I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Land Court of New Zealand
Waiariki District

A20200012165

WĀHANGA *Under*	Section 135 of Te Ture Whenua Maori Act 1993
MŌ TE TAKE *In the matter of*	Lot 1 Owhatiura South 5 Part Block
I WAENGA I A *Between*	RICHARD TAPSELL Te kaitono *Applicant*

Nohoanga: *Hearing*	28 January 2021, 247 Waiariki MB 194-199 (Heard at Rotorua)
Kanohi kitea: *Appearances*	G Dennett for Applicant
Whakataunga: *Judgment date*	30 June 2021

TE WHAKATAUNGA Ā KAIWHAKAWĀ C T COXHEAD
Judgment of Judge C T Coxhead

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Hei timatanga korero
Introduction

[1] Lot 1 is Māori land. Lot 1 is surrounded by Lot 2 which is General land. Lot 1 and Lot 2 have been held by the Tapsell whānau for near on 100 years. Hira Tapsell, the grandfather of the applicant, purchased the land in the early 1900's. He and his wife lived there with their 5 children. It was Hira's dream that the land would be available to house the Tapsell whānau.

[2] The applicant seeks a change of status for Lot 1 from Māori freehold land to General land to realise the dream of their grandfather.

Te Whenua
The Land

[3] Lot 1 Owhatiura South 5 Part Block is a 2023m^2 section of Māori freehold land in the rural area behind Lynmore in Rotorua vested in the applicant, Richard Tapsell, solely. It was part of a land purchase by the applicant's grandfather Hira Tapsell in the early 1900s. Lot 1 consists of a long narrow access strip running to a house site, where the applicant's house is situated.

[4] It is surrounded by Lot 2, 10.9361 ha which was changed by the Court from Māori freehold land to General land in 1979 for the purpose of developing the land for Tapsell whānau housing.[1] Lot 2 is owned by the applicant's parents with a house that is accessed via the driveway of Lot 1.

[5] The applicant seeks a change of status for Lot 1 from Māori freehold land to General land.

Te korero a te kaitono
Applicant's submissions

[6] The Tapsell whānau wish to cut one-acre blocks from Lot 2 for whānau members to build their homes on. As the land is currently zoned rural, counsel submits this is the

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1 193 Rotorua MB 294 (193 ROT MB 294); 247 Waiariki MB 194-199 (247 WAR 194-199) at 196.

minimum size allowed for a subdivided block in that area. In order to do this, counsel submits that access to Lot 2 would need to be improved, which would be done by using part of Lot 1. The driveway for Lot 1 also needs to be upgraded for access to the two existing houses of the Tapsell whānau.

[7] Applicant counsel submits that the change of status is needed to unlock the potential of developing the whānau housing blocks, improve access and to secure finance over Lot 1. Counsel submits that without a change of status "banks will not lend on Māori land."

Te Ture
The Law

[8] Sections 135 and 136 of Te Ture Whenua Māori Act 1993 (the Act) provide:[2]

> **135 Change from Maori land to General land by status order**
>
> (1) The Maori Land Court shall have jurisdiction to make, in accordance with section 136 or section 137, a status order declaring that any land shall cease to be Maori customary land or Maori freehold land and shall become General land.
>
> (2) The court shall not make a status order under subsection (1) unless it is satisfied that the order may be made in accordance with section 136 or section 137.
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> (3) A status order under subsection (1) may be made conditional upon the registration of any instrument, order, or notice effecting a conveyance of the fee simple estate in the land to any person or persons specified in the order.
>
> **136 Power to change status of Maori land owned by not more than 10 persons**
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> The Maori Land Court may make a status order under section 135 where it is satisfied that—
>
> (a) the land is beneficially owned by not more than 10 persons as tenants in common; and
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> (b) neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4)); and
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> (c) the title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered; and

[2] Te Ture Whenua Māori Act 1993, ss 135, 136.

(d) the land can be managed or utilised more effectively as General land; and

(e) the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[9] As Judge Ambler noted in *Te Whata - Waiwhatawhata 1A2B6 Lot 1 DP 168554*:[3]

> An application to change status must be considered in two steps. First, the Court must assess whether each of the statutory pre-conditions in section 136(a) to (e) have been independently satisfied. Second, if the statutory pre-conditions have been satisfied, the Court must then consider whether to exercise its discretion in favour of the change of status.

[10] The principals developed by the Court when considering status change applications are set out in *Tahuparae – Ngapākihi 1T*, where Judge Harvey summarised these as follows:[4]

(a) Those rights or interest in the land go beyond the beneficial owners themselves to whānau, hapū and descendants of owners;

(b) Land is a tāonga tuku iho and should be retained within the kin group if possible;

(c) Owners should as far as possible be empowered to develop, manage and utilise and control their own lands;

(d) Status change for the sole purpose of securing a higher sale price is not a reason to grant such an order;

(e) Section 136 is to be read conjunctively. If the Court is dissatisfied that any of the criteria set out in that section have not been satisfied it need proceed no further;

(f) Notice must be given to the PCA [preferred class of alienees] to give that group the opportunity to make submissions;

(g) A change of status is possible but only in a limited range of situations and each application must be considered as to its merits and particular circumstances taking into account the principles of retention and development; and

(h) An applicant's personal circumstances must always be taken into account when considering any application for a status change.

