

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

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

**AP-20230000021954  
A20220018605**

WĀHANGA                      Sections 135, 158 and 307, Te Ture Whenua Māori  
*Under*                              Act 1993

MŌ TE TAKE                      Ohiti Waitio 1D Section 1, Ohiti Waitio X8 and  
*In the matter of*                      Ohiti Waitio X9 Blocks

I WAENGA I A                      GEORGE GUNN  
*Between*                              Te kaitono  
                                                 *Applicant*

Nohoanga:                      4 February 2025, 117 Tākitimu MB 103-109  
*Hearing*                              (Heard at Hastings)

Kanohi kitea:                      S Scannell, for the applicant  
*Appearances*

Whakataunga:                      17 April 2025  
*Judgment date*

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**TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE**  
*Judgment of Judge D H Stone*

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**Kōrero tīmatanga***Introduction*

[1] The applicant, George Gunn, is the sole owner of various blocks of Māori freehold land. These blocks are part of a farming operation that involves General land, also owned by the applicant. The applicant asks the Court to change the status of the Māori freehold land blocks so that they become General land. He then asks for all of these blocks to be amalgamated into one title.

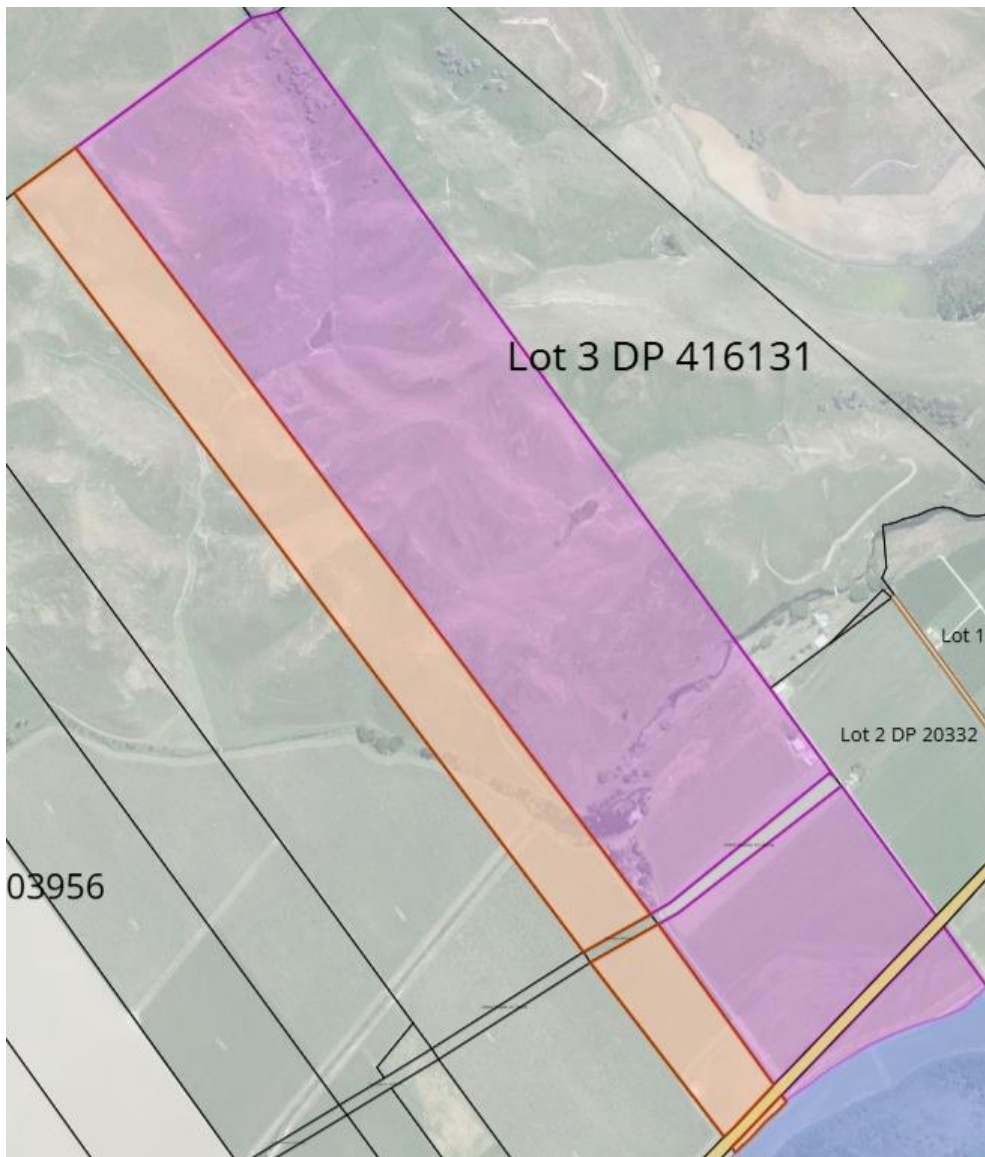
**Whakarāpopototanga***Summary*

[2] The Court:

- (a) declines to change the status of Ohiti Waitio 1D section 1 and Ohiti Waitio X8 from Māori freehold land to General land;
- (b) grants orders to change the status of Ohiti Waitio X9 from Māori freehold land to General land; and
- (c) grants orders to amalgamate Ohiti Waitio X8 and Ohiti Waitio 1D section 1.

**Kua ahatia?***What has happened?*

[3] The applicant is the sole owner of four contiguous blocks, being Ohiti Waitio 1C1, Ohiti Waitio 1D section 1, Ohiti Waitio X8 and Ohiti Waitio X9, as depicted in the diagram below. The block coloured purple is Ohiti Waitio 1C1. The unused road that runs through this block is Ohiti Waitio X9. The block coloured orange is Ohiti Waitio 1D section 1. The unused road that runs through this block is Ohiti Waitio X8.



