

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

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

AP-20240000005619

WĀHANGA
Under

Sections 19 and 338, Te Ture Whenua Māori Act
1993
Regulation 21, Māori Reservation Regulations
1994

MŌ TE TAKE
In the matter of

Whakapoungakau 15B Sec 10

I WAENGA I A
Between

JEAN GALVIN
Te kaitono
Applicant

ME
And

HINEMOA LOUISA NGĀTAI, JACQUELINE
TANIA MANEY, PARAONE PIRIKA,
RAYMOND ERIC PATIHANA TOLLEY AND
RIHIPA LANA TANIA TAIATINI AS TRUSTEES
OF THE WHAKAPOUNGAKAU 15B 10
MĀORI RESERVATION
Ngā kaiurupare
Respondents

ME
And

TIKANGA ARORO CHARITABLE TRUST
Te hunga e whai take ana
Interested Party

Nohoanga: 18 September 2024, 323 Waiariki MB 122-153
Hearing (Heard at Rotorua)

Whakataunga: 24 January 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA TUARUA C T COXHEAD
Judgment of Deputy Chief Judge C T Coxhead

Copies to:

R Murray, Kokiri Chambers, PO Box 13136, Tauranga 3141, rohario@kokirichambers.nz
M Tukapua, Kokiri Chambers, PO Box 6132, Marlon Square, Wellington 6141, matewai@kokirichambers.nz
J Murray, O'Sullivan Clements Law, PO Box 646, Rotorua 3040, j.murray@osc.co.nz
J McDougall, Holland Beckett, DX HP40014, Tauranga 3143, james.mcdougall@hobec.co.nz

Hei kōrero tīmatanga*Introduction*

[1] Jean Marie Galvin lives in one of the kaumātua houses on Whakapoungakau 15B sec 10 block (the Block). She has raised multiple issues with the administration and activity that is happening on the Block.

[2] Ms Galvin filed an application for an injunction to stop the Trustees from evicting her and other kaumātua tenants from the kaumātua houses that the Trustees administer until an inquiry into the administration of the Whakapoungakau 15B sec 10 Māori Reservation (Rotokawa Bath Site) (the Reservation) was completed.

[3] I granted an interim injunction preventing the trustees of the Reservation from:¹

- (a) carrying on activities which are outside of the gazetted purposes of the Reservation; and
- (b) evicting the kaumātua tenants of the Whakapoungakau 15B sec 10 block.

[4] At the hearing of the interim injunction, I stated that the inquiry into the Reservation that has been requested would be focussed. The scope of the inquiry would be:

- (a) Whether the trustees have permitted activities to occur on the land which are outside the purposes of the Reservation; and
- (b) The lack of written tenancy agreements with the existing kaumātua tenants of the Reservation.

[5] On 18 September 2024, I held a hearing and undertook the inquiry.

Kōrero whānui*Background*

¹ 315 Waiariki MB 135-171 (315 WAR 135-171).

[6] In 1966 the original Māori reservation gazette set aside the Block “for the purpose of a bathing place for the common use and benefit of the Ngati-Rorooterangi, Ngati-Uenukukopako, and Rangiteaorere Hapus.”²

[7] In 1989 the purpose of the Reservation was redefined “as a place for bathing and for kaumatua housing as a health resort for the hapu of Ngatii Rorooterangi, Ngati Uenukukopako and Rangiteaorere.”³

[8] There are currently eight kaumātua homes on the Reservation, seven of which are currently occupied. Ms Galvin is a resident of one of the kaumātua homes and a beneficiary of the Reservation.

[9] Ms Galvin does not currently have a written tenancy agreement and neither do any of the other kaumātua that reside on the Reservation.

[10] The current trustees of the Reservation have acknowledged that there are maintenance issues with the current kaumātua housing. They have been in discussions with Ngāti Uenukukōpako Iwi Trust (NUIT) about housing options that could assist in complying with the requirements of the Residential Tenancies Act 1986 and the Residential Tenancies (Healthy Homes Standard) Regulations 2019.

