismissed.[8]

[18] Unfortunately this interim agreement was short-lived. In 2010 a fence was erected on the boundary of B16 fronting Wainui Road, once again blocking the existing access. Consequently, a further application for an injunction was filed by Mrs Te Rehu on 29

---

4 The report incorrectly noted that the paper road ran along the northern bank of the Te Touwai River.
5 See 142 Whangarei MB 267 - 268 (142 WH 267 - 268).
6 A20090017923.
7 A20090018408.
8 142 Whangarei MB 267 - 268 (142 WH 267 - 268).

November 2010.[9] On 3 December 2010 Judge Spencer granted an interim injunction preventing the owners of B16 from obstructing the existing access.[10]

[19] Mrs Martin's 2009 application per s 316 of the Act came before Deputy Chief Judge Fox on 12 June 2012.[11] During the course of that hearing Judge Fox suggested that it may be more appropriate to file an application seeking reasonable access per s 326B on the basis that B19A1 is landlocked rather than seeking a roadway per s 316. This application was dismissed by consent. Judge Fox also invited the Roberts whānau to file an application per s 326B of the Act.

[20] The current application per s 326B of the Act was then filed on 7 January 2013. That application first came before Judge Ambler on 23 October 2013 where it was adjourned.[12] Several teleconferences were held and various directions were issued in preparation for a full hearing. The application was consequently heard on 15 August 2014 in Kaikohe by Judge Ambler and Judge Armstrong. At the conclusion of that hearing the application was adjourned for the filing of further evidence and to conduct a final site visit.[13]

[21] The further evidence was filed, and a site visit was conducted on 2 February 2015.[14]

[22] At the request of the parties, closing submissions were filed on 27 February and 24 April 2015.

The law

[23] Section 326B of the Act states:

> **326B Reasonable access may be granted in cases of landlocked Maori land**
>
> (1) The owners of landlocked land may apply at any time to the Court for an order in accordance with this section.

---

9 A20100018408.
10 14 Taitokerau MB 1 (14 TTK 1).
11 44 Taitokerau MB 31 - 53 (44 TTK 31 - 53).
12 69 Taitokerau MB 56 - 76 (69 TTK 56 - 76).
13 86 Taitokerau MB 189 - 281 (86 TTK 189 - 281).
14 95 Taitokerau MB 275 - 277 (95 TTK 275 - 277).

(2) On an application made under this section,—

(a) the owner of land adjoining the landlocked land that will or may be affected by the application must be joined as a party to the application; and

(b) every person having an estate or interest in the landlocked land, or in any other piece of land (whether or not that piece of land adjoins the landlocked land), that will or may be affected if the application is granted, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local authority concerned, are entitled to be heard in relation to any application for, or proposal to make, any order under this section.

(2A) The applicant must, as soon as practicable after filing an application in the Court, send a copy of the application to the local authority concerned.

(3) For the purposes of subsection (2), the Court may, if in its opinion notice of the application or proposal should be given to any person mentioned in that subsection, direct that such notice as it thinks fit must be given to that person by the applicant or by any other person.

(4) In considering an application under this section, the Court must have regard to—

(a) the nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased or otherwise acquired the land; and

(b) the circumstances in which the landlocked land became landlocked; and

(c) the conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land; and

(d) the hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and

(e) the requirements of Part 3B of the Conservation Act 1987, if the application affects a conservation area; and

(f) issues of public safety raised by a rail operator, if the application affects a railway line; and

(g) such other matters as the Court considers relevant.

(5) If, after taking into consideration the matters specified in subsection (4), and all other matters that the Court considers relevant, the Court is of the opinion that the applicant should be granted reasonable access to the landlocked land, it may make an order for that purpose—

> (a) vesting in the owners of the legal estate in the landlocked land the legal estate in fee simple in any other piece of land (whether or not that piece of land adjoins the landlocked land) except land that is a national park, public reserve or railway line; or
>
> (b) attaching and making appurtenant to the landlocked land an easement over any other piece of land (whether or not that piece of land adjoins the landlocked land), despite section 75 of the Railways Act 2005.

[24] Section 326B is contained within Part 14 of the Act. Section 286 of the Act states:

> **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.
>
> (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.

[25] Section 287(2) of the Act makes it clear that the Court's jurisdiction under Part 14 is discretionary and the Court must be satisfied that any orders granted would achieve the principal purpose of Part 14.

[26] In *Māori Trustee v Forde – Section 186 Block V Longwood Survey District* Judge Reeves referred to the recognised approach to applications under s 326B as:[15]

> a) first, to determine the threshold question of whether the land is landlocked;
>
> b) second, to assess whether relief should be granted;
>
> c) third, to consider what conditions should be imposed including, where appropriate, payment of compensation.

[27] This approach is adopted here.

Is B19A1 landlocked?

[28] Section 326A of the Act defines landlocked land as:

---

[15] *Māori Trustee v Forde – Section 186 Block V Longwood Survey District* (2013) 17 Te Waipounamu MB 152 (17 TWP 152) at [36]

> **landlocked land** means a piece of land that has no reasonable access to it and is either—
>
> (a) Maori freehold land; or
>
> (b) General land owned by Maori that ceased to be Maori land under Part 1 of the Maori Affairs Amendment Act 1967

[29] Reasonable access is defined as:[16]

> **reasonable access** means physical access of the nature and quality that may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land.

[30] A similar definition is found in the Property Law Act 2007.[17] In *Wagg v Squally Cove Forestry Ltd* Mallon J summarised the principles in relation to the definition of landlocked land per the Property Law Act 2007:[18]

> (a) Whether there is reasonable access to land is a question concerned with whether there is practical physical access in fact, rather than whether there is legal access.
>
> (b) It is a question of present fact, concerned with whether reasonable access now exists, not whether (for example) "it is possible to provide access by upgrading existing tracks on the applicant's own land".
>
> (c) Access "at the whim of an adjoining owner" or dependent on the "courtesy and goodwill" of the adjoining owner is not reasonable access.
>
> (d) What is reasonably necessary to use and enjoy the land "in accordance with any right ... [or] consent under the Resource Management Act" is concerned with existing uses, not potential uses for which a land owner could apply for consent.
>
> (e) Reasonable access is not necessarily the same as the best access that could be achieved. Other access may be convenient and reasonable but that does not mean that the access the land presently has is unreasonable.
>
> (f) Whether there is reasonable access is a value judgment that the Court has to make on the basis of the evidence. Factors such as the characteristics of the locality (residential, commercial or mixed), the topography of the area and contemporary transportation requirements are relevant.
>
> (g) The circumstances as they existed at the time the land was acquired may be relevant evidence as indicating what the purchaser regarded as reasonable at that time.

---

16 Te Ture Whenua Māori Act 1993, s 326A

17 Property Law Act 2007, s 326.

18 *Wagg v Squally Cove Forestry Ltd* [2012] NZHC 2763 at [60].

