

# TITLE IMPROVEMENT

## Te Kooti Whenua Māori – Māori Land Court

For more information, go to [maorilandcourt.govt.nz](http://maorilandcourt.govt.nz)

Te Kooti Whenua Māori – Māori Land Court (MLC) is the New Zealand Court that hears matters relating to Māori land. The unique relationship between Māori and whenua is recognised by the MLC, and the records held by the Court form an invaluable part of the whakapapa of all Māori people. The MLC operates under the provisions of Te Ture Whenua Māori Act 1993 ('the Act').

### Title reconstruction and improvement

Title<sup>1</sup> reconstruction and improvement is covered by Part 14 of the Act. The principal purpose of this part of the Act is to empower the MLC 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.

Section 288 of the Act sets out matters the MLC must consider for partition<sup>2</sup>, amalgamation<sup>3</sup> and aggregation<sup>4</sup> applications. In each case, the opinion of the owners or shareholders must be taken into account.

The MLC must consider the:

- opinions of the owners or shareholders
- effect of the proposal on the interests of owners or shareholders of a Māori incorporation<sup>5</sup>
- best overall use and development of the land.

The MLC shall not make an order affecting the land in question unless it's satisfied:

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

For a Māori incorporation, the MLC must be satisfied:

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

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 Te Ture Whenua Māori Act 1993).

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 Te Ture Whenua Māori Act 1993).

5. An administrative structure similar to a company for managing Māori land vested in it by the Māori Land Court.

### Considerations 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 landowners enough notice of any meeting or MLC sitting. The MLC will advise the applicant what notice is necessary. Generally, the applicant should write to as many landowners as possible, inviting them to a meeting to consider the proposal, at least 21 days before the meeting.

If landowners can't attend the meeting, they can write to the MLC Registrar with their views on the proposal. The MLC 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's enough support for the application, the MLC must consider the number of landowners in favour of it 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 other landowners and create a separate title. Partitions can also be used to separate interests in two or more neighbouring blocks and combine them into one title.

The MLC will only make a partition order when satisfied a 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 their 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

Full partition requires the consent of the district council under the Resource Management Act 1991 (RMA). If consent is given, the council may require a reserve contribution<sup>6</sup>, 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 towards recreational facilities.

## HAPŪ PARTITION

Hapū<sup>7</sup> partition can only occur where all owners involved in the partition belong to the same hapū. Consent for hapū partition isn't required from the district council, so a reserve contribution may not be necessary and the process of partitioning costs less. However, if any new titles are to be built on, building consent is still required from council. It's advisable to find out from council at the beginning of the partition process if this consent is likely to be granted.

When a hapū partition is created, the new titles are noted of that designation. If, at a later date, the hapū partition is upgraded to a full partition, council's consent will be needed.

If ownership of any of the land is sold or transferred outside of the hapū, the MLC can require a portion of the land be set apart as a Māori reservation<sup>8</sup> for the common use and benefit of the people of Aotearoa. 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 group of owners may benefit by combining their interests, held in two neighbouring blocks, into one block. For 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 MLC 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 MLC may apportion<sup>9</sup> or adjust the rights, obligations or liabilities arising from a lease, mortgage or other encumbrance<sup>10</sup> between the partitioned blocks. For example, an owner may partition a house site from a block already leased. The MLC would apportion the lease to the residue block<sup>11</sup> for all 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 altered. The MLC makes an order, which can be registered with Toitū Te Whenua – Land Information New Zealand (LINZ).

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

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

8. Before 6 February 2021, Māori reservations were established by notice in the New Zealand Gazette. Since, the Court has had authority to create, modify and cancel Māori reservations by court order.

9. Assignment of rights and obligations, or to divide up and share out.

10. (Impediment) Like for example-mortgage, lease, caveat, easement or other charges.

11. Land that remains after an area(s) has been partitioned out from it.

## DWELLING SITES FOR MĀORI

Under section 296 of the Act, the MLC can partition the land to provide an owner with a dwelling site. This provision can be used to vest<sup>12</sup> the dwelling site in a married couple, or civil union or de facto partner, as joint tenants<sup>13</sup> or tenants in common<sup>14</sup> in equal shares. If, after five years, the land hasn't been used as a dwelling site, the MLC may make an order cancelling the dwelling site. It can also order that:

- the land reverts to being held under the former title as if the order hadn't been made, or
- the land be vested in any other person it considers to be justly entitled to it.

