



TITLE IMPROVEMENT

TETURE WHENUA MĀORI ACT 1993

Te Kooti Whenua Māori



Māori Land Court

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New Zealand Government

The Māori Land Court (Te Kooti Whenua Māori) is the New Zealand court that hears matters relating to Māori land. The special bond between Māori people and the land is recognised by the Māori Land Court, and the records held by this Court form an invaluable part of the whakapapa of all Māori. The Māori Land Court operates under the provisions of the Te Ture Whenua Māori Act 1993 (referred to as 'the Act' throughout this booklet).

Title Improvement is one of a series of Māori Land Court booklets designed to help Māori – and anyone else with an interest – to gain a fuller understanding of current Māori land matters.

Title reconstruction and improvement is covered by Part XIV of Te Ture Whenua Māori Act 1993. The principal purpose of this part of the Act is to empower the Māori Land Court to facilitate the use and occupation of land by Māori landowners, enabling owners to improve their land holdings through better title configuration, and provide, add to or otherwise enhance their access to the land.

Title¹ reconstruction and improvement

Section 288 of the Act sets out the matters to be considered by the Māori Land Court for partition², amalgamation³, and aggregation⁴ applications. In each case, the opinion of the owners or shareholders must be taken into account.

In looking at these matters, the Māori Land Court must consider:

- the opinions of the owners or shareholders
- the effect of the proposal on the interests of the owners or the shareholders of a Māori incorporation
- the best overall use and development of the land.

The Māori Land Court shall not make an order affecting the land in question unless it is satisfied that:

- the landowners have had enough notice of the application
- the landowners have had enough opportunity to discuss and consider the proposal
- there is enough support for the application among the landowners.

For a Māori incorporation, the Māori Land Court must be satisfied that:

- the shareholders of the incorporation have been given clear and specific notice of the application
- the shareholders have passed a special resolution supporting the application.

Matters to be considered for each type of application

Landowners' meetings

Landowners should hold a meeting to discuss any application affecting the land.

Sufficient notice

The applicant must give the landowners enough notice of any meeting or Māori Land Court sitting. The Māori Land Court will advise the applicant what notice is necessary. Generally, the applicant should write to as many landowners as possible, inviting them to attend a meeting to consider the proposal, at least 21 days before the meeting.

If the landowners are not able to attend the meeting, they are invited to write to the Registrar of the Māori Land Court about their views on the proposal. The Court may also direct the applicant to place a notice about the meeting in the newspaper on two occasions.

Sufficient degree of support

In determining whether there is enough support for the application, the Māori Land Court will need to consider the number of landowners in favour of the proposal as well as the representation of the shareholding. A minority of landowners with a majority shareholding don't automatically overrule a majority of landowners owning a minority shareholding. The Judge will need to hear all parties and will decide from the evidence and the Act which view should prevail.

Partition

A partition is created when one or more owners separate their shares from the rest of the landowners and create a separate title. Partitions can also be used to separate

interests in two or more neighbouring blocks and then combine them into one title.

The Māori Land Court will only make a partition order when it is satisfied that the partition is necessary for the effective operation, development and utilisation of the land, or that it effects a gift from the donor to a member of his or her whānau. The following points need to be considered:

- access – the area to be partitioned should not restrict access to the rest of the land
- the lie of the land – the area to be partitioned should not take the entire flat or most useable area of the land.

Full partition and hapū⁵ partition

Full partition requires the consent of the district council under the Resource Management Act 1991. If consent is given, the council may require a reserve contribution⁶ whereby a part of the land is given to the council. Sometimes money is contributed instead.

A reserve contribution may include:

- the strip of land formerly known as the Queen's chain
- a strip of land to provide for public access
- land provided for recreational purposes

- a monetary contribution toward recreational facilities.

Hapū partition can only occur where all the owners involved in the partition are members of the same hapū. Consent for hapū partition is not required from the district council, and so a reserve contribution may not be necessary. Because consent is not required, the process of partitioning costs less. However, if any of the new titles are to be built on then building consent will still be needed from the council. It is advisable to find out from the council at the beginning of the partition process if building consent is likely to be granted.

When a hapū partition is created, the new titles are noted of that designation. If, at some later date, the hapū partition is upgraded to a full partition, then the council's consent will be needed. If ownership of any of the land is sold or transferred outside of the hapū, the Court can require that a portion of the land be set apart as a Māori reservation for the common use and benefit of the New Zealand people. This meets the requirements for reserve contribution. Any land set apart for this purpose is to be taken from the land to be sold.

