

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU
In the Māori Land Court of New Zealand
Taitokerau District

AP-20250000015841

WEHENGĀ <i>Under</i>	Sections 18(1)(h) and 18(1)(i), Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	1 Beatrix Street, Avondale, Auckland
I WAENGĀ I A <i>Between</i>	JONATHAN ALBERT Te kaitono <i>Applicant</i>
ME <i>And</i>	KAINGA ORA HOMES AND COMMUNITIES Ngā kaiurupare <i>Respondents</i>

Kōtitanga: On the papers
Hearing

Whakataunga: 2 April 2026
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

Hei tīmatanga kōrero*Introduction*

[1] This is the second of two applications filed by Jonathan Albert¹ in relation to the property at 1 Beatrix Street, Avondale, Auckland (“the land”).

[2] On the 25th of February 2026 Judge Armstrong declined an application for an urgent injunction filed by Jonathan pertaining to the land.² In this application Jonathan now seeks a status determination of the land. His application seeks a finding that the land is taonga tuku iho deemed to be Crown land, but is Māori customary land and is recoverable in accordance with s 328 of Te Ture Whenua Māori Act 1993.

[3] Further he seeks a declaration that the Court find that the land is held in a fiduciary trusteeship based on “s 8H6 of the Treaty of Waitangi Act 1975” and a determination that the applicant is entitled to seek recovery by way of occupation license subject to tikanga Maori.

Kōrero whānui*Background*

[4] Jonathan’s mother Ellen Albert previously held a residential tenancy at 1 Beatrix Street, Avondale in Auckland. That tenancy had been granted by Kainga Ora Homes and Communities (“Kainga Ora”).

[5] Ellen passed away on the 7 October 2025 and Jonathan and Ellen’s family have remained in the property. Kainga Ora has sought to terminate the tenancy and applied for vacant possession of the house and land which Jonathan has refused and opposed. Kainga Ora issued proceedings in the Tenancy Tribunal seeking vacant possession of the property.

[6] The Tenancy Tribunal terminated the tenancy and granted vacant possession of the property to Kainga Ora.

¹ For ease of reference full names are used at the outset, with first names used throughout the remainder of the decision.

² *Albert v Kainga Ora Homes and Communities – DP17384 1 Beatrix Street, Avondale, Auckland* (2026) 308 Taitokerau MB 221 (308 TTK 221).

[7] Jonathan sought an interim injunction from the Māori Land Court to stop the Tenancy Tribunal order, which Judge Armstrong dismissed on the grounds that the application was not tenable in fact and law.

[8] This decision addresses the outstanding applications.

Tūnga o te whenua

Status of the land

[9] Jonathan seeks a determination that the land is Māori customary land. The certificate of title identifies the registered proprietor of the land as Housing New Zealand Limited.³

[10] The title also indicates that the property is not Māori freehold land. Title to the land has been issued pursuant to the Land Transfer Act 2017.

[11] The purpose of the Land Transfer Act 2017 is set out at s 3 which says:

Purpose

The purpose of this Act is to replace the Land Transfer Act 1952 with the modern Act that –

- (a) Continues and maintains the current system of land title in New Zealand; and
- (b) Retains the fundamental principles of that system which are to –
 - (i) Provide security of ownership of estates and interest in land;
 - (ii) Facilitate the transfer of and dealings with estates and interests in land;
 - (iii) Provide compensation for loss arising from the operation of the systems;
 - (iv) Provide a register of land that describes and records the ownership of estates and interest in land and;
- (c) Reflects the fact that land transfer register is kept and operated electronically and that most dealings in land are carried out electronically; and
- (d) By all of the above means, maintains the integrity of title to estates and interests in land.

[12] Section 51 says:

51 Title by registration

- (1) On registration under this Act of a person as the owner of an estate or interest in land, the person obtains a title to the estate or interest that cannot be set aside.
- (2) The title of the registered owner is free from estates and interests in the land that—
 - (a) are not registered or noted on the register; or
 - (b) are not capable of being registered or noted on the register.

³ Certificate of title 55722, 26 June 2003 – Lot 4 deposited plan 314081.

- (3) Despite subsections (1) and (2), the title of the person registered as owner of the estate or interest is subject to—
 - (a) the exceptions and limitations in sections 52 to 56, subparts 1 and 3 of Part 4, and section 204; and
 - (b) any enactment other than this Act that overrides or limits the title.
- (4) Subsections (1) and (2) apply whether or not the registered owner acquired the estate or interest—
 - (a) for valuable consideration; or
 - (b) from a fictitious person.

