

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU***In the Māori Land Court of New Zealand
Tākitimu District***AP-20230000021826****WĀHANGA**
Under

Section 289, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Omahu 4A2B

NĀ
*By*NADIA STAPLES, ROSE TANIKO NGAMOTU,
MONICA KENDRICK, CHRISTOPHER
NGAMOTU, DEBORAH ANN NGAMOTU,
SHAUN STAPLES, GINA STAPLES AND
CHRISTOPHER TE UA STAPLES
Ngā kaitono
*Applicants***Nohoanga:**
*Hearing*4 August 2022, 99 Tākitimu MB 104–119
30 November 2022, 100 Tākitimu MB 269–270
30 November 2022, 100 Tākitimu MB 227–243
9 April 2024, 110 Tākitimu MB 25–33
1 August 2024, 112 Tākitimu MB 214–218
10 December 2024, 116 Tākitimu MB 59–61
5 May 2025, 119 Tākitimu MB 155
5 May 2025, 120 Tākitimu MB 1–22
7 October 2025, 124 Tākitimu MB 269–285
(Heard at Hastings)**Whakataunga:**
Judgment date

21 November 2025

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

Hei tīmatanga kōrero

Introduction

[1] The Omaha 4A2B block is 56.226 hectares located near a small settlement known as Pukehamoamoā, approximately 15 kilometres north-west of Hastings (“the Block”). There are 331 ownership interests in the Block. A group of owners wish to partition their interests out of the Block so they can develop a papakāinga. They applied to the Court on 14 June 2022 for that purpose. They sought an area of approximately 7.5 hectares.

[2] Seven hearings over more than three years were held to consider the application. At the final hearing on 7 October 2025, I granted the partition, with reasons to follow. Here are my reasons.

Kua ahatia?

What has happened?

[3] The journey to partition the Block commenced initially with an owners’ meeting held on 29 May 2021 to consider the granting of a licence to occupy to one of the applicants, Nadia Staples. This request was declined by the responsible trustee, Te Tumu Paeroa. Subsequently, a further owners meeting was held on 22 May 2022, this time to consider a partition. That meeting was advertised in *Hawkes Bay Today* on 30 April 2022. Eight owners, holding approximately 7.14% of the shares in the Block, attended this meeting. They all supported a partition. Four of these owners then applied to the Court to partition the Block.

[4] The application was accepted by the Court on 14 June 2022. The first hearing occurred on 4 August 2022.¹ As noted, the proposal then was to partition 7.45329 hectares from the Block to develop papakāinga housing. This area represented approximately 13.3% of the area of the Block. At that stage, the applicants and the owners had not made a decision on the area to be partitioned. Two areas were proposed, but neither of them had been finally approved. Further, Te Tumu Paeroa did not attend the 22 May 2022 meeting and was only informed of the proposed partition on 20 July 2022, after the partition application had been filed with the Court. At this 4 August 2022 hearing, the applicants concurred with the Court’s initial assessment that there was insufficient support for the partition at that stage. The

¹ 99 Tākitimu MB 104–119 (99 TKT 104–119).

application was therefore adjourned to allow the applicants to seek further input from the owners and for Te Tumu Paeroa to hold a general meeting of owners to discuss (among other things) the proposed partition of the Block.

[5] That owners meeting was held on 17 September 2022. It was called and facilitated by Te Tumu Paeroa. Five owners attended it. Nadia Staples presented on the proposed partition. Again, two areas were proposed for the partition. This was because the applicants wanted to ensure that the partition had the least impact on the remainder of the Block for leasing purposes. Most of the owners present at this meeting supported the partition. Beverley Akurangi indicated that although she did not oppose papakāinga development on the Block, she expressed concern about whether the remainder of the Block (following partition) would be suitable for papakāinga development and queried why such a development could not be undertaken for the benefit of all the owners of the Block. When the issue was put to a resolution, two owners supported the partition and one owner opposed it. However, because two partition areas were proposed, the resolution did not specify which area was supported for partition.

