

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU

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

AP-20230000028596 | A20220003140

WEHENGĀ
Under

Section 328, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Waiteuku 2A4A

I WAENGĀ I A
Between

JULIE TANA
Te kaitono
Applicant

ME
And

DAN HIRA
Te kaiurupare
Respondent

Kōtitanga:
Hearing

23 April 2026, 314 Taitokerau MB 263-290
27 November 2025, 306 Taitokerau MB 115-167
27 March 2026, 290 Taitokerau MB 49-75
(Heard at Whangārei)

Kanohi kitea:
Appearances

J Tana in person
S Davies-Colley for Respondent

Whakataunga:
Judgment date

25 June 2026

TE WHAKATAUNGA A KAIWHAKAWĀ T K T A R WILLIAMS
Judgment of Judge T K T A R Williams

Hei tīmatanga kōrero*Introduction*

[1] This is an application for an occupation order filed by Julie Tana on the Waiteuku 2A4A block. The bulk of the land is administered by the Dan Hira Tana Whānau Trust. The current trustees are Bessie Milton, Dan Tana, Dennis Tana, Gaylene Tana, Janet Pitt, Julie Arnold (Tana) and Sharon Tana.

[2] The applicant, Julie Tana, a trustee, seeks an occupation order for a site of 814m². The site roughly equates to the applicant's shares held in the trust. The respondent, Dan Tana, also a trustee, supports the application for an occupation order but opposes the extent of area that is being sought.

[3] The respondent seeks a reduction of the area that is sought by Julie as well as amendments to two existing occupation orders that have been granted on the whenua in the interests of ensuring that all those who have shares in the land and trust are able to utilise the land and obtain occupation orders as well.

Ngā take*Issues*

[4] The issues for this Court to decide are:

- (a) whether this land needs to be “subdivided” into six or seven sections in order to provide the land sought for an occupation by the applicant as well as provide for the other beneficial shareholders in the land;
- (b) what impact either site layout will have on the existing occupation orders and access to the land; and
- (c) should Julie's application for an occupation order be granted as per the application or in an amended form.

Kōrero whānui*Background*

[5] The land was originally held by Dan Hira Tana (senior). When he passed, his land interests in Waiteuku 2A4A were passed to his seven children in seven individual and equal shares.

[6] In October 2005, the Dan Hira Tana Whanau Trust was constituted. Six of the seven children vested their Waiteuku interests into the Trust. Dennis Tana did not vest his shares in the Trust. Dennis sold his individual share to Dan which Dan continues to hold outside of the Trust. The share previously held by Dennis Tana equates to 819m².

[7] Dan Tana therefore holds 2/7th of the shares in the land, 1/7th of which is in the trust and 1/7th of which is outside of the trust.

[8] Two trustees, Bessie Milton and Janet Pitt, are now deceased.

[9] Two other trustees, Dan and Dennis Tana, agree to the applicant being granted an occupation order but oppose the extent of the area sought by her application. Julie Tana is also a trustee but she is conflicted given the application is for her benefit. We are left with trustees in support and two trustees in opposition to the area sought by way of occupation.

[10] In October 2005, Gaylene applied and was granted an occupation order on Waiteuku for 819m². No specific mention was made in the Trust order about Gaylene's occupation order.

[11] Then in 2011, Sharon applied and was granted an occupation order on Waiteuku for 951m². Specific provision was made in the Trust order for Sharon's occupation order.

[12] It should also be noted that when dealing with the occupation order application for Sharon Tana, Judge Ambler stated the following:¹

On 18 January 2011 I attended a site inspection on the land. In attendance were the applicant, Sharon Tana and her sister, Bessie Milton.

¹ 15 Taitokerau MB 125 (15 TTK 125).

The site issue was easily clarified. Although the survey plan shows the roadway as leading directly to the homestead, the actual course of the roadway lies further to the south. Thus providing the position of the roadway does not change, the granting of the occupation order for the homestead will not affect access to the balance of the land. Should the position of the roadway return to its position as per the survey plan at some time in the future, then the situation of the occupation order will need to be revisited.

As for the occupation order itself, I clarified with those present that because the interests in the land were held by the whānau trust, I needed to grant the occupation order in favour of the whānau trust and amend the trust order for the whānau trust to record the occupation order is held for the exclusive benefit of Sharon Tana. This was understood.