> (h) Reasonable access does not invariably mean vehicular access, but nowadays the situations in which non-vehicular access will be regarded as reasonable are likely to be few because of the great dependence people now have on motor vehicles.
>
> (i) The legislation is remedial. There is no presumption in favour of non-interference with another title

[31] These principles were adopted in *Māori Trustee v Forde* when considering an application per s 326B of the Act.

[32] In the present case Clem Simich accepts that B19A1 is landlocked. However, Mr Simich does not act for all owners in B16 and as such it is necessary to make a determination on whether B19A1 is landlocked. In doing so the following questions arise:

(a) What was the nature and quality of the access (if any) that existed when the land was acquired and what are the circumstances in which the land became landlocked?

(b) Does B19A1 have reasonable access to public roads?

(c) Does B19A1 have reasonable access along Te Touwai River?

(d) Does B19A1 have reasonable access along the paper road?

What was the nature and quality of the access (if any) that existed when the land was acquired and what are the circumstances in which the land became landlocked?

[33] The parent Te Touwai block was partitioned on 23 April 1913. One of the partitioned blocks became Te Touwai B19. The court minute records:[19]

> Each division to be provided with access. This can best be done by using the existing tracks from boat landing up the river extending them if necessary. Surveyor to lay off in most expedient way. There is no prospect of a public road other than the present one and therefore the private road or right of way may be ½ chain wide. Area to come off whole block –
>
> Order in acc with minutes…

---

[19] 52 Northern MB 166 (52 N 166).

[34] On 7 March 1917 Te Touwai B19 was partitioned into B19A and B19B. No provision was made for further or alternative access.[20]

[35] On 16 July 1946 B19A was partitioned into B19A1 and B19A2. B19A1 was vested in Mautini Roberts for a house site. No provision was made for further or alternative access.[21]

[36] Accordingly, the current access issues arose as a result of the various partition orders made by the Court between 1913 and 1946. As at 1913 the Court considered that there was suitable access to the wider B19 block by way of the Te Touwai River. It is not clear if the Court considered access during the subsequent partitions in 1917 and 1946. Clearly the Roberts whānau cannot be criticised for the access problems they face.

[37] The circumstances in which blocks of land, like B19A1, were rendered landlocked has been commented on by the Māori Appellate Court in *Von Dadelszen v Goldsbury – Pukeiti 4A*,[22] albeit in the context of a discussion of the issue of compensation payable. Nevertheless, it is instructive to set out the Court's observations in this regard:[23]

> There are in our view broad principles of law that as a matter of public policy and interest land should not be made unusable through being deprived of suitable access. This was the view of Sir Robert Megarry V-C in Nickerson v Barraclough & Others (1979) 3 ALL E.R. 312 where, in refusing to treat an express term in a grant of land to exclude a right of way as effectively depriving suitable access, he referred to certain dicta in cases of 1648 and 1700 as the source of a principle that the neglect of agricultural land through lack of access was contrary to public policy. It follows in our view, that as a matter of broad policy no individual should profit from an apparent facility to deny access, or, as happened in the early settlement of New Zealand, should obtain an unfair advantage in the use and occupation of land not owned by him, by the practice of "grid-ironing".
>
> The broad principle found legislative expression in the early Native Land Acts whereby the Court was charged with the function of partitioning land amongst the former customary owners and laying off provisions for access for each block. It appears that the demand for the partitioning of land in order to apportion the various family groups to separate allotments exceeded the ability of the Court to consider the most practical access in each case. In the result many blocks were partitioned without access, the legislature reserving to the Māori Land Court, with effect from the Native Land Amendment Act 1913, the power to lay off roads to provide access to those lands at some later stage, and then, whether or not the

---

20 57 Northern MB 68 - 71 (57 N 68 - 71).
21 75 Northern MB 259 – 261 (75 N 259 – 261).
22 *Von Dadelszen v Goldsbury – Pukeiti 4A* (1982) 16 Waikato Maniapoto Appellate MB 328 (16 APWM 328).
23 Ibid at MB 344.

> proposed servient lands had then ceased to be Māori land. The result is that the jurisdiction of the Māori Land Court in the current Section 418 of the Māori Affairs Act 1953 is to lay off roadways over general lands that ceased to be Māori land after the 15th day of December 1913 even without the consent of the owner, and to lay off roadways over general lands that ceased to be Māori land prior to the 15th day of December 1913, only with that consent.
>
> For the sake of completion we add that the legislative expression to the broad principle referred to by the Vice Chancellor (supra) was made more complete in the enactment of Section 129B of the Property Law Act 1952 by the Property Law Amendment Act 1975.
>
> We do not accept therefore that when Mr Von Dadelszen acquired his land he acquired also an enhanced chance to lease or purchase the lands without access, and that the loss of this particular bargaining position is capable of bearing a monetary value which must be compensated for on the provision of access. His land ceased to be Māori land after 1913 and he acquired not a special advantage but rather the special disability that his land was likely to be made the subject of a roadway order even without his consent, if his land in fact provided the most suitable access. By virtue of the Māori Affairs Act his acquisition was at all times subject to the right of the owners of the land locked block to obtain access. By virtue of the Property Law Act amendment referred to it appears that this principle is now extended to all lands, and it would appear that no compensation at all under this heading should be payable as a result of acquiring access available from a statutory source.
>
> It is accordingly our judgment that no compensation should be allowed for what we have termed the "grid-iron factor".

[38] Whether travelling along the river or along its banks by way of the paper road still provides reasonable access is further considered below.

Does B19A1 have reasonable access to public roads?

[39] It is clear that B19A1 has no direct access to public roads. In order to access Wainui Road in the east, the owners must cross B19A2 and B16. In order to access Porters Access Road in the west, the owners would have to cross B19A2, B19B1, B19B2, B18 and what appears to be two further parcels of general land (depending on the route taken).

[40] As set out in *Wagg v Squally Cove Forestry Ltd*, access at the whim of an adjoining owner or dependent on the courtesy and good will of the adjoining owner is not reasonable access. It is also clear from the evidence that the Roberts whānau have been refused access across the western blocks towards Porter's Access Road. The opposition from some owners in B16, and the attempts to obstruct the existing access across B16, is also clear from the court record. The Roberts whānau have only been able to use the existing access

in recent times by way of an interim injunction. As such, there is no reasonable access to B19A1 from Wainui Road in the east or from Porters Access Road in the west.

Does B19A1 have reasonable access along the Te Touwai River?

[41] In *Kingfish Lodge (1993) Ltd v Archer* the Court found that the land in that case was not landlocked as physical access was available by sea.[24] The Court of Appeal also found that although Kingfish Lodge had physical access by sea, it could still be "landlocked" if the physical access failed to meet the nature and quality reasonably necessary to enable use and enjoyment of the land.[25] It was significant in that case that:[26]

(a) The owners of Kingfish Lodge had always travelled by sea;

(b) The owners had stated in an application for a resource consent that stage one of a proposed development could proceed on the strength of the sea access; and

(c) The owners had purchased the land with full knowledge that the land only had sea access.