[4] Ohiti Waitio 1C1 is General land and comprises 70.9110 ha. All of the other blocks are Māori freehold land. The biggest of the Māori freehold land blocks by area is Ohiti Waitio 1D section 1, being 22.2982 ha. Ohiti Waitio X8, comprising 2,301 m<sup>2</sup>, is part of an unused road and runs through the Ohiti Waitio 1D section 1 block. Ohiti Waitio X9 is another part of the same unused road, comprising 7,486 m<sup>2</sup>, and runs through the Ohiti Waitio 1C1 block. All of these blocks are currently utilised as one farming and horticulture operation. The flat areas of these blocks are predominantly used for growing grapes. The hilly areas are used for grazing.

[5] The applicant says that, because the blocks are utilised as one farming operation, they should be amalgamated. To enable that to occur, he seeks that the status of the Māori freehold land blocks (Ohiti Waitio 1D section 1, Ohiti Waitio X8 and Ohiti Waitio X9) be changed to

General land. His application was first heard on 2 May 2023.<sup>1</sup> It was adjourned to enable him to give notice of the proposed status change to the preferred class of alienees. These notices were published in the *Hawkes Bay Today* newspaper on 25 and 31 May 2023. The application was then heard on 4 February 2025.<sup>2</sup>

## Te ture

### *The law*

[6] Sections 135 and 136 of Te Ture Whenua Māori Act 1993 (“the Act”) apply. To change the status of land from Māori freehold land to General land, the Court must be satisfied of the following matters:<sup>3</sup>

- (a) The land is beneficially owned by not more than 10 persons as tenants in common.
- (b) Neither the land nor any interest is subject to any trust.
- (c) The title to the land is registered under the Land Transfer Act 2017.
- (d) The land can be managed or utilised more effectively as General land.
- (e) The owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[7] The relevant legal principles are as follows:<sup>4</sup>

- (a) The preferred class of alienee is to be given formal notice of the application and hearing.
- (b) The Court must first assess whether the five statutory pre-conditions (as noted above) are met. If they are, the Court must then consider whether to exercise its discretion in favour of the change of status, in light of the principles of Te Ture Whenua Māori Act 1993 (“the Act”) as reflected in the preamble, ss 2 and 17

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<sup>1</sup> 103 Tākitimu MB 228-333 (103 TKT 228-233).

