

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

AP-20240000011916
AP-20250000001128

WĀHANGA <i>Under</i>	Section 289, Te Ture Whenua Māori 1993
MŌ TE TAKE <i>In the matter of</i>	Ruatoki A66
NĀ <i>By</i>	KATHY (TE URIKORE) BIDDLE AND RUBEN BIDDLE Ngā Kaitono <i>Applicants</i>

Nohoanga: 9 September 2025, 352 Waiariki MB 343-38
Hearing (Heard at Whakatāne)

Whakataunga: 17 April 2026
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

Hei tīmatanga kōrero*Introduction*

[1] This decision is about the desire of landowners to utilise and occupy land in Ruatoki, by partition, in order to re-establish and secure intergenerational ahi kā.

[2] The decision relates to two applications seeking orders of partition of Ruatoki A Section 66:

- a) AP-20250000001128 - filed by Dr Te Urikore Biddle.
- b) AP-20240000011916 - filed by Dr Te Urikore Biddle and Ruben Biddle.

Kua ahatia?*What has happened?*

[3] This case is about the partitioning of Ruatoki A Section 66 (“the whenua”).

[4] The whenua is 6.0702 ha of Māori freehold land owned by 58 owners who collectively own 75 shares. The land is located in the heart of the Ruatoki Valley.

[5] Ruben Biddle currently owns 3.080357 shares and has applied to transfer 0.5 shares to his 3 children Te Urikore; Taiwera and Ria so that they can build houses on the land. The transfer of shares is also necessary for the partitions that are being sought.

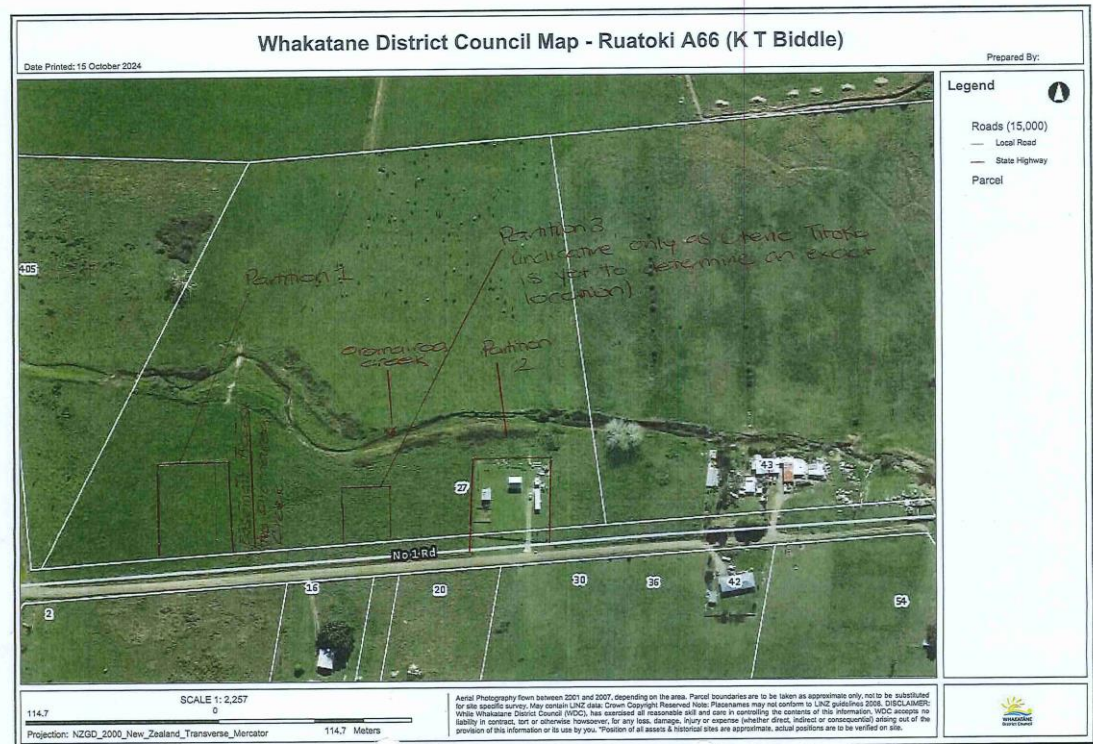
[6] It appears that two partitions are being sought as followings:

a. Partition 1

Owner	Shares	Area for partition
Ihaia Biddle	0.5	809.36m ²
Ruben Biddle	0.5	

b. Partition 2

Owner	Shares	Area for partition
Ruben Biddle	2.5	2,023.40m ²



[7] A partition valuation has been prepared in support by CBRE dated 17 December 2024, valuing the proposed partition areas as follows:

