

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI**

*In the Māori Land Court of New Zealand
Waiariki District*

AP-20250000006168

WĀHANGA
Under

Sections 316, 318 and 322, Te Ture Whenua Māori
Act 1993

MŌ TE TAKE
In the matter of

Lot 1 Deposited Plan South Auckland 18658

I WAENGA I A
Between

JOHN McNALLY FOR GULATI ENTERPRISES
LIMITED
Te kaitono
Applicant

Nohoanga:
Hearing

31 July 2025
(Heard at Rotorua)

Kanohi kitea:
Appearances

Martin Williams
Tim Conder
Tāni Wharewera

Whakataunga:
Judgment date

21 August 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARĀ
Judgment of Judge T M Wara

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John Koning, Commerce Lane Chambers, 253 Te Okuroa Drive, Papamoa 3188; john@clc.nz

Hei tīmatanga kōrero*Introduction*

[1] Gulati Enterprises Limited (“GEL”) has applied to the Court to vary the boundaries of a roadway laid out over Lot 3C2 Parish of Rangitaiki for the purposes of a development.

[2] This application is unique as GEL is not Māori, and the land it seeks to develop is General land adjacent to State Highway 30 on the outskirts of Whakatāne. GEL is an owner of Pt 28B 3C2 Parish of Rangitaiki Roadway (“the Roadway”), a Māori roadway that provides access to several lots, including Lot 1 DP 452650, owned by GEL.

[3] As part of the development, GEL seeks the following variations:

- a. Varying the Roadway to include land from Lot 1 DP 452650.
- b. Permitting the Applicant to resurface the Roadway.

[4] In the alternative, GEL seeks the disestablishment and re-establishment of the Roadway to include land from Lot 1 DP 452650.

[5] The application is opposed by two parties who have interests in the Roadway, Walter (“Tāni”) Wharewera Jr and Ian and Adrienne Lysaght. Their position is that the Court does not have jurisdiction to vary the roadway order under s 322 of Te Ture Whenua Māori Act 1993 (the Act) or grant a new order under s 316(2).

[6] The issue is whether the Court has jurisdiction to hear the application for variation of the Roadway. This is an interim decision.

He aha tēnei kēhi?*What is this case about?*

[7] Prior to 17 May 1950, Walter Wharewera was the sole owner of Lot 28B Parish of Rangitaiki. On 17 May 1950, the land was partitioned into four lots by an Order of this Court, which included two residential sections, a roadway, and the balance. Two small sections, Lots 3C2A and 3C2B, were retained by the Wharewera whānau as house lots, and a roadway was laid out over Lot 3C2.¹

¹ 29 Whakatane MB 77 (29 WHK 77).

[8] In 1975, the balance of the land (being Lot 3C2C) was transferred by Walter Wharewera to Ian and Adrienne Lysaght. The Lysaghts then subdivided the land and the status of that land changed to General land.²

[9] The Lysaghts' interest in the Roadway was challenged by virtue of an application filed by Walter Wharewera, which sought to cancel the Roadway. In the 2005 decision of *Wharewera – Rangitaiki 28B 3C2*,³ Judge Savage considered that the test as to ownership is whether one can pass directly from the road on to the land in question – finding that the Lysaghts are owners in the roadway.

[10] On 2 August 2019, the Lysaghts sold Lot 1 DP 452650 to GEL. This land is General land and zoned for industrial use.

[11] GEL seeks to develop a new service station at the site and, in 2020, obtained a resource consent for this development. This development has been the source of much litigation – in this Court, the High Court and the Court of Appeal – causing GEL to reapply for a resource consent. A new resource consent was granted on 2 September 2024.

[12] In accordance with the resource consent, before any construction activities related to the service station can commence, GEL must undertake certain roading upgrades, including upgrades for the roadway. Ultimately, GEL requires the Roadway to be expanded, complete improvements and is responsible for ongoing maintenance.

[13] In order to achieve the required roading upgrades, GEL requires that the boundary of the Roadway be amended to include some of its land. In the alternative, GEL seeks to disestablish and re-establish the Roadway to include land from Lot 1 DP 452650.

Ngā take hātepe

Procedural matters

[14] A teleconference was held on 18 July 2025, where the jurisdictional issues were raised. A preliminary hearing as to jurisdiction was fixtured as a priority matter on 31 July 2025, and timetabling directions were issued. All parties filed submissions in advance of the hearing.

² 107 Whakatane MB 155–162 (107 WHK 155-162).

³ *Wharewera – Rangitaiki 28B 3C2* (2005) 107 Whakatane MB 156 (107 WHK MB 156).

[15] Sadly, just prior to the hearing, counsel for Tāni Wharewera, Mr Koning, informed the Court that his mother passed away. This was communicated to the case manager by way of email on 28 July 2025, where Mr Koning advised that he would abide by any further directions of the Court.

[16] Unfortunately, I was not aware of the passing of Mr Koning's mother until the day before the hearing. No adjournment was sought, and the hearing proceeded as scheduled.

[17] At the hearing the matter was discussed, and the other parties agreed that it was appropriate under the circumstances for Mr Koning to have an opportunity to file written replies within three days of receiving the hearing transcript. Mr Koning exercised this opportunity to reply, filing on 12 August 2025.

[18] Mr Koning seeks that the hearing be reconvened for two hours by way of Zoom, and the request is supported by Mr Williams, counsel for the first respondent. Counsel for the applicants has not expressed a view.