Combined partition

An owner or a group of owners may benefit by combining their interests, held in two neighbouring blocks, into one block. For

Footnotes

1 The legal ownership of property and the legal evidence of a person's ownership rights.

2 The division of Māori land into two or more separate titles (partition). Alternatively the combination of two or more neighbouring blocks of land with shared interests into a single title (combined partition).

3 Amalgamation of titles occurs when the titles of two or more blocks of land are cancelled and a single title is issued for the whole of the area. The blocks of land are no longer separate (refer to section 307 of the Act).

4 Aggregation of titles occur when two or more separate blocks of land share a common ownership list. The titles remain

separate, but there is only one common ownership list for all aggregated land (refer to section 308 of the Act).

5 A subtribe or kin group that is linked by a common ancestor.

6 A tract of land set aside for a community purpose when land is subdivided.

instance, they may own block A and also have an interest in block B. With the consent of the other owners of both blocks, and by making an application to the Māori Land Court for a combined partition, the interests could be combined to create the new block Z. In all partition cases, the general procedure for a partition application should be followed.

Apportionment of a lease, mortgage, or other encumbrance

When Māori land is partitioned, the Māori Land Court may apportion or adjust the rights, obligations, or liabilities arising from a lease, mortgage, or other encumbrance between the partitioned blocks. For example, an owner may partition a house site from a block that is already leased. The Court would apportion the lease to the residue block for all the other owners. This relieves the lessee of the area for the new house and frees the new block from the lease. The lease for all the other owners is not upset. The Court makes an order, which can be registered with Land Information New Zealand.

Dwelling sites for Māori

Under section 296 of the Act, the Māori Land Court can partition the land to provide an owner with a dwelling site. This provision can be used to vest⁷ the dwelling site in a husband and wife or civil union partner or de facto partner as joint tenants⁸, or as tenants in common⁹, in equal shares.

If, after a period of five years, the land has not been used as a dwelling site, the Māori Land Court may make an order cancelling the dwelling site, and order that:

- the land reverts to being held under the former title as if the order had not been made or

- the land be vested in any other person whom it considers to be justly entitled to it.

Shareholding

A partition is normally based on valuation, not on the land area. This prevents a person from getting more than a fair share by partitioning out a valuable part of the block and leaving the poor land for the remaining owners. If there are not quite enough shares to partition out the area needed, the partitioning owner may pay the difference in cash as assessed by the valuer. On the other hand, the partitioner may own more than enough shares and may decide to leave some shares in the residue block with the other owners. This also ensures that the partitioner and his/her descendants do not lose their ties with the main block and its owners.

The applicant will need to work closely with a surveyor and valuer to correctly work out the partition so that the shareholding, the partitioned area and the valuations are fair. The Court must ensure a fair deal to all parties.

Valuation

When obtaining a valuation for a partition, the following information is required:

- the value of the whole block
- the value of the area to be partitioned
- the value of the balance of the block.

The three valuations are required to make sure that a fair value of the shareholding is calculated.

Land adjoining a state highway

If the land adjoins a state highway, it will be necessary for Transit New Zealand to approve the new access to the block. This is required to maintain safety. A surveyor will be able to advise on this matter.

Land adjoining a local council road

Where a block fronts a road, consent is required from the district council.

Building

If you intend to build on the block, you will need to get a building permit from the district council. Note that fines of up to \$150,000 can be incurred for not having a building permit.

The building permit will cover aspects such as:

- sewage disposal
- coastal erosion
- water catchment
- other matters covered by the Resource Management Act 1991 and the Local Government Act 2002.

Leases

If the block is leased, the consent of the lessee is required before a partition order can be made. The Māori Land Court will make an order apportioning the lease to the balance of the block. If it is necessary to renegotiate the rental over the reduced area, there may be some legal costs involved.

Māori Land Court hearing

The person applying for a partition order will need to attend a hearing of the Māori Land Court to explain how the partition will provide for better use of the land. If all

requirements of the Act have been met and the Māori Land Court agrees, an order will be made to partition the land.

Survey

A survey of the new blocks may be required to complete the partition orders. A survey must be completed to obtain a full certificate of title.

Registration

The Māori Land Court will register all partition orders with Land Information New Zealand. Land Information New Zealand will issue a provisional register title for the land. This is now called a Computer Interest Register. If the new landowner requires a full certificate of title, they will need to pay the fee to Land Information New Zealand

Applying for partition

Process

Notes for applicants:

1 Consult the district council.

Hapū partition: Check whether you need a building permit. You will need to consider aspects such as access and waste disposal.