- a) Partition 1 of 809.36m²: \$3,500.00.
- b) Partition 2 of 2,023m²: \$9,000.00.

[8] As already mentioned, partitions are sought for the development of a papakāinga on the whenua, to re-establish and secure intergenerational ahi kā.

Ko te hātepe ture o te tono nei *The procedural history*

[9] One application for partition was initially heard on 4 February 2025, but was adjourned so that it could be heard alongside the other interrelated applications.

[10] On 3 July 2025 the registrar sought directions for the three applications, which had been located and identified as relevant, to be heard together at the next available sitting of the Court.

[11] On 24 July 2025 I issued a minute identifying challenges to the applications, and inviting the applicants to address these challenges. The legal threshold was also outlined in this minute.

[12] The next hearing took place at Whakatāne, on 9 September 2025. During the hearing, the challenges regarding partition were addressed and discussed, and I invited the applicants to produce evidence from a planner to guide the process and ensure that the desire for a papakāinga aligned or was consistent with the relevant planning framework.

[13] During the hearing I stated that:

So, I cannot take it any further today. In terms of the high threshold of necessity, I cannot be satisfied that there is not other ways of effecting papakāinga development on the whenua that does not include partition. That is why I am inviting you to obtain some evidence and put that before the Court to show that there are actually no other options available.

[14] The applications were then adjourned to chambers for review on 7 November 2025.

[15] On 6 November 2025 the applications were referred to me for directions. Te Urikore filed a report and a letter of support. I directed that the applications be fixtured for hearing, however, with the applicants' consent, I signalled that I would determine the applications without further hearing on 17 November 2025.

[16] On review of the applications for determination, it was clear that the applicants had not properly addressed the issue of necessity. In my minute of 15 December 2025, I stated that:

[7] The applicants have an opportunity to address the issue as to necessity. This includes why an occupation order cannot meet the needs of the whanau. Further, I had suggested that planning evidence be obtained to address the current designations under the Whakatane District Plan. From the information received to date, I cannot be satisfied that there are no other possible options but partition to effect housing development for the whenua.

[8] the alternative pathway for the whanau is occupation orders, where necessity is not a factor for consideration.

[17] On 12 January 2026 Dr Biddle filed a further submission addressing the statutory framework.

[18] On 10 February 2026 I reserved my decision.

Te ture***The law***

[19] The law regarding partition is set out at Part 14 of Te Ture Whenua Māori Act 1993 (“the Act”). To grant a partition application, I must first be satisfied that:¹

- a) the owners have had sufficient notice of the application, and sufficient opportunity to discuss and consider it;
- b) there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matters; and
- c) the partition is necessary to facilitate the effective operation, development, and utilisation of the land.

[20] If those threshold requirements are satisfied, I must have regard to the following mandatory considerations:²

- a) the opinion of the owners as a whole;
- b) the effect of the partition on the interests of the owners;
- c) and the best overall use and development of the land.

[21] Finally, I may exercise my discretion to order a partition if it would achieve the principal purpose of Part 14 of the Act, which is “to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land”.³

[22] In accordance with previous decisions of the Court, in exercising my discretion I must also have regard to the Preamble and ss 2 and 17 of the Act.⁴

[23] The threshold for granting a partition is high. In *Brown v Māori Appellate Court* the High Court noted:⁵

[52] The high threshold imposed by s 288(2) and (4) in the case of partition is consistent with the overall policy of the Act. Partition does not only separate land. Nor does it seem to me to be adequate to describe it, as Chief Judge Durie does in the Maori

¹ Te Ture Whenua Māori Act 1993, ss 288(2) and 288(4)(a); and *Hammond – Whangawehi* 1B3H1 (2007) 34 Gisborne Appellate MB 185 (34 APGS 185) at [16]-[17].