## SHAREHOLDING

A partition is normally based on valuation, not on 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 aren't 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 decide to leave some shares in the residue block with the other owners. This also ensures the partitioner and their descendants don't 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 the shareholding, partitioned area and valuations are fair. The MLC must ensure a fair deal to all parties.

## VALUATION

The following information is required to make sure a fair value of the shareholding can be calculated:

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

## LAND ADJOINING A STATE HIGHWAY

If the land adjoins a state highway, in order to maintain safety, Waka Kotahi – New Zealand Transport Agency must approve the new access to the block. A surveyor can advise on this.

## LAND ADJOINING A LOCAL COUNCIL ROAD

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

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

13. 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.

14. 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 Māori Land Court.

## BUILDING

If you intend to build on the block, you will need to get a building permit from the district council. Fines of up to \$150,000 can be incurred for not having a building permit. The permit covers aspects such as:

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

## LEASES

If the block is leased, the lessee must give their consent before a partition order can be made. The MLC will make an order apportioning the lease to the balance of the block. If it's 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 to explain how partition will provide for better use of the land. If the requirements of the Act have been met and the MLC 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. The survey must be completed to obtain a full certificate of title.

## REGISTRATION

The MLC will register all partition orders with LINZ.

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## Applying for partition

### PROCESS – NOTES FOR APPLICANTS

#### 1. Consult the district council

- Full partition: Check your proposal meets the requirements of the RMA and whether you need a building permit.
- Hapū partition: Check if you need a building permit. You'll need to consider aspects such as access and waste disposal.

#### 2. Arrange a landowners' meeting

Meet with landowners to consider the proposal and get their consent. You must get written consent from any landowners who can't attend the meeting. The meeting and its purpose must be properly advertised.

#### 3. Consult the lessee(s), if any

You must get written consent of your proposal from the lessee(s).

#### 4. Consult a surveyor

Get cost estimates to survey the land.

#### 5. Fulfil the requirements of the RMA

Complete the actions required under the RMA. For full partition, this includes the preparation of a scheme plan and report by a surveyor.

#### 6. Consult a valuer

Get 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've met these requirements, decide whether it's possible to proceed with your application.

#### 8. Consult the MLC

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

#### 9. Prepare your application

Before you file your application, make sure it meets the requirements of the MLC, the Act and the Māori Land Court Rules 2011. Make sure it has:

- all 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 MLC 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 MLC office in the district where the land is located. See the last page of this factsheet for address details.

#### 11. The MLC will contact you

The MLC requires you to send notice of the application to the landowners, occupiers and trustees.<sup>15</sup> The MLC 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 MLC hearing

Attend the hearing to give evidence about your application.

#### 13. The MLC will give or withhold preliminary approval

If you receive preliminary approval for your application, 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 RMA
- obtain a valuation of the proposed partition and the balance of the block.

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<sup>15</sup> A person bound to deal with property on behalf of the owners or beneficiaries. The trustee becomes the legal owner when the order appointing them as trustee for the land is registered against the title. The beneficiaries are called the beneficial owners.

#### 14. A further MLC 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 MLC hearing.

#### 15. The MLC will approve, adjourn or dismiss the application

##### APPLICATION APPROVED, PARTITION ORDER MADE

After the MLC has made the partition order, it 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 MLC may adjourn<sup>16</sup> 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 isn't successful, the MLC will dismiss the application.

#### 16. Title issued

The MLC will arrange for the partition order to be registered by LINZ and a title will be issued.

## 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 land<sup>17</sup> and Māori land<sup>18</sup>. 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.

### LEASES AND MORTGAGES

An amalgamation order can't be made without the consent of people such as the lessee or mortgagee unless the MLC 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 MLC has the power under section 298(5)

of the Act to cancel any existing amalgamation order. The procedure for a partition application must 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 income<sup>19</sup> 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<sup>20</sup> 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 MLC.

### CONSENT

#### LANDOWNERS

Landowners involved must give their consent to the easement. An easement order can be registered by the court free of charge with LINZ.

#### TRUSTEES

Where land is vested in trustees and the trust order<sup>21</sup> allows, trustees may negotiate the terms of an easement with the interested parties. There may be no need for a landowners' meeting but the MLC 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 shareholders but the MLC is still required to issue an order. An easement may be made subject to an annual rental or a one-off payment.

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

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

18. Land whose beneficial ownership the Māori Land Court has determined by freehold order (that is, the Court has created a title for the land and determined the beneficial owners to that land). Freehold titles are often divided by partition order. The land retains the status of Māori land. The status of the land will continue to be Māori land unless and until the Māori Land Court makes an order changing the status of the land.