[6] The application was next heard on 30 November 2022.² The applicants did not agree that the minutes of the 17 September 2022 meeting were accurate, as they did not record all the owners who were present at that meeting. The applicants also indicated that they had received 39 consents to the partition from 297 owners, with 33 owners being deceased. Finally, the applicants indicated that support at the 17 September 2022 meeting was given for the partition of an area then described as “option B”. A map of that area is depicted in the diagram below:

² 102 Tākitimu MB 227–243 (102 TKT 227–243).



Figure 1: "Option B"

[7] Te Tumu Paeroa responded that the attendance list for the 17 September 2022 meeting was based on those who signed the attendance register. It also indicated that it had wished to receive copies of the consent forms that the applicants had gathered so that it could assess whether a poll vote of the owners about the partition would be useful.

[8] I issued directions at the conclusion of the 30 November 2022 hearing for the applicants to file a list of all owners who supported the partition, including whether they have indicated support at a meeting or by signing a consent form, and for that list to be served on Te Tumu Paeroa. I also indicated that a poll vote of the owners would be useful and indicated that a precise location for the proposed partition area should be identified before such a vote is conducted. Finally, I adjourned the application to allow the poll vote to be undertaken.³

[9] There followed some inactivity. I therefore called for the application to be heard again on 9 April 2024. At this hearing, the applicants advised that progress had been stalled significantly due to the impacts of Cyclone Gabrielle, which tore through the rohe on 14

³ 100 Tākitimu MB 269–270 (100 TKT 269–270).

February 2023. That said, the applicants confirmed that they now proposed a partition area known as “option A” (or “A”).⁴ A map showing this area is depicted in the diagram below:

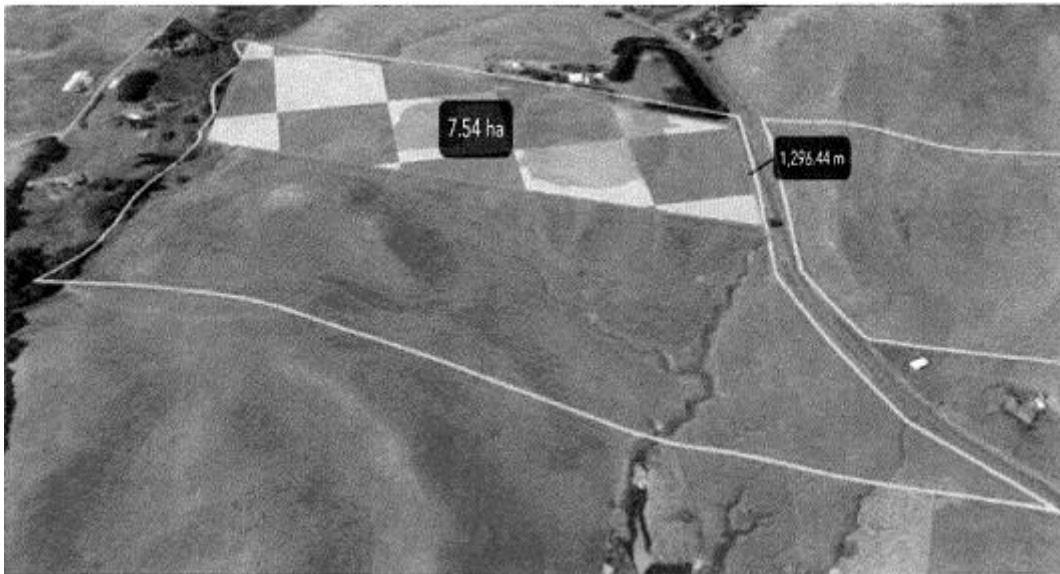


Figure 2: "Option A" (or "A")

[10] Te Tumu Paeroa confirmed that a poll vote of the owners had been undertaken in December 2022, in which eight owners responded (six supported the partition and two opposed it). However, given the passage of time, it was agreed at the 9 April 2024 hearing that a further owners meeting should be called. I therefore adjourned the application to the August 2024 sitting of the Court in Hastings and directed that all information relating to the proposed owners’ hui be filed three weeks prior to that hearing.

