IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUNAMU DISTRICT

Place:	Rotorua
Present:	L R Harvey, Judge
Date:	4 February 2005
Application No:	A20030007014
Subject:	Bruce Bay Block XIV Section 781A – Change of status from Māori Freehold land to General land
Legislation:	Section 135 and 136, Te Ture Whenua Māori Act 1993
Counsel:	A Reihana for Paul Wilson
Hearing:	5 October 2004

RESERVED DECISION

Introduction

On 10 December 2003, Paul Wilson ("the Applicant") applied for a change of status of Bruce Bay Block XIV Section 781A ("the land") from Māori Freehold land to General land pursuant to sections 135 and 136 of Te Ture Whenua Maori Act 1993 ("the Act"). The application states that, inter-alia, "*the land can be managed or utilised more effectively as General land as a change of status provides for better bank security so that funds can be raised to help develop the land…*"

Background

According to the Court's records, the land was created by partition order on 13 February 1958. It has an area of 42.9978 hectares in area and is divided into106.25 shares. As at the date of this application, the Land was solely owned by the Applicant. It is Māori freehold land.

Prior to hearing, Her Honour Judge C M Wainwright issued a direction on 27 January 2004 asking the applicant to "*provide documents that demonstrate his inability to obtain a loan.*" The learned judge also stated that she would be particularly interested in the response of the National Bank, whose representative has specifically advised her of the National Bank's willingness to lend money on the security of solely owned Māori land provided normal lending criteria were satisfied.

Following that, on 6 April 2004 at 106 South Island MB 275 His Honour Deputy Chief Judge W W Isaac adjourned the application until October 2004 on the grounds that the information sought by the Court had not been provided..

On 8 September 2004, the solicitor for the Applicant provided the Court with a comprehensive registered valuation of the land undertaken by the Hokitika branch of ASB Bank. In her correspondence to the Court, counsel advised that the Applicant had decided against making a loan application with the National Bank, as suggested, on the grounds that a fresh business plan would be required, whichwould cost the Applicant some $4,000.

Equally importantly, counsel records that the Applicant *"confirms that he does not have any written proposals etc for the development for the land in issue."* The correspondence also states the Applicant's view that *"the current Māori land status is an impediment to the development of the land"*and, even if the Applicant could procure a mortgage for development, it would be a smaller mortgage than would be obtained if the land was General land.

Counsel then emphasised what the primary reason was for the seeking of the status change:

> *"This is just one of the considerations for Mr Wilson, the bigger reason for changing the status is that Mr Wilson will be in a better position to carry out the development with greater business efficacy that is not unduly hampered by the slower processes of the Māori Land Court. The faster processes of the land transfer system to register mortgages, create easements for water, power, drainage and sewage systems for intended development is a major consideration for Mr Wilson. These mechanics of development can be put through the land transfer system within a shorter timeframe than the Māori Land Court provides enhancing business efficiency."*

The application was then heard by me at Christchurch on 5 October 2004 at 109 South Island MB 127. After hearing from counsel and the Applicant, I adjourned the proceedings for 40 days to enable counsel to file further written submission, taking into account relevant case law. Final submissions were received on 15 November 2004.

Counsel's Submissions

In summary, counsel submitted that:

(a) the Applicant has lived most of his life on the land, which has suffered from lack of utilisation due to its locality and other relevant social economic considerations. The Applicant wishes to develop, utilise and manage the land for commercial purposes to ensure its self-sustaining productivity for the benefit of the Applicant and his family. The Applicant proposes to utilise the land as an eco-tourism venture on a commercial basis. It is ideally located to participate in this growth industry;

(b) the land is located 6 kilometres south of the remote coastal settlement Bruce Bay on the west coast of the South Island, a sparsely populated community of some 20 homes. The nearest township is Fox Glacier some 50 kilometres north and the Haast settlement in the south;

(c) the land was previously a residential property. Its current use is for light grazing as the soil and vegetation make it unsuitable for any other purpose.

The land can be accessed by sealed road with power and water services available;

(d) as the holder of ahi kaa to the land, *"the Māori Land Court is under an obligation to change the status to that of which he chooses being General land."* This stance is supported by *"the concept of tino rangatiratanga referred to in the preamble of the Act in the fact that he meets the criteria mentioned in section 17 of Te Ture Whenua Maori Act 1993*;

(e) the status change will enable the most effective management and utilisation of the block as it will avert delays in obtaining the necessary building consents and encumbrances to give effect to the development plans of the block;

(f) the principal reason for seeking a status change is that the land can be utilised more effectively as General land because *"the processes of Land Information New Zealand are more expeditious and efficient than those of the Māori Land Court*". The delays inherent in dealing with the Māori freehold title are costly and inefficient and such "*unnecessary delays*" with the Court processes "*would lead to commercial failure and keep whānau from being able to utilise their whenua*";

(g) as General land the block would be more effective as security for the purposes of development, which is consistent with the kaupapa of the Act and the case law supportingstatus change in certain circumstances; and

(h) the rights of the preferred class of alienees (PCAs) arise where an alienation of land to a party outside of the preferred class is proposed. As there was no such suggestion then notice to the PCAs *"interferes with his right as owner to the full enjoyment of the land."*

Counsel submitted that the Applicant had satisfactorily met all of the conditions set out in section 136 of the Act and thus should be permitted to effect the change of status from Māori freehold to General land.

