

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

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

**AP-20230000026867
AP-20230000026879
AP-20240000003285
AP-20240000003292**

WĀHANGA
Under

Sections 239, 338(7) and 244, Te Ture Whenua
Māori Act 1993

MŌ TE TAKE
In the matter of

Mangapoike 2A2 Sections 12, 46, 47 & 48 (Te
Reinga Marae)

NĀ
By

**MERE KOKIRI-TAMANUI AND LEONARD
HEMI**
Ngā Kaitono
Applicants

Nohoanga:
Hearing

1 July 2022, 112 Tairāwhiti MB 48-49
8 March 2024, 124 Tairāwhiti MB 224-225
27 June 2024, 126 Tairāwhiti MB 56-62
27 June 2024, 126 Tairāwhiti MB 63-65
(Heard at Gisborne)

Whakataunga:
Judgment date

22 August 2024

TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA C L FOX
Judgment of Chief Judge C L Fox

Hei tīmatanga kōrero

Introduction

[1] This matter concerns three applications relating to Mangapoike 2A2 Sections 12, 46, 47 & 48 (Te Reinga Marae). The first was filed by Mere Kokiri-Tamanui in 2020 for an inquiry pursuant to reg 21 of the Māori Reservation Regulations 1994 (the Regulations). As a result, Mr Leonard Hemi was appointed as an independent lawyer to inquire into the operation of the reservation trust. He then filed two applications. One is under sections 239 and 338(7) of Te Ture Whenua Māori Act 1993 (the Act) for the replacement of marae trustees. The other is for an order under s 244 of the Act varying the charter for the marae.

Kōrero whānui

Background

[2] The marae was originally set aside in 1969 for the benefit of members of Ngāti Hinehika Hapū.¹ In November 2020, an application for inquiry into the trust was filed by Mere Kokiri-Tamanui. The application was referred to mediation and, as an outcome of that mediation, Mr Hemi was appointed as an independent lawyer to inquire into the operation of the reservation trust. Mr Hemi was appointed by the Court on 1 July 2022 and he was directed to:²

- a) assist the trustees to address matters raised in the application, in particular:
 - i Election issues and determining who are the properly elected and appointed trustees. This may include making formal applications to the Court to replace and appoint trustees.
 - ii Financial issues, in particular assessing the state of the financial reporting and whether there is a need for a financial audit.
 - iii Resolving issues about the finalisation of the proposed trust order and its relationship to the charter.

[3] An Annual General Meeting (AGM) was held on 28 October 2023 where an election of eight trustees took place and the draft charter was approved.

¹ “Setting Apart Maori Freehold Land as a Maori Reservation” (10 April 1969) 21 *New Zealand Gazette* 645 at 664.

² 112 Tairāwhiti MB 48-49 (112 TRW 48-49).

[4] The meeting and agenda were advertised in the local newspaper on 28 September 2023 giving the required 21 days' notice. The advertisement included an e-mail address to obtain details on the nomination process for the election of trustees and any other information, including a zoom link. This was the first time beneficiaries of the marae were able to attend the AGM virtually, if they were unable to be present in person. People were advised that there could be no guarantee of internet connectivity.

Ko te hātepe ture o te tono nei

Procedural History

[5] After I appointed Mr Hemi in 2022, the application for an inquiry came before me again on 8 March 2024.³ Filed prior to that date were the resignations of Angela Thomas, Apiata Tapine, Darden King, Justine Te Moananui-Makirere, and Evelyn Grant. At this hearing, I was advised Mr Hemi had filed new applications to finalise the inquiry. The application was adjourned for counsel to determine whether this application was to be dismissed.

[6] On 27 June 2024, the applications for the replacement of trustees and the variation of the charter were before the Court.⁴ Two attendees, Lilac Mitai and Hiraina Mitai-Harris, oppose those applications on the basis of unfair procedure at the AGM. I directed that Darden King file the records of the voting and communications before and after the election and I reserved my decision on both applications. Having reflected on the law, I consider I can make the decision without this material being filed.

Te kēhi mō te Kaitono

The case for the applicant

[7] The application for replacement of trustees sought the replacement of the trustees above who had resigned. Mr Hemi also confirmed that the Court records are yet to be updated to reflect that Ivy Speakman, Paul Hohipa, Paul Grant and Waiwhero Dunn each resigned or were removed over the past seven years. The minutes of the AGM record that there were 15 nominations received. Each gave a presentation on their whakapapa and what expertise they would bring to the trusteeship if they were successful. Two scrutineers were

³ 124 Tairāwhiti MB 224-225 (124 TRW 224-225).

