

Place: Whangarei
 Present: D J Ambler, Judge
 Date: 3 September 2010

Panui No: Chambers Application No: A20100008382

Subject: Kopuakawau – Survey Requisition
 Legislation: Section 332, Te Ture Whenua Māori Act 1993

Details of the applicant are as follows:

Applicant	Address
Deputy Registrar	PO Box 1764, Whangarei

F Beckham, for Deputy Registrar:

Legal Description/Block:	Kopuakawau
No of Owners:	18
Area:	0.2756 hectares
Location:	Block XI Russell Survey District
Land Registration District:	North Auckland
District Council:	Far North District Council
Memorial Entries:	Land determined Maori Freehold 50 Kaikohe 180 – 181; 17 June 2009

This application was brought about by the Maori freehold project. Orders were made to consolidate the ownership and determine the status of the land at reference 50 Kaikohe 180 – 181 on 17 June 2009. As a result the MFLR project team tried to register the orders and plan which was rejected by LINZ, as they say it has been taken up with OCL 135 and DP 102838. A summary of the plan position and copies of relevant documents is as follows:

1. Kopuakawau is surveyed on ML 9717;
2. ML 9717 is shown on the Spatial Map Print down in the Waikare Blocks but it should be shown up with the Te Turuki Blocks in the top of this map;
3. This spatial map shows where Kopuakawau should be;
4. DP 102868 also shows where Kopuakawau should be;
5. DP 102868 is made up of ML 13767, DP 42853 and OLC 135 but ML 9717 is not mentioned.

As Kopuakawau is defined on ML 9717 it is not visible in Landonline and it appears to be removed from Landonline by plans OCL 135 and DP 102838 for no apparent reason. Therefore a detailed investigation needs to be undertaken to get solutions.

This report has now been completed by Kurt Bowen a Registered Professional Surveyor of Paterson Pitts Partners Limited and is attached with the file.

With this information, I now respectfully ask the Court to dismiss the survey requisition application, as the block does not exist with Land Information New Zealand.

Court:

This is an application for a survey requisition. The Case Manager has requested the dismissal of the application on the grounds that Kopuakawau no longer exists.

The background to title to Kopuakawau is set out in the report of 7 July 2010 from Patterson Pitts, surveyors of Dunedin.

In summary, OLC 135 (1887) depicted a Native Reserve known as Te Turuki and an area known as "Kopua Kawau" as being reserved from OLC 135. On 22 August 1904 a title for Kopuakawau was issued under the Māori Land Administration Act 1900. In 1915 ML 9717 defined Kopuakawau as comprising 2 roods 29 perches and lying to the south east of Te Turuki and being separate from OLC 135. In 1983 DP102868 was produce by way of subdivision of Part OLC 135 and Part Te Turuki block. DP102868 mistakenly included the area of Kopuakawau within Lots 1-4 and 9 on DP 102868. Lot 9 is vested in the Far North District Council as Esplanade Reserve. Land transfer titles have issued for Lots 1-4. DP 102868 was not completed through this Court's processes and there is no order subsequent to the 1904 title order cancelling title to Kopuakawau.

Accordingly, the position today is that the Court maintains a title record for the Kopuakawau block but the effect of the issue of LINZ titles for Lots 1-4 and 9 on DP102868 is that title to Kopuakawau has apparently been mistakenly overridden and thereby effectively cancelled.

In my view, it would be inappropriate to dismiss the application that is currently before the Court. The Court's duties in relation to the owners of Māori freehold land are clearly spelt out in the Preamble and ss 2 and 17 of the Act. Here, through processes outside this Court title to Kopuakawau appears to have been compromised. I consider that, at the very least, the application should remain before the Court so that the Court can provide a forum to assist resolution of the current situation (to the extent that that is possible).

Accordingly, I propose to convene a Judicial Conference pursuant to s 67 of the Act to consider what should happen. Various parties have an interest. In my view, the persons that should be invited to the Judicial Conference are:

1. The Registrar or her agent;
2. The Registrar-General of Land or his agent;
3. The Surveyor-General of Land or his agent;
4. The owners of Kopuakawau;
5. The owners of Lots 1-4 DP 102868;
6. The Far North District Council as of Lot 9 DP102868;
7. Mr Sonny George as representative of the Waikare Marae which is situated on part of Te Turuki.



Accordingly, I direct that the application be set down for a s 67 Judicial Conference at Whangarei at the next sitting of the Court (2 hours).

The Case Manager is to send notice of the Judicial Conference, a copy of this minute and a full copy of the Patterson Pitts report of 7 July 2010 to all of the above parties.

I direct the Registrar-General of Land, the Surveyor-General of Land and the Far North District Council to file submissions not less than 7 days before the Judicial Conference setting out their preliminary views on the issues raised by the application and the Patterson Pitts report.

Copy of minute to applicant and interested parties.



D J Ambler
JUDGE