

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIPOUNAMU
In the Māori Land Court of New Zealand
Te Waipounamu District

AP-20230000022135
A20190006592

WEHENGĀ <i>Under</i>	Sections 18(1)(a) and 328, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Wharekauri No 1A No 2
NĀ <i>By</i>	CATHERINE THOMAS Te kaitono <i>Applicant</i>

Kōtitanga:
Hearing

30 October 2019, 60 Te Waipounamu MB 247-256
15 October 2025, 99 Te Waipounamu MB 137-153
(Heard at Waitangi, Chatham Islands)

Kanohi kitea:
Appearances

E Moat for Te Tumu Paeroa

Whakataunga:
Judgment date

7 April 2026

TE WHAKATAUNGA A KAIWHAKAWĀ M J DOOGAN
Judgment of Judge M J Doogan

Kōrero whānui*Background*

[1] This is an application for an occupation order and determination of ownership of a dwelling brought by Catherine Thomas in respect of Wharekauri No 1A No 2 (the land). The land is Māori freehold land, 782.713 hectares in extent located on Kaingaroa Road, Chatham Islands. As at October 2019, when the matter first came before the Court, there were 78 owners in the land. There is an ahu whenua trust known as the Wharekauri 1A2 Trust (the Trust) over the land. The Māori Trustee is the responsible trustee.

[2] The matter came before me on the 15th of October 2025 and after hearing from Ms Thomas and Ms Moat, for the Māori Trustee, I issued an oral decision approving the application in principle.¹

[3] Catherine Thomas is one of a number of advisory trustees of the Trust. The application is made on behalf of the trustees of the Te Puna Aroha Mokopuna Whānau Trust. The responsible trustees of that trust are Catherine Thomas, Marlon Thomas and Warryn Thomas. The trust holds 11.75 shares in the land of the total shareholding of 1932 shares.

[4] The application first came before the Court on the 30th of October 2019.² The minute of this hearing records that Ms Thomas was raised by her grandfather on the land, which is known as Taupeka or Tapuika. She wishes to set aside 4.75 hectares of the land for the benefit of her descendants. This part of the land is outside of a whenua rāhui covenant which lies over another part of the land.

[5] Catherine has been kaitiaki of the land and has carried out extensive planting on the area over which she now seeks the occupation order. Catherine has also built a small whare on this part of the land. Ms Thomas seeks to establish a whare wānanga or house of learning to teach the next generation their whakapapa and genealogy to the land.

[6] The area of 4.75 hectares is proportionate to the shareholding held by the whānau trust and is currently fenced. The fence line runs off the fence adjacent to the public road

¹ 99 Te Waipounamu MB 137-153 (99 TWP 137-153).

² 60 Te Waipounamu MB 247-256 (60 TWP 247-256).

inland for a short distance and then around the back of the whare, and then back to join the public road.

[7] The minutes from the 2019 hearing record steps Ms Thomas had taken to identify owners and the recorded levels of support and opposition. At the time of the hearing in October 2019, those who agreed to the occupation order were 34 of the 78 owners, representing 112.1193 shares. Adding the shareholding of the Te Puna Aroha Mokopuna Whānau Trust support comes to 124.3093 shares. Those who did not agree, six of the 78 owners, held 388.5000 shares. Owners recorded as deceased at that time, 20 owners, held 681.0247 shares. No particular grounds of opposition has been made known to either the applicant or to the Court.

[8] At the time of the hearing in 2019, the Māori Trustee did not wish to take a view one way or the other but was willing to facilitate a process on behalf of the applicant and owners subject to the decision of the Court. Judge Reeves adjourned the matter for six months to enable the applicant to further engage with shareholders with a view to building further support for the proposed occupation order. Since the 2019 hearing, the applicant has received further indications of support from a number of owners and taken steps to try and contact other owners over time.

[9] At the October 2025 hearing, I was able to clarify with the applicant, and with the Māori Trustee representative, a number of factual matters. In terms of the statutory requirement for an occupation order, where the land affected by the proposed occupation order is vested in a trust, the Court must not make an order without the consent of the trustees of the trust. Ms Moat said she would need to take instructions but believed she could obtain instructions fairly quickly because there was sufficient information available and there had been significant support for the application in meetings the Māori Trustee had convened.

[10] On the basis of that indication, I gave an oral decision approving the application in principle, conditional on the Māori Trustee confirming that they consented to the occupation order. This decision now confirms the oral decision I gave on the 15th of October 2025.

[11] Ms Moat had said that she expected to be able to provide a response within one month and I accordingly directed the Māori Trustee to provide its response to the application on or before the 15th of November 2025.

[12] Regrettably, and for reasons that are unclear to me, it has taken until the 27th of March 2026 for the Māori Trustee to finally advise the Court of its position.

[13] In her memorandum dated 27th of March 2026, Ms Moat says:

1. The Māori Trustee refers to His Honour Judge Doogan's oral decision at the hearing on 15 October 2025 to grant an occupation order in favour of Catherine Thomas subject to the Māori Trustee confirming she has no objection or issues.
2. Te Tumu Paeroa apologies for the delay in communicating the Māori Trustee's position.

Occupation order

3. Based on the information Te Tumu Paeroa holds, the whare appears to comply as a permitted activity under the Chatham Islands Resource Management Plan. However, Te Tumu Paeroa has been unable to determine whether consents for discharge of effluent and discharge of contaminants are required, and if they are, have been obtained.
4. Further, it is unclear to Te Tumu Paeroa whether the applicant obtained or needed a building consent for the whare.
5. The Māori Trustee believes Catherine Thomas is in the best position to satisfy the Court of these matters. Provided she does, the Māori Trustee consents to the order.

