

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

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

AP-20240000014226

WĀHANGA <i>Under</i>	Sections 135 and 310, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Lot 1 Owhatiura South 5 Part
NĀ <i>By</i>	RICHARD TAPSELL Te kaitono <i>Applicant</i>

Nohoanga: 9 June 2025, 343 Waiariki MB 108-117
Hearing (Heard at Rotorua)

Kanohi kitea: J McDougall for Applicant
Appearances

Whakataunga: 7 August 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA TUARUA C T COXHEAD
Judgment of Deputy Chief Judge Coxhead

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Hei tīmatanga kōrero

Introduction

[1] The applicants, Keri, Sheryl and Richard Tapsell are whānau and the owners of two adjoining properties. Those properties are Lot 2 DP 578207 owned by Keri and Sheryl Tapsell (Lot 2); and Lot 1 of Owhatiura South 5 Part owned by Richard Tapsell (Lot 1). The properties are depicted in the image below.¹ Lot 2 is General land. Lot 1 is Māori freehold land.

[2] Lot 1 and Lot 2 have been held by the Tapsell whānau for near on 100 years. Hira Tapsell, the grandfather of the applicant, Richard Tapsell, purchased the land in the early 1900's. He and his wife lived there with their 5 children.



[3] Since 2021 Keri and Sheryl have subdivided and sold 1.8 hectares of Lot 2. The whānau wish to develop what remains of Lot 2 in order to sell it. It would seem they intend to sell Lot 1 too. Developing Lot 2 requires that Lot 1, which is the primary access for a number of Lot 2 sections, change in status from Māori freehold land to General land. Accordingly, this application by Richard Tapsell seeks to change the status of Lot 1 to General land.

¹ Submissions for the Applicants dated 6 June 2025.

[4] In the alternative, should the Court not be satisfied that a change of status is appropriate, the applicants seek an exchange. The applicants seek to: transfer the access way (the long narrow yellow section in the image above) from Lot 2 to Lot 1; realign and regularise the boundaries of Lot 1; and increase Lot 1's curtilage (this involves transferring the Lot 2 land immediately surrounding Lot 1, to Lot 1).

[5] This is not the first application seeking a change of status for Lot 1. An application by Mr Tapsell in 2021 requesting that Lot 1 be changed to General land was dismissed.²

Te Ture

Law

[6] The Māori Land Court has the power to change the status of land from Māori freehold land to General land if the legislative requirements are met.³ Such applications are considered in two steps.⁴ First, assessing whether the following preconditions are met:⁵

- (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 (other than a trust imposed by section 250(4));
- (c) the title to the land is registered under the Land Transfer Act 2017 or is capable of being so registered;
- (d) the land can be managed or utilised more effectively as General land; and
- (e) the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[7] The preferred class of alienees is entitled to be given formal notice of the application and hearing.⁶

² *Tapsell - Lot 1 Owhatiura South 5* (2021) 257 Waiariki MB 176 (257 WAR 176).

³ *Te Ture Whenua Māori Act 1993*, s 135.

⁴ *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2008) 125 Whangarei MB 294 (125 WH 294) at [8].

⁵ Section 136.

⁶ *Te Whata*, above n 4, at [11].

[8] Then, consideration of whether to exercise discretion in favour of the change of status. The Court must take into account the kaupapa of Te Ture Whenua Māori Act 1993 (the Act) as expressed in the Preamble and ss 2 and 17. In *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554*, the Court comprehensively identified the relevant legal principles.⁷

[9] The power of the Māori Land Court to make exchange orders is set out in ss 310-314 of the Act. Before making exchange orders, the Court must be satisfied:⁸

- (a) that the exchange is not detrimental to the interests of the Māori owners affected by the exchange;
- (b) that, if the interests to be exchanged are unequal in value, a sufficient sum of money by way of equality of exchange has been actually paid or sufficient security for its payment has been given; and
- (c) that the Māori owners of the land affected by the exchange have had sufficient notice of the application for an exchange order and sufficient opportunity to discuss and consider it, and that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.