[42] It is accepted that the Roberts whānau have physical access to B19A1 up Te Touwai River. However, we do not consider that the nature and quality of the access is reasonable to enable the Roberts whānau to use and enjoy the land.

[43] In order to access B19A1 by the river the Roberts whānau would have to launch in the Whangaroa Harbour and then travel a long distance up the river to B19A1. Due to river erosion and alluvial deposits, it is likely that the owners would only be able to travel up and down the river at high tide. The bank of the river leading up to B19A1 is also steep and unstable. This would make ascending and descending the bank very difficult, particularly if that involved transporting goods, children or the elderly.

---

24 *Kingfish Lodge (1993) Ltd v Archer* [2000] 3 NZLR 364 (CA).
25 Ibid at 372.
26 Ibid at 370 - 371.

[44] The homestead on B19A1 is currently occupied by Lisa Roberts and her uncle Haumia Roberts. Ms Roberts confirmed that they both require access to and from B19A1 on a daily basis. In addition to this, the homestead is used for large whānau gatherings at Christmas, Easter, Labour Weekend and during the school holidays. The homestead is also used for other celebrations such as birthdays, anniversaries, tangi, christenings and weddings.

[45] This means that on these occasions large whānau groups have to access B19A1. This would require the transport of additional clothing, belongings and supplies to cater for the extra whānau. These whānau gatherings include a number of elderly family members and children. Clearly it is not reasonable to expect all of these people and their goods to be transported to the B19A1 block along the river by boat, up and down steep banks, and only at high tide.

[46] This can be contrasted with the facts in *Kingfish Lodge.* There, the Lodge owners had a specific jetty which could be used for loading and unloading passengers and goods onto the landlocked land. The jetty and sea access also allowed the Lodge owners to launch and land in deeper water than the Roberts whānau would experience travelling on the Te Touwai River.

[47] The other factors relevant in *Kingfish Lodge* - that the owners always travelled by sea; that they purchased the land will full knowledge that the land only had sea access; and that they had relied on the sea access in obtaining a resource consent - do not apply in the present case.

[48] As such, the decision in *Kingfish Lodge* can be distinguished from the facts of this case.

[49] For these reasons we consider that B19A1 does not have reasonable access along the Te Touwai River.

Does B19A1 have reasonable access along the paper road?

[50] In order to access B19A1 along the paper road, the Roberts whānau would have to travel along Porters Access Road to the south bank of the Te Touwai River. From there

they would travel east across the existing paper road on the south bank of the river until they are opposite B19A1, which is on the northern side of the river. The Roberts whānau would then have to cross the river to B19A1.

[51] Mautini Dawson gave evidence that prior to the existing access being formed in the late 1960s, the Roberts whānau would access the block by travelling along this route.[27] They would travel up Porters Access Road and would park their cars there. They would then take a horse and sledge to travel east along the southern bank of the river. From there at high tide they would cross the river by boat or at low tide they would ford the river. Ms Dawson stated that they are no longer able to access B19A1 in that way as, due to erosion, the banks have come away and they are no longer able to cross the river.

[52] Mr Haigh filed an aerial photograph showing the route of the paper road. It is apparent from the photograph that due to erosion the course of the river has changed considerably since the paper road was laid out. In particular, in certain places the paper road now crosses the river at a number of different locations. This means that in order to use the paper road to access B19A1 the owners would have to cross the river on a number of occasions before arriving at the point south of B19A1, where there would have to be a further crossing to the B19A1 block. Due to erosion, the banks on the river are now so steep and unstable as to make crossing impractical and unreasonable.

[53] Multiple crossings of the river on a single journey, firstly along the paper road and then to reach B19A1, also exacerbate the difficulties of transporting family members, children, elderly and goods across to B19A1.

[54] As with travel up the river, we do not consider that the nature and quality of the access along the existing paper road is reasonable to enable the Roberts whānau to use and enjoy B19A1.

[55] Alternatively, several bridges would have to be constructed along the paper road in order to travel along its route, and then to cross the river to the B19A1 block. Due to the unstable nature of the land along the banks, the existing paper road which still sits on dry

---

[27] They would also travel across B16 by foot.

land would also require significant upgrading in order to allow for its use. As set out in *Wagg v Squally Cove Forestry Ltd*, whether land is landlocked is a question of present fact, that is, whether reasonable access now exists, not whether it is possible to provide access by upgrading existing tracks.

[56] For these reasons we are satisfied that B19A1 is landlocked.

Should relief be granted?

[57] In determining whether relief should be granted the considerations set out in s 326B(4) are relevant. In the present case the matters as set out in s 326B(4)(c), (d) and (g) are relevant, namely:[28]

> (c) The conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land;
>
> (d) The hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and
>
> …
>
> (g) Such other matters as the court considers relevant. (In this case that includes the level of support for, or opposition to, the application, and what route should be adopted in granting any access.)

Is the conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land, relevant in granting relief?

[58] B19A1 was partitioned in 1946 and awarded to Mautini Roberts for the purposes of a house site.[29] Mautini and her husband Whare Roberts then constructed a house on the block which still survives today. Mautini and Whare Roberts are the tupuna of the whānau trust that now holds the interests in B19A1.

---

[28] It is noted that s 326B(4)(a) and (b) have already been taken into account in determining whether the land is landlocked as set out above. Section 326B(4)(e) and (f) do not apply to the present application.

[29] 75 Northern MB 259 – 261 (75 N 259 - 261).

[59] Mautini Dawson gave evidence that the existing access was formed pursuant to an agreement that was reached in 1968. Mautini Roberts is Mautini Dawson's grandmother. Mrs Dawson's evidence of the agreement reached is as follows.

[60] The late Clem Urlich was an owner in B16. Clem also lived on the B16 block with his children. In 1963 Clem and his wife Ka were fishing at sea when the motor on their boat broke down and the anchor would not hold. The weather deteriorated and Clem and Ka were at the mercy of rough seas. Mautini and Whare Roberts were also at sea and they rescued Clem and Ka by towing them to safety.

[61] Clem was so grateful for the rescue that he offered Mautini and Whare £450.00 as a reward. Mautini refused to take the money but instead told Clem to use that money to buy a new motor, anchor, rope and oar to prevent them from getting into trouble again while at sea.

[62] In 1968 Clem made a further offer to repay Mautini and Whare by allowing a road to be built across the B16 block to access B19A1. Clem offered for the road to be formed as repayment for the sea-rescue. The road was to be "for Mautini and Whare, children, whānau, family, and for their family only, forever and ever…"[30]

[63] Mautini accepted that offer and paid to form the road herself. This involved bulldozing and grading the track, putting in a culvert pipe, and laying the gravel herself using a horse and sledge. This road, formed in 1969, is the existing access over which the applicant now seeks an order per s 326B of the Act.

