



MAORI LAND PARTITIONS

What is the Maori Land Court?

*“...it is the intention of Parliament that **powers, duties, and discretions conferred by this Act shall be exercised, as far as possible. in a manner that facilitates and promotes the retention, use, development and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants.***

Parliament’s directive to the Maori Land Court, as contained in section 2(2) of Te Ture Whenua Maori Act 1993

The Maori Land Court is set up under the Te Ture Whenua Maori Act 1993 and has jurisdiction to hear matters relating to Maori land. The Maori Land Court has a Chief Judge and a Deputy Chief Judge as well as resident Judges in most Maori Land Court Districts. These Judges are appointed by the Governor-General.

The Judges of the Maori Land Court are also Judges of the Maori Appellate Court. The Maori Appellate Court is a court of record originally set up under the Maori Land Court Act 1894, and now set up under Te Ture Whenua Maori Act 1993. It hears appeals from the Maori Land Court. Three or more Judges have power to act as the Maori Appellate Court.

The Maori Land Court and the Maori Appellate Court may state a case requesting the opinion of the High Court on any point of law arising in proceedings before it. The decision of the High Court on that point is subject to an appeal to the Court of Appeal. The decision of the High Court or the Court of Appeal, as the case may be, is binding on the Maori Land Court and the Maori Appellate Court.

What does the Maori Land Court do?

The jurisdiction of the Maori Land Court is to determine, among other things, between Maori:

- ❑ Claims of ownership
- ❑ Claims of trespass
- ❑ Relative interests of the owners in common of Maori freehold land
- ❑ Whether a person is Maori, a descendant of a Maori or a member of any class of alienee
- ❑ The status of the land
- ❑ Dealing with **Occupancy Orders.**



It is also responsible for the order of Maori land Partitions and to create easements over this land. Amongst all these other things, the Maori Land Courts hold the records of all owners of Maori Land including the size of their shares in that land.

Occupancy Orders

It is possible to have a right to occupy an area of Maori Land, whether it be Maori Land or General Land owned by Maori, without a partition or subdivision being carried out. This is known as an Occupancy Order and it bestows the right to occupy on one of the beneficial owners for the lifetime of that person. The Occupancy Order is deemed not to be a partition, development, or subdivision and so does not require a Resource Consent from the Local Authority. However, any structures erected on the land will almost certainly require a Building Consent from the Local Authority and, as with Hapu Partitions, the Maori Land Court will likely pass the application to the Local Authority for comment.

Maori Land Partitions

A Maori Land Partition is the term used when Maori Land is subdivided. As Maori Land operates under a different tenure system to other land in New Zealand there is a different procedure to that for General land.

Maori Land is defined as Maori customary land and Maori freehold land in the *Te Ture Whenua Maori (Maori Land) Act 1993*. Most partitions occur over Maori freehold land as there is little customary land remaining. All partitions of this land must be approved and subsequently ordered by the **Maori Land Court**.

Types of Partition

There are generally two types of partition. One is a Hapu partition, where the parcels of land created will be held by members of the same Hapu or family. The other is a Full Partition, where the parcels may not be held by members of the same Hapu. In either case an order from the Maori Land Court is required. With a Hapu partition, however, Territorial Authority approval is not required as it is not defined as a subdivision.

Partitions are not always defined on the ground and are sometimes only defined as an area on a diagram. This would generally be the result of a Partition Order made by the Maori Land Court when the Court considers that the costs of the partition will far outweigh the benefits of a survey. This is especially the case where there is no existing Certificate of Title.

Although this can sometimes happen it is generally preferable to have a partition defined on the ground by a Licensed Surveyor than simply lines on plans or sketches. Without a survey and a plan deposited under the Land Transfer system there can be no Certificate of Title issued which may introduce difficulties at a later date, especially with finance. There is significant effort being made to ensure all partitions are surveyed.



Partition Procedure

Before the Maori Land Court can make a Partition order it must receive a formal application for that partition. Attached to that application must be:

- A preliminary plan approved by the Territorial Authority under Pt.X Resource Management Act 1991 (s.301) (unless the owners of the resulting partition are members of the same hapu in which case no resource consent is required).
- A land valuation for that area concerned
- A list of current owners
- Consents from the current owners

On application to the Maori Land Court they consider the proposal and research the effects that this proposal will have. They confirm that the list of owners is correct and up to date and that all the appropriate consents have been obtained. Even in the case of a Hapu partition where the Local Authority does not need to give a Resource Consent, it is likely that the proposal will be given by the Court to the Local Authority for comment, especially if utilities and services are to be used.

The Surveyor's role

The Surveyor should be involved from the start of any partition process. They are generally the best equipped to provide a consultants overview of the procedure. The Surveyor can tell you if a proposal meets the requirements of the Resource Management Act as well as inform you of any likely conditions that will likely be imposed on the consent. A Surveyor can prepare the application for Partition for the Maori Land Court and also produce a preliminary plan for approval of the Territorial Authority. In order to create these plans they may need to carry out a survey of the area concerned so that a complete picture is presented on application.

They have the knowledge to cover all statutory aspects of the procedure. As well as this they will also almost certainly be required to survey the partition after the order has been made. All these things mean that the Surveyor is a good person to speak to regarding any partition.

Useful References

Title Improvement - a guide - Te Ture Whenua Maori Act 1993

Issued by the Maori Land Court (Te Kooti Whenua Maori)

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CSNZ | THE CONSULTING
SURVEYORS
OF NEW ZEALAND
A DIVISION OF THE NEW ZEALAND INSTITUTE OF SURVEYORS

1180 Amohia Street | PO Box 396, ROTORUA, New Zealand | Ph: +64 7 347 94
33 Albert Street | PO Box 379, WHITIANGA, New Zealand | Ph: +64 7 866 57