

NOTE:

1. THIS IS AN EXAMPLE OCCUPATION ORDER. IT SETS OUT THE GENERAL TERMS THAT THE COURT MAY INCLUDE IN AN OCCUPATION ORDER ISSUED UNDER SECTION 328 OF TE TURE WHENUA MĀORI ACT 1993.
2. THIS EXAMPLE HAS BEEN PREPARED TO INFORM PERSONS WHO SEEK AN OCCUPATION ORDER OF THE TERMS THAT MAY BE GRANTED BY THE COURT IF THE APPLICATION FOR AN OCCUPATION ORDER IS SUCCESSFUL. HOWEVER, THE COURT RETAINS ABSOLUTE DISCRETION AS TO THE TERMS OF ANY OCCUPATION ORDER.
3. ANY FINAL TERMS OF AN OCCUPATION ORDER ARE THEREFORE SUBJECT TO APPROVAL AND CONFIRMATION BY THE MĀORI LAND COURT IN ACCORDANCE WITH SECTION 328 OF TE TURE WHENUA MĀORI ACT 1993.
4. PLEASE NOTE THAT THIS EXAMPLE IS INTENDED TO PROVIDE YOU WITH GENERAL INFORMATION ONLY. THE MINISTRY OF JUSTICE MAKES NO WARRANTY, EXPRESS OR IMPLIED, NOR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, CORRECTNESS, COMPLETENESS OR USE OF ANY INFORMATION CONTAINED HEREIN.
5. A CHECKLIST OF DIFFERENT CLAUSES WHICH YOU SHOULD SPECIFICALLY CONSIDER IS SET OUT ON THE NEXT PAGE.
6. IF YOU REQUIRE ASSISTANCE, PLEASE CONTACT YOUR LOCAL MĀORI LAND COURT OFFICE.

CHECKLIST

The purpose of this checklist is to provide a reference to the terms within this example occupation order which you should specifically consider.

Page no.	Term	Description
ORDER		
3	Order	Insert the size of the area to be occupied. Also include the name of the application, the name of the block and its legal description.
FIRST SCHEDULE		
4	First Schedule	Include a sketch plan of the area to be occupied.
THIRD SCHEDULE		
10	(d)	Is a payment required to be made to the Landowner(s) for the right to occupy? If so, specify the amount in this clause.
10	(e)	Is there a period in which a house is required to be built or relocated to the site? If so, how long is that period? Specify the period in this clause.
10	(f)	Insert the name of the relevant territorial authority (being the relevant District Council or Regional Council).
10	(h)	Are there existing buildings on the site? If so, specify them in this clause.
10	(i)	How long is the Occupation Order to last? Specify the term in this clause.
10	(j)	Can the term of the Occupation Order be extended? If so, for how long? Include these details in this clause.
10	(k)	Insert the names of the landowners of the block. If there is a trust, name the trustees and the trust.
10	(n)	Name the parent block.

OCCUPATION ORDER

Te Ture Whenua Māori Act 1993, Section 328

In the Māori Land Court
of New Zealand
[Rohe] District

IN THE MATTER of [Block name] being all the
land contained in [LINZ
identifier], [Registry]

AT a sitting of the Court held at [Venue] on [day] [month] 20[XX] before [full name of judge],
Judge

WHEREAS application has been filed by [applicant] seeking an occupation order for an area
of [area of occupation] square metres more or less on the land known as [block name]

NOW THEREFORE the Court upon reading and hearing all evidence adduced in support
thereof and being satisfied on all matters upon which it is required to be so satisfied HEREBY
ORDERS pursuant to section 328 of Te Ture Whenua Māori Act 1993 that [applicant] is entitled
to the exclusive use and occupation of an area of [area] square metres or less in the land
known as [Block name] being all the land contained in [LINZ identifier], [Registry] as set out in
the First Schedule as a site for a house and subject to the terms and conditions set out in the
Second and Third Schedules attached hereto

AND the Court FURTHER ORDERS that this order shall issue IMMEDIATELY pursuant to rule
7.5(2)(b) of the Māori Land Court Rules 2011

AS WITNESS the hand of the Judge and the Seal of the Court.

