

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TAIRĀWHITI DISTRICT**

**A20020006127**

UNDER Sections 316, 326 and 69(2), Te Ture Whenua  
Māori Act 1993

IN THE MATTER OF Mangahauini No. 1 Road Line

BETWEEN Tessina Joy Chambers  
Applicant

AND Tawhiti Blocks Trust  
Respondent

Hearing: 18 February 2003, 2 Conference MB 78-80  
1 March 2005, 20 Ruatōria MB 95  
13 September 2005, 71 Ruatōria MB 19-23 (Heard at Tokomaru  
Bay)  
16 February 2011, 12 Tairāwhiti MB 150  
28 July 2011, 16 Tairāwhiti MB 37  
1 February 2012, 19 Tairāwhiti MB 289  
2 April 2012, 21 Tairāwhiti MB 159-165 (Heard at Ruatōria)  
29 January 2013, 28 Tairāwhiti MB 19-20  
4 April 2013, 29 Tairāwhiti MB 180-185  
(Heard at Gisborne)

Judgment: 16 July 2013

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**RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX**

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## **Introduction**

[1] Ms Chambers is an owner in Mangahauini 1A Section 55 and 56, a block of Māori freehold land situated at Tokomaru Bay on the East Coast. She was previously granted an occupation order over Mangahauini 1A Section 56 on 6 March 2002.<sup>1</sup> After the Court made the occupation order the question of access became a concern. That is due to the site being located in a remote valley on the northwest side of Waimā Road, Tokomaru Bay, East Coast. The Waitakeo Stream flows through the area to the sea and has created some real erosion issues.

## **Application**

[2] This matter concerns an application filed under s 316 of Te Ture Whenua Māori Act 1993 for a portion of a roadway to be laid out over Tawhiti 1F1 and other blocks to Mangahauini 1A Sections 55-59 and for an access order to landlocked land.

[3] The applicant also sought a charge be imposed upon use of the roadway “so that the owners of section 57 and 58 have no right to use the road or bridge until they have contributed to the cost of the roadway, bridge and ongoing maintenance.”

[4] Following a conference held on 18 February 2003, the applicant was given clear directions to:

- Obtain a report and plan from a surveyor detailing the options for access;
- Obtain an engineer’s report reviewing the Gisborne District Council’s position advised by letter dated 6 March 2002.
- Give notice to affected owners.

## **Engineering Evidence**

[5] The Court eventually received the following evidence concerning engineering issues from:

1. Mr WJ Turner, who is the Manager of the Gisborne District Council’s Engineering and Works Department, advised on 6 March 2002 that:

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<sup>1</sup> 62 Ruatōria MB 26 (62 RUA 26). There were only 4 owners in that block when the occupation order was granted.

*“With respect to a proposed access road to Sections 55 and 56 from Waimā Road, we comment as follows after a recent site inspection.*

- 1. The crossing proposed by Tawhiti Trustees is not recommended as the access road will still be within the flood prone zone.*
- 2. The access road proposed by Tessina Chambers appears slightly higher than Tawhiti Trustees proposal, but only marginally higher than recent flood levels and some sections of the access road will still be within the flood prone zone;*
- 3. The most appropriate location for an access road appears to be on the river plane indicated on the plan, approximately 2-3m higher than recent flood levels.*

*The above comments have been made in the absence of any survey information or technical data and if the project is likely to proceed, the following technical issues need to be considered.*

*An engineering consultant engaged to carry out geological, hydrological and geotechnical investigations for pavement and culvert design.*

*Confirm the most appropriate access road location.*

*Inquire with the local people if the proposed access route has ever flooded in the past.*

*The above comments are a technical opinion of the writer and not a requirement of Gisborne District Council.”*

The applicant filed this letter with her application and the Court directed that the applicant obtain independent engineering advice to respond to this letter.

2. Opus International who reported on 26 March 2004:

*“Opus were engaged by the applicant to review the options for providing access to her site on Mangahauini 1A Section 56. These options are reproduced below, with the opinion of Opus concerning their viability as access routes given access standards which require safe all weather access for cars (except at stream crossings).*

#### ***Options Reviewed***

*Three options have been reviewed on site. These are: (ref to Site Sketch attached)*

- Option 1-Traversing around the steep bluff to the south of the stream, and connecting up with an existing track that runs through the mānuka covered hill slope on the south side of the stream. Much of this option appears to follow the existing paper road, but it is likely that the batter slopes for the access construction would extend beyond the road reserve boundaries and into the adjoining property.*
- Option 2-Crossing the alluvial terrace and following close to the stream on its north side. This option involves two stream crossings. While some of the length of this option would be within the paper road, the majority of it would extend across adjoining land.*
- Option 3-A third option has also been reviewed and this involves a combination of the first two options. This option avoids traversing the steep batter near the start of the access but links up with the existing track through the mānuka covered hill slope on the south side of the stream. This option also involves two stream crossings. Again with this option much of it would fall within the paper road, however some*