[11] Around late 2020 to early 2021, Pūwhakamua began storing and constructing cabins on the Reservation. Pūwhakamua is a tikanga Māori rehabilitation and reintegration service specifically for people who have either previously been incarcerated or are deemed at high risk of offending that is sponsored by Tikanga Aroro. Pūwhakamua operates a residential facility on Te Ngae Road in Rotorua.

[12] Around the same time, two houses were erected on the Reservation by NUIT for the purposes of social housing.

[13] In 2023 Tikanga Aroro began a formal process of requesting permission to lease part of the Reservation for the expansion of Pūwhakamua.

² “Setting Apart Maori Freehold Land as a Maori Reservation” 7 *New Zealand Gazette* 10 February 1966, 151-152.

³ “Redifining Purposes of Maori Reservation” 201 *New Zealand Gazette* 16 November 1989, 5766-5767.

[14] Following the interim injunction hearing, I issued a direction noting that the trustees of the Tikanga Aroro Charitable Trust (Tikanga Aroro) will participate in these proceedings.

[15] On 4 December 2023, the trustees served notice requiring the kaumātua tenants to vacate their homes by the end of April 2024. At the hearing of the interim injunction, the trustees of the Reservation confirmed that they are no longer seeking for the kaumātua to vacate the properties.

Ngā kōrero a te Kaitono

Submissions of the applicant

[16] Ms Murray on behalf of the Applicant submits that:

- (a) The trustees of the Reservation have allowed Pūwhakamua to store and construct cabins on the Reservation, which she says is outside of the purpose gazetted for the Reservation. She claims that the Pūwhakamua project is more than simply storing cabins on the Reservation and that the buildings and cabins have taken up a significant footprint on the Reservation. There are currently 18 cabins on the Reservation of varying sizes. Ms Galvin submitted that the presence of Pūwhakamua has not created a safe environment for the Bath Site and surrounding community.
- (b) The trustees of the Reservation have permitted Ngāti Uenukukōpako Iwi Trust (NUIT) to erect two houses on the Reservation. These houses are being used for housing tenants that are not solely kaumātua. She says this is also outside of the purpose set out for the Reservation in the gazette.
- (c) Ms Galvin has been a tenant of the Reservation since 2020. She has paid rent since residing on the Reservation. She claims that the trustees of the Reservation have failed to provide her or any of the other tenants of the kaumātua housing with tenancy agreements. She claims this is also outside of the purpose set out in the gazette.
- (d) She submits that the trustees of the Reservation have failed to consult with the residents and beneficiaries of the Reservation with regard to activities on the

Reservation, including Pūwhakamua activities and the proposed housing development with NUIT.

[17] I note that Ms Galvin's case appears to be brought on behalf of all kaumātua, but the evidence is very specific in terms of Ms Galvin's situation. However, I have taken her evidence as being generally applicable to all kaumātua residing on the Reservation, which was not contested by the Respondents.

Ngā kōrero a ngā Kaiurupare

Submissions of the respondents

[18] Mr Murray on behalf of the Respondents submits that:

- (a) The trustees have been administering the Reservation trust adequately in terms of finances. They are working through matters concerning outstanding water rates with the Rotorua Lakes Council.
- (b) The trustees want to provide kaumātua housing, in keeping with the purpose of the Reservation.
- (c) The trustees are in a position where they have homes on the Reservation which are clearly not up to standard. They could potentially be liable for the standard of housing that they are allowing to remain on the land.
- (d) The trustees' current view is that it is uneconomic to repair and renovate the homes currently on the Reservation to comply with healthy home requirements, and that they should be demolished to allow for redevelopment.
- (e) The trustees have looked at alternatives so that they can provide homes to comply with the healthy home requirements. The trustees do not have the money to simply renovate and bring the current houses up to the required standard.
- (f) The trustees have shown that two new houses can be established on the property.