<sup>2</sup> 117 Tākitimu MB 103 (117 TKT 103).

<sup>3</sup> Te Ture Whenua Māori Act 1993, s 136.

<sup>4</sup> *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2008) 125 Whangarei MB 294 (125 WH 294).

and the fact that a status change will forever remove the statutory right of refusal reserved to the preferred class of alienees.

- (c) These types of applications must be supported by full and cogent evidence that demonstrates that specific plans for the relevant land can be more effectively achieved if the land were General land.
- (d) Each application must be considered on its merits, including the personal situation and desire of the applicant.
- (e) Opposition or lack of opposition by the preferred class of alienees is a relevant factor. The financial ability, or lack of it, of the current generation of the preferred class of alienee to exercise the right of first refusal will not be determinative.

[8] The Court's discretion was discussed in *Apaapa – Te Pura A No 17 Block* (2010) 6 Waikato Maniapoto MB 1 (6 WMN 1) as follows:

- [42] In exercising its discretion the Court must take into account the kaupapa of TTWMA as expressed in the Preamble, ss 2 and 17. In particular:
- a) Those with rights or interests in the land go beyond the beneficial owners themselves to whānau, hapū and descendants of the owners;
  - b) Māori land is a taonga 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 land;
  - d) A change of status is possible but only in a limited range of situations in which the application is in some material way outside the ordinary run of cases or that it is sufficiently distinctive;
  - e) An application for status change where the sole purpose is to sell the land or to achieve a better sale price will be difficult to achieve particularly when assessed against the kaupapa of TTWMA. In terms of the two-step process, although a change of status for the sole purpose of sale may satisfy s 136(d) of TTWMA, the major hurdle is the Court's discretion. The Court must exercise its discretion as far as possible having regard to the kaupapa of TTWMA. The primary objective of TTWMA is the retention of Māori land, sale of land is not an objective.

[9] I adopt this approach in relation to the application to change the status of Ohiti Waitio 1D section 1, Ohiti Waitio X8 and Ohiti Waitio X9 to General land.

[10] Section 307 of Act allows the Court to amalgamate 2 or more areas held under separate titles into one title. To do so, the Court must be satisfied that the areas can be more conveniently worked or dealt with as if it were held in common ownership under one title. If so satisfied, the Court may cancel the several titles under which the land is held and make an amalgamation order substituting one title for the whole of the land.

[11] The power to amalgamate applies to any land to which Part 14 of the Act applies. Section 285 defines that land as Māori land (which in turn is defined in s 4 of the Act as Māori customary land and Māori freehold land), General land owned by Māori and any other land that is subject to Part 2 of the Māori Affairs Restructuring Act 1989. Relevantly for our purposes, the definition in s 285 of the Act does not include General land.

### **Ngā take**

#### *The issues*

[12] Because the applicant is the sole owner of each of the relevant land blocks, all of the requirements of s 136 of the Act to change the status of the Māori freehold land blocks are satisfied, other than the question of whether they can be managed or utilised more effectively as General land. Thus, the following issues arise:

- (a) Can the Māori freehold land blocks be managed or utilised more effectively as General land?
- (b) If so, should the Court exercise its discretion to change the status of these blocks to General land?
- (c) Should the blocks be amalgamated?

**Kōrerorero***Discussion*

*Can the Māori freehold land blocks be managed or utilised more effectively as General land?*

[13] The applicant says that the Māori freehold land blocks can be managed or utilised more effectively as General land for the following reasons:

- (a) Ohiti Waitio X8 and X9 are unused roads. They are very small and are impractical to be farmed or utilised as they are. They can only be utilised together with the blocks they dissect (Ohiti Waitio 1D section 1 and 1C1, respectively). So, their status should be changed so they can be amalgamated with the blocks they dissect.
- (b) All of the blocks have been farmed as one unit by the applicant's family since the 1920s. Since 2006 (being the year in which the applicant acquired the Māori freehold land blocks), farming has become a more expensive operation, creating a need for larger land holdings to make farming economically viable. Further capital is also required as a result. Changing the status of the Māori freehold land blocks and amalgamating them with the applicant's General land will create the larger land holding that is necessary to continue utilising the blocks for farming and horticultural purposes.
- (c) The applicant's succession planning is significantly hindered because his children cannot succeed to the Māori freehold land blocks without first offering them to the preferred class of alienees.
- (d) It is difficult to raise finance over Māori freehold land. Thus, changing the status of the Māori freehold land blocks will provide better opportunities to raise finance. Furthermore, in light of recent and more frequent adverse weather events, access to capital and finance assumes greater importance.
- (e) The Ohiti Waitio 1D section 1 block cannot be farmed as a separate unit anyway. Moreover, because a stream bisects this block, parts of it are inaccessible other than through the applicant's own General land (the only bridge that crosses the

