

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU**

*In the Māori Land Court of New Zealand
Tākitimu District*

AP-20230000021756

WĀHANGA
Under

Sections 288 and 289, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Waipuka No 2C No 1 and Others

I WAENGA I A
Between

ORINE GILLIES ON BEHALF OF THE
GILLIES-KARAITIANA WHĀNAU TRUST
Te kaitono
Applicant

ME
And

JO-ANNE MARY LUCAS, JOANNA ROSE TE
WHAITI, NGAPUOTERANGI (KORO) TE
WHAITI, LEE TE AOWHITIKI KERSHAW
KARAITIANA, MOANA ELLEN SMITH-
DUNLOP AND MOIRA MCGARVA-RATAPU
AS TRUSTEES OF WAIPUKA 2C1 & 2C2
TRUST
Ngā kaiurupare
Respondents

Nohoanga:
Hearing

2 June 2021, 90 Tākitimu MB 215–225
7 May 2024, 109 Tākitimu MB 185–213
2 August 2024, 112 Tākitimu MB 185–213
10 December 2024, 116 Tākitimu MB 111–123
(Heard at Hastings)

Whakataunga:
Judgment date

6 October 2025

TE WHAKATAUNGA A KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Hei tīmatanga kōrero

Introduction

[1] The Waipuka 2C1 and 2C2 blocks make up an idyllic 33.34-hectare site located at Waitangi Road, approximately 2 km north of Waimārama Township. The blocks are coastal. The land there gently rises from the shores of the Pacific Ocean, before reaching moderately steep slopes and gullies planted with mature pine trees. Roughly 13 to 14 hectares (just under half) of the land area is most likely suitable for residential development.

[2] The land is vested in the Waipuka 2C1 & 2C2 Trust, which holds the land on behalf of 238 beneficial owners. One of these is the Gillies-Karaitiana Whānau Trust (“the Whānau Trust”), whose trustees hold 7% of the shares in the land. On a pro-rata proportion of the land area, this equates to approximately 2.3 hectares (or 5.7 acres). The Whānau Trust seeks to partition its share of the land to develop a papakāinga. I must decide whether to grant that partition.

Kōrero whānui

Background

[3] Orine Gillies is the chairperson of the Whānau Trust. She and her whānau have lived and worked on this whenua for over 20 years. They have planned to develop a papakāinga for their whānau on this land for a long time. To enable this development, Ms Gillies, on behalf of the Whānau Trust, filed an application for a partition order on 7 April 2021, which first came before Judge Harvey (as he then was) on 2 June 2021.¹ Over the course of proceedings, they have stressed their aspirations for obtaining safe and accessible housing, and their long-standing desire to return and reconnect with their whenua.

[4] The application came before me in 2024. I visited the site on 6 May 2024, and held hearings on 7 May 2024 and 2 August 2024.² I adjourned the application to allow the parties an opportunity to enter mediation, but this opportunity was not taken up. The matter was heard again on 10 December 2024.³ Following that hearing, I reserved my decision.

¹ 90 Tākitimu MB 215–225 (90 TKT 215–225).

² 109 Tākitimu MB 185–213 (109 TKT 185–213); and 112 Tākitimu MB 185–213 (112 TKT 185–213).

³ 116 Tākitimu MB 111–123 (116 TKT 111–123).

[5] The Whānau Trust seeks to partition a 1.05-hectare section of land, which comprises the Whānau Trust's share of the land that is likely suitable for residential use and development. This is the area within the Waipuka 2C1 and 2C2 blocks that Ms Gillies and her whānau currently occupy. Notably, this section is situated right at the centre of the Waipuka 2C1 block, away from its boundaries. Given its location, the applicants propose an easement to access the partitioned land using existing roadways.