*of the length would fall outside the paper road, and batters will also extend into adjoining property.*

### **Comparison of Options**

#### **5.1 Option 1**

*This option has serious drawbacks in that it involves cutting an access into the steeply eroding siltstone face near the start of the access road. This cutting would extend from distance 60 to distance 130 approximately and the gradient through this length would be relatively gentle. To establish a road bench around this face would involve major earthworks, with significant benching to ensure safety of the cut better. The bench on which the road will be located will be under threat by both slipping from above, and from scouring from the stream below.*

*At distance 170 approximately the access would tie in to an existing tract that has been established sidling up the slope on the south side of the stream through the mānuka. Gradient on the track is approximately 14%, which is steep for a property access, and the track is narrow with only room for one vehicle. Ground slopes uphill from the track are around 30°. At distance 290 a small gully comes down from the hill and crosses the track and this area is wet with free standing water pooled on the surface. Water tabling and widening would be required through this section which would involve cutting into the side of the hill with the risk of de-stabilising the slopes above.*

*The track continues to climb and on to the flat ground at distance 350.*

*The advantage of this option are:*

- *There are no stream crossings involved.*

*The disadvantages of this option are:*

- *Major earthworks involved establishing a road bench around the steep face near the start of the access between distance 60 and 130.*
- *Ongoing problems with stability of the batter above the access.*
- *Vulnerability of the access to stream scour from below the road.*
- *Gradients up the sidling cut (170 to 290).*
- *Potential to de-stabilise the hill slopes above the access from distance 170 to 330 where widening will be required by cutting into the clay layer overlaying the slope. Cut batter slopes may extend some distance up the hill side.*
- *Drainage issues associated with the gully at distance 290.*
- *Likelihood of high future maintenance costs through the section from distance 170 to 330.*

*Due to the extent of earthworks required between distance 60 and 130 this option should be discarded and not considered further.*

#### **5.2 Option 2**

*This option involves following the existing track from the gate at 00 to the stream at distance 100, crossing and then following the stream on its north side across the alluvial terrace through to a second stream crossing at distance 260. From this point the access would climb up to the flat land beyond, similar to option 1.*

*Two stream crossings are required for this option however these are located in positions where low level crossing could be easily constructed. Siltstone is exposed in the bed at both the crossing sites, and founding a low level culvert causeway on this material should be relatively simple. Both crossings can be constructed at right angles to the stream to reduce the possibility of scour. The design of the crossings will depend on the*

*standard of access required. If all weather access were required then large culverts catering for all but the larger floods would be necessary. However, if overtopping in smaller events can be tolerated then a concrete causeway with smaller concrete pipes and appropriate scour protection may be acceptable. Periodic maintenance will be required with low level crossings to keep them clear of debris and sediment build-up. Flood depths over these low level crossings is likely to be substantial based on observed flood debris levels, and known weather characteristics of the east coast.*

*The flood height across the terrace between the two crossings is not known, therefore it is unclear what flood frequency could damage the road or restrict its use in this option.*

*The advantages of this options are:*

- *Avoids all major earthworks.*
- *No issues of land stability or likelihood of de-stabilising hill slopes.*
- *Impacts on the environment are minimal compared to options 1 and 3.*
- *No significant gradients.*
- *Ease of providing passing opportunities.*

*The disadvantages of this option are:*

- *Involves two stream crossings although these are well sited with good foundation conditions.*
- *Low level stream crossings will be overtopped during floods, with flood depths possibly being quite substantial.*

### **5.3 Option 3**

*This option is a combination of Options 1 and 2. Instead of remaining on the south side of the stream and cutting into the hillside between distance 60 and 130, this option follows the same line as option 2 and crosses the stream at distance 100, and then follows around the north side of the stream to a second crossing point at distance 170. From distance 170 the line then follows the same route as Option 1. The comments relating to the stream crossings in 5.2 option 2 above also apply to this option.*

*Again the flood height across the terrace between the two crossings is not known, therefore it is unclear what flood frequency could damage the road or restrict its use in this option.*

*The advantages of this option are:*

- *Avoids cutting into the steep hillside on the south side of the stream between distances 60 and 130.*

*The disadvantages of this option are:*

- *Involves two stream crossings although these are well sited with good foundation conditions.*
- *Stream crossings at 170 is skewed at a sharp angle to the line of the stream which could encourage scour, and lengthens the crossing.*
- *Low level stream crossings will be overtopped during floods, with flood depths possibly being quite substantial.*
- *Steep gradients up the sidling cut (170 to 320).*
- *Potential to de-stabilise the hill slopes above the access from distance 170 to 330 where widening will be required by cutting into the clay layer overlaying the slope. Cut batter slopes may extend some distance up the hill side.*
- *Drainage issues associated with the gully at distance 290.*