[64] Mrs Dawson also gave evidence that despite the sea-rescue her grandmother still paid Clem for the access by providing a bull, a cow and 12 sheep. Mrs Dawson advised that this "is how they paid for their road".[31]

[65] Isabella Urlich also gave evidence on this issue. Ms Urlich is the daughter of Clem Urlich. Ms Urlich expressed some doubt as to Mrs Dawson's evidence as she said that her father never told her of the sea-rescue incident. Ms Urlich gave evidence that Mautini

---

30 86 Taitokerau MB 189 - 281 (86 TTK 189 - 281) at MB 213.
31 Ibid at MB 210.

Roberts' access was along Te Touwai creek and her father felt sorry for her and so they discussed access across B16. Ms Urlich advised that there was a reciprocal arrangement where Mautini Roberts was to pay her father's rates in relation to a bridge to be constructed nearby.

[66] Despite the doubt expressed by Ms Urlich, we accept Mrs Dawson's evidence. We consider that Mrs Dawson was an honest and reliable witness and that she recounted the events as they were told to her by Clem Urlich and her grandmother Mautini. We accept Mrs Dawson's explanation that Clem Urlich granted access across B16 in return for the sea-rescue. But regardless of whether access was granted in response to the sea-rescue, the fact is that some form of understanding was reached in 1968.

[67] While this is a relevant consideration, we also note that Clem Urlich was not the sole owner of B16 in 1968. Rather, he owned 2.75 shares out of a total 12 shares in the block. The Roberts whānau were not aware of this at the time as Clem and his wife Ka were the only people living on B16. As such, they thought that they obtained access across B16 with the consent of all of the owners.

[68] While Clem Urlich did consent, there is no evidence that any of the other owners in B16 consented to this access. Despite that, there was no issue or dispute over the Roberts whānau using the existing access for the next 30 years. It was not until the death of Whare and Mautini Roberts that the current disputes arose. This led to the series of applications filed between 2002 and 2014 as set out above.

[69] We also consider that the Roberts whānau have acted reasonably in attempting to formalise the existing access. An application was filed in 2002 and then withdrawn so that the Roberts whānau could consider alternative access along the paper road. The Roberts whānau engaged an engineer to consider access along the paper road as well as other alternative routes. That report advised that the existing access was the only practical access to B19A1. The Roberts whānau then called a hui on the local marae to discuss that report and to seek support for access across B16.

[70] In response, Alex Simich, through Isabella Urlich and her husband, blocked the existing access. The first time, by placing logs and landfill across the access way. The

second time, by fencing off the access way on the boundary between B16 and Wainui Road. On the second occasion, Mr Simich refused to remove the fence requiring court intervention by way of an interim injunction.

[71] In those circumstances we do not consider that the applicant or the Roberts whānau have acted in a manner which would now make it inequitable for them to seek relief per s 326B of the Act.

[72] The existing access was formed with the consent of at least one owner in B16 and continued unopposed for over 30 years. While debate and tensions have grown over the last decade, we accept that the Roberts whānau have acted in a reasonable manner and have attempted to try and negotiate access with the owners of B16.

What hardship would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other party by the making of the order?

[73] B19A1 is used as a papakainga by the Roberts whānau. Lisa and Haumia Roberts live there permanently. The wider Roberts whānau also gather there regularly for significant occasions. They consider this land to be their turangawaewae.

[74] As B19A1 is landlocked, the failure or refusal to grant relief in this case would cause significant hardship to the applicant, the trustees and the beneficiaries of the whānau trust. In particular, they would be unable to access, utilise and occupy B19A1 in the manner that they and their family have enjoyed for the last 60 years. We also consider that the occupation and utilisation of B19A1 by the Roberts whānau is consistent with the purpose of Part 14 as set out in s 286 of the Act. This is also consistent with the overall principles and kaupapa of the Act as set out in the Preamble and s 17 of the Act.

[75] Clem and Ka Urlich were the last of the owners to occupy B16. Since their death the family homestead on B16 has been demolished and the block has remained unoccupied. As such, the existing access is not interfering with any current use or development of the block.

[76] Clem Simich gave evidence that the owners of B16 are not seeking to occupy or develop B16 at the present time. However, he wishes to preserve the opportunity to do so

in the future. Mr Simich also argues that the current access will cause hardship as it dissects the flat usable land on B16. According to Mr Simich, the existing access will hinder or obstruct any future use or development of B16.

[77] Having considered these matters we accept that there would be considerable hardship to the Roberts whānau if access was not granted per s 326B of the Act. However, we also accept that the existing access could potentially cause hardship to the owners of B16 in that part of it dissects the best land on that block. Despite that, we consider that this hardship can be addressed by altering the route of the existing access. This is further discussed below.

What is the level of support for, or opposition to, the application?

[78] The level of support for, or opposition to, the application is not expressly provided for in s 326B of the Act. Clearly there is no mandatory requirement for an applicant to obtain sufficient support from the owners of the servient land.[32] Despite that, we consider that the level of support or opposition is still a relevant factor to be taken into account.[33]

[79] At the time of the hearing on 15 August 2014, there were 18 owners in B16. Seven had passed away and had not been succeeded to. Those deceased owners were William Apiata, Peter Bowman, Frances Burke, Albert Burkhardt, Celia Burkhardt, Anne Kilbey and Mere Urlich. William Apiata was subsequently succeeded to on 23 September 2014.[34] His interests are now held in the Wiremu Mana Parao Apiata Whānau Trust

[80] The applicant has filed letters of support from five owners in B16. They are Clyde Bowman, Clem Bowman, Theresa Herewini (nee Urlich), William Urlich and Marjorie Te Rehu (nee Urlich).

[81] The applicant has also filed a letter of support from Lilian Beazley, who it is said is an owner in B19A2. There is no Lilian Beazley noted as an owner in the court records for B19A2 although there is a Lena Beazley. It is not clear if they are the same person. It is

---

32 This can be contrasted with an application for a roadway as per s 316 and 317(1) of the Act.
33 This is consistent with the principles and kaupapa of the Act as set out in the Preamble and s 17.
34 89 Taitokerau MB 249 – 253 (89 TTK 249 – 253).

also noted that the whānau trust holds 1.0004 shares in B19A2, making it one of the larger shareholders in the block.

[82] At the hearing on 15 August 2014 Clem Simich and Alex Simich appeared in opposition to the application. They are not owners in B16 although their deceased mother, Mere Urlich, is. Clem and Alex have not yet succeeded to their mother's Māori land interests.