[6] The Whānau Trust seeks this particular section for partition primarily due to their deeply rooted connections to this whenua. They say that they received informal approval many years ago from the trustees of the Waipuka 2C1 and 2C2 Trust to occupy this particular area. In reliance on this approval and in the absence of any opposition, they have lived and worked on the land for more than two decades. They have an existing papakāinga established in this area under this informal arrangement. Whānau members also noted they have their pito buried in this whenua.

[7] Initially, Ms Gillies and her whānau sought their fellow owners' support for an occupation order application over the land to enable papakāinga development. Since then, however, Ms Gillies and her whānau say they were advised by Te Puni Kōkiri that papakāinga funding would not be granted unless the land was partitioned into a separate block wholly owned by the Whānau Trust. Ms Gillies and her whānau therefore seek a partition, emphasising their reliance on Te Puni Kōkiri to provide the financial resources necessary for this development.

Responses to the application

[8] The Court heard the views of owners opposed to the partition. Their reasons for opposition include concerns that:

- (a) If the partition was granted, prime land would be granted to the Whānau Trust to the detriment of the remaining owners.
- (b) Partition is inherently divisive, and that the partition may divide the whānau and the whenua. Some expressed concern about the implications of the partition should the Whānau Trust decide to sell their section. Others questioned whether access to funding could sufficiently justify any partition.

- (c) Other landowners might be precluded from accessing Te Puni Kōkiri funding should this partition be granted to the Whānau Trust.

[9] Opposers were, however, generally supportive of the proposed papakāinga. Some owners have suggested that the partition was not necessary to establish the papakāinga on Waipuka 2C1 & 2C2, given that the existing ahu whenua trust could facilitate such a development.

[10] Initially, the Waipuka 2C1 & 2C2 Trust's position regarding the partition was unclear. However, on 11 April 2024, Joanne Lucas (trustee) wrote to Ngapuoterangi (Koro) Te Whaiti (Chairperson of the Trust) expressing her opposition to the partition for the following reasons:⁴

1. Cohesive governance (decision-making and land management) across the aggregated block would be more effective with the land block remaining undivided.
2. Not all trustees support the partition. Majority of trustees that do currently support the partition have personal conflicts of interest in the matter of this partition.
3. An increasing number of shareholders are objecting to the partition. Undivided Māori land can contribute to community cohesion and collective decision-making, fostering stronger social ties and support networks amongst all beneficiaries.
4. Partitioning may limit the economic potential of the whenua and traditional uses, such as agriculture, forestry, or communal activities. Keeping the land intact would provide better opportunities for sustainable economic development of collective venture that benefit all beneficiaries.
5. The Trust is receiving requests from increasing numbers of shareholders who are wanting License to Occupy. Partitioning would limit land availability.
6. Facilitating sustainable resource management practices that align with traditional ecological knowledge and practices on undivided Māori land would benefit all beneficiaries.

[11] In a letter to the Court dated 24 October 2024, the Waipuka 2C1 & 2C2 Trust confirmed that it opposed the partition. The letter also indicated that, should partition be granted, the Trust would seek that the Whānau Trust be required to move their current structures to a partition site that is contiguous with a boundary of the blocks. At hearing, Ms

⁴ Letter from Joanne Lucas (Trustee of Waipuka 2C1 & 2C2 Trust) to Ngapuoterangi (Koro) Te Whaiti (Chairperson of the Waipuka 2C1 & 2C2 Trust) regarding the partition application (11 April 2024).

Lucas confirmed that the trustees would be prepared to consider the partition if the partitioned area was located on a boundary.

Te ture

The law

[12] Before I consider whether to grant a partition application, I must first be satisfied that:⁵

- (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.

[13] If those threshold requirements are satisfied, I must have regard to the following mandatory considerations:⁶

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

[14] Finally, I may exercise my discretion to order a partition if it would achieve the principal purpose of Part 14 of Te Ture Whenua Māori Act 1993 (the Act), which is:⁷

... 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.

⁵ 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].

⁶ Te Ture Whenua Māori Act, s 288(1).