### **6 Recommendation**

*It is our recommendation that Option 2 be adopted. This recommendation is made for the following reasons:*

- *No significant earthworks or vegetation clearance required*
- *Minimal impact on the environment*
- *The terrain through which the access passes is relatively flat with gentle grades*
- *No significant land stability issues*
- *Ease of construction hence lower construction cost*
- *Low future maintenance costs, although there will be some maintenance required at the stream crossings.*

*Although two stream crossings are required these are well sited and have good foundation conditions. These will be overtopped in floods which will require closure of the access at those times. The frequency of overtopping will be dictated to some extent by the levels adopted for the crossings. Consents will be required from Gisborne District Council for all options including consents to divert and discharge water at the stream crossing.”*

### **Court Procedure**

[6] The application has been before the Court since 25 October 2002. That has been primarily because of the cost of procuring engineering and survey reports. At Ms Chambers request, the application was adjourned in 2003 until 2004. It was further adjourned in December 2004. During that interval, there was some opposition expressed to the roadway by owners for Tawhiti 1F1. Kimihia Tibble, for example, advised court staff on 2 April 2004 that she was concerned about wāhi tapu issues if the roadway traverses Tawhiti 1F1. However, given where she indicated these may be, the options considered for the roadway realignment will not impinge on those areas.

[7] On 1 March 2005, His Honour Judge Harvey heard an application for an injunction concerning stock wandering over the Ms Chambers occupation site.<sup>2</sup> Judge Harvey granted an interim injunction and he adjourned the applications, including the roadway applications, for a further hearing.

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<sup>2</sup> 70 Ruatōria MB 95 (70 RUA 95).

## Orders of the Māori Land Court

[8] That hearing was held on 13 September 2005 at Te Ariuru Marae in Tokomaru Bay.<sup>3</sup> It was preceded by a site visit. The issue before the Court concerned access to the site via a legal paper road which, due to erosion by the stream and natural land movement, is no longer passable at various points. At that hearing the Chairman of the Tawhiti Trust (Mr P Cross) withdrew any previous objection to the application. As a result and there being no objection, the application under ss 316 and 326 was granted and the injunction dismissed.<sup>4</sup> But by 2008, the survey to complete the roadway order had not been provided by Ms Chambers.

[9] However, an occupation order was granted to Starlene Queenie Ngerengere-Otene in May 2008 over Mangahauini 1A Section 57. In the written judgment on that application, the Court noted that the same roadway would be needed to access this occupation site.<sup>5</sup> It directed that a surveyor be commissioned to produce a plan depicting the roadway (Option 2) as recommended by Opus International and relied upon by Judge Harvey and it made orders under ss 69 and 98 to complete that process. The Court also made an order under s 322 amending the order made by Judge Harvey to extend the right of use of the roadway to include all owners, occupiers, their successors in title and invitees of the owners or occupiers of Mangahauini 1A Sections 55-59. All those in occupancy were made liable for an apportionment of costs. The orders were conditional on no objections being received by the Gisborne District Council or the Trustees of Tawhiti 1F1. No written objection was received.

## Requisition for Survey

[10] On 9 March 2011, an order for the requisition of a survey was issued.<sup>6</sup> That survey was not completed and reported upon until the end of 2011. The matter was set down for hearing in April 2012 to ensure all the owners had notice of the realignment of the roadway.<sup>7</sup>

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<sup>3</sup> 71 Ruatōria MB 19 (71 RUA 19).

<sup>4</sup> 71 Ruatōria MB 23 (71 RUA 23).

<sup>5</sup> 179 Gisborne MB 76 (179 GIS 76).

<sup>6</sup> 12 Tairāwhiti MB 150 (12 TRW 150).

<sup>7</sup> 21 Tairāwhiti MB 160 (21 TRW 160).

[11] The roadway as surveyed is over Tawhiti 1F1, Mangahauini 1A Section 55 and Mangahauini 1A Section 56. At the hearing the Registrar reported:

**Keith Bacon, Deputy Registrar:** *The survey required to complete the order at 71 Ruatōria MB 19-23 dated 13 September 2005 has been finished. The order was made to amend the Mangahauini No. Road Line order made at 86 Waiapu MB 20-23 dated 5 October 1922. The purpose of the order is to realign the road line giving access to the Mangahauini 1A Section 55 to 59 blocks, the original road line had been eroded by the Waitakeo Stream. Occupation orders have been made in favour of Tessina Chambers at 62 Ruatōria MB 26-30 dated 6 March 2002 in respect of Mangahauini 1A Section 56 and Starlene Ngerengere at 179 Gisborne MB 76-79 dated 9 July 2008 in respect of Mangahauini 1A Section 57. Each required the roadway access to their blocks.*