stream is on the applicant's General land). Accordingly, the Ohiti Waitio 1D section 1 block can only realistically be utilised together with the applicant's General land.

[14] I am not satisfied that Ohiti Waitio 1D section 1 can be managed or utilised more effectively as General land for several reasons. Overall, the applicant himself acknowledges that this block is part of a successful farming operation. There is no evidence before the Court to show that this block is not being managed and utilised effectively at the moment. In fact, the evidence indicates that the opposite is true. That said, the question is whether the block can be managed or utilised *more* effectively as General land.

[15] Because the block already forms part of the successful farming operation, the presumption must be that the block is already effectively managed and utilised. Therefore, the applicant must prove that the block can be more effectively managed and utilised as General land. There is no evidence before the Court of a specific plan for the block that demonstrates this. Instead, the applicant points to various prevailing circumstances that he says justify the change of status. I turn to those now.

[16] The applicant says that his personal succession planning is made more difficult because some of his land is Māori freehold land. I accept that a status change and amalgamation may be useful for the applicant in terms of his succession planning. However, that is irrelevant. Future succession planning is not about current management or utilisation of the block. Put another way, how the block may be succeeded to in the future is not strictly relevant to how it is managed and utilised now.

[17] Even if future succession planning is relevant, it cannot be determinative. That would result in the applicant's succession plans taking priority over the succession plans of the preferred class of alienees and (through succession) their future generations. This is because a change of status that relies on the applicant's own succession planning will remove the statutory protection (in the form of a perpetual right of first refusal) in favour of the preferred class of alienees, both current and future generations. That clear and unambiguous right of first refusal ought not be removed because of potential future succession issues for present-day owners, particularly owners who are not members of the preferred class of alienees.

[18] Nor am I convinced that there is an issue in raising finance. The applicant has been able to raise finance for his farming operation irrespective of the status of Ohiti Waitio 1D section 1 as Māori freehold land. I accept that finance has been raised using the applicant's General land. However, there is no independent evidence before the Court (other than the applicant's assertions) that finance cannot be raised over Ohiti Waitio 1D section 1. I also accept that, as a general principle, further finance may be required for the applicant's farming operation due to future adverse weather events. But because there is no evidence to show that finance cannot be raised over this block, it remains possible that the impacts of future adverse weather events can be addressed when they arise.

[19] The applicant says the Ohiti Waitio 1D section 1 block cannot be utilised as a stand-alone block. There is no independent evidence to this effect, although I accept that the applicant, who currently farms it, will have first-hand knowledge of this point. In any event, just as succession issues for present-day owners ought not justify the removal of the perpetual statutory right of first refusal in favour of the preferred class of alienees, the same goes for present-day land uses. Even if I accept that Ohiti-Waitio 1D section 1 cannot be used as a stand-alone farming unit, it still could be used for other purposes, both now and in the future. For example, a member of the preferred class of alienees may wish to acquire this block for papakāinga housing. In that example, the block could be utilised independently of the adjoining General land. Thus, whether the block can be used independently in the future is speculation and ought not be a reason to remove the statutory right of first refusal in favour of the preferred class of alienees.

[20] It does appear, however, that the hilly part of Ohiti Waitio 1D section 1 can only be accessed via the bridge located on Ohiti Waitio 1C1, which is General land owned by the applicant. But again, that does not preclude the Ohiti Waitio 1D section 1 block from being utilised in the future. For example, a new bridge can be built on the block in the future. It would be inappropriate for the Court to foreclose that possibility simply because of present-day arrangements.