[83] Clem Simich also advised the Court that he was representing Albert Burkhardt, Anne Kilbey, Celia Burkhardt, Charlotte Allen, Frances Burke, Jane Burkhardt, Jean Hirst, Mary Burkhardt, William Burkhardt, William Apiata and Mere Urlich. A number of those owners (including Mr Simich's mother) are deceased. At the conclusion of the hearing the Court directed Mr Simich to file written authorities from the owners he claimed to represent.

[84] Following the hearing Mr Simich filed letters of opposition signed by Charlotte Allen, William Burkhardt, Albert Burkhardt, Jean Hirst, Mary Burkhardt and June Burkhardt. There is no June Burkhardt noted in the list of owners although there is a Jane Burkhardt. It is not clear if this is the same person. The other five people who have signed letters of opposition are listed as owners in B16. It is also noted that Albert Burkhardt is now deceased.

[85] The letters in opposition do not state that those owners authorise Clem Simich to represent them in this proceeding. By letter received on 1 September 2014, Mr Simich states that those owners spoke to his brother Alex asking him to "continue the defence of our land in B16".

[86] While the extent of Mr Simich's authority to represent those owners is unclear, the letters do indicate that those owners are opposed to the Roberts whānau using the existing access across B16.

[87] We also note that as Clem and Alex Simich have not succeeded to their mother's interests, their views cannot be taken into account as 'owners' in B16. Despite that, we still consider that their views are relevant as they are people who are likely to be entitled to

succeed to interests in the block. Nevertheless, whether those owners understand anything of the circumstances in which the Roberts whānau came to have access over B16 remains unclear. And as noted, it seems that in the last 50 years or so it is only Clem and Ka Urlich who have actually occupied B16.

[88] As such, from the 18 owners in B16, there are five in support and five in opposition (including one who is now deceased). The other owners are deceased or have not responded. We also take into account the position of Clem and Alex Simich as descendants of a deceased owner. We conclude that there is an equal measure of support for, and opposition to, the application.

[89] It is also important that Clem Simich has accepted that the Roberts whānau do require access to B19A1. Mr Simich's concern relates to the route that should be adopted to provide that access. This is similar to the concern expressed by Mr Simich and other owners in relation to the earlier applications that were filed. We now turn to consider that issue.

What route should be adopted in granting any access?

[90] Mr Haigh, a qualified civil engineer, gave evidence of a number of potential routes providing access to B19A1. Mr Simich also proposed a number of alternative routes. The various routes are:

(a) Access from Porters Access Road to the southern bank of the Te Touwai River, then heading east across the existing paper road on the southern bank and crossing the river to B19A1 (option A);

(b) The existing access from Wainui Road across B16 and B19A2 (option B);

(c) Access from Wainui Road heading west across B16 around its northern boundary, arriving at the foot of the hill near the north western boundary of B16. From there turning south and following the foot of the hill before meeting the existing access route at the foot

of the hill towards the southern boundary of B16 and then following the existing access to B19A1 (option C);

(d) Access from Wainui road heading west across B16 along the southern end of the block near the Te Touwai River to the foot of the hill and then following the existing access to B19A1 (option D);

(e) Access from Wainui road around the northern boundary of B16 up over the hill coming down into the east end of B19A2 and then heading south to B19A1 (option E);

(f) Access from Wainui Road heading west across Te Touwai B17A into B19A2 and then heading south to B19A1 (option F);

(g) Access from Porters Access Road crossing the Te Touwai River using the existing bridge, then turning east and following an existing access way across Te Touwai B18, up over a hill, and down into B19B2, B19B1, B19A2 and then to B19A1 (option G); and

(h) Access from Porters Access Road crossing the Te Touwai River using the existing bridge and then turning east and following the northern bank of the Te Touwai River to B19A1 (option H).

[91] A plan depicting these various options is attached to this judgment.[35]

[92] The applicant seeks an order confirming the existing access, being option B.

[93] At the hearing on 15 August 2014 Mr Simich advised that his preferred route in order of priority is:

(a) Option G;

(b) Option H;

---

[35] It is noted that the attached plan is illustrative only. A suitable survey plan will have to be prepared depicting the actual route confirmed by the Court.

(c) Option A;

(d) Option D; then

(e) Option C.

[94] Mr Simich was outright opposed to the existing access, being option B.

[95] Following the hearing on 15 August 2014 Mr Simich proposed a further option being option F which was discussed at the site visit.[36]

[96] Pursuant to s 326B(5) of the Act, if the Court is satisfied that an order should be made, the Court may grant 'reasonable access' to the landlocked land. The phrase 'reasonable access' is the same as that used in the definition of landlocked land.

[97] As such, in granting 'reasonable access' the Court should grant physical access of the nature and quality that may be reasonably necessary to enable the occupier for the time being of the landlocked land to use and enjoy that land. In doing so we take into account the following factors:[37]

(a) The current and future use of the landlocked and servient land;

(b) What type of access is reasonably necessary to enable the occupier of the landlocked land to use and enjoy that land;

(c) Whether the proposed access is practical;

(d) The topography of the land;

(e) The cost to form and maintain the access;

(f) Whether the proposed route will cause hardship to the owners or occupiers of the servient land; and

(g) What is the best overall option taking into account the interests of the owners or occupiers of both the landlocked and the servient land.

---

[36] It is noted that following the 15 August 2014 hearing Mr Simich proposed three further options although two of those largely follow options D and E.

[37] See *Nukutere Lands Trust v Trustees of Whitikau A1 – Opape* 28 (Whitikau A1) (2013) 70 Waiariki MB 272, *Asmussen v Hajnal* (2009) 10 NZCPR 551 (HC), *J T Jamieson & Co Ltd v Inland Road Ltd* [2013] NZHC 3313 and *Roberts v Cleveland* (1990) 1 NZ ConvC 190, 452 where similar principles where taken into account.

[98] We do not intend this list to be exhaustive, and there may be other relevant factors that the Court will need to take into account in any particular case.

[99] In considering these options we have placed weight on the evidence given by Mr Haigh as to the practicality or difficulties associated with each option. While Mr Simich questioned Mr Haigh on the various options, Mr Simich did not challenge his evidence. We have also had the benefit of conducting a site visit and have seen first-hand the topography of the land along the proposed access routes. As such we have been able to form our own assessment which is consistent with Mr Haigh's evidence.

Option A

[100] We have previously determined that access along the paper road and crossing the river is not reasonable access and as such B19A1 is landlocked. It would be illogical if we were to now grant relief along the same route in order to provide reasonable access.

[101] Despite the submissions from Mr Simich, we do not agree that reinforcing and remedial works should be undertaken to provide access along the paper road. We accept the evidence from Mr Haigh that there are inherent problems constructing an access way along the banks of the Te Touwai River. This is an alluvial river system and the banks are highly susceptible to erosion. This was evident during the site visit. This area is also prone to flooding. There is a clear risk that the Roberts whānau might construct an access way along this route only for it to later fall into the river system. This risk is clearly demonstrated by the fact that the paper road now crosses the river itself due to the erosion that has taken place.