[11] The application was next heard on 1 August 2024.⁵ Unfortunately, a further owners’ meeting had not been held by that date. The application was further adjourned to the December 2024 sitting of the Court in Hastings. I again directed the applicant to call and hold a further owners’ meeting.

[12] At the next hearing on 10 December 2024, the applicant sought a further adjournment because the owners’ meeting had not been held.⁶ I adjourned the application to the May 2025 sitting of the Court in Hastings. I also directed the Registrar to consider appointing an

⁴ 110 Tākitimu MB 25–33 (110 TKT 25–33).

⁵ 112 Tākitimu MB 214–218 (112 TKT 214–218).

⁶ 116 Tākitimu MB 59–61 (116 TKT 59–61).

independent facilitator to call and hold the owners meeting and indicated that, if the meeting was not held by May 2025, I would dismiss the application.

[13] The owners meeting was held on 6 April 2025 at Runanga Marae. It was advertised in the *Hawkes Bay Today* newspaper on 8 March 2025, as well as on the Omaha and Runanga Marae Facebook page. Unfortunately, Te Tumu Paeroa was not informed of this meeting. Six owners attended this meeting. The minutes of that meeting did not record a vote on the partition. However, all those present at the meeting had already indicated their support for the partition at previous meetings or through signing consent forms. No new support or opposition to the partition was expressed at this meeting.

[14] The application was next heard on 5 May 2025.⁷ Because Te Tumu Paeroa was not aware of the owners hui on 6 April 2025, it informed the Court at this hearing that it had made plans (as the sole responsible trustee) to hold an owners meeting on 14 June 2025. The primary agenda item for this proposed hui was to be the proposed partition. I therefore adjourned the application to enable that meeting to be held. I also directed the Pae Tukutuku (case manager) to collate all of the consents that had been filed with the Court and circulate that information to all interested parties.

[15] The next owners meeting was held on 14 June 2025. Te Tumu Paeroa advertised this hui by mailout on 15 May 2025. The proposed partition was on the agenda. Fourteen owners attended this meeting in person or by remote means. Again, no resolution was passed at this meeting regarding the partition. However, as was the case for the 6 April 2025 owners meeting, no new support or opposition for the partition was expressed at this meeting.

[16] The application was recalled to Court on 7 October 2025.⁸ The applicants confirmed their desire to partition area “A”. Te Tumu Paeroa confirmed that it supported the aspirations of the owners. At that stage, 56 owner interests supported the partition, who together held 25.70% of the shares in the Block. Two owners opposed the partition, who together held 0.42% of the shares in the Block. Te Tumu Paeroa raised whether easements will be required to access the partitioned area, if the partition is granted. Beverley Akurangi, who had opposed the partition from the outset, sought clarification that the remainder of the Block,

⁷ 120 Tākitimu MB 1-22.

⁸ 124 Tākitimu MB 269-285.

following partition, could also be used for papakāinga. As noted, after hearing from the parties at this hearing, I granted the partition application with reasons to follow.

Te ture

The law

[17] To grant a partition application, I must first be satisfied that:⁹

- (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.

[18] If those threshold requirements are satisfied, I must have regard to the following mandatory considerations:¹⁰

- (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.

[19] 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:¹¹

... to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular landholdings and providing access or additional or improved access to the land.

⁹ 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].

¹⁰ Te Ture Whenua Māori Act, s 288(1).

¹¹ Section 286(1); and *Hammond*, above n 9, at [19].

[20] In exercising my discretion, I must also have regard to the Preamble and ss 2 and 17 of the Act.¹²

[21] The threshold for granting a partition is high. As the High Court in *Brown v Māori Appellate Court* notes:¹³

[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 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”.

[22] 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:¹⁴

[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. ...

[23] Partition is therefore a step of last resort.¹⁵

¹² *Hammond*, above n 9, at [20], citing *Brown v Māori Appellate Court* [2001] 1 NZLR 87 (HC) at [66].

¹³ *Brown v Maori Appellate Court*, above n 12, at [52].