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[3] *Te Whata - Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2007) 125 Whangarei MB 294 (125 WH 294) at [12].

[4] *Tahuparae – Ngapākihi 1T* (2008) 198 Aotea MB 201 (198 AOT 201) at [8].

Kōrerorero
Discussion

[11] Counsel has outlined in submissions how the pre-conditions of s 136(a) – (c) and (e) of the Act have been met. However, there is a lack of information in terms of (d) as to whether the land can be better utilised as General land.

[12] In *Craig v Kira – Wainui 2F 4D* the Māori Appellate Court considered that:[5]

> those seeking a change under s 136 must show, using detailed evidence, that the land can be more effectively managed or utilised as General land. The applicant must prove that there is some specific option or proposal being considered with respect to the land. The applicant must demonstrate that the option or proposal can be better achieved if the land has the status of General land.

[13] The Court was not told how many one-acre (4046 m^2) blocks the Tapsell whānau intend to create from the 10.9361ha (109,361 m^2) of Lot 2. Nor are we given a plan of how they would be laid out on Lot 2 with respect to access from Lot 1. An engineer's report would have been helpful in showing that the proposed whānau house sites on Lot 2 can only be accessed via Lot 1. The plan as placed before the Court lacks detail.

[14] Further, there is no information as to why it is necessary to change the status of Lot 1 to secure finance over Lot 1 when Lot 2 is the main lot to be developed and it is General land. Given Lot 2 is the larger block 10.9361 ha and Lot 1 is 4046 m^2 it is surprising that sufficient finance cannot be secured over Lot 2. Counsel has not provided any evidence that the venture has been rejected for lending by a bank on the basis of Lot 1 being Māori freehold land.

[15] There is no indication that the preferred class of alienees (PCA) have been notified of the application. Per my finding in *Yeoward – Ngapuna A25*:[6]

> In cases like this, where a change of status is requested, members of the preferred class of alienees must be formally notified of the application and the hearing, and the Court will strictly adhere to this requirement.
> …
> Further, an essential question in determining whether a change of status should be granted is whether such change would undermine the balance struck in the Act between

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5 *Craig v Kira – Wainui 2F 4D* (2006) 7 Taitokerau Appellate MB 1 (7 APWH 1).

6 *Yeoward - Ngapuna A25* (2016) 144 Waiariki MB 287 (144 WAR 287) at [13] citing *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554*, above n 3 and *Cleave – Orakawa 3B* (1995) 4 Taitokerau Appellate MB 95 (4 APWH 95); at [21] citing *Craig v Kira*, above n 5.

> landowners' right to engage with their land as they wish, and the wider hapū interest in land as a collective taonga tuku iho.

[16] The applicant has not put forward detailed evidence of the development plan, nor of correspondence from banks declining to finance the venture on the basis of Lot 1 being Māori freehold land. The case for how the land can be better utilised as General land under s 136(d) has not been made out. Further, it does not appear that the PCA has been notified of this application to change the status of Lot 1.

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Other matters

[17] Counsel made submissions that the purpose of seeking that Lot 1 be converted to General land was so that Lot 1 and Lot 2 could be developed together. That was, as I understood submissions, on the basis that family would look to subdivide the land into one-acre blocks and also on the basis that the land would not be sold but would remain in family ownership.

[18] In the process of confirming titles and rating information for the two lots that relate to this application, research has discovered that 1.9 ha of Lot 2 is for sale. It is currently listed on the NAI Harcourts website, zoned residential with the potential to be subdivided into 21 lots.[7]

[19] The Court was not informed that the applicant's whānau were looking to sell part of Lot 2. This was detail that was not presented to the Court and was not provided as part of the development plan. While the fact that part of Lot 2 is being sold is not reason for the application being declined it does further show that the development plan put before the Court lack vital information including the fact that part of the land would be sold.

Kupu Whakatau
Decision

[20] The application fails in a number of respects. The applicant has not put forward detailed evidence of the development plan, nor evidence from banks declining finance on

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[7] The property is listed under the address 1 Link Road, Rotorua.

the basis of Lot 1 being Māori freehold land. I am not persuaded that the land can be managed or utilised more effectively as General land.

[21] Further, it does not appear that the PCA has been notified of this application to change the status of Lot 1.

[22] The application is dismissed.

I whakapuaki i te 1.00pm i Rotorua te 30 o ngā rā o Hune te tau 2021

C T Coxhead
JUDGE