⁷ Section 286(1); and *Hammond*, above n 5, at [19].

[15] In exercising my discretion, I must also have regard to the Preamble and ss 2 and 17 of the Act.⁸

[16] The threshold for granting a partition is high. As the High Court in *Brown v Māori Appellate Court* notes:⁹

[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 Māori 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”.

[17] Similarly, the Māori Appellate Court in *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* observed the necessarily high threshold for granting partition orders under the Act:¹⁰

[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. ...

[18] Partition is therefore a step of last resort.¹¹

Ngā take Issues

[19] The issues to determine are as follows:

⁸ *Hammond*, above n 5, at [20], citing *Brown v Māori Appellate Court* [2001] 1 NZLR 87 (HC) at [66].

⁹ *Brown v Maori Appellate Court*, above n 8, at [52].

¹⁰ *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* (2006) 34 Gisborne Appellate MB 168 (34 APGS 168) at [15].

¹¹ See Judge Harvey’s comments during the hearing of 2 June 2021: 90 Tākitimu MB 215–225 (90 TKT 215–225) at 220–221. See also *Morrison – Moteo Hapua Te Pirau 1C 4B* (2024) 113 Tākitimu MB 193 (113 TKT 193) at [32] & [35].

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

[20] If these 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.

Kōrerorero
Discussion

Did the owners have sufficient notice of the application, and sufficient opportunity to discuss and consider it?

[21] This application was following a meeting of the owners of the Waipuka 2C1 and 2C2 blocks held on 28 March 2021. At that meeting, Ms Gillies sought owner consent for an occupation order to enable the papakāinga development. This proposal received unanimous support from 20 owners in attendance. However, contrary to what was endorsed at that hui, the applicant applied for partition, which appears to have been motivated by the whānau's understanding that papakāinga would not be funded by Te Puni Kōkiri unless the land was partitioned to the Whānau Trust.

[22] Upon receiving the application, on 20 May 2021, the Court directed an advertisement to be placed on the local newspaper outlining the intention to partition the Waipuka 2C1 block and seeking any opposition to be filed by the Court. The Court also encouraged the applicant to make further efforts to contact remaining owners to provide them with sufficient opportunity to consider the proposed partition. As directed, an advertisement was placed in the *Hawkes Bay Today* on 26 May 2021.

[23] When Judge Harvey heard the application on 2 June 2021, he noted that only 5% of the owners supported the partition, and that the Court received opposition from several

owners on the grounds of insufficient notice. He then directed a further owners' meeting to take place to discuss the partition. He also suggested that the hui be advertised via the local radio and a Facebook page to ensure that it was widely communicated to the owners.

[24] Following the 2 June 2021 hearing, the file became inactive. It appears that the parties were waiting for the appointment of an independent facilitator for the owners' meeting directed by the Court, which did not eventuate. The file indicates, however, that two owners' meetings were held in the period from 2021 to 2023. The minutes of those meetings, held on 12 November 2021 and 22 April 2023 respectively, note that papakāinga was a topic of discussion. But the minutes do not record any discussion on partition in general, or the Whānau Trust's proposed partition in particular.

[25] In light of the inactivity on the file, on 4 October 2023 court staff contacted Ms Gillies to confirm whether she wished to pursue the application further. On 26 December 2023 she confirmed that the application remained live. I held a judicial conference on 13 March 2024. I issued directions following that judicial conference to arrange a site visit on 6 May 2024 and to set the application down for hearing on 7 May 2024.

[26] At the 7 May 2024 hearing, it became apparent that further information was required. I therefore directed Ms Gillies to provide further information by 21 June 2024, including any further responses from owners as to whether they support or oppose the proposed partition. I set the application down for a further hearing on 2 August 2024. Additional owner responses were received during the 2 August 2024 hearing. In that hearing, Ms Lucas indicated that, in her capacity as trustee, she assisted in contacting owners to seek their views about the partition. In total, the Court received responses from at least 33 owners.