[102] Constructing an access way along this route would also require substantial remedial works and the construction of several new bridges crossing the river. The cost to do so would be prohibitive.

[103] As such, we consider that option A does not provide reasonable or practical access.

Option B

[104] We accept that option B provides practical access to B19A1. Mr Haigh considered that the existing access is formed along the most practical route. The existing access is well formed and other than routine maintenance, there has been little change to it since it was formed in 1969.

[105] However, we accept the submission from Mr Simich that the start of the existing access dissects the prime flat land available on B16. We also consider that this may well obstruct or hinder any future development or utilisation of B16.

[106] As such we consider that the existing access is only reasonable if the route of the existing access avoids the flat land across B16. That is Option C. While Option B has proved practical to date, we do not consider it can be regarded as the best overall option if left unaltered.

Option C

[107] Option C requires that a new entrance be formed onto Wainui Road near the old school site. A new access way would be formed skirting around the northern boundary of B16 and then heading south where it would join with the existing access as it skirts the hill towards the south of B16.

[108] Mr Haigh considered that this route is also practical although there would need to be some additional work undertaken to form the new section of the access way around the northern boundary of B16 before meeting the existing access where it skirts the hill. Further work would also be required to build up the entrance way onto Wainui Road so that it is level with the road.

[109] Mr Haigh provided a very approximate costing of $25,000.00 to undertake this further work.

[110] We consider that option C does provide reasonable and practical access.

Option D

[111] Option D requires a new entrance way from Wainui Road immediately on the northern side of the Wainui bridge. The new access way would then cross B16 towards the south running adjacent to the river bank where it would then connect with the existing formed access which skirts the hill towards the south of B16.

[112] Mr Haigh considered that more substantial work would be required to form this access way. The entrance way onto Wainui Road would need to be built up so that it is level with the road and the bridge. The new access way across the southern portion of B16 would also need to be built up as the lower end of B16 falls within the river flood zone. Appropriate culverts would need to be put in place as the raised access way across B16 would effectively block drainage from B16 into the Te Touwai River.

[113] Mr Haigh also considered that there would be associated difficulties with this route as it would require building close to an alluvial river which is subject to erosion. As such, the access way would need to be a suitable distance north of the bank of the river to ensure that it was not subject to erosion. This may well be counter-productive in seeking to preserve the flat usable land on B16.

[114] Mr Haigh provided a very approximate costing of $50,000.00 to form this route.

[115] We consider that option D, running adjacent to the river bank, is not reasonable or practical as it is subject to erosion and flooding due to the proximity of the river. To make this option practical the route would have to be moved north so as to be a suitable distance from the bank of the river. The access route would have to be raised so as to bring it above the flood plain with the use of appropriate culverts. The cost to do so is considerably higher than for option C. Altering Option D by moving it north away from the river bank would also be counter-productive as this will interfere with the flat usable land on B16.

Option E

[116] Option E provides access from Wainui road, travelling around the northern boundary of B16 to an existing forestry track which climbs west over the hill. From there the route climbs down the hill to B19A2 and then turns south to B19A1.

[117] Mr Haigh considered that this route is not practical as, while the ridge on the hill consists of hard material, the slopes are dominated by soft and unstable material. The slope is also very steep and any access along this route would be subject to slips and erosion. Although we do not have an estimate of costs to form this access, any such costs are likely to be high due to these issues.

[118] We consider that option E does not provide reasonable or practical access.

Option F

[119] Mr Simich proposed a further option of an entrance from Wainui Road onto B17A. This proposed entrance is some distance north of the existing entrance onto B16. From here the access would run west across B17A to B19A2. The access would then turn south to B19A1.

[120] At the site visit it was clear that there is no existing track along this route. In fact, there was no development at all in this area. The proposed entrance onto B17A consists of a steep bank rising from Wainui Road. The remaining route across B17A is then characterised by steep hills and gullies and the land is covered in dense bush. Forming an access way along this route would require considerable earth works, removal of bush and would incur considerable cost.

[121] We consider that option F does not provide reasonable or practical access.

Option G

[122] This option requires travelling up Porters Access Road and using the existing bridge to cross the Te Touwai River. Upon crossing the bridge it would then follow an existing access way that travels east to an unformed house site on a ridge on the B18 block. From there a new access way would have to be formed down onto B19B2, B19B1, B19A2 and then to B19A1.

[123] Mr Haigh considered that there are a number of difficulties associated with extending the access from the ridge on B18 down a large slope crossing B19B2 and B19B1 and then travelling to the flat land on B19A2 before reaching B19A1. He advised that the

slope descending from the ridge on B18 is soft and hummocky and is unstable. Mr Haigh considered that it would be impractical to form an access along this route.

[124] Mr Haigh provided a very approximate costing of $100,000.00 to form access along this route.

[125] We consider that option G does not provide reasonable or practical access.

Option H

[126] Option H requires travelling up Porters Access Road across the existing bridge and then turning east to follow the northern bank of the river to reach B19A1.

[127] Mr Haigh gave evidence that the ridge on B18 referred to in option G affects this route as well. The southern slope of the ridge is a steep bluff that drops down into the Te Touwai River. Mr Haigh considered that there would be significant difficulty and cost in terms of building an access way to skirt that bluff. Mr Haigh also considered that there would be associated difficulties in forming access along this route given the close proximity to the river and the issues around erosion and flooding.

[128] We consider that option H does not provide reasonable or practical access.

Finding

[129] Having considered the various routes, we find that option C is the most reasonable and practical route in this case.

[130] Option C follows the existing access from B19A1 heading east across B19A2 and across the south western area of B16 skirting the hill. From there some modification will be required to form a new access way as it turns north and curves around the northern boundary of B16. Further modification will also be required to form the new entrance onto Wainui Road at the north eastern boundary of B16.

[131] We consider that this provides reasonable and practical access to B19A1. This also preserves the flat usable area of B16 for future utilisation and development by the owners.

[132] We are aware that this will require the Roberts whānau to expend further cost to modify the existing access. However, this was clearly contemplated by the Roberts whānau. In her affidavit sworn 1 August 2014, Melanie Dawson stated:

> We know that it is possible that in the future the owners of B16 may wish [to] construct houses or buildings on B16. We have no problem with any reasonable modifications to the location of the Roadway, so long as the Roadway remains on safe ground and is not moved down into the swampy part of the block.

[133] At the hearing on 15 August 2014, option C was put to Mrs Dawson. She was asked whether option C is a reasonable modification as contemplated in her evidence. Mrs Dawson responded that:[38]

> It was hopeful, it's probably one of the best pieces of news we've heard in a long time other than to have nothing at all.

[134] This comment was qualified in that Mrs Dawson had not had a chance to discuss this option with the wider Roberts whānau. Despite that, her initial response was positive.