- (g) The trustees have received advice from APL Property Limited that tenancy agreements must be in writing to comply with the Residential Tenancies Act 1986. The trustees have not provided written tenancy agreements to the current tenants.
- (h) One of the requirements of a written tenancy agreement will be that they are providing healthy homes. The other requirement is that if the homes are not in a state of being healthy then the trustees as landlords are at risk of breaching their responsibilities to ensure that the homes are up to a healthy standard under the Healthy Homes legislation.⁴ The trustees are clear that they cannot comply with that. It is, as Mr Murray explained, a ‘Catch-22’ situation.
- (i) Given the difficulty of the situation, the trustees of the Reservation propose a working party consisting of the trustees of the Reservation, the trustees of the Whakapoungakau 15B10 Aggregates Lands Trust and Ngāti Uenukukōpako Iwi Trust to plan for future residential development of the Reservation and Farm site.

Ngā kōrero a te hunga e whai take ana
Submissions of the Interested party

[19] Mr Fletcher on behalf of Tikanga Aroro submitted at hearing that:

- (a) Their relationship with the Reservation has two parts:
 - (i) Storage of cabins gifted to Pūwhakamua.
 - (ii) The possible formal expansion of and use of part of the Reservation.
- (b) Tikanga Aroro have previously sought to lease a portion of the Block from the trustees of the Reservation. They have always anticipated applying to the Court for permission to operate on the Reservation. However, they no longer seek to do so and have started to remove the cabins that were being stored on the Reservation.

⁴ Residential Tenancies (Healthy Homes Standard) Regulations 2019, schedule 1, s 2.

- (c) It appears that Ms Galvin is asking the Court to criticise Tikanga Aroro. They are aware that the success of Pūwhakamua depends on having a strong reputation and community support. They seek to protect their reputation, which is critical to their kaupapa.
- (d) Pūwhakamua did not operate from the Reservation.
- (e) Ms Galvin was provided with multiple opportunities to express any concerns she had regarding Pūwhakamua's planned activity on the Reservation, and she did not do so. An information pack was provided to the residents of the kaumātua homes, and a hui was held on 27 October 2023 that Ms Galvin attended.

Kōrerorero

Discussion

[20] As noted above at the hearing of the interim injunction, I stated that the inquiry into the Reservation that has been requested would be focussed. The scope of the inquiry would be:

- (a) Whether the trustees have permitted activities to occur on the land which are outside the purposes of the Reservation; and
- (b) The lack of written tenancy agreements with the existing kaumātua tenants of the Reservation.

Have the trustees permitted activities to occur on the Block which are outside the purposes of the Reservation?

[21] Around late 2020 to early 2021, Pūwhakamua began storing and constructing cabins on the Reservation. Around the same time, two houses were erected on the Reservation by NUIT for the purposes of social housing. These activities, that the trustees of the Reservation have allowed, are not strictly within the scope of kaumātua housing.

[22] Given this concerns had appropriately been raised by kaumātua residents.

[23] It is clear to me that the trustees engaged with Pūwhakamua with good intentions. It was a quick response to a need, and there was clearly an intention for it to benefit the beneficiaries.

[24] Mr Fletcher, counsel for Tikanga Aroro, submitted to the Court that allowing and permitting the storage and construction of cabins by Pūwhakamua did not necessarily detract or impede on the Reservation, and in fact money from that venture may have gone towards assisting in kaumātua housing. I do not totally agree with this submission but to understand the point that activates beyond the purpose of kaumātua housing may be required in order to assist in the furtherance in pursuing the reservation purpose of kaumātua housing. Put another way, funding from other sources other than rental from kaumātua housing is clearly needed so the Trustees can actually provide good kaumātua housing.

[25] The trustees have now, with Pūwhakamua, taken steps to rectify the breach of the purposes of the Reservation, and Pūwhakamua are looking to vacate and move their cabins off the Block.