[27] The application is long-standing, having been filed in 2021. The only public notice of the application, other than by reference to the Court's own Pānui, occurred in 2021, yet that notice referred to Ms Gillies seeking an occupation order, not a partition. Owners' hui were held in 2021 and 2023, but the minutes of those meetings record that partition was not discussed. That said, it appears that Ms Gillies' desire to partition the block is reasonably well-known. The trustees of the Waipuka 2C1 and 2C2 Trust have been aware of this desire for some time. Further, the application has been heard in Court on four occasions, each time having been notified in the Pānui. Over 30 owners have expressed a view on it. In the

circumstances, I am satisfied that the owners have had sufficient notice of this application and sufficient opportunity to discuss and consider it.

Is there sufficient owner support for the partition?

[28] Overall owner support and opposition to the partition is summarised in the tables below.

Table 1 (includes all shareholder votes except Ranui Brightwell Whānau Trust, Airini Patehipa Trust Whānau Trust, and Cynthia Taiaroa Whānau Trust)

	Total	Support	Oppose	Opposed by children of deceased shareholders – succession still to be done
# shareholdings	390,000	38,628.0142	30,027.9337	19,116.2676
% shareholdings	100%	9.90%	7.70%	4.9%
# shareholders	238	10	15	6
% shareholders	100%	4.20%	6.30%	2.52%

Table 2 (includes all shareholder votes except Cynthia Taiaroa Whānau Trust)

	Total	Support	Oppose	Opposed by children of deceased shareholders – succession still to be done
# shareholdings	390,000	48,279.92038	30,027.9337	19,116.2676
% shareholdings	100%	12.4%	7.70%	4.9%
# shareholders	238	12	15	6
% shareholders	100%	5.04%	6.30%	2.52%

[29] Owners in support of the partition are:

#	Owner/Shareholder in support	Shares
1	Orine Gillies	334.332
2	Gillies-Karaitiana Whānau Trust	28,855.0785
3	Airini Gillies Whānau Trust	2,031.6881
4	Selena Gillies (Trustee of the Selena Gillies Whānau Trust)	334.3321

5	Donna Gillies	2,031.6871
6	Selwyn John Gillies	2,031.687
7	Patrick Naera	167.2764
8	Tereina Russell	83.6382
9	Ruby Merewira Pomepi	83.6382
10	Maria Emmanuel Hinekona Smith	2,674.6566
TOTAL		38,628.0142

[30] Owners who oppose the partition are:

#	Owner/Shareholder in opposition	Shares
1	Maria Anne Akroyd	2,479.4334
2	Rei Kahui Jones	2,479.4334
3	Rima Hanna McGarvey aka Raima Hanna Reo-McGarvey	495.889
4	Aroha Marie Kireka	167.2764
5	RoseMary Hinemoa Akuhata	51.4118
6	Suzanne Wikitoria Morris	76.6684
7	Tai Para Amokura Reo-McGarvey	495.8891
8	Wiremu Wātene Reo-McGarvey	495.8891
9	Roberta Francis Haronga	2,125.2033
10	Marata Tanesia Aranga Te Kura Morris	76.6683
11	Te Waaka Hekeawai Tamahau Whānau Trust	1,783.0638
12	John Ngarangikawhiua Naera	230.005
13	Tu Turetahi Brightwell Whānau Trust	1,313.6317
14	Rumatiki Anne Gillies Smith	1,855.6778
15	Matuakore Whānau Trust	15,901.7932
TOTAL		30,027.9337

[31] The children of the following deceased owners (succession still to be done) oppose the partition:

#	Owner/Shareholder	Shares
1	Haumihiata Akuhata	2,674.6311
2	Maewa Mavis Hellyer	2,479.4334
3	Rangikawhiua Anthony Naera	76.6684
4	Henry Tutemahurangi John Akurangi	76.668
5	Garthue Tangiora MacRae	13,578.8617
6	Rebecca Tareko Wikitoria Naera	230.005
TOTAL		19,116.2676

[32] Section 288(2)(b) requires a ‘sufficient degree’ of owner support for the partition. There is no pre-determined figure amounting to a ‘sufficient degree of support’.¹²

¹² *Whaanga v Niania – Anewa Block* [2011] Māori Appellate Court MB 428 (2011 APPEAL 428) at [51].