[13] Julie has now applied for an occupation order which, if granted, impacts not only upon the other beneficiaries of the Trust but also on the individual share held by Dan Tana.

[14] Over several years, this application has been the subject of extensive engagement, discussion, meetings and a judicial mediation in June 2024, all of which has been unsuccessful.

[15] In order to assist the Court to try to identify the benefits of either a six-site or seven-site proposal Mr Richard Smales was engaged by the Court as a surveyor to prepare concept plans to assist in resolving the issues raised. Several iterations of a proposed site layout were provided by Mr Smales, which had been commented on by the parties.

Applicant's position

[16] In joint submissions filed with the Court dated 30 January 2026, by Julie Tana, Gaylene Tana and Sharon Tana the submitters indicated that they were opposed to a seven-section layout for the land.

[17] Further that they did not wish to reduce the occupation order that has being granted in favour of Gaylene. It was submitted that Gaylene had obtained building and resource consent and a code of compliance certificate for her house that were specifically for the surveyed area allocated to her.

[18] Sharon has agreed to having her occupation area reduced to allow access to go through the rear of her land where the garage is on her area. However, she suggests that reduction is only for a kaupapa that she supports.

[19] They also suggest that a large proportion (3.5 acres) of their father's estate in Horahora 1B4B2 block (which is general land owned by Māori) had been allocated to Dan by their mother as administratrix in March 1985. They say that due to his large inheritance of Horahora 1B4B2 they struggle to reconcile Dan's claims of unfairness in the Waiteuku block, when he has received sole ownership in the Horahora block.

[20] They also say that they have never agreed to Dan holding two occupation orders, and assert that because of his interests in Horahora that this supercedes an equitable right to an area of Waiteuku 2A4A. They consider that the area on the frontage of Waiteuku 2A4A, where his house currently is, represents the shares he purchased from his brother Dennis.

[21] They also say that when Gaylene's occupation order was granted that there was lengthy engagement with all the owners, and even when the occupation order was granted, two months was provided by the presiding judge for any family member to object to her occupation order application. They say that no objection was filed by any member of the family.

[22] They also oppose the proposal to change the existing accessway that is being enjoyed as they say it exists pursuant to longstanding arrangements and to alter that would be inappropriate and unjustified. They consider that the reasonable course would be to proceed with and build on already existing arrangements.

[23] The rest of their evidence asks the Court to take into consideration other allocations of land that have been made outside of the Waiteuku 2A4A block.

[24] Their preferred proposed layout is the six-site layout provided by Mr Smales contained in revision F with the addition that area A be identified for Dan, area B be identified for Gaylene, area F be identified for Sharon, and area C identified for Julie with the remaining areas at the back being area E and D to be left for further discussion after Julie has been granted her occupation order.

Respondent's position

[25] Dan Tana agrees to an occupation order being granted in favour of Julie but says it should not be to his prejudice or the other beneficiaries of the Trust. His position is that the land should be “subdivided” into seven sites rather than six.

[26] This is due to several factors. Firstly, the fact that the interests of Dennis Tana have never been vested in the trust alongside the other six siblings. Therefore, that interest must be accounted for separately and cannot be dealt with by the trust or trustees.

[27] Secondly, he says that if the land is divided into six sections, then some shareholders will have areas that are considerably larger than others. This is except for the area reserved for him, which would be the smallest notwithstanding that he holds a share equal to the others within the trust, as well as a share outside of the trust.

[28] He says that historically there is evidence that supports the intent that the land was to be divided into seven occupation sites. For example the Māori Land Court transcript in 2004 shows that Gaylene’s partner, as spokesman for Gaylene in her occupation order application, indicated that upon granting her occupation order that there would be six other sites remaining to be allocated on the block.

[29] Further, he refers to trust hui held in 2008 to discuss a paper survey and boundaries at which seven shares were discussed.

[30] He also prefers Mr Smales’ proposed site plan C which showed seven sites. He submits that if the driveway access is changed to that which has been identified as the legal accessway, as opposed to that which has been currently enjoyed, then more land would be available for the seven-site proposal to proceed.