Ownership of Dwelling Application

6. It is currently unclear to Te Tumu Paeroa whether the whare is affixed to the land or relocatable (a chattel). The declaratory jurisdiction in section 18(1)(a) Te Ture Whenua Māori Act 1993 is concerned with ownership or possession of Māori freehold land or to any right, title, estate or interest in such land.
7. The Māori Trustee can however confirm that, as responsible trustee, she does not seek to claim any ownership interest in the whare.

[14] I take from this that the Māori Trustee does not object to the decision in principle given on the 15th of October 2025 and therefore consents to the grant of the occupation order in favour of Catherine Thomas per s 328(2) Te Ture Whenua Māori Act 1993 (the Act).

[15] Section 329 of the Act requires the Court to have regard to the opinions of the owners as a whole, the effect of the proposal on the interests of the owners of the land, and the best overall use and development of the land. Notwithstanding those matters, the Court shall not make any order unless satisfied that the owners to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it, that the owners understand that the land to which the application relates may pass by succession and may be for a specified term or until the occurrence of a defined event.

[16] Furthermore, the Court must be satisfied there is sufficient degree of support for the application, having regard to the nature and importance of the matter, and that in the circumstances, the extent of the beneficial interest in the land held by the person in whose favour the occupation order is to be made is entitled to succeed, or justifies that occupation order.

[17] An amendment was made to the Act in 2020 to make it clear that the Court does have the power to grant an occupation order to any beneficiary of a whanau trust that holds a beneficial interest in the land.³

[18] Turning to these criteria, and dealing first with s 329(2) of the Act, having regard to the totality of the evidence before me and the history of this application, I am satisfied that the owners of the land have had sufficient notice of the application and opportunity to discuss and consider it. I am also satisfied that the owners have sufficient information to understand that an occupation order may pass by succession and may be for a specified term.

[19] In terms of sufficiency of support, there is no single mathematical formula. It is a question of fact, while there is recorded opposition from a small number of owners who hold a relatively significant shareholding, I note that there were no specified reasons for the opposition. On the other hand, a relatively high number of owners have registered support for the application. The Māori Trustee holds consents from 29 of 31 owners who responded to its questionnaire in 2019. I understand from the applicant that she has had further expressions of support from owners since that time. I am therefore satisfied there is a

³ Te Ture Whenua Māori Act 1993, s 328(1)(c); inserted on 6 February 2021, by section 72 of Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020.

sufficient degree of support for the application, having regard to the nature and importance of the matter.

[20] I take into account that this is a relatively small portion of a large block, and on which the applicant and her whānau have invested considerable time and effort to improve and reinstate by way of planting vegetation on that portion of the land. This takes me back to the s 329(1) criteria – in terms of the opinions of the owners as a whole, I am satisfied there is a clear majority who support the work the applicant has done, and who support the application and the kaupapa it represents. I am satisfied that the effect of the proposal on the interests of the owners of the land and the best overall use and development of the land will be advanced by granting the application – both for the determination of ownership of a dwelling and for the occupation order – so as to secure for this whānau the base to continue the work they have commenced.

[21] I recorded the following addendum to the minute of the hearing of 15th of October 2025:⁴

I also record that I had the opportunity to view the area which is the subject of this application when I was in the vicinity of this land on a site visit the day after the hearing. I was able to view the access, fencing, planting and location of the whare from the public road, and the driveway adjacent to this land (leading to the house). I have no questions or concerns arising from this, and indeed the opportunity to view the land reaffirmed my view that the orders for determination of ownership and occupation should be made so as to secure and advance the constructive mahi the applicant has invested towards maintenance and restoration of this part of the whenua.

[22] I would add that hau kāinga on the Chatham Islands face particular challenges due to limited infrastructure on the island and the high costs of development and construction. Assessment of the best overall use and development of a block of land of this size (781 hectares) is not an exact science. Uncritical application of precedents set on the mainland are not always appropriate. In this particular case, I place some weight upon not only on what Ms Thomas has been able to establish on this remote portion of the land and her long term vision, but also the efforts she has made since 2019 to try and notify and obtain the consent of the owners, with the help of the Māori Trustee.

⁴ 99 Te Waipounamu MB 152–153 (99TWP 152-153).

[23] I can see no obvious disadvantage to any of the other owners in the granting of the occupation order and determination of ownership of the whare. Conversely, it is not unreasonable that Ms Thomas should seek the security of such orders given her investment of time, money and energy and the longer term vision she has for the generations to come.

Ngā ota
Orders

[24] The Court makes the followings orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 18(1)(a) determining that Catherine Thomas is the owner of the dwelling built on that part of Wharekauri No 1A No 2 shown on the sketch plan attached to this decision as Appendix A; and
- (b) Section 328 granting to Catherine Thomas an occupation order over 4.75 hectares of land within Wharekauri No 1A No 2 as detailed in the sketch plan attached to this decision as Appendix A.

[25] The occupation order is initially for the lifetime of Catherine Thomas or until such time as she may choose to relinquish it, in which case it may be assigned to another beneficiary of the Te Puna Aroha Mokopuna Whānau Trust as determined by the trustees of that Trust. The occupation order will come to an end upon the termination of the Te Puna Aroha Mokopuna Whānau Trust.

[26] The foregoing orders are to be issued immediately pursuant to 7.5(2)(b) of the Māori Land Court Rules 2011.

I whakapuaki i te wā 12:00pm i Te Whanganui-a-Tara, i te 7th o ngā rā o Paengawhāwhā i te tau 2026.

Pronounced at 12:00pm in Wellington, on this 7th day of April 2026.

M J Doogan

JUDGE

Appendix A