Sufficiency of support is not simply a matter of arithmetic.¹³ Rather, it is assessed on a case-by-case basis with regard to the nature and importance of the matter.¹⁴ On this point, the Māori Appellate Court has noted:¹⁵

[38] Clearly, the Court must tackle each of the three steps separately. However, the steps overlap in terms of the evidence that applies to each. For example, the evidence of the “degree of support” is largely the same evidence that goes to the assessment of the opinion of the owners. Importantly, the evidence that goes to “the nature and importance of the matter” for the purpose of s 288(2)(b) must, by definition, include the various evidence that relates to the application: that is, the evidence that goes to whether the partition is “necessary to facilitate the effective operation, development, and utilisation of the land”; “the effect of the proposal on the interests of the owners”; “the best overall use and development of the land”; and the Court’s ultimate exercise of discretion. Our point is that the assessment under s 288(2)(b) requires the Court to consider the evidence in its entirety.

[33] That said, support for the partition would generally need to outweigh opposition unless other factors are at play.¹⁶ The Māori Appellate Court has stated:¹⁷

[62] As these judgments show, in most circumstances where an application for partition is opposed the support for the application will need to outweigh the opposition before there can be said to be ‘sufficient support’ for the partition in terms of s 288(2)(b). The principal circumstances where support might still be found to be sufficient despite those in support of the partition holding a smaller shareholding or being lesser in number to those opposed to it are where there are intractable differences between owners and a partition is the only means by which these differences might be overcome.

[34] *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1*, which similarly concerned a partition application over land with a significant number of owners and a relatively low level of owner engagement, provides some guidance to our present context. In *Reid*, the land in question was owned by 482 landowners. Forty-one owners representing 35.35% of the shares in the land supported the partition, while 56 owners holding 7.47% of the shares actively opposed it. The Māori Trustee only had addresses for 202 landowners, and less than half of those (97) responded to the proposals.¹⁸

¹³ *Neal – Taiharuru 4C3C* (2016) 132 Taitokerau MB 97 (132 TTK 97) at [30]–[31].

¹⁴ *Reid*, above n 10, at 172.

¹⁵ *Whaanga*, above n 12, at [38] (footnotes omitted), citing Te Ture Whenua Māori Act 1993, ss 287–288.

¹⁶ *MacDonald v MacDonald - Wairau Block XII 6C2C* [2016] Māori Appellate Court MB 370 (2016 APPEAL 370) at [58]–[62], citing *Marsh – Karu o Te Whenua B2B5B1 Block* (1996) 19 Waikato Maniapoto Appeal MB 40 (19 APWM 40) at [46], *Reid*, above n 10, at 172 and *Ngatai v Charmaine – Matakana 1A7A Block* (2007) 21 Waikato Maniapoto Appellate MB 147 (21 APWM 147) at [10]–[11].

¹⁷ *MacDonald*, above n 16, at [62].

¹⁸ *Reid*, above n 10, at 172.