[31] He has also said that if the accessway he proposes is realigned to where the legal paper road is identified, he and his son are prepared to provide the machinery and labour to properly form that roadway. He further says that they would contribute their labour costs to do the accessway work and seeks a 50 percent contribution from the other beneficiaries in the trust for the materials to develop the accessway.

[32] He also says that he is paying a large proportion of the rates and that this justifies his position that he should have a considerable say in the site allocation proposal.

[33] Ultimately, what Dan Tana seeks is a seven-site layout largely in accordance with Plan C submitted by Mr Smales, subject to a realignment of the roadway. The roadway would move from the existing road to the legal paper road, with the creation of a further roadway around the northern part of Sharon Tana's occupation order. The further roadway would extend down between the occupation order held by Sharon and sought by Julie, in order to provide access to Gaylene's occupation order site and Dan's house site (which does not presently have an occupation order).

Kōrerorero

Discussion

[34] At the hearing Sharon, Gaylene and Julie were questioned about the application and why they opposed the seven-section site proposal. They simply referred to their written evidence and, in the case of Gaylene, refused to agree to any reduction in her occupation order.

[35] Mr Davies Colley and the Court questioned Mr Smales about the viability of the six and seven-site development, impacts of the current effluent field and power supply, as well as access and tree removal issues.

[36] Ultimately there was did not appear to be any legal restriction to the ability to create either six or seven sites.

Julie's Occupation Order application

[37] There is no opposition to Julie receiving an occupation order. Therefore I propose to grant her occupation order application in the area identified but on amended terms the basis of which will be clarified below.

Six or Seven sections

[38] Having read and heard the evidence of all parties, I consider that the shareholding in the Trust is relevant as to whether or not the land needs to be “subdivided” into six or seven sections in order to provide for the interests that are held in this land and trust.

[39] The objects outlined in the Trust Deed reads as follows:

...the objects of the trust shall be to administer and preserve the interests of the whanau and to use the income derived from those interests to be applied for the purposes of promoting the health, social, cultural and economic welfare, education and vocational training and general advancement in the life of the descendants of Bessie Anne Milton, Dan Hira Tana, Gaylene Louise Tana, Janet Rose Pitt, Julie Arnold and Sharon Lyne Tana”.

[40] The evidence is clear that Dennis did not vest his interest in the Trust. The Trust Deed makes no provision for Dennis Tana. Therefore, the Trust cannot assert that it governs the use and administration of the entire Waiteuku block. A proportion of the land must be reserved to account for Dennis’s former interest in the land. That interest was purchased by Dan. The Court cannot ignore the existence of the separate interest.

[41] The Trust have an obligation to ensure the six named beneficiaries and their whanau who vested their interests in the land receive a benefit from the land. That includes Dan. This benefit is independent of any interest held in any other blocks of land.

[42] The interests Dan received in other blocks of land are not relevant to this land. I have also dismissed assertions by Dan that because he has paid a higher proportion of land rates, that he should have a larger say. Neither position is accepted.

[43] Therefore, it is clear to me that the appropriate layout for the land must be a seven-site layout and not six.

Impact on existing Occupation Orders and road access

[44] Both Sharon and Gaylene have benefitted by being the early applicants for occupation orders as the areas they have been granted equate or exceed the interests they hold in the Trust. Unallocated sites will be smaller and some considerably, as a result.

[45] In order to give effect to a proposed seven-site layout, I agree with the respondent that the appropriate base plan that has been provided for that to occur is plan C submitted by Mr Smales. I consider that this is appropriate in order to provide occupation sites for the families of the six who vested their interests in the Trust as well the seventh interest outside of the Trust. This plan may well require the removal of some trees as Ms Smales identifies.

[46] However, Mr Smales' plan C suggests using the existing roadway access but split within the Waiteuku 1B13 block into two proposed roadways, one running north of Sharon's occupation order area and one running south of her occupation area which is the existing roadway.

[47] I do not consider that to be appropriate, as the split proposed by Mr Smales would take more land from the neighbouring Waiteuku 1B13 land block and require the consent of those owners. As there is an existing legal roadway identified across Waiteuku 1B13 then in my view, the physical roadway should be formed along that pathway rather than maintaining the existing formed roadway.

[48] The new road should be formed as proposed by Dan Tana in his map marked DT1-1, travelling across the north of Waiteuku 1B13 and then the northern end of Sharon Tana's occupation order which then provides access to the proposed three northern sites.