Hītori taitara

Title history

[13] The historic title records that the land now registered under title 55722 first became Crown-owned land on the 6th of August 1942 for the purposes of the Housing Act 1919.⁴

[14] There were updates to the certificate of title in 1957 where the land was vested in Her Majesty the Queen as an estate in fee simple for state housing purposes under the Housing Act 1955.⁵

[15] In 1961 the land continued to be recorded as being registered in favour of Her Majesty the Queen again in fee simple for state housing purposes under the Housing Act 1955.⁶

[16] The last mention of the land being owned specifically by the Crown before coming under the ownership of Housing New Zealand was in 1981⁷ when the property was transferred to Housing New Zealand before being subdivided and then comprised in CT 55722 on the 26th of June 2003 with the registered owner being Housing New Zealand Limited with a fee simple estate of 654m² more or less.

[17] At no time within that sequence of events is there any record that the land was anything other than either Crown land or General land owned by a Crown entity. There is no suggestion that the land has been held in a trustee capacity or that there were any fiduciary obligations in relation to any third parties.

⁴ Certificate of title NA792/84, 6 August 1942 - Lot 34 deposited plan 10006.

⁵ Certificate of title NA1561/35, 12 August 1957 – Lot 34 deposited plan 38372.

⁶ Certificate of title NA1962/90, 16 August 1961 – Lot 34 deposited plan 38372.

⁷ Certificate of title NA49C/460, 7 July 1981 – Lot 34 deposited plan 38372.

[18] Importantly there is no recorded interests in favour of Ellen Albert and therefore there can be no interest that could be vested in any kaitiaki trust that had been incorporated for Ellen Albert or any of her descendants.

Te mana ā-ture
Jurisdiction

[19] The Court of Appeal has recently issued the decision *Mercury NZ Limited v Māori Land Court* which is directly applicable to the issues Jonathan raises in his application.⁸

[20] The court in *Mercury* found:⁹

Indefeasibility of registered title is a central tenet of the Torrens system as implemented in, and confirmed by, the LTA 1952 and the LTA 2017. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register; no adverse claim may be brought against the registered proprietor.²⁵⁸ It is the LTA 1952 that is relevant to the effect of the titles at the time they were registered here. But there is no material difference between the LTA 1952 and the LTA 2017 in their emphasis on the centrality of indefeasibility of registered title.

[21] It went on to say:¹⁰

All the case law points in the same direction, that customary title or rights are not an exception to the indefeasibility of registered title.

[22] It then held:¹¹

To the extent that Māori customary title or interests are inconsistent with the nature and incidents of fee simple ownership, they have plainly and clearly been extinguished by necessary implication of the LTA regime, even if the land did not pass through the Act's required processes.

[23] On that basis the Court went on to say "registered title cannot, in law, have the status of Māori customary land under the Act".¹² Further that:¹³

⁸ *Mercury NZ Limited v Māori Land Court* [2026] NZCA 91.

⁹ *Mercury NZ Limited*, above n 2 at [166](a).

¹⁰ *Mercury NZ Limited*, above n 2 at [166](e); see also *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 (CA).; *Minister of Conservation v Māori Land Court* [2008] NZCA 564, [2009] 3 NZLR 465; *Te Roroa Whatu Ora Custodian Ltd v Kereopa* [2012] NZHC 1052 and *Gregory v Thames Coromandel District Council* [2017] NZHC 2323.

¹¹ *Mercury NZ Limited*, above n 2 at [167].

¹² *Mercury NZ Limited*, above n 2 at [172].

¹³ *Mercury NZ Limited*, above n 2 at [173].

...we consider that the conclusion we have come to about the primacy of the LTA regime over the customary title requires that registered title cannot, in law, have the status of Māori customary land under the Act.

Kōrerorero

Discussion

[24] There is nothing that has been filed which suggests that this land maintains the status of Māori customary land. Housing New Zealand are the registered proprietor and as such have an indefeasible title.

[25] There has been nothing filed which suggests that the exclusion in s 51(3) of the Land Transfer Act 2017 applies.

[26] It is also clear that the land is not general land held by Māori and nothing has been filed by Jonathan that establishes that the land is held by the Crown in a fiduciary capacity for the benefit of Jonathan or his family, therefore s 328 of Te Ture Whenua Māori Act 1993 does not apply.

[27] Similarly, s 8H6 of the Treaty of Waitangi Act 1975 does not exist and therefore this component of the application fails.

[28] Therefore, I find there are no grounds in fact or law for this application to succeed and this application should be dismissed.

Kupu whakatau

Decision

[29] This application is dismissed

I whakapuaki i te 11:00am i Whangārei i te rā Tuesday 7th o April i te tau 2026.
Pronounced at 11:00am in Whangārei, Tuesday 7 April 2026.

T K T A R Williams
JUDGE