² Te Ture Whenua Māori Act, s 288(1).

³ Section 286(1); and *Hammond*, above n 1, at [19].

⁴ *Hammond*, above n 1, at [20], citing *Brown v Māori Appellate Court* [2001] 1 NZLR 87 (HC) at [66].

⁵ *Brown v Māori Appellate Court*, above n 4, at [52].

Appellate Court, as a mechanism for separating people. Partition which excludes owners separates those owners (and their descendants) from the land. In a statute which seeks to promote retention of land as taonga tuku iho for the owners, their whanau, hapu and their descendants, it is understandable that Parliament should require the Court to be satisfied that a partition proposal has “a sufficient degree of support . . . among the owners” and that it be “necessary to facilitate the effective operation, development, and utilisation of the land”. So too, it is consistent with the overall policy of the legislation that the Court should have to further assess the matters specified in s 287 and retains a general discretion, particularly if not satisfied that the principal purpose of Part XIV will be achieved if the order is made in the “manner sought”.

[24] This is consistent with the Māori Appellate Court judgment in *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1*, which observed the necessarily high threshold for granting partition orders under the Act:⁶

[15] It can be seen at once that partition is treated under the Act as being the utmost gravity - akin in some ways to alienation. This sea change in attitude from the Māori Affairs Act 1953 to Te Ture Whenua Māori Act 1993 reflects an acceptance by the legislature that title fragmentation through partition is contrary to Māori economic and cultural interests and should not now be encouraged if there are reasonable alternatives to it. The bar has been set intentionally high. ...

[25] Partition is therefore a step of last resort.⁷

Ngā take Issues

[26] The issues to determine are as follows:

- a) Is partition necessary?
- b) Have the owners had sufficient notice of this application, and sufficient opportunity to discuss and consider it?
- c) Is there sufficient support for the partition?

[27] If all issues are resolved in favour of the partition, I am required to consider the application against the opinion of the owners, the effect of the partition on the interests of the owners, and the best overall use and development of the land. I am also required to determine whether to exercise my discretion to grant a partition in light of the purpose of Part 14, the Preamble, and ss 2 and 17 of the Act.

[28] Given the previous concerns raised regarding necessity, I will address this issue first.

⁶ *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* (2006) 34 Gisborne Appellate MB 168 (34 APGS 168).

⁷ *Staples – Omaha 4A2B* (2025) 125 Tākitimu MB 261 (125 TKT 261) at [23].

Is the partition necessary to facilitate the effective operation, development, and utilisation of the land?

[29] Before an order of partition can be granted, the Court must be satisfied that a partition is necessary to facilitate the effective operation, development, and utilisation of the land. Previous decisions of the Court have addressed the issue of necessity. Whether partition is “necessary” should be construed as what is “reasonably necessary” – meaning “closer to that which is essential than that which is simply desirable or expedient”.⁸ In considering whether partition is necessary, I must assess whether there are reasonable alternatives to partition provided by the Act or elsewhere.⁹

[30] Dr Biddle submits that necessity does not require proof that no other theoretical option exists. Rather, she asks the Court to consider whether alternative mechanisms can meet the whānau’s needs and objectives in a practical, durable and intergenerational way.

[31] As to reasonable alternatives, I had asked the applicants to consider the suitability of occupation orders. Dr Biddle submits that while occupation orders are available under the Act and do not require a necessity threshold, their availability does not mean they are sufficient in every context due to their structural limitations. Dr Biddle submits that occupation orders are designed for individual house sites, do not create separate title, do not resolve collective authority and remain legally connected to the wider block. She says that for papakāinga involving multiple dwellings and stage development over time, reliance on occupation orders would require repeated engagement with the Court as the whānau needs evolve.

[32] Recent decisions of the Court have looked at housing and the development of papakāinga. It has been determined that a partition to enable housing to be constructed on the block is consistent with this best use and development.¹⁰

[33] In the decision of *Bowdler – Waikawa Village Section 26A*, the applicant was the sole owner of the land and sought an order of partition so that her children could build on the land. A plan had been submitted in support seeking the land to be partitioned into five residential lots, with potential for Lot 5 to be further partitioned in the future. In this decision,

⁸ *Brown*, above n 4, at [50].