Full partition: Check that your proposal meets the requirements of the Resource Management Act and check whether you need a building permit.

7 A change of ownership of land gives the recipient of that interest the ownership and its associated rights. (Land may be vested in a trustee, or shares may be vested in another person.)

8 People who own land jointly. The interests are not split between them – they are co-owners. If one owner dies, the other

joint tenant/s automatically succeed to the interest that the deceased joint tenant held. This kind of ownership is most commonly used by married couples, who often prefer to own property as joint tenants. Where general land is owned by more than one person, it is deemed to be held by them jointly unless the title states otherwise.

9 People, who as co-owners, own land together but in separate interests. Interests, in these cases, are often unequal. If one person dies, the other tenants in common have no automatic rights of succession to the interest that the deceased owner had. Māori land is deemed to be held "in common" unless otherwise determined by the Court.

2 Arrange a landowners’ meeting.

Hold a meeting with the landowners to consider the proposal and obtain their consent. You need to obtain written consent from any landowners who are unable to attend the meeting. The meeting must be properly advertised, including the purpose of the meeting.

3 Consult the lessee(s) if any.

You need to seek the written consent of your proposal from any lessee(s).

4 Consult a surveyor.

Seek cost estimates to survey the land.

5 Fulfill the requirements of the Resource Management Act 1991.

Complete the actions required under the Resource Management Act. For full partition, this will include the preparation of a scheme plan and report by a surveyor.

6 Consult a valuer.

Seek a cost estimate for a valuation of and report on the proposed partition and the balance of the block.

7 Determine the feasibility of the proposal.

Once you have met the above requirements, you can decide whether it is possible to proceed with the application.

8 Consult the Māori Land Court.

Request a Court order diagram from the Māori Land Court that shows the proposed location of the hapū partition and any roadway order that could be required.

9 Prepare the application.

Before you file your application, make sure that all requirements of the Māori Land Court, the Act, and the Māori Land

Court Rules 1994 have been met. Make sure that your application has:

- all the details filled in correctly
- a plan of the proposed partition attached, including the value of each separate area created after partition
- consent of the lessee(s) attached
- a schedule of ownership with all the landowners’ respective shares and addresses (including consents)
- details as to how ownership of the land is to be apportioned after partition
- shown the Court how the partition is necessary to “facilitate the effective operation, development and utilisation of the land” (section 288(4) of the Act).

10 File the application.

File the application at the Māori Land Court office in the district where the land is located.

11 The Māori Land Court will contact you.

The Māori Land Court requires you to send notice of the application to the landowners, occupiers, and trustees¹⁰. The Māori Land Court will provide a draft letter for you to use. Send copies of the letter, the application, the preliminary plan, the notice of fixture, and the other requirements to the appropriate people.

12 Attend the Māori Land Court hearing.

Attend the Māori Land Court hearing to give evidence about your application.

13 The Court will give or withhold preliminary approval.

If preliminary approval for your application is given, then you will need to do the following:

For a hapū partition:

- arrange for a surveyor to complete a land survey
- obtain a valuation of the proposed partition and the balance of the block.

For a full partition:

- arrange for a surveyor to complete a land survey
- meet the requirements of the Resource Management Act
- obtain a valuation of the proposed partition and the balance of the block.

14 A further Māori Land Court hearing may be required.

If there is a need to address any details arising from the valuation or land survey, you will need to attend a further Māori Land Court hearing.

15 The Court will approve, adjourn¹¹, or dismiss the application.

Application approved – partition order made

After the Court has made the partition order, the Māori Land Court will send a copy of the order to the district council, who will update their rating records. From then, a separate rate demand will be sent to those persons named in the partition order.

Application adjourned

The Court may adjourn the application to a later date so that further information may be provided or to allow time for certain requirements to be met.

Application dismissed

If the application is not successful, the Court will dismiss the application.

16 A provisional title will be issued.

The Māori Land Court will arrange for the partition order to be registered by Land Information New Zealand, and then a provisional title will be issued. A full certificate of title will be issued upon payment of the required fee.

Amalgamations

Under section 307 of the Act, two or more blocks can be amalgamated to make one block. This usually occurs where there is some common ownership, (a reason to amalgamate, for example, would be to create an economic farming unit). When land is amalgamated, the former titles are cancelled and a single combined ownership list issued. The owners no longer have rights to the individual titles.

An amalgamation can include general land¹² and Māori land. If it does, the resulting block will be Māori land.