¹⁴ *Reid v The Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* (2006) 34 Gisborne Appellate MB 168 (34 APGS 168) at [15].

¹⁵ See my comments at the 7 October 2025 hearing concerning the present application: 124 Tākitimu MB 269–285 (124 TKT 269–285) at 285. See also *Gillies v Lucas – Waipuka No 2C No 1 and Others* (2025) 124 Tākitimu MB 51 (124 TKT 51) at [16]–[18]; Judge Harvey’s comments during the hearing of 2 June 2021 concerning *Gillies v Lucas*: 90 Tākitimu MB 215–225 (90 TKT 215–225) at 220–221; and *Morrison – Moteo Hapua Te Pirau 1C 4B* (2024) 113 Tākitimu MB 193 (113 TKT 193) at [32] & [35].

Ngā take*Issues*

[24] The issues to determine are as follows:

- (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?

[25] 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.

Ngā herenga tauārai*The threshold requirements*

Have the owners had sufficient notice of the application, and sufficient opportunity to discuss and consider it?

[26] The proposal to partition the Block has been known for over three years. Owners' meetings to discuss the proposal were held on 22 May 2022, 17 September 2022, 6 April 2025 and 14 June 2025. All of these meetings were properly notified.

[27] Te Tumu Paeroa also conducted a poll vote of all the owners in December 2022.

[28] In addition, the applicants have spent time and effort to contact owners individually to seek their views on the partition. This has resulted in a number of owners consenting to the partition in writing. Obviously, these owners have had sufficient notice of the partition application and sufficient opportunity to discuss and consider it, even though some of them have not attended the various meetings to discuss the application.

[29] Finally, there have been seven Court hearings to consider the application. Each Court hearing has been advertised in the Pānui.

[30] 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?

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

	Total	Support	Oppose
# shareholdings	21,661.017	5,509.94496	88.92
% shareholdings	100%	25.70%	0.42%
# ownership interests	331	56	2
% ownership interests	100%	16.91%	0.60%

[32] Owners in support of the partition are:

#	Owner/Shareholder in support ¹⁶	# shares	% shares
1	Annelise BJ Timu aka Karetu	8.1072	0.04%
2	Arthur & Winipera Ropiha Whānau Trust	444.6	2.05%
3	Atamira Wharerimu Whānau Trust	29.64	0.14%
4	Belinda Kylie Wharehinga	8.1073	0.04%
5	Billie-Jean Brady	0.6586	0.30%
6	Caroline TR Clarke Whānau Trust	22.2986	0.10%
7	Christopher Ngamotu	574.275	2.65%
8	Christopher Te Ua Staples	114.855	0.53%
9	Colleen Karetu	40.5365	0.19%
10	Daisy Marlana Michelle Tewaikaretu Pennington	51.4586	0.24%
11	Dallas Kawana aka Rangimarie Dallas Kawana	74.1	0.34%
12	Dallas Robin	114.855	0.53%
13	Dallas Ward	12.7617	0.06%
14	Darcel-Janette Brady	0.6587	0.00%
15	David Melvin Larkins Kawana Whānau Trust	44.46	0.21%
16	Deborah Ann Ngamotu	114.855	0.53%
17	Elizabeth Patricia Gemmell aka Wimutu	14.4728	0.06%
18	George Henry Gemmell	14.4728	0.06%
19	George Reihana Robin	114.855	0.53%

¹⁶ Those whom the Court has signed consents on file are indicated in bold. The remaining are as indicated from two spreadsheets provided to the Court by the applicant.