[35] Ultimately, the Court found an insufficient degree of owner support for the partition. In doing so, it recognised several factors relevant to the assessment of owner support as required by s 288(2)(b):¹⁹

[19] There are a number of competing factors to be considered in the overall assessment of what level of support can be considered to be sufficient. On the one hand this is a relatively large block of land with nearly 500 owners, only a small proportion of whom have chosen to be actively involved in this application. Individual owners wishing to utilise their land should not be unduly penalised by the fact that only a minority of owners are engaged in policy setting. It would, we think, in some cases be oppressive to require applicants for partition to show an absolute majority in shareholding in support of the application if a majority do not participate at all. On the other hand there can be no question but that this proposal represents a significant reconfiguration in the land and therefore in the relationships within the community that owns it. The proposal is to remove the only usable unleased land to the control of the appellants. The remaining owners will be locked into a very long-term lease to the Mahia Golf Club for what appears to be marginal return. There is a significant potential imbalance in benefits to accrue to the appellants as against the owners of the residue in this partition. In addition the trustees are implacably opposed to the appellants' proposals.

[20] In the end, the combination of the fact that only a minority of owners by shareholding and numbers participated, the potentially detrimental impact on the residue owners of being left with a marginal long term lease on the entire residue block and the unanimous opposition of the trustees leads us to conclude that there is not sufficient support for this partition proposal in the circumstances of this case.

[21] We therefore find that the requirements of s 288(2)(b) are not satisfied.

[36] The first point in the present case is that, on any assessment, the number of owners who expressed a view on the partition is relatively small. On the most generous assessment, 33 of 238 owners have participated, equating to approximately 13.87% of the owners. That said, this level of participation on these types of issues is not uncommon. Unfortunately, owner engagement on these issues is often low.

[37] The second point is that, again on any assessment, the number of owners who oppose the application is more than those who support it. Even excluding the views expressed by whānau trusts for which unanimous trustee support was not obtained and the views of the children of deceased owners, more owners oppose the partition (being 15 owners) than support it (being 10 owners). When those whānau trusts and children of deceased owners are included, 12 owners support the application, and 21 owners oppose it. As summarised by the Māori Appellate Court, in most circumstances the level of support for a partition would need

¹⁹ At [19]–[21].

to outweigh the opposition before there can be said to be sufficient support for it. Here, because opposition outweighs support, special circumstances would need to exist to find there is sufficient support for the partition.

[38] These special circumstances, according to the Māori Appellate Court, are “where there are intractable differences between owners and a partition is the only means by which these differences might be overcome”. I am not satisfied that those circumstances exist here. For example, although the trustees oppose partition, they do not oppose, and in fact support, the establishment of a papakāinga on this block. Although there is opposition to this application, I am not convinced that any differences between the owners are such that they can only be resolved through partition.

[39] The final point is that, on a shareholding basis, support and opposition to the partition is finely balanced. On one assessment, shareholding support for the partition is approximately 10%, with opposition being approximately 8%. On another assessment (including whānau trusts and children of deceased owners), support and opposition is approximately 12%. Shareholding support, therefore, is inconclusive and does not assist greatly in determining whether there is sufficient support for the partition.

[40] In all the circumstances, I am not satisfied that there is sufficient support for the partition. More owners oppose the partition than support it. There is no intractable difference between the owners that could only be resolved through partition. Shareholding support is inconclusive. Because there is insufficient support for the partition, one of the threshold requirements for partition is not met. Accordingly, the Court cannot grant the partition.

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

[41] If I am wrong in my assessment of the level of support for the partition, I turn now to consider whether partition is necessary.

[42] A central issue in this application concerns whether a partition is in fact necessary for Ms Gillies and her whānau to be eligible for papakāinga funding from Te Puni Kōkiri.

[43] In a letter dated 27 May 2024, Te Puni Kōkiri advised that, to qualify for a grant, the Whānau Trust must have, among other requirements:²⁰

... a confirmed right of occupancy for papakāinga funding such as a **licence to occupy or occupation order**, if not solely owned in the case of Māori title land.

(emphasis added)

[44] This letter also acknowledged that the Whānau Trust has applied for a partition order, and further noted that:

... partitioning against the wishes of the wider whānau is in no way the preference of Te Puni Kōkiri. We encourage interested whānau to gather consensus amongst the wider whānau, but we acknowledge that sometimes this isn't always possible and partition is the avenue whānau chose to take.