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

20. The right to cross or use someone else's land for a specified purpose, such as water, electricity, roadway.

21. 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.

## 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 Waka Kotahi. 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 Waka Kotahi 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 owners of the blocks and the people they invite onto the land; it's not a public road. If the need arises, owners can apply to the MLC to have the land declared a public road. Owners will need district council consent so the road can become a public road and be maintained by the council.

## UNUSED ROADWAYS

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

## UNUSED PUBLIC ROADS

Where a road is no longer required, the authority in charge can apply to the MLC to have the road closed and either included in the adjoining title or revested in those owners who owned the land at the time it was taken for a road.

## Occupation orders

An occupation order issued by the MLC 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 MLC 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. Permission from Waka Kotahi may also be required if access to the house or building site is onto a state highway.

## CONSIDERATIONS

The MLC 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 MLC 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 MLC specifies the date that the occupation order takes effect, the area affected, any consideration payable, and the terms of such payment. The MLC 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 anyone who may succeed to Māori land (providing they are among the preferred classes of alienees<sup>22</sup>).

## 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 LINZ 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.

22. Section 4 of Te Ture Whenua Māori Act 1993 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.

## 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 MLC Registrar for noting.

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## More information

To find out more about title improvement, **go online to** [maorilandcourt.govt.nz](http://maorilandcourt.govt.nz)

Or you can visit your local MLC office or attend an offsite clinic. We have nine offices across Aotearoa New Zealand, which are open between 10am and 4pm on normal weekdays. You don't need to make an appointment. Contact details follow or **go online to** [maorilandcourt.govt.nz/contact-us](http://maorilandcourt.govt.nz/contact-us)

## Contact the Māori Land Court

The DX number is the postal address.

<b>Taitokerau District</b>	Level 3, Manaia House Rathbone Street, Whangārei 0110 DX Box AX10086, Whangārei Phone 09 983 9940 Email <a href="mailto:mlctaitokerau@justice.govt.nz">mlctaitokerau@justice.govt.nz</a>
<b>Auckland Information Office</b>	Ground floor, Building B 65B Main Highway, Ellerslie Auckland 1051 DX Box EX10912, Auckland Phone 09 279 5850 Email <a href="mailto:mlctamakimakaurau@justice.govt.nz">mlctamakimakaurau@justice.govt.nz</a>
<b>Waikato-Maniapoto District</b>	Level 2, BNZ Centre 354 Victoria Street, Hamilton 3204 DX Box GX10101, Hamilton Phone 07 957 7880 Email <a href="mailto:mlcwaikato@justice.govt.nz">mlcwaikato@justice.govt.nz</a>
<b>Wairariki District</b>	Hauora House 1143 Haupapa Street, Rotorua 3204 DX Box JX10529, Rotorua Phone 07 921 7402 Email <a href="mailto:mlcwaiariki@justice.govt.nz">mlcwaiariki@justice.govt.nz</a>
<b>Aotea District</b>	Ingestre House 74 Ingestre Street, Whanganui 4500 DX Box PX10207, Whanganui Phone 06 349 0770 Email <a href="mailto:mlcaotea@justice.govt.nz">mlcaotea@justice.govt.nz</a>
<b>Tākitimu District</b>	Hastings District Court, 106 Eastbourne Street West, Hastings 4122 DX Box MX10024, Hastings Phone 06 974 7630 Email <a href="mailto:mlctakitimu@justice.govt.nz">mlctakitimu@justice.govt.nz</a>
<b>Tairāwhiti District</b>	Ngā Wai e Rua Building Cnr Reads Quay and Lowe Street Gisborne 4010 DX Box PX10106, Gisborne Phone 06 869 0370 Email <a href="mailto:mlctairawhiti@justice.govt.nz">mlctairawhiti@justice.govt.nz</a>
<b>Te Waipounamu District</b>	Level 1, CJESP 20 Lichfield Street, Christchurch 8011 DX Box WX11124, Christchurch Phone 03 962 4900 Email <a href="mailto:mlctewaipounamu@justice.govt.nz">mlctewaipounamu@justice.govt.nz</a>
<b>Office of the Chief Registrar/ Specialist Applications Team</b>	Level 7, Fujitsu Tower 141 The Terrace, Wellington 6011 DX Box SX11203, Wellington Phone 04 914 3102 Email <a href="mailto:mlc.chief-registrars.office@justice.govt.nz">mlc.chief-registrars.office@justice.govt.nz</a>