20	Gina Delia Staples	114.855	0.53%
21	Hara Beattie Whānau Trust	222.3	1.03%
22	Hara Maryanne Kawana WT (Administrator: Valerie Thelma)	37.05	0.17%
23	Hawaikirangi Whānau Trust	120.07	0.55%
24	Henare Kaihote Te Whaiti Whānau Trust	12.029	0.06%
25	Hori Rapana	12.7616	0.06%
26	Huihui Makarena Welsh (nee Peni) Whānau Trust	12.35	0.06%
27	James Juno Kemp Whānau Trust	115.781	0.53%
28	James Juno Kemp Whānau Trust	115.781	0.53%
29	Jamie Desiree Karetu	23.1636	0.10%
30	Janey Rapana	31.90415	0.15%
31	Joanna Poi Lorenz	296.4	1.37%
32	Karen Harmer	247	1.14%
33	Kelly Pauline Waaka McClutchie	8.1073	0.04%
34	Kevin Biddle	31.90417	0.15%
35	Lesley Marie Keriana Waaka	8.1073	0.04%
36	Lydia June Keefe	2.9405	0.01%
37	Mary Mereana Raukete Opai	12.7617	0.05%
38	Maryanne Robin	114.855	0.53%
39	Maryanne Wilson	31.9041	0.15%
40	Mere Kawana	74.1	0.34%
41	Mere Poi Takiwa	296.4	1.34%
42	Moana Theresa Takiwa	3.088	0.01%
43	Monica Ngamotu Kendrick	574.275	2.65%
44	Nadia Staples	114.855	0.53%
45	Paul Biddle	31.90417	0.15%
46	Phillip Karetu	40.5364	0.19%
47	Ria Raniko Adams	12.7617	0.06%
48	Ria Taniko WT (Administrator: Kaye Adams)	114.855	0.53%
49	Robyn Karetu	40.5364	0.19%
50	Rose Taniko Ngamotu	574.275	2.65%
51	Royshill Karetu/Tunua Whānau Trust (Administrator: Jamie Desiree Karetu)	8.6865	0.04%
52	Royshill-Karetu Whānau Trust	40.5365	0.19%
53	Shaun Staples	114.855	0.53%
54	Shirley Biddle	31.90417	0.15%
55	Tumanako Randell	12.8646	0.06%
56	Tumanako Randell	51.4583	0.24%
TOTAL		5,509.94496	25.70%

[33] Owners who oppose the partition are:

#	Owner/Shareholder in opposition	# shares	% shares
1	Daphney Elnora Meriana Tito	44.46	0.21%
2	Mare Beverley Akurangi WT	44.46	0.21%
TOTAL		88.92	0.42%

[34] 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’.¹⁷ Sufficiency of support is not simply a matter of arithmetic.¹⁸ Rather, it is assessed on a case-by-case basis with regard to the nature and importance of the matter.¹⁹ On this point, the Māori Appellate Court has noted:²⁰

[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.

[35] That said, support for the partition would generally need to outweigh opposition unless other factors are at play.²¹ The Māori Appellate Court has stated:²²

[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.

[36] *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

¹⁷ *Whaanga v Niania – Anewa Block* [2011] Māori Appellate Court MB 428 (2011 APPEAL 428) at [51].

¹⁸ *Neal – Taiharuru 4C3C* (2016) 132 Taitokerau MB 97 (132 TTK 97) at [30]–[31].

¹⁹ *Reid*, above n 14, at 172.

²⁰ *Whaanga*, above n 17, at [38] (footnotes omitted), citing Te Ture Whenua Māori Act 1993, ss 287–288.

²¹ *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 14, at 172 and *Ngatai v Charmaine – Matakana 1A7A Block* (2007) 21 Waikato Maniapoto Appellate MB 147 (21 APWM 147) at [10]–[11].

²² *MacDonald*, above n 21, at [62].

actively opposed it. The Māori Trustee only had addresses for 202 landowners, and less than half of those (97) responded to the proposals.²³

[37] 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):²⁴

[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.

[38] There are 331 ownership interests in the Block. Some owners hold more than one ownership interest. 56 ownership interests support the partition. This represents approximately 17% of the ownership interests. Two ownership interests oppose the partition. This means approximately 18% of the ownership interests have expressed a view on the partition. This is a relatively low participation rate. However, it is not unusually low for these types of applications. When considering the number of owners meetings that have been held to discuss the partition, together with the poll vote conducted by Te Tumu Paeroa, it is difficult to identify what further steps the applicants could have taken to encourage greater participation among the owners. In the circumstances, and although greater owner

²³ *Reid*, above n 14, at 172.