[49] The road should then be formed to run down between the two occupation orders, that which is currently held by Sharon and that which is to be granted in favour of Julie, which would then provide access to Gaylene's site and to Dan's site. A rough draft of this is provided by Mr Tana in his affidavit exhibit DT1-1. With that amendment to the accessway there should be no need for the current existing accessway marked as area B on Mr Smales' proposed plan C.

[50] This new roadway would be built across the existing effluent field and will require the removal of the shed on Sharon's site.

[51] This proposal means that the location of the power pole on the south side of Sharon's occupation order is no longer an issue. It may still leave an issue with the power pole stay and Mr Smales is to identify whether that remains a problem or not.. The boundary of area A is to be moved north to include the former road accessway within it.

[52] Therefore, I propose to make orders that Mr Smales provide a new and final survey plan providing for seven lots as illustrated in plan C with the amendments outlined above.

[53] The proposed realignment of the accessway will impact upon the existing occupation order granted in favour of Sharon, reducing the area available to her. Her occupation order will need to be varied accordingly. I consider this to be appropriate as the current occupation order area exceeds her interest held in the Trust but will still be larger than the three other unallocated interests. Further, she has indicated that she is comfortable with a reduction. I also note the indication made by Judge Ambler in 2011 about the need to revisit Sharon's occupation order if there is a change to the accessway. A variation to clause 7A of the Trust Deed will need to be made accounting for this. I intend to invoke s 37(3) and s 244 in order to make provision for this.

[54] Further apart from the change in access, there is very little impact, if any, to the occupation order granted in favour of Gaylene and therefore her occupation order area is largely preserved. Again, her occupation order area will be larger than the three other unallocated interests. Given that, there is little basis in my view for Gaylene to oppose the orders. I note that Gaylene's occupation order has not been provided for in the Trust Deed. I intend to invoke s37(3) and s 244 in order to make provision for Gaylene's occupation orders made in 2005 with these proposed amendments to access as per the new survey.

[55] The area marked A should then be vested in Dan Tana solely and should constitute the share held by him independently of the trust. In accordance with s37(3) and s 328, I intend to make an occupation order in favour of Dan Tana over area A once clearly identified.

[56] The northern three areas marked D, E, F should be allocated to the Bessie whānau, the Pitt whānau and Dan Tana with the Bessie and Pitt whānau having first option to choose which of those three areas they would like to have allocated to them and Dan receiving the last available area.

[57] I add that the Court will accept the proposal by Dan Tana to perform the work in order to form the new proposed roadway across the legal accessway across Waiteuku 1B13 and across the land at the northern part of Sharon's occupation order and travelling down between Sharon and Julie's occupation orders, ending with access being provided to both Gaylene and Dans area, with Dan meeting all labour and equipment costs but sharing in material costs 50/50 with the other beneficiaries of the trust.

[58] Once Mr Smales has provided a plan as outlined then the Court will make formal orders to that extent.

[59] Dan is also to obtain council consent to the addition of six dwellings to the council septic system so that the effluent field is no longer required.

Te whakataunga *Decision*

[60] The Waiteuku 2A4A block is to be surveyed by Mr Smales on the basis of a seven-site allocation consistent with draft plan "C" and DTI-1. That survey is also to be consistent with paragraphs [45]-[51] of this decision.

[61] Dan Tana is to obtain council consent adding six dwellings on the Waiteuku 2A4A land block to the council septic system consistent with the survey.

[62] Dan Tana is also to provide undertakings that he will form the accessway as described in this decision within 3 months of a final decision being issued, the labour and equipment costs of which are to be borne by him and the materials costs to be borne 50% by him and 50% by the rest of the beneficiaries in the Trust.

[63] Once that is supplied to the Court's satisfaction, formal orders can then be made granting Julie's occupation order in accordance with s 328, a variation to the Trust Deed in

accordance with s 37(3) and s 244 in relation to Sharon's occupation order and Gaylene's occupation order and an in accordance with s 37(3) and s 328 an occupation order in favour of Dan in relation to area A in accordance with the survey plan.

I whakapuaki i te 4:00pm i Whangārei, i te rua tekau ma rima o ngā rā o Hune i te tau 2026.

T K T A R Williams
JUDGE