[45] Despite this, the applicant's whānau have repeatedly said that Te Puni Kōkiri had given them the impression that a partition was required to be eligible for papakāinga funding.²¹ The whānau told the Court that they attempted to pursue alternative measures such as a licence to occupy or an occupation order, but Te Puni Kōkiri staff had either advised them that this was not enough or suggested a partition.²² The whānau have clearly indicated to the Court that eligibility for funding is their key motivation for seeking a partition, and that they would not have pursued it if it was not required.²³

[46] To seek clarity on this issue, on 30 August 2024, I asked Te Puni Kōkiri to respond to the following questions:²⁴

- (a) The applicant has established a papakāinga on the Block, based on an informal arrangement. This is generally the area that the applicant seeks to partition. Neither the applicant, nor the Gillies-Karaitiana Whānau Trust, hold a licence to occupy or an occupation order over this area. Provided that all other criteria are met, would the applicant or the Gillies-Karaitiana Whānau Trust be eligible to obtain papakāinga funding through Te Puni Kōkiri to develop this area (as it is, without partition)? If not, why not?
- (b) If the applicant or the Gillies-Karaitiana Whānau Trust obtained a licence to occupy or an occupation order over the proposed partition area, and provided

²⁰ Letter from Te Omiraka Hazel (Regional Advisor, Hastings – Ikaroa Rāwhiti, Te Puni Kōkiri) (27 May 2024).

²¹ 90 Tākitimu MB 215–225 (90 TKT 215–225) at 218; and 112 Tākitimu MB 185–213 (112 TKT 185–213) at 199–200.

²² 90 Tākitimu MB 215–225 (90 TKT 215–225) at 218; and 112 Tākitimu MB 185–213 (112 TKT 185–213) at 200 & 202.

²³ 112 Tākitimu MB 185–213 (112 TKT 185–213) at 202.

²⁴ 112 Tākitimu MB 255–256 (112 TKT 225–256).

all other criteria are met, would they be eligible to obtain papakāinga funding through Te Puni Kōkiri to develop this area (as it is, without partition)? If not, why not?

- (c) If the applicant or the Gillies-Karaitiana Whānau Trust obtained a licence to occupy or an occupation order over the proposed partition area, and also received papakāinga funding from Te Puni Kōkiri to develop that area, provided all other criteria are met, would papakāinga funding be available in the future (based on current policy settings) to establish additional papakāinga on the Block? In other words, would providing papakāinga funding to the applicant or the Gillies-Karaitiana Whānau Trust, based on them holding a licence to occupy or an occupation order over a part of the Block, prevent other owners in the Block from obtaining papakāinga funding from Te Puni Kōkiri to establish papakāinga on the remainder of the Block?
- (d) If the proposed partition is granted, will the Gillies-Karaitiana Whānau Trust be eligible to receive papakāinga funding from Te Puni Kōkiri (provided all other criteria are met)? If not, why not?
- (e) If the proposed partition is granted and the Gillies-Karaitiana Whānau Trust receive papakāinga funding, will the remaining owners be eligible to receive papakāinga funding from Te Puni Kōkiri over the remainder of the Block (provided all other criteria are met)? If not, why not?