[10] The power to grant exchange orders is a discretionary power.⁹ The principal purpose of the part of the Act governing exchange orders 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.”¹⁰ The Court may refuse to exercise discretion if it is not satisfied that granting the exchange order sought would achieve that purpose.¹¹

[11] Regard must also be had to the Preamble to the Act along with ss 2 and 17.¹²

⁷ (2008) 125 Whangarei MB 294 (125 WH 294) at [8]-[39].

⁸ Section 312.

⁹ Section 287(2); *McCaw Lewis Trustee (No 1) Ltd - Rakautatahi 1B2B1A* (2022) 97 Tākitimu MB 232 (97 TKT 232).

¹⁰ Section 286(1).

¹¹ Section 287(2).

¹² *McCaw Lewis Trustee*, above n 9.

Ngā kōrero a te Kaitono*Applicants' submissions*

[12] The applicants wish to develop Lot 1 and Lot 2, to build 10 additional houses. Mr McDougall for the applicants submitted that Lot 1 must change status not only so that it can be managed and utilised more effectively but to support the proposed subdivision of Lot 2. They say the main barrier to the viability of the development is that Lot 1 is classified as Māori freehold land.

[13] Counsel for the applicants submits that granting the change of status for Lot 1 will increase the sale price of the Lot 2 properties once the Lots are developed, and in that way will benefit the Māori landowners. The owners wish to utilise the proceeds of sale of the Lot 2 properties to purchase a new farm. Counsel for the applicants submits that enabling the development of Lots 1 and 2 through a change in land status will support the applicants to purchase a farm, thereby providing land for housing, income, and land retention for future generations. They submit:

In the round, this is not a case of the applicants simply wanting to change the status of their land for the sole purpose of sale and financial gain. The applicants have a deep connection and affinity to land, having made their livelihoods on it. The Tapsell's have every desire to retain land in the hands of their whānau – just not the subject land due to the inability to make a living from it – and intend to purchase replacement land. Their wish to achieve this by changing the status of Lot 1 does not subvert the kaupapa of the Act, but supports it, particularly the rangatiratanga of the Tapsell whanau.

[14] The applicants have filed a report by Veros Property Services Limited (the Report) to demonstrate that Lot 1 will be more effectively managed or utilised as General land. The Report explains the reason that the main barrier to the viability of developing Lots 1 and 2 is the Māori freehold land status of Lot 1.

[15] The Report says that Lot 1 provides the most feasible access and services to the potential new houses on Lot 2. Because the development looks to result in more than eight properties using the one accessway, the Rotorua Lakes Council may require the accessway to be vested in the Council. There are situations where councils manage assets on Māori freehold land as public infrastructure, but the Report states that it is not certain that Rotorua Lakes Council would agree to that arrangement. The accessway would also likely need to be widened, which would create an untidy title if the current narrower accessway remains Māori freehold land. Overall, the Report says that leaving the accessway as Māori freehold

land will cause uncertainty for potential buyers, particularly those who might be unfamiliar with arrangements involving Māori freehold land.

[16] If the Court decides not to grant the change of status, the applicants seek an exchange order. Counsel for the applicants submits that the exchange will be beneficial to Richard Tapsell because he will acquire additional land surrounding his house. They submit the order sought would exchange interests of roughly equal value, and it is in the nature of a family arrangement. The affected owners all support the application. They submit that the proposed exchange is consistent with the kaupapa of the Act in that it will facilitate better use, occupation and development of both properties.

Me tuku au he ōta hei panonitia te tūnga taitara?

Should I grant an order to change the status?

[17] The applicants are very aware that obtaining a change of status is not easy. The discussion at hearing was very much focused on whether Lot 1 will truly be better managed or utilised as General land. In my view the proposal is very much centred on changing Lot 1 to General land so that Lot 2 can be developed and better utilised through sale. In essence, it will be easier to sell Lot 2 sections if the access way to the subdivided Lot 2 area is General land. Currently that access way is Lot 1, and it is Māori freehold land.