[135] In response to the additional cost required to modify the existing access, Mrs Dawson gave evidence that it could take five years but that the Roberts whānau would be able to raise the money to pay for the modifications.[39]

[136] For these reasons we consider that option C is the most practical and reasonable route to provide access to B19A1 taking into account the views and interests of all owners affected by this application.

What conditions should be imposed including, where appropriate, payment of compensation?

[137] Pursuant to s 326B(5), once the Court is of the opinion that the applicant should be granted reasonable access to the landlocked land, the Court may make an order:

(a) Vesting in the owners of the landlocked land the legal estate in fee simple in the land over which the access way is to run; or

---

[38] 86 Taitokerau MB 189 - 281 (86 TTK 189 - 281) at MB 254.
[39] Ibid at MB 256.

(b) Granting an easement over the affected land for the purpose of providing access.

[138] In the present case we consider that access should be granted by way of an easement. There is no basis or reason to vest ownership of the land in B16 over which the access is to run in the owners of B19A1. To do so would unnecessarily deprive the owners of B16 of the ownership of that land beneath the access corridor.

[139] We also consider that the rights, powers and covenants implied in Schedule 4 of the Land Transfer Regulations 2002, and Schedule 5 of the Property Law Act 2007, should apply with respect to the easement, subject to the modifications set out below.

[140] Pursuant to s 326D(1) any order under s 326B(5) must be registered as an instrument under the Land Transfer Act 1952. Before the instrument can be registered a suitable plan will have to be prepared depicting the easement corridor. As such, the proposed order granting access will need to be conditional on a suitable plan being filed with, and approved, by the Court.

[141] A further issue arises as to whether compensation should be payable. Mr Simich argues that if access is granted compensation should be paid. Mr Hockley, for the applicant, advises that his client "is not strictly opposed" to the payment of compensation.

[142] Melanie Dawson gave evidence that the Roberts whānau are aware that compensation may have to be paid. She stated that "[w]e are prepared for this and have means to pay."[40]

[143] Marjorie Te Rehu gave evidence in support of the application. She is an owner in B16. Mrs Te Rehu advised that she is not seeking payment of compensation with respect to her interests in B16. However, she considered that compensation should be paid to the other owners in B16.

[144] The standard approach is that where access is granted as per s 326B compensation should be paid. The Roberts whānau are aware of this, do not object and have means to

---

[40] 86 Taitokerau MB 189 - 281 (86 TTK 189 - 281) at MB 252.

pay compensation. There is no apparent reason why compensation should not be awarded in this case.

[145] As such, the order granting access will also be conditional on payment of compensation.

[146] There is no valuation evidence on the record as to the appropriate amount of compensation that should be paid. Mr Hockley also argues that any compensation payable should take into account the payments already made by the Roberts whānau. Presumably Mr Hockley is referring to the bull, cow and 12 sheep paid to Clem Urlich when the existing access was formed in 1969. We accept that the payment of these animals is relevant. This will need to be considered as part of determining the level of compensation payable.

[147] In order to determine the level of compensation payable we intend to appoint a valuer to prepare a valuation for the purpose of compensation with respect to the new access way. That valuer will be engaged by the Court out of the Māori Land Court Special Aid Fund pursuant to ss 69 and 98 of the Act. Upon the valuation being filed, copies will be distributed to the parties, and the parties will have an opportunity to present any further submissions on the valuation obtained. A further decision will be then be issued on the papers determining the level of compensation payable.

Decision

[148] Pursuant to s 326B(5) of the Act access is granted by way of a right of way easement to the B19A1 block across B16 and B19A2 as described in option C set out in this decision.

[149] Pursuant to s 326C of the Act the easement is granted subject to the following terms and conditions:

(a) The easement is subject to the rights and powers implied by clauses 1, 6 and 10 to 13 of Schedule 4 of the Land Transfer Regulations 2002 and the implied covenants detailed in Schedule 5 of the Property Law Act 2007 regarding grants of vehicular rights of way

provided that the right in clause 2(d) of Schedule 5 of the Property Law Act 2007 shall prevail over clause 11 of Schedule 4 of the Land Transfer Regulations 2002. The Court retains jurisdiction in relation to any disputes.

(b) The owners of B19A1 are to construct at their cost the accessway over the easement.

(c) Compensation for the grant of the easement being determined by the Court, and paid by the applicant, as directed by the Court;

[150] Pursuant to s 73 of the Act the above orders are conditional upon:

(a) The Court determining the level of compensation payable and to whom it is to be paid;

(b) The applicant filing a suitable survey plan depicting the route of the easement, such plan to be approved by the Court.

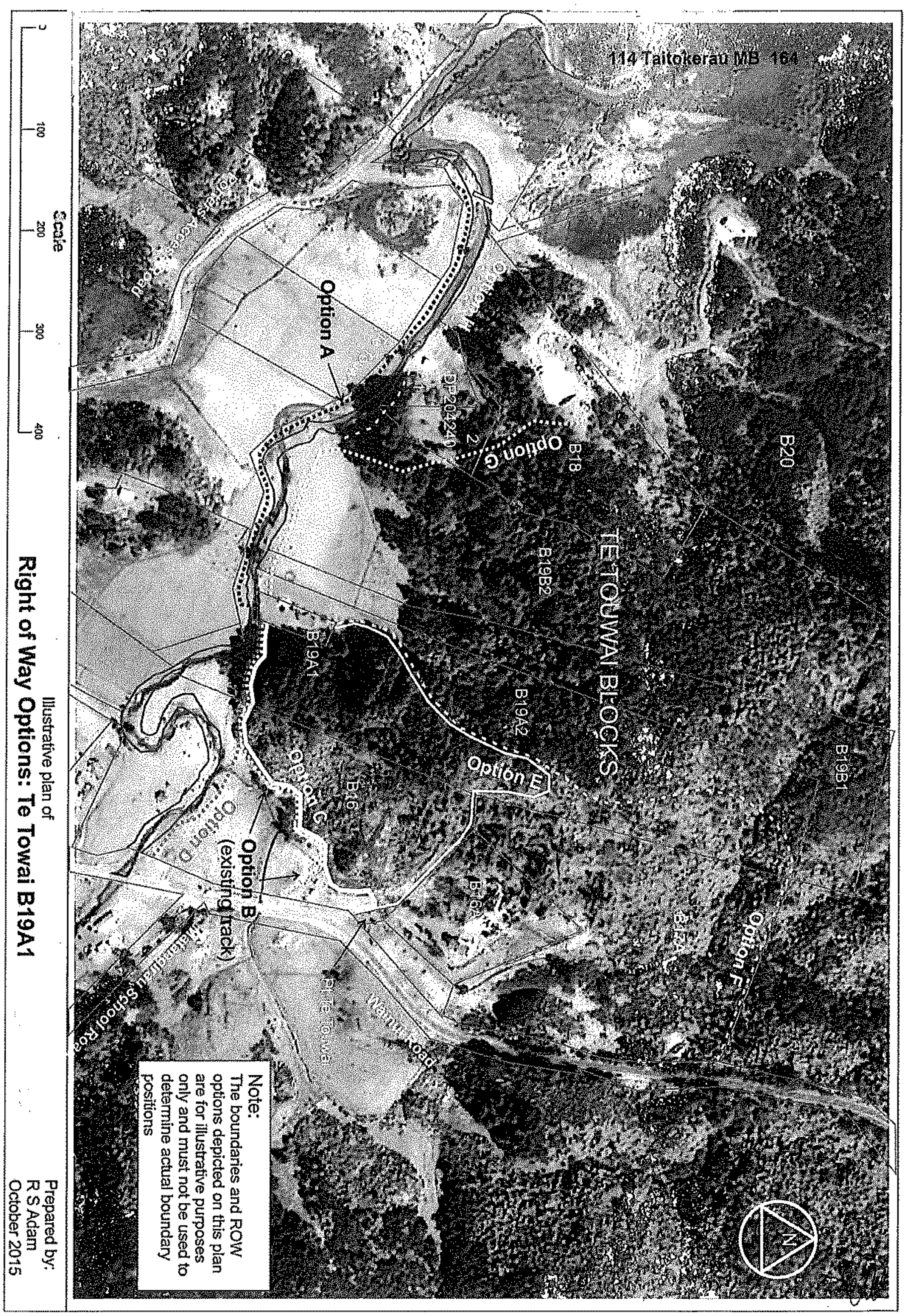
[151] The application is adjourned for the Court to engage a valuer per ss 69 and 98 of the Act for the purpose of determining compensation payable.