⁴ 126 Tairāwhiti MB 56-62 (126 RW 56-62); 126 Tairāwhiti MB 63-65 (126 TRW 63-65).

selected and Apiata Tapine and Justine Te Moananui-Makirere managed the Zoom and Facebook attendees. A list of the nominees were displayed on a whiteboard and the names relayed to those online. The top polling eight people were elected, namely:

1. Billy Jack King
2. Renee Stone-Nepia
3. Wikitoria Maureen Mitai
4. Sapphire Nepia
5. Naomi Wilson
6. Priszillia Hawkins
7. Kowhai Cooper
8. Letia King

[8] Three people counted the votes, and no one registered any objection on the day, as far as Mr Hemi was aware.

[9] The AGM minutes also record that the marae charter was discussed and the draft update was approved for filing with the Court.

Ngā whakahe a Ms Mitai rāua a Ms Mitai-Harris
Opposition by Ms Mitai and Ms Mitai-Harris

[10] Prior to the court hearing in June, a Notice of Intention to appear was received from Ms Mitai and Ms Mitai-Harris. They claimed the election process was “unfair and unjustified.” They claimed votes per person were not clarified at the start of the election (one vote per person). They claimed multiple voting was permitted after the fourth nominee had been selected and that voting online was not correctly counted. In addition, they alleged that one screen with votes was counted but a second screen was not. They could not understand why only eight trustees were chosen. They also claimed that all attempts to clarify the situation have been unproductive.

[11] At the hearing Ms Mitai-Harris added that there were 37 people online. They were all able to vote more than once. Votes were not all counted from those online. She did acknowledge there were technical problems with the Wi-Fi at the marae.

Ngā Ture
The Law

[12] For the addition, reduction, and replacement of trustees the Court has a broad discretion. It may at any time, on application made pursuant to s 239 of the Act, add to or reduce the number of trustees or replace one or more trustees of any trust constituted in respect of Māori land or General land owned by Māori.⁵ Similarly, under s 338(7) of the Act:

The court may, by order, vest any Maori reservation in any body corporate or in any 2 or more persons in trust to hold and administer it for the benefit of the persons or class of persons for whose benefit the reservation is made, and may from time to time, as and when it thinks fit, appoint a new trustee or new trustees or additional trustees.

[13] Annual meetings with 21 days' prior notice of the time and place of the meeting are required by the Regulations.⁶ Regulation 19 provides, *inter alia*:

...

(2) The annual general meeting—

- a) shall be open to the attendance of all beneficiaries or other persons for whose benefit the reservation is intended; and
- b) shall be chaired by a trustee, or a person nominated by the trustees; and
- c) shall be conducted in such manner as the chairperson of the meeting directs.

...

(3) The trustee or trustees shall at the annual general meeting—

...

- c) give to persons attending the meeting a reasonable opportunity to express their views in relation to the reservation.

[14] A marae reservation is to have a charter as per reg 7 of the Regulations. Regulation 7 provides:

7 Charter in respect of marae

- (1) Subject to subclause (2), where a reservation is a marae, the trustees of that reservation shall draw up, in agreement with the beneficiaries of the marae, a charter for the reservation, which charter may include provision for the following matters:

⁵ Te Ture Whenua Māori Act 1993, s 236.

⁶ Māori Reservations Regulations 1994, reg 19.

- a) the name of the marae:
- b) a general description of the marae reservation (including a plan if appropriate):
- c) a list of iwi, hapu, or whanau (whichever is relevant) who are the beneficiaries of the marae reservation:
- d) the process for nominating and selecting marae trustees:
- e) principles to which the trustees will have regard in relation to the marae:
- f) the manner in which the trustees are to be accountable to the beneficiaries:
- g) the process by which conflicts between beneficiaries and trustees are to be resolved:
- h) the recognition of existing marae committees:
- i) the appointment by the trustees of 1 or more committees for the purposes of carrying out the day to day administration of the marae:
- j) the procedure for altering the charter:
- k) provision for the keeping and inspection of the charter:
- l) subject to the provisions of the Act or any regulations made under the Act, such other matters as the beneficiaries of the marae may require.

[15] Te Reinga Marae has a charter adopted on 8 October 2006 at an AGM. It provides that trustees may be nominated at marae meetings, that nominations must be in writing, that nominees have to be of Ngāti Hinehika descent, and that voting has to be by show of hands or by secret ballot.

Kōrerorero

Discussion

[16] The nomination process used at the October 2023 AGM, the process for the election of trustees and the resulting election of eight trustees were not inconsistent with the charter, the Regulations, or the Act. The 2006 Charter provides for eight trustees. However, it is not clear from the minutes whether all 8 nominees elected for appointment as trustees are of Ngāti Hinehika descent. I intend to appoint them, conditional on Mr Hemi confirming they are of Ngāti Hinehika descent. I consider this result consistent with the charter that was in place at the time of the election.