Share amalgamation

The calculation of the shareholding in the amalgamated block is based on the value of the shares of the owners in the former blocks. A valuation for each of the blocks needs to be completed at the same date. This is to give a fair basis for the amalgamation. The amount of new shares in an amalgamated block is proportionate to the value of the shares in the former blocks.

10 A person bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing him/her as trustee for the land is registered against the title.

The beneficiaries are called the beneficial owners.

12 In broad terms, land that is not Māori land and is not Crown land.

11 To postpone a court sitting, or any meeting, to another date and/or location.

Leases and mortgages

An amalgamation order can't be made without the consent of people such as the lessee or mortgagee unless the Māori Land Court is satisfied that the amalgamation would not detrimentally affect the rights of those people.

Cancelling an amalgamation

To cancel an amalgamation or remove one of the former blocks from the amalgamation, it is necessary to apply for a partition order. The Māori Land Court has the power under section 298(5) of the Act to cancel any existing amalgamation order. The procedure for a partition application will need to be followed.

Aggregations

An aggregation of the ownership of two or more blocks is usually undertaken when there are several people with shares in each block. The result of an aggregation is a common ownership list for all the aggregated land.

The benefit is that each block can be used independently of the other but there is only one pay list to maintain. This makes it more convenient to distribute any income¹³ from the blocks because the administration costs are reduced. Because the original titles remain, there is no requirement to survey the overall land, as there is with an amalgamation.

Shareholdings

The basis for calculating the new shareholdings is the same as for amalgamations. The shareholders' former interest in a particular block is converted to an interest of equivalent total value in the aggregation.

The difference between an amalgamation and an aggregation is:

- Amalgamation merges owners and titles into one new block. Boundaries between the blocks disappear.
- Aggregation merges only the owners into one new list. Boundaries between the blocks remain.

Easements

An easement can be created by a Court order under section 315 of the Act. An easement gives rights to cross or use another person's piece of land for a specified purpose without the right to possession. Easements can be for items such as power lines, water pipes, and access. Easements, apart from those granted to provide access to land, may be varied or cancelled on application to the Māori Land Court.

Consent

Landowners

The landowners involved will need to give their consent to the easement. A landowners' meeting may be necessary to obtain consent. An easement order granted by the Māori Land Court can be registered by the Court free of charge with Land Information New Zealand.

Trustees

Where the land is vested in trustees and where the trust order¹⁴ allows, the trustees may negotiate the terms of an easement with the interested parties. There may be no need for a landowners' meeting but the Court is still required to issue an order.

Māori incorporation

Where the land is owned by a Māori incorporation, the committee of management may negotiate the terms of an easement with the interested parties. There may be no need for a meeting of the

shareholders but the Court is still required to issue an order.

An easement may be made subject to an annual rental or a one-off payment.

District council

An easement that gives access to land by joining on to a council road will need the consent of the district council. An easement that joins on to a state highway requires the consent of Transit New Zealand. The consent will set out how the accessway should be formed. You can get further details about a consent from the district council or a surveyor.

Survey

An easement should be surveyed – either as part of the partition plan or specifically for the purpose of the easement.

The following terms are used for easements:

- dominant tenement (the land that has the right over another piece of land)
- servient tenement (the land over which the dominant tenement exercises the right of the easement)
- easement in gross (where there is no dominant tenement, for example, power lines over the block).

Roadways

Roadways are covered by sections 316 to 326 of the Act, which provides for setting up, cancelling, and changing roadways.

Roadways that will connect to a state highway need the consent of Transit New Zealand before they are formed. Similarly, a roadway that will connect to a road under the authority of a district council requires the consent of the district council.

Roadway order

A roadway order is usually made to provide access to a block as a result of a partition. If this access is to go over general land, the consent of the landowner is required.

Roadway maintenance

Those who use a roadway to gain access to their blocks should maintain it. The roadway is only for the use of the owners of the blocks and the people that they invite onto the land; it is not a public road. If the need arises, the owners can apply to the Māori Land Court to have the land declared a public road. The owners will need district council consent so that the road can become a public road and be maintained by the district council.

Unused roadways

Where a roadway is no longer required, the owners can apply to the Māori Land Court to have the roadway cancelled.

Unused public roads

Where a road is no longer required, the authority in charge of the road can apply to the Māori Land Court to have the road closed and either included in the adjoining title or revested in those owners who

13 Money that is derived from assets held and earnings (such as rent and interest) but not “purchase money” (land converted into money).

14 An order of the Māori Land Court that sets out: the objectives of a trust; the powers, obligations, and rights of trustees; and the rights of the beneficiaries.

owned the land at the time it was taken for a road.