JUDGE

FIRST SCHEDULE

[Sketch Plan]

DRAFT

SECOND SCHEDULE

1. Defined terms

Terms used in this Schedule in initial capitals have the meanings given to them in the Third Schedule.

2. Duration of the Occupation Order

- (a) This occupation order commences on the Commencement Date and ends on the Expiry Date.
- (b) No later than one year prior to the Expiry Date, the Occupier shall be entitled to apply to the Māori Land Court to extend the duration of this order for the Extension Period. The Landowner(s) must not unreasonably withhold their support for the extension where the Occupier has complied and continues to comply with these terms and conditions.

3. Permitted Activities

- (a) The Occupier shall only use the Site for a residential dwelling and associated activities for the Occupier and members of their immediate whānau, save that the Occupier shall not have more than the Maximum Occupants living on the Site without the written approval of the Landowner(s). The Landowner(s) consent will not be unreasonably withheld if the occupation is consistent with tikanga Māori and is allowing multiple generations of the same whānau to live together on the same site.
- (b) The Occupier shall be entitled to erect, construct or cause to be affixed to the Site only one permanent residential dwelling, together with such other outbuildings as are reasonably required to use the Site for residential occupation.
- (c) With the approval of the Landowner(s), the Occupier may locate temporary accommodation (such as caravans, house buses or any other similar vehicles), save that any temporary accommodation must remain capable of being removed from, and not be permanently affixed to, the Site.
- (d) The Occupier shall be entitled to keep domesticated animals on the Site, save that any domesticated animal must remain within the Site and not cause any nuisance to other occupiers on the Parent Block or unreasonably interfere with the management of the Parent Block by the Landowner(s).

4. Restricted Activities

- (a) The Occupier shall not use the Site for any unlawful purpose.
- (b) The Occupier shall not make or permit noise or behaviour on the Site that would interfere with the quiet enjoyment of the other occupiers of the Parent Block.
- (c) The Occupier shall not permit the Site to be used for any Commercial Activity that would unreasonably interfere with the quiet enjoyment of the other occupiers of the Parent Block, and ensure that the primary use of the Site remains consistent with the overall use of the Site being for residential occupation.

- (d) The Occupier shall not obstruct the Parent Block or access to the Parent Block.
- (e) The Occupier shall not permit the Site to be used for any gang related activity, gang club house or gang pad.
- (f) The Occupier shall not make any structural alterations or additions to any Existing Improvements on the Parent Block, unless approved by the Landowner(s).

5. The House

- (a) If there is no existing house on the Site at the Commencement Date:
 - (i) As soon as reasonably practicable, the Occupier must commence building a house on, or relocating a house to, the Site.
 - (ii) The Occupier must establish a house on the Site, for which Code of Compliance Certificate has been issued, within the Construction Period. A Code of Compliance Certificate for any occupied building on the Site must be provided to the Court prior to the expiry of the Construction Period, and to the Landowner(s) if requested.
- (b) The Occupier shall obtain all required building and resource consents from the Council. These must be provided to the Landowner(s) if requested.
- (c) The Occupier shall ensure that, should any application for resource consent require identifying interested or notifiable parties, the details of the Landowner(s) will be provided to any Council to which the application relates.
- (d) The Occupier shall ensure that any building on the Site complies with all relevant legislation.
- (e) As soon as reasonably practicable after the house is established on the Site, the Occupier shall apply to the Māori Land Court pursuant to section 18(1)(a) of Te Ture Whenua Māori Act 1993 for an order determining that the house is owned by the Occupier.
- (f) The Occupier shall not take or permit any action or omission that may adversely affect the house (including any tangible property affixed to the house), Site or the Parent Block.