*ML 448413 has been prepared and approved as to survey on 14 December 2011.*

*The roadway as surveyed is over Tāwhiti 1F1, Mangahauini 1A Section 55 and Mangahauini 1A Section 56. The area for each of these blocks will be reduced as shown below:*

<u>Block</u>	<u>Previous Area</u>	<u>New Area</u>	<u>Amount reduced</u>
Tāwhiti 1F1	757.0684 ha	756.7624 ha	.3060 ha
Mangahauini 1A section 55	.1542 ha	.0485 ha	.1057 ha
Mangahauini 1A Section 56	.2630 ha	.2270 ha	.0360 ha
			<u>Amount increased</u>
Mangahauini No 1 Roadline	1.1798 ha	1.6885 ha	.5087 ha

*The Mangahauini No. 1 Road Line, Mangahauini 1A Section 55 and Mangahauini 1A Section 56 were surveyed on ML 3177, and the partition order for Tāwhiti 1F1 was signed when ML 398330 was approved as part of the Māori Freehold Land Project. Plan ML 448413 replaces the plan for these three blocks and the road line. Each order will need amending pursuant to section 86 of Te Ture Whenua Māori Act 1993 to show the new area and by removing the former plans and replacing them with ML 448413.*

*Mangahauini 1A Section 55 and Mangahauini 1A Section 56 have the same ownership. It may be necessary to amalgamate the two blocks in the future to allow any further building sites.*

*I therefore ask that ML 448413 be approved, and for the following orders pursuant to Section 86 of Te Ture Whenua Māori Act 1993.*

- 1. To amend the partition order for Tāwhiti 1F1 dated 5 September 1921 by reducing the area to 756.7624 ha (1870a:0r:1p) and by deleting ML 398330 attached and replacing it with ML 448413;*
- 2. To amend the partition order for Mangahauini 1A Section 55 dated 1 April 1919 by amending the area from 0a. 1r 21 per (.1542 ha) to 0a. 0r. 19.2p (.0485 ha);*
- 3. To amend the partition order for Mangahauini 1A Section 56 dated 1*



*April 1919 by amending the area from 0a. 2r. 24 per (.2630 ha) to 0a. 2r. 9.7 per (.2270 ha); and*

*4. To amend the order Vesting the Property of a Body Corporate in the Beneficiaries for Mangahauini No. 1 Road Line dated 5 October 1922 by amending the area from 2a. 3r. 26.4per (1.1798 ha) to 4a. 0r. 27.58 per (1.6885).*

[12] I referred the application back to the Registrar for a further report under s 40 and for a further meeting with the Tawhiti 1F1 owners. Unfortunately, the Tawhiti 1F1 meeting failed to reach a quorum but discussion took place and those who attended agreed that the roadway realignment should proceed.

[13] At the next hearing held on 29 January 2013, the new Chairperson of the Tawhiti 1F1 Trust (Mr Tui Marino) agreed to the realignment of roadway survey subject to the following conditions:

- That the roadway and use of the roadway be at no cost to Tawhiti 1F1 Trust;
- That the ex-dwelling site/pa be left undisturbed as a wāhi tapu; and
- In the event the proposed residential housing is abandoned at any stage then the roadway shall revert to Tawhiti 1F1 Trust.<sup>8</sup>

[14] However, the Court received from Mr Eru Reedy an objection to the survey.<sup>9</sup> The Court adjourned the application in order to hear from Mr Reedy. The last hearing on this matter was held on 4 April 2013.<sup>10</sup> I note that his major concern was that there be no loss of land to Tawhiti 1F1 as a result of the realignment. I reserved my judgment and the file was referred to me on 26 April 2013.

## **Order**

[15] I note that on 9 May 2008, the Court made an order under s 322 amending the order made by Judge Harvey to extend the right of use of the roadway to include all owners, occupiers, their successors in title and invitees of the owners or occupiers of Mangahauini 1A Sections 55-59.

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<sup>8</sup> 28 Tairāwhiti 19 (28 TRW 19).

<sup>9</sup> 28 Tairāwhiti 19 (28 TRW 19).

<sup>10</sup> 29 Tairāwhiti MB 180 (29 TRW 180).

[16] As the following is a technicality that has no practical consequences for the applicant, Ms Chambers, and to demonstrate the true intention of the Court there is an order under s 86 to add the following words:

“and Tawhiti 1F1 (who shall bear no costs) with ownership of the land under the roadway remaining vested in the owners of each affected block.”

Pronounced in Open court in Gisborne on the 16<sup>th</sup> day of July 2013.

C L Fox  
**DEPUTY CHIEF JUDGE**