[26] The other matter to consider is the two houses that were put on the block in conjunction with NUIT. The Applicant says that while the houses erected by NUIT may be for kaumātua housing purposes, the trustees are allowing kaumātua *and* their whānau to live in the houses.

[27] The Applicant, confirmed through her counsel that in her view the kaumātua housing should only be for kaumātua and they should not be allowed to permit any of their family to live with them, including mokopuna.

[28] This is a very narrow way in which to read the purpose of the Reservation. The trustees have identified a need and have looked at a way in which to provide more houses than currently on the block that are new, safe and healthy homes for kaumātua. This has been done with the assistance of NUIT. As long as the houses are being provided for kaumātua who will be the main tenant then in my view the fact that they also have whānau living with them is still within the purposes of the reservation. It is still kaumātua housing.

[29] I do not think that the two houses placed on the property in conjunction with NUIT are outside the scope of the purpose of the Reservation.

[30] It is my view that in permitting the building of houses on the Reservation by Pūwhakamua the trustees allowed an activity which, on a narrow interpretation of the purpose of the Reservation, does not fit within the scope of kaumātua housing. However, this was never done with a negative or detrimental intention in terms of the kaumātua housing purpose, and as has been stated was done with the intention to benefit all beneficiaries. Further Pūwhakamua are looking to vacate and move their cabins off the Block.

[31] This is not of itself serious enough to justify the trustees being forced to stand down, in essence being removed per s 240 of the Act, which would then require the holding of elections to have them replaced.

Lack of written tenancy agreements with the existing kaumātua tenants of the Reservation.

[32] The trustees are in a dilemma where the Applicant does not currently have a written tenancy agreement and neither do any of the other kaumātua that reside on the Reservation.

[33] It is a legal requirement for the trustees to provide written tenancy agreements to the tenants of the kaumātua homes.

[34] Both parties agree that this is not an easy situation. The ideal would be that the houses on the Reservation:

- (a) were at a very good standard and were healthy homes standard compliant;
- (b) there were written tenancy agreements in place; and
- (c) the tenants were paying their rent and complying with the written tenancy agreements.

[35] This is not the current situation.

[36] It is clear to me that the trustees do want to provide kaumātua homes on the Reservation, however there is clear disagreement on how this is to be achieved.

[37] The tenants in essence are wanting:

- (a) new houses or renovated houses to be built for them;
- (b) the trustees to provide alternative affordable accommodation while the new houses are being built or renovations are being undertaken;
- (c) a guarantee that they will be able to return to the new houses or renovated houses; and
- (d) rent as originally intended in 1988 being at a rate of 25% of the pension.

[38] The current tenants have high expectations. Their demands do look very difficult, if not nearly impossible, for the trustees to meet.

[39] While the trustees have not been perfect in the administration of the Reservation, they are fully aware of the issues they have before them, which are not easy issues to resolve.

[40] Given the difficulty of the situation, the trustees of the Reservation propose a working party consisting of the trustees of the Reservation, the trustees of the Whakapoungakau 15B10 Aggregates Lands Trust and Ngāti Uenukukōpako Iwi Trust to plan for future residential development of the Reservation and Farm site. This working group should be formed.

[41] In my view the trustees' actions have not been such to cause the Court to intervene and remove them.

[42] The trustees have a difficult task ahead of them and should be allowed to get on with looking after the land as they see fit and in alignment with the purposes for which the land was set aside.

Kupu whakatau

Decision

[43] Therefore, the inquiry is complete and the injunction is now dismissed.

[44] I decline making a direction as requested by the applicant.

I whakapuaki i te 2:00 pm i Rotorua, i te rua tekau mā whā o ngā rā o Hanuere i te tau 2025.

Pronounced at 2:00pm in Rotorua on this 24th day of January 2025.

$\{\text{signature}\}$

C T Coxhead

KAIWHAKAWĀ MATUA TUARUA