

**IN THE HIGH COURT OF THE COOK ISLANDS  
AT RAROTONGA (LAND DIVISION)**

**APPLICATION NO. 1032/22**

IN THE MATTER OF                      of an application pursuant to s 50 of the Cook  
Islands Amendment Act 1946

AND IN THE MATTER OF              the land known as, **TE KIRIKIRI, SECTION  
97, ARORANGI, RAROTONGA**

BETWEEN                                **IAN IOABA MONEIL TETINI VAETERU**  
Applicant

AND                                        **KOI NANA VAETERU**  
Objector

Date:                      19 March 2025

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**JUDGMENT OF ARMSTRONG J**

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## **Introduction**

[1] Ian Vaeteru seeks an occupation right over part of Te Kirikiri Section 97, in Arorangi. The application is opposed by his sister, Koi Vaeteru. In this judgment, I determine whether to grant the occupation right.

## **What legal principles apply?**

[2] I can grant an occupation right per s 50 of the Cook Islands Amendment Act 1946. When doing so, I first have to be satisfied that the application is supported by a majority of the owners. If that statutory threshold is met, I then have to consider whether to exercise my discretion to grant the occupation right.<sup>1</sup>

[3] In 2022, the Court issued a practice note concerning occupation right orders. That practice note is not binding, however, it provides a useful guide on the relevant factors the Court will usually consider when deciding whether to exercise its discretion to grant an occupation right.

## **Is the application supported by a majority of owners?**

[4] On 12 May 2022, a meeting of owners was held to consider this, and other, applications concerning this land.<sup>2</sup> The minutes of the meeting record that Mr Vaeteru's proposed occupation right was presented to the owners who discussed it and then put it to a vote. Ten owners voted in favour of the application with two against. In addition to this, a number of owners, or their representative, signed consents, and the plan, supporting this application.

[5] The Deputy Registrar has reviewed the level of support from the owners. She has certified that 47 of the 80 owners support it. That constitutes a majority.

[6] Ms Vaeteru argues that at the owners' meeting, the Rangatira told Mr Vaeteru that he had to obtain a more defined survey plan and bring it back to a further meeting of owners. Mr Vaeteru disputes this. He says he submitted his plan, and proposed occupation

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<sup>1</sup> *Bates – Te Raoia Section 12K2, Ngatangiia, Rarotonga* (2011) AP438/2010 & 315/2011.

<sup>2</sup> Rereao Heather and Michael Benns were also seeking occupation rights on different sites on this land. Their applications were considered by the owners at the same meeting.

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right, to the owners and they approved it. Mr Vaeteru argues there was no requirement to obtain a better plan and take it back to a further meeting of owners.

[7] The minutes from the meeting do not record that Mr Vaeteru had to obtain a better plan or that he had to take his application to a further meeting of owners. The minutes simply record that his proposed occupation right was presented to the owners, there was some discussion and then a vote cast. Those minutes have been signed by Nooapi Tearea as the chairperson and Angelene Tuara as the secretary for the meeting.

[8] Those minutes do record the following:

Before the meeting closed Ms Samantha Tepai, the family Title holder of Rangatira, Thank the family for coming to the meeting and encouraged Mr Benns whose piece of land was only confirmed in principle at this meeting, to work with Mr Ariihee and the surveyor to complete the job and get the families endorsement.

[sic]

[9] This confirms that it was Mr Benns' application that was only approved in principle. It was Mr Benns who had to obtain a better survey and take it back to the meeting for approval, not Mr Vaeteru.

[10] Finally, the owners signed Mr Vaeteru's plan, approving that plan. This further supports that he was not required to obtain a further more detailed plan.

[11] I am satisfied that Mr Vaeteru's application is supported by a majority of owners. He presented his application to a meeting of owners and it was approved by a vote of ten in favour with two against. Mr Vaeteru obtained further consents in writing from the owners or their representatives. Those owners also signed the plan. The Deputy Registrar has certified that 47 of the total 80 owners support the application.

[12] I am satisfied that the statutory threshold for granting an occupation right has been met.

### **Should I exercise my discretion to grant the occupation right?**

[13] There is no prescribed list of factors that must be met before the Court will exercise its discretion to grant an occupation right. What is relevant will differ in each case. The practice note provides a useful guide on relevant factors the Court will often consider

when deciding whether to exercise its discretion. Ms Vaeteru's objection addresses a number of those relevant factors.