6. General Terms and Conditions

- (a) The Occupier shall at all times ensure the Site and the house on the Site are kept in a well maintained and tidy condition.
- (b) The Occupier shall allow reasonable access by the Landowner(s) onto the Site for the purpose of the Landowner(s) monitoring compliance with these terms and conditions of occupation. The Landowner(s) must give one week's written notice to the Occupier to enter onto the Site for this purpose.
- (c) If, during any earthworks or construction on the Site, koiwi or taonga are discovered or disturbed, then all earthworks and construction are to be immediately halted and the Landowner(s) notified of the issue. No further work of any nature should recommence on the Site until the direct approval of the

Landowner(s) is obtained in writing. The Landowner(s), the Occupier and any other interested party will meet within 14 days of any notification and jointly discuss how the issue is to be resolved.

- (d) The Occupier shall pay the Consideration (if any is specified in the Third Schedule) to the Landowner(s).
- (e) The Occupier may invite visitors to the Site. The Occupier is responsible for any visitors they invite to the Site and they must ensure they abide by the terms and conditions of occupation.

7. Rates

- (a) If the Site is separately rated, the Occupier shall pay all rates levied in respect of the Site.
- (b) If the Site is not separately rated, the Occupier shall pay a fair share of the rates levied in respect of the Parent Block.
- (c) Rates rebates shall benefit the party that pays the rates.

8. Access and Infrastructure to the Site

- (a) The Landowner(s) and Occupier shall agree the means of access to the Site and the Occupier shall pay all costs associated with constructing an accessway and maintaining and repairing the means of access.
- (b) The Occupier shall be responsible for all infrastructure required to the Site from the Parent Block boundary, in accordance with the building and resource consents obtained by the Occupier and approved by the Landowner(s).
- (c) Should the Site cover a portion of an unformed roadway, the Occupier must obtain from the Council a licence to occupy the portion of the unformed roadway within the Site.
- (d) The Occupier shall be liable to pay a reasonable contribution to the costs associated with upgrading the accessway if required due to future development of the Parent Block.

9. Subletting and Assignment

The Occupier cannot sublet or assign their occupation rights to any other party.

10. Dispute Resolution

- (a) If any dispute arises out of these terms and conditions, the Landowner(s) or the Occupier may:
 - (i) file an application to the Māori land Court for the dispute to be determined; or
 - (ii) by agreement (in writing) adopt the Alternative Dispute Resolution process (ADR process) set out below:

ADR Process

Step 1- Negotiations

- (b) The parties will seek to resolve the dispute through good faith negotiation in a manner that is consistent with the tikanga of the parties.
- (c) To give certainty to the parties, Step 1 must be completed within 21 days of the parties agreeing in writing to adopt the ADR process, save that the parties may extend this timeframe by mutual agreement in writing.

Step 2- Mandatory Mediation

- (d) If Step 1 fails to resolve the dispute, then a mandatory mediation must be held within 60 days of Step 1 ending, save that the parties may extend this timeframe by mutual agreement in writing.
- (e) If the parties cannot agree on a mediator, then one will be appointed by a Judge of the Māori Land Court in the district where the relevant land is located.
- (f) The mediation (regardless of whether the mediator is appointed by the parties or the Court) will be held in accordance with the Māori Land Court mediation process, rules and/or protocols as set out in Part 3A of the Act and by any specific rules of the Māori Land Court for conducting mediations. The parties may vary how the mediation is to operate by mutual agreement in writing.
- (g) Any costs incurred by the appointment of a private mediator will be shared equally between the parties unless agreed otherwise.

Step 3- Determination by the Māori Land Court

- (h) If mediation does not resolve the dispute, or the mediation is not completed within the stated timeframe for Step 2, then the parties may file relevant applications with the Māori Land Court.
- (i) For the avoidance of doubt, if the parties agree to adopt the ADR process they must complete Steps 1 and 2 of the ADR process, before the dispute can be determined by the Court, unless both parties mutually agree in writing to opt out before completion of the ADR process or there is a need for urgent injunctive relief by any party to the dispute.