[17] As to the issues raised by Ms Mitai and Ms Mitai-Harris regarding voting, I accept the evidence for the applicants that everything was done to accommodate those who attended online and that the voting record reflected the results filed with the Court. It was up to Ms Mitai and Ms Mitai-Harris to verify with evidence the allegations made. No evidence was filed demonstrating any issues with the voting process.

[18] As for the variation of the charter, throughout proceedings the marae charter has been referred to as a charter/trust deed/trust order/terms of trust. These are different things. As described in *Tukapua – Horowhenua 11B 36 2L 4A Block (Kawiu Marae)*,⁷

A charter is the agreement between trustees and beneficiaries about how a marae reservation is to be administered. Trustees' have a duty and are bound to administer the marae according to the terms of the charter.

[19] The marae charter can be varied by the trustees in agreement with the beneficiaries, in the same way it is created per reg 7 of the Regulations, without the need for a Court order. Court approval is needed to change the beneficiaries of the reservation, as discussed below.

[20] On the other hand, “where specific terms of trust are required for a Māori reservation those terms are set out by an order [pursuant to s 338(8)] from this Court.”⁸ Under s 244 of the Act the Court similarly has the power to vary a trust by varying or replacing the order constituting the trust. For Māori reservation trusts, “a trust order does not need to be complex, because the trust is governed by The Regulations.”⁹ It is not necessary for the contents of a marae charter to be captured in the terms of trust by way of a trust order.

[21] I do not consider it necessary for Te Reinga Marae’s charter to be approved by the Court, nor set out in a trust order unless the trustees consider it necessary.

[22] I also note that the current draft includes the Ngāi Kohatu Hapū as beneficiaries, although Te Reinga Marae was not set aside for the Ngāi Kohatu Hapū. If the class of beneficiaries is to be extended to include Ngāi Kohatu Hapū, that is something requiring

⁷ *Tukapua – Horowhenua 11B 36 2L 4A Block (Kawiu Marae)* (2013) 307 Aotea MB 117 (307 AOT 117) at [34].

⁸ *Povey v Sherard - Otakanini Māori Reservation (Haranui Marae)* (2017) 155 Taitokerau MB 4 (155 TTK 4) at [7].

⁹ *Pita v Ngatiwai ki Whangaruru Whenua Topu Trust - Whangaruru Whakaturia 1D9A and Whangaruru Whakaturia 1D10A* (2010) 10 Taitokerau MB 40 (10 TTK 40) at [70].

Court approval. It will need to be discussed and approved at a Special General meeting and then an application made pursuant to s 338(1) and (3) of the Act should be filed. It should also remain in the charter.

[23] I note that the current draft does not cover all matters listed in the Regulations, including the principles to which the trustees may have regard to in relation to the marae. Consequently, another Special General meeting is needed to work through reg 7 of the Regulations to review the current charter and the new work completed on the draft completed by Mr Hemi. Full record keeping recording the voting process is to be adopted by the trustees. Any new charter will amend the existing charter and come into effect once it is approved by the beneficiaries. The trust may choose to lodge the charter with the Registrar.

[24] Any changes to the class of beneficiaries must be approved by the Court along with any draft terms of trust (if that is ultimately required).

Kupu whakataunga me ngā ōta

Decision and orders

[25] Pursuant to s 86 the Court record is to be updated to reflect that Ivy Hinepua Arangi Speakman, Paul Patrick Hohipa, Paul Watene Grant and Waiwhero Leonie Dunn are former, not current, trustees.

[26] There is an order pursuant to ss 239 and 338(7) of Te Ture Whenua Māori Act 1993 replacing Angela June Thomas, Apiata Michael Tapine, Darden King, Justine Te Moira Te Moananui-Makirere, and Evelyn Mavis Grant due to resignation, with:

1. Billy Jack King
2. Renee Stone-Nepia
3. Wikitoria Maureen Mitai
4. Sapphire Nepia
5. Naomi Wilson
6. Priszillia Hawkins
7. Kowhai Cooper
8. Letia King

[27] The order for appointment is conditional on Mr Hemi confirming that all nominees are of Ngāti Hinehika descent.

[28] As for the application for variation, the Registrar is directed to conduct a further meeting to be held in Wairoa to discuss the issues raised in paragraphs [21]-[24] and file an application under s 338(1) and (3) if necessary. Voting is to be by show of hands. There is to be no zoom attendance. Mr Hemi may assist and he may also submit a further application for Special Aid. The Registrar must advertise the meeting in the Wairoa Star at least 14 days before the meeting.

[29] The application filed pursuant to reg 21 of the Māori Reservation Regulations 1994 is concluded and may be dismissed.

I whakapuaki i te wā 11am ki Te Whanganui-a-Tara, 22 o ngā rā o Hereturikōkā i te tau 2024.
Pronounced at 11am in Wellington on this 22nd day of August 2024.

C L Fox
CHIEF JUDGE