The Law

The relevant sections concerning status change are 135 and 136:

> ***135. Change from Māori land to General land by status order*** *– (1) The Māori Land Court shall have jurisdiction to make in accordance with section 136 or section 137 of this Act, a status order declaring that any land shall cease to be Māori customary land or Māori freehold land and shall become General land.*
> *(2) the Court shall not make a status order under subsection (1) of this section unless it is satisfied that the order may be made in accordance with section 136 or section 137 of this Act.*
> *(3) A status order under subsection (1) of this section may be made conditional upon the registration of any instrument, order, or notice eff3ecting 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 Māori land owned by not more than 10 persons – *(1) The Māori Land Court may make a status order under section 135 (1) of this Act where it is satisfied that –*

- *(a) The land is beneficially owned by not more than 10 persons as tenants in common; and*
- *(b) Neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4) of this Act); and*
- *(c) The title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered; and*
- *(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.*

Case Law

The leading Māori Appellate Court authorities on the issue of status change are *re Part Orokawa 3B – Loma Cleave (*1995) Taitokerau Appeallate MB 95*, in re Maketu A2A – White* (1991) Wāiariki Appellate MB 116, in *re Papamoa 2A1 – Arapeta Hoko 203* 20 Wāiariki Appellate MB (APWM) 167 and in *re Part Orokawa* 3B *– Dovey Regeling* (2004) 6 Whangarei Appellate MB (APWH) 157. The essence of those decisions has been well traversed and this judgment need not be encumbered with that material, suffice to say that the principles referred to are adopted here.

For completeness, reference should also be made to the decision *Bruce v Edwards* [2003] 1 NZLR 515. In that decision the Court of Appeal observed that since an order for a change of status would bypass the right of first refusal and the restrictions of alienation, the preferred class of alienee should be given opportunity to make fully informed submissions before a status change application was dealt with.

Discussion

The previous authorities underscore the importance of section 136(d) of the Act. The Court must be satisfied, inter alia, that the Land can be *"managed or utilised"* more effectively as General land. While counsel made much of the fact that the Applicant had significant development plans, surprisingly little evidence was presented to support that contention. For example, reference was made to business plans yet none of that information was provided to the Court in support of the application. Indeed, apart from counsel's submissions, and some commentary from the Applicant himself, the only substantive piece of evidence was the bank's valuation. This too was rather limited, but given its principal purpose, that is hardly surprising.

In any event, it became clear that the principal reason for seeking the status change was that the Applicant considered the Land Transfer Office processes more efficient when compared to those of this Court. With respect, I consider that argument unpersuasive. I do not accept that the framers of the Act intended that section 136(d) provided the Court with a discretion to permit status change where an Applicant believes, correctly or otherwise, that Land Transfer Office processes are more efficient then those of the Court. Similarly, counsel's argue that the Court is *"under an obligation"* to change status is also ill conceived. The power of the Court to grant a status change is discretionary. Counsel also referred to the *Maketu A2A decision* in

support of the Applicant's position but the facts in that decision are quite different to the present. Consequently it has limited application to this case.

As to the issue of notice to the PCAs, *Loma Cleave* established the practice that notice of a status change application should be given. In my view the observations of the Court of Appeal in *Bruce v Edwards* also support the need for notice to the PCAs where a status change is contemplated, per Blanchard J at 521:

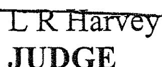
> *"Curiously, the Act does not in express terms require any notification of a s135 application other than by publication in the Panui,* ***but it is well established since the decision of the Māori Appellate Court in Re Cleave (1995) 3 NZ ConvC 192,245 that it is unwise and not in accord with the objectives of the Act (namely the retention of Maori land and general land owned by Māori in the hands of the owners and its effective use, management and development – see s17) for a s 135 application to be heard without specific notice to the PCA."*** (Emphasis added)

The Applicant's proposed eco-tourism venture may or may not be viable. A change of status may or may not enable the Land to be *"managed or utilised"* more effectively as General land. But, given the paucity of evidence and the lack of detail concerning the proposal, I am simply unable to assess whether or not the application complies with the Act, and in particular, with section 136(d). Therefore the application, as presently framed, cannot succeed. As the Māori Appellate Court has held, applications for status change are serious matters that require full and cogent evidence. The lack of detail as to the precise content of the Applicant's proposal has rendered this outcome inevitable. A future application, properly presented, may yet satisfy the requirements of the Act but that is a matter for the Applicant and his counsel.

Decision

After careful consideration of the evidence and the submissions, the application is dismissed.

Dated at Rotorua this 4TH day of FEBRUARY 2005



L R Harvey
JUDGE