Occupation orders

An occupation order issued by the Māori Land Court grants people the right to occupy a house site on Māori freehold land. Occupation orders can be sought either for an existing house or for a building site. The owner of a beneficial interest in Māori land or anyone entitled to succeed to a deceased owner may apply for an occupation order. The area of occupation sought must not be more than the proportion of shares the applicant owns, or will own upon succession, in the block.

The Māori Land Court can set a period of time that the order is for, or specify that it will end on the occurrence of a defined event, such as the death of the occupier.

Consent

If the land is vested in a trust or Māori incorporation, they must consent to the occupation order. The local authority also needs to provide their consent. They also need to be consulted if building consent is required. The lessee and/or occupiers of the land must also consent, along with the rest of the landowners. In most cases a properly advertised meeting is necessary.

Transit New Zealand's permission may also be required if access to the house or building site is onto a state highway.

Considerations

The Court must consider:

- the owners' opinions
- the effect the occupation order would have on the owners

- the best overall use and development of the land.

To grant an occupation order the Court must be satisfied that the owners have had adequate notice and sufficient opportunity to consider and discuss the matter, and that there is sufficient support for the proposal.

The Māori Land Court specifies the date that the occupation order takes effect, the area affected, any consideration payable, and the terms of such payment. The Court may also review an occupation order at the request of any shareholder in the land or the person in whom the order is vested.

Succession

Succession to occupation orders can occur. The holder of an occupation order can leave the order by will to any one who may succeed to Māori land (providing they are among the preferred classes of alienees¹⁵).

Applying for an occupation order

Applicants must include all required consents (see above) with their application, including minutes of the owners' meeting and the advertisement. A valuation including details of the site must also be provided, along with the current Land Information New Zealand title.

When applying for an occupation order, under section 328 of the Act, applicants must include a detailed sketch plan showing the whole block, the site location, any other buildings on the block, boundaries, measurements, and proposed access.

Licence to occupy

A licence to occupy essentially has the same effect as an occupation order. The main difference is that a licence to occupy is negotiated between the landowner

and the trustees. However the trustees must have the power to grant licences to occupy in their trust order. The trust order may also limit who may apply and impose any conditions.

If the licence is for a period of 21 years or more, a copy must be sent to the Registrar of the Māori Land Court for noting.

More information

For more information about improving land titles, please write to, phone, fax, email, or visit a Māori Land Court office. Staff will be pleased to assist you and discuss any matters with you.

www.justice.govt.nz/maorilandcourt

¹⁵ Section 4 of the Act lists the preferred classes of alienees in relation to any alienation. In considering applications relating to alienations, the Māori Land Court must be satisfied that the preferred classes of alienee have been granted an opportunity to exercise the first right of refusal.

Māori Land Court offices

Te Taitokerau District

Registry Office
2nd Floor, Manaia House, Rathbone Street
AX10086, Whangārei 0140
T (09) 983 9940
F (09) 983 9941
E mlctaitokerau@justice.govt.nz

Auckland Information Office

135 Kolmar Road
EX10912, Papatoetoe 2155
T (09) 279 5850
F (09) 279 5852
E mlcpapatoetoe@justice.govt.nz

Waikato Maniapoto District

Registry Office
Level 2, BNZ Centre, 354-358 Victoria Street
GX10101, Hamilton 3240
T (07) 957 7880
F (07) 957 7881
E mlcwaikato@justice.govt.nz

Waiariki District

Registry Office
Hauora House, Haupapa Street
JX10529, Rotorua 3046
T (07) 921 7402
F (07) 921 7412
E mlcwaiariki@justice.govt.nz

Aotea District

Registry Office
Ingestre Chambers, 74 Ingestre Street
PX10207, Whanganui 4541
T (06) 349 0770
F (06) 349 0771
E mlcaotea@justice.govt.nz

Tākitimu District

Registry Office
2nd floor, Heretaunga House
Cnr Lyndon and Warren Streets
MX10024, Hastings 4156
T (06) 974 7630
F (06) 974 7631
E mlctakitimu@justice.govt.nz

Te Tairāwhiti District

Registry Office
Cnr Reads Quay and Lowe Street
(entrance on Reads Quay)
PX10106, Gisborne 4040
T (06) 869 0370
F (06) 869 0371
E mlctairawhiti@justice.govt.nz

Te Waipounamu District

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76 Peterborough Street
WX11124, Christchurch 8140
T (03) 962 4900
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E mlctewaipounamu@justice.govt.nz

National Office & Office of the Chief Registrar

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Use the X number as you would a PO Box number.