[14] Ms Vaeteru argues that the site of the proposed occupation right contains a historic marae. Ms Vaeteru said that the marae is overgrown but is still "quite distinct in its nature and form". She says the marae is significant to their family and should be protected from development.

[15] Mr Vaeteru says there is no marae on this site. He has filed a letter from David Cummings of Eagle Land Survey Limited. Mr Cummings states that he carried out a topographical survey of this area and there is no marae on this site.

[16] Ms Vaeteru attended the 2022 meeting of owners where her brother's application was discussed. The minutes from that meeting do not record her objecting to her brother's proposed occupation right or raising that the proposed site was located on top of a historic marae. If this was a significant issue, I would have expected Ms Vaeteru to raise this at the meeting so that the other owners could consider this when deciding whether to approve the occupation right. There is no evidence that she did.

[17] The minutes do record Ms Vaeteru objecting at the meeting to the proposed occupation right for Rereao Heather. If she had of objected to her brother's application, I expect this would have been recorded in the minutes as well.

[18] If there was clear evidence that this proposed occupation right was located on an existing marae site it may well be inappropriate to grant the occupation right. Marae are significant sites to the Cook Island people and I agree it may be appropriate for this Court to protect such sites from development. However, in this case Ms Vaeteru has not produced any objective or cogent evidence to confirm that there is a marae located on this site.

[19] Ms Vaeteru also argues that the proposed site is steep and it is not possible to build a house on the site.

[20] It is clear that the proposed site has a steep gradient. This was raised at the meeting of owners but they approved it anyway. Generally, steep sloping ground may make building a house more difficult, and more expensive, but that does not mean it is

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impossible to build on such a site. I do not have any expert evidence from an engineer confirming how feasible it is to build on this site. Ms Vaeteru only expressed her personal opinion on the matter.

[21] If the occupation right is granted, Mr Vaeteru will have to start the build within five years and complete the build within seven years. If it is impossible to build on this site within that timeframe, the order will lapse. This condition will police the feasibility of the build.

[22] Finally, Ms Vaeteru argues that their mother has existing occupation rights and her brother may be entitled to occupy one of those sites.

[23] During the hearing, Brian Mason advised that he reviewed the occupation rights held by Mr and Ms Vaeteru's mother and confirmed that there are no longer any existing occupation rights in place. If those existing occupation rights have lapsed, or been cancelled, then Mr and Mrs Vaeteru would have to apply for a new occupation right on those earlier sites held by their mother.

[24] Mr Vaeteru said he did seek an occupation right on the family land in Tupapa, but that was not supported by the owners. He said the other sites have been allocated to other family members and so he is now seeking an occupation right on this land.

[25] If an applicant already has an occupation right, or may reasonably be expected to hold one on the death of a family member, that is relevant to whether he or she should receive a further occupation right. I accept the evidence from Mr Vaeteru and Mr Mason that the existing occupation rights held by Mr Vaeteru's mother have lapsed or been cancelled. There is nothing to prevent Mr Vaeteru from receiving an occupation right over this site.

[26] Finally, I note that the proposed site is large being slightly over 1 acre. Ms Vaeteru has not objected to the size of the site. As Mr Vaeteru will need to build on a steep slope, I accept that a larger area is required to do so. The minutes from the meeting of owners, and the plan, record the size of the area and the owners made an informed decision approving that site.

[27] I consider I should exercise my discretion to grant this occupation right.

## **Decision**

[28] Per s 50 of the Cook Islands Amendment Act 1946, I grant an occupation right to Ian Ioaba Moneil Tetini Vaeteru and his direct descendants for residential purposes over an area of 4,125m<sup>2</sup> on Te Kirikiri Section 97, in Arorangi, as shown on the plan prepared by Mr Cummings dated 9 May 2022. That order is subject to the standard terms and conditions set out in the practise note of 12 May 2022.

Dated at 8:30am (NZT) in Whangārei on this 19<sup>th</sup> day of March 2025.

A handwritten signature in black ink, appearing to read 'M P Armstrong', written in a cursive style.

M P Armstrong  
**JUSTICE**