[47] On 20 September 2024, Te Puni Kōkiri responded as follows:²⁵

- (a) No, Te Puni Kōkiri will not commit funding to a development where there is no legal right of occupation in place, additionally eligibility does not determine funding. Funding availability and Te Puni Kōkiri priority settings will always determine the funding of a project.
- (b) Yes, it could be possible on the basis the licence to occupy is granted to the Gillies-Karaitiana Trust, not an individual(s), additionally the length of the licence to occupy would need to be for the lifetime of the Trust. From a Te Puni Kōkiri view, it is essential the homes are retained and secure in long term ownership and management of the funded entity for the occupation and use of current and future whānau, partition is viewed as the best way to achieve this.
- (c) No, supporting one whānau to develop papakainga doesn't hinder another whānau from receiving future support on that same block so long as there is space to suffice additional homes, and all other criteria can be met by that applying whānau. This does raise the point in why we encourage whānau to have the kōrero with all owners and beneficiaries of the whenua prior to going through with an application. If there are aspirations of wider whānau for papakāinga perhaps there is opportunity in progressing as a wider whānau, this could be an opportunity for the current management structure to support the wider whānau aspirations.
- (d) Yes, provided all other criteria is met the Gillies-Karaitiana Whānau Trust would be eligible to receive funding.

²⁵ Letter from Te Omiraka Hazel (Regional Advisor, Hastings – Ikaroa Rāwhiti, Te Puni Kōkiri) to Judge DH Stone (27 May 2024) (emphasis added).

(e) Yes, provided all other criteria is met for those applying whānau.

[48] It is reasonably clear, having visited the land on 6 May 2024 and from the geotechnical report for the block filed on 17 June 2024, that the eastern portion of the Waipuka 2C1 and 2C2 blocks adjoining the moana is suitable for residential occupation and development. The development of papakāinga housing on this land would therefore facilitate the effective operation, development, and utilisation of this land.

[49] The question, however, is whether a partition is necessary for this development to occur.

[50] 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”.²⁶ In considering whether partition is necessary, I must assess whether there are reasonable alternatives to partition provided by the Act or elsewhere.²⁷

[51] The Whānau Trust has sought a partition based on the understanding that it was required to be eligible for Te Puni Kōkiri papakāinga funding. I acknowledge that there has been some confusion for the Whānau Trust as to Te Puni Kōkiri’s policies with respect to papakāinga funding, as it appears that the Whānau Trust received unclear advice from staff on the ground.

[52] However, it is clear from the evidence before the Court that an applicant may be eligible for papakāinga funding by obtaining a licence to occupy or an occupation order over the land (provided that all other criteria are satisfied). This was confirmed in Te Puni Kōkiri’s letters of 27 May 2024 and 20 September 2024.

[53] Further, Ms Lucas on behalf of the Waipuka 2C1 & 2C2 Trust has signalled that the Trust is supportive of the proposed papakāinga and is willing to consider granting the Whānau Trust a licence to occupy to enable this development.²⁸ A licence to occupy is therefore one reasonable alternative the Whānau Trust could pursue. In the alternative, the Whānau Trust could also seek an occupation order from the Court, which received owners’

²⁶ *Brown*, above n 9, at [50].

²⁷ *Hammond*, above n 5, at [23]–[24], citing *Reid*, above n 10, at [13]–[15].

²⁸ 112 Tākitimu MB 185–213 (112 TKT 185–213) at 207–208.

endorsement at the owners' hui of 28 March 2021 before it was abandoned in favour of a partition application.

[54] The Whānau Trust has maintained that their overarching goal in these proceedings is to be able to access the necessary financial resource to develop a papakāinga. They have indicated that they would not have sought a partition in the first place if Te Puni Kōkiri's funding policy did not require it.²⁹ While Te Puni Kōkiri has suggested that a partition may be a desirable option for facilitating long-term ownership and management of the land, it is clear on the evidence that a partition is not required to be eligible for papakāinga funding to enable this development.

[55] I therefore do not consider the partition necessary for the operation, development, and utilisation of the land.

Conclusion

[56] I therefore find that two of the threshold requirements for a partition are not satisfied. As such, there is no need to consider the remaining statutory requirements to grant a partition.

Whakataunga *Decision*

[57] The application is dismissed.

I whakapuaki i te 4.30 pm i Heretaunga, i te 6 o ngā rā o Oketopa i te tau 2025.

D H Stone
JUDGE

²⁹ At 199–200.