[19] Taking all matters into account, I will not recall this application for further hearing. While I have some sympathy for Mr Koning, he had not sought an adjournment, and has been given an opportunity to present his client's case. I have taken note of his submissions – both those filed prior to hearing and the replies – and I am satisfied that Mr Koning has been given a fair opportunity to put his client's case forward. Therefore, I decline the request for further hearing.

He whaimana a te Kooti ki te whakarerekē i te rori?

Does the Court have jurisdiction to vary the existing roadway?

[20] This Court has exclusive jurisdiction in relation to roadways under Part 14 of the Act.⁴ Part 14 pertains to title reconstruction and improvement of land, primarily relating to Māori land or General land owned by Māori.⁵ The purpose of Part 14 is to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land.⁶

⁴ Te Ture Whenua Māori Act 1993, s 287.

⁵ Section 285.

⁶ Section 286.

[21] As confirmed by the Māori Appellate Court in *Ngunguru Coastal Investments Limited v Climo – Horahora Whare 1B4A2D1 and others*,⁷ the exercise of jurisdiction under Part 14 is discretionary. Discretion should be exercised in accordance with the plain meaning of ss 318 and 322 of the Act and having regard to the principles of the Act outlined in the Preamble and ss 2 and 17 of the Act.

[22] While the primary focus of Part 14 is title improvement to land owned by Māori, there are exceptions in relation to easements and roadways where jurisdiction of this Court extends to General land. Interestingly, this is framed differently in ss 315 to 326 as simply General land;⁸ land other than land to which this Part applies;⁹ other land;¹⁰ or land that has ceased to be land to which this Part of this Act applies.¹¹

[23] As to whether the Court has jurisdiction to vary the 1950 roadway order, s 322 of the Act applies:

322 Court may cancel roadways

- (1) Where any roadway that has been laid off by an order of the Court, whether before or after the commencement of this Act, has not been declared to be a road, the Court may, on application, vary or cancel that order in so far as it relates to the roadway.
- (2) Where application for the variation or cancellation of an order under this section is made by any person other than the Chief Surveyor of the district in which is situated the land over which the roadway has been laid off, notice of the variation or cancellation of the order shall be given to the Chief Surveyor by the Registrar.
- (3) The Court may vary or cancel any order under this section notwithstanding that, after the order was made, the land over which the roadway was laid out ceased to be land to which this Part of this Act applies.

[24] Mr Koning submits that the variations proposed by GEL will significantly vary the 1950 order.

⁷ *Ngunguru Coastal Investments Limited v Climo – Horahora Whare 1B4A2D1 and others* [2012] Māori Appellate Court MB 80 (2012 APPEAL 80).

⁸ Sections 315(1) and 316(2).

⁹ Section 316(3).

¹⁰ Section 315(3).

¹¹ Sections 315A(2) and 322(3).

[25] Mr Koning relies on *Ohinemango Lands Trust v Waikawa Lands Trust – Waikawa Pahaoa 1B & 1C 2C 1B (Aggregated)*,¹² submitting that such fundamental changes to the original roadway order fall outside the Courts jurisdiction to vary a roadway. This is supported by Mr Williams, who says that the Court’s powers to vary a roadway cannot be applied to change the original terms of the roadway order in any significant or fundamental way.

[26] I cannot accept this submission for two reasons. First, *Ohinemango Lands Trust v Waikawa Lands Trust* is distinguished on its facts. In *Ohinemango*, the variations sought were to change the original terms as to compensation and usage rights, which were two fundamental issues considered when the roadway order was granted in 1985. Judge Coxhead observed that the variations sought were very much about undoing the original order, to circumvent s 77 of the Act.¹³ Second, as submitted by Mr Conder, this takes the Court beyond the realm of jurisdiction and into the realm of merit, requiring an assessment as to the nature and extent of the variations being sought.

[27] Mr Williams submits that any variation to a roadway is necessarily constrained by s 316 of the Act, as to the Court’s power to lay a roadway. Effectively, Mr Williams submits that such variation is limited by the recipient of the benefit: that a variation can be granted over Māori land for the benefit of General land or over General land for the benefit of Māori land; however, a variation cannot be granted over General land for the benefit of General land. This contention is supported by Mr Koning, who says that the Court only has jurisdiction over General land under s 322(3) if that General land is already subject to a roadway order.

[28] I do not accept that the scope of a variation is constrained in this way. As an owner of the Roadway, GEL has the standing to apply for a variation of the Roadway. The nature and extent of the variations sought requires an assessment of the merits. I am not minded to take an unduly technical approach to jurisdiction when this is not required, particularly where the Act requires this Court to promote practical solutions to problems arising in the use or management of any land, which includes the Roadway.¹⁴

¹² *Ohinemango Lands Trust v Waikawa Lands Trust – Waikawa Pahaoa 1B & 1C 2C 1B (Aggregated)* (2019) 223 Waiariki MB 78 (223 WAR 78).

¹³ At [46].

¹⁴ Te Ture Whenua Māori Act, s 17.

Whakataunga

Decision

[29] I find that I have jurisdiction to hear this application pursuant to s 322 of the Act.

[30] On this basis, there is no need to consider the alternative argument as to whether this Court has the jurisdiction to cancel and then re-establish the existing roadway.

[31] I direct counsel to file a joint memorandum addressing timetabling matters within 28 days.

I whakapuaki i te 3:00pm i Rotorua, rua tekau mā tahi o ngā rā o Ākuhata i te tau 2025.
Pronounced at 3:00pm in Rotorua on Thursday this 21st day of August 2025.

T M Wara

KAIWHAKAWĀ