11. Termination

- (a) Unless terminated earlier in accordance with the provisions of this clause, the Occupation Order will end on the Expiry Date.
- (b) Failure by the Occupier to comply with clauses 4(a), 5(a), and 9 constitutes a material breach of these terms. In the event of a material breach, the Landowner(s) may apply to the Māori Land Court to terminate the Occupation Order.
- (c) Failure by the Occupier to comply with any terms of this Schedule (save those referred to in clause 11(b)) constitutes a non-material breach of these terms. In the event of a non-material breach:
 - (i) the Landowner(s) must give notice to the Occupier of the breach;

- (ii) the Landowner(s) and the Occupier must meet to resolve the dispute and/or for the Occupier to remedy the breach within 14 days of the Landowner(s) giving notice of the breach to the Occupier;
- (iii) the Landowner(s) and the Occupier must follow the dispute resolution process at clause 10, save that they may agree to follow an alternative dispute resolution process in accordance with tikanga Māori that is appropriate in the circumstances.
- (iv) If the Occupier fails to remedy the breach or a resolution cannot be reached, either the Occupier or the Landowner(s) may apply to the Māori Land Court for a review of the Occupation Order.

12. Effect of termination

- (a) On the End Date, any improvement erected on the Site by the Occupier shall be removed at the Occupier's own expense. This right to remove improvements is subject to the Occupier obtaining a s 18(1)(a) order from the Court, declaring the Occupier's ownership of the improvements.
- (b) If the Occupier fails to remove the structure within six months of the End Date, at their absolute discretion the Landowner(s) may:
 - (i) remove and dispose of the improvements, in which case the Occupier will, at the Landowner(s) discretion, be liable to reimburse the expense involved in doing so; or
 - (ii) consent to the improvement(s) remaining on the Site, in which case the improvements will, from six months after the Termination Date, become the property of the Landowner(s), with no compensation due to the Occupier.
- (c) The Occupier shall leave the Site clean and tidy, and clear of rubbish and possessions at the End Date.

13. Succession to the Occupation Order

- (a) The parties acknowledge that this occupation order is capable of being succeeded to in accordance with the wishes of the Occupier, save that any such succession must be consistent with the Act.
- (b) To avoid doubt, succession to this occupation order does not alter, vary or change any of the terms or conditions set out in this Schedule, including the duration of this occupation order.
- (c) Any successor to this occupation order is bound by and must comply with the terms and conditions set out in this Schedule.

THIRD SCHEDULE

Defined Terms

- (a) *Act:* Te Ture Whenua Māori Act 1993, as amended or replaced from time to time.
- (b) *Commencement Date:* The date of this order.
- (c) *Commercial Activity:* An activity undertaken for the primary purpose of making a profit but excludes activities that can ordinarily be undertaken in a residential dwelling without the approval of the local territorial authority.
- (d) *Consideration:* [the amount of consideration to be paid for the Occupation Order, e.g. rent payments. Elaborate on when, how and to who these payments will be made.]
- (e) *Construction Period:* A period of [five (5) years] which begins at the Commencement Date.
- (f) *Council:* [insert the name of the relevant district or regional council]
- (g) *End Date:* The earlier of:
 - (i) the Expiry Date; and
 - (ii) the date that this occupation order is terminated in accordance with clause 11(b) or (c) of the Second Schedule.
- (h) *Existing Improvements:* [describe any existing improvements and/or structures on the Parent Block]
- (i) *Expiry Date:* The date that is [35] years after the date of this order.
- (j) *Extension Period:* A further term of [35] years after the Expiry Date.
- (k) *Landowner(s):* [insert the names of the owners of the Parent Block or the name of the existing management structure (in the case of a trust, name the current trustees, followed by "as trustees of the [name of trust]")]
- (l) *Maximum Occupants:* [Twelve (12)] people.
- (m) *Occupier:* The person to whom this order is granted, together with their successors to this order.
- (n) *Parent Block:* [Insert description of the block over which this order is granted]
- (o) *Site:* The area that is subject to the Occupation Order, as detailed in the First Schedule.