⁹ *Hammond*, above n 1, at [23]-[24], citing *Reid*, above n 6, at [13]-[15].

¹⁰ See *Staples*, above n 7; and *Bowdler – Waikawa Village Section 26A* (2024) 85 Te Waipounamu MB 32 (85 TWP 32).

the applicant had considered alternatives including licenses or occupation orders but had produced evidence as to the limitation of lending on multiply-owned land. Lending was the key reason given for necessity:¹¹

Realistically, the intention of the applicant's children to build homes on their respective lots will not be possible without partition. Third party financing is required for construction of at least one of the applicant's children, and current bank-lending policies prevent loans being approved over multiply-owned land. The Court has previously accepted similar facts as decisive when assessing partition necessity.

[34] In the decision of *Staples*, the application was brought by a group of eight owners who collectively held 10.6% of the ownership of the land. A single partition was granted which was proportional to their ownership so that the owners could develop a papakāinga on the land. In this decision, there were three reasons given in support of necessity:¹²

I am satisfied that the partition is necessary to enable the proposed papakāinga development. First, the fact that there has been no such development on the Block to date suggests that the status quo will not facilitate papakāinga development. Second, given the size and topography of the Block, it is not possible to develop the entire Block into papakāinga housing, meaning some sort of partition will likely be necessary for that purpose anyway. Third, any other alternative arrangement, such as a lease, licence to occupy, or an occupation order will not likely result in the development of a papakāinga because those arrangements are unlikely to provide the certainty of title to enable such a development.

[35] These cases can be distinguished from the current application for several reasons:

- a) In *Bowdler* the applicant was the sole owner of the land; the land was surrounded by residential lots; and third-party financing was required for construction.
- b) In *Staples* one partition was granted to allow for the development of a single papakāinga for the benefit of multiple owners.

[36] While it has been determined that a partition to enable housing to be constructed on the Block is consistent with this best use and development, I cannot be satisfied that proposed partitions are necessary to facilitate the effective operation, development, and utilisation of the land. This is not a case where a single partition is sought for the development of a widescale papakāinga for multiple owners, nor is there any evidence that third party financing is required for constitution. Finally, no development plan has been provided to

¹¹ *Bowdler*, above n 10, at [27].

¹² *Staples*, above n 7, at [47].

show how the southern portion of the block adjacent to No.1 Road could be best utilised in the interests of the owners.

[37] I had previously raised issues about the location of the proposed partitions. Unlike the situation in *Staples*, the applicants are not seeking a single partition to facilitate housing for multiple owners, rather, the desire is to remove two small and separate parcels of land from the block. This impacts on the usability of the balance of the southern portion of the block. I had raised this concern with the applicants, who advised that the locations were chosen for their safety and proximity to existing accessways, which avoid flood zones and protect watercourse margins. However, this does not alleviate my concern as to the usability. The applicants have signalled that the intention is for a papakāinga involving multiple dwellings and stage development over time, however there is insufficient evidence as to a development, and whether this application would benefit from a development plan.

[38] In addition, if this application sought to partition the entire southern portion of the land adjacent to No.1 Road for a papakāinga, then perhaps a different view may have been reached. However, based on the evidence before me, I cannot be satisfied that the proposed partitions are necessary to facilitate the effective operation, development, and utilisation of the land.

[39] I understand that this decision will be disappointing to the applicants who are seeking to build on their whenua and re-establish and secure intergenerational ahi kā. They entered this process with the understanding that partitions have a high threshold, and hopefully they have a better understanding of the evidence required to support any future applications that may be advanced.

Te otinga *Conclusion*

[40] As I have found that the threshold requirement of necessity for a partition is not satisfied, there is no need to consider the remaining statutory requirements to grant a partition.

Whakataunga

Decision

[41] The partition applications are dismissed.

I whakapuakina i te 2:00pm i Rotorua, i te tekau mā whitu o ngā rā o Āpereira i te tau 2026

Pronounced at 2:00pm in Rotorua, this 17th day of April 2026

T M Wara

KAIWHAKAWĀ