[18] As submitted, Lot 2 is capable of having 12 lot subdivisions undertaken. To carry out this subdivision it is necessary to upgrade access via the existing driveway being Lot 1. The proposed sites can only be accessed by Lot 1's driveway. To develop the 12 sections on Lot 2 it may be necessary for the driveway (Lot 1) to be vested in the council for ownership and management. Mr McDougall submits that this will enable better management and utilisation of Lot 1. I disagree.

[19] It is clear to me that the objective of changing Lot 1's status is to facilitate the proposed subdivision of Lot 2. Currently, there do not appear to be any issues regarding access to Lot 1. The focus is instead on changing the status of Lot 1 to allow better sales and access to Lot 2. The applicants' view is that people would be reluctant to purchase subdivided sections of Lot 2 if their access (Lot 1) is Māori Freehold land. In other words, their argument is that Māori Freehold land needs to change to allow better sales of General land. That cannot be a better utilisation of the Māori Freehold Lot 1 land.

[20] The applicants also submit that the change of status will allow them to utilise Lot 1 with the sale of Lot 2 subdivided sections and then from those funds, this will enable them to purchase replacement land that can be used and managed as a farm. That proposal lacks detail. There is no detail as to where this land is or whether a potential farm has been identified, whether the land will be Māori freehold land or General land nor whether the Tapsell whānau have an association with the intended farm like the 100 year plus connection they have had with this land.

[21] In my view, this is not a case of Lot 1 needing a change of status so that Lot 1 can better utilised. This is a clear case of arguing that Lot 1 should change status so that Lot 2 can be better utilised. For example, the proposal would not result in any additional housing on Lot 1.

[22] In my view Lot 1 will not be managed or utilised more effectively as General land and therefore the application is dismissed.

Me tuku au he ōta hei whakawhiti i ngā wāhanga whenua?

Should I grant an order to exchange the parcels of land?

[23] Mr McDougall and I had lengthy discussions at hearing about the exchange order. The criteria for exchange orders are different to the criteria for change of status orders.

[24] The values of the interests proposed to be exchanged are roughly equal, representing similar sized parcels of land, and the arrangement is of benefit to the wider whānau and the owners of the respective properties. Clearly the owners support the exchange order.

[25] Currently the driveway which provides access to the house on Lot 1, and to any future houses on Lot 2, is part of Lot 1. Making the exchange order sought would result in Lot 1 losing ownership of the driveway, and instead it appears Lot 1 would be granted easements over the driveway.¹³ This would not improve access to Lot 1 and may instead result in less control over the accessway. The exchange will not facilitate the use and occupation by the Tapsell whānau by rationalising particular landholdings and providing additional or improved access to the Lot 1.

[26] The applicants say that the driveway may be widened to provide for the new development. I presume the driveway may also be better maintained if the surrounding land

¹³ Veros Property Services Limited, Report titled “15 Link Road” dated December 2024, at 30.

is developed. However, counsel for the applicants also suggested that Lot 2 will be developed regardless of whether the driveway changes status.¹⁴ It is not clear to me that making the exchange order sought would improve access for Lot 1. A widened or better maintained driveway appears likely to occur regardless of the outcome of this application. I acknowledge the development may occur later or result in receiving lower sale prices for the Lot 2 sections.

[27] The applicants have not demonstrated that the order sought will improve the Tapsell whānau's use and occupation of the land. They have shown that the order sought will increase the sale prices once Lots 1 and 2 are developed. The Court will not grant the exchange order.

Whakataunga

Decision

[28] The application under sections 153 and 310 of Te Ture Whenua Māori Act 1993 as it relates to Lot 1 of Owhatiura South 5 Part is dismissed.

I whakapuaki i te 3.00pm i Rotorua, te tuawhitu o ngā rā o Ākuhata i te tau 2025.
Pronounced at 3.00pm in Rotorua on Thursday this 7th day of August 2025.

C T Coxhead

KAIWHAKAWĀ MATUA TUARUA

¹⁴ Submissions for the Applicants dated 6 June 2025 at [4.8](d).