²⁴ At [19]–[21].

participation is always to be encouraged, I am satisfied with the level of owner participation for the proposed partition.

[39] Of those owners who expressed a view on the partition, there is overwhelming support for it. The 56 ownership interests that support the partition hold 25.70% of the shares in the Block. The two ownership interests that oppose the partition hold 0.42% of the shares in the Block. I am therefore satisfied that there is sufficient support for the partition among the owners who expressed a view on it.

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

[40] The applicants have maintained since 2022 that the partition is necessary to enable the development of a papakāinga on the Block.

[41] 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”.²⁵ In considering whether partition is necessary, I must assess whether there are reasonable alternatives to partition provided by the Act or elsewhere.²⁶

[42] 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.

[43] Beverley Akurangi indicated that she did not oppose the development of a papakāinga, but that such a development should involve all the owners. There is merit in that proposition. However, such a development has not been achieved to date and it is not clear to me how that would change. The reality is that the applicants are ready to proceed to

²⁵ Brown, above n 9, at [50].

²⁶ Hammond, above n 5, at [23]–[24], citing Reid, above n 10, at [13]–[15].

the next stage of a papakāinga development and I am reluctant to halt their progress. Moreover, the partition, if granted, will not prevent the remaining owners from developing the remainder of the Block.

[44] I therefore consider the partition necessary for the operation, development, and utilisation of the land.

Conclusion on the threshold requirements for partition

[45] I therefore determine that the threshold requirements for a partition are satisfied.

Ngā whakaaro whakature

The mandatory considerations

What is the opinion of the owners as a whole?

[46] I have considered the opinion of the owners as a whole in assessing the level of support for the partition. As noted, of the owners who expressed a view on it, there is overwhelming support.

What is the effect of the partition on the owners?

[47] The partition, if granted, will reduce the area of the Block, leaving approximately 49–50 hectares. Te Tumu Paeroa did not express any concern that the removal of the partition area from the Block would have an adverse effect on the remaining owners. The remainder of the Block will continue to be leased, as it is currently.

[48] As noted, there remains sufficient land within the Block following partition for further papakāinga development for the remaining owners.

What is the best use and development of the land?

[49] Housing is almost certainly the best use and development of the Block. A partition to enable housing to be constructed on the Block is consistent with this best use and development. The remainder of the Block can continue to be leased and remains available for further papakāinga development, should the remaining owners wish to take that step.

[50] All told, the mandatory considerations point towards partition.

Te kōwhiringa kia wāwāhi ai

The discretion to grant a partition

[51] Even if I am satisfied that the threshold requirements are met and the mandatory considerations point towards partition, I still retain a discretion to decline it. In exercising this discretion, I must have regard to the purpose of Part 14 of the Act and the general purpose and Preamble of the Act.

[52] The principal purpose of Part 14 of the Act 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. The proposed partition is to facilitate a papakāinga development, which is entirely consistent with the purpose of Part 14 of the Act.

[53] The Preamble of the Act recognises that land is a taonga tuku iho and that it is desirable to promote the retention of that land in the hands of its owners, their whānau, and the hapū. It is also desirable to facilitate the occupation, development and utilisation of that land for their benefit. Following partition, the Block is retained by its owners, but some of the owners retain interests in one part of the Block and the other owners retain interests in the remainder. As noted, the partition is necessary to undertake a papakāinga development. Accordingly, the partition is consistent with the Preamble and, as a result, s 2 of the Act.

[54] I exercise my discretion in favour of granting the partition.

Te whakataunga

Decision

[55] The partition is approved.

[56] The applicants together hold approximately 10.6% of the shares in the Block. On a straight calculation of land and shares, this equates to approximately 6 hectares. The applicants sought to partition approximately 7.5 hectares. I am prepared to partition an area of 6 hectares for them.

[57] They have sought the partition in area “A” (as depicted earlier at paragraph [9]). The approved partition will comprise 6 hectares within this area. The applicants say no easements are required. The precise location of the partition (within area “A”) and the requirements for any easements will be confirmed by survey. The partition orders are therefore conditional on that survey.