[21] Now turning to Ohiti Waitio X8 and X9, different considerations apply. These are unused roads that cannot be utilised other than in conjunction with the blocks they dissect. I accept that Ohiti Waitio X9 can be managed or utilised more effectively if it has the same status as the block it dissects, being Ohiti Waitio 1C1 (General land). Ohiti Waitio X9 is a narrow

channel of Māori freehold land surrounded by General land. I am therefore satisfied that it can be more effectively managed as General land.

[22] The same cannot be said of Ohiti Waitio X8. It dissects Ohiti Waitio 1D section 1, which remains Māori freehold land. It cannot be managed or utilised more effectively as General land because it is surrounded by Māori freehold land. Thus, the statutory requirement in s 136(d) of the Act is not met in relation to this block. Ohiti Waitio X8 should therefore remain as Māori freehold land.

*Should the Court exercise its discretion to change the status of the Māori freehold land blocks to General land?*

[23] I have determined that the statutory requirement in s 136(d) is not satisfied in relation to Ohiti Waitio 1D section 1 and Ohiti Waitio X8. If I am wrong about that, I would have declined to exercise the discretion to change the status of these blocks, for the same reasons as I consider that the statutory requirement in s 136(d) is not met.

[24] I am satisfied that the discretion should be exercised in favour of changing the status of Ohiti Waitio X9 to General land. I consider that such an approach is not inconsistent with the purposes of the Act. I acknowledge that, as a result, the perpetual right of first refusal in favour of the preferred class of alienees will be lost. The reality is, given its location (surrounded by General land), shape (a narrow strip) and size (7,486m<sup>2</sup>), Ohiti Waitio X9 cannot be utilised for any purposes independently of Ohiti Waitio 1C1, which is General land owned by the applicant.

*Should the blocks be amalgamated?*

[25] Given that I have declined to change the status of Ohiti Waitio 1D section 1 and Ohiti Waitio X8, parts of the applicant's farming operation remain Māori freehold land. Section 307(8) of the Act provides that if any amalgamated land was formerly Māori freehold land, all of the amalgamated land becomes Māori freehold land. If all of the applicant's blocks are amalgamated, all of his land will become Māori freehold land. That outcome is clearly contrary to the applicant's wishes. Therefore, I decline to amalgamate all of these blocks into one title.

[26] Instead, Ohiti Waitio X8, as an unused road, should be amalgamated with the block it dissects (Ohiti Waitio 1D section 1). It will be more conveniently worked or dealt with if it is held in common ownership under one title. Upon amalgamation, the new block will be Māori freehold land.

[27] Ohiti Waitio 1C1 and, as a result of this decision, Ohiti Waitio X9 are General land. It would make sense to amalgamate these blocks. However, s 307(1) of the Act only allows the Court to amalgamate land to which Part 14 of the Act applies. This land is defined in s 285 of the Act and does not include General land. Further, there does not appear to be any provision in the Act that expressly allows General land to be amalgamated. That said, s 307(8)(b) of the Act contemplates that General land can be amalgamated, presumably so long as some of the amalgamated land falls within the s 285 definition. The position is uncertain. Fortunately, I need not be concerned with this uncertainty. Because Ohiti Waitio 1C1 and (now) Ohiti Waitio X9 are General land, they cannot be amalgamated because the amalgamation will not include any land to which Part 14 applies.

### **Whakataunga**

#### *Decision*

[28] The Court declines to change the status of Ohiti Waitio 1D section 1 and Ohiti Waitio X8 from Māori freehold land to General land.

[29] The Court grants:

- (a) An order per s 135 of Te Ture Whenua Māori Act 1993 declaring that the status of Ohiti Waitio X9 shall cease to be Māori freehold land and shall become General land.
- (b) An order per s 307 of Te Ture Whenua Māori Act 1993 amalgamating the Ohiti Waitio X8 block and the Ohiti Waitio 1D section 1 block.

I whakapuaki i te 1.00 pm i Te Whanganui a Tara, te 17 o ngā rā o Āperira i te tau 2025.

D H Stone  
**JUDGE**