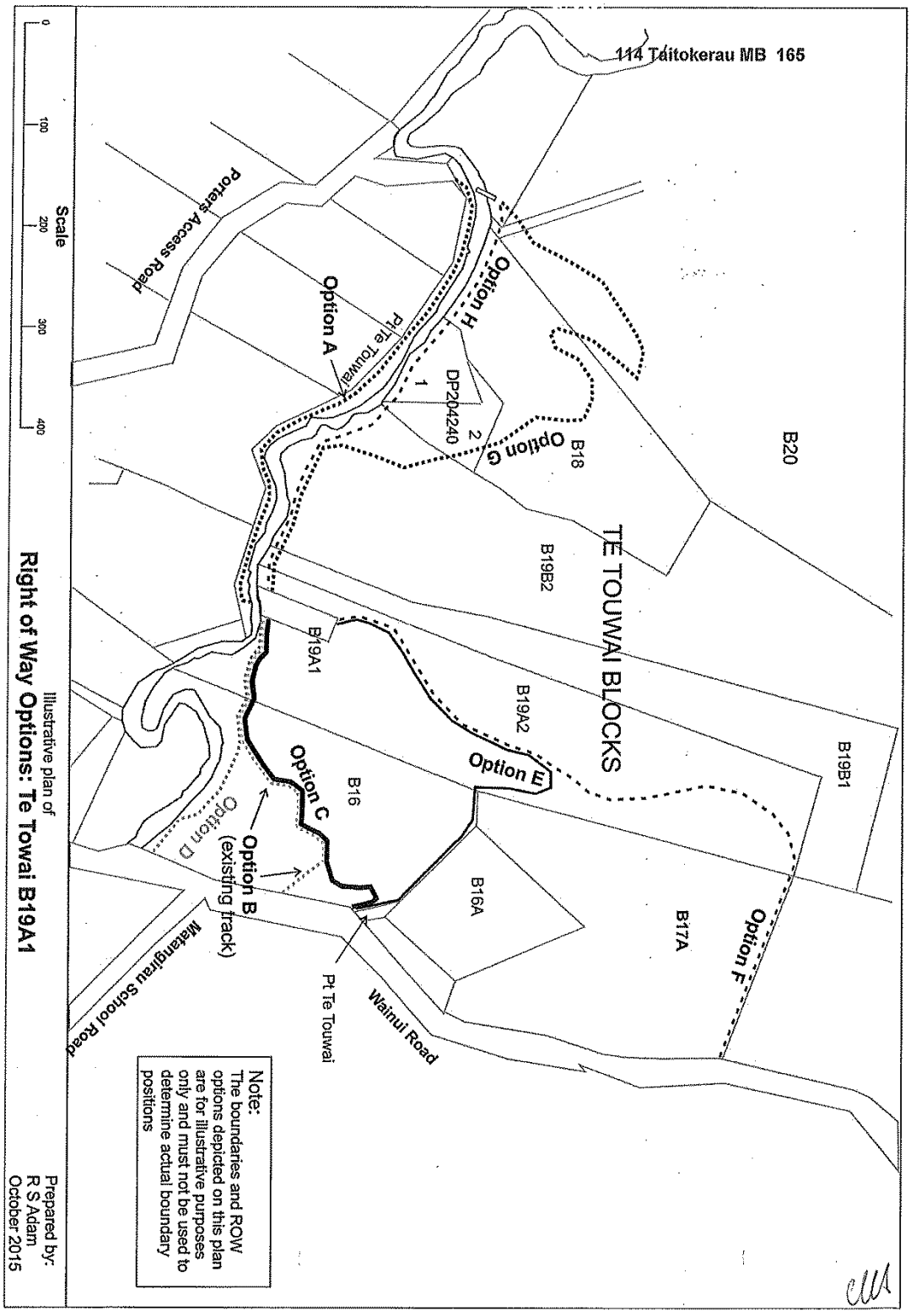
Pronounced in open Court in Whangarei at 3.45 pm on Thursday this 15th day of October 2015.

D J Ambler
JUDGE

M P Armstrong
JUDGE

APPENDIX A


114 Taitokerau MB 164
Illustrative plan of
Right of Way Options: Te Towai B19A1
Scale
0
100
200
300
400
Option A
Option B
(existing track)
Option C
Option D
Option E
Option F
Option G
TE TOUWAI BLOCKS
B18
B19A1
B19A2
B19B1
B19B2
B20
B16
Waimu Road
Note:
The boundaries and ROW options depicted on this plan are for illustrative purposes only and must not be used to determine actual boundary positions
Prepared by:
R S Adam
October 2015


114 Taitokerau MB 165
Portets Access Road
Option A
Pt Te Touwai
Option H
DP264240
1
2
Option G
B18
B20
TE TOUWAI BLOCKS
B19B2
B19A1
B19A2
Option E
B19B1
Option C
B16
Option D
Option B
(existing track)
B16A
B17A
Option F
Matangirau School Road
Pt Te Touwai
Waimui Road
Note:
The boundaries and ROW options depicted on this plan are for illustrative purposes only and must not be used to determine actual boundary positions
Scale
0
100
200
300
400
Illustrative plan of
Right of Way Options: Te Towai B19A1
Prepared by:
R S Adam
October 2015