[58] Once partition occurs, the area partitioned to the applicants will no longer form part of the land that is managed by the Omahu 4A2B Ahu Whenua Trust. Therefore, the terms of that trust will need to be amended to remove the newly partitioned area from the trust (this will require a partial termination of the Omahu 4A2B Ahu Whenua Trust) and to change the trust’s name to reflect the new appellation for the remainder of the block following partition. Orders to this effect are granted. They are conditional on a new title being created for the newly partitioned area.

[59] Once partition occurs, the applicants wish to establish an ahu whenua trust over their newly partitioned area. That makes good sense. The partition orders will be conditional on that new ahu whenua trust being constituted. In practice, the orders constituting the new ahu whenua trust and the order confirming the satisfaction of this condition will be granted contemporaneously. This will mean that the new ahu whenua trust will be created at the same time as the new title is created for the new partition area.

Ngā ōta *Orders*

[60] The Court makes the following orders pursuant to Te Ture Whenua Māori Act 1993:

(a) Section 289 partitioning the land known as Omahu 4A2B as follows:

- (i) An area comprising 6 hectares, within the area marked “A” as depicted at paragraph [9] of this decision and subject to survey, in the names of Taniko Rose Ngamotu, Monica Kendrick, Christopher Ngamotu, Debroah Ann Ngamotu, Nadia Staples, Shaun Staples, Gina Staples and Christopher Te Ua Staples as tenants in common as per their proportions, to be called Omahu 4A2B1 or such appellation as the Surveyor-General approves, in satisfaction of all of the shares held by

Taniko Rose Ngamotu, Monica Kendrick, Christopher Ngamotu, Debroah Ann Ngamotu, Nadia Staples, Shaun Staples, Gina Staples and Christopher Te Ua Staples; and

- (ii) An area comprising the remainder of the Omaha 4A2B block, subject to survey, in the names of the remaining owners, as per their proportions, to be called Omaha 4A2B2 or such other appellation as the Surveyor-General approves, in satisfaction of all of the shares held by those remaining owners.
- (b) The order at [60](a) above is conditional under s 73 on:
- (i) Taniko Rose Ngamotu, Monica Kendrick, Christopher Ngamotu, Debroah Ann Ngamotu, Nadia Staples, Shaun Staples, Gina Staples and Christopher Te Ua Staples filing with the Court within 3 months of the date of this decision a satisfactory survey plan setting out the partition areas, which must also set out the location and terms of any easements required to properly give effect to the partition.
 - (ii) Taniko Rose Ngamotu, Monica Kendrick, Christopher Ngamotu, Debroah Ann Ngamotu, Nadia Staples, Shaun Staples, Gina Staples and Christopher Te Ua Staples constituting an ahu whenua trust in respect of their shares in the partition area created per order [60](a)(i) above.
- (c) Section 131 determining that the partitioned areas shall remain Māori freehold land.
- (d) Section 241, and invoking s 37(3), granting a partial termination of the Omaha 4A2B Ahu Whenua Trust over the partition area created per order [60](a)(i) above. To avoid doubt, the Omaha 4A2B Ahu Whenua Trust continues over the remainder of the block following partition.

- (e) Section 244, and invoking s 37(3), amending the terms of trust of the Omahu 4A2B Ahu Whenua Trust to change the name of the trust to reflect the new appellation of the remainder of the block, following partition.
- (f) The orders at [60](d)–(e) above are conditional under s 73 on:
 - (i) The creation of a separate registered title for the partition area created per order [60](a)(i) above. To avoid doubt, the Omahu 4A2B ahu whenua trust remains as the management structure of the partition area created per order [60](a)(i) above until a separate registered title is created for that area.
 - (ii) The constitution of a new ahu whenua trust over the partition area created per order [60](a)(i) above.

I whakapuaki i te 11.00 am i Te Whanganui-a-Tara, i te 21 o ngā rā o Noema i te tau 2025.

D H Stone
JUDGE